

Review Article

A primer for workers' compensation

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Abstract

BACKGROUND CONTEXT: A physician's role within a workers' compensation injury extends far beyond just evaluation and treatment with several socioeconomic and psychological factors at play compared with similar injuries occurring outside of the workplace. Although workers' compensation statutes vary among states, all have several basic features with the overall goal of returning the injured worker to maximal function in the shortest time period, with the least residual disability and shortest time away from work.

PURPOSE: To help physicians unfamiliar with the workers' compensation process accomplish these goals.

STUDY DESIGN: Review.

METHODS: Educational review.

RESULTS: The streamlined review addresses the topics of why is workers' compensation necessary; what does workers' compensation cover; progression after work injury; impairment and maximum medical improvement, including how to use the sixth edition of American Medical Association's (AMA) *Guides to the evaluation of permanent impairment (Guides)*; completion of work injury claim after impairment rating; independent medical evaluation; and causation.

CONCLUSIONS: In the "no-fault" workers' compensation system, physicians play a key role in progressing the claim along and, more importantly, getting the injured worker back to work as soon as safely possible. Physicians should remain familiar with the workers' compensation process, along with how to properly use the AMA *Guides*. © 2014 Elsevier Inc. All rights reserved.

Keywords: Workers' compensation; Impairment; Review; Guides; Work injury

Introduction

Occupational injuries or illnesses represent a substantial percentage of many orthopedic practices. A physician's role within a workers' compensation injury extends far beyond just evaluation and treatment with several socioeconomic and psychological factors at play compared with similar injuries occurring outside of the workplace. Although workers' compensation statutes vary among states, all have several basic features with the overall goal of returning the injured worker to maximal function in the shortest time period, with the least residual disability and shortest time away from work.

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Why is workers' compensation necessary?

Before the establishment of the current "no-fault" liability systems, both workers and employers were growing increasingly dissatisfied with the common law system. Workers were required to prove employer negligence to recover costs after injury, often requiring costly litigation. Workers generally did not win negligence suits as the common law contained three legal defenses strongly favoring the employers: doctrine of contributory negligence (did the employee contribute to the injury?), fellow-servant rule (did a fellow worker contribute to the injury?), and assumption of risk (was injury an inherent hazard of the job or one that the worker was aware of?) [1].

Employers were also dissatisfied with the common law system because of the potentially large and uncertain financial risk of litigation. Lawsuits were costly, and if by chance, a worker won a lawsuit, the employer would have to pay out a substantial cash award [1].

In addition to this mutual dissatisfaction with the common law system on behalf of workers and employers, there was an increased societal awareness of the problems associated with industrial accidents and subsequent loss of wage-earning capacity and lack of medical care. This led to the passage of the first workers' compensation laws in the United States in 1911. Given that the US Constitution preceded federal legislation for most private sectors during this time, individual states controlled workers' compensation, allowing each state to have differences in compensation, reporting, payments, and administrative procedures.

By providing compulsory, universal insurance coverage with both unhindered access to needed medical services and income protection, workers' compensation has been described as the oldest form of social insurance in North America [1]. Under the no-fault system, employers are generally held responsible for work-related injuries or illnesses, even those felt to be unavoidable or not able to carry liability under tort law. Because fault is no longer an issue, injured workers receive more certain and more expeditious care. Similarly, given the tort immunity employers receive, administrative bodies attend to disputes over issues related to the injury claim opposed to courts.

What does workers' compensation cover?

Workers' compensation pays for necessary medical care after work-related injuries or illnesses, temporary disability benefits, permanent partial and total disability for any permanent impairment from the injury, and vocational rehabilitation. It also pays benefits to survivors of workers who die because of work-related causes (Table 1). Workers qualify for compensation if the following three conditions are met: an injury or illness occurred, it arose "out of, or in the course of, employment," and there are costs to pay.

Medical benefits are provided with no requirement for deductibles or copayments. Furthermore, total compensation for medical care and rehabilitation is provided, as long as the employee follows the conditions of reporting and health-care provider selection.

Income benefits are paid for temporary and permanent disability. Temporary disability comes in the form of lost wages because of time away from work, usually paid at a level of two-thirds of pre-accident wages and subject to maximum amounts. Permanent disability is based on a residual loss of a certain body part or function after medical

treatment and rehabilitation (impairment) and can be compensated as a fixed amount in the form a lump sum or monthly payments in perpetuity.

In exchange for the employer paying for the injured worker's care regardless of the cause, the worker offers the employer exclusive tort immunity from legal suit in response to being injured. Under this no-fault system, workers with work-related injuries give up their right to sue employers at common law. Therefore, civil litigation remedies, such as actual wage, pain and suffering, and punitive damages, are not available. Exceptions exist in cases of deliberate intentional acts by workers or employers.

Progression after work injury

The first and most important step after a work-related injury is for the worker to obtain prompt quality medical care (Figure). In many states, workers are restricted to choose within a preset panel of doctors, at least for the initial evaluation and treatment. After this point, a workers' compensation claim adjuster contacts the injured worker. This individual acts as a director for the claim process, communicating with the key parties involved, the injured worker, worker's supervisor, and health-care providers. The adjuster also coordinates when the employee may be able to return to work and whether the employer will have a job for the injured worker after the recovery process is completed.

If the injured worker remains out of work after a brief specified waiting period of 3 to 7 days, he or she starts receiving temporary disability benefits. This partial wage replacement offers the worker 50% to 70% of pre-injury wages, which offer support but does serve as an incentive to return to work. The worker continues to receive such payments until they either return to work (with or without restrictions) or reach maximum medical improvement (MMI).

Return to work

Getting an employee back to work as soon as safely possible should be the main goal for both the worker and the employer. During recovery (ie, before MMI), treatment recommendations translate into work restrictions. If the employer can accommodate the work restrictions written by the treating physician, the employee may be able to return to work on light or modified duty. However, if no such position is available or able to be created, return to work is postponed until work restrictions can be further modified, during which time the employee continues to receive temporary partial disability payments. Employers can significantly lower their cost of indemnity payments and future premiums and increase productivity by providing temporary light-duty positions. In addition, employees who return to work in light duty commonly have a faster recovery [2–4].

Table 1
Coverage under workers' compensation

What does workers' compensation cover after injury/illness
Necessary medical care
Temporary disability benefits (partial wage replacement)
Permanent partial or total disability (impairment)
Vocational rehabilitation
Survivor benefits (if death because of work-related causes)

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