

The Health Care Executive Workers' Compensation Advisor

Special Interest Articles:

- Managing Workers' Comp Reduces Costs.
- Proper Use of Bureau Forms: the Time Periods.
- Recent Cases that Affect Your Bottom Line.

Highlights:

- Injury Statistics 2
- Interview Tips 4
- Night Shift 4
- Blood Exposure 5



Welcome to Fried, Kane

The Health Care Executive Workers' Compensation Advisor is designed to provide specialized information to health care executives regarding effective management of workers' compensation claims. It offers practical guidance in ways to mitigate the ever increasing costs associated with workers' compensation issues.

The health care industry presents special problems and unique

issues in matters arising under the Pennsylvania Workers' Compensation Act. Our experience in this highly specialized and technical area of the law will help you and your organization handle any workers' compensation need in the most effective and cost efficient manner possible.

Fried, Kane, Walters, Zuschlag and Grochmal offers personalized, industry specific service and focuses on our

client's needs and best interests by defending their workers' compensation claims aggressively while keeping them up-to-date not only on their cases but also regarding recent developments in the Pennsylvania Workers' Compensation law. We invite you to learn more about our legal services and its cost cutting benefits to your health care facility by contacting us. Visit us at www.friedkanelaw.com.

Managing Workers' Compensation Reduces Costs

Your health care organization can implement effective strategies to minimize its workers' compensation claims expenses. The health care industry faces special problems and unique issues in analyzing claim trends, reviewing existing claims and implementing specific strategies designed to meet the needs of individual health care facilities. When cases become complex or when litigation begins, it is essential that you place yourself in the best

defensible position. One strategy that is proven to reduce workers' compensation costs is an aggressive return to work program.

One part of this strategy is the aggressive use of initial vocational interviews which help to enhance your defense position for a suspension and/or modification petition based upon available employment opportunities. Importantly, a suspension of an injured worker's benefits should be aggressively pursued if

there is a lack of cooperation with the initial vocational interview.

Careful legal analysis of the specific fact situation of a claim is necessary in order to expedite the suspension of a claimant's benefits. For example, one proven successful strategy used by Fried, Kane is requesting a suspension of benefits within a Petition to Compel Physical Examination. Often a Workers' Compensation Judge will (continued on page 2)

Managing Workers' Compensation (continued)



Issue an interlocutory order mandating that a claimant attend an initial vocational interview under a potential suspension penalty. If and when a

claimant does not comply with the interlocutory order, the employer defendant can request that a final suspension order be circulated, rather

than filing a separate Suspension Petition and waiting for it to be assigned to a Judge thus resulting in considerable savings to the defendant.

Injury Statistics in the Health Care Industry

The most recent injury statistics available from the Pennsylvania Department of Labor and Industry regarding work related injuries sustained by health care workers was compiled in its 2006 Annual Report. The Department reported 13,918 injuries in health care and social assistance industries. Ambulatory health care services had 2,562 injuries, hospitals had 3,779 injuries, nursing and residential care facilities had 5,646 injuries, and social assistance agencies reported 1,931 injuries.

In 2005, there were a total of 12,541 injuries among health care and social assistance providers. That results in an increase of nearly 10% in the number of work injuries affecting health care providers in 2006 when compared to injuries occurring in 2005.

The type of injury sustained in Pennsylvania health care facilities included 13 amputations, enucleations and loss of use injuries, 188 heat and

chemical burns, 2,134 contusion, crushing and bruise injuries, 897 cut, laceration and puncture injuries, 636 fractures, 7,337 sprains and strains, 443 multiple injury incidents, 350 occupational disease exposures, and 1,920 unclassified injuries.

The 2006 Annual Report provided the following statistics regarding body parts affected. Of the 13,918 injuries in the health care sector, 885 affected the head, 444 affected the neck, 4,063 affected the upper extremities, 3,909 affected the trunk, 2,778 affected the lower extremities, 1,726 affected multiple body parts, 107 affected body systems and 6 were unclassified.

834 injuries were caused by striking against something and 2,253 were caused by being struck by something. 202 injuries resulting from falling from an elevation while 1,630 occurred from falls from the same level. 300 injuries occurred with the claimant being caught in, under or between

something. 1,470 occurred with the body reacting to something.

Overexertion caused 5,113 injuries and 6 were sustained with contact to electricity. 214 occurred with contact with extreme temperatures and 329 with contact to caustic substances or radiation. Traffic accidents caused 451 injuries and 1,116 were considered "other."

Analysis of this data confirms that the most prevalent injury type in the health care industry continues to be strains and sprains. With over 60% of the population being overweight, this is not a surprising statistic.

As a practical tip, it is essential that careful attention be paid to the description of the injury on the Notice of Compensation Payable which allows the Employer to manage the claim effectively in the future.

(Statistics from the 2006 PA Workers' Compensation and Workplace Safety Annual Report available online at www.dli.state.pa.us.)

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Proper Use of Bureau Forms: The Time Periods

This is the first in a series of articles designed to provide an overview of the proper acknowledgment of a compensable work injury, in addition to the subsequent remedies and strategies needed to alter the benefit status of an injured health care worker.

The Pennsylvania Workers' Compensation system has developed into a specialized "form" based practice. Individual forms have been promulgated by the Bureau of Workers' Compensation to accomplish many of the remedies available to your health care facility.

As a health care workers' compensation professional, venturing into this administrative law system, you must become familiar with the appropriate forms and the mandatory time frames associated with each remedy.

Upon completion of the investigation of a reported work injury, the Employer and/or Insurer must decide whether workers' compensation benefits will be denied or voluntarily paid. The employee interview (see article on page 4) is one of the important elements in your management of the claim as it provides essential information to make the proper determination to deny the claim or accept it voluntarily.

If the claim is voluntarily accepted, there

are many statutory requirements which must be followed. The following are just some of the time considerations that you must keep in mind when managing your workers' compensation claims.

The Employer Report of Injury Form (LIBC-344) must be filed if the employee is absent for one work shift or more. The Employer has the responsibility of completing the form and filing it with the insurer. The Insurer will then file the form with the Bureau.

The Employer/Insurer must accept or deny the claim for disability within 21 days of the Employee notice OR the Employer's knowledge of the work injury. The first installment of workers' compensation benefits must be paid no later than the 21st day after the Employee notice or the Employer has knowledge of the disability.

Any delay by the Employee in providing notice to the Employer or any delay in the Employer's actual knowledge of the occurrence of a work related injury delays the commencement of the 21 day period during which the Employer/Insurer must accept or deny a claimed work injury.

Pursuant to the express provisions of the Workers' Compensation Act, if the Employee does not provide notice and the Employer does not have

actual knowledge of the occurrence of the work injury within 120 days of the date of injury, no compensation shall be payable.

The Employee or someone on her behalf must give notice to the Employer within 21 days after the occurrence of the injury and inform the Employer "in ordinary language" that a certain Employee has sustained an injury (1) in the course of employment and (2) on or about a specific time, at or near a specific place. Notice must be given to an immediate or other "superior" of the Employee or any agent of the Employer. Knowledge of Employer's agent is knowledge to the Employer. Form LIBC-500 advises the Employee of reporting an injury.

The notice period for occupational disease claims commences as of the date the employee knows of the existence of a disability resulting from the occupational disease with a possible relationship to the employment. The 21 day notice period commences as of the "discovery" of the possibility of a compensable occupational disease by the Employee.

This series of articles will continue in the next edition of The Health Care Workers' Compensation Executive.



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Tips for Interviewing a Claimant

The interview of a potential workers' compensation claimant is an essential element to the effective management and cost control of claims. Fried, Kane, Walters, Zuschlag and Grochmal recommends several areas of inquiry which allows you to properly analyze the claim before denying or accepting it. The areas of inquiry include:

- Background
- Employment history
- Injury/Accident description
- Disability
- Prior Disability or Injury
- Medical Treatment
- Current Symptoms
- Activities of daily living
- Other Benefits available
- Fraud Inquiries

The attorneys of Fried, Kane will be happy to assist you in formulating questions and areas of inquiry for specific cases. We believe that the initial interview should be used as part of your management strategy.

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The Night Shift and the Potential of WC Liability

Recently the World Health Organization added night shift work to its list of probable carcinogens. This announcement can be a potential concern for the health care industry as it uses overnight workers as part of the normal course of business.

The WHO study focused on eight epidemiological studies on cancer rates from different geographical regions and concluded that shift work that involves the circadian disruption is a probable carcinogenic to humans.

In managing any potential workers' compensation claims for cancer based upon the WHO findings claiming work related cancer, it is critical to begin any analysis of such claim from the perspective that

night shift work is not a known carcinogen but rather a "probable" carcinogen. Therefore, the claimant would still need to prove causation.

Additionally, the WHO research showing higher cancer rates among night shift workers does not prove that the night shift causes cancer. The study did not analyze common risk factors that may or may not have been shared by night shift workers that increase their risk of developing cancer.

Although it is not a far fetched notion that a night shift worker within the health care industry may file a claim alleging that his or her development of cancer is related to work (based upon the WHO research findings), it is recommended that any such claim be denied.

Under the Pennsylvania Workers' Compensation Act, the claimant must prove that the predominant cause of cancer was his or her work and that other risk factors were not significant in the development of cancer.

Because of the uncertainty in this new concept in Workers' Compensation Law, any such potential claim should be denied and handled aggressively. The issues would focus on the general uncertainty about the cancer's origins.

Causation issues associated with occupational disease claims are difficult and we recommend thorough legal analysis and aggressive handling to reduce your workers' compensation costs.



Exposure to Blood: What You Need to Know to Manage Your Workers' Compensation Claims

Healthcare personnel are at risk for workplace exposure to bloodborne pathogens. Specifically, the most prevalent risks are from exposure to hepatitis B virus (HBV), hepatitis C virus (HCV), and human immunodeficiency virus (HIV).

Workplace exposures to these pathogens occurs through needlesticks or cuts from sharp instruments contaminated with an infected patients blood or through contact through the eye, nose, mouth or skin with a patient's blood. The risk of this type of injury is ever increasing especially in light of the nursing shortage. Studies have shown that needlestick

injuries in hospitals increase dramatically when staffing levels are lowered.

When faced with these difficult cases, it is important to aggressively question the claimant regarding the work exposure to blood as well as any risk factors the claimant may have which questions a work related cause for the infection.

Importantly, most exposures do not result in infection and the risk of infection varies with such factors including the pathogen involved, the type of exposure, the amount of blood involved in the exposure and the amount of the virus in the patient's blood at the time

of exposure. Your facility should have in place a system for reporting blood exposures which allows you to quickly analyze the risk of infection.

Occupational disease claims are complex when considering the important causation issue as the claimant must prove (1) exposure by reason of employment, (2) a causal relationship to the industry or occupation, and (3) that there is a substantially greater incidence of the disease in that industry or occupation than in the general population. Therefore FKWZ&G recommends careful evaluation before accepting such claims as compensable.



Fried, Kane's Successes that Affect the Bottom Line

Fried, Kane, Walters, Zuschlag and Grochmal has successfully represented health care facilities in numerous workers' compensation cases. Our lawyers, one of whom is a nurse, understand the unique problems faced by health care institutions. Our legal services will free you from the complexities and concerns associated with workers' compensation claims made against your facility. Our lawyers' strategic expertise and frank legal advice will enable you to take control of your workers' compensation costs. Here are some examples of our successful cases.

In T.W. v. Mercy Hospital of Pittsburgh, the WCJ accepted the testimony of the defendant's medical witness who was also the claimant's treating physician. We were able to show that defendant properly offered claimant a job within the physical restrictions set forth by the treating physician but that claimant refused to return to work. The defendant was entitled to a suspension of benefits resulting in an anticipated savings of \$508,150 based upon a thirty year projected life expectancy.

In L.Y. v. Mercy Hospital, the claimant's Claim Petition was denied when the WCJ found that

the claimant did not sustain a work-related injury based upon the credible testimony of an employer's lay witness and the defendant's medical expert resulting in a savings of over \$762,000.

In I.D.v. St. Francis Health System, Fried, Kane successfully litigated a complex Claim, Reinstatement and Penalty Petition. Strategically, FKWZ&G also initiated litigation through the filing of a Termination Petition. Fried, Kane successfully established that the claimant did not sustain a new injury but rather a recurrence of a prior work injury. The Penalty (continued on page 6)

The materials contained in The Health Care Executive Workers' Compensation Advisor were prepared by Fried, Kane, Walters, Zuschlag and Grochmal for information purposes only, are not intended to be legal advice and do not constitute legal advice. For additional information or for legal advice, contact any of our lawyers at (412)261-4774.

FKWZ&G Successes that Affect the Bottom Line (cont.)



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Petition, based upon claimant's allegation that benefits were suspended without signing a supplemental agreement, was denied because the claimant failed to execute it. The result was a savings for the defendant of \$352,160.

In J.S. v. Mayview State Hospital, FKWZ&G represented the defendant on a Claim Petition and Petition for Penalties. The defendant did not dispute that the injury occurred, but Fried, Kane argued that the Claimant did not experience any disability as a result of the work injury. The WCJ accepted the testimony of the defense medical witness as secured by Fried, Kane, and found that, although a work injury

occurred, the Claimant was not entitled to workers' compensation benefits because he did not experience a disability. Fried, Kane then successfully secured a termination. The successful strategy employed by Fried, Kane resulted in a savings of over \$65,000 for the defendant.

In G.M. v. Gary B. Means, DMD, FKWZ&G successfully litigated the denial and dismissal of a claim petition. The issue in this difficult case was whether the claimant had returned to work and had ongoing earning power. Specifically, a confidential informant notified the carrier that claimant was working. Fried, Kane instituted surveillance which documented that

the claimant went to a friend's home for periods of eight hours. The claimant's wife was employed a caretaker for the friend's disabled son at this location. However, claimant's wife was documented to be elsewhere. On aggressive cross examination by FKWZ&G lawyers, claimant admitted that he was working but stopped because of the effect on his workers' compensation benefits. An additional aggressive strategy was to subpoena seven witnesses to document claimant's activities. The WCJ found that defendant was entitled to an ongoing modification of benefits resulting in an anticipated savings of \$650,000 over the lifetime of the claim.

About Fried, Kane, Walters, Zuschlag and Grochmal

We are a law firm providing our employer, insurance carrier and third-party administrator clients cost effective results in all matters arising under the PA Workers' Compensation Act. We offer personalized service and over 190

years of combined expertise while focusing on our client's needs and best interests.

Founded in 1976, we have built a reputation of responding to our clients needs with exceptional service, prompt analysis

and candid legal advice. We invite you to use our innovation, experience and expertise to help you manage your workers' compensation claims. Call us at (412)261-4774 or visit us on-line at www.friedkanelaw.com.



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