

PITFALLS FOR NEW ADJUSTERS - or HOW TO AVOID FALLING INTO THAT PIT

1. *Should I assume the employer is covered when an injury is reported?*

Review the policy contract language: What are the dates of coverage – did the injury occur during the coverage period? What State did the injury occur in? Is there coverage for that State? Does it cover an owner of the business?

2. *Should I assume the injury is covered in Iowa? How do I know if it is scheduled or unscheduled?*

Know the law of the State: Must the injury be witnessed before it can be found compensable? No. Does the employee have to give notice of the injury in writing? No – see § 85.23 (unless employer has actual notice, employee/someone on their behalf must inform the employer within 90 days).

Should you pay benefits where there is uncertainty as to whether sufficient notice was given to employer? No – see § 86.13 (payments of benefits conclusively establishes that employer/carrier have notice)

Does Iowa allow medical review to challenge treating medical provider's treatment recommendations? Not in Iowa.

Are TTD/HP benefits due & owing the first missed day of work? No – see § 85.32 (owed only if off work for 4 days; first 3 days owed only if off work more than 14 days)

If the injured employee is *suspected* of intoxication due to alcohol/illegal drugs/legal drugs not prescribed by medical practitioner, can claim be denied? Not quite: 1) need to show that at the time of injury/immediately after, the employee tests positive for alcohol/illegal drug/legal drugs not prescribed by medical provider or not used as prescribed, *then* it is presumed employee was intoxicated & that was a substantial factor in causing injury AND 2) employee cannot overcome this presumption. § 85.16

Can you rely on employer's claim that his/her employee signed a contract not to be covered by worker's compensation insurance to deny claim? No – see § 85.18 (rights cannot be contracted away)

How many dependents does a married employee with three children have, when calculating rate? 5 – the employee counts as one dependent.

Get accurate wage records as soon as possible so the correct rate is calculated.

3. *Does it matter who claimant treats with for a compensable injury?*

Take care in exercising your right to choose the authorized medical provider: In Iowa you have the right to choose the medical providers so take care in determining who the authorized medical providers are. If an authorized treating physician orders testing, procedures, and referrals to other providers – those *must be* approved as they have been ordered by an authorized physician. “Referral by an authorized physician to another practitioner routinely is found to be authorized.” *Lawyer & Higgs*. However, attempt to maintain control over who performs tests and other care.

4. *Should I talk to the claimant? Do I need to talk to anyone else?*

Communication is key: Contact the claimant as soon as possible. Get the claimant’s statement. In addition to getting background information including whether they are married and/or whether they have dependents, find out *all* other non-occupational medical conditions, names of medical providers, the names of prior employers, and particularly the name & address of their primary medical provider. If the claim is compensable, explain what benefits they are entitled to and, perhaps what worker’s compensation does not cover. Inform them that you will be choosing their care. Send them a patient waiver to allow you to get records. Let the claimant know you will be following up with him/her to find out how they are doing

Contact the employer to find out what they know. Find out who witnessed the injury, whether & to whom the claimant reported the injury. Find out what the claimant reported as the cause of the injury, where the claimant claims they have pain. Find out whether the employer can offer light duty work if claimant has restrictions. If they have not had a worker’s compensation claim previously, explain the process.

Contact the critical witnesses & get statements, including home address & phone number so you have that information if they leave employment with their employer.

Contact the medical provider & request the medical records to find out whether the claimant’s story is consistent. Find out whether the claimant’s condition is consistent with the reported injury. As the provider’s offices never delay sending you the bills, make sure they know you expect the office notes with the bills.

If litigated claim or you want assistance, contact the defense attorney. Consult with us on any strange fact patterns if there is a question whether the injury is compensable, whether we have any medical providers to recommend, and/or issues on what care should be authorized. If the claim is being litigated, provide them with all the medical records, employer file, statements and any other documents you have obtained. If you are comfortable doing so, provide the defense attorney your log notes.

5. *Do I need to make any follow up communications?*

Follow up: Follow up with the claimant to find out how they are doing; can they return to work, at least light duty; are they complying with any medical recommendations and attending all their appointments; if they have returned to light duty work find out whether they are working within their restrictions; are they working less than their normal hours, and if so explain that you will be paying them TPD benefits. If the claimant needs to attend medical appointments while working, make sure they are getting paid for that time but also that they need to return to work following appointments.

Follow up with the employer to find out what light duty work is available. If the claimant is working light duty, is the employer ensuring the work is within the claimant's restrictions. Make sure the claimant showing up for work daily and on time. Get the wage records to calculate TPD is claimant is working less than full time.

Follow up with the medical providers to make sure you are getting all the records. Communication with the medical provider should help avoid them making a referral without your knowledge and to enable you to maintain control of the medical care.

If you have an alternate medical petition filed against you, get that petition and all medical records to the defense attorney as soon as possible, as hearings on these petitions are set for shortly after the petition has been filed of the petition. See § 85.27(4) and Commissioner's Rule 4.48.

6. Are there other ways to get needed information regarding claims?

Use your resources: Get the ISO reports.

Get the claimant's past medical records, review those for the names of additional medical providers and get their records.

Know the medical issues – let google be your friend!

Follow up on information provided by the employer or witnesses or co-employees of reports of claimant's activities outside of restrictions or inconsistent with the alleged injury or whether the injury occurred outside of work.

When appropriate, get surveillance and then watch it and read the reports.

Discuss claim with peers to get ideas on further investigation, facts that support denial of the claim, whether & when to order surveillance, what doctors to consult, among other matters.

Contact defense counsel when you have questions regarding of Iowa law, recommended doctors, assistance with investigation.

7. *Once I have talked to the claimant, employer, doctors, etc. and have denied the claim, I can close it - right?*

Keep evaluating the claim: Iowa Agency decisions hold that claims must be evaluated when new information is received that may indicate the claim is compensable. Witnesses may change their story. Medical providers may change their diagnoses or opinions. The claimant may develop symptoms that indicate the injury is compensable. The defense attorney may advise you that the injury is compensable under Iowa law. Failure to evaluate this, and act on this can lead to a higher award if the case goes to hearing, including the assessment of penalty benefits.

8. Other things to keep in mind:

- The claimant is not your friend. However, be empathetic. If they feel you are concerned about how they are doing, are providing them with appropriate medical care, and are timely paying any indemnity benefits owed, they may not go running to an attorney.
- Ensure any indemnity benefits owed are being timely issued – to avoid assessment of a penalty later and keep the claimant from running to an attorney. Likewise pay medical bills that are owed timely and make sure you get all bills rather than the claimant, to avoid the claimant running to an attorney.
- Do not make promises that you cannot keep – such as providing light duty when the employer has none available or agreeing to send them to a certain doctor when they are not one of your preferred doctors.
- Do not be the king or queen of denial. 90% of injuries are compensable.