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Workers' Comp 101: Definitions and Claim Reporting Part I

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Teamwork

A Periodical for Providers and Clients of **Comp1One®**

Claims Management 101: Part I

What is the definition of an “employee” and “employer” under AL Code § 25-5-1?

- An Employee is defined as every person in the service of another under any contract of hire, expressed or implied, oral or written, including aliens and minors, who are legally permitted to work under the laws of the State. The only exceptions are domestic servants, farm laborers, casual employees, and those employed by employers of less than five employees.
- An “employer” is defined as “every person who employs another to perform a service for hire and pays wages directly to the person.”

What type of injuries are covered under the Act?

- Traumatic or “single occurrence” claims for injuries caused by an accident arising out of and in the course of the employment.
- The employee must prove broken bone, laceration, slip and fall claims by a preponderance of evidence.

What about psychological or mental claims?

- The term “injury” does not include a mental disorder or injury that has neither been produced nor proximately caused by some physical injury to the body.



JEREMY N. TROUSDALE

What are the regulations for Occupational Diseases and Repetitive Use Injuries?

- Diseases arising out of and in the course of employment and due to hazards in excess of those ordinarily incident to employment in general and peculiar to the occupation of the employee are compensable.
- The disease must be caused by a hazard peculiar to an occupation and result directly from exposure, over a period of time, to the normal working conditions of the occupation.
- The employee must prove claims resulting from cumulative trauma or repeated exposure such as Asbestosis, COPD, Carpal Tunnel Syndrome and Degenerative Disc Disease by clear and convincing evidence.

What does the code say with regards to pre-existing conditions?

- To deny compensation based upon misrepresentations regarding physical or medical history, the employer must provide a written warning in BOLD print at the time of the offer of employment stating “MISREPRESENTATIONS AS TO PRE-EXISTING PHYSICAL OR MENTAL CONDITIONS MAY VOID YOUR WORKERS’ COMPENSATION BENEFITS”.

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Comp1One is a comprehensive case management company located in Huntsville, Alabama with clients across the Southeast. Comp1One and sister company, North Alabama Managed Care, Inc. (NAMCI), are divisions of Premier Health Networks of Alabama, LLC featuring PPO network access for direct medical cost savings in group health and workers’ compensation.

Comp1One features 24 hour case management services with Certified Nurse Case Managers and the backing of Board Certified Occupational Health Physicians. Our nurses and physicians are available for pre-certification, utilization management, file reviews, case referrals, peer reviews, and catastrophic injury management.

Comp1One is certified by the state of Alabama Department of Industrial Relations, is licensed and insured, and has been recognized for Best Practices in Injury Management in the state of Alabama.

Comp1One
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Case Management

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Legal Update

New amendment to the Medicare Secondary Payor Statute (MSP), adopted by Congress at the end of 2007. It is a broad amendment of the Social Security Act that will significantly impact ALL liability and workers' compensation insurers as well as self-insurers. One of the primary purposes of the amendment is to increase the amount of money that Medicare is able to recover under the Medicare Secondary Payer Act.

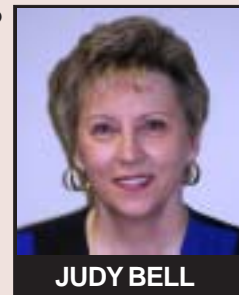
Beginning in June 2009, for every single claimant who files a claim in any liability or workers' compensation case, the insurer (or self-insurer) must inquire as to whether the claimant is a Medicare beneficiary and, if so, the insurer must provide that information to Medicare. Failure to do so by the deadline (that will later be determined by the Secretary) will result in fines of \$1,000 per day per claimant.

Prior to June 2009, the Secretary will issue directives concerning additional information that will be required as well as the deadlines for the provision of the required information. If you ever have any questions concerning the Medicare Secondary Payor Act, please feel free to contact us.

*Bennett L. Pugh and Melisa C. Zwilling
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(205) 822-2006*

Company News

Welcome Judy Bell to the Comp1One Team! Judy has over ten years of medical office experience and attended Leo University where she focused on Business Administration.



JUDY BELL

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Work Comp 101 (continued)

What injuries are not covered by the Workers' Compensation Act?

- Self-inflicted injuries are not compensable
- Idiopathic or unexplained falls
- Injuries incurred during "horseplay" may not be compensable if the "horseplay" constitutes a substantial deviation from the employment.
- "Willful misconduct" includes all conscious or intentional violations of law

What if the employee has a positive drug or alcohol test?

- Injuries caused by an employee's intoxication from alcohol or illegal drugs are not entitled to compensation benefits; however, the burden of proving an employee's intoxication is placed on the employer.
- A positive drug test conducted and evaluated pursuant to USDOT regulations entitles the employer to a presumption that the employee was impaired.

Injuries resulting from recreational or social activities are within the course of employment when:

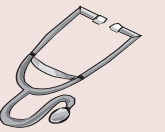
- They occur on the premises during a lunch or recreation period as a regular incident of the employment.
- The employer expressly or implies required participation, or by making the activity part of the services of an employee, brings the activity within the orbit of employment.

What are the reporting requirements?

- Ala. Code § 25-5-78 states that the employee must give written notice of an on-the-job accident within five (5) days to the employer; however, the Courts have held that as long as an employee provides notice of an on-the-job accident to a supervisory employee within 90 days of the date of accident, it is properly reported.
- The employer is not liable for any compensation or medical benefits until notice is provided. If notice is not provided within the 90 day time period, the employee's claim for workers' compensation benefits should be barred.
- If suit is not filed to recover benefits under the Act within two (2) years from the date of the accident or date of last compensation payment, the employee's compensation claim is barred.

This is the first part in a series of a general overview of Ala. Code § 25-5-1. For more information, please contact Jeremy Trousdale, Carr Allison Attorneys at Law, at (205) 822-2006.

Clinical Comments



ACL Surgery: It's not just for the Pros Anymore

It's not uncommon to hear of an injury at work resulting in a torn ACL. As recent as 15 years ago, such an injury meant the end of an active lifestyle for many individuals. Only professional athletes underwent surgery, usually at specialized centers and with varying degrees of success.

Things are different now. Over the past several years, techniques have evolved that routinely allow patients to make a successful return to their chosen occupation. Nearly 300,000 ACL reconstructions are performed annually across the U.S., with predictable results for patients of all ages.

The ACL or anterior cruciate ligament is a large stabilizing ligament inside the knee. This ligament connects the back of the femur (thighbone) to the front of the tibia (shinbone) and provides stability to the knee during activities. The ACL acts like a strong brace to keep the tibia from shifting forward on the femur. Loss or tearing of the ligament results in an instability of the knee that can cause the knee to buckle or give way.

ACL tears are most often the result of a single traumatic injury. Common injuries include twisting the knee beyond its normal range of motion or hyper-extending the knee (bending the knee backwards) as a result of a fall. Often a pop is felt in the knee when the ligament is torn. Usually the knee is acutely painful and most individuals are unable to continue to work and often require assistance walking. Within hours, the knee swells and becomes difficult to bend and straighten. Pain usually persists about the whole knee, and causes difficulty standing or bending the knee for several days. After several weeks, most of the pain and swelling usually resolve and patients may return to some limited activities. Without surgical treatment however, patients can experience repeated episodes of buckling or giving way of the knee, which can result in further damage to the knee cartilage lining.

Diagnosis of an ACL injury is made on the basis of routine X-rays and a clinical exam. Tests such as MRI's (magnetic resonance imaging) are often used to evaluate the possibility of additional injuries and to confirm the diagnosis of an ACL tear.

Treatment of ACL tears is primarily surgical in the patient who wishes to continue to participate in an active lifestyle or occupations that require a stable knee. This includes many workers that are on uneven or slippery surfaces, ladders or heights and high demand occupations. Nonsurgical treatment is an option for the patient who no longer wishes to pursue competitive sports and the patient whose occupation is low demand. Nonsurgical treatment involves a brief period of rest followed by rehabilitation to restore strength and motion to the knee. The instability from the ACL tear remains and some degree of activity limitation to avoid actions which may result in buckling of the knee is a long-term commitment. Braces can occasionally be used to further stabilize the knee, but are not a substitute for surgical treatment and rarely allow the patient to return to full function.

Surgical reconstruction of the torn ACL is the treatment of choice for occupations which require a stable knee. Reconstruction of the ACL involves removal of the damaged ACL and replacement with a new ligament graft. The ligament graft is taken from uninjured parts of the knee or donor tissue. Common graft sources include the patient's central third of the patellar tendon, patients' hamstring tendons, or donor tissue. ACL reconstruction is now routinely performed with arthroscopy. This permits the use of smaller incisions, allowing faster recovery with less discomfort. During surgery, drill holes are made in the tibia and femur to allow accurate placement of the new ACL graft. Once the graft is

in proper position, it is fixed in place with either metal or absorbable screws. Most patients are released following surgery on the same day or after an overnight stay.

My

personal preference in treating working patients is using the patient's hamstring tendons or donor tissue. These techniques are less invasive and often allow an earlier return to modified duty status compared to patellar tendon grafts. Also, the use of absorbable fixation devices allows for followup MRI studies should future injuries occur and avoids the stigma of placing metal in the knee.

Recovery from surgery requires time and rehabilitation to restore the knee to adequate function. Rehabilitation is used to restore strength and motion. Often a knee brace may be worn during the initial recovery time to protect the knee while it is healing and to lessen the chance of re-injury. Most patients can return to a modified duty status within days of surgery depending on their occupations. Return to competitive sports or work activities that require running and cutting maneuvers are usually allowed in 4-6 months depending on surgeon preference and the patients healing response. Surgical treatment is not without risks, and these are best discussed between the patient and the surgeon when considering treatment. The success rate for surgical treatment of ACL injuries is very high, with roughly 90% of patients returning to their previous level of activity.

Modern surgical treatment of ACL injuries represents one the greatest advancements in sports medicine over the past decade. Thanks to medical science, the injury that once ended many careers can be overcome with modern surgical techniques, new technology and appropriate rehabilitation.

J. Randall Riehl, M.D.



J.Randall Riehl, MD