

WY Department of Workforce Services
Special Investigations Unit (SIU)

Bandits and Buckaroos - Workers' Comp Fraud and How to One-Up the Bandits

SHRM Wyoming State Conference 2018

Cowboy UP

- Living each day with courage
- Take pride in your work
- Always finish what you start
- Know where to draw the line
- Adopt a tough approach or course of action –
dictionary.com
- Make a determined effort to overcome an
obstacle or deal with difficult situation –
en.oxforddictionaries.com

National Insurance Crime Bureau (NICB)

- Workers' Comp. fraud cost \$7.2 billion
(about 25% of all insurance fraud)
- As one company executive put it:
'If workers' comp fraud was a legitimate
business, it would rank among Fortune 500
companies.'

Coalition Against Insurance Fraud

- More than one in 10 small-business owners are concerned an employee will fake an injury or illness to steal workers compensation benefits;
- Nearly one in four owners also installed surveillance cameras to monitor employees on the job;
- One in five owners feel unsure how to identify workers compensation scams



Fraud

What is Fraud?



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Fraud

Any intentional or deliberate act to deprive another of property or money by guile, deception, or other unfair means.


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Why They Do it?

Cressey Fraud Triangle

The fraud triangle derives from Donald Cressey's hypothesis:

Trusted persons become trust violators when they conceive of themselves as having a financial problem which is non-shareable, are aware this problem can be secretly resolved by violation of the position of financial trust, and are able to apply to their own conduct in that situation verbalizations which enable them to adjust their conceptions of themselves as trusted persons with their conceptions of themselves as users of the entrusted funds or property.¹



¹Donald R. Cressey, *Other People's Money* (Montclair: Patterson Smith, 1973) p. 30.

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Principal Categories of Fraud

- Misrepresentation of material facts
- Concealment of material facts
- Bribery
- Extortion
- Conflicts of interest
- Forgery
- Theft of money or property
- Theft of trade secrets
- Breach of fiduciary duty
- Statutory offenses

Misrepresentation of Material Facts

- Deliberate making of false statements to induce the intended victim to part with money or property
- Most often thought of when the term *fraud* is used
- Can be prosecuted criminally or civilly under a variety of statutes, such as false statements, false claims, or mail and wire fraud

Misrepresentation of Material Facts

- Required elements may vary according to the jurisdiction and whether the case is prosecuted criminally or civilly
 - Material false statement
 - Knowledge of its falsity
 - Reliance on the false statement by the victim
 - Damages suffered

Wyoming Worker's Compensation Act

W.S. §27-14-510. Misrepresentations or false statements; failure of employer to establish account or furnish payroll report.

(a) Any person who knowingly makes, authorizes or permits any misrepresentation or false statement to be made for the purpose of him or another person receiving payment of any kind under this act is guilty of:

(i) A misdemeanor punishable by a fine of not more than seven hundred fifty dollars (\$750.00), imprisonment for not more than six (6) months, or both, if the value of the payment is less than five hundred dollars (\$500.00);

(ii) A felony punishable by a fine of not more than ten thousand dollars (\$10,000.00), imprisonment for not more than ten (10) years, or both, if the value of the payment is five hundred dollars (\$500.00) or more.

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Workers' Compensation Fraud

Common Schemes

- Premium Fraud (Employer Fraud)
- Claimant Fraud
- Organizational Fraud (Provider Fraud)

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Claimant Fraud

- Misrepresenting the circumstances of any injury or fabricating that an injury occurred
- Secondary Employment
 - Securing a job with another employer
 - Fake identity
 - Assuming another's identity
 - Working "under the table"
 - Self employment

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Indicators of Claimant Fraud

- Injured worker:
 - disgruntled, soon to retire, or facing imminent firing or layoff
 - involved in seasonal work that is about to end
 - unexplained or excessive time off prior to injury
 - takes more time off than the injury seems to warrant
 - nomadic/history of short-term employment
 - new on the job

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Indicators of Claimant Fraud

- Injured worker:
 - experiencing financial difficulties
 - recently purchased private disability policies
 - changes physician when a release for work has been issued
 - history of reporting subjective injuries
- Review of rehab report describes claimant as “muscular, well-tanned, with callused hands and grease under the fingernails” or other similar descriptions

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Circumstances of the Accident

- Occurs late Friday afternoon or shortly after the employee reports to work Monday
- No witnesses
- Claimant has injury at odd time, i.e. at lunch hour
- Rumors circulating that the accident was not legitimate
- Occurs in an area where the injured employee would not normally be
- Accident is not the type customarily associated with those within the injured worker’s position or job classification, i.e. an office worker who is lifting heavy objects on a loading dock

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DWS SIU Organization

- Two full time state employees
- Four contract investigators located throughout the state
- One additional contractor used for investigations outside Wyoming

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Process

- Referral received
 - Claims analyst, employer, Fraud Hotline, etc.
- Determine whether to open an investigation
- Assign case to contract investigator
 - Provide preliminary information
- Conduct investigation
 - Provide surveillance/reports

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Process con't

- Notify analyst of result of investigation
 - Analyst notifies employer (if applicable)
- Analyst determine cause of action based on investigation and applicable statutes/rules/regulations
- Provable violations may be presented for prosecution

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Employer: What can you do?

- Develop a culture of zero tolerance
- Fraud awareness program
 - Anti fraud training and education
- Diligent post injury management program
 - Light duty works in some cases
 - Proactive interaction w/Claims Analyst
- When fraud is suspected: Report promptly
 - Fraud Hotline; Internet; Call SIU; Through Claims Analyst

Benefits of Light Duty Contracts

- In Light Duty contracts the Division pays 80% of the difference of the gross wages on light duty and pre-injury gross wages
- Light Duty wages are non-chargeable to the employers account
- If an employee refuses a bona fide light duty work offer
 - TTD will be reduced to 1/3 (non-chargeable to the employer)

As an Employer

- Request 2nd opinion on medical treatment
- Receive the medical records
- Appeal any final determination
- Request an investigation from SIU
- Conduct your own internal investigation immediately after the injury is reported

Report through Internet



<http://www.wyomingworkforce.org/contact/fraud/>

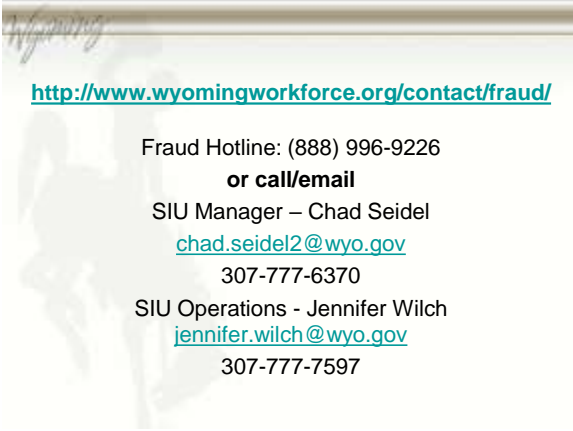


Prosecutions

- In May of 2016, Michael J. Roth of Wheatland plead guilty to one misdemeanor count for making a false statement and paid full restitution of \$5,401.30 for workers' compensation benefits.
- In February of 2016, Victor Rodriguez of Sheridan entered a no contest plea to one count of workers' compensation fraud. Rodriguez is currently awaiting sentencing in District Court in Sheridan County.

Prosecutions

In April of 2016, Andrew Jivelekas, of Worland was sentenced for wire fraud. Jivelekas received one year imprisonment in a federal penitentiary, to be followed by two years of probation, and was ordered to pay \$25,781.73 in restitution.



<http://www.wyomingworkforce.org/contact/fraud/>

Fraud Hotline: (888) 996-9226
or call/email
SIU Manager – Chad Seidel
chad.seidel2@wyo.gov
307-777-6370
SIU Operations - Jennifer Wilch
jennifer.wilch@wyo.gov
307-777-7597



THANK YOU!
