# WORKERS COMPENSATION CLAIMS MANAGEMENT IN MARYLAND AND THE DISTRICT OF COLUMBIA

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## Limitations

The statute of limitations is tolled if the employer fails to file timely the first report of injury. However, if the claim is the employer's first notice of the work-related injury, the employer's first report can be timely, even after the limitations period has expired. In other words, limitations will bar a claim filed after expiration of the statute of limitations if the employer files its first report within ten (10) days after the claim is filed.

The tolling provision prevents the employer from relying on the statute of limitations to bar a claim on an injury it did not report at the time. It does not apply to bar a claim where the employer was not aware of the injury, or the contention that it was work-related, until the claim was filed.

## Notice of Injury

Failure to provide timely written notice of injury may not bar a claim if the employer cannot demonstrate prejudice. With the increased deployment of digital recording devices, you should consider whether the alleged injury would have been recorded and preserved if timely notice had been given.

## D.C. Statement of Rights and Responsibilities

By regulation, employers are required to provide claimant with a Statement of Rights and Responsibilities upon receipt of the claim. Service of this form is proof claimant is aware of the right to choose the initial treating physician.

**Independent Medical Examination**

The well-reasoned opinion of a treating physician is generally accorded great weight in resolving claims. An independent medical evaluation can overcome a treating physician's contrary opinion if it is thorough and supported by the objective medical evidence.

Copies of all diagnostic tests and films should be provided to the examiner with a complete set of treatment records. The good examiner will summarize *and explain the significance of* findings supporting the opinion.

Even a strong IME may not be sufficient to successfully dispute a claim by itself. You may want to consider providing a copy to the treating physician with a request for comment, prognosis, or the explanation for continuing disability.

**Medical Case Management**

In appropriate cases, you may want to consider assigning a nurse case manager to coordinate and monitor the medical treatment afforded to claimant. This can be a useful adjunct to your medical claim management to move the case to resolution. You should feel free to request information on treatment and prognosis from physicians.

**Statutory Medical Management**

The District of Columbia Act provides that the claimant is entitled to only one chosen physician. The employer must show that the claimant's choice is voluntary, and made with

knowledge of the right to choose a physician. This can be established by showing that the claimant received a Statement of Rights and Responsibilities.

Once a treating physician is chosen, a claimant cannot switch physicians unless the employer consents or the Office of Worker's Compensation approves the change based on a showing of good cause.

The claimant's unauthorized change of physician relieves the employer from responsibility for paying for the medical treatment provided by that physician.

An issue sometimes arises where the treating physician refers the claimant to another physician. A referral to a different specialty or for a specific therapy is covered. A general referral for future treatment is generally considered to be a change of physicians.

The District of Columbia Act also provides for Utilization Review of medical treatment. An accredited utilization review provider can determine the reasonableness and necessity of medical treatment. The review can be retroactive or prospective.

The treating physician has the opportunity to comment on the review and to seek reconsideration from the provider, or a hearing with the administrative law judge. At a hearing, the provider's opinion is presumed correct.

The intent is to avoid litigation of medical treatment disputes, leaving them to medical professionals to resolve.

The claimant can never be held responsible for expenses incurred for treatment of a work-related injury. If a claim for medical expenses is denied based upon an unauthorized change of physicians, or utilization review, the physician cannot recover the expenses from the claimant.

If you are contesting responsibility for medical expenses, you should notify the physician of the reason that you are not accepting responsibility for the treatment and return

the invoice.

**Surveillance**

Where there is reason to suspect employment or other significant activity, surveillance can be very useful. Good surveillance may be effective to (1) impeach the credibility of claimant, (2) corroborate a medical opinion on the ability to return to work, or (3) challenge a permanent disability rating based upon recorded limitation of the range of motion.

We recommend spot checks on warm days preceding shift change hours.

Impeachment evidence can be disclosed after the claimant testifies at the hearing. We isolate photographs from recordings for introduction as exhibits in the record.

**Vocational Rehabilitation/Light Duty Program**

Once a claimant has reached maximum medical improvement, a permanent disability award may be entered.

It is the employer's burden to prove that the employee is capable of returning to work in modified duty. This is most effectively accomplished with the implementation of a light duty program. The employer controls the offer and can take credit for wages that would have been earned whether or not the claimant decides to accept the light duty position. It can serve as an impetus for finding permanent alternate employment and fostering team responsibility for safety.

Most employers place a limit on the duration of the light duty assignment to avoid conflict and a permanent class of light duty workers.

Vocational rehabilitation is rarely used for scheduled losses. For this reason, it is rarely used in Maryland, except in cases of alleged total disability, and often is combined with

re-training.

In the District of Columbia, wage lost benefits can be payable for up to 667 weeks for non-scheduled losses. In appropriate cases, vocational rehabilitation can be utilized to maximize post-injury earnings.

A vigorous program can help retain the work ethic and uncover other factors that may be at play, such as a concurrent disability or other impediments to employment.

In the District of Columbia, a claimant's unreasonable refusal to attend an IME or cooperate with vocational rehabilitation is grounds for suspension of benefits until such time as the claimant complies. The Maryland Commission is receiving public comments on a similar rule.

You may utilize conditional medical restrictions to support a call back to work. In other words, the IME physician may offer an opinion that claimant should try to work in the position for up to six hours to start, increasing up to eight hours per day.

**Permanent Disability**

Maryland employs a three-tiered system for compensating permanent disabilities.

Injuries compensable for less than 75 weeks are minor disabilities compensated at the rate of $162.50 per week.

For disabilities resulting in an award of 75 to 249 weeks, the compensation rate is $322 per week.

For serious disabilities resulting in awards of 250 weeks or longer, the compensation rate is two-thirds the average weekly wage, not to exceed $724 per week.

The fact that an injury results in industrial loss, impairing the claimant's earning capacity, can be considered by the Maryland Commission to award a disability greater than

the anatomical impairment for first-tier, minor disability claims.

In the District of Columbia, industrial loss can be considered in all cases to grant the disability award exceeding the anatomical impairment where the injury results in loss of earning capacity.

**Separate and Distinct Disabilities**

In the District of Columbia, a back injury may give rise to a scheduled disability award for loss of use of the leg if it results from a separate and distinct disability. If radiculopathy causes pain and loss of strength of a leg that amounts to a separate and distinct disability, it can be compensated in addition to the wage loss resulting from the back injury.

Similarly, claimant may obtain a scheduled award for loss of use of an arm as a result of a shoulder injury in addition to the wage loss benefits payable for loss of the use of the shoulder.

A scheduled award for a separate distinct disability may be payable concurrent with an award for temporary partial wage-loss disability.

**Consider the Treating Physician**

The rule in favor of treating physicians can be used to the employer's advantage in cases where the claimant and employer have obtained rating from independent evaluators. You should find out what permanent partial disability rating the treating physician would assign. Many times this can be estimated based upon a review of findings in the treatment records. If favorable, the opinion of the treating physician can have a substantial impact on the value of the case.

All things being equal, the Maryland Commission is more likely to enter an award

based upon the average of the ratings. Physicians who are frequently called upon to evaluate disabilities are well known to the Commission and their opinions may be discounted.

In the District of Columbia, the administrative law judge is more likely to analyze the medical evidence and choose the impairment rating that is more fully supported by the other evidence of record.

**Assessment of Attorneys' Fees**

In Maryland, attorneys' fees are always deducted from the final weeks of compensation awarded.

In the District of Columbia, attorneys' fees can be assessed against the employer in addition to the worker's compensation benefits secured as a result of the attorney's work.

You can limit the amount of attorneys' fees, and the likelihood a case will go to a hearing, by making a tender of compensation. A tender of compensation is an unconditional offer to pay an amount of money.

You should tender compensation in the amount of the rating obtained from the employer's independent medical evaluation. This limits the attorney's fee to 20% of the difference between the amount of compensation tendered and the amount of compensation ultimately obtained through the services of the attorney. This can act as a disincentive to litigation a claim through hearing.

**Stipulation or Settlement**

Claims can be resolved by stipulation or settlement.

A stipulation is an agreement of fact as to the degree of disability and/or amount of compensation payable.

A settlement is a final and conclusive resolution of the claim for benefits.

Upon request, a stipulation can be approved in an order awarding compensation. This should be done to start the limitations period for modification of awards.

Considerations may influence the decision on whether to settle or stipulate. Because any aggravation of a condition constitutes a new injury, there is little incentive to pay a premium to settle with current employees.

Some employers prefer to compensate these as recurrences or modifications of permanent awards at the lower compensation rates.

However, open claims can be subject to modification to permanent total disability if the claimant is ultimately unable to continue in the usual occupation.

Requiring a resignation in conjunction with the settlement is not prohibited in the District of Columbia or Maryland. Waivers of other claims, or the right to seek reemployment, may not be enforceable.

**Medicare Set Asides**

Maryland has adopted procedures and forms for use in cases involving Medicare set asides. These are required where the settlement closes medicals if the settlement exceeds $25,000 and the claimant is older than 64 or has been on SSDI for at least 24 months; or if the settlement exceeds $250,000 and the claimant has a pending claim for SSDI or is within 30 months of Medicare eligibility (62½ years old).