

# Workers' Compensation

## Reform on the Horizon?

California's workers' compensation system is a 100-year-old, constitutionally guaranteed system that provides workers the right to compensation for workplace injuries. This compensation includes medical treatment to "cure and relieve" the injury and, when appropriate, indemnity benefits in the form of temporary or permanent disability.

The system is rooted in an agreement between employers and employees, sometimes referred to as the "The Grand Bargain," where employers accept responsibility for all injuries and illnesses that occur in the course and scope of employment, even when they would otherwise have no legal liability. The workers, in exchange for the guaranteed coverage, relinquish the right to sue their employers in civil court.

When an employee files a workers' compensation claim, the employer generally has 90 days to accept or reject the claim (this timeline was shortened by SB 1127 (Atkins; D-San Diego; 2022) for certain presumption claims). The employer is required to pay for up to \$10,000 in health care services while the claim is being reviewed, even if it ultimately is denied. If the employer rejects the claim, the employee has the right to have his or her claim heard by a workers' compensation administrative law judge.

### PRIOR REFORMS

The last two administrations under Governors Arnold Schwarzenegger and Edmund G. Brown Jr. both oversaw significant workers' compensation reforms. In 2004, SB 899 (Poochigian; R-Fresno) sought to address increased volatility in the workers' compensation insurance market by making reforms to nearly every aspect of the system.

In light of some of the unintended consequences of SB 899 and the 2008 recession, stakeholders resumed discussions about another reform around 2010. The result was SB 863 (De León; D-Los Angeles) in 2012. SB 863 included, among

other items, benefits increases, liens reform, and the creation of Independent Bill Review (IBR) and Independent Medical Review (IMR).

### DISCUSSIONS REGARDING REFORM EMERGE

The present system is relatively stable, but expensive. It is the fourth most expensive workers' compensation system in the country. Employers are growing concerned about increased frictional costs and inefficiencies within the system while many workers' advocates seek increased benefits as well as improved timely access to medical treatment.

Discussions about possible systemwide reforms were overshadowed in the last few years by the COVID-19 pandemic. Governor Gavin Newsom declared that he intends to end the COVID-19 state of emergency in February 2023, so it is likely that discussions about workers' compensation reform will re-emerge. Indeed, the Department of Workers' Compensation (DWC) has started having stakeholder meetings, hosting a public forum "to hear ideas to improve the State's workers' compensation system" at the end of last year, and promising continued discussion on other topics into the new year.

It is essential that any reforms be negotiated between the two cornerstones of the workers' compensation system: employers and workers. It also is important that any legislation be the product of a transparent, data-driven process. All too often in the workers' compensation space there are troublesome bills driven by anecdotes rather than actual data.

For employers, several issue areas call out for improvement:

- **Cumulative Trauma (CT) Claims:** There is a low burden to file CT claims, so the number of them continues to grow, especially post-termination claims. These claims are extremely costly, with some studies finding that as many as 90% of them are litigated before the Workers' Compensation Appeals Board.

- **Qualified Medical Evaluators (QME) Process:** The DWC recently revised the medical-legal fee schedule, including increasing reimbursements for QME reports. The department should have taken additional actions in this area, including unaddressed recommendations from the California

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State Auditor's 2019 report. Most significantly, further action is necessary to ensure that QMEs produce high-quality reports that help resolve disputes in a timely manner. The DWC increased the cost for these reports, but the quality of the product received remains low.

- **Independent Medical Review (IMR):** A small number of physicians and attorneys who drive much of the IMR activity are abusing the IMR system. The most active 1% of requesting doctors (about 106) account for more than 40% of all disputed service requests. The top 10 doctors alone account for about 10% of all disputed requests. This means that in 2019, 10 doctors filed more than 16,000 IMR requests. Some law firms send 90% of all Utilization Review (UR) denials to IMR. The data shows that UR decisions are being upheld by IMR about 92% of the time, so many of these IMR requests are not legitimate, yet they continue to be filed and employers bear the cost of IMR.

- **Employer Assessments:** Employer assessments will rise significantly in 2023, an estimated 13.9% increase from 2022. One of the causes of this increase includes the Subsequent Injuries Benefits Trust Fund, which now tops \$430 million. The increases in this fund have gone out of control and are in part responsible for the continued ballooning assessments. The cost of the fund must be reined in.

- **Medical Provider Networks (MPN):** These networks

must be preserved. MPNs are essential to providing quality care within the California workers' compensation system. Presently, employers and insurance providers have the opportunity to determine which providers may or may not be part of their network. This allows for the exclusion of inexperienced and low-quality providers that have low return-to-work rates, produce low-quality reports, or engage in poor or abusive billing practices. The right to control MPN quality benefits both workers and employers by ensuring that workers are getting the care they need in a timely manner and that frictional costs and litigation in the system remain low. MPNs were a critical part of prior negotiated reforms to the workers' compensation system to provide quality care and control cost.

#### CALCHAMBER POSITION

The workers' compensation system was created to provide a cost-efficient and expedited way to compensate employees for workplace injuries. Once an employee establishes that an injury is work-related, the employee is entitled to compensation, regardless of fault. Any changes to the system must be accomplished through a transparent, data-driven process between labor and management. The Legislature must be cautious when proposing changes to the workers' compensation structure, to maintain a balanced system that provides fair benefits to workers, while minimizing costs and unfair pressures on employers.



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January 2023