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To Whom It May Concern:

The following submission is my personal opinion and does not reflect the opinion of my employer or other individuals.

I am a Registered Nurse with more than 5 years experience working in manufacturing industries as an Occupational Health Nurse. A large part of my role involves managing WockCover Queensland claims.

I have not worked as an OHN in other states.

The current no fault legislation leaves the employer over exposed to injury claims. As the system stands and I quote a solicitors page "there is no need to prove fault on the part of your employer to make a WorkCover claim. The reality is the onus of proof is on the employer to provide evidence that the injury did not happen at work or the claim will be accepted. As far as I am aware this is contrary to other legal. Once WorkCover accepts a claim the employer is liable (through their WorkCover contributions) to cover all expenses related to the treatment of the injured worker .

The legislation should be changed so the onus of proof is on the claimant when the cause of injury is in question, it line with other areas of law.

Another outcome of the "no fault system" is that there is no onus on the treating doctor to question wether the injury matches the stated mechanism.

Yet another area where the employer is over exposed is via "aggravation to a pre existing condition". Usually the condition is unknown to the employer with employee under no obligation to disclose the condition. Even if the employee lied about the existence of a condition and then aggravated it the employer is liable. The result of this is that an employer would need to treat every employee as though they have everything wrong with them to eliminate the eggshell skull rule.

The legislation should be changed to state "work needs to be a major or 51% contributing factor before a claim is accepted".

Current legislation states if work is a significant contributing factor to the injury/illness the claim will be accepted. This is ambiguous and it could be argued that as little as 1% is significant contribution. As with the comment above the legislation needs to be either changed to "work being a major contributing factor" or at least be prescriptive as to what is meant by significant.

Once a claim is accepted by WorkCover the employer is exposed to potential litigation. Even though it is this arena evidence of fault is examined, the general consensus is that the litigant will get some compensation even if the employer is not at fault. The legislation should be changed to state that if the employer can prove they are not at fault there can be no common law claim made by the injured party. This will reward good employers and encourage others to improve their safety standards.

The process of litigation has several negative outcomes. The employer is forced to contribute considerable resources to their defence, even if they are not at fault. The injured worker needs to remain "injured" until their case is finalised. WorkCover needs to spend their limited budget on representing the employer.

One solution to this situation would be for WorkCover to be able to increase their permanent disability offer closer inline with the current payouts. The result would be the injured worker is able to adjust to their "new life" quicker, WorkCover reduces their running costs and employers can save resources.

WorkCover Queensland have a focus on returning the injured worker to work safely in the shortest possible time as it has been shown that this reduces disability in the injured worker and therefore reduced the claims cost. At present the only mechanism WorkCover or the employer has to facilitate an early return to work is to contact the treating doctor and ask for them to consider suitable duties for their patient. This process can be time consuming and often fails as the treating doctor only has the workers version of events and the worksite. A potential solution to this would be for the focus to be that WorkCover medical certificates are constructed to default to participation in suitable duties and for the doctor to complete a section explaining why the worker is completely disabled.

I recently had a case where a worker was not following the safe work procedures and sustained relatively minor abrasions. This worker was certificated as unfit to work for four days.

Thank you for your time.

Pamela Mahar OHN