Employer Fraud

When an employer commits workers’ compensation fraud, not only does the insurance company get hurt, all the honest employers get hurt too, as they have to pick up a disproportionate share of the insurer’s cost of operations. If you become aware of a competitor or another employer committing workers’ compensation fraud, you should report the matter to the appropriate governmental agency.

**Employer Workers Comp Fraud is Considered Theft**

Fraud is a form of theft, therefore when an employer commits any of the following actions; the employer is intentionally stealing from the insurance company, and is committing fraud.

* **Misclassification of the Business:** The business classification code used by the insurer to rate the employer in comparison to other employers in the same industry will be wrong if the nature of the employer’s business is not properly disclosed to the insurance company. For example: the employer advises the broker attempting to write their business that the company does janitorial services, but does not disclose their primary work is skyscraper window washing.
* **Misclassification of Employees:** The employer classifies employees as a type of employee other than what the employee actually is. For example: the employer classifies employees as corporate officers (for whom they don’t have to purchase workers’ compensation insurance) when the employees perform the regular work of the business and exercise no control over the management operation of the business.
* **Under Reporting the Actual Payroll:** Another factor in the calculation of workers’ compensation premiums is the total amount of payroll. Dishonest employers will report fewer employees and a lower total payroll then they actually have. Reporting a payroll that is 25% below what the actual payroll is will normally result in the workers’ compensation premium being 25% lower than it would otherwise be.
* **Cash Economy:** Closely related to under reporting the actual payroll is the employer who utilizes a cash economy to lower workers’ compensation premiums. These type of shady employers will:
  + Advise workers they are not employees, but independent contractors, and will provide them a 1099 form instead of the standard W-2, while all the time supervising and directing the employee’s work.
  + Pay workers a minimum amount by check, reportable to the government and insurer, and pay the employee an additional amount in cash. Employers often sell employees on the idea of lower taxes to get them to agree to this ploy.
  + Pay workers with compensation other than a check or cash, by providing free rent or meals, barter, etc.
* **Blocking the Reporting of Claims:** Employers normally understand the more claims they have, the higher their workers’ compensation premiums will be. The dishonest employer will often voluntarily pay the employee’s medical treatment when they anticipate the injury will be a medical only claim.

Sometimes employers don’t cheat the workers’ compensation insurer, but instead commit workers’ compensation fraud against other employers. This occurs when an employer does not purchase workers’ compensation insurance at all. While this type of employer may get away with for a while paying the medical and wages of injured employees, sooner or later a severe injury occurs that the employer cannot afford to pay for. The injured employee’s work comp claim eventually will end up in the state funded pool for uninsured injuries. Of course the state pool is funded by assessments against the insurance companies, and the insurance companies pass the cost along to the legitimate employers insured with them.

**Consequences of Employer Fraud**

Reputable employers do not consider committing workers’ compensation fraud. Hopefully, employers are honest because it is the right thing to do. If any employer thinks they can get away with workers’ compensation fraud, they should remember that when they are caught (and they almost always are) they will have to deal with:

* Criminal record
* Jail time
* Fines
* Payment of underpaid premiums
* Loss of business license
* Loss of income from being out of business

If you know of an employer who is committing workers’ compensation fraud, the information you have should be provided to the governmental agency that deals with insurance fraud in your state.