

Workers' Compensation Essentials

**Presented to:
AC Transit Board of Directors**



What is Workers' Compensation?

- State-mandated program to cover employees' economic losses due to injuries or illness occurring on the job
- A no-fault system providing benefits to injured employees and, potentially, their dependents
- Exclusive remedy for injuries occurring on the job
- Removes workplace injuries from Tort law.
- Provides injured employees with medical and wage replacement benefits
- Liberal construction
- WCAB jurisdiction

Medical-Legal Evaluations

- Panel Qualified Medical Evaluator (PQME)
- Agreed Medical Evaluator (AME) – litigated claims
- Performed to determine whether an injury is work-related and/or when the injury has reached Maximum Medical Improvement (MMI)
- For litigated claims, permanent disability evaluation may be performed by an Agreed Medical Evaluator or a Qualified Medical Evaluator

Benefits – Permanent Disability (PD)

- Provides bi-weekly benefits for injured workers who are deemed to have sustained permanent disability due to their injuries
- Employee must be determined to be at Maximum Medical Improvement (MMI) by their treating physician, a PQME or AME
- Level of PD is based upon nature of injury and body part, utilizing the American Medical Association (AMA) Guides to Permanent Impairment
- Benefits are payable bi-weekly up to a maximum rate of \$290 and a minimum rate of \$160
- Life pension supplement is payable to injured workers for the remainder of their life, for injuries with PD ratings $\geq 70\%$
- Employees who are deemed permanently totally disabled (100% rating) receive the applicable TD rate for the rest of their lives

Benefits – Permanent Disability (PD) - Calculations

- The AMA Guides are used to develop a Whole Person Impairment (WPI) which is used to create a Permanent Disability rating string.
- The Permanent Disability rating string is developed by using the California rating schedule which considers age and occupation modifiers to the WPI.
- The Level of Permanent Disability determined by the rating string is assigned a dollar value by the Schedule for Rating Permanent Disability established in the California Labor Code
- Rating String Example:

2012 CT Injury, Bus Driver, 62yo

Neck: 65% (15.01.01.00 - 35 - [5] 45 - 250F - 45 - 55) = 36%
Lumbar: 60% (15.03.01.00 - 28 - [5] 36 - 250F - 36 - 45) = 27%
Right Shoulder: 100% (16.02.01.00 - 4 - [7] 5 - 250F - 5 - 7%) = 7%
Right CTS: 85% (16.01.02.02 - 6 - [4] 7 - 250F - 7 - 10) = 9%
Left CTS: 85% (16.01.02.02 - 14 - [4] 17 - 250F - 17 - 22) = 19%
Ortho CVC = 36 C 27 C 19 C 9 C 7 = 67% PD = \$97,060

Above Ratings +

Sleep: 66% (13.03.00.00 - 12 - [6] 16 - 250H - 20 - 26) = 17%
Reflux: 66% (06.01.00.00 - 6 - [6] 8 - 250F - 8 - 11) = 7%
Constipation: 66% (06.02.00.00 - 6 - [6] 8 - 250G - 9 - 12) = 8%
ED: 66% (07.05.00.00 - 6 - [2] 7 - 250F - 7 - 10) = 7%
Internal CVC: 17 C 8 C 7 C 7 = 34%
Combined 67 C 34 = 78% PD = \$139,927.50 + Life Pension

Benefits – Future Medical Care

- Injured workers may be entitled to treatment for their injuries for the rest of their lives – 100%
- Need for future medical care established by treating physician, PQME or AME at the time the injured worker reaches MMI
- Future medical is secured at the time of claim settlement
- Benefit may be fully settled, but this may require approval by Centers for Medicare/Medicaid Services, via Medicare Set Aside

Benefits – Death & Dependency

- Survivors entitled to \$10,000 burial expense
- Death benefits payable to total and/or partial dependents
- Dependency established based upon the level of financial support previously provided by the deceased
- Benefits payable up to \$320,000 for three or more total dependents

Litigation

- Application for Adjudication of Claim filed with WCAB
- Injured worker may be represented by an attorney or *in pro per* (self-represented)
- Defense attorney may be assigned to take depositions and represent the employer at hearings and trials
- Workers' Compensation Appeals Board (WCAB) has sole jurisdiction over workers' compensation claims
- Litigation dramatically increases the duration and cost of workers' compensation claims

Program Example

Year of Loss	Average Total Incurred	
	Litigated	Non-Litigated
2011	\$ 100,528	\$ 14,073
2012	\$ 192,436	\$ 9,876
2013	\$ 124,376	\$ 5,193
2014	\$ 104,454	\$ 5,482
2015	\$ 105,394	\$ 4,911
2016	\$ 57,325	\$ 3,456
2017	\$ 94,579	\$ 21,377
2018	\$ 70,130	\$ 25,011
2019	\$ 71,953	\$ 10,776
2020	\$ 20,677	\$ 10,171

AC Transit

Year of Loss	Average Total Incurred	
	Litigated	Non-Litigated
2012	\$ 145,759	\$ 7,714
2013	\$ 142,227	\$ 6,861
2014	\$ 150,735	\$ 6,706
2015	\$ 166,063	\$ 9,106
2016	\$ 127,445	\$ 8,113
2017	\$ 137,508	\$ 5,804
2018	\$ 125,321	\$ 13,327
2019	\$ 108,141	\$ 13,599
2020	\$ 68,890	\$ 17,637
2021	\$ 35,190	\$ 12,173

Resolutions

- Claim may be resolved by:
 - Stipulations with Request for Award
 - Settlement agreed upon by injured worker, employer and attorneys
 - Pays out permanent disability over time
 - Future medical remains open and payable by employer/carrier/TPA
 - Compromise & Release
 - Settlement agreed upon by injured worker, employer and attorneys
 - Permanent disability paid out in one lump sum
 - Typically settles out employer's liability for ongoing future medical benefits
 - May require Medicare Set Aside
 - Findings & Award
 - Settlement determined by WCAB judge
 - Pays out permanent disability over time
 - Future medical remains open and payable by employer/carrier/TPA

Negotiations

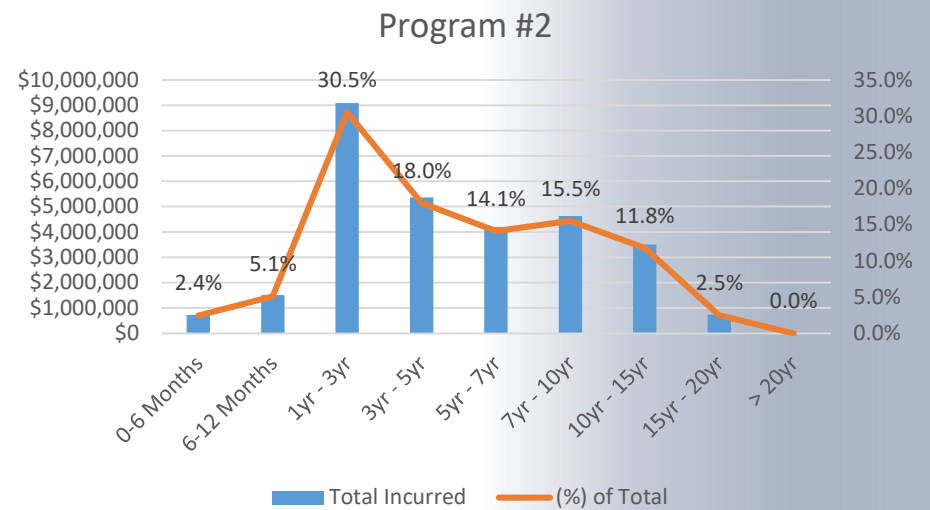
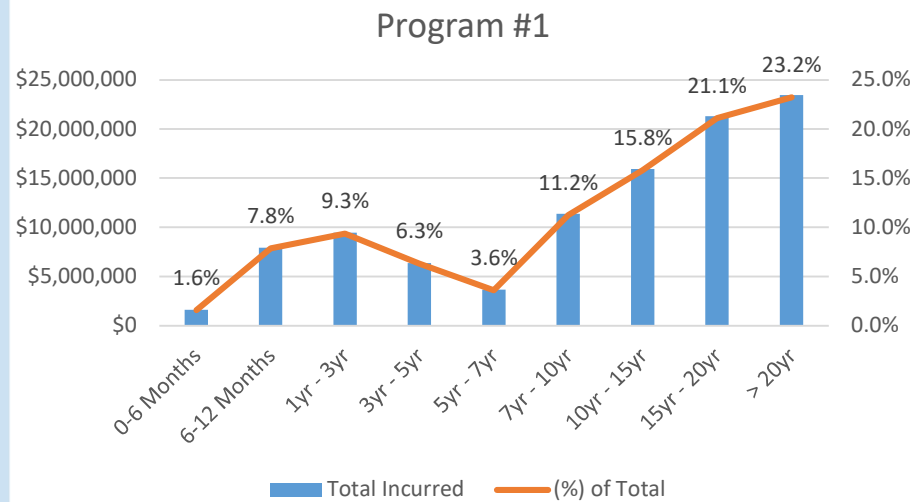
- Determine all exposures:
 - Can we concede to anything?
 - Where do we hold firm?
- Provide probability analysis to the future exposures
 - Use of Vocational Rehabilitation Experts
- Capture ranges of permanent disability
 - Incorporate DFEC expert reporting
- Capture best and worst-case scenarios for medical
- Determine if MSA is needed
 - Does employee want to manage treatment?
- Determine if a structure settlement is recommended
 - Structures can stretch out the amount of monetary value and still provide an immediate payout

Consider Excess Authority.

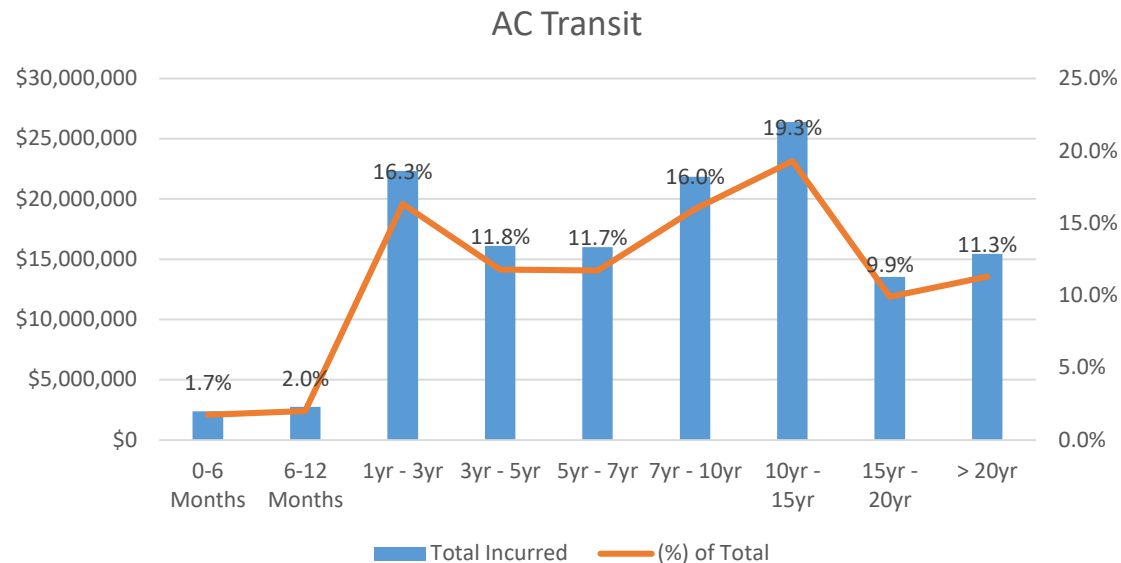
Settlement Authority Requests (SARs)

- Discussion about Medical Legal Evaluations / Permanent & Stationary
- Discussion about Permanent Disability benefit amounts and Settlement Award types
- Discussion about litigation (depositions, mediations/arbitrations, court hearings and trials)
- Discussion about investigations (statements, law enforcement reports, sub-rosa, and fraud)
- Discussion about Excess Carriers (taking into consideration their interests and how they are involved in settlement strategies)
- Discussion about maximum claim cost exposure and litigation strategies to reduce exposure were appropriate
- Discussion about the uncertainties of Workers' Compensation Appeals Board outcomes and how that impacts settlement strategies
- In time discussions will include the Alternative Dispute Resolution process

Settlement Approach - Comparison



Settlement Approach – AC Transit



Age of Claim	#Claims	(%) of Total	Total Incurred	(%) of Total
0-6 Months	126	13.7%	\$2,376,040	1.7%
6-12 Months	65	7.1%	\$2,732,065	2.0%
1yr - 3yr	236	25.6%	\$22,321,404	16.3%
3yr - 5yr	117	12.7%	\$16,096,730	11.8%
5yr - 7yr	89	9.7%	\$16,004,249	11.7%
7yr - 10yr	99	10.7%	\$21,829,870	16.0%
10yr - 15yr	107	11.6%	\$26,383,633	19.3%
15yr - 20yr	38	4.1%	\$13,521,859	9.9%
> 20yr	44	4.8%	\$15,427,949	11.3%
Total	921	100.0%	\$136,693,799	100.0%

Alternative Dispute Resolution (ADR)

Foundational Principles

- Aligned Interests of labor and management re Workers' Compensation

Goal

- Change the Culture
- Care for employees
- Close all claims within two years

Alternative Dispute Resolution (ADR)

Steps

- Member Advocate
- Mediation
- Arbitration
- Petition for Reconsideration

Alternative Dispute Resolution (ADR)

Settlements

- Again – Close all claims within two years
- Medical liability remains for the life of the applicant without a Compromise & Release (i.e. only a C&R will allow you to terminate your loss development)
- Allow/Demand attorneys fully explain the District's risk (best day vs. worst day)
- Prioritize claims for C&R based on the potential for losses to spike