

WORKERS' COMPENSATION

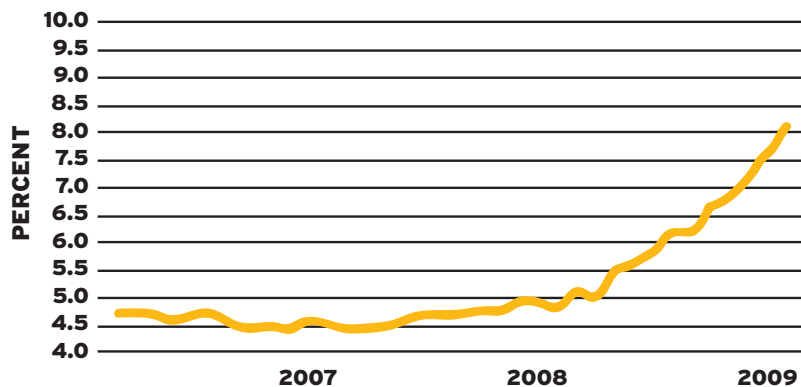
THE QUESTION OF THE HOUR

Of the emerging trends for Workers' Compensation in 2009, several will help answer what for many is the main question of the moment: How have the economy and resulting job losses impacted my Workers' Compensation exposures? Other key issues discussed below represent ongoing problems whose cost implications are finally emerging and demanding attention from Workers' Compensation managers.

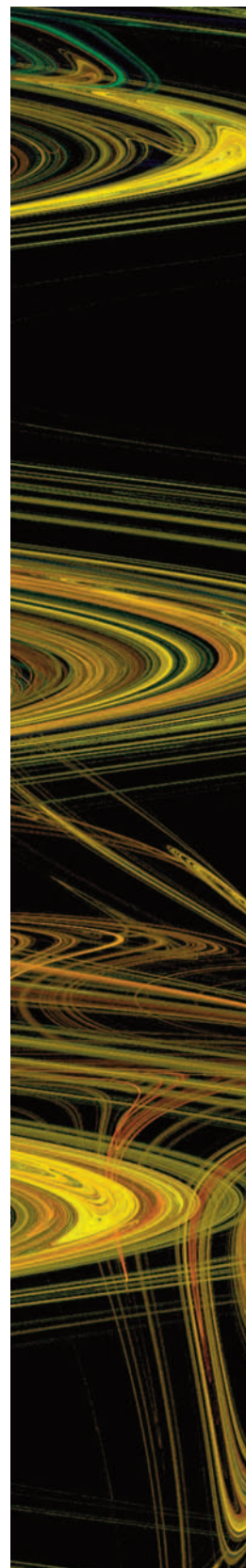
WITH UNEMPLOYMENT RISING SINCE LATE 2007, WE EXPECT DECLINES IN EXPOSURE AND DOWNWARD PRESSURE ON CLAIM FREQUENCY

Employment has been declining consistently since December 2007, the start of the current recession. Job losses averaged 430,000 per month in the three months ending December 2008. The number of unemployed increased by 851,000 to 12.5 million in February 2009 as the unemployment rate rose to 8.1%. Declining economic activity translates into reduced Workers' Compensation exposures, seen most clearly in industries more sensitive to the economy, such as real estate, construction and some manufacturing sectors. We expect claim frequency to continue to fall as companies rightsize and reengineer their current workforce. One major factor contributing to the decline in exposure is that many employers focus layoffs on less skilled and less experienced workers, who tend to have more injuries.

UNEMPLOYMENT RATE AS OF MARCH 1, 2009



Source: U.S. Bureau of Labor Statistics, www.bls.org



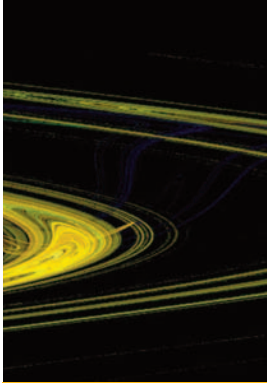


MINIMAL WAGE INCREASES MAY DECREASE INDEMNITY COSTS

As the demand for labor falls, and companies control expenses, wage increases become scarce. Corporations are also eliminating bonuses and performance compensation. The U.S. Bureau of Labor Statistics recently reported a 2.1% increase in average wages in 2008, following a 3.8% increase in 2007. Stagnating wages may reduce long-standing upward trends in indemnity payments.

YEAR & MONTH	AVERAGE HOURLY EARNINGS		AVERAGE WEEKLY EARNINGS	
	CURRENT DOLLARS	CONSTANT (1982) DOLLARS	CURRENT DOLLARS	CONSTANT (1982) DOLLARS
2008:				
FEB.	3.8	-0.7	3.8	-0.7
MARCH	3.9	-0.5	3.6	-0.7
APRIL	3.8	-0.4	3.8	-0.4
MAY	3.7	-0.5	3.1	-1.1
JUNE	3.6	-1.7	2.6	-2.5
JULY	3.5	-2.4	2.9	-2.9
AUG.	3.8	-1.9	3.5	-2.2
SEPT.	3.6	-1.7	3.0	-2.3
OCT.	3.9	-0.1	2.9	-0.9
NOV.	3.9	3.3	2.6	2.0
DEC.	3.9	4.6	2.4	3.1
2009:				
JAN.	3.8	4.5	2.5	3.3
FEB.	3.6	4.1	2.1	2.5

Source: U.S. Bureau of Labor Statistics, www.bls.org



EVEN WITH THE ECONOMIC DOWNTURN, MEDICAL EXPENSES STILL RISE

The medical care component of the Consumer Price Index is on course to increase to over 4.3% in 2009, up from 3.8% in 2008. Of all the major categories in the February 2009 CPI report, medical care showed the highest annual rate of growth for the three months ending February 2009. Higher medical care costs and substantial increases in utilization will place further upward pressure on medical severity.

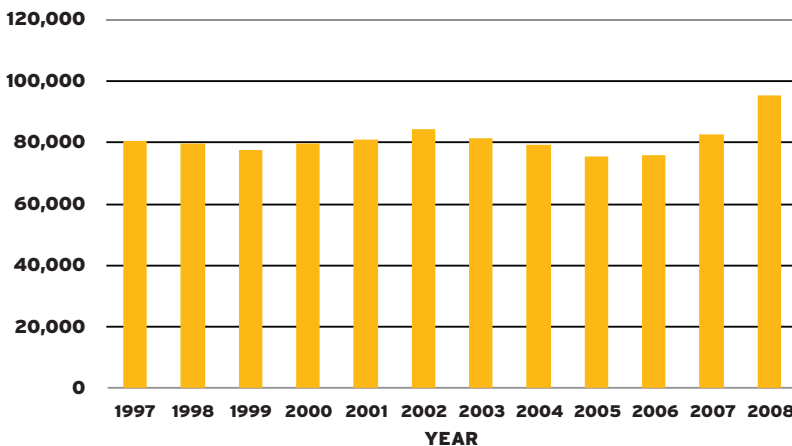
Expenditure Category	CONSUMER PRICE INDEX							COMPOUND	UNADJUSTED
	SEASONALLY ADJUSTED CHANGES FROM PRECEDING MONTH							RATE 3 MOS. ENDED	12 MOS. ENDED
	Aug. 2008	Sept. 2008	Oct. 2008	Nov. 2008	Dec. 2008	Jan. 2009	Feb. 2009	Feb. 2009	Feb. 2009
All items	0.0	0.0	-0.8	-1.7	-0.8	0.3	0.4	-0.5	0.2
Food & bev	0.6	0.5	0.4	0.2	0.1	0.1	-0.1	0.1	4.7
Housing	0.0	-0.1	0.0	-0.1	0.0	0.0	0.0	0.0	1.9
Apparel	0.4	-0.3	-0.7	0.1	-0.6	0.3	1.3	3.9	0.8
Transportation	-0.9	-0.1	-4.8	-9.7	-5.0	1.3	1.9	-7.4	-11.0
Medical care	0.2	0.3	0.2	0.2	0.3	0.4	0.3	4.3	2.8
Recreation	0.4	0.2	0.2	0.0	-0.2	0.0	0.4	1.0	1.9
Education & communication	0.2	0.1	0.2	0.2	0.3	0.3	0.2	3.3	3.6
Other goods & services	0.2	0.2	0.3	0.0	0.0	0.3	0.2	2.0	3.2
Special indexes:									
Energy	-2.0	-0.1	-7.8	-16.9	-9.3	1.7	3.3	-17.4	-18.5
Food	0.6	0.5	0.4	0.2	0.0	0.1	0.1	0.0	4.8
All items less food & energy	0.2	0.1	0.0	0.1	0.0	0.2	0.2	1.5	1.8

Source: U.S. Bureau of Labor Statistics, www.bls.org.

RIGHTSIZING, LAYOFFS AND WORKFORCE REDUCTIONS HAVE INCREASED THE NUMBER OF EEOC COMPLAINTS

While Workers' Compensation claim frequency may be on the decline, Equal Employment Opportunity Commission (EEOC) charges hit record highs in 2008. The EEOC received a record-high 95,402 private sector discrimination charges in fiscal 2008, up 15.2% from the previous fiscal year, according to preliminary year-end data released by the commission. In the first three months of 2009, some states have already seen more EEOC charges filed than in all of 2008. Employers should expect delays in EEOC claim resolution and an increase in claim frequency. Notable increases are being seen in retaliatory discharge and age discrimination cases.

TOTAL EEOC CHARGES



Source: U.S. Equal Employment Opportunity Commission, www.eeoc.gov/stats/charges.html

SEVERAL STATES ARE PLANNING TO INCREASE REIMBURSEMENTS TO HOSPITALS AS HOSPITAL COSTS CONTINUE TO RISE AS A TOTAL PERCENTAGE OF TOTAL WC COSTS

Workers' Compensation costs for hospital care continue to escalate at a faster rate than the cost of care offered by other medical providers. In most jurisdictions, hospitals are allowed to charge higher rates for Workers' Compensation treatment than for general health (GH) treatment. The National Council of Compensation Insurers (NCCI)

disclosed in a February 2009 report¹ clear evidence that hospitals are charging more and are being utilized more on Workers' Compensation cases than in GH cases. In the study cited below, hospital costs accounted for more than 45% of Workers' Compensation medical payments. The NCCI reported that charges for specialty services, such as radiology and surgery, in hospitals far exceed the charges for those services in physician offices and specialty clinics. In each of the 21 NCCI states covered in the study, both Workers' Compensation utilization and charges were higher than those for GH. Unfortunately, there is little relief on the way, as insurer and employer lobbying efforts have not identified this as a major issue and for the most part do not address it.

States are also doing little about it. In fact, several states, including Minnesota and Florida, are proposing to increase hospital reimbursement costs. South Carolina did this in October 2006, and insurers in the state have now filed for a 23.7% rate increase. One reason for the disproportionate cost of hospital treatment in Workers' Compensation cases is that most employers focus on initial treatment and physician care.



WC MEDICAL COSTS BY CATEGORY

MEASURES	PHYSICIANS	CHIROPRACTORS	PHYSICAL/ OCCUPATIONAL THERAPISTS	HOSPITALS	OTHER PROVIDERS
PERCENT OF PAYMENTS	33.70%	1.20%	9.40%	45.50%	8.30%
AVERAGE MEDICAL COST PER CLAIM	\$2,973	\$1,371	\$1,883	\$5,111	\$1,289
AVERAGE NUMBER OF VISITS PER CLAIM	9.5	16.6	14.5	5.5	4

Source: *The Anatomy of Workers' Compensation Medical Costs and Utilization, 7th Edition*. WC-08-16–WC-08-26, Workers' Compensation Research Institute, January 2009.

What can employers do?

- Establish triage procedures to reduce the number of hospital visits
- Ensure that injured employees utilize members of a PPO network
- Educate physicians on the value of per-refer procedures
- Use nurse case management to direct care to providers outside of the hospital

FDA ACTING ON NARCOTICS ABUSE, AN UNFORTUNATE COST FACTOR IN WORKERS' COMPENSATION

Abuse of pain medications – a serious issue in Workers' Compensation because many cases involve chronic injuries and chronic pain – is being targeted by the Federal Drug Administration (FDA). In early February, the Food and Drug Administration announced that it was stepping up efforts to reduce unsafe use of 24 narcotics products – methadone pills, fentanyl patches and extended-release pills containing morphine, oxymorphone and oxycodone (OxyContin). A new program known as REMS (Risk Evaluation and Mitigation Strategies) will allow the FDA to place tight restrictions on the distribution of OxyContin and 23 other drugs. No immediate changes are planned, but in April 2009 the FDA began meeting with manufacturers, patient and consumer advocates, and health care professionals to develop guidelines.

Narcotics drive an estimated 40% of Workers' Compensation pharmaceutical costs, which account for about 14.5% – more than \$4 billion – of Workers' Compensation medical expenses.² Narcotics use is particularly high in Workers' Compensation cases due to the fact that most involve some degree of pain. Reducing spending on narcotics could potentially affect approximately \$1.6 billion in direct Workers' Compensation costs.

Further cost savings may be found in the link between cases involving narcotics abuse and the most expensive Workers' Compensation cases. Cases in which narcotics have been prescribed prematurely or excessively cost an average of \$7,783, while non-narcotic cases cost an average of \$2,668.³

FENTANYL

One of the most problematic drugs is fentanyl, a main ingredient in several popular products. Derived from opium, and 80 times more potent than morphine, fentanyl is exceptionally addictive. The warning label on one of the products says the drug "is intended to be used only by oncologists and pain specialists" knowledgeable in using opioids to treat cancer patients who are already tolerant to opioid therapy for their underlying chronic pain. Workers' Compensation programs rarely handle cancer cases, raising the question of whether fentanyl products are being prescribed appropriately.

A source at a major insurance carrier has told us that fentanyl is now the twelfth most frequently prescribed drug and the third most costly drug for Workers' Compensation treatments. A list of commonly described pain drugs, three of which contain fentanyl, show the cost impact.

EQUIVALENT ONE DOSE COSTS

DARVOCET	\$1.18
DILAUDID	\$2.01
PERCOCET	\$3.98
FENTORA (FENTANYL)	\$77.06
DURAGESIC (FENTANYL)	\$68.65
ACTIQ (FENTANYL)	\$77.08

In many cases, patients with back or neck pain or other ailments are taking the drug four or more times a day, racking up annual bills of \$12,000 to \$18,000 for fentanyl-based drugs alone. Provisions in many states prevent Workers' Compensation administrators from restricting coverage of painkillers even for nonapproved use.

What steps can employers take to control the narcotics portion of their pharmacy and prescription costs?

- See if your carrier or TPA has a narcotics therapy management program; if not, push them to create one!
- Use predictive modeling to identify cases with potential for narcotics abuse, i.e., soft tissue injury with narcotics prescribed within the first 30 days of treatment. Predictive modeling supports the value of timely intervention.
- Make sure your Workers' Compensation program involves pharmacy reviews.

- Educate your providers by giving them data on the associated costs where narcotics are prescribed.
- Nurse case management, along with experienced personnel, can help identify narcotics abuse early on and bring it to the attention of physicians. It is estimated that more than 40% of physicians never ask a Workers' Compensation patient if they have a history of narcotics abuse⁴.
- Patient education increases worker awareness of the various alternatives to narcotics. For example, aggressive physical therapy can often alleviate the need for any pain medication in cases involving moderate back pain.

CALIFORNIA RATES COULD SURGE NEARLY 25%

California's Workers' Compensation Insurance Rating Bureau (WCIRB) will file for a nearly 25% increase in pure premium rates, based on new loss data and the potential impact of recent legal decisions. If the full 24.4% increase for the benchmark rate is approved by the state Department of Insurance, the rates would remain on average 54% lower than the approved pure premium rates in effect July 1, 2003, according to WCIRB data. The new rates would go into effect July 1, 2009.⁵

Approval is by no means certain. Insurance Commissioner Steve Poizner said in a statement responding to the request, "I will give this WCIRB recommendation the same level of careful scrutiny I have given previous requests. I will not allow California's job creators to be burdened with unnecessarily high Workers' Compensation costs...These soaring costs are unsustainable and must be controlled if we are to prevent a repeat of the Workers' Compensation crisis we saw earlier this decade." Late last year, Poizner rejected a 16% increase proposed by the state WCIRB for the advisory pure premium rate, the nonbinding standard for determining

Workers' Compensation rates. He set a benchmark of a 5% increase to account for higher medical and claim adjustment costs.⁶

The rating bureau said a recent evaluation of loss experience suggested the need for an increase in the claim cost benchmark of 17.6%, primarily due to **higher medical costs**. The analysis was based on three recent Workers' Compensation Appeals Board decisions: *Ogilvie v. City and County of San Francisco*, *Almaraz v. Environmental Recovery Services* and *Guzman v. Milpitas Unified School District*.

These cases affected payments for permanent disability awards and could have far-reaching impacts, according to the Workers' Compensation Action Network, an alliance of business and insurance interests. Prior to the legislative reforms passed in 2004, permanent disability cases were filed in California at three times the national average and accounted for 82% of all benefit costs in the system, according to the network. As usual, Workers' Compensation professionals will be keeping an eye on California.

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¹ *Effectiveness of Workers Compensation Fee Schedules - A Closer Look*, National Council of Compensation Insurers (NCCI), February 11, 2009, <https://www.ncci.com/documents/Fee-Schedule-FullRpt-02-09.pdf>.

² *Journal of Workers Compensation*, Vol. 18, No. 1, Fall 2008.

³ Ibid.

⁴ *Family Matters: Substance Abuse and The American Family*, The National Center on Addiction and Substance Abuse (CASA) at Columbia University, March 2005.

⁵ "California Workers' Comp Rates Could Surge by 25%," BestWire, AM Best, March 19, 2009.

⁶ "Poizner Backs 5% Hike in Calif. Workers' Comp Benchmark, Rejects 16% Proposal," BestWire, AM Best, October 28, 2008.

