

When a Workers' Compensation Claimant Becomes an Inmate

How to Mitigate Exposure and Close Out a Case for an Incarcerated Employee

By Joanna Hair

Occasionally, an employee with an open workers' compensation will get arrested and put in jail. Much traditional wisdom about managing claims no longer applies in this situation.

For example, it may become impossible for an incarcerated claimant to keep appointments with their authorized treating physician. For the same reason, the claimant may not be able to receive or deposit wage benefit checks. Finally, an employer may no longer be able to reduce wage benefits exposure by providing light duty work to an incarcerated employee.

Many issues that arise when a claimant is imprisoned must be addressed on a case-by-case basis. However, there are proven ways to mitigate exposure and resolve claims.

Know When to Suspend or Reinstate a Claimant's Wage Benefits

It seems logical to conclude that wage benefits are no longer due to a claimant who is presently in jail. After all, the purpose of paying wage benefits is to replace a portion of the wages a temporarily disabled employee would have earned had they not suffered a work-related injury or occupational illness. An incarcerated claimant cannot work because they are jailed.

In reality, suspending an incarcerated claimant's wage benefits is not always possible. For example, Georgia courts determined that suspending benefits while a claimant is in jail awaiting trial violates the Equal Protection Clause of the 14th Amendment because doing so favors claimants who are capable of posting bond over those who cannot. As a result, and assuming the qualifying injury or illness does not totally disable the person, a claimant will

only have their wage benefits suspended after they are found (or plead) guilty and start serving their sentence.

In every state, counsel for an employer and carrier must review the applicable statute of limitations when considering any reinstatement of wage benefits. A claimant who is released from incarceration before the statutory cap on their claim has run out should have their benefits reinstated upon release. On the other hand, benefits will not need to be restarted if the statute of limitations runs out during a jail term.

In a situation where a claimant is arrested for violating probation, benefits may be suspended as soon as a probation revocation hearing is held and the claimant is reincarcerated. The carrier would not have to wait for the conclusion of a full trial.

Handle the Intricacies of Work Release Programs

Work release programs are both a potential way to mitigate ongoing wage benefit exposure and a potential source of workers' compensation claims. After all, any employee can suffer a work-related injury or illness.

In states where wage benefits may be suspended when a claimant is convicted of or pleads guilty to a jailable offense, there is generally no need to try to reduce exposure by using work release. Since work release is, itself, a type of sentence, people on work release are treated as incarcerated individuals for the purposes of handling open workers' compensation cases.

Conversely, in states where wage benefits are still owed to incarcerated claimants, employers and carriers have the ability to utilize



a claimant's work release income to offset exposure for continuing wage benefits in the same way that earnings from any other job may help reduce or eliminate wage benefit exposure.

Employers must also check if the state in which they operate excludes participants in work release programs from workers' compensation. In such states, an inmate who is injured while on a work release assignment does not have the right to file a workers' compensation claim. This is why some jails and prisons require employer partners to sign contracts obligating employers to cover inmate workers under their workers' compensation policies even if state law does not require this.

Expect Challenges When Settling a Claim

There are a few things to take into consideration when moving to settle a workers' compensation claim for an incarcerated employee. First, many claimants who face jail time will be motivated to settle their cases. Money from a lump sum payment can be used to pay legal fees.

Still, the logistics of settling a case may be complicated by jail and prison rules. Many of the more common ways of negotiating a deal, such as phone calls or emails, may be limited and, for the inmate, expensive. Communicating by letter could be the only practical option even though this will significantly delay the process. An employer or carrier that is especially committed to resolving the case can also send a representative to the jail or prison for face-to-face negotiations with the claimant.

Obviously, if the claimant is represented by counsel, said counsel will need to be contacted and involved in negotiations. But it is

important to remember both that a family member is not automatically a legal representative for a claimant and that only the claimant has the ultimate authority to agree to a settlement.

A final concern in some states is that settlement documents need to be notarized. This may also be preferred by employers and carriers even when notarization is not required by law. Arranging for a notary to witness signatures can be tricky when an inmate cannot simply head over to their bank or lawyer's office with release and resignation documents.

Alternatives to notarization exist. A very practical one is having two witnesses sign documents in addition to the claimant.

When a requirement for notarization cannot be waived, retaining a notary who is willing to go to the jail or prison and meet with the claimant is necessary. The notary may also need to figure out an innovative way to verify an inmate's identity because most inmates are not allowed to carry personal identification on their person.

In summary, having a workers' compensation claimant become incarcerated while their case remains open throws a wrench into the proceedings. Administering the claim can feel daunting and overwhelming because so many standard procedures no longer apply. Learning your state's laws pertaining to incarcerated claimants makes it possible to reduce exposure and settle claims.

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