WORKERS’ COMPENSATION 101

Timothy B. Armstrong
Armstrong & Sigel, LLP
INJURY: An event or incident resulting in the need for medical treatment exceeding first aid and/or lost time from work.

Types of Injuries:

1. Specific Injury ➔ Slip and fall, etc.
2. Cumulative ➔ Repetitive type injuries (carpal tunnel syndrome)

➢ Can include occupational diseases.
COMPENSABILITY:

• AOE/COE - To be compensable, the injury must **ARISE** out of and occur within the **COURSE** of employment.

  ➢ **ARISE element**: Injury must “Arise” out of the circumstances of employment.

  ➢ **COURSE element**: The injury must also occur within the “course” of the injured employee’s duties.
Claim Form: (DWC-1):
Must be provided to injured employee within one working day of knowledge of injury: Claim Form must be provided personally or by 1st Class Mail.

1. If claim not immediately accepted, delay must be issued within 14 days of employer knowledge.

2. Denial must be issued within 90 days of knowledge or claim is presumed compensable.

Employer’s Report of Occupational Injury of Illness:
Must be submitted to OSHA within 5 days of knowledge
THRESHOLD DEFENSES

JURISDICTION

A. Employment
   1. Independent Contractor
   2. General/special employment - Temporary employment agencies

B. California - Jurisdiction
   1. Residence
   2. Contract of Hire
   3. Place of Injury
DEFENSES

A. Statutory
1. Intoxication
2. Self inflicted injury
3. Initial physical aggressor
4. Commission of a felony
5. Recreational activity
6. Post-termination
7. Personal attack
8. Good faith personnel action (psyche only)
9. Six month employment requirement (psyche only)
10. Horseplay
11. Going & coming rule
12. Deviation from special errand or route
13. Statute of Limitations
DEFENSES (cont.)

B. Medical
1. Dueling doctors

C. Factual
1. Mendax, mendax, igni bracae
(Liar, Liar, Pants on Fire)
RED FLAGS

1. Monday morning - Post vacation injuries
2. Short-term employees
3. Delay in reporting
4. Retaliation claims
5. Unwitnessed events
6. Low wage earners - Part-timers
RED FLAGS (cont.)

7. Employees with concurrent employment or self-employment
8. Injury repeaters
9. Vague or ambiguous description of injury (i.e., cannot recall time, place, date, cause, etc)
10. Inconsistent mechanism of injury
11. Prior claims history (with previous employer) knowledge of system
12. First notice of injury is from attorney’s letter
INVESTIGATION

A. Investigation Report - created with input of injured employee, if possible:

1. When
2. Where
3. How
4. Why
5. Witness/es
6. I.D. any evidence
B. Interview employee:

1. Obtain statement before referring out for the medical treatment, if possible

2. Ask employee for a handwritten statement including an explanation of any inconsistencies (i.e., late reporting to employer)

3. Identify mechanics of injury
C. Identify Witnesses:

1. Name, home address, and telephone number of all witnesses

2. Have each witness prepare and sign a statement describing their knowledge of injury.

3. Have statements witnessed by another employee (if significant)

4. Obtain any relevant evidence from witness regarding the employee

5. (i.e., recreational activities or hobbies—prior injury, etc)
D. Identify:

1. **Documents** - police reports, sources of medical records (i.e., applicant’s treating doctor)

2. **Physical evidence** - photo, machinery, etc.
E. Preserve:

1. Secure and isolate any relevant physical evidence

2. Forward copies of documents to claims administrator
LABOR CODE 132(a)

Prohibits an employer from discriminating against an employee that either files a workers’ compensation claim or makes known their intention to do so. Discrimination not necessarily limited to termination, can also include:

1. Loss of employee benefits/or seniority
2. Re-assignment
3. Disciplinary action

Essentially any detrimental action taken by the employer against an injured worker that is determined to be the consequence of an industrial injury can be the basis for an allegation of discriminatory misconduct under Labor Code § 132(a).