

# FACT SHEET FOR EMPLOYERS

Workers' compensation insurance is mandatory for all Vermont employers. Most employers are aware of their coverage obligations and they know that it provides an injured worker with certain benefits. This fact sheet is intended to answer common employer questions and to provide information about the workers compensation process, dispute resolution and other facts of interest.

## **Purpose**

Workers compensation law is intended to provide for employees a speedy, no-fault remedy and for employers liability which is limited and determinate.

## **Statutory Benefits**

An injured worker may be entitled to one or more of these specific benefits:

- Medical care/treatment that is reasonable and necessary to treat injury
- Lost time if disabled due to work injury; roughly 2/3 of usual work wages
- Permanent impairment only if injury results in permanent impairment; per AMA Guides to the Evaluation of Permanent Impairment
- Vocational rehabilitation if unable to return to suitable employment
- Death benefits if evidence supports the death arose due to work injury

## **What is a work injury?**

A work injury is an injury that arises out of and in the course of employment. It may be an injury or an occupational disease and it may occur instantaneously or over time.

## **First report of injury**

Employers must report all work injuries that result in either any medical attention or one lost day of work or more. Filing a first report does not impose liability upon the employer for that injury. The first report of injury must be reported to the department and to the employers insurance carrier. It is up to the insurance adjuster to deny the claim.

## **Denial of a Claim**

The insurance adjuster is responsible for denying and adjusting the claim. All Vermont workers compensation adjusters must be licensed and must receive annual training, thus ensuring familiarity with the law and procedures. The adjuster has a duty to investigate the claim and must provide evidence to support the denial. Every claim is unique, therefore the adjuster must be able to contact the employer and to obtain or communicate essential information about a claim. The adjuster may ask the employer to provide relevant information about the injury or other pertinent work place information. The employer, in turn, has the right to request from the insurance carrier information about the claim and/or the carrier's investigation.

### **Burden of Proof is on Employee**

The employee has the burden of proving that they suffered a work injury. Their statement alone is not sufficient. The employee must submit evidence supporting their claim. If the employee submits evidence, the employer, through its carrier, may submit contrary evidence. Evidence may include medical records, witness statements, or documentation of other factual information relevant to the claim. If both the employee and the carrier submit contrary evidence, the employee's evidence must be more persuasive for their claim to succeed.

### **Pre-existing injuries**

A claim is sometimes denied because the employee had a pre-existing injury. The denial is appropriate only if the employee suffered no new injury and/or no aggravation or worsening of their pre-existing injury. The law concerning pre-existing injuries is that you take your employee as you find them. This means that even if an employee may be more likely to suffer an injury, if a new injury occurs or an old injury is aggravated, the employer is responsible.

### **Pre-existing work injuries – Aggravation v. Recurrence**

A common dispute arises when an employee has suffered a work injury in the past and now suffers either an acceleration or exacerbation of an old injury or the return of symptoms following a temporary remission. This is called an aggravation/recurrence dispute. Either the employer/carrier from the old injury or the current employer/carrier are responsible. One insurance carrier must begin paying benefits. The department reviews the evidence and applies the following analysis to determine liability.

- Did the incident destabilize a previously stable condition?
- Had employee reached medical end result before leaving the first employer?
- Had employee stopped treating medically for original condition?
- Had employee successfully returned to work following original injury?
- Did employee's subsequent work contribute to final disability?

### **Denial of specific benefits**

Once a claim is accepted by the insurance carrier, specific benefits may still be denied. One example of a specific benefit that may be denied is surgery. If surgery has been recommended, there may be conflicting physicians opinions as to whether or not the proposed surgery is reasonable and necessary to treat the work injury. The insurance adjuster may submit evidence (in this example medical evidence) on the issue. The benefit sought may be properly denied if the insurance carriers evidence outweighs the employees evidence.

### **Stopping payment of benefits**

The insurance adjuster must file at **Form 27** (Notice of Intention to Discontinue Payments) along with supporting evidence to stop payment of most benefits. The following reasons, supported by evidence, allow the insurance carrier to stop paying one or more benefits:

- Employee has reached medical end result
- Employee has failed or refused to return to work once medically released
- Employee refuses to attend a medical exam reasonably requested by the employer

- Employee willfully makes a false statement or representation of a material fact for the purpose of obtaining a workers' compensation benefit
- Employee fails or refuses, without good cause, to provide a medical authorization

### **Medical end result**

In Vermont, the carrier may stop paying lost time benefits when the employee reaches medical end result, that is, when the employee has reached a plateau in their recovery such that significant further improvement is not expected, regardless of treatment. The carrier must submit proof establishing medical end result.

### **Independent medical examinations**

The insurance carrier may request that the employee undergo an independent medical examination (IME). The employee must be given proper notice and the exam must be scheduled at reasonable times and places. IMEs are usually requested to address a specific medical issue in the claim such as causation, medical end result or permanency.

### **Return to work**

The employees return to work is a logical and desirable goal in workers compensation. The employee must be released to return to work by a medical provider. If the employee is not able to return to full-duty work it is necessary for a physician to address the employees physical work capabilities and/or limitations so that the employee can return to work safely. The employer may hasten the return to work process by identifying the physical requirements of available jobs and keeping the employee advised of availability. Once the employee returns to work the insurance carrier is allowed to stop payment of indemnity benefits.

### **Return to employer – Reinstatement**

The employer is required by law to reinstate the employee if s/he recovers within two years of being disabled. The employee should be reinstated in the first available suitable position. This means that if the employer has suitable work, it must be offered to the employee. Suitable work is that which the employee has the physical abilities, knowledge and skills to perform. The employer is not obligated to create a new position.

### **Permanent Partial Disability**

When a work injury results in permanent impairment, the employee is entitled to compensation for that impairment, as rated by a medical provider, according to the most recent edition of the AMA (American Medical Assoc.) Guides to the Evaluation of Permanent Impairment. More than one medical opinion concerning permanent impairment may be provided in a claim. The employee is entitled to have one opinion from his/her treating physician (or, if treating physician does not perform permanency ratings, from another physician) paid for by the insurance carrier. If the opinions differ by <10% they are resolved at the informal level and >10% at the formal level. The opinions are weighed and the following factors considered:

- Whether report was clear, thorough and included objective support for opinion expressed
- Comprehensiveness of exam
- Whether all medical and treatment records were considered in rendering opinion

- Nature and length of provider /patient relationship
- How the impairment was calculated, including review of criteria, table or page consulted

### **5th Edition of the AMA Guides**

The American Medical Association recently issued a new edition of the Guides to the Evaluation of Permanent Impairment. Vermont law requires that impairment ratings be calculated according to the most recent edition. There are some changes with the new edition. The new, 5th edition places greater emphasis upon objective and verifiable findings such as positive MRI or EMG findings. Another change is that the medical provider may add additional impairment for pain. No studies are yet available on the impact of ratings with the new edition. Early reviews suggest that for some injuries, ratings may go up, and for some injuries, ratings may go down. As always, both parties to a claim may present evidence on the issue of the appropriate permanent impairment rating. In addition, the other medical evidence in the file is considered.

### **Permanent Total Disability**

By law, an employee with specific identified injuries (such as the loss of both hands) is entitled to permanent total disability (PTD) benefits. PTD benefits are paid for a minimum of 330 weeks and continue unless the insurance carrier presents evidence that the employee has reasonable prospect of finding regular employment. The 1999-2000 legislature amended the law to recognize the Odd Lot Doctrine. This extends PTD benefits to an employee who, apart from the scheduled PTD injuries, is unable to return to regular, gainful employment. Despite this law change, the employee continues to have an extremely high burden of proof in establishing s/he is permanently and totally disabled. Even if there is a determination of PTD and an award, the carrier may present evidence to limit the duration of these benefits.

### **Injuries Not Covered**

Not all work injuries are covered under workers compensation. Compensation is not allowed for injuries caused by:

- employees willful intent to injure him/herself or another
- by or during the employees intoxication
- employees failure to use a safety appliance provided for his/her use

The burden of proof is on the employer who wishes to claim the benefit of one or more of these denials.

### **Drug Testing**

Employers may perform drug testing of employees and/or of applicants only under the following specific conditions.

1. Job applicants: Employment has been offered, conditional upon negative test result; written notice of the testing procedure, drugs to be tested and that therapeutic levels of medically prescribed drugs will not be reported; and the drug test is administered pursuant to 21 V.S.A. §514.

2. Employees: Probable cause to believe employee using/under the influence of a drug on the job; and, employee assistance program in place; and, employee may not be terminated for 1st positive test; and drug test administered pursuant to 21 V.S.A §514.

### **Medical Case Management**

Over recent years insurance carriers have increased their use of medical case managers (MCMs) whose job is to assist in the development and implementation of a medical care plan for the injured employee. MCMs are generally nurses with medical knowledge and experience. They are agents of the insurance carrier. The Vermont workers compensation system recognizes the assistive role of the MCM and encourages the employees cooperation.

### **Insurance rate**

Workers' compensation insurance coverage may be a large expense for an employer. The insurance rate depends upon the employer's payroll, experience rating and the type of work performed. The best way to keep insurance premiums down is to develop and maintain a good safety record. The number and severity of work injuries affects the employer's experience rating, which adjusts the standard industry rate up or down, accordingly. A work injury can affect an employer's safety record and experience rating for a 3 year period. If you are a small employer or you have a poor safety record you may not be able to obtain coverage in the voluntary market and will have to obtain coverage in the assigned risk pool which may cost more than insurance in the voluntary market.

### **The biggest cost saver is SAFETY**

The number one way to reduce workers compensation costs and claims is through safety and training. Studies show that safety measures, training and experience all contribute to a reduction in work injuries. In Vermont, the three most common injuries are to the back, the eyes and cuts on the hands. These statistics point out the need for body mechanics and proper lifting techniques, safety goggles and gloves. Providing appropriate training and developing and implementing safety protocols and which are used consistently can reduce work injuries, thus helping to keep insurance premiums down. If you would like a free safety and health consultation please contact Project WorkSAFE at 1-888-723-3937 (888-SAFE-YES).