



# Worker's Compensation Investigations

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## Training Objectives

- Background –
  - What is an injury? *Labor Code Sections 3208*
  - Types of Injury? *Labor Code 3208.1/ 5411/ 5412*
- Responding to injuries – when does the investigation start
  - The Screamers v. The Sleepers
- Investigating
  - The purpose.
  - The approach.
  - The report.

## What is an Injury?

- Any injury or disease arising out of the employment including:
  - artificial members, dentures, hearing aids, eyeglasses and medical braces of all types; provided, however, that eyeglasses and hearing aids will not be replaced, repaired, or otherwise compensated for, unless injury to them is incident to an injury causing disability.
  - Psychiatric if it is a mental disorder and meets the threshold of 51% predominantly caused by employment.
    - Requires cause to be based on actual events
    - Requires employment of 6 months (not continuous)
      - Exception is sudden and extraordinary employment condition.
    - Violent Act or Direct exposure to violent act requires 35-40%
    - Special Circumstances:
      - Post Termination
      - Good Faith Personnel Action

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## Types of Injuries?

- **Specific** - instigated by one single event.
- **Cumulative** - resulting from ongoing minute trauma's usually associated with repetitive type activities.
- **Occupational disease** - resulting from ongoing exposure to hazards
- **Aggravations** - an increase in disability (pre-existing whether industrial or not) or need for medical care as a result of current events/ employment specific or cumulative.

## Responding to Injuries - when does the investigation start:

- Constructive Knowledge – when a person of authority is made aware of an injury.
  - Can be reported by anyone and not just the injured worker.
  
- The Screamer v. The Sleeper
  - The Screamer – you see the injury/ respond to injury.
  - The Sleeper – you are told about the injury.

## The Screamer:

- If Called to Respond – get as much information as possible while you get to the scene
- Approach Scene with caution
  - Observe without preconception the scene and its details
  - Identify where you will start
    - Consider you may be distracted from immediate investigation by the need to respond and care for injured worker and secure the area.
    - Can you start with the injured worker? First responder? Witnesses?
  - Note potential witnesses
    - Take witness contact information if unable to obtain statements immediately.

## The Screamer (cont'd):

- Find a way to paint the picture
  - Take Pictures
  - Draw Diagrams
- Take Statements
  - Injured Worker
  - Witnesses
- Gather Other Pertinent Information
  - Job Descriptions
  - Shift Hours
  - "non" witnesses

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## The Sleeper:

- "I hurt myself...", "My back hurts...", "I am stressed"
  - How did it happen?
  - Would they like to seek medical care?
  - Would they like to file a workers' compensation claim?
- Answers to "How did it Happen"
  - At Work
  - At Home
  - I don't know
  - I don't know but I think

## The Sleeper (cont'd)

- Prepare initial question and follow up questions and understand what you want to get out of the discussion.
  - Initial Question: How did it happen can have variations of the theme
    - Why do you believe this to be work related?
    - What is it about your work do you believe caused this injury?
    - What do you understand caused this injury?
  - Follow Up Questions: (examples)
    - How long have you felt you have had this injury?
    - Are there any other activities you did/ do that could have caused this injury?
    - What activities were you engaged in the days before this injury?

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# Investigating

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Together we'll go far



### The Purpose:

- OSHA Required
- Identify Safety Needs/ Hazards and implement risk management strategies.
- Identify 3<sup>rd</sup> Parties for Causation (Subrogation)
  - The right to pursue a 3rd party who may be responsible in part if not entirely for the injury
    - **MVAs** - train all drivers to take insurance information regardless of fault.
    - **Other** - if possible isolate cause of injury whether it be a site or chair, etc. Take pictures when possible. Lock up item if possible. If isolation not possible, good pictures can be very helpful with recovery.
- Assist in determining compensability
- Establish facts for future investigation possibilities

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### FYI: Statutes

- Claims can only be delayed or denied with good cause
- An Examiner has 14 days in which to determine whether they will delay, accept, or deny a claim
- If the claim is delayed the Examiner will have 90 days from the constructive date of knowledge to determine whether they will accept or deny the claim
- The injury is presumed compensable if no determination is made by 90 days

## The Approach:

- Do Not Pursue Blame
  - "Just the facts, ma'am."...Sgt. Joe Friday
- Make this a fact finding exercise.
- Statements should be their words.
  - Information gaps are anticipated.
  - Perceptions will be given.

*What happens if people feel they can get in trouble for something?  
What happens when people feel they are telling on their coworkers?*

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## The Report: Your report should address....

WHO had the accident

WHAT happened

what inflicted the injury

what are immediate causes

what were basic causes

what, if any, were the contributing causes

WHERE did it happen

WHEN did it happen

HOW did it happen (ties into what)

Importance of detailing Mechanism of Injury



## Identifying Workers' Compensation Fraud....

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### Fraud

- *"Any person who makes or causes to be made any knowingly false or fraudulent material statement or material representation for the purpose of obtaining or denying workers' compensation benefits or payments is guilty of a felony"*



## FYI – Fraud:

- Fraudulent claims have a heavy burden of proof. If you believe an individual is being fraudulent, articulable suspicion is required to conduct surveillance.
- Abuse is more prevalent than legal fraud and can be minimized by thoroughly investigating claims; keeping in contact with employee; returning employee to modified work



## Case Scenarios

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### The Screamer:

- You are called by a school and advised that an ambulance was called to take a teacher who was working in her class room taking pictures down and putting up new pictures when she fell and broke a leg.

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### The Sleeper:

- You are left a message from a long term employee, custodian, who said that his doctor told him his neck problem is because of work and he needs a DWC-1.

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### The Screamer:

- You, a student, and a colleague, witness an employee slip and fall over a water cooler bottle that was in the hallway.

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