



AIG: Avoiding Litigation in Workers' Compensation Claims

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Psychological and psychosocial factors as well as the demographics and culture of a workplace can impact the ultimate outcome of a workers' compensation claim and, specifically, whether the claim escalates to litigation. Understanding these issues is key to successfully navigating them before and after a worker is injured and can significantly improve the claim experience and outcome for employees and employers alike.

Psychosocial Factors

Dr. E. Allan Lind of Duke University has studied psychosocial factors in litigation for years and co-authored the book *The Social Psychology of Procedural Justice*. Focusing on the employer-employee relationship, Dr. Lind explored what drives employees to litigate and what might be done to reduce the potential for litigation.¹

People are prone to sue, he asserts, when they blame another for their injury or perceive an injustice. They will pursue the economic gain if the risk is acceptable.¹ Dr. Lind outlines three steps on the path to employee litigation:

1. Naming the injury.
2. Blaming someone else for the injurious event.
3. Identifying monetary damages owed to him/her.¹

On the other hand, people who complain will not necessarily pursue litigation if they feel their complaints have been heard. If the injured worker feels that he or she was negatively confronted during the complaint process, he or she will often move from complaining to litigation.¹ Avoiding confrontation is key and careful attention to how employees perceive they are being treated is critical.

If employees believe they are part of a team and protected from arbitrary power or rejection, they are more likely to work with the company instead of fighting it through litigation. Recognition, benevolence and neutrality in treatment provided with politeness and dignity are key factors to reducing the likelihood of litigation. Employees want to feel in control of the information used to make decisions and want fact-based decisions. The mere perception of fairness is critical and, indeed, carries more weight than actual fairness.¹

Dr. Lind suggests behaviors that will help instill the sense of fairness in an employer's treatment of employees:

- Issues are best resolved immediately when an injury happens. The longer it takes, the more likely that an injustice is perceived.
- Without exception, employees should be treated with respect and dignity.
- Injured workers value the opportunity to tell their story to an unbiased party, without fear of reprisal or bias. Even if an act is perceived as unjust, actions perceived as just in handling the incident can help to reassure the injured worker.
- Honest, fact-based and proactive discussions of how and why decisions are made are critical. Failure to act honestly will drive the injured worker closer to litigation.
- If a mistake is made, a quick apology and correction can go a long way.¹

The Value of "Social Capital"

Dr. Robert D. Putnam of Harvard University has studied the subject of "social capital" in society, politics and the workplace for many years. He is the author of several books, including *Bowling Alone*, and is the Director of the Seguro Seminar, an ongoing initiative focused on expanding knowledge around levels of trust and community engagement and developing strategies and efforts to increase this engagement. Members include a U.S. Senator before he became President of the United States along with many business and civic leaders.

Social capital can be defined as "social networks and norms of reciprocity and trustworthiness that arise from them."⁹ Surveys have shown that people who lack stability in their families and other situations look to the workplace to build stable, caring, and long-term relationships.⁹ While countless studies have shown that a workplace with strong social capital enhances workers' lives and helps improve the employer's bottom line, Dr. Putnam and his colleagues identified in their work that employers don't necessarily view building social capital as within their scope of objectives.⁸ Studies have shown that social capital in the workplace helps to create employee satisfaction and higher productivity.⁸ This is a major disconnect, since there is a compelling business case for infusing social capital into the workplace. One study even pointed to on-the-job social capital as more important than salary or fringe benefits in determining employee commitment, productivity, or satisfaction.¹⁰ Having "work-life" programs that make family and community obligations easier for workers also adds to perceived employer value.⁸



Studies Weigh In

In a 2010 study by the Workers' Compensation Research Institute (WCRI), Richard Victor and Bogdan Savych interviewed injured workers who had lost more than seven days of work to determine how many retained an attorney and what motivated the workers to do so.² The study, which involved 6,823 injured workers across 11 states, found that workers were more likely to retain an attorney when they perceived a threat to job security, income benefits or medical treatment.² In fact, workers who feared being fired after an injury were 2 to 3 times more likely to hire an attorney.

Employees were also more likely to retain an attorney when they felt that their supervisor did not believe they were legitimately injured. Depending on the state, workers were 8 to 18 percent more likely to retain an attorney if they felt that their supervisor doubted the injury.² The study showed that attorney involvement was strongly correlated with an employee's level of trust in the workplace."²

The mere perception of a claim's denial also impacted employees' decision to retain an attorney. Workers who believed that their claim was denied, even if the claim was later paid, were 34 percent more likely to retain an attorney. This perception of denial could have stemmed from a formal denial, communication of a denial, a delay in payments, or a lack of communication.²

Other factors impacting employees' decision to retain an attorney included:

- **Employee disadvantage.** Employees who felt they were disadvantaged in navigating complex claim processes were more likely to retain an attorney. Workers with only a high school degree were 6 percent more likely to retain an attorney.² Spanish-speaking workers were twice as likely to retain an attorney than their English-speaking counterparts.²
- **Job tenure.** Workers with less than one year on the job were more likely to retain an attorney, while those with more than 10 years on the job were less likely – pointing to the benefits of employee/employer loyalty.²
- **Age.** Workers under age 25 years were less likely to retain an attorney, while those aged 25 to 39 years were more likely and those 55 years and older were even more likely.

Factors with little impact on whether a worker retained an attorney included the company's size or industry and the employee's marital status or gender. Union involvement increased the likelihood of a worker retaining an attorney in states where unions help workers find attorneys and decreased likelihood in states where the union provides protections (so workers feel less of a need to hire counsel).²

The type of workers' compensation dispute system can contribute to a worker's decision to retain a attorney as well.³ According to other WCRI studies, for example, voluntary payment of benefits helped to discourage retaining attorneys.⁴ There was less of a need to retain an attorney when there was more certainty around what was owed to the injured worker.⁵

A 2016 study by Lockton Companies showed claimants' fears were highly correlated with higher claim costs. Costs were 3.5 times higher when words like "fear" and "afraid" were noted in adjusters' communications. The study also found some 60 percent of all workers' compensation costs were driven by claimants who experienced fear.⁷

A Harvard University publication examining various aspects of negotiating settlements identified the following practices to consider when dealing with injured workers:

- Look objectively at the weaknesses in your position. If new evidence shows that a prior position was wrong or weak, change positions.
- Carefully consider what each party wants. It may be possible to satisfy all parties through a compromise or settlement.
- Ensure that you act fairly, regardless of the other party's behavior. If the other side has "hard lined," help them by offering information on why facts have changed so that they can hopefully move away from that position.
- Be positive and honest in all dealings.⁶



Drawing on our extensive experience supporting employers and employees through workers' compensation claims, AIG has developed a multi-faceted approach that promotes worker engagement and drives down workers' compensation claim costs. Among other things, AIG's approach includes:

Helping Employees at Work – AIG's Pre-Injury Consultants (PIC's) work with employers to help ensure that medical assistance and safety programs are aimed at avoiding injury and supporting injured workers from day one.

Informing Injured Workers – In seven states where state-specific information is available (CA, CT, FL, RI, NH, NY, WV), AIG sends injured workers information on basic rights and benefits within that state.

Putting Help at Workers' Fingertips – AIG Go WC, a mobile friendly solution, makes it easy for employees to access information on their claims and on how the workers' compensation process works. After a simple registration process, an injured worker can learn about payments, apply for direct deposit, review prescriptions and get answers directly from the State on how the process works.

Expert Guidance – Our Claim Representatives have expertise in specific jurisdictions and can help guide injured workers through the claims process. Our Claim Representatives typically make contact with the employer, injured worker and treating physician within 24 hours of receiving a lost time claim.

Medical Support – With AIG's Productivity Edge program (limited availability), injured workers can engage with a nurse from day one who will help guide them through the process of finding the right provider for quality treatment from our Outcome Based Network. Early assistance helps to save an average of 16 percent of overall claim costs and may help to prevent inappropriate use of opioids.

Return to Work Assistance – AIG's automated programs ensure that a nurse is assigned as soon as possible in lost time claims to help guide injured workers through the medical and return to work processes. Automation also captures claims that develop lost time later in the lifecycle to ensure that those workers are provided guidance as well.

Legal Guidance – AIG's Claims Counsel provide legal support to cost-efficiently assist AIG's Claim Representatives in guiding claims to a just outcome, so injured workers can be confident in obtaining any benefits they are owed, even in complex compensable claims, without having to retain their own attorney.

California Workers' Compensation Appeals Board (WCAB) Assistance – AIG's California Hearing Representative Program coordinates informal meetings with injured workers and assistance officers at the WCAB to discuss information on rights, benefits and obligations under California workers' compensation laws. This program helps injured workers understand the likely outcome of a claim from the state's perspective without the need to retain their own attorney.

- 1 – Litigation and Claiming in Organizations: Antisocial Behavior or Quest for Justice? Dr. E. Allan Lind, 2012
- 2 – Avoiding Litigation: What Can Employers, Insurers, and State Workers' Compensation Agencies Do? WCRI, Richard A. Victor, Bogdan Savych, 2010
- 3 – WCRI, Boden, 1992 as cited in Avoiding Litigation: What Can Employers, Insurers, and State Workers Compensation Agencies Do? WCRI, 2010
- 4 – WCRI, Boden, 1988 as cited in Avoiding Litigation: What Can Employers, Insurers, and State Workers Compensation Agencies Do? WCRI, 2010
- 5 – WCRI, Boden, Kern and Gardner, 1991 as cited in Avoiding Litigation: What Can Employers, Insurers, and State Workers Compensation Agencies Do? WCRI, 2010
- 6 – Psychological Principles in Negotiating Civil Settlements, 4 Harvard Negotiation Law Review, 1999
- 7 – Leading with Empathy: How Data Analytics Uncovered Claimants' Fears, Lockton Companies, 2016
- 8 – Better Together Report, Seguro Seminar on Civic Engagement in America, Robert D. Putnam and Lewis M. Feldstein with Don Cohen, 2003
- 9 – Bowling Alone: The Collapse and Revival of American Community, Robert D. Putnam, 2000
- 10 – National Study of the Changing Workforce, Family and Work Institute, 1997

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