

Employee Benefits & Workers' Comp News



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Compliance/Discrimination

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Basic Steps to Avoid Discrimination in the Workplace

Workplace discrimination takes many forms, but sound policies and procedures can reduce the occurrences.

The U.S. Equal Employment Opportunity Commission (EEOC) reported that in 2018 it resolved 90,558 charges of workplace discrimination and collected \$505 million for victims. Retaliation was the most frequently filed charge, followed by sex, disability and race.

What does this mean for employers? According to CERS (Cutting Edge Recruitment Solutions), the average out-of-court discrimination settlement for an employer is about \$40,000 and the majority of cases are ruled in the plaintiff's favor. Ten percent of wrong-



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Prescription Drug Rule Implementation Delayed

The U.S. Department of Labor, Health and Human Services (HHS) and Treasury delayed the implementation of the HHS 2020 Notice of Benefit and Payment Parameters until Jan. 1, 2021, or later. The federal rule would require health insurance plans to credit to the out-of-pocket maximum the amount of financial assistance received from drug manufacturers.

Large group health insurance issuers and self-insured group health plans have been using manufacturer drug coupons to help plan members get lower or no cost brand-name drugs. These coupon programs, known as "co-

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ful termination and discrimination cases result in \$1 million settlements.

Not all discrimination, though, deals with sex, disability or race. Another form of discrimination is when employers fail to offer benefits equally to all employees. For instance, granting special accommodations to one employee and not another — such as granting extra time off — can lead to inconsistencies, which can lead to lawsuits. Make sure you apply policies equally when dealing with promotions, vacation, pay, assignments, awards, discipline and termination.

Here are some guidelines for staying compliant with the law and making your company a more respectful workplace:

Based on Salaries

- ✱ **Respect non-exempt status:** You must pay your employees overtime if they work more than 40 hours per week. However, there is an exemption, and this is where it gets tricky. You do not have to pay exempt employees, and they do not qualify for minimum wage because they are paid for work performed, not for the hours they work. There are strict guidelines as to who qualifies for status as an exempt employee, outlined by the federal government's Fair Labor Standards Act and some state regulations. For an employee to be considered exempt, they must use their independent judgment in performing their duties at least 50 percent of the time and must earn more than \$455 per week. An example of an exempt employee would be an executive who supervises

at least two employees and makes decisions to hire or fire employees.

- ✱ **Base pay on job requirements:** Salaries should be based on what the market demands, not on what a new employee made in a previous job or how long you've known that employee. If two employees are doing the same job, their salaries should be similar, although they do not have to be exact. Performance can be a factor.

- ✱ **Don't deduct from exempt employees' paychecks:** You don't pay exempt employees for overtime. But you also can't dock their pay if they leave work early. Plus, if you dock your exempt employees' checks for missing partial days, you've automatically made them non-exempt and you may owe them overtime.

- ✱ **Pay non-exempt employees for all of the time worked:** It is illegal for you to make an employee work off the clock. It also is illegal for an employee to work off the clock when you tell them not to. If they do, you must pay them for the time they worked before you can fire them.

Based on Hiring and Firing Practices

- ✱ **Follow discrimination law:** You must hire people based on their qualifications. You cannot discriminate on the basis of race, gender, age, national origin, disability, religion, sexual orientation or pregnancy. Some states and localities have additional laws regarding discrimination. However, it is legal to discriminate based on weight, unless the weight is considered a disability.

pay assistance programs," typically apply to high-cost specialty drugs for which a generic is not available.

Confusion arose over whether the HHS rule requires plans to count the value of drug manufacturers' coupons toward the patient's out-of-pocket maximum.

Additionally, the departments issued an FAQ in 2014 stating that non-grandfathered health plans in the individual and small group markets must provide coverage of essential health benefits and that other requirements apply.

The 2021 HHS Notice of Benefit and Payment Parameters will address these issues in more detail.

Therefore, until the 2021 Notice is issued, the Departments will not initiate enforcement action if a group health plan excludes the value of drug manufacturers' coupons from the annual limit on cost sharing.

- ✱ **Document everything:** Don't fire any employee for poor performance or other issues unless you have documented the circumstances at least twice. Also, don't be in a hurry to terminate an employee. In addition to being well documented, the decision to terminate someone's employment should at least be reviewed by more than one manager and involve someone with Human Resources training. Also consider offering severance which can reduce the chance of a lawsuit.

Based on Employee Actions

- ✱ **Make it Easy to Report Complaints:** Provide more than one option for employees to complain about discrimination so that they can bring legitimate issues to management's attention. This also ensures that a supervisor cannot hide issues from Human Resources and upper management. The sooner you learn about a problem, and investigate, the sooner you can fix it.
- ✱ **Train Your Managers:** Your managers need to be aware of potential discrimination issues in the workplace and how to handle complaints. If not handled properly, they can become lawsuits. Also, ensure that you have specialists knowledgeable in the Family and Medical Leave Act (FMLA) and Americans With Disabilities Act (ADA) rules and regulations.
- ✱ **Have a good handbook:** Include up-to-date policies on issues including at-will employment; equal employment and harassment issues; work hours; leave and accommodation under the FMLA and the ADA; workplace violence; trade secrets and confidentiality of company information; and work rules and the consequences for violating them. Employees should acknowledge that they received and read the handbook.

Please contact us if you need more information. ■

When Are Workers Comp Claims Denied?

While workers' compensation is essentially a no fault bargain between employers and employees there are a number of reasons claims can be denied



Workers compensation is essentially a no-fault arrangement or “bargain” between employers and employees. The “bargain” is that employees give up the right to sue their employers for injuries arising out of their employment in exchange for the employer’s guarantee to pay on a no-fault basis most medical and indirect costs relating to those injuries, including disability payments and rehabilitation expenses, if needed.

There are, however, guidelines for workers compensation eligibility:

- 1 The claimant must be an employee.
- 2 The employer must carry workers’ compensation insurance or have “opted-in” to the workers compensation laws of the states where it does business. A self-insured employer or employer in Texas (where workers compensation insurance is optional) would probably want to do this. Otherwise the “no-fault” bargain would not apply and the employee could sue the employer for injuries.
- 3 The injury or illness must be work-related.
- 4 The state’s deadlines must be complied with for reporting the injury and filing a workers’ comp claim.

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Claims can be denied, usually for one of the following reasons:

- ✱ **Injury was not reported in time:** State deadlines differ as to when employees need to report injuries to their supervisors and for filing a claim. Injuries usually need to be reported within 24 hours.
- ✱ **Claim was not filed in time:** States have different deadlines for filing an initial claim, typically 30 to 90 days. If a claim is filed after someone left the job, there are special rules that apply, depending on the state. The important thing in those instances is that the claim was reported timely to a supervisor in the first place.
- ✱ **The injury is not compensable according to state guidelines.** Some states have special restrictions on workers' comp claims for cumulative trauma or psychological conditions. Some states rule out workers' comp benefits for illnesses caused by long-term emotional stress at work — or hold the bar very high for them (though in California stress-related injuries are covered by statute).
- ✱ **There was no medical treatment:** In most cases, medical treatment must be provided for an injury incurred in the course of employment in order to initiate workers' comp benefits.
- ✱ **The injury is not deemed to be work-related.** It's not always clear whether an injury happened at work. This is often a contentious issue. In a recent case in Washington state, for instance, an Amazon worker claimed his shoulder was dis-

located handling boxes as part of his normal job routine. He was denied workers compensation when it was established an injury affecting his shoulder occurred off hours.

Three other situations might also affect workers compensation eligibility:

- ✱ **Going and Coming rule** — In general, injuries incurred going to and from work are not covered. But there are exceptions: as when traveling is a significant part of the job, commuting in a company car or traveling between job sites.
- ✱ **Idiopathic Injuries** — these are injuries of unknown origin. For instance, when someone has a stroke or heart attack while at work. Unless there is some sort of connection to a job function, such an injury would be considered idiopathic and not covered.
- ✱ **Horseplay** — Injuries resulting from horseplay can be barred from compensation. In general, the person initiating the horseplay would be denied benefits.

By the way, injuries caused by third parties either intentionally or negligently are compensable, though typically the employer's workers' compensation company (or the self-insured employer themselves) would subrogate the claim.

If you have questions about the workers compensation claims process as it applies to your business, please give us a call. ■

Workers Compensation Insurance Execs Look into the Future

Here are the five critical trends affecting workers' compensation identified by the National Council on Compensation Insurance

The National Council on Compensation Insurance (NCCI), which gathers data, analyzes industry trends, and provides objective workers compensation rate and loss cost recommendations, asked 100 leaders in the workers compensation industry about the five most critical trends affecting the future of workers compensation.

Here's what they told NCCI:

1 How does an aging and changing workforce affect key industry drivers such as claims frequency and severity, along with wage and employment levels?

Insurers are looking at complications in health coverage due to the more complex medical conditions of workers and are monitoring the increase in hiring of unskilled workers and how that may impact workplace safety. They are spending more time educating others on the chal-

lenges of the aging workforce and monitoring contract workers, as well as establishing an overall focus on workplace safety and education.

2 What does the future hold for medical care costs given so many variables, such as emerging healthcare technology and treatments, issues related to opioids and marijuana in the workplace, and mega-claims associated with seriously ill or injured workers?

Leaders say it is difficult to forecast where medical costs are going because of the rapid changes in technology and treatment. Insurers are working with physicians and specialists to ensure they aren't overprescribing treatments or medications and are enhancing claims systems to enable deeper analysis of complex medical cases. Some are looking into new so-

lutions like artificial intelligence and telemedicine.

3 Will the gig economy ever grow to the extent that it affects the traditional workforce? And will insurers develop innovative products to serve that market?

Many leaders wonder if the impact of the gig economy is more hype than reality. States are starting to pass legislation related to the gig economy and insurers are dealing with the complexity of that and how it varies from state to state. Insurers say they are looking at alternative coverage options for gig workers and monitoring state legislative activity to keep ahead of changing trends.

4 How will rapidly changing workplace technology affect American jobs and the workers comp industry? Can regulation and legislation keep pace?

Leaders are looking at rapidly changing technological advances in the workplace but also realize that corresponding regulation is not keeping up with the changes. They're adapting to new technology and automation, while considering alternatives for policy delivery systems for workers and employers.

5 Will insurers be able to react quickly enough to preserve rate adequacy if trends shift?

Leaders told us they're closely monitoring the trend of declining loss costs reported by rating bureaus. They're feeling the impact of slowed growth due to lower premiums, and many are investing in predictive analytics to help with pricing and dedicating more resources to actuarial research and analysis. ■



Employees Need to Know About 401(k) Required Minimum Distributions

Effective January 1, 2020, your employees must withdraw at least the minimum amount from their employer-sponsored 401(k) and IRAs (Individual Retirement Accounts) by age 72

The required minimum distribution (RMD) age was formerly 70½. The RMD amount is determined by applying a life expectancy factor set by the IRS to the employees' account balance at the end of the previous year.

Account holders who are taking a RMD for the first time may wait until April 1 of the year after the year they turn age 72. For 401(k) plans, they can wait until 72 or until the year they retire, if they don't have a five percent or more ownership stake in their employer. After that, account holders' RMD for a given year must be withdrawn by Dec. 31, either in a lump sum or in installments.

If they decide to delay taking their first RMD until the next year, they'll have to take two minimum distributions during that calendar year. This can put them in a higher tax bracket for that year, which may significantly increase their taxes. They also could have to pay a 50 percent excise tax on the amount that was not withdrawn. That is 50 percent of the difference between the required distribution and the actual distribution. There also is a penalty for not withdrawing the full amount.

Employees can find out how much of their RMD will be taxable by visiting the IRS website at www.irs.gov/retirement-plans/retirement-plans-faqs-regarding-required-minimum-distributions.



The RMD deadlines apply even if the account owner dies. The beneficiaries must take the regular required minimum distribution the year in which the account holder dies. The following year, the required minimum distribution will depend on the age of the beneficiary.

Remember, the more your employees know about their 401(k) accounts, the better informed they'll be when making decisions about how much to save. Talk to your broker about how best to communicate this information. ■

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