

LEGAL ADVISOR



A PilieroMazza Update for Federal Contractors and Commercial Businesses

LABOR AND EMPLOYMENT

Employee Refusal of Medical Treatment – Tips to Avoid Costly Claims

By Meghan Leemon



Imagine a situation where you notice your employee badly cuts his thumb at work, and you, as the employer, offer to call an ambulance or take him for a medical examination, but the employee refuses and insists he is fine. Days, weeks, or even months go by and then suddenly you are

notified that the same employee is suing your company because his injury was not treated properly and now his thumb must be amputated. Or, you notice that an employee is having chest pains or is visibly ill, you offer to get the employee medical attention and the employee insists that she is ok, but is later found deceased in her car while on the way home.

As the employer, are you liable in these scenarios? Whether the employer will be found liable for an injury or harm even if the employee failed to seek medical care often depends on whether the employer acted reasonably or properly documented the employee's refusal of medical treatment.

First, it is important to understand how employers may be held accountable for failure to properly record incidents. Although each state has a different set of rules, there are generally timelines that must be followed as to when the employee should notify the employer and the employer should notify the insurer and/or the state when an injury has occurred, typically within a few days of the injury. If an employer is aware of an injury and the employee refuses to file a notice, employers should first explain to the employee that reporting job-related injuries may entitle

them to benefits and failure to report injuries may result in a rejection of a later claim. If the employee still refuses, have the employee sign a statement of claim refusal. If the employee refuses to sign a statement, which they have a right to do, ensure that records are kept detailing the conversation, including who was involved and when the conversation took place. Although often an employee may still file a claim for workers' compensation benefits, it is critical that employers maintain all injury and illness records to protect the employer's eligibility for insurance coverage and to assist the insurer in any subsequent investigation

In addition to workers' compensation, some injuries or illnesses need to be reported to the Occupational Safety and Health Administration ("OSHA"). Generally, any work-related injury or illness requiring medical treatment beyond simple first aid (such as a Band-Aid) must be recorded on the employer's OSHA log. There are minimal exceptions to this, including if you have 10 or fewer employees during the last calendar year, unless OSHA or the Bureau of Labor Statistics informs you that you must keep records. However, severe injuries, such as death, amputation or hospitalization have stricter reporting requirements.

Even if an employer complies with all reporting requirements, the scope of employer liability could depend on the thoroughness of the employer's records and policies. Some illnesses are not work related but arise during the workday. Employers are often hesitant to get involved when an employee makes a decision regarding their own health. However, employers should still take reasonable steps to ask the employee whether they would like to seek medical care and record the incident just like they would a work-related injury.

As noted above, it is important to have an employee sign a refusal of care form and to sufficiently record

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the details of the interaction, including any witness statements. However, an employer's duty may go beyond completing this form. If, in using reasonable judgment, the employee appears to be okay, it may be sufficient to document the incident and have the employee acknowledge she refused treatment. If the employer has any doubt about whether the employee needs emergency medical treatment, it is important to call emergency services by dialing 911. First responders are trained to follow standard operating procedures when a person refuses medical treatment and often are able to better assess a situation than supervisors or managers who do not have medical expertise. Having emergency medical service personnel involved helps add another level of protection against your liability. Of course, this should be documented in your records as well.

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It is nearly inevitable that an employee will be injured or become ill at work, and employees often refuse medical treatment. It is important for employers to have a policy in place to deal with this type of situation and to properly train front line supervisors and managers to follow these procedures consistently. Additionally, make sure the company is meeting reporting requirements through established standard operating procedures including a refusal of medical treatment form. PilieroMazza attorneys are here to assist should employers need assistance developing or revising these policies.

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