

Managing Litigated Workers' Compensation Claims Through Advocacy & Empathy

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In 2017, Kimberly Simmons, Nationwide Director of Safety and Claims Management at Fidelity National Financial (FNF) in Jacksonville, Florida, wanted to try a new strategy to manage her workers' compensation claims. After some research and study, FNF implemented an advocacy approach when handling their workers' compensation claims. After an employee was injured on the job, Ms. Simmons quickly telephoned the worker's supervisor as well as the injured employee and made sure everyone understood how the process worked. Was the injured employee able to contact the workers' compensation adjuster? Did the injured employee understand how to get medical treatment? Was the supervisor able to accommodate the injured worker so they could continue working light duty? If the injured employee was placed on a no-work status, Ms. Simmons did her best to reassure the claimant that their job would be waiting for them when he or she was able to return to work. Most of what Ms. Simmons did cost little to no money, other than the cost of her making a few phone calls and her time. But the gains she achieved through this quick human interaction turned out to be substantial.

Evidence That It Works

Once the FNF statistics for fiscal year 2019 were reviewed, the financial impact of the strategies that had been implemented by Ms. Simmons

two years before was impressive. The total costs incurred on open workers' compensation claims decreased by 22% or 2.1 million dollars. The workers' compensation pending claims inventory fell by 25%. The total future reserves on workers' compensation claims fell by an astronomical 44%. The average number of days that a claimant spent on temporary total disability fell by 67%. The aged pending claims inventory (claims that were more than two years old) fell by 15%. The ratio that workers' compensation claims were closed was up 90% from fiscal year 2018. Additionally, the workers' compensation claim frequency (how often claims are reported) was down 6%. The results were staggering and made clear that the advocacy approach can have a quick and measurable impact.

What Is Advocacy?

The advocacy approach runs somewhat contrary to traditional claim handling techniques. Advocacy tries to promote transparency and reassurance to the injured worker. The words that we use matter and can make a difference if a claim becomes litigated. Instead of bombarding the employee with technical jargon and confusing acronyms (AWW, TTD, FROI, etc.), claims handlers and employers try to clarify the basics of how the process will work and try to make the process easier for the injured worker. Instead of talking about a "compensable" injury,

use plain language like an “accepted” or “covered” injury. Instead of a frustrating game of phone tag for the claimant to make a recorded statement that can lead to distrust, set up a specific time to speak. If there is a walk-in clinic that offers equal treatment for the claimant but is closer, consider agreeing to authorize that clinic instead of the one that is 25 miles away.

In short, be empathetic. Treat the injured worker how you would like to be treated if you were injured. The adjuster and employer being responsive is a big part of this. Communication is imperative under the advocacy approach and answering the claimant’s questions in a timely manner can avoid miscommunication and confusion. Both of which may result in the worker being more likely to “lawyer up.” Delays or perceived denials often result in claimants seeking legal counsel and may get the injured worker in the mindset of not wanting to return to work for the employer. In some cases, it can be helpful for the employee’s direct supervisor to speak with the claimant. If the injured worker believes that the employer is concerned for their well-being and wants them to return to work, this creates goodwill between the parties from the inception of the claim, rather than animosity.

Implementing Advocacy

As Ms. Simmons has shown, implementing the advocacy strategy does not have to be overly complicated or expensive. Having a supervisor and/or Human Resources Director check in with the injured worker within 24-48 hours of the injury is very beneficial. In larger companies, the strategy behind this approach can be shared

when training supervisors and in educational materials. The focus on clear, concise, easy to understand language for all employees is crucial to this process. To initiate this approach, employers should designate one person in charge of implementation to promote accountability of the process.

Added Benefits

Additional benefits of advocacy include helping to retain talented workers, which can result in less employee turnover. The trust created by this process also helps to create a better work culture overall. An employee that goes through a positive return-to-work experience is likely to share that with his or her co-workers. And this improved relationship between the employee and employer breeds loyalty to the company as a whole. It’s not just touchy-feely jargon. Many forward-thinking companies such as FNF show clear evidence that this strategy can have profound bottom-line consequences. This holistic approach of simply communicating better with the employees and working with them as an advocate, not an adversary, can improve the entire system.



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