

What you don't know CAN hurt you
The Importance of Pre-Employment Screening

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A company advertises a job opening for a worker to pack and load heavy boxes onto trucks. It would seem an easy position to fill.

But what if that applicant shows up with two good, strong arms and appears to be a perfect candidate for the job, but has a history of back trouble that resulted in a number of previous Workers' Compensation claims? Not as easy to make the call this time. And virtually impossible if no pre-employment medical testing is put into place, particularly by a medical practitioner who understands the job requirements and what it takes physically to accomplish them.

With budget and personnel cut backs, many companies are also cutting back on pre-employment practices. Five years ago investing \$300-\$400 in a pre-employment physical, blood work, and drug testing was palpable. Today, when a company is looking for money to fix the office copier machine, maybe not as much.

But employers are also aware of the high-cost of Workers' Compensation claims, which have them doing a high-wire act to make sure they hire the right employee for the job, while protecting the safety of their other workers (and in some instances, the public). The latter is especially important because failure to do so sends a silent message to their other workers that the company doesn't care whom they hire, even if it impairs job safety. And in the workplace, a silent message can sound like a jet plane taking off.

Obviously, no employer wants to inherit an existing injury when putting someone new on the clock, only to see a slight aggravation in the line of duty become totally their responsibility. But the possibility always exists.

A perfect example is an ice cream manufacturer in Pennsylvania who saw his Workers' Compensation Experience Modification Factor skyrocket to more than three times what it should be. The elevated Experience Mod was caused by several open

claims, which were a direct result of improper or non-existent hiring procedures. The company did not conduct pre-employment background checks and physicals. This opened the door for at least two employees to come on payroll with existing soft tissue injuries to the back and shoulder, a condition further aggravated by the cold temperatures they encountered on the job.

Each state addresses the aggravation or exacerbation of a pre-existing condition differently. In most states, if the on-the-job injury exacerbates a pre-existing condition (even by 1%) it is considered to be a part of the payable injury. This is conditional upon the physician being able to say that within “reasonable medical probability” the pre-existing condition was and still is aggravated by the on-the-job injury.

But this isn’t always the case. Some states have adopted a more definitive way of separating occupational (on-the-job injuries) from non-occupational (pre-existing conditions). In Florida, Oregon, Massachusetts and (to a lesser degree) South Dakota, for an accident or aggravation of a pre-existing condition to be compensable (payable), they have included the definition of “coverage” to include a provision called *major contributing factor*. This means the condition the physician is treating has to be at least 51% related to the on-the-job injury.

For instance, diabetes is a very common pre-existing occurrence. If an employee injures a leg on the job and also has diabetes, the physician starts treatment for the leg condition and is also monitoring the diabetes. As long as the majority of the treatment (51%) is for the leg pain, it is payable under Workers’ Compensation. If there comes a time when the leg pain subsides and the diabetes is getting worse (51% of the treatment is now related to the diabetes), it should no longer be considered payable under Workers’ Compensation.

This creates added pressure on the physician to accurately assess the percentage contribution of the occupational injury relative to any pre-existing condition. In the above example, before the major contributing factor cause was enacted, the entire treatment for the diabetes would be payable under Workers’ Compensation as long as the leg pain *continued to aggravate (or exacerbate) the diabetes*. This would include any hefty costs that may be incurred for amputation (which is a common complication for uncontrolled diabetes) and any resulting permanent impairment or prolonged disability.

Another tricky area of pre-employment screening is determining if the applicant has a history of filing Workers' Compensation claims. And—news alert—people *will lie on their application* in order to get a job they really need.

Under the Federal Americans with Disabilities Acts (ADA), employers cannot inquire about past Workers' Compensation claims, nor can they refuse to employ someone who has filed past claims or whose disability or impairment has no bearing on whether or not they can perform the essential tasks they are being hired for. The job interview can only determine if the person can perform essential job functions, with or without reasonable accommodation. But that doesn't mean you can't ask about prior injuries, you just can't ask *before* you hire the applicant.

In the end, it's important for the employer to take all steps necessary to make sure they hire the right person for the job. And this can only be accomplished by implementing the proper pre-employment procedures. This includes using “post” job offer medical questionnaires, making sure that a qualified medical practitioner who understands the job requirements performs all medical testing, and dodging a legal minefield by remembering that applicants should be assessed *only* by their ability to perform the essential tasks at hand.

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