

LIABILITY & THE WORKERS' COMPENSATION SYSTEM

The complexities of Workers' Compensation can leave employers feeling powerless when it comes to decisions of liability. At our latest BJS Workers' Compensation Breakfast Seminar, Employers were given an understanding of the process behind determining liability. The roles of the key players in the process were discussed and how to best engage them to ensure that both sides of the situation are assessed. An understanding of what makes a valid claim was provided along with the arguments an employer can make to dispute claims liability. A proven approach to improving the chances of declining non-legitimate claims was outlined to attendees. The main takeaway points from each of our presenters are outlined below.



The Host

The key points Simon wants you to remember in relation to managing the claims liability process are:

1. Accept all legitimate claims immediately, because, you know, they're legitimate... and because tying your insurer down disputing claims with no basis will make them reluctant to work with you on disputing claims when it matters.
2. Don't be a passenger. You need to take control of the process to ensure that the other parties involved are addressing your queries relating to liability despite their competing motivations.
3. Don't expect things to happen. The chances of the correct decision being made diminish significantly if you are not actively involved in the process.
4. It is essential to engage your Insurer from the beginning of the process:
 - a. Have a solid argument for why you believe the claim does not meet the criteria for a valid claim
 - b. Gain agreement from your insurer that the argument is valid
 - c. Gather and provide evidence to enable the insurer to support your argument
5. Workers' Compensation is a specialty area. To obtain optimal results in the management of Liability, Premium, Claims and People Risk, employers should look to engage appropriate expertise.



Simon Booth

AEGIS Risk Management Services
Manager | Workers' Compensation

The Lawyer

The key points Andrew wants you to remember in relation to managing the claims liability process are:

- Understanding the nature of the injury is important for successful rehabilitation.
- The law allows you to direct employees to provide medical information and attend assessments (section 6 page 2 of employee claim form, s.113 WIRC Act, s22(2)(b) OHS Act and at law when you have reasonable belief that they are no longer able to safely undertake their duties).
- Look at 3 defences for a Stress claim:
 1. Not injured at work
 2. Not mental injury
 3. Reasonable management actions



Andrew Douglas
FCW Lawyers
Managing Principal

All of these require a close relationship with a supervisor who treats them fairly, knows what is happening in their life and who carries out their obligation to monitor the health of employees (s.22 OHS Act).

- Key to all claims is to move fast, ensure a safe pathway to work and that any issue of employee suggesting they were mistreated are investigated immediately. All evidence should be provided to the circumstance investigators. Speak to the team at Aegis for advice on managing this.
- Always keep accurate notes that are made at the time of conversations.
- Ensure you have good policies and procedures for people management and follow them.

The Insurer

The key points Nguyen wants you to remember in relation to managing the claims liability process are:

- The liability process requires the employer, insurance agent and any other parties involved to work collaboratively to collate and gather the appropriate and relevant information in a limited timeframe.
- Communication and building relationships between the insurance agent and employer leads to more effective outcomes when managing claims with where liability is being disputed.

"Giving the Insurance Agent a better understanding of the workplace and the facts surrounding the alleged incident will ensure all parties are working on the same strategy"



Nguyen To
Xchanging
Lead Practice Group
Management / Entitlements

- An employer should utilise the 10 days following receipt of claim from the injured worker if you are planning to dispute liability. Collate all the supporting information you would like the insurance agent to consider and engage in a detailed discussion with the eligibility specialist, agree to the strategy and gather the information before lodging the claim by day 10.
- Return to work planning is a common goal for all parties regardless of liability. Employers can now seek assistance from the insurance agent whilst the claim hasn't had liability determined as yet. The early engagement of Occupational Rehabilitation services can expedite the return to work process regardless of the liability decision.
- If an employer wants to rely on the defence of reasonable management actions under section 40 of the WIRC Act 2013 to dispute a psychological injury, it is critical that they can prove that they have followed their own policies and procedures.
- Liability decisions are based on an assessment of a combination of factual and medical information, which may include independent medical examinations, worker's clinical history, treating health practitioner's report and circumstance investigations and, at times where relevant, surveillance and CCTV footage in conjunction with evidence and discussions with employers.

BJS Insurance Group Workers' Compensation Breakfast Seminar – Speaker Summaries



The Broker

The key points Danny wants you to remember in relation to managing the claims liability process are:

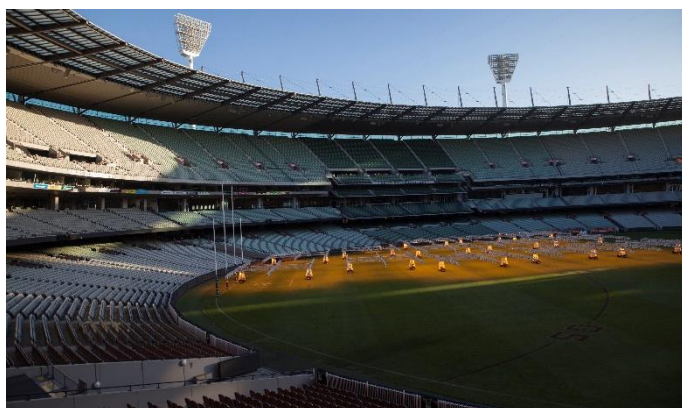
- Over 60% of disputed claims are eventually accepted
- When claims are disputed workers are 11% more likely to be off work after 6 months than workers whose claims were not disputed
- Employers should ensure that they have a sound argument and supporting evidence before deciding to dispute liability for a claim
- Return to work should remain a primary process regardless of the liability process. The early stages of any Workers' Compensation claim are crucial in the claims management process, so an early and pro-active approach to return to work is important to ensure that if a claim is accepted, this process has been followed.
- It is very likely that the insurer is unfamiliar with the employer's business operations, so it is therefore important to have detailed assessments of the job the injured worker was performing to ensure there is no doubt as to what the role is or how it is performed.
- The Eligibility Officer at the Insurer faces a fast-paced and stressful environment, so it is important to deal with only the facts and not get caught up in the emotion of a disputed claim.
- It is important for Employers to build a relationship with their insurer.



Danny Mason

AEGIS Risk Management Services
Account Manager | Workers' Compensation

The videos from the BJS Workers' Compensation Breakfast Seminar can be accessed [here...](#)



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