

WORKERS COMPENSATION TIPS

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A. ALWAYS fill out a first report of injury completely and correctly.

The First Report of Injury is the first and oftentimes most important documentation in a Worker's Compensation ("WC") claim. Each and every section of the First Report of Injury needs to be carefully and correctly completed. A fully completed First Report of Injury will be very useful to the WC adjuster and later to the attorney defending a WC lawsuit.

- Employee's information to include name, age, address, telephone number.
- Length of time in employment.
- Date employee notified (notice is required to employer).
- What happened.
- What body part injured.

B. Defenses to claim

Defenses or exceptions which may negate an employee's claim for benefits (either compensation, medical or both):

- When the accident is caused by the willful misconduct of the employee.
- When caused by the act of a third person or fellow employee for personal reasons, and not directed against him as an employee or because of his employment.
- When the employee intentionally brings about the injury or death of himself or another.

- When the employee is intoxicated from alcohol or use of illegal drugs and such causes the injury or death.
- When the employee fails or willfully refuses to use safety devices provided by the employer.
- When the employee willfully refuses or willful neglects to perform a statutory duty.
- When the employee willfully breaches of a reasonable rule or regulation of the employer, of which rule or regulation the employee has knowledge.
- Accident or injury not caused by the employment, the employee has to prove legal causation and medical causation. Legal causation means that the accident actually happened and arose out of the employee's employment; Medical causation means that the accident was in fact a contributing cause of the injury.

Furthermore, each portion of the first report of injury is there for a reason; not just for the State DIR, but for the adjusters and counsel.

C. Show and have genuine concern for your employee.

This amazingly reduces the number of suits you may receive and also gives you an opportunity to check up on the employee's complaints of pain, ability to get around, etc.

D. Document any and everything that relates to an injured employee.

Get employee and witness statements immediately. Also, make sure to note any and all employees who were working that day and saw or heard anything. As time passes, people forget details and stories/facts change.

E. Have employees fill out a post-hire medical questionnaire.

Fraud on employment applications is prevalent but you must provide the appropriate warning or you are liable for an injury despite incorrect preemployment inaccuracies. Employers should have an employee (post-hire) complete a medical questionnaire asking questions about prior injuries or medical problems. Section 25-5-51 of the Alabama Worker's

Compensation Act provides: "No compensation shall be allowed if, at the time or in the course of entering into employment, . . . the employee knowingly and falsely misrepresents in writing his or her physical or mental condition and the condition is aggravated or re-injured in an accident arising out of and in the course of her employment.

"At the time an employer makes an unconditional offer of employment.. . the employer shall provide the employee with the following written warning in bold type print, **Misrepresentations as to preexisting physical or mental conditions may void your workers' compensation benefits.**" Therefore, get out and review your employee's application and medical questionnaire immediately after the accident. If the employee has injured a portion of the body mentioned in your questionnaire, investigate!

F. Provide written safety guidelines to all employees or make them available in a common break room.

Have employees sign that they have read these policies upon employment or upon implementation of the rules. Upon an injury, investigate immediately to determine if any safety rules were violated by the employee.

Section 25-5-51 provides that "no compensation shall be allowed for an injury or death caused by the willful misconduct of the employee, by the employee's intention to bring about the injury or death of himself or herself or another, his or her willful failure or willful refusal to use safety appliances provided by the employer..."

Furthermore, include in these safety guidelines that it is a violation for an employee to work outside any physician's restrictions. Note all restrictions in an employee's personnel file. Make each supervisor aware of his employees' restrictions and enforce that the

supervisors do not allow an employee to work outside those restrictions.

G. Do not send employees on personal errands.

Personal errands, done at the direction of a supervisor, become in the line and scope activities. Asking your assistant to pick up your laundry can result in a myriad of accident scenarios which would arguably be covered under workers' compensation. Imagine the dismay your boss will have with that comp claim.

H. Have specific job descriptions for each employee.

Job descriptions can assist in defining the scope of your employee's work. When the question arises as to whether that was in the course of employment, a well written job description can be of great help.

Further, a job description can be utilized for return to work issues. Presenting the job description to the treating physician can allow the doctor to make an informed decision as to whether the employee can return to regular duties and/or needs certain job specific restrictions.

Your vocational expert will find a job description of great help in determining vocational disability. It is also a good tool in combating the vocational assessment of the plaintiff's expert.

I. Have written policies and procedures.

Assure that each employee is aware of your specific requirements for reporting an on-the-job injury. As with the safety guidelines, have each employee acknowledge that they have read and understand the policies of your company, including your policy for reporting an injury, no matter how slight. If an employee cannot read, have him sign an

acknowledgment that though he cannot read, a specific employee has explained the policies to them. Always communicate the employees' and employer's rights, roles and responsibilities to each and every employee both upon hire and upon any injury.

If you do not have written policies and procedures in place, please consult with an employment attorney to assure that you promptly and properly implement such policies.

J. Implement a drug and alcohol policy.

This will protect you in the event that the injury was caused by an employee's drug or alcohol use. Where this is determined, you are obligated to only pay medical benefits not weekly compensation benefits. Always have your preferred physician drug test an employee in the general course of examining the employee after an injury.

K. Implement an alternative duty program.

Employees who remain in the workforce are less likely to malingering or exaggerate their injuries. You need to provide a real job, not a fake one. Make the employee's time useful.

L. Workers' Compensation "Red Flags"

- Monday morning or near a holiday
- Short term employee, employee with disciplinary record or employee on probation
- Employee with numerous past employers
- Employee with numerous past injuries
- Immediate attorney involvement
- Other family members receiving compensation or disability

- No witnesses
- Other employees that knew employee was planning to fake an injury
- Delay in reporting the injury
- No specific date, time or place for injury
- Details of injury reported are "sketchy"
- Discrepancies between claimant's account of injury and witnesses' accounts
- Claim maybe part of a suspicious pattern of claims from the same area or location
- Claim occurs prior to anticipated layoff, termination or retirement or occurs after termination

M. Some employees are entitled to benefits.

If an employee is injured on the job, he maybe entitled not only to weekly benefits and medical benefits, but also to a further monetary award. Even if you believe an employee is exaggerating his injuries, he may still be entitled to benefits. The adjuster and your attorney, if one is involved, will evaluate the case determine the best outcome. Tell your employee that the adjuster determines if a claim is accepted or denied as a compensable claim. This will help ease any possible tension between you and the employee. No matter how angry the claimant makes you, how rude he or his attorney is, if he is entitled to benefits, he should be paid voluntarily. If a judge awards benefits where they are clearly due, he may award more than you could have settled for just because of your unreasonableness.

N. Send your lawyer your complete file.

It cannot be stressed enough the importance of getting your entire file materials to your defense counsel. Other than the Complaint, this is the first source of information that

your attorney has access to. It will be awhile before he or she gets the employer's file and even longer before he or she gets the employee's documentation, if any.

- Include the entire personnel file, worker's compensation file and medical file.
- Provide a detailed history of the employee's wages for the 52 week period prior to the injury and any wages paid after the injury.
- Make sure statements, video, surveillance reports, photos, etc. are given to counsel as soon as they are available.
- Include all claims notes. You have been intimately involved in this matter prior to counsel. Your thoughts, notes, impressions, etc., will help your lawyer get up to speed and inform him or her as to what has transpired prior to you assigning the file. Make sure, however, your notes are not incorporated into documents that would otherwise be produced to the other side. In other words, avoid writing commentary in the margins of medical records and other documents. The chance of producing such in error exists and can result in devastating consequences.
- If your notes are not clear or nonexistent, give your attorney a detailed outline of what *you* think about the claim, as well as any unique issues you see or that the employer may have.
- Update your lawyer. Don't just send them a copy of your file with the case assignment and then assume they don't need anything else. Often times, you will get information and documentation that has not made it to the lawyer. This is especially true about an employee's activities on the job or in the community.

STATE OF ALABAMA
**EMPLOYER'S FIRST REPORT OF INJURY
OR OCCUPATIONAL DISEASE**

Ombudsman 1-800-528-5166

CLAIM REFERENCE					
1. Insured Report Number		2. Filing Office Claim Number		3. OSHA Log Case Number	
EMPLOYER					
4. Employer Business Name			ADDRESS, IF LOCATION DIFFERENT FROM BUSINESS ADDRESS		
5. Physical Address 1			10. Mailing Address 1		
6. Physical Address 2			11. Mailing Address 2		
7. City		8. State	9. Zip		12. City
15. Federal ID Number			16. U.C. Account Number		17. NAICS
13. State		14. Zip			
INSURER / FILING OFFICE					
18. Insurer Name		21. Filing Office Name		21a. Service Co. #	
19. Insurer Federal ID Number		22. Mailing Address 1		23. Mailing Address 2	
20. Type Insurer		24. City		25. State	
<input type="checkbox"/> Insurance Co. Ins Co #		26. Zip		27. Filing Office Federal ID Number	
<input type="checkbox"/> Self-Insurer SI #					
<input type="checkbox"/> Group Fund GF #					
EMPLOYEE / WAGES					
28. First Name		32. Employee ID Number		33. Type Employee ID Number	
29. Middle Name		34. Mailing Address 1		SSN <input type="checkbox"/> Passport Number <input type="checkbox"/> Green Card <input type="checkbox"/>	
30. Last Name		35. Mailing Address 2		Employment Visa <input type="checkbox"/> Assigned by Jurisdiction <input type="checkbox"/>	
31. Last Name Suffix (ie. Jr., Sr., III)		36. City		40. Gender	
		37. State		Male <input type="checkbox"/>	
		38. Zip		Female <input type="checkbox"/>	
		39. Phone		41. Date of Birth	
43. Marital Status		44. Date Hired		42. Nbr of Dependents	
Unmarried (Single or Divorced or Widowed) <input type="checkbox"/>					
Married <input type="checkbox"/>					
Separated <input type="checkbox"/>					
Unknown <input type="checkbox"/>					
45. Occupation Description			46. Number of Days Worked Per Week		
47. Wages \$		49. Received Full Pay For Day of Injury?		Yes <input type="checkbox"/> No <input type="checkbox"/>	
48. Hourly <input type="checkbox"/> Daily <input type="checkbox"/> Weekly <input type="checkbox"/> Bi-weekly <input type="checkbox"/> Monthly <input type="checkbox"/>		50. Did Salary Continue?		Yes <input type="checkbox"/> No <input type="checkbox"/>	
INJURY / TREATMENT					
51. Date of Injury		52. Time of Injury		53. Time Employee Began Work	
		a.m. <input type="checkbox"/> p.m. <input type="checkbox"/> unk <input type="checkbox"/>		a.m. <input type="checkbox"/> p.m. <input type="checkbox"/>	
54. Date Disability Began		55. Date of Death			
PLACE OF ACCIDENT, INJURY, OR EXPOSURE			61. Injury Occurred on Employer's Premises?		
56. Site Address			Yes <input type="checkbox"/> No <input type="checkbox"/>		
57. City			62. Date Employer Notified		
58. State					
59. Zip					
63. For OSHA Reporting Only. DESCRIBE WHAT THE EMPLOYEE WAS DOING JUST BEFORE THE INCIDENT AND HOW THE INJURY OCCURRED. (Ex. While climbing a ladder and carrying roofing materials, ladder slipped on wet floor causing worker to fall 20 feet.)					
64. Nature of Injury Code					
65. Part of Body Code		66. Cause of Injury Code			
67. Initial Treatment		68. Name of Treatment Facility		69. Address	
First Aid By Employer <input type="checkbox"/>		70. City		71. State	
Emergency Room <input type="checkbox"/>		72. Zip		73. Name of Physician or Other Health Care Professional	
Major medical/Lost time <input type="checkbox"/>				74. Has Injured Returned to Work	
No Medical Treatment <input type="checkbox"/>				Yes <input type="checkbox"/> No <input type="checkbox"/>	
Minor Clinic / Hospital <input type="checkbox"/>				If so, 75. Date	
Hospitalized > 24 Hours <input type="checkbox"/>				76. Time a.m. <input type="checkbox"/> p.m. <input type="checkbox"/>	
Hospitalized Overnight <input type="checkbox"/>					
OTHER					
77. Date Prepared		78. Preparer's First Name		79. Last Name	
		80. Title		81. Preparer's Telephone Number	