

THE FORUM

Getting claimants back to work

MODERATOR



Richard Lenkov,
capital member,
Bryce Downey
& Lenkov L.L.C.

Mr. Lenkov's practice areas include insurance litigation and workers compensation, among others. With nearly 20 years of experience, he serves as co-chair of the Claims and Litigation Management Alliance's Workers Compensation Committee.

How do you ensure that your clients are putting full effort into returning to work?

MICHELLE M. KOHUT: Most, if not all, petitioners want to return to work as soon as possible, so we discuss the importance of following doctors' orders. If a question arises as to the proposed treatment, then we will help get a second opinion to make an informed decision with the physician and treatment options.

What strategies do you employ when it is clear that your client cannot return to his or her preinjury wages?

KOHUT: If a petitioner cannot return to his or her preinjury wages, it is important for them to seek other positions within restrictions and skill set. Pretrials on this issue have been beneficial in determining whether a labor market survey or vocational rehabilitation is warranted.

How do you balance the need to separate from a claimant who cannot perform their job with the need to engage in an interactive process as required by the Americans with Disabilities Act?

CHRISTOPHER ZOOK: These are difficult situations, but we must follow the interactive process. Develop and implement an ADA-compliant checklist. Flowcharts are also helpful to drive

consistency with each request.

LISA JURSKI: How much of the regular job can the injured worker perform, and are accommodations even needed? Have a program that is limited to a specific short period of time that is meant to be work-hardening and rehabilitation as opposed to a specific job. Determine if limitations are permanent vs. temporary.

What are some red flags indicating that a claimant might not return to work quickly?

ERIC T. LANHAM: The biggest red flag is a poor attitude, whether directed to employer, doctors, adjuster, nurse case manager or simply a poor response to being injured on the job. Certainly, an individual with a spotty attendance record or work history is more likely to abuse off-work status as well.

ZOOK: Strained employee/employer relationship, employer's business is struggling, performance issues, employee going through personal issues, additional symptoms/body parts are disclosed as others resolve, and employee is nonresponsive to communication.

JURSKI: Subjective complaints outweigh objective findings, outside personal issues that interfere with work/life, poor attendance history and recent discipline issues preceding the work-related injury.

(Employers) need to stay connected to the employee throughout the claims process. It shows the employee they are valued.

Christopher Zook, Frankenmuth Insurance

THE FORUM

What is the biggest challenge in getting employers to accommodate a claimant?

LANHAM: Convincing an employer that an employee will not reinjure themselves upon return to work. It certainly helps to have the physician working with direct knowledge of the physical demands of the employee's job. A good adjuster or nurse case manager can often work as a liaison between the employer and physician to make sure that both employee and employer are confident in the accommodated position.

ZOOK: Getting employers to understand the important role they play in achieving an optimal outcome. They need to stay connected to the employee throughout the claims process. It shows the employee they are valued by the organization. It is something small but has a huge impact.

JURSKI: Thinking outside the box. No one wants to add to overall staffing. Getting them to look at reallocation of workload as a team in order to maintain the same staffing level can be a challenge. Changing the mindset that every claim is a scam or a way to get something for nothing. To view light duty as a way to get the injured worker back to work and enhance recovery as opposed to creating light duty that is designed to punish the injured worker. The mindset should be a positive instead of a negative.

When a claimant is clearly not going to go back to his preinjury wages, how do you prevent a case from being an expensive wage-differential or permanent total award?

LANHAM: A good place to start is within the company. Even if the claimant is not going back to his or her regular job, a legitimate but different job offer with the same employer will almost always prevent a permanent total award and reduce wage-differential claims. If that fails, it's critical to have a

credible medical expert that can assess physical limitations and restrictions and a credible vocational expert that can opine as to the appropriate loss of access or earnings potential. The credibility of these experts is crucial.

What innovative strategies can our readers engage in for claimants who don't return to work quickly?

KOHUT: Be proactive. By having a return-to-work program that accommodates petitioners with restrictions, the petitioner then feels productive and is thus further encouraged to return to his preinjury health. Also, having treatment authorized on a more expedient basis would decrease the time a petitioner is off work.

LANHAM: We are seeing more nonprofits that provide return-to-work opportunities. Second opinions on work restrictions may be necessary if the treating doctor is unwilling to work with the employer on return-to-work issues.

ZOOK: Engage co-workers, family and friends to reach out to the employee, maintaining that connection to work and the employee understanding the important role they play at work and in the home.

JURSKI: Engage the employee in the discussion of what work they feel they could do. Let the employee know they are a valuable asset and they are cared about. Keep in regular contact with the employee. Let them know how much they are missed.

MEET THE PANEL



Lisa Jurski is the workers compensation program director for HCR ManorCare, a nationally based health care provider with 70,000 employees. Based in Toledo, Ohio, Ms. Jurski and her team handle claims with a philosophy that it is not about how to get out of paying a claim, but how to assist injured workers and get them back to work and their preinjury life as quickly as possible. She has been in the workers compensation claims industry for almost 40 years.



Michelle M. Kohut, a Chicago personal injury trial lawyer, joined the law firm of Corboy & Demetrio in 2004 and practices in all areas of personal injury law as well as in the area of workers compensation. She is active in national and local associations,



including the Women's Bar Association of Illinois, where she served as president in 2013-2014.

Eric T. Lanham has been representing employers and insurers in defending workers compensation claims since 1993. Based in Kansas City, Kansas, his concentration is in handling complex workers comp claims, defining the limits of workers comp and employers liability policies, and protecting the subrogation interests of employers and insurers throughout Missouri, Kansas and Iowa.



Christopher Zook is a claims manager at Frankenmuth Insurance responsible for auto, personal injury protection insurance and workers compensation. Based in Frankenmuth, Michigan, he has been in the insurance industry for 17 years.