

Manager/Supervisor Risk Management

#44– 4/10/12

A twice weekly e-mail training for YCPARMIA members

TOPIC: WORKERS' COMPENSATION – PENALTIES, SERIOUS & WILLFUL, LC 132a

Built into the WC system is a series of penalties for improper conduct by the parties. In this topic we will take a quick look at three that can be alleged against the employer/insurer.

- Penalties: There are a variety of penalties that increase the injured worker's benefit due to late payments, and/or unreasonable delay. These are pretty rare on YCPARMIA files. Our TPA probably issues over 15,000 benefit checks per year, and we might see 5 or 6 penalties averaging less than \$100. The penalty is normally added into the check payment.
- Serious & Willful Misconduct (S&W): This is defined as something more than gross negligence, and involves conduct of almost a quasi-criminal nature. Generally S&W allegations involve a situation where an employee is injured by a dangerous work condition that the employer knew about, knew how dangerous it was, and deliberately chose to take no action to address it. A classic example might be the violation of an OSHA safety order. A finding of Serious & Willful can result in a 50-percent increase in benefits; this penalty is not insurable, and therefore would not be covered by YCPARMIA. Serious and Willful are rarely alleged against our members, and we have no record of any of our members being hit with a S&W award.
- LC 132a: The Labor Code prohibits discrimination by the employer against workers who are injured in the course and scope of their employment. To put it another way, the employer cannot penalize an employee for filing a WC claim. The employee must show a connection between the WC claim and the employer's discrimination or detrimental act. The remedy for a 132a violation is an increase in benefits up to \$10,000; YCPARMIA does not cover 132a penalties, and while 132a claims are occasionally alleged, we have no record of any being awarded against our members.

Irrespective of what the injured worker might think, LC 132a does not make them bullet proof. We have seen a number of situations where an employee who is about to face discipline suddenly has a questionable work injury. When that happens it is essential that the supervisor works closely with their HR Department. Both the personnel action and the WC claim should be handled separately and pursuant to normal procedures "letting the chips fall where they may." A 132a claim is defensible by showing that the detrimental act suffered by the employee, in this case some form of discipline, was necessary, appropriate, and in the normal course of business. From a risk perspective a \$10,000 LC 132a exposure probably never justifies allowing a bad employee to escape their performance issues.

We will revisit 132a claims in later topics when we discuss employment liability claims for discrimination and harassment grounded on the EEOC and DFEH.

Next topic: Workers' Compensation – Lawyers