



## KOPKA PINKUS DOLIN & EADS, LLC

**WORKER'S COMPENSATION FRAUD: A Series of Articles on Why We Should Care, Tips to Prevent it and New Ways of Investigating it with the use of Social Media and the Internet**

### **WORKER'S COMPENSATION FRAUD PART II: OTHER TYPES OF FRAUD AND PRACTICAL TIPS FOR AVOID AS WELL AS DETECTING FRAUDULENT CLAIMS**



In part one of this series, we focused on why as an industry we should be aware of worker's compensation fraud and examples of worker's compensation fraud committed by workers. However, as mentioned in Article One, dishonest employees are not the only individuals who affect costs in our industry. In actuality, there is employer fraud and medical provider fraud. To understand the inherent distrust that can arise in the system we should have an awareness of these types of fraud as well. These types of actions are often referred to as soft crimes with actions by a dishonest employee as hard crimes. Are they really as soft and indirect as the term suggests? Certainly, the impact is not soft by any means.

A scenario out of New York from a few years ago is a classic example of worker's compensation fraud by an employer. A Bronx nursing home owner was one of the first charged under the New York statute that made it a felony for employers to fail to carry worker's compensation insurance with penalties including up to four years in prison. In this situation, the employer failed to provide coverage to over hundreds of employees for over a year period. In Indiana, the statute section that would be likened to the New York statute would be *§22-3-4-13 Employer and carriers—Records and reports of injuries—Penalty for violation of article—Venue—Prosecution of violations—Order to employer to cease doing business in the state*. In a nutshell, a company who fails to carry proper coverage or is not an approved self-insured commits a Class C or Class A misdemeanor depending on the exact factual circumstances. Of course, there are entities that may fit in a statutory exemption but for our purposes, we are speaking of employers who do not meet such exemption status. A unique provision to our statute is that compensation to the employee or dependents of a deceased employee (1) not exceed double the compensation provided by this article. *Indiana Code §22-3-4-13 (f)(1)*.

Further, this statute allows a court, in certain circumstances where benefits are due, to order the employer to temporarily cease doing business in Indiana until certain criteria are met. *Indiana Code §22-3-4-13(i)*.

Of course, employer worker's compensation fraud also exists in many "softer" forms. Other costly deceitful actions can include under-reporting of payroll, underestimating employment projections, misclassifying workers, and deducting premium dollars from employee wages. Even though it may be a misdemeanor under the Hoosier Worker's Compensation Act, the egregious offense can bring on unwanted notoriety and severe monetary penalties.

Our third kind of worker's compensation fraud is commonly referred to as Medical Provider Fraud. How does medical provider fraud present itself? It can be outright fraud such as creative billing, self referrals, upcoding, unbundling or outright product switching. However, less noticeable acts also exist such as under-utilization, over-utilization, kickback arrangements and plain old internal fraud. Luckily, simple ways in our world exist to avoid the bad apples. Work with services, case managers, doctors, et cetera, that are familiar to you, an organization you belong in, or that have a solid reputation in our state. Ask your attorney or an attorney with a broad client base to help you navigate the vendor waters. Counsel can be a wealth of information to guide you in the selection process. Also, some of the best referrals come directly from our peers in the industry.

At this point in our journey, some practical information is always useful to help employers, claims specialists and others who assist in claim handling to learn some warning signs to detect fraudulent claims and also avoid fraudulent claims.

In the true spirit of our fellow Hoosier Dave Letterman, these tips can be presented in a Top Ten format.

### **Tips for Employers & Adjusters to Avoid Fraudulent Claims**

1. Hire wisely
2. Focus on safety
3. Develop a return to work policy
4. Educate, don't threaten
5. Adopt a zero tolerance policy
6. Stay in touch
7. Follow procedures consistently
8. Thoroughly investigate
9. Checks and balances in system
10. Seek assistance and advice from counsel early

## Tips for Employers & Adjusters on Detecting Fraudulent Claims

1. Employee is hard to contact
2. New employee
3. Identification issues-bad home address, SSDI etc
4. Accidents on Fridays, Mondays or after interruptions of work
5. Lack of witnesses
6. Incident happens where the worker isn't normally supposed to be
7. Disgruntled employee
8. Employee is overly familiar with lingo
9. Varying versions of account of accident
10. Failure to complete doctor's recovery regimen

Despite our best efforts, fraud is still a reality in the worker's compensation world. In the next two weeks, we will look at ways to investigate it both old school through methods that have been proven over the test of time and new school via the use of the Internet and social media sites.

