Injury Management
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Cost Related to Worker Compensation Injuries

- NIOSH estimates $200 Billion annually.
- Dollars spent on injury, fraud, indemnity, cost management, lost time, and rehabilitation.
- Average cost of back injury requiring surgery is $78,000.
- Average cost of same back injury under Jones Act is $750,000.
- Cumulative Trauma for one upper extremity can cost $55,000.
What Are Ways of Reducing This Cost

- Drug Screen
- Post-Offer Pre-Placement Physical Exam
- Work Screen - Job specific FCE
- Case Management Once Injury Occurs
- Early Diagnosis
- First Aid vs. OSHA Recordable
- Treatment of Injury
- Physical Therapy
- MMI and Close Claim
POST-OFFER PRE-PLACEMENT PHYSICAL EXAM

- Title 1 of the Americans with Disabilities Act (ADA) of 1990 limits the employer’s ability to conduct a disability-related inquiry or medical examination prior to an offer of employment.

- The ADA does not prohibit an employer from establishing job-related qualification standards post-offer including:

  1. Physical requirements necessary for performing the job.

  2. No established history of a medical problem that could pose an imminent threat to the employee or others.
Post Offer Pre-Placement Physical Exam

- The employer cannot use qualification standards to screen out individuals unless the standards are shown to be job-related and consistent with business necessity.

- The Employer may exclude an individual with disabilities if that individual poses a direct threat (significant risk of substantial harm) that cannot be reduced or eliminated though reasonable accommodation. (29 CFR Part 1630, App. 1630.15(b)
The employer must then consider whether there is a reasonable accommodation that will enable an otherwise qualified individual with a disability to work.

29 CFR 1630.2p.2ii,iii refers to reasons one cannot accommodate a disability.
Undue hardship because of financial strain usually will be contested; average cost of accommodation is $660.

More solid reason is that accommodation will fundamentally alter Employer’s operation (29 CFR 1630.15(d)).
Title one prohibits discrimination against qualified individuals with a disability. However, one is not in violation of the act if an individual with a disability cannot perform the essentials of the job function.

If individual fails the Post-Offer Pre-Placement Physical Exam, the failure is not due to his/her disability but simply to the fact that he/she cannot perform the essential functions of the job consistent with business necessity.
The Examination Process

- History
- Physical Exam
- Laboratory
- Imaging Studies
- Work Screens – Job Specific FCE
- Summary of Findings
Medical History

- 49 CFR 391.45
- Safety Sensitive Positions
- Can screen out individuals who pose a safety threat in the work environment.
- IDDM, Seizures, Cardiovascular Abnormalities, Cerebral Vascular Accidents, Uncontrolled Hypertension, Mental Disorders, Vision Problems, Medications, Significant Hearing Loss.
Physical Exam

- General Appearance
- Mental Status
- Head, Ears, Eyes, Nose, and Throat
- Neck
- Chest
- Heart
- Abdomen
- Genitourinary System
- Spine
- Extremity
- Neurological
Laboratory

- Urine Dipstick to evaluate for blood, glucose, kidney problems, infections
- Drug Screen. An individual who currently uses illegal drugs is NOT a qualified individual with a disability and does not fall under the protection of the ADA.
Imaging Studies

- Chest x-ray
- Cervical (Neck) x-ray
- Lumbar (Back)x-ray
- Screening MRI / CT
Work Screen

- Evaluates strength, endurance, and flexibility
- Based on Job Analysis
- Treadmill endurance
- Lifting requirements
- Kneeling, crawling, bending, stooping
- Grip strength
- Ladder climbing
Summary of Findings

Examinee has:
- No limitations noted.
- Limitations with Recommendations.
- Limitations until Defect(s) Corrected.
- Passes or Fails Work Screen Test.
The Federal Occupational Safety and Health Act of 1970, states that records regarding injuries, illnesses, and deaths have to be recorded at the work place. (29CFR part 1904)

Employers may rely on Physicians or Licensed Health Care Professionals for input, but ultimately it is the Employer’s responsibility and accountability for OSHA Recordkeeping decisions.
OSHA Recordable

- OSHA performs around 250 audits per year.
- Most of the audits are triggered by employee complaints.
- There is a Recordkeeping National Emphasis Program (NEP) underway that will be completed by September 30, 2010 to assess employer underreporting.
- OSHA will target employers who report low injury rates in industries that historically have high injury rates.
Several hundred sites will be included in NEP.

2007, 2008 records will be reviewed.

Though the data collected is ostensibly for analysis, this is an ENFORCEMENT ACTION.
Recording a Case on the Log

- Is there a Case?
- Is the Case work related?
- Is the Case a new case?
- Does the Case meet one of the specific severity criteria?
A case is defined by OSHA as an abnormal condition or disorder experienced by the worker. Abnormal conditions are physical (swelling, ecchymosis, decreased range of motion, redness) or subjective (pain, headache). Further investigation and analysis required to determine if condition is a recordable.
Is the case work related?

1. Geographic presumption: occurred in the work environment.
2. Work contribution: if an event or exposure in the work environment contributed to the Case, pre-existing condition(s) are work related only if the condition is significantly aggravated by an event or exposure at work.
Work Relationship Exceptions

1. Worker is present in the work environment as a member of the general public.
2. Symptoms surface at work due to non work related event or exposure.
3. Due to voluntary participation in a wellness program, fitness, or recreational activity.
4. Due to eating, drinking, or preparing food for personal consumption.
5. Due to personal tasks on company premises performed outside assigned working hours.
6. Due to personal grooming, self-medication for a non work related condition or intentionally self-inflicted injury or illness.
7. Motor vehicle accident in the company parking lot or access road during commute to or from work.
8. Common cold or flu.

9. Mental illness, unless the employee volunteers a written opinion issued by a Psychiatrist, Psychologist, or Psychiatric Nurse Practitioner that states the condition is work related.
Is the Case a new Case?

- There is no recorded injury or illness of the same type that affects the same part of the body.
- The employee had a previously recorded injury or illness of the same type that affects the same body part but had recovered completely; and then an event or exposure in the work environment caused the signs or symptoms to reappear.
Does the Case Meet One of the Specific Severity Criteria?

- Death
- Days away from work
- Days of restricted work activity
- Job Transfer/Re-classification
- Medical Treatment
- Loss of consciousness
- Significant diagnosed work related injury or illness
First Aid Exemptions

14 treatments are considered FIRST AID and exempt (all other treatments are recordable):
1. Nonprescription medication at nonprescription strength
2. Tetanus immunization
3. Cleaning, flushing, soaking, surface wounds
4. Wound coverings, butterfly bandages, Steri-strips
First Aid

5. Hot or cold therapy
6. Non-rigid means of support
7. Temporary immobilization device used to transport accident victims
8. Drilling finger nail or toe nail, draining fluid from blister
9. Eye patches
10. Removing foreign bodies from eye with only irrigation or cotton swab
11. Removing splinters/foreign material from areas other than eyes by irrigation, tweezers, cotton swabs or simple means
12. Finger Guard
13. Massage Therapy
14. Drinking fluids to relieve heat stress
1911- State of Washington enacted Industrial Insurance law to protect workers and employers. 
1937- Worker Compensation law made work place injury “no fault” insurance program that covered occupational diseases as well. 
1971- Legislature expanded coverage to all classifications of employment in the state, not just the most hazardous.
Worker Compensation Insurance

- Washington’s Department of Labor and Industry covers 151,000 Employers and 1.7 million workers.
- There are 400 large Employers that are self-insured that account for the remaining third of the state’s workforce.
- Small percentage of workers are covered under Longshore and Harbor Workers’ Act.
Costs of Claims

- National average of one back injury that leads to surgery is $78,000.
- Jones Act- Same back injury that occurs over federal water will cost up to $750,000.
- Cumulative Trauma of the upper extremity can cost up to $55,000.
- Amputation of little finger at the DIP joint, the injured worker shall receive compensation of $972 (Medical Examiner Handbook, Department of Labor and Industry).
Case Management

- Injury/illness evaluated and treated.
- Aggressive utilization of diagnostic tests to evaluate for red flags.
- Advise if injury/illness is OSHA recordable for self insured employers.
- Initiate an L&I claim if employer is covered by State Fund; unless the injured worker specifically directs the physician not to report it under title 51.
- If the injury is not catastrophic and is stable, can patient return to work with or without restrictions?
Case Management

- Identify risk factors to prevent long term disability.
- Patients who have been off work for 3 months will have a 50% probability that they will be off work for 1 year.
- It’s imperative to obtain the right diagnosis and address the return to work needs as quickly as possible (within the first month of injury).
Claim Management

- The best treatment for an injured worker is return to work in either a modified format or full duty. This fosters less dependency on treatment and allows the worker to feel valued and self-confident.
- Have appropriate follow up care from 2-14 days post injury.
- Has there been significant improvement in weeks 2-4?
Claim Management

- High risk of disability should be addressed at weeks 8-12 if no significant improvement. (though red flags can be detected before this time period). This includes any other diagnostic tests, specialist referrals, full FCE, Vocational Rehabilitation, Independent Medical Examiner, etc.

- When patient is deemed stable and no further medical care can improve the condition, he/she is determined to be at Maximum Medical Improvement (MMI).
Employee able to work, though his/her subjective complaints and objective findings may wax and wane over time.

By law, cases are closed when MMI is reached and the patient’s condition is fixed and stable.

Palliative and maintenance care is not paid for once the patient reaches MMI.

Some cases may be awarded permanent partial disability otherwise known as settlements based on impairment ratings when MMI is reached.

Re-opening claim is based on proof that the condition has worsened or been aggravated since the claim has been closed.
Case Example
as reported by Ann Kensy

- A nurse in her mid thirties presents with complaint of neck pain after transferring a patient.
- Initial evaluation in the emergency room. Employee then had Chiropractic treatment 3x week for 2 months, x-rays, prescription medication.
Case Example

- Medical Reserve for treatments and diagnosis equaled $3,000.
- Indemnity Reserve was $3,200.
- Employee has not been back to work because physician has not released the patient to full duty. Now has complaints of upper back pain.
- MRI done after 2 months which was negative for disc herniation.
Case Example

- Independent Medical Exam was scheduled which resulted in advising Employee to not lift more than 5 pounds. Employee advised to start Physical Therapy, and have a Neurologist consultation.
Case Example

- Neurologist allows Employee to return to work but with the restrictions of no lifting greater than 25 pounds.
- On the third day of modified duty after more than 3 months off, Employee claims to have aggravated her injury while transferring a client. Employee was not supervised.
- New MRI shows a herniated disc.
Neurosurgeon evaluates case and is granted surgery where a discectomy was recommended.

Employee declines surgery and elects to have conservative treatment for another 2 years.

Costs at this point:
Medical: $49,354
Indemnity: $104,000
Case Example

Case Settled for $320,000
Case Example

- Nurse who is 42 years old has complaint of lower back pain after transferring a client.
- Employee treated by physician with appropriate therapy and diagnostic test.
- Employee returned to modified duty and was supervised by head nurse.
- Employee returned to full duty after 1 month.
Case Example

Cost of claim:
Medical: $4,092
Indemnity: $2,500
File closed with return to full duty.
SUMMARY

- Post-Offer: Drug Test + Physical + Work Screen
- Prevention
- Pro-Active + Communicate
- Establish with Occupational Medicine Center
- Aggressive Diagnosis + Treatment/Rehab
- Modified Work – Avoid Time Loss
- Manage and Close Claim
Keep your eye on the ball...
Don’t freak out...
and Keep Smiling... because
We’re in this together!