



# Are you suspicious about a workers compensation claim?

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- *Employers need a thorough knowledge of their state's workers compensation protocols*
- *Understand the process of lodgment and assessment in a claim*
- *The steps for investigating a claim*

**A**s an employer have you ever had a sneaky suspicion about the legitimacy of a workers compensation claim?

Given the complexity of the workers compensation and occupational health and safety legislation, and the rights of all parties involved, this situation can be very stressful.

What are your options if you don't believe that a worker's injury occurred at work, or that their claim is legitimate?

There are strict parameters related to the lodgment, assessment and decisions on workers compensation claims. Each state has its own workers compensation protocol and as an employer it is important to familiarise yourself with them.

## Workers' rights

First, it is fundamentally important to understand that your employees have the right to make a claim for compensation. Even if you don't believe the injury occurred at work, you, as the employer, must lodge their claim. Providing your worker has a valid medical certificate and has completed the claim for compensation form, you are obliged to lodge it.

If your worker is successful in their claim you should keep a record of it on their employee

record, but you must ensure it is kept confidentially (WorkCover Corporation of South Australia 2006). It is not your right to divulge this information.

## Employers' rights

Although workers have the right to make a claim for compensation and you, as the employer, must lodge it, it doesn't mean you have to agree with the claim. The claim form provides the employer with the opportunity to indicate if they do not support the claim in the section Employer's Report of Injury. You should ensure you indicate clearly in this section if you do not support the worker's claim.

You are also entitled to request a factual investigation into your concerns. You are within your rights to contact your Claims Manager to express your concerns about the legitimacy of the claim. Ask your Claims Manager to pend the claim as soon as they receive it; this will give your Claims Manager more time to investigate and to determine the validity of the claim. Pending the claim will also allow you time to gather information supporting your rejection of the claim.

It is the responsibility of the insurer, not you, to notify the worker that the claim is pended and explain why. They must also let the worker know that legal advice is available to them — at your cost.

## You don't agree with the claim

If you disagree with a claim once it has been declared you are liable, you have the right to serve on the worker a written notice informing them that liability is disputed. However, at this stage you are still required to pay wage-replacement payments on a 'without prejudice basis' (WorkCover Tasmania Board 2006). If the claim is relatively minor, it may be better to accept it on a 'without prejudice basis' since the

worker's legal fees may be more than the claims costs.

Disagreeing with a claim is not restricted to disagreeing with the fact that the injury did occur as a result of work. In fact there are a variety of levels on which you might disagree with the worker's claim including and not limited to:

- the amount being claimed to cover medical expenses
- the level of impairment as a result of the injury
- the degree to which work was the contributing factor to the injury
- how much the employee should be entitled to in compensation payments
- the amount being claimed for damage to personal property
- the amount being claimed for pain and suffering.

(Workers Compensation Commission 2005)

Whatever is the case, if you maintain that the claim is bogus, you should immediately begin collecting supporting information. This could include statements from co-workers who saw 'Joe' hurt himself playing football on the weekend, or a colleague who knows that 'Joe' has already been receiving treatment for this condition. You are entitled to investigate claims in this way, but remember to act quickly, as in most cases a time limit does apply for you to present such information in response to a claim.

But what should you do if you are unsure if a claim is bogus? Should you just accept it and pay the compensation? You may like to investigate by trying to gather supporting information for rejecting the claim, particularly if you are suspicious about claims that include any of the following:

- injuries that occur a few days before holidays
- injury or illness after termination
- injuries that occur after the weekend — usually sports-related
- inconsistencies in the medical record
- late reporting of the claim without explanation
- a history of suspicious claims.

(WorkCover Authority of NSW 2003)

While you are investigating a claim, however, you should continue to manage the situation as if the claim is legitimate — this mitigates future cost exposure, especially if the claim ends up being accepted at a later date.

### Surveillance at work

If you believe that a worker is exaggerating the symptoms of their injury or is malingering, it may

be useful to place them under surveillance. Under current legislation, you are entitled to have surveillance devices in your workplace, with the exception of places such as bathrooms and toilets.

It is important to have very clear strategies in place about what you will do with surveillance material. Provide your insurer with as much information as you can about the possible movements of the worker, any appointments they have, or upcoming events in their personal life. Surveillance of the injured worker that demonstrates that their claim is legitimate is just as worthwhile as catching them out.

Don't forget to communicate your concerns to your Claims Manager as soon as possible. Most states have a specialised Investigative Division that serves to detect, prevent, investigate and resolve insurance fraud and your case can be reported to them.

### Fraud is serious

Fraudulent claims are not to be taken lightly, as severe penalties are applicable. If an employer, worker or service provider is found to be fraudulent, consequences range from a fine through to imprisonment.

Taking a possibly fraudulent compensation claim to court may also be risky in the associated press it will bring. The media love to take the underdog's side and often will make the company out to be the bad guy. If your evidence is not strong and the possible loss of reputation could be worse than paying the compensation claim, it may not be worth disputing the claim — as unfair as it may seem.

### Preventing claims

While there are some people who will try to claim for anything they can, as a general rule, having preventative measures, such as a risk management plan, in place will help reduce the number of claims made.

Many companies throughout Australia specialise in risk management. It may be worthwhile enlisting their help to develop a plan which could potentially save you thousands of dollars and hours of your time.

Often prevention is better than cure, and in the case of workers compensation, this is definitely the case.

Fraudulent claims can be extremely frustrating to deal with — but keep your cool and remember that sometimes you have to lose the battle to win the war.

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