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Workers' Compensation Fraud Issues

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3 Types of Fraud

- Employee Fraud
- Employer Fraud
- Medical/Health Care Fraud

Employee Fraud- Civil

- Civil Workers' Compensation Fraud
 - Elements:
 - Misrepresentation or concealment of fact
 - The misrepresentation/concealment is material to an issue in the claim
 - The misrepresentation/concealment is made with the intent of misleading another to rely on it
 - The misrepresentation/concealment caused the Bureau/Employer to rely on the contents of the misrepresentation/concealment
 - The misrepresentation/concealment proximately caused an injury to the Bureau/ employer (typically payment of benefits)

Employee Fraud- Civil

- Most issues of civil workers' compensation fraud involve collecting temporary total or permanent total disability while engaging in gainful employment.

Employee Fraud- Civil

- Recoupment of funds by the BWC is governed by Ohio Revised Code § 4123.511(J) and (K) but is different for state fund versus self-insured employers.



Employee Fraud- Civil

State Fund vs. Self-Insured Employers

Employee Fraud- Civil

- State Fund Employers
 - Most often with civil fraud, the overpayment is collected through future awards but the Employer's account is credited immediately.
 - Any premium impact will also be alleviated.

Employee Fraud- Civil

- Self-Insured Employers
 - Self-Insured Employers that still pay into the surplus fund can recoup the overpayment in the same way as state fund employers under § 4123.511(J) and (K).
 - Self-Insured Employers that no longer pay into the surplus fund which is now the majority of Self-Insured Employers must go after the employee independently.

Employee Fraud - Civil

- Practical Applications of Workers' Compensation Fraud
 - Almost always applied to claimants who are working while collecting disability benefits.
 - Malingering is not fraud!
 - Are private investigators worth the cost?
 - Submission of P.I. reports and videos at hearing

Employee Fraud – Red Flags

- Facebook, LinkedIn, SOCIAL MEDIA!!!
(must be an open account. You cannot friend the person under a pseudonym to see the account.)
- Claimant is never home, never answers phone calls or has specific times and days for IMEs
- Seasonal work that is about to end and files a claim
- Claimant engages in physical activity while on TT or PTD that is inconsistent with limitations due to injury
- Claimant is collecting TT or PTD while working
- Claimant is “diverting” narcotics to others or deceiving medical providers to obtain prescriptions

Employee Fraud- Criminal

- Criminal Fraud is governed by O.R.C. § 2913.48.
- The elements are almost the same as civil fraud but must include clear evidence of intent to defraud.
- Bureau must prove criminal theft without consent of the owner through deception, threat or intimidation.
- Criminal fraud can also include forgery.

Employee Fraud- Criminal

- A conviction can result in a first degree misdemeanor to a third degree felony, depending on the amount of money.
- In addition to criminal penalties, a finding of criminal fraud will result in an attempt to immediately recoup all payments tied to the fraud from the claimant.

Employer Fraud

- Employer fraud usually involves premium non-payment and/or misreporting of workers' compensation payroll.
 - Failure to pay premiums under O.R.C. § 4123.37.
 - Misrepresentation as to amount or classification of payroll under O.R.C. § 4123.25.

Employer Fraud

- Employers can be criminally prosecuted under O.R.C. § 4123.99.
- Penalties can range from a minor misdemeanor to a second degree misdemeanor and can also involve treble damages.

Employer Fraud – Red Flags

- Suspicion that a competitor is underbidding contracts because they are not paying workers' compensation coverage.
- Certificate of coverage is not visible to employees or is outdated.
- Employer is misreporting payroll or shifting payroll suddenly to lower cost jobs.
- Employer misclassifies employees as independent contractors/subcontractors.

Medical/Health Care Fraud

- Medical/Healthcare fraud involves obtaining payment by deception from the BWC and/or a self-insured employer.
- Medical fraud can involve a health care provider, manage care organization (MCO), the owner of a medical practice or a management care practice.

Health Care Fraud – Red Flags

- Medical providers are performing medically unnecessary treatments or diagnostic tests.
- Services that have not been provided have been billed, or more expensive procedures than those performed are billed.
- An unlicensed medical provider is billing for services.
- Narcotic prescriptions are being provided with limited or no medical treatment/evaluations.

Workers' Compensation Fraud

Who are the players in the workers' compensation fraud system?

Workers' Compensation Fraud

- BWC Special Investigations Unit (SIU) is the lead agency for investigating all workers' compensation fraud.
 - SIU is comprised of three regional special investigation units for claimant fraud that operates in most customer service offices.

Workers' Compensation Fraud

SIU, in addition to claimant fraud team, has three other teams:

- Health care provider team
- Employer fraud team
- Safety violations investigation unit (VSSR)

Workers' Compensation Fraud

The Ohio Attorney General's Office can become involved in fraud investigations, especially criminal fraud prosecutions.

Workers' Compensation Fraud

The Ohio Highway Patrol has jurisdiction over crimes committed in state buildings or on state property.

Workers' Compensation Fraud

Local law enforcement often becomes involved in BWC fraud investigations where there is evidence of illegal dispensing of narcotics by health care providers. "Pill Mill" cases.

Workers' Compensation Fraud Statistics

From the inception of the program in
1993 through June 2015:

- Researched 114,538 allegations;
- Completed 62,465 investigations;
- Closed 25,534 founded cases;
- Identified \$1.6 billion in savings;
- Identified \$26,478 per closed case;
- Referred 4,672 subjects for prosecution;
- Secured 2,429 criminal convictions.

2015 Statistics

Prosecution Referrals Indictments Convictions Identified Savings

Employer Fraud	65	36	42	\$3,286,721
Health Care Fraud	11	3	3	\$19,382,499
Claimant Fraud	153	92	106	\$37,090,867

2014 Statistics

Prosecution Referrals Indictments Convictions Identified Savings

Employer Fraud	67	55	40	\$3,746,592
Health Care Fraud	32	2	6	\$19,562,267
Claimant Fraud	168	92	86	\$32,597,553

Workers' Compensation Fraud

Questions about workers' compensation fraud or workers' compensation in general?

OSHA Reminder

On November 1, 2016, OSHA's new reporting rule, 29 CFR § 1904.(b)(1)(i) take effect.

- Retaliatory reporting procedures:
 - Reporting procedures that discipline for failure to immediately report an injury run afoul of the new rule.
 - Incentive programs that encourage employees not to report injuries or disease are not compliant.
- Unreasonable reporting procedures:
 - Deter or discourage reporting such as mandatory post-accident blanket drug testing policies. **Exception to the rule are federal and state mandated drug testing.**