

Manager/Supervisor Risk Management

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A twice weekly e-mail training for YCPARMIA members

TOPIC: WORKERS' COMPENSATION – INJURY

Compensation is based on injury, not accident, so we should probably take a quick look at what injuries are covered under the Labor Code. "Injury" obviously includes injury to the body. It also includes injury to artificial members, Injury to dentures, and injuries to eyeglasses and hearing aids (when caused by an injury causing disability). Contracting or developing a condition classified as a disease, or psychiatric injuries are also included in the definitions.

The most common type of injury is the traumatic injury caused by an application of force (blows, falls, cuts, twists or strains). Another type of injury is caused by repetitive trauma where damage comes on gradually due to repeated activities occurring during employment (for example using a keyboard and mouse). Injury can also include trauma that aggravates or "lights up" a preexisting disease or condition.

BUT – understand that the definitions are not really important for this discussion. **What is important to recognize is that the decision as to whether a worker has suffered an injury is made by the doctor.** The doctor will base their decision on the information that the employer provides, on the worker's medical history, and on the medical examination.

An area that does cause some confusion is a claim for "cumulative trauma." It is similar to a repetitive injury in that it is trauma from the repeated use of a body part over an extended period of time. A distinction must be drawn between the normal aging process, and a work related break-down of the body. Again, this is a medical issue with the decision made by the doctor. These claims sometimes follow a major injury, and seem to suggest that the pre-existing cumulative trauma made the body more vulnerable to the specific injury. Other times they seem to occur just before a notice of retirement. The Labor Code establishes the date of injury on a "CT" claim as when the employee was disabled and at the same time knew or should have known that the condition was due to work.

The last part of the injury discussion concerns "Presumptive Injuries." There are two types:

1. Any claimed injury that is not denied or rejected by the TPA claims examiner within 90 days of the employer receiving the claim is presumed to be a compensable work injury; and
2. Certain injuries and conditions specified in the Labor Code that are suffered by certain safety employees (law enforcement and fire) are presumed to be work related and compensable. These conditions include cancer, heart trouble, pneumonia, hernia, tuberculosis, and in some cases, lower back injuries. The presumption can continue after retirement or termination depending on length of employment. Lastly, these presumptions can sometimes be rebutted by the employer with adequate evidence.

Next topic: Workers' Compensation – "Information/documentation only"