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AN EMPLOYERS GUIDE TO  
**WORKERS'**  
**COMPENSATION**  
CLAIMS

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# Workers' Compensation Defined

**PUT SIMPLY, WORKERS' COMPENSATION IS INSURANCE THAT PROVIDES CASH BENEFITS AND MEDICAL CARE FOR WORKERS WHO ARE INJURED OR BECOME ILL AS A DIRECT RESULT OF THEIR JOB.**

Although the definition sounds straightforward, situations that result in a workers' comp claim are often complex, and outcomes can be expensive. In this guide, we'll explore workers' compensation claims from the employer's point of view, providing insights, examples, and suggestions to help you mitigate risk, keep costs down, and maintain a productive workforce.

**Let's first look at examples of coverage criteria. Injuries that may be covered by workers' comp fit the following:**

- The injury resulted from the course and scope of employment
- The task performed was within normal job duties, or
- The task was for the benefit of the employer

**Here are a few examples of injuries commonly covered by workers' comp:**

- Carpal tunnel
- Back injuries from repetitive movement
- Slip and falls at work
- Injuries sustained in a motor vehicle accident while driving or doing business

**There are also numerous reasons why an injury might not be covered under workers' comp:**

- The injury was self-inflicted
- The employee was in violation of a law or company policy
- The employee was not on the job at the time of the accident
- The injury or illness is not work-related.  
*(For example, if someone suffers a cardiac event at work, but the cause is diagnosed as artery blockage, it would not qualify for workers' comp.)*
- Involvement in a motor vehicle accident during their work commute

## Did You Know?

The most common type of workers' comp claim results from a sprain or strain, beating out fractures, contusions, and lacerations.



# Why Speedy Reporting Matters

## BUSINESSES CAN NOT ONLY SAVE MONEY BUT IMPROVE OUTCOMES FOR INJURED WORKERS BY REPORTING CLAIMS IMMEDIATELY.

- It allows the carrier to control the overall costs of the claim by directing appropriate medical treatment and care.
- Early reporting improves communication between the injured worker and the employer, as well as the adjuster, the medical clinic, and other parties involved with the process.
- The injured worker feels valued.
- By shortening claim reporting, trained experts can help facilitate return to work which reduces lost productivity.
- The adjuster assigned to the case can immediately begin an investigation to determine compensability.
- Finally, it allows the adjuster to direct appropriate and prompt medical care.

## Delayed Reporting Will Cost You

You can expect higher costs and more attorney involvement when reporting time lags.

### The Wait Can Cost You

**30%**  
Cost Increase  
Wait 15-21 Days

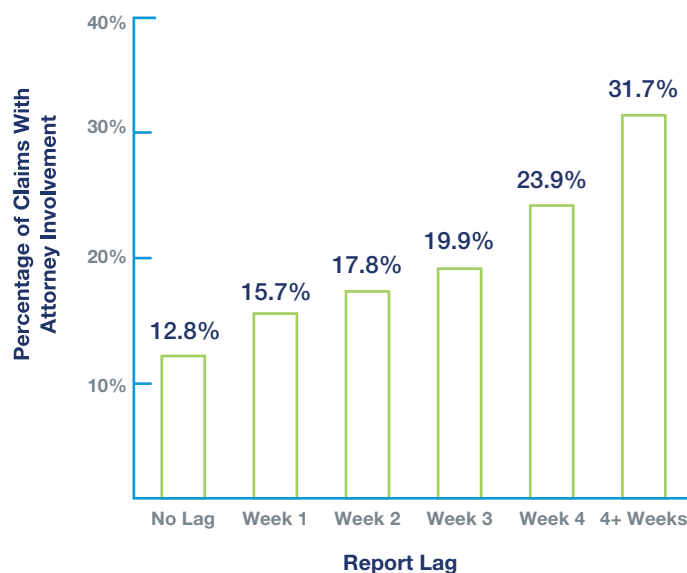
**70%**  
Cost Increase  
Wait 29+ Days

### The Wait Means More Attorney Involvement

**12.8%**  
Lawyers Involved  
Claim made day-of  
the accident

**31.7%**  
Lawyers Involved  
Claim made 4+ weeks  
after accident

## Claimant Attorney Involvement Increases as Reporting Lag Increases



National Council on Compensation Insurance "The Relationship Between Accident Report Lag and Claims Cost on Workers' Compensation Insurance," Jan. 2015.

NCCI's Detailed Claim Information Data for Report for Years 2010 and 2011 cases incurred losses valued as of 18 months after report date. Insurance," Jan. 2015.

# Case Study: When In Doubt, Report It

Jackie from Acme company called to report a claim on February 25. When asked what happened, she responded that an employee was hospitalized on February 18 after being injured on February 8.

## What was the reason for the delayed reporting?

Jackie explained, “Back on February 8th, Darrell was working on an engine, and the steam burned his arms and hands. He told me he wasn’t interested in filing a workers’ comp claim and was going to handle the injury himself. I said that was fine.”

On February 18, Darrell developed an infection and had to be treated in urgent care. “He had a 104-degree fever and was immediately hospitalized,” said Jackie. “The cost of the claim ended up being \$100,000.”



## Lesson:

As an employer, you are obligated by law to report workers’ comp claims. The reporting of this claim lagged 18 days after the incident. If it had been reported earlier, the worker could have received proper care and perhaps avoided the costly hospital stay.



# The Do's & Don'ts of Claims Reporting

**TO ENSURE EFFICIENT CLAIMS REPORTING, BE SURE YOUR TEAM UNDERSTANDS WHAT THEY SHOULD DO AND SHOULDN'T DO.**

## Do's ✓

- ✓ **Train managers on the importance of prompt reporting.** Make sure managers understand their responsibility to the company and the injured worker.
- ✓ **Provide reporting contacts and materials.** Provide supervisors with reporting information such as phone numbers and the employer's accident report. **Note:** This is especially important for those working in the field, such as contractors, roofers, landscapers, etc.
- ✓ **Document the reporting process.** The process should designate who is responsible for reporting incidents, as well as the individual who will fill in if the original person is absent.
- ✓ **Encourage employees to report all claims.** Even if it doesn't appear serious at first, the impact of an injury can worsen over time.
- ✓ **Reassure employees.** Be sure employees feel comfortable reporting an injury, knowing there won't be negative repercussions.

## Don'ts ✗

- ✗ **Don't withhold the reporting of an injury.** Remember, reporting a loss is not an admission of liability or compensability. However, there are fines and penalties imposed by the state for the failure to report a claim. As an employer, you are responsible for reporting all workplace injuries.
- ✗ **Don't delay claims reporting.** A delay in seeking treatment may cause a deterioration in the employee's condition and impede their recovery time. It can increase costs and the possibility of litigation.
- ✗ **Don't withhold the injury report because you believe a claim is questionable.** Treat the injured worker with respect and empathy and let the adjuster conduct an investigation to determine compensability.
- ✗ **Don't pay any medical bills or authorize any treatment.** Most states, specifically Florida, have medical fee schedules that dictate how the insurance company is required to make pay bills. Employers may think that if they pay the minor costs of medical treatment, this will reduce their insurance costs. The truth is, an initially minor injury can result in major medical complications. Let the insurance professionals handle the claims entirely.





# FrankCrum's Workers' Comp Claims Process

## 1. Reporting

Once an employee notifies you of an injury or suspects a work-related condition, you must immediately report it.

- Call FrankCrum Workers' Comp (WC) Processing team at 727-799-1229 ext. 4700
- Submit the claim online at [FrankCrum.com/accident](https://FrankCrum.com/accident)
- Submit the accident report to [wcclaims@frankcrum.com](mailto:wcclaims@frankcrum.com)

Please have information about the incident ready, such as the name of the injured worker, where the incident occurred, etc.

When you connect with the WC Processing team, they will ask you to direct the injured worker to a local urgent care facility and they will provide the facility with the required authorization to speed up the appointment.

## 2. What To Expect

- A.** A claim is reported to the FrankCrum WC Processing team.
- B.** Once the WC Processing team gathers all the incident information, the claim is reported to our third-party administrator (TPA).
- C.** The adjuster will complete an investigation, including a statement from the injured worker, and any witnesses, and review the facts of the case.
- D.** If the case is accepted, the adjuster will direct further medical care, physical therapy, and diagnostic testing, and possibly assign a nurse case manager.

**Note:** A nurse case manager's role is to act as a liaison between the injured worker and the health care system.

- E.** The adjuster is responsible for all payments on the case, such as medical and indemnity.
- F.** Once the injured worker is released to either modified or full-duty work, the FrankCrum Processor will discuss return to work with the client.

### 3. Recovery

Take the time to stay connected with the injured employee during their recovery. Call them once a week, find out how they're doing, and let them know you care. If an employee feels dismissed, it can result in hard feelings and litigation that could be avoided.

### 4. Return-to-Work Programs

After each medical visit, the FrankCrum WC Processor will provide you with up-to-date work status reports and will help you identify light-duty opportunities.

The goal of a return-to-work program is to transition the injured worker back into the workforce. Depending on the situation, this may require modifications to their current job or identifying another position within the organization that they can perform. Providing a light-duty opportunity is a good way to bring the employee back into the fold and aid in their recovery.

FrankCrum offers customized return-to-work programs through a vendor partnership.





# OSHA Reporting



**AS AN EMPLOYER, YOU ARE ALSO RESPONSIBLE FOR REPORTING CERTAIN CLAIMS TO OSHA.**

Here are some of OSHA's reporting guidelines:

- You must report a fatality to OSHA within eight hours of the incident.
- If an incident results in immediate hospitalization, amputation, or eye loss, it must be reported to OSHA within 24 hours.
- To report to OSHA, call 1-800-321-6742.

**Note:** Employers are not required to report injuries to OSHA from a motor vehicle accident on a public street or highway, except in a construction zone or if it occurred on a commercial or public transportation system, such as an airplane or bus, or involves hospitalization or diagnostic testing or observation.





# FMLA and ADA Basics

## FMLA

The Family and Medical Leave Act (FMLA) of 1993 is a federal labor law requiring covered employers to provide employees with job-protected, unpaid leave for qualified reasons. It only applies to covered employers: companies with 50 or more employees in a 75-mile radius.

### An eligible employee meets all of the following criteria:

- Works for an employer with 50 or more employees within a 75-mile radius
- Has been employed by their employer for at least 12 months; not necessarily consecutively
- Worked at least 1,250 hours during the previous 12 months

### Qualifying reasons for FMLA up to 12 weeks include:

- Birth of a child to the employee or to the employee's spouse
- Placement of a child with the employee for adoption or foster care
- To care for a spouse, child, or parent who has a serious health condition
- To care for the employee's own serious health condition that renders the employee incapable of performing the functions of their current position. For instance, an employee experiencing serious health impacts from a workers' comp incident may need to take FMLA.

### Other qualifying reasons for FMLA include military family caregiver leave of up to 26 weeks for these reasons:

- To care for a spouse, child, parent, or next of kin who is a service member
- To care for a veteran undergoing treatment who was a member of the Armed Forces
- Qualifying exigency because the employee's spouse, parent, or child is on covered active duty

## ADA

The Americans with Disabilities Act (ADA) of 1990 prohibits discrimination based on a disability — a physical or mental impairment that substantially limits a major life activity. Almost every aspect of work is included among the employment practices addressed in this law. It applies to employers with 15 or more employees.

### The ADA makes it unlawful to discriminate in all employment practices, including:

- Recruiting
- Hiring
- Firing
- Training
- Job assignments
- Promotions
- Pay
- Benefits
- Layoffs
- Leave

### A person is considered to have a disability under the ADA for the following reasons:

- A physical or mental impairment that substantially limits one or more major life activities
- A record of such an impairment
- The person is regarded as having such an impairment. For instance, someone may not be disabled, but if you regard them as having a disability, they can fall under the protections of the ADA.

“Substantially limits” means ability to perform a major life activity as compared to most people.

To determine whether an impairment is substantially limiting, the individual’s performance is compared to what most others are able to do.

### Major life activities include:

- Caring for oneself
- Performing manual tasks
- Seeing
- Hearing
- Eating
- Sleeping
- Walking
- Standing
- Lifting
- Bending
- Speaking
- Breathing
- Learning
- Reading
- Concentrating
- Thinking
- Communicating
- Working

**Note:** An impairment that limits one major life activity need not limit other life activities to be considered a disability.

An individual with a disability may require an accommodation to perform the essential functions of a job. A reasonable accommodation is any modification or adjustment to a job or the work environment that allows a qualified person with a disability to perform a job’s essential functions. Examples of accommodation include modifying work schedules, having flexible leave policies, or providing specific tools.







## ACCURATE JOB DESCRIPTIONS CAN HELP YOU MINIMIZE ADA-RELATED CHALLENGES.

Providing an accurate job description allows both applicant and employer to hone in on essential job functions to determine whether they can be performed (with or without reasonable accommodation). Job descriptions are also often used as evidence in ADA cases.

Take, for example, a staff accountant who is a CPA. They use their specialized skills to handle corporate taxes and financial reports. They also spend time filing paperwork. The tasks associated with their specialized skill set are considered essential to the role of staff accountant, while ancillary tasks, such as filing paperwork, are not.

The ADA requires a conversation between employer and employee regarding disabilities to discover possible reasonable accommodations. To achieve this, employers must utilize the [Interactive Process](#).

### The interactive process encompasses these five steps:



**Talk.** Open up a conversation about how the disability is affecting the employee's job performance and how they are limited. You do not need details of their medical condition or diagnosis.



**Ask.** Ask what accommodation they think would enable them to perform their tasks. You may ask for a doctor's note. You could also ask the employee to have their doctor complete an assessment based on their job description.



**Determine.** Figure out what accommodations are viable.



**Suggest.** Suggest an alternative accommodation, if needed.



**Agreement.** Once you've agreed on the accommodation, follow through and implement it. Be sure to document your conversation and place it in the employee's medical file, not their main personnel file.

# The Bermuda Triangle: Where Workers' Compensation, FMLA, and ADA Meet

## THE INTERSECTION OF WORKER'S COMPENSATION, FMLA, AND ADA IS OFTEN CALLED THE BERMUDA TRIANGLE.

Each law provides different elements to a qualified individual, and employers must understand the interaction between them because misapplication can lead to liability.

It's important to remember that FMLA and ADA are federal laws, while workers' compensation varies by state. Some states also have their own leave and disability laws. Employers can also implement their own policies that provide additional leave and benefits beyond what's required by law.

Once you determine which law(s) your company is subject to, you can apply that knowledge to the situation you're facing. Some laws run concurrently, but you should always try to do whatever benefits the employee most.

Be sure to consult with an HR professional on employment law requirements and best practices related to specific cases.



## The Interplay Between Worker's Compensation, FMLA, and ADA

Although these laws often work together, they have different purposes and requirements.

### Comparison Overview

	Workers' Compensation	FMLA	ADA
<b>Which law applies?</b>	Does the employee have a work-related injury or illness?	Does the employee have a serious health condition?	Does the employee's condition meet the definition of a disability?
<b>Employer coverage requirements</b>	Coverage varies by state; usually applies to employers with one or more employees	50 or more employees	15 or more employees
<b>Employee eligibility requirements</b>	An employee who has an injury arising out of or in the course of employment, with state law exceptions for possible willful behavior	An employee who has worked at least 12 months and 1,250 hours and who reports to a worksite at which 50 or more employees work with a 75-mile radius	An employee (or applicant) who is disabled, is qualified for the position, and can perform the essential functions of the position with or without reasonable accommodation
<b>Length of leave and reinstatement</b>	There are no limits to the length of leave and no reinstatement rights under most state laws, with the exception of when a discharge is considered retaliatory	Leave is defined very specifically, and an employee can get reinstated to the same or similar job	There are no limits to the length of leave that may be appropriate, but the employee would be reinstated to their previous job unless it creates an undue hardship for the employer

### The Interplay Between Worker's Compensation, FMLA, and ADA

While each law has its own characteristics, employees may have rights under more than one at the same time.

#### Here's an example:

- Workers' compensation pays an employee who can't work based on a work-related injury or illness
- FMLA provides job-protected leave when the workers' comp incident leads to a serious medical condition
- The ADA will help if a serious medical condition results in a disability

It's important to understand the interplay between these laws to ensure legal compliance, as well as to provide employees with the benefits and protections that each law provides.

### Employer Considerations for the Bermuda Triangle

In order to determine which laws impact your business, consider factors such as number of employees, the state(s) and cities where the company operates, and the industry. Then determine the following:

- Which laws apply to all employees?
- Which laws cover an individual employee based on their situation?
- What entitlements does an individual receive under applicable laws?



# Quiz

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The Acme company has 40 employees within a 75-mile radius. Mary has worked full-time for five years and more than 1,250 hours in the past 12 months. Mary is injured in the scope of employment and now has a hard time concentrating on her duties. What laws would Mary be covered by in this situation?

- A. Workers' Comp and ADA
- B. Workers' Comp and FMLA
- C. FMLA and ADA
- D. Workers' Comp, FMLA, and ADA

Answer: A. Workers' Comp and ADA. FMLA does not apply in this situation because Acme does not have 50 or more employees. ADA provisions could help Mary deal with her concentration challenges, like digital reminders, a quiet workspace, noise-canceling headphones, remote work, or additional time off, if appropriate.



# Handling Performance Issues Alongside a Workers' Comp Claim

It's important that employers avoid actions that could be perceived as retaliatory toward workers' compensation claimants. However, that doesn't mean that employee performance issues should be ignored simply because a claim is ongoing. Instead, managers can assume that their decisions will be scrutinized and ensure policies and procedures are followed precisely.

**Even if a performance issue seems cut and dry, take time to analyze it thoroughly.**

- Investigate the situation
- Document the facts: what, when, where, who
- Determine the appropriate action to address the situation

## Corrective Action Considerations

**Although a particular corrective action may seem appropriate based on the case at hand, there are several other factors to consider:**



**Policy.** Is there a written policy related to this behavior and the consequences of misconduct? Have the expectations been clearly defined and communicated to the employee?



**Consistency.** How has this behavior been handled with other employees?



**Timeliness.** When did the behavior take place? Did it happen before the workers' comp claim? Did it happen on their first day back after being on leave for several weeks? Why is this problem being addressed now?

To avoid the perception of impropriety, be sure to take these factors into account. If you're unsure whether formal corrective action is the right step, consider whether coaching or a simple reminder might do.

Ignoring poor performance in the workplace has a ton of negative consequences, including reduced productivity, lower morale, higher turnover, and the list goes on. While it's important to address misconduct head-on, it's also critical to treat employees fairly and ensure no one fears retaliation.



# Case Study: Proceed with Caution

Jodie failed to document daily tasks in a maintenance log per company policy. Coaching took place after the first incident, and a verbal warning was issued the second time. Soon after, Jodie had a worker's comp injury and was out for a few days.

Two days after returning to work, Jodie failed to document daily tests in the maintenance log again, and the worker on the second shift didn't know what tests were already complete.

The decision was made to implement formal corrective action with a written warning.

## Why was this decision correct?

- The behavior was unrelated to the workers' comp injury or impairment and is against company policy.
- Jodie had been trained on the correct procedure, coached, and had a verbal warning.
- There were only a few days — not weeks or a month — where Jodie could potentially have forgotten the task and would need retraining.
- The mistake was made after two days of completing it properly.
- The second shift worker had to go check the task to see that it was done, creating inefficiency that impacts productivity.

## Lesson:

Even when a workers' comp claim is in play, you can still handle performance issues as long as you proceed cautiously. Be sure to consider consistency and how other similar situations have been handled.



# Termination

## AS AN EMPLOYER, YOUR LEVEL OF RISK INCREASES IF YOU DECIDE TO TERMINATE AN EMPLOYEE WHO IS INVOLVED IN A WORKERS' COMP CASE.

In this instance, you should perform a thorough termination risk analysis and consult with an expert for guidance. Be sure to review the situation, evaluate the risks, and define and demonstrate a legitimate cause for termination.



- **Demonstrate the employee is not able to return to work.** You conducted the interactive process and, even with reasonable accommodation, the employee is unable to return to work.
- **Demonstrate that the employee's behavior justifies termination.** For example, if the employee engaged in sexual harassment, they are putting others at risk by remaining employed, so the behavior justifies termination.
- **Demonstrate the business need for termination.** It would be an undue hardship for the business to provide reasonable accommodation. Perhaps, the company is experiencing layoffs or a restructuring in which the employee's position is being eliminated.

Along with a reasonable cause for termination, you will need to have documentation to back up the decision.



# Case Study: Justification for Termination

Ryan fell and twisted an ankle. When he returned to light duty, he got into an argument and punched another employee.

The decision was made to terminate Ryan.

## Why was this decision correct?

- The behavior is unrelated to the worker's comp injury or impairment.
- The behavior is against company policy and is gross misconduct.
- The outcome of this behavior is the injury of another worker and another workers' comp claim.

## Common Mistakes

- Don't terminate an employee for filing a workers' compensation claim or making an accommodation request. This is considered retaliation, and many states have laws that forbid retaliation for filing a workers' comp claim. Plus, there are relevant discrimination and disability laws.
- Don't automatically terminate an employee if they don't show up after being released back to work. Do you ordinarily terminate employees automatically if they miss a shift? Do you typically call, text, or reach out to their emergency contact first? You should treat an employee returning from medical leave the same way; otherwise, it could be viewed as a pretext for retaliation. Consistency is key.
- Don't automatically terminate an employee when their leave is exhausted. Engage in the interactive process and find out whether a reasonable accommodation is possible.
- Don't terminate an employee for poor performance or behavior without conducting your due diligence. Review the situation and the personnel file carefully. Even for gross misconduct terminations such as theft, sexual harassment, and physical violence, conduct an investigation and allow the employee to explain their behavior, as you may learn of mitigating circumstances or the involvement of other employees in the situation.







Jesse, a delivery driver, broke her back in a car accident making a delivery, spent several weeks in the hospital, and her FMLA is now exhausted. She can't bend, walk, lift, or sit for long periods of time, and she needs to rest after a few hours. There is no improvement expected in her condition.

The decision was made to terminate Jesse.

#### **Why was the decision correct?**

- Jesse could no longer perform the functions of a delivery driver
- No reasonable accommodation could enable Jesse to perform the essential functions of the role
- There were no other positions in the company that Jesse could do based on her disability

## **Case Study: The Employee Cannot Return to Work**



# Employer Best Practices

**AS AN EMPLOYER, NAVIGATING WORKERS' COMPENSATION CLAIMS ALONG WITH EMPLOYEE RELATIONS CAN BE CHALLENGING. TO MITIGATE THE ASSOCIATED RISKS, CONSIDER IMPLEMENTING THESE BEST PRACTICES.**



**Policies.** Be sure that policies and procedures reflect expectations, define consequences, and are clearly and consistently communicated.



**Job descriptions.** Maintain accurate job descriptions that describe the essential functions of each position. They can be used to guide reasonable accommodations and provided to doctors to inform return to work.



**Consistency.** Ensure workers' comp claimants are not treated worse than other employees in similar situations.



**Train managers and supervisors.** Managers and supervisors need to understand the importance of reporting claims promptly. They should know about reasonable accommodations and basic employment laws.



**Timely corrective action.** Timing of corrective action is critical.



**Termination risk analysis.** Performing a thorough risk analysis is important when handling a workers' comp claim, but is also a good idea for employees generally.



**Reach out for expert help.** Don't forget to reach out to an expert for help when you need it.

# Additional Resources

Each state has an agency that administers workers' comp. You can find information on all states on the [US Department of Labor \(DOL\) Website](#).

The DOL enforces FMLA. [This website](#) offers online compliance assistance resources with all the forms and information you need, as well as assistance.

[The Job Accommodation Network](#), JAN, is a free service sponsored by the DOL to help educate employers on various illnesses and injuries and what can be done with them.

**IF YOU HAVE QUESTIONS ABOUT WORKERS' COMPENSATION CLAIMS, FMLA, ADA OR OSHA REPORTING, CONTACT ONE OF THE FRANKCRUM CONTACTS TODAY.**

[Contact Us!](#)



FrankCrum.com  
800.277.1620

## LEGAL NOTICE

The purpose of this information is to assist in the discussion of risk, concerns and general requirements. It is not tax advice, legal advice or judgment of a business's compliance or non-compliance. It is recommended you seek qualified legal counsel familiar with your particular circumstances before taking any action.