

WORKERS' COMPENSATION

From Hiring to Firing

**Prepared by Moore, Clarke,
DuVall & Rodgers, PC**

HIRING PROCESS

What Employers Must Know

INTERVIEW QUESTIONS

- Prior Work Injuries
- Post Offer Questionnaire
 - Rycroft Defense
 - Prongs of Rycroft
 - Intentional
 - False Misrepresentation
 - Employer Reliance
 - Causal Connection
- What you can ask?
- What you can't ask?
- Pre-Employment Physical

ORIENTATION

Informing Employees of WC Act

BILL OF RIGHTS

- Employers Responsibilities.
- Employees Rights.
- Posted with Panel of Physicians.
- Accessible to All Employees.

Panel of Physicians

Employers Must

- (1) Post Panel
- (2) In a Prominent Location
- (3) Which is Accessible to All Employees

Traditional Panel of Physicians

- Minimum of six (6) non-associated physicians
- At least one (1) physician must practice the specialty of Orthopaedic Surgery
- Maximum of two (2) industrial clinics
- At least one (1) minority physician

Conformed Panel of Physicians

- Minimum of ten (1) non-associated physicians
- At least one (1) physician must practice the specialty of Orthopaedic Surgery
- At least one (1) physician must practice the specialty of General Surgery
- At least one (1) physician must practice the specialty of Chiropractic Medicine
- Maximum of two (2) industrial clinics
- At least one (1) minority physician

Notice of the Injury

- Notice to anyone in supervisory capacity
- Employer duty to inquire upon slightest notice
- Injuries must be reported within 30 days.
- Injuries should be reported, in writing, whenever possible.
- Company policy of “24 hour” or “immediately” is acceptable but will not preclude benefits

TYPES OF INJURIES*

- Traumatic
Examples: back, loss of limb, rotator cuff, knee, ankles, contusions, strain, sprain
- Repetitive Motion
- Aggravation of Pre-Existing Condition
- Strokes
- Heart Attack
- Occupational Disease Statute
- Hernia Statute
- Hearing Loss
- Catastrophic Injuries

*Common examples, not exhaustive list

Drug and Alcohol Policy “Rebuttable Presumption”

- Proper Collection Procedure in Place
- Testing for Alcohol within three (3) hours
- Testing for Drugs within eight (8) hours
- Causal Connection is a Necessity

PANEL PROCEDURE

- Employee may select a physician from the posted panel/network directory
- Emergency situations may preclude panel restrictions until the emergency status resolves
- Employee may select to make one (1) change of physicians to another panel or network physician
- In some cases, the State Board may order a change of physician at the request of the Employer, Employee or upon its own Motion

Panel of Physicians (continued)

- Employers must take all reasonable measures to ensure that all employees:
 - (a) Understand the function of the panel or WC/MCO members when necessary; and
 - (b) Are given assistance in contacting (but not picking) panel or WC/MCO members when necessary

Employer's Failure to Provide Panel Requirements

- Employee may then select any physician to provide treatment.

Controverting the Claim

When a claim is controverted, the
Employer may not restrict the
Employee to the Posted Panel

MEDICAL PROCEDURE

“Reasonable and necessary to effect a cure, give relief, or restore to suitable employment”

MEDICAL TREATMENT*

- Physician visits
- Diagnostic Testing
- Surgery
- Physical Therapy
- Occupational Therapy
- Daily Living Aids
 - Examples: mattress, cane, maid service, wheelchairs, scooters, and braces
- Home Health Care
- Renovations
- Spas
- Gym/exercise equipment
- Weight Loss Programs
- Reimbursed mileage and drugs

*Examples, not exhaustive List

Medical Procedure (Continued)

- Confidentiality of injury waived by Statute
- HIPAA does not apply to WC
- Employee has right to choose from panel
- Employee visits panel physician
- Panel physician can make referral
- Referral physician cannot make referral
- Pre-authorization of treatment not required by law
- Employees required to co-operate with treatment
- Any Party may request a Change in Physician

Light Duty Return to Work

- Employee may voluntarily return to approved modified duty
- Employer may require return to approved modified duty
- WC-240 process
- Employer sends job description to doctor and simultaneously to employee/attorney
- Doctor must approve, sign, and date job description within 60 days of offer
- WC-240 and job description mailed to all parties
- Minimum of 10 days notice
- Employee may not unjustifiably refuse to try job
- Employee tries less than 15 days, then benefits recommences automatically
- Employee tries 15 days, then benefits are not commenced automatically

Termination of the Employee While on Modified Duty

- *Padgett* Standard

- When a workers' compensation claimant who is on restricted duty due to a compensable injury is terminated by the employer with whom that injury occurred, the question simply becomes one of whether "the economic change for the worse is proximately caused by the work-related injury." Where the claimant is terminated for reasons wholly unrelated to the on-the-job injury, proof of a diligent job search allows the State Board to infer this critical causal connection.

Termination of the Employee (continued)

- *Maloney* Standard
- In *Maloney*, the Georgia Supreme Court held that for such employee to establish entitlement to income benefits, the employee must establish by a preponderance of the evidence that she suffered a loss of earning power as a result of a compensable work-related injury; continues to suffer physical limitations attributable to that injury; and has made a diligent, but unsuccessful effort to secure suitable employment following termination.

WORKERS' COMPENSATION BENEFITS

- Temporary Total Disability Benefits
 - 400 week cap if no work
 - 350 week cap if modified work
 - No cap if deemed catastrophic
- Temporary Partial Disability Benefits
 - 350 week cap
- Permanent Partial Disability Benefits
 - Statutory table for loss of use of body member
- Lifetime Medical Benefits