

Subrogation

Important information

Subrogation is the process by which BWC collects medical and compensation costs paid on behalf of injured workers when a third party causes the workers' compensation injury. In the majority of circumstances, for subrogation to occur, the injured worker must collect a judgment or settlement from the at-fault party or defendant, called the third party by BWC's subrogation unit.

Subrogation rights

Ohio law gives a right of subrogation to BWC, self-insuring employers and certain employers who contract for the direct payment of medical services pursuant to section 4121.44 (L) of the Ohio Revised Code (ORC).

Subrogation allows BWC or a self-insuring employer the right to collect back the costs of the workers' compensation claim from the person or entity who caused the injury. Possible recoverable costs include all past, present and estimated future payments of compensation, medical benefits, rehabilitation costs or death benefits paid to or on behalf of the claimant.

What types of claims can be subrogated?

The most common injury is a motor vehicle accident that another driver causes. There are many other situations in which subrogation can apply, and these include, but are not limited to:

- Premises liability (such as a slip and fall that is not on company property);
- Product liability (such as a machine malfunction);
- Medical malpractice;
- Construction site accidents (caused by a third party);
- Dog bites or animal attacks.

Referrals

BWC's claims service specialists, who initially review the claim, make most referrals. They submit referrals electronically directly to BWC's subrogation unit. Employers, managed care organizations (MCOs), employer representatives, attorneys and insurance companies can also make referrals. They can make referrals by mail, telephone or fax. Referral forms are available for printing on ohiobwc.com in the Ohio Employers or Injured Workers sections under Forms.

A good or valid referral should contain the following:

- Claimant name and date of injury;
- Claim number;
- Employer;
- Third party and insurance carrier (with claim or policy number, if known);
- Attorney representing claimant.

Life of a subrogation claim

Once BWC obtains a valid referral, an account examiner or attorney in the subrogation unit reviews it. He or she reviews the claim for completeness and identity of all involved parties. The BWC employee will also check insurance company databases to help identify the parties and insurance companies. He or she will then mail a letter asserting the claim to those parties.

BWC normally receives notification at the time the injured worker settles the third-party claim. The subrogation department will then negotiate the settlement of the BWC lien with the injured worker or representative and the insurance company. Many times the settlement offer from the third party is less than the full amount of the BWC lien. All parties involved in the settlement consider the offer when negotiating the final amount. Insurance policy limits can also reduce the amount of the offer.

Additionally, most offers must be shared among the injured worker and the bureau. Attorney's fees and costs further reduce any settlement. Section 4123.931 of ORC governs how the BWC calculates the recovery. This statute typically allows the bureau to collect only a percentage of its full lien. Most claims are resolved at this point. The subrogation unit will get a settlement release signed by the injured worker and receive a check representing the amount of the BWC settlement.

Unsuccessfully resolved claims can be referred for mediation to the administrator's designee. BWC refers claims not successfully mediated to the attorney general's office. Generally, when the attorney general's office receives a claim, fees and costs increase. The attorney general's office subtracts these fees from the amount of the BWC's ultimate recovery.

Collection

BWC credits the amount it collects to the employer's risk account at the time of the recovery. This usually reduces the amount of the claim costs. The subrogation collection may also result in a reduction of the employer's premium. However, the employer's premium may remain the same because BWC considers many factors and other claims when calculating premium. BWC's right of recovery is tied to the injured workers' third-party claim. It may take two years or longer to collect.

For more information

Call **1-800-OHIOWBC**, and listen to the options, or contact your claims service specialist at your local customer service office. Visit us at ohiobwc.com.