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# Managing Indemnity Exposures in Workers’ Compensation

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TRENDS IN HIGH-DOLLAR  
WORKERS’ COMP CLAIMS  
AND BEST PRACTICES TO  
MINIMIZE LOSSES

WHITE PAPER



# Introduction

At one time, a \$5 million workers' comp loss was considered large, and a \$10 million claim was a rare occurrence. Today, a \$10 million WC claim has become more common, and individual claims as large as \$40 million are being reported, according to the National Council on Compensation Insurance (NCCI).<sup>1</sup>

The fact is, many indemnity claims begin as routine and later develop into high-dollar claims. If not properly managed, these "developmental" claims will continue to increase in frequency and severity and have a significant impact on employers' workers' comp costs. For this reason, it's critical for brokers to understand key drivers and trends behind these claims and how to help business clients identify opportunities to minimize losses.

When it comes to cost containment, the focus of a workers' comp claim is often on the medical issues. However, neglecting the indemnity aspects of claims can lead to unmanageable costs and reduce the effectiveness of overall cost-containment efforts. To maximize the effectiveness of a workers' compensation program, employers can't afford to ignore the indemnity side of claims management.

This white paper will look at key trends in high-dollar workers' compensation indemnity claims and how employers can strategically apply best practices to minimize losses.

## Frequency and Severity of Workers' Compensation Claims

*While the number of workers' comp claims less than \$1 million has decreased, claims above the \$1 million mark are reaching record levels.* Claim frequency is a key driver behind today's declining workers' comp rates and profitability. However, while accident frequency in workers' comp has declined by 30%, indemnity costs have increased 31% more than wage inflation, and workers'



compensation medical costs have increased 114% more than medical inflation. So even though increases in costs have been offset by fewer accident claims, the growing number of high-dollar worker's compensation indemnity claims will begin to rapidly push rates upward.<sup>2</sup>

## Occupations with High-Dollar Workplace Injuries

An estimated \$1 billion in direct workers' comp costs is paid by employers every week.<sup>3</sup> According to the National Safety Council (NSC), the top five occupations with the largest number of high-dollar workplace injuries are:

- ✓ **Service (includes firefighters and police)**
- ✓ **Transportation and shipping**
- ✓ **Manufacturing and production**
- ✓ **Installation, maintenance, and repair**
- ✓ **Construction**

The NSC identified the top three workplace injury events resulting in multiple lost workdays and increased potential for a high-dollar workers' comp claim as:

### **33.56% Overexertion**

- Lifting or lowering objects.
- Repetitive motions.

### **26% Contact with objects and equipment**

- Being struck by or against equipment.
- Caught in or compressed by equipment or objects.
- Struck, caught, or crushed in collapsing structure, equipment, or materials.

### **25.8% Slips, trips, and falls.**

- Falls to a lower level.
- Falls on the same level.



# Trends in High-Cost Workers' Comp Indemnity Claims

*There are many catalysts that can propel a simple workers' comp claim into a developmental claim. Here, we'll look at three key factors that are leading to an increase in rising claim costs.*

## **Prolonged use of opioids**

Many work-related injuries occur to the back, and doctors are increasingly prescribing both short- and long-term opioid use to address the pain. However, prolonged opioid use in musculoskeletal injuries increases sensitivity to pain and can exacerbate pain associated with the original injury. In many cases, the continued blocking of pain can prevent an injured worker from achieving the stamina needed to work through an injury and fully recover. This can translate into billions in additional costs as the claim may be open for years or even for the lifetime of an injured worker.

*The U.S. prescription opioid epidemic tops \$80 billion and continues to grow.*

*Health insurers and workers' compensation carriers shoulder about one-third of this cost.<sup>4</sup>*

## **Outdate treatment methods**

When it comes to medical treatments and tests, processes in treating injured workers often takes a standardized, one-size-fits-all approach. Research by the National Institutes of Health (NIH) shows that it is more of a benefit to provide workers recovering from an injury with options to help them better manage their ongoing pain, instead of routinely ordering additional test and treatments. NIH findings show that training the brain to respond differently to pain signals may be more effective and even last longer than traditional physical therapy and medication, and that nondrug and nonopioid therapies should be considered a viable alternative in helping injured workers manage chronic pain.



## Delays in filing a claim

Workers' comp claims reported within three days cost 15% to 20% less than claims reported after three days, and injuries reported two weeks after the date of incident cost on average 18% more than those reported the first week.<sup>4</sup> When it comes to controlling claim costs, expediting claim reporting is where the rubber hits the road. Unfortunately, employees hold off reporting an incident because they think they will be blamed or that the injury is minor and doesn't require medical care. These delays can quickly turn a simple incident into a big claim issue.

# Minimizing Indemnity Exposures

*Managing workers' comp claims requires insurers to strike a balance between ensuring an injured worker receives the most appropriate treatment and care while also controlling costs. A good place to start is with a safety or injury prevention program.*

## Core elements of an injury prevention program

In addition to reducing workplace injuries, an injury prevention program is a proactive way to improve response time when an injury occurs. It also maintains compliance with health and safety legislation.

According to the Occupational Safety and Health Administration, the seven core elements of recommended best practices for businesses when creating a workplace injury and illness prevention program are:

- 1. Management leadership.** Establish safety goals and objectives and communicate them companywide. This includes providing adequate resources and support for the program and setting a good example.
- 2. Worker participation.** Involve workers and their representatives in all aspects of the program - including setting goals, identifying and reporting hazards, investigating incidents, and tracking progress.



**3. Hazard identification and assessment.** Put procedures in place to continually identify workplace hazards and evaluate risks. This can include a regular review of injury reports.

**4. Hazard prevention and control.** Work with employees to identify and select ways to eliminate, prevent, and control workplace hazards.

**5. Education and training.** All workers should be trained to understand how the program works and how to carry out the responsibilities assigned to them under the program.

**6. Program evaluation and improvement.** Establish processes to verify program implementation and also monitor program performance and identify any program inadequacies or gaps that may present opportunities for improvement.

**7. Communication and coordination.** Businesses need to make a commitment to provide the same level of safety and health protection to all workers and communicate hazards present at the worksite.

The OSHA website offers a number of sample safety and injury prevention programs employers can use as guidance when developing their own customized programs tailored to their specific workplaces.

## Key benefits to developing an injury prevention program to reduce high-cost indemnity claims include:

- Reducing employee injury rates and illnesses
- Decreasing absenteeism
- Increasing employee motivation to stay at or return to work
- Reducing workers' compensation costs
- Decreasing OSHA claims



# Return-to-Work Programs, Vocational Rehabilitation and Work Hardening

*According to the Job Accommodation Network, the likelihood of an injured worker returning to work drops to 50% by the 12th week of leave, with additional research indicating that injured employees will most likely never return to work if they are out six months.<sup>5</sup> These unresolved cases can result in high-cost indemnity claims.*

## **Return-to-work programs**

*Even with a sound safety program, accidents can still occur. When they do, a return-to-work program can create a direct cost benefit to the workers' compensation claim by returning an employee to work as soon as he or she is able.*

When an employee is injured on the job, efforts should be made to return him or her to work as soon as medically appropriate. By offering an employee a temporary alternative work position, return-to-work programs can be a proactive way to better prevent a medical-only claim from turning into a time-lost claim. These programs work by reintegrating employees who are unable to resume their usual duties due to an injury or illness. This includes assigning temporary, limited, or light-duty work while they recover.

Return-to-work programs can help decrease costs and keep employees in the workforce. Without some type of temporary or alternate work assignment during the recovery process, employers will continue to pay the employee full workers' comp benefits. In addition, they might also incur costs associated with a temporary or replacement worker's salary. Not only will these extra costs have an immediate financial impact on the employer, but the company's workers' comp experience modification factor will most likely be significantly higher, resulting in a premium increase for the next three years.



## **Vocational rehabilitation**

Vocational rehabilitation describes a wide range of services aimed at helping impaired workers develop the skills needed to return to their jobs or enter a new line of work. These services have two goals: to restore an injured employee to gainful employment through vocational training, and the rebuilding of work skills and to reduce the employer's burden of future compensation under the Workers' Compensation Act. This can include opportunities in a light-duty capacity with the employer or a job search in the local community. Vocational rehab services also offer training and schooling reimbursement to help injured workers prepare for a different job if they are incapable of going back to their regular occupation due to permanent restrictions.

**A study on vocational rehabilitation revealed considerable effectiveness with respect to the services for musculoskeletal conditions - the most common diagnosis in disability and workers' compensation claims in the U.S.<sup>5</sup>**

## **Work hardening**

Work hardening is a comprehensive and systematic therapy plan that helps injured employees who have been out of the workforce for an extended period of time return to the physical condition they were in prior to the injury. The main objective is to optimize the work capability of employees while minimizing the risk of reinjury upon the return to work, which may prolong the claim. Work hardening includes a menu of real or simulated work tasks, conditioning exercises, and education used to restore physical, behavioral, and vocational functions and often involves a number of professionals such as physical therapists and occupational counselors. This program is a highly structured, multidisciplinary, and individualized program and isn't always the right fit for every employee. In general, these programs are more successful with employees who are motivated to get better and go back to work.

**Take note!** When evaluating the indemnity aspects of a workers' compensation claims program, alternatives to costly benefit exposures should be considered. Employers must be aware that any return-to-work program must comply with state-specific and federal laws, including the Americans with Disabilities Act, the Family Medical Leave Act, OSHA standards, and workers' compensation statutes.



# Employee Prescreening and Drug Testing

*Case studies show a 60% decline in direct workers' compensation costs one to two years after pre-hire employment screening testing begins.<sup>6</sup>*

## Physical abilities testing

It's a scenario that happens all too often. A company advertises a job opening for warehouse workers. Lacking a process for conducting preemployment background checks and physicals, the employer hires workers with existing soft tissue back and shoulder injuries. Due to the physical nature of the work, the employees' preexisting injuries are later aggravated. Several open claims later, the company sees its workers' comp experience modification factor nearly triple.

**The ADA prohibits requiring a medical exam prior to extending a job offer. However, employers can ask prospective employees to take a medical exam after a conditional job offer is made, provided they require all other candidates for the same job category to undergo the same exam.**

Used in conjunction with drug testing, physical abilities testing, or PAT, can be an effective injury-reduction strategy. PAT is a type of preemployment testing that permits employers to better gauge the physical ability of potential new hires to perform essential functions of a specific job. The goal is to screen out potential employees who would struggle to manage those physical demands, placing them and their coworkers at higher risk for workplace injuries.

Using an Americans with Disability Act-compliant job analysis, the assessment objectively quantifies the physical demands placed on a worker such as his or her ability to lift, pull, push, bend, and carry, as well as the frequency and intensity of these activities while on the job. Environmental factors are also generally included, assessing the employee's ability to work in extreme



temperatures, at high elevations, and with other physical challenges that an employee may encounter.

**Take note!** Under the Federal Americans with Disabilities Act, it is unlawful for employers to inquire about past workers' compensation claims or refuse to employ someone who has filed past claims or whose disability or impairment has no bearing on whether they can perform the essential tasks they are being hired for. Employers can ask the applicant questions about his or her ability to perform job-related functions if the questions are not phrased in terms of a disability. They can also ask an applicant to describe or to demonstrate how, with or without reasonable accommodation, the applicant will perform job-related functions. Questions about prior injuries must be tabled until after the applicant has been hired.

### **Drug and alcohol testing**

Each year, drug and alcohol abuse costs U.S. companies billions of dollars, which includes turnover rates for employees, unexcused absences, lower productivity, accidents,

and increased workers' compensation claims. In fact, according to the U.S. Department of Justice, 50% of workplace accidents are caused by drug abuse.

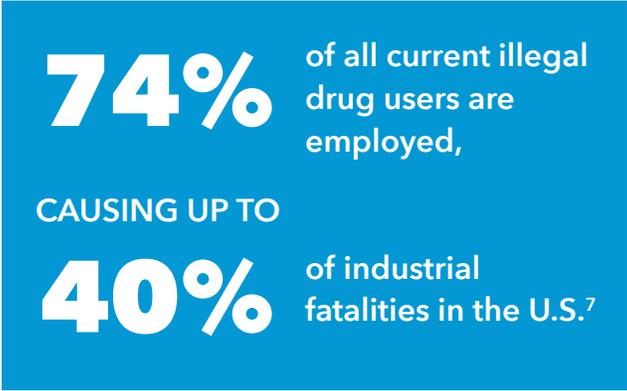
**Drug abuse costs employers \$81 billion a year in lost productivity and costly workers' comp claims due to serious accidents that occur while on the job.<sup>6</sup>**

Preemployment drug testing is an effective way to avoid hiring abusers in order to better prevent drug-related workplace injuries and control costly workers' compensation claims.

This type of drug testing is typically conducted after a conditional offer of employment has been made. If an applicant tests positive for drugs, an employer can elect not to hire the individual, thus avoiding the risk. It's important to note that state laws differ regarding preemployment drug testing; therefore, employers should understand the laws in their operating state.



In addition to preemployment drug testing, employers can also conduct additional tests that will reduce workplace injuries and control high indemnity workers' comp claims.



They include:

- ✔ **Random testing** is performed on an unannounced basis, and employees are selected at random.
- ✔ **Periodic testing** is typically performed on current employees at consistent time periods throughout the year.
- ✔ **Follow-up testing** is for employees who have previously tested positive for drugs or have violated company drug policy.
- ✔ **Reasonable suspicion testing** is conducted when there is reasonable cause to suspect an employee of drug use.
- ✔ **Return-to-duty** testing is a schedule of tests that is often used for an employee who has undergone drug treatment and is ready to return to work.
- ✔ **Blanket drug testing** is when all employees are tested.
- ✔ **Post-accident drug** testing is typically conducted within 12 hours of the incident to determine whether drugs or alcohol were involved.

**Take note!** Preemployment drug-testing laws are in flux and will vary from state to state. This can include limits to when, how, or whether drug screening can be conducted. Employers should always check with their state's specific drug laws for information.

At the end of the day, it is the employer's responsibility to take the necessary steps to hire the right person for the job. In most cases, this can be accomplished only by implementing the proper preemployment procedures to significantly reduce workplace injuries - and related costs - before they happen.



# The Importance of Partnering with the Right Workers' Comp Insurer

In the increasingly complex and litigious world of workers' compensation claims, managing costs remains a priority for many companies. Successful management of these expenses must be comprehensive - from the time of the injury through recovery and eventual return to work. This includes partnering with an insurer who can:

- ✔ Identify workplace risk exposures and develop a safety and injury prevention program.
- ✔ Educate managers and employees on the importance of timely claim reporting and knowing what to do when an injury first occurs.
- ✔ Be a point of contact for critical information such as claim status and return-to-work options.
- ✔ Regularly analyze experience modification scores, loss runs, OSHA reports, and other data to better understand and control costs.
- ✔ Be an intermediary between the insurer and employer to facilitate the claims process.

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*"Whether a business has five or five hundred employees, it's important for companies to establish a partnership with a workers' comp insurer who can be a partner in their risk management program."*

*-Todd Pollock, Senior Vice President, Workers' Compensation, Worldwide Facilities*

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# Claim-Reporting Best Practices

Cost management in workers' compensation claims begins at the point of injury to the worker. One of the best ways to reduce workers' compensation expenses is to immediately document the circumstances of the accident or injury when it occurs. This includes being proactive in applying best-practice principles that include:

**1. Post-injury reporting.** Post-injury reporting comes before a claim is filed and is critical in documenting the circumstances that gave rise to the incident by:

- ✔ Documenting the date, time, location, and other particulars of the incident.
- ✔ Providing accurate information to the insurance adjuster.
- ✔ Signaling the beginning of the claims-reporting and rehabilitation process (when needed).
- ✔ Identifying outside factors that may have contributed to the incident that might not be related to the employee's job duties.
- ✔ Discouraging fraudulent claims from being filed by establishing an organizational culture in which job injuries and claims will be documented and investigated.

**2. Prompt claim reporting.** According to the National Council on Compensation Insurance, claims with more than a two-week delay in reporting are characterized by a lower medical share of total cost, greater attorney involvement, and more use of lump-sum payments, along with a lower closure rate at 18 months. These characteristics suggest that claims with a delay of more than two weeks are more complex to settle, take longer to close, and involve a longer period before the injured worker can return to work. Prompt claim reporting offers a multitude of key benefits that:



- ✔ Allow adjusters to proactively investigate and set cost-mitigation efforts into motion.
- ✔ Provide the injured employee with quicker access to medical care.
- ✔ Make it easier for the adjuster to determine whether the claim is compensable.
- ✔ Reduce employee lost time or restricted activity.

Consequences of claim-reporting delays can increase the risk of legal action from the injured employee and may affect medical outcomes caused by a delay in treatment.

**Delays in reporting work-related injuries can cause workers compensation claim costs to increase by up to 51%.<sup>8</sup>**

--National Council on Compensation Insurance as cited by Business Insurance.

### **3. Developing a network of access to proper medical professionals.**

Establishing relationships with local occupational health clinics that understand a business's operations can quickly provide the most appropriate care for an injured worker by streamlining the medical specialist referral process. This can include a network of treating physicians and clinical professionals who can be instrumental in getting employees back to work safely and with minimal costs.

## Conclusion

Claims management teams and stakeholders need to be proactive in their approach to program cost management. While focusing on the medical side of claims is important, failing to do the same regarding indemnity benefits can prove harmful. When controlling the indemnity portion of a workers' compensation claim, employers have many opportunities to implement effective and cost-efficient services to better control costs.



# About Worldwide Facilities, LLC

Established in 1970, Worldwide Facilities is a national wholesale insurance broker, managing general agent and program underwriter. Our team of insurance specialists has access to virtually every specialty domestic and international insurance market.

*For information on mitigating workers' compensation risks, contact Todd Pollock, Senior Vice President, Workers' Compensation, (508) 625-3547 [tpollock@wwfi.com](mailto:tpollock@wwfi.com).*



# Notes

- 1** Tony DiDonato, [Workers' Compensation Mega Claims](#), National Council on Compensation Insurance Research Brief, August 2018.
- 2** Ibid.
- 3** United States Department of Labor, [Business Case for Safety and Health](#), Occupational Health and Safety Administration
- 4** Castlight Research Report, [The Opioid Crisis in America's Workforce](#).
- 5** Waddell G, Burton A, Kendall N. [Vocational Rehabilitation: What Works, For Whom, and When?](#) Report for the Vocational Rehabilitation Task Group, May 2016.
- 6** Ergo Science, [Pre-Hire Physical Abilities Testing](#), 2015
- 7** Sandy Smith, [Drug Abuse Costs Employers \\$81 Billion Per Year](#), The National Council on Alcoholism and Drug Abuse as cited in Environment, Health and Safety, March 2014.
- 8** National Council on Compensation Insurance as cited by [Business Insurance](#).



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