



Insurance Brokers &  
Consultants

**MSKW** LLP

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DOCUMENT NECESSITY-  
COMBATING CALIFORNIA  
WC CLAIMS

# M S K W



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# Employer's Duty to Investigate

**LC 5402(b)** If liability is not rejected within 90 days after the date the claim form is filed under Section 5401, the injury shall be presumed compensable under this division.

The presumption of this subdivision is rebuttable only by evidence discovered subsequent to the 90-day period.



# To Accept Or Deny

Labor Code § 3208.1 “An injury may be either:

- (a) ‘specific,’ occurring as the result of one incident or exposure which causes disability or need for medical treatment; or
- (b) ‘cumulative,’ occurring as repetitive mentally or physically traumatic activities extending over a period of time, the combined effect of which causes any disability or need for medical treatment. The date of a cumulative injury shall be the date determined under Section 5412.”

We must gather all the facts and details of the claims.



# Get Started Right Away



## PROVIDE CLAIM FORM-DWC-1

Employer or the claims adjuster needs to conduct an investigation prior to accepting or denying the claim.

## EXERCISE MEDICAL CONTROL WITHIN 90 DAYS

Until the date the claim is accepted or rejected, liability for medical treatment shall be limited to ten thousand dollars (\$10,000.00) LC§5402(c).

## INVESTIGATION BY EMPLOYER

- (1) 5020 FORM- work product
- (2) Job description- mechanism of injury

Was injury AOE/COE?

- Horseplay
- Altercation/violent act subject matter?
- Intoxication

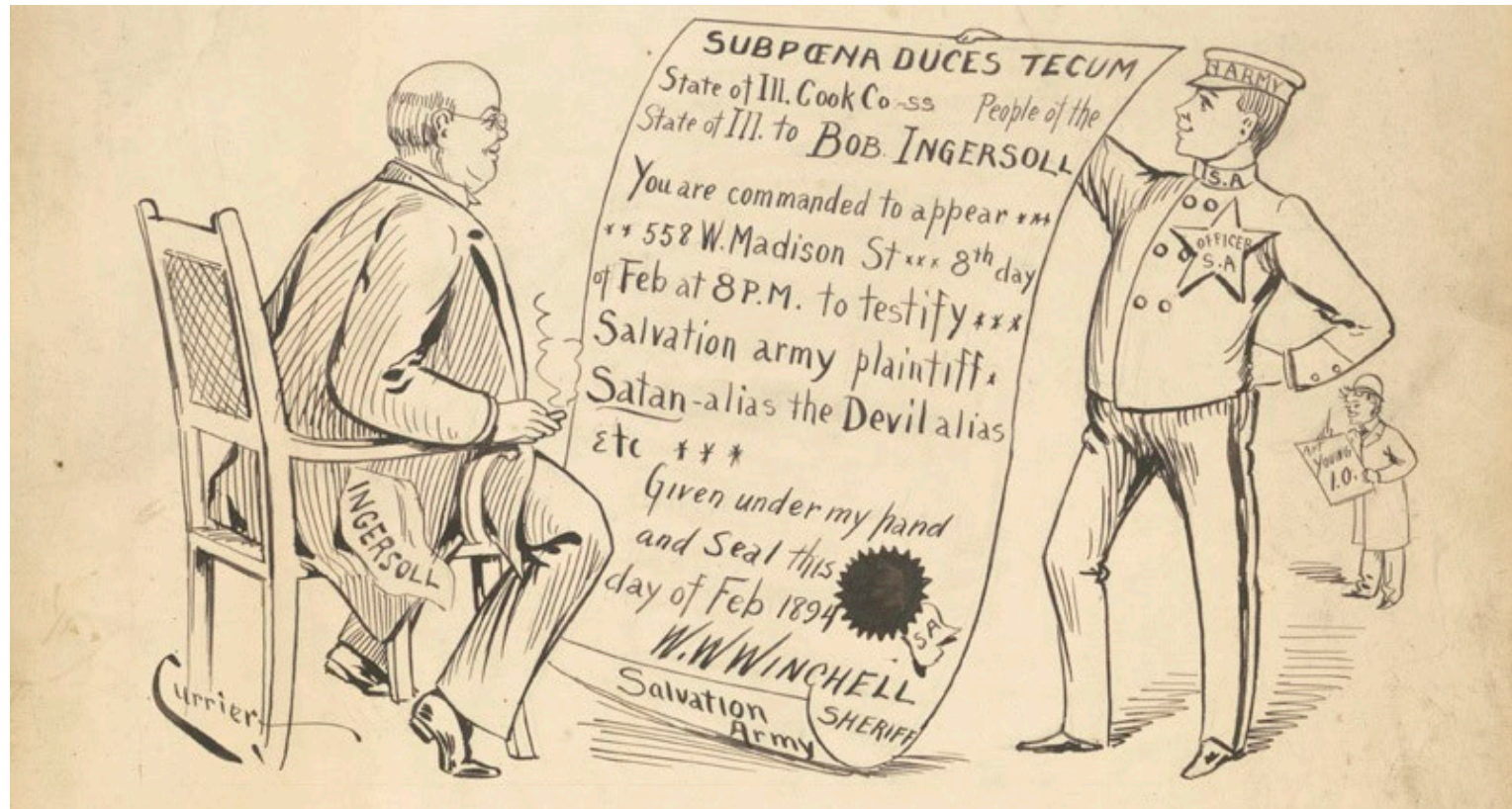
- (3) Handbook- Policies re termination?  
(example: job abandonment)




# What Is A Subpoena Duces Tecum?

subpoena duces tecum, in subpoena, n.

A subpoena (sense 1b) requiring a person to present documents or other physical evidence; = duces tecum, n.



# The Kitchen Sink (Personnel File)

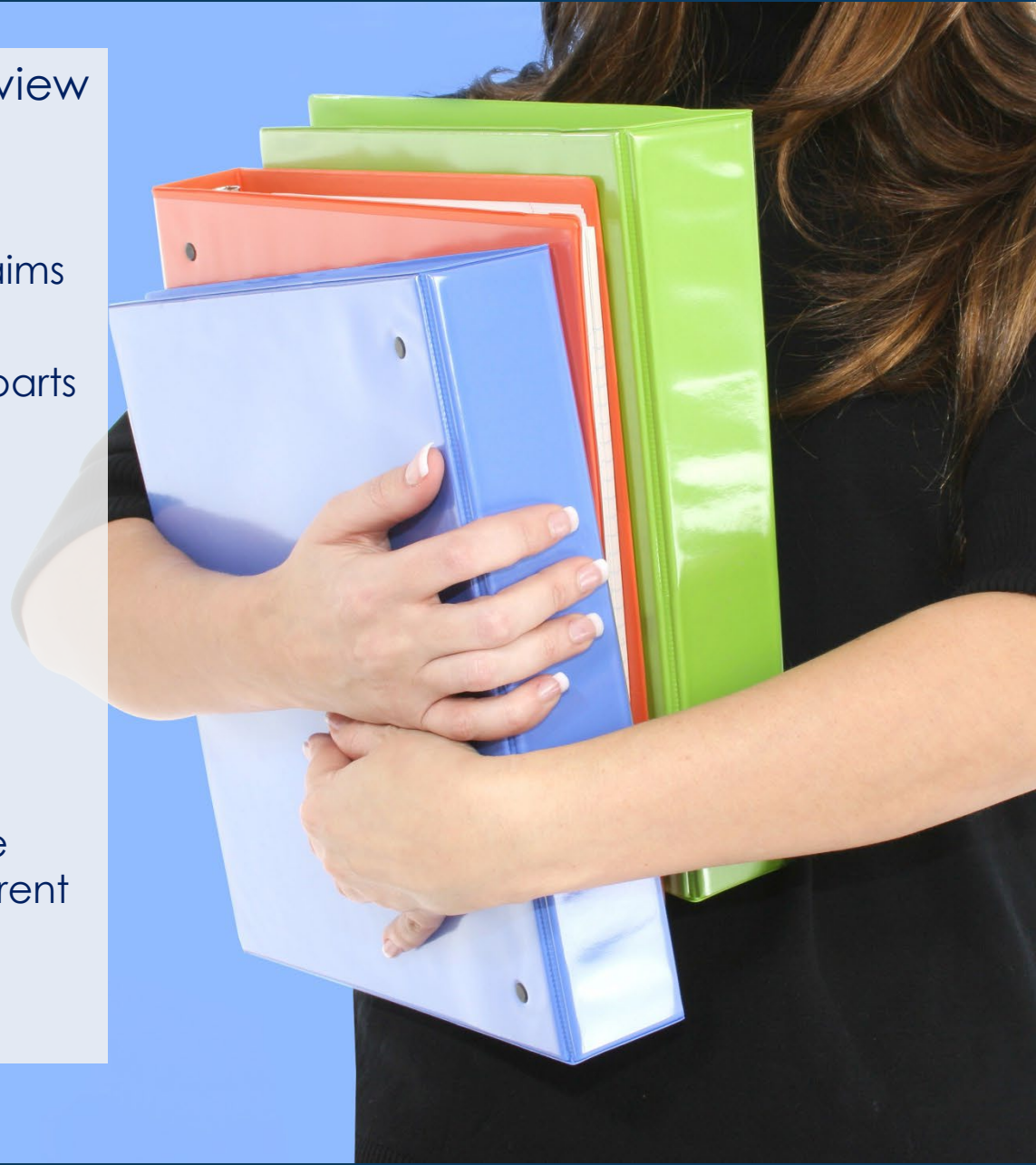
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- Witness statements, [red flags] inconsistent statements with co workers and supervisors
  - Job performance
  - Hiring forms- packets
  - MPN network- acknowledgement- language
  - Write ups/disciplinary actions/warnings- retaliation post term and good faith personnel psych defenses
  - Job description/analysis- physical requirements- combating CT claims
  - Wage statements- determine TTD rate- maximum wage earner
  - Resume
  - Termination documents/resignation documents
  - Medical records/off work slips/FMLA = prior issues health insurance SDT subpoena
  - Pre employment physical



# Investigation – Claims Administrator

Gather all the documents – review and look for:

- Obtain medical releases
- ISO/EAMS shows prior similar claims
  - Look for prior nonindustrial injuries- overlapping body parts
- EAMS prior claim search:
- Obtain SS earnings release
- Red flags
  - Disputed
  - Subrosa
  - Combat work restrictions
- Coverage issues- e.g. Insurance policy? Temp agency? Concurrent employment?
- Length of employment





# Use Deposition To Combat Compensability: Nature And Extent Of Disability

The Deposition Have the defense attorney schedule a deposition of the employee, if possible, have employer attend.

\*Assess credibility- job performance, analysis policies, reporting, reporting of injury- Tends to lead to expedited resolution

Padilla v. LAMTA, (6/28/10, ADJ6981165)

## KEY QUESTIONS:

- (1) Prior injuries- Compare to ISO claim and EAMS search
- (2) Concurrent employment and/or employment during last 5 years
- (3) PTP treatment
  - (1) Length of each visit- did PTP meet with applicant, thorough history, review records
  - (2) PTP personnel – speak spanish/ language of applicant
  - (3) Range of motion testing
  - (4) MRI studies taken- is disability status supported by substantial medical evidence?

If You Can Attend, **DO** Attend

Yes

No



# Getting Us Out Of A Cumulative Trauma

## **Let's assess OUR coverage.**

Know who is before, IF there is concurrent employment, and who is after.

1. WCIRB- EACH EMPLOYER INVOLVED
2. FREE CHECK:  
<https://www.caworkcompcoverage.com/>

Determine WHY the CT is pled the way it is

## **What is the end date?**

1. Last day worked? Correct? Concurrent Employment?
2. First date of treatment? GAP in treatment as a whole OR to specific body parts?
3. First date of disability? IF PRIOR TO last date of employment, can push back CT period- LC 5412.
4. Date applicant met with an attorney? Added body parts after representation?
5. Length of employment? Causation based on medical reasonable probability.



# NATURE OF THE CT: Employment

Let's look at the applicants  
DOH

Let's look at actual last  
date work

LC5412: Determine  
whether there were ever  
modified duties

- What were they
- When were they
- Did they ever stop or  
was there ever a gap

Get a job description, of all  
positions the applicant  
worked for employer,  
concurrent employer and  
previous employer

Get a personnel file to  
determine whether there  
was ever lost time from  
work- industrial and/or  
nonindustrial (Remember  
Subpoena Health  
Insurance Records!)



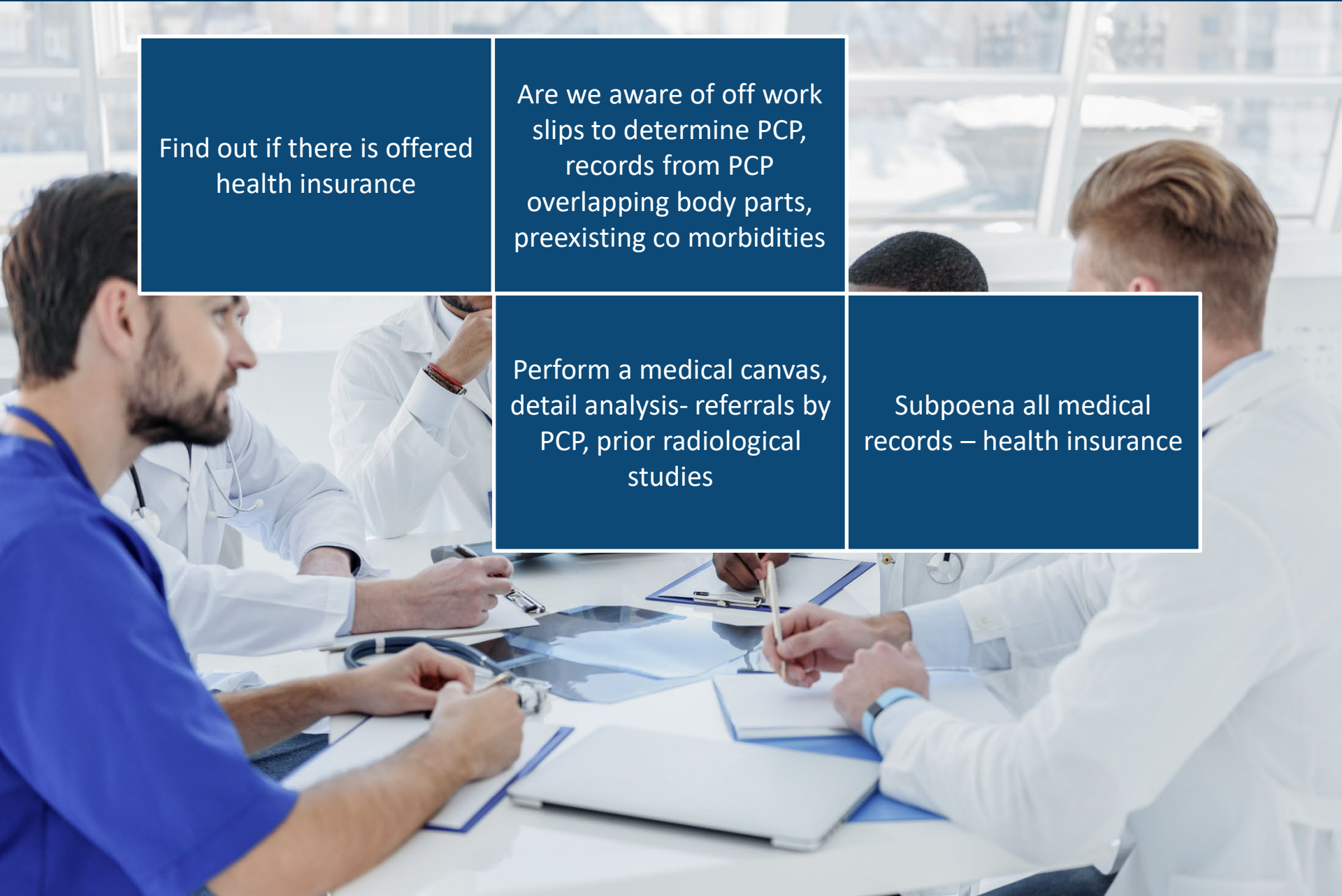
# NATURE OF THE CT: Medical

Find out if there is offered health insurance

Are we aware of off work slips to determine PCP, records from PCP overlapping body parts, preexisting co morbidities

Perform a medical canvas, detail analysis- referrals by PCP, prior radiological studies

Subpoena all medical records – health insurance



# NATURE OF THE CT: Legal



Look into all applications filed – are there any specific injuries pled

Any additional Cumulative Trauma filings

Were there prior work injuries with medical treatment during employment – even if first aid only?

EAMS/ISO?

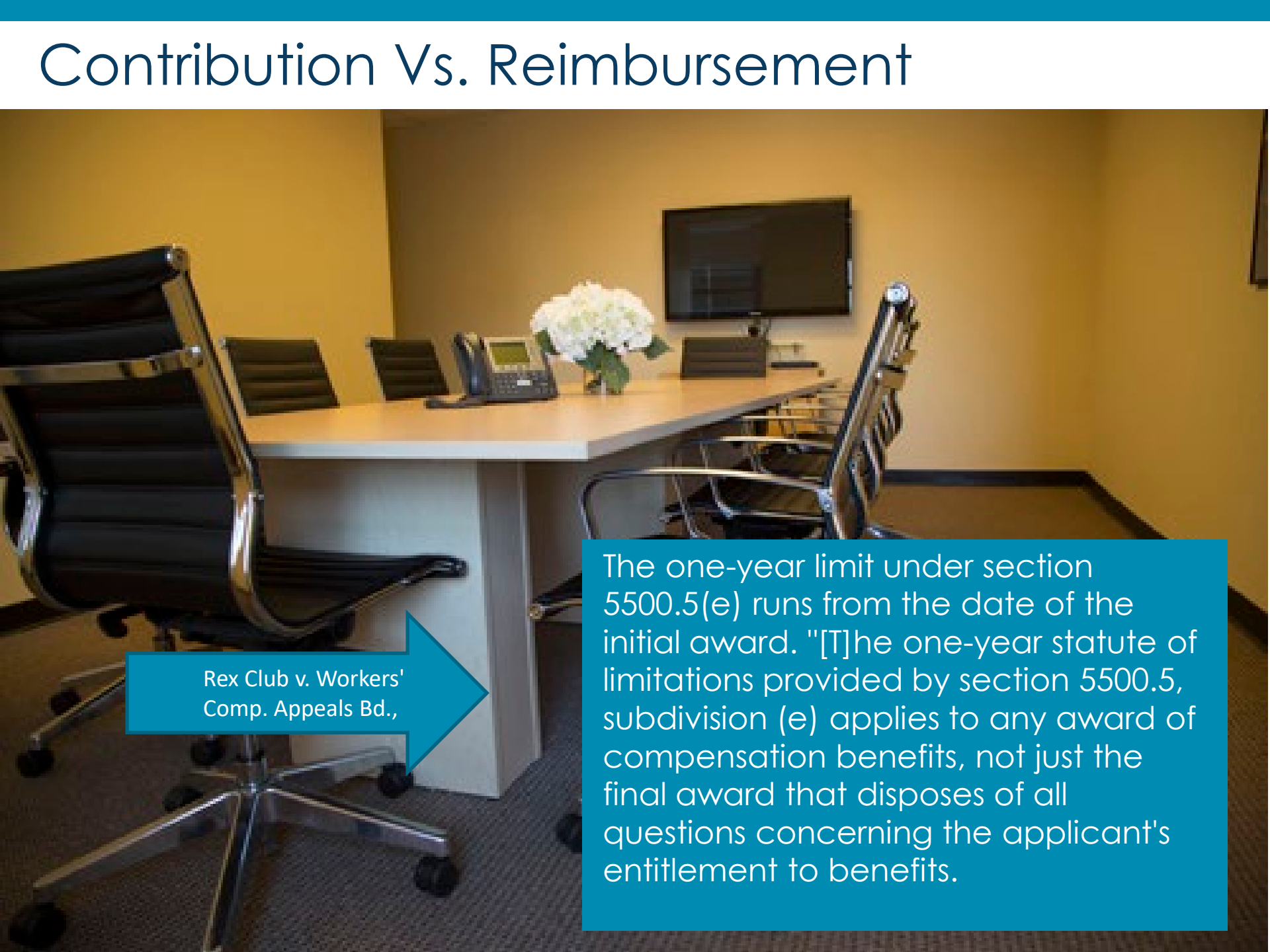


# Combating Post Term CTS

## Checklist

- MPN notices posted Reynolds
- Employee handbook acknowledgement
- MPN acknowledgment
- Investigations from supervisors
- No injury disclaimer- speak with employment attorney
- Evidence to support retaliation- witness statements

# Contribution Vs. Reimbursement



Rex Club v. Workers'  
Comp. Appeals Bd.,

The one-year limit under section 5500.5(e) runs from the date of the initial award. "[T]he one-year statute of limitations provided by section 5500.5, subdivision (e) applies to any award of compensation benefits, not just the final award that disposes of all questions concerning the applicant's entitlement to benefits.



# FINAL ANALYSIS OF EXAMPLE FACT CASE





Conclusion

Questions

Comments

MSKW

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Mental Health Parity Update

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[Previous Compliance Webinar Series Recordings & Presentation Decks](#)  
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HOT TOPICS with Beth Schroeder @ Raines Feldman

October 18, 2023, 12:00 to 1:00 PM CT

[Registration Link](#)

- **Risk Control Series - Realities of the Aging Workforce**

October 3, 2023, 11:00 to 12:00 PM PT

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