



Survival Strategies For Today's Business Climate

Worker's Compensation Insurance Fraud

Workers' Compensation Insurance fraud is a concern for many employers today. Rising costs and a broken system are resulting in frustration and concern. Unfortunately, fraud is difficult to prove. Fraud and abuse are often confused, leaving an employer feeling that their insurance company is not helping them combat fraud. Educating yourself on fraud is the most effective way to fight it. The first step in educating yourself about fraud is to understand what fraud is and how it differs from abuse. *Webster's Dictionary* defines abuse as "to use wrongly," while it defines fraud as "intentional deceit." Clearly, the difference between fraud and abuse is that fraud is intentional and abuse is unintentional.

So, once you are suspect that fraud is occurring, what do you do? If you suspect fraud, you have to prove that your injured employee is intentionally deceiving you and your insurance company for personal gain. If your employee is merely abusing the workers' compensation system it will be difficult to charge your injured employee with fraud in court. So, how do you prove it is fraud and not abuse? You have to be diligent in your injury investigations and ask the right questions. If you are suspicious that an employee is committing fraud, it is imperative that you ask questions that will help you to prove deceit. You have to catch them in a lie.

Here's an example:

A year ago, your employee injured their back lifting a box at your facility. It is a soft tissue injury and therefore it is difficult to tell the extent of the injury other than the injured's description of their pain. You suspect they are malingering, that they have recovered from the injury months ago but are prolonging the injury in order to continue to receive benefits. Merely suspecting that they are malingering

will not stand up as fraud in court. You must prove deceit. Here's how:

Step 1: Sit down with your employee for an interview. Ask them how they are doing. Ask them what specific activities they can no longer perform as a result of their injury. Write down your discussion.

Step 2: Call your insurance company and request an investigation that includes surveillance. Be sure to send your insurance company and the investigator the list of activities that the employee claims they are unable to perform as a direct result of their injury. This will help the investigator possibly tape your injured worker engaging in those activities, thus proving deceit.

Step 3: Find out when your employee's next doctor appointment is. Have the investigator perform surveillance on the day of the appointment, both before and after the appointment. Review the doctor's report against the surveillance tape. Did the employee tell the doctor that they cannot lift more than 10 pounds? Did the doctor restrict the employee from lifting more than 10 pounds? Does the surveillance tape on the day of the appointment show the employee repeatedly lifting their 30-pound toddler?

Always be sure to work with your insurance company and your investigator to help combat fraud. There are no guarantees that even the most diligent investigation will reveal fraud, however playing an active part in the investigation will increase your ability to protect your company and its interests.

LKM Consulting is a business consulting firm that focuses on human resources and workers' compensation cost control.

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