

COMPCONTROL

The Official KMIT Member Newsletter

Avoiding Attorney Involvement With Workers' Compensation Claims

By Timothy K. Michels*

Workers' compensation was created as a no-fault system meant to benefit both employers and employees. In exchange for giving up the right to sue the employer, an injured employee is paid medical and indemnity benefits for compensable injuries.

So, if no-fault is at the heart of the workers' compensation system, why is there increasing attorney involvement and litigation today?



While it is important to remember that every injured worker in Kansas [edit] has a right to legal counsel, it is also worth remembering that *attorney involvement isn't always inevitable*.

Employers would be well advised to recognize the following factors that contribute to increased litigation and attorney involvement:

1. The employee feels the claim is unfairly denied:

Many injured workers consult an attorney only after the insurance company has denied their claim. To create a sense of fairness in the process, insurers must strive to fully investigate each claim before making a compensability decision. Direct contact should be made with the employer, employee, and any witnesses to help determine exactly what happened. A careful review of pertinent medical records provides details about the mechanics of the injury and details about prior medical conditions.

Employers can help by providing complete injury reports to their insurer as quickly as possible.

2. No contact or "care" by the employer:

Repeated studies have shown the importance of prompt contact with an injured worker in reducing litigation. *It is natural for injured workers to have questions and worries about their livelihoods, their medical needs, and the workers' compensation process.* Unanswered questions serve to increase their fear. Employers **can have a positive** impact by periodically calling injured employees to ask how they are doing and to remind them that they are valued and missed.

3. Overbearing or intrusive contact by the employer:

Contact with the employee during convalescence can have a positive impact, but *harm can be done if the employee perceives the contact as unreasonable.* Avoid questioning the severity of the employee's injury, making excessive demands for documentation of the injury, or making the employee return to work in a light duty capacity when he or she is not physically ready.

4. Unpaid bills and late checks:

Injured workers will usually seek counsel from an attorney if they incur expenses directly, do not receive checks due them, or receive collection notices from medical providers. Bills are often misdirected to the employee or employer instead of being directed to the insurer, so *make sure employees and their medical providers know where bills are to be sent.*

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CompControl is a publication of the League of Kansas Municipalities and the Kansas Municipal Insurance Trust for the purpose of educating and informing cities about loss control methods and risk management. If you have any questions concerning KMIT workers' compensation or risk management that you would like to see answered in this newsletter, please direct those inquiries to:

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Letter from the Pool Administrator

Dear KMIT Members and Others,

Happy Summer All! Hope your long summer days ahead are full of fun in the sun (with maybe a bit of rain here and there).

The face of the KMIT pool has changed quite a bit lately. First, as noted last time, KMIT added **eleven new members** this spring. And, Dave Alfaro said goodbye to the Board (as he assumes a new professional position with his county), with **Steve Archer** (Arkansas City) being appointed to fill out Dave's term. Plus, **Mike Smith** (msmith@lkm.org) has come on board with the League and KMIT, replacing soon-to-be-departed Mark Morris, who is headed back home to Russell to enter the private sector. AND, even our League/KMIT accountant is new—**Phyllis Mitchell** (pmitchell@lkm.org) started with the LKM a few weeks ago.

In this edition, we have reprinted a really good article by **Timothy K. Michels**, which I discovered in the Maryland Journal. Mr. Michels' 'six factors' of "**Avoiding Attorney Involvement With Workers' Compensation Claims**" are right on target, and the entire piece is written in a concise, yet entirely complete and understandable fashion.

The issue of why cities must pay premium for contractors, and even 'self-employed' contractors, who cannot provide proof of work comp coverage (a certificate) to the member city, has come up in the past, and came up in several cities again this year. The Board had a full and frank dialogue on this subject and voted unanimously to continue the practice of requiring proof of coverage or charging premiums. If your city has *any* additional questions, please contact me (316-259-3847 or dosenbaugh@lkm.org).

Your KMIT Board of Trustees meets next in Cheney (**Ty Lasher**, host) in late June, and then again in late August in Eudora (**Cheryl Beatty**, hostess). And, it's not too early to mark your calendars for the **KMIT Annual Meeting**, held, as always, in conjunction with the LKM Annual Conference—this year's KMIT meeting will be on Monday afternoon, **October 9**, in Topeka.

Until next time...



Pool Administrator

KMIT would like to welcome **Mike Smith**. Mike has worked in and around local government for the past 30 years. After receiving his B.B.A. and M.P.A. from the University of Missouri-Kansas City, he worked for cities in Missouri, Oregon, and Colorado in management roles from director of administrative services to city manager. Mike recently completed his J.D. from Washburn School of Law and has been admitted to the Kansas bar. Mike continues to enjoy local government and looks forward to working with the League and all of the KMIT member cities. Welcome aboard Mike!



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5. Failure to talk about injuries before they occur:

Employers can reduce uncertainties and fears about the consequence of injuries by explaining ahead of time what employees can expect if they are injured. New employee orientation sessions and periodic discussion of workers' compensation during safety meetings can help reinforce your concern for your employees' health and welfare.

6. Lack of trust:

The workers' compensation system is complex and can be frightening to someone unfamiliar with its rules and procedures. If the employer does not honestly and openly answer injured workers' questions, or if injured workers are denied timely access to benefits, is it any wonder that they turn to others for assistance with their claims?

7. Lack of modified duty or harassment after the return to work:

A temporary light-duty position can help return injured workers back to the job sooner than would otherwise be possible, but make sure the assignment is approved by the employee's doctor. The job should not be developed as punishment for filing a workers' compensation claim; nor should the employee be asked to tolerate abuse from his co-workers because of the injury or the temporary job modifications.

8. Employee dissatisfaction:

Happy employees want to get better and return to work. *Unhappy employees are more likely to find ways to avoid a return to work.*

9. The accident that should never have happened:

Preventing an injury avoids the problem altogether. By holding regular safety meetings, working with loss control consultants, and having an action plan ready to respond to an accident, you can help minimize the risk of injury to your employees.

*Timothy K. Michels (tmichels@iwif.com or 410-494-2300) is the Executive Vice President of Claims for IWIF Workers' Compensation Insurance (www.iwif.com), the largest provider of workers' compensation insurance in Maryland.

Editor's note: This story was edited slightly, with the author's permission, including added emphasis in several places.

KMIT Requirements for Contractors and 'Contracted Employees'

The question of which contractors and 'contracted employees' are required to be covered (and accounted for, through payroll audits) by KMIT members has come up again during the recent annual payroll auditing process and further clarification appears to be in order.

First, as a matter of tax law, ALL contractors and 'contracted employees,' *other than those which are incorporated*, must be issued an IRS 10-99 tax statement each year. Cities must comply with this law, a fact which really has nothing to do with KMIT.

Secondly, Kansas work comp law, in fact, does not require 'self-employed contractors' to carry work comp insurance on themselves (though affordable insurance is available, generally at the minimum premium of \$750).

However, while the state does not require work comp coverage to be carried by self-employed contractors, that fact *does not necessarily relieve the work place 'employer' (in this case, a KMIT city) from being responsible* for work comp expenses if the 'self-employed' person gets injured while working at or on behalf of the city.

Accordingly, the KMIT payroll auditors (The Audit Store) do require that KMIT cities *must provide one of the following* on ALL contractors who are issued a 10-99, either: (1) a certificate of work comp insurance coverage; or, (2) an accounting of the total hours worked, or amount of labor paid (for the city), during the audited year, by/to that particular company or 'self-employed' person. This means that KMIT cities must pay premiums (based upon hours worked or labor paid) for all '10-99 contractors' who cannot provide a certificate of coverage to the city.

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The KMIT Board of Trustees, acting at their April meeting (in Osage City), had a full discussion of this topic, and voted unanimously to reaffirm the above practice.

It is the position of the KMIT Board of Trustees, that each KMIT member city should pay a portion (through its premium payments) of all the risk to the pool for which each is responsible, including the risk associated with the use of independent contractors, for the continued well being of, and in the overall best interest of, the KMIT workers' compensation pool.

Please contact Pool Administrator Don Osenbaugh, dosenbaugh@cox.net or 316-259-3847, with any questions.

DeHaven is "Mayor of the Year"

Mayor Keith DeHaven, Sedgwick, has been chosen as "**Mayor of the Year**" by a vote of his peers in the Kansas Mayors Association. Keith has been a member of the KMIT Board of Trustees since 2001 and is the **2005/2006 KMIT President**.

Keith has served on the Sedgwick Governing Body for a total of 35 years; he has been mayor over three stretches: 1967-1981, 1985-1989, and from 1993 to the present. As noted in the May 25 edition of *The Harvey County Independent*, "In the past five decades, he has given leadership to and participated in no fewer than 20 civic and government organizations."

Mayor DeHaven was presented the award at the annual Kansas Mayors' Conference held on May 19-20, in conjunction with the League's 'Leadership Summit,' at the Grand Prairie Hotel and Conference Center in Hutchinson.

Congratulations, Keith!

Safe Cities as of May 31, 2006

If you would like assistance returning an injured employee to work, or need ideas for modified duty, please contact Victoria Vanderhoof, 1-877-502-9897 or victoria.vanderhoof@imacorp.com.

Abilene	Concordia	Girard	Leoti	Palco	Tonganoxie
Admire	Conway Springs	Glen Elder	LKM	Park City	Treece
Allen	Council Grove	Goodland	Lucas	Parsons	Turon
Altamont	Cullison	Grainfield	Maize	Peabody	Ulysses
Andale	Damar	Greeley	Marysville	Princeton	Valley Center
Andover	Derby	Grenola	McFarland	Ramona	WaKeeney
Atchison	De Soto	Halstead	Medicine Lodge	Ransom	Wakefield
Atlanta	Douglass	Hamilton	Melvorn	Reading	Walton
Baldwin City	Eastborough	Hartford	Minneapolis	Roeland Park	Wamego
Belleville	Edgerton	Hays	Mission	Rose Hill	Wellington
Bennington	Elkhart	Hill City	Moline	Russell	Wellsville
Beverly	Ellsworth	Hillsboro	Montezuma	Satanta	
Bird City	Esbon	Hoisington	Mound City	Sedan	
Blue Rapids	Eudora	Holcomb	Neosho Rapids	Sedgwick	
Bonner Springs	Eureka	Horton	Newton	Sharon Springs	
Brewster	Florence	Hoxie	Oberlin	Spearville	
Caldwell	Ford	Independence	Ogden	Spring Hill	
Centralia	Fort Scott	Jetmore	Olpe	St. Francis	
Chautauqua	Fowler	Johnson City	Osage City	Stockton	
Cheney	Frankfort	Kingman	Oskaloosa	Tampa	
Cherryvale	Fredonia	Kinsley	Oswego	Tescott	
Clay Center	Galena	Lenora	Ozawkie	Tipton	

Claims

*Top 5 Frequency and Cost Analysis
January 1, 2006 through May 31, 2006*

<u>By Department</u>	<u>Frequency</u>	<u>Claims Cost</u>
Police	51	\$ 107,286
Street	24	63,656
Fire	23	53,640
Water	22	49,108
Maintenance	21	137,754

<u>By Accident Type</u>	<u>Frequency</u>	<u>Claims Cost</u>
Strain or Injury	50	\$ 144,169
Fall or Slip	31	110,611
Miscellaneous Causes	25	17,021
Occupational Hazard	23	42,638
Cut/Puncture/Scrape	17	7,043

<u>By Body Part</u>	<u>Frequency</u>	<u>Claims Cost</u>
Lower Back Area	22	\$ 69,119
Multiple Body Parts	19	150,354
Fingers	18	29,056
Hand	14	8,012
Shoulder(s)	13	96,971

If you would like a similar breakdown for your city, please contact
Victoria Vanderhoof at 1-800-288-6732

Damaged Videos - HELP!

Recently, IMA has had several videos from our lending library returned that were damaged. Please remove the following videos from your list as they will not be available any longer. Kristi McCosh is in the process of adding more new videos so check the KMIT website after June 1st for an up-to-date list that will include new videos.

When returning videos to IMA, we ask that you use a padded envelope or box to help eliminate the possibility of videos being damaged during shipment. Thanks for your help!

- 83: Bloodborne Pathogens The OSHA Standard
- 282: Preventing Slips & Falls
- 208: Housekeeping Responsibilities
- 292: Personal Protective Equipment Training
- 189: Safety Bite: Machine Guarding
- 229: Hard Hat Safety

KMIT Calendar

June

23 KMIT Board of
Trustees Meeting,
Cheney

August

25 KMIT Board of
Trustees Meeting,
Eudora

KMIT Revenues & Expenses April 30, 2006

Combined Assets

Cash In Bank	\$4,108,872
Premiums Outstanding	431,190
Investments	3,448,154
Prepaid Expenses	<u>19,642</u>
Total Assets	\$8,007,858

Combined Liabilities & Equity

Claims and Accrued Expenses Outstanding	\$ 68,854
Reserved for Losses	1,941,172
Deposits on Premiums	4,326,291
Incurred But Not Reported (IBNR)	<u>1,547,034</u>
Total Liabilities	7,883,351
KMIT Statutory Fund Balance	<u>124,507</u>
Total Liabilities and Equity	\$8,007,858

Welcome Steve Archer

Steve Archer is the newest member of the KMIT Board of Trustees. Steve, who is the Director of Administration for the City of Arkansas City, was appointed by KMIT President Keith DeHaven to replace Dave Alfaro. To learn more about Steve, go to <http://www.kmit.net/index.asp?NID=32>.

Kansas Municipal Insurance Trust

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