



CENTRAL SAN JOAQUIN VALLEY RISK MANAGEMENT AUTHORITY

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Northern Region

Angels Camp
Atwater
Ceres
Escalon
Gustine
Hughson
Lathrop
Livingston
Newman
Oakdale
Patterson
Ripon
Riverbank
Sonora
Sutter Creek
Tracy
Turlock
Waterford

Designing The Perfect Workers' Compensation Program

You've evaluated your Workers' Compensation Program (WCP) and costs continue to rise. You understand there are many aspects of workers' compensation that are out of your control, but what can you do? If you had the resources, how could you build the "Perfect Workers' Compensation" program?

Let us make an assumption – if you have employees, you will have employees who are injured or become ill due to their work. Can you overcome this assumption? No – but you can mitigate the exposure.

Due to the assessments over the last few years, staff evaluated workers' compensation losses that occurred in the last 10 years. The following graphs depict findings based on loss data provided by AIMS through 6/30/16:

Central Region

Chowchilla
Clovis
Dinuba
Dos Palos
Firebaugh
Fowler
Huron
Kerman
Kingsburg
Los Banos
Madera
Mendota
Merced
Orange Cove
Parlier
Reedley
San Joaquin
Sanger
Selma

All Claims			
	Number of Claims	Total Incurred Amount	Average Cost Per Claim
Manual ¹	2,704	\$33,739,534	\$12,478
Non Manual ²	912	9,166,146	11,610
Safety ³	3,773	76,267,010	19,827
Total	7,389	\$119,172,690	\$15,341

¹ Maintenance, Mechanics, Parks, Airport, Streets, Buildings, Waste Management, Animal Control, Transportation, etc.

² Clerical, Administration, Recreation, etc.

³ Fire and Police

Southern Region

Arvin
Avenal
Corcoran
Delano
Exeter
Farmersville
Lemoore
Lindsay
Maricopa
McFarland
Porterville
Shafter
Taft
Tehachapi
Tulare
Wasco
Woodlake

Cause of Injury - All Claims	Number of Claims	Total Incurred Amount	Average Cost Per Claim
Absorption, Ingestion, or Inhalation ⁴	522	\$2,410,511	\$4,618
Altercation, Apprehension involving Suspects	729	9,904,605	13,587
Bite, Burn, or Puncture Wound	1,047	2,610,305	2,493
Bodily Reaction ⁵	712	26,085,553	36,637
Caught or Struck By/Between	1,247	15,127,816	12,131
Lifting, Pulling, Pushing, or Twisting	2,020	33,608,868	16,638
Slip, Trip, or Fall	814	24,168,399	29,691
Total	7,389	\$119,172,690	\$16,128



⁴ Absorption, Ingestion, or Inhalation includes rashes, smoke inhalation, exposure to blood borne pathogens, etc.

⁵ Includes strokes, cardiovascular, dizziness, cancer, stress, cumulative trauma (CT), etc.

Average Number of Loss Days Paid - Indemnity Only				
	Number of Claims	Full Salary Days	Temporary Disability Days	Total
Non Safety	1,392	0	53	53
Safety	1,712	42	38	80

Age	All Claims		Indemnity Only	
	Number of Claims	Average Cost Per Claim	Number of Claims	Average Cost Per Claim
14 -19	84	\$1,062	15	\$3,009
20 – 29	1,478	6,067	439	18,325
30 - 39	2,212	13,565	879	32,703
40 - 49	1,993	21,194	895	46,109
50 - 59	1,297	24,342	628	49,356
60+	325	19,388	151	40,535

The CSJVRMA has experienced an average litigation rate of 17% of the last 10 years, which is below the state average of 39% noted by the California Workers' Compensation Institute. The top 5 reasons claimants hire a lawyer are not receiving payment or not receiving it on time; dislike of their doctor; fear of losing their job; feeling that the process is taking too long; and not receiving a call to see how they are doing. Frequent employer communication with the injured worker about the next steps in getting back to work is key to alleviating the fears, and potentially reducing litigation. The Workers' Compensation Insurance Rating Bureau (WCIRB) has recently released an analysis of allocated loss adjustment expense (ALAE) cost trends in California workers' compensation. The major findings of the report are the average ALAE cost per claim has increased by more than 5 times in the last 25 years. In addition, despite the implementation of Senate Bill 863 in 2013, average ALAE costs have increased by 20% since 2012. Other comparisons suggest that CT claims are much more likely to involve significant ALAE costs and these types of claims have been growing faster than other types of claims, indicating that the recent growth in cumulative injury claims is likely a key driver of recent increases in ALAE levels. It was also noted that 40% of CT claims filed since 2012 were filed after the worker was fired, laid off, or quit.

While the CSJVRMA has an effective third party claims administrator and a Workers' Compensation Program Manager providing oversight, one of the challenges with workers' compensation is there are many aspects out of an employer's control due to laws and regulations. To ensure members can affect the cost of claims, the document titled "Designing the Perfect Worker's Compensation Program" has been updated and will be posted to the CSJVRMA's website.

Listed below are some recommendations for proactive approaches, managing your workers' compensation costs, and reducing future exposure:

1. Claims History/Loss Experience

You should receive the workers' compensation loss reports every month from AIMS that list all claims. If you are not, please let us know immediately! The reports list the total paid out on these claims and what is expected to be paid, known as the total incurred amount. Do you understand what this information actually means for your program or how it is developed?

Every employer should be responsible for understanding their workers' compensation claim history or loss experience.

If you do not know the following information, work with AIMS to obtain the information:

- Read the reports and make sure the claims listed belong to your employees. Mistakes can be made. If a file has been incorrectly applied to your City, notify AIMS immediately and continue to review the reports until the mistake is corrected.
- How do you know if the amounts paid or the future amounts estimated to be paid are accurate?
 - Actively participate in Claim Reviews with AIMS.
- Ask how the amounts estimated to be paid are determined.
- Require management of each department involved in the Claim Review to participate in the review as this will help everyone to understand the financial impact, the impact to resources and the impact to personnel.
 - Request periodic audits of the claims to assure accuracy of payments and future estimates.
- Share information regarding types of claims and causes of accidents/injuries with your Risk Management/Loss Control staff so you can reduce the likelihood of similar accidents occurring in the future (refer to Item 3).

IMPACT YOU MAY EXPECT: Knowledge is power! An employer aware of how their claims are administered can work with this knowledge to reduce future claims whenever possible.

2. Select The Right Designated Occupational Clinic

Every employer should have a designated Occupational Clinic. However, simply designating the clinic is not all an employer should do.

Engaging the Occupational Clinic as part of the Workers' Compensation Team can be vital to making sure the employees receive the appropriate care, the employer receives information regarding the employees' ability to return to work and the treating physician has a clear understanding of the work conducted by the employer and the essential job functions of that work.

Waiting until injuries occur and then learning about the services of your Occupational Clinic can

lead to delays in appropriate care, and misunderstandings regarding return to work information.

The following steps can aid an employer when selecting the Occupational Clinic:

- Select a clinic located near the employer's facility. If the employer has several locations, select an Occupational Clinic that has locations near each of the employer's addresses.
- Meet with the physicians at the Occupational Clinic and discuss the type of work performed, the job titles, and the essential functions of the job(s). Do not assume the physicians "just know" what work goes on at the employer's facility.
- Provide clear communication expectations.
 - Clarify what employer representative should be contacted regarding an employee's ability to return to work.
 - Make sure the Occupational Clinic knows who is administering your workers' compensation claims.
- Determine if the Occupational Clinic can provide complete pre-employment/post-offer physical examinations.
 - A copy of the Essential Functions of the job should be discussed with the evaluating physician prior to the evaluation.
 - The Occupational physician's evaluation will evaluate the employee's health history, medication usage, and provide a medical opinion as to the individual's ability to perform the essential functions of the job.
- An annual meeting at the clinic by the employer is recommended to assure conditions at the facilities are appropriately maintained and to discuss any concerns the employer may have with the services provided by the clinic.
- Determine if the Occupational Clinic can provide Return to Work Examinations. Refer to Section 2 for a discussion on the development and value of a successful Return to Work program.

IMPACT YOU MAY EXPECT: Identification of employees who are able to meet the Essential Functions of the job. Appropriate medical care for injured workers. Prompt receipt of return to work information. All of which will result in reduced workers' compensation costs.

3. Alternative Dispute Resolutions or "Carve-Out"

Alternative Dispute Resolutions (ADR) or "Carve-Out" programs were introduced in to California Workers' Compensation and are described as:

(1) An alternative dispute resolution system for employees and employers engaged in construction (or other enumerated activities), established pursuant to Labor Code section 3201.5.

(2) An alternative dispute resolution system for any industry (other than construction), established pursuant to Labor Code section 3201.7.

Although originally released for Construction type employers only, the ADR process has been expanded to other employer types, including Public Entities. A recent review of the Division of Workers' Compensation website shows 9 of the 19 active ADR agreements are for Public Entities.

An ADR program encourages Labor Unions and Employers to work together and "carve out" ways to provide workers' compensation benefits without developing negative and adversarial relationships. This can result in decreased costs and better efficiency than traditional workers' compensation services.

The positive aspects of the process have been described as including a reduction of litigation and disputes to include reduced medical-legal timeframes and reduced delays in medical care. Many participants state they experience increased employee morale, positive medical care results and an overall reduction in workers' Compensation claims program costs.

To participate in an ADR agreement, per Labor Code sections 3201.5(a) and 201.7(a)(3); California Code of Regulations, title 8, sections 10200(e), 10201(a)(2)(C), and 10202(d)(2)(C), the Union must:

- Be a bona fide labor organization that actually represents the employees in California as to wages, hours, and working conditions; and
- Be recognized or certified as the exclusive bargaining representative of the employees involved; and
- Have officers who have been elected by secret ballot or otherwise in a manner consistent with federal law; and
- Be free of domination or interference by any employer and receive no improper assistance or support from any employer

The non-construction type employer per Labor Code section 3201.7(c); California Code of Regulations, title 8, section 10202(d)(1)(E) must:

- Have an annual workers' compensation premium of at least \$50,000 or the self-insured equivalent; or
- Be part of a "safety group" of employers that has annual workers' compensation premiums of at least \$500,000 or the self-insured equivalent.

To determine if an ADR agreement is right for you, the employer needs to identify those serious areas of concern that may be improved by moving to an ADR situation. The employees' input is going to be vital to a complete buy in of any change to an ADR process. Various resources can be utilized to identify problem areas, such as surveying injured workers, forming discussion groups of employees, reviewing OSHA logs and Claims History (See Item 2 above). Your goal is to identify the most serious problems with your WCP and determine if you can improve a particular aspect of the program or if you need a complete change to the workers' compensation system for delivery of benefits and dispute resolution that would support creating an ADR agreement.

The CSJVRMA has budgeted the costs to develop an ADR for 5 members annually. The City of Madera and Porterville have established ADRs. To form your ADR, contact AIMS who will assist members in following these basic steps (understanding that tasks that are more detailed will be undertaken as you progress through the process):

- You must negotiate the ADR agreement separately from other collective bargaining agreements covering the same employees.
- Once the parties have agreed to the provisions of the ADR, they jointly submit an application to the Administrative Director of the Division of Workers' Compensation.

In developing the provisions of the ADR, you need to keep in mind that you must maintain the same level of benefits for injured workers. Through negotiation, you now have options to address those areas of serious concern identified earlier. Some considerations may be:

- Develop an ADR system that usually involves the services of ombudsmen, mediators, and arbitrators. Both labor and management should be directly involved selection of these individuals.
- Develop agreed lists of providers agreed upon by both parties for medical providers and others that may provide services to injured workers.
- Consider combining the delivery of medical benefits and disability compensation to injured workers by coordinating and integrating the services provided under both workers' compensation and group health.
- Include a written Return to work policy and program.

The development of the formal ADR will require cooperation between labor and management, but can result in more timely provision of benefits, with fewer disputes and less litigation.

IMPACT YOU MAY EXPECT: Undertaking the ADR process can be a daunting task for an employer. Union negotiations will be required and will involve recognizing areas of serious concern regarding workers' compensation delays (perceived or actual), and then working together to correct these issues. However, those employers involved in the ADR process have realized savings in their WCPs and believe there is greater injured worker satisfaction with the benefits provided.

4. Case Settlements

If you are disputing the level of disability, the injury in its entirety, or the need for medical care, an evaluation of the costs of litigation weighed against settlement should be made.

Once a Notice of Representation is received from an applicant's attorney, resolution of the claim will likely be delayed and further costs incurred to support a higher settlement from which the attorney receives their percentage. On disputed claims, request the examiner outline a potential settlement at onset of litigation. Attempt to settle the claim before litigation becomes outrageous. The longer a case remains open, the more likely the costs will increase. If one waits for the applicant's attorney to make a move on case settlement, the injured worker is likely to go back to the doctor at some point, or at least threaten to, and this may lead to additional temporary

disability, permanent disability, and medical exposures as well as additional claims.

Consider offering additional money to Compromise and Release future medical care benefits. Future medical liability can often be reduced for those claims that can be settled via Compromise and Release and not subject to rising medical costs, thus eliminating the exposure for new and further disability. However, all settlements involving future medical benefits must be evaluated to protect the interest of Medicare. The examiner's settlement discussion should clearly indicate they have considered Medicare's interest and how it impacts the settlement. Negotiating a settlement via Compromise and Release may mean that a higher amount of money will have to be offered to resolve all benefits and close the file. Each type of settlement requires a different and specific approach.

5. Employee Wellness Initiatives

Implementation of Employee Wellness Initiatives can benefit both the City's workers' compensation claims as well as have a positive impact to healthcare benefit costs. Simply stated, healthier employees have fewer injuries and will recover faster!

For public entities, Safety Officer occupations such as Police and Fire, have been identified as high risk occupations for conditions such as high blood pressure, cardiac injury, mental stress, and sleep disturbance. Working conditions that demand shift work, poor eating habits while on the job, prolonged periods of inactivity followed by immediate, focused activity, and increased stress can all lead to or aggravate serious health conditions.

Studies have been done of Safety Officers showing that promoting a health and intervention program focused on "improve(ing) their well-being so that compensable injuries are less likely and disability durations are shorter" benefits the program as well as the employees. Another study involving Oregon firefighters focused on improved diet and exercise habits with the results demonstrating an average savings of \$1,500 in "work-related health expenses" annually per employee.

While a focus on Safety Officer positions as the more costly claims in your program may seem like enough to do, applying the concept of Employee Wellness to all staff should be the focus for employers and can be considered for all fields of employment.

These programs can be as simple as encouraging employees to be more active in and aware of their personal health. They can also be more complicated and involve employers paying for gym memberships, or encouraging and rewarding staff for weight reduction. One of the easiest ways to begin an Employee Wellness initiative is to educate employees through their health insurance. While these steps seem harmless and would be well-intentioned, the risk of assuming workers' compensation liability for any resulting illness or injury as well as the potential for violating the Health Insurance Portability and Accountability Act (HIPAA), Americans with Disabilities Act (ADA), *Genetic Information Nondiscrimination Act* (GINA), and others laws exists.

As stated above, employers who implement Employee Wellness initiatives may face a backlash of workers' compensation claims filed as a result of unclear expectations and/or miscommunicated instructions to employees regarding the Wellness initiatives.

Involving the health insurance provider in the Wellness discussion can provide the employer an opportunity to explore both the benefits and risks involved with implementation and employee participation.

As with all programs, clearly outlining the expectations and involvement of both the employee and employer in Employee Wellness Initiatives will set the goals in place and clarify each party's responsibilities.

IMPACT YOU MAY EXPECT: Increased cost of implementing the plan may include fees incurred for increased employee benefits such as gym memberships. Employees may actually be injured while exercising or working out leading to workers' compensation claims.

The benefits to the employer will be healthier employees, resulting in potentially lower healthcare costs and an overall reduction in workers' compensation costs due to decreased frequency and severity of claims.

6. Risk Management/Loss Control

All accidents, regardless of benefits paid or estimated, valid or in dispute should be reported to your Risk Management/Loss Control staff for evaluation. Here are examples of some Key questions Risk Management/Loss Control staff should be considering:

Referring back to Item 2 above – simply knowing the employee was injured in a trip and fall accident because its listed this way on the Loss Report is not sufficient to reduce or manage the risk for future accidents.

- Determine what actually caused the accident?
 - This is different than stating the employee “tripped over a box”. The cause may be the box was placed in a heavy traffic area.
 - From a Risk Management/Loss Control standpoint, the team should address why the box was placed there as well as who moved the box.
 - Is training needed for staff regarding movement/placement of boxes and material?
 - Has this same employee been injured in a similar manner before, or has the person who placed the box caused similar accidents before?
 - ❖ Is this employee continually working in an unsafe manner? If so, has this employee been counseled regarding working safely?
 - Is there a lack of available space to place the boxes when they are moved? If so, can this be corrected?

IMPACT YOU MAY EXPECT: Identifying current and future risks and focusing resources on addressing these risks will result a reduction of similar accidents and resulting injuries.