

Workers' Compensation: A Guide to Administering Your Claims

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A Brief Overview of Nebraska Workers' Compensation Laws

Accident or Occupational Disease

- Accident:
 - Unexpected, unforeseen injury
 - Happening suddenly and violently
 - Producing objective symptoms of an injury
- Occupational Disease
 - A disease, which is due to causes and conditions that are characteristic of and peculiar to a particular trade or occupation
 - NOT ordinary diseases of life that the general public is exposed

Accident or Occupational Disease

- Notice
 - Must be provided “as soon as practicable”
- First Report of Injury (“FROI”)
 - Must be filed within 10 days of notice
 - Not all accidents require a FROI
- Tip: Employee Accident Reports

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Arising Out Of and In The Course of Employment

- Arising Out Of
 - Refers to origin, cause, or character of an accident
- In the Course Of
 - Refers to time, place, and circumstances of an accident

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Compensation

1. Temporary Disability Benefits
2. Permanent Disability Benefits
3. Medical Benefits
4. Vocational Rehabilitation Benefits

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Temporary Disability Benefits

- Average Weekly Wage
 - Benefits are paid based on two-thirds of the injured worker's average weekly wage over the prior 26 weeks
- Temporary Total Disability ("TTD")
- Temporary Partial Disability ("TPD")

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Maximum Medical Improvement ("MMI")

- The point where a medical professional believes no further treatment is likely to produce any change in the workers' injury and thus, the extent of the Plaintiff's permanent disability is determinable.

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Permanent Disability Benefits

- Scheduled Member Injuries vs. Body as a Whole Injuries
- Impairment Ratings vs. Loss of Earning Capacity
- Permanent Total Disability

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Medical Benefits

- Reasonable and Necessary
- Employers are liable for all **reasonable** medical, surgical, and hospital services, which are **required** by the nature of the injury and which will relieve pain or promote and hasten the employee's restoration to health and employment.

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Available Defenses

- Willful Negligence/Intoxication
- Violation of a Safety Rule
- Misrepresentation During Hiring

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Limiting Your Workers' Compensation Exposure

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Utilize Smart Hiring Practices

- Recruit, vet, and hire qualified people
- TRAIN new employees
- Ask whether the applicant is capable of performing the essential functions of the position with or without reasonable accommodation

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Create a Culture of Safety

- Create safety programs
- Enforce bona fide safety rules
- Document and investigate all accidents
- Consider post-accident drug and alcohol testing

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Create a Return-to-Work Program

- Offer light or transitional duty
- Accommodate restrictions when possible
- Avoid alienating the injured worker
- Coordinate with medical providers where appropriate

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Defending Questionable Claims

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Satisfy All Your Undisputed Legal Obligations

- Treat injured workers with respect
- Pay the injured worker for benefits that are clearly compensable
- Don't invite unnecessary litigation
- Building credibility with a judge starts on day one of the claim

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Establish Rapport and Maintain Communication

- Don't alienate injured workers
- Build trust
- Maintain communication
- Let injured workers know you value them and look forward to their return

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Document and Investigate Alleged Accidents

- Timely investigations “lock in” the employee’s allegations
- Complete Accident Reports
- Get Witness Statements where appropriate
- Look for and retain video surveillance.

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Document and Investigate Alleged Accidents

- Pay particular attention to “**mechanism of injury**” and the “**onset of symptoms**”
- Mechanism of injury
 - The manner in which the injury alleged occurred
- Onset of symptoms
 - When the employee began to experience symptoms, what those symptoms were, and how severe those symptoms are

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Watch for “Creep”

- Avoid the progressive exaggeration of the injured workers’ allegations over time by carefully documenting the alleged accident as early as possible.

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Do Not Rush to Deny Claims

- Denying claims invites litigation
- Denying claims based on weak grounds invites expensive, unsuccessful litigation
- Consider provisionally accepting questionable claims, pending investigation

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Empower Claims Adjusters and Outside Counsel

- Provide information
- Communicate your goals
- Communicate regularly

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Encourage Smart Claims Management

- Encourage smart surveillance
- Avoid notoriously "defense-minded" experts
- Obtain comprehensive medical histories

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Thank You!

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