

California Workers' Compensation

Recent Legislation and System Performance

Presented by:



2010

A New Decade

The Workers' Compensation Action Network is pleased to present this informational booklet on California's workers' compensation system in 2010.

In assessing the past decade, we find a system rocked by crisis and fundamentally transformed by legislative action that curbed abuses, reduced litigation and improved system performance and outcomes for injured workers. The resulting cost savings allowed small businesses to create jobs, empowered nonprofit groups to deliver additional services and helped local governments restore funding to other critical service areas.

As California ushers in a new decade, it is confronted with emerging trends that are alarmingly similar to those that gave rise to its last crisis: fast-rising medical costs and harmful court decisions that make the system for rating permanent disabilities more costly and litigious. It is with the hope that history will not be forgotten nor repeated that this booklet accounts for the turmoil of the pre-reform system, the sweeping changes enacted by the legislature, performance of the current system and latest trends.

Against the backdrop of an ongoing recession, double-digit unemployment, and crippling budget deficits for government at all levels, California's economy is ill-equipped to withstand another workers' compensation crisis that would further jeopardize its competitiveness or ability to create jobs.

Role of Workers' Compensation

The purpose of workers' compensation is to provide prompt medical care to workers injured on the job, as well as deliver cash benefits to compensate injured workers for a portion of lost wages on a temporary or permanent basis. This social insurance program is designed to function as a "no fault" system. There is no burden of proof for an injured worker to show employer negligence caused a workplace injury. It acts as the exclusive remedy for workers and employers to resolve workplace accidents without resorting to the court system.

Workers' compensation is typically delivered through one of two mechanisms:

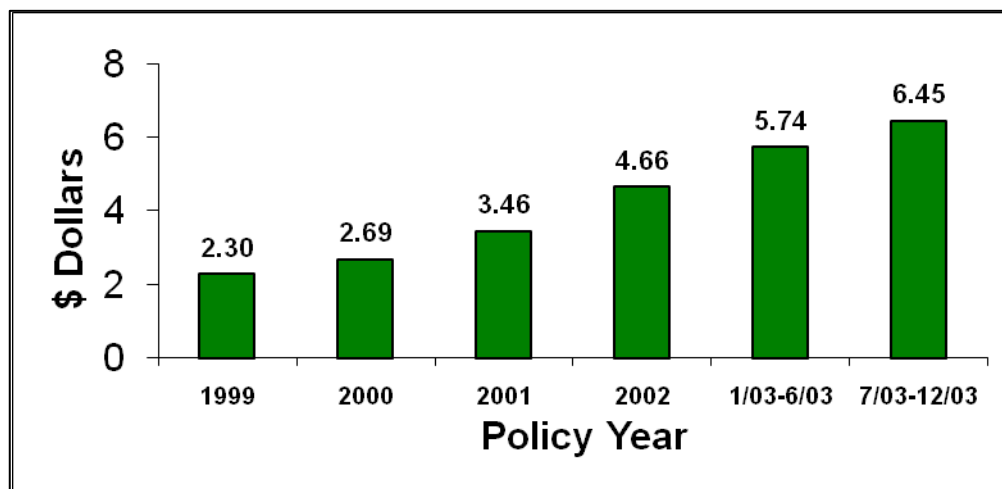
- Insurance — Employers may purchase workers' compensation insurance from a private insurance company or the State Compensation Insurance Fund.
- Self-insurance — Employers, including very large employers and many public agencies, may choose to pay directly for their workers' compensation costs. Smaller employers may also pool their resources to form self-insurance groups.

California's Crisis

California's workers' compensation crisis reached its peak in 2003. Between 1999 and 2003, the cost of workers' compensation insurance for California employers nearly tripled, increasing from \$2.30 to \$6.45 per \$100 of payroll.¹ California was ranked the most expensive state for workers' compensation insurance, with an average insurance rate nearly 40 percent higher than the next highest state and more than double the national average.²

According to the Public Policy Institute of California, "the two most important contributors to the workers' compensation crisis appear to be rising medical costs and increasing numbers of permanent partial disability cases."³

INSURER RATE PER \$100 PAYROLL 1999-2003



Several key facts bear out this conclusion:

- Medical costs for workers' compensation claims in California more than doubled between 1995 and 2002 and grew much faster than the national rate of medical inflation.⁴
- Medical costs per claim were twice as high as the national average in 2002.⁵
- Permanent partial disability claims were being filed at a rate three times the national average and 20 percent higher than the next highest state.⁶

The high number of permanent disability cases in California's system was also linked to a very high rate of litigation and attorney involvement, with attorneys involved in 89 percent of all permanent disability cases.⁷ That rate climbed to 96 percent attorney involvement for the most severe cases.⁸

Reform Legislation

From 2002 through 2004, California enacted four significant reform laws. While these new laws changed many aspects of California's workers' compensation system, major components of these reforms sought to:

- Increase indemnity (cash) benefits to injured workers;
- Rein in skyrocketing medical costs by controlling medical over-utilization and adopting evidence-based medical treatment standards;
- Produce consistent, objective measurements for compensating permanently disabled workers;
- Reduce California's high rate of costly litigation; and
- Increase incentives to get injured workers back on the job.

Key Reforms: Medical Care and Permanent Disability

As noted, high medical costs were one of the key drivers of California's crisis. In particular, the utilization of medical services in California was much greater than in other states and led to increased costs, despite the fact that medical outcomes here were generally worse.⁹ One reason for this high utilization rate is that all treatment prescribed by a physician was presumed correct, with no recourse for employers to challenge the treatment as either unnecessary or inappropriate.

As shown in the chart (pages 5-6), the reforms required that all treatment be in accordance with a Medical Treatment Utilization Schedule (MTUS), which is presumed correct for all medical treatment issues. Reform legislation enacted in 2004 mandated the use of evidence-based, peer reviewed medical treatment guidelines published by The American College of Occupational and Environmental Medicine (ACOEM), which now form the basis of the MTUS. In 2009, other evidence-based treatment guidelines were added to supplement the MTUS in the areas of chronic pain and postsurgical medical treatment.¹⁰ The reforms also required employers to establish Utilization Review programs, which is the process by which qualified physicians review treatment requests to ensure they are supported by evidence-based guidelines.

Recent reforms also capped the number of chiropractic visits, which, according to one study, were 160 percent higher in California than an average among 12 states.¹¹ In addition, employers now have the ability to manage the delivery of care by creating Medical Provider Networks, while giving injured workers the ability to seek second and third opinions from other physicians within the network or appeal to the Division of Workers' Compensation (DWC) for Independent Medical Review if they dispute the diagnosis or treatment.

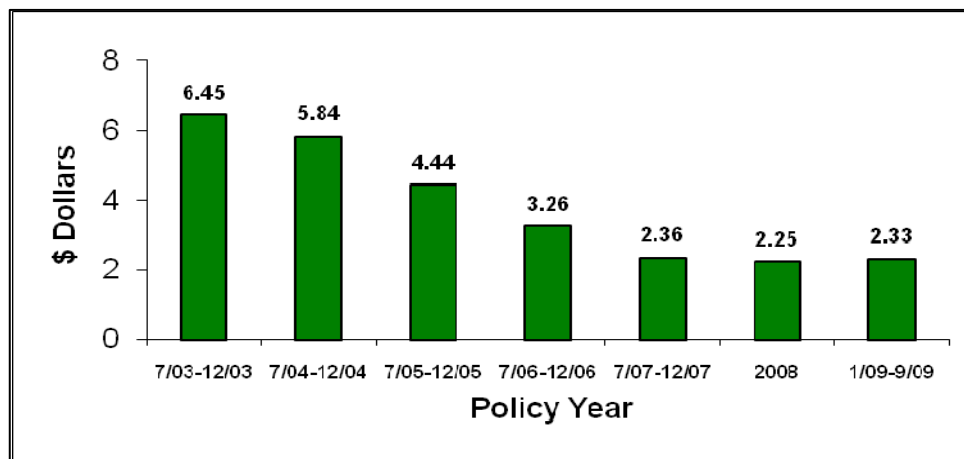
California's system for rating permanent disabilities (PD) was also dramatically changed. Under the state's old system, subjective factors, such as work restrictions, were used to determine the level of permanent disability and, ultimately, the level of benefit to be paid. This system was described as "costly, inequitable, inconsistent and prone to disputes."¹² In California, PD cases accounted for 82 percent of all benefit payments, well above the national average of 59 percent.¹³ In addition, PD benefit costs in California increased by 62 percent between 1998 and 2004.¹⁴

As a result of reforms, California now uses guides published by the American Medical Association (AMA) for measuring permanent impairment. Significantly, these guides, which are used by 38 other states, provide a tool for physicians to consistently measure and rate the level of an injured worker's impairment. This rating is then multiplied by factors for age, occupation and diminished future earning capacity to arrive at the percentage of permanent disability.

Reform legislation enacted in 2004 also increased payments for injured workers rated more than 70 percent permanently disabled and decreased payments for injured workers rated less than 15 percent permanently disabled. This legislation also established incentives for returning injured workers to work by allowing PD benefits to be decreased by 15 percent if there is an offer for alternative or modified work and increased by 15 percent if there is no such offer.

California's Post-Reform System: Initial Cost Savings

INSURER RATE PER \$100 PAYROLL 2003 – 2007



According to the Workers' Compensation Insurance Rating Bureau (WCIRB), the average statewide insurer rate during the first nine months of 2009 was \$2.33 per \$100 of payroll, which is 64 percent below the average rate charged during the second half of 2003.¹⁵

Legislation	Key Reform Components			
	Medical Treatment and Utilization	Temporary Disability	Permanent Disability	Other Reforms
Assembly Bill 749 (Calderon) Year: 2002	<ul style="list-style-type: none"> Eliminates the treating physician's presumption of correctness, except for a predesignated, personal physician or chiropractor Requires Administrative Director to develop fee schedules for pharmaceuticals and outpatient surgery centers 	<ul style="list-style-type: none"> Annual benefit increases 1/03, 1/04 and 1/05 Future benefit increases tied to increases in Statewide Average Weekly Wage 	<ul style="list-style-type: none"> Annual benefit increases for Permanent Total Disability 1/03, 1/04 and 1/05 Future benefit increases for Permanent Total Disability tied to increases in Statewide Average Weekly Wage Annual benefit increases to maximum PD benefits for certain rating intervals 1/03 – 1/06 Increase in scheduled number of weeks for PD benefits 1/04 	<ul style="list-style-type: none"> Increase aggregate life pension and death benefits in '06 Weekly life pension and death benefits subject to COLA adjustments after 1/03 Allows for lump-sum settlement payment for vocational rehabilitation
Assembly Bill 227 (Vargas) & Senate Bill 228 (Alarcon) Year: 2003	<ul style="list-style-type: none"> Requires Administrative Director to adopt a new medical treatment utilization schedule, which will be presumptively correct with regard to extent and scope of medical treatment Requires that ACOEM guidelines be used until the new schedule is developed Requires that for injuries not covered by ACOEM, treatment be based on other evidence-based treatment guidelines generally recognized by the medical community Requires development of new fee schedules for physician services, inpatient hospital services, pharmaceuticals and outpatient facility services Generally limits chiropractic and physical therapy to 24 visits Requires employers to develop a utilization review process 			<ul style="list-style-type: none"> Repeals vocational rehabilitation Requires that an injured worker receive a supplemental job displacement voucher if he/she does not return to work within 60 days of termination of TD payments Requires employers to pay any bill for medical treatment within 45 days
Senate Bill 899 (Poochigian) Year: 2004	<ul style="list-style-type: none"> Repeals primary treating physician's presumption of correctness for all issues and all dates of injuries Requires that the presumption given to the treatment utilization schedule/ACOEM may only be contested by a preponderance of scientific medical evidence Requires that employers pay for up to \$10,000 worth of medical treatment while determining whether to accept or deny a claim Allows employers to establish Medical Provider Networks (MPN) for the treatment of injured workers Provides injured workers in MPNs the right to 2nd and 3rd medical opinions and Independent Medical Review for disputed diagnosis and treatment Generally limits occupational therapy to 24 visits <p><i>NOTE: AB 1073 (Nava) 2007 prohibits limitation on physical medicine from applying to postsurgical treatment if provided according to postsurgical treatment guidelines</i></p>	<ul style="list-style-type: none"> Caps TD payments at 104 weeks within 2 years of first TD payment, with some exceptions <p><i>NOTE: AB 338 (Coto) 2007 extends timeframe from 2 years of first TD payment to 5 years from date of injury</i></p>	<ul style="list-style-type: none"> Repeals use of work restrictions for determining PD awards Requires the use of AMA guides for determining physical impairment Requires Administrative Director to create a new Permanent Disability Rating System by 1/1/05, which must include modifiers for age, occupation and loss of future earning capacity Increases scheduled number of weeks from 9 to 16 for PD ratings above 70%; reduces scheduled number of weeks by 1 for PD ratings below 15% Increases PD award by 15% if there is no offer to return to modified work; decreases PD award by 15% if there is an offer to return to modified work Requires that employer is only liable for the permanent disability caused by work-related injury 	

Sources: WCIRB; CHSWC; CWCI

The WCIRB estimates that medical and indemnity costs for insured employers have been reduced by approximately \$13.7 billion as a result of these legislative reforms.¹⁶

Employers' options for workers' compensation insurance have increased dramatically due to more competition in the marketplace. Since reform legislation was enacted, 29 new insurers have started writing workers' compensation policies in California. Market share for the State Compensation Insurance Fund, which acts as the insurer of last resort in California, has been reduced by approximately half.¹⁷

Public sector employers, including cities, counties and school districts, have saved an estimated \$1.9 billion as a result of reforms. The savings would have been sufficient to pay the annual salaries of 23,000 public school teachers and 25,000 police officers in fiscal year 2005-06.¹⁸

Despite these savings, costs for workers' compensation coverage remains more expensive in California than in neighboring states Arizona, Oregon and Nevada and is 121 percent of the national median.¹⁹ According to the National Academy of Social Insurance, California employers paid 18 percent of all medical and cash benefit costs in the nation in 2006, despite the fact that only 12 percent of covered workers are in California.²⁰

California's Post-Reform System: Improved Outcomes for Injured Workers

Since the 2004 reforms, the average return-to-work rate for injured workers has increased by 5 percent and by as much as 11 percent for injuries to certain body parts, such as spine and knee. According to the DWC, 70 percent of workers injured during the first six months of 2005 were working within 12 months of their injury. According to the RAND Corporation, the 12-month return-to-work rate is a "strong predictor of the long-term economic outcomes of disabled workers."²¹

California's system has also improved dramatically in providing a key wage replacement benefit to injured workers. Due to benefit caps that existed prior to 2003, 20 percent of temporarily disabled workers were not receiving benefits equal to two-thirds of their weekly wages, which is the target for such benefits. Since 2003, the weekly amount for this benefit has been increased by more than 100 percent (from \$490 to \$986). As a result, the number of temporarily injured workers receiving tax-free benefits equal to two-thirds of their wages has increased to 97 percent.²²

Injured workers' claims are being resolved more quickly and with less litigation. Between 2005 and 2007, the average number of days for an injured worker to get a trial on a disputed claim decreased by 46 percent.²³ After the reforms, the number of PD claims that were resolved within 12 months increased by 48 percent and those resolved within 36 months increased by 29 percent. Overall, the number of litigated workers' compensation claims has declined by 36 percent, which is greater than the overall decline in workers' compensation claims between 2003 and 2007. The number of PD claims involving attorneys has declined by more than 6 percent since the reforms.²⁴

Injured workers continue to have access to quality medical care. In a survey of 1,000 injured workers on medical treatment issues, the DWC found that the "vast majority of injured workers have access to quality care." According to the survey, 83 percent of injured workers report being able to access quality medical care, and 78 percent report being satisfied or very satisfied with the care they received for their injuries. The DWC noted that satisfaction levels were similar to those reported in previous surveys conducted before the introduction of evidence-based medicine and treatment guidelines to California's workers' compensation system.²⁵

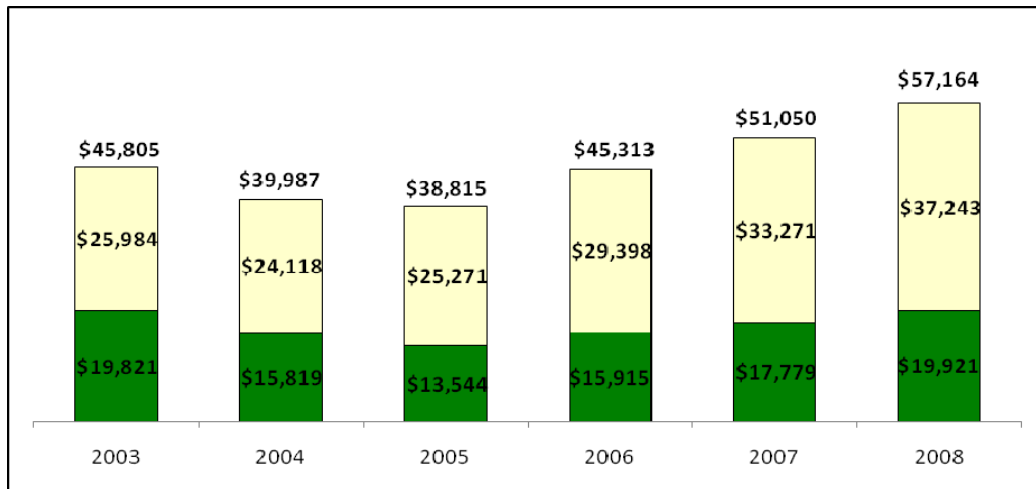
Latest Trends: Costs Increasing Again

After five consecutive years of rate reductions, average workers' compensation insurance rates began to increase again in 2009. For insurance policies beginning January 1, 2009, the average rate increased by 6 percent. For policies beginning July 1, 2009, the average rate increased by 9 percent.²⁶ According to the Insurance Commissioner, average workers' compensation rate for policies beginning January 1, 2010 grew by 4 percent.²⁷

The increase in rates reflects a 47 percent increase in costs per claim between 2005 and 2008. Although the majority of the increase is attributable to medical costs, which have been growing by double-digit percentages each year since 2005, costs per claim in 2008 eclipsed pre-reform levels for both medical treatment and cash benefits.²⁸

According to research by the California Workers' Compensation Institute, factors in rising medical costs include more doctors' office visits, more treatments per visit, increased costs for surgeries, increased costs for pharmaceuticals and medical equipment, and increased costs for medical cost containment and legal expenses. In 2009, the DWC unveiled a 12-point plan for regulations to "monitor and help control medical costs in California's workers' compensation system."

COSTS PER INDEMNITY CLAIM*



*Excludes medical only



Estimated ultimate medical



Estimated ultimate indemnity (cash)

Latest Trends: Legal Threats

In California, there is a history of legal rulings undermining legislative reform of the workers' compensation system. The *Minnear* decision, for example, was estimated to add as much as \$800 million to system costs after the 1993 reforms became law.²⁹

In 2009, the Workers' Compensation Appeals Board (WCAB) issued rulings in cases known as *Almaraz*, *Guzman* and *Ogilvie*. In these three cases, the WCAB ruled that injured workers could present evidence to challenge and overturn their PD ratings under the objective, AMA-based rating system mandated by the Legislature.

California's non-partisan Legislative Analyst has concluded that these rulings could lead to "(1) changes in PD ratings, (2) increased incentive for litigation, and (3) decreased uniformity in determining PD. Ultimately, these effects would likely lead to increased benefits for workers and higher costs for businesses and governments." The WCIRB, meanwhile, has estimated that these cases will add \$800 million in costs for employers. All three cases are under appeal.³⁰

About WCAN

WCAN is a statewide, broad-based grassroots coalition of employer and insurer trade groups, businesses, non-profit organizations and public entities working together to ensure the full and successful implementation of legislative reforms to restore predictability and stability to the workers' compensation system, reduce costs for employers and improve services to injured workers. WCAN works to ensure that California employers and the media are informed about the implementation process so the legislative gains are protected and realized to ensure injured employees are given necessary medical care promptly and receive benefits timely, fraud is eliminated, legitimate disputes are resolved fairly and quickly, and system costs are reduced where inefficiencies and inequities exist.

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Endnotes

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