



WORKERS' COMPENSATION 101

April 6, 2023

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WORKERS' COMPENSATION HISTORY

INDUSTRIAL REVOLUTION

Workers' Compensation laws and benefits were developed as a result of the industrial revolution. Previously, there was no provision if someone was injured or maimed or help for their families if they were killed. If a worker was injured and unable to return to their job, they were frequently fired.

U.S. EARLY WC SYSTEMS

The US first patterned their system similarly to laws developed in Europe in the late 19th century. Our first WC law was federal for railroad workers. In 1911 States began developing regulations. Some States provided "voluntary" issuance of benefits. Other States provided mandatory benefits, but the injured worker would have to prove negligence on the part of the employer before afforded benefits.

WORKERS' COMPENSATION HISTORY

CALIFORNIA

California provided a 'voluntary' system in 1911 via the Roseberry Act. In 1913 the Boynton Act established a compulsory system followed by the WC Insurance & Safety Act of 1917.

In 1990 the adoption of the Americans with Disabilities Act (ADA) prohibited discrimination on the basis of disability and requires employers to give individuals with disabilities 'reasonable' accommodations.

HISTORICAL RESULT OF WORKERS' COMPENSATION SYSTEM

California's WC system is:

➤ Compulsory (no fault) Required vs. voluntary Exclusive remedy

SOME AFFIRMATIVE DEFENSES

Intoxication Defense

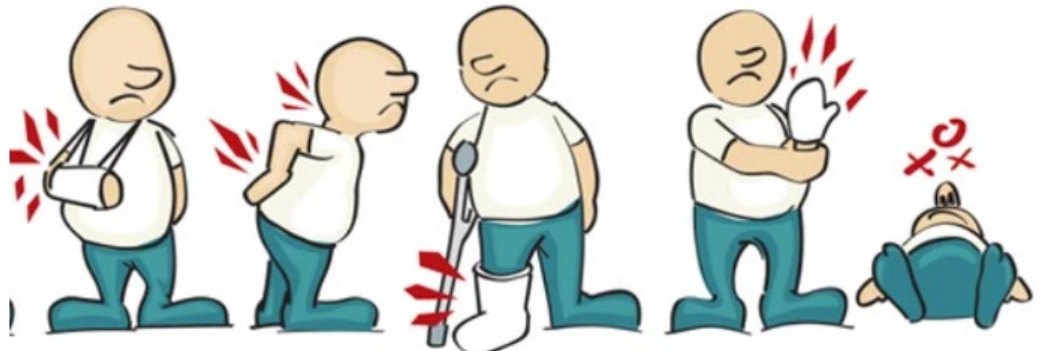
Initial Physical Aggressor

Post Termination Filing

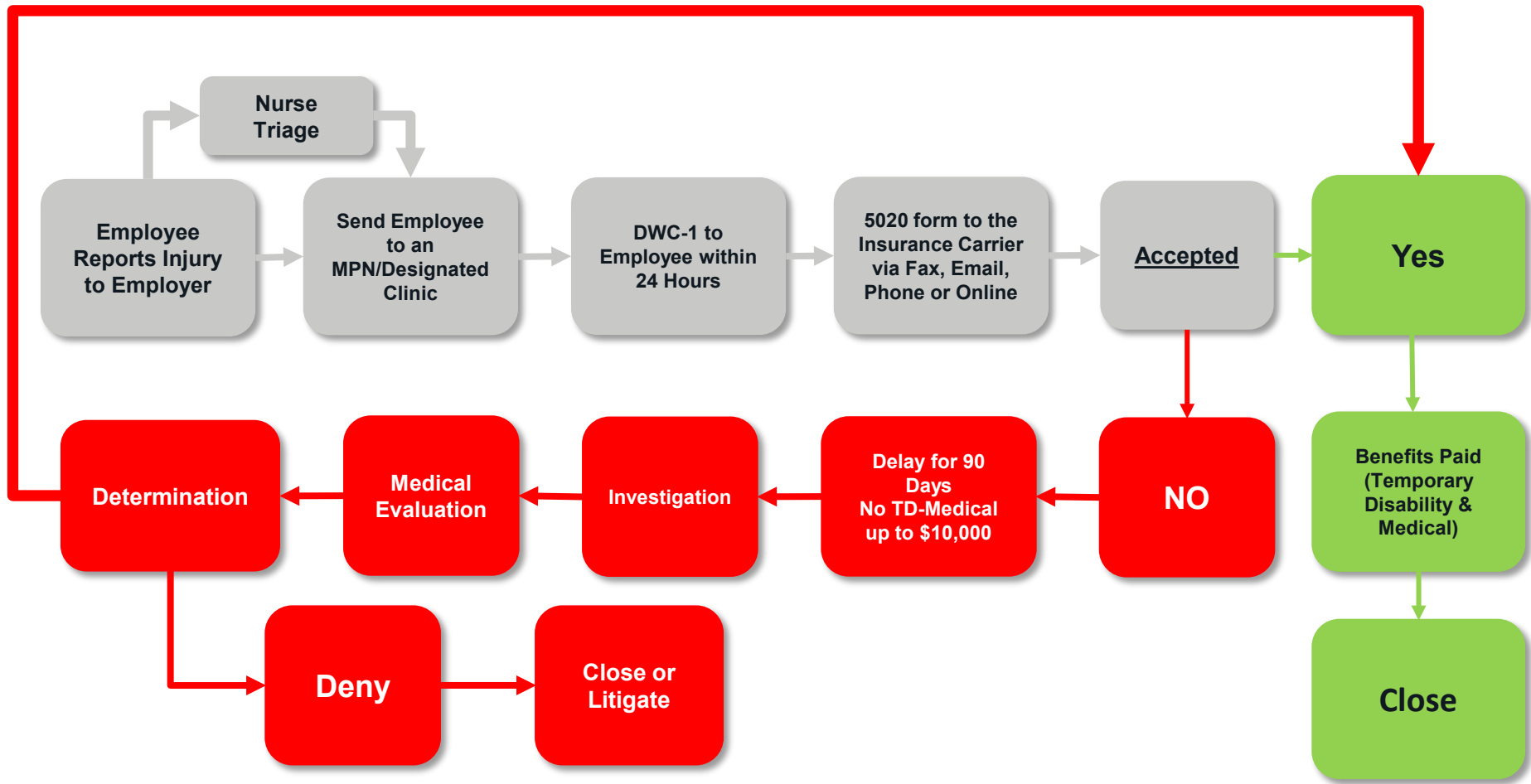
Horseplay or Skylarking

Self-inflicted Injury

Suicide



PATHWAY OF A CLAIM



WORKERS' COMPENSATION BENEFIT OVERVIEW

Types of Benefits:

Medical treatment for injury (no deductibles or copays)*

Temporary Total Disability (TD or TTD)

- Paid when the employee is unable to perform usual work
- Maximum CA rate (\$1,619.15/week)

Temporary Partial Disability (TPD)

Permanent Disability (PD or PPD)

- Based on a permanent and stationary report from a doctor
- Designed to compensate for the limitation on future work caused by the injury
- Maximum CA rate of \$290/week

Supplemental Job Displacement Voucher (SJDB).

- Benefit to assist injured workers who are permanently restricted from their usual and customary duties to return them to suitable gainful employment
- Value of \$6,000 (CA)

Death Benefits

- In CA: \$10,000 for burial expenses and \$250,000 for 1 dependent (\$290,000 for 2 dependents, \$320,000 for 3+)

CLAIM RESOLUTION / SETTLEMENT

Settlement Types:

Stipulation with Request for Award

- Provisions for Future Medical

Compromise and Release (C&R)

- Closes out all outstanding issues

Compromise and Release with Future Medical

Findings and Award (F&A)

- Determined by a WCJ

ACCIDENT INVESTIGATION & RED FLAGS

In California, it is estimated that Workers' Compensation fraud costs the state between \$2 billion to \$5 billion per year.

Every accident that occurs at your company should be investigated for three reasons:

1. To prevent further accidents from occurring in the future
2. To identify potentially fraudulent claims
3. To Preserve the record for future legal reference

ACCIDENT INVESTIGATION & RED FLAGS

There are many red flags too numerous to include all of them but here are the top 10:

Late reporting – the accident was not reported timely

Unwitnessed – there were no witnesses to the accident

Accident happened on Friday but reported on Monday

Injury reported after notice of layoff or disciplinary action

Employee has prior injuries to the same body part(s)

Short-term employee

There are different versions of the accident or the employee's story changes

Conflicting statements

The employee has poor attendance

The employee has a history of disciplinary problems

ACCIDENT INVESTIGATION & RED FLAGS

- Develop and maintain an effective Injury & Illness Prevention Program (IIPP) as well as a COVID-19 Prevention Program.
- Designate a person most qualified to conduct the investigation. This can be the safety manager, human resources manager, or any person in management well versed in the operation of the company.
- Make sure you have a comprehensive accident investigation reporting form.
- Identify the root cause of the accident to correct the problem and prevent future accidents.

ACCIDENT INVESTIGATION & RED FLAGS

Preventing fraudulent claims

- When you are hiring new employees, you should consider your pre-employment screening as a valuable tool in preventing fraud.
- Pre-employment physical
- Check references
- Background check
- Drug Screen

1. Offer Modified or Transitional Work:

One of the best tools that can be utilized to reduce your long-term Workers' Compensation claims costs.

- TD payments are not made on the claim
- Medical costs savings – injured workers are proven to recover more quickly when active at work and tend to experience gradual return of full physical function (NCM – Nurse Case Manager)
- Eliminates cost of hiring temporary or new employees
- Prevents them from becoming dependent on a disability system
- Reduce frivolous claim

WAYS TO MITIGATE COSTS

2. Utilize an MPN:

Selected medical providers that can help control medical costs and duration of a claim. Employees are required to treat within your MPN only, unless they properly pre-designate a doctor prior to injury.

3. Nurse Triage Program:

A nurse triage program can help with identifying and provide instruction on First Aid incidents.

(WCIRB requires reporting of all claims which includes First Aid Claims, regardless whether payment is made by the employer).

WAYS TO MITIGATE COSTS

EX-MOD CALCULATION

- Claim information is reported to the WCIRB by each insurance carrier; Unit Statistical Report
- An Experience Modification (rating) is calculated each year based on Actual Losses/Expected Losses.
- The WCIRB uses the last 3 years of data from the completed year.
 - For example, for a 1/1/23 calculation, 3 policy years are included.



SAMPLE FORMS

- ❑ **Employer Claim Form – 5020**
- ❑ **Employee Claim Form - DWC1**
- ❑ **Accident Investigation Form (*sample only*)**
- ❑ **Workers Compensation Acronyms**

Employer Claim Form (5020)

EMPLOYER'S REPORT OF OCCUPATIONAL INJURY OR ILLNESS		OSHA CASE NO.	
<p>FORM OR CONTENTS</p> <p>EMPLOYER'S REPORT OF OCCUPATIONAL INJURY OR ILLNESS</p> <p>PLEASE PRINT OR TYPE IN BLOCK LETTERS. USE THIS SIDE OF THE FORM.</p>		<p>FATALITY <input type="checkbox"/></p>	
<p>Any person who makes or causes to be made any knowingly false or fraudulent statement or material representation for the purpose of obtaining or denying workers' compensation benefits or payments is guilty of a felony.</p>		<p>California law requires employers to report within five days of knowledge every occupational injury or illness which results in lost time beyond the date of the incident OR requires medical treatment beyond first aid, if an employee subsequently dies as a result of a previously reported injury or illness, the employer must file within five days of knowledge an amended report indicating death. In addition, every serious injury, illness, or death must be reported immediately by telephone or telegraph to the nearest office of the California Division of Occupational Safety and Health.</p>	
<p>1. FIRM NAME</p>		<p>2. FIRM NUMBER</p>	
<p>3. MAILING ADDRESS (Number, Street, City, Zip)</p>		<p>3b. Phone Number</p>	
<p>4. LOCATION (Different from Mailing Address (Number, Street, City and Zip))</p>		<p>3c. Local Office Code</p>	
<p>5. NATURE OF BUSINESS (e.g., Printing, construction, wholesale, grocery, apparel, hotel, etc.)</p>		<p>6. State unemployment insurance office</p>	
<p>7. TYPE OF EMPLOYER <input type="checkbox"/> Private <input type="checkbox"/> Govt <input type="checkbox"/> County <input type="checkbox"/> City <input type="checkbox"/> Federal Govt <input type="checkbox"/> Non Govt, Family</p>		<p>8. INDUSTRY</p>	
<p>9. DATE OF EVENT (Date of injury or illness)</p>		<p>10. EMPLOYER'S BUSINESS HOUR</p>	
<p>11. NUMBER OF WORKERS IN THE FIRM AT THE TIME OF THE EVENT</p>		<p>12. DATE EMPLOYEE RETURNED TO WORK (month/day)</p>	
<p>13. DATE LAST WORKED (month/day)</p>		<p>14. IF STILL OFF WORK, CHECK THIS BOX</p>	
<p>15. DATE EMPLOYEE'S KNOWLEDGE, NOTICE OF ILLNESS (month/day)</p>		<p>16. IF STILL OFF WORK, CHECK THIS BOX</p>	
<p>17. EMPLOYEE'S POSITION (Job Title)</p>		<p>18. DATE EMPLOYEE'S PERIODIC HEALTH CHECK (month/day)</p>	
<p>19. EMPLOYEE'S SEX <input type="checkbox"/> Male <input type="checkbox"/> Female</p>		<p>20. DATE OF BIRTH (month/day/year)</p>	
<p>21. LOCATION WHERE EVENT OR EXPOSURE OCCURRED (Number, Street, City, Zip)</p>		<p>22. COUNTY</p>	
<p>23. DEPARTMENT WHERE EVENT OR EXPOSURE OCCURRED (e.g., Industrial department, machine shop)</p>		<p>24. ON EMPLOYER'S PREMISES? <input type="checkbox"/> Yes <input type="checkbox"/> No</p>	
<p>25. EQUIPMENT, MATERIALS AND CHEMICALS THE EMPLOYEE WAS USING WHEN EVENT OR EXPOSURE OCCURRED (e.g., Acetylene, welding torch, forklift, tractor, etc.)</p>		<p>26. DAILY HOURS</p>	
<p>27. SPECIFIC ACTIVITY THE EMPLOYEE WAS PERFORMING WHEN EVENT OR EXPOSURE OCCURRED (e.g., Welding, repair of metal forms, loading boxes onto truck)</p>		<p>28. DAYS PER WEEK</p>	
<p>29. HOW ILLNESS OCCURRED (Describe sequence of events, specify object or exposure which directly produced the illness, e.g., Worker slipped back to impact work and object on nose material. As he fell, he brushed against track with, and turned right hand. USE SEPARATE SHEET IF NECESSARY)</p>		<p>29a. WEEKLY HOURS</p>	
<p>30. HOW ILLNESS OCCURRED (Describe sequence of events, specify object or exposure which directly produced the illness, e.g., Worker stepped back to impact work and object on nose material. As he fell, he brushed against track with, and turned right hand. USE SEPARATE SHEET IF NECESSARY)</p>		<p>30a. WEEKLY WAGE</p>	
<p>31. City, State and Zip of Hospital (Number, Street, City, Zip)</p>		<p>32. Phone Number</p>	
<p>33. Hospitalized as an inpatient overnight? <input type="checkbox"/> No <input type="checkbox"/> Yes (If yes, date, name and address of hospital (number, street, city, zip))</p>		<p>34. Phone Number</p>	
<p>35. Employer treated in residential care? <input type="checkbox"/> Yes <input type="checkbox"/> No</p>		<p>36. PART OF BODY</p>	
<p>37. SOURCE</p>		<p>38. NATURE OF INJURY</p>	
<p>39. SOURCE</p>		<p>40. SOURCE</p>	
<p>41. EMPLOYEE NAME</p>		<p>42. SOCIAL SECURITY NUMBER</p>	
<p>43. HOME ADDRESS (Number, Street, City, Zip)</p>		<p>44. DATE OF BIRTH (month/day)</p>	
<p>45. OCCUPATION (Regular job title, No initials, abbreviations or numbers)</p>		<p>46. EVENT</p>	
<p>47. EMPLOYMENT STATUS <input type="checkbox"/> Regular <input type="checkbox"/> Part-time <input type="checkbox"/> Seasonal</p>		<p>48. DATE OF INJURY (month/day)</p>	
<p>49. EMPLOYEE USUALLY WORKS <input type="checkbox"/> hours per day, <input type="checkbox"/> days per week, <input type="checkbox"/> total weekly hours</p>		<p>50. OTHER WHAT CLASS CODE OF YOUR POLICY NUMBER APPLIES TO THIS INJURY</p>	
<p>51. GROSS WAGES/SALARY \$ <input type="text"/> per <input type="text"/></p>		<p>52. OTHER PAYMENTS NOT REPORTED AS WAGES/SALARY (e.g. tips, meals, overtime, bonuses, etc.)</p>	
<p>53. OTHER PAYMENTS NOT REPORTED AS WAGES/SALARY (e.g. tips, meals, overtime, bonuses, etc.)</p>		<p>54. BETRAY OF INJURY</p>	
<p>55. SIGNATURE & TITLE</p>		<p>56. DATE (month/day)</p>	
<p>57. SIGNATURE & TITLE</p>		<p>58. DATE (month/day)</p>	
<p>59. SIGNATURE & TITLE</p>		<p>60. DATE (month/day)</p>	

*Confidential information may be disclosed only to the employee, former employee, or their personal representative (CCR Title 8 14200.33), to others for the purpose of processing a workers' compensation or other insurance claim, and under certain circumstances to a public health or air enforcement agency or to a contractor hired by the employer (CCR Title 8 14200.30). CCR Title 8 14200.40 requires private plans report to certain state and federal workplace safety agencies.

FORM 5020 (Rev 7) June 2002 FLILING OF THIS FORM IS NOT AN ADMISSION OF LIABILITY

Employee Claim Form (DWC1)


State of California
Department of Industrial Relations
DIVISION OF WORKERS' COMPENSATION

WORKERS' COMPENSATION CLAIM FORM (DWC 1)

Employee: Complete the "Employee" section and give the form to your employer. Keep a copy and mark it "Employee's Temporary Receipt" until you receive the signed and dated copy from your employer. You may call the Division of Workers' Compensation and hear recorded information at (800) 736-7401. An explanation of workers' compensation benefits is included in the Notice of Potential Eligibility, which is the cover sheet of this form. Detach and save this notice for future reference.

You should also have received a pamphlet from your employer describing workers' compensation benefits and the procedures to obtain them. You may receive written notices from your employer or its claims administrator about your claim. If your claims administrator offers to send you notices electronically, and you agree to receive these notices only by email, please provide your email address below and check the appropriate box. If you later decide you want to receive the notices by mail, you must inform your employer in writing.

Any person who makes or causes to be made any knowingly false or fraudulent material statement or material representation for the purpose of obtaining or denying workers' compensation benefits or payments is guilty of a felony.



Estado de California
Departamento de Relaciones Industriales
DIVISION DE COMPENSACION AL TRABAJADOR

PETITION DEL EMPLEADO PARA DE COMPENSACION DEL TRABAJADOR (DWC 1)

Empleado: Complete la sección "Empleado" y entregue la forma a su empleador. (Quédela con la copia designada "Recibo Temporal del Empleado" hasta que Ud. reciba la copia firmada y fechada de su empleador. Ud. puede llamar a la División de Compensación al Trabajador al (800) 736-7401 para ser informado grabado. Una explicación de los beneficios de compensación de trabajadores está incluido en la Notificación de Posible Elegibilidad, que es la hoja de portada de esta forma. Separe y guarde esta notificación como referencia para el futuro.

Ud. también debería haber recibido de su empleador un folleto describiendo los beneficios de compensación al trabajador lesionado y los procedimientos para obtenerlos. Es posible que reciba notificaciones escritas de su empleador o de su administrador de reclamos sobre su reclamo. Si su administrador de reclamos ofrece enviarle notificaciones electrónicamente, y usted acepta recibir esas notificaciones solo por correo electrónico, por favor proporcione su dirección de correo electrónico abajo y marque la caja apropiada. Si usted decide después que quiere recibir las notificaciones por correo, usted debe de informar a su empleador por escrito.

Toda aquella persona que a propósito haga o cause que se produzca cualquier declaración o representación material falsa o fraudulenta con el fin de obtener o negar beneficios o pagos de compensación a trabajadores lesionados es culpable de un crimen mayor "felonía".

Employee—complete this section and see note above. Empleado—complete esta sección y note la notación arriba.

1. Name. Nombre: _____ Today's Date. Fecha de Hoy: _____

2. Home Address. Dirección Residencial: _____

3. City. Ciudad: _____ State. Estado: _____ Zip. Código Postal: _____

4. Date of Injury. Fecha de la lesión (accidente): _____ Time of Injury. Hora en que ocurrió: _____ a.m. _____ p.m.

5. Address and description of where injury happened. Dirección/lugar donde ocurrió el accidente: _____

6. Describe injury and part of body affected. Describe la lesión y parte del cuerpo afectada: _____

7. Social Security Number. Número de Seguro Social del Empleado: _____

8. Check if you agree to receive notices about your claim by email only. Marque si usted acepta recibir notificaciones sobre su reclamo solo por correo electrónico. Employee's e-mail: _____
You will receive benefit notices by regular mail if you do not choose, or your claims administrator does not offer, an electronic service option. Usted recibirá notificaciones de beneficios por correo ordinario si usted no escoge, o su administrador de reclamos no le ofrece, una opción de servicio electrónico.

9. Signature of employee. Firma del empleado: _____

Employer—complete this section and see note below. Empleador—complete esta sección y note la notación abajo.

10. Name of employer. Nombre del empleador: _____

11. Address. Dirección: _____

12. Date employer first knew of injury. Fecha en que el empleador supo por primera vez de la lesión o accidente: _____

13. Date claim form was provided to employee. Fecha en que se le entregó al empleado la petición: _____

14. Date employer received claim form. Fecha en que el empleado devolvió la petición al empleador: _____

15. Name and address of insurance carrier or adjusting agency. Nombre y dirección de la compañía de seguros o agencia administradora de seguros: _____

16. Insurance Policy Number. El número de la póliza de Seguro: _____

17. Signature of employer representative. Firma del representante del empleador: _____

18. Title. Título: _____ 19. Telephone. Teléfono: _____

Employer: You are required to date this form and provide copies to your insurer or claims administrator and to the employee, dependent or representative who filed the claim within one working day of receipt of the form from the employee.
EL EMPLEADOR: Se requiere que Ud. feche esta forma y que proporcione copias a su compañía de seguros, administrador de reclamos, o dependiente/representante de reclamos y al empleado que hayan presentado esta petición dentro del plazo de un día hábil desde el momento de haber sido recibida la forma del empleado.

SIGNING THIS FORM IS NOT AN ADMISSION OF LIABILITY. EL FIRMAR ESTA FORMA NO SIGNIFICA ADMISION DE RESPONSABILIDAD

Employer copy/Copia del Empleador Employee copy/Copia del Empleado Claims Administrator/Administrador de Reclamos Temporary Receipt/Recibo del Empleado

Rev. 1/1/2016

Employer Accident Investigation Form

Incident investigation form



Incident details			
Name of person involved in the incident:		Date of incident:	
Location of incident:			
Incident investigation team:			
What task was being performed at the time of the incident?			
What happened? (e.g. 'employee tripped over box' or 'forklift hit wall')			
What factors contributed to the incident?			
Environment:		Equipment/materials:	
<input type="checkbox"/> Noise	<input type="checkbox"/> Layout / design	<input type="checkbox"/> Wrong equipment for the job	<input type="checkbox"/> Equipment failure
<input type="checkbox"/> Lighting	<input type="checkbox"/> Dust / fume	<input type="checkbox"/> Inadequate maintenance	<input type="checkbox"/> Material / equipment too heavy / awkward
<input type="checkbox"/> Vibration	<input type="checkbox"/> Slip / trip hazard	<input type="checkbox"/> Inadequate guarding	<input type="checkbox"/> Inadequate training provided
<input type="checkbox"/> Damaged / unstable floor	<input type="checkbox"/> Other	<input type="checkbox"/> Other	

Employer Accident Investigation Form

Work systems:		People:		
<input type="checkbox"/> Hazard not identified	<input type="checkbox"/> No / inadequate risk assessment conducted	<input type="checkbox"/> Procedure not followed / no procedure exists	<input type="checkbox"/> Drugs / alcohol	
<input type="checkbox"/> No / inadequate safe work procedure	<input type="checkbox"/> No / inadequate controls implemented	<input type="checkbox"/> Fatigue	<input type="checkbox"/> Time / production pressures	
<input type="checkbox"/> Hazard not reported	<input type="checkbox"/> Inadequate training / supervision	<input type="checkbox"/> Change of routine	<input type="checkbox"/> Distraction / personal issues / stress	
<input type="checkbox"/> Other		<input type="checkbox"/> Lack of communication	<input type="checkbox"/> Other	
Corrective actions:				
Contributing factor (<u>from</u> above list)	What are we going to do to fix the problem?	Who	When	Completion date
Issue fixed?				
Name	Signature	Date		
Person involved in incident:				
Manager:				

Employer Accident Investigation Form

Incident investigation process guide

Establish the facts of the incident, including:

- What happened?
- When and where did it happen?
- What task was being done?
- Who was involved?
- Were there any witnesses?

Gather all necessary background information, for example:

- Maintenance records
- Safe work procedures
- Instructions manuals
- Training records

Employer Accident Investigation Form

Consider all the potential contributing factors:

- **Environment:** Did environmental conditions (e.g. light, noise, floor surfaces) contribute to the incident?
- **Equipment /materials:** Did anything about the equipment, materials, tools etc (e.g. equipment failures, missing guards) contribute to the incident?
- **Work systems:** Was there something about the system that contributed (e.g. hazard not identified, known hazard not addressed)?
- **People:** Was there something the workers, supervisors or contractors did that contributed to the incident (e.g. poor communication, being tired or rushing to finish on time)?

Employer Accident Investigation Form

Determine the primary cause/s of the incident, that is, those which if they hadn't occurred then the incident wouldn't have occurred. Ask yourself "Would the incident have happened if....?"

Identify the root cause / system failures that underlie the primary cause/s and contributing factors.

One simple technique for identifying the root cause is the 'Five Whys'. This technique involves asking yourself 'Why did this happen?' and continuing to ask 'Why' for each response until you reach a conclusion that does not generate another 'why' and the underlying cause becomes apparent.

The final and most important step in any investigation is to take action to fix all the factors that contributed to the incident, starting with the primary cause/s and working through each of the contributing

Acronym Key

AA =	Applicant's Attorney
AME =	Agreed Medical Examiner
AOE /COE =	Arising out of & Occurring in the Course of employment
APP =	Applicant
CE =	Claims Examiner
CT =	Cumulative Trauma
C&R =	Compromise & Release (settlement)
DA =	Defense Attorney
DOI =	Date of Injury
DOR =	Declaration of Readiness (legal filing)
EE =	Employee
ER =	Employer

Acronym Key

F&A =	Findings and Award (settlement)
FCE =	Functional Capacity Evaluation
FM =	Future Medical
IMC =	Independent Medical Council
IMR =	Independent Medical Review
In pro per =	Injured worker representing themselves
IME =	Independent Medical Examiner
IW =	Injured Worker
LT =	Lost Time
MDW =	Modified Duty Work
MMI =	Maximum Medical Improvement
MCN =	Managed Care Nurse

Acronym Key

MSA =	Medicare Set Aside
MSC =	Mandatory settlement conference
N&F =	New & Further (legal filing)
NCM =	Nurse Case Manager
NLT =	No Lost Time
NOV =	Next Office Visit
P&S =	Permanent and Stationary
PD =	Permanent Disability
POA =	Plan of Action
PTP =	Primary Treating Physician
PT =	Physical Therapy
PQME =	Panel Qualified Medical Examiner

Acronym Key

QME =	Qualified Medical Examiner
RTW =	Return to Work
RX =	Prescription
SJDB =	Supplemental job displacement benefit
S&W =	Serious & Willful lawsuit
Stip =	Stipulation with Award (settlement)
SX =	Surgery
Subrosa =	Investigator filming activities
TD =	Temporary Disability
TTD =	Temporary Total Disability
UR =	Utilization Review
WCAB =	Workers Compensation Appeals Board
132a =	Discrimination for filing WC claim

WRAP UP - QUESTION AND ANSWER



QUESTIONS AND ANSWERS



The EPIC advocacy team is available to answer questions and help clients navigate their workers' compensation program

Workers Compensation 101 Webinar – Rebooted 2023

You can also visit our website. [Workers Compensation Webinar Series](#) for the recording and any future webinars with Epic Brokers.

1. **Is there a way to attack the PTP's request for an FRP?**

Medical treatment such as a Functional Restoration Program goes through the carrier's Utilization Review for approval. If not warranted, the request from the Primary Treating Physician will be denied. However, the doctor can appeal the decision.

What about PTPs who get the approval and then handle the program in house - isn't that a conflict of interest?

As long as it is approved by UR and it was disclosed about the PTP's in-house FRP program, there wouldn't be a conflict of interest.

2. **Our employees in California work from home - we do not have physical space in the state. How does remote work play into it?**

An employee working from home is essentially the same as if he/she was working at the employer's location. It basically works the same, because the area where they work would be considered the extension of the company. The challenge for injuries occurring at their home/office is that there are no witnesses or cameras and it would be a little difficult to deny a claim of injury. However, depending on the type of injury alleged, an investigation would be warranted as to their actual activities at the time of injury. Also, if the employee was hired in California and the company is based in another State, the employee would be entitled to Workers' Compensation Benefits in the State where the employee was hired (i.e. California).

3. **When you cannot accommodate restrictions on their current shift, but offer a job on another shift and the employee refuses.**

When an employee is offered modified duty work and they decline, they will not be paid by the insurance carrier. There is nothing in the Labor Code that mandates modified work must be the same "shift". However, if a change poses a problem for the employee, we have return to work vendors who may be able to assist with transitional work.

They are out of FMLA, PLOA and paid time off. Are we within our rights to terminate the employee since we offered a position, and they declined it?

It is important to follow your company policy applicable to any employee on a leave of absence and consult with your Labor Attorney. However, any time a person is terminated during an ongoing Workers Comp claim, there is a possibility of a 132(a) filing (an alleged discrimination suit against an injured worker).

4. **Are you saying if an employee gets a scratch and asks for a Band-Aid, we need to report that?**

If an employee is not required to seek medical treatment with a provider, it is not required to report to the insurance carrier. You should document your records only. Some carriers recommend reporting all 'incidents' to have on record should the employee decide to later seek treatment. Incidents or record-only claims are not reported to the insurance rating bureau and do not impact your experience modification.

Or is it only if the employee says I need a Band-Aid AND medical treatment?

*Once an employee seeks medical treatment a claim must be filed. **As of 1/1/2017, WCIRB requires reporting of all claims which include First Aid, regardless of whether payment is made by the employer.** This would be a good example of the necessity to utilize a Nurse Triage Service, because the medical professional will assess whether an injury is self-care or referred to a medical facility. Having this type of service, it takes the burden away from the employer to make a medical decision.*

5. **Sometimes employees do not continue with their follow-up appointments. Do we need to follow up on this?**

If the employee is not following up on treatment, the employer can intervene by nudging the employee to complete their treatment. If they remain non-compliant, the adjuster will send notice of claim closure.

6. **Are there any proposed legislative changes coming down from Sacramento that will affect employers? Anything we need to have on our radar?**

See next page from the WCIRB.

WCIRB Bulletin

Bulletin No. 2022-13

October 5, 2022

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Summary of 2022 California Legislation – Bills Signed by the Governor

The California Legislature recessed for the year on August 31 and the Governor had until September 30 to sign or veto any bills passed by the Legislature. This Bulletin highlights those bills signed by the Governor that relate to workers' compensation insurance, as well as other bills that may be of interest.

Assembly Bill No. 1681

This bill authorizes the Insurance Commissioner, or their designated deputy commissioner, to convene meetings with representatives of insurance companies or representatives of self-insured employers to discuss specific information concerning suspected, anticipated or completed acts of insurance fraud. This bill also authorizes a district attorney to convene a meeting with representatives of insurance companies or representatives of self-insured employers so long as the Commissioner, their designated Deputy Commissioner, or designated employees of the California Department of Insurance (CDI) Fraud or Legal Division attend such a meeting.

The bill protects a person sharing information pursuant to that authorization from civil liability for libel, slander, or any other relevant cause of action if the Commissioner, their designated Deputy Commissioner, or designated employees of the CDI's Fraud Division or the department's Legal Division are present at the meeting, they advise meeting participants of guidelines to ensure compliance with federal and state antitrust laws, and there is no fraud or malice on the part of the participants.

Assembly Bill No. 1751

This bill extends the sunset of the existing COVID-19 presumption and claim requirements put in place by Senate Bill No. 1159 from January 1, 2023 to January 1, 2024.

Assembly Bill No. 2148

Existing law allows an employer to commence a program under which disability indemnity payments are deposited in a prepaid card account for employees. This bill extends the authorization to deposit indemnity payments in a prepaid card account from January 1, 2023 until January 1, 2024.

Assembly Bill No. 2154

This bill revises the provisions relative to bonds issued to discharge workers' compensation to additionally authorize the California Insurance Guarantee Association (CIGA) to ask the California Infrastructure and Economic Development Bank (Bank) to issue bonds if CIGA determines the insolvency of member insurers writing homeowners' and automobile insurance and other insurance will result in covered claim obligations in excess of CIGA's capacity to pay from current funds. If the board of CIGA asks the Bank to issue bonds, the bill requires the board to report information to the Assembly and Senate Committees on Insurance within sixty (60) days of the request and annually while the bonds remain outstanding. The bill authorizes CIGA to levy an assessment on member insurers writing homeowners' and automobile insurance and other insurance to pay the principal of, and interest on, the bonds issued for that claims category, which would be recouped through a surcharge on applicable policies.



This bill also specifies that obligations under a policy issued to cover cybersecurity are covered claims, if CIGA's total liability does not exceed \$1,000,000 or the policy limits, whichever is less. Finally, this bill requires the plan of operation to require a member insurer to recoup the premium charge amount, as determined by CIGA, through a surcharge on premiums, even if a premium charge has not yet been paid to CIGA because the member insurer had no direct written premium for that category of insurance for the prior year.

Assembly Bill No. 2693

Assembly Bill No. 685 (AB 685) modified occupational safety standards to require employers to provide notice and report information related to COVID-19 workplace exposure within one day of notice of the exposure. The bill also expanded Cal/OSHA's authority to enforce COVID-19 related notice requirements and impose civil penalties for an employer's failure to comply. This bill extends the applicability of AB 685 from January 1, 2023 to January 1, 2024.

Among other provisions, the bill requires that if an employer receives notice of potential exposure to a "qualifying individual", the employer must take specific steps to notify employees within one business day. The bill also prohibits employers from requiring employees to disclose medical information unless otherwise required by law and from retaliating against a worker for disclosing a positive COVID-19 test or diagnosis or order to quarantine or isolate. Additionally, the bill provides that if an employer is notified that the number of its COVID-19 cases meets the definition of an outbreak, as defined by the California Department of Public Health, the employer must notify its local public health agency within 48 hours of the names, number, occupation and worksite of the "qualifying individuals".

Further, AB 685 included potential COVID-19 exposure as an imminent hazard and expanded Cal/OSHA's authority to prohibit entry into the workplace on this basis. Any restrictions imposed by Cal/OSHA must be limited to the immediate area where the imminent hazard exists and must not prohibit any entry within a workplace that does not cause a risk of infection. Finally, Cal/OSHA may not impose restrictions that would materially interrupt "critical government functions" essential to ensuring public health and safety, or the delivery of electrical power or water.

Assembly Bill No. 2848

Existing law requires the Division of Workers' Compensation (DWC) to contract with an outside independent research organization to evaluate and report on the impact of the provision of medical treatment within the first thirty (30) days after a claim is filed, for claims filed on or after January 1, 2017, until January 1, 2019. Existing law also requires the report to be completed before January 1, 2020, and to be distributed to the DWC, the Senate Committee on Labor and Industrial Relations, and the Assembly Committee on Insurance. This bill changes the claim dates to between January 1, 2017 and January 1, 2021, and requires the report to be completed before July 1, 2023.

Senate Bill No. 216

This bill requires concrete contractors holding a C-8 license, warm-air heating, ventilation and air-conditioning (HVAC) contractors holding a C-20 license, asbestos abatement contractors holding a C-22 license, or tree service contractors holding a D-49 license to also obtain and maintain workers' compensation insurance even if that contractor has no employees. After July 1, 2023, licensees with employees and without proper valid certification will have their licenses suspended. As of January 1, 2026, the bill would require all licensed contractors or applicants for licensure to obtain and maintain workers' compensation insurance unless they are organized as a joint venture and file a certificate of exemption.

Senate Bill No. 1002

This bill includes a licensed clinical social worker (LCWS) as treatment the employer is reasonably required to provide, would expand the meaning of medical treatment to include the services of an LCWS, and would authorize an employer to provide an employee with access to an LCSW acting within the scope of their practice. The bill also authorizes medical provider networks (MPN) to add LCSWs to the physician providers listing, authorize an LCWS to treat or evaluate an injured worker only upon referral from a physician, as defined, and prohibits an LCSW from determining disability. Finally, this bill makes

legislative findings and declarations in support of allowing licensed clinical social workers to treat work-related mental and behavioral health issues.

Senate Bill No. 1040

Existing law authorizes the Insurance Commissioner to bring a superior court action to enjoin a person who is violating or about to violate the Insurance Code and to apply for a judgment to enforce an order requiring a person to pay a monetary penalty or reimburse the department for costs incurred by the department in prosecuting the matter.

This bill authorizes the Commissioner to seek a judgment to enforce an order for restitution and to order a respondent to provide restitution for a loss arising from the respondent's conduct. With a restitution order, and if the facts and equity permit, the bill authorizes the Commissioner to issue an order of rescission enforceable on any person subject to the Commissioner's jurisdiction, subject to judicial review.

Senate Bill No. 1064

This bill prohibits the Structural Pest Control Board from issuing, reinstating or continuing to maintain any structural pest control operator company registration under this chapter unless the applicant or existing company has filed a current and valid Certificate of Workers' Compensation Insurance as evidence of current and valid Workers' Compensation Insurance coverage, or a statement certifying that they have no employees and are not required to obtain or maintain workers' compensation insurance.

The bill also requires the insurer, including State Compensation Insurance Fund, to report to the registrar of the Structural Pest Control Board the company name, registration number, policy number, dates that coverage is scheduled to commence and lapse, and cancellation date if the policy is canceled for specified reasons. Finally, the bill provides that willful or deliberate disregard and violation of workers' compensation insurance laws constitute a cause for disciplinary action, and that a violation of these provisions is not a misdemeanor.

Senate Bill No. 1127

This bill:

- Amends the investigatory period from 90 to 75 days for law enforcement and first responders subject to a presumption.
- For firefighters and peace officers claiming illness or injury related to cancer, the bill increases the number of compensable weeks to 240 weeks of temporary disability benefits as opposed to the 104 compensable weeks available to other injured workers.
- Increases the fine for unreasonable delay of benefits to be 5 times the amount of benefits up to maximum liability of \$50,000 from the current standard of up to 25% or \$10,000.
- Requires the DWC to identify and amend its existing data collection processes to include collection of the date on which the claimant is notified of acceptance, denial or conditional denial of liability for a claim.

Senate Bill No. 1242

Existing law requires an insurer that reasonably believes or knows that a fraudulent claim is being made to send a prescribed form and additional information about the fraudulent claim to the CDI's Fraud Division within sixty (60) days after determination by the insurer that the claim appears to be a fraudulent claim. This bill instead requires an insurer to send that form and information within sixty (60) days after it has determined, after the completion of an investigation, that it reasonably suspects or knows an act of insurance fraud may have occurred or might be occurring.

Among other things, the bill also requires an agent or broker to use the electronic form within the Fraud Division's Consumer Fraud Reporting Portal before placing an insurance application with an insurer to report if they reasonably suspect or know that a fraudulent application is being made. If the agent or broker reasonably suspects or knows that fraud has been perpetrated after an insurance application has been placed with an insurer, the bill requires the agent or broker to report that information directly to the insurer's special investigative unit. Finally, the bill requires the Insurance Commissioner to submit

fingerprints for, in addition to others, property casualty broker license applicants to the Department of Justice for analysis and to be required to take courses on insurance fraud in addition to other ethics course requirements.

Other Bills of Interest

Assembly Bill No. 257

The FAST Recovery Act establishes the Fast Food Council, subject to a petition signed by 10,000 fast food restaurant employees, which will be responsible for creating and establishing sector-wide minimum standards on wages, working hours and other working conditions related to the health, safety and welfare of, and supplying the necessary cost of proper living to, fast food restaurant workers, as well as effecting interagency coordination and prompt agency responses in this regard.

The bill also defines the characteristics of a fast food restaurant, including that the establishment be part of a set of fast food restaurants consisting of thirty (30) or more establishments nationally that share a common brand, or that are characterized by standardized options for decor, marketing, packaging, products and services. Additionally, a fast food restaurant is defined as, in its regular business operations, primarily providing food or beverages (1) in disposable containers; (2) for immediate consumption either on or off the premises; (3) with limited or no table service; and (4) to customers who order or select items and pay before eating.

Assembly Bill No. 1643

This bill requires that the Labor and Workforce Development Agency, on or before July 1, 2023, establish an advisory committee to study and evaluate the effects of heat on California's workers, businesses and economy. The bill also requires the advisory committee to recommend a study that addresses prescribed topics relating to data collection, certain economic losses, injuries and illnesses, and methods of minimizing the effect of heat on workers.

Assembly Bill No. 2243

This bill would require the Division of Occupational Safety and Health, before January 1, 2024, to submit to the standards board a rulemaking proposal to consider revising the heat illness standard to include an ultrahigh heat standard for employees in outdoor places of employment for heat in excess of 105 degrees Fahrenheit and require employers to distribute copies of the Heat Illness Prevention Plan. The bill would similarly require a rulemaking proposal to consider revising the wildfire smoke standard to reduce the existing air quality index threshold for PM2.5 particulate matter at which control by respiratory protective equipment becomes mandatory.

The bill would require the standards board to review the proposed changes and consider adopting revised standards on or before December 31, 2025. The bill would further require the division to consider regulations, or revising existing regulations, relating to protections related to acclimatization to higher temperatures, as provided.

7. If it is proven that an employee is responsible for their injury, how does that play out for an employer?

California is a "no-fault" state. If an employee was performing his/her regular job duties and was injured in the process by not following the proper procedure, the claim would still be covered. However, if any of the Affirmative Defenses apply such as "self-inflicted injury, the claim may be denied, but an Investigation would have to be done first.

8. An employee of a subcontractor of our temp staffing agency hurt herself while working in our facility as an employee of the subcontractor. She failed her pre-employment test and was hired with our company anyway. One week into her job as our employee she said she couldn't do the job because her shoulder was still hurting from the injury while working for the subcontractor. The subcontractor is stating they are not responsible for the W/C case because she refused treatment when it initially happened. We disagree. Who is responsible for this work comp case?

An employee refusing medical treatment for an injury does not take the subcontractor out of the equation, because it is not a reason for denial of injury in California. In terms of responsibility, it could ultimately be both if it is a Cumulative Trauma injury. In Workers Comp, you take the employee as is, meaning their entire medical history and/or conditions. Any employer may join other employers that are believed or found to be liable for an injury. However, we suggest filing a claim with your insurance carrier, so they may conduct a thorough investigation to obtain all of the facts. If the decision is to deny the claim, then at least you have a formal denial on record. If the employee obtains representation and files a claim against the subcontractor, the subcontractor and or the attorney representing her can still pull you in for your percentage of exposure.

9. The pay that you offer the injured worker extends the 104 weeks cap.

"Aggregate disability payments for a single injury which causes Temporary Total Disability shall not extend for more than 104 compensable weeks within a period of 5 years from the date of injury."

10. Because, WC has to pay him the equivalent pay of 104 weeks, not just 104 weeks.

California Temporary Disability is limited to 104 weeks within a 5-year period from the date of injury. Payments for a few long-term injuries, such as severe burns or chronic lung disease can go longer than 104 weeks.

11. I know firsthand, because we paid an employee for 104 weeks, and he got additional weeks of pay from WC.

Not knowing the nuances behind this particular claim, it could have been Temporary Disability payments owed that were in dispute and eventually paid which extended the 104 weeks cap.

12. Our EEs are only allowed to treat outside the MPN if she/she and the MD both signed the Predesignating Form before the injury.

Correct. If an employee predesignates a doctor prior to an injury in writing and the physician agrees prior to the injury, then that is something the insurance company cannot control. Thus, they will have to honor the doctor of choice.



Thank You

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