

Beyond workers' compensation

It's not always the only source of benefits for injured employees

Typically, worker's compensation is the primary source of benefits for injured workers. But sometimes the cost of medical care or replacing lost wages is paid partially by other sources, such as Social Security or auto insurance.

That can financially affect both employee and employer. It can mean more compensation for the employee. And it can have a positive impact on the employer's experience modification and, ultimately, on the employer's premium.

Social Security

A totally disabled employee may be eligible for Social Security disability benefits if he's been off work four months and expects his disability to continue for a year or more.

In some situations, the Social Security benefit supplements workers' compensation benefits. Other times, workers' compensation supplements Social Security.

Here's how it works. Your employee is temporarily and totally disabled. Let's say he is receiving \$200 a week in workers' compensation. He's also eligible for \$250 a week in Social Security disability benefits. Therefore, in addition to his workers' compensation check, he will receive a Social Security disability check for the difference, which is \$50 a week.

Please note, however, that Minnesota workers' compensation usually pays more than the Social Security entitlement. So chances are, if he's entitled to \$250 in Social Security disability, then he's probably receiving more like \$400 in workers' compensation. He'd therefore receive no additional money from Social Security.

Time passes, and it becomes clear that the employee is permanently and totally disabled. Watch what happens. Social Security becomes the primary source of benefits, and sends him a check for \$250 a week. Workers' compensation, under which he is eligible for \$400 a week, pays the difference and therefore sends him a check for \$150 a week.

For the employee in this last case, the income amount is a wash. He still receives a total of \$400 a week. But for you as the employer, the Social Security amount reduces your workers' compensation liability.

As the insurer, SFM will work with the Social Security Administration to share benefit information and coordinate payments. The employer doesn't need to do anything.

The disabled employee typically will get help applying for Social Security from his attorney, rehabilitation therapist or, in some cases, claim representative. There are other considerations for the employee in becoming eligible for Social Security disability, too, such as how it impacts his ability to obtain medical insurance and Medicare, and how it protects his income history during his disability years so he's not penalized some day when Social Security uses it to figure his retirement benefit.

Social Security disability benefits received by a dependent of an injured worker come into play as well. A recent Minnesota Supreme Court ruling indicates that once an insurer pays a total of \$25,000 in permanent total disability benefits, it is then able to include any dependents in the "offset" of benefits owed to the employee. This further

reduces an employer's workers' compensation liability so be sure to let your claims representative know whether an injured worker is receiving Social Security disability benefits.

Auto insurance

When an employee is hurt in a traffic accident, your organization's automobile coverage might provide benefits. These would be coordinated with workers' compensation.

The injured employee's workers' compensation benefits will pay up to 66 2/3 percent of his average weekly wage, subject to a statutory maximum. No-fault auto benefits will pay up to 85 percent.

The workers' compensation benefits always come first. So if the employee's average weekly wage is \$300 and workers' compensation pays \$200, then the no-fault auto carrier will pay the difference up to 85 percent, or \$255, subject of course to the terms of the auto policy. The employee will receive two checks—one from SFM for \$200 a week and another from the auto carrier for \$55 a week.

Your responsibility is to make sure the injury is reported to your agent and auto insurance carrier. Beyond traffic accidents, injuries happen other ways, like slamming a car door on someone's hand or falling while getting out of the car. Be sure to report any incident right away so the carrier is on notice in case benefits are sought later.

Your agent, together with the auto carrier and SFM, will coordinate the auto benefits with the workers' compensation benefits.

This of course assumes the employee either was using a company car or that he was using his own car and your organization's auto policy covers his car while he uses it for work. If your policy does not cover his car, then you might advise the injured employee to check into no-fault benefits available under his own personal auto policy.

For more information about what you need to know about auto injuries and workers' compensation to help reporting delays and errors, please download or order the "Auto accidents" CompTalk from SFM's online "Resource catalog."

Third-party recovery

These are circumstances in which auto coverage benefits your employee. In other circumstances, you benefit.

Let's say another driver crashed into your employee's car and therefore was at fault in causing the work injury, and let's then assume that other person or his auto insurer paid your employee for the injury.

SFM would recover an appropriate part of those additional dollars going to the injured employee. Any portion to which you are entitled will reduce your ultimate cost as the employer of the workers' compensation claim.

This also applies to benefits paid injured employees involved in other types of third-party situations, such as when benefits are paid by the product liability coverage of a firm that manufactured faulty equipment, or when the employee is injured off site and receives benefits through the third party's homeowner or business premises coverage.

Employee disability

If your organization offers employees a short- or long-term disability plan, it's probably one of two types: The type that specifically excludes work-related injuries, or the type that doesn't mention work injuries at all.

If yours is the first type, you're ahead of the curve. The exclusion in your plan is the basis for providing benefits through workers' compensation.

If your plan does not include a specific exclusion for work injuries, you might run into a problem: paying twice for the same disability.

Here's how. One of your employees develops a serious medical problem and becomes disabled. It is not clear early on whether it's really a work injury. So you the employer begin paying benefits under your short-term disability plan.

Later, the employee files a claim for workers' compensation. The claim is determined to be valid, and the employee receives benefits through workers' compensation. Trouble is, since your short-term disability plan does not exclude work injuries, the employee may claim he has no legal obligation to return to you the money he's already received through it.

You might want to check out your employee handbook or wherever else the short-term disability plan is described, particularly if your plan is self-funded. If the description does not contain an exclusion, ask your employment attorney to modify the language.

Credit disability

Some people purchase disability coverage offered by their credit card companies or other private organizations.

"Credit disability," as it's called, typically covers work injuries. However, it's entirely up to the employee to check the terms of such a policy and file a claim for whatever benefits might apply. They would have no impact on the employee's receipt of workers' compensation benefits.

Out of pocket

Actually, an organization's own pocketbook is not a source of benefits at all, although once in a great while an employer comes along who thinks it is.

Unless you're a self-insured employer, the First Commandment of Workers' Compensation is: Thou shalt not pay benefits thyself.

For one thing, the Minnesota Department of

Labor and Industry considers it a violation to pay benefits rather than file a First Report of Injury.

For another—and this is the real kicker—paying an employee's medical bill out of pocket means you have implicitly accepted liability for the injury. And you've done that without the help of a claims representative's investigation. Beyond the first medical bill, you will end up paying the medical and lost-time costs of any complications. Years later, if the employee is reinjured, you will end up paying more.

So don't even think about it. That's SFM's job.

Should you happen by mistake to receive a bill from a medical provider, send it immediately to your claims representative.

Prior injuries

This lies well within the realm of workers' compensation, rather than beyond it. But it deserves mention here because prior injury claims can involve multiple parties, and the answer to the question "Who pays?" can ultimately affect your worker's compensation premium.

Say one of your employees aggravates an old back injury. That old back injury happened years ago when he worked for a former employer. Or maybe he was already working for you but you had a different workers' compensation insurer.

Your job is to let SFM know ASAP that you think an old injury may be involved.

Even if you don't know for sure, call your claims representative anyway and report your suspicion—the sooner, the better. If you wait too long, recovering money from another party may be difficult, and that could ultimately affect your experience modification factor and therefore your work comp premium.

The other party from which money would be recovered would be the former employer's insurer or, if he was working for you when the original back injury happened, then it would be your former

workers' compensation insurer. What's going to happen behind the scenes is that SFM and the former insurer will have to figure out how much of the claim each is liable for. Unless they do that through negotiation, the issue will enter a legal process and could take some time to resolve.

In the meantime, SFM in some cases will ask for a court order enabling it to begin right away paying the employee the benefits he's entitled to.

The order lets SFM keep the door open so it can later resolve the issues of ultimate liability, which can be to your benefit. The greater the size of the recovery, the less the claim will impact your experience modification.

Your claims representative will ask whether the prior injury happened outside Minnesota or was not work-related. If either of those is true, it will

add a wrinkle to the case: Your SFM coverage will be liable for all medical and lost-time benefits. Under Minnesota law, recovery is not an option here. However, if the case involves permanent disability, then liability for part of the disability benefits may be apportioned out.

Bottom line: Take an active role in relaying information to your claim representative. Call early and often. That'll ultimately make a difference in your experience modification factor, and hence your premium. It can also help avoid delays in benefit payments in complex cases, and that's a positive for you in hanging on to good employees.

For more information, talk with your claims representative or call SFM's in-house legal firm—Lynn, Scharfenberg & Associates—at (952) 838-4450 or (800) 937-1181, option 7.

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