



An Employer's Guide to

WORKERS' COMPENSATION

IN CALIFORNIA

Getting Workers' Compensation Coverage

Before an Injury Occurs

What to Do When an Injury Occurs

Helping Your Employee Return to Work after an Injury

Avoiding Unnecessary Disputes

Resources for Employers

An Employer's Guide to

WORKERS' COMPENSATION

I N C A L I F O R N I A

Important Note:

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Division of Workers' Compensation
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Using This Guide

This guide is meant to remove the barriers you face as an employer in understanding workers' compensation coverage, how a safety and health program can save you money long term, what to do when an injury occurs, helping your injured employee return to work, and how to avoid disputes.

Whether you are a small company just starting out or have just been assigned to manage the workers' compensation program at a large, well-established firm, you are going to have a number of questions—what's the best way to get workers' compensation coverage, how do I keep costs down, what can I do to make sure workers' compensation matters are properly handled at my business?

The pages that follow answer these and many other questions. When you see this symbol  it means the term is further defined in the Resources section at the back of the guide.

Taking the steps described can help you manage your risks, your employees' safety and your company's productivity.

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We are interested in any feedback from you on ways DWC can improve information for employers and employees on workers' compensation. To send suggestions or request additional copies of this guide, contact:

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Chapter 1

Getting Workers' Compensation Coverage

California law requires employers to have workers' compensation insurance. Even out-of-state employers may need workers' compensation coverage if a contract of employment is entered into in California.

How to get coverage

You can get workers' compensation insurance coverage from any of the more than 300 private licensed insurers authorized to sell such policies in California. While you can purchase the policy directly from an insurer, most policies are sold through an insurance agent or broker.

The largest workers' compensation carrier is State Compensation Insurance Fund (State Fund). If you can't find an insurer willing to cover your business, State Fund is required to provide you with coverage.

If you belong to a trade association you might want to check with them first—some trade groups negotiate special rates for their members. Your local chamber of commerce may also be a source of good advice.

Some employers—mainly large businesses—self insure for workers' compensation. Self insurance requires state approval, a net worth of at least \$5 million, net income of \$500,000 per year and posting a security deposit. Contact your broker or the state's Self Insurance Plans office (see Resources) for information on self insurance.

The self insured employer has the option of administering their own workers' compensation claims or contracting with a third party administrator (TPA) to provide these services. For the small-business employer, group self insurance may be possible—call Self Insurance Plans for information.

What to look for in a workers' compensation carrier

As a business person, cost is probably one of your main concerns. Keep in mind that the services you can get from a workers' compensation insurer may save you money in the long run. Like anything else, *it pays to shop around*. Remember: bargain basement prices may mean bargain basement services.

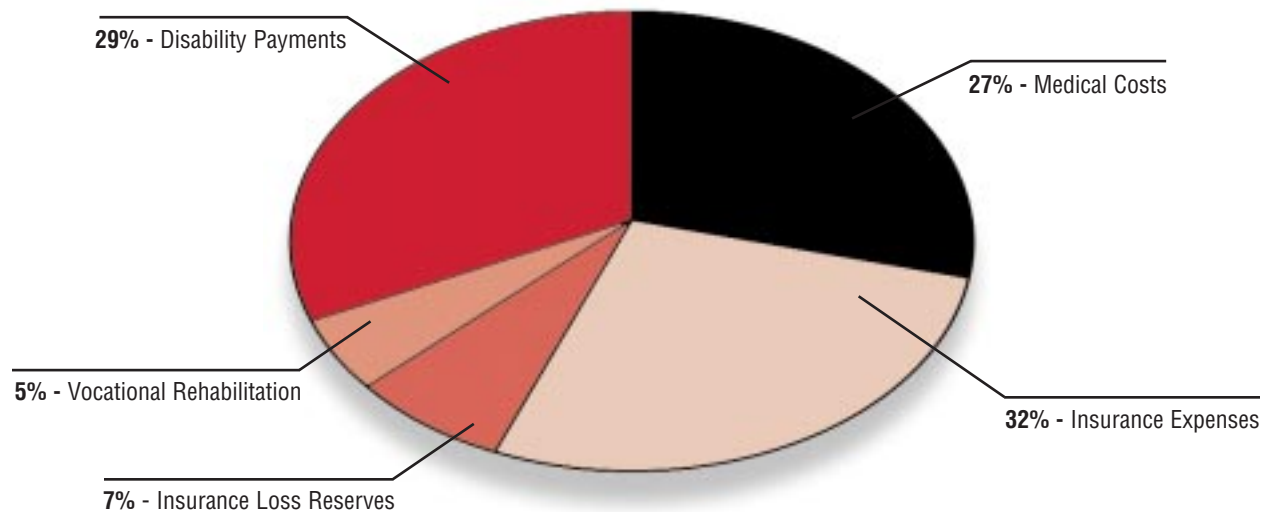
How the carrier handles their claims is important to you. Once an injury occurs, you need the insurer to review the claim to accept or deny it, arrange for medical care, communicate promptly and clearly with your injured employee, pay bills for medical treatment and disability benefits—in other words, handle or manage the claim and set aside enough reserve money to cover all of the expenses. These things need to be done in an efficient and timely way to avoid problems and disputes.

Also look at the loss control services provided by the insurer. Preventing injuries in the first place is the best way to keep your workers' compensation costs down.

Your carrier must, with some exceptions, make loss control services available to you as a client at no extra charge over and above the premium you pay, *though you may have to ask for them*. Among the services that must be included are: a workplace survey to identify high hazards; a review of workplace injury and illness records; discussions with management staff; and development of a plan to improve your business' health and safety loss experience.

Your workers' compensation insurer is also an excellent resource for assistance in developing or improving your *Illness and Injury Prevention Program*, which is required by law (see chapter 2). Let your broker and carrier know that safety services are important to you.

Where does your premium dollar go?



Workers' Compensation Costs for Insured Employers
 Source: *1998 California Workers' Compensation Losses and Expenses*, WCIRB report, June 1999.

Questions to consider when choosing a workers' compensation insurer:

- Who is your local representative? Can this person be reached easily? Do the claims adjusters have a very high number of cases to manage? Note: the higher the case load, the more you want to know about timeliness and quality of services for your injured employees.
- Does the insurer contract for high quality medical care through a nearby clinic? How do they choose the doctors who will see your employees? Is the clinic a place where you yourself would go for treatment? Can you choose another occupational medicine clinic for your injured workers?
- Will the insurer help you audit your payroll to make sure employees are accurately classified for setting your insurance premium? Note: check your payroll regularly and calculate the effect of any payroll changes on your workers' compensation premium. Let your insurer know of any changes.
- Will the insurer provide you with regular reports on the status and projected costs of outstanding claims? How frequently will you receive these reports, known as loss runs? Will they provide you with statistics that show how your company's claim rate and costs compare with other similar businesses?
- What percentage of their claims is disputed or litigated?

Shopper's Guide to Workers' Compensation Carriers



Items to Look At	Insurer #1	Insurer #2	Insurer #3
Annual basic premium: how much will they charge?			
Any surcharges ? (see Definitions)			
Are dividends paid out to policyholders? (see Definitions)			
Schedule rating ? (see Definitions)			
Incentives or discounts?			
Do they specialize in your industry?			
Loss control services: what will they do for you?			
Return to work program: what assistance do they provide?			
Medical care: which clinic or network do they use? Managed care? Health Care Organization (HCO)?			
Customer services: who do you call if you have a problem? Local office?			
How do they work with policyholders to prevent fraud?			
Payroll audit assistance?			

Use this checklist to compare the carriers you are considering or your broker recommends. Many of the terms used here are defined in the Resources section.

What your workers' compensation insurance buys

For your injured employees it buys:

- Medical services needed to treat the job injury or illness.
- Temporary disability payments to help replace lost wages.
- Permanent disability payments to compensate for permanent effects of the injury.
- Vocational rehabilitation if the employee is not able to return to the kind of work performed at the time of injury.
- A death benefit for survivors in the case of fatal injury.

For you it buys: coverage of financial liabilities for any on-the-job injury or illness. If you have workers' compensation coverage through a policy or self insurance, you pay only the cost of your insurance premiums—unless serious and willful misconduct or discrimination is involved. A policy also provides you with legal representation by the insurer if a case is disputed.

Who pays for workers' compensation insurance

The cost of workers' compensation insurance is the employer's responsibility. You cannot legally require an employee to pay any of the costs of your workers' compensation coverage. This includes any out-of-pocket medical expenses.

How to work with a broker or independent insurance agent

Employers often get workers' compensation insurance through a broker or agent who has a property and casualty license to sell such insurance.

Most insurance brokers offer multiple lines of insurance. Though putting all your insurance needs in one basket may be convenient, make sure that the broker is well informed on the problems specific to workers' compensation insurance. Some brokers write workers' compensation policies for only one insurance company, and that carrier may not be the best one for you.

Ideally, your broker should be able to connect you with an insurer that specializes in insuring employers of about your size and in your type of business. Be aware that brokers are paid by either commissions or



Dealing with insurance problems

If you disagree with some action your insurer has taken, you can call the Workers' Compensation Insurance Rating Bureau's Office of Policyholder Ombudsman or the California Department of Insurance for additional information. If that doesn't help, you can file an appeal with the Department of Insurance (see Resources).

You should send a copy of your appeal letter to the nearest office of the Consumer Services Unit of the Department of Insurance (see Resources). Do this within 30 days. Whatever you do, act promptly. **WCIRB** ombudsman Garrett Yee says, "The longer you wait to deal with a problem, the worse it's going to be."

fees—they get paid a certain amount for signing you up with a new carrier and for renewing your policy each year. Discuss any other services, besides getting insurance coverage, that the broker may be able to provide.

Be an active consumer

While it may be far easier to leave this up to your insurance broker, it is in your best interest to *read and understand your workers' compensation policy*. If there is

something you don't understand, ask your carrier to explain.



Workers' compensation insurance premiums are generally based on the industry you are in (**classification**), the kind of injury claims you have had in the past (loss experience) and the size of your company (payroll).

In California there are more than 400 different classifications. Employers in the same classification may have very different loss experience, which causes their insurance premiums to be different. Employers with premiums above \$19,900 over a three-year period are subject to **experience modification**, which is applied to their premium.

This ex-mod, as it is called, is used to determine what premium you will be charged relative to other employers in your classification. An ex-mod of 100 percent means you have an average injury rate. Those with more than the average number of injuries would pay a higher premium.

If your insurer makes a decision affecting your premium or classification, try to get information on how they made the decision. First talk to your insurance broker—if your broker cannot help you, then call your insurer directly.

Employers have the right to dispute the actions of their insurer. For example, you may request that your insurer reconsider the classification they have given to your company and employees. You can also ask for a review of your experience modification.

Can you ever go without workers' compensation insurance

The short answer is **NO**.

Some employers and their **employees** are covered under separate systems for workers' compensation. This includes federal employees and maritime, longshore, railroad and harbor workers. Others are exempt: people volunteering with charitable organizations in return for aid or sustenance, and some household or residence employees.



Sole business owners are not required to have coverage but may get it for themselves alone, if an insurer is willing to provide it. Business partners or corporate officers must be covered in some cases.

For each general rule there are exceptions. The question of who needs to be insured, and who does not, is too important for guesswork. If in doubt, seek competent legal or other professional advice.

While there are some exceptions to the general rule requiring workers' compensation insurance, you should be very cautious in assuming that any apply in your case. One exception is the independent contractor. The rules for who is, and who is not, an independent contractor can be complicated—consult a labor law attorney for advice based on your particular situation. Some insurers also provide this type of advice.

To improperly call an employee an independent contractor is against the law. The fact that a worker has signed a piece of paper saying that person is an independent contractor does not mean the courts or tax agencies will agree. Often workers sign documents saying they are independent contractors—then they suffer major, expensive injuries and say they were employees all along. They often collect benefits. Proceed with caution in this



Some of the legal considerations that decide whether a person is an employee or an independent contractor:

- Independent contractors are customarily engaged in their own established businesses, have their own supplies and tools and may be licensed for the kind of work they do (such as plumber, software programmer).
- You can tell independent contractors what you want done, but not how to do the job they have contracted to complete.
- Though independent contractors may have to meet a contractual deadline, they may work hours of their own choosing.
- You cannot fire an independent contractor.

area of contracting and get solid advice before assuming that you don't need workers' compensation coverage for someone doing work for you.

Employee leasing companies and labor contractors

If you are considering the services of an employee leasing company or labor contractor, *proceed with caution*. Generally, even though such a service must have workers' compensation coverage under its own policy, you or your company must be listed as an additional insured.

Before signing, ask to see the policy or have it reviewed by a knowledgeable professional.

The high cost of going without workers' compensation insurance

An employer's failure to have workers' compensation coverage is a criminal offense. The state also issues penalties up to \$100,000 against illegally uninsured employers.

If you think the cost of workers' compensation insurance is high, consider paying a serious claim without coverage. Workers who are injured while working for illegally uninsured employers have their benefits paid from a special state fund. The state then goes after the uninsured employer, using many of the same methods for collecting overdue taxes, child support and student loans. The state can put a lien on your home. Your contractor's license is automatically suspended. Your assets can be attached even if held overseas or in a corporation or trust. Workers can sue you for negligence in civil court.

Workers' compensation protects the health and income of workers who get injured on the job. It also limits the employer's liability for lawsuits. Like meeting your payroll, if you can't afford workers' compensation insurance, you shouldn't be in business.



Rethinking your workers' compensation: one employer's view

“We had no control over any part of our workers' comp. I read the past reports and couldn't even figure out how the injury occurred. We had several cases with attorneys, and the insurance company didn't seem to exist half the time. The first thing we needed to do was educate ourselves on our rights and responsibilities, and we needed to get a handle on the situation.

“Take a deep breath before you begin! Plan out a strategy and then double the timeline (everything will take twice as long as you planned). Don't try to make all the changes at once. When you feel like you're banging your head against the wall, stand back, gather your forces and come at them from an entirely different angle.”

–Rose Valley Agricultural Group



Chapter 2

Before an Injury Occurs

Having adequate coverage for workers' compensation and an insurer you can work with is an important first step. However, what happens before a work injury takes place is under the employer's control.

California law requires employers to provide a safe and healthy work environment. You can lower the chance of injury through a proactive employee safety and health program, called the *Injury and Illness Prevention Program*. All too often this program is evaluated only after a serious injury has happened.

If you are a new employer, you may be starting from scratch. If you are rethinking your current workers' compensation and workplace safety and health program, it may mean breaking from tradition and finding a new way of looking at things. Even a well-managed safety program needs regular evaluating and updating.

Develop a safety culture

Think about it for a minute—if your employees were asked to rate the company's safety and health program, what would they give it on a scale of 1–10?

A strong message needs to come from the top—the boss and managers—that safety is important, that it's part of doing the job, and that the company is serious about its policies. The employer is responsible for a safe work environment and has many tools to help bring this about.

You can spend 10 minutes a day in safety talks, do weekly walk-throughs to look at workplace conditions, hold monthly safety committee meetings, interview injured workers for their ideas on how to make the job safer. These steps go a long way toward preventing injuries and illnesses—and costs associated with them—from happening in the first place.

Cal/OSHA requires every employer to develop and maintain an effective *Injury and Illness Prevention Program*. This can be your blueprint to control workers' compensation costs while running a productive and safe business.

The Cal/OSHA Consultation Service offers free assistance to employers working to comply with safety and health regulations, and to help lower your workplace injury and illness rates. They do not give citations or fines.

Look out for potential hazards at your worksite

Identify the risks that can contribute to injuries in your workplace.

Hazards come in many sizes and shapes. Some examples are:



- **ergonomic**—poor job design increasing risk of musculoskeletal diseases.
- **toxic substances**—solvents, metals, dusts.
- **physical**—temperature, noise, falls, tools, motor vehicle accidents.
- **biological**—bloodborne pathogens, tuberculosis.
- **psychological**—stress, workplace violence.



Characteristics of companies with low injury rates:

- Management commitment to safety
- Routine safety and health activities
- Supervisor and employee involvement in safety program
- Effective training of supervisors and employees

Your company's *Injury and Illness Prevention Program* should prioritize the specific hazards in your workplace and figure out how they will be controlled.

Go over past injuries

Before you write next year's premium check, take a look at the company's safety record. Are injuries going up or down? What types of injuries are most frequent? Are the employees who are doing one particular job, or working a lot of overtime, the same ones who are getting injured?

Often you will see patterns to the problems. Sources of injury data are your employees and supervisors, insurance carrier, injury or first aid logs and Cal/OSHA Form 200 for recording reportable injuries and medical records.

Your insurer should provide you with a breakdown, called a **loss run**, of your past injuries and costs. If you are a larger company, ask to have the loss run broken down by job classification and compared with the previous year's experience. If your company is experience rated, your experience modification number will tell you how well you are doing compared to similar companies.

You should also examine first aid cases and near misses—the fall or burn that almost happened. These can show you where safety training or hazard control needs reinforcing.

Involve your employees

Where can you get the most practical suggestions for improving tools and work layout or avoiding dangerous work habits? From your employees, the people doing the work. Employees can help do safety inspections, participate on safety committees and contribute good ideas for doing the job safer and better. Employees who carry out safety policies or insist upon safe and healthful working conditions are protected by law from discrimination, retaliation or other reprisal.



Key steps in the Injury and Illness Prevention Program:

- Name a person who is responsible for day-to-day implementation of the program and has authority for assuring its effectiveness.
- Identify worksite hazards, general as well as specific.
- Communicate safety information to employees, give them a voice in forwarding concerns and suggestions to management.
- Investigate worksite accidents/exposures.
- Correct and control workplace hazards.
- Make sure employees get the training they need and are required to have.
- Keep the records required by the program.



Review employee communications and safety training

Safety starts with management sending a strong message of accountability and support. A strong message that's not followed up with action gives employees the impression that safety isn't important to you.

Effective workplace safety and workers' compensation programs start with good employee communications. Employers around California say that communication problems are a top reason for disputes following a workers' compensation claim—lack of effective communication between the employee, doctor, claims adjuster and employer can cause delays and frustrations that boil over into litigation.

Train supervisors and managers

Supervisors, foremen and team leaders need training to recognize and control hazards, teach and monitor their staff in safety procedures and work habits. Invest in your supervisors and make sure they know that safety is a priority for your company.

Employee Safety Training Checklist

- Are new employees thoroughly oriented to the workplace, shown how to do their job safely and how to report problems?
- Do all employees receive safety training when they move to a new job site or get new equipment, furniture or tools?
- Do you have a feedback system to make sure employees understand the training they receive?
- Do you make sure seasonal and temporary employees are included in training?
- If you use employee leasing or a temporary employment agency, is that company providing the required training? If not, you may end up responsible for their injuries.
- Where are the training records kept and by whom?

Areas to cover in supervisor policies and training include:

- How the company's safety program works and their responsibility in it.
- What to do when an injury occurs, after-hours policies—remember the third shift—working off-site, emergencies and assigned responsibilities.
- How to arrange medical care for injured employees.
- How to report injuries quickly—many carriers have a toll-free phone number for immediate reporting of injuries. You or your representative must give the injured employee an Employee Claim Form (DWC Form 1, see Resources) within one working day of your knowing an injury occurred. The employee fills out the top part, the employer fills out the rest and sends the form to the insurance company—the employee gets a copy of the completed form.
- How to respond to an injured employee's questions and concerns after an injury.
- How to investigate the accident promptly and correct any safety problems.
- How to file a supervisor's report of the injury—recording details of the event and circumstances of the injury—and send it to the insurance carrier.
- How to keep records of the accident, medical and disability reports.

Assess special training needs

Up to 30 percent of work injuries take place among employees who have been on the job *for less than a year*. Retraining in the first year of employment pays off in fewer injuries.

If you hire young workers age 18 and under, they may need more safety instruction and supervision than the experienced staff. California labor law also restricts the hours and type of work young workers can perform.

By law, worksite safety and health training must be conducted in a form readily understood by all employees—this means that if you have non-English speaking employees, the written and verbal instructions must



“We wanted employees who had legitimate work injuries to report the injury without fear of reprisal. Because our bonus program was tied to the number of injuries per restaurant, workers felt it was negative to report an injury. Now we have a bonus system that rewards going to safety meetings, visiting the local industrial clinic and other proactive safety tasks.”

–Rubio’s Baja Grill Restaurants, San Diego

be translated. Ask your insurer for safety and workers’ compensation materials in other languages. Videos and hands-on training can help employees with limited English and low reading skills to learn necessary safety information.

Some job categories have specialized training requirements. For example, workers in agriculture, construction, chemical handling, hospital and medical care are covered by Cal/OSHA training regulations. Check with Cal/OSHA to find out which apply to your kind of work.

An ongoing safety committee of supervisors and workers can help you review, prioritize and follow up on all aspects of employee safety training.

Posting notices, giving medical care instructions

Employers must post a notice—in a conspicuous place—giving employees information on the company’s workers’ compensation coverage and where to get medical care for work injuries. Failure to post this notice is a misdemeanor that can result in a heavy civil penalty—up to \$7,000 per violation. Contact your insurer to get the posting notice and required information.

At the time of hire and again when an injury occurs, the employer must give basic information to employees about workers’ compensation coverage and benefits. Most carriers have an injured worker brochure that you can use for this purpose. It is also available from the state Division of Workers’ Compensation.

The brochure covers where to go for medical care, how to report an injury, what will happen after the injury, and employee rights and benefits after an injury. It must be available in English, and in Spanish if you have Spanish-speaking workers.



Also at the time of hire, employees must be told of their right to **pre-designate** their own personal physician who would provide treatment if an injury occurs on the job. The employer may give employees a form for pre-designating medical care, or the employee may write a note that should be kept in the personnel file (see chapter 3).



Why is choice of doctor important?

The **treating doctor** will:

- Decide what kind of medical treatment is needed.
- Help identify the kinds of work the employee can do safely while recovering.
- Provide key information to help the injured worker return to work.
- Write medical reports that affect the benefits the employee is eligible to receive.



Make sure injuries are reported

Some employees are afraid to report an injury to their employer. This may be especially true for conditions such as carpal tunnel syndrome, tendonitis, and low back pain, in which symptoms develop slowly over a long period of time. Employees who are working in pain, trying to hide their symptoms, suffer reduced productivity and morale—and may end up with more serious and costly injuries.

Don't make it difficult for employees to report injuries to you. A potential injury caught early may avoid a workers' compensation claim altogether. State Labor Code 132a prohibits discrimination against an employee who is hurt on the job or files a workers' compensation claim.

Getting medical care for work-related injuries/illness

Information on where to get emergency care must be posted in your workplace. In any emergency case, take the employee to the nearest emergency room or call 911.


Medical care is one of the main benefits of workers' compensation—out of every dollar spent on workers' compensation benefits, about 40 percent goes to medical care.

How is your employee treated on the first medical visit? This may influence the whole course of treatment and recovery. Although the insurer or third party administrator frequently arranges for medical care, you can provide input on the quality of treatment you want your employees to receive.

“I recommend that the employer go visit the clinic where employees will be sent for occupational medical care. Look at the facility and talk to the staff—make sure it is a place where you or a family member would feel comfortable getting medical treatment. This also helps the clinic get an idea of who you are and shows that you are concerned about the quality of care they deliver.”

—third party administrator

Managed Care



Some health plans and medical groups offer managed care for work injuries. Since managed care can have many different meanings, ask these questions of your insurer or the medical plan itself:

- Do they assure early access to needed medical services?
- Do they have a program to ensure quality of care?
- Do they use nurse case managers to facilitate communication between you, the employee, doctor and insurance carrier?
- Will they help the employer coordinate early and safe return to work?

- Will the plan coordinate its occupational medicine services with your group health care plan?
- Is the plan a state certified **Health Care Organization (HCO)**?

Talk to your insurance broker or carrier about how a Health Care Organization could work for your business. A managed care plan providing comprehensive services may be able to save you money—first you need to know how it will work for your particular company and employees.

Some employers and managed care plans survey their injured workers after an injury to measure satisfaction with the medical care provided. This way they get valuable feedback from employees while showing concern for the quality of medical care.

Your insurer's loss control department, your insurance broker, your trade association and the Cal/OSHA Consultation Service are all good sources of information and help. Take advantage of any training classes or materials offered to employers to improve your workplace health and safety program. Invest in prevention now for long term payoff in workers' compensation savings.



Chapter 3

What to Do When an Injury Occurs

Medical treatment

Your employee comes to you and says, “I’m injured,” or “I’m feeling sick,” and it might be work-related. Your first concern is to see that your employee gets medical treatment right away. Send the employee to the clinic or doctor you or your insurance company chose ahead of time.

There are two exceptions, one legal and one based on common sense:

- If your employee’s need for treatment appears urgent—for example, bleeding profusely, unconscious or maybe having a heart attack—get the employee to the nearest emergency room or call 911.
- If your employee has pre-designated a personal physician to treat on-the-job injury or illness, and it is not an emergency, the employee should go to this physician.

The pre-designated physician

Usually the employer chooses the primary treating physician for the first 30 days after an injury is reported. However, if before an injury the employee had notified the employer in writing of a personal physician who previously directed the employee’s medical treatment and has the employee’s medical records, that employee can be treated by the pre-designated physician from the date of the injury. This physician must be a medical doctor or osteopath. If the employee wants to be seen by some other kind of doctor—for example, a chiropractor—the injured employee may ask to change doctors after the initial visit.

“Few steps are so simple and so important in controlling costs and ensuring prompt and proper delivery of benefits as reporting the claim quickly. Use the 1-800 [toll-free phone number] or Internet reporting options offered by many insurers and rush your 5020 [employer’s report] to the insurer.”

—Don Way, Independent Brokers and Agents of the West

Paperwork

If one of your employees is injured on the job, you will need to do some paperwork. First, your insurer should have given you a supply of employee claim forms entitled *Employee’s Claim for Workers’ Compensation Benefits* (DWC Form 1—see Resources).

You must give the employee the DWC Form 1 directly or send it by first class mail to their home. The employee should complete the employee section of the form and return it to you.

At the same time, you should give your employee an injured worker pamphlet, which contains basic information on benefits, rights and obligations under workers’ compensation law. Your insurer should also have given you a supply of these.

If your insurer didn’t give you employee claim forms or injured worker pamphlets, ask for them at once. According to the law, an employer has to give or send by first class mail an employee claim form to the injured employee within just one working day of finding out about the on-the-job injury.

The employer has up to five working days to provide the injured worker pamphlet, which describes workers’ compensation benefits, employee rights and responsibilities, important timelines and where an employee can get more information on the workers’ compensation system.

When the injured employee completes and returns the claim form, you then have one working day to fill out your portion of the form and send it to your insurer. Give a copy of the completed form to your employee and keep a copy for yourself.

You must complete a Form 5020, *Employer's Report of Occupational Injury or Illness*, also known as the employer's report (see Resources). You have five days from your knowledge of the work-connected injury or illness to fill out this form and mail or fax it to your insurer. Delay in reporting can cause delay in benefits and lead to unnecessary anxiety for your employee.

Commonly Asked Questions

Q: What if my employee has a cut or scratch, something that only needs antiseptic and a bandage? Do I still have to do this paperwork?

A: No. You do not provide the claim form and complete the employer's report unless the injury results in lost time beyond the date it occurred, or your employee requires medical treatment beyond first aid.

Q: What if the employee claims to be injured at work, but I don't think it's true? Do I have to file the claim form and the Form 5020?

A: Yes, you must file the Form 5020. Document your concerns in writing to the insurer. It is their job to investigate. If they decide it is not work-related, your employee must be sent a written notice to that effect.

Q: Can I just pay the medical bills myself and not report the injury to my insurer?

A: No. You have an obligation to report all work-related injuries or illnesses to your carrier.

Q: What if I am worried that the employee is not really able to safely handle normal duties after an injury?

A: If you have this concern, talk to your claims adjuster. The injured employee may need to be seen by a special physician called a qualified medical examiner to decide when it is safe to return to the job.

Q: If there's a pre-designated physician, can I take the employee to the employer's physician first?

A: No, unless it is an emergency the employee has the right to go to the pre-designated physician. However, the employer has the right to a second opinion from an employer-selected physician at any time during the treatment process.

Q: Do I have to keep a job open for someone who's been hurt at work?

A: The law recognizes that you may have legitimate business reasons for replacing an employee who cannot continue on the job, and does not prohibit you from doing so. However, you should be aware of your responsibilities under state and federal laws that may apply in this situation. Consult your insurer, an attorney or a state information and assistance officer for more information.

Note: the state Division of Workers' Compensation's **information and assistance staff** answer questions about workers' compensation —see Resources.



What Employees Think of Their Workers' Compensation Claims

Employees surveyed who had received safety training in their job before an injury occurred were more satisfied with their treatment in the workers' compensation system and less likely to hire a lawyer. Many injured workers worried that they might be fired if they filed a workers' compensation claim. Most wished that their employer had helped them more with their claim:

"My employer just didn't seem to care. He said, 'I pay my premium to the insurance carrier—they should take care of you.'"

"My employer didn't even know where to get a claim form and didn't seem to know anything about workers' compensation."

The survey found that of the employees who reported a positive experience after filing a claim, many said it was because their employer had given them helpful information, accompanied them to the doctor after the injury, or helped solve problems along the way.

— **University of California survey of injured workers, *Navigating the California Workers' Compensation System: The Injured Worker's Experience*, July 1996.**

Injury investigation

Because you don't want a repeat of the injury that's just occurred, ask yourself whether it was caused by a preventable hazard or risk.

If Mr. B. hurt his back while lifting a box of supplies, had he been trained in proper lifting technique? Was the machine into which Ms. J. put her hand turned off, and was the safety guard in place? What was the source of the fumes bringing on Mr. C.'s asthma?

Use each injury case as an opportunity to take a closer look at your workplace. Any ongoing hazard should be corrected immediately. An injury or exposure investigation provides important feedback to your *Injury and Illness Prevention Program*.

Claim investigation

It's mainly your insurer's responsibility to decide whether a claim investigation is needed and to carry it out.

It also makes sense for an employer to act right away to find out and record who saw or heard what, when, and where, while events are fresh in everyone's mind.

The information you obtain may help your insurer decide whether the claim will be accepted or denied.

Workers' compensation fraud

Recent publicity about workers' compensation fraud shows a lot of misunderstanding about what fraud is. An employee, employer, medical provider or other party can commit fraud. For a successful prosecution the false representation must be knowingly made with intent to deceive, and the false representation must be material and make a difference in what happens. The purpose of the false representation must be to obtain or deny compensation benefits.

In the workers' compensation system many questionable and even abusive practices fall short of the legal definition of workers' compensation fraud. These cases won't be successfully prosecuted under the anti-fraud laws.

While employees should know that you are serious about preventing fraud, it is a mistake for an employer to treat every workers' compensation claim as fraudulent. This creates unnecessary litigation, which increases claim costs, which increases *your* costs through higher premiums. And it's bad for the morale of your employees.

That said, if you suspect genuine fraud, report it to your insurer right away. Your insurer is required by law to have staff who investigate fraud. Cases with enough evidence of wrongdoing are turned over to the Department of Insurance Fraud Unit and local district attorneys for further investigation and prosecution.



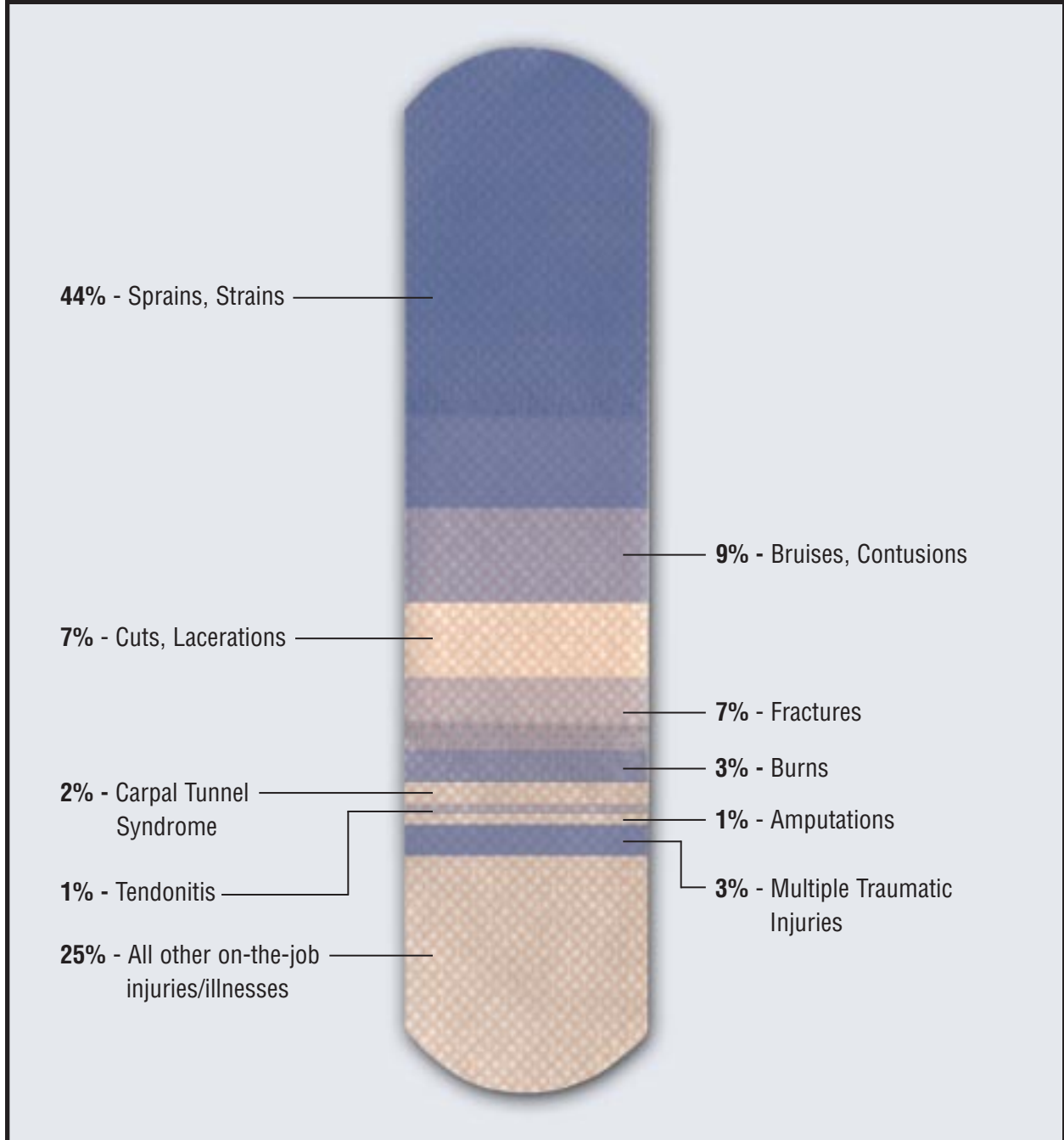
How to keep a claim and medical treatment on track

Suppose that an injury has resulted in a long period of time off work for your employee. Out of sight should not be out of mind. If you care, show it—send your employee a card or flowers. Call to see how the employee is doing and fill them in on news from the workplace.

Make sure the claims administrator has all the information needed from you and that they're doing what is needed for your employee. When the doctor says the employee is ready to return to work within medical restrictions, help by making modified or part-time work available, if necessary.

Your insurer and their claims adjuster, your insurance broker, the industrial medicine clinic or managed care plans all have resources to help you respond effectively after an injury. Taking care of the claim right away and making sure your employee receives what is needed after the injury are key management tools.

Most frequent types of work injuries/illnesses in California, 1997



Source: Department of Industrial Relations/Division of Labor Statistics and Research.



Chapter 4

Helping Your Employee Return to Work after an Injury

Different kinds of claims

Helping an injured worker return to work is one of the most important things you can do to help your employee recover and hold down your workers' compensation costs. Employees are generally able to return to their jobs soon after an injury, often on the same day, although some ongoing medical care may be needed. These are called medical only claims because little or no time is lost from work—three days or less—and they involve no disability payments.

About 25 percent of all workers' compensation injuries involve three or more lost days from work and tend to be the more serious injuries. These workers are eligible for temporary disability (TD) payments, which help replace their lost wages while they are off work. An injured employee who can come back to work part time may be eligible for temporary partial disability payments.

Workers who never recover their full function after an injury are eligible for permanent disability (PD) benefits, either permanent total disability or permanent partial disability—even these workers may be helped by an employer's proactive return to work program.

You can make a big difference by helping your employees get back to work as soon as is medically safe. You benefit by having an experienced and productive employee back on the job instead of drawing



disability payments. The employee benefits by being productive again and receiving a salary.

Working with the employee, doctor, insurance carrier

Good planning for an employee's return to work starts on the first day of an injury, not after someone has been gone for a week or two. Studies

show that the longer employees are off work after an injury, the harder it may be for them to return to work.

In addition to the physical trauma of injury, it may be scary to the worker to go back to where the injury occurred. Investigate the accident right away and correct any safety hazards.

Tell the doctor early about the kind of work the employee did before the injury. Some employers send a job description directly to the treating doctor. The more the doctor knows, the more help your employee will have in getting back to a normal work life. If questions remain about what the employee can safely do when returning to work after an injury, talk to the treating doctor or nurse case manager.

Some insurers, clinics and managed care plans help employers set up a return to work program. Find out if yours does this and get help from them.



Understanding the terms transitional, modified, alternative work assignments

Workers who cannot return immediately to their usual and customary job may need temporary assignments that allow them to continue medical recovery while coming back to work.

Transitional work includes assignments that meet the specific medical restrictions set by the doctor, while allowing the employee to perform either some of the old job or a different job that the employer has identified. Transitional work should be evaluated frequently, in close communication with the employee and the treating physician. The goal is to progressively match the worker's capabilities as function is restored after an injury.

Modified work involves any changes to the original job that allow the injured worker to perform in that position: changing the work station or tools, removing tasks that the employee cannot perform, reducing the time spent on a particular task (for example, 15 minutes rest for every hour doing data entry on a computer), moving the location of the job to avoid dusts or other exposures.

Alternative work involves moving the worker to another position within the company. An employer who provides certain kinds of modified or alternative work for 12 months to a worker eligible for vocational rehabilitation (VR) benefits may be relieved of the obligation to pay for VR benefits, and is eligible for a partial refund on the workers' compensation premium.

“When I call supervisors to discuss modified work for an injured worker, I commonly hear there is no modified work available. I think this is unfortunate because recovery after an injury is improved when the injured employee has a chance to progressively resume activities, under medical supervision. More employers are realizing this. Both the injured worker and I appreciate this because it really makes a difference in recovery.”

—occupational medicine physician

The supervisor's role

When helping an injured employee return to work, supervisors sometimes feel caught in the middle—they're supposed to bring back an injured worker, yet keep production or performance up to the pre-injury rate. You need close communication between supervisors, the injured employee and treating physician to decide:

- The abilities and limits (called functional capacity) of the employee after the injury and during the rehabilitation period.
- What work can be done safely within the work restrictions given by the doctor.
- How often you should check the employee's condition and see how the modifications are working.

Many job modifications cost the employer less than \$500. On the other hand, a week of temporary disability payments can cost up to \$490 and affect your insurance rate for several years to come.

Making return to work cost-effective for your company involves changing attitudes, being flexible and proactive, and maintaining clear communication.

Checklist for a return to work program

- Job descriptions, to identify jobs or parts of jobs that could be done by an injured employee.
- Written policy on return to work process, including responsible persons and any deadlines.
- Agreement with union, if there is a collective bargaining agreement, to participate in a return to work program for injured employees.
- Train staff, especially supervisors, and hold them accountable for carrying out your return to work plan.
- Encourage employees and supervisors to report claims promptly. If you don't know about a claim for two weeks, it's hard to be proactive.
- Develop communication with the medical providers or clinics where your employees receive their care—these doctors are key to a successful return to work program.
- Identify who will keep in touch with injured employees off work. Let them know what you are doing to help them return and that you haven't forgotten about them.
- Offer job modifications, adjust work hours, arrange alternative work. Design for the injured employee's needs, which may vary from case to case. Talk to the treating doctor about restrictions and abilities for a particular case.
- Follow-up: evaluate your modified duty cases often. The goal is to move the employee back to a regular position, unless a permanent disability prevents that. Some companies set a 30-90 day limit on transitional duties, at which point work restrictions and modifications are reevaluated.
- Meet with your claims administrator at least annually to examine your lost-time injury cases and discuss how changes in your return to work program could help keep costs down.

What employers say about their return to work programs

“Our supervisors used to be afraid of lower productivity from injured workers. That led to employees thinking they should automatically stay home resting for a week or more after an injury. When we started a return to work program, everyone was educated about the importance of modified duty and its benefits.”

—Southern California employer

“Once we introduced a modified work policy, an unanticipated result has been an increase of trust and respect between the employees and the company.”

—California business

“Each injured employee is brought back immediately to modified duty—answering busy phones, assisting with clerical or dietary responsibilities, even calling former patients to assess their level of satisfaction with care. Before, supervisors were afraid of lower productivity from injured workers and employees thought they should just stay home and rest. Now employees feel valued, heal faster and do not suffer the consequences of lost wages. The employee-employer relationship stays intact and a sense of esprit de corps develops as employees are supported while they heal. Plus, our disability costs decreased dramatically.”

—director of business development, Scripps-Encinitas Hospital

Whether you have 15 or 1,500 employees, you should have job descriptions stating the responsibilities and activities required in each position. These provide the basis for compliance with the Americans with Disabilities Act (ADA), in addition to helping you manage your employees and stay competitive.

Say an employee in your packing and shipping department has a broken leg. The doctor says the employee can work, but no standing or lifting. Should the employee come back to work or stay at home for four weeks until the cast is removed? With your job descriptions, often you can identify work—such as taking phone or fax orders from customers—that can be done by someone with a broken leg, while following the work restrictions ordered by the doctor.

In the past an employer might have said, “Come back when you can do all of your regular job.” This was called the 100 percent rule—either do 100 percent of your old job or don't come back. This attitude is very costly, and very likely illegal.

Instead of looking at what the employee with a broken leg cannot do, look at what that employee *can* do safely. Though you don't want to put the employee at risk of reinjury or slower recovery, a lot of duties can be performed safely when you plan ahead.

The federal Americans with Disabilities Act, California Fair Employment and Housing Act, and workers' compensation laws prohibit discrimination against disabled workers. The Family and Medical Leave Act requires employers to provide up to 12 weeks of unpaid leave for eligible employees who have family and medical reasons for taking leave. Employers face different legal requirements under state and federal law regarding injured or disabled employees. The chart on the next page gives a brief overview of the key laws.

The best defense against a discrimination claim is to have in place a written policy and program for disabled workers who need help returning to work, and to make sure that policy is carried out consistently.

The vocational rehabilitation benefit

For employees who cannot return to their usual job even with modifications, vocational rehabilitation benefits are available. Vocational rehabilitation may involve retraining for a new job, one which is within the capabilities of the injured employee. Contact the state Division of Workers' Compensation's Rehabilitation Unit (see Resources) for more information.



Key state and federal laws concerning injured and disabled workers				
	Provisions and Protections	Covered Employers	Jurisdiction	Penalties
Workers' Compensation	Mandatory provision of medical care, temporary disability, permanent disability and vocational rehabilitation benefits to employees injured on the job—prohibits discrimination	All employers	State: Division of Workers' Compensation/ Department of Industrial Relations	Varies according to violations
Americans with Disabilities Act (ADA)	Protects the civil rights of permanently disabled employees—requires employers to provide reasonable accommodation to enable disabled employees to perform their jobs	Employers with 15 or more employees	Federal: Department of Labor/Equal Employment Opportunity Commission	Up to \$300,000
Family and Medical Leave Act (FMLA) and California Family Rights Act	Requires that employers allow employees with serious health conditions, family illness, or new baby to be off work (unpaid) up to 12 weeks, without losing their jobs or their health care benefits	Employers with 50 or more employees	Federal: Department of Labor State: Department of Fair Employment and Housing	Unlimited in court—up to \$150,000 in compensatory damages and administrative fines before Fair Employment and Housing Commission (FEHC)
State Disability Insurance (SDI)	Provides up to 52 weeks of benefits to employees who are unable to work due to disability, following a 7-day waiting period	All employers	State: Employment Development Department	
Short Term Disability and Long Term Disability Benefits	Voluntary benefit programs can sometimes replace the SDI benefit—definition of disability, amount of benefits, length of benefits and waiting periods determined by policy	Voluntary	Federal: Department of Labor/ERISA	
Fair Employment and Housing Act (FEHA)	State program that provides civil rights protections similar to the ADA—provides for a pregnancy disability leave of up to 4 months	Employers with 5 or more employees	State: Department of Fair Employment and Housing	Unlimited in court—up to \$150,000 in compensatory damages and administrative fines before FEHC

Please consult the specific agency to understand the employer's responsibilities under these various laws and regulations.



Division of
Workers' Compensation

Information and Assistance
Injured Worker Workshop



EVALUATIONS

Chapter 5

Avoiding Unnecessary Disputes

In 1998 nearly 200,000 disputes were filed regarding workers' compensation claims. The state Workers' Compensation Appeals Board (**WCAB**) is the judicial system for resolving these disputes. A large percentage of the disputes that go to the WCAB could be avoided.



Whether avoidable or not, disputes result in litigation and the higher claims costs of going to court. For you, this means higher premiums. What can an employer do to avoid unnecessary disputes?

Make it easy for employees to report an injury

Perhaps worrying about job security, an employee delays reporting what looks like a minor injury.

While lifting a customer's purchases, Ms. Y. feels a sharp twinge in her back. She's concerned and maybe mentions it to a coworker, yet doesn't feel comfortable saying anything to the boss. This will not be a problem if the back pain goes away without the need for medical treatment. Instead of getting better, her back gets worse—to the point that she has to report the injury because she can no longer continue to do her job.

By this time, two or three weeks have gone by since the initial incident. It's not too late for her to make a claim, but because she delayed reporting her injury, the insurer will probably conduct an investigation. Ms. Y.'s benefits will be delayed, perhaps for many weeks. Her condition

may deteriorate for lack of treatment, making the medical care she eventually receives all the more expensive. Because she didn't report the injury when it happened, her claim may be denied.

Out of frustration or necessity, Ms. Y. may exercise her right to become represented by an attorney. Her claim is on its way to becoming a litigated case, all because she didn't report the injury right away. Make sure your employees know the importance of reporting even minor work injuries immediately.

Don't treat the injured employee like the enemy

You may think it was careless or stupid of Mr. B. to put his hand where he did, and now your insurance premium is probably going to increase. If you focus only on this, you're going to blame the victim of the accident, Mr. B.—and he will know it. Instead, show the injured worker and your other employees that you are concerned by investigating the cause of the injury and taking steps to eliminate or control the hazard.

Over and over the same complaint is heard from people coming into the workers' compensation litigation system: "I worked for them for so many years, but as soon as I got hurt on the job, they treated me like the enemy. It wasn't my idea to get hurt." These are the words of an injured worker who may seek satisfaction through litigation—unnecessary, expensive litigation—which a more sympathetic employer might have avoided.

Make sure your claims administrator is doing the job

If one of your employees is receiving workers' compensation benefits, ask whether the compensation checks are arriving on time and the employee is getting adequate medical attention. Let your claims administrator know that you are paying attention to their handling of claims, and encourage injured employees to contact you if there are any problems. If you suspect problems or delays, call the carrier's employee or claimant assistance phone number and see how long it takes to get through to someone.

State auditors found over \$350,000 in unpaid compensation owed injured workers in 1998, all in cases where the claims administrator should have been paying benefits. The auditors also issued 1,448 penalties for late compensation payments.

The point is that you—the employer—play a key role in working closely with the injured worker and the claims administrator to see that the system works smoothly and fairly.



Common reasons for disputes going to the WCAB

- Causation—whether the injury/illness is work-related
- Type and extent of medical treatment needed
- Degree of permanent disability after treatment
- When someone is ready to go back to work

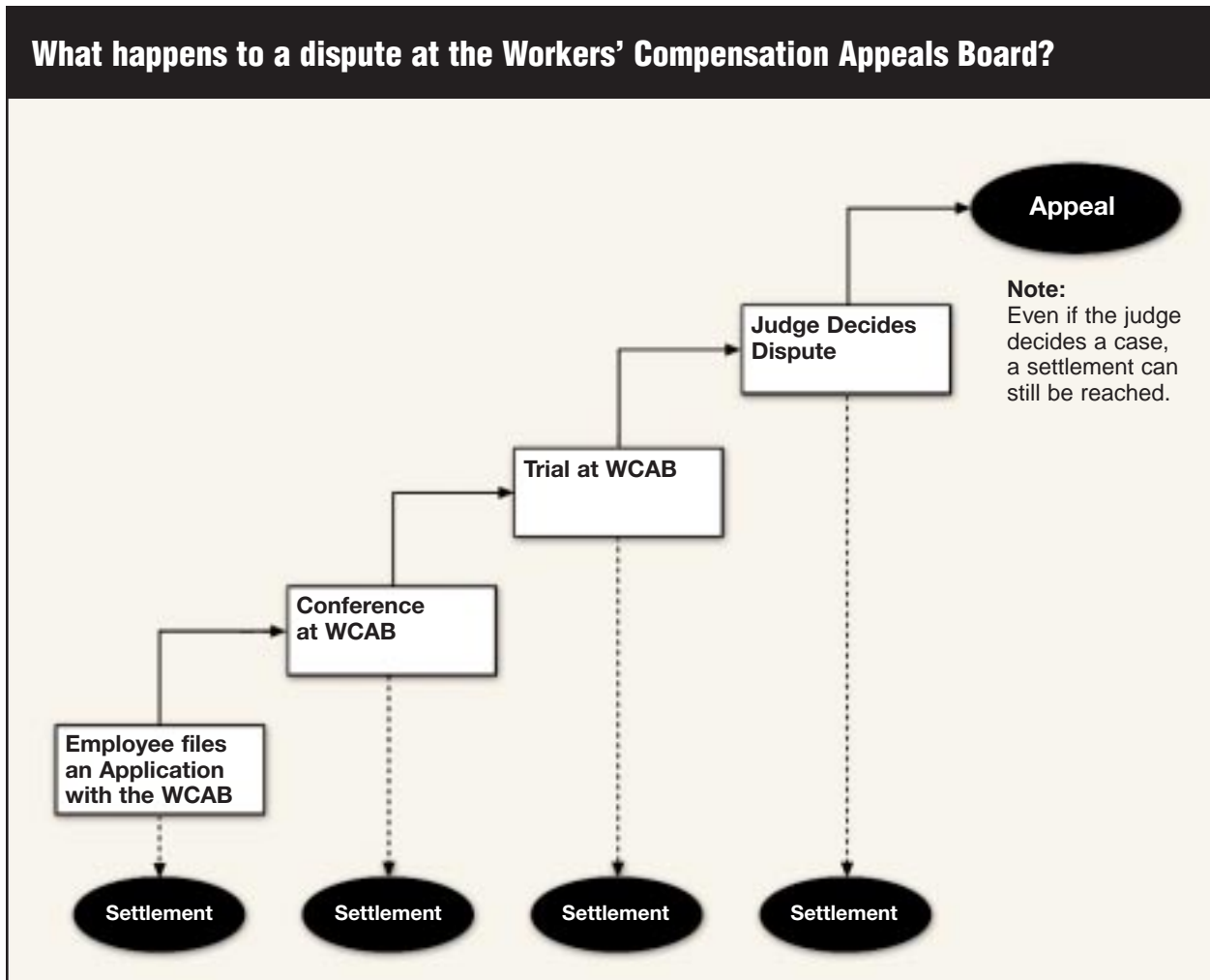
Although these are the most common areas of disputes, miscommunication in a complex system contributes to disputes.

How disputes get resolved

Some workers' compensation disputes are simply unavoidable. As an employer you're not expected to be an expert on workers' compensation law. Yet in becoming aware of an injury or claimed injury, it is your responsibility to report any questionable facts or circumstances to your claims administrator.

It is also in your interest to be familiar with your insurer's policies. As an employer you have the right to know about any disputes over your workers' compensation claims. Make sure your carrier knows that you want to be notified. Pay attention to whether claims are being disputed when you think it's inappropriate, whether claims are investigated in a timely way, and whether benefits are paid on time to employees. It is up to your insurer, drawing on knowledge of the law and considering the pertinent facts, to make a decision to allow or deny the claim.

In making a workers' compensation claim, your employee has the right to be represented by an attorney. With or without an attorney, the employee has the right to establish a case with the WCAB and can do so



At any step in this process a dispute can be settled by the employer/insurer voluntarily providing benefits or services to an injured employee. This usually comes about through negotiations between the employer's insurance carrier and the injured worker (or their attorney). Settlement can be by **Compromise and Release** or a **Stipulation with Award**. These agreements must be reviewed by a judge.



by filing an *Application for Adjudication* at one of the WCAB local offices and sending you a copy.

The insurer will provide a legal defense on your behalf against all aspects of a claim that cannot be reasonably resolved by negotiation and compromise.

You must be formally told of any pending settlement, if you have notified the WCAB and your insurer in writing that in your opinion no compensation is payable in a particular case. Though this may not prevent the settlement from taking place, it gives you the opportunity to communicate your concerns to your insurer.



Resources for Employers

Where to get more information and help

Workers' compensation insurance, services, problems

Start with your industry trade association or local chamber of commerce. Find out if they offer group insurance with discounted rates or dividends, and safety training.

Your insurance broker

Make sure they are licensed and know about workers' compensation insurance. For a particular injury claim or service in general, call your insurer/claims administrator.

Name of insurer _____

Phone _____

California Division of Workers' Compensation (DWC)

Oversees functioning of the state's workers' compensation system, including specific benefit programs, settling disputes and providing information to employers, employees, medical providers, claims administrators and others.

Order publications and forms: DWC Publications, 455 Golden Gate Avenue 9th Floor, San Francisco, CA 94105.

DWC Information and Assistance Unit:

800-736-7401 for recorded information. Look in the white pages of your phone book under California State of, Industrial Relations, Workers' Compensation for the local information and assistance office number.

**Workers' Compensation Insurance Rating Bureau (WCIRB)
Policyholder's Ombudsman: 415-778-7159**

The WCIRB can help with complaints, problems with your policy, your experience modification and employee classifications used to figure your premium.

**California Department of Insurance
Consumer Hotline: 800-927-HELP**

Regulates the insurance industry and provides consumer services:

- Gives information on companies selling workers' compensation coverage.
- Takes complaints or appeals with classification, rates or services.
- Investigates and prosecutes fraud.

To send written complaints: Insurance Commissioner, California Department of Insurance, 45 Fremont Street 23rd Floor, San Francisco, CA 94105.

Self Insurance Plans: 916-483-3392

Handles applications to become self insured for workers' compensation for both employers and third party administrators.

Industrial Medical Council (IMC): 800-794-6900

Develops treatment guidelines for medical care of common workers' compensation injuries and illnesses, licenses qualified medical evaluators (QMEs).

Commission on Health and Safety and Workers' Compensation: 415-703-4220

Joint labor-management commission, evaluates the workers' compensation and health and safety programs in the state and makes recommendations for improvements.

Safety and health

First stop: Your insurance company's loss control department. You have the right to get help from them to control workplace health and safety hazards.

Cal/OSHA Consultation Service: 800-963-9424

This educational section of Cal/OSHA focuses on small and medium size employers to provide:

- Worksite consultation
- Education and training materials
- Help in complying with standards

Services are free and confidential. This is *not* the same as Cal/OSHA enforcement.

Internet addresses for information and help

www.dir.ca.gov

Department of Industrial Relations:
 Division of Workers' Compensation
 Workers' Compensation Appeals Board
 Self Insurance Plans
 Industrial Medical Council
 Commission on Health and Safety and Workers' Compensation
 Cal/OSHA Consultation Service

www.insurance.ca.gov

Department of Insurance
 regulations, insurance company licensing information, reporting fraud

www.dfeh.ca.gov

Department of Fair Employment and Housing
 discrimination regulations, California Family Rights Act

www.edd.ca.gov

California Employment Development Department
 independent contractor information, employment issues, state disability insurance program

www.dol.gov

US Department of Labor
 federal OSHA, workplace injury/illness statistics, Family and Medical Leave Act

www.eeoc.gov

Equal Employment and Opportunity Office
 discrimination protections, Americans with Disabilities Act

Federal OSHA: 800-475-4019

Provides technical assistance, workplace safety and health information.

Industry groups/business associations

These may offer safety training or services that are designed for your type of business. Some examples are Farm Bureau, Restaurant Association, small business and contractors groups.

Local colleges and universities

Many offer services, classes and training that are open for employers, your supervisors and employees. Some offer certificate programs for specific industries or hazards.

Return to work programs

Your insurer or health care provider should be able to help you learn about returning injured employees to work. If you have a relationship with a local clinic, health plan or hospital, ask them for help.

DWC Vocational Rehabilitation Unit:

Oversees delivering vocational rehabilitation benefits for injured workers who qualify, including re-training plans and alternative work offers. Look in the white pages of your phone book under California State of, Industrial Relations, Workers' Compensation for the local rehabilitation office number.

Disability Management Employer Coalition (DMEC): 800-789-3632

This coalition of employers has chapters around California that sponsor educational seminars and networking among employers who want to learn more about actively managing disabilities and absences from work.

Job Accommodation Office: 800-232-9675

Answers questions about the federal ADA and helps employers identify practical job modifications that can help employees get back to work.

California Department of Fair Employment and Housing: 800-884-1684

Enforces laws concerning employment discrimination, including disability and the California Family Rights Act.

Equal Employment and Opportunity Office (EEOC): 800-669-3362

Federal office for California. Handles questions and complaints on discrimination, including those under ADA.

To report suspected fraud

- Call your insurance carrier to report suspected fraud.
- California Department of Insurance Fraud Division: 800-927-4357.
- Your county district attorney office, listed under the county name in the white pages of your phone book.

Definitions of key words

Applicant

The person, usually an injured worker, who establishes a case before the Workers' Compensation Appeals Board (WCAB) by filing an *Application for Adjudication*.

Classification

The standard classification system groups employers who conduct relatively similar operations and have similar exposure to hazards that can result in a workers' compensation claim. Standard classifications are a key component in determining the price an employer will pay for workers' compensation insurance. It recognizes that risk of injury and costs of benefits vary significantly from industry to industry.

Compromise and Release (C&R)

Formal settlement of a claim or some aspect of a claim. Must be approved by a workers' compensation judge.

Deductible policy

One in which, in exchange for a reduced premium rate, the employer agrees to provide workers' compensation benefits up to a specified level, at which point the insurer takes over their provision.

Defendant

The party opposing the applicant in a WCAB case, usually the employer and insurer.

Disability

Any condition which results in functional limitations or impairment that interferes with an individual's ability to compete on the open labor market.

Disability management

A process to prevent disability from occurring or to intervene early, following the onset of a disability, to encourage and support continued employment. Disability management has both rehabilitation and productivity goals.

Dividend

Adjustment to the price of a workers' compensation policy after it expires. Dividends are paid mainly in proportion to the amount of premium paid by the employer and the employer's loss experience (claim costs) during the policy period. Dividends cannot be guaranteed in advance and have been reduced under open rating.

Employee

The term employee includes every person who performs a service for someone else under any employment or contract of hire or apprenticeship, expressed or implied, verbal or written, whether lawfully or unlawfully employed. Employee includes undocumented workers and minors.

Ergonomics

The study of the physical and mental capabilities and limits of the worker, including the interaction with tools, equipment, work methods, tasks and the work environment. The goal of ergonomics is to reduce work-related musculoskeletal disorders by adapting the work to fit the person instead of forcing the person to adapt to the work.

Experience modification (also called ex-mod or experience rating):

Formula by which the WCIRB uses an employer's past loss experience as a predictor of future losses to adjust the employer's workers' compensation insurance premium up or down. Loss experience is evaluated 18 months from the effective date of the policy, again in 12 months, and a third time 12 months after that, based on estimated and actual costs of any claims. These three years are then averaged to get the ex-mod used. To be eligible for such a modification, an employer must meet a premium-dollar threshold, which is annually determined by the WCIRB. In 2000 this threshold is \$19,900.

Findings and Award

Written determination by a workers' compensation judge which, unless successfully appealed, determines the extent of the employer's liability and the employee's entitlement.

Health Care Organization

An organization certified by the Department of Industrial Relations to provide managed medical care within the workers' compensation system.

Information and assistance officer

Staff of the Division of Workers' Compensation available to answer a wide range of questions from employers, injured workers, attorneys and insurance carriers—they also provide educational materials, hold conferences to resolve problems in a case, and conduct injured worker workshops at locations around the state.

Loss run

Computer printout showing status and cost breakdown of open and recently closed claims.

Market rate

The workers' compensation insurance premium rate that an employer may obtain by shopping around.

Minimum premium

The least amount that an insurer is willing to charge for a particular kind of business. For a small-business employer, this may exceed a rate based entirely on payroll and job classifications. Since minimum rates vary among insurers, it pays to shop around.

Participating policy

One in which an employer participates in the profits of the insurer by qualifying for a potential dividend.

PD

Permanent disability.

PDR

Permanent disability rating. Expressed as a percentage and calculated on the basis of medical findings, it determines the number of weeks to which an employee is entitled to permanent disability benefits.

Pre-designation

The process by which an employee notifies the employer of a personal physician by whom the employee wants to be seen after a work injury. The choice must be in writing and made before a work injury takes place. Each employee must be given the right to pre-designate a personal physician at the time of hire.

Pure premium rate

Also known as the advisory rate, represents the average charge necessary to pay expected claim costs—that is, indemnity and medical payments plus loss adjustment expenses—of all employers within a specified occupational class. The rate is determined by the state insurance commissioner after consulting with the WCIRB and others.

Schedule rating

A schedule of debits and credits that can be applied to a policyholder's premium on the basis of individual risk characteristics—such as whether the employer has a safety committee or uses a managed care program. It is an insurer's tool for adjusting the planned rate on file with the Department of Insurance.

Stipulated rating

Formal agreement on a PDR. Must be approved by a workers' compensation judge.

Stipulation with award

A settlement of a case where the parties agree on the terms of an award.

Surcharge

Additional premium charge based on legally required items for which an insurer believes additional money will be needed to meet the expected losses and expenses of a particular employer.

Treating physician

The physician who has overall responsibility for managing the care of an injured employee.

WCAB

Workers' Compensation Appeals Board, consists of a reconsideration unit in San Francisco and district offices throughout the state where disputed issues are initially heard by administrative law judges.

WCIRB

Workers' Compensation Insurance Rating Bureau. As an agent of the Department of Insurance and funded by the insurance industry, this private entity provides statistical and rating information for workers' compensation insurance and employer's liability insurance, and collects and tabulates information to develop pure premium rates. Location of the policyholder ombudsman program which provides information and helps employers resolve disputes with insurers.

Sample Form 1

Employer's Report of Occupational Injury or Illness (Form 5020)


State of California		Please complete in triplicate (type, if possible) Mail two copies to:		OSHA Case No.	
EMPLOYER'S REPORT OF OCCUPATIONAL INJURY OR ILLNESS				<input type="checkbox"/> Fatality	
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		NOTICE: 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.			
EMPLOYER	1. FIRST NAME	1A. POLICY NUMBER	DO NOT USE THIS COLUMN		
	2. MAILING ADDRESS (Number and Street, City, Calif)	2A. PHONE NUMBER	Case NO.		
	3. LOCATION, IF DIFFERENT FROM MAILING (Number and Street, City, Calif)	3A. LOCATION CODE	Ownership		
	4. NATURE OF BUSINESS, e.g., painting contractor, wholesale grocer, sawmill, hotel, etc.	5. STATE UNEMPLOYMENT INSURANCE ACCT. NO.	Industry		
EMPLOYEE	6. TYPE OF EMPLOYER STATE CITY COUNTY SCHOOL DISTRICT	6. SOCIAL SECURITY NUMBER		9. DATE OF BIRTH (mm/dd/yy)	
	EMPLOYEE NAME	8. SOCIAL SECURITY NUMBER		9. DATE OF BIRTH (mm/dd/yy)	
	10. HOME ADDRESS (Number and Street, City, Calif)	10A. Phone Number		AGE	
	11. SEX MALE FEMALE	12. OCCUPATION (Regular job title) - No initial abbreviations or numbers	13. DATE OF HIRE (mm/dd/yy)		Daily hours
EMPLOYEE	14. EMPLOYEE USUALLY WORKS hours per day days per week total weekly hours		14A. EMPLOYMENT STATUS (State applicable status at time of injury) Regular Full Time Part Time temporary seasonal		14B. Under what class code of your policy were wages assigned?
	15. GROSS WAGES/SALARY \$ PER		16. OTHER PAYMENTS NOT REPORTED AS WAGES/SALARY (e.g., tips, meals, lodging, overtime, bonuses, etc)? <input type="checkbox"/> YES \$ Per <input type="checkbox"/> NO		Weekly hours
	17. DATE OF INJURY OR ONSET OF ILLNESS (mm/dd/yy)	18. TIME INJURY/ILLNESS OCCURRED A.M. P.M.	19. TIME EMPLOYEE BEGAN WORK A.M. P.M.	20. IF EMPLOYEE DIED, DATE OF DEATH (MM/DD/YY)	
INJURY	21. unable to work for at least one full day after date of injury <input type="checkbox"/> yes <input type="checkbox"/> no		22. DATE LAST WORKED (mm/dd/yy)	23. DATE RETURNED TO WORK (mm/dd/yy)	24. IF STILL OFF WORK CHECK THIS BOX.
	25. PAID FULL WAGES FOR DAY OF INJURY OR LAST DAY WORKED: YES <input type="checkbox"/> NO <input type="checkbox"/>	26. SALARY BEING CONTINUED <input type="checkbox"/> YES <input type="checkbox"/> NO	27. DATE OF EMPLOYER'S KNOWLEDGE/NOTICE OF INJURY/ILLNESS (MM/DD/YY)	28. DATE EMPLOYEE WAS PROVIDED EMPLOYEE CLAIM FORM (MM/DD/YY)	
	29. SPECIFIC INJURY/ILLNESS AND PART OF BODY AFFECTED. MEDICAL DIAGNOSIS, if available e.g., second degree burn on right arm, lacerations of left elbow, lead poisoning.				
	30. LOCATION WHERE EVENT OR EXPOSURE OCCURRED (Number, Street, City)		30A. County	30B. ON EMPLOYER'S PREMISES? <input type="checkbox"/> YES <input type="checkbox"/> NO	
ILLNESSES	31. DEPARTMENT WHERE EVENT OR EXPOSURE OCCURRED, e.g., Shipping department, machine shop		32. OTHER WORKER'S INJURED IN THIS EVENT? <input type="checkbox"/> YES <input type="checkbox"/> NO		Event
	33. EQUIPMENT, MATERIALS AND CHEMICALS THE EMPLOYEE WAS USING WHEN THE EVENT OR EXPOSURE OCCURRED, e.g., acetylene, welding torch, farm tractor, scaffold				See Source
	34. SPECIFIC ACTIVITY THE EMPLOYEE WAS PERFORMING WHEN EVENT OF EXPOSURE OCCURRED e.g., welding seams of metal forms, loading boxes onto truck.				Extent of injury
	35. HOW INJURY/ILLNESS OCCURRED. DESCRIBE SEQUENCE OF EVENTS. SPECIFY OBJECT OR EXPOSURE WHICH DIRECTLY PRODUCED THE INJURY/ILLNESS. e.g., worker stripped back to inspect work and slipped on scrap material. As he fell, he bumped against fresh wall, and lacerated right hand. USE SEPARATE SHEET IF NECESSARY.				
36. NAME AND ADDRESS OF PHYSICIAN (Number and Street, City, Calif)			36A. PHONE NUMBER		
37. IF HOSPITALIZED AS AN INPATIENT, NAME AND ADDRESS OF HOSPITAL (Number and Street, City, Calif)			37A. PHONE NUMBER		
Completed by (Type or Print)		Signature	Title	Date	

FORM 5020 (REV. 6) FILING OF THIS REPORT IS NOT ADMISSION OF LIABILITY

The employer's report must be sent to your insurer within five days of the employer's knowledge of a work-related injury or illness. Get copies from the California Department of Industrial Relations.

Sample Form 2

Employee's Claim for Workers' Compensation Benefits (DWC Form 1)

<p>State of California Department of Industrial Relations DIVISION OF WORKERS' COMPENSATION</p>		<p style="text-align: right;">Estado de California Departamento de Relaciones Industriales DIVISION DE COMPENSACIÓN AL TRABAJADOR</p>
<p>EMPLOYEE'S CLAIM FOR WORKERS' COMPENSATION BENEFITS</p>		
<p>If you are injured or become ill because of your job, you may be entitled to workers' compensation benefits.</p> <p>Complete the "Employee" section and give the form to your employer. Keep the copy marked "Employee's Temporary Receipt" until you receive the dated copy from your employer. You may call the Division of Workers' Compensation at 1-800-736-7401 if you need help in filling out this form or in obtaining your benefits. An explanation of workers' compensation benefits is included on the back of this form.</p> <p>You should also have received a pamphlet from your employer describing workers' compensation benefits and the procedures to obtain them.</p>		
<p style="font-size: small;">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.</p>		
<p>PETICIÓN DEL EMPLEADO PARA BENEFICIOS DE COMPENSACIÓN DEL TRABAJADOR</p>		
<p>Si Ud. se ha lesionado o se ha enfermado a causa de su trabajo, Ud. tiene derecho a recibir beneficios de compensación al trabajador.</p> <p>Complete la sección "Empleado" y entregue la forma a su empleador. Quédese con la copia designada "Recibo Temporal del Empleado" hasta que Ud. reciba la copia fechada de su empleador. Si Ud. necesita ayuda para completar esta forma o para obtener sus beneficios, Ud. puede hablar con la División de Compensación al Trabajador llamando al 1-800-736-7401. En la parte de atrás de esta forma se encuentra una explicación de los beneficios de compensación al trabajador.</p> <p>Ud. también debería haber recibido de su empleador un folleto describiendo los beneficios de compensación al trabajador lesionado y los procedimientos para obtenerlos.</p>		
<p style="font-size: small;">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".</p>		
<p>Employee: Empleado:</p> <p>1. Name. <i>Nombre.</i> _____ Today's Date. <i>Fecha de Hoy.</i> _____</p> <p>2. Home Address. <i>Dirección Residencial.</i> _____</p> <p>3. City. <i>Ciudad.</i> _____ State. <i>Estado.</i> _____ Zip. <i>Código Postal.</i> _____</p> <p>4. Date of Injury. <i>Fecha de la lesión(accidente).</i> _____ Time of Injury. <i>Hora en que ocurrió.</i> _____ a.m. _____ p.m.</p> <p>5. Address and description of where injury happened. <i>Dirección/lugar dónde ocurrió el accidente.</i> _____</p> <p>6. Describe injury and part of body affected. <i>Describe la lesión y parte del cuerpo afectada.</i> _____</p> <p>7. Social Security Number. <i>Número de Seguro Social del Empleado.</i> _____</p> <p>8. Signature of employee. <i>Firma del empleado.</i> _____</p>		
<p>Employer—complete this section and give the employee a copy immediately as a receipt. Empleador—complete esta sección y déle inmediatamente una copia al empleado como recibo.</p> <p>9. Name of employer. <i>Nombre del empleador.</i> _____</p> <p>10. Address. <i>Dirección.</i> _____</p> <p>11. Date employer first knew of injury. <i>Fecha en que el empleador supo por primera vez de la lesión o accidente.</i> _____</p> <p>12. Date claim form was provided to employee. <i>Fecha en que se le entregó al empleado la petición.</i> _____</p> <p>13. Date employer received claim form. <i>Fecha en que el empleado devolvió la petición al empleador.</i> _____</p> <p>14. Name and address of insurance carrier or adjusting agency. <i>Nombre y dirección de la compañía de seguros o agencia administradora de seguros.</i> _____</p> <p>15. Insurance Policy Number. <i>El número de la póliza del Seguro.</i> _____</p> <p>16. Signature of employer representative. <i>Firma del representante del empleador.</i> _____</p> <p>17. Title. <i>Título.</i> _____ 18. Telephone. <i>Teléfono.</i> _____</p>		
<p>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.</p> <p>SIGNING THIS FORM IS NOT AN ADMISSION OF LIABILITY</p>		<p>Empleador: Se requiere que Ud. feche esta forma y que provéa 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.</p> <p>EL FIRMAR ESTA FORMA NO SIGNIFICA ADMISION DE RESPONSABILIDAD</p>
<p>Original (Employer's Copy) DWC Form 1 (REV. 1/94)</p>		<p>ORIGINAL (Copia del Empleador) DWC Forma 1 (REV. 1/94)</p>

The employee claim form must be given to the injured employee within one working day of the employer's knowledge of injury. Get copies from your insurer or the state Division of Workers' Compensation.

Division of Workers' Compensation
California Department of Industrial Relations
February 2000

 OSP 00 36231

