

Workers' Compensation Update: Practical Information and 2017 Changes

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Content Disclaimer

The information presented is general in nature and is intended to present an overview of workers' compensation. The written and verbal contents of the presentation are not intended to constitute consulting and/or advice and no client relationship is established between the presenter and attendees.



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- Field adjuster for Liberty Mutual handling workers' comp and general liability claims in 1970, Dallas TX
- Claims manager of a captive insurance company managed by a large regional broker in 1973, Denver CO
- Moved to CA with a large national brokerage in 1980
- Started own brokerage and consulting business in 1983 in the areas of workers' comp and employee health plans for larger employers, with the focus of healthcare cost containment
- Also Program Development & Trainer for Polestar Performance Programs, Inc. and a Managing Consultant to Aspen Risk Management Group.



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- National Certification through the Human Resources Certification Institute (HRCI) as a Senior Professional in Human Resources (SPHR) since 2002
- HR consultant since 2006
- 20+ years in HR management
- Former President of National Human Resources Association (NHRA) – San Diego Chapter



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Agenda

- Workers' Compensation Insurance
 - CA experience rating plan
 - WCIRB changes
 - Criteria for excluding officers & board members
 - Minimum & Maximum payroll changes
 - What to do when you have a WC claim
 - Claims process
- Handling the claim and leave from the HR side



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CA Experience Rating Plan

- Experience Rating benchmarks an employer against others in same industry
- Based on individual employer's claims and payroll
- Experience Modification Factor (X-mod) expressed as %
- Number of claims (frequency) and cost of claims (severity) impacts employer's X-mod



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Safety Financial Incentive

- Experience Rating Plan provides financial incentive for workplace safety
 - X-mod of 100% is cost neutral to employer WC
 - X-mod > 100% will increase employer WC cost
 - X-mod < 100% will decrease employer WC cost



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2017 Rating Changes for CA

- WC Rating Bureau (WCIRB) changed the formula for calculating X-mods to add greater weight on the frequency of claims
- Variable Split Value added to the calculation based on the employer's payroll size & class codes
- Employers with higher frequency of losses can expect to have their X-mods adversely affected



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What is a Variable Split Point?

- In calculating an employer's X-mod, the actual losses are divided into Actual Primary Losses and Actual Excess Losses
- Primary Losses count more in the calculation
- Since 2010, the split point for Primary Losses has been \$7,000
- In 2017, the WCIRB changed to a Variable Split Point (VSP) to give more weight to frequency of claims

VSP



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Why VSP Added to Calculation

- Per WCIRB, the previously used fixed split point of \$7,000:
 - Did not reflect CA's changing pattern of frequency & severity
 - Was no longer producing effective results in determining an employer's true X-mod



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Expected Outcome of VSP

- Per their website, the WCIRB says:
 - It has no overall expectation of impact on employer premiums
 - The Variable Split Point places greater weight on claim frequency than on severity
 - Employers that have greater claim frequency than the average for their industry will have higher X-mods under this new plan



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2017 First Aid Claims

- Prior to 2017, CA employers did not have to report First Aid Claims to the WCIRB and they were not used in the X-mod calculation
- Starting in 2017, CA employers are required to report ALL claims to the WCIRB
- This means that ALL claims will be used in the X-mod calculation
- The impact of this change will depend upon the individual employer's claims situation



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2017 Exclusion Criteria

- CA Assembly Bill 2883 amends the criteria for excluding officers & board members from coverage
- Officers or board members may be excluded if they own 15% or > of common stock
 - Provisions will change if SB189 law is enacted
- General Partner of partnership or managing member of LLC may be excluded from coverage
- Excluded party must do written waiver of rights



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2017 Payroll Minimum & Max

- Effective Jan. 1, 2017, the payroll amounts for executive officers, partners, individual employers and members of LLC's are as follows:
 - Officer Minimum: \$48,100
 - Officer Maximum: \$122,100
- No changes to wage thresholds of any dual wage classification



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To Do Before You have a Claim

- Develop a claims handling protocol that will identify who is responsible for what in the event of an employee injury/illness
- Distribute the protocol to the responsible parties and let them know their responsibilities
- Make sure proper Posting Notices are in place
- Remind ALL employees it is their responsibility to notify their supervisor in the event of an injury
- Designate one person (preferably HR) to report the WC claim to the insurance company



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To Do When You Have a Claim

- Provide the injured employee a WC Claim Form (Form DWC 1)
- Get enough basic information from the injured employee to know how to proceed
- Do NOT try to determine legitimacy of claim
- Direct the injured employee to designated MPN clinic (or have supervisor transport injured EE)
- Report the injury to your insurance carrier or TPA
- If employee does not return to work, contact them to let them know what to expect



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Claims - Traveling Out of State

- Generally, the injured employee will receive WC benefits based on where they live
- What constitutes an accepted WC claim is significantly broadened for an employee travelling on business
- If an injury occurs while employee is travelling ask insurance carrier for assistance in locating medical facilities



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Employer Best Practices



- Written Programs
 - return to work; modified duty
- Communicate, Communicate, Communicate
 - new employee pre-injury, post injury, medical providers, brokers, claims examiners
- Written job descriptions with physical needs
- Identify potential modified duty jobs



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The Claims Process

- When a WC claim is reported to the carrier:
 - Carrier sets up a claim file
 - Assigns the claim file to a claim examiner
 - Claims examiner contacts employer to obtain any missing/additional info about the claim
 - Claims examiner contacts injured employee to explain claims process



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The Claims Process *(cont.)*

- Claims examiner and/or supervisor establish an initial reserve for the claim (there are several methods of establishing reserves on new claims)
- Claims examiner monitors medical reports for change in employees condition/work status
- Claims examiner establishes Plan of Action for the claim and puts the claim on a diary system appropriate for the type/seriousness of claim



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How Employers can Assist

- Do a thorough investigation of the incident to determine cause of the incident
- Contact all witnesses and co-workers to get their input on the incident
- If any of their statements vary from that of the injured employee, notify the insurance company
- If there are any issues regarding the employee's employment notify insurance company
- Make contact with the employee to see how they are doing and if they have any questions



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HR Steps

- Primary responsibilities
 - Provide DWC1 form to employee within 24 hours
 - Report “potential” claim to carrier
- Stop paying employee if not working



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Leave – Workers Comp

- Reason
 - Work-related injury or illness
 - Carrier must approve claim as work-related
- Time off
 - Amount of time determined by medical providers
 - Protected but termination possible with legal help
- Employee pay
 - Carrier pays for any employee loss if determined it's a valid claim



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Leave – Disability

- Reason
 - Carrier denies workers' comp claim
 - Personal injury or illness
- Time off
 - Not protected except per specific laws (i.e., CA pregnancy leave)
- Employee pay
 - Unpaid time off
 - Employee should file for state disability pay, if available

REJECTED
INSURANCE
CLAIM



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Leave – FMLA (or CA's CFRA)

- Reason
 - Employer and employee qualify
- Time off
 - 12 weeks of protected leave per 12 months
 - Include intermittent time off
 - Runs concurrently with other leaves
- Employee pay
 - Unpaid time off



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Job Descriptions

- Physical aspects of work
 - Continual visual concentration without any visual or auditory impairment not correctable to normal levels or that would impair safety of individual or others
 - Ability to stoop, bend, kneel, reach, and move freely throughout building for performance of duties
 - Prolonged standing and sitting in the same place
 - Good finger dexterity
 - Performing repetitive movements associated with the manufacturing of products
 - Ability to lift 25 pounds from floor to table to floor



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Health Insurance

- Continued health insurance coverage ruled by what is in your Employee Handbook
 - May limit time coverage will continue
 - May move employee to COBRA
- Have plan for employee to continue their share, if any, of their insurances



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Return to Work

- Light / modified duty
 - Temporary restrictions
 - Work hard to accommodate
- Medical certification
 - Ultimately you want medical clearance with no restrictions



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Recommendations

- Update job descriptions for physical aspects
- Develop light duty possibilities before needing it
- Keep checking in with your workers' comp rep
- Legal advice regarding terminations



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Additional Questions?



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