

WORKERS' COMPENSATION

Fraud Epidemic among Providers Booms in California

IN WHAT could be just the tip of a fraud iceberg, prosecutors have filed charges against nearly 100 medical providers in Southern California in cases involving more than 100,000 injured workers.

The cases include "cappers," who are typically paid about \$100 per patient to recruit injured workers to doctors and medical "mills" that provide the same treatment to every claimant they see, regardless of their injuries.

One scam includes referring workers to

unnecessary care to justify billing for medical-legal reports that cost about \$1,000 each.

These cases should be a wake-up call for employers, who need to look for the warning signs that one of their injured workers has been swept up in a scam that can negatively affect their X-Mods and the premiums that they will pay in the future.

What you can do

As an employer, it's difficult since you probably won't be seeing the bills as they come in.

Some experts recommend educating workers about the benefits of staying in the insurance company's network of treating physicians.

They should be educated in the dangers of succumbing to advice to go to a certain doctor while they are already receiving treatment from a physician designated by the insurer.

Also, they should be told that if they feel that a certain procedure is obviously unrelated to their condition, they should speak up and request a second opinion. If they are faced with this kind of situation, they should inform your H.R. administrator or whoever you have designated in your office to oversee your workers' comp.

They can also make their concerns known to the claims adjuster.

The only way to put a dent in this type of fraud is through employee cooperation. You should stress to your staff the importance of being aware so they are not sent for unnecessary treatment that could put their health at risk, particularly if treatment includes shockwave therapy or spinal surgery. ❖

THE SCAMS

The scams being perpetrated typically involve bribes and kickbacks being paid to doctors who refer injured workers to other doctors or medical providers, which in turn perform unnecessary, expensive procedures or dispense expensive "medicines."

\$100,000 a month in bribes

Dr. Philip Sobol pleaded guilty to taking \$100,000 a month in bribes to send patients to doctors who performed invasive spinal surgeries.



Expensive pain cream

Prosecutors filed charges against the owner of Landmark Medical Management, accusing him of paying kickbacks so his firm could supply expensive medicated pain creams to injured workers. The firm billed insurers more than \$100 million.



Questionable treatment

One worker testified that doctors referred her for questionable shockwave therapy and acupuncture to treat an injured knee. Providers billed the insurer \$95,000 in medical fees.



Excessive procedures

Dr. Ronald Grusd was indicted for bribing a doctor to send injured workers to his imaging treatment centers for MRIs, shockwave therapy and nerve tests, which were deemed questionable considering the injuries of the workers.



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SPECIAL ENROLLMENT

Small Employers Get an ACA Gift

THE AFFORDABLE Care Act is usually quite rigid in its compliance rules, with minimum contribution levels, minimum value and set amounts for employee participation in group plans.

However, there is one little-known nugget that is a gift for small employers. That's the special enrollment period for small employers (those with 2–100 workers) who don't meet participation or contribution requirements.

This part of the Affordable Care Act requires health insurance companies to offer this annual one-month special enrollment period from November 15 to December 15 for January effective dates.

This means employers do not have to meet the normal 75% participation requirement or 50% premium contribution rule. So if you have 20 employees and only two want insurance coverage, you can still enroll with no problems during this one-month period.

Also, during this period, you can set up the contribution amount however you want to, but it can be way lower than 50%. And it does need to be the same for each employee.

WHY SHOULD YOU OFFER A GROUP HEALTH PLAN?

- Employer contribution is 100% tax deductible as a business expense and tax free to your employees.
- Employees can pay their portion of premium with pre-tax dollars (if they have a cafeteria plan in place), which saves both employer and employee in taxes. It's a win-win!
- More plan choices – In most cases, you'll have more plan choices to offer in the group market.
- Attraction and retention. You want talent and they expect good benefits.

If you hire someone after open enrollment closes, and they need health insurance but don't have a special enrollment period, and you don't have a group health plan in place, that talent may go to an employer with a group health plan in place.

So, if you've wanted to be that employer of choice and get a group plan in place, but had the dreaded participation or contribution problem, now is your time.

You should call us today so we can work in advance to prepare to enroll your staff during the 30-day window. ❖

**Call Us
415.461.RISK**

WORKPLACE SAFETY

Why Your Firm Needs a Total Ban on Cell-phone Use



DISTRACTED DRIVING from smart phone use is becoming one of the leading causes of accidents in the U.S., and for the first time overall roadway deaths and injuries have started rising again despite regular advancements in car safety – a change that experts attribute to the scourge.

And as if that news is not bad enough, if one of your employees while driving for you on the job injures or kills someone while using a mobile phone, your organization could face serious liabilities. This is especially true if they were either talking on the phone without a hands-free device or using texting or some other smart phone function while behind the wheel.

But lately, juries have even been awarding large judgments in cases when a motorist was using a hands-free set while driving.

If a court were to find your driver negligent, the resulting damages could put you out of business or seriously dent your company's finances.

That's why you need to implement workplace rules to prevent distracted driving. If you have not done so, you should – and you can use the National Safety Council's cell-phone kit as a basis for those policies. ❖

You can find the NSC kit at: www.nsc.org

Sample Policy

The NSC recommends that you have a policy that includes a total cell-phone ban on all employees while they are driving, including the use of hands-free devices. Research has shown that hands-free devices are not safer than handheld phones because the cognitive distraction still exists.

In its kit, the NSC includes a sample cell-phone policy, which reads:

"Due to the increasing number of crashes resulting from the use of cell phones while driving, we are instituting a new policy. Company employees may not use cellular telephones or mobile electronic devices while operating a motor vehicle under any of the following situations, regardless of whether a hands-free device is used:

- When the employee is operating a vehicle owned, leased or rented by the company.
- When the employee is operating a personal motor vehicle in connection with company business.
- When the motor vehicle is on company property.
- When the cellular telephone or mobile electronic device is company owned or leased.
- When the employee is using the cellular telephone or mobile electronic device to conduct company business."

Liability wake-up call

- A jury in Texas found a beverage company liable after one of its drivers crashed while using a hands-free device, even though the headset complied with the company's policy. **Verdict: \$21 million.**
- A jury in Arkansas found a lumber distributor liable after one of its salesmen rear-ended another car while talking on a mobile phone. **Verdict: \$16 million.**
- A jury in Ohio ordered a national technology communications company to pay damages after one of its drivers, while using a cell phone, crashed into another car and killed one of the occupants. **Verdict: \$21.6 million.**

The facts

- The NSC model estimates 21% of crashes, or 1.2 million crashes in 2013, involved talking on handheld and hands-free cell phones.
- The model estimates an additional 6% or more crashes, or a minimum of 341,000 of crashes in 2013, involved text messaging.
- Hence, a minimum of 27% of crashes involved drivers talking and texting on cell phones, according to the model.

EMPLOYERS TARGETED

Employees Increasingly File FMLA, FLSA Lawsuits



The number of employee lawsuits against employers for Family Medical Leave Act (FMLA) and wage and hour violations has skyrocketed in the last five years and your firm could be the next target even for a small misstep, which can be costly.

The Department of Labor has increased its budget and the number of investigators pursuing employers who violate the Fair Labor Standards Act (FLSA), which covers wage and hour complaints, including exempt and non-exempt employee violations, overtime violations and similar issues.

Employment law attorneys say that the surge in FMLA complaints is a result of more people knowing about the law as the DOL has expanded its reach and publicized the act in press releases about actions it has taken against various employers.

Also, they say, the term “serious health condition” is broadly defined, making it easy for employees to satisfy.

Here we take a look at the problem and what you can do to avoid being sued.

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FMLA

Qualifying reasons for FMLA leave include: birth of a child; a serious health condition that makes the employee unable to perform their work functions; and to care for a spouse, child or parent with a serious health condition.

The rapid rise in FMLA lawsuits is a direct result of the law becoming increasingly complex for employers to navigate, and its increased enforcement. The number of FMLA cases filed last year hit 1,108, almost a fourfold increase from the 280 that were filed in 2012.

What you need to know

- Post and distribute information about employees’ FMLA rights and include it in your employee handbook.
- Don’t retaliate against someone seeking FMLA leave.
- Develop an internal process for employees to use when applying for FMLA leave.
- Make sure managers and supervisors apply your FMLA process consistently.
- Be careful to balance any pushback against the employee, but you have the right to ask for more information from the employee and their doctor. And you can monitor the use of FMLA days.

FLMA cases filed



NOTABLE SETTLEMENTS OR AWARDS:

- Staples Inc. – \$275,000
- Solvay Chemical – \$1.5 million
- Christ Hospital and Medical Center – \$11.6 million



FLSA

Wage and hour lawsuits are typically filed under the Fair Labor Standards Act, and they’ve been creeping up, a trend employment lawyers attribute to more people working from home and technology, which has blurred the lines between when workers are on or off the clock.

What you need to know:

- There are four main areas you need to be concerned with: minimum wage, overtime pay, record-keeping and youth employment.
- Make sure you properly classify your employees as non-exempt or exempt (the minimum salary to be classified as exempt will rise to \$47,476 a year later this year. Currently it’s \$23,327).
- There are six exempt positions: executive, administrative, learned professional, creative professional, computer professional and outside sales staff.
- Track exempt employees’ hours just in case.
- Compute overtime properly.
- Employees must be compensated for time spent answering e-mails during off hours, including vacation.

FLSA cases filed



NOTABLE FLSA SETTLEMENTS

- Walgreens – \$23 million
- Wells Fargo – \$15 million
- Roto-Rooter – \$14.2 million

