

Workers' Compensation Fraud: The Evidence is Key

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Many employers feel the frustration of seeing claimants who appear to be engaging in workers' compensation fraud. What actually constitutes fraud is different than someone who appears to be abusing the system. For example, a claimant receiving temporary total disability compensation while simultaneously engaging in work for a different employer is engaged in fraud. However, a claimant receiving temporary total disability compensation and engaged in a hobby that others charge money for is not necessarily committing fraud. The trick for employers is to recognize the possible signs of fraud and collect sufficient information before approaching the over-tasked fraud department of the Ohio Bureau of Workers' Compensation.

And the Ohio Bureau of Workers' Compensation fraud department has been busy in recent months. In April, James Lee, a Cuyahoga Falls man, was convicted of committing workers' compensation fraud, and ordered to repay close to \$70,000 of improperly collected benefits. Mr. Lee had an open workers' compensation claim under which he was receiving temporary total disability benefits, when the BWC received a tip on its fraud hotline that Mr. Lee also was working as a commercial truck driver. The BWC investigated Mr. Lee's activities, and found Mr. Lee had worked as a truck driver for three different businesses, all while continuing to receive benefits.

Mr. Lee is one of many claimants who came under the scrutiny of the BWC's fraud investigation teams this past year, and from whom the BWC stands to recoup fraudulently received benefits. According to a report released by the BWC, during the 2013 fiscal year, the BWC's Special Investigations Department received more than 3,300 allegations of fraud, investigated over 2,000 of those allegations, of which 915 of the investigated allegations were founded, referred 236 cases to criminal prosecution and achieved 140 convictions of workers' compensation fraud for an identified savings of \$55 million to the State Insurance Fund.

Employers are also the target of the BWC's crack down on fraud. In the 2012 - 2013 fiscal year, 200+ cases were closed and 30 employers were convicted of workers' compensation fraud for activities that included: altering coverage certificates, submitting payment premium checks that were returned for nonsufficient funds, allowing workers' compensation coverage to lapse and failure to maintain workers' compensation insurance coverage.

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One such employer was Trista Blose, owner of Bolivar Pizza in Tuscarawas County, who recently pled no contest to one felony count of workers' compensation fraud for allowing her coverage to lapse. Ms. Blose's failure to pay her premiums came to light when the BWC's fraud investigation team received a tip from the BWC's employer compliance division. As a result of her plea, Ms. Blose was placed in the community corrections felony diversion program for six months to one year.

Health care providers also were targeted by the BWC, which investigated and closed in excess of 60 cases, an 83% increase from last year. A total savings of over \$11 million was realized. The most common charges brought against health care providers were related to improper billing and prescription fraud.

One of the health care providers investigated by the BWC was Dr. Joseph Spare, a physician at the Marion Independent Physicians Association. He recently settled a civil suit brought against him for improper billing by agreeing to repay the BWC \$150,000 for fraudulent workers' compensation bills and associated costs. The BWC took notice of Dr. Spare when it perceived that he was billing the BWC for a much higher number of counseling and medication management sessions than his peers. Upon investigation, the BWC determined that while Dr. Spare was billing for both counseling and medication management at each session, the counseling sessions actually were being performed by three of his staff members who were not licensed to provide counseling services. Dr. Spare's settlement includes a repayment to the BWC for the more than 1,100 fraudulently billed counseling sessions.

Employers are key to uncovering much of the fraud. Some "red flags" for employers to look for when an employee is suspected of committing workers' compensation fraud include:

- Discrepancies in reports of the alleged injury;
- Inability to recall specific details of how the injury occurred;
- Employee refuses (or delays multiple times) diagnostic procedures to confirm injury;
- Cross-outs, white-outs and erasures on documents;
- Employee receiving disability benefits cannot be reached via phone because he/she is "never home" or is reportedly "sleeping" and cannot be disturbed;
- Employee receiving disability benefits is seen with calluses on hands, grease under fingernails, or other physical evidence that he/she is still working;
- Employee begins "doctor shopping" when medications are no longer prescribed.

If you suspect an employee or health care provider is engaging in workers' compensation fraud, contact your attorney for advice on how to investigate and document the actions which you feel may constitute workers' compensation fraud.

For information about workers' compensation fraud or any other workers' compensation question, please contact [Sarah E. Pawlicki](#) or [Colleen L. Diedrich](#) or visit our web site at www.eastmansmith.com.

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