

Work-related Injuries – Addressing Restrictions FAQ

When should a post-accident drug screen and a breath alcohol test be completed?

It's best to get them done as soon as possible after an accident occurs. When individuals are allowed to come in the next day, or even 12 hours later, drugs or alcohol may have already been metabolized or expelled through the kidneys or liver.

If the hospital completes a drug panel that indicates a non-negative status, are the test results submitted to Workforce Safety & Insurance (WSI) with the regular medical information, and is the employer notified?

Since the drug test is ordered by the company, the company will receive the drug screen results, but **NOT** WSI. You would need to forward that report to WSI to help them make a determination.

If the injured employee works various shifts throughout the week, would they be eligible for wage loss if they miss five consecutive days or five consecutive shifts?

Yes, they would be eligible for wage loss as WSI goes by calendar days, not shifts worked.

Was this presentation specific to North Dakota? The presenter mentioned a designated medical provider, but in Minnesota, we can't direct care. Can you clarify this?

That is correct. In Minnesota, employers can recommend a designated medical provider for a work injury, but the employee has the right to choose their own medical provider. In South Dakota, injured employees have the right to choose their own medical provider, but the company can suggest one.

Following an accident, does OSHA now require reasonable suspicion documentation for all incidents? Whereas in the past, we could automatically complete documentation after an accident. Have they updated their regulations?

Yes, OSHA has updated its regulations regarding post-accident drug testing. Under the current guidelines, employers must have reasonable suspicion that drugs or alcohol contributed to the accident to justify a post-accident drug test. This must be balanced with OSHA's clear stance that a reasonable and acceptable workplace safety practice is to drug test after an accident in the workplace. You cannot drug test as retaliation for reporting an accident or injury in the workplace.

What if an injured worker refuses to do approved restricted duty tasks assigned to them?

Get the injured employee's refusal to work in writing and send the documentation to WSI. WSI will not pay wage loss if they refuse the work you are offering.

What if an injured employee cannot return to their position despite reasonable accommodation and there are no other positions they would be qualified to fill?

The injured employee would be eligible for wage loss if you can't offer them work. Once the claim is approved, WSI will pay 66.6% of their average weekly wage until they can return to work.

Can or will WSI ever intervene or assist an employer with case management services which is being managed by another insurance company in a Non-Monopolistic State (New Mexico)?

I do not believe ND WSI or any other worker's compensation insurance company has jurisdiction to assist an out of state claim. I would call the insurance carrier to be certain since some worker's compensation insurance companies do provide insurance in other countries.

Do you know the differences between North Dakota and Minnesota workers' compensation guidelines for returning to work and wage loss?

We're not experts in Minnesota or South Dakota compensation insurance. You should call your workers' compensation insurance company for these questions. Most companies follow the general rules for returning to work as soon as possible and accommodate employees to keep them at work. Wage loss varies from state to state, and specific rates and duration of benefits differ significantly. Your workers' compensation insurance company can give you reimbursement rates and principles for getting injured employees back to work.

Are medical providers responsible for following up if the employer has questions regarding accommodations?

No. Even though it's not the medical provider's responsibility to know each company's accommodations, most are willing to talk with supervisors, managers and safety directors who accompany the injured employee to their appointment. They may adjust the restrictions to meet the company's accommodations within reason.

To clarify wage loss, if the medical provider excuses the employee from work for five or more consecutive days – but they weren't scheduled to work all those days – does the employee still qualify for wage loss because they haven't worked five consecutive days?

Yes, the employee could still file a wage loss claim because WSI goes by calendar days, not shifts scheduled or worked.