

Education Forum 2019



EFFECTIVE VERBAL COMMUNICATION WITH WORKERS

Presented by:

Damian Clarke, Accredited Personal Injuries Specialist

Level 14, 31 Queen Street, Melbourne VIC 3000

(03) 9613 0900

MELBOURNE BRISBANE SYDNEY CANBERRA ADELAIDE MAROOCHYDORE PARRAMATTA SOUTHPORT



1. Communication

- 1.1. A study conducted by the Rand Centre for Health and Safety in the Workplace reported in a Blog¹ found that comprehensive case management of employee injuries can reduce lost time by as much as **42%**. An essential component of this is effective communication between all parties involved.
- 1.2. A study by the Workers' Compensation Research Group makes it clear that what is most important is the quality and tone of that communication.
- 1.3. In communicating, it needs to be appreciated that employees will have varying degrees of intelligence, competency, understanding and perceptions, potentially complicated in cases of persons from non-English speaking backgrounds. Additionally there may exist psychological/psychiatric barriers, cognitive and behavioural issues.
- 1.4. The study highlighted that poor outcomes can involve common perceptions on the part of an employee such as:
 - 1.4.1 risk of retaliation or job loss for injury claims;
 - 1.4.2 doubt as regards whether they are being believed or whether there is a perception by decision maker that the extent of injuries exaggerated;
 - 1.4.3 that the claim may well be denied.
- 1.5. That study recommended some solutions to deal with costly miscommunication issues including:
 - *"Trained [persons] to ensure timely and appropriate communications that convey job security, trust and respect for the employee's right to be compensated for workplace injuries.*
 - *Provide education materials on workplace injuries and the workers' comp to employees as well as a helpline or contact person that can answer any questions or concerns.*
 - *Communicate clearly with the employee about claim status to prevent misunderstandings and ease feelings of anxiety or uncertainty.*
 - *Work to improve any inefficiencies in the workers' comp process that interfere with timely payments or encourage denials of legitimate claims."*
- 1.6. The blog also made reference to an article published in Rough Notes, an insurance industry trade magazine which stressed *"the importance of clear, timely, appropriate communication in optimal resolution of workers' compensation claims"*. Consistent contact, communication and interaction with the employee, care providers, claims reps and other stakeholders was considered in the article to be essential to reducing lost time injuries. The blog talked about how *"regular, supportive communication with injured employees"* including informal reassurance, etc. will greatly facilitate return to work and reduction of costs.

¹ Article from ErgoScience in a blog published 24/07/15.

- 1.7. An article published in May 2018² reported on a Canadian study which concluded that there were “*communication challenges between health care providers and case managers*” which in turn negatively impacts on care and can alienate treating health care providers. They talked about this interaction between the provider and the case manager commenting on how sometimes the communication is via the employee who may in fact be relaying incorrect information, again reinforcing this need for clear communication.
- 1.8. In an article published in 2012³, it highlighted how there was so much emphasis given on injury prevention but perhaps not enough emphasis given in explaining to an employee what will happen when an employee i.e. what is the process, what are the expectations, what are the RTW policies, what are the commitments, etc. This communication should be aimed at developing a trust and showing the employee that there is care for the employee. It can show that there is a commitment to prompt resolution of work related claims. This article also reinforced the importance of communication with treaters, the employee and supervisors. A comment made in this article, which is a comment that we have often heard in the litigated process, is that the injured employee felt that he/she was not properly supported. It talked about a phone call from an injured employee as soon as possible, interaction as soon as possible.
- 1.9. Safe Work Australia produced a document entitled “*Taking Action*”⁴ which dealt with the increasing prevalence of psych injuries. The contents could form a half day training session on its own. The article addresses the pre-determination period and describes best practices as:
- Communication with the employee being positive and supportive.
 - The employer and employer stakeholders being provided with clear information about the claim determination process.
 - The employee being informed by their GP about how to access treatment community services outside the workers’ compensation system (dare we say there is strong argument as to why EIP plays such an important role to try and minimise employees refusing any treatment until the claim is determined).
 - Developing strategies to address any interpersonal issues and facilitate return to work.
 - Identifying the barriers to return to work and addressing where possible.
 - Initiating financial support payments on a without prejudice basis (although one has to consider that the majority of employees do have accrued but untaken leave which can be tapped into).
- 1.10. In cases where liability is disputed, the paper talks about:
- expediting the dispute resolution process;
 - that there be continuing engagement between the employee and the employer during the dispute resolution process; and

² Communication and Collaboration among Return to Work Stakeholders written by Elizabeth Russell and Agnieszka Kosny

³ Article published EHS Today by Carl Zeutzius 05/10/12

⁴ Taking Action: A Best Practice Framework for the Management of Psychological Claims in the Australian Workers’ Compensation Sector published by Safe Work Australia circa 2015

- the employer continuing to pursue opportunities for RTW i.e. non stat rehab.

1.11. The paper also touches on:

- meeting guaranteed turnaround times on decision making and things to be done;
- taking into account the employee's individual circumstances including the nature of the psychological injury;
- the need for a clear understanding of the process and likely timeframes for managing the claim;
- the employee having and taking some ownership of the outcome of the claims process in the sense of mutual responsibility with the self-insurer/employer and the employee in achieving a successful RTW.

1.12. Suffice to say the paper is strong on communication.

1.13. The paper also highlighted a case study in respect of behavioural insights regarding workers' compensation and identified six key practices being:

- Simplification of communication to/with injured employees.
- Focus messaging on return to work rather than injuries.
- Empower employees to take control of their recovery.
- Focus on people, not processes, and ensure that case managers provide personalised support.
- Engage doctors actively and early; and
- Develop an evidence base, particularly in what works for different types of injuries and sectors.

[This evidence based aspect ties very much in with the Clinical Guidelines presentation.]

1.14. Regard must also be had to Licence conditions one of which provides that a licensee must comply with the requirements of any applicable laws of the Commonwealth, States or Territories and with respect to the safety, health and rehabilitation of employees, with a particular focus on the statutory requirements for genuine consultation with employees and their representatives. There is also the catch-all condition that, in managing claims, a licensee must be guided by equity, good conscience and the substantial merits of the case without regard to technicalities.

2. **But what about Me the Delegate?**

2.1. It is appreciated that from time to time decision makers are dealing with employee's whose behaviour, for whatever reason, can cause distress and anxiety for decision makers.

2.2. Additionally, this can occur when dealing with third parties such as employee solicitors who may adopt a bullying/harassing approach – rare, but it happens.

- 2.2.1. *The Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015* provide that a solicitor must be honest and courteous in all dealings in the course of legal practice (Rule 4.1.2).
- 2.2.2. A solicitor must not in any action or communication associated with representing a client use tactics that go beyond legitimate advocacy (Rule 34.1.2).
- 2.2.3. A solicitor must not in the course of practice, engage in conduct which constitutes, inter alia, workplace bullying (Rule 42.1.3) which arguably can extend beyond the solicitor's own workplace into the workplace of the person with whom that solicitor may be dealing.
- 2.2.4. A solicitor must not engage in conduct, in the course of practice or otherwise, which demonstrates that the solicitor is not a fit and proper person to practice law, or which is likely to a material degree to be prejudicial to, or diminish the public confidence in, the administration of justice or bring the profession into disrepute (Rule 5).
- 2.3. What about the employer/employee per se?
- 2.3.1 An employer has an OH&S duty to ensure a safe place of work and a safe system of work. This duty would extend to a protection of decision makers in carrying out duties. If, for example, there is a particularly aggressive or threatening claimant, then the employer has an obligation to ensure appropriate protection for the decision maker, whether this means moving management of the claim interstate, seeking appropriate intervention orders or dealing with a claimant under employer policies.
- 2.3.2 Most entities will have policies regulating behaviour of employees. If I take Australia Post as an example, it has published a policy called "*Our Ethics: How we do things at the Australia Post Group*". This goes to setting out the expectations of employees in their behaviour, not just as between each other but also towards third parties such as contractors, customers and suppliers.
- (a) Clause 3.1.3 provides it is not acceptable to: intimidate, offend or mislead other workforce participants, customers, suppliers or the public.
- (b) Clause 3.4 provides an obligation on an APC employee to always treat every workforce participant, customer and supplier with courtesy and respect.
- (c) It additionally provides that it is not acceptable to cause disadvantage, discomfort, embarrassment or offence to other workplace participants at work, during out of hours activities or when using social media.
- (d) It provides that an employee must not discriminate, harass or bully anyone at work, during out of hours activities or when using social media.
- (e) It provides that a person must not threaten, abuse or intimidate (physically, verbally or in writing), or injure or attempt to injure another person – whether at work, during out of hours activities or when using social media.
- 2.4. There also exists obligations at law which regulate the behaviours between persons including human rights and equal opportunity legislation as perhaps being the best example as well as at criminal law, e.g. assaults (including threats).

