

Workers' Compensation System Overview

Contributed by Team-One Employment Services LLC

Workers' compensation insurance covers employees for injuries that occur at work. It was originally designed as a non-adversarial "no-fault" insurance system. The main interest groups involved in this issue are business/employers, labor unions, insurers, health care providers, and lawyers.

There are five basic types of workers' compensation benefits:

- Medical care
- Temporary disability benefits
- Permanent disability benefits
- Vocational rehabilitation services
- Death benefits

Temporary disability benefits are intended to replace 2/3 of the injured worker's income, up to a maximum weekly benefit. Beginning 1/1/03, the maximum for temporary disability benefits is \$602 per week, increasing in steps to \$840 per week on 1/1/05. Adjustments by formula are scheduled to be made in the following years for injuries occurring 1/1/06 and thereafter. Maximum permanent disability benefits are \$230 per week as of 1/1/03 for those claiming 70 percent or less permanent disability, and \$270 per week by 1/1/06 for those claiming 70 percent or more. The assessment of the injured worker's permanent impairment and limitations is made by either the treating physician or a "Qualified Medical Evaluator" (QME). The treating physician's presumption was repealed with the passage of AB 749.

1993 Reforms

In the 1980s, the cost of workers' compensation insurance became an issue for businesses in California. Worker compensation costs increased so rapidly that by 1989, and again in 1991, reforms were first enacted.

In 1993, the Legislature approved significant workers' compensation reforms. The Legislature was trying to address a fundamental inconsistency in California's workers' compensation system: it was one of the most expensive systems in the nation, yet delivered relatively low benefits to disabled workers.

The reforms appeared to have resulted in a significant reduction in workers' compensation costs and there was no additional pressure for changes until 2000 due to reduced premiums.

One of the primary changes in 1993 that led to lower premiums was the passage of SB 30 (Johnston), which eliminated the "minimum rate law." Prior to the passage of SB 30, the State established a minimum rate below which insurers could not sell their insurance. This law was intended to protect the solvency of the workers' compensation insurers. Since the repeal of the minimum rate law, workers' compensation insurance has seen dramatic price competition. Now, open pricing is the law and there has been little legislative effort to change it.

Since the enactment of the 1993 reforms, insurers and businesses have continued to argue in favor of specific and modest reforms. They also have opposed statutory benefit increases unless those increases are accompanied by additional reforms.

Under the open rating system of SB 30, the insurance rates did not result in unusually high profits for compensation insurers. In fact just the opposite occurred.

The price competition of the past 10 years has many carriers on the financial edge and 25 percent of the carriers have either pulled out of the market or gone insolvent (such as Superior National). The State Compensation Insurance Fund saw its book of business rise from 14 percent of the marketplace to nearly 50 percent.

On November 2, 1999, the Insurance Commissioner adopted an

18.4 percent increase in the workers' compensation advisory rates, indicating his belief that rates were too low. Since then nearly every quarter has seen advisory rate increases. This created additional pressure for the Legislature to mandate a benefit increase.

Workers' Comp in 2002: AB 749

With the election of Governor Gray Davis, labor-sponsored workers' compensation benefit increase bills were passed by the Legislature in each of his first three years as Governor. The Governor vetoed each of those attempts, citing excessive costs to business. After three years of struggle, the Legislature reached an agreement – AB 749. The proposal increased weekly benefits for injured workers and pledged to implement new cost-cutting reforms to minimize the impact on California businesses. The employer community opposed AB 749.

In a July 2002, the Workers Compensation Insurance Ratings Bureau estimated that AB 749 will increase total annual benefit costs by 17.8 percent, or \$3.2 billion, by 2006. Under AB 749, the maximum weekly benefits for temporarily disabled, and for totally and permanently disabled workers, rose from \$490 to \$602 on January 1, 2003. By 2005, the maximum jumps to \$840 weekly. After that, benefits increase annually, based on a cost-of-living adjustment tied to the state average weekly wage.

Maximum weekly benefits for most workers with permanent but partial disabilities will increase from \$140 to \$230 in 2006.

The Current Situation

Employers are receiving premium increases for the fourth year in a row. Workers' compensation insurance premiums have gone up a minimum of 77 percent in the last four years, and employers bear the entire cost. In fact total workers' comp premiums paid by California businesses were 69% higher last year than in 2000. The extra \$6.3 billion that California businesses paid in workers' comp premiums last year compared with 2000 is as big a burden as the corporations tax, California's largest business tax.

California employers pay the highest premiums in the nation, an average of \$5.23 for each \$100 of payroll,

The California Chamber of Commerce attributes the rate increases to 4 factors:

- The passage of AB 749, which increases benefits. Most of those increases will impact businesses in the summer of 2003.

- An increase in the pure premium advisory rate, that is the advisory rate set by the Department of Insurance. This rate has increased 50 percent over the last 3 years.
- A surcharge on premiums to cover insolvencies.
- Increased costs to the system, particularly medical benefits.

On average, insurers charge 17 percent more than the pure premium advisory rate, which is scheduled to increase on July 1. The increases this summer will take into account the benefit increase required by AB 749.

According to studies of the California workers' compensation insurance industry, in 2000, insurers providing workers' compensation in California paid \$1.51 in claims and operating expenses for each \$1 taken in as premiums. The State Compensation Insurance Fund, considered the insurer of last resort, has threatened to refuse to accept new business.

Over the past three years, insurance companies have either pulled out of the California market or declared insolvency.

California Doesn't Measure Up

California's workers' compensation system earned an "F" for effectiveness in a recent study based on injuries and illnesses recorded on a log required by federal law. The study of all states by the Work Loss Data Institute, an independent database development company focused on workplace health and productivity, looked at data recorded on the OSHA Form 200 to rate the performance of each state's workers' compensation system.

California's "F" was based on data from 2000, the most recent year for which state-by-state data is available. The seven other states and territories receiving "Fs" were New York, Texas, West Virginia, New Jersey, Louisiana, Rhode Island and Puerto Rico.

Neighbors Nevada, Arizona and Oregon were among the nine states receiving an "A" for their workers' compensation system performance records, while Washington earned a "C."

The study looked at six variables: injury and illness incidence rates, cases in which the employee missed work, median disability durations, delayed recovery rate, low back strain and carpal tunnel syndrome. California ranked among the highest in the nation in median disability durations, an element of cost. When a case requires missed work, the longer the case is out, the higher the indemnity costs. The national average is six days of missed work. California had an average of eight days. Only Puerto Rico (17 days) and Texas (10 days) had higher median disability durations. New York tied with California. The most common condition listed in workers' compensation claims is low back strain and sprain, which resulted in more than 330,000 cases of lost workdays nationwide in 2000. Although many states had a high incidence of the variety of injuries that go under this category, California was among the four states with the worst outcomes for this condition.

Increased Costs to System

California's workers' compensation system claim frequency decreased 3.4 percent from 2000, yet the cost of each claim for accident year 2001 was

\$43,317, up from \$39,146 in 2000, according to the Workers' Compensation Insurance Rating Board.

Medical Costs

Medical costs have increased more than 100 percent since 1999—even though the fees for treatment codes have not been increased since 1984. In 1991, the average medical cost per indemnity claim was \$8,935. By 2001, the average cost per claim had increased to \$22,765. Medical inflation within the California workers' compensation system exceeds the national rate of medical cost inflation.

A California Workers' Compensation Institute study found that California's chiropractic costs rose 153 percent from 1996 to 2001, from \$77 million to \$195 million, while the average number of chiropractic procedures per claim jumped from 59 to 120. As a result, chiropractors are now the leading medical provider in the California Workers' Compensation system. An additional study by the Workers' Compensation Research Institute found that California medical providers, especially chiropractors, treated injured workers more often than their counterparts in other states. Except for a slight decline in 1996, average payments to chiropractors climbed steadily from \$1,455 in 1993 to \$2,556 in accident year 1998—a 76 percent increase. The CWCI study also concluded that the average total number of chiropractic visits per claim climbed from 20.2 for accident year 1993 to 29.9 for accident year 1998—a 48 percent increase. Much of the increase was in claims lasting one to two years or less. The average number of claims rose 59 percent for claims in the first year and 70 percent for claims within the first two years.

Permanent Partial Disability

In addition to medical costs, an increase in permanent partial disability (PPD) benefits is affecting costs to the system. The system has seen significant increases in the number of PPD claims for minor disabilities. Ninety percent of all PPD claims are for disabilities of less than 25 percent. Eighty percent of all medical benefit dollars are consumed by these claims and 60 percent of all legal expenses come from these claims.

Please note that information used in this article was derived extensively from the Senate Republican Office of Policy Report Number INS-03-02, dated April 14, 2003 and from information provided by the California Coalition on Worker Compensation. It was refined and arranged to provide an unbiased and a factual presentation on the state of Worker Compensation in the State of California today.