

Manager/Supervisor Risk Management

#38– 3/20/12

A twice weekly e-mail training for YCPARMIA members

TOPIC: WORKERS' COMPENSATION –TEMPORARY DISABILITY -- MALINGERING

“Malingering” is an admittedly harsh term, but for our purposes we will limit its definition to an employee with apparent medical issues and a deteriorating work ethic. Most of us can think of someone that has a never ending series of medical maladies, and/or personal problems. A not uncommon scenario has the employee using up all of their accumulated leave time while their work performance deteriorates. At some point their supervisor might start to consider how much better things would be if they were able to get someone new in that would carry their share of the work load. The employee starts to fear impending discipline, and pre-emptively submits a claim for an industrial injury while reinforcing their role of “victim.” Feeling that they cannot work they look to the workers' comp doctor to place them on temporary disability. The supervisor in turn looks to workers' comp as a possible solution to their employee problem.

Let's state a general truth: You generally cannot use workers' compensation to solve employment issues. The system is designed to deliver benefits to injured workers, not to deal with performance or personnel issues. At the same time, it is equally important that all involved in the process work hard to keep an employee from “gaming the system.”

The answers to personnel issues lie in the interaction between the supervisor and the HR Department, and are grounded on documentation and employment law. The workers' compensation issues can, to some extent, complicate or overlap the personnel issues, but are grounded on medical determinations and Labor Code standards.

The existence of a workers' compensation claim is a factor to be considered, but does not serve to shield the injured worker from performance issues. It may slow the personnel process or postpone discipline, but does not serve to cure inadequate performance. Again, this is where it is essential for the supervisor/manager to interact with HR and reach agreement on what actions will be taken.

The workers' compensation claim is handled without consideration of pending personnel issues. YCPARMIA encourages holding the employee accountable during the process and providing modified work as needed. Letting the problem employee escape the work place by using workers' compensation sends the wrong message and merely prolongs the personnel process. Alternatively, it is equally important to remember that bad employees can suffer work injuries. You cannot prejudge the validity of their WC claim. The compensability of the claim will be decided by the doctor. All the supervisor can do on the WC claim is to work with their HR department and claims examiner to provide the doctor with as much information as possible so that an informed decision can be made that considers all of the potential factors.

Next topic: Workers' Compensation – Medical Benefits