



## Workers' Compensation Red Flags and Fraud

There are hundreds of thousands of active workers' compensation claims in California. During the fiscal year 2013–2014, the California Fraud Division identified 5,729 suspected fraud cases. Of those, only 248 cases were sent to prosecuting authorities (County District Attorneys). For those convicted at trial or who entered a plea bargain, what were the penalties? Not as harsh as you would think. Usually, it would be some form of community service, conditional or supervised probation, limited restitution, and maybe county jail time (less than one year). California State Prison incarceration for common workers' compensation fraud is typically not a factor. Deterrents are low.

Red flags are indicators of a potential fraudulent claim, however, they do not mean that a specific workers' compensation claim is a chargeable criminal offence. Your insurer must be very realistic about pursuing fraud because, in the end, your insurer will need overwhelming evidence to get a conviction. Accordingly, there is little risk for an injured worker to exaggerate a claim.

So what are the red flags you should consider as potential issues to bring up with your claims adjuster?

### Common Red Flags:

- Employee's accident report contains no specific details or is incomplete.
- Claimant fails to report the injury in a timely manner.
- No one saw the injury.
- Claimant and witness statements offer conflicting accounts of what happened.
- The employee misses doctor visits or medical treatment.
- Specific "soft tissue" injury claim develops psychiatric overtones.
- Claimant is unable to define medical ailments as listed on the claim form.
- The alleged accident happens right before a job shut down, planned vacation, or retirement.
- The injured worker is a new employee.
- The claimant has a history of disciplinary issues.
- Claimant cannot be reached at home during working hours although claiming to be disabled from working; or message takers are vague and non-committal.
- Claimant is actively involved in physical sports or activities outside of work.
- Claimant works part time jobs on the side.
- The employee is not getting along with fellow workers.
- The claimant has a poor attitude and attendance record.
- The Social Security Number provided does not belong to the claimant.
- Claimant's co-workers express opinions that the injury is not legitimate.

Note that once they engage a lawyer, claimants might assert that they misused words, or made trivial mistakes, as excuses to dilute the impact of common red flags, thereby covering their tracks.

Knowing that a criminal prosecution is a very long shot, even with good evidence, your efforts should be redirected to an employment screening process and an active safety program.

### **Employment Screening and Safety:**

The application process should not be to hire first, and then learn more about the employee later. Employers adopting the use of human resource supervisors or other management to interview potential hires is a key way to identify issues and limitations. To protect your company, you must properly screen any new hire first.

Under the Americans with Disabilities Act, employers cannot discriminate based on a physical or mental impairment or request medical records. However, construction businesses can inquire about an applicant's ability to perform specific job duties. Also, in California, pre-employment drug testing is allowed. Team-up with your local medical clinic so they know the physical demands of your available jobs, and have your applicants tested against them. In this way, you can determine if the worker can perform at satisfactory levels before he or she is hired.

New employees should present themselves to the office first for HR orientation, and then be sent to the field. New employee orientation should include:

1. Description of the Safety and Health Program
2. Workplace Safety Best Practices
3. Reporting Unsafe Acts and Conditions
4. Reporting Accidents
5. Company Approved Medical Clinics
6. Personal Protective Equipment (PPE) Requirements
7. First Aid
8. Chemical Safety
9. Safety and Health Committee
10. Safety Bulletin Board

From that point, your field foremen and superintendents should be actively managing safety to avoid workers' compensation risks.

Every morning, perform an assessment of the entire crew. Are they fit for duty? It is easier to determine this assessment/evaluation during a stretch and flex time. Conduct a daily jobsite hazard analysis to identify the safest way to perform the work, and be diligent to discover new risks.

Understand what is considered to be first aid, and know what clinics or onsite medical services can be used for first aid to keep your employees at work. Always have first aid kits available on site and have somebody trained on how to use those kits.

After every safety meeting, or when completing their time cards, have every employee sign off that they have not had an injury since the last safety meeting.

It is important to fully understand accident investigations. Be sure to obtain all witness statements and preserve all evidence. Take a lot of photographs. Don't jump to conclusions, and do not implicate your company when writing your accident reports. Neutral statements are best when describing the conduct of your company.

Consider offering voluntary benefits to your employees. Statistics show that when employees have voluntary disability accident and hospitalization, they are less likely to present a claim to workers' compensation. The employee pays for this coverage, and you benefit from a payroll tax deduction.

Perform drug testing at selected projects (when required by an owner); or for cause that is directly connected to a post-accident investigation.

Do you know the locations of your nearest medical emergency clinics that are already approved by your workers' compensation insurer? These are Medical Provider Networks (MPN) that your insurer has established, and should be used by your employees to contain medical costs.

Does each employee know that they are empowered to stop work if they feel that an activity is not safe? Delegating that power to employees creates trust with management.

### **Conclusion:**

Recognizing red flags is important, and should be shared with your insurer. But, employee screening and job safety supported by your management team is a much better method to avoid red flag claims altogether.

We are here to help you with safety and risk management advice. Please contact us if you need assistance and guidance in the development of your employee orientation and safety programs.

**Contact Greg Roush at 408.418.2736 — [groush@pentarisk.com](mailto:groush@pentarisk.com), or your PentaRisk broker or account executive for more information on *Workers' Compensation Red Flags and Fraud*. Visit our website at <http://pentarisk.com/>.**

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