**Are You Sabotaging Your Return to Work Program?**

**Introduction:**

* Welcome to WC Mastery training
  + Filing the hole in your bucket
  + What you will Learn to Do:
    - Identify red flag company policies which are sabotaging return to work success
    - Define counterproductive elements of a union collective bargaining agreement
    - Share examples of policy changes which caused drastic improvements in work comp results
    - Change common mistakes in return to work procedures which cause unnecessary delays and costs
* Introduce 3 Major Points
  + Holes In Company Policy
  + Holes in Union Collective Bargaining Agreement
  + Common Mistakes and Stopping The Leaks

**Main Point #1: Holes In Company Policy**

* **Salary & Wage Continuation / Gross Up:**
  + “Gross-up” employees, or to continue paying 100% of the employee’s salary rather than collecting workers’ compensation.
  + Examples:
    - *Major airline risk manager*
      * *12-16 weeks of wage continuation, voluntary return to work; when changed policy to mandatory, 95% never miss a day; prior to that 1%.*
    - *Large school system:* 
      * *50% drop in claims when eliminated wage continuation.*
    - *Major national newspaper:*
      * *expensive incentive program to motivate employees to return to work*
      * *careful examination revealed making 115% of their pre-injury earnings when the stayed out of work.*
  + **Stay-at home perks:** 
    - Childcare costs
    - commuting costs
    - time with kids
  + **Occupational Injury Pay Supplements:** 
    - Supplemental benefits to make up the difference between workers compensation benefits and regular earnings.
  + **Value of Work**
    - Unsatisfactory outcome is 4x more likely.
    - 2x more likely to develop chronic work disability.
    - Shorter recovery times and longer life expectancy.
    - 2-3x increased risk for poor general health
    - 2-3x increased risk in mental health problems
    - Excess mortality rate of 20%
* **‘Across the Board’ Cost Allocation**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | 1 | 2 | 3 | 4 | 5 |
| Claim Costs | 350k | 200k | 200k | 200k | 50k |
| Allocated | 200k | 200k | 200k | 200k | 200k |
| Profits | $1.050m | $1m | $1m | $1m | $900k |
| Adjusted | $900k |  |  |  | $1.050m |

*No accountability at the level of control*

*No motivation to return an injured employee to light duty*

* **Benefit Double Dip**
  + **Short Term Disability:** 
    - 6 weeks
    - Loan protection policy: pays mortgage, consumer loans, credit cards
  + **Long Term Disability:** 
    - 26 weeks for up to 2 years, fails to deduct WC payments; receiving both greater than pre-injury salary
      * Example: *an injured construction company employee received long-term disability (LTD) payments after 26 weeks of disability, in addition to workers compensation benefits. The total of these benefits exceeded his pre-injury earnings. And, his childcare and commuting expenses also were greatly reduced while he was home.*
  + **Unemployment Compensation**
    - in a few states, employee receiving work comp can also qualify for partial unemployment
    - ***Research study on unemployment***
      * The more money or longer unemployment, the longer people stay out of work.
  + **Pension & Retirement:**
    - if plans do not allow for offset, can receive work comp & full pension
  + **Accident Insurance:**
    - Employees may collect accidental auto insurance if the work-related injury occurred while driving on company business.
  + **Product Liability Actions/Lawsuits:**
    - Product liability action against the manufacturer of a product causing their injury
    - All such income should offset workers’ compensation settlements. The insurance company should file for an offset or seek subrogation on behalf of the employer.
* Additional Considerations:
  + **Open ended job return**
    - Holding jobs open indefinitely rather than for a specific (6 months) time.
  + **Accrue vacation & sick time** 
    - vacation & sick time viewed as entitled benefits
  + **Perks**
    - Gym membership, professional dues

**Main Point #2: Holes In Union Policy**

* **Why unions are formed:**
  + Wages, Benefits,
  + Primary Reason:
    - **Dignity & Respect**
  + Union gives workers a voice, a way to stand up for themselves.
  + One to Many Relationship
    - If relationship with Business Manager is strained, union relationship is strained.
* **Level of Trust w/ Union Leadership**
  + ***Business leader will foster “us vs them” dynamic***
  + Trust most important element of success
* **Collective Bargaining Agreement**
  + Management Rights:
    - “management has right to run company in a profitable way…etc”
    - RTW often not specifically stated: Subject to CBA or not?
    - what has been done in the past?
  + Contractual Provisions or Limitations On RTW:
    - Transfer employees.
    - Create new job assignments.
    - Modify seniority provisions.
    - Implement return-to-work programs.
    - Absolute prohibition on any work out of classification
      * Often resistance from Union is “safety”
  + ADA Requirements
    - Can be complicated topic, however:
      * employers are required to comply with the ADA regardless of whether a CBA exists.
      * Reasonable accommodation must be made, variance in agreement may be needed
      * ADA generally applies immediately after injury
      * 50% of ADA lawsuits originate from work-related incidents
* **Strategies to Improve Union Relationship**
  + **Financial impact on Union, pension fund/welfare fund**
    - Are union welfare funds being depleted by suspicious claims?
    - Are dues being stopped when employees are out-of-work?
    - Do claims impact profit sharing or employer’s financial survival?
    - What are the negative physical and mental effects experienced by the out-of-work employees?
      * Are they losing fine craftsman skills?
  + **Negotiation 101:**
    - Easy Victory & Good faith effort:
      * Teachers union rep; good faith gesture in anticipation of you cooperating with them
      * added a personal day that was important to the teachers;
  + **Leverage Safety Improvements to Build Trust**
    - Even the most strained union relationship can find common ground with safety.
      * Do you have a stack of safety work orders that haven't been address?
      * Do you have a system to track safety issues and ensure they are addressed in a timely manner?
  + **Long Shore Union Example - Unintended Consequences**
    - **Transparency w/ books and financial impact**
    - **Salary & Wage Continuation / Gross Up**
      * Supplementing benefits from the welfare fund resulting in full wages
    - **Accrual of Benefits**
      * Seniority, sick days, and vacation time accruing faster while the employee remains out of work.
      * *Example: Longshore Union on East Coast*
        + *1000 hours to qualify for benefits*
        + *178 total members*

*24 did not receive benefits*

*33 out on WC did receive benefits*

*Awareness of policy turned company around*

**Main Point #3: Common Mistakes and Stopping The Leaks**

* **Common Mistakes:**
* **Delayed care for employee**
  + Pay w/o prejudice: $10k CA
  + Doctors on list that don’t accept WC
  + Lack of Communication
* **Accepting Every Claim**
  + Fear of claim denial sets the wrong expectation for employees & encourages fraud and abuse.
* **Failure to Audit Claims Prior to Unit Statistical Date** 
  + unit statistical date 6 months prior to policy renewal
  + Holding a claims audit 60-90 days prior to the unistat date
  + Ensure accurate reserves
* **Using IME Instead of a Peer Review**
  + IMEs are expensive and take weeks to schedule
  + Peer reviews are quick and much less expensive
* **Poor IME Outcomes** 
  + 30% of IMEs are less favorable than could be.
    - Incomplete medical records:
      * 4 out of 30 claims ER records not requested, adjusters not aware that should request
      * Pre-injury medical records
        + Herniated disks, 30-40% of people w/o back pain have herniated disk
    - Medical records organized chronologically
    - IME Cover Letter
      * Summarize pertinent information
      * “Would the required surgery have been necessary regardless of work place injury?”
      * If this workplace injury never occurred, would the worker’s current medical condition be substantially different?
    - Timing of IME
      * Done at wrong time: example, before MRI results in file, before seeing a specialist
* **Missed Opportunity For Offsets** 
  + **Subrogation: recoup losses**
    - Educate claims handlers on importance, CE credits, training how to recognize
    - Take action as soon as possible – get right subro council, investigators, & experts involved.
    - Specialized subrogation firms -full service expertise & guidance, expert witness
  + **Social Security Disability Benefit Offsets**
    - **Reverse Offset**: most states WC offsets SSDI, in a few states SSDI offsets WC
  + **Prior Injury – Physical Testing**
    - 10 years ago suffered back injury and received 10% permanency rating
    - Same worker suffers back injury and receives 20% permanency
      * Most states allow to deduct prior permanency
  + **Second Injury Funds**
    - Approximately 20 States still have second injury funds
    - pool set aside to reimburse employers who hire previously injured employees.
* **Safety Incentive Programs**
  + Incentivizing “injury free”
* **Stopping the Leaks**

1. What Benefits are Injured Workers Getting By Not Working?
2. Examine Extra Insurance Your Employee May Have
3. Get your Departments to Work Together to Design WC Policies
   * human resources
   * industrial relations
   * workers comp
   * employee benefits