



ALLIANCE INTERSTATE RISK

WORKERS' COMPENSATION

# From Incident to Resolution: Winning Workers' Comp with Investigation & Strategy

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# WHAT'S AHEAD? BEST PRACTICES FOR...

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- **Employee Injury Notification**

Immediate response and reporting actions

- **Approved Medical Care**

Directing care to authorized providers

- **Initial Claim Investigation**

Facts, documentation, and spotting red flags

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## **Ongoing Communication with Adjuster**

Timely communication & claim updates

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## **Return-to-Work (RTW)**

Modified duty & alternatives

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## **Tennessee Affirmative Defenses**

Key defenses & compliance considerations

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# THERE'S BEEN AN EMPLOYEE ACCIDENT OR INJURY... NOW WHAT?

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When the injury is clearly *undisputed*:

- Is it an **emergency**?
- Report catastrophic claims to the Carrier ASAP
  - Bureau of Workers' Compensation requires reporting within 24 hours
- Send injured worker to a work comp-approved medical provider
  - **Employer must provide a panel of three medical doctors in Tennessee!**
- Arrange for a post-accident drug screen, even if they don't request treatment
- Submit a completed FROI to the carrier – *ideally within 24 hours of notice of injury*

# THERE'S BEEN AN EMPLOYEE ACCIDENT OR INJURY... NOW WHAT?

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When the injury is *questionable*:

- Supervisor interview of injured worker
  - *To determine the how, when, and why the accident occurred*
  - *Have supervisor document this conversation in writing using the employee's own words*
- If possible, obtain written statement from the injured worker
- Witness statements – the sooner the better!
- Surveillance video? Event recorder footage?
- Safety policy violation?
- Drug screen results

# MEDICAL TREATMENT & PANEL OF THREE

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- General Rule – Employer must offer a panel of three medical providers who are “willing to treat”
  - Exceptions: emergency, refusal to treat
    - *If refused – document in writing*
  - TPA can assist with identifying panel providers
- Panel Of Three
  - Physicians, surgeons, chiropractors, or specialty practice groups
  - Must be located within the IW’s “community”
  - Panel must be offered within three business days following a request or knowledge that an injury will require ongoing medical treatment
    - follow-up visit constitutes ongoing medical treatment



# INITIAL INVESTIGATION OF THE CLAIM

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*Adjusters may request the following:*

- All written statements and accident reports
  - Police report, third party insurance info, internal investigation reports
- Names of all witnesses – *contact info too, if available*
- Surveillance / event recorder footage
- Drug test results

# INITIAL INVESTIGATION OF THE CLAIM

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*But wait, there's more...*

- Injured worker's personnel file
  - PJOMQ, medical notes, DOT physicals, jurisdictional agreement, owner/operator agreement, etc.
- Any relevant safety policies
- Injured worker's work status
- Payroll records for wage statement
  - 52 weeks prior to the date on injury starting with the last full pay period before the date of injury



# STAYING IN TOUCH WITH THE CLAIMS ADJUSTER

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- Inconsistent information from investigation
- Receiving income from another source
- RTW elsewhere
- Personnel / employment matters
- Disciplinary issues
- Disgruntled employee
- Issues with communication following accident
- Claims for unemployment, STD, LTD
- LOR or notice of suit, if received



# MODIFIED DUTY RELEASE & THE RETURN TO WORK PROCESS

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# THE INJURED WORKER HAS TEMPORARY MODIFIED DUTY RESTRICTIONS... NOW WHAT?

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## RETURN TO WORK AT THE EMPLOYER

- Temporary duty work is offered by the employer and is ***accepted*** by the injured worker
  - Bona fide job offer
  - Injured worker is paid via payroll by employer
  
- Temporary duty work is offered by the employer and is ***refused*** by the injured worker
  - *Offers of Suitable Employment*
  - Contact Carrier ASAP as benefits may be suspended
  - Make sure to document everything!

# THE INJURED WORKER HAS TEMPORARY MODIFIED DUTY RESTRICTIONS... NOW WHAT?

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## ALTERNATIVE RETURN TO WORK (RTW) PROGRAMS



**TEMPORARY LIGHT DUTY JOBS  
THROUGH LOCAL NON-PROFIT  
ORGANIZATIONS**



**REMOTE WORK OPPORTUNITIES  
THROUGH AN ALTERNATIVE RTW  
VENDOR...**

*DON'T SHOOT THE MESSENGER 😊*



**INJURED WORKER PAID VIA EMPLOYER'S  
PAYROLL AND MAY BE ELIGIBLE FOR  
SUPPLEMENTAL BENEFITS THROUGH  
WORK COMP**

# AFFIRMATIVE DEFENSES

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No Employment  
Relationship /  
Independent  
Contractor

Statute Of Limitations

1 Year from date of injury or last  
voluntary payment made on the  
claim

Notice Defense

- Statute – 15 days
- Case Law – actual knowledge and verbal notice are sufficient.

Willful Misconduct  
& Willful Failure to  
Use A Safety  
Device

Intoxication From  
Alcohol/Impaired By  
Illegal Drugs

Tennessee Drug Free Workplace

Misrepresentation  
Defense

# WILLFUL MISCONDUCT DEFENSES

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## Willful failure or willful refusal to use safety devices provided by employer

*Safety policies & procedures are so important here!*

4 Elements to be met:

1. IW's actual notice of the rule
2. IW's understanding of the dangers involved in violating the rule
3. ER's bona fide enforcement of the rule
4. IW's lack of a valid excuse in violating the rule

*There must be a degree of willfulness in violating the rule as opposed to general negligence.*



# BEST PRACTICES FOR APPLYING WILLFUL MISCONDUCT

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- Prepare written policy clearly describing safety rules and regulations **and have the employee sign this policy**
- **Document** safety/training sessions where these policies are covered. Keep a log of attendees and documents distributed at these sessions
- **Document** history of the employee's safety violations
- Make sure that safety policies are **regularly enforced**



# BEST PRACTICES FOR APPLYING WILLFUL MISCONDUCT PART 2

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- Preserve recordings, footage, and evidence related to alleged accident
- Prepare Incident Reports and obtain statements
- Have employee complete and sign document admitting he or she violated safety policy for every violation of the rule across the company

*Remember, this could also impact a potential employment law / retaliation claim!*

# INTOXICATION / IMPAIRMENT DEFENSE

- DOT testing – 49 C.F.R. Part 40 – presumption of impairment
- Refusal to submit to post accident blood/urine test
- Proximate cause of injuries
- Burden of proof on employer
- Exception: **Tennessee Drug Free Workplace** Qualifying employers are given a presumption that the injury was caused due to employee's intoxication in the event of a positive or refused test. Employee then carries the burden of proving intoxication was not the cause of the injury.
- WARNING: This is a detailed set of regulations and employer needs to make sure they follow the Rules and Regulations of the Drug Free Workplace program. The Bureau can and will assist employers with implementing this program.



**ATA COMP FUND / ALLIANCE INTERSTATE RISK  
POST JOB OFFER — MEDICAL QUESTIONNAIRE**

DATE: \_\_\_\_\_ POSITION: \_\_\_\_\_

NAME: \_\_\_\_\_

<p><b>A. DO YOU EVER HAVE:</b></p> <p>Reactions to Medicines _____</p> <p>Reactions to Oils _____</p> <p>Reactions to Chemicals _____</p> <p>Skin Rashes or Eczema _____</p> <p><b>B. HAVE YOU EVER HAD:</b></p> <p>Asthma _____</p> <p>Hay Fever _____</p> <p>Shortness of Breath When Walking _____</p> <p><b>C. HAVE YOU EVER HAD:</b></p> <p>High Blood Pressure _____</p> <p>Heart Trouble _____</p> <p>Heart Attack _____</p> <p>Heart Surgery _____</p> <p>Fainting Spells _____</p> <p>Varicose Veins _____</p> <p>Swelling of Ankles _____</p> <p><b>D. DO YOU HAVE OR EVER HAD:</b></p> <p>Hernia _____</p> <p>Diabetes _____</p> <p><b>E. EYES:</b></p> <p>Do You Use Contacts or Eye Glasses _____</p>	<p><b>F. HAVE YOU EVER HAD:</b></p> <p>Seizures or Convulsions _____</p> <p>Epilepsy _____</p> <p>Paralysis _____</p> <p>Numbness of Hands or Feet _____</p> <p>Double Vision _____</p> <p>Severe Headaches _____</p> <p>Migraine Headaches _____</p> <p>Dizzy Spells _____</p> <p><b>G. HAVE YOU EVER HAD:</b></p> <p>Neck Injury or Pain _____</p> <p>Back Injury or Pain _____</p> <p>Neck Surgery _____</p> <p>Back Surgery _____</p> <p>Knee Surgery _____</p> <p>Shoulder Injury or Pain _____</p> <p>Shoulder Surgery _____</p> <p>Rheumatism or Arthritis _____</p> <p>Fracture Break of Bone _____</p> <p>Knee Injury or Pain _____</p> <p><b>H. MEDICINE/ DRUGS/ ALCOHOL:</b></p> <p>Are You Taking Medicine Regularly _____</p> <p>Are You Currently Using Illegal Drugs or Harmful Substance _____</p> <p>How Much? _____</p> <p>How Often? _____</p>
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I acknowledge that the Alabama Trucking Association Workers' Compensation Self-Insurance Fund/ Alliance Interstate Risk program mandates that if I refuse to submit to or cooperate with a blood or urine test after an accident, I shall forfeit workers' compensation benefits. INT. \_\_\_\_\_ subject to state-specific claim jurisdiction

I acknowledge that misrepresentation as to preexisting physical or mental conditions may void my Workers' Compensation benefits. INT. \_\_\_\_\_ subject to state-specific claim jurisdiction

Explanation of all yes answers, use back page if needed: \_\_\_\_\_

The Undersigned understands that the Alabama Trucking Association Workers' Compensation Self-Insurance Fund ("ATA Comp Fund") and Alliance Interstate Risk program ("AIR") requires the execution of a post job offer medical questionnaire. The Undersigned agrees to complete said questionnaire truthfully and agrees to allow the disclosure of it to the Company and/or ATA Comp Fund/AIR to determine whether the Undersigned is fit for duty. For DOT covered drivers, under 49 CFR 391.11, the motor carrier makes the final driver fitness-for-duty determination.

The Genetic Information Nondiscrimination Act of 2008 ("GINA") prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of employees or their family members. In order to comply with this law, we are asking that you not provide any genetic information when responding to this request for medical information. "Genetic information," as defined by GINA, includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.

Signature of Applicant: \_\_\_\_\_ Company Representative: \_\_\_\_\_

# MISREPRESENTATION DEFENSE

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## Three Elements to asserting this defense:

- The employee must have *knowingly* and *willingly* made a false representation as to his or her physical condition
- The employer must have relied on the false representation in hiring the employee
- There must have been a causal connection between the false representation and the later injury

***Burden of proof is on the employer and employer must establish the causal relationship by medical testimony.***

Medical Records Sweeps

Offer Light Duty Work at employer or through RTW vendor

Identify Non-Compliance Issues - *terminate benefits for non-compliance*

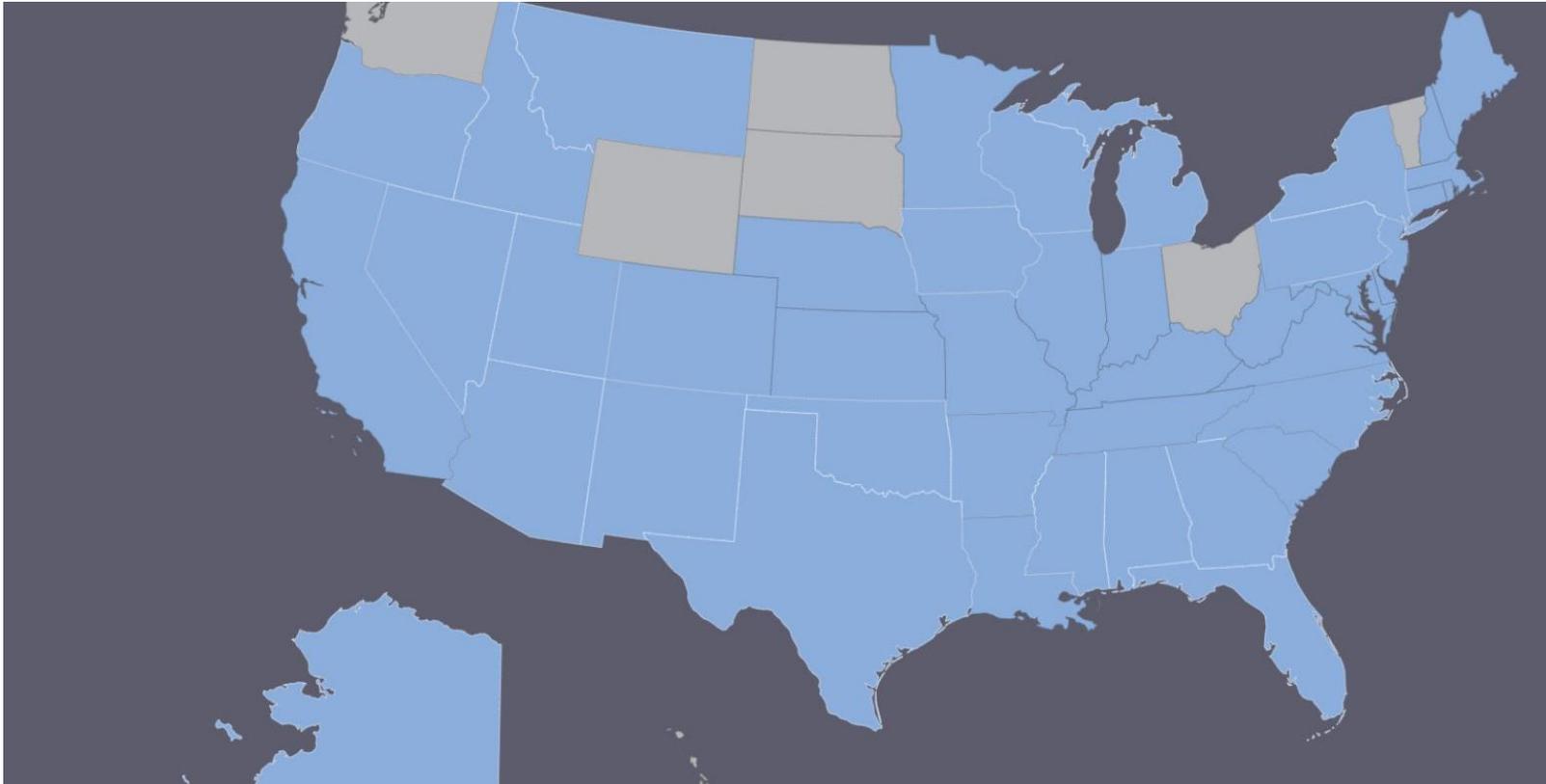
Push for MMI

Utilize NCM

Surveillance, social media sweeps

Have trusted defense counsel

# SUGGESTIONS FOR HANDLING CHALLENGING CLAIMS



ALLIANCE INTERSTATE RISK

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WORKERS' COMPENSATION

THANK YOU!