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THE CONTROVERSY OF DENYING A WC CLAIM

We are publishing this Client Memorandum in the hopes that it will alleviate certain amount of frustration and controversy with employers over the reasons why certain work related claims the employer feels should be denied, they are not. Please understand that we are presenting general processes, that not every claim is the same and not all States or Regulators work exactly the same.

The initial factual and logistical events surrounding a work related claim for injuries received not withstanding, present the first and may be the only opportunity and ability an employer has to controvert/deny that specific claim; first, there certain actions and documentation needed within the time constraints imposed by Regulators, differently in each State, and, second, there are contractual terms and conditions the employer assumed when its Workers Compensation Policy was purchased.

Let's address the first, the employer's contribution to this process. The employer, upon notification of what appears to be a non-compensable claim, takes steps in accordance with its operational protocols to collect information and documentation the employer thinks it's necessary for proof. Most of the time, the "proof that's necessary" protocol has been written and implemented by individuals that may not have the required knowledge, skill and experience and may be relying on common sense and logic or wrong assumptions. They also may be relying on their insurance carrier to support their denial by performing additional investigation to support the employer's position. Remember the "time constraints" which are very short; there may not be time left to perform additional investigation even if the insurance carrier was so inclined. Note the "...even if...". All controverted/denied work related claims must be adjudicated by a Regulator who will judge based on all evidence provided by both parties. If the evidence collected by the employer is found by the Regulator to be inadequate, with the time limitations having expired, this evidence that the employer was counting on, is now discarded. Since the attorney appointed by the insurance carrier to represent the employer, now without any acceptable evidence, has no choice but to accept the claim as compensable.

Now, let's address the second and more controversial process which is not well known, understood or accepted by the majority of employers and causes them a lot of grief. Any insurance policy, including the Workers Compensation Policy, contractually shifts the liability for the events it has agreed to provide coverage for, in this case work related injuries, from the employer to the insurance carrier. For a small defined monetary loss, the premium, the employer has agreed to contractually shift the responsibility of all fortuitous claims, up to an agreed limit, to the insurance carrier; obviously this arrangement also shifts the responsibility of defending these claims, to the insurance carrier under a clause known as the "Right To Defend" impeded in the policy. To put it simply, the insurance carrier bought the employer's liability and they now have the right to defend all claims emanating from this policy. This arrangement is as old as there are insurance policies.

For the next surprise, it is interesting to read what New York State advises employers in the first paragraph on its page providing information to them as to how to controvert a claim, presented in its entirety (all States are substantially the same):

> *"The insurance carrier can contest the claim for a variety of reasons, including that the injury was not related to work, or the employee is not injured to the extent that he or she is claiming. An employer can also request that the insurance carrier contest the claim. However, since the insurance carrier has assumed the liability for the claim, it is not required to comply with the employer's request."*

So, when the employer who thinks that it has collected all the right information and documentation, well within the time permitted by law, presents this to its insurance carrier and the carrier says "...no, we don't think so..." and they proceed to file the claim as compensable, please don't loose your cookies. Look internally in how to improve your operational processes in reporting and managing WC claims.

With this memo we are not trying to tell you that an employer should not be controverting claims that should be controverted. What the employer must do is work quickly, accurately and completely to collect the right information that will be needed in each individual case to (a) convince the carrier that the particular case should be controverted, (b) which in turn will motivate the carrier who will motivate the assigned defense attorney to present the facts to the Regulator in the appropriate light. Then, considering the prevalent environment in your State Regulations and how it may be applied, you may have a chance of winning the debate.

The killer in all this is that lack of initial employer knowledge along with de-centralization of departmental operational responsibilities and communications, fosters further lack of knowledge that becomes costly for the employer in two levels, (1) immediate by driving the specific claim costs higher, and (2) long term since it builds the overall cost of claims over time (xMods) leading to higher premiums.

This is intended as a "Call to Action" for all employers. There are ways to solve almost every problem; someone has to know how to do it successfully. We recommend to at least review certain parts of your operational protocols related to reporting of work incidents to ensure that work related events are attended to as directed by your executives who have drafted and implemented your internal processes, accurately, immediately and appropriately. This is the beginning to drastically reduce your insurance costs.

Bluefire can assist you in this goal.