



## When can an insurer communicate with a represented worker?

By Kelly J. Niemeyer ■ April 22, 2016

You, an adjuster, have one question you are sure could be easily answered with a phone call to the injured worker. Should you call?

Depending on whether the worker is represented, this could be an *ex parte* communication, a Latin phrase meaning “on one side only; by or for one party.” An *ex parte* communication occurs when a party to a case, or someone involved with a party, talks or writes to or otherwise communicates directly—in this case between an adjuster and the injured worker—about the issues in the case without the knowledge of the worker’s attorney.

Insurers must provide “prior or simultaneous written notice” to a worker’s attorney whenever it contacts the worker to schedule independent medical examinations, or engages in any contact that “affects” or “may result in the denial, reduction or termination of the worker’s benefits.”<sup>1</sup>

In addition, the insurer must provide the worker’s attorney a copy of any communications with the Department concerning the claim. The same is true for any contact relating to settlement of the claim.<sup>2</sup> Note, the worker’s attorney may also consent and allow the insurer or other parties to contact his/her client directly (as a general practice, get it in writing).

Alternatively, if you are an insurer who is represented and the worker won’t stop contacting you, you can always tell them you are represented and all further communications need to go through your defense counsel.

If the worker is not represented, *ex parte* communications are not an issue. It is always smart when speaking with a worker, however, to confirm at the beginning of your conversation that they remain unrepresented.

The attorneys at Reinisch Wilson Weier PC are here to review these situations, provide education on recent case law and aid in making an informed decision. ■



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<sup>1</sup> ORS 656.331 & OAR 436-060-0015(1).

<sup>2</sup> OAR 436-060-0015(1)(c).

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