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### **SUGGESTIONS TO DO WITHIN FIRST 14 DAYS OF RECEIPT OF INJURY**

I have been asked to recommend things the adjuster should review, examine or consider within the initial days of receiving notice of an injury or claim.

Be careful that you follow all internal procedures and policies that govern file handling. To the extent that the below recommendations conflict, please follow internal guidelines. These suggestions are simply suggestions from counsel.

#### **I. Speak with the Employer:**

1. Contact with the employer is essential. You need to determine the appropriate source for information to and from the employer.
2. Ask about all witnesses to the accident with names, addresses and contact information.
3. Ask about all of the facts surrounding the accident and the extent of the employee's injuries.
4. Ask whether the employee will have lost time, has lost time, is out of work, has returned to work, if returned is any partial due.
5. Determine the AWW, obtain a 52 week pre injury wage statement or all of the wage history of the employee if s/he was there less than 52 weeks.
6. Determine if the AWW should reflect seasonal adjustments, or if there is a need for a comparable employee.

7. Request, if permitted, a copy of the personnel file and/or employment application.
8. Identify the name of any medical facilities the employee treated with and if there are any occupational employer providers.
9. Ask if there was a pre-employment physical and if so, obtain a copy.
10. Ask if the employee was concurrently employed (if the employer knows).
11. Identify if there were any collateral issues that would be relevant to the injury claimed. For example, layoffs, downsizing, performance issues, changes in job assignment, duties, pay.
12. Verify if there are ANY possible 3<sup>rd</sup> party actions (CRUCIAL) early on in the case as the insurer may need to initiate the 3<sup>rd</sup> party action before the statute of limitations runs out.
13. If the injury is significant, begin assembling facts about any prior injuries, known medical conditions that may have been a hindrance to the performance of the employee's job that the employer was aware of (possible Section 37 facts for Second Injury Fund).
14. Identify if there is any language barriers, learning disabilities as observed by the employer.
15. Ask the employer for its opinion about the injury, could it have happened as the employee claims, is s/he a reliable employee, do they want him/her back, **any possibility of modified or light duty work, job offer.**

## II. Contact with the Employee/Claimant:

1. Initiate contact with the employee as soon as feasible.

2. Take a recorded statement so long as company policies and procedures permit and s/he is not represented by counsel. (Note- be sure to start with acknowledging that you have the employee's permission and that it is being recorded and note any stopping of the tape and restarting) (also note- In Massachusetts the employee has a right upon request for a copy of any recorded statements).

3. In the recorded statement (or simply an interview) get as much detail about the accident as possible to include the usual who, what, where, when, why, how, witnesses, cause of the accident, body parts injured, all places where medical treatment was rendered or sought, any PRIOR injuries (worker's compensation for any employer, MVAs, slip and falls, etc), if the employee is on Social Security and/or Medicare and if s/he has applied, is the employee on STD/LTD, unemployment, currently working, last day worked, AWW, concurrent employment, educational level, past work history, name of his/her PCP.

Note: When an attorney effectively cross examines a witness (and you are not cross examining the employee/claimant) he/or she may want to get the employee to fully commit to his/her position by asking these series of questions after exhausting the inquiry in each area: Consider this technique as warranted even though the employee is not under oath.

A. Injuries: "Have you now told me about all of the injuries that you sustained **in this accident?**" -- and reiterate them one at a time to be sure. Then, "There were no other body parts injured in the accident that you failed to mention?"

B. Other claims history: "Have you now told me about all of your **prior injuries and/or subsequent injuries?**" - Again list them.

C. Treatment: "Have you now told me about all of your **treatment, medical appointments, listing all providers, for this injury?**"

D. Related Treatment: "Have you now told me about **any prior medical treatment or subsequent if this is a delayed interview from the date of the accident, office visits or injuries to the same body parts complained of in this accident?**" -- List them to be clear.

4. Ask the employee about signing a medical authorization.

5. Ask the employee about signing a Form 105 (extension of the pay without prejudice period) only when appropriate and depending on how far along the claim is when you receive it. Note, this is generally not recommended if you receive the file immediately after the accident and you are still within the first few months of disability.

6. If the employee is treating with a doctor, how he was referred to the doctor and if he has ever treated with that doctor before.

7. Verify the employee's current address, prior addresses, DOB and SS number as appropriate, type of car s/he owns and if s/he is driving.

### **III. Contact with Medical Providers:**

1. Follow insurer's policies and guidelines here and as privacy laws permit.

2. Be sure that the appropriate party issues the UR (Utilization Review) card.

### **IV. Contact with Defense Legal Counsel:**

1. Discuss any legal issues early on with your legal counsel. Don't let a possible defense be waived by failing to raise it early on in the claims handling.

2. Discuss strategies for the defense of the file or if PWOP or accepted cases, strategies for moving the case toward a modification or settlement.

### **V. Coverage:**

1. Verify that your insured is properly covered by a policy with your insurer and that the injury is within the policy coverage.

2. Verify if there is the possibility of coverage elsewhere (for example, if the injury is after a return to work or delayed disability from the date of injury – look to see if your policy has been superseded by a new carrier).

3. Verify jurisdiction. Did the injury happen in Massachusetts or does the employee have sufficient contact with Massachusetts to allow for the claim to be covered in Massachusetts?

**VI: Surveillance/ Index Bureau Check:**

1. Upon receipt verify the employee's claim history through an index or claims bureau check.
2. When appropriate, initiate surveillance of the employee's activity level.

**VII. IME:**

1. Arrange for the employee to be examined by the appropriate medical specialist at reasonable intervals depending on the nature and severity of the injury. Some case may warrant immediate scheduling of an IME upon receipt (within the initial 14 days) other not.

**VIII. Miscellaneous:**

1. Filing of the forms—
  - A. Be sure that the Form 101 (Employer's First Report of Injury) is timely filed. The Regulation requires: "File this form within 7 calendar days, not including Sundays and legal holidays, of receipt of notice of any injury alleged to have arisen out of and in the course of employment, which totally or partially incapacitates an employee for a period of 5 or more calendar days from earning wages."
  - B. Commence payment or denial. – Be certain that you either commence (begin) payments or deny (Form 104) within 14 days of receipt of the Form 101 or Form 110.
  - C. File the Form 103 Notice of Payment (within 30 days) of commencing payment.
  - D. Form 104 - If you denied the claim, be certain to raise all defenses on the form 104 or run the risk of waiving those defenses. If you are late in filing the Form 104, pay the \$200 penalty to the employee to buy back your defenses.
2. Follow up with named witnesses if liability is contested or possible 3<sup>rd</sup> party case.

3. Defenses: Explore all of the possible defenses on the Form 104 to determine if you need to further investigate them now. For example, if your first notice of the injury was **NOT** a FROI (Form 101) but a Claim (Form 110) look to see if Notice is a viable defense that needs to be raised.

Look for Section 27 (Willful misconduct of the employee that led to the accident), Section 27A (False representation by employee of physical condition), Section 36B (unemployment offset), Section 28 (penalty against insurer for willful disregard of employee's safety by the employer), examine any penalty allegations and verify as much information as soon as possible because the penalty structure escalates rapidly and you may be able to resolve the issue at a lower cost if immediate attention is applied.

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