

# Benefit Insights

## ADA Amendments Reinstate Original Broad Purpose of the Law

Both Houses of Congress have overwhelmingly passed and President Bush has signed into law the ADA Amendments Act of 2008. This legislation addresses court and Equal Employment Opportunity Commission interpretations of the Americans with Disabilities Act that have, over the years, narrowed certain ADA definitions and in general made application of the ADA more restrictive than was originally intended.

The "Findings and Purposes" section of the legislation cites specific U.S. Supreme Court cases that have led to lower courts "incorrectly" ruling in individual cases that people with a range of substantially limiting life impairments are not people with disabilities. The amendments do retain the ADA's definition of "disability":

- a physical or mental impairment that substantially limits one or more of the major life activities of the individual;
- a record of such an impairment; or
- being regarded as having such an impairment.

**Furthermore, the amendments specify that the definition of "disability" be construed "in favor of broad coverage."**

However, the amendments add language that provides a non-exhaustive list of major life activities, including routine activities such as caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating and working. They also clarify that a major life activity includes the operation of major bodily functions. Furthermore, the amendments specify that the definition of "disability" be construed "in favor of broad coverage." This means, for example, that an impairment that

substantially limits one major life activity need not limit other major life activities in order to be considered a disability, and that an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

These provisions address the U.S. Supreme Court case of Toyota Motor Manufacturing of Kentucky v. Williams, which narrowly defined "major life activity" as one that is of central importance to most people's lives. The Williams case also required that, in order for an impairment to be viewed as "substantially limiting"



a major life activity, it must prevent or severely limit the individual from performing the activity. The amendments clearly apply a much broader standard for ADA protection to apply.

*continued on page 3*

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## ***Tips on Spotting Workers' Comp Fraud***

Spotting the red flags that indicate possible workers' compensation fraud by employees is the best way to prevent fraud from occurring. Knowing how to spot the red flags is a proactive way to nip a potentially costly but false workers' compensation claim before it begins.

Most instances of workers' compensation fraud occur when the claimant:

- Deliberately falsifies information about how an injury occurred, such as claiming the injury was work-related when it was not,
- Deliberately amplifies the seriousness of an injury to falsely prolong the claim, or
- Deliberately continues to collect entitlements while working on the sly for their own purposes or with another employer.

### ***Common Signs of Workers' Compensation Fraud***

- **Lack of witnesses** – The majority of people claiming false work-related injuries usually do not have witnesses to support their claim. Vigilance is especially necessary when the employee normally works with other co-workers who should have witnessed the injury but did not.
- **Contradictory accounts of how the injury occurred** – This can be particularly blatant when any of the doctor's, employer's, or witnesses' reports contradict the employee's report of the incident. Another red flag should be raised when the employee is deliberately vague about how the injury occurred.
- **Dissatisfied employees** – Unhappy employees can be motivated to make a false workers' compensation claim, especially if a recent incident such as a reprimand, changed responsibilities, or a possible demotion has occurred.
- **Time occurrence of the injury** – Many false workers' compensation claims are submitted before a potential strike, project conclusion, strike, or possible layoff. Many false claims also happen to be submitted on either a Friday or a Monday.
- **Inconsistent injury** – The nature and extent of the injury is not consistent with their duties or type of job performed.
- **Inconsistent reporting procedures** – Occurs when there is an inexplicable gap between when the injury occurred and when the employee reported the injury. Be alert if crucial injury data is absent, such as no definite time reported when the injury happened or if other vital dates are absent.

- **Lack of contact** – The employee cannot be easily contacted by the claims rep or employer. Continuous lack of contact might be indicative the employee is working elsewhere while receiving ongoing entitlements. Another red flag should be raised when the employee immediately moves to another state or foreign destination after going on workers' compensation.

- **Lack of cooperation** – The employee deliberately delays or avoids medical treatment or medical diagnostics needed to clarify the medical condition of the employee's alleged injury.

- **Physical signs** – The employee exhibits physical signs of working such as dirt or grease on their hands or fingernails, work clothes that exhibit traces of work, or scrapes or bruises.

- **Newer employee** – From a statistics vantage, new employees are more likely to commit workers' compensation fraud than senior employees. The most proactive means to counter this is to carefully screen all new employees in the hiring process beforehand.

Although red flags can help minimize potential workers' compensation losses from fraud, your best strategies to counter this problems should include:

1. Implement a Zero Tolerance policy for workers' compensation fraud and be sure your employees know about it.
2. Take a hands on approach with all workers' compensation claims and become especially vigilant when red flags appear.
3. Keep in regular communication with your injured employee.
4. Have a consistent new employee screening process. Offer new employees a thorough orientation and communicate a comprehensive explanation of the workers' compensation process along with the employee's rights and responsibilities.

Fraudulent workers' compensation claims are a severe drag on the costs of any business. By being aware of how to spot potential problems and being proactive at the outset can help you reduce workers' compensation fraud in the workplace.



## Preparing for Your Workers' Compensation Premium Audit Can Save You Money

When your insurance company issued your workers' compensation policy, you paid an estimated premium for the term of the policy. This rate was based on the nature of your business and your estimated payroll. However, once your policy expires, the insurance company conducts a premium audit to gather data about your actual costs for the applicable policy term. If there is any shortfall, you are responsible for the difference between the original estimate and actual premium.

Naturally, you want to keep the difference between the estimated and actual rate as low as possible. Consider the following list of tips:

- Have all necessary records available for the auditor.
- Break down your payroll by classification code so that the auditor doesn't have to classify any unexplained payroll. Leaving the decision up to the auditor could result in having the payroll placed in the highest classification.
- Separate overtime wages from regular wages. This allows the auditor to discount the overtime wages back to regular wages.
- Exclude tips, severance pay, meal and travel advances and bonuses paid for inventions, because none of these are included in workers' compensation premium calculations.
- Divide uninsured subcontractor billings into material and labor costs since you are only required to pay premiums for labor. If you don't have an actual split, figure on 50 percent for each. One important exception to this is for heavy equipment operators who are employed as subcontractors. In this case, use a third of their total billings as reportable labor costs.
- Don't include short- or long-term disability payments in the data given to the auditor because these are excluded from premium calculations.

- Be sure to cap all covered officers' payroll at the maximum for your state.
- Exclude wages paid to employees who are on active military duty because their wages aren't included in premium calculations.
- Present the auditor with all Certificates of Insurance for covered subcontractors so you aren't charged for them.
- Classify all employees in the lower-rated payroll classifications if you aren't sure about where they should be classified. However, you should never deliberately misclassify an employee.
- Be sure you make the auditor aware of all employees who do only clerical work and are physically located away from the shop floor. These employees qualify to be classified in the lower rated clerical codes. If your clerical staff aren't physically separate from the shop, you should consider changing their work location.



### **continued from page 1...ADA Amendments Reinstate Original Broad Purpose of the Law**

In *Sutton v. United Airlines*, the U.S. Supreme Court ruled that mitigating measures, such as medication or devices, must be taken into account in determining whether a person is substantially limited in a major life activity. Under such an interpretation, for example, an individual with epilepsy was not protected by the ADA if he or she took medication that controlled the condition. The amendments specify that, with the exception of ordinary eyeglasses or contact lenses, the determination of whether an impairment substantially limits a major life activity is to be made without regard to the ameliorative effects of mitigating measures. Examples given of such mitigating measures include medication, medical supplies, low-vision devices, prosthetics, hearing aids, mobility devices, oxygen therapy equipment, and the like; use of assistive technology; reasonable accommodations or auxiliary aids or services; or learned behavioral or adaptive neurological modifications.

The amendments also remove some language from the ADA that courts had relied upon to interpret the law narrowly. For example, the original ADA included a finding that approximately 43 million Americans have one or more physical disabilities, and that "individuals with disabilities are a discrete and insular minority." In both the *Williams* and *Sutton* cases, the U.S. Supreme Court cited this language to set a strict standard for being protected by the law.

As a result of these changes, many more employees may be considered disabled under the ADA and thus fall under the law's protections, including the requirement that an employer provide reasonable accommodation. With these changes to the ADA, now would be a good time to review your company's policies, procedures and handbooks to make sure your company is in compliance with these legal requirements.

## Consumer Involvement Critical for Health Care Cost, Quality Control

Fewer than half of U.S. adults have the confidence, knowledge and skills to proactively manage their health care, according to a report from the Center for Studying Health System Change (HSC). This type of consumer engagement is critical to efforts to control the cost and quality of health care.

Data for the report came from the HSC 2007 Health Tracking Household Survey, which sampled more than 15,500 adults. Individuals contacted were asked 13 questions to determine their Patient Activation Measure (PAM), an assessment of an individual's knowledge, skills and confidence in managing their health. Based on answers to these questions, the surveyed individuals were assigned to one of four levels of patient activation: 1—passive/not confident enough to play an active role in their own health; 2—lack basic knowledge and confidence in the ability to manage their own health; 3—taking some action to manage their health, but still lack some confidence/skills; and 4—have many of the behaviors necessary to manage their health, but may not be able to maintain these behaviors in times of stress.

Only 41 % of the surveyed adults were at the highest level of patient activation, according to the report. At this level, “people still struggle to maintain healthy behaviors but tend to have the skills and confidence to manage their health in a more proactive way.”

Individuals who were younger, more educated and at higher income levels tended to have higher levels of patient activation, as did those with private health insurance. Individuals with chronic health conditions also had higher patient activa-

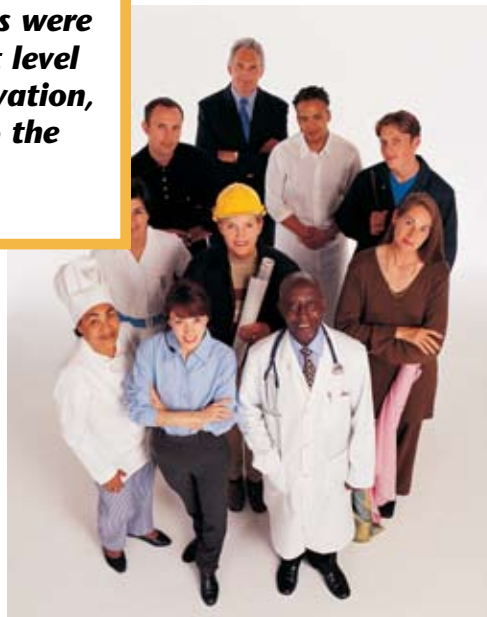
tion levels. However, the report notes that much demographic variation was found within each of the four patient activation levels, meaning that characteristics like less education should not be seen as a barrier to an individual being able to attain the knowledge, skills and confidence of a higher activation level.

What's the benefit in trying to move individuals to attain higher levels of patient activation? According to the report, research shows that higher levels of patient activation are associated with healthy behaviors, preventive care and increased self-management of health conditions, and with seeking and using relevant health information. For example, 94 % of individuals rated at the highest level of patient activation read about possible side effects when getting a new prescription, compared to 74 % of individuals rated at the lowest level of patient activation.

The bottom line is this: Having involved and engaged consumers is key to controlling health care utilization, costs and outcomes. As the report states: “Payment reform and structural changes to care delivery only address one side of the equation.

The other side is consumers and patients becoming more informed decision-makers and managers of their health.”

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