

Problem employees, situations

When workers' comp is involved, know the costs before you react

Most work injuries are cut-and-dried. An employee hurts his hand, gets treated and returns to work. But sometimes work injuries—and claims for workers' compensation benefits—get entangled with personnel problems. Too often, employers handle these touchy situations by reacting today and regretting it tomorrow.

The result: Situations become embroiled in legal issues, drag out into years, and skyrocket in costs. Here's how you can avoid that. Following are three situations you may face.

1. The employee who doesn't want to return to work

Mary, an administrative assistant for years, is a good employee. She was diagnosed with work-related carpal tunnel syndrome. After time off for surgery, the physician released her to return to work with restrictions.

Some signs

- "Doctor shops" for a physician who will keep her off work.
- Medical problems are all subjective.
- Personal problems.
- Constant pain.
- Difficult to reach.
- Misses appointments.
- Gives conflicting information.
- No desire to get well or return to work.

You offered Mary a transitional job, but she complains of constant pain, requests additional medical restrictions from her physician and seems to have lost her desire to get well and return to work. You are at a loss what to do.

This is a relatively common situation, and one to be handled delicately.

If Mary has a history of being a good employee, don't assume she's trying to defraud the system. She may be worried she won't be able to perform as well as before, or

concerned about what her co-workers or supervisor might say. Or perhaps she has personal problems at home, and the sense of security from workers' compensation causes her to develop a disability mindset.

A work injury can be a life-altering event, so it's important for you to be supportive and persistent. Keep in close contact with Mary during the time she is off work. Let her know she is valued. Explain your company's return-to-work policy and your expectations.

When she is released to work with restrictions, send her a written job offer. Be willing to alter the job if she has concerns. When she returns to work, see that she is in a supportive environment.

If she still refuses to return to work or brings you increased medical restrictions in response to a transitional job offer, call your SFM claims representative, who can explain to her that she may lose her benefits for turning down an appropriate job offer. She may not be aware of that.

2. The potentially false claim

Bob, a new employee, comes to you his second week on the job and complains of a back injury. No one saw the injury occur, and his explanation doesn't add up.

Some signs

- Disgruntled.
- Fears termination or layoff.
- Nearing the end of seasonal work.
- Just hired.
- Substance abuser.
- Several prior workers' compensation claims.
- Prior dishonesty on the job.
- Unwitnessed injury.

He seems unusually knowledgeable about workers' compensation. You suspect fraud. You reason that a false claim might raise your workers' compensation costs, so your inclination is to ignore the claim and hope the employee drops it. Do you?

No—not after you've thought this through a little more.

Chances are the savvy employee won't drop it. Furthermore, you'd make yourself an easy lawsuit target for failing to report a claimed injury.

Fill out a First Report of Injury. Since a copy is sent to the employee, type your suspicions in the "Confidential comments" box on the online form or write your suspicions on a separate paper. Remember, just because you report an injury doesn't mean the employee will receive benefits. It just means the employee claimed he was injured. Your claims representative will investigate the claim.

Continue to report any suspicious circumstances or subsequent events. Your claims representative wants to stay in the loop on these claims in particular.

3. The problem employee

Dan, a recent hire out of a group of marginal job candidates, isn't working out as you'd hoped.

Attendance is poor, and when he does

Some signs

- Poor attendance.
- Performance problems.
- Doesn't get along with others.
- Hostile, volatile.
- Dishonesty issues.

show up he's late. His negative attitude is affecting employee morale, and his relationship with his supervisor is

hostile. But you've kept him on through the busy season.

Then he comes to you claiming a back injury. It's the last straw. You don't want to deal with him anymore.

What do you do?

First and most important, don't fire him—at least not on impulse. Firing may be your gut reaction, but it could set you up for a

lawsuit. Under Minnesota law, an employer cannot refuse to report a work injury and cannot fire an employee for claiming a work injury. Lawsuits in these cases can be costly and are not covered under your workers' compensation policy.

Instead, think through your options and their likely results. Ultimately, you want this to be a prudent business decision.

In this case, say Dan makes \$600 per week working for you, and your workers' compensation premium is \$16,575 calculated with a 0.85 experience modification factor. The chart below shows how dramatically different your additional costs can add up depending on your response and how the scenario plays out. The amounts here are pretty typical for this kind of situation.

Note that medical expenses are likely to be higher if the employee is not working. An employee with no return-to-work expectations is more likely to experience chronic

pain, require additional treatment and medication, and develop a disability mindset.

Also worth remembering: If you fire the employee and he receives workers' compensation benefits, you'll end up dealing with him for a long time, even though he's no longer your employee. And if he was a problem employee, he'll probably be a problem claimant.

Financially, the three scenarios show strikingly different outcomes. It almost always makes sense financially to offer the employee a transitional job. In this case, if Dan accepts, you will have significantly decreased your workers' compensation costs and legal risk. If he declines, he no longer may be eligible for wage-replacement benefits.

Of course, you may have other factors to weigh besides only the financial cost of your action. But by thinking your actions through, you'll be able to make a decision that's right for you and your business.

Costs add up differently depending on your response

	Paid by insurer	Paid by employer
Scenario 1: You fire the employee or don't offer work post-injury.		
Medical benefits	\$20,000	
Wage-replacement benefits: 52 weeks of TTD benefits	20,800	
Retraining benefits to be computer programmer		
Two years of retraining at vocational school	40,000	
Tuition	20,000	
Rehabilitation expenses	10,000	
Total cost of claim	\$110,800	
Increased cost of workers' compensation over 3 years (E-mod increases to 1.24)		\$22,815
Scenario 2: You fire the employee, and he files a civil lawsuit for claims including retaliatory discharge.		
Total cost of claim (see above)	\$110,800	
Increased cost of workers' compensation over 3 years (see above)		\$22,815
Defense costs, including attorney		20,000
Plaintiff attorney		30,000
Damages (including punitive damages up to 3 times the work comp benefits due)		Up to 332,400
Total cost of civil suit		\$382,400
Total (civil suit + increased cost of work comp over 3 years)		\$405,215
Scenario 3: After two months of recovery, you get the employee back to work and train him to do a transitional job that fits his medical restrictions.		
Medical benefits	\$10,000	
Wage-replacement benefits		
8 weeks of TTD benefits	3,200	
20 weeks of TPD benefits	2,600	
Legal expenses	0	
Training expenses	0	
Rehabilitation expenses	3,000	
Total cost of claim	\$18,800	
Increased cost of workers' compensation over 3 years (E-mod increases to 1.04)		\$11,115

Seven tips help you handle problem situations

Problem claims have few cut-and-dried solutions. Each situation is unique and its response needs to be carefully tailored. But some rules of thumb can help make the best of a bad situation and avoid complications.

1. Don't fire the employee.

A quick decision in the heat of the moment could make the problem longer, costlier and more troublesome in the end.

Take a step back, talk to others involved, and examine your choices and their costs. If you still decide termination is the right course, you'll have made that decision knowing what to expect down the road.

2. Put personal feelings aside.

This may be difficult. But you want to make a decision that's ultimately best for your organization overall, though it may not be the decision you'd personally prefer.

Be pragmatic about the short-term and long-term outcomes. Be realistic about how the employee will portray the situation, whether or not it's accurate. Consider what's at stake for your organization. How would the different outcomes affect all the people involved?

3. Document everything.

Good documentation may save you from expensive litigation. Include:

- Every time you contact the employee, including what was discussed and when.
- All physician contact.
- Employee performance issues.

4. Consult the right people.

Employee

Never underestimate the power of showing concern for an injured employee. Claims often become difficult or can even go to litigation because the employee is off work and feels isolated and afraid. Fear leads to distrust, and that can lead to disputes.

Send cards or flowers. Contact the employee early and continue to do so regularly. Explain transitional work. Let her know she is valued and you want her back on the job.

Claims representative

Besides experience in educating employers about the costs and consequences of difficult situations, your claims representative has many resources available, including legal and medical professionals. When a problem situation arises, call your claims representative first, and always keep him or her in the loop.

Physician

Beware of miscommunication here. The problem employee may misrepresent available transitional jobs to the physician. Or he may fail to return the Report of Work Ability to you. If you have questions about work restrictions, call the physician. Convey to the

physician your commitment to return-to-work and transitional duty.

Legally, if you call the physician to discuss transitional work, you are obligated to verify the discussion and its substance in writing back to the physician and send a copy to the employee. This practice also improves accountability throughout the claim.

Employment attorney

SFM can give you legal advice from a workers' compensation perspective, but you may need employment law advice as well.

If you do not have an employment attorney, SFM has an arrangement with Littler Mendelson, a law firm specializing in labor and employment law. Its services are available to SFM policyholders at discounted rates. For information, call SFM at (952) 838-4450 or Littler's Minneapolis office at (612) 313-7650.

Agent

Your agent can explain what your decision will do to your e-mod, long-term insurance costs and long-term insurability.

5. Make the employee a transitional job offer.

This is one of the most important steps you can take to maintain good relations with the employee, decrease indirect claim costs, and increase your ability to settle the claim favorably.

When designing the transitional job, consider the employee's work restrictions and be creative. Remember, the job really has to be there; it can't be fake or menial. Send a formal job offer letter to the employee's residence.

If you haven't heard from your employee in a reasonable time, call your claims representative. Wage-replacement benefits may be discontinued if the employee refuses a job offer within his medical restrictions. A sample job offer letter is in your SFM *Employer Kit*, or it can be downloaded from SFM's online "Resource catalog" at www.sfmic.com

6. Make the best business decision for your organization.

Ultimately, you have to assess all aspects of the situation and do what you think best for your company. Workers' compensation costs may be only one aspect.

If the employee's behavior is harming your organization, you may decide that letting the employee go and risking the much larger potential costs is the better option. On the other hand, the circumstances may suggest that the prudent business decision is to work through the problems and avoid risking the costs.

7. Be proactive. Prevent these in the future.

Use good hiring practices. Deal with performance problems promptly. Make good employee relationships and teamwork a priority. Tune in to employee concerns and morale problems.

Be committed to safety: By preventing injuries you can prevent many problem claims while protecting your company's most valuable resource—its employees.



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