

Ten Most Common Workers' Compensation Misconceptions

Workers' compensation laws continue to become more complicated. Many employers cannot control their costs nor stay in compliance because they do not know or understand the law. The following are the ten most common misconceptions regarding workers' comp and the correct explanations of the law.

1. Employees should be treated by their own physician for all work-related illness or injury.

You have the right to select the doctor who provides care for your employee's work-related injuries or illnesses for the first 30 following an incident, unless the employee has predesignated his/her personal physician. You have similar control for up to 180 days of treatment (or 90 days if you do not provide health insurance) if you provide occupational health services through an HCO and the employee has not predesignated a personal physician.

2. Time away from work for work-related illness or injury is not included in other protected leaves of absence.

Employers subject to FMLA/CFRA should advise eligible employees that workers' compensation leave runs concurrently with leave under FMLA/CFRA for up to 12 weeks and give them applicable family medical leave notices.

3. If I offer an injured employee temporary modified duty, I must pay his/her regular rate of pay.

An offer of temporary modified duty to an employee who is receiving temporary disability benefits does not have to be at his/her regular salary. The pay rate can be appropriate for the modified job and the employee can receive partial temporary disability pay from workers' compensation.

4. I must continue my employee's health benefits for the entire duration of workers' compensation leave.

Employers with health plans subject to ERISA do not have to continue health benefits for the duration of an employee's workers' compensation leave. Benefits must be continued for as long as you would provide them for employees on non-occupational medical leaves. Thereafter, COBRA rights must be offered.

5. Workers' compensation insurance only covers injuries occurring on the company's premises.

Injuries that occur outside the workplace, even in an employee's home, may be covered by workers' compensation, provided they arise out of employment and occur in the course of employment. This may include injuries that occur during commuting to and from work, if you control the employee's route of travel or the employee is allowed to engage in work activities during the commute, such as cell phone calls.

6. Stress in an employee's personal life is a major factor in workers' compensation stress claims.

In order to receive workers' compensation for stress, the employee must show that work accounts for more than 50% of all sources of stress. Thus, evidence that the majority of stress factors can be attributed to non-work circumstances is an effective defense against stress claims

7. A new employee who is unable to cope with the pressures of his job is a prime candidate for a successful workers' compensation stress claim.

An individual who has been employed by you for less than six months will not be compensated for work-related stress, unless the stress results from a sudden and extraordinary employment condition. Also, lawful, non-discriminatory, good faith personnel actions (such as discipline and terminations) are not grounds for stress claims. Early action should therefore be taken when a new employee is identified as unable to cope with a job.

8. First aid cases need not be reported to my workers' compensation carrier.

If an injured worker requires only first aid treatment and suffers no time lost from work beyond the date of the illness or injury, you may pay the doctor for services direct, and avoid payment by your workers' compensation carrier. The Doctor's First Report must still be filed.

9. I can refuse continued employment to an employee unless and until he/she fully recovers from a work-related injury.

An employee who is disabled as a result of a work-related illness or injury will likely be considered disabled under state and/or federal law. Employers must comply with disability discrimination laws and provide reasonable accommodation to such injured workers who can perform essential job functions. Failure to do so may result in a claim under both workers' comp law and disability discrimination law. However, you are not required to create a position or displace another employee.

10. A case of serious injury or death from a work-related incident need not be reported to Cal/OSHA until all the details have been identified.

You must report any work-related serious injury or death to Cal/OSHA within 8 hours after you know of the incident. Failure to properly report can result in heavy fines and criminal prosecution.