

## Make Surveillance Worth the Money

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A largely sedentary/stationary workforce is a luxury in the world of Workers' Compensation law because the idea of a disabling work injury, or a nagging, high cost medical recovery period, seems to be a remote possibility. If any part of your workforce includes employees who lift, carry, climb, clean, bend, squat, stand, sit, or travel as an integral part of the job – you likely have had a situation where a work injury occurs, and as a result, an employee is held out of work by a doctor. Depending on the nature of the injury, and the person's day-to-day job duties, the "disability period" does not always match the injured workers' actual recovery. When an injured worker has been off work for an extended period, and their treatment has waned, but the worker has not been "cleared" by a doctor to return to work – the employer naturally grows suspicious of the workers' activities and looks for opportunities to prove that the worker is at best, malingering, or at worst, lying about their condition. Surveillance can be a useful tool for confirming a suspicion that an injured worker is no longer disabled.

Video or photographic surveillance is a potential gold mine for employers (with emphasis on the word potential). The idea of catching an injured worker performing some activity that exceeds the scope of his perceived/documented physical limitations is irresistible to many employers, insurance carriers, and Workers' Compensation claims administrators. The drawback to surveillance is that it is uncertain, expensive, and does not always yield positive results.

If surveillance is suggested by your insurance carrier or attorney, there are certain things you can provide that can exponentially increase the chances of making surveillance worth the money. Below are my top three:

1) Input and background information is key. The employer can provide critical input to the surveillance team regarding an injured workers' habits and hobbies that can save time and money by eliminating the guesswork associated with surveillance. Injured workers who have not returned to work after months or years can be "caught" doing outdoor chores such as leaf raking, snow removal, or moving furniture, or participating in sports – but, in order to maximize the chances of getting good surveillance, the employer should provide as much input as possible to the surveillance team. If the employer knows certain information that would be helpful to the surveillance team – it should be communicated early and often. A quick message to a surveillance team, with critical information regarding a person's whereabouts, or activities, can make all the difference.

2) Think 21st Century about surveillance. With the popularity of social media, and the installation of surveillance/security cameras seemingly everywhere, it is important for employers to consider these sources before resorting to traditional video/photo surveillance that can only be obtained through a "stakeout." Social media is an excellent source of information for Workers' Compensation claims because often injured workers will post comments, photos and other things that can directly impact their claim. Injured workers will often say/do things through or on social media that they would never want or expect to be seen or heard by a Workers' Compensation Judge or their employer – this is precisely the sort of information that can help in the defense of a Workers' Compensation claim. If, for example, an injured employee who is not working due to a knee injury – posts photos on facebook of a recent hiking trip – that sort of information can be critical to litigation, and can save an employer and/or insurance carrier tens of thousands of dollars.

3) Go the distance. Surveillance teams are often provided with specific instructions as to how to obtain surveillance on a person who is collecting Workers' Compensation wage loss benefits. These sorts of instructions often include the typical residential "stakeout," or limiting the scope of "tailing" an injured worker around town on errands. By placing specific instructions or limitations on surveillance, the employer can save money (because surveillance is expensive), but will likely miss opportunities for good surveillance that can only be obtained when an injured worker feels safe in thinking they are

out of the camera eye. In many instances, injured workers who lead largely sedentary lifestyles, will do physical activities or try things that they would never do at home; this includes visits to water parks, amusement parks, hiking/biking/rafting trips, golfing, dancing, sledriding/skiing/skating/snowtubing, etc. Paying a surveillance team to follow an injured worker on a family trip to Cedar Point may be expensive, but that surveillance team returning from the trip with video of the injured worker on a water slide, in the bumper cars or playing carnival games that require physical activity is well worth the price of admission.

For additional information please contact Ken Scholtz at [kscholtz@tuckerlaw.com](mailto:kscholtz@tuckerlaw.com)