

Auto accidents

Here's what you need to know when somebody gets hurt

Tony, a construction foreman, was driving his own vehicle from one job site to another transporting work materials when he was involved in a minor automobile accident.

Both vehicles sustained minor damage but were drivable. It appeared neither driver was seriously injured, although Tony later wondered if he should see a doctor about the stiffness in his neck.

According to Tony, the accident was the other driver's fault.

Knowing he had to get to the job site soon, Tony exchanged names and telephone numbers with the other driver.

As Tony drove away from the accident, he wasn't sure what to do next. Should he have waited for a police officer to file an official report? Should he have taken more information from the other driver, such as the insurance company or the license plate number? Should he inform someone at work about the accident? If so, who?

SFM sees these kinds of auto accident situa-

tions frequently. They create several issues you should be aware of.

In some cases, the employee involved in an auto accident—whether seeking medical treatment or not—fails to report it to someone at work because the person thinks it's covered by his own personal auto insurance. Other times, the employee knows the accident is covered by his employer's insurance, but thinks someone else will be collecting the important information about the accident so he thinks he doesn't need to do that at the scene. And in other cases, some employers, even when made aware of an auto injury, don't report it to their workers' compensation insurer because they mistakenly think the injury-related costs are covered by their auto liability insurance.

Take a look at the issues separately.

Workers' compensation is primary.

When an employee is in an auto accident while performing a work duty, workers' compensation is always the primary source of insurance for medical treatment and wage-loss benefits.

If the other driver is at fault, SFM may be able to recover some of those costs at a later date. This right to recovery is called subrogation.



Traveling to and from the workplace is generally not considered to be on the job and therefore is not covered by workers' compensation. There are two exceptions to this rule:

- If you require an employee to bring his car to the office for use during the workday, his travel to and from the office is considered to be within the course of employment and is covered by workers' compensation. So is business travel during the day.
- If you regularly furnish your employees with transportation to and from the workplace in company-operated buses, trucks, vanpools or carpools, any injuries to employee passengers will be covered by workers' compensation. The rationale under state law is that an employer-operated vehicle is in effect an extension of the employer's premises.

Besides reporting the accident to the auto carrier, it's also prudent to report the accident to SFM even if you're unsure whether the accident is considered work-related or whether the employee sustained any injuries. That way, the case can be handled in a thorough and timely way if the symptoms of an injury later develop.

In the example above, Tony should report the accident and his possible injury to the person in your organization who handles workers' compensation issues. In turn, that person should report the accident to SFM, your workers' compensation insurer, as well as your agent or auto carrier.

Inform employees of their responsibilities when an auto accident occurs.

Let employees know it's their responsibility to gather certain information so they can give it to you when they have been in a work-related auto accident.

Just like in a personal auto accident, taking the right steps at the scene of an on-the-job auto acci-

dent are necessary to investigate the accident and submit insurance claim information.

Here are four important steps employees should take when hurt in work-related auto accidents.

1. Call an ambulance for anyone seriously injured.
2. Call local, state or county police to the scene. This is helpful in filling out a police report and issuing any citations. If the employee is not able to call police to the scene, be sure he makes a legal accident report with the police department as soon as possible.
3. Obtain key information about the other driver, witnesses and vehicles:
 - Names, addresses and phone numbers of all persons who were in each vehicle and those of witnesses.
 - License numbers and state registrations of all vehicles involved.
 - Insurance information from the other driver.
4. Immediately report the accident to the person in your organization who handles insurance claims.

The most important action an employee or employer can take after a work-related automobile accident is get a copy of the traffic accident report.

In the example above, Tony should have called police to the scene so he could file an official accident report, and he should have obtained a lot more information from the driver and witnesses and about the vehicles. Finally, he immediately should have reported the accident and information about it to your organization's claim coordinator.

Personal injury attorneys may contact your employee.

Some personal injury attorneys get names of people who were recently involved in automobile accidents and contact them by mail.

You may want to make your employees aware of this when they report auto accidents to you, so they're not confused when approached by an attorney. Although it's an employee's right to hire an attorney, in this situation, it wouldn't hurt to advise the employee to consult your local bar association or an attorney referral service to retain an experienced personal injury lawyer.

Third-party recoveries may not be 100 percent, and may take time.

In situations where the other driver was primarily at fault, SFM will attempt to recover the workers' compensation benefits it's paid from the other driver's personal auto insurance carrier.

It's important to note here that SFM may not recover the entire amount of the claim, although it takes all necessary steps to maximize the recovery.

There are many reasons why SFM rarely recovers 100 cents on the dollar.

In some states, including Minnesota and Wisconsin, the statute authorizing employers and insurers to pursue subrogation claims contains a formula that usually limits subrogation recoveries to a maximum of two-thirds of the workers' compensation benefits paid.

In addition, many times the third party is not 100 percent at fault, so the subrogation claim must be discounted because of shared liability between

the third party and your employee.

Often times there is simply not enough insurance money to go around. If your employee is seriously injured by a driver whose auto insurance policy limits are less than the amount of incurred workers' compensation benefits, SFM may be very fortunate to recover one-third of the benefits ultimately paid on the claim.

In other cases, SFM is unable to recover the losses incurred until after the injured employee's claim is closed, which could take anywhere from a few months to a few years. Because open claims are most likely still active claims, the claims representative may want to determine the final dollar amount incurred on the claim before collecting subrogation monies.

Although it may be a long process and not always the full amount hoped for, the recovery of dollars through subrogation ultimately is reflected in the employer's workers' compensation loss history.

If you have questions along the way or would like legal advice, contact your SFM claims representative or SFM's in-house legal firm, Lynn, Scharfenberg & Associates at (952) 838-4450 or (800) 937-1181.