

IMMEDIATE INJURY REPORTING:

REASONS, EMPLOYEE HEALTH EXAMPLES, AND SUPPORTING LEGAL & MEDICAL AUTHORITY

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IMMEDIATE INJURY REPORTING DELIVERS BETTER CLAIM OUTCOMES

Texas employers have the option of providing either workers' compensation insurance coverage for on-the-job injuries or voluntarily establishing an injury benefit plan. Such injury benefit plans commonly require employees to immediately report any accident or injury (for example, within 24-hours). As supported by extensive legal and medical authority, immediate injury reporting is in the best interests of employees and co-workers.

Some states' workers' compensation systems also require immediate injury reporting, but many states' workers' compensation systems allow up to 30 days for injury reporting. Such a 30-day timeframe:

- discourages and delays medical treatment for injured workers,
- prolongs employee disability,
- increases the likelihood of injury aggravation and permanent injury,
- inhibits accident investigation (in ways such as the availability of witnesses and valid drug/alcohol testing after some time has passed),
- increases claim costs and medical expenses,
- increases insurance premiums,
- increases the likelihood of fraudulent injury reporting,
- jeopardizes the safety of co-workers, and
- increases liability exposure.

EXAMPLES SUPPORTING IMMEDIATE INJURY REPORTING:

- **Poor Outcome Risk:** Sally, a 35-year-old food service employee, ruptured a bicep tendon while moving boxes. She reported the injury two weeks later, but bicep tendon could not be successfully repaired due to the delay in reporting and treatment.
- **Tendon Risk:** Bobby, a 29-year-old truck driver, cut his finger while securing a load. He applied a band aid at that time, but reported the injury four weeks later due to continued soreness and loss of finger mobility. The hand surgeon found that the tendon in Bobby's finger was lacerated, and a nerve was damaged. The delay in surgical repair resulted in the need for more extensive post-operative physical therapy and permanent loss of finger mobility. As in Sally's case above, treatment of his injury within one or two days of the date on which it occurred would have obtained a much better outcome.
- **Diabetic Risk:** Thomas, a 50-year-old diabetic warehouse worker, stepped on a nail that penetrated his shoe and punctured his left foot. He did not report the injury, applied a band aid, and continued working. Thomas reported the injury three weeks later due to infection of the wound caused by the nail in his foot. Consequently, his left foot required amputation. Had he reported the injury within a day or two of its occurrence, he likely would have obtained a much better outcome.

EXAMPLES SUPPORTING IMMEDIATE INJURY REPORTING:

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- **Fraud:** Frank, a 25-year-old retail employee in Waco, injured his right wrist at a rodeo on Saturday. The following Tuesday, he reported the injury as a workplace injury, alleging that it occurred on Friday of the prior week.
- **Co-worker Safety:** Jill, a 43-year-old manufacturing employee in Dallas, was struck with a projectile from a defective binding machine, causing bruised ribs. She reported the incident a week later when she decided to seek medical care. In the interim, a co-worker working the second shift suffered the same injury from the same unsafe workplace condition that Jill failed to timely report. Had Jill timely reported the incident, the unsafe condition would have been remedied and her co-worker would not have also been injured.

EMPLOYEE SAFEGUARDS:

A requirement for immediate injury reporting should be coupled with the employee safeguards described below. Employers and benefit claim administrators should consider specifying and consistently applying these employee safeguards when administering injury benefit claims:

- **Good Cause Exception and Fiduciary Duty.** An immediate injury reporting requirement should be subject to a “good cause” exception. Determination of whether the “good cause” exception has been satisfied should be made by a fiduciary administering the benefit plan in the best interests of employees, as required by the Employee Retirement Income Security Act (ERISA). 29 U.S.C. § 1104. (<https://www.law.cornell.edu/uscode/text/29/1104>).
- **Actual Knowledge.** An immediate injury reporting requirement should provide that the notice period runs from the time the employee either actually knows, or should have known about the accident or injury.
- **Accidental Injury versus Occupational Disease/Cumulative Trauma.** Special injury benefit plan provisions are needed to distinguish between an injury occurring by accident (a sudden, abrupt event that occurs at an identifiable time and place), and injuries that may reasonably be reported later because they occur gradually and require time for medical diagnosis, such as an occupational disease or an injury caused by repetitive motion over time.

These criteria can be further defined in the benefit plan or claim procedures. They help ensure that an immediate injury reporting requirement fairly addresses the interests of both injured workers and employers.

FINANCIAL IMPACT ON EMPLOYERS, AND INSURERS:

Delays in injury reporting result in delays in medical treatment. A 2016 study by the Texas Department of Insurance found that delayed treatment of work injuries beyond seven days increases medical expenses by 40%. <http://www.tdi.texas.gov/reports/wcreg/documents/accesstocare16.pdf> (page vi).

IMPACT OF EXTENDING THE REPORTING TIMEFRAME:

A broader window for reporting claims (for example, 30 days) under a Texas injury benefit plan would result in minimal additional benefits to injured workers due to:

- **Communication** – the continued emphasis on immediate injury reporting, in most cases, communicated to employees to an extent far beyond ERISA’s communication requirements described below;
- **Payments Made** – the common industry practice of paying all medical expenses and lost wages incurred between the date of injury and the date of claim denial; and
- **Settlements** – some employees who received benefit claim denials also received liability claim settlements.

LEGAL AUTHORITIES SUPPORTING IMMEDIATE INJURY REPORTING:

- **DOL Approves 8-Hour Injury Reporting in 2016 Settlement** – U.S. Steel, the union, and U.S. Department of Labor approved an 8-hour injury reporting requirement in this case. http://mccathernlaw.com/wp-content/uploads/2017/02/US_Steel_Occ_Illness_Inj_Rep_Policy.pdf.
- **OSHA Requires Injury Reporting in 24 Hours or Less** – Employers are required to notify OSHA within 24 hours of an employee: (1) being hospitalized for an on-the-job injury, or (2) having a limb or appendage amputated or eye removed. Further, OSHA requires that a fatality must be reported within 8 hours. <https://www.osha.gov/recordkeeping2014>. A 30-day injury reporting timeframe can cause employers to violate OSHA reporting rules.
- **Federal District Court Finds 24-Hour Injury Reporting Reasonable in 2012** – A federal district court found that a 24-hour injury reporting rule was not unreasonable and did not result in denial of a substantial number of claims under the plan. https://scholar.google.com/scholar_case?case=8159654563112423967&hl=en&as_sdt=6&as_vis=1&oi=scholar. See also *Gonzalez v. Aztex Advantage*, 547 Fed. Appx. 424 (5th Cir. 2013) and *Garcia v. Best Buy*, 2009 WL 2982788 (S.D.Tex.2009) aff’d on other grounds, 416 Fed. Appx. 384 (5th Cir. 2011).
- **ERISA’s Required Communication** – Immediate injury reporting requirements are problematic in workers’ compensation systems because they require no pre-injury communication with employees. On the other hand, employers sponsoring a Texas injury benefit plan are under a legal obligation to fully disclose the requirement of immediate injury reporting when an employee begins work, should such requirement be imposed. 29 CFR 2520.104b-2 <https://www.gpo.gov/fdsys/granule/CFR-2009-title29-vol9/CFR-2009-title29-vol9-sec2520-104b-2>. These employers also tend to “over-communicate” through highlight brochures, new hire orientation and other computer-based learning mechanisms, in-person employee meetings and manager training, workplace posters, wallet cards, videos, etc. Communication supports employee understanding and compliance with the immediate injury reporting requirement. Enforcement of that requirement further cements the importance of timely injury reporting to all employees.
- **Texas Labor Code Defense for Controlled Substance** – Texas employers that do not provide Texas workers’ compensation insurance coverage lose “exclusive remedy” protection and can be held liable for negligence in lawsuits by injured employees. Texas Labor Code section 406.033(c) (<http://www.statutes.legis.state.tx.us/Docs/LA/htm/LA.406.htm>) provides a defense against these lawsuits if the employee was intoxicated at the time of the work incident. A 30-day injury reporting timeframe can cause employers to lose that defense.

MEDICAL AUTHORITIES SUPPORTING IMMEDIATE INJURY REPORTING:

- **Journal of Occupational and Environmental Medicine:** “Lag Times in Reporting Injuries, Receiving Medical Care, and Missing Work: Associations with the Length of Work Disability in Occupational Back Injuries” <https://www.ncbi.nlm.nih.gov/pubmed/26445030>.

This study explores how disability length relates to three lag times, the number of days from the date of injury until the day it is reported, the number of days from the date of injury until the day the injured receives medical care, and the number of days from the date of injury until the injured initiates work disability. The result of the study showed shorter lag times for each of the aforementioned lags were related to shorter lengths of disability.

- **Spine Health Services Research:** The sooner an injured worker starts therapy, the better the outcomes. This study shows that with early physical therapy, there is decreased advanced imaging and decreased overall medical costs for low back pain. https://www.researchgate.net/profile/John_Childs/publication/225053961_Primary_Care_Referral_of_Patients_With_Low_Back_Pain_to_Physical_Therapy/links/0912f509283badbf89000000.pdf
- **Sports Medicine and Arthroscopy Review:** Risk of complications increases with delay in surgical intervention after a ruptured bicep tendon. <https://www.ncbi.nlm.nih.gov/pubmed/18703974>
- **Stanford University:** “Medical literature supports the idea that delayed provision of medical treatment can increase medical costs and delay employees’ return to work.” *Alison D. Morantz, Stanford University, 3/18/2016, “Rejecting the Grand Bargain: What Happens When Large Companies Opt Out of Workers’ Compensation?”

*See, e.g., Terry L. Blackwell, Stephen J. Leierer, Stephanie Haupt & Angeliki Kampitsis, “Predictors of Vocational Rehabilitation Return-to-Work Outcomes in Workers’ Compensation,” Rehabilitation Counseling Bulletin 46:2, pp. 108-114 (2003); Stephen J. Hunter et al., “Predicting Return to work: A Long-Term Follow-Up Study of Railroad Workers After Low Back Injuries,” Spine 23(21), November 1, 1998, pp. 2319-28; Kucera et al. (2009); Patricia Sinnott, “Administrative Delays and Chronic Disability in Patients with Acute Occupational Low Back Injury,” Journal of Occupational Environmental Medicine, June 2009; 51(6):690-9; Gerald F. Kominski, “Return to Work and Degree of Recovery Among Injured Workers in California’s Workers’ Compensation System,” Journal of Occupational and Environmental Medicine 2008; 50: 296-305.

EXAMPLES OF INDUSTRY SUPPORT:

- **Missouri Employers Mutual Insurance Company** on “Prompt injury reporting a benefit for all” https://www2.mem-ins.com/newsroom/reportingb_article.htm
- **PartnerSource** on “Why 24-hour injury reporting is good for workers & employers” <https://www.partnersource.com/option-insights-vol-ix-june-2016/> (4-minute video)
- **Safety News Alert** on “Worker hides injury for 2 months - then sues for comp” <http://www.safetynewsalert.com/worker-didnt-report-injury-for-2-months-should-he-get-workers-comp/> (see comments at end of article)

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