

Workers' Compensation

Overview:

Details vary from state to state, but the general underlying principles of the workers' compensation system include:

- Workers have relinquished recourse to liability suits in exchange for a no-fault system under which work-related injuries are compensated regardless of who is at fault
- The system provides coverage for both medical and loss of income costs
- Compensation is based upon the extent of the injury and the degree to which it reduces income
- Employers must participate, thus liability costs are shared across the system
- Both employer and employee have the right to appeal decisions of the insurer
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Benefits:

- All medical expenses
- Temporary benefits if wages are lost (2/3 of your gross wages or \$400/week, whichever is lower)
- Additional money if you have permanent damage to a limb, facial scars or loss of hearing or eyesight
- Permanent benefits, if you are limited in your ability to work or can never work again
- Death benefits
- Vocational rehabilitation/retraining in some cases
- Additional money if the injury or illness results in a lower wage at a new job
- Benefits continue for as long as your injury or disability lasts

Information in this section is in large part from New York State AFL-CIO Workers' Compensation Navigator Program. 2000.

Sudden Injuries vs. Slowly Developing Conditions

SUDDEN INJURY (broken bones, chemical splashes, sudden back pain)

- Worker must notify employer about the accident within 30 days
- Worker should see a doctor who understands WC as soon as possible
- Doctor should write down in chart that this was an occupational injury
- Worker should tell the hospital or billing staff that this is a compensation case and the employer's insurance carrier should be billed
- Worker should file compensation papers right away (must be done within 2 years): in New York this is the C-3 form
- Make sure Doctor files C-4 form

ILLNESS, DISEASE, or SLOWLY DEVELOPING CONDITION (tendonitis, carpal tunnel syndrome, repetitive strain injuries, hearing loss, lung problems from chemical and dust exposure)

- Worker should find a sympathetic doctor who specializes in occupational health
- Determination of a work-related illness does not require certainty; "reasonable medical certainty or probability" means a 51% likelihood
- C-3 should be filed right away, as should the Doctor's C-4.
- **Insurance companies almost always initially contest (controvert) disease claims at first, but worker will get a hearing with a WC judge. Usually the worker ends up getting compensation, although it takes time**

What Can You Do as a Migrant Health Clinician?

- Recognize that the injured worker has a right to WC; establishing medical coverage and assisting with prompt, appropriate return to work are all in the best interests of the patient
- Determination of work-relatedness does not require certainty; “reasonable medical probability or certainty” means a 51% likelihood; also, work needs to be a significant but not the sole cause
- Fill out forms to the best of your ability and file promptly (C-4 forms in New York state should be filed every 4-6 weeks)
- Remember that all medical tests or treatments over \$500 require prior written authorization from the insurance carrier (except medical emergencies)
- Avoid bargaining on your decisions (just as you might avoid bargaining on the prescribing of opiates)
- Recognize that in complex cases, controversion by the insurer is possible
- Consider referral of the patient to an occupational or other specialist in these more complicated cases

Impairment: *The loss, loss of use, or derangement of any body part, organ system or organ function. The physician determines impairment*

Disability: *An alteration in an individual's ability to meet personal, social or occupational demands because of an impairment. Disability is determined by an adjudicator who often works with input from physician specialists, physical therapists, social workers and others*

The WC system **is supposed to** award benefits on disability, so that if two workers with different jobs suffer the same injury, but one is able to continue working while the other cannot, then the one who is off work should receive disability benefits, while the one able to return to work, shouldn't receive any benefits upon return to work. However, it appears as if the system is moving toward impairment based awards, which means in practice, benefits are cut for many workers. It is important therefore, for **doctors to give a level of disability** rather than impairment on the C-4 to try to counteract this tendency

Return to Work

Overview:

Return to work is a co-operative effort that goes well when all stakeholders participate with the goal of safe and timely return to productive contribution in the workplace. In most cases of occupational injury the stakeholders include the health-care professional, the injured employee, the employer and possibly the insurer.

Factors that determine success of return to work

many of these are beyond the control of the treating clinician, but it is important to understand them

- **workplace factors**
 - *job demands
 - *level of control by the employee
 - *physical nature of the tasks
 - *willingness of employer to accommodate injured workers, etc.
- **individual factors**
 - *age
 - *gender
 - *marital status
 - *education
 - *financial resources
 - *pre-existing impairments
 - *history of previous compensation for injury
 - *substance abuse,
 - *fear of re-injury, etc.

Factors affecting return to work that are under control of clinician

- prompt accurate diagnosis
- timely institution of therapy
- early appropriate referral
- early involvement of rehabilitation services - this should be planned at the initial visit.
- early planning for return to work
- clear communication with patient and employer
- ongoing monitoring of the patient's functional capacity relative to work demands

Many of these factors suggest that successful return to work may be threatened in the situation of the injured farmworker. However these issues are frequently outweighed by socioeconomic imperatives that tend to drive the farmworker back to the job. These include: local and seasonal demand for labor, financial responsibilities and ability to survive locally without current income / housing.

Return to Work Continued

Communication with all stakeholders is the responsibility of the treating health professional.

Of key importance is

Clear communication with the patient – at the initial visit:

- describe the nature of the injury
- review the expected immediate and long term impacts upon ability to work
- outline the plans for referral for additional assessment / treatment and for rehabilitation
- outline plans for follow up and for return to work
- discuss with the patient the extent and content of any planned discussions with the employer.

Prompt communication with the employer:

- current and anticipated functional capacity
- anticipated duration of reduced function.
- specific limitations or restrictions
- plans for follow up

To Successfully Coordinate Appropriate Return to Work...

the clinician must gain detailed information on the nature, intensity and duration of work activities. There must be a clear understanding of potential risks involved with the return to work – for the patient, for co-workers and bystanders.

Remember to....

Learn from the patient a clear description of the nature, intensity and duration of the work tasks. Ask about the nature of the employee's relationship with the employer / supervisor.

Throughout this process the clinician must try to facilitate ongoing communication between the worker and the employer until return to full work is achieved.

In discussions with employers...

It is appropriate to communicate nature of the patient's anticipated limitations in the workplace, but not about the exact diagnosis or specific therapy undertaken. It is helpful to discuss with the employer any potential for "modified duty" tasks.

References: Ontario Work Safety and Insurance Board accessed at:
<http://www.wsib.on.ca/wsib/wsibsite.nsf/public/HealthPhysiciansGuideRTW>

Other Considerations

PATIENT PRIVACY: Because of the employer's and insurer's financial interest in the progress and outcome of medical care, they are provided information on the injury, its therapy, and response to therapy. In many states, this information is conveyed to insurers and employers through the physician's WC forms. If additional information is supplied, such as copies of progress notes, the physician must be careful to restrict the information in the note to what is appropriate for employers and their insurers to see. This disclosure is permitted under HIPPA (45 CFR 164.512b).

http://privacyruleandresearch.nih.gov/pdf/ocr_publichealth.pdf

WORKERS COMPENSATION IS PARTICULARLY IMPORTANT TO FARMWORKERS BECAUSE:

- ***It is often the only access to healthcare that migrant workers receive, as WC covers all medical costs and migrant farmworkers do not usually have health insurance***
- ***One does NOT need to be a US CITIZEN in order to receive WC benefits***
- ***UNDOCUMENTED workers have a right to at least medical coverage. It is in the best interest of the worker and the clinic to file WC claims.***
- ***If worker is out of work for more than 7 days, he or she can recover part of his or her lost wages***

WHEN DO BENEFITS START?

- If the worker is out of work 7 days or less, medical costs will be covered, but no benefits are paid for lost wages. However, the 7 days do NOT have to be consecutive days of absence. They can be accumulated over time.
- Eligibility for lost wages begins the 8th day
- If the doctor keeps the worker out of work for 15 or more days, lost wages payments will be retroactive to the date of injury
- Keep in mind it takes several weeks to start receiving any checks.

The form is titled "STATE OF NEW YORK WORKERS' COMPENSATION BOARD" and "ATTENDING DOCTOR'S REPORT AND CARRIER/EMPLOYER BILLING FORM". It includes fields for patient information (name, address, date of birth, sex, race, religion, occupation, date of injury, date of report, date of examination, date of report), physician information (name, address, phone number, fax number, email address, board number, board expiration date, board type, board status, board category, board specialty, board sub-specialty, board sub-specialty code, board sub-specialty description, board sub-specialty code description, board sub-specialty code description), and billing information (carrier name, carrier address, carrier phone number, carrier fax number, carrier email address, carrier board number, carrier board expiration date, carrier board type, carrier board status, carrier board category, carrier board specialty, carrier board sub-specialty, carrier board sub-specialty code, carrier board sub-specialty description, carrier board sub-specialty code description, carrier board sub-specialty code description). There are also sections for "INJURED WORKER SHOULD NOT PAY THIS BILL" and "PLEASE TYPE - SEE REVERSE FOR IMPORTANT INFORMATION".

Top – information provided by the patient. Potential problems here may relate to uncertainty about the employer. Is it the farm owner or the labor contractor? What is their insurance carrier?
The employee's social security number.....

Mid-section – information from physician's initial history and examination. "Occupational" if the likelihood is 51% in your opinion.
 #4 - Plans for referral to specialist, X-rays, physical therapy or other procedures are noted. See back of form for authorization request instructions.
 #5 - Is the impairment total vs. partial, permanent vs. temporary? Your best judgment.
 (Blank spaces in this section will hold up the patient's Checks)

#9 & 10 – only after maximum improvement attained. May need a specialist or a Functional Capacity Evaluation from a physical therapist for this.

#11 & 12 – once again 51% likelihood of occupational etiology and specific diagnoses.

This form is for billing purposes and to provide information to the insurance carrier and the Workers Compensation board for accurately processing the claim. The form must be submitted within 48 hours to the WC Board district office, the insurance carrier and the patient (or designated lawyer/representative). Sharing this information with the employer is specifically exempted from HIPPA restrictions.

C-4 Form for New York State

Workers' Compensation Resources

New York

Workers Compensation Board
Public Information Office
(518) 474-6670
<http://www.wcb.state.ny.us/>

Advocate for Injured Workers - Mr. Edwin Ruff
518 474-8182
1 800-580-6665
FAX - 518 486-7510

Farmworkers Legal Services
1-800-724-7020
<http://www.flsny.org>

Connecticut

Office of the Chairman
Capitol Place
21 Oak Street
Hartford, CT 06106
Phone: (860) 493-1500
<http://wcc.state.ct.us/>

Delaware

Office of Workers' Compensation
P.O. Box 9954
Wilmington, DE 19809-9954
302-761-8200
<http://www.delawareworks.com/industrialaffairs/services/workerscomp.shtml>
Contact employer if injured. No initial employee forms

Maine

Workers Compensation Board
27 State House Station
Augusta, ME 04333-0027
Telephone: (207) 287-3751
TTY: (207) 287-6119
Toll Free (Maine Only) 1-888-801-9087
<http://www.state.me.us/wcb/>

Maryland

Maryland Workers' Compensation Commission
10 East Baltimore Street
Baltimore, MD 21202-1641
(410) 864-5100
<http://www.wcc.state.md.us>
Employee forms must be requested through the website; employer form done online

Massachusetts

Department of Industrial Accidents Information Portal
1-800-323-3249 (Boston office)
<http://www.mass.gov/dia/>

New Hampshire

Department of Labor
State Office Park South
Spaulding Building
95 Pleasant Street
Concord, NH 03301
Phone: (603) 271-3176
http://www.labor.state.nh.us/workers_compensation.asp

New Jersey

Christopher Leavey, Administrator
Division of Workers' Compensation
P.O. Box 381
Trenton, NJ 08625-0381
(609) 292-8802, Fax (609) 984-3924
<http://www.nj.gov/labor/wc/wcindex.html>

Pennsylvania

Bureau of Workers' Compensation
1171 S. Cameron St., Room 324
Harrisburg, PA 17104-2501
(800) 482-2383
<http://www.dli.state.pa.us>
Forms must be submitted online

Rhode Island

RI Department of Labor and Training
Division of Workers' Compensation
1511 Pontiac Avenue, Building 69, 2nd Floor
PO Box 20190
Cranston, RI 02920-0942
(401) 462-8100 option 1
WCEdcUnit@dlt.state.ri.us
<http://www.dlt.ri.gov/wc/>

Vermont

Vermont Department of Labor and Industry
National Life Building
Drawer 20
Montpelier, Vermont 05620-3401
802-828-2286
<http://www.state.vt.us/labind/wcomp/wcforms.htm>

West Virginia

1-888-4WV-COMP (888-498-2667)
<http://www.wvcc.org>
Forms available online

General Information

<http://www.workerscompensation.com>