

REPORTING RULES FOR EMPLOYERS

By Peter Rousmaniere

Employers should minimize their work injury exposure in every way that is legal and ethical. The most obvious priority is to reduce the number of injuries. Employers can also learn how to record on their Occupational Safety & Health Administration log only those injuries that are required by OSHA's rules. And they can learn how to triage quickly injuries to the appropriate first aid or medical treatment center. These methods can not only save medical expense, especially if the employer has on-site clinical resources, but also reduce the number of recordable injuries. And that is all well and good.

But it is illegal to engage in a willful pattern of violating OSHA record keeping rules by under-recording. And an employer faces serious financial liability if it adopts a practice of not filing claims to its insurer and self-paying medical expenses.

The U.S. Department of Labor's record keeping rules are generally unambiguous, but an expert may be needed to interpret them in borderline cases.

I asked for some scenarios from Curtis Smith, executive vice president of Medcor, which provides telephone-based injury triaging and on-site medical services to employers. In one of the instances he gave me, an employee slips, twisting his ankle and striking his head. There is no loss of consciousness but the employee complains of head, neck and ankle pain. Emergency responders arrive; they temporarily immobilize the worker for transport to the emergency room. All X-rays of the neck, spine and ankle are negative. The patient receives ice for the ankle and non-prescription medications, and is sent home for the rest of the day. No work restrictions are given and the employee is released to full duty for the next day.

Smith said that OSHA does not require this injury to be recorded. Smith told me that half of work injuries can be properly treated by well-planned triage and first aid, and if there is an on-site medical clinic, some 85 percent of injuries can

typically avoid any off-site medical care. He told me that OSHA recordable counts could be cut in half, if effective triage or clinics are used at the worksite.

But what about reporting a claim? Workers' comp insurance policies require full reporting of injuries. There is no bright line definition on how severe an injury must be to be reported to the insurer, but any injury for which there is medical involvement beyond first aid would certainly seem to me to qualify.

That slip that Smith describes appears to me as one that must be reported to the insurer, for four reasons beyond the fact there was a medical expense. First is the risk of lingering head injury problems that could entail more medical care. Second are insurance policy requirements. Third, state law probably requires it.

Finally, look at the Medicare Secondary Payer law. Medicare does not want to pick up a dollar of medical expenses arising out of a compensable injury. It is beginning, indirectly, to define what injuries it considers compensable under workers' compensation statutes.

A new provision, which goes into effect by 2011, says whoever pays for medical care for Medicare entitled persons (mostly, persons 65 years or older) needs to report these claims to Medicare. If the employer pays for all the care, it incurs the burden of reporting. The rules are not yet clear on the details. Medicare tends to make up the rules as it goes along. But the intent of the amendment is clear: no more free rides on Medicare's nickel. And the penalty for not reporting is \$1,000 per claim, per day. Does that get your attention?

PETER ROUSMANIERE *is an expert on the workers' compensation industry. He can be reached at riskletters@lrp.com.*