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

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What's Ahead?

- Injury Notification and Response
- Medical Care and Provider Direction
- Claim Investigation and Communication
- Return to Work
- Missouri Affirmative Defenses
- Pointers for Challenging Claims

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

When the injury is clearly *undisputed*:

- Is it an **emergency?**
- Report catastrophic claims to the Carrier ASAP
- Report all other claims within 24 hours
- Send injured worker to a WC-approved medical provider
  - Direction of medical care
- Post-accident drug screen, even if they don't request treatment
- Submit a completed FROI to the carrier
  - 30 day rule

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

When the injury is *questionable*:

- Supervisor interview of injured worker: How? When? Why?
  - If possible, obtain written statement from the injured worker
- Witness statements – the sooner the better!
- Surveillance video? Event recorder footage? Obtain immediately
- Safety policy violation?
- Drug screen results

MEDICAL TREATMENT

- **GOOD NEWS: DIRECTION OF MEDICAL CARE!**
  - **TPA can assist with identifying preferred providers**
  - **Wage replacement to attend medical visits?**
  - **Mileage to attend medical visits?**

INITIAL INVESTIGATION

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

But wait, there's more…

- Injured worker's personnel file
  - PJOMQ, employment application, DOT physicals, jurisdictional agreement, owner/operator agreement, etc.
- Any relevant safety policies
- Injured worker's work status
- Payroll records for wage statement
  - 13 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

- 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

THE INJURED WORKER HAS TEMPORARY MODIFIED DUTY RESTRICTIONS… NOW WHAT?

RETURN TO WORK AT THE EMPLOYER

- Mod duty work is offered by the employer and is ***accepted***
  - Bona fide job offer
  - Must be within restrictions provided by authorized treating physician
  - Injured worker is paid via payroll by employer
  - If earning less than pre-injury AWW, carrier is responsible for issuing TPD benefits

- Mod duty work is offered by the employer and is ***refused***
  - *Offers of Suitable Employment*
  - Contact Carrier ASAP as benefits may be suspended
  - Make sure to document everything in writing!

THE INJURED WORKER HAS TEMPORARY MODIFIED DUTY RESTRICTIONS… NOW WHAT?

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

- Employer/Employee Relationship
- Alcohol/Controlled Substances
- Notice Defense
- Failure to Use Safety Devices
- Idiopathic / Equal Exposure
- Going and Coming

EMPLOYER / EMPLOYEE RELATIONSHIP

General / Subcontractor Liability

Independent Contractor

Owner / Operators covered under WC Policy

Alcohol and Controlled Substances

- **Total defense** – must show the use of the alcohol or controlled substances was the proximate cause of the accident RSMo. 287.120.6(2)

- **Partial defense** – employer is entitled to a **50% reduction** in benefits (medical, TTD and PP) if Employer has policy against drug use **and** injury was sustained in conjunction with the use of alcohol or nonprescribed controlled drugs RSMo. 287.120.6(1)
  - Sliding scale of reduction

Safety Defenses

- **Where the injury is caused by:**
  - The failure of the employee to use safety devices where provided by the employer; or
  - From the employee's failure to obey any reasonable rule adopted by the employer for the safety of employees.
- **The compensation provided herein shall be reduced <u>at least 25% but not more than 50%</u> IF:**
  - Employee had actual knowledge of the rule; and
  - Employer had, prior to the injury, made a reasonable effort tot cause his or her employees to use the safety deices and to obey the rule.

IDIOPATHIC / EQUAL EXPOSURE

- **Idiopathic** – “peculiar to the individual, innate”

- **Equal Exposure** – whether an Employee is equally exposure to the risk factor at work and in their normal, non-employment life

- **Considerations:**
  - What were they doing at the time? Do they do this in their regular life?
  - Is there anything about the employment that contributed to why the accident occurred?

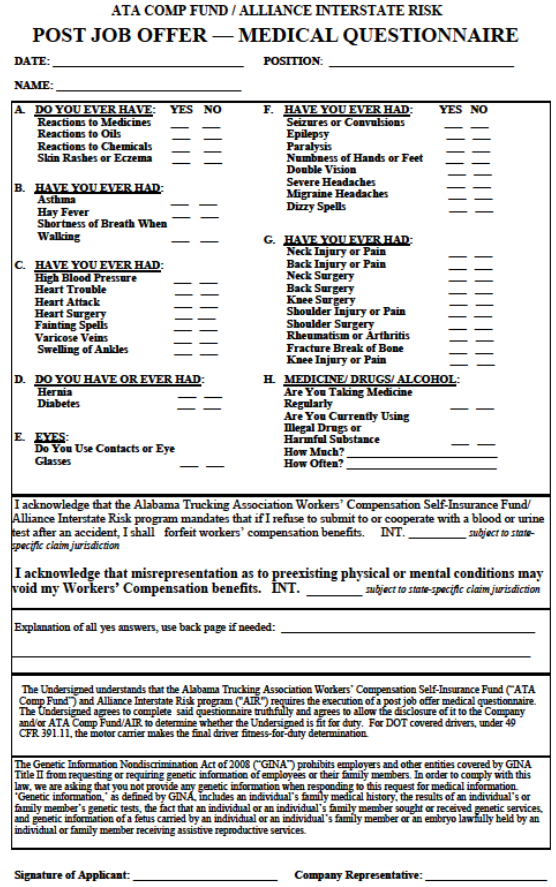
BEST PRACTICES: PJOMQ

Post Job Offer Medical Questionnaire

- Should include questions regarding:
  - Prior injuries / illnesses
  - Prior surgeries and surgical recommendations
  - Prior disability benefits, permanent restrictions, impairment ratings

Consider sending for post-hire physicals / evaluations

Potential for Misrepresentation Defense…



ATA COMP FUND / ALLIANCE INTERSTATE RISK

POST JOB OFFER — MEDICAL QUESTIONNAIRE

DATE: _____ POSITION: _____

NAME: _____

	YES	NO
A. DO YOU EVER HAVE:		
Reactions to Medicines	__	__
Reactions to Oils	__	__
Reactions to Chemicals	__	__
Skin Rashes or Eczema	__	__
B. HAVE YOU EVER HAD:		
Asthma	__	__
Hay Fever	__	__
Shortness of Breath When Walking	__	__
C. HAVE YOU EVER HAD:		
High Blood Pressure	__	__
Heart Trouble	__	__
Heart Attack	__	__
Heart Surgery	__	__
Fainting Spells	__	__
Varicose Veins	__	__
Swelling of Ankles	__	__
D. DO YOU HAVE OR EVER HAD:		
Hernia	__	__
Diabetes	__	__
E. EYES:		
Do You Use Contacts or Eye Glasses	__	__
F. HAVE YOU EVER HAD:		
Seizures or Convulsions	__	__
Epilepsy	__	__
Paralysis	__	__
Numbness of Hands or Feet	__	__
Double Vision	__	__
Severe Headaches	__	__
Migraine Headaches	__	__
Dizzy Spells	__	__
G. HAVE YOU EVER HAD:		
Neck Injury or Pain	__	__
Back Injury or Pain	__	__
Neck Surgery	__	__
Back Surgery	__	__
Knee Surgery	__	__
Shoulder Injury or Pain	__	__
Shoulder Surgery	__	__
Rheumatism or Arthritis	__	__
Fracture Break of Bone	__	__
Knee Injury or Pain	__	__
H. MEDICINE/ DRUGS/ ALCOHOL:		
Are You Taking Medicine Regularly	__	__
Are You Currently Using Illegal Drugs or Harmful Substance	__	__
How Much? _____		
How Often? _____		

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:** _____

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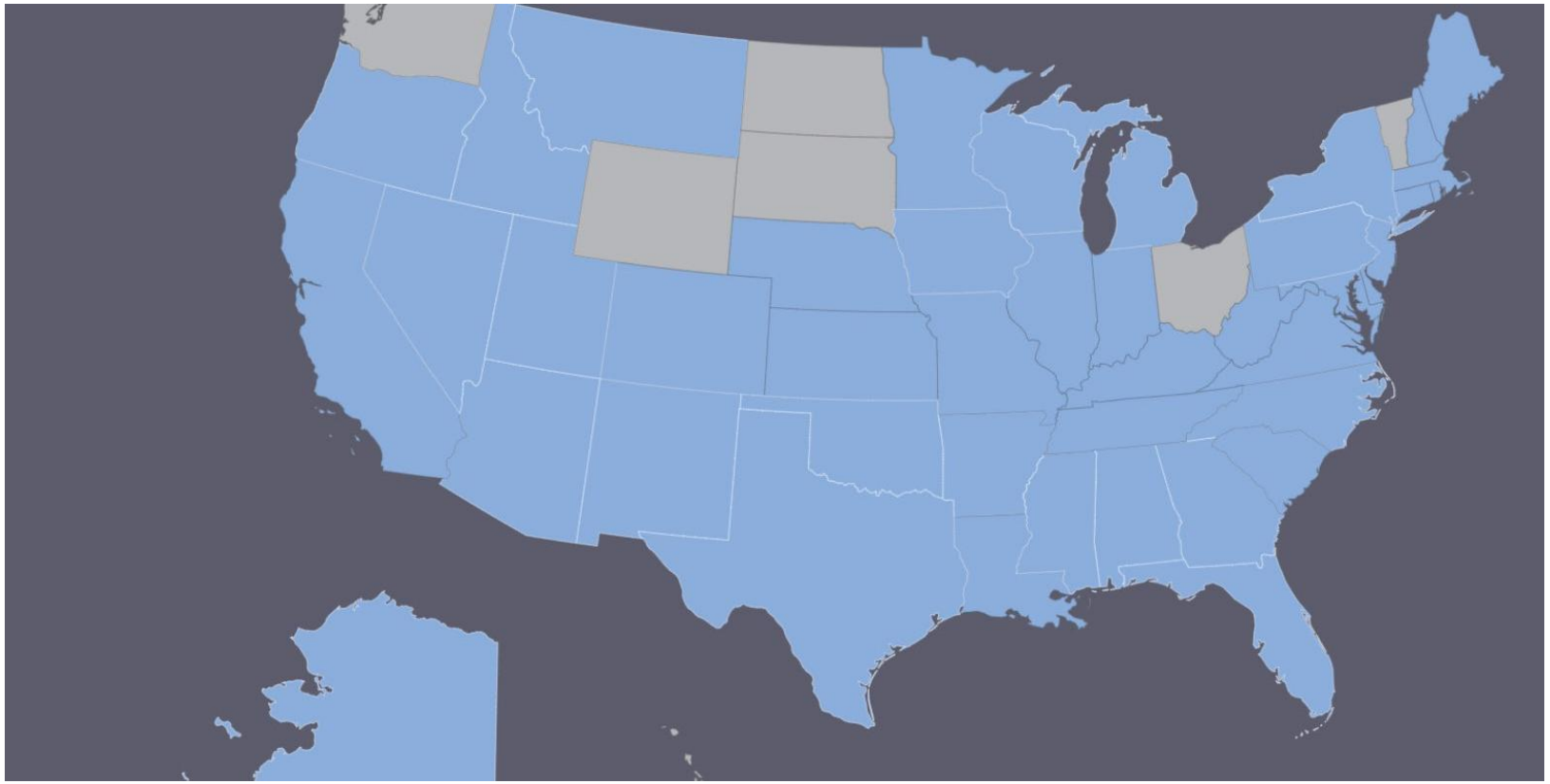
Signature of Applicant: _____ **Company Representative:** _____

Suggestions for Handling Challenging Claims

- Medical Records Sweeps
- Offer Light Duty Work
- Identify Non-Compliance Issues
- Push for MMI
- Utilize NCM
- Surveillance, Social Media Sweeps
- Have Trusted Defense Counsel



ALLIANCE INTERSTATE RISK

WORKERS' COMPENSATION

Thank You!