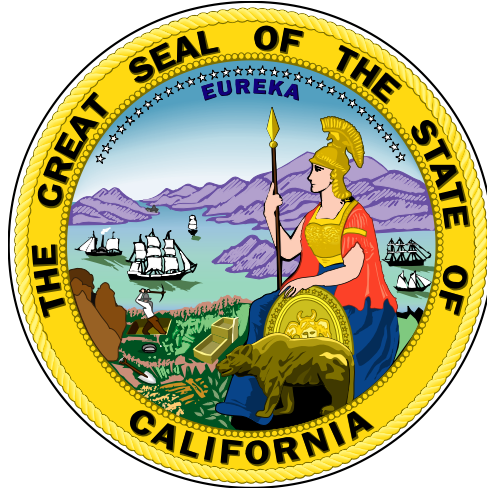


California Commission on Health and Safety and Workers' Compensation



CHSWC 2020 Annual Report

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Department of Industrial Relations

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ABOUT CHSWC

The Commission on Health and Safety and Workers' Compensation (CHSWC) examines the health and safety and workers' compensation systems in California and makes recommendations to improve their operation.

Established in 1994, CHSWC has directed its efforts toward projects and studies to identify opportunities for improvement and to provide an empirical basis for recommendations and/or further investigations. CHSWC utilizes its own staff expertise combined with independent researchers with broad experience and highly respected qualifications.

At the request of the Executive Branch, the Legislature and the Commission, CHSWC conducts research, releases public reports, presents findings, and provides information on the health and safety and workers' compensation systems.

CHSWC activities involve the entire health, safety and workers' compensation community. Many individuals and organizations participate in CHSWC meetings, fact-finding roundtables and serve on advisory committees to assist CHSWC on projects and studies.

CHSWC projects address several major areas, including permanent disability (PD) ratings and related benefits, State Disability Insurance (SDI), return to work, carve-outs and medical fee schedules. Additional projects address benefits, medical costs and quality, fraud and abuse, streamlining of administrative functions, information for injured workers and employers, alternative workers' compensation systems, and injury and illness prevention. CHSWC also continually examines the impact of workers' compensation reforms.

The most extensive and potentially far-reaching project undertaken by CHSWC is the ongoing study of workers' compensation PD ratings. Incorporating public fact-finding hearings with studies by RAND, the CHSWC PD project analyzes major policy issues regarding the way in which California workers are compensated for PD incurred on the job.

CHSWC engages in a number of studies and projects in partnership with state agencies, foundations, and the health and safety and workers' compensation community including: the Labor and Workforce Development Agency (LWDA); the Department of Industrial Relations (DIR); the Division of Workers' Compensation (DWC); the California Department of Insurance (CDI); the Fraud Assessment Commission (FAC); the Governor's Office of Homeland Security (OHS); the Bureau of Labor Statistics (BLS); the Department of Fair Employment and Housing (DFEH); the California Health-Care Foundation (CHCF); RAND; the National Academy of Social Insurance (NASI); the National Institute for Occupational Safety and Health (NIOSH); and the International Association of Industrial Accident Boards and Commissions (IAIABC). Current CHSWC projects and studies are described in this report, and earlier projects and studies are found at:

https://www.dir.ca.gov/chswc/CHSWC_Research.html

CHSWC *Serving all Californians*

- Created by the 1993 workers' compensation reform legislation.
- Composed of eight members appointed by the Governor, Senate and Assembly to represent employers and labor.
- Charged with examining the health and safety and workers' compensation systems in California and with recommending administrative or legislative modifications to improve their operation.
- Established to conduct a continuing examination of the workers' compensation system and of the State's activities to prevent industrial injuries and occupational diseases and to examine those programs in other states.
- Works with the entire health and safety and workers' compensation community—employees, employers, labor organizations, injured worker groups, insurers, attorneys, medical and disability providers, administrators, educators, researchers, government agencies, and members of the public.
- Brings together a wide variety of perspectives, knowledge, and concerns about various health and safety and workers' compensation programs critical to all Californians.
- Serves as a forum in which the community may come together, raise issues, identify problems, and work together to develop solutions.
- Contracts with independent research organizations for projects and studies designed to evaluate critical areas of key programs. This is done to ensure objectivity and incorporate a balance of viewpoints and to produce the highest-quality analyses and evaluation.

ABOUT CHSWC

CHSWC Members Representing Employers



Martin Brady

Martin Brady is executive director at Schools Insurance Authority, where he has worked since 1988.

Mr. Brady is a member of the California Joint Powers Authority, California Coalition on Workers' Compensation, Public Agency Risk Managers Association, Public School Risk Institute, Association of Governmental Risk Pools and the Public Risk Management Association.

Appointed by: Governor



Mona Garfias

Since 1998 Ms. Garfias has been director of claims at DMS Facility Services, a large unionized employer in the janitorial industry with over 1,800 employees. She started her insurance industry career 27 years ago and has held various positions involving workers' compensation claims on both the insurance carrier and insurance brokerage sides.

Ms. Garfias was instrumental in implementing the Ross Pike Memorial Workers' Compensation Carve-Out & Alternative Dispute Resolution (ADR) program and continues to be involved in this program on a daily basis.

Appointed by: Senate Rules Committee

ABOUT CHSWC

CHSWC Members Representing Employers

Sean McNally

Sean McNally is the President of KBA Engineering in Bakersfield, California. He has been certified by the State Bar of California as a specialist in workers' compensation law. He is a licensed general contractor and serves as a trustee for the Self-Insurer's Security Fund. His community activities include serving on the Board of Directors of the Golden Empire Gleaners and the Board of Trustees for Garces Memorial High School. He is the past Vice President of Corporate and Government Affairs and past Vice President of Human Resources for Grimmway Farms.

Mr. McNally is a graduate of the University of the Pacific McGeorge School of Law and was a partner at the law firm of Hanna, Brophy, MacLean, McAleer and Jensen. He graduated from the University of San Francisco with bachelor's degrees in English and theology. Following that, he did graduate studies at Hebrew University of Jerusalem, Israel.

Appointed by: Governor



ABOUT CHSWC

CHSWC Members Representing Labor



Doug Bloch

Doug Bloch has been the political director at Teamsters Joint Council 7 since 2010. He was the Port of Oakland campaign director for Change to Win from 2006 to 2010 and a senior research analyst at Service Employees International Union (SEIU) Local 1877 from 2004 to 2006.

Mr. Bloch was the statewide political director at the California Association of Community Organizations for Reform Now (ACORN) from 2003 to 2004 and ran several ACORN regional offices, including those in Seattle and Oakland, from 1999 to 2003. He was an organizer at the Non-Governmental Organization Coordinating Committee for Northeast Thailand from 1999 to 2003.

Appointed by: Governor



Christy Bouma

Christy Bouma is President of Capitol Connection, which she joined in 2000. She was a mathematics and computer science teacher at the Hesperia Unified School District from 1989 to 1999 and an instructor at Victor Valley Community College from 1991 to 1998.

Ms. Bouma has supported the California Professional Firefighters, the California School Employees Association governmental advocacy team, the State Building and Construction Trades Council, and the Service Employees International Union on special legislative projects. She is affiliated with the Institute of Government Advocates, the Leadership California Institute, and the CompScope Advisory Committee of the Workers' Compensation Research Institute. Ms. Bouma holds a master's degree in computer science.

Appointed by: Governor

ABOUT CHSWC

CHSWC Members Representing Labor

Shelley Kessler

Shelley Kessler recently retired from her position as the Executive Secretary-Treasurer of the San Mateo County Central Labor Council which represents 110 affiliated local unions and over 70,000 working member families. She worked at the Labor Council for 31 years, first as the political director and subsequently as the head of the organization until her retirement. During that time, she was also a Vice-President of the California State Labor Federation. She is a 37-year member of the International Association of Machinists and Aerospace Workers.

Her experience in working on the floor at General Motors, Fremont, CA and Westinghouse Electric, Sunnyvale, CA, compelled her to become involved in worker health and safety issues. She joined the boards of the Santa Clara Center for Occupational Safety and Health, Worksafe, and later the advisory boards of both Cal/OSHA and the Labor Occupational Health Program at UC Berkeley in order to pursue her concerns for worker protections. Ms. Kessler holds two Bachelor of Arts degrees from Sonoma State University.

Appointed by: Speaker of the Assembly



Evan Mitch Steiger

Mitch Steiger is a legislative advocate for the California Labor Federation, AFL-CIO. The California Labor Federation, representing over 2.1 million workers statewide, fights to defend and improve the wages, benefits and working conditions of all Californians. Mitch's role is to advocate on behalf of workers in a variety of issue areas, including occupational health and safety as well as workers' compensation, and he participated in the stakeholder discussions that produced SB 863.

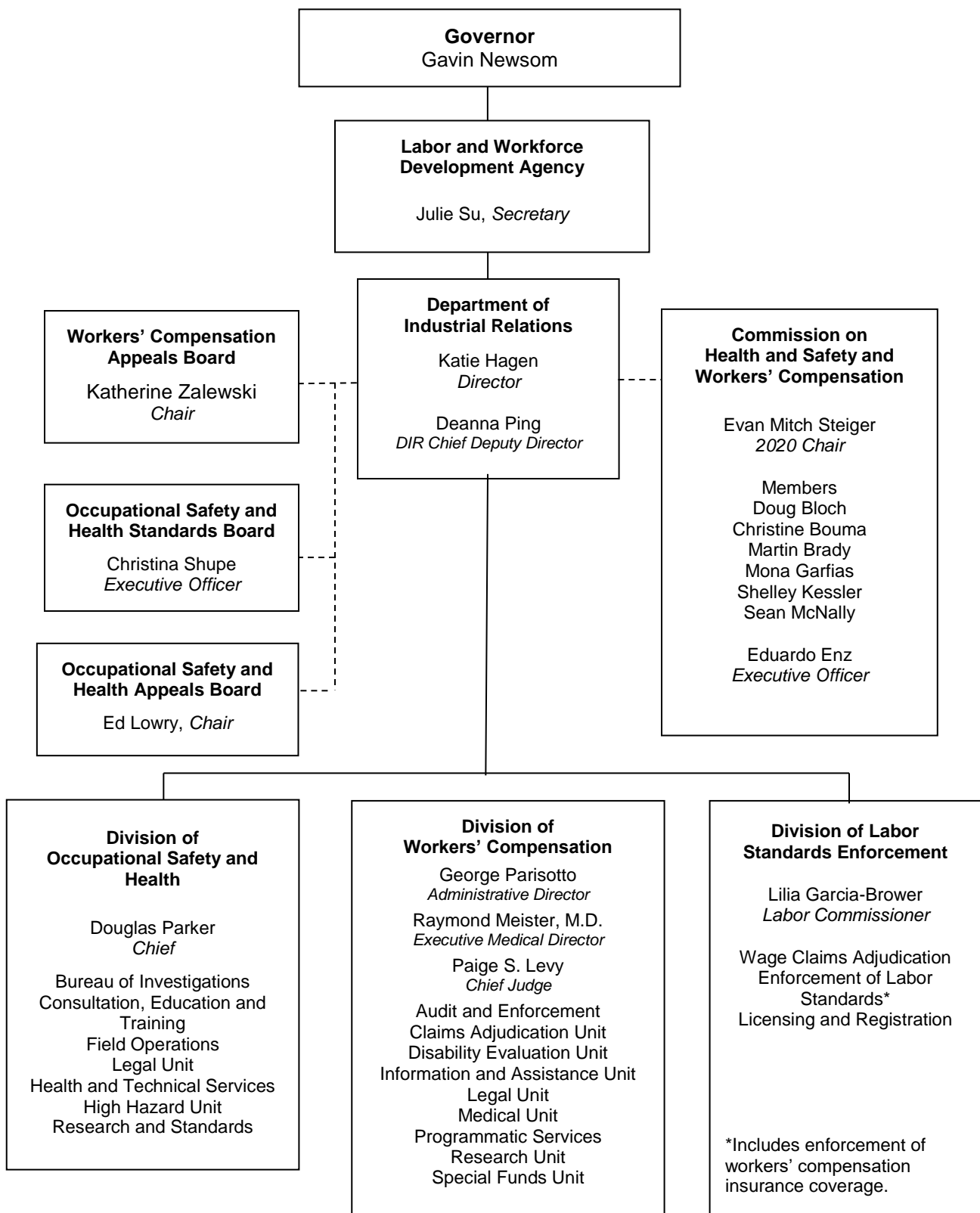
Mitch has been with the California Labor Federation since 2010, and prior to that served as researcher/organizer for United Food & Commercial Workers Local 21 and legislative advocate for the Washington State Building & Construction Trades Council, AFL-CIO. He is a member of the Pacific Media Workers Guild, Local 39521, CWA.

Appointed by: Senate Rules Committee



ABOUT CHSWC

State of California Health and Safety and Workers' Compensation Functions in 2020



For the full DIR organization chart see:

<http://web/informational/Portal.asp?goto=pers/HR%20Organization%20Charts.htm> and http://www.dir.ca.gov/org_chart/org_chart.pdf.

CHSWC RECOMMENDATIONS

The COVID-19 pandemic is a national and international public health emergency that has resulted in numerous occupational and non-occupational fatalities, hospitalizations and illnesses, high levels of unemployment, decreased levels of economic productivity, and changes in the workers' compensation and health and safety systems. In considering the pandemic in California, the Commission on Health and Safety and Workers' Compensation (CHSWC) recommends continued monitoring of the COVID-19 pandemic and supporting efforts to help ensure that workers and employers are protected from and unexposed to this particularly contagious virus.

In addition, CHSWC recommends continued implementation of methods and procedures proven effective to prevent workplace injuries and illnesses, to ensure appropriate and timely delivery of indemnity and medical benefits for injured workers, to avoid delays in the workers' compensation claims process, and to renew commitment to incentivize uninterrupted and undiminished payment of wages.

CHSWC will continue to examine the following areas:

- Return-to-work incentives and disincentives
 - Return-to-Work Supplement
 - Supplemental Job Displacement Benefit (SJDB)
 - Information for Injured Workers and Employers on the benefits of returning to work
- Wage loss after occupational injury and illness
 - Permanent Disability (PD) Benefits
 - Presumptions
- Access to and the appropriateness and timeliness of medical care
 - Medical Provider Networks
 - Carve Outs
 - Utilization Review (UR)
 - Independent Medical Review
 - Medical Treatment Guidelines
 - Telehealth
 - Qualified Medical Evaluator (QME) Process
 - Friction, administrative delays, and backlogs
- Pharmaceuticals
 - Drug formulary
- Fraud detection
 - Medical provider suspensions and criminally charged providers (doctors)
 - Insurance company special investigation units (SIUs) and reporting suspicious claims to regulators
 - Data science and machine learning
 - Legal loopholes, profit centers, commission-driven sales, conflicts of interest, and other potential areas for abuse in a regulated industry.
- Stakeholder interaction in the claims process
 - Regional differences in claimant injuries and claims handling
- Mechanism of injury, risk factors, and cumulative effects, including age
 - High hazard occupations and injuries
 - Repetitive motion and cumulative injuries

CHSWC RECOMMENDATIONS

- Health and Safety
 - Employee and employer training and retraining, Personal Protective Equipment (PPE), and recordkeeping
 - Apprenticeship training and workplace safety culture

RETURN TO WORK

Return-to-Work Supplement

Labor Code section 139.48 requires the Department of Industrial Relations (DIR) program, the [Return-to-Work Supplemental Program](#) (RTWSP), to administer a \$120 million fund that makes supplemental payments to workers whose permanent disability benefits are disproportionately low in comparison to their earnings losses.¹ A recent CHSWC study by RAND that evaluated the Return-to-Work Fund found a low rate of receipt of the RTWSP among eligible workers.

Recommendations

- Ongoing monitoring of the use of this benefit
- Consider the recommendations of the CHSWC study by RAND “[Evaluation of the Return-to-Work Fund in the California’s Workers’ Compensation System](#),”² which include:
 - Automating the RTWSP payment after SJDB vouchers are issued to improve participation in the program.
 - Increasing outreach and notification to help increase participation in the RTWSP by eligible workers, such as making the RTWSP website available in multiple languages.
 - Improving the monitoring and data collection of SJDB vouchers issued to track emerging changes in the RTWSP-eligible population.
- Continue to explore all methods of increasing application rates for unrepresented injured workers, including involvement from claims adjudicators, employers, and labor advocates.
- Include benefit expenditure trend data and the number of RTWSP disbursements in the CHSWC Annual Report.

Information for Injured Workers and Employers on the Benefits of Return to Work

- Continue to promote a system that effectively and safely reintegrates injured workers into the workplace at the earliest possible opportunity so that economic losses resulting from injuries can be reduced for employers and employees.
- Distribute information about benefits of return-to-work programs and adherence to timeframes for filing applications or appeals.
- Communicate research findings about the benefits of returning to work and about the experience in which the longer an injured worker stays out of work, the greater the long-term adverse economic impact; promote identification of potential psychosocial risk factors in delaying the return to work.
- Continue to partner with organizations to support and promote early and safe return-to-work efforts and projects.

¹ <https://www.dir.ca.gov/rtwsp/rtwsp.html>.

² https://www.rand.org/content/dam/rand/pubs/research_reports/RR2500/RR2548/RAND_RR2548.pdf.

CHSWC RECOMMENDATIONS

WAGE LOSS AFTER OCCUPATIONAL INJURY AND ILLNESS

Permanent Disability Benefits

Research on the impact of the 2012 workers' compensation reforms on earnings losses suggests that SB 863 has likely met its primary objective of restoring adequate wage replacement rates, although some inequities still exist in these rates across impairments. The research also determined for the first time that the economic recession in the late 2000s and early 2010s had a severe impact on the earnings of permanently disabled (PD) workers, making the higher benefits provided under the most recent reforms particularly important for maintaining adequate levels of wage replacement. Additional recent research on wage loss monitoring found that recessionary impacts were felt broadly, but the extent of recovery varies across regions and industries.

Recommendations

- Consider the recommendations in the DIR studies by RAND "[Wage Loss Monitoring for Injured Workers in California's Workers' Compensation System](#),"³ which include:
 - Continued monitoring of earnings losses and the adequacy of permanent partial disability (PPD) benefits.
 - Continued research to understand how and why the Great Recession had such lasting effects on post-injury outcomes in order to better understand the present and future economic shocks, as well as past ones.
- Monitor the progress of the Department of Industrial Relations/Division of Workers' Compensation study that will evaluate the PD benefit payments and impairment ratings for occupational cancer cases (with and without presumptions) in California using injury claim and earnings loss data.

Presumptions

The COVID-19 pandemic has had a tremendous impact on the workers' compensation (WC) and health and safety system in California and on its economy. As of October 21, 2020, California had over 870,000 positive confirmed COVID-19 cases, with deaths exceeding 17,000,⁴ and over 44,000 COVID-19 claims have been filed in the WC system.⁵ In addition, California's unemployment rate rose from 3.9 percent in January 2020⁶ to 14.9 percent in June 2020, a higher rate than at the height of the Great Recession.⁷ Several states, including California, implemented presumptions of compensability for employees related to COVID-19. In California, Governor Newsom issued an executive order in May providing for a rebuttable presumption of compensability for all workers directed by their employer to work outside their home that applies to the period March 19 to July 5, 2020.⁸ The Workers' Compensation Insurance Rating Bureau estimated the impact of the presumption at approximately \$1.2 billion.⁹ SB 1159, enacted on September 17, 2020, codifies the COVID-19 presumption created by the executive order and provides two new rebuttable presumptions: an employee's illness related to COVID-19 is an occupational injury and therefore eligible for workers' compensation benefits if specified criteria are met.¹⁰ In addition to a presumption related to COVID-19, several states have expanded their presumption statutes for other conditions for public safety employees. In California, the passage of SB 542 created a rebuttable presumption that, until January 1, 2025, for certain state and local firefighting personnel and peace officers, the term "injury" also includes

³ https://www.rand.org/pubs/research_reports/RR2572.html; https://www.rand.org/pubs/research_reports/RR2807.html.

⁴ <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Immunization/ncov2019.aspx#>.

⁵ Data provided on October 8, 2020 by the California Division of Workers' Compensation from the Workers' Compensation Information System for COVID-19 FROI claims for January 1, 2020-September 30, 2020.

⁶ <https://edd.ca.gov/newsroom/unemployment-march-2020.htm>.

⁷ <https://edd.ca.gov/newsroom/unemployment-july-2020.htm>.

⁸ <https://www.gov.ca.gov/wp-content/uploads/2020/05/5.6.20-EO-N-62-20-text.pdf>.

⁹ https://www.wcirb.com/sites/default/files/documents/rb-covid19-cost_impact_of_governor_executive_order_0.pdf.

¹⁰ <https://www.dir.ca.gov/dwc/Covid-19/FAQ-SB-1159.html>.

CHSWC RECOMMENDATIONS

posttraumatic stress disorder (PTSD) that developed or manifested while the injured person was in the service of the department or unit.

Recommendations:

- Continued monitoring of the impact of the temporary presumptions related to COVID-19
- Continued study of the impact of extending presumptions for conditions such as PTSD for public safety employees and cancer for non-public safety officers

MEDICAL CARE IN WORKERS' COMPENSATION

Monitoring Medical Care and Costs

In the past, problems in the medical-legal process included delays in selecting evaluators, obtaining examinations, and producing evaluation reports. Deficiencies also existed in the content of reports when they failed to comply with the legal standards or omitted necessary components, thus necessitating the submission of supplemental reports. These problems contributed to an increase in frictional costs and delays in resolving disputes and delivering benefits to injured workers.

Significant changes in the medical care process for injured workers have resulted from the reform legislation enacted in 2012. One change is that medical necessity disputes are now resolved using Independent Medical Review (IMR).

Additional reform legislation relating to medical care, [Senate Bill 1160](#),¹¹ was enacted in September 2016. The bill aims to expedite medical treatment to injured workers within the first 30 days after their injury by exempting conservative treatment from UR, standardizing UR procedures, modernizing data collection in the system to improve transparency, and implementing antifraud measures in the filing and collection of medical treatment liens. SB 1160 also [requires DIR](#) to develop a system for the mandatory electronic reporting of UR decisions and the Doctor's First Report of Injury form.¹²

In October 2016, the California Legislature requested that CHSWC update a study of the QME process first done for the Commission by UC Berkeley in 2010. That study raised several issues about the QME process and made several recommendations for improving the efficiency and equity of evaluations. In 2018, the DWC posted proposed revisions to the Medical-Legal Fee Schedule on the DWC Forum and received extensive public comments. DWC will be holding a public hearing on the revised medical-legal fee schedules proposed regulations on December 14, 2020.¹³

The DWC recently [adopted changes](#) in its Physician Services/Non-Physician Practitioner Services Fee Schedule to encourage greater use of telehealth in light of the COVID-19 public health emergency.¹⁴

Recommendations

- Monitor and study the use of telehealth and other medical care changes in WC in light of the COVID-19 pandemic.
- Evaluate and monitor the implementation of SB 1160 provisions, including the rulemaking process for UR.
- Continue to study and monitor the frequency, severity, and economic consequences of musculoskeletal injuries across occupations and demographics.

¹¹ Text of SB 1160, https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB1160.

¹² DWC website, SB 1160 page, <https://www.dir.ca.gov/dwc/SB1160-AB1244/SB1160.htm>.

¹³ <https://www.dir.ca.gov/dwc/DWCPropRegs/2020/Medical-Legal-Fee-Schedule/Med-Legal-Fee-Schedule.htm>.

¹⁴ <https://www.dir.ca.gov/DIRNews/2020/2020-41.html>.

CHSWC RECOMMENDATIONS

- Provide system monitoring data on UR decisions and Doctor's First Report, after data become available, in the CHSWC Annual Report.
- Monitor the effectiveness of UR and IMR in the California WC system and identify instances in which guidelines and the use of hierarchical evidence are not followed, are abused, or are otherwise generating unnecessary friction and delay.
- Continue to study and review concerns about the QME process, including monitoring the adoption process of revisions to the Medical-Legal Fee Schedule and DWC's response to the recommendations detailed in the recent California State Auditor's report on the QME process.¹⁵
- Promote and support the recommendations in the [RAND Medical-Legal white paper](#).¹⁶
- Continue to support DWC's efforts to continue to work with all stakeholders in the WC community to revise the medical-legal fee schedule with new reimbursement rates to providers for various medical evaluations required in the schedule.
- Incentivize the use of Medical Provider Networks (MPNs) in post-employment claims as discussed in the RAND report "[Provider Fraud in Workers' Compensation](#)."¹⁷

Pharmaceuticals

LC section 5307.27 requires that the DWC Administrative Director establish a drug formulary using evidence-based medicine, as part of the medical treatment utilization schedule (MTUS). The DWC drug formulary took effect January 1, 2018.

Recommendations

- Monitor and evaluate the impact of the evidence-based drug formulary. This should include an assessment of how the drug formulary affects pharmaceutical use, expenses, IMR use, and access to medically appropriate care for injured workers.
- Monitor the consultation by the Pharmacy and Therapeutics (P&T) Committee in advising on updates to the MTUS formulary based on evidence of the relative safety, efficacy, effectiveness, type of packaging, and variable cost of drugs in a class of drugs.

ANTIFRAUD EFFORTS

Underground Economy

The underground economy consists of businesses that do not comply with health, safety, WC, and other tax and reporting laws in California. These businesses might not have all their employees on the official company payroll and might not report wages paid to employees that reflect their real job duties. Operators in the underground economy create an unfair advantage over their law-abiding competitors and cost the state an [estimated](#) \$8.5 million to \$10 billion in uncollected tax revenues every year.¹⁸

¹⁵ California State Auditor Report 2019, "Department of Industrial Relations: It's Failure to Adequately Administer the Qualified Medical Examiner Process May Delay Injured Workers' Access to Benefits," November 2019, <https://www.auditor.ca.gov/pdfs/reports/2019-102.pdf>; Response to the Report by the DWC, <https://www.auditor.ca.gov/reports/2019-102/response.html>.

¹⁶ California Workers' Compensation Medical-Legal Fee Schedule, Analysis and Recommendations, RAND, 2018, https://www.rand.org/pubs/working_papers/WR1279.html.

¹⁷ Provider Fraud in California Workers' Compensation, RAND, 2017, https://www.dir.ca.gov/Fraud_Prevention/Reports/Provider-Fraud-In-CA-Workers-Compensation.pdf.

¹⁸ EDD website, The Underground Economy page, https://edd.ca.gov/Payroll_Taxes/Underground_Economy_Operations.htm.

CHSWC RECOMMENDATIONS

Recommendations

- Continue to research how to identify the underground economy and ensure compliance with WC and health and safety laws.
- Support outreach and education efforts, including publicizing the DIR booklet “[All Workers Have Rights](#).”¹⁹
- Encourage reporting of alleged noncompliant business practices to protect workers and employers and promote transparency in the workplace.
- Continue to report on the number of DLSE enforcement citations for a lack of workers’ compensation insurance, and related industry and geographic information for those violations.
- Support the Labor Enforcement Task Force (LETF) in its efforts to combat the underground economy.

Workers’ Compensation Medical Provider Fraud

In recent years, criminal indictments and prosecutions have highlighted the extent of medical provider fraud in the WC system. Estimates of the cost of this fraud to participants in the WC system are as high as \$1 billion per year.²⁰

[Assembly Bill 1244](#)²¹ and [SB 1160](#),²² which were signed into law in September 2016, added LC Sections 139.21 and 4615 and provide a mechanism for suspending perpetrators of fraud from the workers’ compensation system, staying liens of criminally charged providers, and limiting financial recovery related to fraudulent activity.

Recommendations

- Monitor and evaluate the outcomes of LC Sections 139.21 and 4615 and the efforts of the Anti-Fraud Unit with respect to these and other provisions related to anti-fraud reforms.
- Monitor the extent of medical provider fraud in areas such as kickbacks, overbilling, and upcoding and new efforts to deter and eliminate fraudulent practices.
- Monitor the impact of medical provider suspensions in the WC system.
- Monitor progress in the filing of medical provider financial interest disclosures with the DIR and support the investigation of medical provider ownership interests that may conflict with the rules.
- Promote the voluntary use of the Department of Insurance Workers’ Compensation Insurance SIU Guidelines and Protocols,²³ which were last updated in 2011.
- Consider recommendations in the RAND report “[Provider Fraud in California Workers’ Compensation](#)”²⁴ related to provider fraud, including:

¹⁹ DIR, LETF “All Workers Have Rights” booklet, 2020, https://www.dir.ca.gov/letf/What_are_your_rights_as_a_worker.pdf.

²⁰ [Senate Labor and Industrial Relations Bill Analysis of SB 1160, August 31, 2016](#), https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201520160SB1160.

²¹ Text of AB 1244, https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB1244.

²² Text of SB 1160, https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB1160.

²³ CDI, Workers’ Compensation Insurance Special Investigative Unit Guidelines and Protocols, 2011, <https://www.insurance.ca.gov/0300-fraud/0100-fraud-division-overview/0300-fraud-claims-and-forms/upload/WC-SIU-Guidelines-and-Protocols.pdf>.

²⁴ Provider Fraud in California Workers’ Compensation, RAND, 2017, https://www.dir.ca.gov/Fraud_Prevention/Reports/Provider-Fraud-In-CA-Workers-Compensation.pdf.

CHSWC RECOMMENDATIONS

- Keeping post-employment claims treatment under an employer's control to prevent uncontrolled increase in medical provider liens.
- Considering new forms of fraud detection through the use of the Workers' Compensation Information System database and other claims databases and exploring how advanced analytics, business intelligence, machine learning, and other data science techniques can be best employed.

Workers' Compensation Payroll Reporting by Employers

The cost of employers' WC insurance premiums is based on their total payroll. By misreporting payroll costs, some employers avoid the higher premiums that they would incur with accurate payroll reporting. Employers can also misreport the total payroll or the number of workers in specific high-risk, high-premium occupation classifications by reporting them in lower-risk, lower-premium occupations. A [CHSWC study](#) found that between \$15 billion and \$68 billion in payroll is underreported annually.²⁵ A related study on split class codes found that 25 to 30 percent of low-wage payroll is underreported or misreported.

Recommendations

- Consider implementing recommendations in the "[Report on Anti-Fraud Efforts in the California Workers' Compensation System](#)" to address premium fraud.²⁶
- Consider updating the 2009 study of payroll underreporting to understand the extent of this practice in more recent years, including underreporting by employers and professional employer organizations.
- Examine claiming at Uninsured Employers Benefits Trust Fund (UEBTF) to better understand the industries, occupations, and other business characteristics of employers who risk not carrying any WC insurance.
- Support collaboration among labor enforcement agencies to bring employers into compliance with labor laws.
- Monitor trends listed by the Department of Insurance Workers' Compensation Fraud Convictions on its website.²⁷

PUBLIC SELF-INSUREDS

California law requires every employer, except the state, to secure payment of its WC obligations by obtaining either insurance or a certificate of consent to self-insure from the Director of DIR.

Unlike private self-insurers, public-sector employers are not legally required to post a security deposit, and no guarantee association is established by law to pay benefits to injured employees in the event that a public employer or a Joint Powers Authority defaults on its WC obligations.

SB 863 added LC section 3702.4, which required CHSWC to examine the public-sector self-insured WC programs and to make recommendations for improving program administration and performance. CHSWC contracted with Bickmore for a study to assist in fulfilling this requirement in 2014.²⁸

²⁵ "Fraud in Workers' Compensation Payroll Reporting: How Much Employer Fraud Exists? How are Honest Employers Affected?" UC-Berkeley, January 2009,

https://www.dir.ca.gov/chswc/Reports/2011/Final_Report_FAC_Premium_Avoidance.pdf

²⁶ DIR, DWC, CHSWC, and CDI, Report on Anti-Fraud Efforts in the California Workers' Compensation System, January 2017,

https://www.dir.ca.gov/Fraud_prevention/FRAUD-white-paper.pdf

²⁷ CDI, Workers' Compensation Fraud Convictions page, <https://www.insurance.ca.gov/0300-fraud/0100-fraud-division-overview/25-wc-conv/index.cfm>

²⁸ "Examination of the California Public Sector Self-Insured Workers' Compensation Program," Bickmore, October 22, 2014. (The link will be restored when the report is compliant with web accessibility standards.)

CHSWC RECOMMENDATIONS

In 2016, Bickmore prepared a study for DIR to identify various data reporting elements that, after having been collected by the DIR Office of Self-Insurance Plans, would further the intent of LC section 3702.2. Specifically, the goal is to establish a database of WC information for use by public policy makers, regulators, public entities, and the service industry that supports public entity self-insurance in California.

The 2014 and 2016 studies were used to inform DIR Office of Self-Insurance Plans [rulemaking](#)²⁹ related to the annual reporting of public-self-insured employers.

Recommendations

- Monitor the implementation of the regulations to collect critical information on public sector claims and costs for public-sector employers and employees.
- Consider supporting the release of the results in the annual reports by (public) entity identifier.
- Report on the status of public entity self-insured data reporting as discussed in the 2016 Bickmore report.

HEALTH AND SAFETY

CHSWC recognizes that injury and illness prevention is the best way to preserve workers' earnings and to limit WC coverage cost increases for employers.

Recommendations

- Continue to monitor the COVID-19 pandemic and support efforts to help keep workers and employers safe. California is issuing regular [updates on COVID-19](#),³⁰ including [Coronavirus resources for California employers and workers](#)³¹ compiled by the Labor & Workforce Development Agency.
- Continue to develop materials and resources for both workers and employers that include the most up-to-date information on guidelines related to the COVID-19 pandemic.
- Continue support by employers and the health and safety and workers' compensation community for the CHSWC statewide Worker Occupational Safety and Health Training and Education Program (WOSHTEP), one of CHSWC's most proactive efforts. WOSHTEP trains and educates workers, including young workers, in a wide range of workplaces and in agriculture on proven injury and illness prevention measures.
- Collaborate with the DIR Communications unit to promote and extend WOSHTEP's reach to ensure effective outreach and to promote WOSHTEP messages and services, and its three regional UC resource centers.
- Support ongoing partnerships and continued development of in person and online training and outreach materials designed to teach the importance of implementing the required written Injury and Illness Prevention Plan.
- Collaborate with the health and safety and WC community to extend the reach of CHSWC's School Action for Safety and Health (SASH) Program, a model program to help schools statewide improve their injury and illness prevention practices for K–12 school employees, including teachers.
- Collaborate with the health and safety and WC community to develop materials and training to address the stressors faced by school employees, particularly those caused by the impact of the COVID-19

²⁹ Office of Self-Insurance Plans, Proposed Regulations, https://www.dir.ca.gov/osip/rulemaking/osip_rulemaking_proposed.html.

³⁰ CDPH News Releases for daily COVID-19 updates, <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Immunization/ncov2019.aspx>.

³¹ LWDA, Coronavirus 2019 (COVID-19) Resources for Employers and Workers, <https://www.labor.ca.gov/coronavirus2019/>.

CHSWC RECOMMENDATIONS

pandemic. In particular, messages and training that help school districts balance work and family and development of individual resilience and relaxation skills should be prioritized.

- Support efforts to develop and create a California Occupational Research Agenda specific to the needs of California’s employers and workforce to prevent workplace injuries and illnesses, while integrating the contribution made by the National Occupational Research Agenda (NORA) at the National Institute for Occupational Safety and Health (NIOSH).
- Support efforts, including total worker health, to develop training and safety strategies—including adaptive technologies—that help to prevent musculoskeletal disorders.
- Facilitate the outreach of a model training curriculum for occupational safety and health training for child-care workers and employers.
- Collaborate with the Office of the Director and the Labor Occupational Health Program to promote the [training program](#)³² for janitorial services industry employees and employers to prevent sexual harassment and sexual assault-related workplace injuries and illnesses.
- Monitor the implementation of AB 1978, which requires every janitorial business in California to register annually with the DLSE, and report on the number of registered janitorial providers in the DLSE License Registration database and the number of penalties for unregistered janitorial providers for the CHSWC Annual Report.
- Facilitate the development and outreach of materials related to protecting workers from hazardous air quality during wildfires.

³² DIR, Sexual Harassment Prevention Training for Janitorial Services Employers, <https://www.dir.ca.gov/dlse/Janitorial-Training.html>.

SPECIAL REPORT: 2020 LEGISLATION AND REGULATIONS ON HEALTH AND SAFETY AND WORKERS' COMPENSATION

HEALTH and SAFETY AND WORKERS' COMPENSATION LEGISLATION

The brief summaries of legislation below provide an overview of the bills' intent and do not purport to provide an official description of the legislation or go into the complete details of the measures.

Copies of the legislation referenced in this digest, along with information, such as legislative committee analyses, are available on the Legislative Counsel of California website at www.leginfo.legislature.ca.gov. The chaptered bills took effect January 1, 2020, unless they contain an urgency clause, in which case they took effect immediately upon the Governor's signature. Alternatively, some measures specify their effective date.

To research legislation enacted into law or vetoed in recent years, see past annual reports at: <http://www.dir.ca.gov/chswc/AnnualReportpage1.html>.

HIGHLIGHTS OF 2019 and 2020 LEGISLATION SPECIFIC TO THE COMMISSION

SB 1159 (2020)

In addition to the presumptions discussed below, this bill would require the Commission on Health and Safety and Workers' Compensation to conduct a study of the impacts of COVID-19 and the specific presumptions created by this bill and report its findings to the Legislature and the Governor. SB 1159 provides that a preliminary report from CHSWC is due to the Legislature and the Governor by December 31, 2021, and the final report must be delivered by April 30, 2022.

SB 880 (2019)

SB 880, adopted as LC 4651, went into effect in 2019. The law, until January 1, 2023, authorizes an employer, with the written consent of the employee, to deposit disability indemnity payments for the employee in a prepaid card account that meets specified requirements, including allowing the employee reasonable access to in-network automatic teller machines. The bill requires employers to provide all necessary aggregated data on their prepaid account programs to CHSWC upon request, and require the Commission to issue a report on or before December 1, 2022, to the Legislature regarding payments made to those prepaid card accounts, as specified. The deadline of 2023 makes this a pilot program. In workers' compensation terminology, "employer" often means insurer unless the employer is self-insured, so it is the insurer who sets up the payment cards for the injured worker.

Note that the prepaid card must comply with the federal Electronic Fund Transfer Act (EFTA) card accounts used for public assistance, such as unemployment insurance benefits. In California, the Employment Development Department (EDD) uses the EDD Debit Card from the Bank of America to deliver benefit payments for all EDD benefit programs including Disability Insurance (DI), Paid Family Leave (PFL), and Unemployment Insurance (UI). The EDD Debit Card is valid for three years from the date of issue. (See https://edd.ca.gov/About_EDD/The_EDD_Debit_Card.htm.)

The mandated CHSWC report about these disability indemnity payments should include, but is not limited to, the following:

- (i) The number of employees who elected to receive their disability indemnity payments in a prepaid card account.
- (ii) The cash value of the disability benefits sent to prepaid card accounts.

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(iii) The number of employees who opted to change the method of payment from a prepaid card account to either a written instrument or electronic deposit.

(E) The report issued pursuant to subparagraph (D) shall comply with Section 9795 of the Government Code.

The Commission plans to examine the adoption of this prepaid card account system by employers (i.e., insurers) and to meet the deadline for the mandated December 2022 report to the Legislature.

SB 537 (2019)

SB 537, adopted as LC section 127.1, 138.7, et al., effective January 1, 2020, requires the administrative director of DWC, with input from CHSWC, to issue a report to the Legislature, on or before January 1, 2023, comparing potential payment alternatives for providers to the official medical fee schedule, including, but not limited to, capitation, bundled payments, quality incentives, and value-based payment systems. The report should address advantages and disadvantages of each alternative payment system to the official medical fee schedule and make recommendations to the Legislature on alternative payment pilot programs.

AB 1400 (2019)

AB 1400, adds LC section 77.7 effective January 1, 2020, requires CHSWC, in partnership with the County of Los Angeles and relevant labor organizations, to submit a study on the risk of exposure to carcinogenic materials and the incidence of occupational cancer in mechanics who repair and clean firefighting vehicles. The study must use baseline and historical data collection methods.

HEALTH AND SAFETY

Health and Safety Legislation

AB 685, Assembly Member Reyes.

COVID-19: imminent hazard to employees: exposure: notification: serious.

Amends, repeals, and adds Sections 6325 and 6432 of, and adds and repeals Section 6409.6 of, the Labor Code, relating to occupational safety.

Status: Enrolled on September 8, 2020 and chaptered on September 17, 2020.

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB685

Summary: (1) Existing law, the California Occupational Safety and Health Act of 1973 (OSHA), requires the Division of Occupational Safety and Health, when, in its opinion, a place of employment, machine, device, apparatus, or equipment or any part thereof is in a dangerous condition, is not properly guarded, or is dangerously placed so as to constitute an imminent hazard to employees, to prohibit entry or use, as applicable, and to attach a conspicuous notice of that condition, as specified. OSHA requires that this prohibition be limited to the immediate area in which the imminent hazard exists. OSHA prohibits this notice from being removed except by an authorized representative of the division under certain conditions. OSHA makes a violation of this provision regarding dangerous conditions a crime.

This bill would authorize the division, when, in its opinion, a place of employment, operation, or process, or any part thereof, exposes workers to the risk of infection with severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2, also known as COVID-19), so as to constitute an imminent hazard to employees, to prohibit the performance of that operation or process, or entry into that place of employment. The bill would require the division to provide a notice thereof to the employer, to be posted in a conspicuous place at the place of employment. The bill would require such a prohibition to be limited to the immediate area in which the imminent hazard exists, as specified. The bill would require such a prohibition to be issued in a manner so as not to materially interrupt the performance of critical governmental functions essential to ensuring public health and safety functions or the delivery of electrical power or water. By expanding the scope of a crime, the bill would impose a state-mandated local program.

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This COVID-19 imminent hazard provision would be repealed on January 1, 2023.

(2) Existing law requires an employer to file a report of every occupational injury or occupational illness, as defined, of each employee that results in lost time beyond the date of the injury or illness, and that requires medical treatment beyond first aid, with the Department of Industrial Relations, on a form prescribed by the department. Existing law requires an employer to immediately report a serious occupational injury, illness, or death to the division by telephone or email, as specified.

This bill would require a public or private employer or representative of the employer, except as specified, that receives a notice of potential exposure to COVID-19 to provide specified notifications to its employees within one business day of the notice of potential exposure. The bill would require the employer to provide prescribed notice to all employees, and the employers of subcontracted employees, who were on the premises at the same worksite as a qualifying individual, as defined, within the infectious period, as defined, that they may have been exposed to COVID-19. The bill would require notice to the exclusive representative, if any, of notified employees. The bill would require an employer to provide those employees and any exclusive representative with certain information regarding COVID-19-related benefits and options. The bill would require an employer to notify all employees, the employers of subcontracted employees, and any exclusive representative on the disinfection and safety plan that the employer plans to implement and complete per the guidelines of the federal Centers for Disease Control. The bill would require an employer to maintain records of notifications for at least 3 years. The bill would provide for a specified civil penalty for an employer that violates the notification requirements. The bill would define additional terms for its purposes.

The bill would require an employer, if the employer or representative of the employer is notified of the number of cases that meet the definition of a COVID-19 outbreak, as defined, within 48 hours, to report prescribed information to the local public health agency in the jurisdiction of the worksite. The bill would require an employer that has an outbreak to continue to give notice to the local health department of any subsequent laboratory-confirmed cases of COVID-19 at the worksite. The bill would exempt a health facility, as defined, from this reporting requirement.

The bill would require the State Department of Public Health to make specified information on outbreaks publicly available on its internet website, as specified. The bill would require local public health departments and the division to provide a link to this page on its internet websites. By requiring additional duties from local public health departments, this bill would impose a state-mandated local program.

(3) OSHA creates a rebuttable presumption that a "serious violation" exists in a place of employment if the division demonstrates that there is a realistic possibility that death or serious physical harm could result from the actual hazard created by the violation. OSHA requires the division, before issuing a citation alleging that a violation is serious, to make a reasonable attempt to determine and consider certain facts. This OSHA requirement is satisfied if the division sends, at least 15 days before issuing such a citation, a standardized form containing descriptions of the alleged violation the division intends to cite as serious and clearly soliciting the prescribed information. OSHA permits an employer to rebut the presumption, as prescribed, and establishes inferences that may be drawn at hearing with regard to information provided by an employer in rebuttal.

This bill would exempt a citation alleging a serious violation relating to SARS-CoV-2 from the precitation (sic) standardized form provision and the rebuttal at hearing provision.

This exemption would be repealed on January 1, 2023.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

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This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

- (5) Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

AB 2043, Assembly Member Robert Rivas.

Occupational safety and health: agricultural employers and employees: COVID-19 response. Adds and repeals Section 6725 of the Labor Code, relating to employment, and declaring the urgency thereof, and takes effect immediately.

Status: Enrolled September 10, 2020 and chaptered on September 28, 2020.

https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB2043

Summary: Existing law, the California Occupational Safety and Health Act of 1973, provides the Division of Occupational Safety and Health within the Department of Industrial Relations with the power, jurisdiction, and supervision over all employment and places of employment necessary to enforce and administer all occupational health and safety laws and standards and to protect employees. Under the act, the Occupational Safety and Health Standards Board within the division is authorized to adopt, amend, or repeal occupational safety and health standards and orders.

This bill would require the division to disseminate, in both English and Spanish, information on best practices for COVID-19 infection prevention, as specified, consistent with the Guidance Documents available on the division's internet website, including, but not limited to, the Guidance Document entitled, "Cal/OSHA Safety and Health Guidance: COVID-19 Infection Prevention for Agricultural Employers and Employees." The bill would also require the division to work collaboratively with community organizations and organizations representing employees and employers to conduct a statewide outreach campaign, targeted at agricultural employees, to assist with the statewide dissemination of the best practices information and to educate employees on any COVID-19-related employment benefits to which they are entitled, including access to paid sick leave and workers' compensation. The bill would require the campaign to include public service announcements on local Spanish radio stations and the distribution of workplace signs. The bill would require the division to routinely compile and report, via its internet website, information relating to the subject matter, findings, and results of any investigation by the division relating to practices or conditions prescribed in the Guidance Documents or a COVID-19 illness or injury at a workplace of agricultural employees, as specified. The bill would repeal these provisions when the state of emergency has been terminated by proclamation of the Governor or by concurrent resolution of the Legislature, as specified. The bill would also direct the division to enforce the Guidance Documents to the extent any specific Guidance Document applies to any specific workplace and to the extent the division has existing regulatory authority.

This bill would declare that it is to take effect immediately as an urgency statute.

AB 2210, Assembly Member Aguiar-Curry.

Contractors: violations: disciplinary actions.

Amends Sections 7109.5 and 7110.5 of the Business and Professions Code, relating to professions and vocations.

Status: Enrolled September 4, 2020 and chaptered on September 24, 2020.

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB2210

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Summary: Existing law, the Contractors' State License Law, provides for the licensure and regulation of contractors. Existing law creates the Contractors' State License Board, within the Department of Consumer Affairs and authorizes the board to impose discipline on contractors for violations of laws and to impose, among other penalties, civil penalties. Existing law authorizes the board to appoint a registrar as the executive officer and secretary to carry out all of the administrative duties of the board. Existing law provides that a cause for disciplinary action against a contractor arises for violations of specified safety provisions that result in death or serious injury to a person.

This bill would also authorize disciplinary action against a contractor for violations of specified regulations regarding tree work, including maintenance or removal, without regard to whether death or serious injury to an employee resulted.

Existing law requires the registrar to initiate disciplinary action against a contractor within 180 days of receipt of notification from the Labor Commissioner that a contractor has made a willful or deliberate violation of the Labor Code.

This bill would also require the registrar to initiate disciplinary action against a contractor upon transmission to the Contractors' State License Board of copies of any citations or other actions for willful or deliberate violations of specified tree trimming regulations. The bill would also extend the time for the registrar to bring the disciplinary action from 180 days to 18 months.

AB 2537, Assembly Member Rodriguez.

Personal protective equipment: health care employees.

Adds Section 6403.3 to the Labor Code, relating to workplace safety.

Status: Enrolled September 11, 2020 and chaptered on September 29, 2020.

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=20192_0200AB2537

Summary: Existing law requires an employer to furnish employment and a place of employment that is safe and healthful for the employees and to establish, implement, and maintain an effective injury prevention program, as prescribed. Regulations enacted by the Department of Industrial Relations regulate the nature and use personal protective equipment and regulate practices in health care facilities connected with aerosol transmissible diseases.

This bill would require public and private employers of workers in a general acute care hospital, as defined, to supply those employees who provide direct patient care or provide services that directly support personal care with the personal protective equipment necessary to comply with the regulations described above, as specified. The bill would also require an employer to ensure that the employees use the personal protective equipment supplied to them. The bill would further require that an employer in this context, beginning April 1, 2021, maintain a supply of specified equipment in an amount equal to 3 months of normal consumption. The bill would require an employer to provide an inventory of its stockpile and a copy of its written procedures, as specified, to the Division of Occupational Safety and Health upon request. The bill would authorize the assessment of a civil penalty of up to \$25,000 for each violation to maintain the required stockpile, except in certain circumstances. The bill would make a statement of legislative findings. The bill would require an employer who is obligated to maintain an equipment stockpile and who controls a facility or setting in which another employer provides health care services to maintain the required equipment for the other employer.

The bill would require a general acute care hospital, on or before January 15, 2021, to be prepared to report to the Department of Industrial Relations, under penalty of perjury, its highest 7-day consecutive daily average consumption of personal protective equipment during the 2019 calendar year and would exempt general acute care hospitals under the jurisdiction of the State Department of State Hospitals from this requirement, as specified. The bill would require an employer to establish and implement effective written procedures for periodically determining the quantity and types of equipment used in its normal consumption. The bill would also authorize the division to enforce these provisions through the issuance of citations, as specified. By expanding the crime of perjury, the bill would impose a state-mandated local program.

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The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

AB 2658, Assembly Member Burke.

Occupational safety and health: hazards.

Amends Sections 6310, 6311, and 6399.7 of, and adds Section 6311.5 to, the Labor Code, relating to occupational safety and health.

Status: Enrolled September 15, 2020 and chaptered on September 29, 2020.

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=20192_0200AB2658

Summary: Existing law prohibits an employee from being laid-off or discharged for refusing to perform work in violation of prescribed safety standards, where the violation would create a real and apparent hazard to the employee or fellow employees. Existing law creates a cause of action for wages for the time an employee laid-off or discharged for such a refusal is without work as a result. Existing law defines the term "employment" for these and other purposes to exclude household domestic service.

This bill, notwithstanding that definition or any other provision, for purposes of the hazard provisions, would define the term "employee" to include a domestic work employee, except for a person who performs household domestic service that is publicly funded, including publicly funded household domestic service provided to a recipient, client, or beneficiary with a share of cost in that service.

The bill would make it a crime for a person, after receiving notice to evacuate or leave, to willfully and knowingly direct an employee to remain in, or enter, an area closed under prescribed provisions of law due to a menace to the public health or safety, including an employee employed for household domestic work, except as specified. For these purposes, the bill would state that the term employee includes a person who performs household domestic service that is publicly funded. The bill would also make conforming changes.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

SB 275, Senator Pan.

Health Care and Essential Workers: personal protective equipment.

Adds Section 131021 to the Health and Safety Code, and to add Section 6403.1 to the Labor Code, relating to personal protective equipment.

Status: Enrolled September 10, 2020 and chaptered on September 29, 2020.

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200SB275

Summary: Existing law establishes the State Department of Public Health to implement various programs throughout the state relating to public health, including licensing and regulating health facilities and control of infectious diseases.

This bill would require the State Department of Public Health and the Office of Emergency Services, in coordination with other state agencies, to, upon appropriation and as necessary, establish a personal protective equipment (PPE) stockpile. The bill would require the department to establish guidelines for the procurement, management, and distribution of PPE, taking into account, among other things, the amount of each type of PPE that would be required for all health care workers and essential workers in the state during a 90-day pandemic or other health emergency.

Existing law requires every employer to furnish and use safety devices and safeguards, and to adopt and use practices that are reasonably adequate to render the employment and place of employment safe and healthful.

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The bill would, commencing January 1, 2023, or one year after the adoption of specified regulations, whichever is later, require health care employers, including clinics, health facilities, and home health agencies, to maintain an inventory of new, unexpired PPE for use in the event of a declared state of emergency and would require the inventory to be at least sufficient for 45 days of surge consumption, as determined by regulation, as specified. The bill would assess a civil penalty on a health care employer who violates that requirement, as specified. The bill would authorize the Department of Industrial Relations to exempt a health care employer from the above-required civil penalties if the department determines that supply chain limitations make meeting the mandated level of supplies for a specific type of PPE infeasible and the health care employer has made a reasonable attempt to obtain PPE, or if the health care employer has made a showing that they are not in possession of the mandated level of supplies due to reasons beyond their control, as specified.

The bill would require the Department of Industrial Relations to adopt regulations, in consultation with the State Department of Public Health, setting forth requirements for determining 45-day surge capacity levels, as specified, for a health care employer's PPE inventory.

The bill would also establish the Personal Protective Equipment Advisory Committee, consisting of representatives from an association representing skilled nursing facilities, a statewide association representing physicians, and labor organizations that represent health care workers, among other groups, to make recommendations for the development of guidelines for the procurement, management, and distribution of PPE, as specified.

SB 1371, Committee on Judiciary.

Maintenance of the codes. Amends Sections 1206, 1348.95, 1358.92, 1368.015, 1385.045, 1502.35, 1596.86, 1797.223, 25160, 25205.15, 39037.5, 39960, 40100.6.5, 50406, 50515.02, 50675.14, 50952, 53594, 116378, 116765, 116770, 120372, 120372.05, and 124241 of the Health and Safety Code, among many other codes.

Status: Enrolled September 10, 2020 and chaptered on September 30, 2020.

https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB1371

Existing law directs the Legislative Counsel to advise the Legislature from time to time as to legislation necessary to maintain the codes.

This bill makes nonsubstantive changes in various provisions of law to effectuate the recommendations made by the Legislative Counsel to the Legislature.

Other Health-Related Legislation in the Labor Code.

AB 3175, Assembly Member Levine.

Entertainment industry: age-eligible minors: (sexual harassment) training.

Amends Section 1700.52 of the Labor Code, relating to employment, and declaring the urgency thereof, to take effect immediately.

Status: Enrolled September 11, 2020 and chaptered on September 25, 2020.

https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB3175

Summary: Prior to the issuance of an entertainment work permit to a minor, existing law requires the parent or legal guardian of the minor and the age-eligible minors to receive and complete training in sexual harassment prevention, retaliation, and reporting resources. Existing law requires the training to be in a language understood by that person.

Existing law requires an employer having 5 or more employees to provide at least 2 hours of classroom or other effective interactive training and education regarding sexual harassment to all supervisory employees and at least one hour of classroom or other effective interactive training and education regarding sexual

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harassment to all nonsupervisory employees in California, as specified. For purposes of this requirement, existing law directs the Department of Fair Employment and Housing to develop or obtain online training courses and to make those courses available on the department's internet website.

This bill would instead require that the parent or legal guardian ensure that sexual harassment training, as made available online by the department, be completed by the age-eligible minor, as defined, accompanied by their parent or legal guardian. The bill would require that the parent or legal guardian certify to the Labor Commissioner that the training has been completed, as specified.

The bill would instead require that the training provided under these provisions be provided in a language that can be understood by that person, whenever reasonably possible.

Because this bill would expand the crime of perjury, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would declare that it is to take effect immediately as an urgency statute.

HEALTH AND SAFETY AND WORKERS' COMPENSATION REGULATIONS

Health and Safety Regulations

The regulatory activities of the Occupational Safety and Health Standards Board (OSHSB) and Division of Occupational Safety and Health (DOSH) regulations are available online as noted below. Formal rulemaking is preceded by a notice, the release of a draft rule, and the announcement of a public hearing. (DOSH and Cal/OSHA references are used interchangeably, and DOSH and Cal/OSHA enforce the OSHSB safety and health standards.)

Occupational Safety and Health Standards Board (OSHSB) approved standards are at:

<http://www.dir.ca.gov/OSHSB/apprvd.html>

Proposed OSHSB standards and rulemaking updates are at:

<http://www.dir.ca.gov/OSHSB/proposedregulations.html>

Approved Division of Occupational Safety and Health (DOSH) regulations are at:

http://www.dir.ca.gov/dosh/rulemaking/dosh_rulemaking_approved.html

Proposed Division of Occupational Safety and Health (DOSH) regulations are at:

https://www.dir.ca.gov/dosh/rulemaking/dosh_rulemaking_proposed.html

Regulations in Title 8 of the California Code of Regulations (CCR) are at:

<http://www.dir.ca.gov/samples/search/query.htm>.

Occupational Safety & Health Standards Board (OSHSB) Title 8 index at:

<http://www.dir.ca.gov/title8/index/t8index.html>

Under CCR, Title 8, Chapter 3.2, DOSH promulgates regulations for the administration of the safety and health inspection program, such as posting, certification, and registration requirements. Under CCR, Title 8, Chapter 4, OSHSB promulgates health and safety orders organized by industry, process, and equipment in subchapters, which are then enforced by DOSH (Cal/OSHA).

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WORKERS' COMPENSATION

WORKERS' COMPENSATION

Workers' Compensation Legislation

SB 1159, Senator Hill.

Workers' compensation: COVID-19: critical workers (presumption) and others (outbreaks) Adds Section 77.8 to, and adds and repeals Sections 3212.86, 3212.87, and 3212.88 of, the Labor Code, relating to workers' compensation, and declaring the urgency thereof, to take effect immediately.

Status: Enrolled September 8, 2020 and chaptered on September 17, 2020.

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=20192_0200SB1159

Summary: Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, to compensate an employee, as defined, for injuries sustained in the course of employment. Existing law creates a disputable presumption that specified injuries sustained in the course of employment of a specified member of law enforcement or a specified first responder arose out of and in the course of the employment.

Existing law governs the procedures for filing a claim for workers' compensation, including filing a claim form, and provides that an injury is presumed compensable if liability is not rejected within 90 days after the claim form is filed, as specified.

Existing case law provides for how certain presumptions may be rebutted.

This bill would define "injury" for an employee to include illness or death resulting from the 2019 novel coronavirus disease (COVID-19) under specified circumstances, until January 1, 2023. The bill would create a disputable presumption, as specified, that the injury arose out of and in the course of the employment and is compensable, for specified dates of injury. The bill would limit the applicability of the presumption under certain circumstances. The bill would require an employee to exhaust their paid sick leave benefits and meet specified certification requirements before receiving any temporary disability benefits or, for police officers, firefighters, and other specified employees, a leave of absence. The bill would also make a claim relating to a COVID-19 illness presumptively compensable, as described above, after 30 days or 45 days, rather than 90 days. Until January 1, 2023, the bill would allow for a presumption of injury for all employees whose fellow employees at their place of employment experience specified levels of positive testing, and whose employer has 5 or more employees.

This bill would require the Commission on Health and Safety and Workers' Compensation to conduct a study of the impacts of COVID-19 and the specific presumptions created by this bill and report its findings to the Legislature and the Governor, as specified.

This bill would declare that it is to take effect immediately as an urgency statute.

AB 2257, Assembly Member Gonzalez.

Worker classification: employees and independent contractors: occupations: professional services.

Adds Article 1.5 (commencing with Section 2775) to Chapter 2 of Division 3 of, and repeals Section 2750.3 of, the Labor Code, and amends Sections 17020.12 and 23045.6 of, and adds Sections 18406, 21003.5, and 61001 to, the Revenue and Taxation Code, relating to employment, and declaring the urgency thereof, to take effect immediately.

Status: Enrolled September 1, 2020 and chaptered on September 4, 2020.

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=20192020_0AB2257

Summary: Existing law requires a 3-part test, commonly known as the "ABC" test, to determine if workers are employees or independent contractors for purposes of the Labor Code, the Unemployment Insurance Code, and the wage orders of the Industrial Welfare Commission. Under the ABC test, a person providing

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labor or services for remuneration is considered an employee rather than an independent contractor unless the hiring entity demonstrates that the person is free from the control and direction of the hiring entity in connection with the performance of the work, the person performs work that is outside the usual course of the hiring entity's business, and the person is customarily engaged in an independently established trade, occupation, or business. Existing law charges the Labor Commissioner with the enforcement of labor laws, including worker classification.

Existing law exempts specified occupations and business relationships from the application of the ABC test described above. Existing law, instead, provides that these exempt relationships are governed by the multifactor test previously adopted in the case of *S. G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341. Existing exemptions include persons providing professional services under specified circumstances, including certain services provided by still photographers, photojournalists, freelance writers, editors, and newspaper cartoonists.

This bill would revise and recast these provisions. The bill would additionally exempt certain occupations in connection with creating, marketing, promoting, or distributing sound recordings or musical compositions. The bill would also exempt a musician or musical group for the purpose of a single-engagement live performance event, unless certain conditions apply, and would define related terms. The bill would also exempt an individual performance artist presenting material that is their original work and creative in character and the result of which depends primarily on the individual's invention, imagination, or talent, if certain conditions are satisfied.

This bill would delete the existing professional services exemptions for services provided by still photographers, photojournalists, freelance writers, editors, and newspaper cartoonists. The bill would, instead, establish an exemption for services provided by a still photographer, photojournalist, videographer, or photo editor, as defined, who works under a written contract that specifies certain terms, subject to prescribed restrictions. The bill would establish an exemption for services provided to a digital content aggregator, as defined, by a still photographer, photojournalist, videographer, or photo editor. The bill would establish an exemption for services provided by a fine artist, freelance writer, translator, editor, content contributor, advisor, narrator, cartographer, producer, copy editor, illustrator, or newspaper cartoonist who works under a written contract that specifies certain terms, subject to prescribed restrictions.

This bill would create additional exemptions for various professions and occupations. In this regard, the bill would exempt from the ABC test people who provide underwriting inspections and other services for the insurance industry, a manufactured housing salesperson, subject to certain obligations, people engaged by an international exchange visitor program, as specified, consulting services, animal services, and competition judges with specialized skills, as specified. The bill would also create exceptions for licensed landscape architects, specialized performers teaching master classes, registered professional foresters, real estate appraisers and home inspectors, and feedback aggregators. The bill would revise the conditions pursuant to which business service providers providing services pursuant to contract to another business are exempt. The bill would revise the criteria pursuant to which referral agencies and service providers providing services to clients through referral agencies are exempt and would revise applicable definitions. The bill would also create an exemption for business-to-business relationships between 2 or more sole proprietors, as specified. The bill would provide that a hiring entity need only satisfy all of the conditions of one of the exemption provisions to qualify for the exemption from the ABC Test.

Existing law authorizes an action for injunctive relief to prevent misclassification of employees, to be prosecuted against a putative employer by the Attorney General or a city attorney.

This bill would also authorize a district attorney to prosecute an action for injunctive relief.

Existing provisions of tax law define "employee" for purposes of those provisions.

This bill would make conforming changes to tax law regarding the determination of the status of a worker as either an employee or an independent contractor per the criteria described above.

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This bill would declare that it is to take effect immediately as an urgency statute.

Workers' Compensation Regulations

The regulatory activities of the Division of Workers' Compensation (DWC) to implement the provisions of the 2012 workers' compensation reform legislation can be found online. Formal rulemaking is often preceded by the release of a draft rule and the opening of an online forum for interested parties to post comments. Older regulations can be found on the DWC rulemaking page at:

https://www.dir.ca.gov/dwc/Laws_Regulations.htm.

Information on preliminary rulemaking activities is available at:

<http://www.dir.ca.gov/Wcjudicial.htm>.

The latest formal rulemaking updates are available at:

www.dir.ca.gov/DWC/dwcrulemaking.html.

DWC Approved Regulations 2020 are available at:

https://www.dir.ca.gov/dwc/rulemaking/dwc_rulemaking_approved.html

DWC Proposed Regulations 2020 are available at:

http://www.dir.ca.gov/dwc/rulemaking/dwc_rulemaking_proposed.html.

Information on Workers' Compensation Appeals Board (WCAB) preliminary rulemaking activities:

<https://www.dir.ca.gov/dwc/DWCWCABForum/1.asp#WCAB/>.

Regulations in Title 8 of the California Code of Regulations (CCR) are at:

<https://www.dir.ca.gov/samples/search/querydwc.htm>.

Administration of Self-Insurance Plans Regulations

Any regulatory activities of the Office of Self-Insurance Plans (OSIP) are discussed on the pages listed below.

Proposed OSIP regulations are at:

https://www.dir.ca.gov/osip/rulemaking/osip_rulemaking_proposed.html.

Approved OSIP regulations are at:

http://www.dir.ca.gov/osip/rulemaking/osip_rulemaking_approved.html.

Regulations in Title 8 of the California Code of Regulations (CCR) are at:

<https://www.dir.ca.gov/samples/search/querysip.htm>.

SYSTEM COSTS AND BENEFITS

This section contains estimated California workers' compensation (WC) costs for 2019. The information reflected in this report is through December 31, 2019, and, as a result, does not reflect the impact of the COVID-19 pandemic, except for the parts where the post-2019 developments are appropriate to include and the information is available from well-established sources. The disruptive impact of COVID-19 on California's WC system described in the Recommendations section of this report (see page 9) includes unpredictable changes in the environment where the main components of the WC costs emerge. The COVID-19 pandemic is a rapidly evolving crisis. Both the stay-at-home executive order and the rebuttable presumption of compensability law are periodically extended and modified affecting the analysis, assumptions, and estimates essential for administration of WC programs.

The California WC system covers an estimated 16,775,000 employees³³ working for over 1,040,539 employers³⁴ in the state. These employees and employers generated a gross domestic product of \$3,137,469,000,000 (\$3.1 trillion) in 2019.³⁵ A total of 680,180 occupational injuries and illnesses were reported for 2019,³⁶ ranging from minor medical treatment cases to catastrophic injuries and deaths. The total paid cost to employers for workers' compensation in 2019 was an estimated \$21.4 billion. (See Tables 4 and 5 in the box "Systemwide Cost: Paid Dollars for 2019 Calendar Year" on page 31.)

Employers range from small businesses with one or two employees to multinational corporations doing business in the state and the state government itself. Every employer in California must secure its liability for payment of compensation, either by obtaining insurance from an insurer licensed by the Department of Insurance (CDI) or by obtaining a certificate of consent to self-insure from the Department of Industrial Relations (DIR). The only lawful exception is the state, which is legally uninsured.

³³ NASI Report: Workers' Compensation: Benefits, Costs, and Coverage, 2017, October 2019.

<https://www.nasi.org/sites/default/files/nasiRptWkrsComp2017%20Final.pdf>.

³⁴ CHSWC estimates are based on an Employment Development Department report, as above, showing 1,622,756 businesses in 2019. Of these, 1,164,434 were businesses with 0 to 4 employees. For this estimate, half of those businesses are assumed to have no employees subject to workers' compensation. $1,622,756 - (1,164,434/2) = 1,040,539$.

https://www.labormarketinfo.edd.ca.gov/LMID/Size_of_Business_Data_for_CA.html.

³⁵ California Department of Finance, Economic Research Unit,

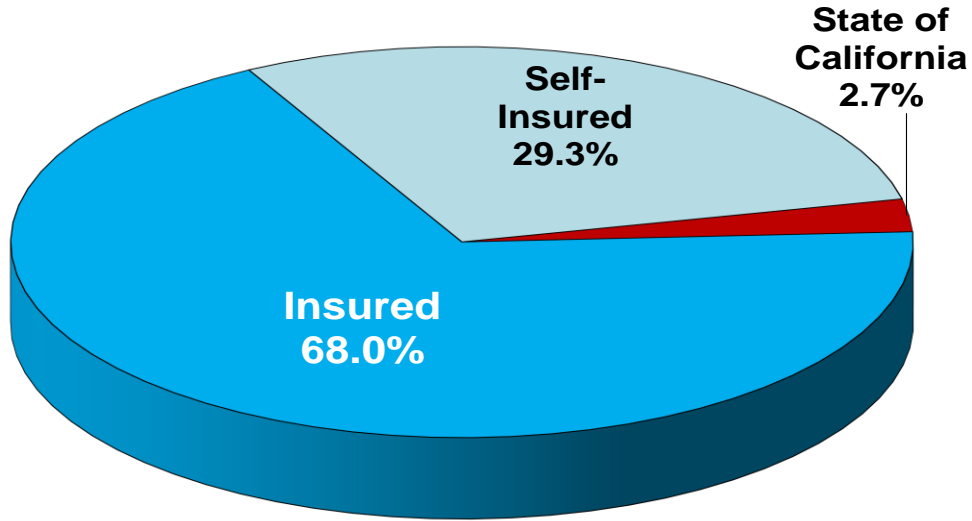
http://www.dof.ca.gov/Forecasting/Economics/Indicators/Gross_State_Product/.

³⁶ The latest year for which Workers' Compensation Information System (WCIS) reports are reasonably complete. Data are from the Division of Workers' Compensation (DWC) report from the WCIS database, "FROI and SROI Data Summary, by Year of Injury," April 2020, https://www.dir.ca.gov/dwc/wcis/WCIS_tables/AggregateFROISROIData/AggregateFROISROIData.html. Due to delayed reporting, the number of claims reported to WCIS for a given year may grow by more than 5 percent between the second and the fourth years after the end of the accident year. Boden, Leslie I. and Al Ozonoff, "Reporting Workers' Compensation Injuries in California: How Many are Missed?" (2008), CHSWC Report.

SYSTEM COSTS AND BENEFITS

According to Figure 1, based on the claim counts reported to the Workers' Compensation Information System (WCIS), 68.0 percent of injuries occur to employees of insured employers, 29.3 percent of injuries occur to employees of self-insured employers, and 2.7 percent of injuries occur to employees of the State of California.³⁷ (For calculations based on claim counts and paid loss data, see Tables 1-3 in the box "Methods of Estimating the Workers' Compensation System Size" on pages 29-30.)

Figure 1: Market Shares Based on Claim Counts Reported to WCIS (2017-2019 average)



Data Source: DWC - WCIS

³⁷ WCIS, Table 4, "Workers' Compensation Claims by Market Share," April 2020, https://www.dir.ca.gov/dwc/wcis/WCIS_tables/Table-4/WCIS_Reports-Table-4.html.

SYSTEM COSTS AND BENEFITS

Methods of Estimating the Workers' Compensation System Size

The overall system size for 2019 is estimated at 1.47 times the insured sector size. This multiplier is based on claims counts in the Workers' Compensation Information System (WCIS).¹ CHSWC is using a three-year moving average of WCIS claim counts available since 2000 because it blunts the effect of one-time aberrations. The annually revised estimate of the multiplier is based on updated claims data provided by WCIS as well as updated paid loss amounts from the Workers' Compensation Insurance Rating Bureau (WCIRB), the Office of Self-Insurance Plans (OSIP), and the California Department of Human Resources (CDHR) in order to examine and substantiate its accuracy.

This systemwide multiplier, based on a three-year moving average of workers' compensation claim counts, could be used in a normal downward and upward economic cycle. It could not be applied when estimating the systemwide WC costs for 2020 because of the COVID-19 pandemic's highly disruptive nature.

Claim Counts-Based Method

The number of claims for all sectors increased by 10 percent from 618,014 claims in 2013 to 680,178 claims in 2019. The market share of the insured sector ranged from a three-year moving average of 65.4 in 2013-2015 to 68.0 percent in 2017-2019. The market share of the self-insured sector decreased from the average of 31.3 percent in 2013-2015 to 29.3 percent in 2017-2019. The three-year moving average share of the State of California steadily decreased from 3.3 percent in 2013-2015 to the average of 2.7 percent in 2017-2019. In 2019, the three-year average market shares based on claims counts were 68.0 percent insured, 29.3 percent self-insured, and 2.7 percent state. Using these values, a multiplier for extending the insured sector information to the overall system can be calculated as $100\%/68.0\% = 1.47$, slightly lower than 1.49 in 2018.

Table 1: Workers' Compensation Claims (in 000s) by Market Share

Year	Insured		Self-Insured		State of California	
	Number	Market Share (%)	Number	Market Share (%)	Number	Market Share (%)
2017	462.6	66.7	212.1	30.6	19.3	2.8
2018	477.1	68.7	198.6	28.6	18.7	2.7
2019	467.5	68.7	194.1	28.5	18.5	2.7
Average for 3 years		68.0		29.3		2.7

Source: WCIS.

¹ WCIS Database as of April, 2020, https://www.dir.ca.gov/dwc/wcis/WCIS_tables/Table-4/WCIS_Reports-Table-4.html.

(continued on the next page)

SYSTEM COSTS AND BENEFITS

(continued)

Methods of Estimating the Workers' Compensation System Size

Based on the convergence of market share measurements from two independent methods, the data demonstrate that the insured market share is 66-68 percent of the workers' compensation system. Depending on the method of measurement, the self-insured sector is 29-31 percent and the state sector is 3 or 4 percent.

Paid Loss Method

Paid loss data indicate that 66.0 percent of the market is insured, 30.0 percent is self-insured, and 4.0 percent is the state. These percentages are similar when using 2019 data for the insured and private self-insured sectors and either 2018-2019 or 2019-2020 data for the State and public self-insured sector, as shown in Tables 2 and 3. The multiplier for extending insured sector information to the overall system can be calculated as $100\%/66.0\% = 1.515$ (is 0.045 higher than estimated 1.47 based on claim counts for which 2019 data was available as of August 2020).

Table 2: Percent Distribution of Workers' Compensation Paid Costs by Sectors (excluding Administrative Expenses) using public self-insured and state data for FY 2019-2020

	Indemnity	Medical	Subtotal	% in Total
a. Private Self-Insured ¹ (2019)	\$641,844,631	\$725,360,934		
b. Public Self-Insured ² (2019/2020)	\$1,394,483,000	\$1,087,617,896		
SELF-INSURANCE PLAN (a + b)	\$2,036,327,631	\$1,812,978,830	\$3,849,306,461	30.0%
INSURED (2019)³	\$3,825,261,000	\$4,610,154,000	\$8,435,415,000	66.0%
STATE (2019/2020)⁴	\$233,540,539	\$292,750,447	\$526,290,986	4.0%
Total			\$12,811,012,447	

Table 3: Percent Distribution of Workers' Compensation Paid Costs by Sectors (excluding Administrative Expenses) using public self-insured and state data for FY 2018-2019

	Indemnity	Medical	Subtotal	% in Total
a. Private Self-Insured ¹ (2018)	\$614,881,701	\$750,749,175		
b. Public Self-Insured ² (2018/2019)	\$1,271,654,069	\$1,144,059,798		
SELF-INSURANCE PLAN (a + b)	\$1,886,535,770	\$1,894,808,973	\$3,781,344,743	29.8%
INSURED (2018)³	\$3,770,094,000	\$4,645,113,000	\$8,415,207,000	66.2%
STATE (2018/2019)⁴	\$223,499,531	\$288,969,888	\$512,469,419	4.0%
Total			\$12,709,021,162	

¹ Private Statewide Summary, <http://www.dir.ca.gov/osip/StatewideTotals.html>.

² Public Statewide Summary, <http://www.dir.ca.gov/osip/StatewideTotals.html>.

³ WCIRB, 2019 Losses and Expenses Report, Exhibit 18.1, released June 29, 2020.

https://www.wcirb.com/sites/default/files/documents/2019_ca_wc_losses_and_expenses_report-complete.pdf

⁴ Cost Information, <https://www.calhr.ca.gov/employees/Pages/workers-compensation-program.aspx>.

SYSTEM COSTS AND BENEFITS

Workers' compensation is generally a no-fault system that provides statutory benefits for occupational injuries or illnesses. Benefits consist of medical treatment, temporary disability (TD) payments, permanent disability (PD) payments, return-to-work assistance, and death benefits. The overall amounts paid in each of these categories systemwide are shown in Tables 4 and 5. These figures are based on insurer-paid amounts multiplied by 1.47 to include estimated amounts paid by self-insured employers and the State.

Systemwide Cost: Paid Dollars for 2019 Calendar Year

Table 4: A Claim Counts-Based Estimate of Workers' Compensation System Size (Million \$)

	Insured	Self-Insured and the State	All Employers
Indemnity	\$3,825*	\$1,798	\$5,623
Medical	\$4,610*	\$2,167	\$6,777
Changes to Total Reserves	-\$519	-\$244	-\$763
Insurer Pre-Tax Underwriting Profit/Loss and Insurer Policyholder Dividends	\$2,930	N/A	\$2,930
Expenses (see Table 5 below: Breakdown of Expenses)	\$5,409	\$1,427	\$6,836
TOTAL for 2019*	\$16,255	\$5,148	\$21,403

*Include CIGA payments totaling \$135 million.

Source for Insured figures in Tables 4 and 5 is WCIRB Losses and Expenses report released on June 29, 2020. Self-insured and state expenses are calculated by CHSWC using 0.47 multiplier for equivalent cost components. The equivalent expense components are estimated as in Table 5.

Table 5: Breakdown of Expenses (Million \$)

	<i>Insured</i>	<i>Self-Insured and State</i>	<i>All Employers</i>
<i>Loss Adjustment Expense</i>	\$2,057	\$967	\$3,024
<i>Commissions and Brokerage</i>	\$1,360	N/A	\$1,360
<i>Other Acquisition Expenses</i>	\$683	N/A	\$683
<i>General Expenses</i>	\$980	\$461	\$1,441
<i>Premium and Other Taxes</i>	\$329	N/A	\$329
Total	\$5,409	\$1,427	\$6,836

Estimate of Workers' Compensation System Size Based on Written Premium

Another way to calculate systemwide costs for employers is by using written premium.

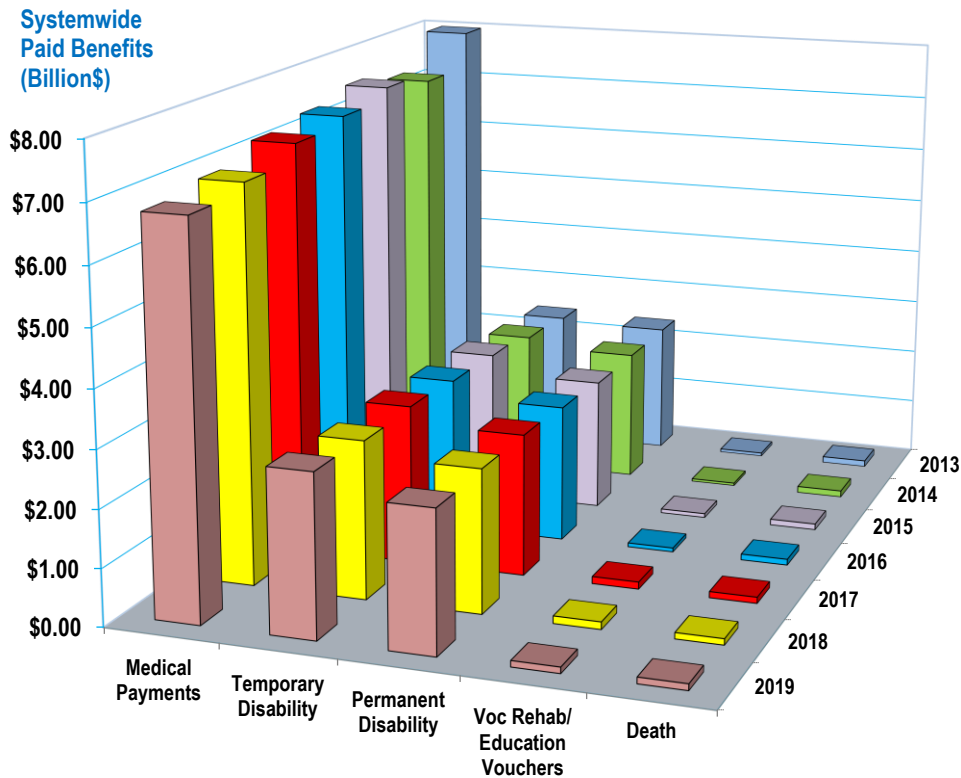
Written premium for insured employers = \$15.9 billion in calendar year 2019.³⁸

$$\$15.9 \text{ billion} \times 1.47 = \$23.4 \text{ billion systemwide costs for employers.}$$

³⁸ WCIRB Quarterly Experience Report as of December 31, 2019, Chart 1.
https://www.wcirb.com/sites/default/files/documents/4q_experience_report_20200423_0.pdf.

SYSTEM COSTS AND BENEFITS

Figure 2: Systemwide* Paid Benefits, by Year and Type of Payment (\$ in billions)



* Systemwide amounts for CY 2019 estimated at 1.47 times the amounts reported by insurers

Data Source: WCIRB

The Cost Impact of the Rebuttable Presumption of Compensability for California COVID-19 Workers' Compensation Claims, March 19-July 5, 2020

The COVID-19 pandemic and the subsequently adopted stay-at-home order are significantly affecting California's economic, health-care, and WC systems. In order to alleviate the adverse impact of COVID-19 injuries sustained in the course of employment by designated types of employees, SB 1159 (Hill) was enacted on September 17, 2020.³⁹ Its statutes took effect immediately and remain in effect until January 1, 2023. This bill codifies the COVID-19 compensability presumption created by Executive Order N-62-20⁴⁰ that Governor Newsom signed on May 6, 2020, and provides two new rebuttable presumptions that an employee's illness related to COVID-19 is an occupational injury and therefore eligible for WC benefits if specified criteria are met.

Executive Order N-62-20 covered the California employees directed by their employers to work outside their home from March 19 to July 5, 2020, initially imposed by the stay-at-home executive order N-33-20.

In an effort to expand the access of workers with COVID-19 to medical care and to incentivize medical providers to accept workers' compensation insurance, the Division of Workers' Compensation (DWC) introduced changes in many sections of the Official Medical Fee Schedule (OMFS).⁴¹ The OMFS changes include the Physician Services/Non-Physician Practitioner Services Fee Schedule, Durable Medical Equipment, Prosthetics, and

³⁹ SB 1159, COVID-19 Critical Workers, https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201920200SB1159.

⁴⁰ <https://www.gov.ca.gov/wp-content/uploads/2020/05/5.6.20-EO-N-62-20-text.pdf>.

⁴¹ DWC emergency regulations filed with the state's Office of Administrative Law (OAL), https://www.dir.ca.gov/dwc/rulemaking/dwc_rulemaking_proposed.html and https://www.dir.ca.gov/dirnews/link_page.html.

SYSTEM COSTS AND BENEFITS

Orthotics and Supplies (DMEPOS) in order to support essential services during the COVID-19 pandemic, Inpatient Hospital Section (increase in DRG weights for COVID-19 related discharges); Pathology and Clinical Laboratory section to adopt new COVID-19 testing codes and fees. The increases in medical fees are both temporary as with three CPT procedural codes that improve access to medical care through telehealth during the public health emergency and more long-term when the LC section 5307.1.⁴² requires adjustments in the OMFS to conform to Medicare fee schedule changes. Depending on the effective dates, these adjustments are made retroactively to the Medicare effective dates and require that workers' compensation claims administrators set up a process to reevaluate claims ex post facto when applicable, adding to the complexity of the cost evaluation process.

In order to identify, capture, and track COVID-19 injuries, the DWC updated certain filing and application forms, introduced new medical and claims-related codes and data elements in the Workers' Compensation Information System (WCIS) and Electronic Adjudication Management System (EAMS), and adjusted the means of data and information collection through electronic filing, JET filing, paper filing by U.S. mail, and e-mail when approved.

At the request of the Assembly Insurance Committee, the WCIRB conducted an evaluation of the potential cost impact of the compensability presumption for COVID-19 claims of essential critical infrastructure employees, limited to the provisions of the Executive Orders N-33-20 and N-62-20, with the latter providing a rebuttable presumption replacing the initial conclusive one. These estimates were limited to the dates of injury from March 19 to July 5, 2020, and included only those who either tested positive or were diagnosed with COVID-19.

Since the cost impact of the Order varies based on the number of employed with WC coverage, the proportion of workers positively tested or diagnosed with COVID-19 among covered workers, and the number of WC claims that are actually filed, the cost estimates were done at three different ranges of potential impact. On this basis, the WCIRB estimated that the cost of COVID-19 claims filed by workers subject to the Order ranges from \$0.6 billion to \$2.0 billion with a midrange estimate of \$1.2 billion. This midrange estimate comprises 7 percent of the \$18.3 billion WC systemwide cost estimated for 2020 prior to the pandemic.⁴³ According to the WCIRB, these estimates do not apply after July 5, 2020, and do not reflect costs for later extensions of the Order or new legislation such as SB 1159.

COVID-19 claim counts in 2020

Prior to the COVID-19 pandemic, the California WC program did not cover routine community-spread illnesses such as colds or the flu because they could not be directly identified as Arising out of Employment (AOE)/Course of Employment (COE) and were treated as mild and easily alleviated conditions. As COVID-19 proved to be deadly in some cases, several bills were signed into law to expand access to WC coverage in the face of the pandemic.

SB 1159 extends COVID-19 eligibility under WC and makes it easier for first responders, health-care workers, and people who test positive due to an outbreak at work to get necessary medical care and wage replacement benefits. At the same time, the intent of AB 685 (Reyes) is to enhance Cal/OSHA's enforcement of COVID-19 infection prevention requirements, including timely notification to employees and local and state public health officials of COVID-19 cases at workplaces.⁴⁴ According to Governor Newsom, these laws will help California workers stay safe at work and get the support they need if they are exposed to COVID-19.

⁴² LC section 5307.1, http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=5307.1.&lawCode=LAB

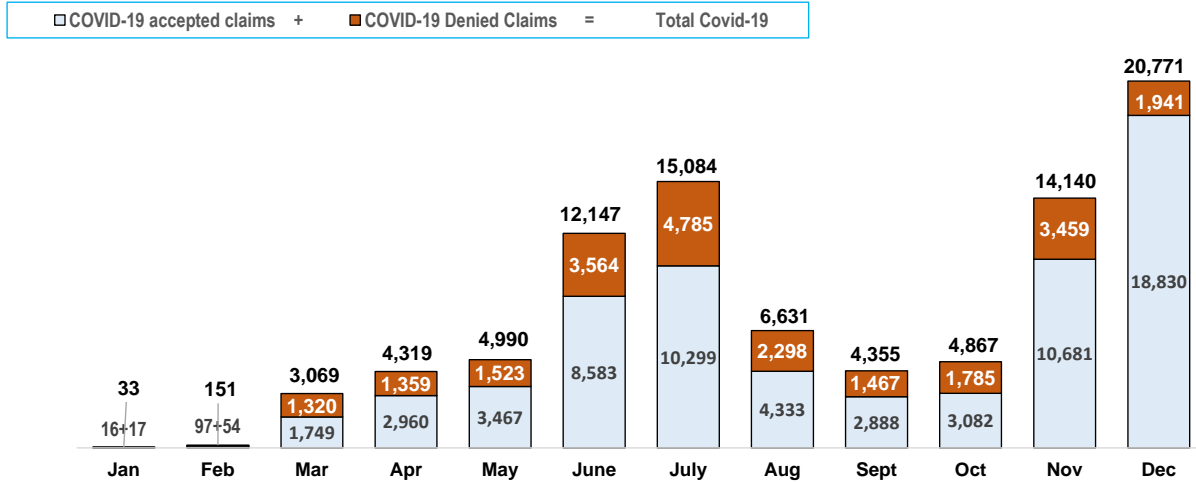
⁴³ WCIRB's Evaluation of Cost Impact of Governor Newsom's Executive Order on Rebuttable Presumption for California COVID-19 Workers' Compensation Claims, <https://www.crowell.com/files/Evaluation-Cost-Impact-Governor-Newsom-Exec-Order.PDF>.

⁴⁴ Office of Governor Gavin Newsom, <https://www.gov.ca.gov/2020/09/17/governor-newsom-signs-legislation-to-protect-californias-workforce-amid-the-covid-19-pandemic/>.

SYSTEM COSTS AND BENEFITS

Figure 3 shows the number of COVID-19 WC claims filed monthly, including accepted or denied claims in 2020 (reported as of January 7, 2021).

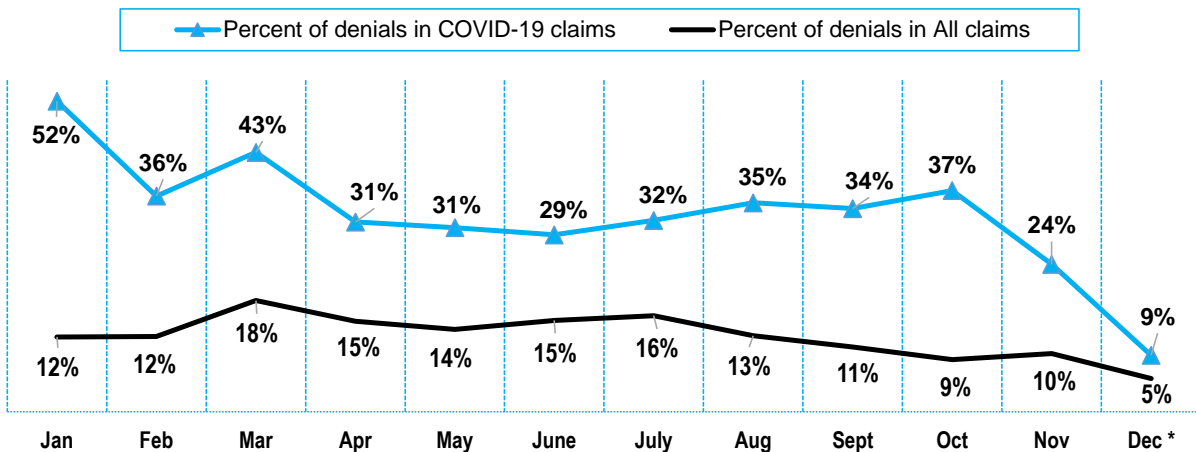
Figure 3: Number of compensable and denied COVID-19 claims in 2020, as of January 7, 2021



Source: DWC-WCIS FROI

The COVID-19 pandemic presents unique conditions, in which many jobs that had not been typically considered hazardous suddenly became dangerous, and the mandatory rules of claim denials were changed by the State of California. Workers at a high risk of exposure to the virus while at work received WC insurance coverage due to efforts by Governor Newsom and his administration that started as Executive Order N-62-20 and culminated in SB 1159 on September 17, 2020. Figure 4 compares the monthly denial rates of COVID-19 cases to denials in all WC claims filed in 2020 (reported as of January 7, 2021).

Figure 4: Percent of Denials in All and COVID-19 Claims in 2020, as of January 7, 2021



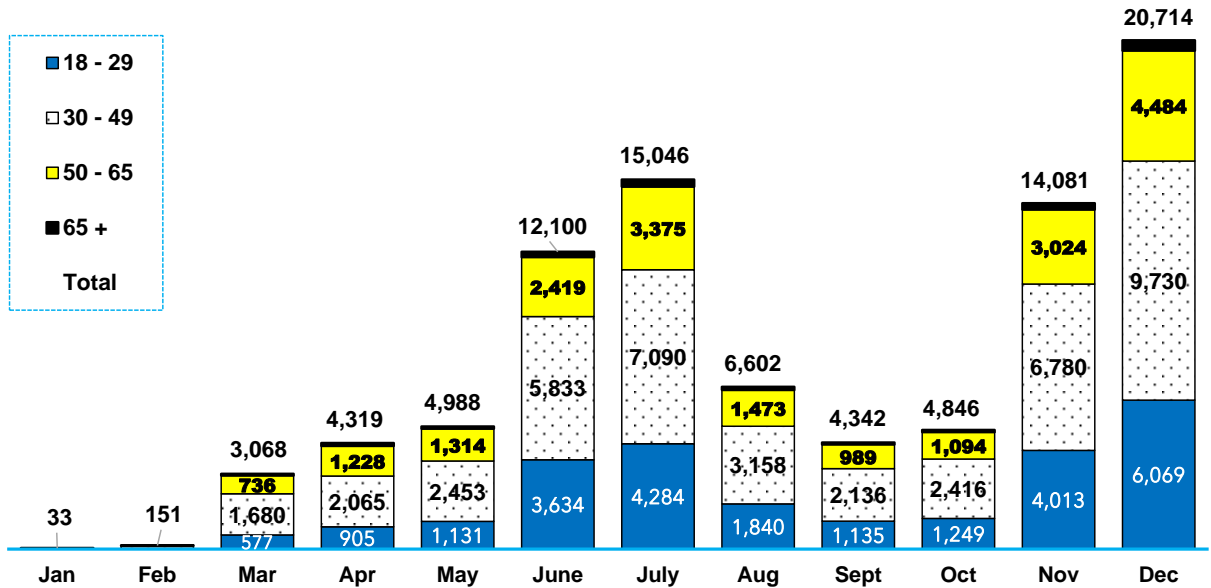
* Covid-19 claims data for December is incomplete.

Source: DWC- WCIS FROI

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Figure 5 shows a monthly age exposure to COVID-19 filed in 2020 (reported as of January 7, 2021). Workers in the 30 to 49, followed by 18 to 29 and 50 to 65 age groups experienced the highest number of COVID-19 infections.

Figure 5: Number of COVID-19 Claims by Age in 2020, as of January 7, 2021



Note: Monthly total numbers of Covid-19 WC claims differ from totals in Figure 3 due to unreported ages.

Source: DWC - WCIS FROI

2012-2016 Workers' Compensation Reforms: Changes in the California System

Since 2012, California made several significant reforms in the workers' compensation system that have been estimated to have saved \$3 billion annually.⁴⁵ The major reform bills are summarized as follows.⁴⁶

2012 Workers' Compensation Reforms: Senate Bill 863

One of the major reform efforts within the past several years was the enactment of Senate Bill 863 in September 2012. The goal of the reform was to improve benefits for injured workers while reducing costs. SB 863 generally makes changes in: the measurement of permanent disability; the compensation for permanent disability; the physician fee schedule; the process to resolve disputes over appropriate medical treatment, medical fees, billing and collections; the means of ensuring self-insurance program solvency and the methods of securing the payment of compensation by self-insurance; and other aspects of the workers' compensation system.

Many of the provisions of SB 863 were supported by CHSWC research and recommendations. For a summary of the key provisions of the reforms, see the "Special Report: 2012 Workers' Compensation Reforms" in the 2012 CHSWC Annual Report. For a summary of earlier reforms, see the "System Costs and Benefits Overview" section in the 2011 CHSWC Annual Report.

⁴⁵ https://www.wcirb.com/sites/default/files/documents/2019_state_of_the_system_report.pdf

⁴⁶ Information on other legislation related to workers' compensation is in CHSWC legislative reports at: <https://www.dir.ca.gov/chswc/AnnualReportpage1.html>.

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The WCIRB’s estimates in its retrospective evaluation update of SB 863 indicate total annual statewide savings of \$2.3 billion per year, an increase of \$2.1 billion over the previous projected prospective estimates of \$200 million.⁴⁷ SB 863 medical reforms have resulted in over \$2 billion in annual savings.

Table 6 reproduced from WCIRB’s SB 863 Cost Monitoring Update⁴⁸, summarizes WCIRB’s estimates using various cost categories.

Table 6: WCIRB’s 2019 Evaluation of Senate Bill (SB) 863 Cost Impact

	Updated Cost Impact (in \$ million)	Updated Total % Impact on Losses and LAE
Indemnity Cost Components		
Changes to Weekly PD Min & Max	+\$650	+3.4%
SJDB Benefits	+\$40	+0.2%
Replacement of FEC Factor	+\$550	+2.9%
Elimination of PD Add-ons	(\$170)	-0.9%
Three-Tiered Weekly PD Benefits	(\$100)	-0.5%
Ogilvie Decision	(\$130)	-0.7%
Indirect Impact on Overall Indemnity Utilization	(\$220)	-1.2%
Med and LAE Cost Components		
Changes to Lien Filings	(\$480)	-2.5%
Spinal Implant Hardware Reimbursements	(\$110)	-0.6%
Changes to ASC Fees	(\$80)	-0.4%
IMR—Impact of Frictional Costs	+\$70	+0.4%
MPN Strengthening	(\$190)	-1.0%
IBR-Impact on Frictional Costs	\$0	0.0%
RBRVS Changes to Physician Fee Schedule	(\$330)	-1.7%
Indirect Impact on Overall Medical Utilization	(\$1,770)	-9.3%
TOTAL ESTIMATE—ALL ITEMS	(\$2,270)	-11.9%

Source: WCIRB

2015 Workers’ Compensation Reforms: Medical Treatment Utilization Schedule (MTUS) and the Drug Formulary (AB 1124)

AB 1124 required the DWC Administrative Director to establish an evidence-based drug formulary and to update the formulary on at least a quarterly basis to allow for the provision of all appropriate medications, including those that are new to the market. The MTUS Drug Formulary has three essential parts: the ACOEM Treatment Guidelines which are the backbone of the formulary, the MTUS Drug List, which guides prospective review requirements, and the Ancillary Formulary Rules. The MTUS Drug List is not a standalone document and must be used in conjunction with the adopted American College of Occupational

⁴⁷ Senate Bill No. 863 WCIRB Cost Monitoring Report—2016 Retrospective Evaluation

http://www.wcirb.com/sites/default/files/documents/sb_863_cost_monitoring_report_2016.pdf

⁴⁸ https://www.wcirb.com/sites/default/files/documents/research_brief_october_2019_sb_863_cost_monitoring_update.pdf

SYSTEM COSTS AND BENEFITS

and Environmental Medicine (ACOEM) guidelines.⁴⁹ The formulary regulations went into effect January 1, 2018, and the actual impacts of implementing the drug formulary will be monitored. According to the WCIRB, the formulary is estimated over time to save about \$100 million per year.⁵⁰

2016 Workers' Compensation Reforms: Fortifying the Anti-Fraud Changes Regarding Liens (AB 1244 and SB 1160)

SB 863 made changes regarding liens filed against an injured workers' claim, for medical treatment and other services provided in connection with the claim, but not paid for by the employer or insurance carrier. In particular, a filing fee of \$150 was required for all liens filed after January 1, 2013, and a \$100 activation fee was required for liens filed before then, but activated for a conference or trial after January 1, 2013. There were also provisions for dismissal of liens by operation of law after January 1, 2014, if no filing or activation fee has been filed, as well as an 18-month statute of limitations for filing liens for services rendered after July 1, 2013, and a three-year statute of limitations for services provided before then.

After a delay because of court challenges to a related section of the law, the workers' compensation community in particular, district attorneys' offices throughout California, especially in San Diego and Los Angeles, realized that suspicious medical bills were still being filed and paid as liens by providers who had ongoing adverse involvement with the criminal justice system and their practice. In 2016, AB 1244 (Gray)⁵¹ passed into law and required the Administrative Director of the DWC to suspend any medical provider, physician, or practitioner from participating in the workers' compensation system in any capacity if the individual or entity meets specific criteria related to fraud. Those criteria include being convicted of a felony or misdemeanor: (1) involving fraud or abuse of the Medi-Cal, Medicare, or workers' compensation systems; (2) relating to patient care; (3) involving fraud or abuse of any patient; or (4) otherwise substantially related to the qualifications and duties of the provider. The medical provider could also be suspended if his or her license, certificate, or approval to provide health care has been surrendered or revoked, or that individual or entity is suspended from participation in the Medicare or Medicaid programs because of fraud or abuse. The bill enabled the barring of a medical provider from submitting or pursuing claims for payment for services or supplies provided, if that provider had been suspended from participation in the workers' compensation system. AB 1244 also made changes in Labor Code section 4906 related to the Attorney Fee Disclosure Statement, including requirements to ensure that the injured worker is informed of the specific district office location at which the injured worker's case will be filed.⁵²

Until the passage of SB 1160, fraudulent medical providers could claim no knowledge of billing fraud, citing errors by their office staff as the reason for the fraud. In 2016, SB 1160 (Mendoza)⁵³ required the medical provider to sign a declaration under penalty of perjury stating that the lien is not subject to independent medical review or independent billing review, and that the lien claimant is submitting a legitimate bill for services rendered. SB 1160 also added section 4615 to the Labor Code, which automatically stays any lien filed by or on behalf of a medical treatment provider who has been criminally charged with an offense involving fraud against the workers' compensation system, medical billing fraud, insurance fraud or fraud against the Medicare or Medi-Cal programs. SB 1160 also required all lien claimants to file an original bill with their lien. These lien reforms together with those of SB 863 have contributed to savings of \$1.4 billion per year.⁵⁴

Leading up to these reforms, CHSWC helped to convene and co-chaired a series of working group roundtable meetings addressing fraud in the workers' compensation system with multiple stakeholders. Many of the recommendations for statutory improvements from these sessions were incorporated into the SB 1160 and AB 1244 anti-fraud reforms signed into law in September 2016.⁵⁵ According to the WCIRB,

⁴⁹ <https://www.dir.ca.gov/dwc/MTUS/MTUS-Webinar-Transcript-Nov2017.pdf>

⁵⁰ https://www.wcirb.com/sites/default/files/documents/2018_state_of_the_system_report_0.pdf

⁵¹ http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB1244

⁵² <https://www.dir.ca.gov/dwc/SB1160-AB1244/AB1244.htm>

⁵³ http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB1160

⁵⁴ https://www.wcirb.com/sites/default/files/documents/2019_state_of_the_system_report.pdf

⁵⁵ https://www.dir.ca.gov/fraud_prevention/fraud-white-paper.pdf

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the anti-fraud reforms in addition to SB 863 provisions related to lien filings have been key contributing factors in the decrease in medical severity over the past several years.⁵⁶

2016 Workers' Compensation Reforms: Utilization Review (SB 1160)⁵⁷

In addition to anti-fraud provisions regarding liens, SB 1160 also addressed utilization review (UR). SB 1160 reduces UR requirements in the first 30 days following a work-related injury. Commencing July 1, 2018, SB 1160 requires each UR process to be accredited by an independent, nonprofit organization to certify that the UR process meets specified criteria, including, but not limited to, timeliness in issuing a UR decision, the scope of medical material used in issuing a UR decision, and requiring a policy preventing financial incentives to doctors and other providers based on the UR decision. It also mandates electronic reporting of UR data by claims administrators to the DWC, which will enable the division to monitor claim processes and address problems. DWC posted the utilization review regulations on its forum for public comment in December 2018 with a public comment period closing on January 15, 2019.⁵⁸ Those public comments can be reviewed on the forum website.

⁵⁶ WCIRB 2018 report on California's Workers' Compensation System

https://www.wcirb.com/sites/default/files/documents/2018_state_of_the_system_report_0.pdf

⁵⁷ <https://www.dir.ca.gov/dwc/SB1160-AB1244/SB1160.htm>;

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB1160

⁵⁸ <https://www.dir.ca.gov/dwc/DWCWCABForum/UR-Regulations.htm>

SYSTEM COSTS AND BENEFITS

Costs of Workers' Compensation in California

Employers pay the cost of workers' compensation either by paying premiums for workers' compensation insurance or by self-insuring with the consent of the Department of Industrial Relations (DIR). Only the State of California can be legally uninsured as an employer. The cost to insured employers is measured in terms of premiums. The premium is measured before discounts that are given for deductibles because no adequate data are available on the amounts paid by employers in deductibles. The cost to self-insured employers is measured mostly by incurred claims, similar to the analysis of insurance company losses and expenses. These two aspects of employer costs are discussed in this section, followed by the loss and expense analysis for insurers.

Costs Paid by Insured Employers

In 2019, workers' compensation insurers' earned premium totaled \$16.1 billion paid by California employers.⁵⁹

In the past sixteen years, the cost of workers' compensation insurance in California has undergone dramatic changes for several reasons.

The legislative reforms in the early 2000s, which were developed to control medical costs, update indemnity benefits and improve the assessment of PD had a significant impact on insurance costs. These reforms reduced workers' compensation costs in California, but the cost of insurance began to increase again after 2009.

Workers' Compensation Average Premium Rate

Figure 3 shows the average advisory rate per \$100 of payroll approved by the Insurance Commissioner (IC) and the insurers' average charged premium rate per \$100 of payroll. The average charged rate is based on collected premiums and reflect all insurer expenses whereas the advisory rate approved by the IC reflects only loss and loss adjustment expenses. Both the approved advisory and charged rates have steadily declined since 2015, and between the second period of 2015 and 2019, the charged rate was on average 16 percent higher than the approved advisory rate.

The charged rate rose on average by 5 percent from 2013 to its peak in the first period of 2015 and then decreased by 40 percent from the first period of 2015 to the first quarter of 2019. According to the WCIRB this decrease is largely due to the significant savings from SB 863.⁶⁰ The pure premium rates approved by the IC are only advisory. Under California law, insurers are permitted to make their own determinations regarding the pure premium rates they will use, as long as the ultimate rates charged do not threaten the insurer's financial solvency, are not unfairly discriminatory, and do not create a monopoly in the marketplace.

According to Figure 6, the advisory pure premium rates approved for January 1, 2020, are on average 44.5 percent below those as of January 1, 2015.⁶¹ These rates are not predictive of an individual employer's insurance premium, which may fluctuate greatly from these figures based upon an employer's business, the mix of employees and operations, and the employer's actual claims experience. According to the

⁵⁹ "2019 California's Workers' Compensation Losses and Expenses." WCIRB, June 29, 2020. Note that the earned premium is not identical to the written premium. The two measurements are related, and the choice of which measurement should be used depends on the purpose.

⁶⁰ WCIRB 2020 report on California's Workers' Compensation System, Chart 4.

https://www.wcirb.com/sites/default/files/documents/2020_state_of_the_system_report-ar.pdf.

⁶¹ WCIRB Quarterly Experience Report as of December 31, 2019, Chart 2,

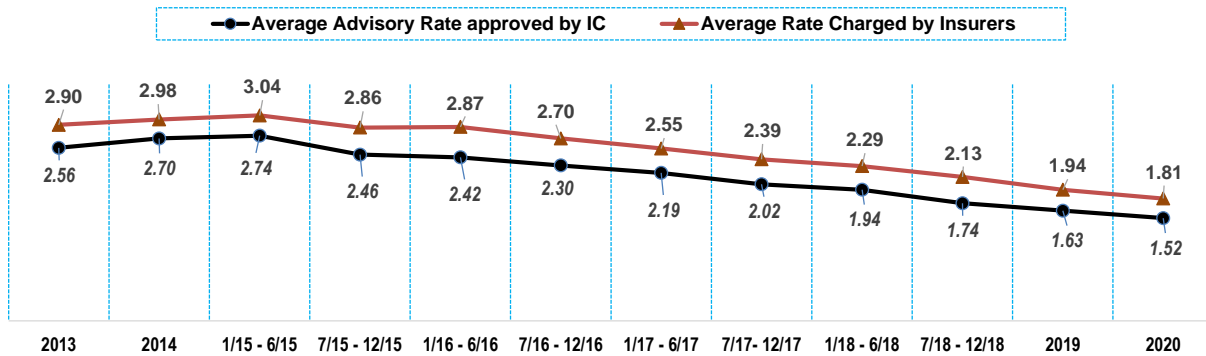
https://www.wcirb.com/sites/default/files/documents/4q_experience_report_20200423_0.pdf and WCIRB 2020 report on California's Workers' Compensation System, Chart 5,

https://www.wcirb.com/sites/default/files/documents/2020_state_of_the_system_report-ar.pdf.

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WCIRB, absent COVID-19, the average advisory pure premium rate submitted to IC for January 1, 2021, was slightly below the 2020 level. However, when the COVID-19 claim impact is included, the WCIRB proposed a 2.6 percent increase in the average advisory pure premium rates.⁶² Although the overall average pure premium rate of \$1.56 per \$100 of payroll was not amended in its September 15, 2020, proposal, the WCIRB revised the individual proposed advisory pure premium rates by classification to reflect the updated information on the frequency and severity of COVID-19 claims by industry sector. These amounts, though averaging \$0.06 per \$100 of payroll as in the WCIRB's original January 1, 2021, filing (submitted on August 26, 2020), range from \$0.01 per \$100 of payroll for the Information industry sector to \$0.24 per \$100 of payroll for segments of the Healthcare and Social Assistance industry sector.⁶³

Figure 6: Average Advisory Rate per \$100 of Payroll approved by Insurance Commissioner (IC) and Average Charged by Insurers Rate per \$100 of Payroll



Note: In the second periods of 2013 and 2014, the Insurance Commissioner did not issue decisions with respect to PPR per \$100 of payroll and in the second periods of 2019 and 2020 the WCIRB did not propose the advisory premium rate filings to be approved by the Insurance Commissioner.

For 2020, the charged rate of \$1.81 was for the 1st quarter and the advisory rate of \$1.52 was approved for the first half of the year.

Source: WCIRB

The level of the WC pure premium rates depends on the experience modification rate (EMR) metric that insurers use to calculate premiums. The EMR takes into account the number of injuries a company experienced over certain period, their corresponding costs, and payroll. The WCIRB amended the EMR, reflecting the impact of the COVID-19 pandemic.⁶⁴ Claims arising directly from a diagnosis of COVID-19 with accident dates after December 1, 2019, are excluded from the experience rating calculations of individual employers. Because the occurrence of COVID-19 WC claims incurred by an employer is unlikely to be a strong predictor of that employer's future WC claim costs, the inclusion of such claims in an experience modification calculation would not meet the intended goal of experience rating. Another change in the EMR is adjustments to payroll. Payments made to employees who were not engaged in any work during the stay-at-home order are excluded from the reportable payroll. This exclusion applies while California's stay-at-home order is in place. Changes in payroll account for the extraordinary circumstances resulting from the stay-at-home order and the fact that employees who are not engaged in work activities have no work-related exposure.

Largely because of the SB 863 reforms, which took effect in 2013 and saved about \$1.3 billion annually⁶⁵, the cost of insurance began to fall again in 2015. In particular, as shown in Figure 7, the cost of \$1.94 per

⁶² WCIRB Quarterly Experience Report as of June 30, 2020,

https://www.wcirb.com/sites/default/files/documents/quarterly_experience_report_2020_2q-handout.pdf.

⁶³ WCIRB Submits Amended January 1, 2021, Pure Premium Rate Filing to CDI, <https://www.wcirb.com/news/wcirb-submits-amended-january-1-2021-pure-premium-rate-filing-cdi>.

⁶⁴ WCIRB July 1, 2020 Workers' Compensation insurance rating rules,

https://www.wcirb.com/sites/default/files/documents/decision_and_order.pdf.

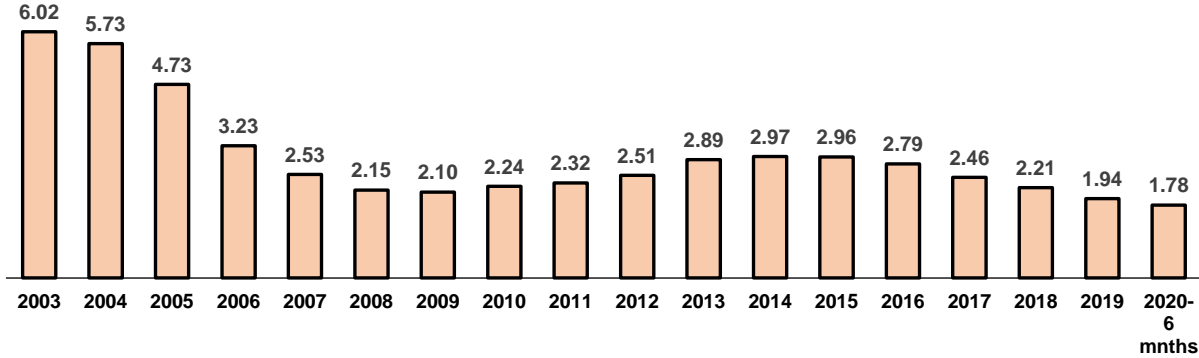
⁶⁵ Senate Bill No. 863 WCIRB Cost Monitoring Report—2016 Retrospective Evaluation

https://www.wcirb.com/sites/default/files/documents/sb_863_cost_monitoring_report_2016.pdf.

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\$100 of payroll in 2019 was still 68 percent below the 2003 peak of \$6.02 per \$100 of payroll, 35 percent below the second peak in 2014, and 12 percent below the 2018 rate.⁶⁶ The average charged rate for the first two quarters of 2020 was 8 percent below that for 2019 and 40 percent below the second peak in 2014.

Figure 7: Industry Average Charged Pure Premium Rate per \$100 of Payroll, 2003–2019



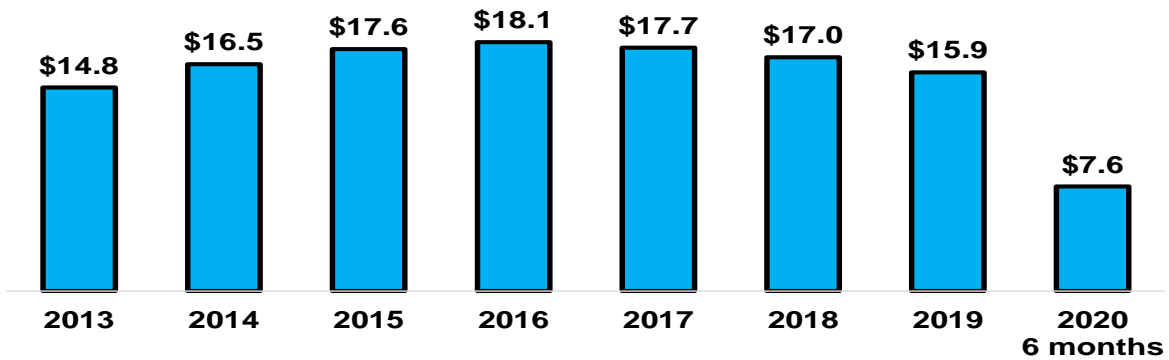
Source: WCIRB

Workers' Compensation Written Premium

WCIRB defines written premiums as the premiums that an insurer expects to earn over the policy period.

According to Figure 8, written premium increased by 22 percent from 2013 to 2016 and then declined 12 percent from its peak in 2016 to 2019, including a 7 percent decline from 2018 to 2019.⁶⁷ The decreases from 2017 to 2019 following seven consecutive years of increases from 2009 (not shown in the period covered by this report as in Figure 7) was driven primarily by decreases in rates charged by insurers, as shown in Figure 8, more than by offsetting increases in employer payroll. According to the WCIRB, written premiums for the first two quarters of 2020 were 11 percent below those for the first two quarters of 2019. The impact of the COVID-19 crisis on the California economy is expected to significantly reduce employer payroll and insurer premium for the remainder of 2020.

Figure 8: Workers' Compensation Written Premium, Gross of Deductible Credits as of June 30, 2020 (\$ in billions)



Source: WCIRB

⁶⁶ WCIRB Quarterly Experience Report as of June 30, 2020, Chart 2

https://www.wcirb.com/sites/default/files/documents/quarterly_experience_report_2020_2q-handout.pdf.

⁶⁷ WCIRB Quarterly Experience Report as of June 30, 2020, Insurer Experience, Chart 1.

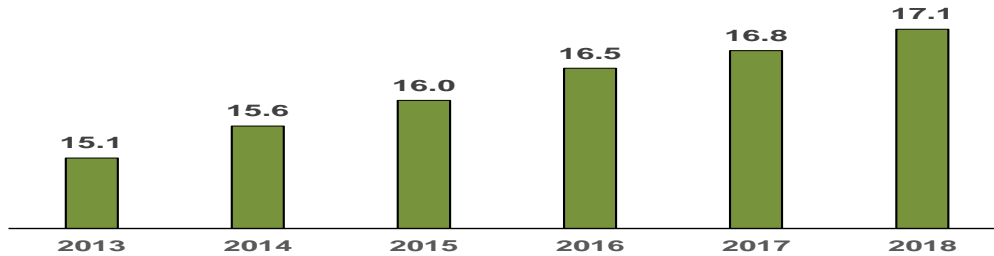
https://www.wcirb.com/sites/default/files/documents/quarterly_experience_report_2020_2q-handout.pdf.

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Workers Covered by Workers' Compensation Insurance

The estimated number of California workers covered by workers' compensation insurance grew by 13.3 percent from 15.1 million in 2013 to 17.1 million in 2018.⁶⁸ See Figure 9.

Figure 9: Estimated Number of Workers Covered by Workers' Compensation Insurance in California (millions)

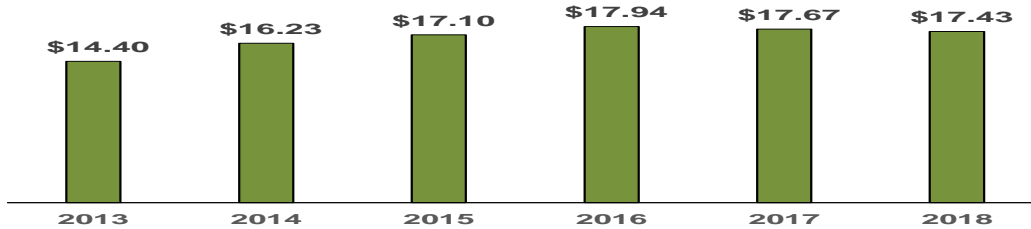


Source: National Academy of Social Insurance (NASI)

Total Earned Premium

WCIRB defines the earned premium as the portion of a premium earned by the insurer for policy coverage already provided. As shown in Figure 10, earned premium increased by 24.6 percent from 2013 and 2016 and then decreased by 3 percent from 2016 to 2018.

Figure 10: Workers' Compensation Earned Premium (\$ in billions)

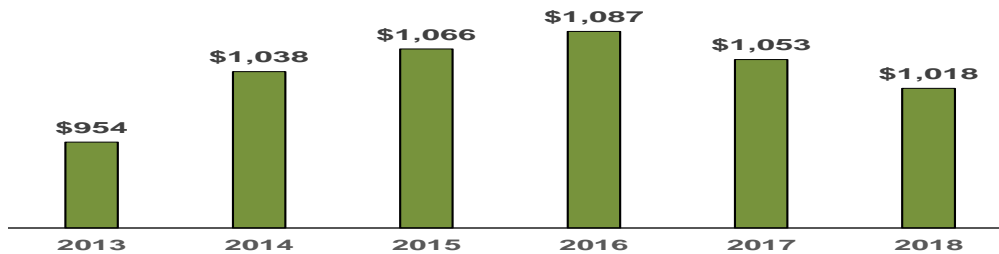


Source: WCIRB

Average Earned Premium per Covered Worker

As shown in Figure 11, the average earned premium per covered worker increased by 14 percent from 2013 to 2016 and then decreased by 6 percent from 2016 to 2018.

Figure 11: Average Earned Premium per Covered Worker



Source: WCIRB and NASI

⁶⁸ Latest available data in 2020 from NASI Report: Workers' Compensation Benefits, Coverage, and Costs, 2018, November 2020, <https://www.nasi.org/sites/default/files/nasiRptWkrsComp2017%20Final.pdf>.

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Costs Paid by Self-Insured Private and Public Employers

The permissible alternatives to insurance are private self-insurance, public self-insurance for government entities either individually or in joint power authorities (JPAs), and legally uninsured state government.

The Office of Self-Insurance Plans (OSIP) is a program within the Department of Industrial Relations (DIR) Director's Office that is responsible for the oversight, regulation, and administration of the workers' compensation self-insurance marketplace in California. The self-insurance marketplace consists of more than 9,849 employers, employing more than 4 million workers, with a total payroll exceeding \$218 billion. One out of every four California workers is covered by self-insured workers' compensation⁶⁹.

During 2014, OSIP expanded on its many initiatives from the previous year designed to streamline its operations, reduce fees to California employers, and increase its accountability, transparency, and commitment to provide the public with a high level of responsive customer service. An example of this is the year-long project to expand a successful E-Filing platform enabling self-insured employers and actuaries to electronically file their required employer's actuarial and financial report. In 2015, OSIP worked on further improving e-filing to make it even easier to file an employer's Annual Report.

Another significant accomplishment was the development and implementation of a streamlined process for California employers who wish to become self-insured to accomplish this process in a "speed-of-business" manner. In 2011, the total time required to complete the private self-insured application process and be issued a certificate of authority to self-insure was nearly nine months. In 2012, this was shortened to four to six months, with additional reductions during 2013 to less than 30 days. In 2014, OSIP successfully worked with private employers and completed this process consistently in less than 14 days. In April 2014, OSIP was able to facilitate and complete this process for a major California employer with more than \$1 billion in revenues and over 26,000 employees in just nine days.

OSIP achieved these and many other significant accomplishments in 2015 while reducing expenditures, saving 40 percent in its fiscal year 2015-2016 budget.

In 2016, OSIP moved to a more client-oriented culture, in which each employer had one main contact person for all questions and needs. This led to further efficiency and better communication between the stakeholders and OSIP. OSIP continued to realize the savings of the previous few years.

The focus in 2016 and 2017 was two major projects. Further e-filing enhancement was rolled out in mid-2017; OSIP has received positive feedback from self-insured filers on the changes. The regulations changed the requirements for being self-insured from a net worth requirement to a credit-based requirement. This modern approach allows mid-size companies to become self-insured.

In 2017 and 2018, the two-phase audit process was improved. In previous years, audit supervisors conducted the first phase, which included a general review of the profile, liabilities, and previous audit performance of employers subject to the three-year routine audit. Employers who fail to meet specific criteria are identified for the second-phase field audit. In 2017 and 2018, the responsibilities for the first-phase audit were shifted from the audit supervisor to office staff, with a designated office analyst who coordinates the results from the first-phase audit with the audit supervisor who, in turn, made the decisions on which employers would be subject to the field audit. The change enabled the audit supervisor and the senior compliance officer to have more time to focus on more complicated audits and issues that surface.

The benefits of changes made in previous years were realized in 2018. The credit-based requirement attracts more employers to become self-insured. As employers become more familiar with their main contact person, they are more comfortable asking questions and interacting with OSIP. In 2017 and 2018,

⁶⁹ <https://www.dir.ca.gov/osip/StatewideTotals.html>.

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OSIP focused on drafting regulations to clarify the solvency, performance, and costs of public self-insurers' workers' compensation programs.⁷⁰

Part of the cost of workers' compensation for self-insured employers can be estimated using the amount of benefits paid in a given year and changes in reserves. This method is similar to the one used by the insurance industry, but the data are less comprehensive for self-insured employers than for insurers. The most complete estimate of the cost to self-insured employers is still obtained by calculating a multiple of the cost to insured employers, excluding the cost elements that apply only to insurance. Using this method yields a multiplier of 0.47 and an estimated cost to self-insured employers and the state for 2019 of \$5.1 billion (see the box "Systemwide Cost: Paid Dollars for 2019 Calendar Year" on page 31).

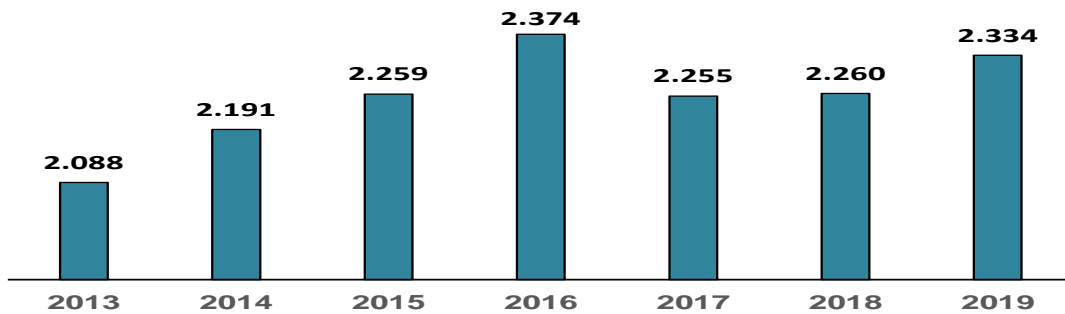
OSIP's focus in 2019 was the proposed rulemaking⁷¹, which was posted in December 2018. The regulations would require financial information, as well as demographic and claims profile from public self-insurers. This would provide transparency as to the true costs of public self-insurers' workers' compensation programs and the solvency of each public self-insured employer.

The public entity regulations were approved on May 14, 2020, and took effect July 1, 2020. Public entities will be required to submit at least two of three forms: the J-1, the P-1, and the AR-2 addendum in addition to the existing annual report requirements due October 1 of each year and covering the previous fiscal year. Information received from the forms will be used to determine the solvency of WC programs. In addition, information may be used for benchmarking purposes and for comparisons of public entities with similar entities.

Private Self-Insured Employers⁷²

Number of Employees. Figure 12 shows the number of employees working for private self-insured employers between 2013 and 2019. A number of factors affect the year-to-year changes. One striking comparison is the average cost of insurance per \$100 of payroll for insured employers, described earlier. When insurance is inexpensive, fewer employers are attracted to self-insurance, but when insurance becomes more expensive, more employers move to self-insurance. As the cost of insurance per \$100 of payroll for insured employers increased from \$2.90 in 2013 to \$3.04 in 2015, more employers chose self-insurance from 2013 to 2016. Because the insurer pure premium rates per \$100 of payroll began to decline in 2015, more employers obtained workers' compensation insurance, thereby decreasing the number of employees covered by self-insurance plans by 5 percent from 2016 to 2018. The number of employees covered by self-insurance plans increased by 5 percent from 2017 to 2019.

Figure 12: Number of Employees of Private Self-Insured Employers (Millions)



Source: DIR Self-Insurance Plan

⁷⁰ Currently, public self-insured employers are not required to provide financial information, whereas to remain self-insured, private self-insured employers must prove that they are financially viable.

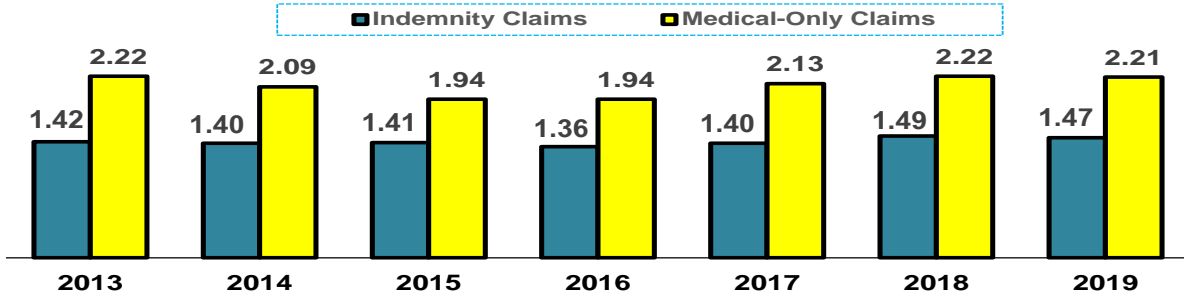
⁷¹ https://www.dir.ca.gov/osip/rulemaking/osip_rulemaking_approved.html.

⁷² Data on private self-insured employers are from DIR's Office of Self-Insurance Plans correspondence received by CHSWC in June 2020.

SYSTEM COSTS AND BENEFITS

Indemnity or Medical-Only Claims. Figure 13 depicts the rate of indemnity or medical-only claims per 100 employees of private self-insured employers. The rate of indemnity claims per 100 employees of private self-insured employers decreased by 4 percent from 2013 to 2016 and then increased overall by 8 percent from 2016 to 2019. The rate of medical-only claims decreased by 13 percent from 2.22 per 100 employees in 2013 to 1.94 per 100 employees in 2016 and then increased by 14 percent from 2016 to 2019.

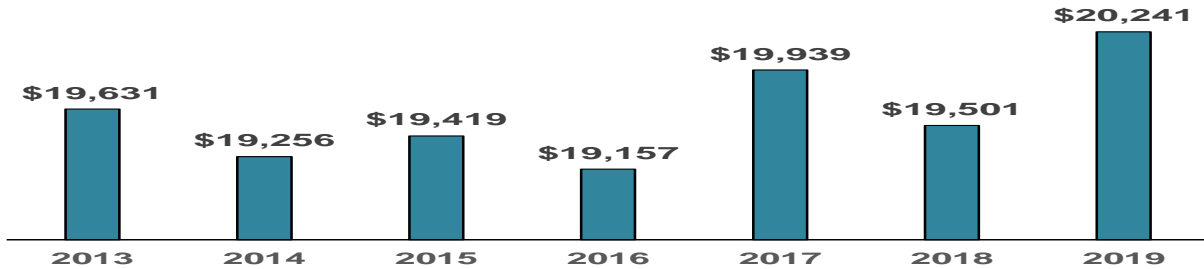
Figure 13: Number of Indemnity or Medical-Only Claims per 100 Employees of Private Self-Insured Employers



Source: DIR Self-Insurance Plan

Incurred Cost per Indemnity Claim. Figure 14 shows the incurred cost per indemnity claim for private self-insured employers, which experienced changes similar to the changes for insurance companies. The average incurred cost per indemnity claim fluctuated between \$19,150 and \$20,240 from 2013 to 2019.

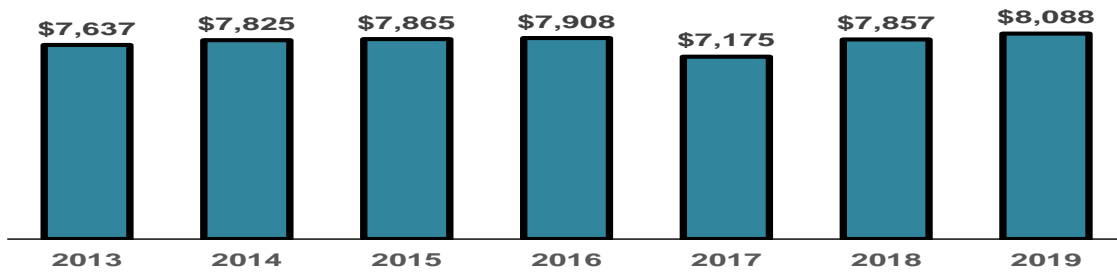
Figure 14: Incurred Cost Per Indemnity Claim of Private Self-Insured Employers



Source: DIR Self-Insurance Plan

Incurred Cost per Indemnity and Medical Claim. The average cost of all claims, including both indemnity and medical-only claims, is naturally lower than the average cost of indemnity claims. It showed a steady overall increase from 2013 to 2019, with a one time 9 percent decrease from 2016 to 2017. See Figure 15.

Figure 15: Incurred Cost per Claim, Indemnity and Medical of Private Self-Insured Employers



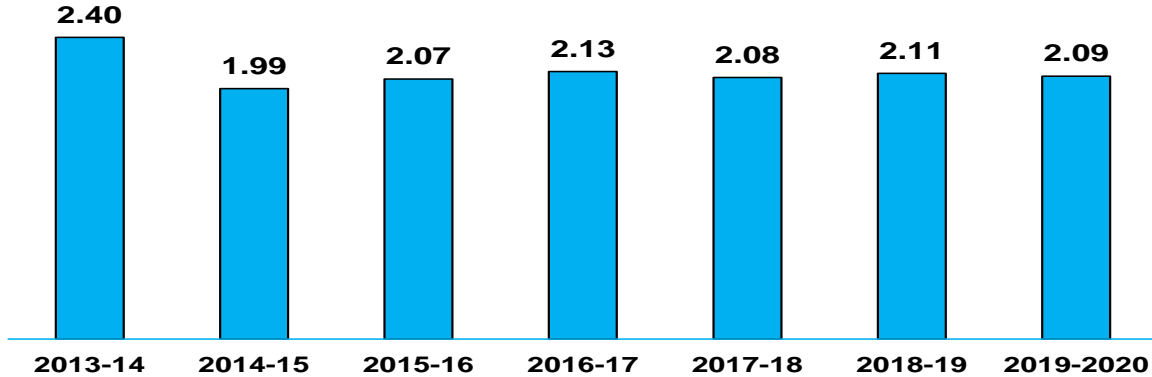
Source: DIR Self-Insurance Plan

SYSTEM COSTS AND BENEFITS

Public Self-Insured Employers⁷³

Number of Employees. Figure 16 shows the number of employees of public self-insured employers between fiscal years 2013-2014 and 2019-2020. The number of employees of public self-insured employers decreased by 17 percent from 2013-2014 to 2014-2015, increased by 7 percent from 2014-2015 to 2016-2017, and then fluctuated between 2.08 and 2.13 million employees from 2016-2017 to 2019-2020.

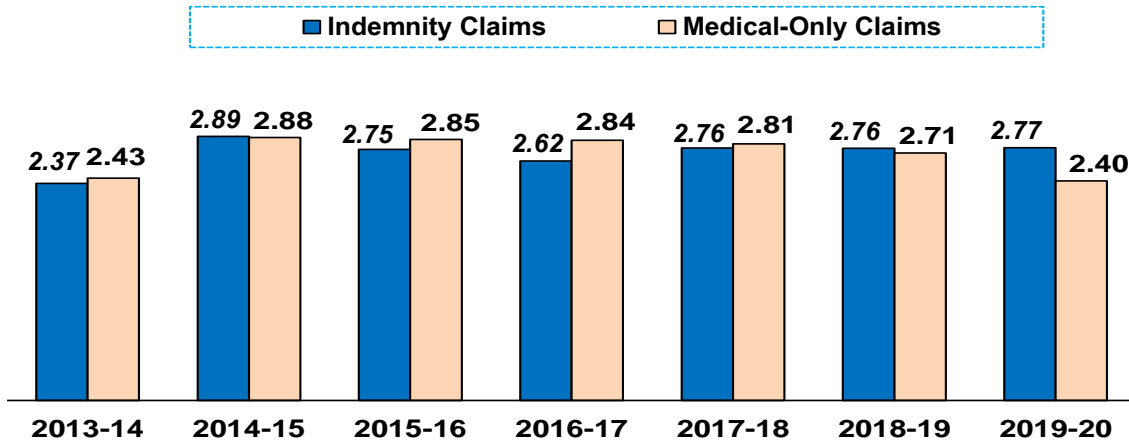
Figure 16: Number of Employees of Public Self-Insured Employers (Millions)



Source: DIR Self-Insurance Plan

Indemnity or Medical-Only Claims. The rate of indemnity claims per employees working for public self-insured employers increased by 22 percent from 2013-2014 to 2014-2015, and then decreased by 9 percent from 2014-2015 to 2016-2017. The rate increased by 5.5 percent from 2016-2017 to 2017-2018, did not change in 2018-2019, and then increased slightly in 2019-2020 from the 2017-2018 rate. After a one time 18 percent increase from 2013-2014 to 2014-2015, the rate of medical-only claims decreased by 17 percent from 2.88 per 100 employees in 2014-2015 to 2.40 per 100 employees in 2019-2020. See Figure 17.

Figure 17: Number of Indemnity or Medical-Only Claims per 100 Employees of Public Self-Insured Employers



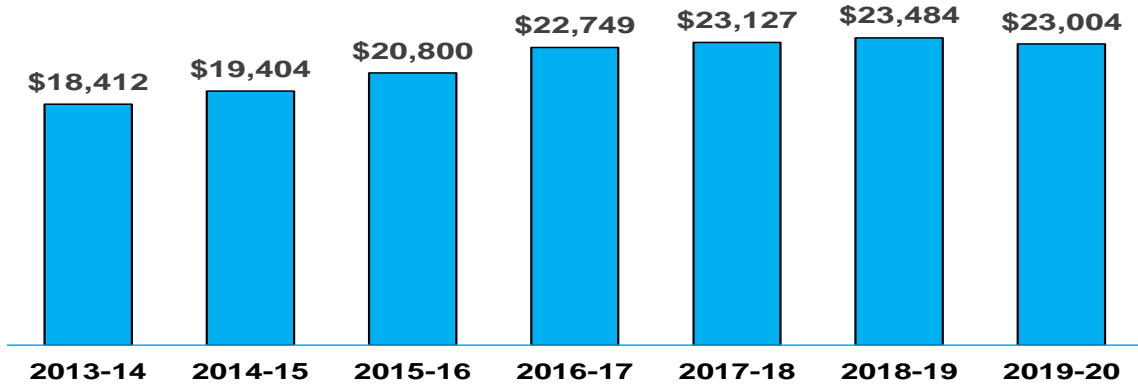
Source: DIR Self-Insurance Plan

⁷³ Data on public self-insured employers are from DIR's Office of Self-Insurance Plans correspondence received by CHSWC in December 2020.

SYSTEM COSTS AND BENEFITS

Incurred Cost per Claim. Figure 18 shows the incurred cost per indemnity claim for public self-insured employers between 2013-2014 and 2019-2020. From 2013-2014 to 2018-2019 the incurred cost per indemnity claim increased steadily by 28 percent from \$18,412 to \$23,484, and then decreased by 2 percent from 2018-2019 to 2019-2020.

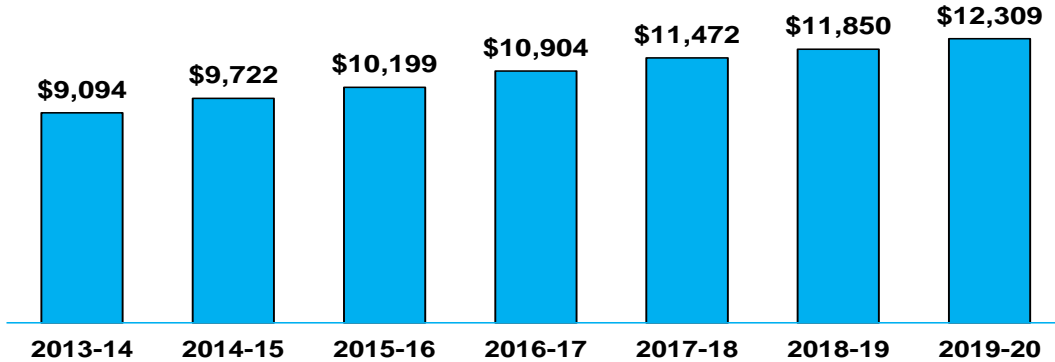
Figure 18: Incurred Cost per Indemnity Claim of Public Self-Insured Employers



Source: DIR Self-Insurance Plan

Incurred Cost per Indemnity and Medical Claim. Figure 19 shows the incurred cost per indemnity and medical claim for public self-insured employers between 2013-2014 and 2019-2020. The incurred cost per indemnity and medical claim increased steadily from 2013-2014 and 2019-2020, rising by 35 percent, from \$9,094 in 2013-2014 to \$12,309 in 2019-2020.

Figure 19: Incurred Cost per Claim—Indemnity and Medical—Public Self-Insured Employers



Source: DIR Self-Insurance Plan

SYSTEM COSTS AND BENEFITS

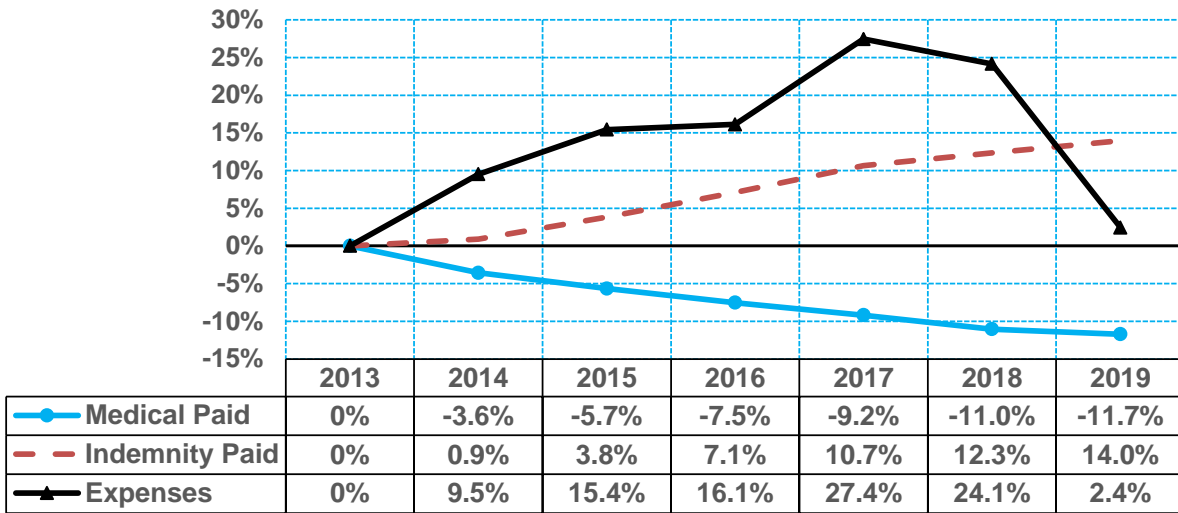
Estimated Workers' Compensation Systemwide Expenditures: Indemnity and Medical Benefits

Overall Costs

Methodology for Estimating. The estimated percentages of total systemwide costs are based on insured employer costs provided annually by the WCIRB. The assumption is that these data can also be applied to those who are self-insured. Because self-insured employers and the state are estimated to account for 32 percent of total California workers' compensation claims in 2019, the total systemwide costs in that year are calculated by increasing WCIRB data for insured employers by a multiple of 1.47 to reflect that proportion. (For calculations based on claim counts see Table 1 in the box "Methods of Estimating the Workers' Compensation System Size" on page 29.)

Growth of Workers' Compensation Costs

Figure 20: Workers' Compensation Costs: Annual Change Compared with 2013



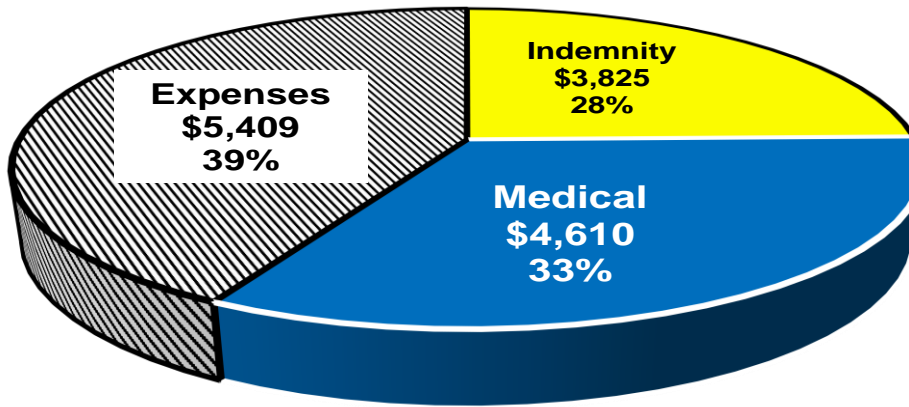
Source: WCIRB

SYSTEM COSTS AND BENEFITS

Distribution of Workers' Compensation Costs by Type.

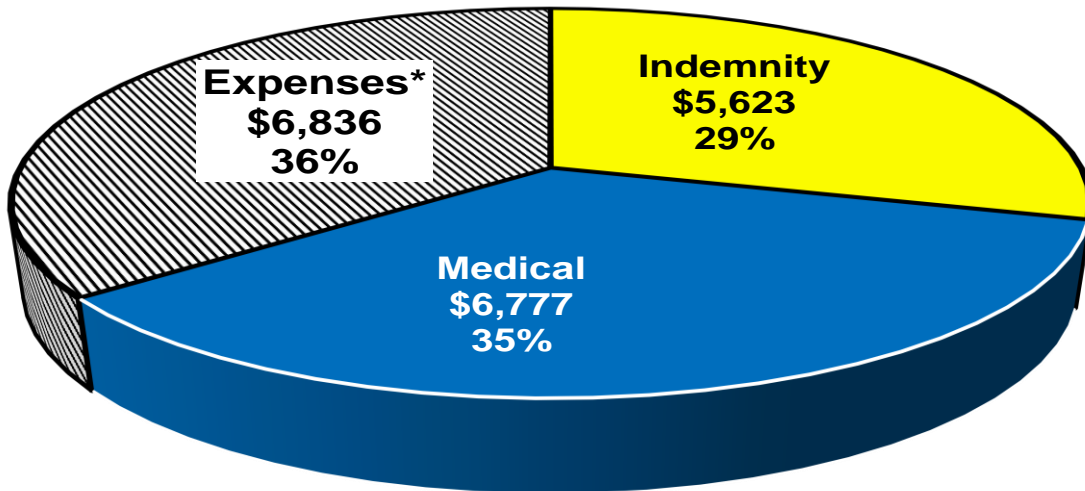
Figures 21 and 22 show the distribution of workers' compensation paid costs for insured employers and systemwide.

Figure 21: Estimated Distribution of Insured Employers' Workers' Compensation Paid Costs, 2019 (\$ in millions)



Data Source: WCIRB

Figure 22: Estimated Distribution of Systemwide Workers' Compensation Paid Costs, 2019 (\$ in millions)



* The distribution shown in this chart includes both insured and self-insured employers' costs. For insured costs, Expenses include allocated loss adjustment expenses, unallocated loss adjustment expenses, commissions and brokerage, other acquisition expenses, and premium taxes. Self-insured employers would not encounter some of those types of expenses.

Data Source: WCIRB with calculations by CHSWC

SYSTEM COSTS AND BENEFITS

Indemnity Benefits

The WCIRB provided data for the cost of indemnity benefits paid by insured employers. Assuming that insured employers comprise approximately 68.0 percent of total California workers' compensation claims, estimated indemnity benefits are shown in Table 7 for the total system, insured employers, self-insured employers, and the State of California.

Table 7: Systemwide Estimated Costs of Paid Indemnity Benefits (\$ in thousands)

INDEMNITY BENEFIT COMPONENTS BY SECTORS	2018	2019	Change
Systemwide, paid by all sectors			
Temporary Disability	\$2,755,798	\$2,823,927	\$68,129
Permanent Total Disability	\$228,418	\$249,900	\$21,482
Permanent Partial Disability	\$2,265,065	\$2,206,025	-\$59,040
Death	\$107,873	\$110,622	\$2,749
Funeral Expenses	\$3,531	\$3,293	-\$238
Life Pensions	\$126,753	\$121,941	-\$4,812
Vocational Rehab/Nontransferable Education Voucher	\$130,000	\$107,426	-\$22,574
Total	\$5,617,439	\$5,623,134	\$5,695
Paid by Insured Employers			
Temporary Disability *	\$1,849,529	\$1,921,039	\$71,510
Permanent Total Disability *	\$153,301	\$170,000	\$16,699
Permanent Partial Disability *	\$1,520,178	\$1,500,697	-\$19,481
Death *	\$72,398	\$75,253	\$2,855
Funeral Expenses	\$2,370	\$2,240	-\$130
Life Pensions	\$85,069	\$82,953	-\$2,116
Vocational Rehab/Nontransferable Education Voucher *	\$87,248	\$73,079	-\$14,169
Total	\$3,770,094	\$3,825,261	\$55,167
Paid by Self-Insured Employers and the State**			
Temporary Disability	\$906,269	\$902,888	-\$3,381
Permanent Total Disability	\$75,117	\$79,900	\$4,783
Permanent Partial Disability	\$744,887	\$705,328	-\$39,559
Death	\$35,475	\$35,369	-\$106
Funeral Expenses	\$1,161	\$1,053	-\$108
Life Pensions	\$41,684	\$38,988	-\$2,696
Vocational Rehab/Nontransferable Education Voucher	\$42,752	\$34,347	-\$8,405
Total	\$1,847,346	\$1,797,873	-\$49,473

Sources: Calculated by CHSWC, based on data from the WCIRB

* Single Sum Settlement and Other Indemnity payments have been allocated to the benefit categories.

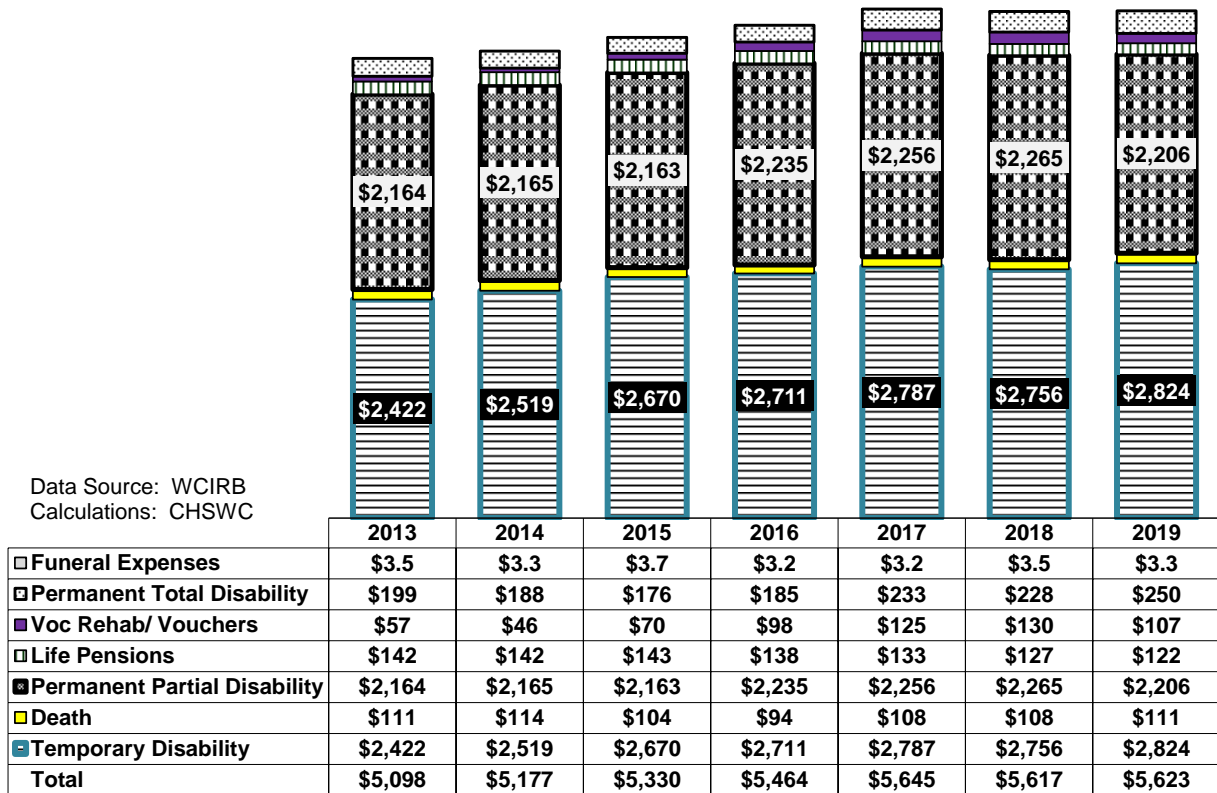
** Figures estimated based on insured employers' costs. Self-insured employers and the State of California are estimated to comprise 32 percent of all California workers' compensation claims that translates into a 0.47 multiplier applied to indemnity benefits paid by insured employers.

SYSTEM COSTS AND BENEFITS

Trends in Paid Indemnity Benefits.

The estimated systemwide paid indemnity benefits for 2013-2019 are displayed in Figure 23. Paid indemnity benefits increased steadily by 11 percent from 2013 to 2017 as the result of SB 863 reforms and then slightly decreased by 0.4 percent from \$5,645 million in 2017 to an average of \$5,620 million in 2018 and 2019. Payments for permanent partial disability increased by 5 percent from 2013 to 2018, and then decreased by 3 percent from 2018 to 2019. The temporary disability benefits increased by 17 percent from 2013 to 2019. Supplemental Job Displacement Benefits (SJDB) increased about 2-fold from 2013 to 2018 and then decreased by 17 percent from 2018 to 2019.

Figure 23: Workers' Compensation Paid Indemnity Benefit by Type, Systemwide Estimated Costs (\$ in millions)



Data Source: WCIRB
Calculations: CHSWC

Data Source: WCIRB
Calculations: CHSWC

Supplemental Job Displacement Benefits Costs

The reforms of 2003 eliminated vocational rehabilitation (VR) for injuries arising on or after January 1, 2004, and replaced it with a supplemental job displacement benefit (SJDB). The VR statutes were repealed as of January 1, 2009. Consequently, the expenditures for VR decreased rapidly, as the remaining pre-2004 cases were addressed and essentially ended.

Supplemental Job Displacement Benefit Vouchers

Assembly Bill 227 created a system of nontransferable educational vouchers effective for injuries that occurred on or after January 1, 2004, resulted in a permanent partial disability and termination without an offer of return to work by at-injury employer unless the employer offers and the employee rejects or fails to accept modified work. The WCIRB's estimate of the cost of education vouchers is based on information

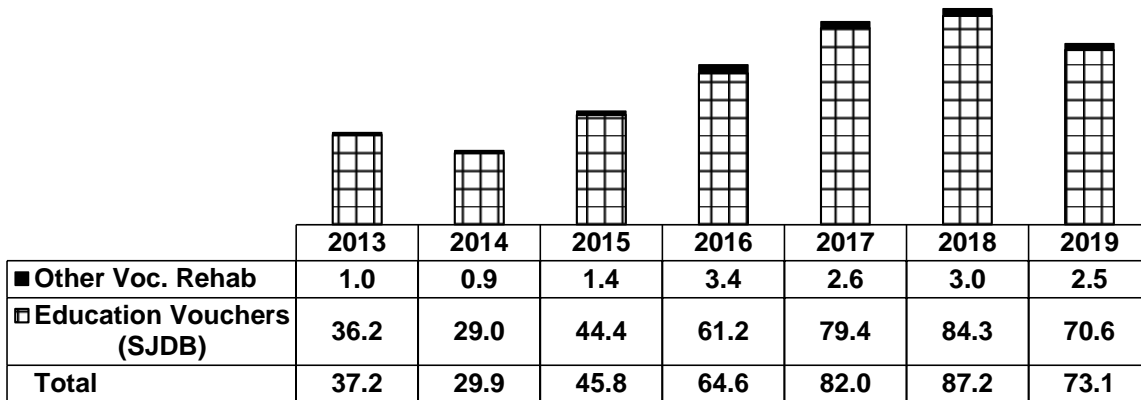
SYSTEM COSTS AND BENEFITS

compiled from its most current Aggregate Indemnity and Medical Costs Call, Call for Calendar Year Experience, and Permanent Disability Claim Survey.

SB 863 revised the SJDB for injuries that occurred on or after January 1, 2013, while preserving the concept of a voucher for education or training for an injured worker who does not have an opportunity to return to work for the at-injury employer. Effective with injuries that occurred on or after January 1, 2013, Labor Code Section 4658.5 was amended and Labor Code Section 4658.7 was added that modified the system of supplemental job displacement benefits. According to LC Section 4658.7, the voucher is now a flat \$6000 for all levels of permanent disability and can be used for training at a California public school or any other provider listed on the state’s Eligible Training Provider List (ETPL) on their CalJobs website. It can also be used to pay licensing or certification and testing fees, pay up to 10 percent of the voucher amount for services of licensed placement agencies and RTW counseling, to purchase tools required by a training course, to purchase computer equipment of up to \$1,000 and to reimburse up to \$500 in miscellaneous expenses. The voucher does not expire if issued prior to January 1, 2013. After January 1, 2013, the voucher will expire within two years of being issued or five years from the date of injury, whichever comes later.

Figure 24 shows that the amounts paid for SJDB vouchers by insured employers in 2018 increased 2.3-fold compared to 2013 and almost threefold compared to 2014. From 2018 to 2019, the amounts paid for SJDB vouchers decreased by 16 percent. The proportion of amounts paid for SJDB vouchers in total Vocational Rehabilitation was 97 percent from 2013 to 2019, with a slight decrease to 95 percent in 2016.

Figure 24: Amounts Paid for Supplemental Job Displacement Benefit (SJDB) Vouchers by Insured Employers (\$ in millions)



Source: WCIRB

Medical Benefits

Workers’ Compensation Medical Costs vs. Medical Inflation

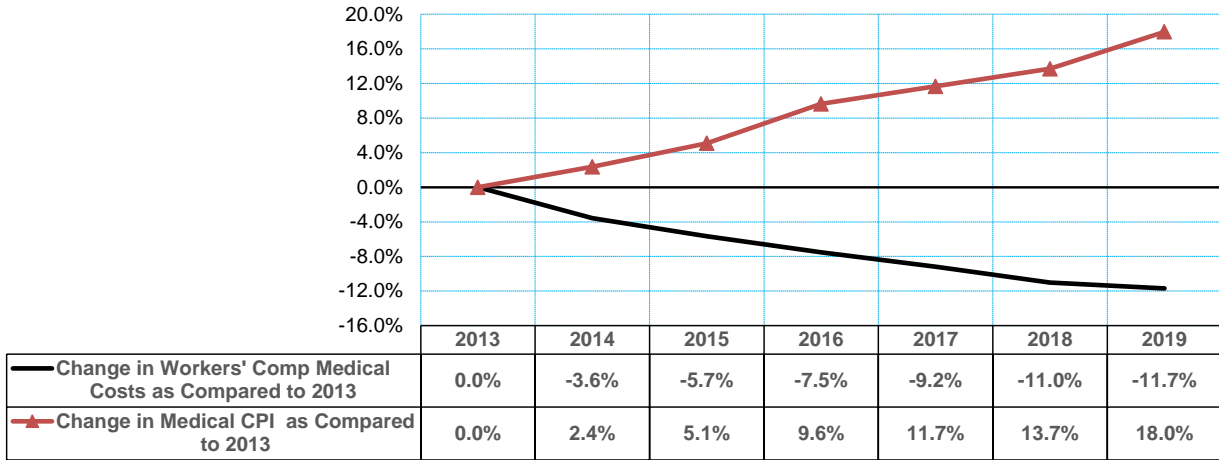
Figure 25 compares the change in California’s workers’ compensation medical costs paid by insurers and self-insured employers in each consecutive year from 2013 with the growth in the medical component of the Consumer Price Index (CPI) in each consecutive year over the same base year. The medical component of the CPI is also known as the “Medical CPI,” an economic term used to describe price increases in health care services.

Since 2013 the WC medical costs have decreased at a cumulative rate of 12 percent in 2019 and an average annual 2 percent rate in the same period from 2013 to 2019. At the same time, the medical CPI has steadily increased since 2013. Cumulative growth in medical CPI from 2013 to 2019 was 18 percent, with an average annual 2.8 percent increase in the same period. Figure 25 compares the WC medical costs paid by employers and regulated through the California State WC program with Medicare and group health plan payments reflected in the medical CPI. The State program regulates the WC medical costs through the

SYSTEM COSTS AND BENEFITS

Official Medical Fee Schedule (OMFS), which also covers pharmaceutical costs, Medical Treatment Utilization Schedule (MTUS), and regulatory activities. Because consumers, as defined by the CPI concept, do not share the cost of WC claims, payments for medical services covered by WC programs are not directly reflected in measuring the medical CPI.

Figure 25: Growth in Workers' Compensation Medical Costs Compared with Growth in Medical Inflation (2013 as a base year)



Source: WCIRB; Bureau of Labor Statistics (BLS)

Distribution of Medical Benefits: Where Does the Workers' Compensation Dollar Go?

The WCIRB provided data on the cost of medical benefits paid by insured employers. Assuming that insured employers comprise approximately 68 percent of California workers' compensation claims, estimated medical benefits are shown in Table 8 for the total system, insured employers, self-insured employers, and the State of California.

SYSTEM COSTS AND BENEFITS

Table 8: Systemwide Estimated Costs—Medical Benefits Paid (\$ in thousands)

MEDICAL BENEFIT COMPONENTS BY SECTORS	2018	2019	Change
Systemwide, paid by all sectors			
Physicians	\$1,846,174	\$1,795,489	-\$50,685
Hospital (Inpatient and Outpatient)	\$933,820	\$858,920	-\$74,900
Medical Supplies and Equipment	\$388,157	\$350,767	-\$37,390
Pharmacy	\$163,998	\$127,177	-\$36,821
Medical-Legal Evaluation	\$431,733	\$428,070	-\$3,663
Payments Made Directly to Patients*	\$2,189,689	\$2,160,640	-\$29,049
Medical Cost-Containment Programs**	\$207,280	\$212,493	\$5,213
Medicare Set-aside and Reimbursements	\$344,698	\$464,840	\$120,142
Capitated Medical	\$31,783	\$29,335	-\$2,448
Other (Med Liens, Dental, Interpreter***, & Copy Services***)	\$383,885	\$349,199	-\$34,687
Total	\$6,921,218	\$6,776,929	-\$144,289
Paid by Insured Employers			
Physicians	\$1,239,043	\$1,221,421	-\$17,622
Hospital (Inpatient and Outpatient)	\$626,725	\$584,299	-\$42,426
Medical Supplies and Equipment	\$260,508	\$238,617	-\$21,891
Pharmacy	\$110,066	\$86,515	-\$23,551
Medical-Legal Evaluation	\$289,754	\$291,204	\$1,450
Payments Made Directly to Patient*	\$1,469,590	\$1,469,823	\$233
Medical Cost-Containment Programs**	\$139,114	\$144,553	\$5,439
Medicare Set-aside and Reimbursements	\$231,341	\$316,218	\$84,877
Capitated Medical	\$21,331	\$19,956	-\$1,375
Other (Med Liens, Dental, Interpreter***, & Copy Services***)	\$257,641	\$237,550	-\$20,091
Total	\$4,645,113	\$4,610,154	-\$34,959
Paid by Self-Insured Employers and the State****			
Physicians	\$607,131	\$574,068	-\$33,063
Hospital (Inpatient and Outpatient)	\$307,095	\$274,621	-\$32,474
Medical Supplies and Equipment	\$127,649	\$112,150	-\$15,499
Pharmacy	\$53,932	\$40,662	-\$13,270
Medical-Legal Evaluation	\$141,979	\$136,866	-\$5,113
Payments Made Directly to Patient*	\$720,099	\$690,817	-\$29,282
Medical Cost-Containment Programs**	\$68,166	\$67,940	-\$226
Medicare Set-aside and Reimbursements	\$113,357	\$148,622	\$35,265
Capitated Medical	\$10,452	\$9,379	-\$1,073
Other (Med Liens, Dental, Interpreter***, & Copy Services***)	\$126,244	\$111,649	-\$14,596
Total	\$2,276,105	\$2,166,773	-\$109,332

Sources: Calculated by CHSWC, based on WCIRB's Medical Data Call (MDC).

* Med payments made directly to patient include amounts paid directly to injured workers on lump sum settlements for future med expenses; to a much lesser extent they may also include payments for transportation related to medical care.

** Medical cost-containment programs (MCCP) costs on claims covered by incepting July 1, 2010 and beyond are considered Allocated Loss Adjustment Expenses (ALAE). The amount of MCCP costs reported as ALAE for 2019 is \$306 million.

*** Based on WCIRB surveys of insurer medical payments.

**** Figures estimated are based on insured employers' costs. Self-insured employers and the State of California are estimated to comprise 32.0 percent of all California workers' compensation claims that translates into a 0.47 multiplier applied to indemnity benefits paid by insured employers.

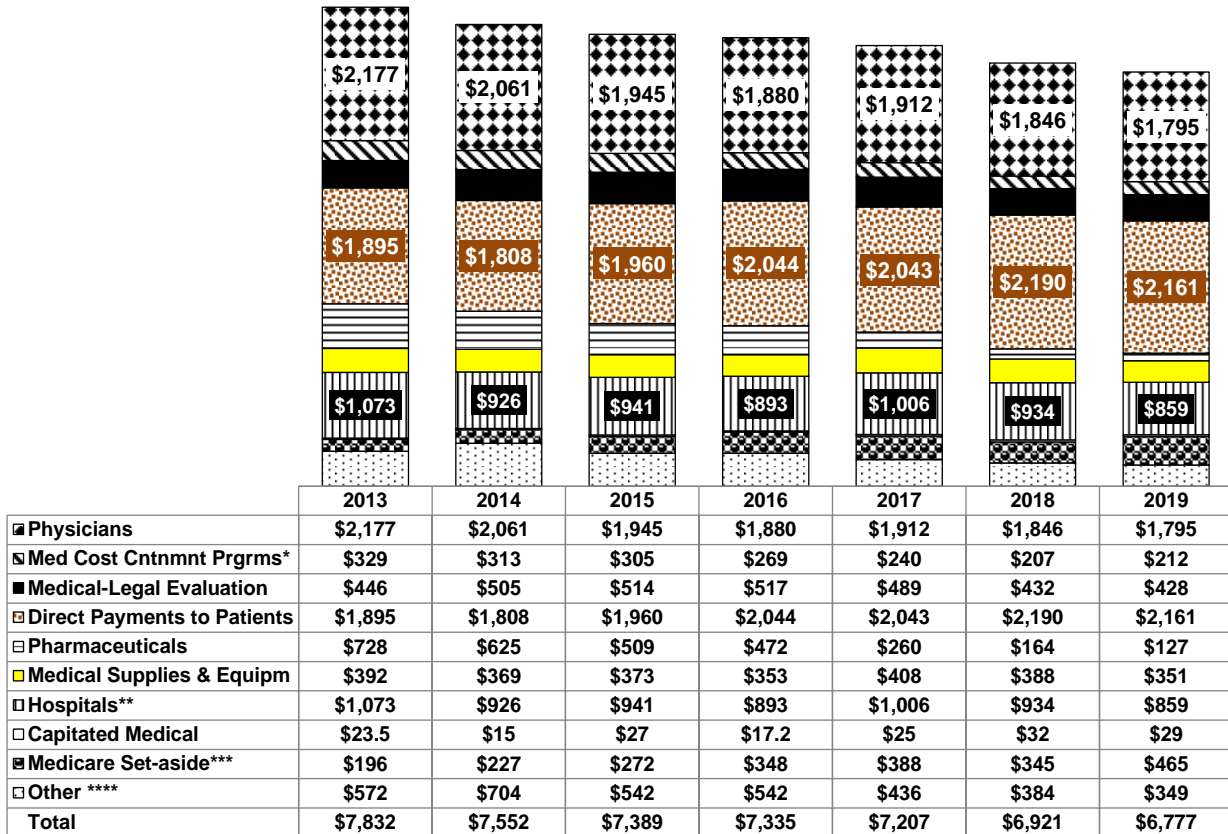
SYSTEM COSTS AND BENEFITS

Trends in Paid Medical Benefits

The estimated systemwide paid medical costs for the past several years are shown in Figure 26. The following trends may result from the impact of SB 863.

The cost of the total medical benefit decreased by 13.5 percent from 2013 to 2019, with an average of 2.4 percent decrease per year. Payments to physicians decreased overall by 18 percent from 2013 to 2019 with a slight 2 percent increase from 2016 to 2017. Hospital costs decreased by 17 percent from 2013 to 2016, increased by 13 percent from 2016 to 2017, and then declined by 15 percent from 2017 to 2019. Medical supplies and equipment stabilized at an average of \$372 million per year from 2013 to 2016, increased by 16 percent from 2016 to 2017, and then fell by 14 percent from 2017 to 2019. Medical-legal evaluation costs increased by 16 percent from 2013 to 2016, but decreased by 17 percent from 2016 to 2019. Pharmacy costs decreased almost 6 times from \$728 million in 2013 to \$127 million in 2019. This decline was primarily driven by a decrease in utilization which may reflect the impact of Independent Medical Review (IMR), including the reduction in utilization of opiates. Direct payments to patients increased overall by 14 percent from 2013 to 2019. Expenditures on medical cost-containment programs decreased overall by 36 percent from 2013 to 2019.⁷⁴ The apparent increases in the medical payments made to injured workers and medical-legal evaluation costs were in part the result of availability of more detailed reporting of payments into specific recipient/payee categories.

Figure 26: Workers' Compensation Paid Medical Benefits by Type, Systemwide Estimated Costs (\$ in millions)



Source: WCIRB's MDC (Calculations by CHSWC)

⁷⁴ Medical cost-containment program costs on claims covered by policies incepting prior to July 1, 2010, are considered medical loss, and those covered by policies incepting July 1, 2010, and beyond are considered allocated loss adjustment expenses.

SYSTEM COSTS AND BENEFITS

Average Ultimate Total Loss

Figure 27 shows changes in indemnity and medical components of the projected ultimate total loss per workers' compensation indemnity claim.

Beginning with claims incurred on policies incepting on or after July 1, 2010, the cost of medical cost containment programs (MCCP) is reported to the WCIRB as allocated loss adjustment expenses (ALAE) rather than as medical loss.

The WCIRB projected the average cost or "severity" of a 2019 claim⁷⁵ to be \$68,662, which is generally consistent with the projected severity for 2018, although with a slight second year increase following several years of modest decline in claim severities.⁷⁶ The projected average indemnity cost showed relatively modest increase from 2013 to 2015, primarily a result of SB 863 increases to permanent disability benefits effective in 2013 and 2014. After a slight decrease from 2015 to 2016, the severity of indemnity claims stayed flat in 2016 and 2017 before starting to increase again. The projected indemnity severity in 2019 was 4 percent higher than in 2018 and 8 percent higher than in 2017. Following a steady 11 percent decrease in medical severities from 2013 to 2017, driven by medical cost savings arising from SB 863, there was a 5 percent increase from 2017 to 2018. According to the WCIRB, this increase was driven in part by a higher volume of large claims and annual inflation adjustments in the medical fee schedule. From 2018 to 2019, the projected medical severity decreased by 2 percent. An initial review of 2019 experience by the WCIRB suggests that decreases in the utilization of medical services and flattening claim settlement rates had an impact on average medical costs.⁷⁷ The relatively flat medical severities since 2015 were driven by recent reforms, reduced pharmaceutical costs and efforts to fight fraud. The projected average ALAE cost, excluding MCCP, has been flat from 2013 to 2019, with an average of \$10,250 despite reductions in average loss severities driven by reforms.⁷⁸ According to the WCIRB, the average ALAE costs tend to rise shortly after the implementation of reforms, even during periods when medical costs have declined. Another factor is improving claim settlement rates that may moderate ALAE costs as well.

⁷⁵ Only indemnity claims (excluding medical-only ones) are included in these estimates. See "WCIRB Report as of December 31, 2019, Insurer Experience, More Information," p. 21.

⁷⁶ *Ibid.*, Charts 8–12.

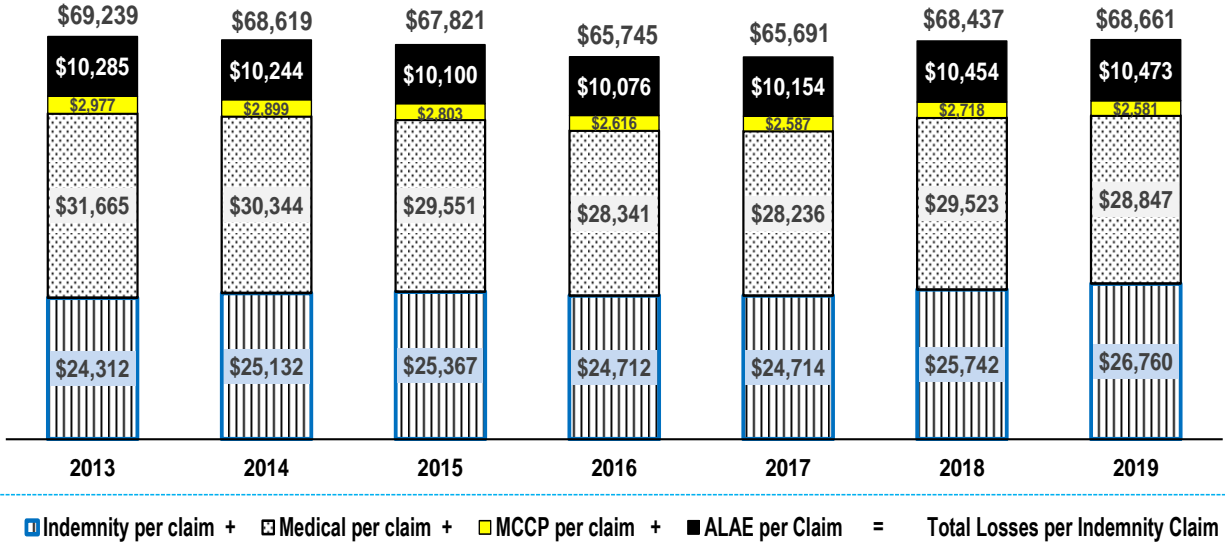
⁷⁷ *Ibid.*, Chart 10.

⁷⁸ *Ibid.*, Chart 11.

SYSTEM COSTS AND BENEFITS

According to WCIRB, average claim severities for accident year 2020 will be heavily impacted by COVID-19 claims and other issues arising from the pandemic that impact claim activity.

Figure 27: Projected Ultimate Total Loss and ALAE per Indemnity Claim as of December 31, 2019



Source: WCIRB

Please note that the WCIRB's estimates of average indemnity claim costs have not been indexed to take into account wage increases and medical inflation.

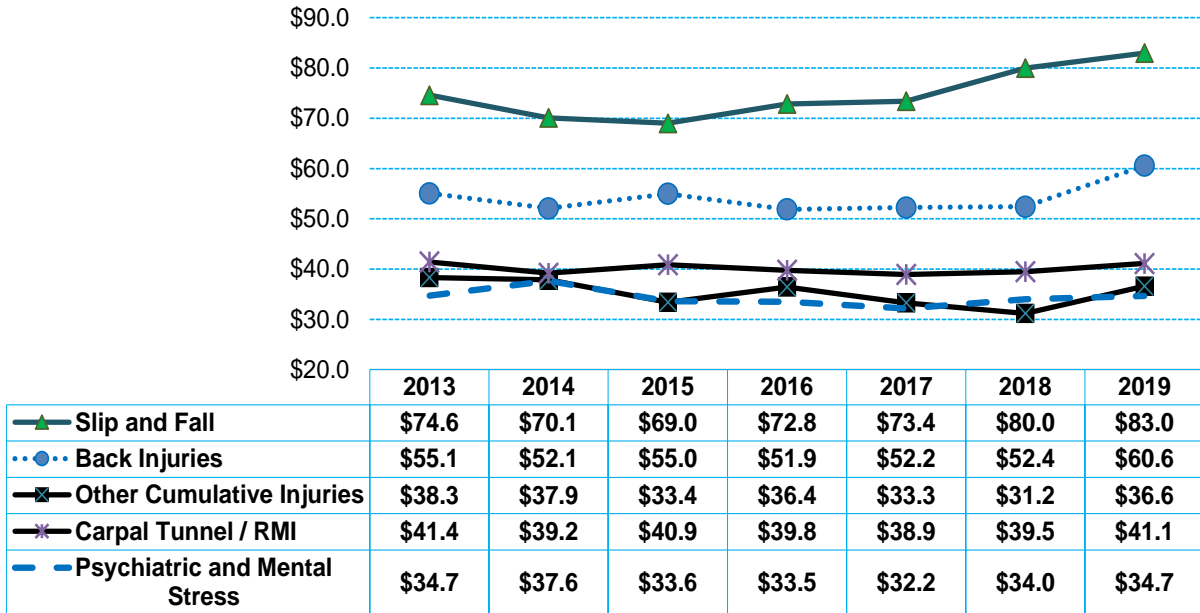
Average Cost per Claim by Type of Injury

Figure 28 shows the average medical and indemnity costs of permanent disability claims.

The average cost of the most expensive type of injury, the slip and fall decreased by 7.5 percent from 2013 to 2015, and then increased by 20 percent from 2015 to 2019. The average cost of back injuries fluctuated between \$52,000 and \$55,000 from 2013 to 2016, stayed relatively flat from 2016 to 2018, and then increased by 16 percent from 2018 to 2019. The average cost of carpal tunnel (RMI) stabilized at around \$40,000 per year from 2013 and 2019. The average cost of other cumulative injuries decreased by 13 percent from 2013 to 2015. Then, after a 9 percent increase from 2015 to 2016, it declined by 14 percent from 2016 to 2018, and grew again by 17 percent from 2018 to 2019. The average costs of psychiatric and mental stress claims decreased by 14 percent from 2014 to 2017, after a 6 percent increase from 2013 to 2014, and then increased by 8 percent from 2017 to 2019.

SYSTEM COSTS AND BENEFITS

Figure 28: Average Cost per PD Claim by Type of Injury, 2013 - 2019 (Thousand \$)



Source: WCIRB

Cumulative Trauma Claims

According to Labor Code Section 3208.1, an injury may be either specific or cumulative. A specific injury is one that takes place as the result of a single incident or exposure. A cumulative injury results from repetitive trauma (mental or physical) over a period of time.⁷⁹ The data below describe select trends in cumulative injuries. Additional information on cumulative trauma (CT) claims can be found in a 2018 WCIRB report, which includes the following findings:⁸⁰

- Between 15 percent and 20 percent of all newly filed indemnity claims are CT claims.
- All recent CT claim growth is in the Los Angeles and San Diego regions, which now generate 75 percent of CT claims but only 50 percent of other claims.
- Recent CT claim growth is spread across many industries in the Los Angeles region, though the Manufacturing and Hospitality sectors have experienced the most significant growth rates.
- CT claim growth in Southern California is concentrated in lower wage workers.
- About 40 percent of recent CT claims are filed after the employee is terminated, about three-quarters are initially denied in part or in whole, and about one-quarter also involve an accompanying specific injury claim.
- CT loss payouts are much slower than those for specific injury claims and on average ultimate costs for CT claims are higher than those for specific injury claims.
- CT claims incur significantly more medical-legal and lien payments than other types of claims, particularly at early and mid-maturity levels.
- CT claims stay open longer than other claims, but claim settlement rates have accelerated across all claim types.

⁷⁹ Labor Code Section 3208.1, p. 9, <https://www.dir.ca.gov/dwc/medicalunit/toc.pdf>

⁸⁰ WCIRB's The World of Cumulative Trauma Claims Report, October 2018.

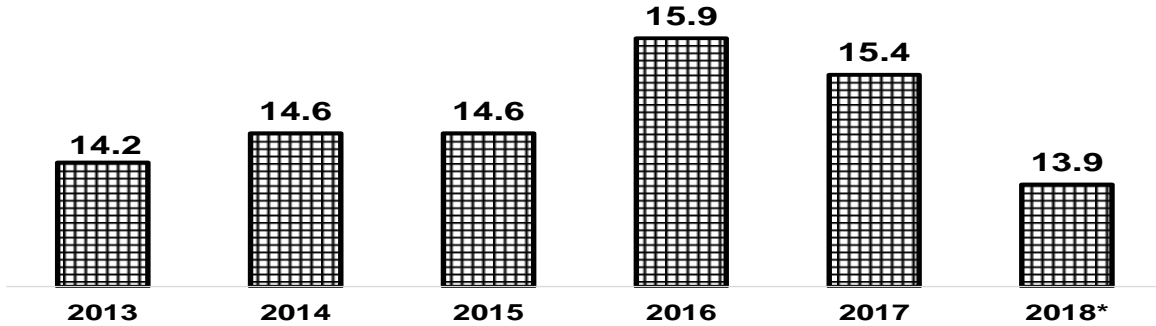
https://www.wcirb.com/sites/default/files/documents/the_world_of_cumulative_traum_claims_study_102018.pdf

SYSTEM COSTS AND BENEFITS

Cumulative Trauma Claim Counts

Figure 29 shows that CT claim rates increased by 12 percent from 2013 to 2016. According to the WCIRB, this increase was a part of a sharp increase in CT claims in the Los Angeles and San Diego areas, as other California regions experienced decreases in CT claims. Since 2016 the CT claim rates have declined but are still well above the pre-Great Recession levels.⁸¹

Figure 29: Cumulative Trauma Claims per 100 Indemnity Claims

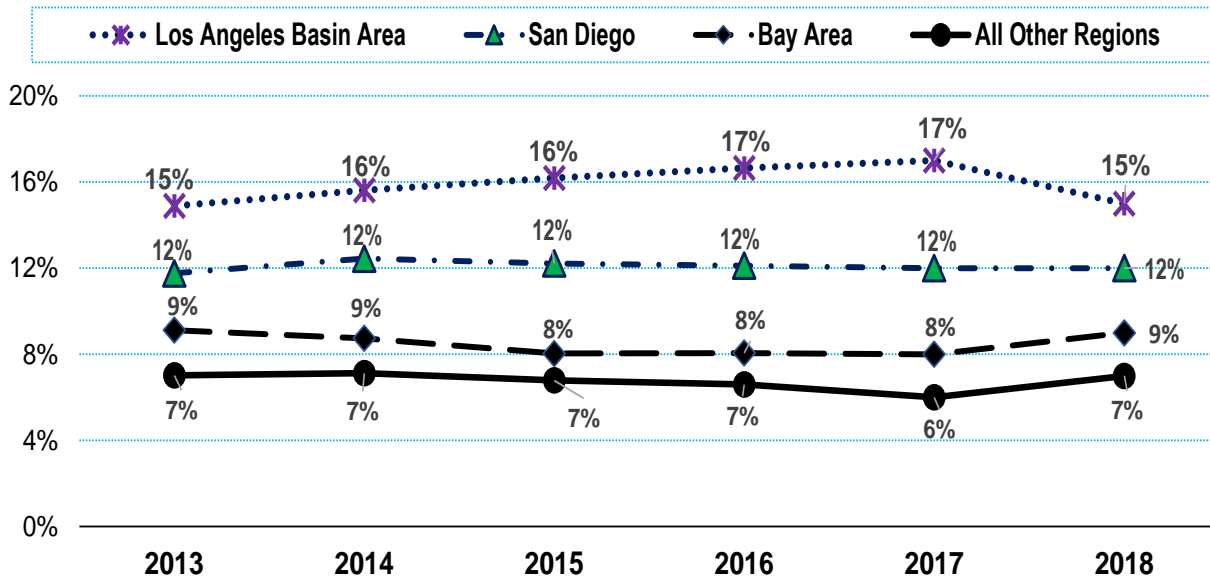


* Preliminary Data.

Source: WCIRB

As seen in Figure 30, the vast majority of recent growth in CT claims through 2017 has been in the Los Angeles and San Diego regions. The share of CT claims in the Los Angeles region declined in 2018, while that share increased in the Bay Area and other regions. Although not included in the figure, CT claims historically trended at the same levels throughout the state, with the lowest rates in more rural areas.

Figure 30: Percent of Cumulative Trauma Indemnity Claims by Region



Source: WCIRB

⁸¹ WCIRB Report as of December 31, 2019, Insurer Experience, Chart 7, https://www.wcirb.com/sites/default/files/documents/4q_experience_report_20200423_0.pdf.

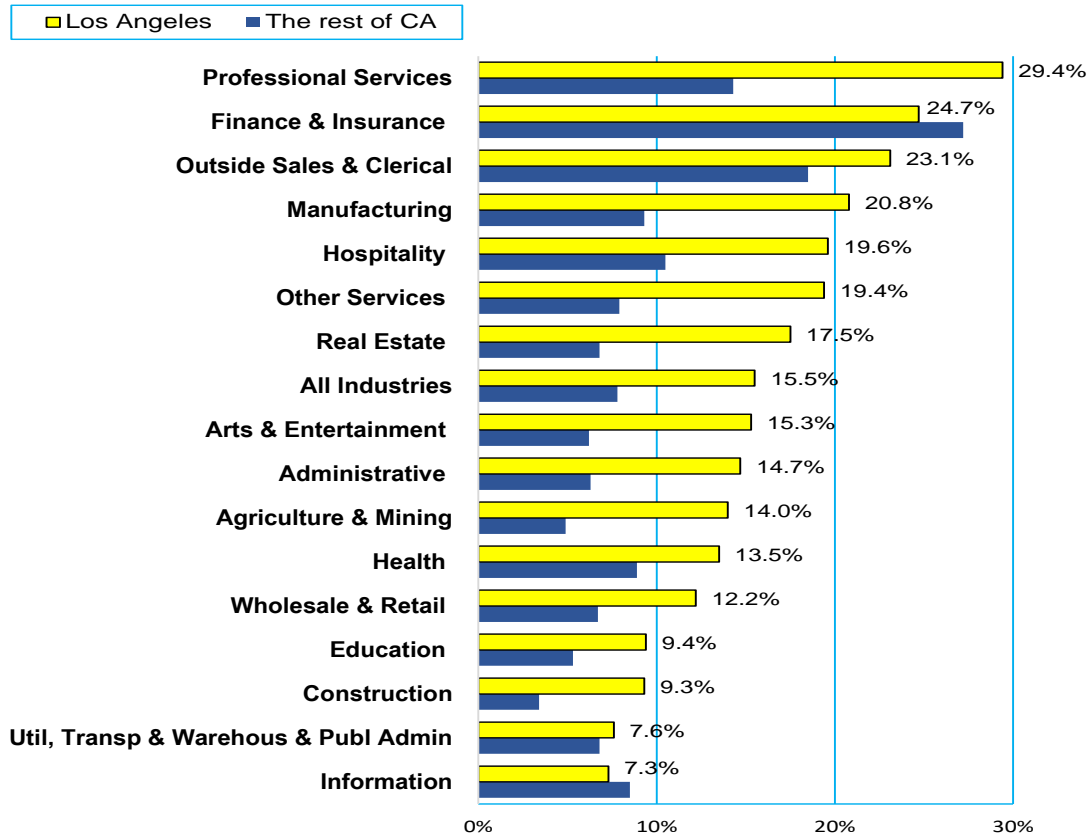
SYSTEM COSTS AND BENEFITS

Frequency of Cumulative Trauma Claims during Economic Downturn and COVID-19 Pandemic

According to the WCIRB, since 2012, about 25 post-termination claims, most of which were CT claims, have been filed for every 1,000 jobs lost. If only 50 percent of the rate of post-termination claims were applied to 4.3 million Californians who have lost jobs due to the COVID-19 pandemic, about 54,000 post-termination claims could be filed over 2020, increasing statewide indemnity claim frequency by approximately 25 percent.⁸² Over the long term (1961-2017), the average annual decline in claim frequency was 0.9 percent during the periods of expansion and 1.8 percent during times of economic downturn. CT claims, unlike other claims, also often increase during economic downturns in California and can partially offset declines in other claims and, consequently, in decreased costs. During the Great Recession (2007-2009), the average annual increase in CT claim frequency was 7.5 percent compared with 0.1 percent during the preceding economic expansion. Similarly, during periods of economic downturn, claims with injuries often involving less objective medical evidence, such as soft tissue and carpal tunnel injuries, tended to decrease at a slower rate, compared to claims involving more objective medical evidence, such as fracture and crushing injuries.

Figure 31 shows that the majority of CT claims originated in the Los Angeles area and were concentrated in the professional services, finance and insurance, manufacturing, and hospitality industries. According to WCIRB data, the proportion of CT claims in white-collar industries has increased since 2015.

**Figure 31: Share of Cumulative Trauma Indemnity Claims by Industry
(Los Angeles and the Rest of CA)
(Policy Year 2017, 1st Report Level)**



Note: NAICS Sector order based on most recent Policy Year available

Source: WCIRB

⁸² WCIRB Impact of Economic Downturn on California Workers' Compensation Claim Frequency, https://www.wcirb.com/sites/default/files/documents/rb-impact_of_economic_downturn-audienceready_0.pdf.

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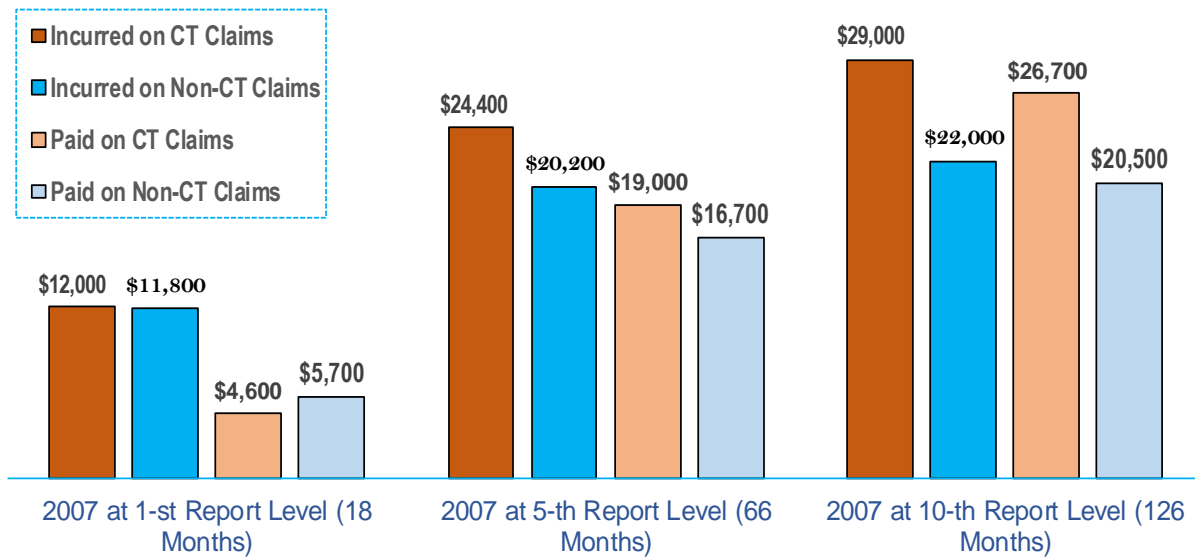
Cumulative Trauma Claim Costs

Figures 32 and 33 illustrate the indemnity and medical costs of CT claims at 1.5, 5.5, and 10.5 years of maturity. In 2017, the ten and a half year mature claims originated in the 2007 accident year as the two figures demonstrate a cost development of aging CT claims.

It takes over seven years for CT claims to be 98 percent reported or three times as long as for specific injury claims. In order to demonstrate better characteristics and attributes of CT claims the data have to be tracked from earlier accident years as in Figures 32 and 33.

Initially at 18 months, average CT claim and specific claim indemnity costs are similar. A number of CT claims are initially reported as a medical-only claim with the indemnity benefits paid on an associated claim. CT claims develop much higher costs than specific injury claims and on average have higher indemnity costs at later maturities.

Figure 32: Development of Average Indemnity (Incurred or Paid) Costs per Cumulative Trauma Claims

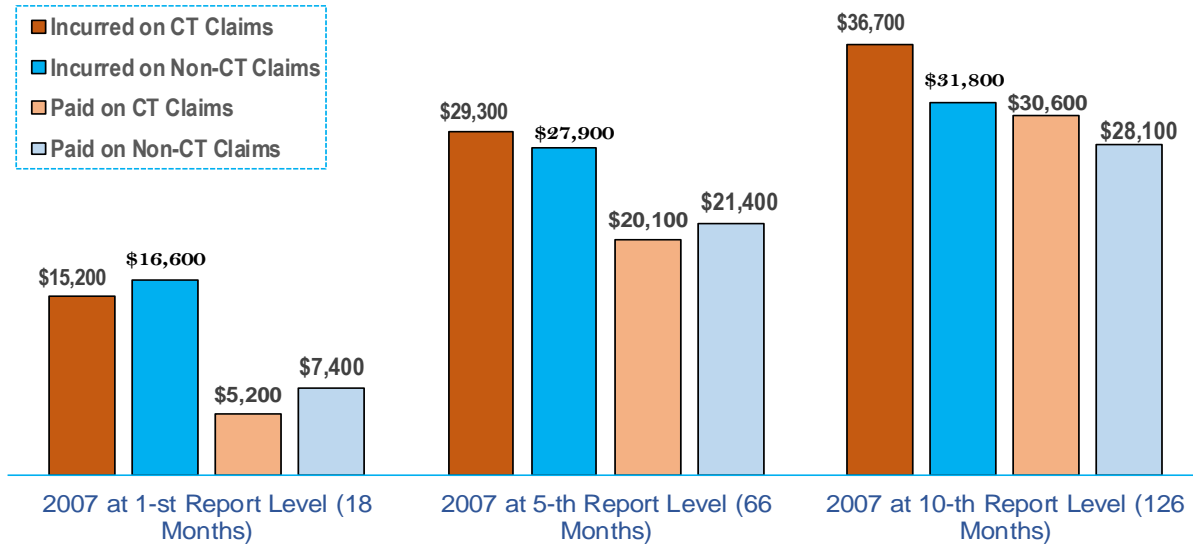


Source: WCIRB

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Initially at 18 months, average CT claim medical costs, like their indemnity costs, are lower than those for specific injury claims. CT claim medical costs develop much higher than for specific injury claims and are on average 13 percent more expensive for incurred and 8 percent higher for paid costs by 126 months.

Figure 33: Development of Average Medical (Incurred or Paid) Costs per Cumulative Trauma Claims



Source: WCIRB

Changes in Average Medical and Indemnity Costs per Claim by Type of Injury

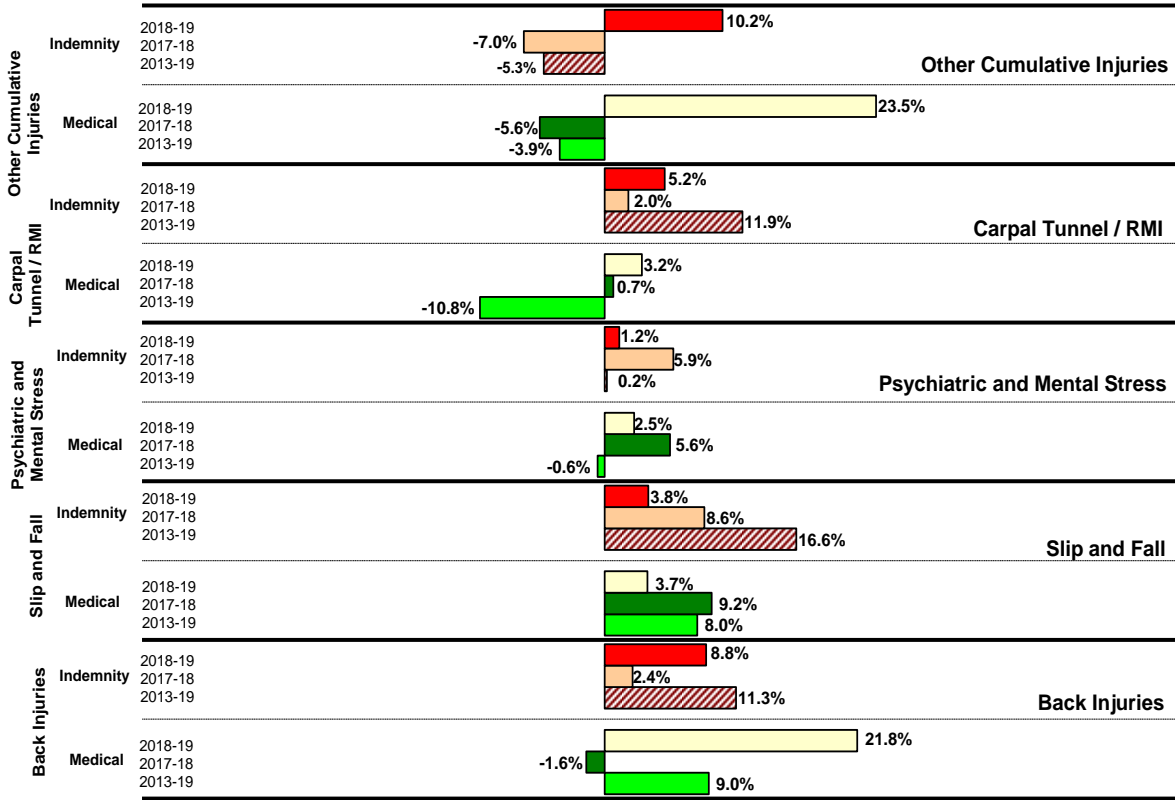
Figure 34 illustrates the impact of the reforms on selected types of injury. The six-year trend from 2013 to 2019 shows decreases in medical costs for carpal tunnel/RMI, other cumulative, and psychiatric and mental stress illnesses and injuries, while back and slip and fall injuries experienced 9 and 8 percent increases respectively during the same period. The same six-year trend for indemnity costs showed increases in indemnity costs for almost all types of injury, except for other cumulative injuries. Slip and fall injuries showed a higher six-year increase in both average indemnity and medical costs.

From 2017 to 2018, medical costs increased by 9.2 percent for slip and fall injuries, by 5.6 percent for psychiatric and mental stress disorders, and by 0.7 percent for carpal tunnel/RMI injuries. In the same period, there was a 5.6 percent decrease in the average medical cost of claim for other cumulative injuries and 1.6 percent decrease for back injuries. In the same year, the indemnity costs increased for all types of injuries except for other cumulative type.

From 2018 to 2019, medical costs increased for all types of injuries, including 23.5 percent increase for other cumulative injuries and 21.8 percent increase for back injuries. Similarly, the indemnity costs in the same period, increased for all types of injuries, including 10.2 percent increase for other cumulative injuries and 8.8 percent increase for back injuries.

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Figure 34: Percent Change in Average Medical and Indemnity Costs per Claim by Type of Injury (From 2013 through 2019, from 2017 to 2018, and from 2018 to 2019)



Data Source: WCIRB

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Medical-Legal Expenses

This section contains estimated California WC medical-legal costs for 2019. The information regarding the medical-legal costs in this report is through December 31, 2019, and, as a result, does not reflect the impact of the COVID-19 pandemic.

In California's workers' compensation system, the medical-legal evaluations result in medical-legal reports addressing specific medical and legal questions based on review of all the medical information concerning a work-related injury. The medical-legal examinations do not provide any medical treatment and the medical treatment-related evaluations for resolving disputes are outside the scope of medical-legal services. A medical-legal report is conducted to determine multiple compensability and disability threshold issues:

- Worker's eligibility for benefits: Arising out of Employment (AOE)/Course of Employment (COE).
- Permanent and stationary status of injured worker.
- Existence and extent of permanent and temporary disabilities.
- Apportionment.
- Ability to return to work.
- Injured worker's ability to engage in his/her usual occupation.
- Need for future medical treatment in cases settled by Compromise and Release.

*DWC COVID-19 Medical-Legal Emergency Measures*⁸³

The DWC adopted emergency regulations for medical-legal evaluations that took effect May 14, 2020, and expire January 12, 2021, as outlined in Executive Order N-40-20 with two possible 150-day extensions if the Order remains in effect. The issue of whether a medical-legal report is admissible or constitutes substantial medical evidence is determined in accordance with applicable laws and is not altered by these emergency measures.

The DWC's Notice of Emergency Regulatory Action addresses the ongoing need for medical-legal evaluations, prevents a backlog of medical-legal evaluations resulting from stay-at-home orders throughout the state and helps injured workers and employers continue to move their WC claims to a resolution without delay.

The regulations include the alternative forms for performing the medical-legal evaluations and reports. In line with the stay-at-home order, the DWC regulations allow the primary treating physicians to continue managing the injured workers' care through telehealth options whenever medically appropriate. Telehealth options include remote visits via videoconferencing, videocalling or similar technology that allows a video connection.

All the following conditions apply to telehealth medical-legal evaluations:

1. The injured worker is able to participate in a telehealth evaluation without violating the stay-at-home order.
2. The medical issue in dispute is determined to be essential to an injured worker's benefits and must involve the following:
 - a. An evaluation is determining whether the injury is AOE/COE
 - b. Termination of an injured worker's indemnity benefit payments, or
 - c. Work restrictions

⁸³ DWC Medical-Legal Emergency Regulations, https://www.dir.ca.gov/dwc/DWCPropRegs/2020/QME-Regulations/QME_Regs.htm.

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3. There is a written agreement between injured worker, carrier, or employer, and the QME.
4. The telehealth evaluation is consistent with appropriate medical practices and ethical considerations.
5. The QME attests that the evaluation of the injured worker can be performed effectively and safely with a telehealth evaluation and does not require an in-person physical examination that can better contribute to the examiner's ability to make an accurate diagnosis or to foresee the outcome of a treatment already provided.
6. When the medical-legal evaluations do not require the injured worker or others to travel and interact with anyone outside their immediate household.

Medical-Legal Process in Pre-COVID-19 Environment

SB 863, which took effect January 1, 2013, did not directly address the medical-legal process, but its several provisions introduced a significant change to medical-legal evaluations in how medical treatment disputes are resolved. It was expected that the number of medical-legal reports would be reduced by the IMR, lien, medical provider network (MPN), and independent bill review (IBR) provisions of SB 863. As of January 1, 2013, for injuries occurring on or after that date, and as of July 1, 2013, for all dates of injury, disagreements about a specific course of medical treatment recommended by the treating physician are resolved only through a process called independent medical review (IMR). In this environment, medical-legal evaluations by QME and AME are limited to disagreements about whether a claim is covered by workers' compensation (compensability) and disability threshold issues. In addition, another SB 863 legislative change that indirectly could have had an impact on medical-legal evaluations were the California Labor Code Sections 4660.1(c)(1) and (2). These sections limited the ability of injured workers to receive a PD compensation for sleep disorders, sexual disorders and psychological/psychiatric disorders that develop as a "compensable consequence" of physical injuries. For cases after December 31, 2012, sleep disorder and sexual dysfunctions caused by a physical injury and psychiatric disorders cannot cause an increase in PD rating, unless the psychiatric disorder is due to violent acts, direct exposure to a significant violent act, or caused by catastrophic injury, including but not limited to loss of a limb, paralysis, severe burn, or severe head injury.

According to the DWC, under the former system, it typically took 9 to 12 months to resolve a dispute over the treatment needed for an injury. The process required: (1) negotiating over the selection of an agreed medical evaluator, (2) obtaining a panel, or list, of state-certified medical evaluators if agreement could not be reached, (3) negotiating over the selection of the state-certified medical evaluator, (4) making an appointment, (5) waiting for the appointment to get an examination, (6) awaiting the evaluator's report, and then, if the parties still disagree, (7) awaiting a hearing with a workers' compensation judge, and (8) awaiting the judge's decision on the recommended treatment. In many cases, the treating physician could also rebut or request clarification from the medical evaluator, and the medical evaluator could be required to follow up with supplemental reports or answer questions in a deposition.

SB 863 replaced those eight steps with an IMR process similar to the one used in group health plans, which takes approximately 40 (or fewer) days to arrive at a determination to obtain appropriate treatment.

According to the WCIRB, subsequent to SB 863, the most expensive ML-104 report with at least four complexity factors accounted for two-thirds of all medical-legal payments from service year 2013 to 2015, contributing to the increase in total medical-legal costs. From 2014 to 2016, the increase in costs was attributable, in part, to an increased use of ML-106, a supplemental medical-legal evaluation report and to a lesser degree by increased usage of the complex ML-104 code. From 2015 to 2019, the average paid per transaction for a ML-104 report increased by 10.4 percent, while the share of ML-104 transactions declined by 31 percent. Much of this decline in ML-104 transactions was attributable to efforts started in 2017 by the Division of Workers' Compensation to ensure that sufficient documentation of the complexity was provided on ML-104 reports. At the same time, the average paid per transaction for ML-102 (the most basic medical-legal evaluation) remained about the same, but its share of transactions increased by 55.5

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percent. As a result of these changes in the mix of different types of medical-legal evaluations performed, the average cost of a medical-legal evaluation on both PD claims and all claims decreased by 16 percent and the total medical-legal cost declined by 12 percent from 2016 to 2019.

Beginning from 2016, the analyses in the CHSWC Annual Report are based on the WCIRB's medical transaction data from its Medical Data Call (MDC). The MDC began with mandatory medical transactions in the third quarter of 2012 that were reported to the WCIRB by December 31, 2012.

The historical medical-legal analysis ending in 2015 and based on the WCIRB's Permanent Disability Survey data for 2012, the latest one available, can be found in the 2015 CHSWC Annual Report:

<http://www.dir.ca.gov/chswc/allreports.html>

Workers' Compensation Claims with Medical-Legal Expenses

The WCIRB's MDC provides two sets of medical-legal data. The first is for all claims with total and partial disabilities, temporary disabilities, medical only, and denied claims as well. The second set is only for claims with total and permanent partial disability which usually have higher severity and a longer life cycle. Claims reported to MDC include claims with any medical transaction and, for this report, are grouped by the service year of a transaction.

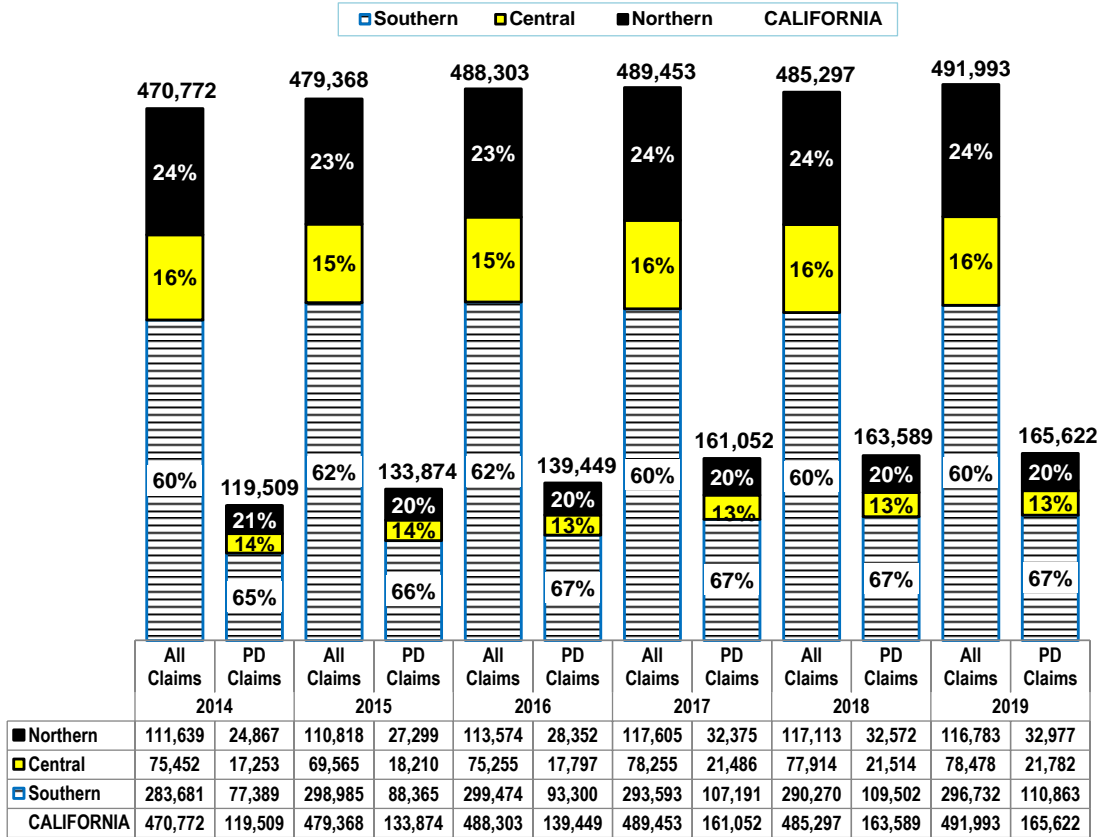
The data for 2012 are only for six months of medical-legal services provided from July 1, 2012 to December 31, 2012 and are not included in this report.

Figure 35 shows the number of permanent disability (PD) and all claims originating in three California regions in Service Years (SY) 2014 to 2019. The share of claims statewide, involving a permanent disability, increased steadily from 25 percent in 2014 to almost 34 percent in 2019.

Around 60 percent of all claims and 65-67 percent of PD claims originated in Southern California and 24 percent of all claims and 20 percent of PD claims originated in Northern California. Different regions in California have different patterns of medical-legal reporting. Regions with a higher share of workers' compensation claims in the system have a bigger impact on both the average number of medical-legal evaluations per claim and the average cost of medical-legal evaluations statewide.

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Figure 35: Workers' Compensation Claims, All and with Permanent Disability, by California Region, SY 2014-SY 2019

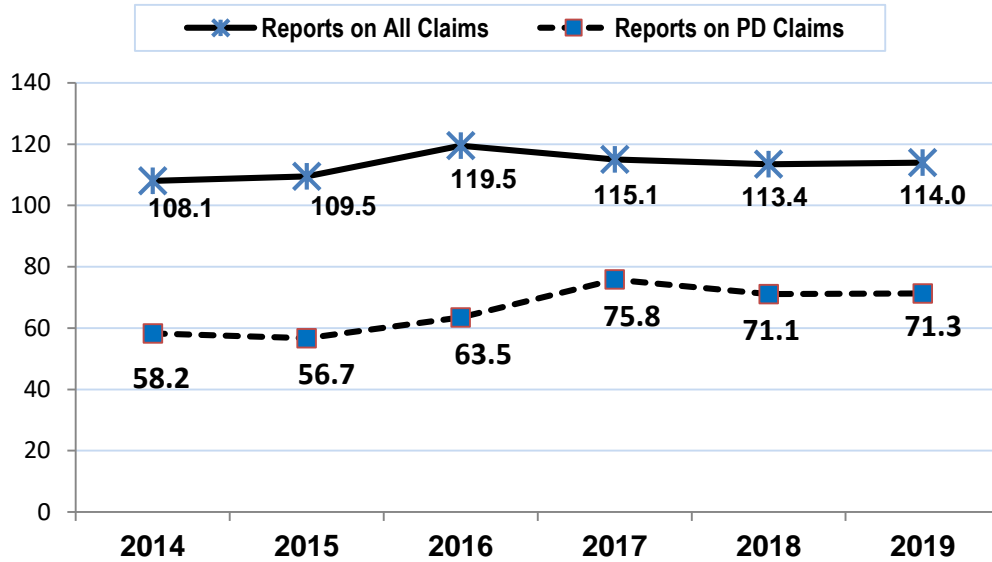


Source: WCIRB

Figure 36 shows the number of medical-legal reports conducted on PD and all claims in California for SY 2014 to SY 2019. The share of all medical-legal reports in California conducted on PD claims increased from an average of 53 percent yearly from 2014 through 2016 to an average of 64 percent from 2017 through 2019. The number of medical-legal reports on all claims increased steadily by 11 percent from SY 2014 to SY 2016, decreased by 5 percent from 2016 to 2018, and then increased slightly from 2018 to 2019. In 2014 and 2015, this growth could be explained by an increase in non-PD claims with medical-legal reports while the number of medical-legal reports on PD claims decreased in that period. At the same time, the number of medical-legal reports on PD claims was an average of 57,450 medical-legal reports per year in 2014 and 2015, increased by 34 percent from 2015 to 2017, and then decreased by 6 percent from 2017 to 2019.

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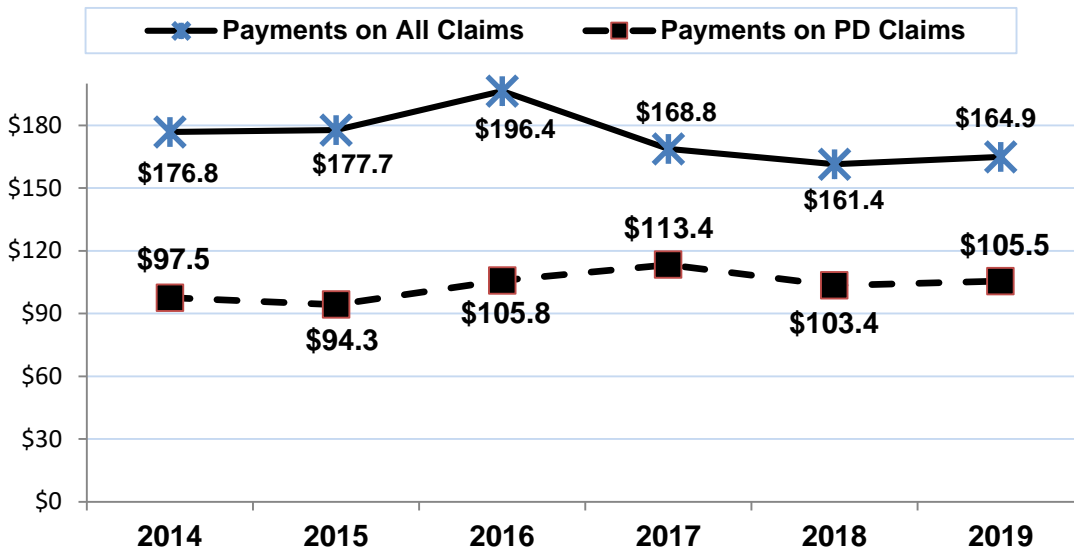
Figure 36: Number of Medical-Legal Reports on PD and All Claims (Thousands)



Source: WCIRB

Figure 37 shows statewide medical-legal payments on PD and all claims in California for SY 2014 to SY 2019. On average, around 54 percent of all yearly medical-legal payments were for PD claims from SY 2014 to SY 2016. That share increased 10 points up to 64 percent from SY 2016 through SY 2019. The medical-legal payments on all claims increased by 11 percent from SY 2014 to SY 2016, based in part on an overall 9 percent increase in medical-legal payments on PD claims during the same time period. This trend also reflects the increased number of medical-legal evaluations on PD claims from SY 2015 to SY 2017. From SY 2016 to SY 2019, the medical-legal payments on all claims decreased overall by 16 percent.

Figure 37: Medical-Legal Payments on PD and All Claims (Million \$)

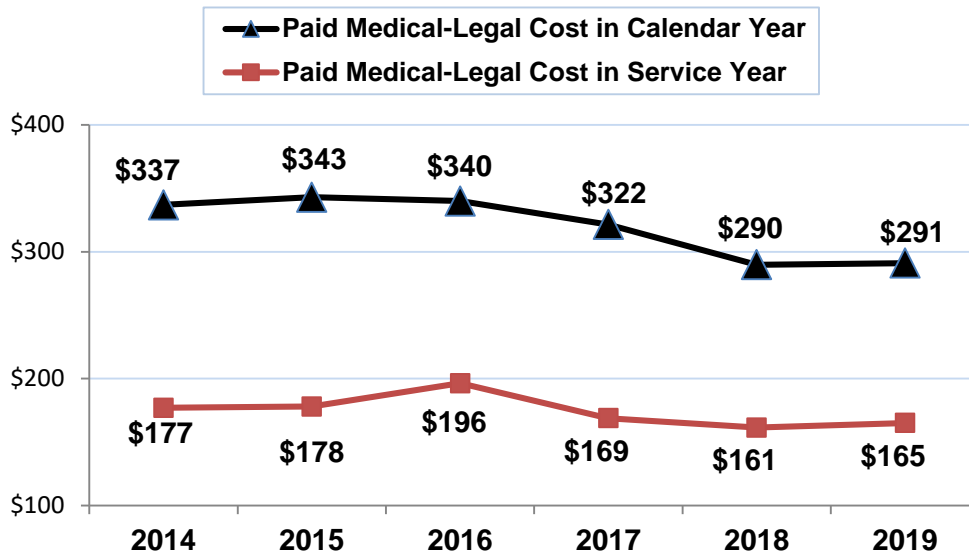


Source: WCIRB

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The total medical-legal cost is reported by the WCIRB as a component of the total medical cost. The WCIRB's widely used and referenced Losses and Expenses Report⁸⁴ has estimates of the "paid medical-legal amount" or amounts paid in a certain calendar year (CY). The WCIRB's MDC, on which the total amounts in Figure 37 are based, covers medical-legal evaluations only for a certain service year. Payments reported for a calendar year are for medical-legal services with service dates in different years and therefore cover more services, while payments discussed in this report are limited to services during the same calendar year. Figure 38 shows paid medical-legal amounts in CY 2014 to CY 2019 from the Losses and Expenses Report against the paid medical-legal amounts in SY 2014 to SY 2019 from the current CHSWC report.

Figure 38: WCIRB's Medical-Legal Costs Reported in Calendar vs. Service Years (Million \$)



Source: WCIRB

The total medical-legal expenses could be of different amounts for different organizations and even within the same organization, depending on how the data are collected, the type of reporting year applied (calendar, accident, service, or fiscal), methods of estimation, and on inclusion or exclusion of insured, self-insured, and legally uninsured employers.

Starting in CY 2014, the amounts paid for medical services are based on the WCIRB's Aggregate Indemnity and Medical Costs Call, Call for California Workers' Compensation Calendar Year Experience, and MDC that provide a better reporting of payments into specific categories. The Losses and Expenses Report estimated amounts paid for medical services before CY 2014 based on the WCIRB's Aggregate Indemnity and Medical Costs Call and Call for California Workers' Compensation Calendar Year Experience. These medical payments were segregated into categories, including the medical-legal category, based on the type of medical provider receiving payment and not necessarily the procedures performed, as is done in the MDC.

Another consideration when the dollar amounts of medical-legal reports are estimated as a share of medical bills is that the bill review data are based on the fee schedules and not all medical costs are captured in the databases, especially medical costs not covered by the fee schedule.

⁸⁴ WCIRB, 2018 Losses and Expenses Report, Exhibit 1.1, June 28, 2019.

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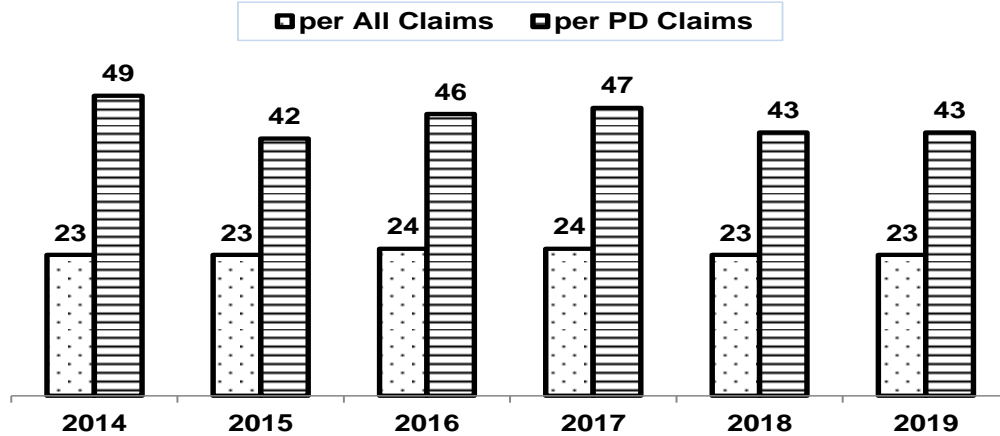
Also, the methods for calculating medical expenses could differ by the inclusion or exclusion of different categories of medical expenses, such as medical cost containment program (MCCP) expenses, thereby increasing or decreasing the total.

The changes in total medical-legal cost for insurers reflect changes in its three components: the number of workers' compensation claims, the average number of medical-legal evaluations per claim, and the average cost of a medical-legal evaluation.

Medical-Legal Evaluations per Claim

Figure 39 compares the frequency of medical-legal reports for all claims and PD claims statewide from SY 2014 to SY 2019. The average number of medical-legal evaluations per 100 PD claims is about double the rate for all claims. While the average number of medical-legal evaluations per 100 all claims stabilized at 23 between the SY 2014 and SY 2019, the same rate for PD claims decreased overall by 12 percent from 49 reports per 100 PD claims in SY 2014 to 43 reports per 100 PD claims in SY 2019.

Figure 39: Number of Medical-Legal Evaluations per 100 Workers' Compensation Claims (PD and All) in California



Source: WCIRB

Medical-Legal Reporting by the California Regions

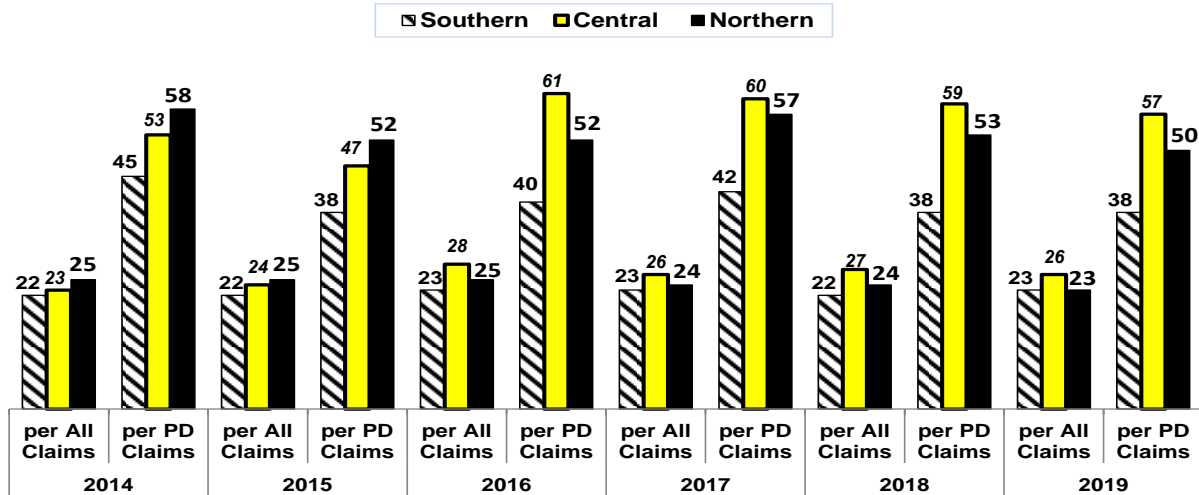
The different regions in California are often thought to have different patterns of medical-legal reporting. Figure 40 compares the frequency of medical-legal reports for all claims and PD claims in three California regions from SY 2014 to SY 2019. During this period, all three California regions showed a similar trend in changes of the average number of medical-legal evaluations per 100 PD claims.

From SY 2014 to SY 2015, the average number of medical-legal evaluations per 100 PD claims decreased for all three California regions, with a 16 percent decrease in the South, an 11 percent decrease in the Central region, and a 10 percent decrease in the North. All three regions experienced an increase in the average number of medical-legal evaluations per 100 PD claims from SY 2015 to SY 2017, with the highest increase in the Central region (28 percent) compared to the South (11 percent) and the North (10 percent). From SY 2017 to SY 2019, the average number of medical-legal evaluations per 100 PD claims decreased for all three California regions, with a 12 percent decrease in the North, a 10 percent decrease in the South, and a 5 percent decrease in the Central region. From 2016 to 2019, Central California exceeded both Northern and Southern California in the average number of medical-legal evaluations per 100 PD claims even on its downtrend from 61 to 57 medical-legal evaluations per 100 PD claims during this time. The number of medical-legal evaluations per 100 PD claims in Northern California exceeded that in Southern California in all six years. In the same period, the average number of medical-legal evaluations per 100

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claims did not change in both regions, the origin of the majority of PD claims and medical-legal evaluations in California, with 22-23 in the South and 24-25 medical-legal evaluations per 100 claims in the North.

Figure 40: Average Number of Medical-Legal Evaluations per 100 Claims (PD and All), by Region

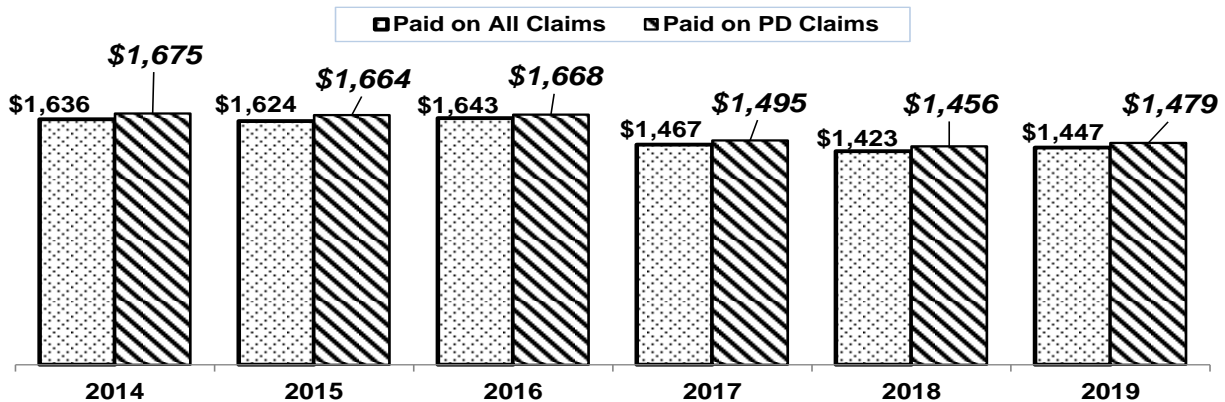


Source: WCIRB

Average Cost per Medical-Legal Evaluation

According to Figure 41, both the average cost of a medical-legal evaluation on PD claims and the average cost of a medical-legal evaluation on all claims were stable and did not change from SY 2014 to SY 2016. After a more than 10 percent decrease in both the average cost of a medical-legal evaluation on PD claims and the average cost of a medical-legal evaluation on all claims from SY 2016 to SY 2017, both averages stabilized close to their 2017 levels from SY 2017 to SY 2019.

Figure 41: Average Cost of a Medical-Legal Evaluation on All and PD Claims, California



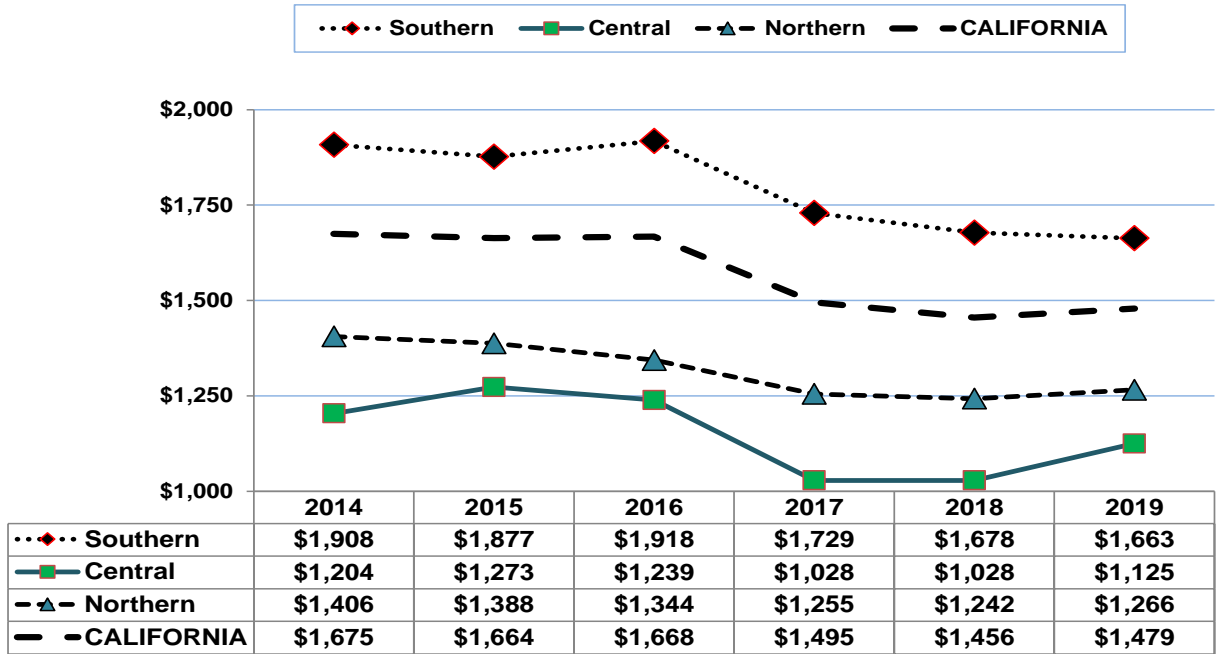
Source: WCIRB

According to Figure 42, both Southern and Northern California showed no change in the average cost of a medical-legal evaluation on PD claims from 2014 to 2016. In that period, a medical-legal evaluation on PD claims averaged \$1,905 per year in Southern and \$1,380 per year in Northern California. The historical data show that, on average, medical-legal evaluations in Southern California have always been substantially more expensive. The statewide changes in the average cost of a medical-legal evaluation on PD claims mirrored the pattern in Southern California, with no change from 2014 to 2016. From SY 2016

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to SY 2019, the average cost of a medical-legal evaluation on PD claims decreased by 13 percent in Southern and by 6 percent in Northern regions.

Figure 42: Average Cost of a Medical-Legal Evaluation on PD Claim, by Region



Source: WCIRB

Trends in both the average number of medical-legal evaluations per claim and the average cost of an evaluation in California are being driven by medical-legal evaluations in Southern California, as seen in Figure 42 and Table 9. About 60 percent of medical-legal evaluations originated in Southern California in SY 2014 to SY 2019, reflecting the similar share of Southern California in workers' compensation claims.

Table 9: Distribution of Medical-Legal Reports on PD Claims by California Regions

	2014	2015	2016	2017	2018	2019
Southern	60%	60%	60%	59%	58%	60%
Central	16%	15%	17%	17%	18%	17%
Northern	25%	25%	23%	24%	24%	23%

Source: WCIRB

Status of the Revision of the Medical-Legal Fee Schedule (MLFS) and the DWC's Efforts to Address the Bureau of State Audit Recommendations with Respect to MLFS⁸⁵

The Medical-Legal Fee schedule adopted by the Administrative Director in 2006 increased the cost per medical-legal evaluation for dates of services on or after July 1, 2006. Table 10 shows the costs and description from the Medical-Legal Fee Schedule.

⁸⁵ Information on the Status of Revision of the MLFS and DWC's Efforts to Address the Bureau of State Audit Recommendations with Respect to MLFS was provided by DWC.

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Table 10: Medical-Legal Evaluation Costs for Dates of Service on or After July 1, 2006

Evaluation Type	Amount Presumed Reasonable
ML-100 Missed Appointment	Some claims administrators will not pay
ML-101 Follow-up	\$62.50/15 minutes or \$250/hr.
ML-102 Basic (flat rate)	\$625
ML-103 Complex (flat rate)	\$937.50
ML-104 Extraordinary	\$62.50/15 minutes or \$250/hr.
ML-105 Testimony	\$62.50/15 minutes or \$250/hr.
ML-106 Supplemental	\$62.50/15 minutes or \$250/hr.

Note: Two categories ML-105 and ML-106, created by CCR Title 8, Sections 9793 & 9795, June 2006, were applicable to 2008 and later claims. The functions of medical testimony and supplemental evaluations were moved into these two new categories from their previous status.

On August 19, 2019, the DWC posted proposed regulations that would have amended the Medical-Legal Fee Schedule, changing it to a flat fee based system. Based upon the comments received, the DWC decided to hold stakeholder meetings to discuss changes to update the Medical-Legal Fee Schedule.

The DWC then held numerous meetings over the course of the next six months, working collaboratively with industry stakeholders to formulate a new Medical-Legal Fee Schedule. Representatives from employers, insurance carriers, medical providers, and medical management companies participated in the stakeholder meetings. In addition to changes to the Medical-Legal Fee Schedule, the stakeholder meetings also addressed QME report quality and other process changes to improve the overall functioning of the QME program.

Utilizing the results of those stakeholder meetings, the DWC redrafted proposed regulations for a new fee schedule. The DWC again posted the proposed regulations on their open forum webpage on June 25, 2020, and meaningful feedback was received and considered. The final version of the proposed fee schedule regulations⁸⁶ was posted for comment on October 28, 2020, with a public hearing held on December 14, 2020; the intended implementation date for the new Medical-Legal Fee Schedule is April 1, 2021. Meeting this timeline will achieve one of the recommendations of the audit of the QME program that was completed by the State Auditor’s Office on November 19, 2019.

To date, the DWC has fully implemented the State Auditor’s recommendations related to creating policies to ensure workers’ compensation judges review and reject QME reports that do not meet minimum standards. The DWC has partially implemented the State Auditor’s recommendations related to tracking QME reports rejected by judges, reviewing the quality and timeliness of QME reports, and implementing written policies and procedures that define DWC’s internal processes for disciplining QMEs. The DWC is actively working to fully implement the balance of the audit recommendations that are within the control of the agency.

Medical-Legal Cost Drivers

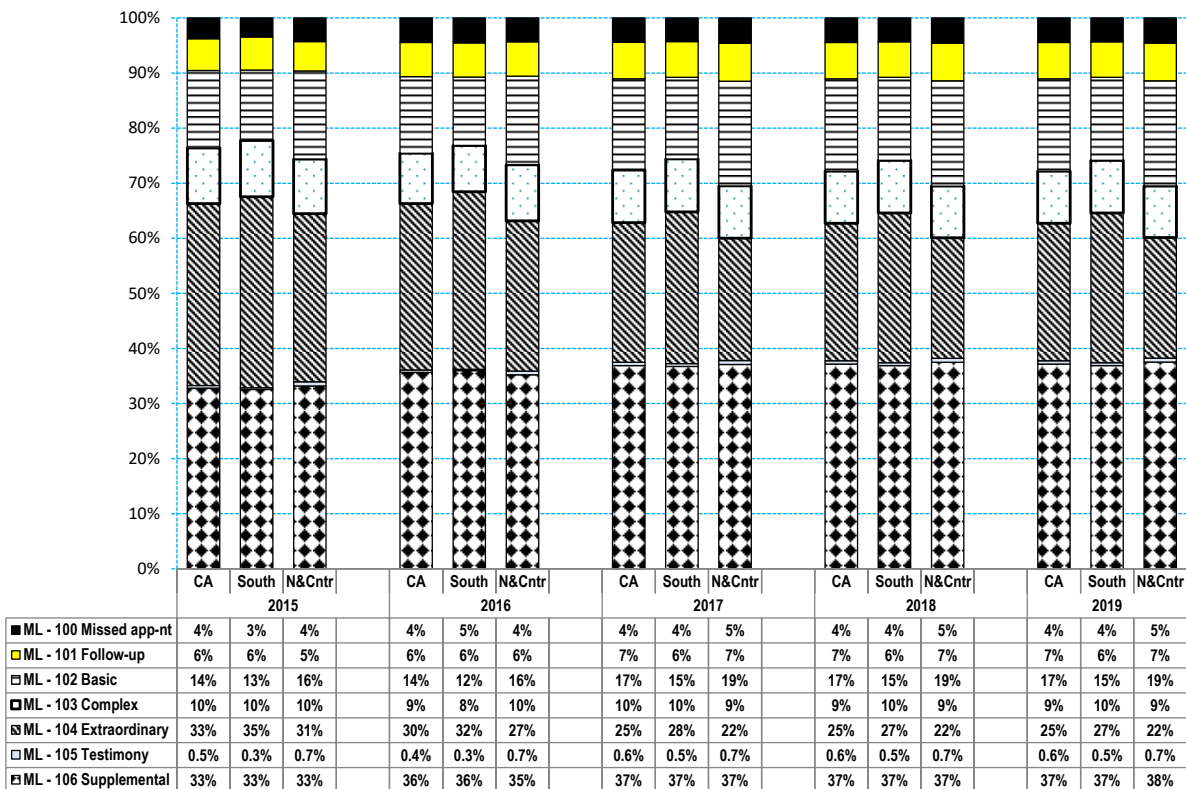
The primary cost driver for California and its Southern region is not the price paid for specific types of evaluations. Rather, the mix of codes used for billing the evaluations continues the historical pattern of including a higher percentage of the most complex and expensive evaluations and a lower percentage of the least expensive type; although this pattern started changing in 2017 with an increase in ML-102 reports.

⁸⁶ <https://www.dir.ca.gov/dwc/DWCPropRegs/2020/Medical-Legal-Fee-Schedule/Med-Legal-Fee-Schedule.htm>

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The distribution of medical-legal evaluations by categories of “fee schedule type” in Figure 43 show that, in SY 2015 and SY 2016, on average, one-third of medical-legal evaluations in the Southern California region were classified as Extraordinary (ML-104). Although, within that average, the share of ML-104 reports in the Southern region had been steadily decreasing from 35 percent in SY 2015 to 27 percent in SY 2019, as the share of Supplemental reports was increasing from 33 percent in SY 2015 to 37 percent in SY 2019. In SY 2019, 67 percent of medical-legal evaluations in Northern/Central California and 70 percent in Southern California were billed under the time-based codes, such as ML-101, ML-104, or ML-106, which are priced at \$62.50 for every 15 minutes for QMEs or \$78.13 for every 15 minutes for AMEs. Some medical-legal evaluation activities are not billable separately under all medical-legal fee codes. For example, reviewing medical-legal consultation reports could not be billed separately under flat-rated codes as ML-102 or ML-103, as opposed to time-based codes. This makes billing a medical-legal evaluation under a time-based code more profitable in the majority of evaluations. The share of ML-102 Basic reports in California increased from 14 percent in SY 2015-2016 to 17 percent in SY 2017-2019.

Figure 43: Distribution of Medical-Legal Evaluations on PD Claims by Procedure Code in California and Regions, SY 2015 - SY 2019



"N&Cntr" - Northern and Central regions

Data Source: WCIRB

Although the average cost of ML-104 reports is still high (see Table 11 and Figure 44), the decrease in the share of ML-104 reports and the increase in the share of Basic ML-102 reports, caused the share of ML-104 payments in total medical-legal payments of three regions to decrease by ten percentage points from SY 2014 to SY 2019 (see Table 11).

Table 11 shows that in the three years from SY 2017 to SY 2019, 62 percent of medical-legal payments in the Southern region and around 57 percent in the Northern and Central regions were spent on the most highly reimbursed Medical-Legal procedure (ML-104). ML-104 involves claims with four or more complexities, is reimbursed at a rate of over \$3,000 per report (see Figure 41) and increases costs on a

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per-transaction basis as well. According to WCIRB, there was a modest 3 percent increase in payments per transaction between CY 2014 and CY 2016. All these factors explain why the average cost of a medical-legal evaluation on PD claims did not show a notable decrease in CY 2014-2016 before the share of ML-104 reports began decreasing in CY 2017.

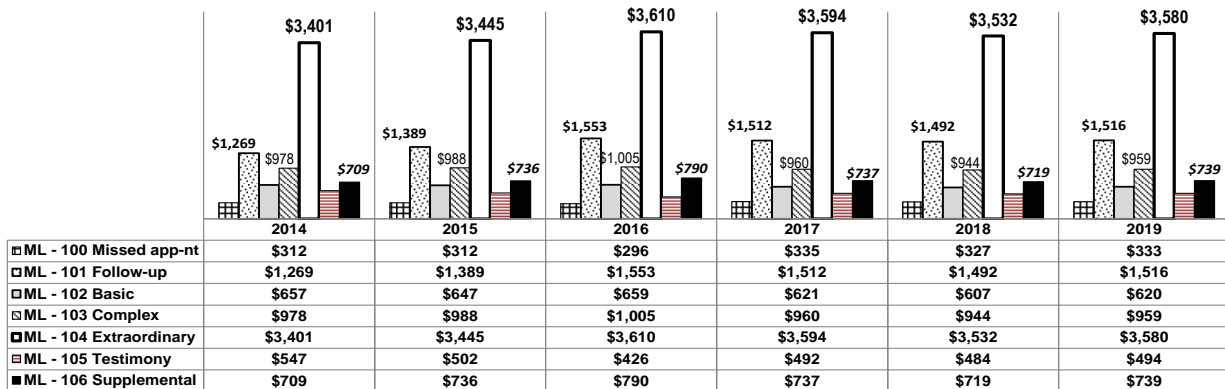
Table 11: Characteristics of ML-104 coded Reports done on PD Claims in California Regions

		2014	2015	2016	2017	2018	2019
Southern	Share of region in Total Med-Legal Payments	68%	68%	67%	68%	67%	67%
	Share of ML-104 in regional payment	72%	69%	66%	62%	62%	62%
	Avg Cost of ML-104 Report	\$3,738	\$3,754	\$3,952	\$3,924	\$3,839	\$3,818
	ML-104 Reports per 100 PD Claims	16	13	13	11	10	10
Central	Share of region in Total Med-Legal Payments	11%	12%	13%	12%	13%	13%
	Share of ML-104 in regional payment	66%	64%	63%	57%	57%	56%
	Avg Cost of ML-104 Report	\$2,595	\$2,856	\$2,924	\$2,718	\$2,751	\$3,002
	ML-104 Reports per 100 PD Claims	16	14	16	13	13	12
Northern	Share of region in Total Med-Legal Payments	21%	21%	20%	20%	21%	20%
	Share of ML-104 in regional payment	67%	67%	63%	58%	58%	57%
	Avg Cost of ML-104 Report	\$2,955	\$2,955	\$3,081	\$3,208	\$3,192	\$3,248
	ML-104 Reports per 100 PD Claims	18	16	14	13	12	11

Source: WCIRB

According to Figure 44, the average cost of all medical-legal evaluations billed under the time-based codes, such as ML-101, ML-104, or ML-106, showed an overall increase from SY 2014 to SY 2016, a slight decrease from SY 2016 to SY 2018, and then again a small increase from SY 2018 to SY 2019. The cost of an extraordinary report increased by 6 percent from \$3,401 in SY 2014 to \$3,610 in SY 2016 and then, on average, stabilized at close to that cost level from SY 2016 to SY 2019.

Figure 44: Average Cost of a Medical-Legal Evaluation for a PD Claims in California by Procedure Code



Source: WCIRB

Another possible explanation for the differing trends in the average cost per evaluation and the increasing frequency of the most complex evaluations in California could be both the frequency and the number of psychiatric and psychological/behavioral evaluations per claim.

On average, psychiatric and psychological/behavioral evaluations are around \$3,000, the most expensive evaluations by specialty of provider, and are nearly always billed under the ML-104 code. Table 12 shows that the average cost of a psychiatric evaluation in California increased by 13 percent from SY 2014 to SY 2016 and then decreased by 13 percent from SY 2016 to SY 2019. The average cost of a psychological/behavioral evaluation increased by 5 percent from SY 2014 to SY 2016, mirroring a 4 percent

SYSTEM COSTS AND BENEFITS

increase in Southern California and 10 percent increase in Northern California, and then decreased by 3.5 percent from SY 2016 to SY 2019.

Table 12: Average Cost of a Psychiatric or Psychological/Behavioral Report by Region

		2014	2015	2016	2017	2018	2019
Southern	Psychiatry	\$3,503	\$3,617	\$3,952	\$3,622	\$3,565	\$3,491
	Psychologist/Behavioral	\$3,054	\$2,942	\$3,171	\$3,270	\$3,195	\$3,156
Central	Psychiatry	\$2,492	\$2,870	\$2,853	\$2,165	\$2,184	\$2,378
	Psychologist/Behavioral	\$2,685	\$2,761	\$2,717	\$2,440	\$2,414	\$2,638
Northern	Psychiatry	\$2,917	\$3,015	\$3,228	\$2,760	\$2,746	\$2,782
	Psychologist/Behavioral	\$2,589	\$2,612	\$2,841	\$2,481	\$2,484	\$2,510
CALIFORNIA	Psychiatry	\$3,233	\$3,352	\$3,642	\$3,197	\$3,152	\$3,163
	Psychologist/Behavioral	\$2,863	\$2,829	\$3,001	\$2,907	\$2,856	\$2,897

Source: WCIRB

Southern California is the origin of about 70-75 percent of the psychiatric and 67 percent of the psychological/behavioral evaluations in California and has the biggest impact on both the frequency and cost of medical-legal evaluations statewide. The frequency of psychiatric and psychological/behavioral evaluations in Southern California averaged 5 per 100 PD reports and 9 per 100 PD reports yearly in the four years from SY 2016 to SY 2019 (Tables 13 and 14).

Table 13: Rate of Psychiatric Evaluations per 100 PD Reports

	2014	2015	2016	2017	2018	2019
Southern	6	5	5	5	5	5
Central	5	5	4	4	4	4
Northern	6	6	4	4	4	4
CALIFORNIA	6	5	4	4.5	4.5	4.5

Source: WCIRB

Table 14: Rate of Psychiatric and Psychologist/Behavioral Evaluations per 100 PD Reports

	2014	2015	2016	2017	2018	2019
Southern	5	6	9	9	9	9
Central	6	5	8	9	9	9
Northern	7	6	9	9	9	9
CALIFORNIA	6	6	9	9	9	9

Source: WCIRB

Table 15 shows that the psychiatric and psychological/behavioral evaluations combined make up about one fifth of total medical-legal payments in California, which makes them important cost drivers of California's medical-legal expenses.

Table 15: Share of Payments for Psychiatric and Psychological Reports in California Medical-Legal Payments, by Region

	2014	2015	2016	2017	2018	2019
Southern	20%	19%	16%	18%	18%	18%
Central	23%	22%	19%	20%	20%	20%
Northern	24%	24%	19%	19%	19%	19%

Source: WCIRB

WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

INTRODUCTION

The Commission on Health and Safety and Workers' Compensation (CHSWC) examines the overall performance of the health and safety and workers' compensation systems to determine whether they meet the State of California's constitutional objective to "accomplish substantial justice in all cases expeditiously, inexpensively, and without encumbrance of any character."

In this section, CHSWC provides performance measures to assist in evaluating the system impact on everyone participating in the workers' compensation system, particularly workers and employers.

Through studies and comments from the community, as well as administrative data, CHSWC has compiled the following information pertaining to the performance of California's systems for health and safety and workers' compensation. Explanations of the data are included with the figures and tables.

- Workers' Compensation Appeals Board (WCAB) Workload
 - Division of Workers' Compensation (DWC) Opening Documents
 - DWC Hearings
 - DWC Decisions
 - DWC Lien Filings and Decisions
- DWC Audit and Enforcement Program
- DWC Medical Unit (MU)
- DWC Disability Evaluation Unit
- DWC Medical Provider Networks and Health Care Organizations
- DWC Information and Assistance Unit
- DWC Return-to-Work Supplement Program (RTWSP)
- DWC Uninsured Employers Benefits Trust Fund
- DWC Subsequent Injuries Benefits Trust Fund
- DWC Adjudication Simplification Efforts
 - DWC Information System (WCIS)
 - DWC Electronic Adjudication Management System (EAMS)
 - Carve-outs: Alternative Workers' Compensation Systems
- Division of Labor Standards Enforcement (DLSE)
 - DLSE Bureau of Field Enforcement
 - DLSE Registration Services-Janitorial Services
- Anti-Fraud Efforts

Impact of COVID-19 shutdowns/interruptions on workload and countermeasures to maintain workflow in the system⁸⁷

DWC, like every other state office, has been significantly affected by the COVID-19 crisis. In March 2020, DWC altered all its operations to keep staff safe. The Division sent its staff home, determined which functions could be performed at home, rather than on-site at state buildings, and arranged access to

⁸⁷ Information on the impact of COVID-19 shutdowns/interruptions was provided by DWC.

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computers for all telecommuting employees who needed them. Despite some delays in providing services, all DWC operations—including those performed by the Audit Unit, Medical Unit, the Subsequent Injuries Benefit Trust Fund, and the Uninsured Employers Benefit Trust Fund—remain open and operational with no significant backlogs.

To assist the workers' compensation (WC) system in continuing to provide services, on May 14, 2020, the Division adopted emergency regulations regarding its Medical-Legal program. The regulations allow the electronic service of documents and allow qualified medical evaluations to take place in a safe manner, via telehealth, that are compliant with existing orders from the Governor's office and local public health departments. The regulations are in effect for 180 days and can be readopted. Further, Executive Order N-63-20, issued May 7, 2020, extended the following statutory and regulatory deadlines for 60 days:

- Paragraph 8c: Labor Code (LC) sections 4616(b)(1) and California Code of Regulations (CCR), Title 8, sections 9767.2(a) and (b) and 9767.8(d), related to the period in which the administrative director must act upon Medical Provider Network (MPN) applications or requests for modifications or reapprovals.
- Paragraph 8f: LC section 123.5 and CCR, Title 8, sections 9713, 9714, and 9714.5, related to the period in which Workers' Compensation Administrative Law Judges (WCALJ) must file decisions.

With regard to its adjudicative function, at first DWC limited its in-person hearings to expedited hearings and handled mandatory settlement conferences, priority conferences, and status conferences via a partnership with CourtCall, an online virtual court hearing platform. After the Governor issued the stay-at-home order in March, DWC limited all hearings, appearances, and meetings to telephonic. Expedited hearings proceeded in the telephonic format, but other hearings were continued. DWC then issued conference lines to all DWC judges to allow for litigants to use those lines to hear all cases. Those lines were posted on the DWC website for community access. DWC reduced staffing in the district offices and in all units to about 25 percent, with the rest of the staff working from home. Most employees continued to come into an office on a rotational basis a few times per week. DWC continued to process all work coming into the offices. DWC then added cases in chief trials on May 4, and lien conferences also started to be heard on May 28. Both are heard via the judge's conference lines.

Also in May, DWC updated certain forms to add a "body part code" giving DWC a greater ability to track injuries related to COVID-19.

In August 2020, DWC then began using a videoconferencing platform for trials and expedited hearings when warranted. In September, DWC added lien trials to the calendar. DWC also adjusted its notices to reflect the judge's conference line, instead of the location of the courthouse.

To assist injured workers with filing the Return-to-Work Supplement Program application, DWC posted the application online, and the DWC call center is also assisting injured workers with preparing forms. DWC also advised the community that it would accept certain documents by e-mail after an en banc hearing by the Workers' Compensation Appeals Board allowing such a filing. DWC is handling most of its filings by e-filing, JET filing, or postal mail.

All other DWC operations remain open and operational with staff primarily working from home.

Impact on DWC's and WCAB's Workload as a Result of COVID-19

At first, because of the shutdowns and reduction in hearings, the number of DWC hearings was significantly reduced. For example, DWC heard 15,521 cases in April. Although this number was significant, considering that 75 percent of the staff began to work from home, it was much lower than in April 2019, when DWC judges heard 28,670 cases. However, by June hearings had significantly increased, and DWC judges heard 23,687 cases. This was slightly below the prior year; in June 2019, DWC judges heard 25,719 cases. Hearings have stabilized at about that level and, in July 2020, were slightly higher, at 24,030. Although the number in July remains slightly lower than in DWC's regular calendar month, DWC has found that handling

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hearings via telephone and video is more time consuming for its staff and judges, so they cannot have as many hearings as they would in person. DWC continues to provide all services via telephone, video, or mail-in requests. The staff are not providing services in person at this time. DWC does not have any significant backlog.

WCAB DISTRICT OFFICES WORKLOAD

At the Division of Workers' Compensation's (DWC) 22 district offices and satellites located throughout California, employers, injured workers, and others receive judicial services that assist in the resolution of disputes from workers' compensation claims. The local district offices are a major part of the workers' compensation court system, where judges make decisions about cases. These offices are called WCABs as their activities are regulated by a Workers' Compensation Appeals Board (WCAB), a seven-member, judicial body appointed by the Governor and confirmed by the Senate.⁸⁸ In this context, the WCAB workload does not include a WCAB review of formal appeals of decisions made by district WCAB judges, and it does not include case law decisions by the seven-member WCAB.

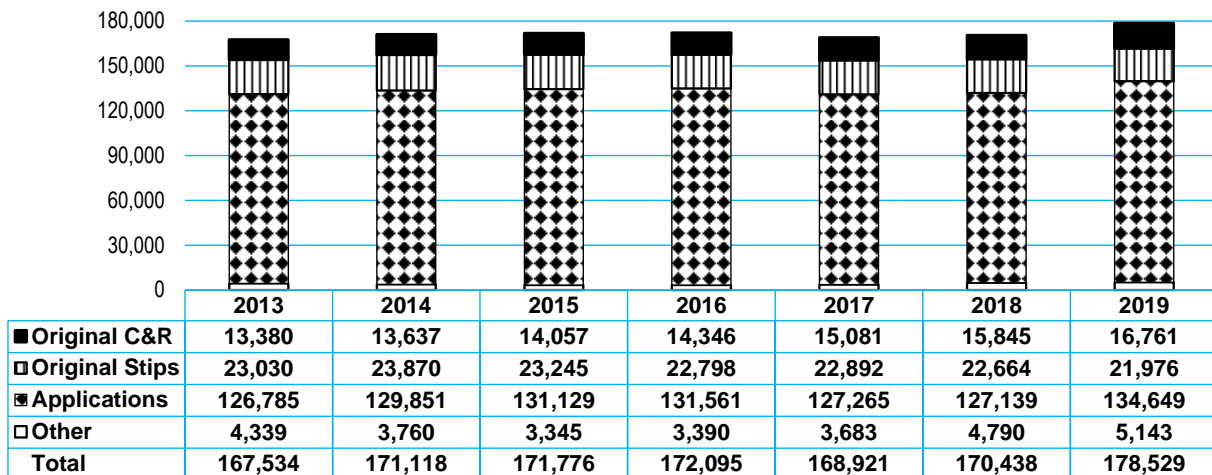
Division of Workers' Compensation Opening Documents

Three types of documents open a Workers' Compensation Appeals Board (WCAB) District Office case. Figure 45 shows the number of Applications for Adjudication of Claim (applications), Original Compromise and Releases (C&Rs), and Original Stipulations (stips) received by the Division of Workers' Compensation (DWC).

Prior to August 2008, DWC workload adjudication data were available from the legacy system. After August 2008, DWC transitioned to a new computer-based system, the Electronic Adjudication Management System (EAMS).

As Figure 45 shows, the total number of Opening Documents increased slightly by 2 percent from 2013 to 2016, went back to its 2013 level in 2017, and then increased by 6 percent from 2017 to 2019. The number of applications, the largest component of opening documents and therefore a trendsetting factor, increased by 4 percent from 2013 to 2016, declined to its 2013 level in 2017, and then increased by 6 percent from 2017 to 2019.

Figure 45: DWC Opening Documents (as of August 2020)



Source: DWC

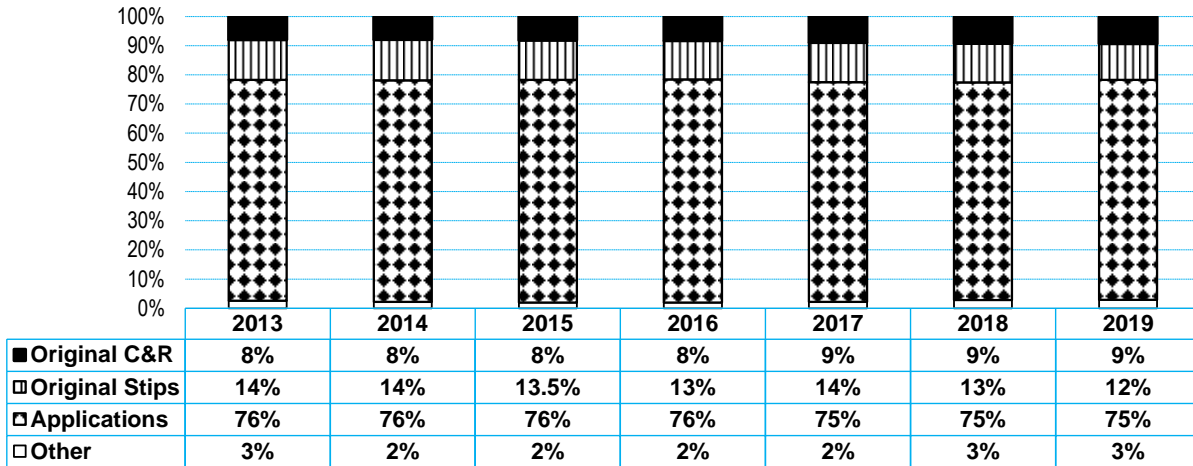
⁸⁸ <https://www.dir.ca.gov/wcab/wcab.htm> and <https://www.dir.ca.gov/dwc/dir2.htm>.

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Mix of DWC Opening Documents

As Figure 46 shows, the applications for adjudication comprised on average 75 percent of the opening documents yearly from 2013 to 2019. The proportion of original (case-opening) stipulations leveled off at 13-14 percent per year from 2013 to 2019. In the same period, the proportion of original C&Rs also stabilized at 8-9 percent.

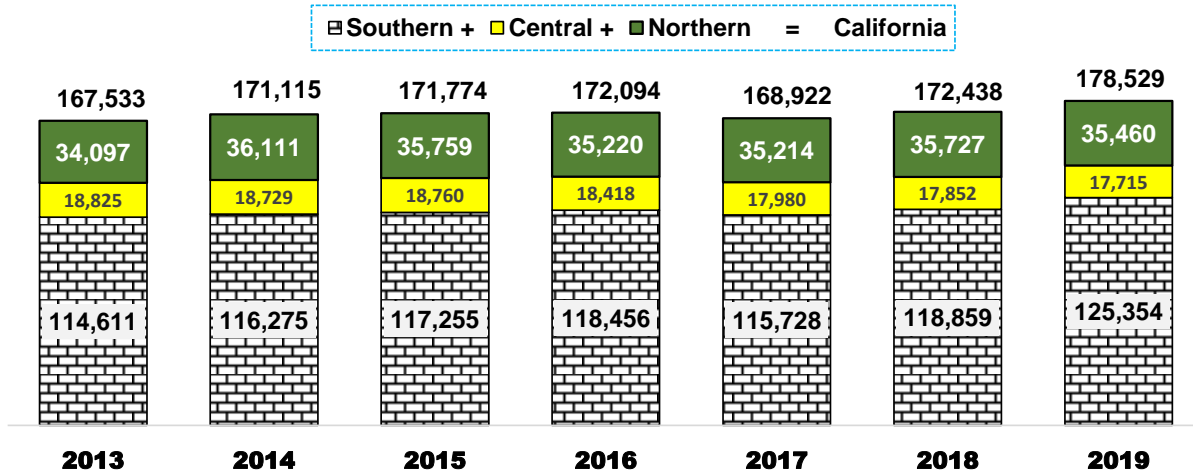
Figure 46: Percent Distribution by Type of Opening Documents (as of August 2020)



Source: DWC

According to Figure 47, about 70 percent of yearly DWC opening documents originated in Southern California between 2013 and 2019. Northern and Central California comprised about 20 and 10 percent of opening documents respectively in the same period.

Figure 47: DWC Opening Documents by California Regions (As of October 2020)



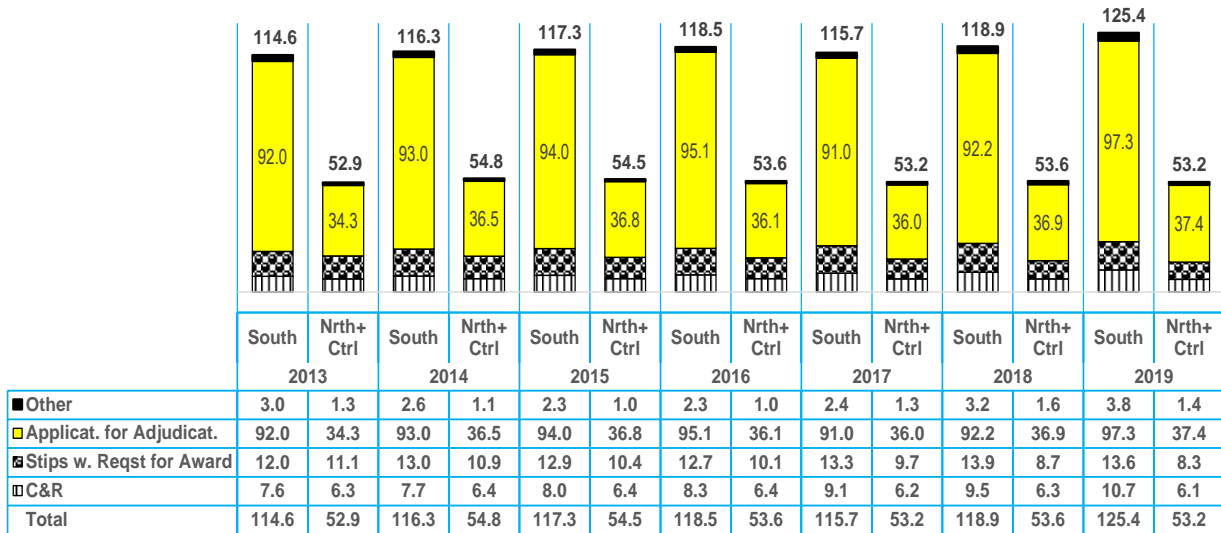
Source: DWC

Figure 48 demonstrates the geographic origin of DWC opening documents. Although the types of opening documents, such as Compromise & Release and Stipulations with Request for Award, originate in the

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Southern region more than in the Northern and Central regions combined, the number of Applications for Adjudication in the Southern region exceeded those of the Northern and Central regions combined Applications by more than 2.5 times in each year from 2013 to 2019. On average, 72 percent of the yearly Applications for Adjudication in California come from the Southern region, affecting the level of WC litigation in the state.

Figure 48: Types of DWC Opening Documents by California Regions (As of October 2020)
(Thousand)



Source: DWC

Division of Workers' Compensation Hearings

Numbers of Hearings

Labor Code Section 5502 hearings are the first hearings only. The hearings covered are expedited hearings, priority, status, and mandatory settlement conferences, and trials that follow a mandatory settlement conference (MSC). The timelines are measured from the filing of a Declaration of Readiness to Proceed (DOR) to the hearing. The time frames for each of these hearings are prescribed as follows:

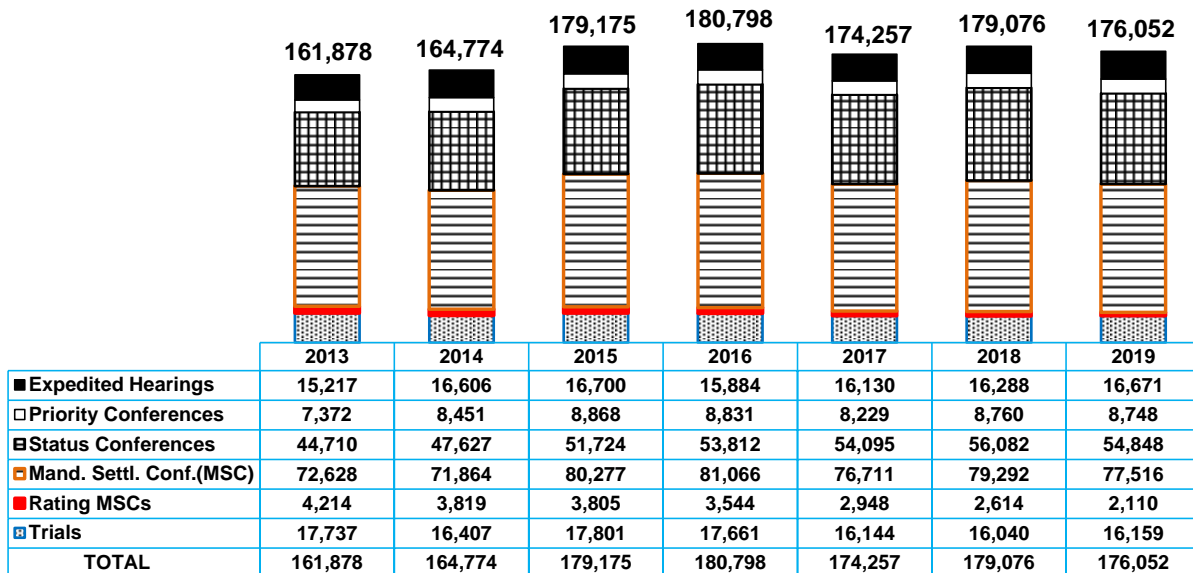
- A. Expedited Hearing and Decision. Labor Code Section 5502(b) directs the Court Administrator to establish a priority calendar for issues requiring an expedited hearing and decision. These cases must be heard and decided within 30 days following the filing of a DOR.
- B. Priority Conferences. Labor Code Section 5502(c) directs the Court Administrator to establish a priority conference calendar for cases when the employee is represented by an attorney and the issues in dispute are employment or injury arising out of employment (AOE) or in the course of employment (COE). The conference shall be conducted within 30 days after the filing of a DOR to proceed.
- C. For cases in which the employee is represented by an attorney and the issues in dispute are employment or injury arising out of employment or in the course of employment and good cause is shown why discovery is not complete for trial, then status conferences shall be held at regular intervals.
- D. MSC and Ratings MSC. Labor Code Section 5502(e) establishes time frames to schedule MSCs and trials in cases involving injuries and illnesses occurring on and after January 1, 1990. MSCs are to be conducted not less than 10 days and not more than 30 days after filing a DOR.

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- E. Trials. Labor Code Section 5502(e) mandates that if the dispute is not resolved at the MSC, a trial is to be held within 75 days after filing the DOR.

Figure 49 indicates the number of different types of LC 5502 hearings held in DWC from 2013 through 2019. The total number of hearings held increased by 12 percent from 2013 to 2016, and then fluctuated from 2016 to 2019 at around 2 percent yearly. The number of mandatory settlement conferences (MSCs), the most numerous hearings, increased by 12 percent from 2013 to 2016, decreased by 5 percent from 2016 to 2017, and then fluctuated from 2017 to 2019. Rating MCSs decreased by twice from 2013 to 2019. The number of expedited hearings increased by 10 percent from 2013 to 2015 decreased slightly from 2015 to 2016, and then went back to its 2015 level. The number of status conferences increased steadily by a total of 25 percent from 2013 to 2018, and then decreased slightly from 2018 to 2019. The priority conferences increased by 20 percent from 2013 to 2015 and then stabilized at 8,700 conferences per year from 2015 to 2019. The number of trials decreased by 7 percent from 2013 to 2014, increased by 8 percent to an average of 17,700 trials per year in 2015 and 2016, and then decreased by 10 percent to an average of 16,100 trials per year from 2017 to 2019.

Figure 49: DWC Labor Code 5502 Hearings Held



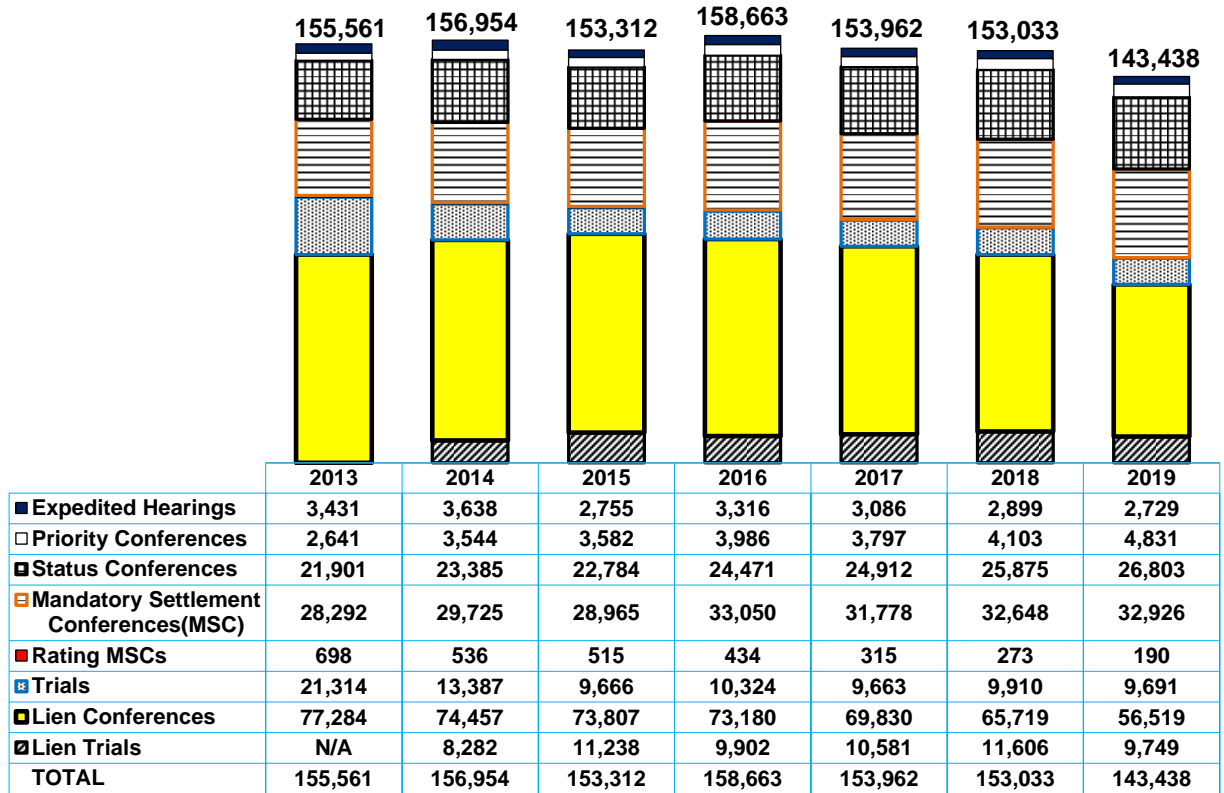
Source: DWC

The non-Section 5502 hearings are continuances or additional hearings after the first hearing. Figure 50 shows non-Section 5502 hearings held from 2013 to 2019.

The number of MCSs fluctuated between 28,300 and 33,000 conferences between 2013 to 2019. The rating MCSs decreased 3.7 times from 2013 to 2019. The number of status conferences increased overall by 22 percent from 2013 to 2019. The number of priority conferences almost doubled from 2013 to 2019. The number of expedited hearings fluctuated between 2,750 and 3,600 hearings between 2013 and 2016, and decreased by 18 percent from 2016 to 2019. The number of trials fell by half from 2013 to 2015 and then averaged 9,850 trials per year from 2015 to 2019. The lien conferences decreased steadily by 27 percent from 2013 to 2019. Lien trial data available from 2014 shows an overall 40 percent increase from 2014 to 2018 and then a 16 percent decline from 2018 to 2019.

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Figure 50: DWC Non-5502 Hearings Held

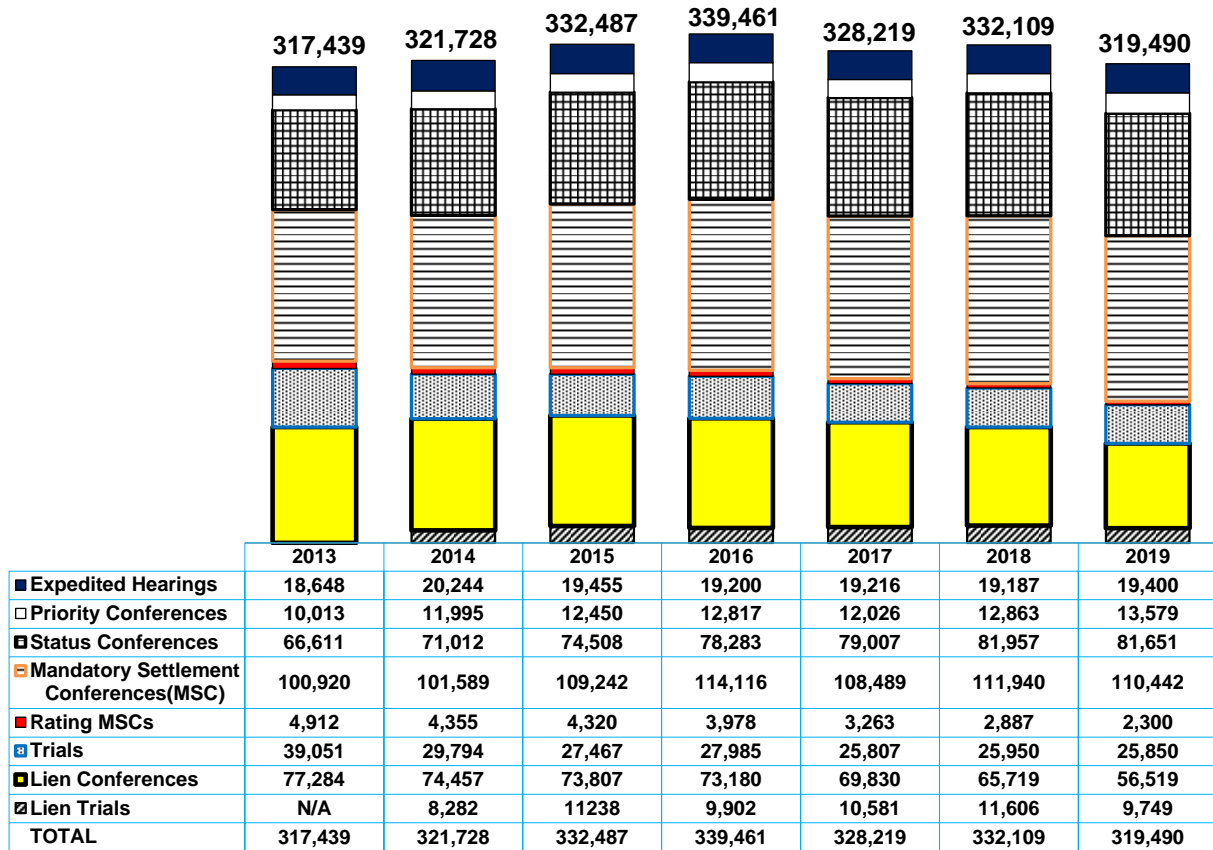


Data Source: DWC

Figure 51 shows the total hearings held from 2013 to 2019 including Labor Code Section 5502 hearings, non-Section 5502 hearings, and lien conferences.

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Figure 51: DWC Total Number of Hearings Held (LC 5502 and non-5502)



Data Source: DWC

Timeliness of Hearings

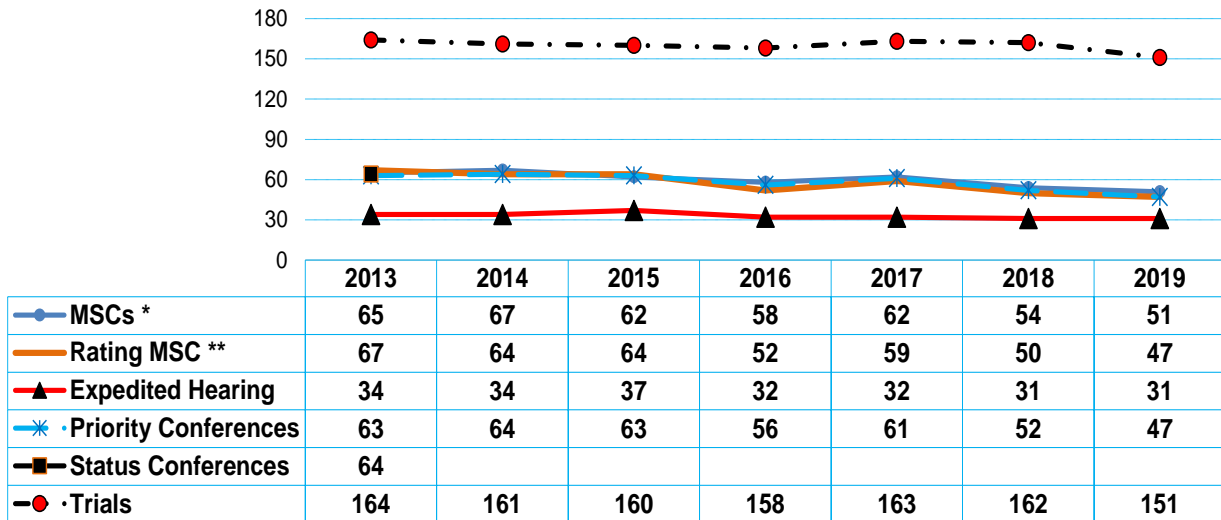
California Labor Code Section 5502 specifies the time limits for various types of hearings conducted by DWC on WCAB cases. In general:

- An expedited hearing must be held within 30 days of the receipt of a DOR.
- The conference shall be conducted within 30 days after the filing of a DOR.
- MSCs, rating MSCs, and priority conferences are required to be held within 30 days of the receipt of a request in the form of a DOR.
- A trial must be held within 75 days of the request if a settlement conference has not resolved the dispute.

Figure 52 shows the average elapsed time from a request to a DWC hearing in the fourth quarter of each year, from 2013 to 2019. All types of DWC hearings showed an overall decrease in average elapsed time from a request to hearing from 2012 to 2016 followed by a one time increase from 2016 to 2017, excluding the expedited hearings, and then again—by decline for all types of DWC hearings from 2017 to 2019. For expedited hearings, the average elapsed time from a request to hearing showed an almost uninterrupted and steady 9 percent decrease, from 34 days in 2013 to 31 days in 2019. The average elapsed time for MSCs decreased by 9 percent from 2013 to 2016, increased by 7 percent from 2016 to 2017, and then declined by 18 percent from 2017 to 2019. Similarly, the average elapsed time from a request to hearing for priority conferences decreased by 11 percent from 2013 to 2016, increased by 9 percent from 2016 to 2017, and dropped by 23 percent from 2017 to 2019. The average elapsed time from a request to a DWC trial decreased overall from 164 to 151 days from 2013 to 2019.

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Figure 52: Elapsed Time in Days from Request to DWC Hearing (4th Quarter)



* Mandatory Settlement Conferences

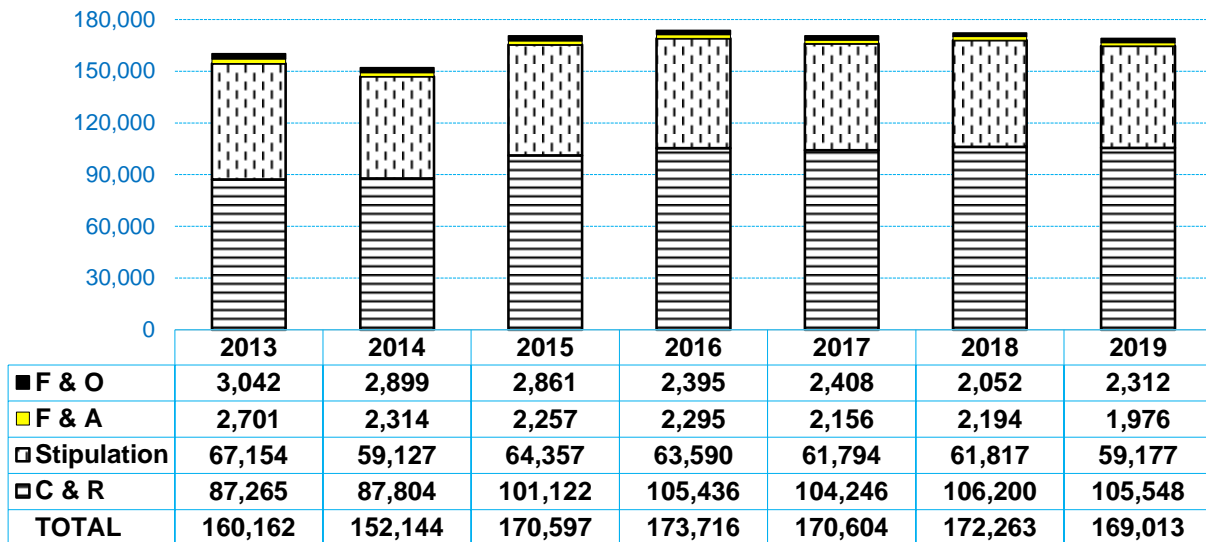
Source: DWC

Division of Workers' Compensation Decisions

DWC Case-Closing Decisions

Figure 53 shows that the total number of case-closing decisions decreased by 5 percent from 2013 to 2014. This decrease in the number of case-closing decisions was due to decreases in Findings & Award (F&A), in Findings & Order (F&O, and in Stipulations from 2013 to 2014. From 2014 to 2016, the total number of case-closing decisions increased by 14 percent as a result of a steady 38 percent increase in Compromise and Releases (C&Rs) from 2012 to 2016 and a 7.5 percent increase in Stipulations from 2014 to 2016. From 2016 to 2019, the total number of case-closing decisions fluctuated between 169,000 and 173,700 decisions per year.

Figure 53: DWC Case-Closing Decisions



Source: DWC

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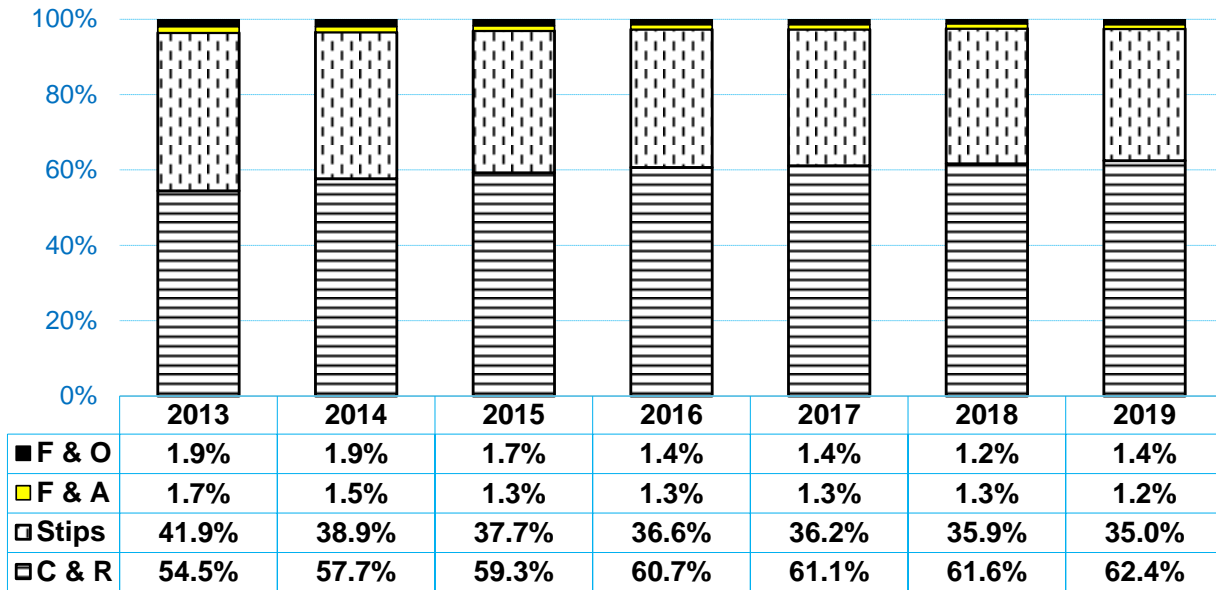
Mix of DWC Decisions

As shown in the previous figures and in the figure below, again, the vast majority of the case-closing decisions were in the form of a WCAB judge's approval of Stips and C&Rs, which were originally formulated by the case parties.

From 2013 to 2019, the proportion of Stips decreased from 41.9 to 35 percent and the proportion of C&Rs increased from 54.5 to 62.4 percent.

Figure 54 shows that a small percentage of case-closing decisions evolved from a Findings & Award (F&A) or Finding & Order (F&O) issued by a WCAB judge after a hearing. That pattern continued with an overall decrease for both types of decisions from 2013 to 2019.

Figure 54: Percent Distribution by Type of DWC Decisions



Source: DWC

Division of Workers' Compensation Lien Filings and Decisions

SB 863 became effective January 1, 2013 and introduced changes regarding liens filed against an injured workers' claim, for medical treatment and other services provided in connection with the claim, but not paid for by the employer or insurance carrier. The bill introduced a filing fee of \$150 required for all liens filed after January 1, 2013 and a \$100 activation fee required for liens filed before January 1, 2013. These fees served as tools for dismissal of liens by operation of law after January 1, 2014 if no filing or activation fee has been filed. Other measures included an 18-month statute of limitations for filing liens for services rendered after July 1, 2013 and a 3-year statute of limitations for services provided before then. Assignments of lien claims were also strictly limited and allowed only where the assignor had gone out of business.

Senate Bill 1160 and Assembly Bill 1244, both of which became effective on January 1, 2017, added important new provisions that significantly decreased the number of liens filed in 2017:

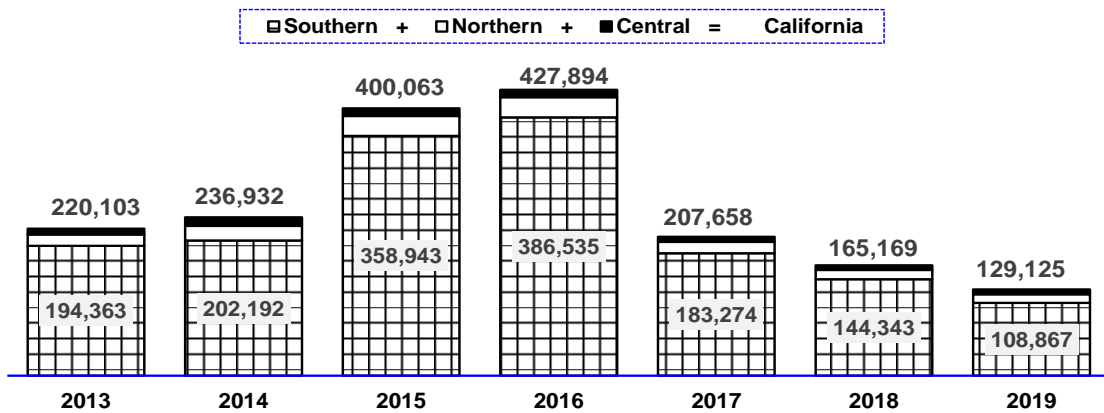
- Labor Code section 4615 places an automatic stay on liens filed by or on behalf of physicians and providers who are criminally charged with certain types of fraud. The automatic stay prevents those liens from being litigated or paid while the prosecution is pending.

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- Provider suspension activities undertaken pursuant to Labor Code section 139.21 include consolidation and dismissal of all pending lien claims in a special lien proceeding for providers who have been suspended due to conviction of a covered crime. A Special Adjudication Unit (SAU) was created in DWC to conduct lien consolidation proceedings.
- Labor Code section 4903.05(c), as amended by SB 1160, introduced the lien dismissals by operation of law. This provision requires lien claimants to file a declaration verifying the legitimacy of liens for medical treatment or medical-legal expenses. Claimants who had filed liens between January 1, 2013 and December 31, 2016, were required to file the declarations by July 1, 2017, to avoid having those liens dismissed.

As Figure 55 shows, the number of liens filed in 2013 and 2014 stabilized at an average of 228,500 liens per year following the introduction of lien filing fees and other lien provisions in SB 863. The number of liens filed increased by 69 percent from 2014 to 2015, increased further in 2016 to reach its peak, and then decreased by 70 percent from 2016 to 2019 due to the SB 1160 and AB 1244 reforms enacted in 2016. About 85-90 percent of the filed liens originate in Southern California. The share of the Southern region in liens filed averaged 88 percent from 2013 to 2017 and then decreased to 84 percent in 2019. Northern California comprises about 7 to 10 percent of the liens filed.

Figure 55: Number of Liens Filed by California Regions, 2013-2019



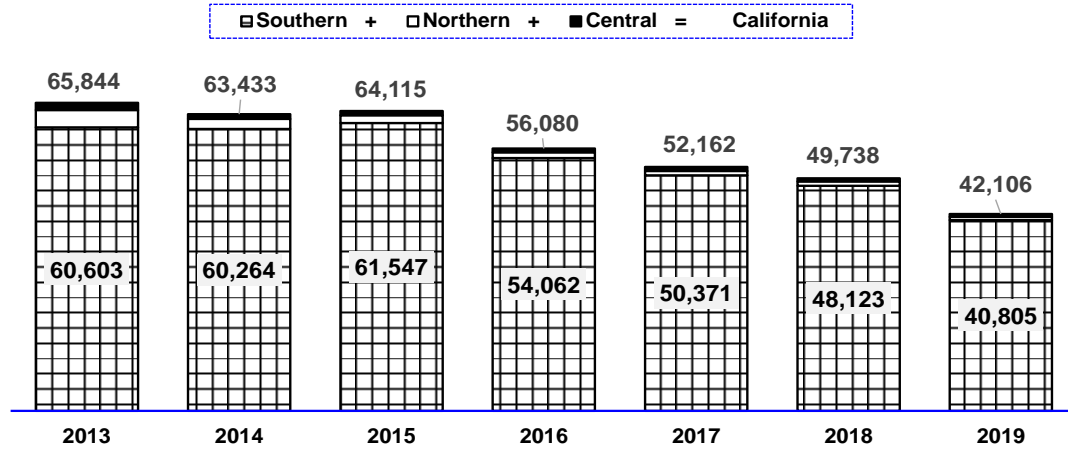
Source: DWC

Figure 56 shows that the number of decisions regarding liens filed on WCAB cases reached its peak in 2013, thereby increasing concomitant expenditure of DWC staff resources for resolution of those liens. The number of lien decisions decreased overall by 36 percent between 2013 and 2019. Because of the addition of LC section 4615, many liens are stayed and cannot be decided until the criminal case is resolved.⁸⁹ When the number of liens filed in 2015 and 2016 significantly increased, only 16 and 13 percent of liens, respectively, were resolved. When the number of liens filed ranged between 129,000 and 237,000 from 2013 to 2014 and then from 2017 to 2019, about 30 percent of liens were resolved. The lien decisions in Southern California comprised 92 percent of lien decisions in 2013. That share gradually increased to 97 percent in 2017 and stayed at that level from 2017 to 2019. The Northern region comprised 6 percent of lien decisions in California in 2013. That share decreased to 2 percent in 2016 and did not change in 2019. As with the disproportionate number of Applications for Adjudication concentrated in the Southern region, the liens continue to be a popular method for recovering payments for services rendered by providers in Southern California.

⁸⁹ <https://www.dir.ca.gov/dwc/SB1160-AB1244/Special-Adjudication-Unit-Calendar.htm>

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Figure 56: Number of DWC Lien Decisions, by California Regions in 2013-2019



Source: DWC

See “Report on Liens” (CHSWC, 2011) for a complete description. (The link will be restored when the report is compliant with web accessibility standards.)

DIVISION OF WORKERS' COMPENSATION AUDIT AND ENFORCEMENT PROGRAM

Background

The 1989 California workers' compensation reform legislation established an audit function within the Division of Workers' Compensation (DWC) to monitor the performance of workers' compensation insurers, self-insured employers, and third-party administrators to ensure that industrially injured workers are receiving proper benefits in a timely manner. The DWC Audit and Enforcement Unit conducts audits on a random selection of workers' compensation claim files.

The purpose of the audit and enforcement function is to provide incentives for the prompt and accurate delivery of workers' compensation benefits to industrially injured workers and to identify and bring into compliance those insurers, third-party administrators, and self-insured employers who do not deliver benefits in a timely and accurate manner.⁹⁰

Assembly Bill 749 Changes to the Audit Program

Assembly Bill (AB) 749, effective January 1, 2003, resulted in major changes to California workers' compensation law and mandated significant changes in the methodologies for claim file selection and assessment of penalties in the audit program.

Labor Code Sections 129 and 129.5 were amended to ensure that each audit location will be audited at least once every five years and that good performers will be rewarded. A profile audit review (PAR) of every audit subject will be done at least every five years. If a new Claims Administrator has at least three years of claims inventory, an audit may be conducted sooner. Any audit subject that fails to meet a profile audit standard established by the Administrative Director (AD) of the DWC will be given a full compliance audit (FCA). Any audit subject that fails to meet or exceed the FCA performance standard will be audited again within two years. Targeted PARs or FCAs may also be conducted at any time based on information indicating that an insurer, self-insured employer or third-party administrator is failing to meet its obligations.

⁹⁰ In addition, LC 129 (f) requires an audit of the Uninsured Employers Benefits Trust Fund (UEBTF) by the claims and collections unit of DWC.

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To reward good performers, profile audit subjects that meet or exceed the PAR performance standard will not be liable for any penalties but will be required to pay any unpaid compensation. FCA subjects that meet or exceed standards will be required to pay penalties only for unpaid or late paid compensation.

Labor Code Section 129.5(e) was amended to provide for civil penalties up to \$100,000 if an employer, insurer, or third-party administrator has knowingly committed or has performed with sufficient frequency to indicate a general business-practice act discharging or administering its obligations in specified improper manners. Failure to meet the FCA performance standards in two consecutive FCAs will be rebuttably presumed to be engaging in a general business practice of discharging and administering compensation obligations in an improper manner.

Review of the civil penalties assessed is obtained by written request for a hearing before the WCAB rather than by application for a writ of mandate in the Superior Court. Judicial review of the WCAB's F&O is as provided in Sections 5950 et seq.

Penalties collected under Section 129.5 and unclaimed assessments for unpaid compensation under Section 129 are credited to the Workers' Compensation Administration Revolving Fund (WCARF).

Overview of Audit Methodology

Selection of Audit Subjects

Audit subjects, including insurers, self-insured employers and third-party administrators, are selected randomly for routine audits.

The bases for selecting audit subjects for targeted audits are specified in California Code of Regulations (CCR) 8, Section 10106.1(c), effective January 1, 2003:

- Complaints regarding claims handling received by DWC.
- Failure to meet or exceed FCA performance standards.
- A high number of penalties awarded pursuant to Labor Code Section 5814.
- Information received from the Workers' Compensation Information System (WCIS).
- Failure to provide a claim file for a PAR.
- Failure to pay or appeal a Notice of Compensation Due ordered by the Audit Unit.

A claims administrator identified for a return target audit because of the failure of a PAR/FCA audit conducted in 2003 or later may be subject to a civil penalty under LC section 129.5(e). The Administrative Director may assess a civil penalty upon finding, after hearing, that an employer, insurer, or third-party administrator for an employer has knowingly committed or has performed any of the following with sufficient frequency:

- Induced employees to accept less than compensation due or made it necessary for employees to resort to proceedings against the employer to secure compensation due.
- Refused to comply with known and legally indisputable compensation obligations.
- Discharged or administered compensation obligations in a dishonest manner.
- Discharged or administered compensation obligations in a manner as to cause injury to the public or those dealing with the employer or insurer.

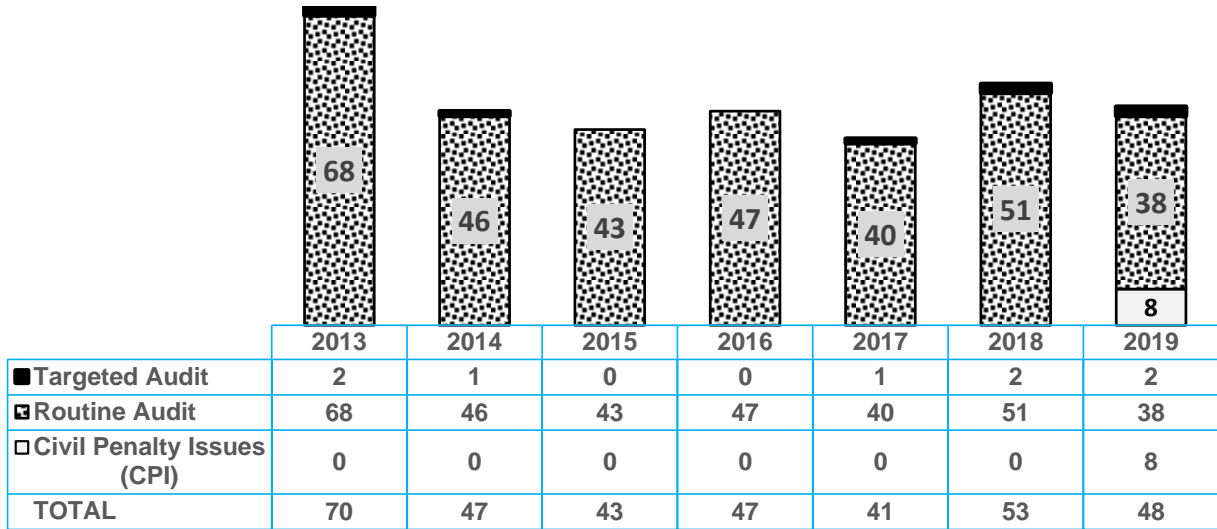
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Audit and Enforcement Unit Data

Routine and Targeted Audits

Figures 57 to 63 depict workload data from 2013 through 2019. Figure 57 shows the number of routine and targeted audits and the total number of audits conducted each year.

Figure 57: Routine and Targeted Audits and Civil Penalties Assessed

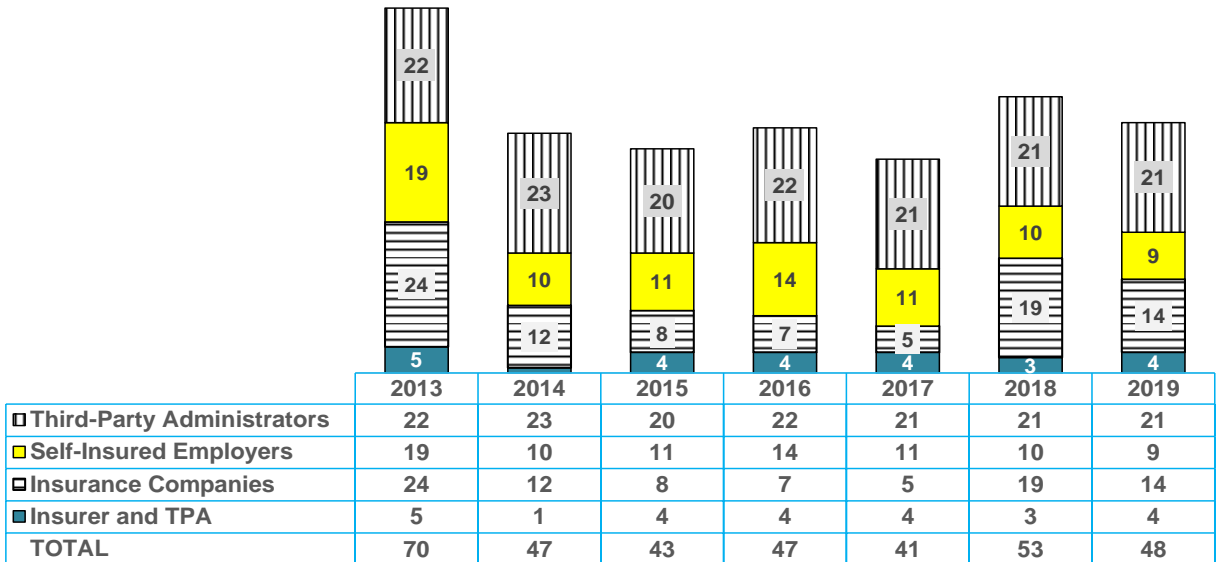


Source: DWC Audit and Enforcement Unit

Audits by Type of Audit Subject

Figure 58 depicts the total number of audit subjects each year, broken down by whether the subject is an insurance company (insurer), a self-insured employer, or a third-party administrator.

Figure 58: DWC Audits by Type of Audit Subject



Source: DWC Audit and Enforcement Unit

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Selection of Files to Be Audited

The majority of claim files are selected for audit on a random basis, with the number of indemnity and denied cases selected based on the number of claims in each of those populations of the audit subject:

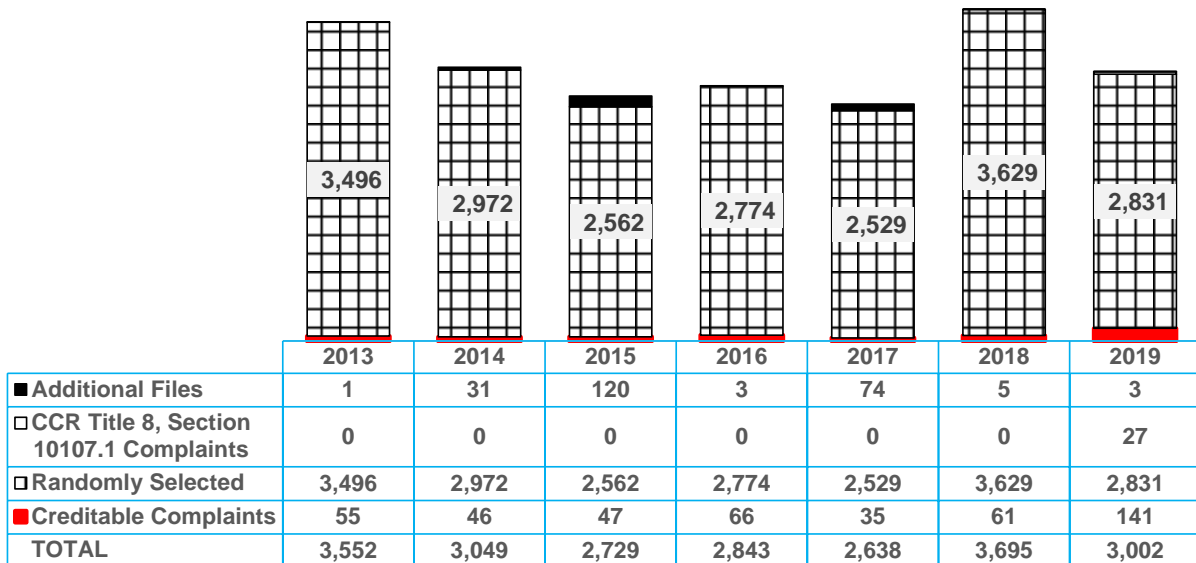
- Some valid complaint files may be selected to undergo targeted audits, and penalties may be issued.
- Additional files include claims chosen based on criteria relevant to a targeted audit but for which no specific complaints had been received.
- The number of claims audited is based upon the total number of claims at the adjusting location and the number of complaints received by DWC related to claims-handling practices. Types of claims include indemnity, denied, complaint, and additional files. The Audit Unit only audits claims with indemnity benefits paid and only tracks the number of medical only files on the Annual Report of Inventory.

Figure 59 shows the total number of claim files audited each year broken down by the method used to select them. In 2019, within the PAR/FCA audits, compliance officers audited 3,002 claim files, of which 2,831 were randomly selected claims⁹¹ in which some form of indemnity benefits was paid. Targeted claims audited included 141 files based on valid complaints received by the DWC. Another 3 audited claims were designated as "additional" files.

"Additional" files include the following:

- Claims audited as a companion file to a randomly selected file.
- Claims chosen based on criteria relevant to a target audit but for which no specific complaints had been received.
- Claims in excess of the number of claims in the random sample, audited because the files selected were incorrectly designated on the log.

Figure 59: Files Audited by Method of Selection



Source: DWC Audit and Enforcement Unit

⁹¹ Some claim files may be substituted for another file if the randomly selected file does not meet the PAR audit criteria or if the files selected were incorrectly designated on the log. These files would still be counted in the original random sample number and not listed as additional files.

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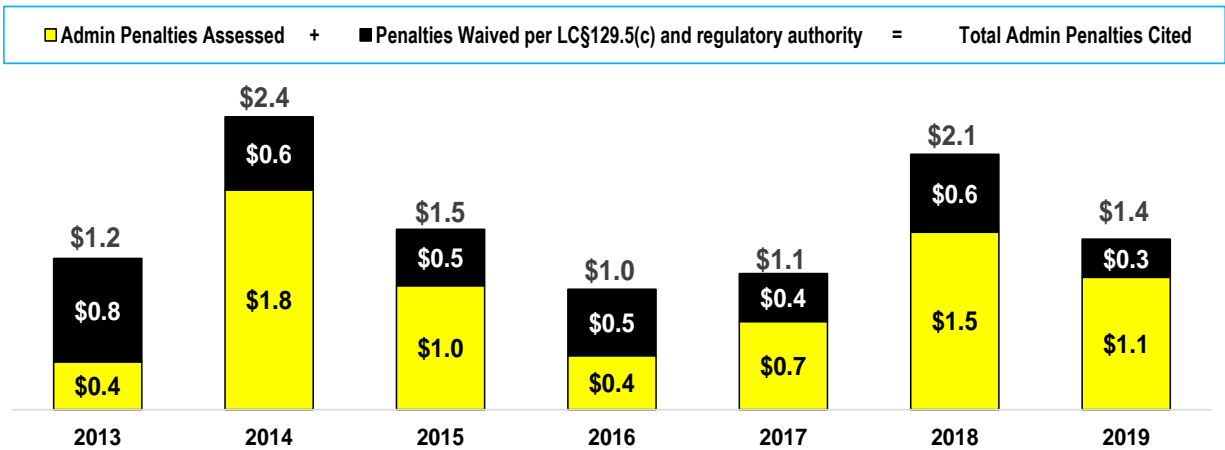
Administrative Penalties

Figure 60 shows the administrative penalties cited from 2013 to 2019. As a result of PAR/FCA audits conducted during the calendar year 2019, the Audit & Enforcement Unit found and cited 5,261 violations against claims administrators, with initial administrative penalties cited totaling \$1,462,876.

Not all administrative penalties are subject to collection. Under the Labor Code, no penalties are assessed on those "cited" violations unless the audit subject fails the audit at a specific level.⁹²

In accordance with Labor Code section 129.5(c) and regulatory authority, the Audit & Enforcement Unit did not assess or waived \$310,575 of the potential administrative penalties of the cited violations. The violations which, by law, were not assessed occurred within 27 of the audits that met or exceeded the PAR performance standard. All violations cited in the audit that failed the FCA performance standard were assessed. The assessed penalties subject to collection from claims administrators for FCA audits came to a total of \$1,085,626.

Figure 60: DWC Audit Unit—Administrative Penalties Cited (Million \$)



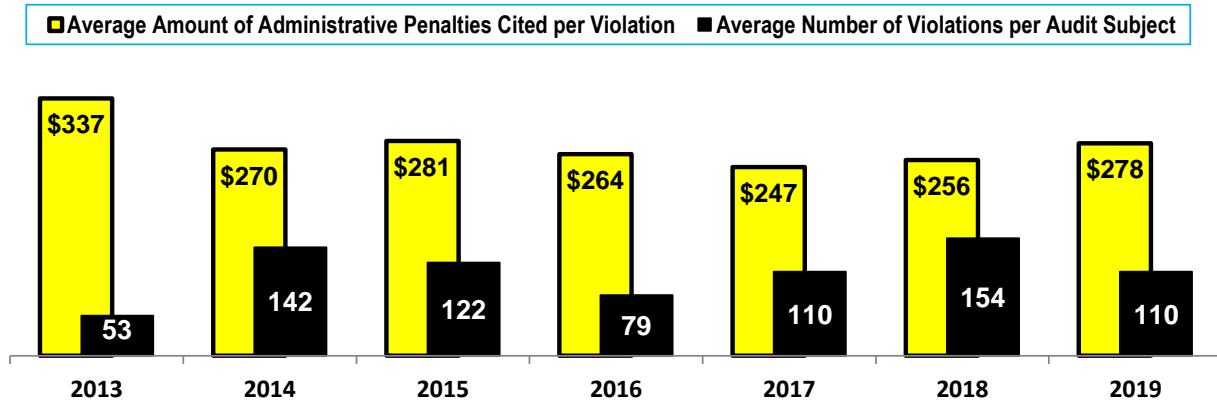
Source: DWC Audit and Enforcement Unit

Figure 61 shows the average number of violations per audit subjects each year and the average dollar amount of administrative penalties cited per violation. In 2019, the average number of violations per 48 completed profile audits was 110 and the average amount of penalties cited per 5,261 violations was about \$278 that includes the penalties waived.

⁹² DWC Annual Audit Report, page 3, <https://www.dir.ca.gov/dwc/AuditReport2019/AuditReport.pdf>.

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Figure 61: Average Amount of Administrative Penalties Cited per Violation and Average Number of Violations per Audit Subject



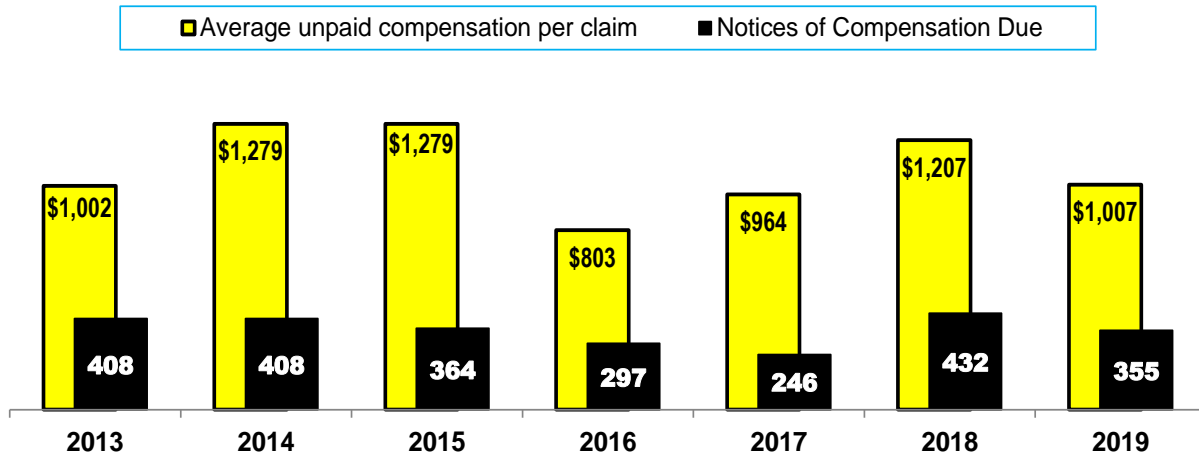
Data Source: Audit and Enforcement Unit

Unpaid Compensation Due to Claimants

Audits identify claim files in which injured workers were owed unpaid indemnity compensation. The administrator is required to pay these employees within 15 days after receipt of a notice from the Audit and Enforcement Unit advising the administrator of the amount due, unless a written request for a conference is filed within 7 days of receipt of the audit report. When employees due unpaid compensation cannot be located by claims administrators, the unpaid compensation is payable by the administrator to WCARF. In these instances, an application by an employee can be made to DWC for payment of monies deposited by administrators into this fund.

Figure 62 depicts the average number of claims per audit where unpaid indemnity compensation was found and the average dollar amount of compensation due per claim.

Figure 62: Average Amount of Unpaid Compensation per Claim and Number of Notices of Compensation

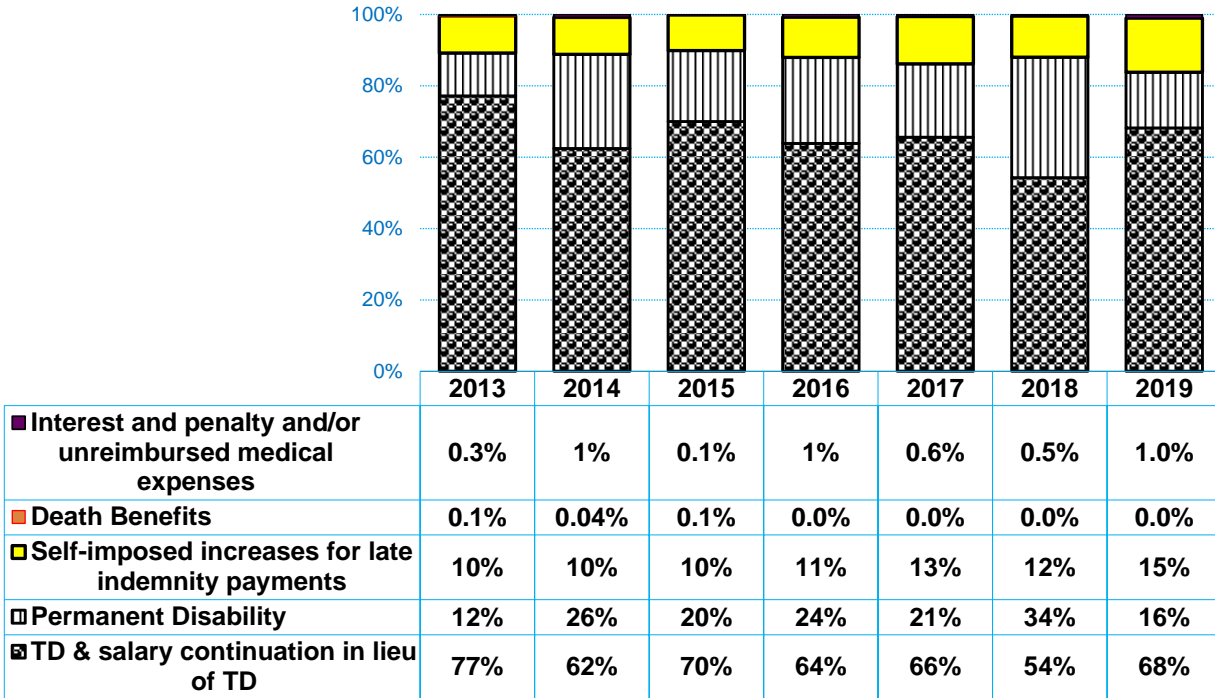


Data Source: Audit and Enforcement Unit

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Figure 63 shows yearly distribution of unpaid compensation by specific type.

Figure 63: Distribution of Unpaid Compensation by Type



Note: Due to rounding, percentages may exceed 100%.

Data Source: DWC Audit and Enforcement Unit

For further information ...

DWC Annual Audit Reports are available at
<https://www.dir.ca.gov/dwc/AuditReport2019/AuditReport.pdf>.

CHSWC “Report on the Division of Workers’ Compensation Audit Function” (1998).
<http://www.dir.ca.gov/CHSWC/FinalAuditReport.html>.

DIVISION OF WORKERS’ COMPENSATION DISABILITY EVALUATION UNIT

The DWC Disability Evaluation Unit (DEU) determines permanent disability ratings by assessing physical and cerebral impairments presented in medical reports. Physical impairments for injuries after 2005 are described in accordance with the *AMA Guide*, 5th ed., and disability is determined in accordance with the 2005 Permanent Disability Rating Schedule (PDRS). A final permanent disability rating (PDR) is obtained only after the whole person impairment rating obtained from a treating physician is adjusted—depending on year of injury—for diminished future earning capacity (FEC), occupation and age at the time of injury. For injuries prior to 2005 and after April 1, 1997, the 1997 PDRS or an earlier edition is utilized, depending on date of injury. For injuries that occur on or after January 1, 2013, the FEC modifier has been replaced with a 1.4 modifier in accordance with changes to Labor Code Section 4660.1 as a result of SB 863.

The DEU’s mission is to prepare timely and accurate ratings to facilitate the resolution of workers’ compensation cases. Ratings are used by workers’ compensation judges, injured workers, insurance claims administrators and attorneys to determine appropriate permanent disability benefits. DEU prepares three types of ratings:

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- Formal Ratings—ratings per workers' compensation judges as part of expert testimony in a litigated case.
- Consultative Ratings—ratings on litigated cases at the request of an attorney, DWC Information & Assistance Officer, or other party to the case in order to advise parties to the level of permanent disability.
- Summary Ratings—ratings on non-litigated cases done at the request of a claims administrator or injured worker.

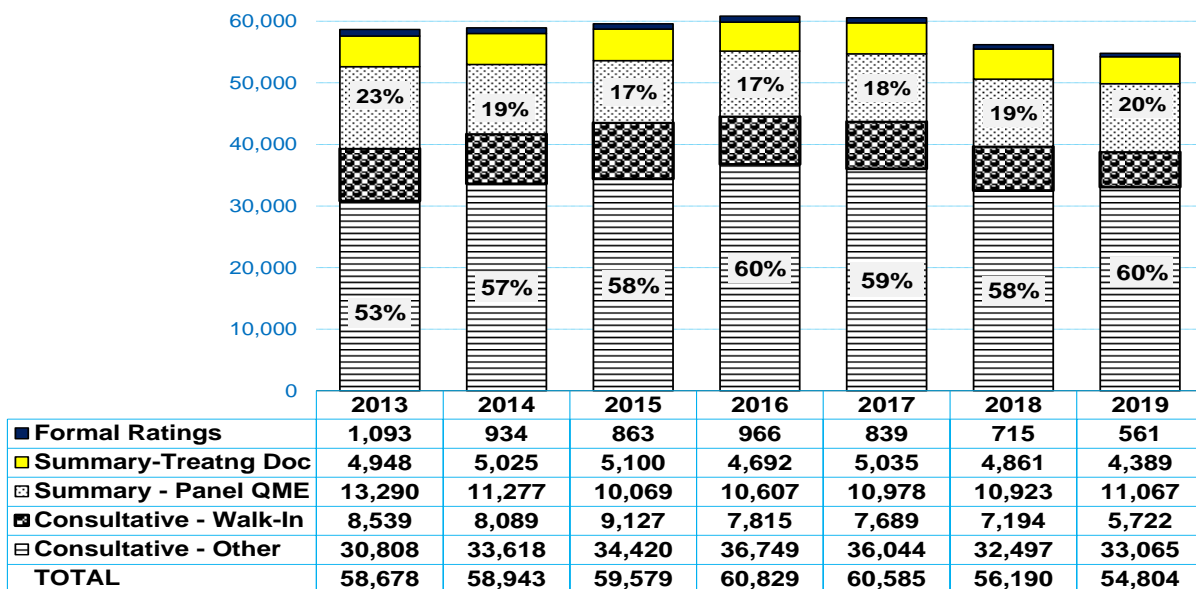
A permanent disability can range from 0 to 100 percent. Zero percent signifies no reduction of earning capacity, while 100 percent represents permanent total disability or a complete loss of earning capacity. A rating between 0 and 100 percent represents a partial loss of earning capacity. Partial permanent disability correlates to the number of weeks that an injured employee is entitled to permanent disability (PD) benefits, according to the percentage of PD.

In addition to written ratings, DEU provides oral consultations on PD issues and commutation calculations to determine the present value of future indemnity payments to assist in case settlements.

Figure 64 illustrates DEU's workload from 2013 to 2019 and shows the total ratings and ratings by type.

The total number of DEU written ratings increased by 4 percent from 2013 to 2016 and declined by 9 percent between 2016 and 2019. The combined share of consultative ratings in total ratings increased from 67 percent in 2013 to 71 percent in 2019 as the share of non-walk-in consultative ratings increased from 53 percent in 2013 to 60 percent in 2019. The share of non-walk-in consultative ratings increased, although its yearly numbers decreased by 10 percent in the past four years as the total DEU written ratings have decreased since 2016. The combined share of summary ratings by panel QMEs and treating doctors in all ratings decreased from 31 percent in 2013 to 28 percent in 2019. Overall from 2013 and 2019, the number of summary ratings by panel QMEs fell by 17 percent and the number of summary ratings by treating doctors decreased by 11 percent. The number of formal ratings, the smallest component of DEU written ratings, fell almost by half from 2013 to 2019.

Figure 64: DEU Written Ratings, 2013-2019



Data Source: DWC Disability Evaluation Unit

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Table 16 shows the number of ratings issued in 1997, 2005, and 2013 by type and rating schedules in effect.

Table 16: DEU Ratings in 2019 by Type and Year when the Rating Schedules Took Effect

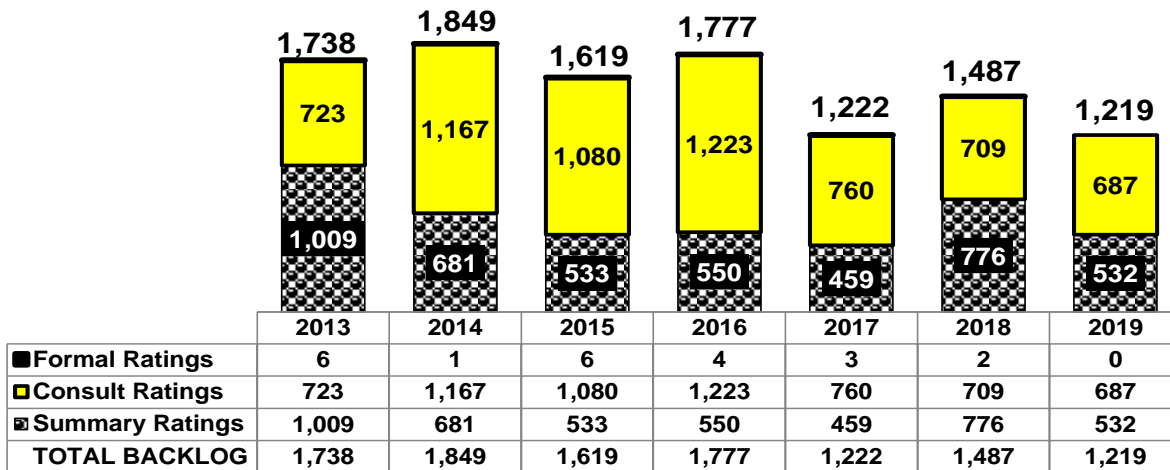
Type of Rating	1997	2005	2013
Summary rating based on QME report	37	5,184	5,846
Summary rating treating based on physician report	4	1,998	2,387
Walk-in consultative ratings	77	3,341	2,304
Other consultative ratings	1,100	16,541	15,424
Formal ratings requested by judge	51	274	236
TOTAL	1,269	27,338	26,197
Percent of each rating schedule in effect in grand total number of ratings (=54,804)	2.3%	50%	48%

Data Source: DWC Disability Evaluation Unit

DEU Backlog

A rating backlog represents rating requests of medical reports that have been received but not yet rated. Formal ratings and cases set for hearing are given priority. According to Figure 65, from 2013 to 2016, the rating backlog fluctuated between 1,600 and 1,850 backlogs per year. The DEU decreased the ratings backlog by 31 percent from 2016 to 2017. From 2017 to 2018, the rating backlog increased by 22 percent, mostly due to an increase of 69 percent in summary ratings and then declined again by 18 percent when backlogs of both consultative and summary rating fell from 2018 to 2019. The total backlog in 2019 was the smallest in 2013 to 2019 yearly backlogs. The reduction in the backlog provides quicker delivery of benefits to injured workers and resolution of workers' compensation cases.

Figure 65: Number of DEU Backlogs by Type



Data Source: DWC Disability Evaluation Unit

Commutation Calculations

DEU also performs commutations of future indemnity payments involving present-value calculations. These commutation calculations assist parties in the resolution of claims involving lump-sum payments, including

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calculation of attorney fees on litigated cases. The estimates are done upon submission of requests to Workers' Compensation Administrative Law Judges by the parties involved.

For injuries that occurred on or after January 1, 2003, life pension and total PD payments are increased according to the annual increase of the state average weekly wage (SAWW) starting January 1 after the payment commences and each January thereafter. The increase in benefits based upon annual SAWW increases the complexity of commutation calculations. DEU performed 1,460 commutations, averaging 121.7 commutation calculations per month in 2019.

Table 17: Number of DEU Commutations, 2015-2019

	2015	2016	2017	2018	2019
Commutations	1,431	1,473	1,463	1,621	1,460

Staffing

Current staffing levels are 39 Disability Evaluators (37 WCC and 2 WCA positions) with four vacancies in the hiring process, 2 supervisors (1 vacancy), and 1 unit manager. DEU is supported clerically by staff assigned to the Adjudication Unit.

DIVISION OF WORKERS' COMPENSATION MEDICAL UNIT

The Medical Unit is responsible for the oversight of the physicians who perform disability evaluations in the workers' compensation system, educating physicians on medical-legal issues, and advising the Administrative Director on various medical issues. The Medical Unit sets standards and issues regulations governing Qualified Medical Evaluators (QMEs) and enforces the regulations governing QME disciplinary actions. The Medical Unit issues panels of three randomly selected QMEs to both represented and unrepresented injured workers who need a medical-legal evaluation in order to resolve a claim.

The Medical Unit also reviews, certifies, monitors, and evaluates Health Care Organizations (HCOs) and Medical Provider Networks (MPNs). Additionally, the Medical Unit reviews utilization review (UR) plans from insurers and self-insured employers and develops and monitors treatment guidelines. The unit also participates in studies to evaluate access to care, medical quality, treatment utilization, and costs. Finally, the Medical Unit recommends reasonable fee levels for various medical fee schedules.

Qualified Medical Evaluator Panels

DWC assigns panels composed of three QMEs, from which an injured worker without an attorney can select an evaluator with a requested specialty to resolve a medical dispute. The panels are randomly selected based on the applicant's residence zip code. Before April 19, 2004, only an unrepresented by attorney injured worker could request a panel. SB 899, which went into effect April 19, 2004, allowed the claims administrator to request a panel in an unrepresented case if the injured worker failed to do so within 10 days. Likewise, in a represented case, both the applicant's attorney and the defense could request a panel if they could not agree on an AME in cases involving a date of injury on or after January 1, 2005. Although both sides attempt to request the panel in the medical specialty of their choice, the first valid request is processed and subsequent requests are returned as a duplicate.

The assignment of panels began in 1991, and over time, changes in the law revised the process for obtaining a QME panel. Effective January 1, 2013, SB 863 no longer requires the parties to confer on using an AME before requesting a panel. Additionally, this reform created a new framework for resolving current medical treatment disputes through an independent medical review (IMR) process. This means that a QME can no longer address current medical treatment disputes. QMEs are also limited to having no more than 10 offices, whereas formerly the number of offices for which they could be certified was unlimited.

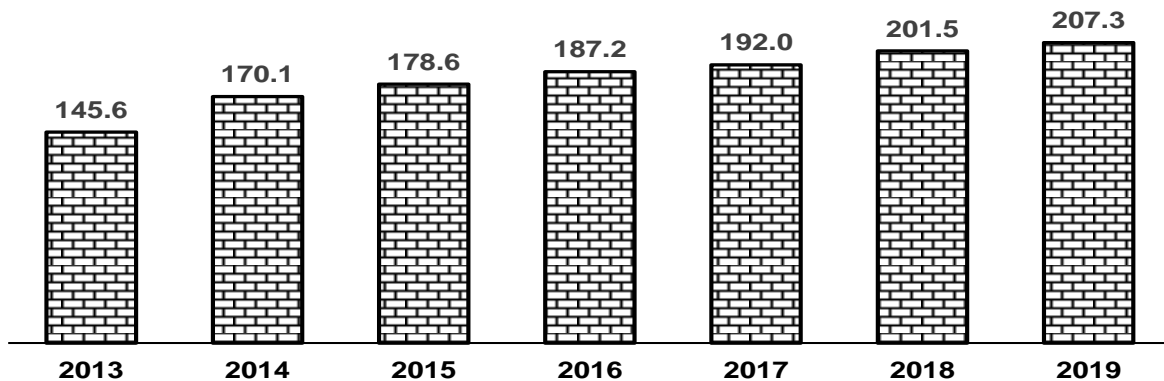
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An increase in the volume of panel requests has been evident over the past seven years because of various legislative reforms, WCAB decisions, and changes in reporting requirements. An online system was implemented on October 1, 2015 to expedite the assignment of initial panels in represented cases. WCAB decisions such as the Romero decision (2007), the Messele decision (2011), and the Navarro decision (2014) also contributed to an increase in panel requests. These changes have contributed to the increase in the number of QME panels, as seen in Figures 59-61.

The total number of QME Panel Requests includes represented initial requests submitted online that became effective on October 1, 2015 and initial, additional, replacement panel requests, judge orders, and change of specialty panels received as mailed paper submissions. The initial panels are requested using either Form 105 for unrepresented or Form 106 for represented cases. The online system applies to represented cases with dates of injury on or after January 1, 2005, and according to DWC, makes up 48 percent of the panel requests received yearly since 2016. Mailed paper submissions are processed in-house and include initial unrepresented panel requests from either the injured worker or the claims examiner, initial represented panel requests either involving a pre-2005 date of injury or an uninsured employer, and additional specialty panels and replacement panels for both the unrepresented and represented cases. An additional panel is requested when a specialty different from the one obtained in the initial panel is needed.⁹³ In a represented case, the parties mail Form 31.7⁹⁴ by jointly agreeing on the additional specialty assignment or obtain an order from a WCALJ. In the case of an unrepresented applicant, the parties confer with an I&A officer to authorize the additional specialty panel application. A replacement panel is requested when one or more QMEs on the initial panel, additional panel, or replacement panel cannot be utilized for a qualifying reason listed under the replacement panel regulation section 31.5.⁹⁵ Form 31.5⁹⁶ must be mailed to the medical unit for processing, whether the case is represented or unrepresented.

Figure 66 shows the total number of QME Panel Requests as defined above. With Panel Request counts rising in 2014, their volume increased by about 17 percent from 2013 to 2014. From 2014 to 2019, the number of QME Panel Requests increased steadily, by 22 percent.

Figure 66: Number of Qualified Medical Evaluator (QME) Panel Requests (Thousand)



Note: Data for 2013 were incomplete and are missing a full count of all requests received.

Source: DWC

Effective October 1, 2015, the DWC implemented an online system to enable an electronic completion and submission of a panel request on Form 106 in order to provide a panel immediately. This system applies only to initial panel requests for represented cases, involving a date of injury after December 31, 2004. This online system can be accessed 24/7 and enforces a waiting time of 15 days, including 5 days for mailing

⁹³ Obtaining Additional QME Panel in a Different Specialty, https://www.dir.ca.gov/t8/31_7.html.

⁹⁴ QME Panel Request Form 31.7, https://www.dir.ca.gov/dwc/FORMS/QMEForms/QMEForm31_7.pdf.

⁹⁵ QME Replacement Request, https://www.dir.ca.gov/t8/31_5.html.

⁹⁶ Replacement QME Panel Request Form 31.5, https://www.dir.ca.gov/dwc/FORMS/QMEForms/QMEForm31_5.pdf.

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from the date of the dispute letter, before applying for the panel. For out-of-state cases, the waiting time is 20 days, including 10 days for mailing. If a panel has already been issued, an online submission is rejected and referred to as a duplicate request. If a panel entry was made before the 15-20-day waiting time or an insufficient number of QMEs in a requested specialty is available, the submission is also rejected as a premature request. The requestor of the online panel will get either a panel list or a rejection letter. If a panel is assigned, then the requestor must serve the panel to the opposing side within one working day after generating the panel list.

Figure 67 shows the number of represented initial requests submitted online, as defined above, and the requests assigned panels. From 2015, when the online system was implemented, to 2019, 75 percent of the online panel applications were assigned panels, and about 25 percent were rejected as ineligible by the online system. Represented panel requests reached 89,100 in 2016 and since then comprised a big share of incoming panel requests. From 2016 to 2019, the number of represented panel requests increased by 13 percent.

Figure 67: Online QME Panel Requests Submitted and Requests Assigned Panels

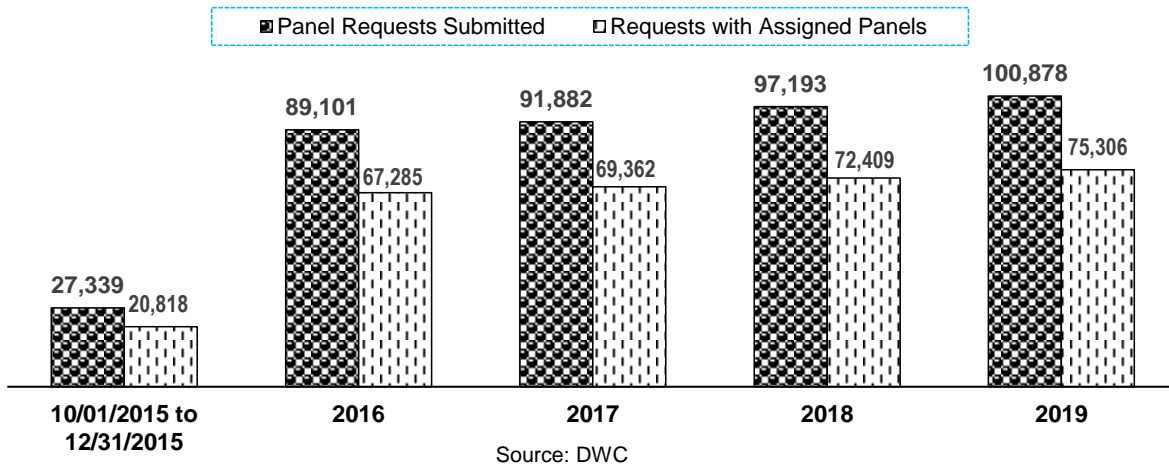


Figure 68 shows the number of rejected on-line panels that comprise about 25 percent yearly as it was described in relation to Figure 67.

Figure 68: On-Line QME Panel Requests Rejected at Submission

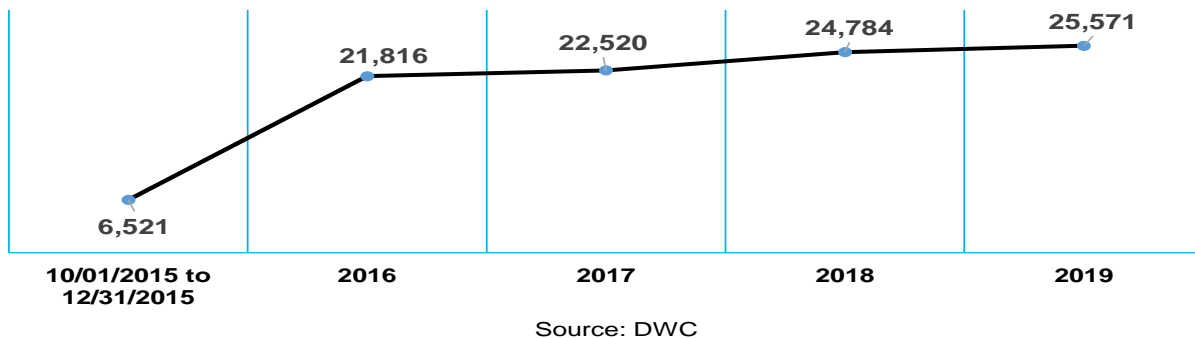
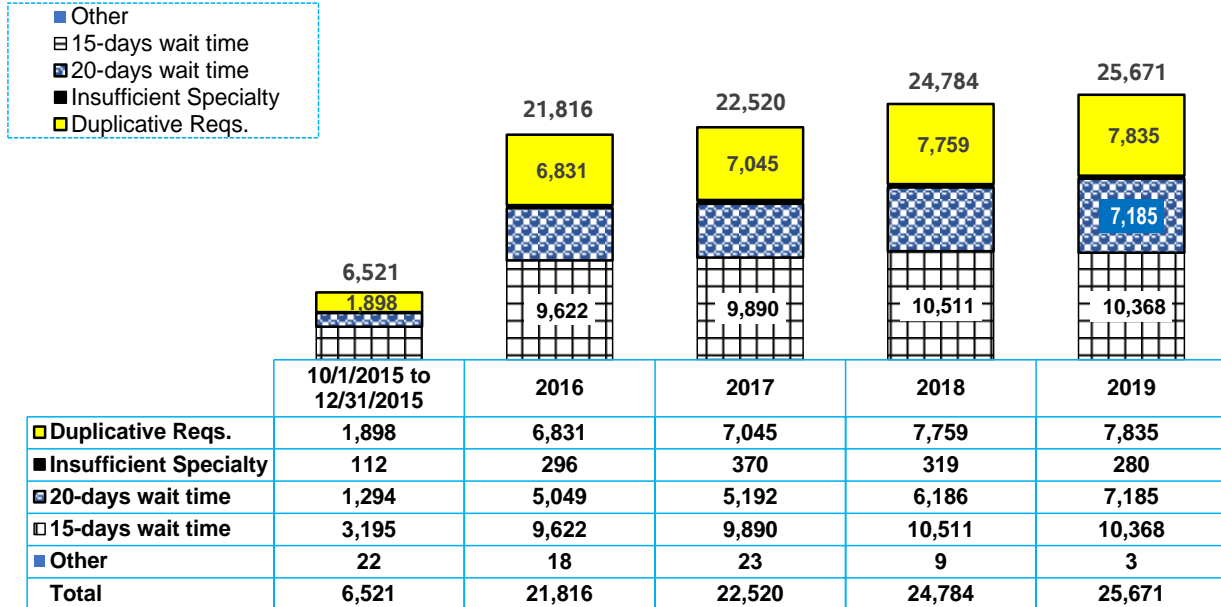


Figure 69 demonstrates the number of rejected online panels by reasons of rejection. The bigger components of the rejected online QME requests such as noncompliance with 15- or 20-day waiting times, and duplicative requests increased from 2016 to 2019 as the total number of online QME requests increased during that period.

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Figure 69: Number of Rejected On-Line QME Panel Requests by Rejection Reasons



Source: DWC

Panel Requests mailed to the Medical Unit for processing

All panel types other than the ones mentioned in the previous subsection are mailed to the Medical Unit for processing.

Panel requests mailed for processing include the following types: unrepresented initial panel requests sent by either an unrepresented applicant or his defense on Form 105; requests for a panel by represented applicants with a date of injury before January 1, 2005; requests for panels in cases involving an uninsured employer; requests for obtaining additional specialty panels under certain specified conditions as in 8 CCR section 31.7, requests for replacement⁹⁷ of one or more QMEs from a panel that meets the conditions specified under 8 CCR section 31.5, and WCJ-ordered panels.

Panel requests received by mail are reviewed and either assigned a panel or rejected with a response letter that outlines the reasons, which are mostly related to incompleteness or ineligibility.

Figures 70 and 71 display the panel counts received by mail and sorted, reviewed, and either assigned panels or rejected by Medical Unit staff in-house, not online.

According to Figure 70, the number of QME panel requests received by the Medical Unit by mail decreased by 35 percent from 2015 to 2016 and then increased by about 9 percent from 2016 to 2019.

⁹⁷ The term "replacement" is referenced as "second" panels in-house to communicate the type of handling needed for the panel request.

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Figure 70: Number of QME Panel Requests Received by Mail (Thousand)

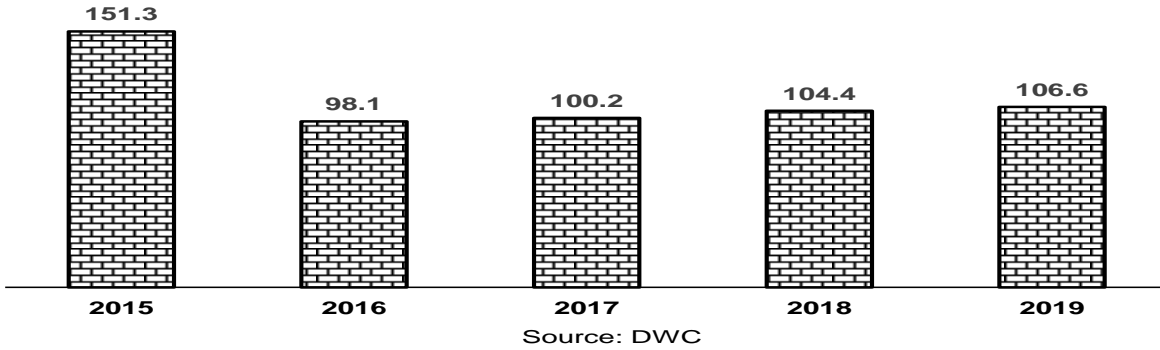
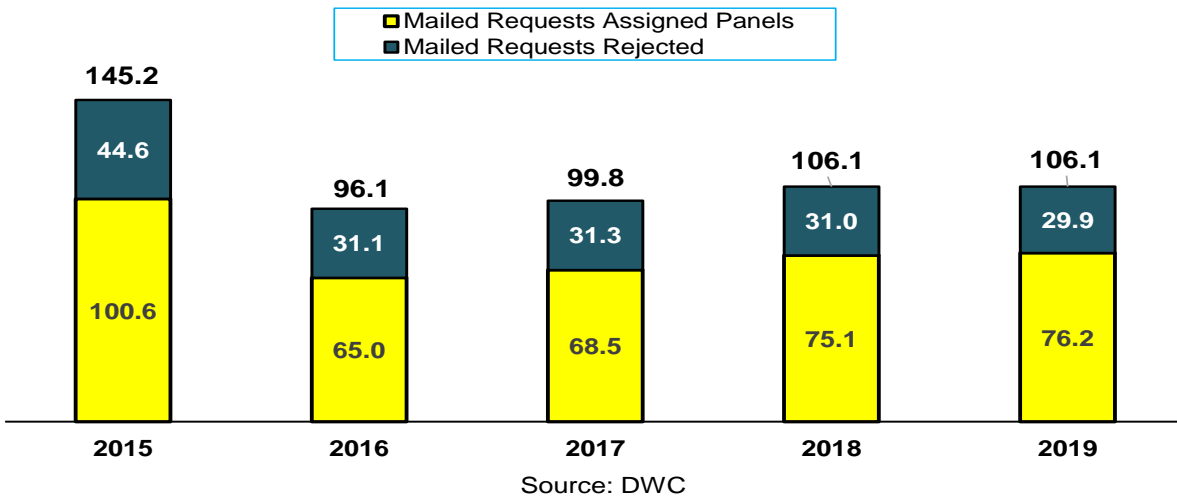


Figure 71 shows the count of mailed QME requests received by the Medical Unit, processed and issued panels or rejected from 2015 to 2019. On average, 70 percent of all processed requests are assigned panels yearly. The Medical Unit has 30 calendar days to issue a panel in represented cases.

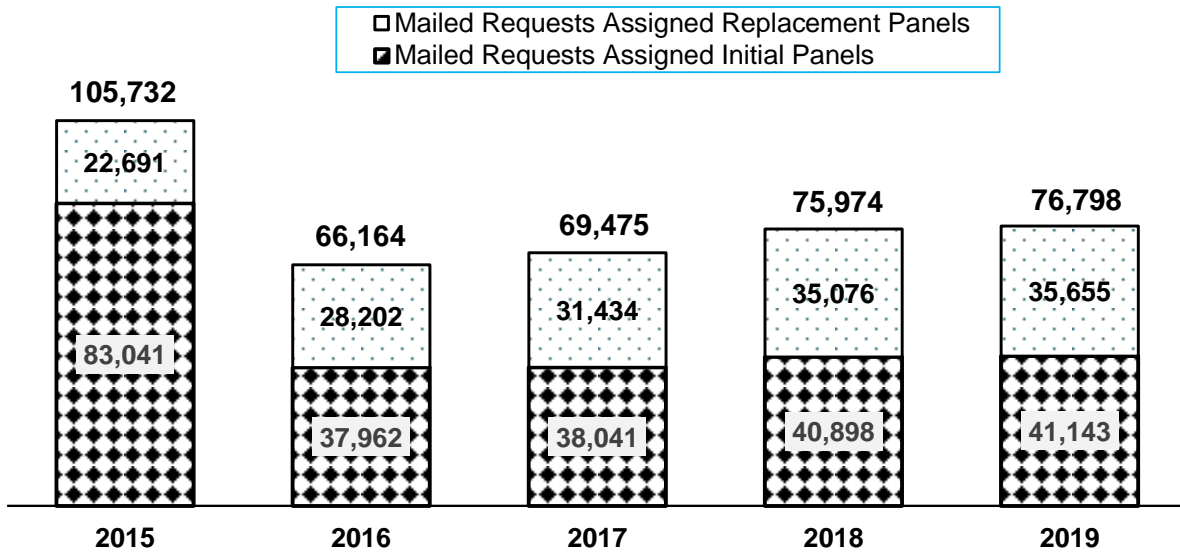
Figure 71: Mailed QME Requests Processed by MU and Assigned Panels or Rejected (Thousand)



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Figure 72 shows that the total number of QME requests assigned panels decreased by 37 percent from 2015 to 2016 and then increased steadily by 16 percent from 2016 to 2019. On average, about 55 percent of mailed QME requests are assigned the initial panels from 2016 to 2019.

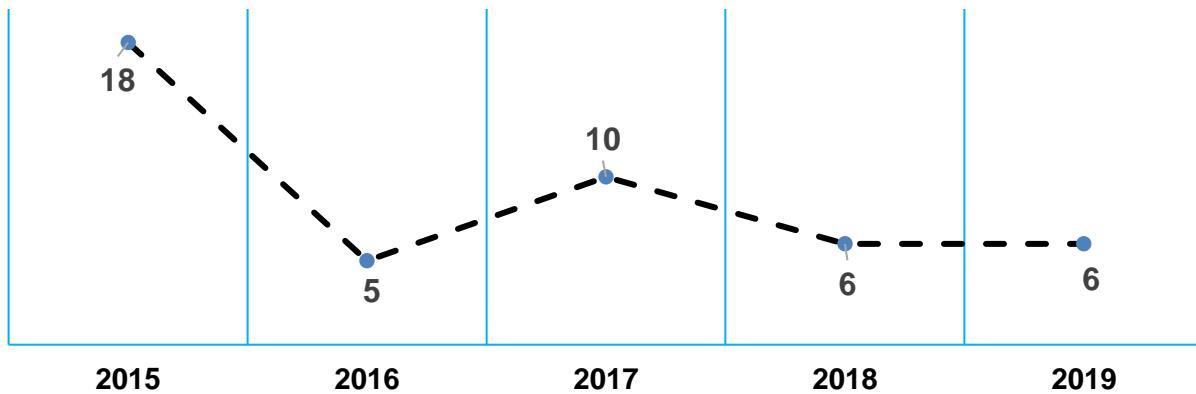
Figure 72: Mailed QME Requests Assigned Initial or Replacement Panels



Source: DWC

Figure 73 shows the number of days it takes the Medical Unit to assign an initial panel to QME requests filed by unrepresented injured workers after receipt.

Figure 73: Number of Days Required to Assign Initial Panel in Unrepresented Cases (from the Date of Receipt)



Source: DWC

Utilization Review

The utilization review (UR) process includes utilization management functions that prospectively, retrospectively, or concurrently review and approve, modify, delay, or deny treatment recommendations by physicians, as defined in LC section 3209.3, based in whole or in part on medical necessity to cure or relieve the injured worker from the effects of his or her injury prior to, retrospectively, or concurrent with the provision of medical treatment services pursuant to LC section 4600. UR begins when the completed DWC

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Form RFA (request for authorization of medical treatment) accepted as complete under 8 CCR Section 9792.9.1(c)(2) is first received by the claims administrator or, in the case of prior authorization, when the treating physician satisfies the conditions described in the UR plan for prior authorization (§ 9792.6.1(y)).

Each employer, either directly or through its insurer or an entity with which an employer or insurer contracts for utilization review services, is required to establish a utilization review process via written policies and procedures. A UR plan is the written plan filed with the Administrative Director (AD) pursuant to LC section 4610, setting forth the policies and procedures and a description of the UR process (section 9792.6.1(x)). The UR plan ensures that UR decisions are consistent with a medical treatment utilization schedule (MTUS). The MTUS, which is adopted by the AD, incorporates evidence-based, peer-reviewed, nationally recognized standards of care (LC sections 4610(c) and 5307.27(a)).

Effective January 1, 2004, each employer is required to file a UR plan with the AD. UR is a review of the treating physician's requests for treatment (RFAs) and the decisions made about the medical necessity of the requests. The Utilization Review Organization (URO) can be an internal or external group (from the claims administrator or employer) that performs most of the UR. The UR regulations (8 CCR Section 9792.6 et seq.) were adopted on September 22, 2005, and UR enforcement regulations were adopted on June 7, 2007. The enforcement regulations (8 CCR Section 9792.11–9792.15) gave the DWC the authority to investigate all UROs that have submitted a UR plan. New regulations were introduced as Emergency Regulations on January 1, 2013, and adopted on February 12, 2014, in response to the adoption of SB 863. These new regulations include the enforcement sections 9792.11, .12, and .15. Sections 9792.13 and .14 were not changed and therefore are not found in the newly adopted regulations, but are still considered part of the UR enforcement regulations. Effective January 1, 2018, the Division of Workers' Compensation has also adopted a drug formulary to implement Assembly Bill 1124. The regulations (8 CCR §§9792.27.1–9792.27.23) established an evidence-based drug formulary, updated quarterly, consistent with MTUS.

Investigations to enforce UR requirements have been conducted every five years as required by law. Investigations can be either routine or targeted. Routine investigations are conducted by randomly selecting files from all UR requests that the specific URO has received within a three-month period. The period selected is the previous three full months from the start of the investigation. The DWC notifies the URO by sending a Notice of Utilization Review Investigation (NURI); generally, these also say "Routine," unless performing a specific targeted investigation. After the DWC has the information requested, including a list of all requests for authorization (RFAs) for the three-month period, files are randomly selected for review and a list of those files is sent to the URO with the Notice of Investigation Commencement (NIC). The URO has 14 days from receipt of the NIC to provide copies of each selected file. When the correct number of UR files is obtained, they are reviewed to determine whether:

- The requests were answered on time.
- Decisions were made with the required criteria and rationale.
- The decision is communicated on time and to the appropriate parties.
- Independent Medical Review (IMR) application is sent to appropriate parties with all denial or modification decisions.
- Other related regulatory requirements are followed.

Files found to have violations are given a set penalty. The entire investigation is given a score, depending on how many violations of certain types are cited. The passing score is 85 percent or higher. After the score is determined, the URO is notified through a Preliminary Report with all exhibits to verify how the score was compiled and any next steps to be taken. The URO may request a post-investigation conference and may send further documentation to verify that it actually performed the UR correctly. After the conference and review of additional documentation, the DWC completes the Final Investigation Report. If the URO has a failing score or has any mandatory violation (Sections 9792.12(a)(1-17) and (c)(1-4)), DWC also sends an Order to Show Cause (OSC) and a Stipulation and Order, with the Final Report. Fifteen thousand five hundred dollars (\$15,500) was assessed in penalties after completing seven UR investigations in 2019 and \$97,200 in penalties after four investigations were completed in the first eight months of 2020. According

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to the Medical Unit, because UR investigations are done through random selection of UROs and files, penalty assessment results can vary significantly from year to year.⁹⁸

Table 18: Status of UR Investigations

	2015	2016	2017	2018	2019	2020 (Jan.-Aug.)
Number of UR investigations completed	27	11	4	6	7	4
Number of UR investigations pending	0	0	0	0	0	9
Number of failed investigations	2	0	0	0	0	0
Amount of UR penalty assessments	\$39,000	\$8,000	\$30,500	\$2,000	\$15,500	\$97,200

Source: DWC

Status on SB 1160 implementation: Utilization Review and Doctor's First Report

Utilization Review

SB 1160 was signed into law in September 2016. Among other provisions, it revises and recasts provisions relating to UR with regard to injuries occurring on or after January 1, 2018. The bill sets forth the medical treatment services that would be subject to prospective UR. It authorizes retrospective UR for treatment provided under limited circumstances. The bill also establishes procedures for conducting prospective and retrospective UR. On and after January 1, 2018, the bill establishes new procedures for reviewing determinations regarding the medical necessity of medication prescribed pursuant to the drug formulary adopted by the Administrative Director.

In addition, commencing July 1, 2018, the bill requires each UR to be accredited by an independent nonprofit organization to certify that it meets specified criteria, including timeliness in issuing a UR decision and the scope of medical material used in issuing a UR decision.

The passage of SB 1160 also requires the DWC administrative director to develop a system for the electronic submission of information on each UR decision to the DWC. The proposed system requires the secure electronic transmission directly from the Utilization Review Organizations (UROs) to the DWC. Through the monitoring of this UR data, the division will be able to accurately assess timelines of requests for treatment, determine the effects of the MTUS clinical guidelines on treatment, and compare URO decisions on treatment to assess program consistency. The system is still in the process of being built.

Doctor's First Report of Injury

Every physician who treats an injured worker must file a complete Doctor's First Report of Injury (DFR) on form 5021 with the employer's claims administrator within five days of the initial examination. Currently, the claims administrator is required to send a paper copy of the DFR (Form 5021) by mail to DIR. Recent changes require that physicians electronically file the DFR with DWC. The new electronic system is currently being piloted and allows for standardized data to be submitted directly to DWC and used to improve the workers' compensation system.

Text of the SB 1160 bill is at:

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB1160/

Information on the rulemaking process related to SB 1160 for UR and DFR is at:

<https://www.dir.ca.gov/dwc/DWCWCABForum/UR-Regulations.htm>

⁹⁸ The information was provided by the Medical Unit in October 2020.

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Independent Medical Review

Senate Bill 863 adopted several provisions that affect how medical necessity determinations are made for medical care provided to injured workers. One of the key provisions was putting in place the Independent Medical Review (IMR) process for resolving medical treatment disputes. Effective January 1, 2013, for injuries occurring on or after that date, and effective July 1, 2013, for all dates of injury, IMR is being used to decide medical necessity disputes for injured workers. The DWC administers the IMR program with costs borne by the employer, and it is similar to the group health process for medical treatment dispute resolution.

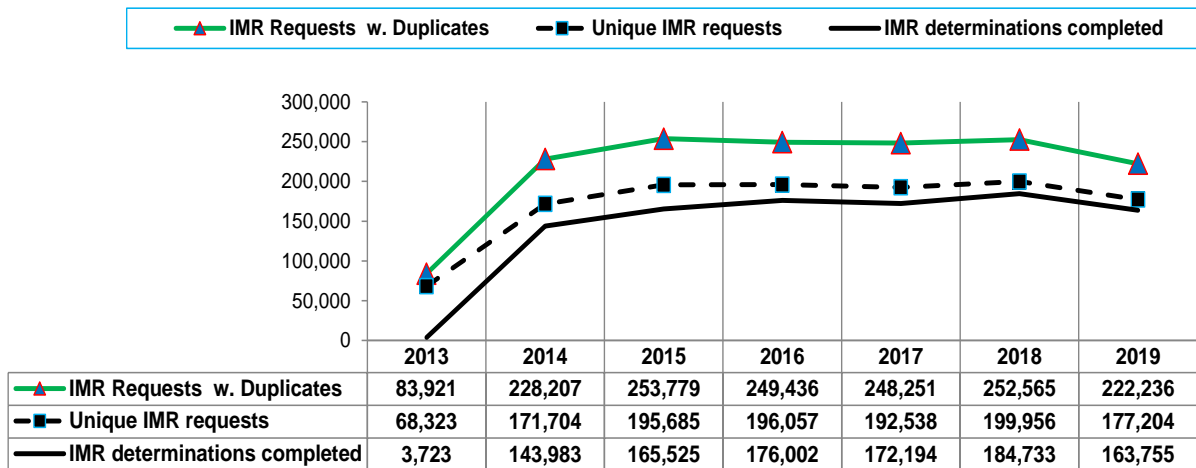
Figure 74 shows the annual numbers of IMR applications with duplicates, the number of unique medical review requests, and IMR determinations between 2013 and 2019, when the IMR program was in its seventh year.

Over 1.5 million IMR requests were filed in the first seven years of the program. According to Figure 62, in 2013, the first year of the program, 83,920 IMR applications were received. Following an initial ramp-up period that occurred when the program was open for all dates of injury, IMR applications held remarkably steady from 2015 to 2018. From 2018 to 2019, the number of IMR applications decreased 12 percent.

The number of unique IMR requests received from 2013 to 2019 totaled more than 1.2 million. After a 14 percent increase from 2014 to 2016, the number of unique IMR requests fluctuated from 2016 to 2019, with an 11 percent decrease from 2018 to 2019.

The number of IMR determinations completed from 2013 to 2019 totaled more than 1.0 million. The total number of IMR decisions issued per year increased each of the first four years of the program. A peak of 176,002 issued decisions in 2016 was followed by the number of decisions fluctuating between 163,800 to 184,700 per year from 2016 to 2019. From 2018 to 2019, the number of IMR determinations completed decreased by 11 percent.

Figure 74: Number of Independent Medical Review Requests (IMR) Received and Determinations Completed, 2013-2019

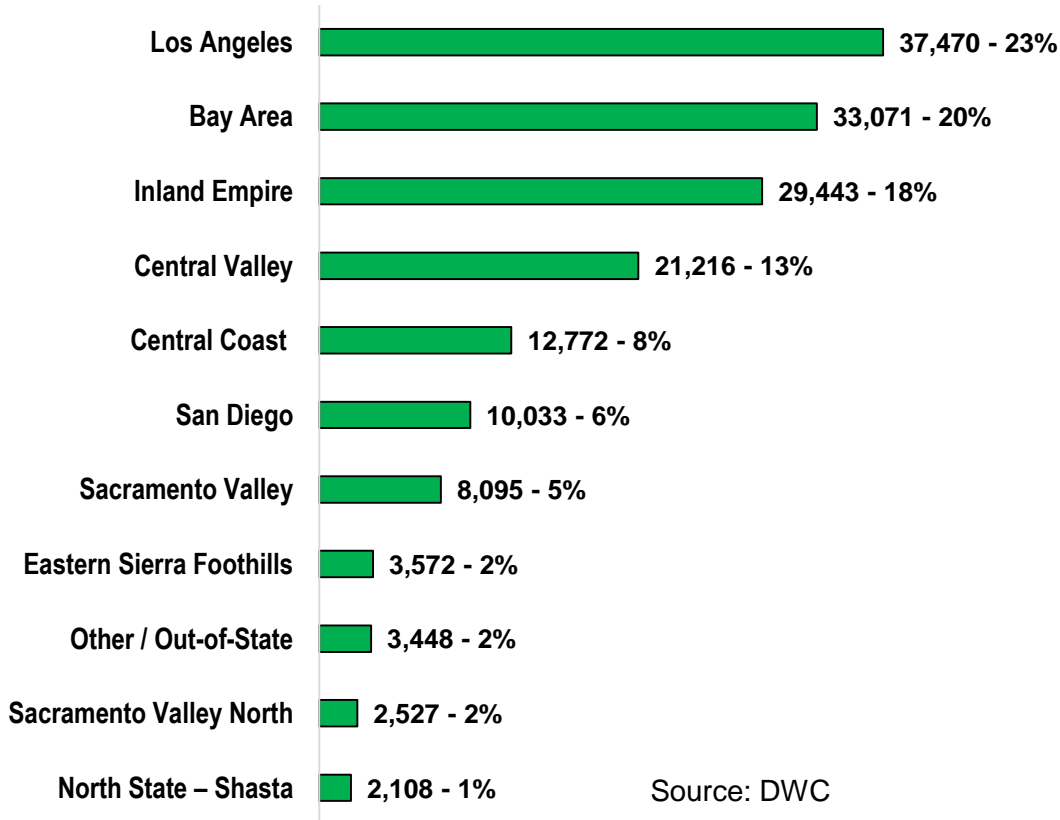


Data Source: DWC

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Figure 75 shows the number of IMR case decisions issued in 10 regions of California. Southern California accounted for 47 percent of all IMR decisions.

**Figure 75: IMR Case Decisions Issued by Region in 2019
(Total=163,755)**



For further information ...

DWC, "2019 Independent Medical Review (IMR) Report: Analysis of 2018 Data" (2019).

<https://www.dir.ca.gov/dwc/IMR/reports/IMR-Annual-Report.pdf>

Independent Bill Review

Senate Bill (SB) 863 adopted several provisions to provide a quick, efficient way of resolving disputes over medical billing and eliminate litigation at the appeals board over billing disputes. One of the key provisions was putting in place the Independent Bill Review (IBR) process for resolving medical treatment and medical-legal billing disputes. Effective January 1, 2013, for medical services provided on or after that date and in cases in which the fee was determined by a fee schedule established by the DWC, the IBR is used to decide disputes when a medical provider disagrees with the amount paid by a claims administrator. The DWC administers the IBR program, which refers applicants to an independent bill review organization (IBRO). The reasonable fees for IBR are paid by the applying physician. If the independent bill reviewer determines that the claims administrator owes the physician additional payment on the bill, the claims administrator must reimburse the physician for the additional payment and for the review fee.

Figure 76 shows the yearly numbers of IBR requests received and IBR decisions completed between 2013 and 2019. In 2013, when IBR became effective, 1,000 applications were received and 204 IBR decisions

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were completed. The number of IBR requests received doubled from 2013 to 2,009 in 2014. Activity peaked the following two years, with approximately 2,360 applications filed each year and then decreased 31 percent from 2016 to 2019. As of December 2019, the number of IBR requests received totaled 13,227, and the number of decisions completed totaled 9,790, with a peak of 2,191 in 2015.

Figure 76: Number of Independent Bill Review Requests and Decisions, 2013–2019

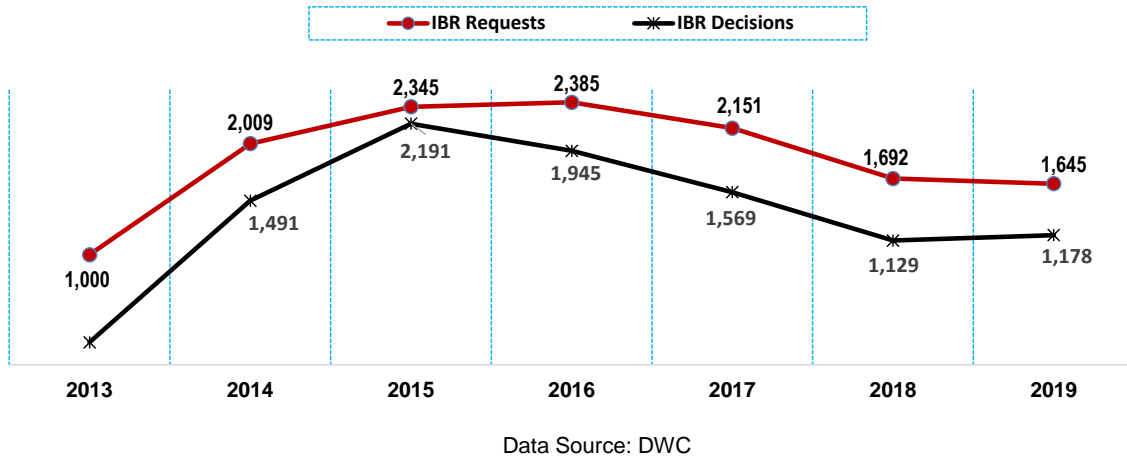
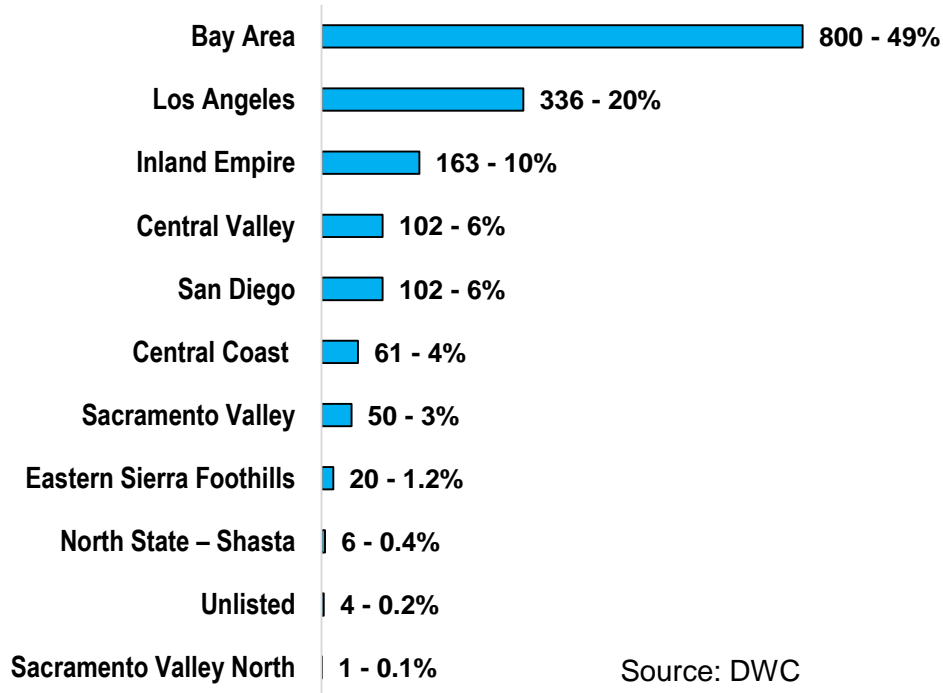


Figure 77 shows the number of IBR applications filed in 10 regions of California, and the Northern regions comprised about 53 percent.

**Figure 77: Number of IBR Applications Filed, by Regions in 2019
(Total=1,645)**



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Medical Provider Networks and Health Care Organizations⁹⁹

Medical Provider Networks

Background

Between 1997 and 2003, the California workers' compensation system had significant increases in medical costs. During that period, workers' compensation medical treatment expenses in California increased by an estimated 138 percent,¹⁰⁰ outpacing the cost of equivalent medical treatment in non-industrial settings. To slow this rise in costs, major reforms were enacted in 2003 and 2004. One such effort was the passage of Senate Bill (SB) 899 in April 2004. A major component of SB 899 was the option to establish a medical provider network (MPN), as promulgated in Labor Code Section 4616 et seq. MPNs were implemented beginning January 1, 2005. On September 18, 2012, another round of major workers' compensation reforms was signed into law in SB 863. SB 863 incorporates significant changes to MPNs, including but not limited to: expanding who can qualify to become an MPN applicant; limiting the MPN approval period to four years and requiring MPN plans to be reapproved; providing the right to petition for MPN suspension or revocation; and authorizing the adoption of administrative penalties to ensure that MPN applicants comply with regulations. Most of these changes took effect on January 1, 2014.

On October 6, 2015, SB 542 was signed into law with additional changes, including: clarifying the MPN independent medical review process from the independent medical review process that resolves UR disputes; requiring every MPN to post on its website information on how to contact the MPN, on medical access assistance and how to obtain a copy of any notification regarding the MPN that is required to be given to an employee by regulations; creating efficiencies for approving MPNs when a modification is made during a four-year approval period; clarifying who provides for the completion of treatment when there is a continuity-of-care issue; and giving a statutory definition of an entity that provides physician network services. These changes took effect on January 1, 2016.

An MPN is a network of providers established by an insurer, a self-insured employer, a Joint Powers Authority (JPA), the State, a group of self-insured employers, a self-insurer security fund, or the California Insurance Guarantee Association (CIGA), or entities that provide physician network services to treat work-related injuries.

The establishment of an MPN gives employers significant medical control. With the exception of employees who have a predesignated physician, according to California Labor Code Section 4600, employers that have established an MPN control the medical treatment of employees injured at work for the life of the claim, as opposed to 30 days of employer medical control they had prior to the passage of SB 899. Having an MPN means the employer has more control with regard to who is in the network and whom the injured worker sees for care for the life of the claim. The employer chooses to whom the injured worker goes on the first visit; after the first visit, the injured worker can go to a doctor of his/her choice as long as the doctor is in the MPN and practices the relevant medical specialty.

Before the implementation of an MPN, insurers, employers or entities that provide physician network services are required to file an MPN application with the DWC for review and approval, pursuant to 8 CCR Section 9767.1 et seq.

The DWC provides all the data on MPNs in this section.

⁹⁹ The information in this section was provided by the DWC Medical Unit, with minor edits by CHSWC staff.

¹⁰⁰ Based on the WCIRB annual report *California Workers' Compensation Losses and Expenses Report*, prepared pursuant to the California Insurance Code, Section 11759.1.

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Application Review Process

California Labor Code Section 4616(b) mandates that the Division of Workers' Compensation (DWC) review and either approve or disapprove MPN plans submitted within 60 days of their submission. If the DWC does not act on the plan within 60 days, the plan is deemed approved by default.

Upon receipt of an MPN application, the DWC does an initial cursory review of all applications received. The result of the review is communicated to each applicant in a letter indicating whether the application is "complete" or "incomplete," as applicable. Applicants with incomplete sections in their application will be asked to fill in the missing part(s). Applicants with a complete application will receive a "complete" letter, indicating the target date for completion of the full review of their application. The 60-day time frame within which the DWC should act starts the day a complete application is received by the DWC.

The full review of an application involves thorough scrutiny, using a standard checklist, to see whether the application followed the statutory and regulatory requirements set forth in California Labor Code Section 4616 et seq. and CCR Sections 9767.1 et seq. The full review culminates with an approval letter if no deficiency is discovered in the submitted application. Applicants with deficient applications are sent a disapproval letter, listing deficiencies that need to be corrected. This process is repeated until the application is approved or withdrawn.

Material modification filings go through a review process similar to the one for an initial application. Except in cases in which an MPN application was approved prior to January 1, 2014, the material modification must include all updates to ensure that the MPN complies with the current regulations.

Applications Received and Approved

Table 19 summarizes the number of MPN activities from their inception in November 1, 2004, to December 31, 2019. During this time, the MPN program received 2,646 MPN applications. Of these, 52 were ineligible, as they were erroneously submitted by employers, insurers, or other entities that, under the MPN regulations, are not eligible to set up an MPN. As of December 31, 2019, 2,447 applications were approved. After approval, the DWC revoked 32 approved applications. The reason for revocation was the applicants' erroneous reporting of their status as self-insured when in fact they were insured entities or an insurer no longer eligible to transact workers' compensation in California. In addition to the revoked applications, 402 applications were withdrawn and 1,668 were terminated after approval. The reasons for the withdrawals were either that the applicant decided not to pursue an MPN or that a duplicate application was submitted. The reason for the termination was the applicant's decision to stop using the MPN. In 2019, the DWC reached out to expired MPNs that were past their four-year approval period. In response, the DWC received confirmation that over 637 MPNs were no longer being used and were terminated because the majority of networks were consolidated into MPNs established by an entity that provides physician network services.

Table 19: MPN Program Activities from November 1, 2004, to December 31, 2019

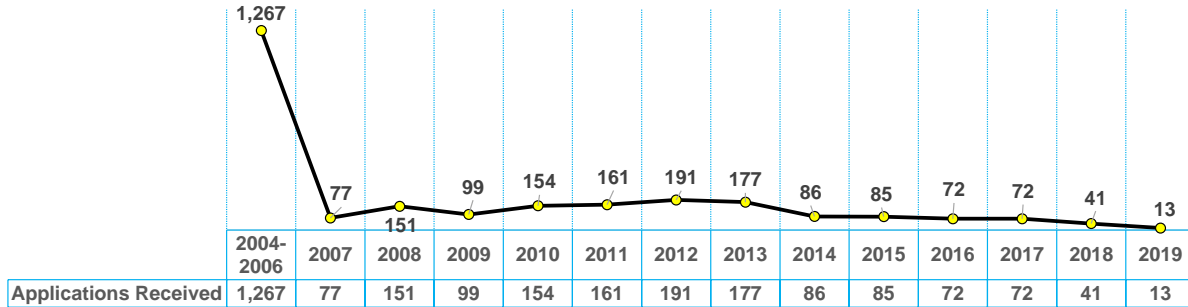
MPN Application Status	Number
Received	2,646
Approved	2,447
Material Modifications	4,565
Withdrawn	402
Revoked	32
Ineligible	52
Terminated	1,668

Source: DWC

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Figure 78 shows the receipt of MPN applications from 2004 to 2019. The bulk of applications, 48 percent, were received from 2004 through 2006 (1,267), with a peak of 751 applications in 2005. The number of applications decreased almost 10 times from 751 in 2005 to 77 in 2007 and then averaged 155 applications per year from 2008 to 2013. From 2014 to 2017, the number of MPN applications received by DWC averaged 78 applications per year, before falling to 41 applications in 2018 and 13 applications in 2019.

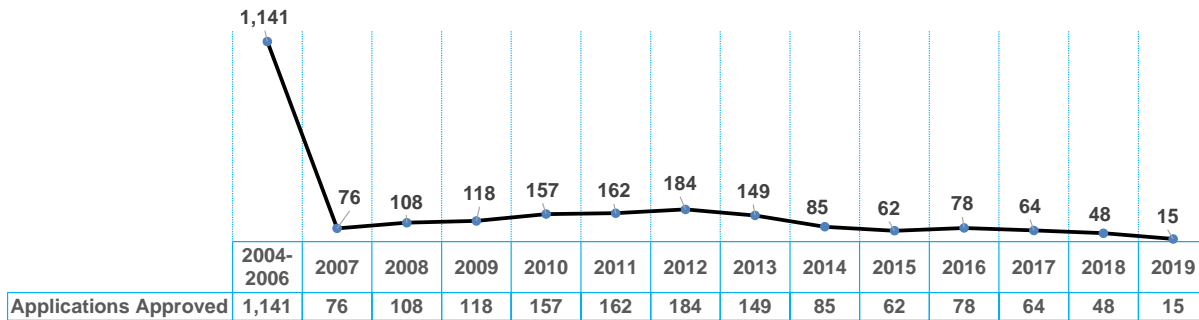
Figure 78: Number of MPN Applications Received, 2004-2019
(Total = 2,646)



Source: DWC

Figure 79 shows the MPN applications approved from 2004 to 2019. To recap, about 47 percent (1,141) of MPN applications were approved from 2004 through 2006, with a peak of 994 or 41 percent of applications approved in 2005. As the number of MPN applications decreased 10-fold from 2005 to 2007, the number of approved applications decreased accordingly. From 2008 to 2013, the number of approved MPN applications averaged 146 per year, decreased to an average of 72 approvals per year from 2014 to 2017, and then continued falling to 48 approvals in 2018 and 15 approvals in 2019.

Figure 79: Number of MPN Applications Approved, 2004-2019
(Total = 2,447)



Source: DWC

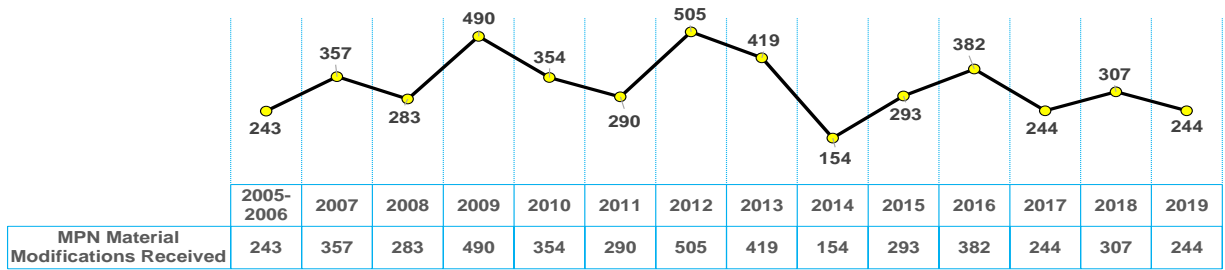
Material Modifications

MPN applicants are required by 8 CCR Section 9767.8 to provide notice to the DWC for required material changes to their approved MPN application. Modifications are required when the MPN Liaison or Authorized Individual changes or the employee notification materials change, among other reasons. Modifications go through a review, and an approval process similar to the one for a new application, within the same regulatory time frame.

Figure 80 shows the number of material modification filings received by the DWC from 2005 to 2019. The number of material modifications received increased from a yearly average of 120 in 2005 and 2006 to 357 in 2007 and then fluctuated between 280 and 500 from 2008 to 2013, decreased to 154 in 2014, and then fluctuated between 240 and 380 per year from 2015 to 2019.

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**Figure 80: Number of MPN Material Modifications Received, 2005-2019
(Total = 4,565)**



Source: DWC

Plan for Reapproval Process

Beginning January 1, 2014, SB 863 introduced the four-year approval period for existing and newly approved MPN plans. The MPN applicant is required to submit a complete plan to the DWC for reapproval at least six months before the expiration of the four-year approval period. The amended MPN regulations that became effective August 27, 2014, set the expiration date for those MPN plans with a most recent application or material modification approval date prior to January 1, 2011, to December 31, 2014. For all plans with an application approval date on or after January 1, 2014, the expiration date is four years from the application approval date.

The MPN application plan for reapproval review is similar to the application review process except that the Administrative Director has 180 days rather than 60 to act from the date an MPN application plan for reapproval is received by the DWC.

As in the original application review process, a full review of a plan for a reapproval application involves thorough scrutiny, using a standard checklist, to see whether the application followed the statutory and regulatory requirements set forth in California Labor Code Section 4616 et seq. and CCR Sections 9767.1 et seq. The full review results in an approval letter if no deficiency is discovered in the submitted application; if deficiencies are identified, the MPN applicant is sent a disapproval letter, listing the deficiencies that need to be corrected. A correct and complete resubmission is required to ensure that the MPN approval does not expire, which will result in corrective action initiated by the DWC for a noncompliant plan.

Table 20 shows the number of MPN approved plans that will require a filing for a plan for reapproval through 2023. This number is expected to decrease as approved MPNs are terminated because of consolidation into new approved MPNs created by entities that provide physician network services. In addition, this number may change because MPN applicants will proactively ensure that the MPN is reapproved more than six months before the plan's expiration.

**Table 20: Expiring MPN Application Plans by Quarter and Year
Through December 31, 2023**

Quarter	2020	2021	2022	2023	Total
Q1	13	29	31	18	91
Q2	37	65	22	16	140
Q3	43	34	21	23	121
Q4	19	46	25	15	105
TOTAL	112	174	99	72	457

Source: DWC

Table 21 shows the number of MPN application plans for reapprovals received and approved at DWC from 2014 through 2019.

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Table 21: MPN Application Plans for Reapproval Received and Approved by Month Through December 31, 2019

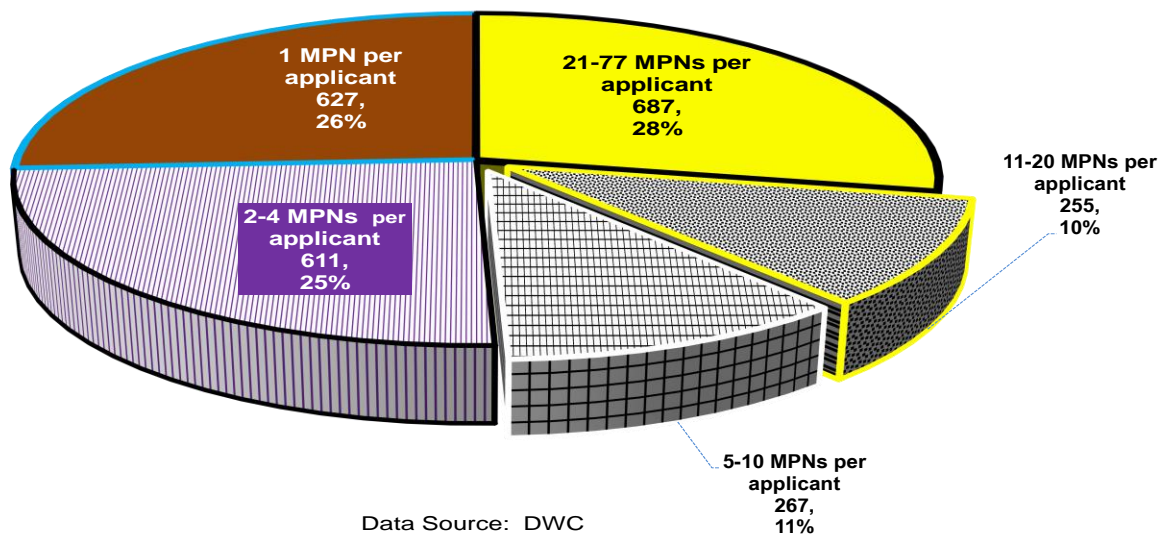
		Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sep	Oct	Nov	Dec	Total
2014	Received	0	0	0	0	0	0	0	0	0	15	17	42	74
	Approved	0	0	0	0	0	0	0	0	0	0	0	30	30
2015	Received	25	14	3	30	2	6	1	0	4	4	29	23	141
	Approved	6	3	1	27	3	1	4	0	2	5	37	22	111
2016	Received	12	13	10	8	5	10	11	8	9	1	4	0	91
	Approved	0	2	4	0	8	1	4	11	9	1	1	1	42
2017	Received	6	4	3	4	10	3	2	4	8	3	5	1	53
	Approved	1	8	5	2	4	4	7	9	2	2	8	7	59
2018	Received	1	4	1	1	4	12	0	4	8	0	1	3	39
	Approved	2	0	0	1	0	2	2	1	1	5	2	1	17
2019	Received	3	9	6	3	2	2	3	12	6	11	8	29	94
	Approved	1	6	7	2	3	4	7	3	8	2	2	3	48

Source: DWC

MPN Applicants

MPN applicants are allowed to administer more than one MPN. Currently, MPN applicants with more than one approved MPN account for 74 percent of all MPNs, including 687 approved applicants with 21 to 71 MPNs (see Figure 81). The names of MPN applicants with 10 or more approved MPNs are shown in Table 23. ACE American Insurance Company leads with 77 MPNs, followed by Zurich American Insurance Company with 46 MPNs, and National Union Fire Insurance Company of Pittsburg, PA with 43 MPNs.

Figure 81: Distribution of Approved MPNs by Number of MPNs per Applicant, 2019 (Total=2,447)



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Table 22: Names of MPN Applicants with 10 or More Approved MPNs

Name of Applicant	Number of MPNs
ACE American Insurance Company	77
Zurich American Insurance Company	46
National Union Fire Insurance Company Of Pittsburgh, PA	43
OCM Coastal Acquisition Co., LLC	43
American Home Assurance Company	41
Safety National Casualty Corporation	36
Federal Insurance Company	35
The Insurance Company Of The State Of Pennsylvania	35
Old Republic Insurance Company	32
Fidelity & Guaranty Insurance Company	32
New Hampshire Insurance Company	31
MedEx Healthcare	31
Arch Insurance Company	29
Hartford Accident and Indemnity Company	27
Discover Property & Casualty Insurance Company	27
United States Fidelity and Guaranty Company	26
American Zurich Insurance Company	25
XL Specialty Insurance Company	25
Fidelity and Guaranty Insurance Underwriters, Inc.	25
Hartford Insurance Company of the Midwest	21
Commerce And Industry Insurance Company	19
AIG Property Casualty Company	18
Travelers Property Casualty Company of America	18
Twin City Fire Insurance Company	16
Hartford Fire Insurance Company	16
American Guarantee and Liability Insurance Company	16
Continental Casualty Company	15
Hartford Underwriters Insurance Company	15
Granite State Insurance Company	15
Praetorian Insurance Company	14
United States Fire Insurance Company	13
Greenwich Insurance Company	13
Landmark Insurance Company	12
American Casualty Company of Reading, Pennsylvania	11
Sentinel Insurance Company, Ltd.	11
The North River Insurance Company	11
Zurich American Insurance Company of Illinois	11
Indemnity Insurance Company of North America	11

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Name of Applicant	Number of MPNs
Tokio Marine & Nichido Fire Insurance Co., Ltd.	10
SPARTA Insurance Company	10
Hartford Casualty Insurance Company	10
XL Insurance America, Inc.	10
SPARTA American Insurance Company	10
St. Paul Fire and Marine Insurance Company	10

Source: DWC

Table 23 shows the number of MPN applicants by type of applicant. From 2004 to 2013, the majority (on an average of 62 percent per year) of MPN applications were filed by insurers, followed by self-insured employers (28 percent). SB 863 added the option for the MPN applicant to change the type of applicant to an entity that provides physician network services, which is reflected in the numbers reported in this table. The share of MPN applications filed by insurers fell to 45 percent in a transitional year of 2014 and then decreased to an average of 31 percent from 2014 to 2019. At the same time, the number of MPN applicants filed by entities that provide physician network services increased from 6 in 2013 to an average of 47 per year from 2014 to 2019.

Table 23: Number of Approved MPN Applications by Type of Applicant, 2004–2019

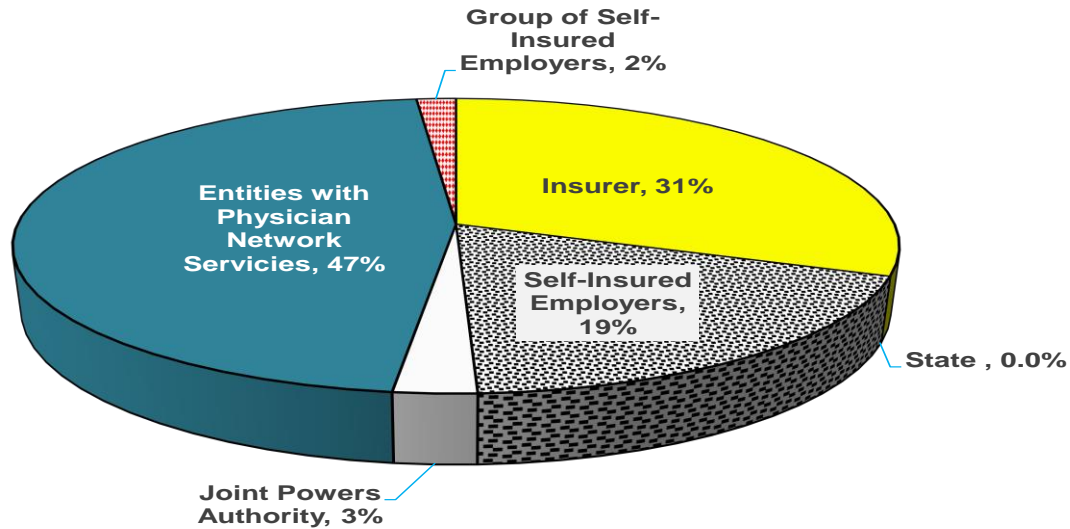
Type of Applicant	2004-2013	2014	2015	2016	2017	2018	2019	TOTAL
Insurer	1,375	38	17	24	18	7	5	1,483
Self-Insured Employers	614	29	9	5	13	12		681
Entities with Physician Network Services	6	15	32	45	33	29	10	172
Joint Powers Authority	56	3	3	4	0	0	0	66
State	4	0	0	0	0	0	0	4
Group of Self-Insured Employers	40	0	1	0	0	0	0	41
Total	2,095	85	62	78	64	48	15	2,447

Source: DWC

Figure 82 shows the distribution of MPN applications approved from 2014 through 2019 by the type of applicant when the entities providing physician network services prevailed. On average, 47 percent of approved MPN applications were submitted by entities providing physician network services, followed by 31 percent of insured employers, and 19 percent of self-insurers.

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Figure 82: Distribution of All Approved MPN Applications by Type of Applicant, 2014 - 2019



Source: DWC

MPN Plans Using HCO Networks

Health Care Organizations (HCOs) networks are used by 156 (6 percent) of the approved MPNs. This number excludes MPNs that were revoked, terminated, or withdrawn after approval. The distribution of MPNs by HCOs is shown in Table 24. CorVel HCO has an MPN market share of 3.5 percent, followed by CompAmerica (First Health), which has a share of 1.2 percent, and Medex, which has a share of almost 1.2 percent.

Table 24: Number of MPN Applicants Using HCO Networks

Name of HCO	Approved MPN Plans Using HCO Network	Percentage of Applications Received	Percentage of Applications Approved
CorVel	92	3.5%	4%
CompAmerica (First Health)	32	1.2%	1 %
MedEx	31	1.2%	1 %
Promesa	1	0%	0%
Total Using HCO	156	6%	6%

Source: DWC

Status of the MPN Program

The MPN program is in its fourteenth year and continues to develop as more MPNs are being used. The MPN plan monitoring and review processes have evolved with the regulations and as agency resources permit. SB 863 brought about important changes to the MPNs to improve efficiencies, promote greater accuracy, and ensure regulatory compliance. Effective January 1, 2016, SB 542 has added clarifying information regarding MPN requirements.

To implement the important changes brought about by the passage of SB 863, the MPN regulations were amended, and these amendments took effect August 27, 2014. The changes in the MPN regulations include a more efficient streamlined application process that allows electronic submission of MPN applications, modifications, and reapprovals. The regulatory amendments also include the requirements for an MPN to qualify as an entity that provides physician network services. Allowing these entities to qualify as an MPN

WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

applicant better aligns legal with operational responsibility. Additional changes in the MPN regulations include the assignment of unique MPN identification numbers to each MPN in order to easily identify a specific MPN. The amended MPN regulations establish the standards MPNs must meet with the MPN Medical Access Assistants to properly assist injured workers to find and schedule medical appointments with MPN physicians. The amended regulations clarify access standards and now require an MPN to have at least three available physicians from which an injured worker can choose, and if the time and location standards are not met, MPNs shall have a written policy permitting out-of-network treatment. Moreover, the amended MPN regulations set forth the physician acknowledgment requirements to ensure physicians in the MPN have affirmatively elected to be a member of the network and a streamlined process for obtaining acknowledgments from medical groups. To promote greater accuracy and ensure statutory and regulatory compliance, MPNs are approved for a period of four years and must file a reapproval before the expiration of this four-year period. Finally, the DWC's oversight of MPNs is strengthened with the formal complaint process, the Petition for Suspension or Revocation of MPNs, the ability to conduct random reviews of MPNs and the authority to assess administrative penalties against MPNs to ensure regulatory compliance.

Health Care Organization Program

Health Care Organizations (HCOs) were created by the 1993 workers' compensation reforms. The laws governing HCOs are California Labor Code, Sections 4600.3 through 4600.7, and 8 CCR Sections 9770 through 9779.8.

HCOs are managed care organizations established to provide health care to employees injured at work. A health-care service plan (HMO), disability insurer, workers' compensation insurer, or a workers' compensation third-party administrator (WCHPO) can be certified as an HCO.

Qualified employers who contract with an HCO can direct treatment of injured workers from 90 to 180 days depending on whether the employer offers qualified health-care coverage to its employees for non-occupational injuries or illnesses.

An HCO must file an application and be certified by the DWC according to Labor Code Section 4600.5 et seq. and 8 CCR Sections 9770 et seq. Due to regulatory changes in 2010, HCOs now pay a fee of \$2,500 at the time of initial certification and a fee of \$1,000 at the time of each three-year certification thereafter. In addition, HCOs are required to pay an annual assessment of \$250, \$300, or \$500 based on their enrollments of covered employees as of December 31 of each year.

Currently, the HCO program has seven certified HCOs, but only four of them have enrollees; the rest are keeping their certification and using their HCO provider network as a deemed network for MPNs. Certified HCOs and their most recent certification/recertification date are listed in Table 25.

Table 25: Currently Certified HCOs by Date of Certification/Recertification, 2020

Name of HCO	Date of Certification/Recertification
CorVel Corporation	12/30/2017
First Health/ CompAmerica Primary	10/5/2019
First Health/ CompAmerica Select	10/5/2019
Kaiser On The Job HCO	12/3/2018
MedEx Health Care	3/16/2019
MedEx 2 Health Care	10/10/2018
Promesa Health, Inc.	4/16/2019

Source: DWC

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HCO Enrollment

At its peak in mid-2004, HCOs had approximately half a million enrollees. However, with the enactment of MPNs, employee enrollment under the large HCOs, such as First Health and Corvel, declined considerably. Compared to enrollment in 2004, First Health lost 100 percent of its enrollees and Corvel's enrollment declined by 99.6 percent, to 405 by December 2012. As of December 2011, the total employee enrollment under HCOs fell by 66.4 percent to 161,413 from 481,337 in 2004. In 2017, HCO enrollment increased to 288,235. The total employee enrollment under HCOs fell by 42.5 percent from 481,337 in 2004 to 276,970 in 2019. Table 26 shows the number of enrollees as of December 31 of each year from 2004 through 2019.

Table 26: HCOs by Number of Enrollees for 2004 through 2019

Name of HCO	Medex/ Medex 2	Kaiser Perman.- on-the-Job	Comp Partners	Promesa	CorVel	Intracorp	NetWork	First Health CompAme rica Primary/S elect	Prudent Buyer (Blue Cross)	Sierra	Total
2004	62,154	30,086	60,935	n/a	100,080	6,329	1,204	218,919	1,390	240	481,337
2005	66,304	67,147	61,403	n/a	20,403	3,186	0	2,403	0	0	220,846
2006	46,085	66,138	53,279	n/a	3,719	2,976	0	0	0	0	172,197
2007	69,410	69,602	13,210	n/a	3,050	2,870	0	0	0	0	158,142
2008	69,783	77,567	1,765	21,197	3,384	0	0	0	0	0	173,696
2009	34,378	72,469	1,729	16,467	1,983	0	0	0	0	0	127,026
2010	46,838	74,223	2,884	17,602	435	0	0	0	0	0	141,982
2011	61,442	76,263	4,200	19,041	467	0	0	0	0	0	161,413
2012	67,606	75,253	11,561	23,772	405	n/a	0	0	n/a	n/a	178,597
2013	75,183	74,122	554	28,222	0	n/a	0	0	n/a	n/a	178,081
2014	86,550	73,939	396	30,701	0	n/a	0	0	n/a	n/a	191,586
2015	145,352	77,521	422	29,448	0	n/a	0	0	n/a	n/a	252,743
2016	182,034	84,637	486	26,397	0	n/a	n/a	0	n/a	n/a	293,554
2017	175,387	88,260	729	23,859	0	n/a	n/a	0	n/a	n/a	288,235
2018	173,175	94,519	500	17,659	0	n/a	n/a	0	n/a	n/a	285,853
2019	170,123	92,752	n/a	14,095	0	n/a	n/a	0	n/a	n/a	276,970

Source: DWC

Health Care Organization Program Status

HCO enrollment decreased approximately 3 percent between 2018 and 2019. HCOs are still being certified for use of their networks as deemed networks for MPNs.

For further information ...

www.dir.ca.gov/dwc and http://www.dir.ca.gov/dwc/MPN/DWC_MPN_Main.html

Medical Treatment Utilization Schedule Training Module

Physicians treating in the California workers' compensation system are required to follow the evidence-based recommendations in the DWC medical treatment utilization schedule (MTUS). The online course below provides helpful instructions. In 2016, the DWC introduced a free online one-hour Continuing Medical Education (CME) course for treating physicians, qualified medical examiners, physician reviewers, other health care providers, as well as anyone else interested in learning how to use the MTUS.

WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

Topics covered include:

- What the MTUS is and how to use it
- How to navigate the MTUS treatment guidelines and apply recommendations via case scenarios
- When to consider recommendations outside of the MTUS guidelines for the care of your patient
- The role of utilization review (UR) and independent medical review (IMR) physicians

Since this course was launched, the MTUS has undergone significant updates as well as the addition of a Drug Formulary and free provider access to the MTUS treatment guidelines. The DWC has released a revised and expanded online MTUS course to include the Formulary and information on obtaining free MTUS-ACOEM guidelines access in September 2019.

The online course can be found at the following website:

<https://www.dir.ca.gov/dwc/CaliforniaDWCCME.htm>

MTUS and Formulary Update

Since a significant overhaul in late 2017, the MTUS treatment guidelines have been regularly updated to include the latest treatment guidance from the American College of Occupational and Environmental Medicine (ACOEM). Since its January 2018 release, the MTUS Drug List portion of the MTUS Formulary has been updated regularly to remain current with the latest medication recommendations from ACOEM.

MTUS and Treatment Guidelines:

<https://www.dir.ca.gov/dwc/MTUS/MTUS.html>

MTUS Drug Formulary:

<https://www.dir.ca.gov/dwc/MTUS/MTUS-Formulary.html>

MTUS Drug List:

<https://www.dir.ca.gov/dwc/MTUS/MTUS-Formulary-Orders.html>

ACOEM Coronavirus (COVID-19) Guide

The American College of Occupational and Environmental Medicine (ACOEM) and MDGuidelines® have released a [Coronavirus \(COVID-19\) Clinical Practice Guideline](#).

The Division of Workers' Compensation (DWC) supports this guidance and plans on adopting and incorporating the ACOEM Coronavirus (COVID-19) Guideline into the Medical Treatment Utilization Schedule (MTUS).

However, at the time of this writing, the evidence base on the management of this disease is evolving at such a rapid pace that updates to this guideline are being published frequently. As a result, DWC will wait to adopt and incorporate ACOEM's COVID-19 Guideline into the MTUS until the frequency of updates has slowed to the point that the formal guideline adoption process can be completed.

DIVISION OF WORKERS' COMPENSATION INFORMATION & ASSISTANCE UNIT

The DWC Information & Assistance (I&A) Unit provides information and assistance to employees, employers, labor unions, insurance carriers, physicians, attorneys and other interested parties concerning rights, benefits and obligations under California's workers' compensation laws. The I&A Unit, often the first DWC contact for injured workers, plays a major role in reducing litigation before the WCAB. The Unit gets approximately 3,670 calls a week on its toll-free line, 800-736-7401, or 191,000 calls a year. These callers get prerecorded messages in English and Spanish about the workers' compensation system and can request forms, fact sheets, or guides.

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Table 27: Information & Assistance Unit Workload

No. of	2013	2014	2015	2016	2017	2018	2019
Calls from public handled	300,515	308,221	307,242	311,473	299,674	201,050	190,647
Outgoing calls placed	33,965	33,015	34,017	31,985	29,922	27,578	26,772
Settlements reviewed and assisted	13,055	14,129	14,535	13,988	10,841	9,332	8,509
Face-to-face meetings with walk-ins	24,588	25,105	26,858	25,715	20,987	18,900	16,666
Injured Worker Workshop presentations	243	239	245	229	238	185	183
Workshops for injured workers attended	3,013	2,615	2,377	2,714	1,593	1,053	899
Correspondence written	13,005	12,996	11,557	13,511	14,805	14,700	14,765
Conference with WC Judge	NA	9,125	9,334	9,313	7,314	7,700	7,329
Audit Unit referrals	NA	70	58	NA	46	25	2

Source: DWC

Spanish Outreach Attendance data by the type of outreach was available only since 2017 (see Table 28). In 2019, the bilingual staff of I&A Unit participated in 54 workshops, fairs, farmworker breakfasts, and consulate presentations, sometimes alone, and sometimes with other DIR staff, such as Labor Commissioners.

Table 28: Spanish Outreach Attendance

	No. of Events			Avg No. of Attendees per Event		
	2017	2018	2019	2017	2018	2019
Mexican consulates	27	40	40	60	50	45
Radio	1	1	1	NA	NA	NA
Workshops	3	6	3	50-75	25-50	25-50
Farmworker-related fairs/events	27	29	10	200-300	200-300	200-300

Source: DWC

Table 29: DWC Educational Conferences Attendance, 2012–2020

		Attendees	Exhibitors
Los Angeles	2012	1,015	64
	2013	1,091	87
	2014	1,058	85
	2015	1,162	89
	2016	1,191	95
	2017	1,190	91
	2018	1,039	74
	2019	1,045	74
Oakland	2012	939	59
	2013	762	53
	2014	740	53
	2015	836	61
	2016	878	59
	2017	803	66
	2018	733	54
	2019	800	50
	2020	559	41

Note: Due to the COVID-19 pandemic, the 2020 Los Angeles conference was canceled.

Source: DWC

WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

The I&A Unit provides the DWC Tele-Learning classes on different workers' compensation issues for Department of Industrial Relations (DIR) employees. However, no DWC tele-learning classes were held in 2018 and 2019. In 2019, the Training and Outreach Unit took over the tele-learning program, as the I&A Unit ceased its oversight of the classes. The enrollment numbers in these classes in 2014-2017 are listed in Table 30.

Table 30: Number of Enrollees in DWC Tele-Learning Classes for DIR employees

Courses	2014	2015	2016	2017
Disability Management/RTW	Not offered	12	10	6
Basic Claims	24	23	23	22
Basic PD	6	12	16	11
Medical Management	27	Not offered	9	6
Advanced Claims	Not offered	17	16	12
Advanced PD	15	3	5	7
Total	72	67	79	64

Source: DWC

DIVISION OF WORKERS' COMPENSATION INFORMATION SERVICE CENTER

The DWC Information Service Center (ISC) is located in San Bernardino. The main function of the ISC is to screen all incoming calls for all 24 DWC District offices. Any combination of a district office's main number and I&A Unit, Disability Evaluation Unit, and Rehabilitation Unit lines are directed through ISC, which answers questions and provides information in both English and Spanish on workers' compensation and EAMS issues for the general public. In addition, all EAMS help desk emails and Notice of Representation (NOR) questions go through ISC. ISC staff members monitor and resolve questions sent via email to the EAMS Help Desk, process NOR updates received through the e-File system, and answer Virtual EAMS Support Team (VEST Issue Tracker) questions sent by both internal and external users. In September 2014, some members of DWC ISC's staff started participating in the new DIR Cloud call center several days a week. No statistics are available yet on DIR Cloud call center's workload.

Table 31: DWC's Information Service Center Workload

Activities	2013 & 2014	2015	2016	2017	2018	2019
Incoming calls	306,026	180,144	198,232	184,463	177,281	163,119
Outgoing calls*	9,425	3,532	184	312	264	133
Calls in Spanish	22,054	14,908	13,465	12,609	11,798	11,766
Calls in Spanish for Return to Work Unit**	na	na	na	na	na	1,256
Calls transferred to district offices	58,523	33,191	47,271	45,851	39,514	39,102
EAMS Help Desk emails	32,147	21,000	16,208	20,025	22,594	18,724
Correspondence mailed out	10,309	5,346	5,492	4,697	4,477	3,490
NOR-related questions processed	78,647	47,548	30,243	29,547	25,045	27,381
VEST/Issue tracker of EAMS related problems	381	53	18	47	30	13

* Decrease in manual outgoing calls due to new phone system.

** Spanish calls for Return-to-Work Supplement Program (RTWSP) became available in June 2019.

Source: DWC

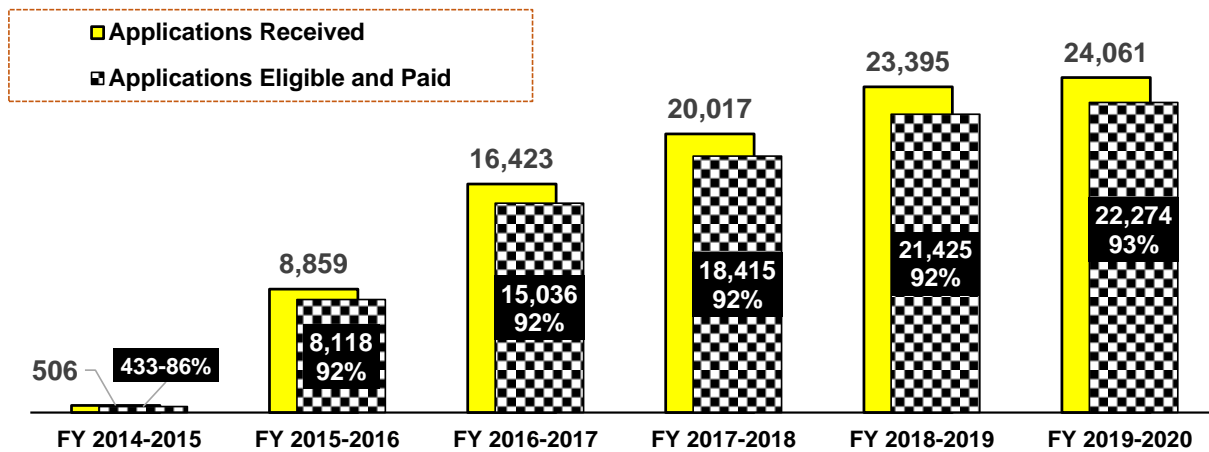
WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

RETURN-TO-WORK SUPPLEMENT PROGRAM

The Return-to-Work (RTW) Fund was created under Labor Code Section 139.48 as one of the components of SB 863 enacted in September 2012. This section requires that the Department of Industrial Relations (DIR)'s Return-to-Work Supplement Program (RTWSP) administer a \$120 million fund for the purpose of making supplemental payments to workers whose permanent disability benefits are disproportionately low in comparison to their earnings losses. Injured workers may be eligible for a one-time \$5,000 Return-to-Work supplement if they have a date of injury on or after January 1, 2013, and have received a Supplemental Job Displacement Voucher (SJDB) because of that injury. The benefit is administered by DIR's RTWSP in accordance with the regulations implemented on April 13, 2015, and amendment effective March 20, 2017¹⁰¹. The RTWSP application is only available online. For those with no access to a computer, every DWC district office has a kiosk equipped with a computer, scanner, and printer enabling them to apply.

As shown in Figure 83, the number of applications received increased 17 times from an incomplete FY 2014-2015 to FY 2015-2016 and then almost tripled over the next four fiscal years (FY 2016-2017 to FY 2019-2020), when on average 92 percent of the RTWSP applications received were eligible for payment. Similarly, the number of eligible RTWSP applications increased almost 19 times from FY 2014-2015 to FY 2015-2016 and then nearly tripled over the next four fiscal years (FY 2016-2017 to FY 2019-2020). According to the RTWSP staff, the increase in applications could be explained by the collaborative efforts between RTWSP staff, vocational schools, Vocational Return to Work counselors (VRTW), claims administrators, applicant attorneys, and the injured workers.

Figure 83: Total RTWSP Applications Received and the Share of Applications Eligible and Paid



Note: Data in FY 2014-2015 is for 04/13/2015 - 06/30/2015

Source: DWC

According to Figure 80, 8 percent of the applications received from FY 2015-2016 to FY 2019-2020 were ineligible according to the RTWSP rules and standards. The reasons for ineligibility from FY 2015-2016 to FY 2019-2020 are detailed in Table 32 and included those falling under 8 CCR Sections: 17302(a), 17302(b), 17304, and 17306.

¹⁰¹ <http://www.dir.ca.gov/ODRegulations/ReturnToWorkRegulations/ReturnToWork.html>; <http://www.dir.ca.gov/ODRegulations/ReturnToWork/ReturnToWork.html>.

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Table 32: Reasons for ineligibility of RTWSP Applications

8 CCR Sections	Reasons
§17302 (a)	Date of Injury before 1/1/2013
§17302 (b)	Same person applying more than once (System Processed or Reviewer Processed)
§17304	Timeliness (application submitted past the deadline)
§17306	Incomplete voucher, SJDB proof of service missing, wrong voucher

Source: DWC

As the volume of RTWSP eligible applications expanded from FY 2014-2015 to FY 2019-2020, thus increasing the time and resources needed for processing the applications and issuing RTWSP checks, the average days of benefit issuance from application received date increased as well. See Table 33.

Table 33: Duration of RTWSP Benefit Issuance

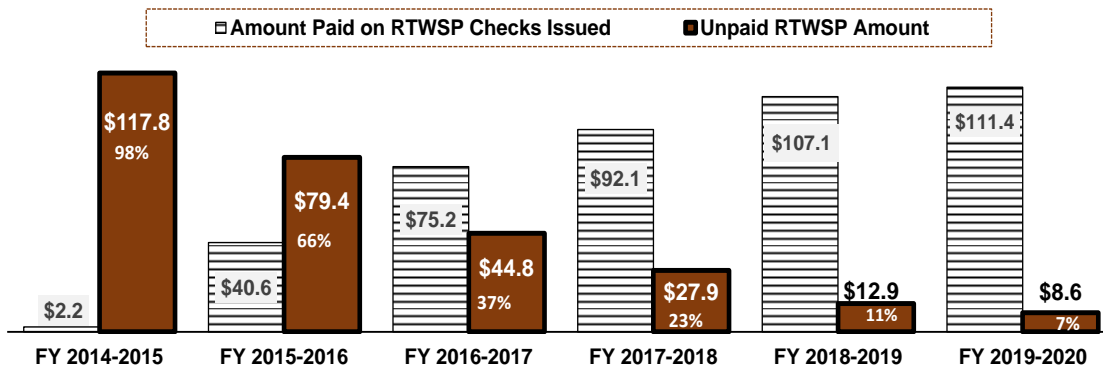
	FY 2014-2015*	FY 2015-2016	FY 2016-2017	FY 2017-2018	FY 2018-2019	FY 2019-2020
Average Days of Benefit Issuance from Application Received Date (days)	10	11	13	20	33	44
Average Days of Benefit Issuance from Decision of Eligibility (days)	6	5	5	5	5	5

Source: DWC

* Note: Data in FY 2014-2015 are for 4/13/2015 - 6/30/2015.

The total yearly amount to be distributed by the RTW Supplement Program is \$120 million for a total of 24,000 eligible applications, and each applicant is issued a \$5,000 check. Figure 84 shows that in FY 2014-2015, the initial stage of the RTWSP program, only 2 percent of the \$120 million annual fund, or \$2.2 million, was disbursed to eligible injured workers. The amount disbursed in FY 2014-2015 increased almost 19 times to \$40.6 million in a single year and then increased to \$111.4 million from FY 2015-2016 to FY 2019-2020. The share of the RTWSP that was not distributed decreased from 98 percent in FY 2014-2015 to 66 percent in FY 2015-2016 and continued to decline over the next four years, reaching 7 percent in FY 2019-2020.¹⁰²

Figure 84: Amount Paid on Eligible RTWSP Applications and the Share of Unpaid Balance



Note: Data in FY 2014-2015 is for 04/13/2015 - 06/30/2015

Source: DWC

¹⁰² See the RAND discussions on RTWSP take-up rate in https://www.rand.org/content/dam/rand/pubs/research_reports/RR2500/RR2548/RAND_RR2548.pdf.

WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

DIVISION OF WORKERS' COMPENSATION UNINSURED EMPLOYERS BENEFITS TRUST FUND

Introduction

All California employers except the State are required to provide workers' compensation coverage for their employees through the purchase of workers' compensation insurance or by being certified by the State as permissibly self-insured. However, not all employers comply with the law to obtain workers' compensation coverage for their employees, and inspection and investigation by DLSE, Cal/OSHA, or LETF might reveal that they lack this coverage.

The Uninsured Employers Benefits Trust Fund (UEBTF) was established to provide payment of workers' compensation benefits to injured employees of illegally uninsured employers. Labor Code Sections 3710-3732 describe the operation of the Fund, and Labor Code Section 62.5 describes the funding mechanism for UEBTF.

The director of the Department of Industrial Relations (DIR) administers the UEBTF. Claims are adjusted for the DIR director by the Special Funds Unit in DWC. UEBTF pursues reimbursement of expenditures from the responsible employers through all available avenues, including filing liens against their property. Litigation for UEBTF is conducted in the name of the director of DIR represented by the Office of the Director Legal Unit.

The analyses of UEBTF activities in the CHSWC Annual Report are based on the Division of Workers' Compensation (DWC)/Department of Industrial Relations (DIR) Electronic Adjudication Management System (EAMS). EAMS provides UEBTF business analytics and maintains document processing workflows supporting the judicial review process, and expands document processing for UEBTF. The EAMS' yearly extracts of UEBTF data reflect changes in numbers and amounts for all years depicted in this report. These UEBTF claims-based data demonstrated in this report for all years, including the last fiscal year, are final and not subject to further adjustments. Please note that the values of the UEBTF expenditures and revenue for the last fiscal year demonstrated in this report are estimates done while the fiscal year is open. Therefore, the values of the UEBTF expenditures and revenue are subject to final adjustments after the DIR accounting books are closed. The accounting data for UEBTF expenditures and revenue is the official information reported to the Governor.

Funding Liabilities and Collections

UEBTF Funding Mechanisms

UEBTF funding comes from:

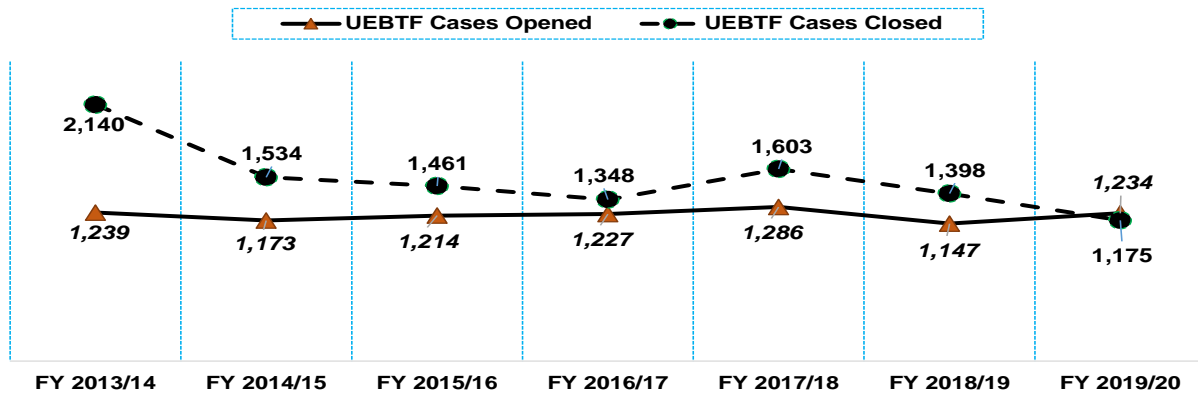
- Annual assessments on all insured and self-insured employers, required by Labor Code Section 62.5(e). According to Labor Code Section 62.5(e), the "total amount of the assessment is allocated between the employers in proportion to the payroll paid in the most recent year for which payroll information is available."¹⁰³ The assessment for insured employers is based on a percentage of the premium, while the percentage for self-insured employers is based on a percentage of indemnity paid during the most recent year. The total assessment collected pursuant to Labor Code Section 62.5 was \$22.0 million for FY 2017-2018 and \$21.2 million for FY 2018-2019.
- Fines and penalties collected by DIR. These include Division of Labor Standards Enforcement (DLSE) penalties and Labor Code Section 3701.7 penalties on self-insured employers.
- Recoveries from illegally uninsured employers per Labor Code Section 3717.

¹⁰³ Prior to the workers' compensation reforms of 2004, the funding for UEBTF came from the General Fund.

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The number of new and closed UEBTF cases is shown in Figure 85. Over the period FY 2013-2014 to FY 2019-2020, more UEBTF cases were closed than opened. In FY 2013-2014, on average, 2 cases were closed for each case opened, and from FY 2014-2015 to FY 2019-2020 this decreased to an average of 1.2 yearly closed cases for each UEBTF case opened.

Figure 85: UEBTF Cases Opened and Closed, FY 2013-2014 to FY 2019-2020

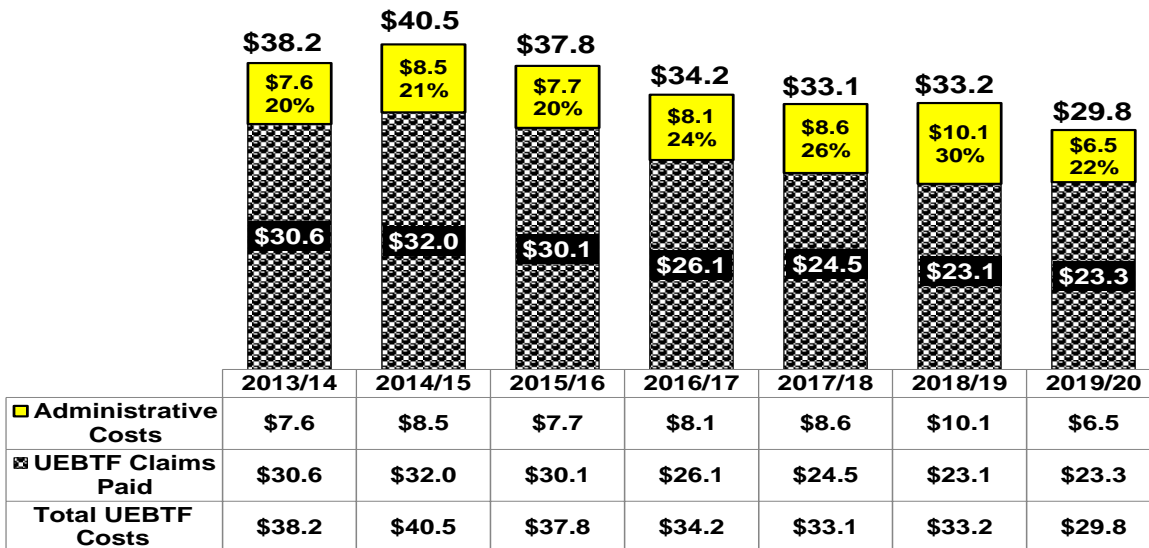


Source: DWC

Cost of the Uninsured Employers Benefits Trust Fund

Figure 86 shows that the total amount paid on UEBTF claims decreased overall by 22 percent from FY 2013-2014 to FY 2019-2020. Administrative costs associated with claim payment activities fell from FY 2014-2015 to FY 2015-2016, after an increase from FY 2013-2014 to FY 2014-2015, and then increased again by 9 percent from FY 2015-2016 to FY 2018-2019. From FY 2018-2019 to FY 2019-2020, the administrative costs declined by 40 percent. The share of UEBTF administrative costs increased from 20 percent of total costs in FY 2013-2014 to 30 percent in FY 2018-2019 and then declined to 22 percent in FY 2019-2020.

Figure 86: Payments on UEBTF Claims and Administrative Costs, FY 2013-2014 to FY 2019-2020 (in \$ million)



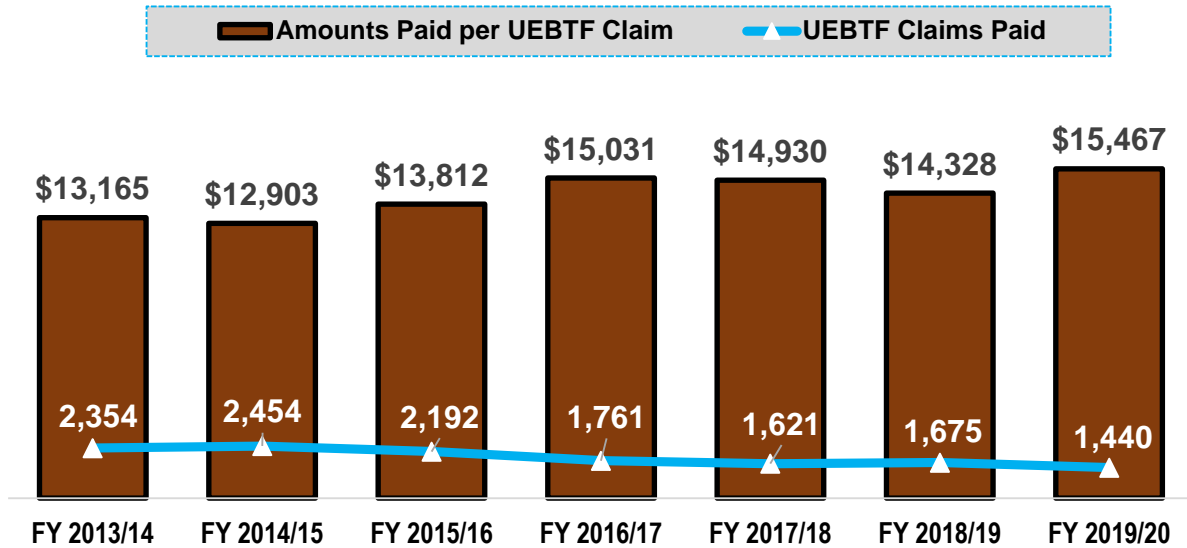
Note: UEBTF Costs for the last Fiscal Year are estimates done before the DIR's books are closed and subject to final adjustments.

Data Source: DWC

WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

As shown in Figure 87, the average amount paid per UEBTF claim decreased by 2 percent as the number of uninsured claims paid increased by 4 percent from FY 2013-2014 to FY 2014-2015. From FY 2014-2015 to FY 2017-2018, the trend reversed, with the average amount paid per UEBTF claim increasing by 17 percent as the number of uninsured claims paid decreased by 34 percent. The amount paid per claim decreased 5 percent, and the number of claims from FY 2017-2018 to FY 2018-2019 increased 3 percent. From FY 2018-2019 to FY 2019-2020, the average amount paid per UEBTF claim increased by 8 percent as the number of uninsured claims paid decreased by 14 percent.

Figure 87: Average Amount Paid per UEBTF Claim and the Number of UEBTF Claims Paid, FY 2013-2014 to FY 2019-2020



Source: DWC

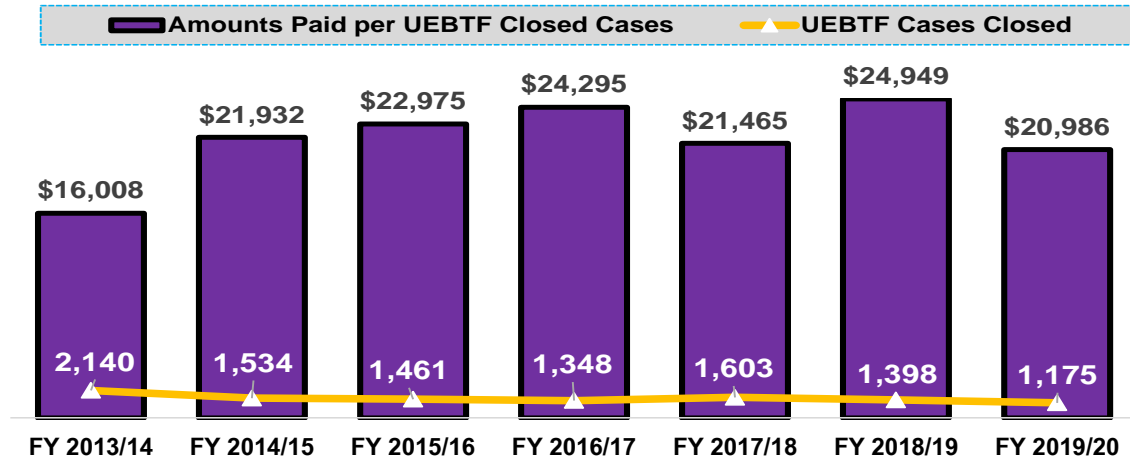
Figure 88 shows the number and the average amount paid in UEBTF closed cases. UEBTF closes a case after it has either been paid off or settled or it has not settled but has been inactive for one year.¹⁰⁴ Between FY 2013-2014 and FY 2018-2019, the average number of cases closed was 1,600.¹⁰⁵ The average amount paid per closed case increased by 39 percent, from \$15,700 in FY 2013-2014 to \$21,750 in FY 2014-2015, and then averaged \$23,000 per closed case from FY 2014-2015 to FY 2018-2019. In FY 2019-2020, both the average number of cases closed and the amount paid per closed case declined.

¹⁰⁴ UEBTF normally closes a case on the grounds of inactivity for one year at the discretion of the adjuster. However, the case could be reopened if the applicant reappears for reasons such as medical treatment or case settlement.

¹⁰⁵ The number of closed cases in FY 2012-2013 was much higher (3,741) than average from FY 2013-2014 to FY 2018-2019. According to UEBTF, this aberration may have been due to a Closing Project conducted by the Claims branch of UEBTF during that year to review and close inactive cases.

WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

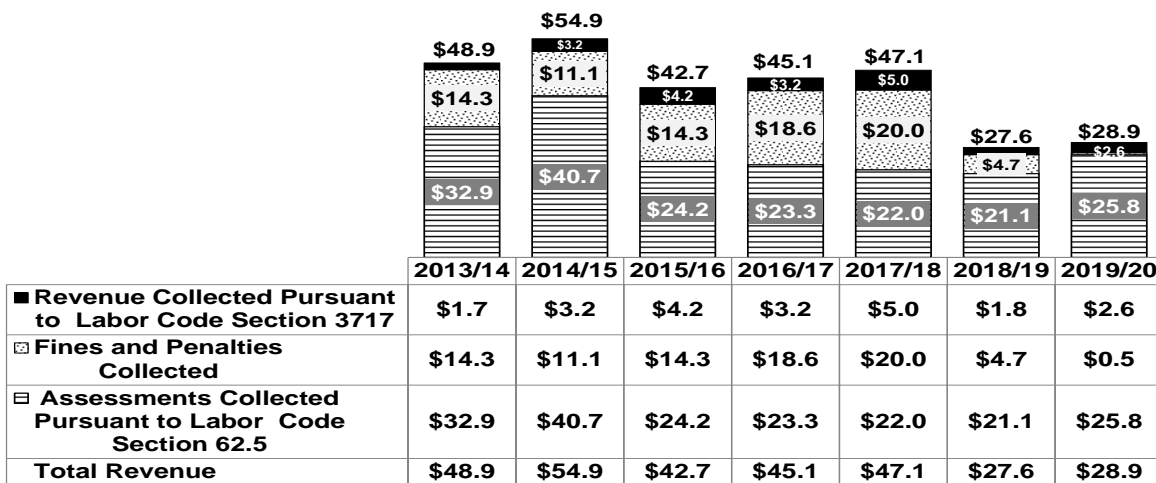
Figure 88: Average Amount Paid per UEBTF Closed Case and the Number of UEBTF Cases Closed, FY 2013-2014 to FY 2019-2020



Source: DWC

Figure 89 shows monies collected by the source of the revenue. Values for the two components of UEBTF revenue such as revenue collected pursuant to LC section 3717 and fines and penalties for the last fiscal year are estimates based on previous fiscal year results and are subject to final adjustments after the DIR accounting books are closed. The value of assessments collected pursuant to LC section 62.5 include assessments collected by OSIP and DWC and are final as reported in Figure 86. The total UEBTF revenue collected increased by 12 percent from FY 2013-2014 to FY 2014-2015, and then declined overall by 47 percent to \$29 million from FY 2014-2015 to FY 2019-2020. This decrease in total UEBTF revenue collected was due to a 36 percent decline in its largest component as the assessments were collected pursuant to LC Section 62.5. The share of assessments collected pursuant to LC Section 62.5 fell from 67 percent of total UEBTF revenue in FY 2013-2014 to 47 percent in FY 2017-2018, declining almost to the same share of revenue as fines and penalties collected, and then increased to 89 percent of total revenue from FY 2017-2018 to FY 2019-2020.

Figure 89: UEBTF Revenues, FY 2013-2014 to FY 2019-2020 (in \$ million)



Note: The Revenue Collected pursuant LC Sec. 3717 and Fines and Penalties Collected in the last fiscal year are subject to final adjustments after the DIR accounting books are closed.

Data Source: DWC

WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

DIVISION OF WORKERS' COMPENSATION SUBSEQUENT INJURIES BENEFITS TRUST FUND

The Subsequent Injuries Benefits Trust Fund (SIBTF) is a fund established and administered by the California Division of Workers' Compensation in the Department of Industrial Relations and governed by Labor Code Section 4751. The legislative intent behind Labor Code Section 4751 is:¹⁰⁶

- to encourage employers to offer employment to workers with pre-existing disabilities without taking economic responsibility for that condition if the worker incurs a work-related injury that causes the pre-existing disabilities to worsen
- to encourage workers with pre-existing disabilities to seek employment and have mechanisms in place to assist them in case their disabilities increase after a workplace injury

SIBTF accomplishes these two goals by providing benefits to qualified injured workers. The subsequent injury must be an industrial injury whereas the pre-existing disability can be either industrial or non-industrial but must be "labor disabling," meaning it limits them in the open competitive labor market. To qualify for SIBTF benefits, the following conditions must be met.¹⁰⁷

1. The employee must have a prior permanent partial disability and a subsequent compensable injury
2. The degree of disability caused by the combination of both disabilities must be greater than that which would have resulted from the subsequent injury alone
3. The combined effect of the pre-existing disability and subsequent injury must be equal to or more than 70 percent.
4. The employee's condition must be one of the following:
 - The previous disability or impairment affected a hand, an arm, a foot, a leg or an eye; and the permanent disability resulting from the subsequent injury affects the opposite and corresponding member; and the disability from the subsequent injury, when considered alone and without regard to or adjustment for the occupation or age of the employee, is equal to 5 percent or more of the total.
 - The permanent disability resulting from the subsequent injury, when considered alone and without regard to or adjustment for the occupation or the age of the employee, is equal to 35 percent or more of the total.

The analyses of SIBTF activities in the CHSWC Annual Report are based on the Division of Workers' Compensation (DWC)/Department of Industrial Relations (DIR) Electronic Adjudication Management System (EAMS). EAMS provides SIBTF business analytics and maintains document processing workflows supporting the judicial review process, updates classifications for case participants to match the current needs, and expands document processing for SIBTF.¹⁰⁸

Over the past few years, the number of workers' compensation cases involving SIBTF increased. Figure 90 shows that, from FY 2013-2014 to FY 2019-2020, the number of SIBTF cases opened more than tripled, totaling 11,291 cases in 7 years. Over the same period, 3,672 cases were closed, with a spike of 1,681 cases closed in FY 2017-2018 because of identification of abandoned cases.¹⁰⁹

¹⁰⁶ <https://www.dir.ca.gov/dwc/claims.html>.

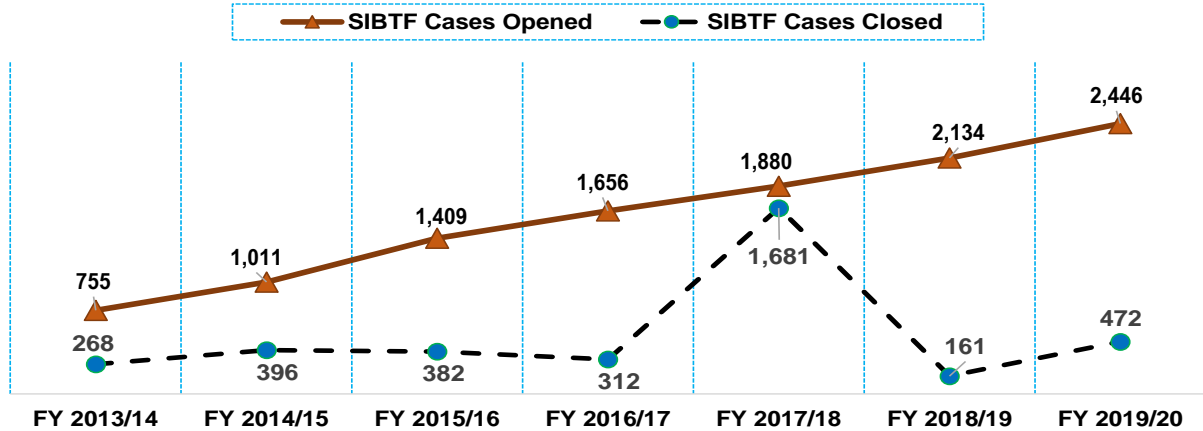
¹⁰⁷ https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=LAB§ionNum=4751.

¹⁰⁸ See DWC Electronic Adjudication Management System (EAMS) section in this chapter for a more detailed description of EAMS activities.

¹⁰⁹ In FY 2017-2018, the number of cases closed was high because a special examination was conducted (via overtime by a staff person in another unit) of all open cases in order to identify abandoned cases (i.e. the applicant passed away prior to finalizing case against SIBTF); https://esd.dof.ca.gov/Documents/bcp/1920/FY1920_ORG7350_BCP2832.pdf.

WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

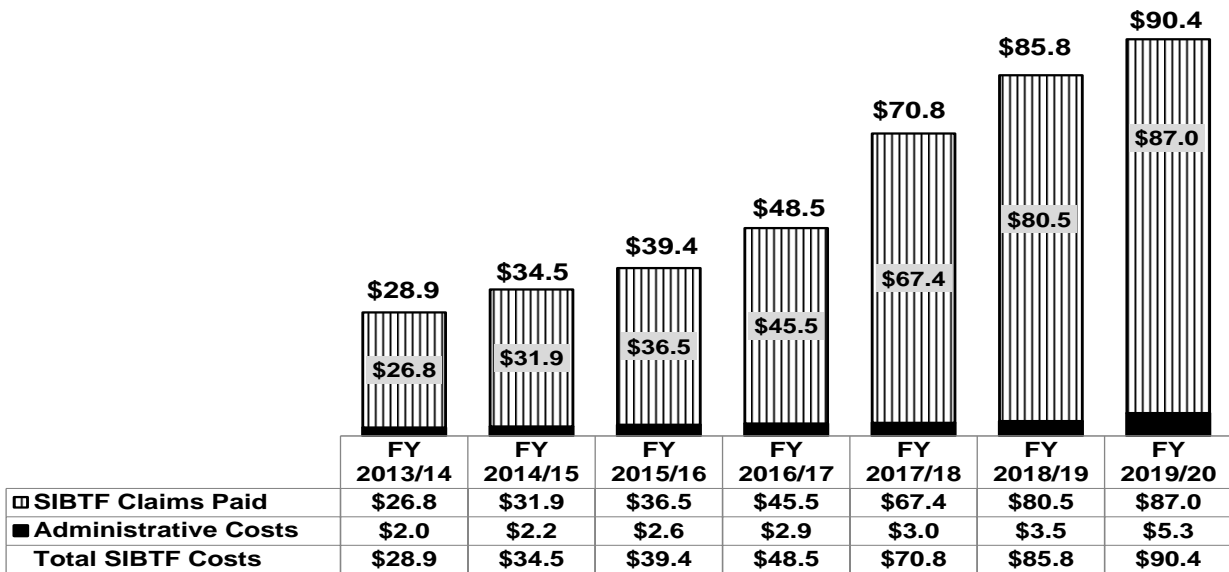
Figure 90: Number of SIBTF Cases, Opened and Closed



Source: DWC

As shown in Figure 91, from FY 2013-2014 to FY 2019-2020 not only did the number of SIBTF cases increase, but the SIBTF costs more than tripled as well. The number of SIBTF cases and the value of claims increased in part because of changes in apportionment rules according to workers' compensation legislation such as SB 899 and Labor Code Sections 4663 and 4664.¹¹⁰ As a result, applications for SIBTF benefits and benefit payouts increased from \$8 million in FY 2003-2004, the last fiscal year before 2004 reforms (not included in the period examined in this report and in the figures), to \$90.4 million in FY 2019-2020.¹¹¹

Figure 91: SIBTF Total Costs (in \$ million)



Note: The SIBTF Administrative Costs for the last Fiscal Year are estimates done before the DIR's books are closed and subject to final adjustments.

Data Source: DWC

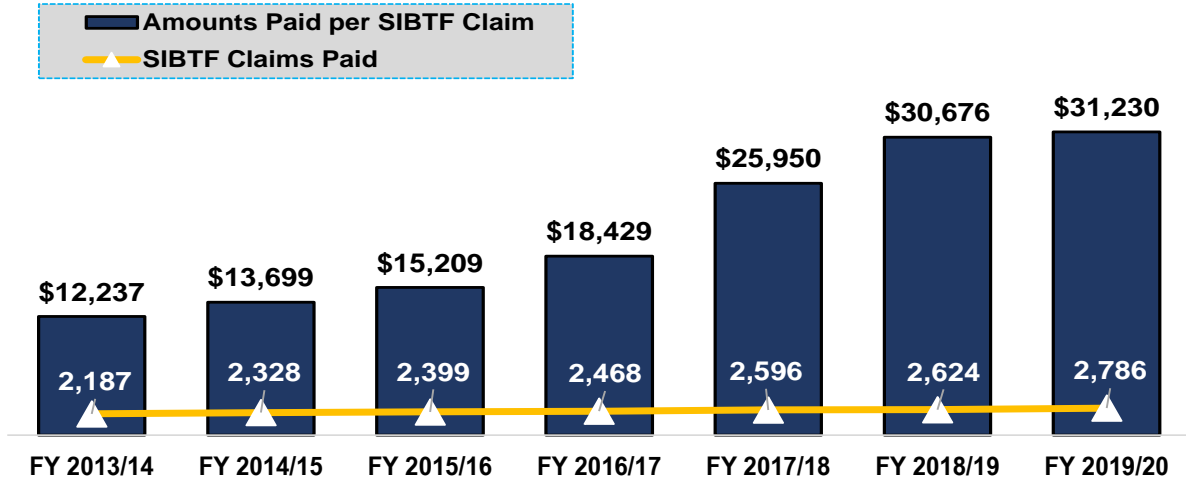
¹¹⁰ According to these amended provisions of LC Sections 4663 and 4664, the apportionment of permanent disability was based on the causation of disability. This means that workers were not entitled to compensation for the worsening of a pre-existing condition.

¹¹¹ https://esd.dof.ca.gov/Documents/bcp/1920/FY1920_ORG7350_BCP2832.pdf

WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

According to Figure 92, from FY 2013-2014 to FY 2019-2020 the number of SIBTF claims paid increased 1.3 times, and the average paid amount per SIBTF claim increased 2.6 times, from an average of \$12,237 in FY 2013-2014 to \$31,230 in FY 2019-2020.

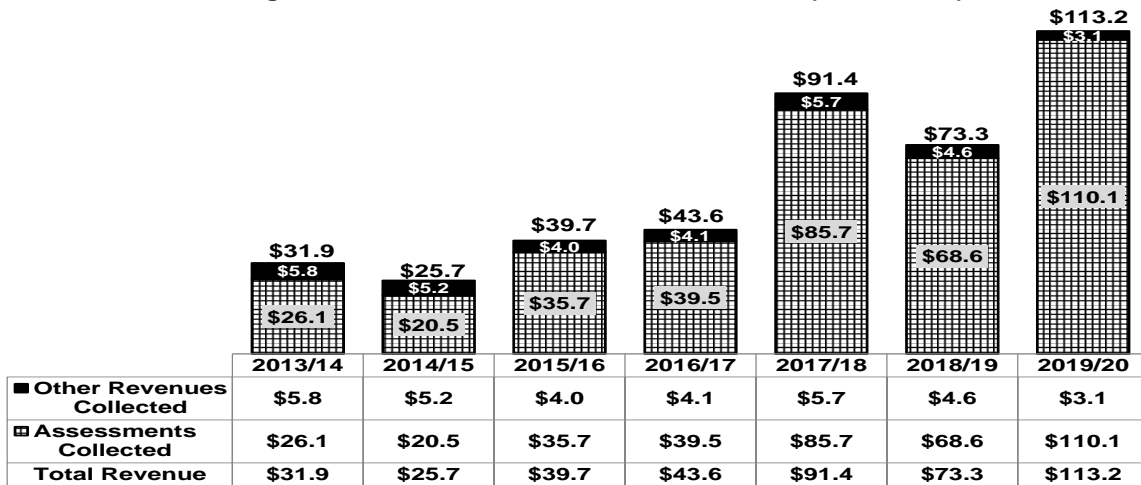
Figure 92: Number of SIBTF Claims Paid and Average Amount Paid per SIBTF Claim



Source: DWC

SIBTF funding comes mainly from annual assessments collected from insured and self-insured employers with the share of other revenue in total revenue falling from about 20 percent in FY 2013-2014 and FY 2014-2015 to 3 percent in FY 2019-2020. As Figure 93 shows, total SIBTF revenue from FY 2013-2014 to FY 2019-2020 increased overall 3.6 times after some fluctuation and spikes. Among the reasons for this significant increase in revenue assessments could be increases in both the number of paid claims and the amount paid per claim, changes in the timing of permanent disability (PD) payments in which the DIR must start paying SIBTF benefits to qualifying workers at the same time that the employer starts paying PD benefits, SIBTF benefits paid in addition to PD payments from the employer, instead of upon a declaration of permanent and stationary status, and overall increases in PD benefits, which make it more feasible for injured workers to pursue payments from the SIBTF fund.

Figure 93: SIBTF Total Revenues Recovered (in \$ million)



Note: Other Revenues Collected for the last Fiscal Year are estimates done before the DIR's books are closed and subject to final adjustments.

Data Source: DWC

WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

ADJUDICATION SIMPLIFICATION EFFORTS

Division of Workers' Compensation Information System

WCIS receives over 700,000 First Reports of Injury and Subsequent Reports of Injury (FROI/SROI) claims per year and 12 million medical bills with 35 million bill lines per year from workers' compensation claims administrators. Because of Governor Newsom's stay-at-home executive order imposed in response to COVID-19, the number of FROI claims received from January to October in 2020 dropped 20 percent compared with claims received during the same time period in 2019. WCIS data are used more than ever to help monitor and improve the WC system in California. The quality of the data has enabled rigorous empirical research, providing a real, data-informed foundation for policy. WCIS staff provides research, regulatory, and educational outreach support through one-on-one training and consultation with reporting entities to improve the FROI/SROI and medical billing data.

WCIS data is being used more than ever to help monitor and improve the workers' compensation system in California. The quality of the data has enabled rigorous empirical research, providing a real, data-informed foundation for policy. WCIS staff provides research, regulatory and educational outreach support through one-on-one training and consultation with reporting entities to improve the FROI/SROI and medical billing data set.

WCIS FROI/SROI adopted new regulations and new reporting guidelines for the California EDI Implementation Guide Version 3.1 CA in March 2018, reflecting the first update since 2012.¹¹² The new guidelines enable WCIS FROI/SROI to track the claims by industries.

WCIS FROI/SROI Data is used for:

- Evaluating the efficiency and adequacy of benefit delivery
- Assisting the department in the safety and health rulemaking process
- Supporting the department in its evaluation of health and safety hazards
- External research requests

WCIS Medical Bill data reporting has improved significantly with the introduction of California Medical Version 2.0 in April 6, 2016. The Medical Billing Database continues to grow. Fifty-three (53) million bills and 156 million bill lines were collected as of October 21, 2020.

WCIS medical data provides supportive evidence for California's:

- Combat against medical fraud and abuse
- COVID-19 legislative analysis
- MTUS drug formulary
- Medical access evaluation, measuring the timeliness and utilization of treatment for injured workers.

The medical bill data continues to be used by outside researchers, as well as by DIR. State agencies such as the California Department of Health Services continue to use the WCIS data in their health surveillance efforts, including the current COVID-19 disease.

Division of Workers' Compensation Electronic Adjudication Management System

Senate Bill (SB) 863 requires electronic lien filing as well as electronic payment of filing or activation fees on some liens. The Division of Workers' Compensation (DWC)/Department of Industrial Relations (DIR)

¹¹² <https://www.dir.ca.gov/dwc/WCIS.htm>.

WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

Electronic Adjudication Management System (EAMS) team successfully deployed the lien filing and activation fee processes to e-Forms, Jet, and Public Search on January 1, 2013.

Upgrades to the new payment processes, including a shopping cart function and increased capacity, were rolled out in March, April, and June 2013. Improvements to these processes are continuing.

The electronic Notice and Request for Allowance of Lien and the Declaration of Readiness forms have been revised, and a new form, the Request for Factual Correction of an Unrepresented Panel Qualified Medical Examiner (QME) Report, was created.

EAMS regulations for e-Form filing, Jet filing, and lien fees were approved. Due to a preliminary injunction ordered by a federal district judge in *Angelotti Chiropractic, Inc., et al. v. Baker, et al.*, effective November 19, 2013, the DWC/DIR EAMS team suspended the collection of activation fees for liens filed before January 1, 2013. Resolution of the appeal of the injunction are discussed below. Through EAMS, DWC continues to collect the filing fee for liens filed after January 1, 2013.

Check processing for the Uninsured Employers Benefit Trust Fund (UEBTF) shifted from DIR Accounting to the State Controller's Office.

Check processing for the Subsequent Injuries Benefit Trust Fund (SIBTF) shifted from DIR Accounting to the State Controller's Office.

To better track Senate Bill (SB) 863 changes, modifications were made to Expedited Hearings, Liens, and reasons for filing Liens.

Tools were created to reschedule multiple court hearings at the same time and change Uniform Assigned Name addresses on multiple cases. The improved Notice of Hearing data mailer shows all cases set for hearing when companion cases are scheduled.

New software tools enable EAMS staff to systematically add or change law firms and claims administrators on multiple cases.

EAMS venue adjustments allow case assignment and hearing scheduling at the Santa Barbara satellite district office.

The upgraded EAMS Case Participants list shows internal and external users the complete addresses of all case parties on a single page.

The EAMS staff is working to better incorporate other portions of SB 863, including Independent Medical Review (IMR) and Independent Bill Review (IBR). Many requests for changes to improve EAMS have been implemented.

In 2015 and 2016, DIR created a more robust and secure network for EAMS by refreshing servers, adding security features, and updating infrastructure software and Cognos reporting software.

Activities in 2015:

- DIR enriched workflows for document processing for judge review, lien processing (to systematically add the lien claimant and lien claimant representative as case participants), and expanded workflows for the Uninsured Employers Benefits Trust Fund (UEBTF). Document processing was improved by adding document titles and updating classifications for case participants to our current needs. The ability to match a new case to a previously injured worker was improved by adding a portion of the worker's first name in the matching criteria.

WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

- In November, we made changes in the Declaration of Readiness and resumed the collection of lien activation fees in compliance with a ruling issued by Judge George Wu of the US District Court for the Central District of California in *Angelotti Chiropractic, Inc., et al. v. Baker, et al.*
- In December, DIR implemented changes to halt the collection of lien activation fees, in compliance with the ruling issued in *Angelotti Chiropractic, Inc., et al. v. Baker, et al.*

Activities in 2016:

- DIR enlarged the comment fields in EAMS, created additional case participant roles, and enhanced the Public Information Search Tool. DIR streamlined the workflow for settlement notification to the judges. JET filing internal processes were improved. DIR enhanced document processing by updating zip code lists, adding more document titles and enforcing the lien claimant UAN (Uniform Assigned Name) on all lien submissions.
- DIR streamlined the process for setting hearings before judges and developed new UEBTF and SIBTF processes for those hearings. The department improved UEBTF document processing, data reliability, and communication templates.

In 2017, DIR began implementation of Assembly Bill 1244 and Senate Bill 1160.

Activities in 2017:

- EAMS support for the Special Adjudication Unit (SAU) was designed and implemented to conduct lien consolidation proceedings.
- Processes were created in EAMS to identify liens of medical providers that have been criminally indicted or suspended in EAMS. Those changes are displayed in EAMS and in the Lien Search results of the Public Information Search Tool.
- DIR revised the electronically filed Notice and Request for Allowance of Lien form to include medical provider information, created the Supplemental Lien Form and Section 4903.05(c) Declaration and updated DWC Document Cover and Separator Sheets to allow submission of SAU case documents into EAMS.
- In August, DIR processed liens that were dismissed by operation of law that did not meet the statutory requirements of Labor Code Section 4903.05.
- DIR improved SIBTF and UEBTF business analytics.

In 2018, DIR completed implementation of Assembly Bill 1244 and Senate Bill 1160 and updated EAMS software and hardware, FileNet storage and scanning software.

Activities in 2018:

- DIR expanded workflows in document processing for SAU judge review. It improved scheduling of hearings and created communication templates for SAU and gave e-filers access to SAU screens.
- DIR reduced redundancy and increased efficiency in EAMS software by updating Curam case management software according to current industry standards.

WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

In 2019, DIR updated EAMS software and hardware and expanded JET filing.

Activities in 2019:

- DIR enriched workflows for document processing for judicial review, updated classifications for case participants to meet its current needs, and expanded document processing for UEBTF and SIBTF by adding document titles.
- DIR continued to improve SIBTF and UEBTF business analytics while enhancing tracking capabilities for case outcomes.
- DIR increased efficiency in EAMS software for internal staff by adding bulk case reassignment processing.
- DIR upgraded EAMS electronic service, FileNet's search application, and data transfer software to meet current industry standards.
- DIR expanded the number of forms and documents to be submitted through JET filing.
- DIR began adding upfront UAN validations for structured E-form submissions.

In 2020, DIR updated the EAMS software and hardware and expanded the JET filing.

2020 activities:

- DIR expanded the number of forms and documents to be submitted through JET filing and updated the internal processing of erred case opening documents.
- DIR completed the process of updating E-forms to remove watermark comments and populate information entered into previously blocked fields.
- DIR completed upfront UAN validations for structured E-form submissions and improved processing of the Answer to Application for Adjudication of Claim by automatically adding new defendants.
- DIR continued to enrich workflows for document processing for judges' review, added document titles for better classification, and created an internal template for use when rejecting medical reports pursuant to LC section 139.2(d)(2).
- DIR upgraded EAMS reporting software and document repository and viewing software to current industry standards.

Carve-Outs: Alternative Workers' Compensation Systems

A provision of the workers' compensation reform legislation in 1993, implemented through Labor Code Section 3201.5, allowed construction contractors and unions, via the collective bargaining process, to establish alternative workers' compensation programs, also known as carve-outs. In 2003, the Legislature extended the program to cover alternative dispute resolution labor-management agreements outside the construction industry. This is codified in LC Section 3201.7.

CHSWC is monitoring the carve-out program, which is administered by DWC.

CHSWC Study of Carve-Outs

CHSWC engaged in a study to identify the various methods of alternative dispute resolution (ADR) which are being employed in California carve-outs and to begin the process of assessing their efficiency, effectiveness and compliance with legal requirements.

WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

Because carve-out programs have operated only since the mid-1990s, the data collected for the report are preliminary. The study team found indications that: the most optimistic predictions about the effects of carve-outs on increased safety, lower dispute rates, far lower dispute costs, and significantly more rapid return to work (RTW) have not occurred, but that the most pessimistic predictions about the effect of carve-outs on reduced benefits and access to representation have not realized either.

For further information ...

How to Create a Workers' Compensation Carve-out in California: Practical Advice for Unions and Employers, CHSWC (2006).

<http://www.dir.ca.gov/CHSWC/carve-out1.pdf>

Impact of Senate Bill 228 (2003)

Senate Bill 228 (2003) added Labor Code Section 3201.7, establishing the creation of a new carve-out program for any unionized industry that meets the requirements. This was in addition to the existing carve-out program in the construction industry (already covered under Labor Code Section 3201.5).

Only the union may initiate the carve-out process by petitioning the Administrative Director (AD). The AD will review the petition according to the statutory requirements and issue a letter allowing each employer and labor representative a one-year window for negotiations. The parties may jointly request a one-year extension to negotiate the labor-management agreement.

In order to be considered, the carve-out must meet several requirements including:

- The union has petitioned the AD as the first step in the process.
- A labor-management agreement has been negotiated separate and apart from any collective bargaining agreement covering affected employees.
- The labor-management agreement has been negotiated in accordance with the authorization of the AD between an employer or groups of employers and a union that is recognized or certified as the exclusive bargaining representative that establishes any of the following:
 - An ADR system governing disputes between employees and employers or their insurers that supplements or replaces all or part of those dispute resolution processes contained in this division, including, but not limited to, mediation and arbitration. Any system of arbitration shall provide that the decision of the arbiter or board of arbitration is subject to review by the Appeals Board in the same manner as provided for reconsideration of a final order, decision, or award made and filed by a workers' compensation administrative law judge.
 - The use of an agreed list of providers of medical treatment that may be the exclusive source of all medical treatment provided under this division.
 - The use of an agreed, limited list of Qualified Medical Evaluators (QMEs) and Agreed Medical Evaluators (AMEs) that may be the exclusive source of QMEs and AMEs under this division.
 - A joint labor-management safety committee.
 - A light-duty, modified job or return-to-work program.
 - A vocational rehabilitation or retraining program utilizing an agreed list of providers of rehabilitation services that may be the exclusive source of providers of rehabilitation services under this division.
- The minimum annual employer premium for the carve-out program for employers with 50 employees or more is \$50,000, and the minimum group premium is \$500,000.
- Any agreement must include right of counsel throughout the ADR process.

WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

Impact of Senate Bill 899 (2004)

In 2004, construction industry carve-outs were amended per Labor Code Section 3201.5 and carve-outs in other industries were amended per Labor Code Section 3201.7 to permit the parties to negotiate any aspect of the delivery of medical benefits and the delivery of disability compensation to employees of the employer or group of employers who are eligible for group health benefits and non-occupational disability benefits through their employer.

Recognizing that many cities and counties, as well as private industries, were interested in knowing more about carve-outs and about health and safety training and education within a carve-out, CHSWC hosted a conference devoted to carve-outs/alternative dispute resolution on August 2, 2007, in Emeryville, California. The conference was for all stakeholders in the workers' compensation system including: those in existing carve-outs; those considering establishing a carve-out; unions and employers; risk managers; government agencies; third-party administrators; insurers; policymakers; attorneys; and health care providers.

The conference provided an opportunity for the health and safety and workers' compensation communities and the public to share ideas for establishing carve-outs which have the potential to: improve safety programs and reduce injury and illness claims; achieve cost savings for employers; provide effective medical delivery and improved quality of medical care; improve collaboration between unions and employers; and increase the satisfaction of all parties.

SB 863 Carve-out Expansion (2012)

SB 863 amended LC section 3201.7 to permit the State of California to enter into a carve-out. As of 2019, no state agency has pursued this option.

Requirements of ADR program reports to DWC under 8 CCR Section 10203

The ADR data reporting requirements, initially adopted by DWC in 1996, can be found in the California Code of Regulations, Title 8, Section 10203. Section 10203 requires that every employer subject to either Labor Code Section 3201.5 or 3201.7 shall provide the DWC with the required information for the previous calendar year on or before March 31 of each year. For each claim with a date of injury on or after January 1, 2004, the information shall be updated annually for the previous four calendar years, thereby allowing longer-term claims trajectories and costs to be determined. In order to fulfill the reporting requirement, groups of employers must, on behalf of their members, either submit data directly to the DWC, or "(a)(2)(B) provide the Administrative Director with written authorization to collect the information from the appropriate claims administrator. However, if the Administrative Director is unable to obtain the information with the written authorization, the employer shall remain responsible for obtaining and submitting the information." Employers are required to submit data using the Aggregate Employer Annual Report (DWC Form GV-1) (8 CCR Section 10103.1) and the Individual Employer Annual Report (DWC Form GV-2) (8 CCR Section 10103.2).

Person hours and payroll covered by agreements filed

As Table 34 shows, for calendar year 2019, 59 reporting programs reported payroll and person-hours. Carve-out programs reported that for the 2019 calendar year, they covered 126 million work hours and \$4.2 billion in payroll. The reported average wage per carve-out person-hours worked was \$33 per hour.

WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

Table 34: Estimated Person-Hours Worked and Payroll, 2008–2019

Calendar Year (Reporting Year)	Reporting Programs	Employers	Payroll (Million\$)	Person-Hours Worked (Millions)	FTE (estimated)	Average Hourly Wage
2008	19	1,274	\$2,782	93	46,500	\$30
2009	21	876	\$3,393	100	50,000	\$34
2010	19	1,177	\$1,976	67	33,500	\$29
2011	22	1,586	\$2,418	78	39,000	\$31
2012	25	1,508	\$1,849	69	34,500	\$27
2013	22	1,815	\$1,226	51	25,600	\$24
2014	27	1,901	\$3,255	122	60,900	\$27
2015	23	1,552	\$2,553	89	44,600	\$29
2016	34	NA	\$3,203	159	79,400	\$20
2017	28	NA	\$3,000	94	n/a	\$32
2018	19	187	\$3,597	101	n/a	\$36
2019	59	763	\$4,210	126	n/a	\$33

Data Source: DWC

Status of Carve-out Agreements

The following websites are updated regularly and show the current status of carve-out agreements pursuant to Labor Code Sections 3201.5 and 3201.7, as reported by DWC.

Construction Industry Carve-out Participants Labor Code Section 3201.5

<http://www.dir.ca.gov/dwc/Carveout/ConstructionCarveOut.htm>.

Non-Construction Industry Carve-out Participants Labor Code Section 3201.7

<http://www.dir.ca.gov/dwc/Carveout/NonConstructionCarveOut.htm>.

For further information ...

The latest information on carve-outs may be obtained at:

<http://www.dir.ca.gov/dwc/carveout.html>.

How to Create a Workers' Compensation Carve-out in California: Practical Advice for Unions and Employers. CHSWC (2006). <http://www.dir.ca.gov/CHSWC/carve-out1.pdf>.

Carve-outs: A Guidebook for Unions and Employers in Workers' Compensation. CHSWC (2004).

(The link will be restored when the report is compliant with web accessibility standards.)

Carve-Outs' in Workers' Compensation: An Analysis of Experience in the California Construction Industry (1999). <http://www.dir.ca.gov/CHSWC/CarveOutReport/Carveoutcover.html>.

DIVISION OF LABOR STANDARDS ENFORCEMENT BUREAU OF FIELD ENFORCEMENT¹¹³

The Bureau of Field Enforcement (BOFE) in the Division of Labor Standards Enforcement (DLSE) is responsible for investigation and enforcement of statutes covering workers' compensation insurance coverage, child labor, cash pay, unlicensed contractors, and Industrial Welfare Commission orders, as well as group claims involving minimum wage and overtime claims. BOFE also handles criminal investigations involving these group claims.

¹¹³ The latest available data for Bureau of Field Enforcement (BOFE) activities are for FY 2017-2018.

WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

Table 35 lists the citations from FY 2017–2018 enforcement actions. It illustrates the Bureau's performance inclusive of all special programs, such as non-public works field enforcement and prevailing wage enforcement through the Public Works Unit.

Table 35: DLSE Citations by Category, FY 2017–2018

Citation Category	Number of Violations	Penalties Assessed	Penalties Collected
Workers' Compensation	1,551	\$28,749,599	\$4,707,626
Itemized Statement	605	\$15,547,187.5	\$2,472,194
Overtime	145	\$895,862.5	\$145,635
Rest and Meal Period	146	\$1,313,214	\$107,864
Minimum Wage	369	\$2,165,910	\$167,148
Child Labor	112	\$265,300	\$150,040
Unlicensed Construction Contractor	27	\$564,200	\$51,462
Garment Registration	19	\$19,500	\$8,313
Garment	69	\$439,400	\$80,350
Car Wash Registration	68	\$607,100	\$541,214
Unlicensed Farm Labor Contractor	5	\$46,600	\$50,000
Lactation Accommodation Violation	1	\$16,600	\$2,250
Misclassification	3	\$1,295,000	\$0.0
Reimbursable Business Expenses	15	\$14,650	\$0.0
Violation of Reporting Time	3	\$250	4,662.5
Waiting Time Penalties	107	NA	NA
Grand Total	3,245^a	\$51,940,373	\$8,488,758
<i>LESS citations dismissed/modified</i>	160	\$3,705,444	
Subtotals	3,085	\$48,234,929	8,488,758
Public Works	757 ^b	\$29,385,945	6,593,795 ^c
TOTAL	3,842	\$77,620,874	\$15,082,553^d

^a Excludes 48 demands made for wages pursuant to LC 223 for contract wages above minimum wages.

^b Should be understood as 757 civil wage and penalty assessments (CWPA's) issued (rather than as citations).

^c Includes Labor Code Section 1777.7 penalty assessments.

^d May include collection of penalties due in earlier reporting periods.

Source: DLSE

For further information ...

<https://www.dir.ca.gov/dlse/DLSEReports.htm>

DLSE REGISTRATION SERVICES–JANITORIAL SERVICES

Labor Code Sections 1420-1434, the Property Services Workers Protection Act, establish registration requirements for janitorial employers and protection for property service workers in the form of sexual harassment prevention training.

WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

Effective July 1, 2018, all janitorial service provider employers were required to register with the DLSE by mail or online by October 1, 2018. The registration fee is \$500 annually, and failure to register is subject to a fine of \$100 per day, up to \$10,000. The DLSE is required to maintain a public database of registered employers, available at <https://cadir.secure.force.com/RegistrationSearch>. Fines are also levied for hiring unregistered janitorial service providers, and the registration database can be used to confirm which registered service providers are in compliance.¹¹⁴

Beginning in January 1, 2019, after janitorial service provider employers are registered, they were also required to provide employees with DLSE-developed in-person sexual harassment prevention training at least once every two years. DIR and CHSWC contracted with the Labor Occupational Health Program at UC Berkeley to develop this training.

Employers must provide the training as required by the adopted [regulations](#) effective July 15, 2020, by using complimentary materials developed by the Labor Occupational Health Program at UC Berkeley for the Department of Industrial Relations and the Commission on Health and Safety and Workers' Compensation. These materials, available below in [English](#) and [Spanish](#), will be updated as needed to help employers meet Fair Employment and Housing Act requirements for sexual harassment and abusive conduct training as well.¹¹⁵

The data in the table below represent the first two full years of the registration requirement:

Table 36: Janitorial Service Providers: Registration and Labor Code Section 1423 Penalties

	FY 2018-2019	FY 2019-2020
Number of new janitorial service providers and contractors registered.	1,669	1,290
Number of newly registered janitorial service providers who incurred a penalty.	5	3 (Penalty status of these cases: first, citation affirmed; second, under appeal; and third, set for conference)
Total LC Section 1423 penalties incurred by janitorial service providers and contractors for failure to register by required date.	\$30,000 or \$10,000 for each of the 3 employers (The other 2 employers were cited for LC Section 226(a) records and/or LC 3700 Workers Compensation (WC) violations.)	\$20,000 (Tres Inc. - CM-757395 - Violation of Janitorial Registration Provision (2 x \$10,000) = \$20,000)
Number of janitorial service providers and contractors who renewed their registration in one year.	NA	1,030
Number of janitorial service providers and contractors who renewed their registration in one year, but incurred a penalty.	NA	0

Source: DLSE

- Number of new janitorial service providers and contractors registered in FY 2019-2020: 1,290
- Number of new janitorial service providers and contractors who registered in 2019-2020 after October 1, 2018, and incurred a penalty: 3

¹¹⁴ https://www.dir.ca.gov/DLSE/Janitorial_Registration_FAQs.html.

¹¹⁵ <https://www.dir.ca.gov/dlse/Janitorial-Training.html>

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- Total LC section 1423 penalties incurred by janitorial service providers and contractors in FY 2019-2020 for failure to register by required date: 2
- Total amount of LC section 1423 penalties in FY 2019-2020: \$20,000.00.

For further information ...

https://www.dir.ca.gov/dlse/Janitorial_Providers_Contractors.html

ANTI-FRAUD ACTIVITIES

Background

During the past decade, there has been a dedicated and rapidly growing campaign in California against workers' compensation fraud. This report on the nature and results of that campaign is based primarily on information obtained from the California Department of Insurance (CDI) Fraud Division, as well as applicable Insurance Code and Labor Code sections, and data published in periodic Bulletin[s] of the California Workers' Compensation Institute (CWCI).

The former Insurance Commissioner Steve Poizner convened an Advisory Task Force on Insurance Fraud in May 2007 to address major issues relating to insurance fraud. Christine Baker, a former executive officer of CHSWC and now the retired director of DIR, chaired the Task Force's Workers' Compensation Expert Working Group.¹¹⁶ The Task Force completed a comprehensive review of the anti-fraud insurance programs and identified 18 recommendations to consider in reducing insurance fraud in California.

The recommendations are consolidated into the following five categories identified by the Task Force:

- Organization and Efficiency of the CDI Fraud Division Enforcement Branch.
- Industry Role in Fighting Fraud.
- Public Role in Fighting Fraud.
- Fraud Statutes and Regulations.
- Technologies.

The Fraud Division is currently implementing the following recommendations:

- Placing personnel in existing fusion centers in the State so that law enforcement can share information more efficiently and quickly identify emerging trends and crime patterns.
- Developing and providing better training for the Special Investigation Units (SIU) on the recognition, documentation and reporting of suspected insurance fraud claims.
- Recognizing insurance companies that go beyond compliance for their greater commitment to fighting fraud.
- Increasing the CDI's outreach efforts about the consequences of fraud and how the public can recognize and report it.

Suspected Fraudulent Claims

Suspected Fraudulent Claims (SFCs) are reports of suspected fraudulent activities received by CDI from various sources, including insurance carriers, informants, witnesses, law enforcement agencies, fraud investigators, and the public. The number of SFCs represents only a small portion reported by the insurers and does not necessarily reflect the whole picture of fraud since many fraudulent activities have not been

¹¹⁶ She is currently serving on the Fraud Assessment Commission at the Department of Insurance as an appointee of former Governor Jerry Brown.

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identified or investigated.

According to CDI Fraud Division data, the quality of SFCs continues to improve each fiscal year. Several reasons for this trend include:¹¹⁷

- The extensive efforts to provide training to the insurance claim adjusters and SIU personnel by the Fraud Division and District Attorneys.
- Changing submission of SFCs by filling out the FD-1 Form electronically on the Internet.
- Promulgating new regulations to help insurance carriers step up their anti-fraud efforts and become more effective in identifying, investigating and reporting workers' compensation fraud. A work plan to increase the number of audits performed by the Fraud Division SIU Compliance Unit was established and continues with an aggressive outreach plan to educate the public on anti-fraud efforts and how to identify and report fraud. This has ensured a more consistent approach to the oversight and monitoring of the SIU functions with the primary insurers as well as the subsidiary companies.
- CDI is strengthening its working relationship with the Workers' Compensation Insurance Rating Bureau (WCIRB) to support the Department's anti-fraud efforts.

The total number of SFCs reported in fiscal year 2018-2019 is 3,391.

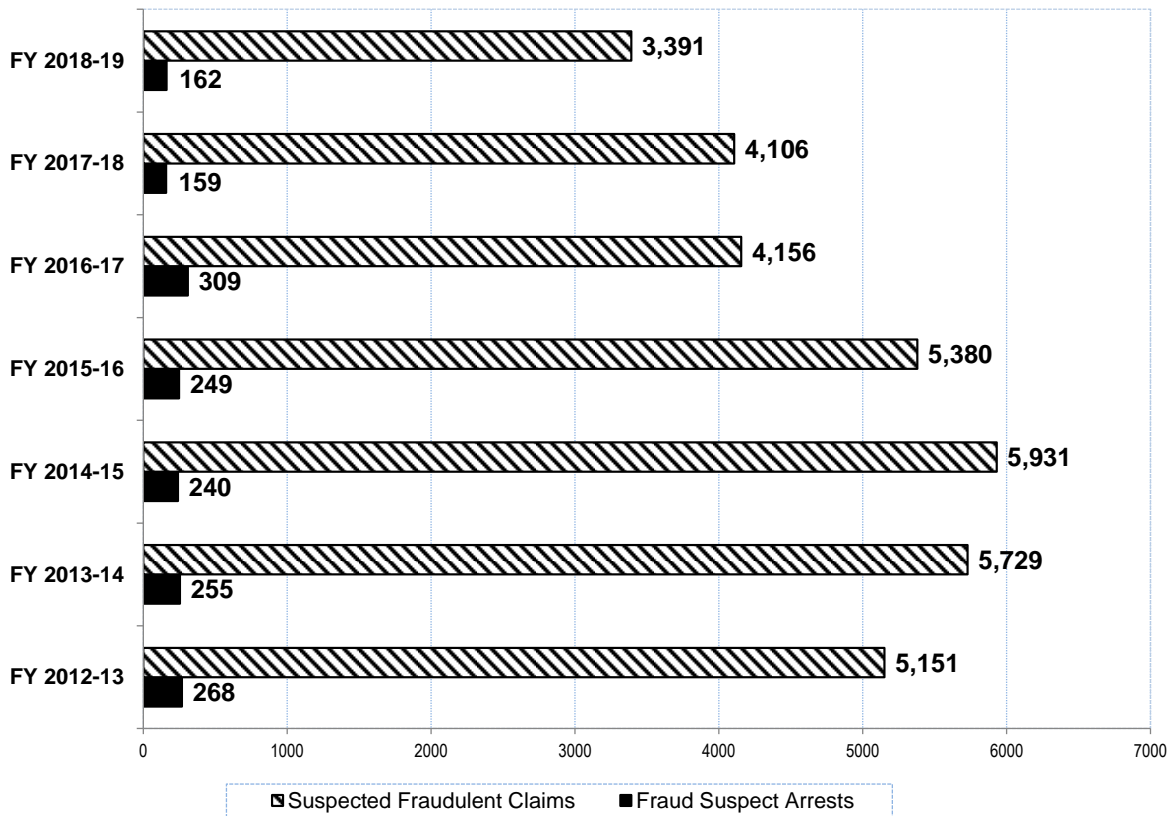
¹¹⁷ 2014 Annual Report of the Insurance Commissioner, August 1, 2015.
<http://www.insurance.ca.gov/0400-news/0200-studies-reports/0700-commissioner-report/>.

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Workers' Compensation Fraud Suspect Arrests

After a fraud referral, an investigation must take place before any warrants are issued or arrests are made. The time for investigation ranges from a few months to a few years depending on the complexity of the caseload. For this reason, the number of arrests does not necessarily correspond to the number of referrals in a particular year (see Figure 94). From FY 2012-2013 to FY 2015-2016, the Fraud Division identified and reported from 5,100 to 5,900 SFCs per fiscal year, with 250 arrests per fiscal year on average. In FY 2016-2017 and FY 2017-2018, the number of identified and reported SFCs fell to about 4,100 cases per fiscal year, with 309 arrests (7 percent of SFCs) in FY 2016-2017 and 159 arrests (4 percent of SFCs) in FY 2017-2018. There was a 42 percent decline in SFCs from the peak in FY 2014-2015 to FY 2018-2019.

Figure 94: Suspected Workers' Compensation Fraudulent Claims and Suspect Arrests



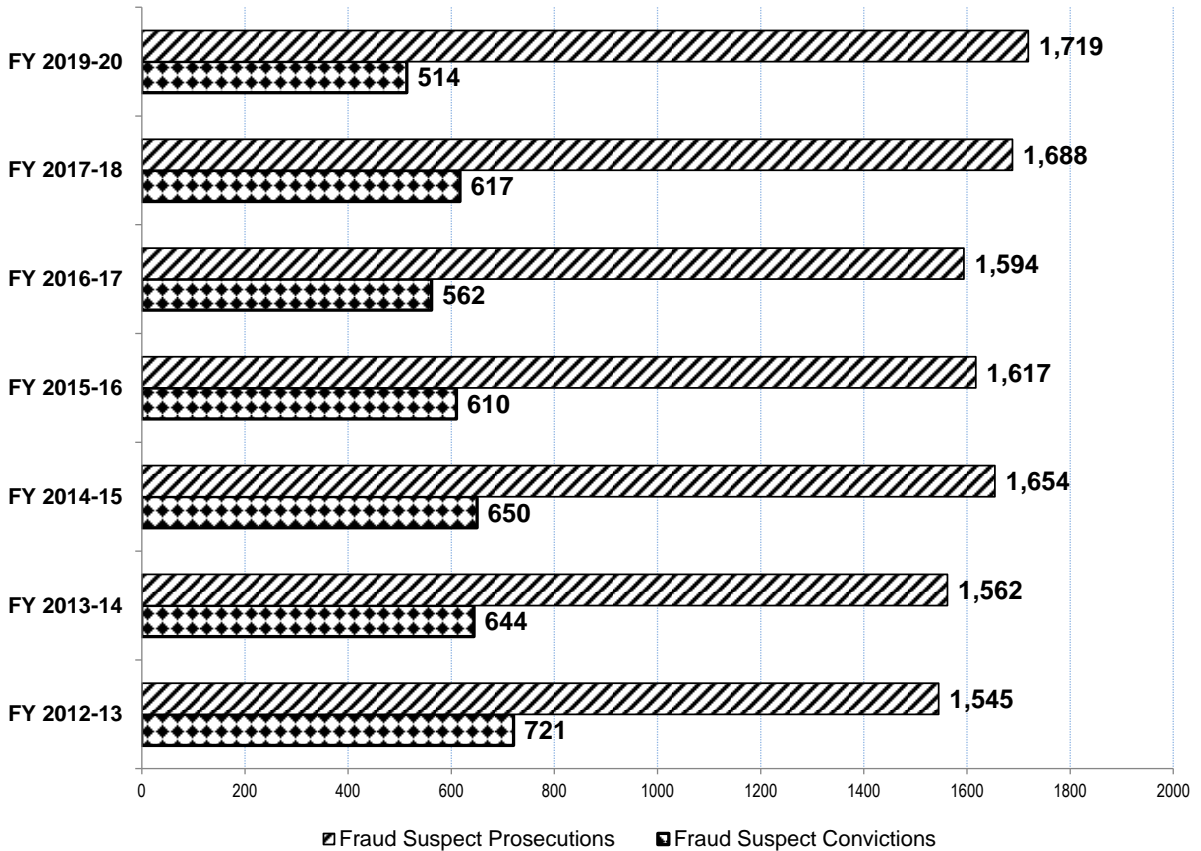
Data Source: CDI - Fraud Division and CWCI

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Workers' Compensation Fraud Suspect Convictions

Based on information from the Fraud Division and CWCI Bulletin(s), the number of workers' compensation fraud suspects convicted annually while many cases are still pending in court is reported in Figure 95. From FY 2012-2013 to FY 2018-2019, district attorneys prosecuted about 1,550 to 1,720 suspects per fiscal year, resulting in 514 to 650 convictions per fiscal year.¹¹⁸

Figure 95: Workers' Compensation Fraud Suspect Prosecutions and Convictions



Data Source: CDI - Fraud Division and CWCI

Workers' Compensation Fraud Investigations

Types of Workers' Compensation Fraud Investigations

Figures 96 and 97 indicate the number and type of investigations opened and carried from fiscal years FY 2012-2013 to FY 2018-2019 reported by district attorneys. Claimant, also named applicant, fraud appears to be the area generating the most cases followed by premium fraud and uninsured employer fraud.

Some of the categories for fraud-related investigations were changed in FY 2005-2006, FY 2006-2007, and FY 2007-2008. In FY 2008-2009, two new categories, Legal Provider and Pharmacy, were introduced as separate categories.

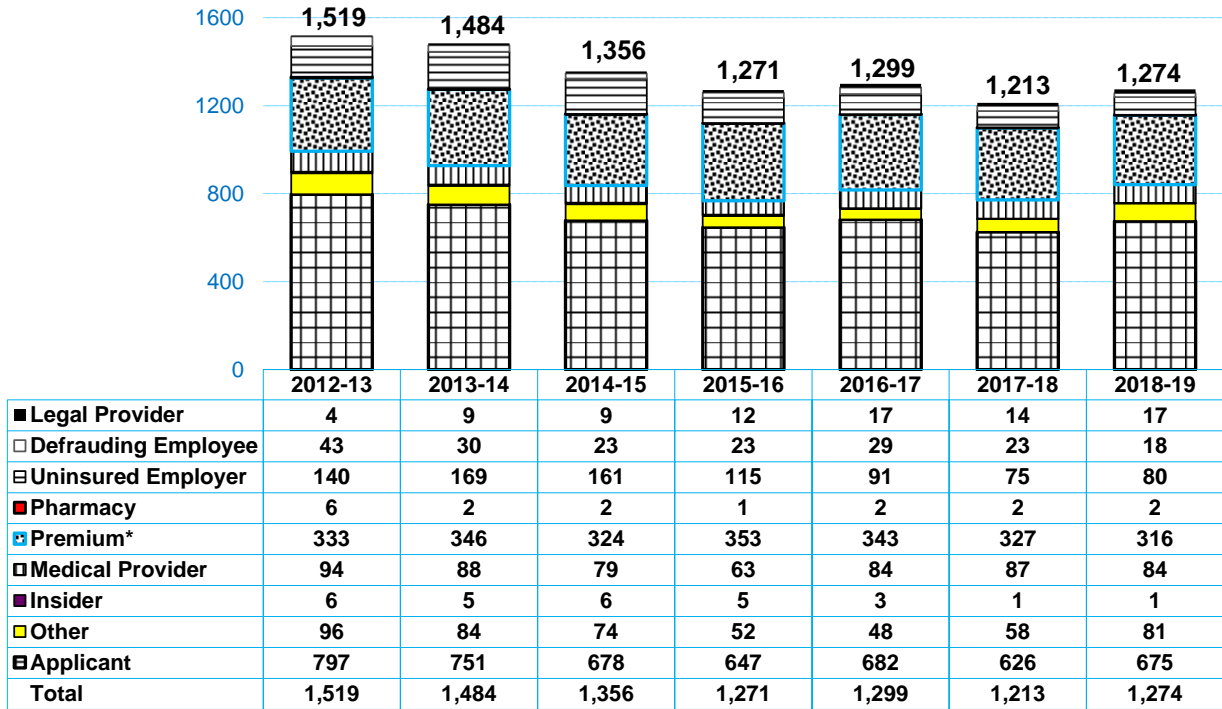
¹¹⁸ For case-by-case information regarding specific workers' compensation fraud convictions, see <http://www.insurance.ca.gov/0300-fraud/0100-fraud-division-overview/25-wc-conv/>

WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

Trends in Workers' Compensation Fraud Investigations

Figure 96 shows that the number of workers' compensation fraud investigations decreased by 20 percent from FY 2012-2013 to FY 2017-2018 and then slightly decreased by 5 percent from FY 2017-2018 to FY 2018-2019. This decrease from FY 2012-2013 to FY 2017-2018 was mostly due to a 21.5 percent decrease in claimants (also called applicants) and an almost two-fold decline in uninsured employer investigations.

Figure 96: Caseload by Type of Fraud Investigations, FY 2012-2013–FY 2018-2019



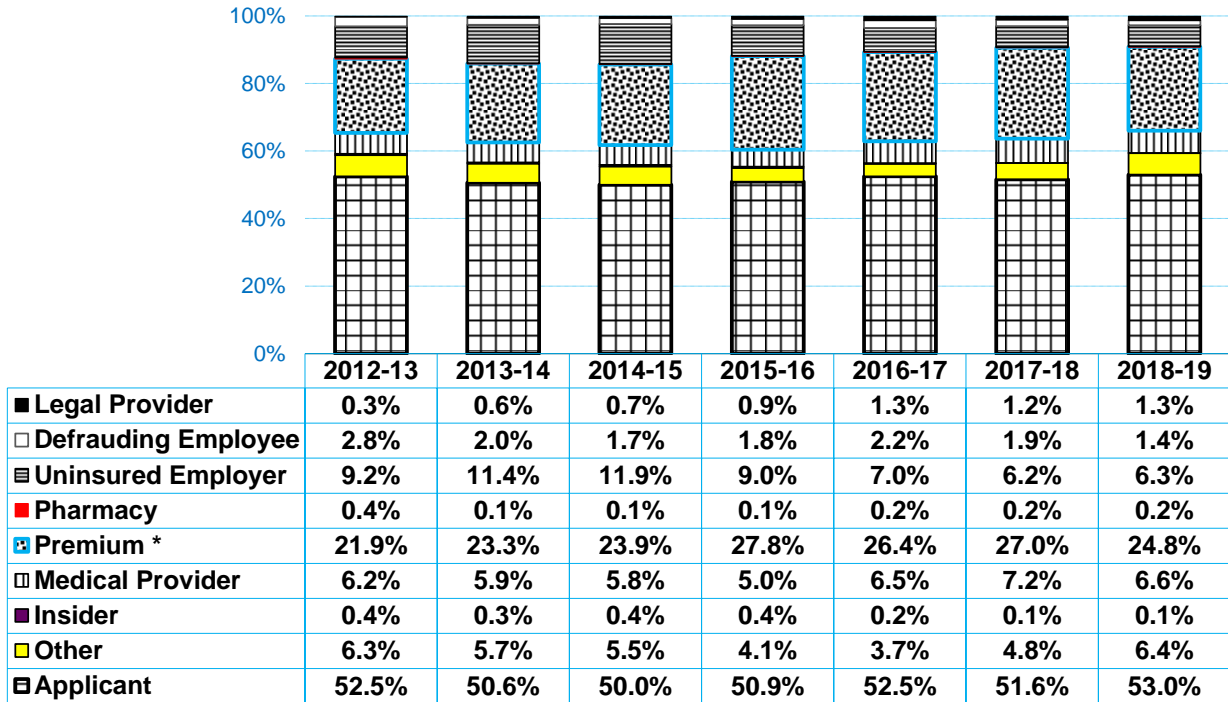
* Includes Misclassification, Underreported Wages, and X-Mod Evasion

Data Source: California Department of Insurance, Fraud Division

As seen in Figure 97, the focus of the investigations experienced some changes during the observed period. Claimant/applicant fraud investigations averaged at 52.0 percent yearly from FY 2012-2013 to FY 2018-2019. During the same period, the percentage of investigations of premium fraud increased overall from 22 percent in FY 2012-2013 to 27 percent in FY 2017-2018, and then decreased slightly from FY 2017-2018 to FY 2018-2019. From FY 2012-2013 to FY 2018-2019, investigations of uninsured employer fraud decreased by three percentage points and decreased for defrauding employees by 1.4 percentage points.

WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

Figure 97: Distribution by Type of Fraud Investigations, FY 2012-2013–FY 2018-2019



* Includes Misclassification, Underreported Wages, and X-Mod evasion.

Data Source: California Department of Insurance, Fraud Division

In addition, the [2019 Annual Report of the Insurance Commissioner](#) notes that the majority of suspected fraudulent claims in calendar year 2019 came from Los Angeles County (1,194, or 34.5 percent of total cases) followed by Orange County (356, or 10.0 percent), and San Diego (221, or 6 percent) or San Bernardino (214, or 6 percent).¹¹⁹

Underground Economy

Although most California businesses comply with health, safety, and workers' compensation regulations, some do not and operate in the "underground economy." Such businesses may not have all their employees on the official company payroll or may not report wages paid to employees that reflect their real job duties. Businesses in the underground economy are therefore competing unfairly with those that comply with the laws. The underground economy costs the California state economy an estimated \$8.5 billion to \$10 billion in tax revenues every year.¹²⁰

Potential Areas for Improvement in Workers' Compensation Anti-Fraud Efforts

CHSWC has conducted many studies that focus on improving workers' compensation anti-fraud efforts and co-chaired stakeholder meetings on fraudulent activity in the workers' compensation system. In September 2016, Governor Brown signed Assembly Bill 1244 and Senate Bill SB 1160 that provide a mechanism for suspending perpetrators of fraud from the workers' compensation system and for limiting financial recovery

¹¹⁹ http://www.insurance.ca.gov/0400-news/0200-studies-reports/0700-commissioner-report/upload/2019-Annual-Report_Web_Final.pdf.

¹²⁰ https://www.edd.ca.gov/payroll_taxes/underground_economy_cost.htm.

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related to fraudulent activity. More information on the Department of Industrial Relations (DIR) efforts related to AB 1244 and SB 1160 can be found at http://www.dir.ca.gov/fraud_prevention/. The Administrative Director of the Division of Workers' Compensation is now required to suspend any medical provider, physician, or practitioner from participating in the workers' compensation system in any capacity when the individual or entity meets specific criteria as related to fraud. Those criteria include conviction of a felony or misdemeanor: (1) involving fraud or abuse of the Medi-Cal, Medicare, or workers' compensation systems; (2) relating to patient care; (3) involving fraud or abuse of any patient; or (4) otherwise substantially related to the qualifications and duties of the provider. The medical provider is also to be suspended when his or her license, certificate, or approval to provide health care has been surrendered or revoked, or when that individual or entity has been suspended from participation in the Medicare or Medicaid programs due to fraud or abuse. A medical provider is now barred from submitting or pursuing claims for payment for services or supplies provided, if that provider has been suspended from participation in the workers' compensation system.

In the period 2019-2020, over 175 criminally charged individuals had their liens stayed under LC Section 4615, representing over 650,000 liens stayed. There were 23 consolidated special lien proceedings, among which 14 are still in process and 9 were resolved. Nineteen (19) providers have had their liens dismissed. The Anti-Fraud Unit (AFU) does not reveal the dollar amounts related to liens and does not break down by year the number of suspensions or criminally charged individuals with liens stayed under LC section 4615. Over 450 providers have been suspended, and 8 providers have been sent a suspension notice with no Order of Suspension issued under LC section 139.21.¹²¹

More information on the Department of Industrial Relations (DIR) efforts related to AB 1244 and SB 1160 can be found at http://www.dir.ca.gov/fraud_prevention/.

¹²¹ Data for 2019-2020 were provided by DIR, Office of the Director Anti-Fraud Unit.

WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

OCCUPATIONAL INJURY AND ILLNESS PREVENTION EFFORTS

Workplace health and safety are of primary importance and the shared goal of all Californians. Ongoing cooperative efforts among workers, employers, employer, and labor organizations, government agencies, health and safety professionals, independent researchers, and the public have resulted in significant reductions in workplace injuries, illnesses and deaths.

This section discusses the number and incidence rate of occupational injuries and illnesses, injuries and illnesses by occupation and other factors, and the efforts to prevent occupational injuries and illnesses. Also included is an overview of the requirements and methods to record and report occupational injuries and illnesses in the United States and California.

Where data are available, comparisons among private industry and state and local government are also included.

Occupational Injuries, Illnesses, and Fatalities

The number of occupational injuries, illnesses, and fatalities in the private sector (private industry) and the public sector (state and local government) for the past several years are listed and discussed in this subsection.

Please note that “lost-work-time” occupational injury and illness cases involve days away from work, job transfer, or days of restricted work activity, and that days-away-from-work cases involve days away from work, regardless of whether there is also job transfer or restricted work activity.

The National Academy of Social Insurance (NASI) estimated that in 2018 (latest available year in 2020) 142.6 million workers were covered by workers’ compensation in the U.S., including 17.1 million in California.

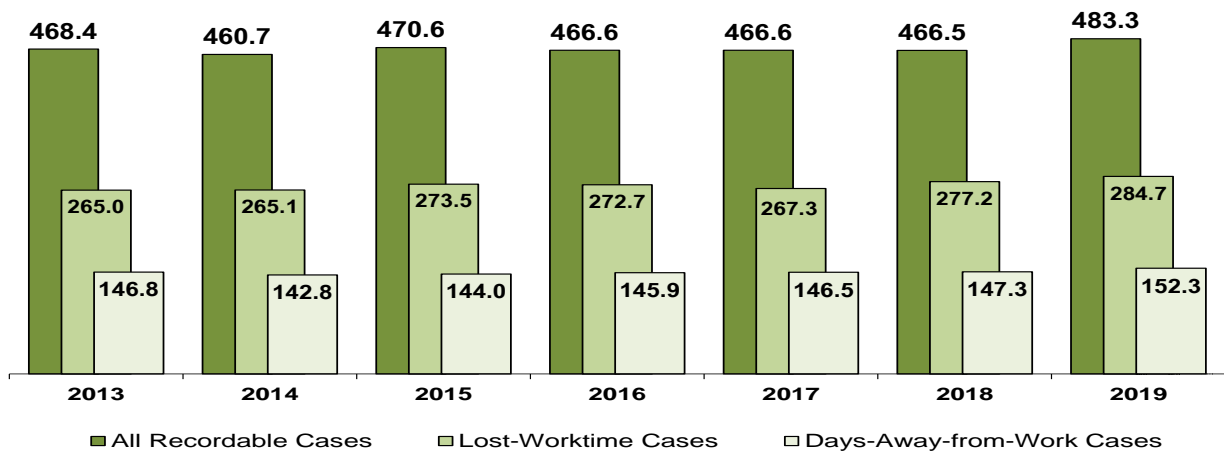
WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

Comparison of the Public and Private Sectors

Non-Fatal Occupational Injuries and Illnesses

Figure 98 shows the number of occupational injuries and illnesses in California’s private industry and state and local government. The number of all recordable cases for occupational injury and illness in California fluctuated between 460,700 and 470,600 cases from 2013 to 2016, stabilized at around 466,600 cases from 2016 to 2018, and then increased by 4 percent from 2018 to 2019. The number of lost-work-time cases increased by 3 percent from 2013 to 2015, decreased by 2 percent from 2015 to 2017, and then increased by 6.5 percent from 2017 to 2019. The days-away-from-work cases decreased by 3 percent from 2013 to 2014, and then increased by 7 percent from 2014 to 2019.

Figure 98: California Non-Fatal Occupational Injuries and Illnesses: Private Industry and State and Local Governments (Thousands)

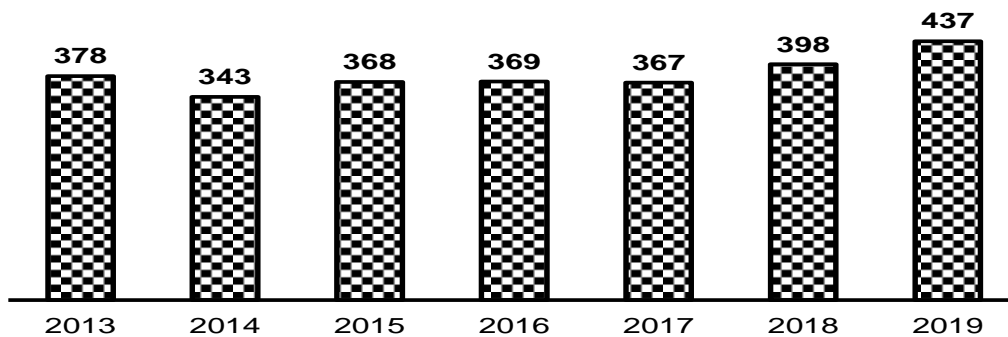


Source: DIR, Office of the Director-Research

Fatal Occupational Injuries and Illnesses

Fatal occupational injuries and illnesses in California are shown in Figure 99. The number of fatal occupational injuries and illnesses in California decreased by 9 percent from 2013 to 2014, and then after increasing again by 7 percent from 2014 to 2015, it stabilized at an average of 368 fatal injuries per year from 2015 to 2017. From 2017 to 2019, the number of fatal occupational injuries and illnesses in California increased by 19 percent.

Figure 99: California Fatal Occupational Injuries and Illnesses—Private Industry and State and Local Governments



Data Source: BLS and DIR, Office of the Director-Research

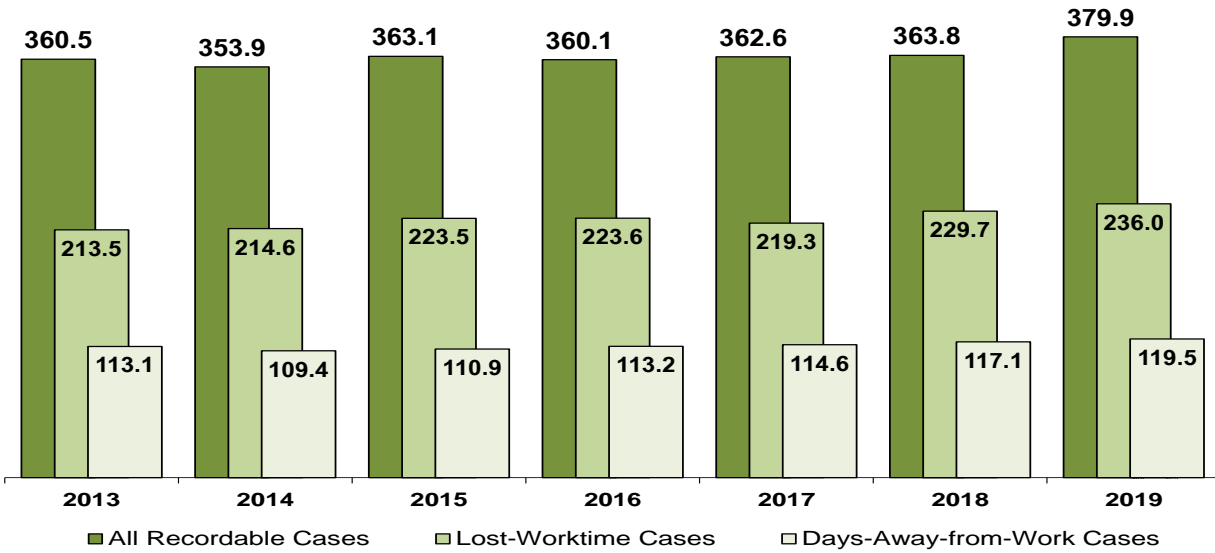
WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

Private Sector

Non-Fatal Occupational Injuries and Illnesses

The total number of recordable injury and illness cases fluctuated between 353,900 and 363,100 cases between 2013 to 2016 and then increased by 5.5 percent from 2016 to 2019. The number of lost-work-time cases increased overall by 10.5 percent from 2013 to 2019. The number of days-away-from-work cases decreased by 3 percent from 2013 to 2014 and then increased by 9 percent from 2014 to 2019.

Figure 100: California Non-Fatal Occupational Injuries and Illnesses: Private Industry (Thousands)

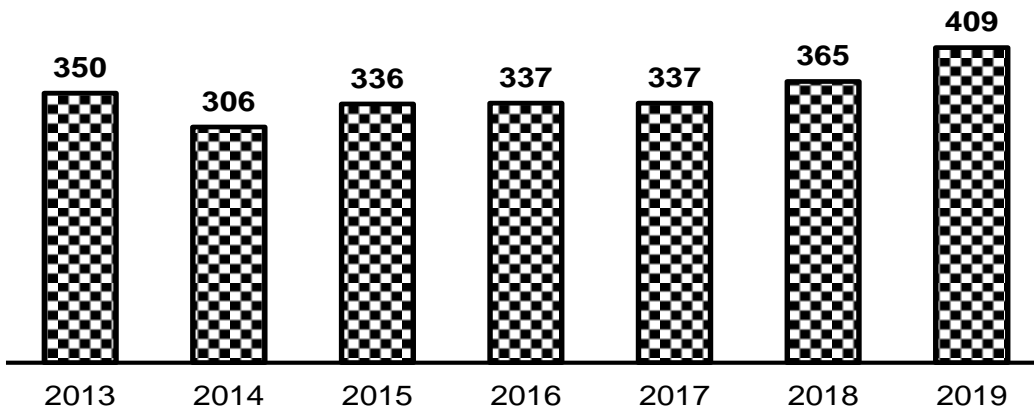


Source: DIR, Office of the Director-Research

Fatal Occupational Injuries and Illnesses

Fatal occupational injuries and illnesses in California private industry decreased by 13 percent from 2013 to 2014, and then after a 10 percent increase in the number of fatal injuries from 2014 to 2015, it stabilized at an average of 337 fatalities per year from 2015 to 2017. From 2017 to 2019, the number of fatal occupational injuries and illnesses in private sector increased by 21 percent.

Figure 101: California Fatal Occupational Injuries and Illnesses—Private Industry



Source: BLS and DIR, Office of the Director-Research

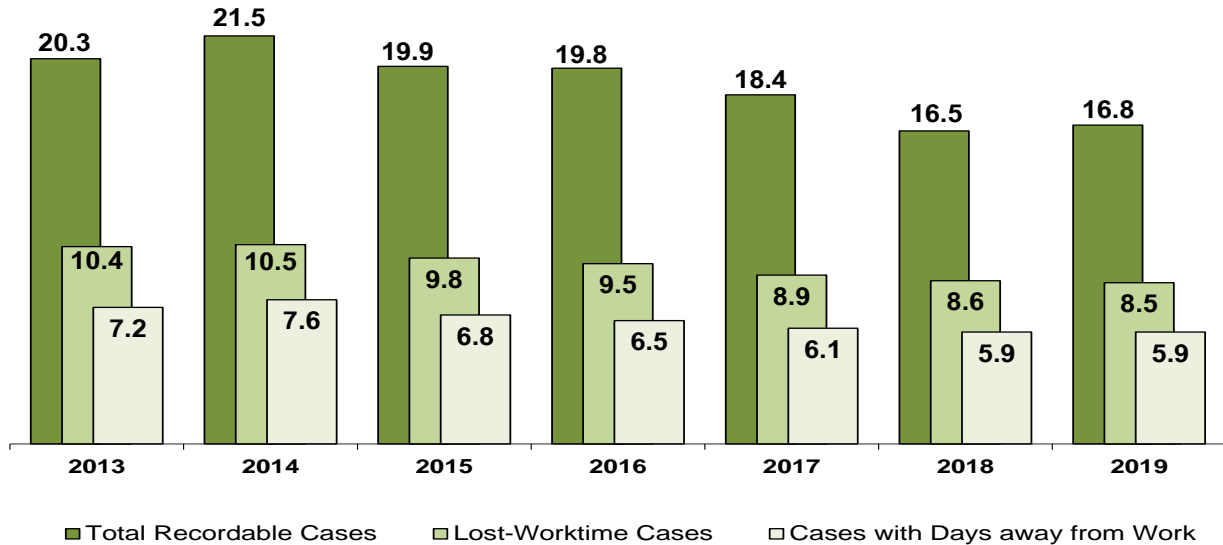
WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

Public Sector: State Government

Non-Fatal Occupational Injuries and Illnesses

The number of all recordable injury and illness cases in California state government increased by 4 percent from 2013 to 2014, decreased by 23 percent from 2014 to 2018, and increased slightly from 2018 to 2019. It should be noted that many state and local government occupations are high risk, such as law enforcement, firefighting, rescue, and other public safety operations.

Figure 102: California Non-Fatal Occupational Injuries and Illnesses: State Government (Thousands)

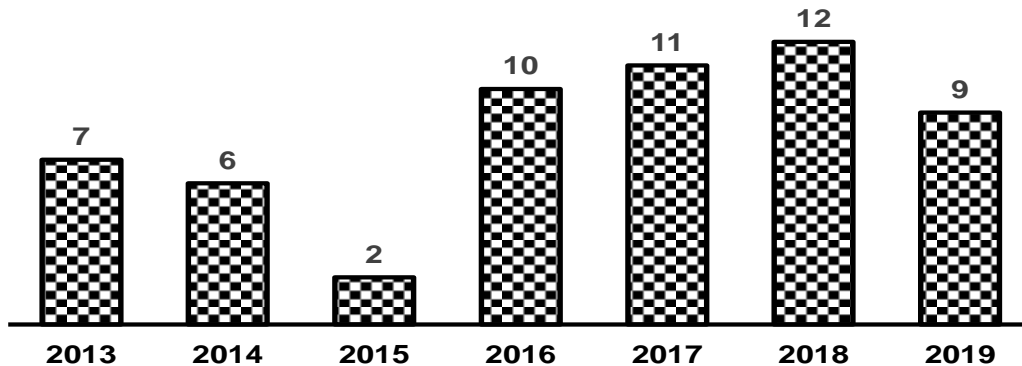


Source: DIR, Office of the Director-Research

Fatal Occupational Injuries and Illnesses

Fatal occupational injuries and illnesses in California state government decreased from 7 in 2013 to a minimum of 2 fatalities in 2015, increased to an average of 11 fatalities annually from 2016 to 2018, and then decreased to 9 fatalities in 2019.

Figure 103: California Fatal Occupational Injuries and Illnesses—State Government



Source: BLS and DIR, Office of the Director-Research

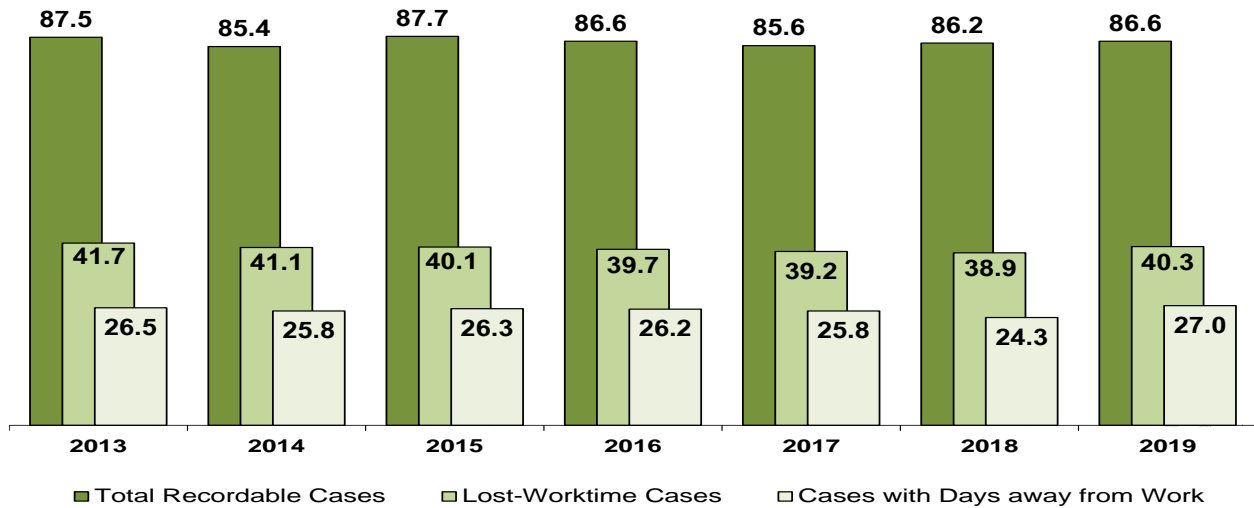
WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

Public Sector: Local Government

Non-Fatal Occupational Injuries and Illnesses

The total number of non-fatal occupational injuries and illnesses in local government fluctuated between 85,400 and 87,700 cases between 2013 and 2016 and then averaged 86,300 cases per year from 2016 to 2019. From 2013 to 2018, the number of lost-worktime cases in this sector decreased steadily by 5 percent before increasing by 4 percent from 2018 to 2019. The number of cases with days away from work decreased overall by 8 percent from 2013 to 2018 and then increased by 11 percent from 2018 and 2019.

Figure 104: California Non-Fatal Occupational Injuries and Illnesses: Local Government (Thousands)

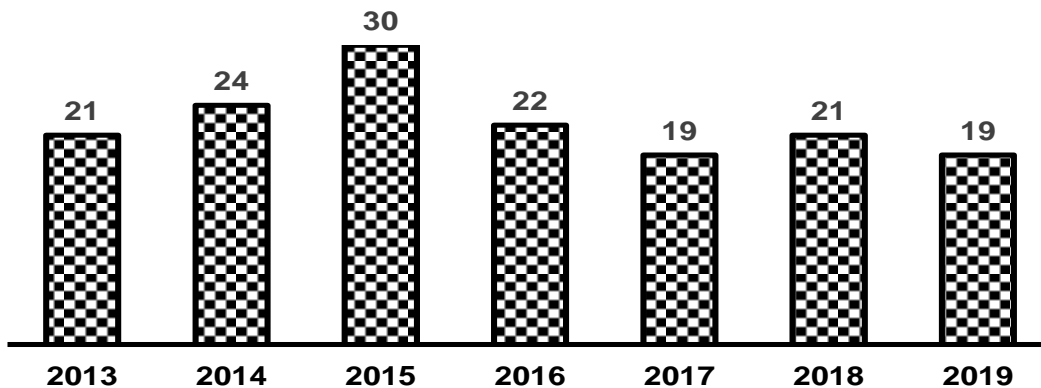


Source: DIR, Office of the Director-Research

Fatal Occupational Injuries and Illnesses

The number of fatal occupational injuries and illnesses in California's local governments increased by 43 percent between 2013 and 2015 and then decreased by 32.5 percent to an average of 20 fatalities per year from 2016 to 2019.

Figure 105: California Fatal Occupational Injuries and Illnesses—Local Government



Source: BLS and DIR, Office of the Director-Research

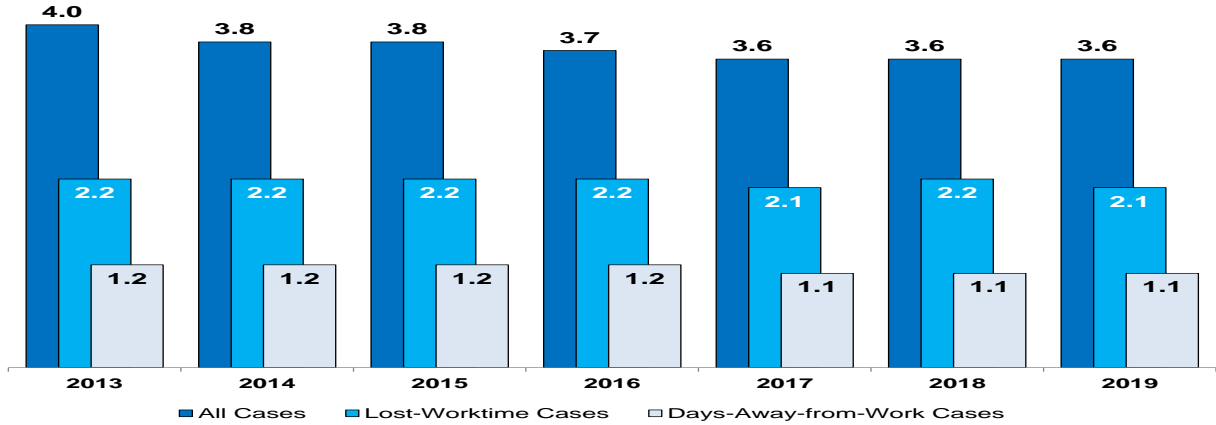
WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

Occupational Injury and Illness Incidence Rates

Comparison of Public and Private Sectors

The incidence rates for all cases in California declined from 2013 to 2017 and stabilized at 2017 level in 2018 and 2019. The incidence rates for days-away-from-work cases remained prevailingly at 2.2 cases per 100 full-time employees from 2013 to 2018, decreasing to a rate of 2.1 in 2017 and 2019. The incidence rate for lost-work-time cases stabilized at 1.2 from 2013 to 2016, decreased to 1.1 from 2016 to 2017, and remained at that level from 2017 to 2019.

Figure 106: California Occupational Injury and Illness Incidence Rates: Private, State and Local (Cases per 100 Full-Time Employees)

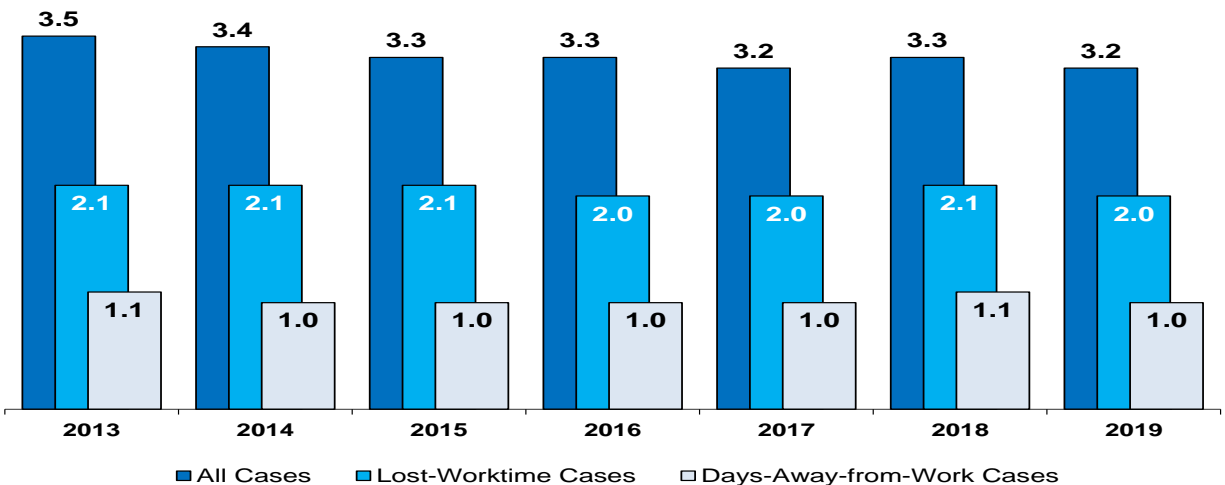


Data Source: DIR, Office of the Director-Research

Private Sector

According to figure 107, the occupational injury and illness incidence rate for all three types of cases in California’s private sector—all cases, lost-work-time, and days-away-from-work—declined from 2013 to 2017, increased from 2017 to 2018, and then returned to the 2017 level in 2019. From 2017 to 2018, the incidence rate increased by 5 percent for lost-work-time cases and by 10 percent for days-away-from-work.

Figure 107: California Occupational Injury and Illness Incidence Rates: Private Industry (Cases per 100 Full-Time Employees)



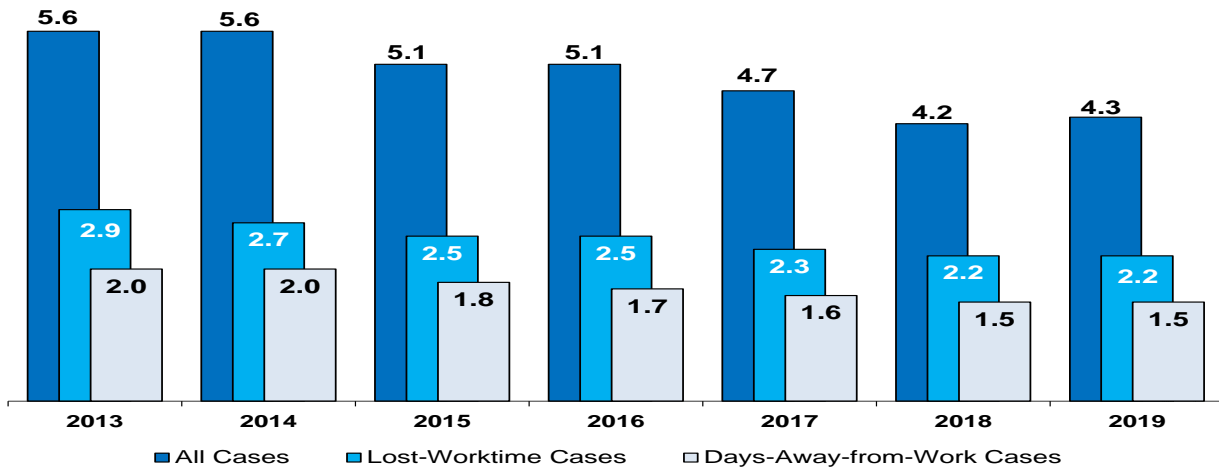
Data Source: DIR, Office of the Director-Research

WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

Public Sector: State Government

California state government occupational injury and illness incidence rates for all cases decreased by 25 percent from 2013 to 2018 and increased by 2 percent from 2018 to 2019. The incidence rate for lost-time cases decreased by 24 percent between 2013 and 2019. The incidence rate for days-away-from-work cases decreased by 25 percent from 2013 to 2019.

Figure 108: California Occupational Injury and Illness Incidence Rates: State Government (Cases per 100 Full-Time Employees)

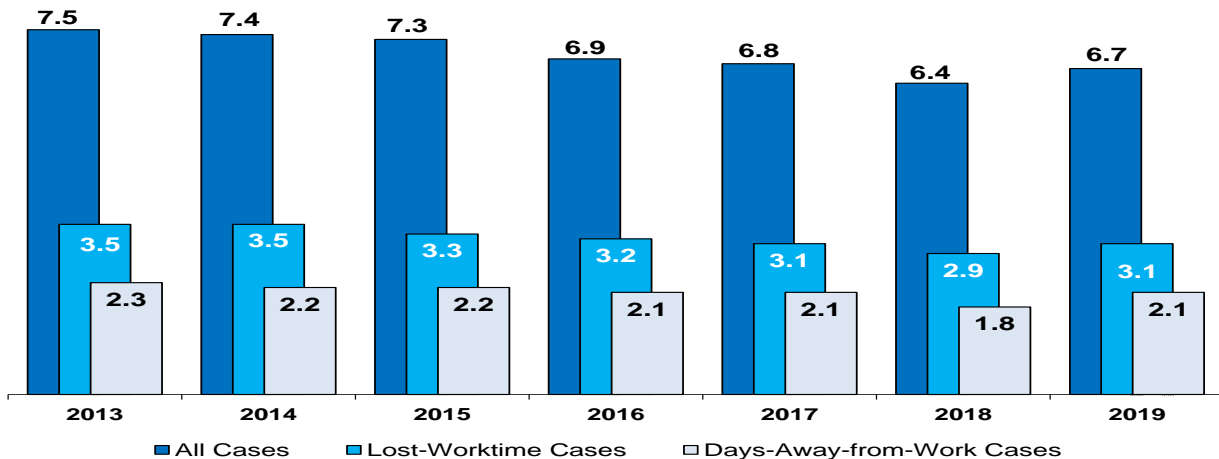


Source: DIR, Office of the Director-Research

Public Sector: Local Government

Local government occupational injury and illness incidence rates for all cases averaged at 7.4 cases per 100 full-time employees from 2013 to 2015, decreased by 12 percent from 2015 to 2018, and then increased by 5 percent from 2018 to 2019. The incidence rate for lost-time cases decreased from 3.5 to 2.9 cases per 100 full-time employees from 2013 to 2018 and increased again to 3.1 in 2019. The incidence rate for days-away-from-work cases decreased by 22 percent from 2013 to 2018 and then increased by 17 percent from 2018 to 2019.

Figure 109: California Occupational Injury and Illness Incidence Rates: Local Government (Cases per 100 Full-Time Employees)



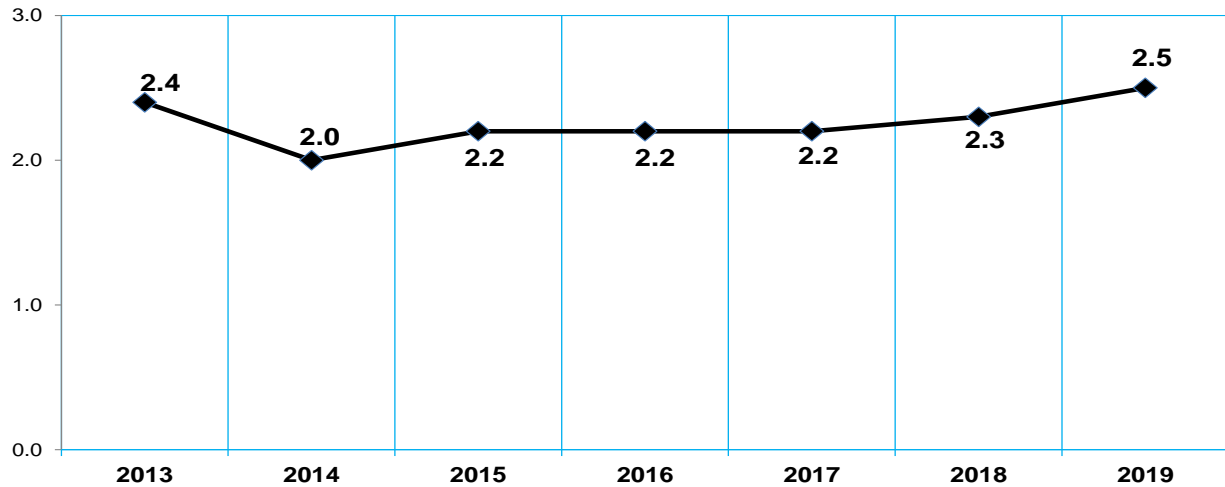
Source: DIR, Office of the Director-Research

WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

California Fatality Incidence Rates

Fatality per employment rates can be used to compare the risk of incurring injury among worker groups with varying employment levels. The fatality rates in California decreased from 2.4 per 100,000 employees in 2013 to a minimum of 2.0 fatalities in 2014. The rate did not change in three consecutive years after increasing to 2.2 fatalities per 100,000 full-time workers in 2015. The fatality rates in California increased by almost 14 percent from 2.2 in 2017 to 2.5 fatalities per 100,000 full-time workers in 2019.

Figure 110: California Fatal Occupational Injuries*—Incidence Rate (per 100,000 employed)**



* California Fatal Occupational Injuries exclude military personnel and workers under age 16 and include all self-employed, family business, and wage and salary workers.

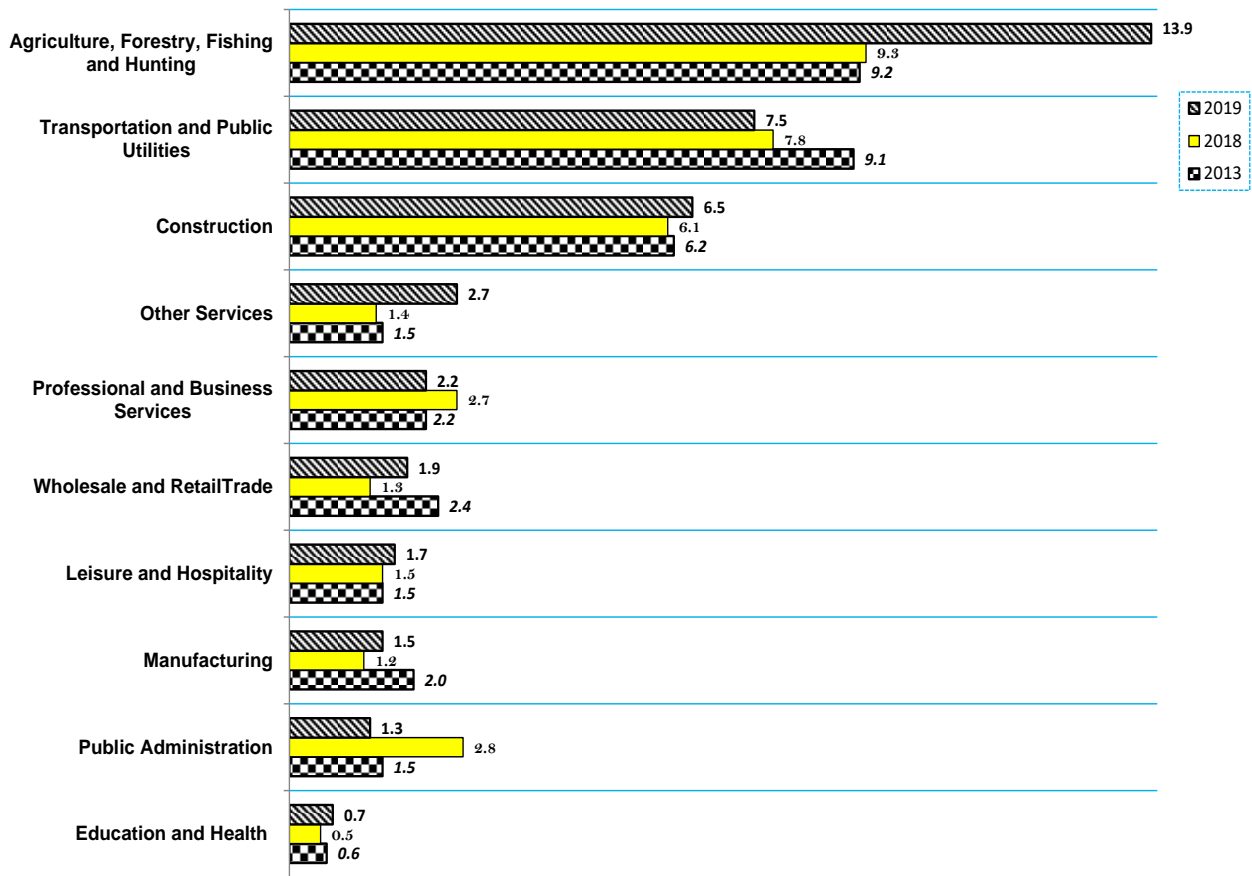
** Incidence Rates for Fatal Occupational Injuries computed using estimates of civilian workers (age 16 and older) from the Current Population Survey (CPS) and are expressed as the number of fatalities per 100,000 employed.

Data Source: U.S. Department of Labor, BLS, in cooperation with State and Federal agencies, Census of Fatal Occupational Injuries.

WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

Figure 111 shows the fatality incidence rates by major industries in 2013, 2018, and 2019. For the three years depicted in the figure, agriculture, forestry, fishing, and hunting, transportation and public utilities, and construction were the top three industries with highest fatality rates in California.

Figure 111: California Fatality Rates by Industries (per 100,000 employed), 2013, 2018, and 2019



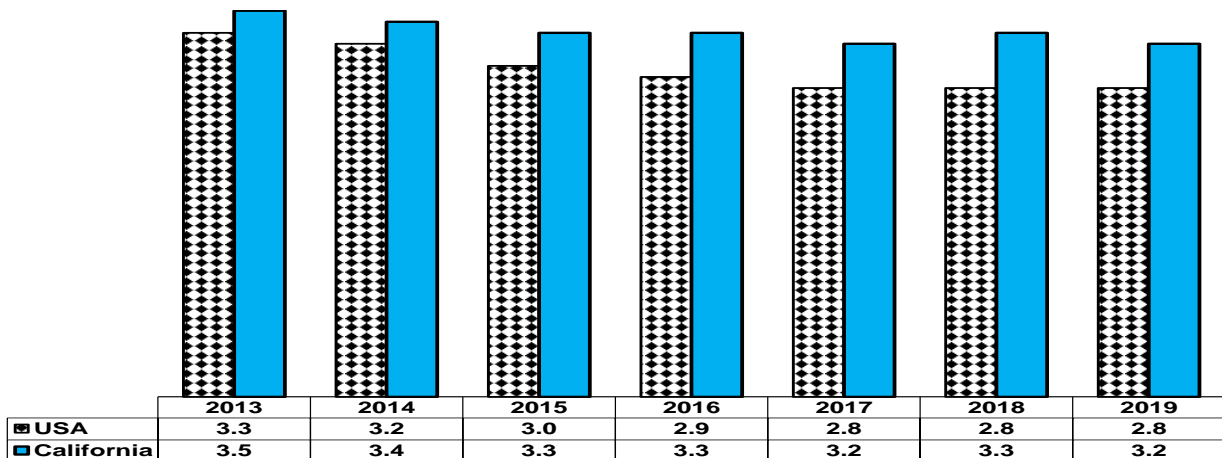
Data Source: BLS, U.S. Department of Labor, Survey of Occupational Injuries and Illnesses, in cooperation with participating State agencies.

WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

Comparison of Incidence Rates in the United States and California

Both the U.S. and California experienced a decrease in occupational injury and illness incidence rates from 2013 through 2017. From 2017 to 2019, the U.S. incidence rate did not change, but the incidence rate in California increased slightly in 2018 before going back to the 2017 level. From 2013 to 2017, U.S. incidence rates dropped by about 18 percent and remained at 2017 level until 2019. The California incidence rates decreased by about 9 percent from 2013 to 2017, increased by 3 percent from 2017 to 2018, and then decreased again by 3 percent from 2018 to 2019. Since 2013, the incidence rate in California has been slightly above the national average during the whole period.

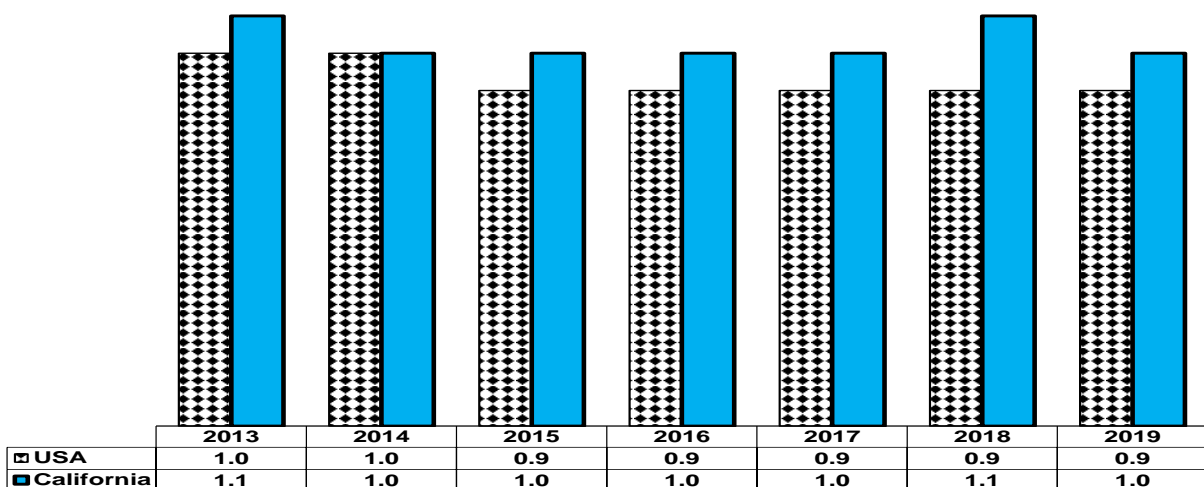
Figure 112: Injury and Illness Incidence Rate per 100 Full-Time Workers: Private Industry, Total Recordable Cases. U.S. and California



Source: US Department of Labor, Bureau of Labor Statistics

The incidence rate of occupational injury and illness days-away-from-work cases also declined in the U.S. from 2013 to 2015 and stabilized at 0.9 cases per 100 full-time workers from 2015 to 2019, while in California, after a decrease from 1.1 in 2013 to 1.0 from 2014 to 2017, the incidence rate increased from 1.0 in 2017 to 1.1 in 2018 before going back to 1.0 in 2019.

Figure 113: Injury and Illness Incidence Rate per 100 Full-Time Workers: Private Industry Cases with Days Away from Work. U.S. and California



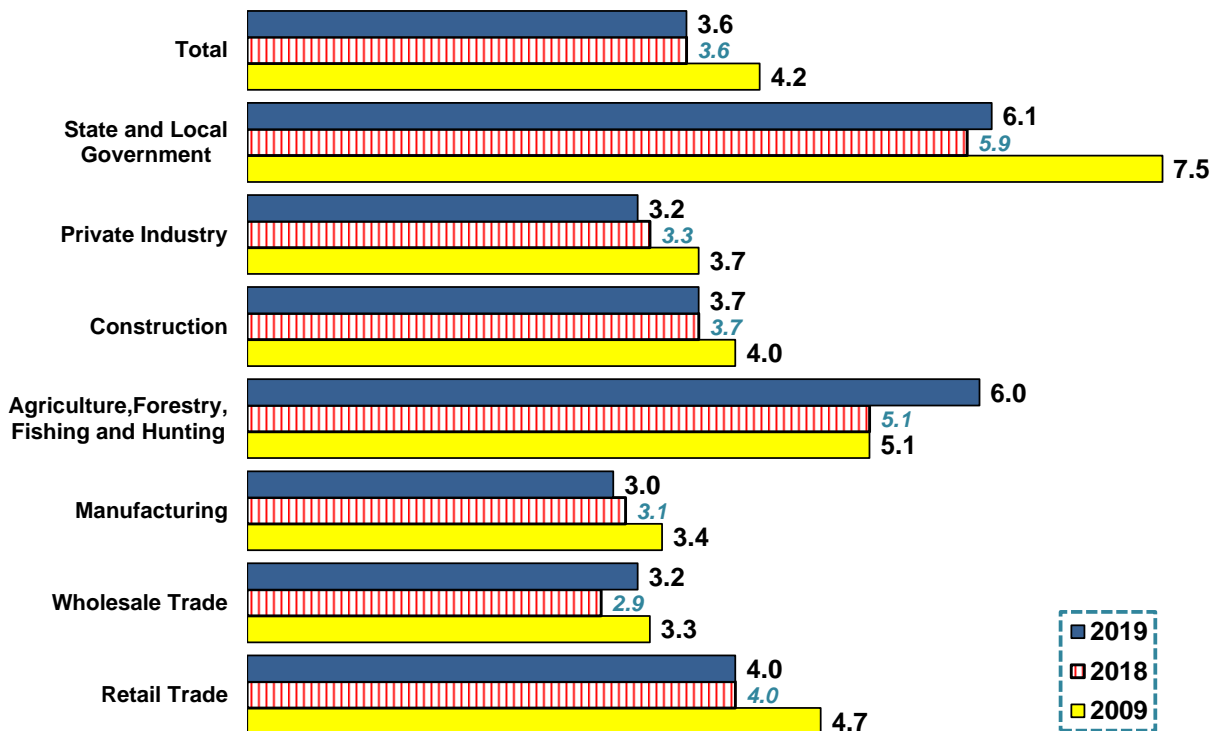
Source: US Department of Labor, Bureau of Labor Statistics

WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

Characteristics of California Occupational Injuries and Illnesses

Figure 114 compares incidence rates for total recordable cases in 2009, 2018, and 2019 by the type of major industry, including state and local governments. The incidence rates in major industries, excluding agriculture, forestry, fishing, and hunting declined overall from 2009 to 2019. During this period, the biggest decline in incidence rates (19 percent) was in state and local government. The overall California occupational injury and illness incidence rates for all industries, including state and local government, declined by 14 percent from 2009 to 2018 and remained the same in 2019. Construction and retail trade also followed this average pattern in all industries. Private industry showed an uninterrupted decline from 2009 to 2018 and from 2018 to 2019, decreased by 13.5 percent from 2009 to 2019. Like private industry, manufacturing experienced a 12 percent uninterrupted decrease from 2009 to 2019. State and local government and wholesale trade experienced a decline from 2009 to 2018, decreasing 21 and 12 percent respectively and then increasing 3 and 10 percent respectively from 2018 to 2019. Agriculture, forestry, fishing, and hunting had the same incidence rate in 2009 and 2018 and then increased by about 18 percent from 2018 to 2019.

Figure 114: Injury Rates by Industry, 2009, 2018, and 2019



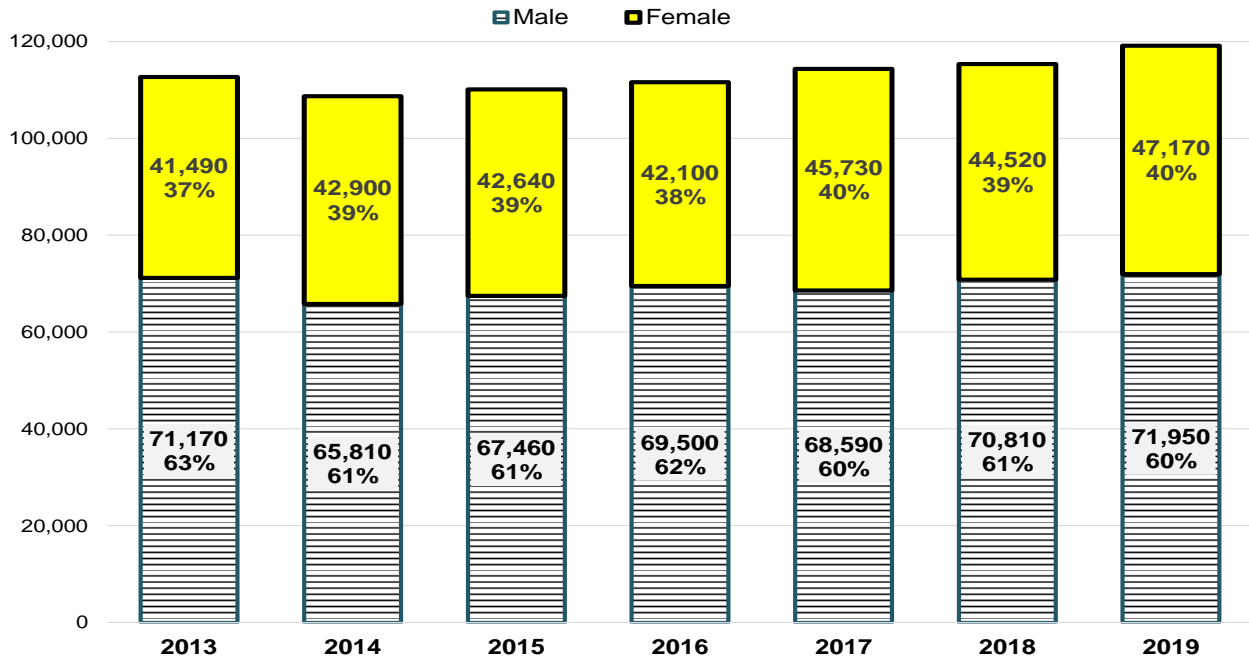
Source: DIR, Office of the Director-Research

WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

Characteristics of California Non-Fatal Occupational Injuries and Illnesses

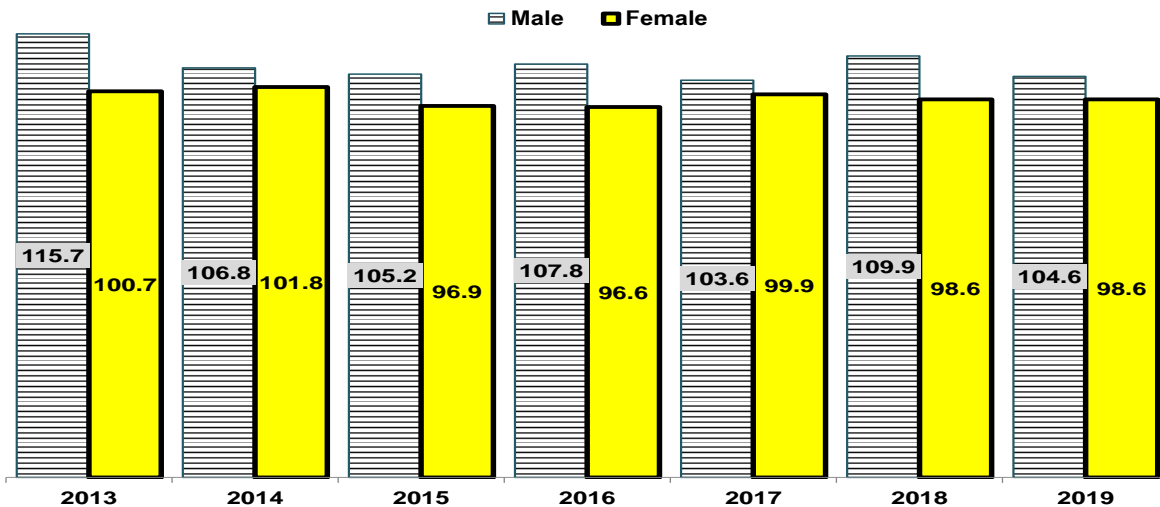
Figures 115-120 illustrate various demographic characteristics of non-fatal occupational injuries and illnesses in private industry in California.

Figure 115: Number of Non-Fatal Occupational Injuries and Illnesses in California by Gender, Private Industry, 2013-2019



Source: DIR, Office of the Director-Research

Figure 116: California Non-Fatal Occupational Injuries and Illnesses Incidence Rates by Gender, Private Industry, 2013-2019 (Cases per 10,000 full-time employees)

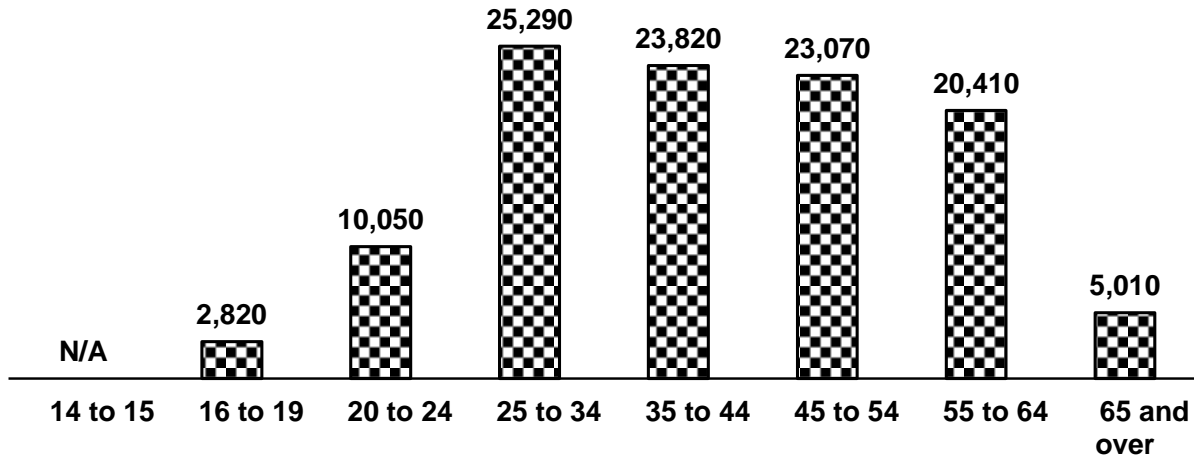


* With days away from work with or without job transfer or restriction.

Data Source: BLS, U.S. Department of Labor, Survey of Occupational Injuries and Illnesses in cooperation with participating State agencies.

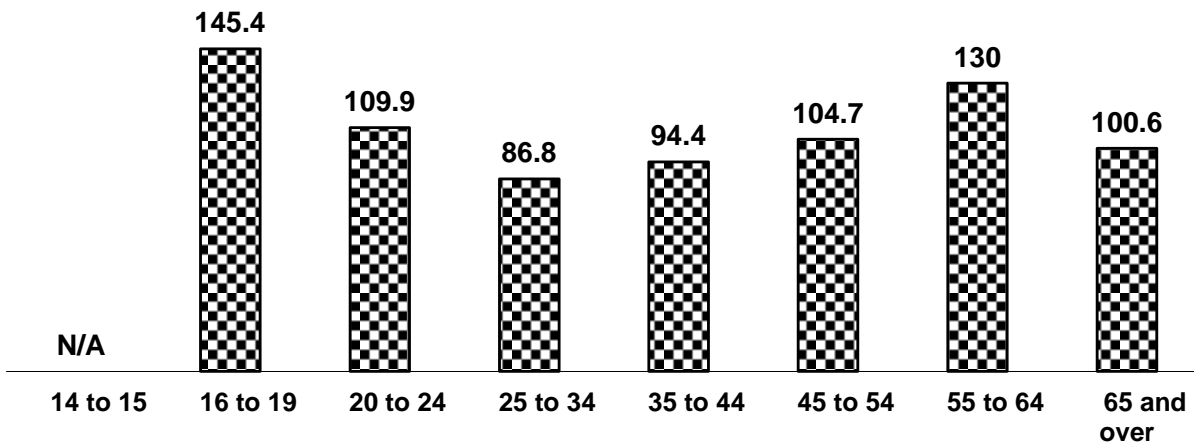
WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

Figure 117: Number of Non-Fatal Occupational Injuries and Illnesses in California by Age, Private Industry, 2019



Data Source: DIR, Office of the Director-Research

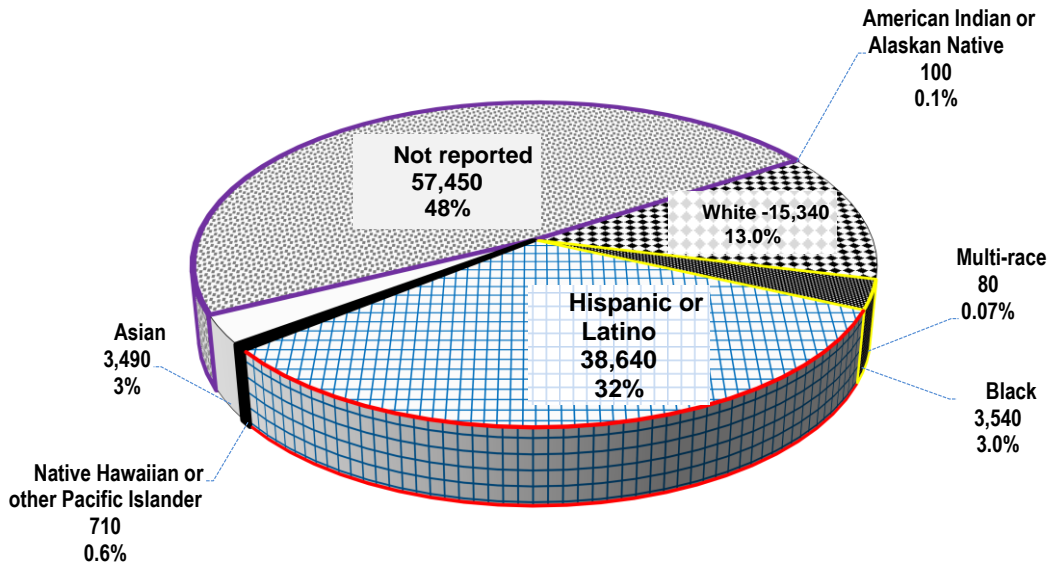
Figure 118: California Occupational Injury and Illness Incidence Rates by Age, Private Industry 2019 (per 10,000 Full-Time Workers)



Data Source: BLS, Department of Labor, Survey of Occupational Injuries and Illnesses in cooperation with participating State Agencies

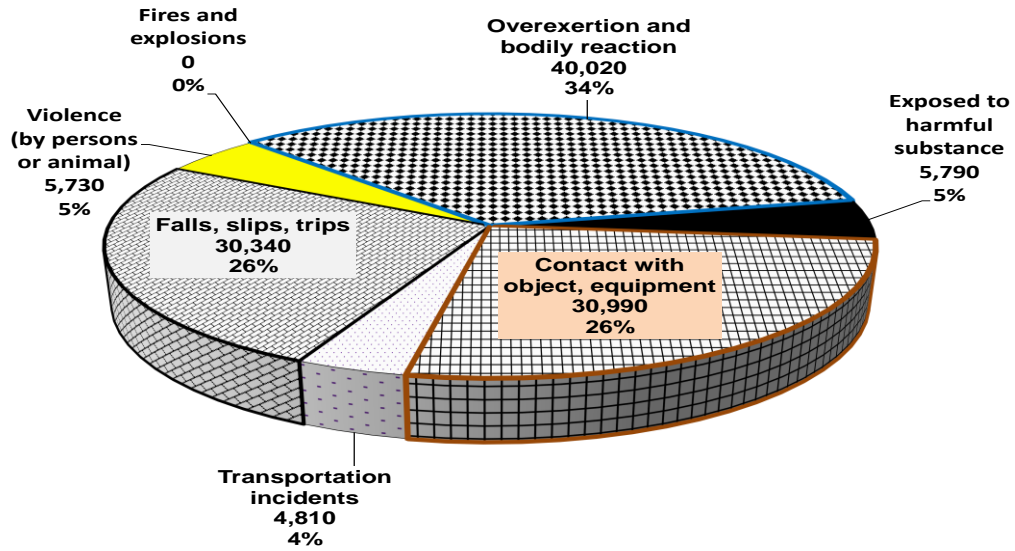
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Figure 119: California Non-Fatal Occupational Injuries and Illnesses by Race or Ethnic Origin, Private Industry, 2019



Data Source: DIR, Office of the Director-Research

Figure 120: California Non-Fatal Occupational Injuries and Illnesses by Event and Exposure, Private Industry, 2019

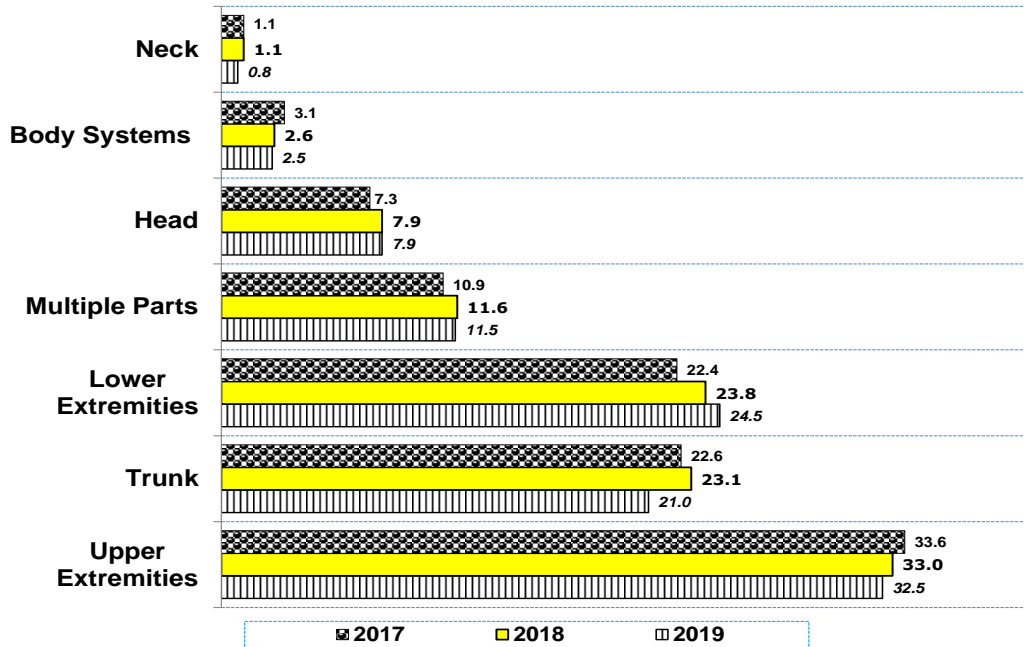


Data Source: DIR, Office of the Director-Research

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Figure 121 shows that the upper extremities, lower extremities, and trunk were the major body parts with the highest incidence rates in 2017, 2018, and 2019.

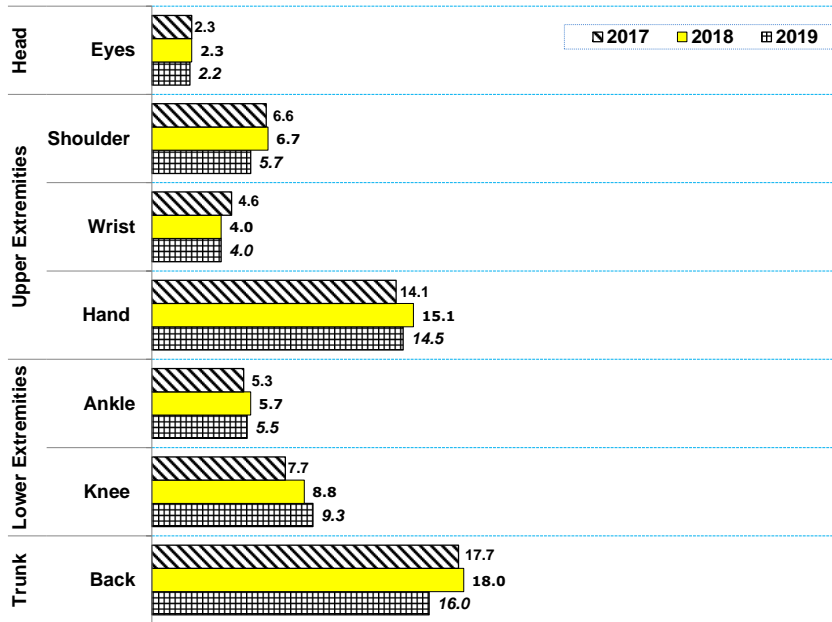
Figure 121: Incidence Rates for Non-Fatal Occupational Injuries and Illnesses by Major Body Parts, Private Industry, 2017, 2018, and 2019 (per 10,000 Full-Time Workers)



Data Source: BLS, U.S. Department of Labor, Survey of Occupational Injuries and Illnesses (SOII) in cooperation with participating State agencies.

Figure 122 shows that the back was the body part with the highest incidence rate in 2017, 2018, and 2019.

Figure 122: Incidence Rates for Non-Fatal Occupational Injuries and Illnesses by Selected Elements of Major Body Parts, Private Industry, 2017, 2018, and 2019 (per 10,000 FTE Workers)

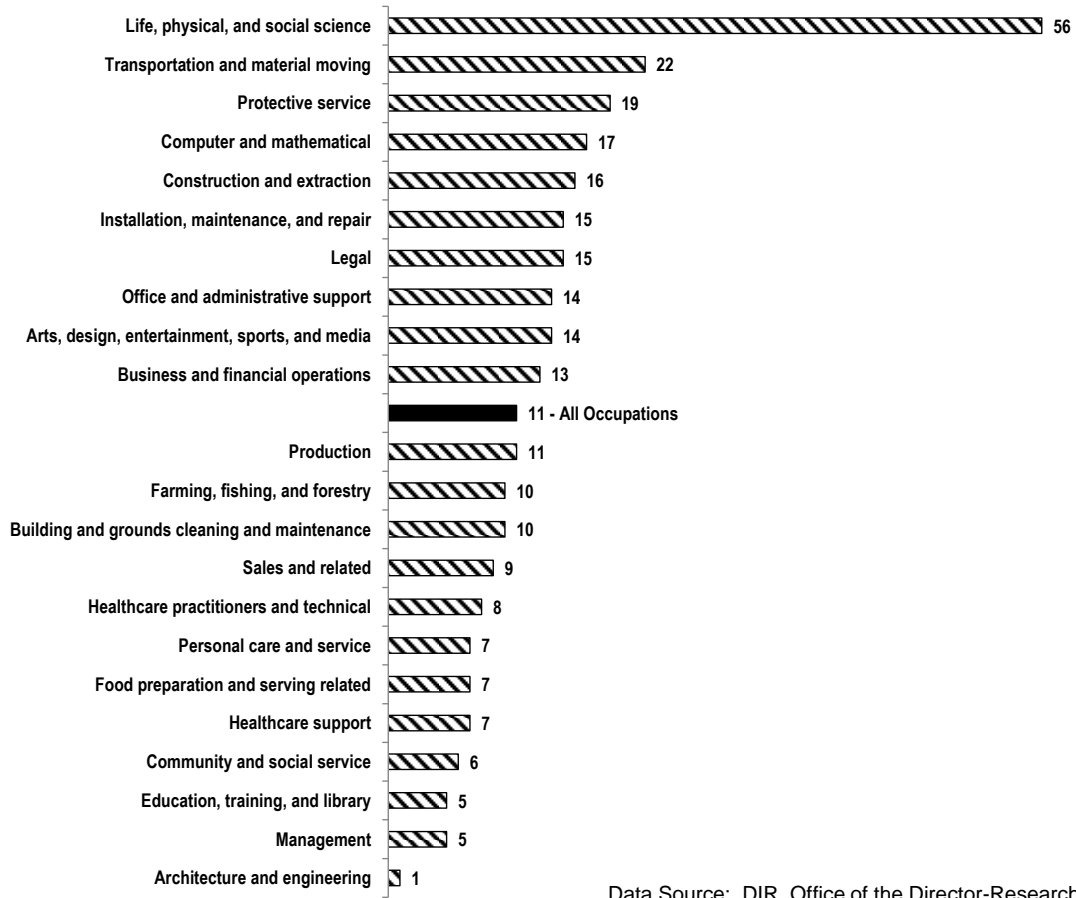


Data Source: BLS, U.S. Department of Labor, Survey of Occupational Injuries and Illnesses (SOII) in cooperation with participating State agencies.

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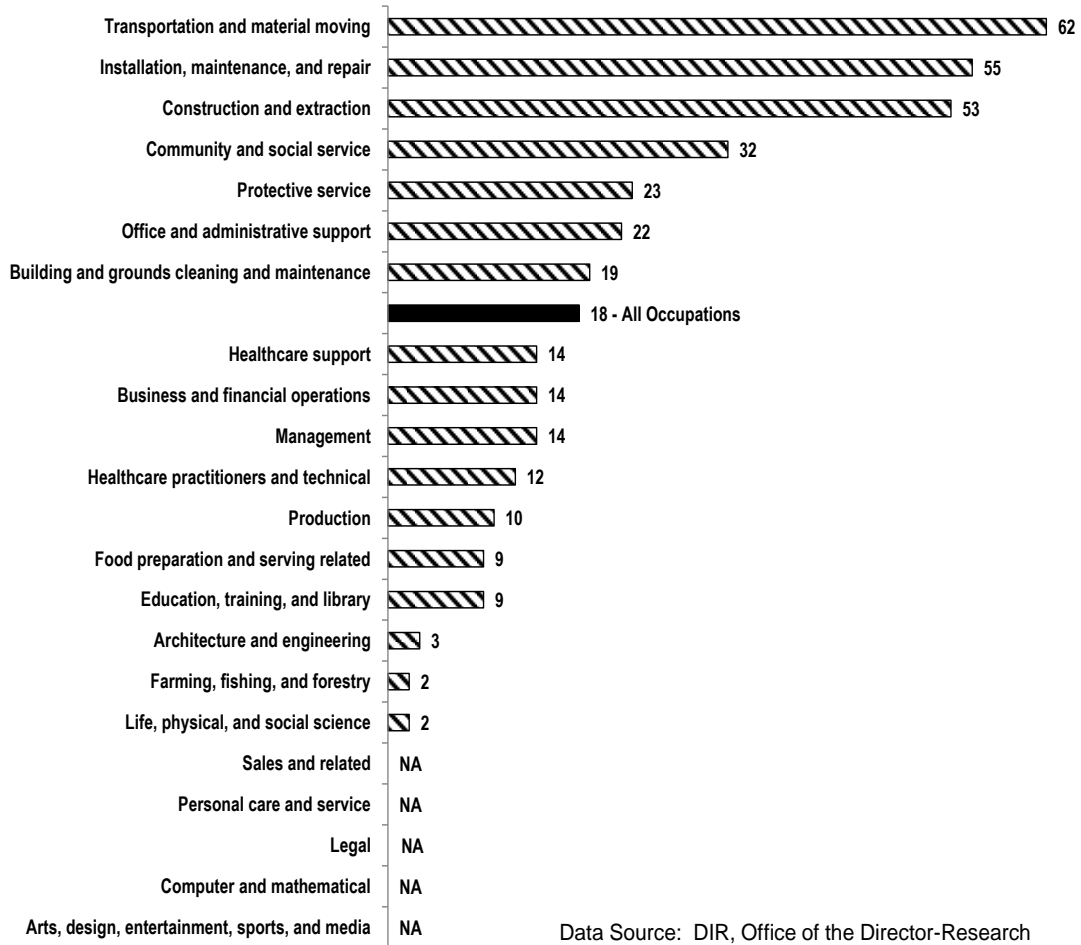
Figures 123 to 125 compare the median days away from work for private industry and state and local government occupations. Life, physical, and social science, transportation and material moving, and protective services had the greatest median days away from work in 2019.

Figure 123: Non-Fatal Injuries and Illnesses by Major Occupational Group: Median Days Away from Work, Private Industry, 2019



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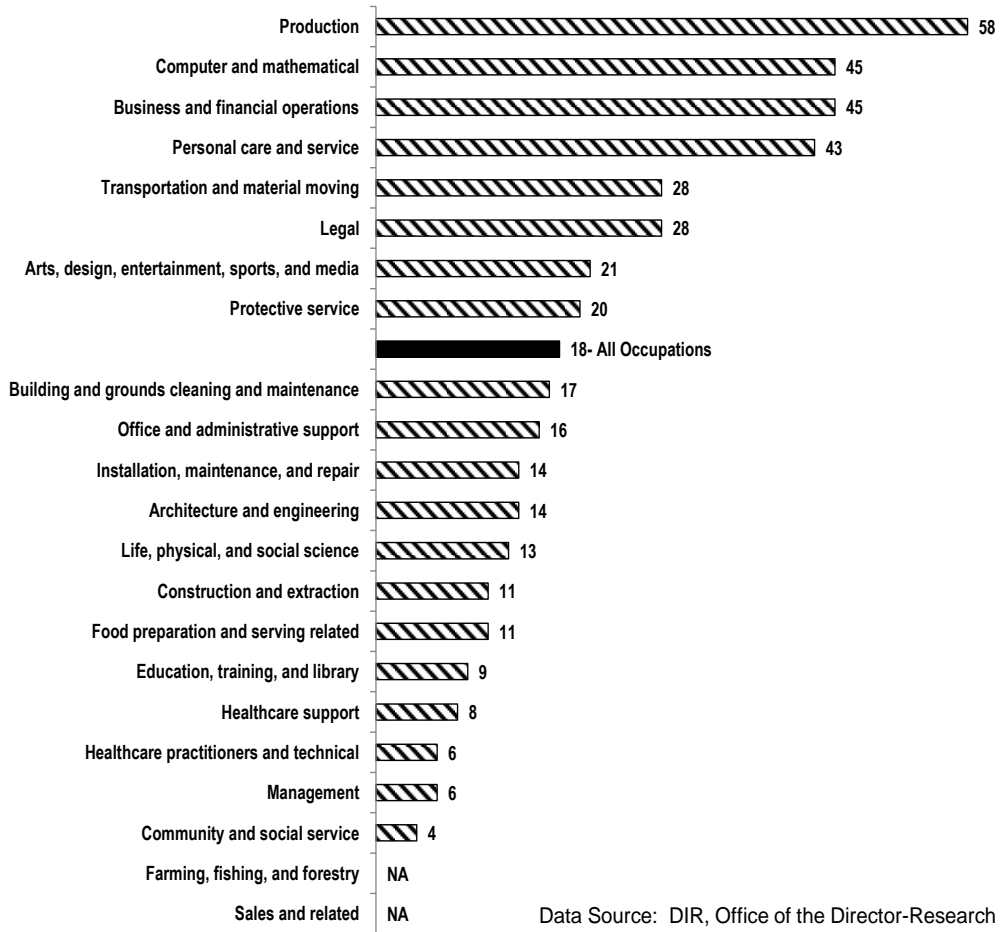
Figure 124: Non-Fatal Injuries and Illnesses by Major Occupational Group: Median Days Away from Work, State Government, 2019



Data Source: DIR, Office of the Director-Research

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Figure 125: Non-Fatal Injuries and Illnesses by Major Occupational Group: Median Days Away from Work, Local Government, 2019

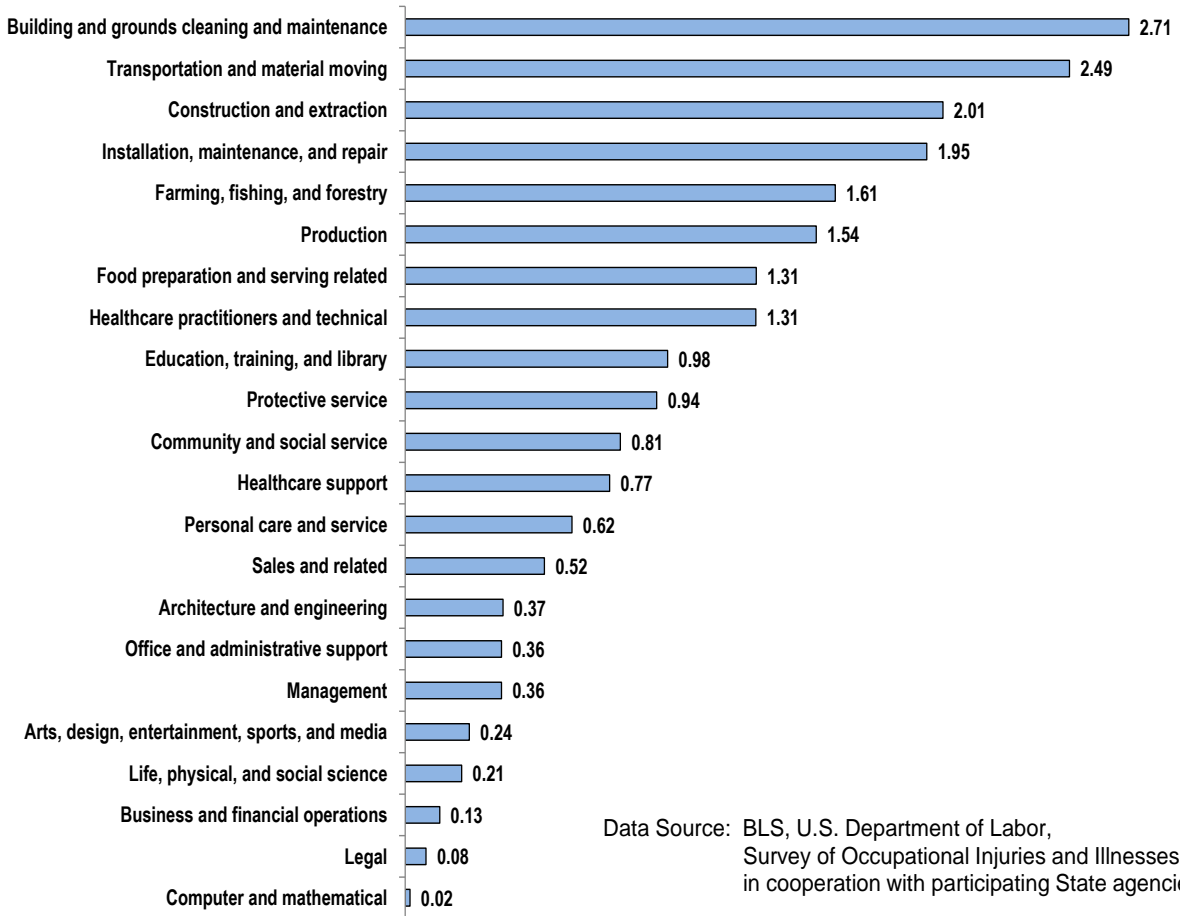


Data Source: DIR, Office of the Director-Research

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Figures 126 and 127 compare the injury and illness incidence rates, including back injury, for various occupations. The building and ground cleaning and maintenance occupations had the highest incidence rate in 2019, followed by transportation and material moving occupations.

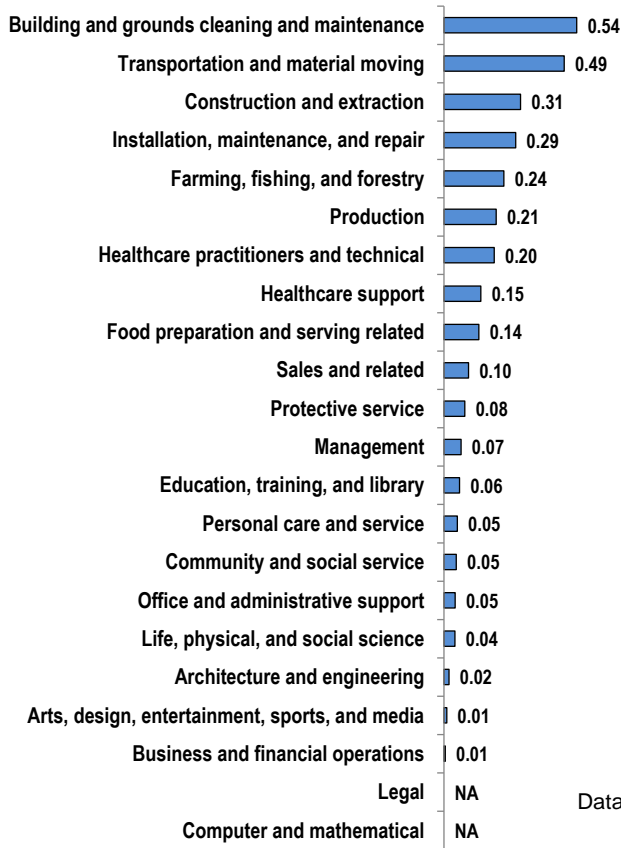
**Figure 126: Incidence Rates by Private Sector Occupational Group (per 100 Full-Time Workers)
Non-Fatal Occupational Injuries and Illnesses with Days Away from Work, 2019**



Data Source: BLS, U.S. Department of Labor,
Survey of Occupational Injuries and Illnesses
in cooperation with participating State agencies

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Figure 127: Back Injury Incidence Rates by Private Sector Occupational Group (per 100 Full-Time Workers) Non-Fatal Occupational Injuries and Illnesses with Days Away from Work, 2019



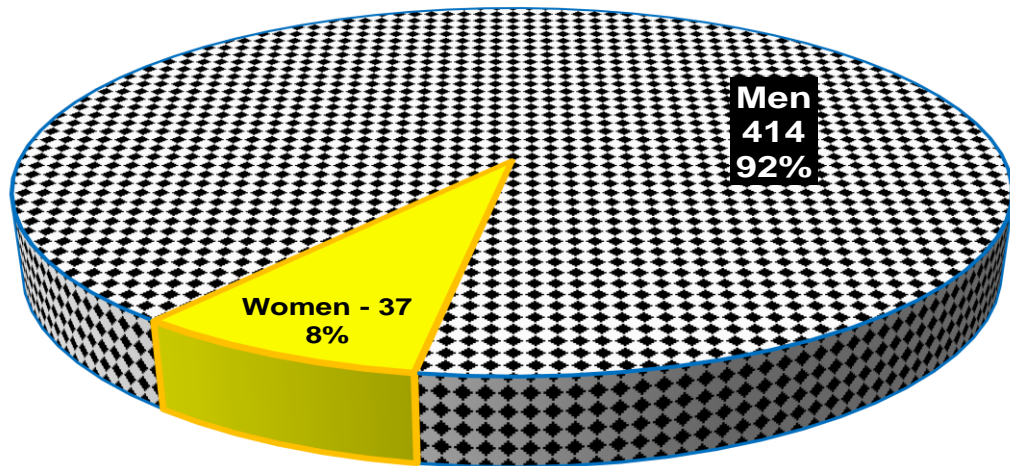
Data Source: BLS, U.S. Department of Labor, Survey of Occupational Injuries and Illnesses in cooperation with participating State agencies

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Characteristics of California Fatal Occupational Injuries and Illnesses

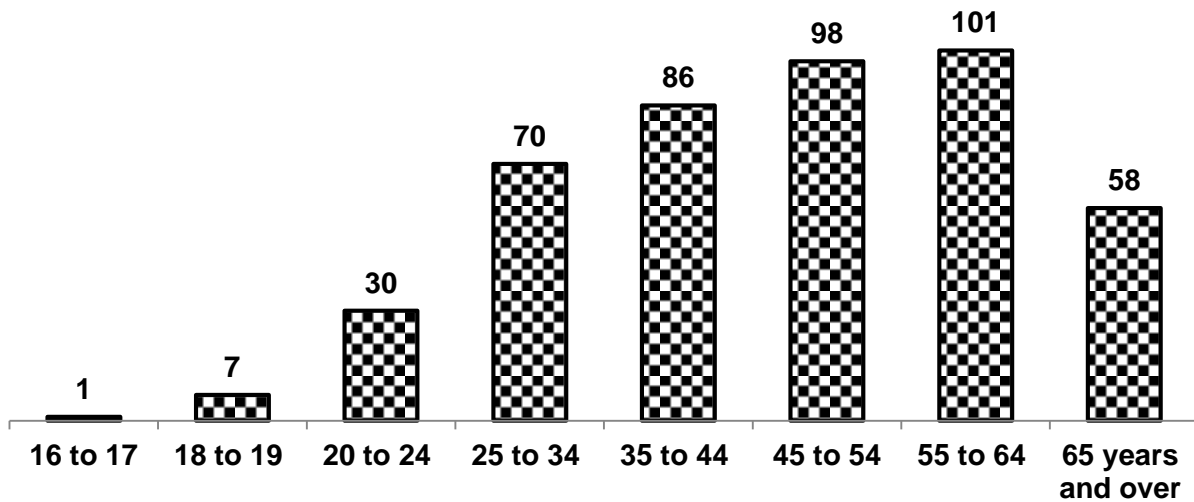
Figures 128-132 illustrate various characteristics of fatal occupational injuries and illnesses in private industry and federal, state, and local governments in California.

Figure 128: California Fatal Occupational Injuries and Illnesses by Gender, 2019



Data Source: BLS

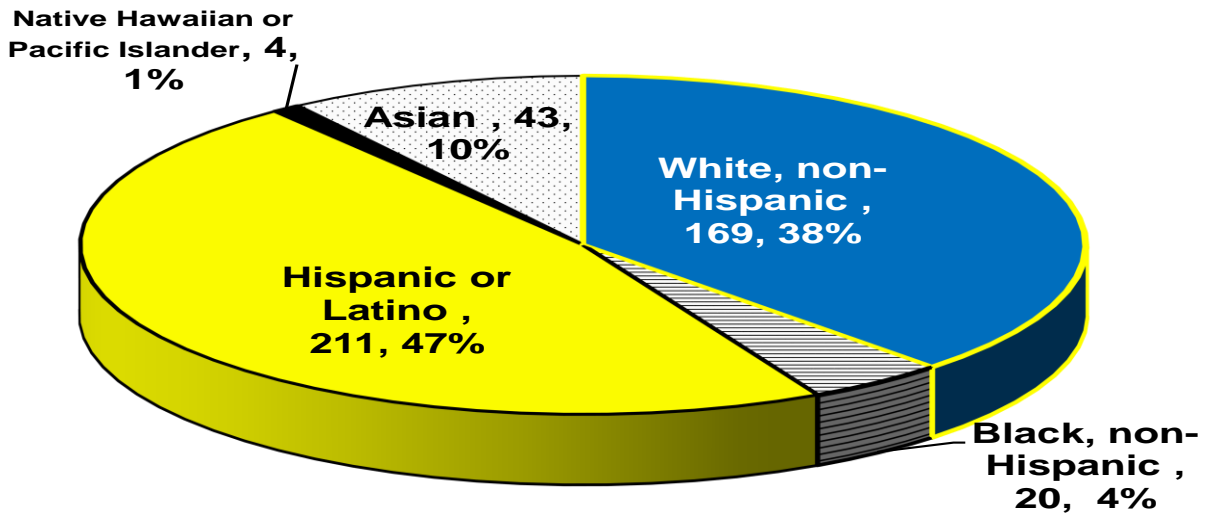
Figure 129: California Fatal Occupational Injuries and Illnesses by Age of Worker, 2019



Source: BLS

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Figure 130: California Fatal Occupational Injuries and Illnesses by Race and Ethnic Origin, 2019



Source: BLS

Figure 131 compares the number of fatalities for various occupations. The transportation and material-moving occupation had the highest number of fatalities in 2019, followed by the construction and extraction occupations.

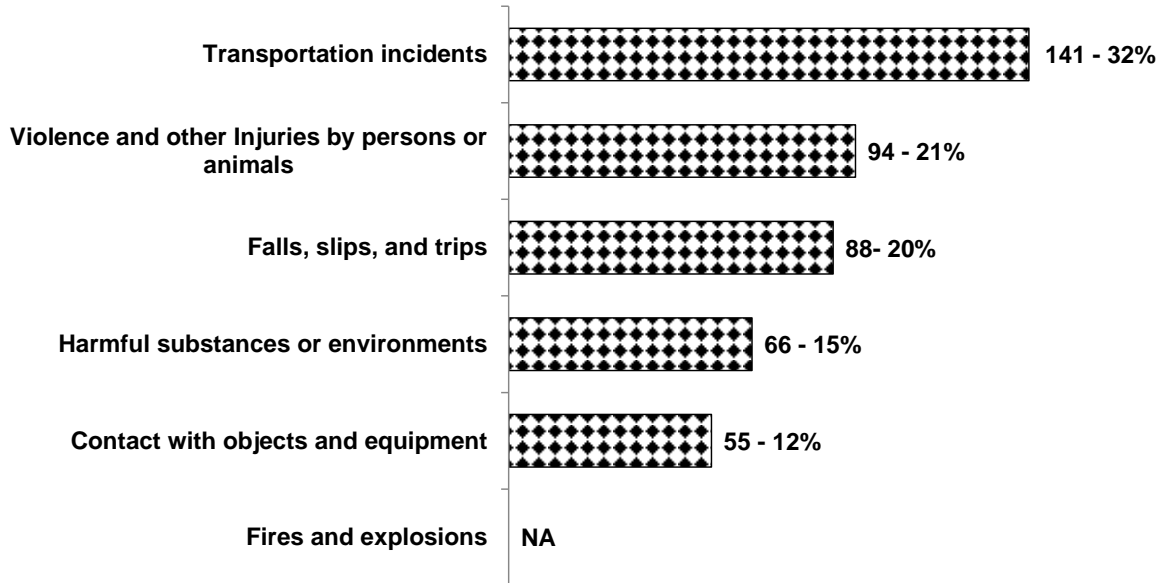
Figure 131: Fatal Occupational Injuries by Selected Occupations, All Ownerships, 2019



Source: DIR, Office of the Director-Research

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Figure 132: California Fatal Occupational Injuries and Illnesses by Event and Exposure, 2019



Source: BLS

Fatal Injuries among Contracted and Independent Workers¹²²

In the Census of Fatal Occupational Injuries (CFOI), a contracted worker is defined as someone employed by one firm but working for another firm that is responsible for operations at the site where a worker is killed. CFOI first collected data on contracted workers in 2011, and the latest data available for U.S. contractor fatalities are for 2015. CFOI collects two types of industry data for contracted workers. The contracting industry is the industry of the firm that contracts the worker. The employer industry is the industry of the firm that directly employs the worker.¹²³ Unlike contractors, as defined in this section, independent workers are temporarily employed and paid directly by the employer. According to the BLS, independent workers generally have short-term jobs that involve a discrete task, have no guarantee of future work based on their current contract, have no guarantee that work will be available when they are able to work, and have the ability to decide which work they undertake.

According to BLS, data available for the U.S. as of May 2017, workers with alternative arrangements—that is, not permanent jobs—comprised 10.1 percent of total employment. Independent contractors make up the largest of four alternative arrangements, responsible for 6.9 percent of total employment in May 2017. The second-largest category was on-call workers, at 1.7 percent. Temporary help agency workers accounted for 0.9 percent of total employment, and workers provided by contract firms made up 0.6 percent of total employment.¹²⁴

Figure 133 shows that from 2011 to 2015, the number of fatal occupational injuries among contracted workers in the U.S. increased by 53 percent.

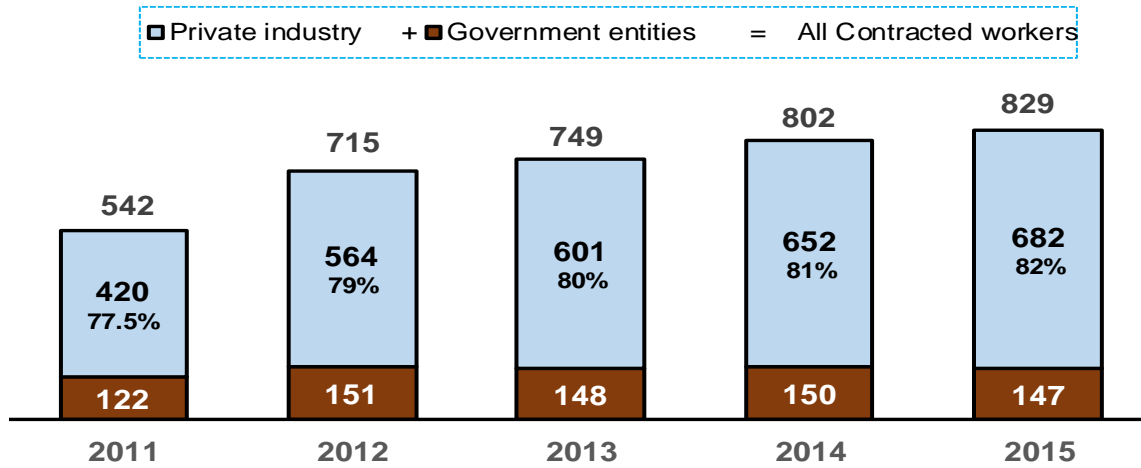
¹²² Data in this section were created on an ad hoc basis by the Bureau of Labor Statistics (BLS) and not updated in 2020.

¹²³ <https://www.bls.gov/iif/oshwc/cfoi/contractor.htm>.

¹²⁴ https://www.bls.gov/opub/ted/2018/independent-contractors-made-up-6-point-9-percent-of-employment-in-may-2017.htm?view_full.

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Figure 133: Number of Fatal Occupational Injuries by Contracted Workers in the U.S., 2011—2015



Source: BLS

Table 37 depicts the number of fatal injuries among independent workers Nationally and in California from 2016 to 2018.

Table 37: Number of Fatal Occupational Injuries by Independent Workers in the U.S. and California, 2016—2018

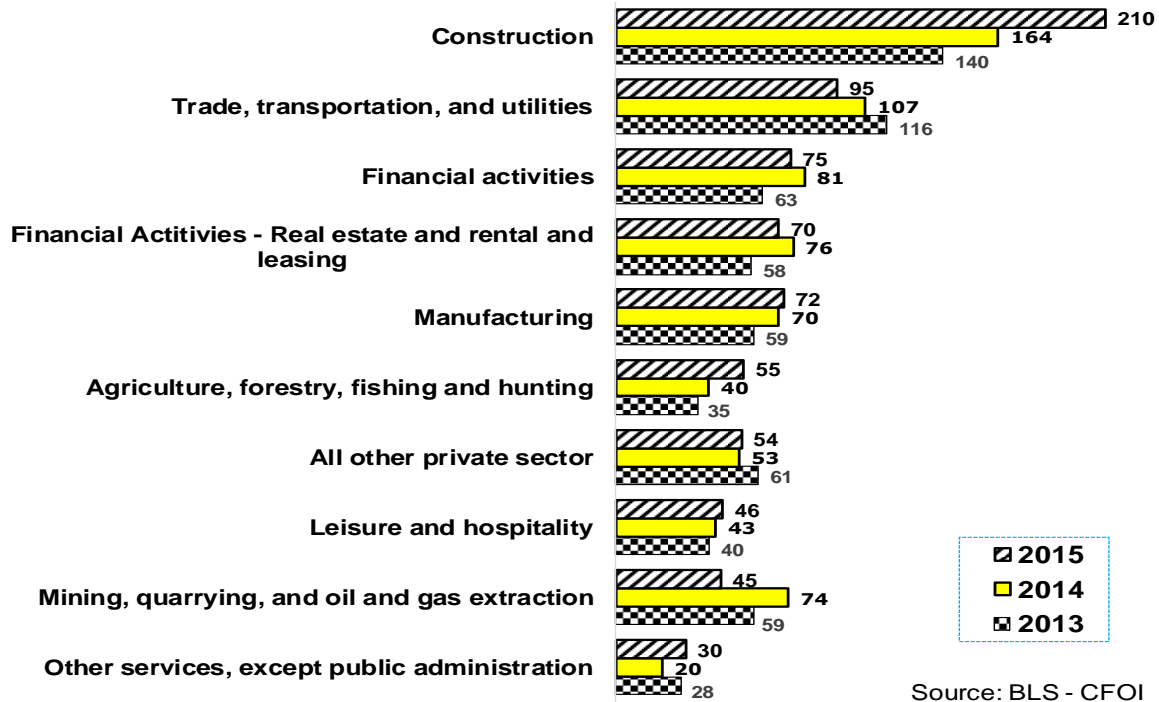
	2016	2017	2018
U.S.	662	613	621
California	52	75	60

Source: BLS

As Figure 134 shows, the largest contracting industries in the U.S for fatally injured contracted workers in private industry were construction, trade, transportation, utilities, and financial activities.

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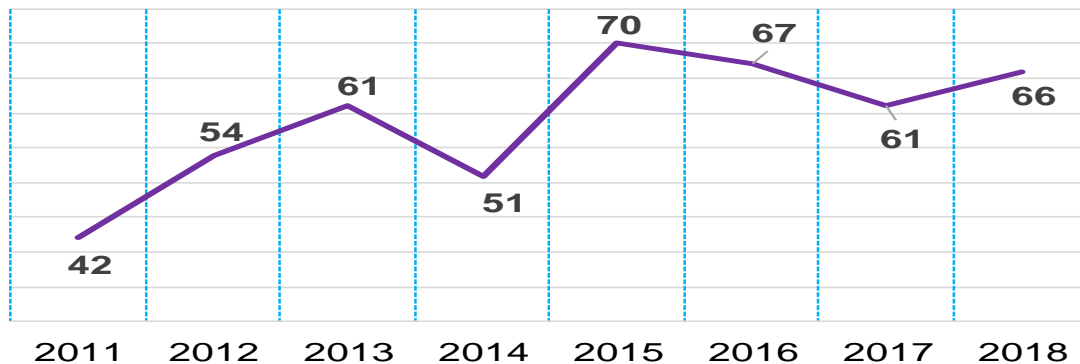
Figure 134: Number of Fatal Occupational Injuries by Contracted Workers in the U.S., by Contracting Industry, 2013–2015



Similar to the pattern nationally, the contractor-based economy has been increasing in California since the Great Recession. The distinction between those who qualify as independent contractors and those who are considered permanent employees is extremely significant. Contractors are excluded from protections for permanent employees in many laws, including coverage by workers' compensation statutes, workplace discrimination laws, eligibility for overtime pay, collection of post-termination unemployment, eligibility for health insurance, and other employee benefits.

Figure 135 shows that the number of fatal occupational injuries for contracted workers in California fluctuated from 42 to 70 fatalities between 2011 and 2015, decreased by 13 percent between 2015 and 2017, and increased by 8 percent from 2017 to 2018.

Figure 135: Number of Fatal Occupational Injuries Incurred by Contracted Workers in California



Source: BLS—CFOI

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Profile of Occupational Injury and Illness Statistics: California and the Nation

Data for the following analyses, except where noted, came from the Department of Industrial Relations (DIR), Office of the Director-Research (OD-Research) and the U.S. Department of Labor (DOL) Bureau of Labor Statistics (BLS).

Incidence Rates

- California's work injury and illness statistics for 2019 indicate a non-fatal injury and illness rate of 3.2 cases per 100 full-time employees in the private sector. This is an about 9 percent decline from the 2013 level of 3.5 and a slight decrease of 3 percent from the previous year's rate of 3.3.
- The trend in California mirrored a national trend from 2013 to 2019. DOL figures for private employers show that from 2013 to 2017, the work injury and illness rate across the U.S. fell from 3.3 to 2.8 cases per 100 employees in the private sector and then remained flat from 2017 to 2019. The reduced incidence of job injuries from 2013 to 2017 is likely due to factors including a greater emphasis on job safety and the shift from manufacturing to service jobs.
- In contrast to the private sector rates, California's public sector decline has not been nearly as dramatic, and the incidence rates are significantly higher than in the private sector. California's state and local government rate for 2019 is 6.1 cases per 100 full-time employees. This is a 14 percent decline from the 2013 rate of 7.1. At the same time, in 2019, the state and local government rate of 6.1 in California is almost 25 percent higher than the national rate of 4.6 for state and local government.
- The national fatality rate increased by 6 percent between 2013 and 2019, from 3.3 to 3.5 cases per 100,000 employed, and California's fatality rate increased by 4 percent from 2.4 per 100,000 employed in 2013 to 2.5 cases in 2019.¹²⁵
- Among the Western region states (Alaska, Arizona, California, Hawaii, Nevada, Oregon, and Washington), Arizona's (3.0), Hawaii's (3.2), and California's (3.2) private industry rates in 2019 for non-fatal occupational injuries and illnesses were the lowest.¹²⁶ The 2019 fatality rates among these states were the lowest for Washington (2.3), California (2.5) and Arizona.¹²⁷

Duration

- Days-away-from-work cases in the private sector, including those that result in days away from work with or without a job transfer or restriction, decreased by 9 percent from 1.1 case per 100 full-time employees in 2013 to 1.0 case per 100 full-time employees in 2019. The national rate of the days-away-from-work cases per 100 full-time employees fell from 1.0 to 0.9 cases in the private sector during the same period.
- Nationally, the overall days-away-from-work rate in 2019 did not change from the 2018 rate. California's days-away-from-work rate of 1.0 case per 100 full-time employees in 2019 decreased from 1.1 in 2018.

Industry Data

- In 2019, injury and illness incidence rates varied greatly among private industries ranging from 0.7 injury/illness per 100 full-time workers in the finance and insurance and management of companies and enterprises industries to 6.0 in agriculture, forestry, fishing, and hunting. California's private industry rates for total cases were higher than the national rates in every major industry division, except for mining, quarrying, and oil and gas extraction (1.0 and 1.2), manufacturing (3.0 and 3.3), educational services (2.5 and 3.6), and information (1.1 and 1.2).

¹²⁵ Beginning in 2007, the Census of Fatal Occupational Injuries (CFOI) adopted hours worked estimates to measure fatal injury risk per standardized length of exposure, which is generally considered more accurate than previously used employment-based rates.

¹²⁶ The comparisons of industry rates have not been adjusted for industry mix in each state.

¹²⁷ <https://www.bls.gov/iif/oshwc/cfoi/staterate2019.htm>.

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- The California private industry total case rate for non-fatal injuries decreased slightly in 2019 from 3.3 per 100 full-time worker injuries in 2018 to 3.2 in 2019, and the rate for the public sector (state and local government) increased from 5.9 in 2018 to 6.1 in 2019.
- According to the OD-Research, and Legislation, the largest decrease in injury and illness by major industry category was in the management of companies and enterprises (56 percent), from 1.6 to 0.7 and finance and insurance (30 percent), from 1.0 to 0.7, per 100 full-time worker injuries in 2018 and 2019 respectively, followed by a decrease in other services (except public administration) (11 percent) from 2.7 to 2.4 per 100 full-time worker injuries in 2018 and 2019, and by a decrease in educational services (8 percent), from 1.2 to 1.1 per 100 full-time worker injuries in 2018 and 2019.¹²⁸
- According to the OD-Research, the largest increase in injury and illness by industry sectors was in mining, quarrying, and oil and gas extraction (43 percent), from 0.7 to 1.0 per 100 full-time worker injuries in 2018 and 2019 respectively, followed by educational services (19 percent), with an increase from 2.1 to 2.5 and agriculture, forestry, fishing, and hunting, with an 18 percent increase from 5.1 to 6.0 per 100 full-time worker injuries in 2018 and 2019, and utilities (15 percent), from 2.0 to 2.3 between 2018 and 2019.¹²⁹
- From 2013 to 2019, the number of fatal injuries¹³⁰ increased by almost 16 percent, from 378 to 437.¹³¹ From 2018 to 2019, there was a 10 percent increase in the number of fatal injuries. In 2019, the highest number of fatal injuries in the private sector was in trade, transportation, and utilities (112), followed by construction (80) and professional and business services (58).
- In private industry, the top ten occupations with the most non-fatal injuries and illnesses in 2019 were: laborers and freight, stock and material movers, hand; heavy and tractor-trailer truck drivers; stockers and order fillers; farmworkers and laborers, crop, nursery, and greenhouse; janitors and cleaners, except maids and housekeeping cleaners; light truck drivers; fast food and counter workers; maids and housekeeping cleaners; food preparation workers; registered nurses.
- In California's state government, the top ten occupations with the most non-fatal injuries and illnesses in 2019 were: correctional officers and jailers; police and sheriff's patrol officers; psychiatric technicians; janitors and cleaners, except maids and housekeeping cleaners; firefighters; registered nurses; first-line supervisors of correctional officers; licensed practical and licensed vocational nurses; court, municipal, and license clerks; first-line supervisors of food preparation and serving workers.
- In local government, the top ten occupations with the most non-fatal injuries and illnesses in 2019 were: police and sheriff's patrol officers; bus drivers, transit and intercity; teaching assistants, except postsecondary; firefighters; janitors and cleaners, except maids and housekeeping cleaners; teaching assistants, preschool, elementary, middle, and secondary school, except special education; maintenance and repair workers, general; first-line supervisors of firefighting and prevention workers; landscaping and groundskeeping workers; elementary school teachers, except special education.
- Transportation and material moving (115), construction and extraction (75), and farming, fishing, and forestry (37) occupations accounted for 52 percent of the fatal injuries in 2019. Installation, maintenance, and repair (36), protective services (34), building and grounds cleaning and maintenance (34), sales and related (23), management (19), and production (19), were the other occupations with the most number of fatal injuries in 2019. Transportation and material-moving occupations were the top cause of fatal injuries accounting for 26 percent of fatal injuries in 2019.
- Transportation incidents (including the federal government) accounted for 32 percent of fatal injuries in 2019 and were a major cause of fatalities among: transportation and material moving (69); farming, fishing, and forestry (19); protective services (10); and construction and extraction (9) occupations.

¹²⁸ DIR, Office of the Director-Research, Table 1: Incidence rates of non-fatal occupational injuries and illnesses by selected industries and case types, 2018, 2019.

¹²⁹ Ibid.

¹³⁰ BLS preliminary data.

¹³¹ The number of fatalities excludes those for the Federal government.

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Establishment Size and Type

- The lowest rate for the total recordable non-fatal cases in 2019 was experienced by the smallest and biggest private employers. Smallest employers with 1 to 10 and the biggest with 1,000 and more employees had incidence rates of 1.1 and 2.8 cases, respectively, per 100 full-time employees. Establishments with 1 to 10, 50 to 249, and 1,000 and more employees experienced 15 percent, 5 percent, and 10 percent decreases in incidence rates from 2018 to 2019.
- Establishments with 50 to 249 employees reported the highest rates of 4.0 per 100 full-time employees, followed by 3.9 cases per 100 full-time employees for establishments with 250 to 999 employees in 2019. Employers with 11 to 49 and 250 to 999 employees experienced 3 and 5 percent increases correspondingly from 2018 to 2019.

Types of Injuries

- Ten out of eleven types of work illnesses and injuries increased from 2013 to 2019 in the private sector. The number of sprains, strains, and tears increased by 5 percent from 2013 to 2019; these injuries remain by far the most common type of work injury accounting for 40.5 percent of days-away-from-work cases in the private sector in 2019. Carpal tunnel syndrome decreased 61 percent between 2013 and 2019. The biggest increase (122 percent) from 180 cases in 2013 to 400 cases in 2019 was in chemical burns and corrosions. Amputations and fractures increased 71 and 42 percent respectively, and bruises and contusions increased 32 percent between 2013 and 2019.
- In the private sector, overexertion and bodily reaction were the leading causes of days-away-from-work injuries, cited in 34 percent of cases in 2019. Both the contact with objects and equipment and falls, slips, and trips were the second-most common causes of injury, accounting for 26 percent of injuries.
- In California state government, the two main causes of injury were overexertion and bodily reaction and violence and other injuries by persons or animals, accounting for about 37 and 19 percent of days-away-from-work cases, respectively, in 2019.
- In local government, the main causes of injury were overexertion and bodily reaction and falls, slips, and trips, accounting for 42 and 20 percent of days-away-from-work cases, respectively, in 2019.
- The most frequently injured body part was the back, accounting for about 13 percent of the cases in state government and 16 percent of the cases in local government in 2019. In the private sector, back injuries account for 16 percent of the non-fatal cases.

Demographics

- Over the period from 2013 to 2019 in the California private sector, the number of days-away-from-work cases for women increased by 14 percent. Days-away-from-work cases for men increased by 1 percent. Some of this increase can be attributed to an increase in employment and total hours worked.
- Between 2013 and 2019, in private industry, the youngest (16 to 19) and the oldest (55 to 64 and 65 and over) age groups had an increase in the number of cases with days away from work. The biggest increase (75 percent) occurred among workers 65 and over. The 16–19 age group increased 48 percent and the 55–64 age group grew 23 percent from 2013 to 2019. Both the 20-24 and 35-44 age groups decreased 1 percent and the 25-34 and 45-54 age groups decreased 5 and 6 percent respectively from 2013 to 2019.
- In 2019, out of 451 fatalities (including the federal government), 92 percent were male and 8 percent were female. Compared to 2013, the biggest and only decrease in the number of fatalities (7 percent) was in the 35–44 age group (from 92 to 86 cases), and there was no change in the number of fatalities in the 45-54 age group (98). The age groups that experienced the biggest increase in the number of fatalities was the 65 and over age group (66 percent increase) from 35 to 58 cases, followed by a 43

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percent increase from 21 to 30 in the 20-24 age group, and a 35 percent increase from 75 to 101 in the age group of those 55 to 64.

- The highest number of fatalities by race or ethnic origin categories in 2019 was experienced by “Hispanic or Latino” (211) and “White, non-Hispanic” (169) groups, accounting for 47 percent and 38 percent of the fatalities respectively. From 2013 to 2019, all ethnic groups experienced an increase in the number of fatalities. The highest increase in fatal injuries from 2013 to 2019, 115 percent, was in the group “Asian” (from 20 to 43 cases), followed by 25 percent increase from 16 to 20 cases in the group “Black, non-Hispanic,” and 9 percent increase from 194 to 211 cases in the “Hispanic or Latino” group. The “White, non-Hispanic” ethnic group experienced a 4 percent increase in fatal injuries, from 163 cases in 2013 to 169 cases in 2019.

Occupational Injury and Illness Reporting

Occupational injury and illness information is the responsibility of BLS in the U.S. and DOL and the OD-Research in the California DIR. Occupational injuries and illnesses are recorded and reported by California employers through several national surveys administered by DOL with DIR assistance.

OSHA Reporting and Recording Requirements

The U.S. Occupational Safety and Health Act (OSH Act) of 1970 requires covered employers to prepare and maintain records of occupational injuries and illnesses. It provides specific recording and reporting requirements that comprise the framework for the nationwide occupational safety and health recording system. The Occupational Safety and Health Administration (OSHA) in DOL administers the OSH Act recordkeeping system.

Although some employers are exempt from keeping Cal/OSHA injury and illness records, all California employers must report injuries to the OD-Research. Every employer must also report any serious occupational injuries, illnesses or deaths to California OSHA (Cal/OSHA) in DIR.

The data assist employers, employees, and compliance officers in analyzing the safety and health environment at the employer’s establishment and are the source of information for the BLS *Annual Survey of Occupational Injuries and Illnesses* and the OSHA *Occupational Injury and Illness Survey*.

BLS Annual Survey of Occupational Injuries and Illnesses

To estimate the number of occupational injuries and illnesses in the U.S., BLS established a nationwide annual survey of employers’ occupational injuries and illnesses. The state-level statistics on non-fatal and fatal occupational injuries and illnesses come from this survey. In California, the OD-Research conducts the survey for BLS.

Non-fatal Injuries and Illnesses

The BLS *Annual Survey* develops frequency counts and incidence rates by industry and also profiles worker and case characteristics of non-fatal workplace injuries and illnesses that result in lost work time. Each year, BLS collects employer reports from about 173,800 randomly selected private industry establishments.

Fatal Injuries and Illnesses

The estimates of fatal injuries are compiled through the Census of Fatal Occupational Injuries (CFOI), which is part of the BLS occupational safety and health statistics program. CFOI uses diverse state and federal data sources to identify, verify, and profile fatal work injuries.

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OSHA Occupational Injury and Illness Survey

Federal OSHA administers the annual *Occupational Injury and Illness Survey*. OSHA utilizes this collection of employer-specific injury and illness data to improve its ability to identify and target agency interventions to employers that have serious workplace problems. For this survey, OSHA collects data from 80,000 non-construction establishments and from up to 15,000 construction establishments.

Occupational Injury and Illness Prevention Efforts

Efforts to prevent occupational injury and illness in California take many forms, but all are derived from cooperative efforts between the public and private sectors. This section describes consultation and compliance programs, health and safety standards, and education and outreach designed to prevent injuries and illnesses in order to improve worker health and safety.

Cal/OSHA Program

The Cal/OSHA Program is responsible for enforcing California's laws and regulations pertaining to workplace health and safety and for providing assistance to employers and workers about workplace safety and health issues.

The [Cal/OSHA Enforcement Unit](#) conducts investigations of workplaces in California based on worker complaints, accident reports, and planned inspections in high hazard industries. Twenty-eight [Cal/OSHA district](#) offices are located throughout California including enforcement, [Mining and Tunneling](#) and [Process Safety Management](#). Specialized enforcement units, such as the High Hazard Unit and the [Labor Enforcement Task Force](#), focus on protecting California's workers from workplace hazards in high hazard industries.

Other specialized units, such as the [Crane Certifier Accreditation Unit](#), the [Asbestos Contractors' Registration Unit](#), the [Asbestos Consultant and Site Surveillance Technician Unit](#), and the [Asbestos Trainers Approval Unit](#), are responsible for enforcing regulations on crane safety and the prevention of exposure to asbestos.

The [Cal/OSHA's Consultation Services](#) Branch provides assistance to employers and workers about workplace safety and health issues through on-site assistance, telephone inquiries, high hazard consultation, and other programs with a particular emphasis. Consultation Services also develops educational materials on workplace safety and health topics.

Information on COVID-19 illnesses reported, complaints received, and inspections and investigations conducted by Cal/OSHA could be found on California's Open Data Portal and in *COVID-19 Complaints, Fatalities, and Illnesses (Update)*¹³² presentation.

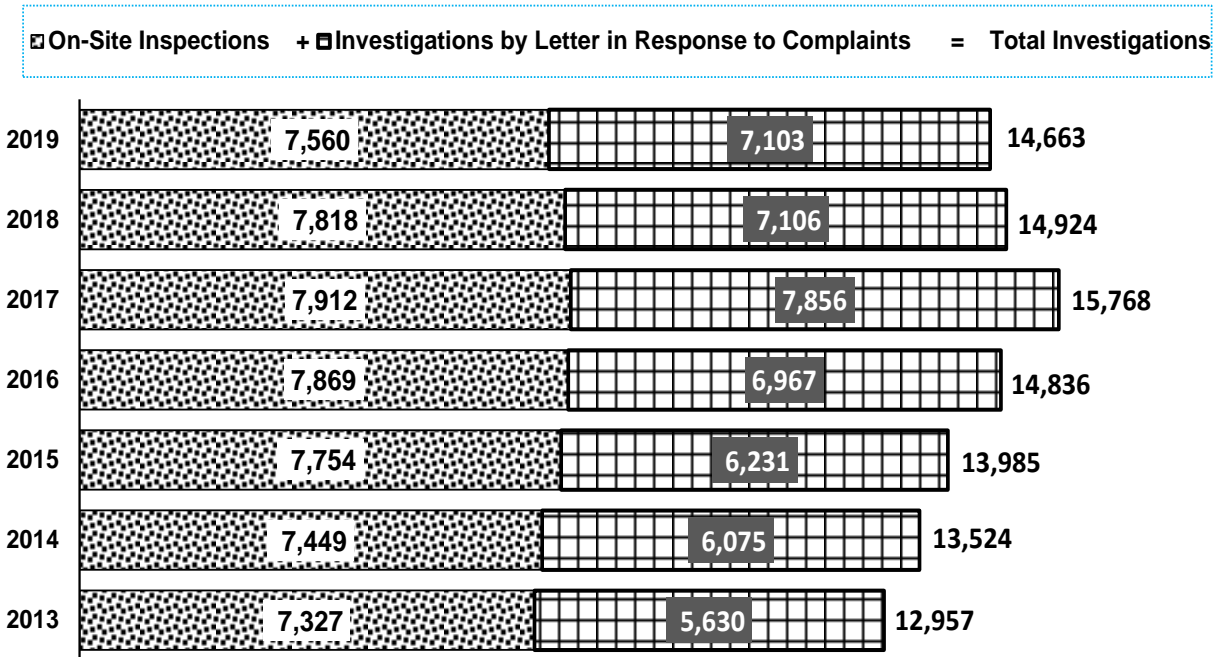
¹³² <https://data.ca.gov/dataset/dosh-covid-19/resource/465980a9-fdd2-4328-9924-6c2a565f41e1> and <https://www.dir.ca.gov/chswc/Meetings/2020/CalOSHA-Presentation-12-03-2020.pdf>.

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Profile of Division of Occupational Safety and Health (DOSH) Investigations and Violations Cited

Figure 136 shows the number of on-site inspections and investigations by letter¹³³ in response to complaints for the period from calendar year (CY) 2013 to CY 2019.¹³⁴ The on-site inspections increased by 8 percent from 2013 to 2017, and then decreased by 4 percent from 2017 to 2019. Investigations by letter in response to complaints increased by 40 percent from 2013 to 2017, decreased by 9.5 percent from 2017 to 2018, and remained at 2018 level in 2019. Accordingly, reflecting DOSH enforcement activities, the total number of investigations increased by 22 percent from 2013 through 2017, and then decreased by 7 percent from 2017 to 2019.

Figure 136: DOSH Enforcement Activities, 2013–2019



Source: DOSH

Figure 137 shows the distribution of DOSH on-site inspections with and without violations from 2013 to 2019.

Unprogrammed inspections triggered by accidents increased from 26 percent of all programmed and unprogrammed inspections in 2013 to 33 percent in 2015 and stabilized at 32-33 percent from 2015 to 2019.

Unprogrammed inspections triggered by complaints changed slightly from 27 percent in 2013 to 30 percent in 2019.

Programmed inspections decreased from an average of 22 percent per year in 2013-2015 to 18 percent in 2017 and then increased to 24 percent in 2019.

¹³³ Investigations by letter are conducted in response to non-formal complaints.

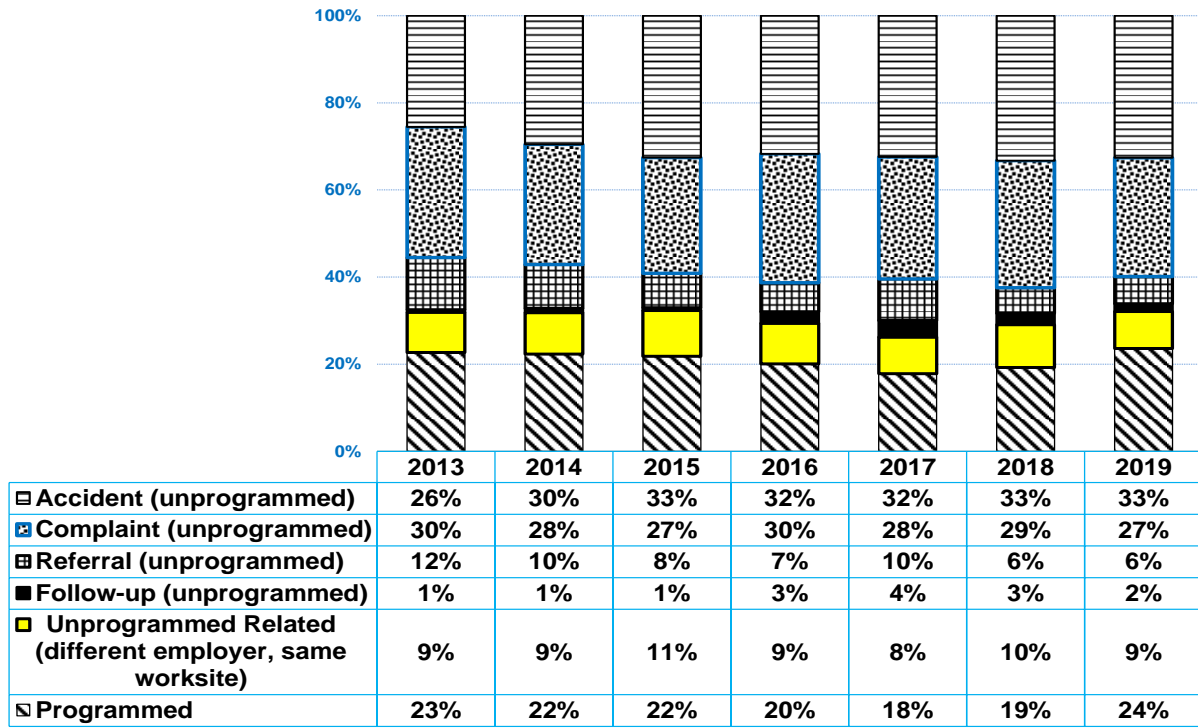
<https://www.dir.ca.gov/dosh/caloshacomplaintflowchart.html>; items 3D and 3E

¹³⁴ The number of investigations, on-site inspections, and violations for calendar years could differ from those in fiscal years below in this section.

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From 2013 to 2019, accidents and complaints were consistently the predominant types of inspections.

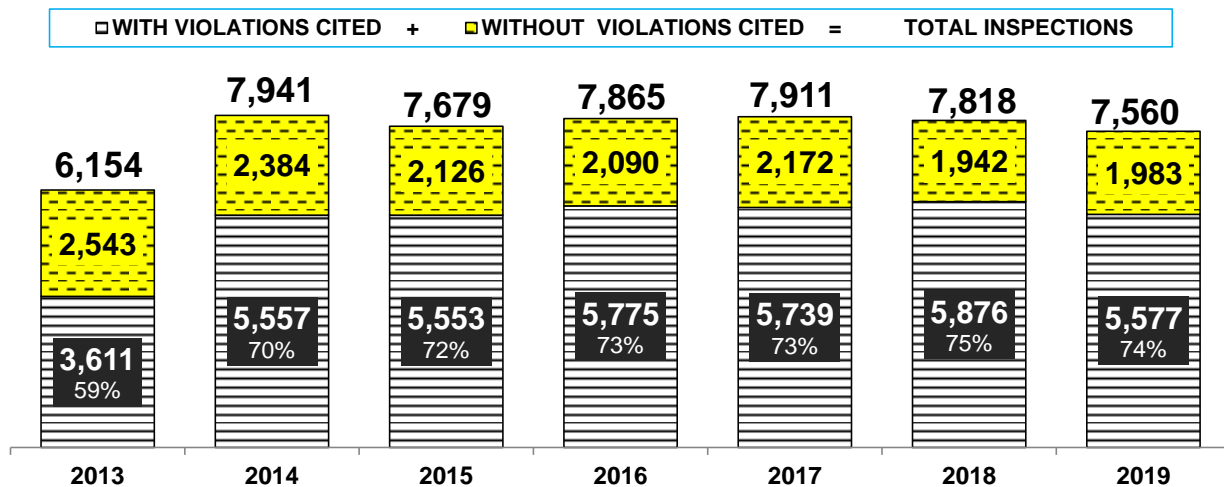
Figure 137: Distribution of DOSH on-Site Inspections by Type (All, with and without Violations), 2013–2019



Source: DOSH

According to Figure 138, the number of inspections without violations decreased overall by 35 percent from 2012 to 2018 while the number of inspections with violations increased 61 percent over the same period. The share of DOSH inspections that resulted in violations cited increased from 59 percent of the inspections in 2013 to 70 percent in 2014 and then increased from 70 percent in 2014 to 74 percent in 2019.

Figure 138: DOSH Inspections (with and without Violations Cited), 2013–2019



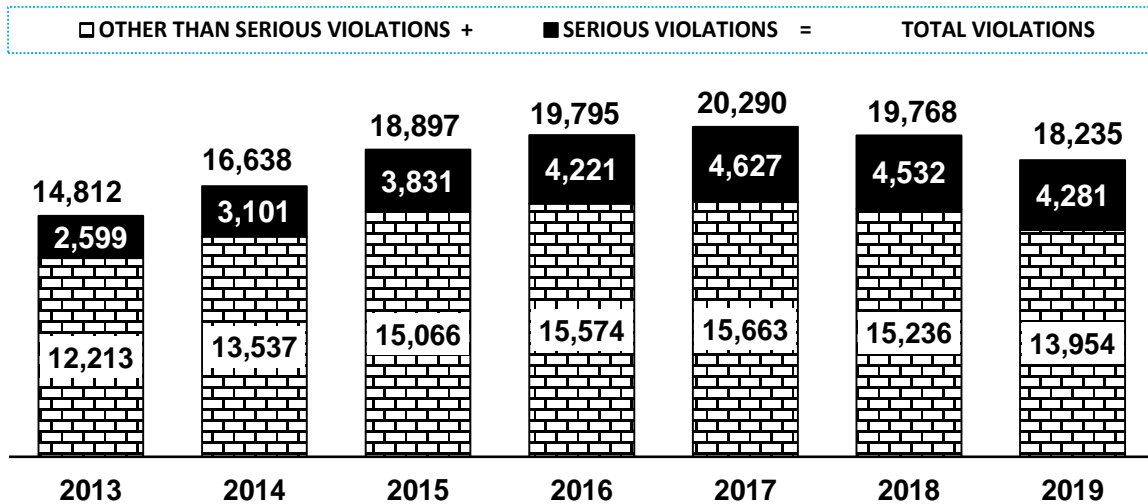
Data Source: DOSH

WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

The number of violations exceeds that of inspections because most inspections of places where violations occur yield more than one violation. Violations are further broken down into serious and other-than-serious. The number of DOSH violations and their breakdown by type from 2013 to 2019 are shown in Figure 136.

According to Figure 139, the number of all violations increased by 37 percent from 2013 to 2017 and then decreased by 10 percent from 2017 to 2019. The number of serious violations increased by 78 percent from 2013 to 2017, and then decreased by 7.5 percent from 2017 to 2019. (See Figures 149 and 150 for OSHAB statistics on the number of appeals of DOSH violations that were filed and resolved.)

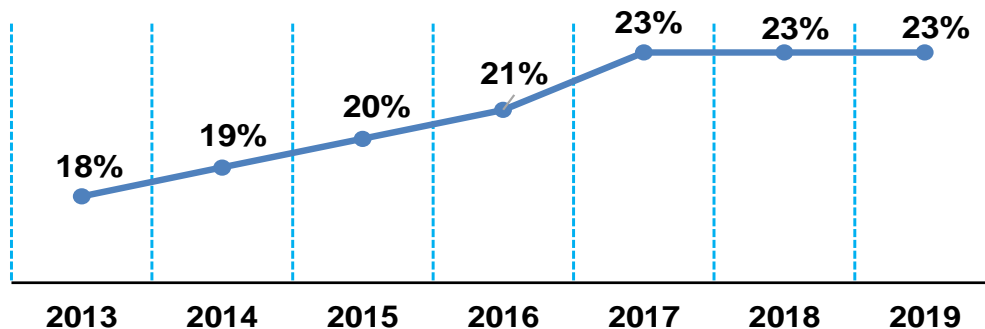
Figure 139: DOSH Violations (Serious and Other Than Serious), 2013-2019



Source: DOSH

Figure 140 shows the trend in serious DOSH violations as a share of all violations from 2013 to 2019. The share of serious DOSH violations gradually increased from 18 percent in 2013 to 23 percent yearly from 2017 to 2019.

Figure 140: Serious Violations as a Share of Total DOSH Violations, 2013-2019

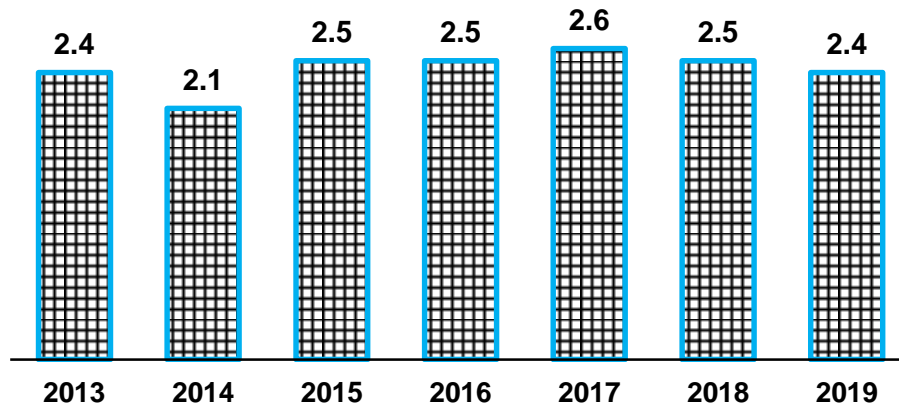


Source: DOSH

The average number of DOSH violations per inspection averaged 2.5 from 2013 to 2019, excluding its one-time decrease to 2.1 DOSH violations per inspection in 2014.

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Figure 141: Average Number of DOSH Violations per Inspection, 2013–2019



Source: DOSH

Table 38: Twenty-Five Most Frequently Cited CCR Title 8 Standards, 2019

Standard	Description	Total Violations	Serious Violations	Percent Serious
3203	Injury and Illness Prevention Program	2041	212	10.4%
3395	Heat Illness Prevention	1910	298	15.6%
1509	Construction Injury and Illness Prevention Program	1057	47	4.4%
3314	Control of Hazardous Energy, Including Lockout/Tagout	593	264	44.5%
5194	Hazard Communication	550	9	1.6%
5162	Emergency Eyewash and Shower Equipment	504	260	51.6%
342	Reporting Work-Connected Fatalities and Serious Injuries	495	11	2.2%
5144	Respiratory Protection	469	21	4.5%
6151	Portable Fire Extinguishers	444	1	0.2%
461	Permits to Operate Air Tanks	341	1	0.3%
2340.16	Work Space About Electric Equipment	330	4	1.2%
3276	Portable Ladders	317	104	32.8%
3650	Industrial Trucks: General Requirements	280	104	37.1%
1512	Construction: Emergency Medical Services	263	5	1.9%
3328	Safe Practices, Personal Protection: Machinery and Equipment	225	93	41.3%
5189	Process Safety Management of Acutely Hazardous Materials	205	26	12.7%
3668	Powered Industrial Truck Operator Training	181	21	11.6%
4650	Compressed Gas and Air Cylinders: Storage, Handling, and Use	175	41	23.4%
1670	Personal Fall Arrest Systems, Personal Fall Restraint Systems and Positioning Devices	156	95	60.9%

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Standard	Description	Total Violations	Serious Violations	Percent Serious
3400	Medical Services and First Aid	139	10	7.2%
3241	General Physical Conditions and Structures: Special Design Requirements, Live Loads	137	14	10.2%
341	Permit Requirements: Excavations, Trenches, Construction and Demolition and the Underground Use of Diesel Engines in Work in Mines and Tunnels	137	9	6.6%
4002	Moving Parts of Machinery or Equipment	137	108	78.8%
3577	Use, Care, and Protection of Abrasive Wheels: Protection Devices	136	74	54.4%
1644	Metal Scaffolds	132	67	50.8%

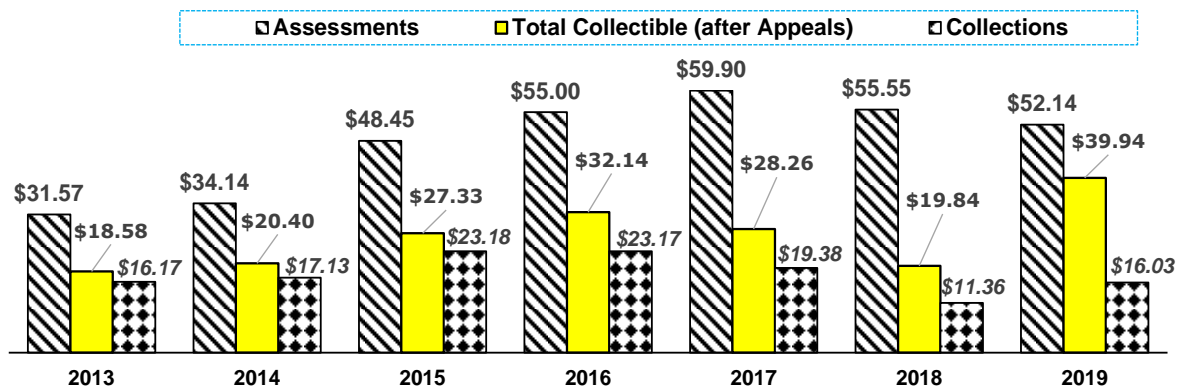
Note: "Serious" includes Serious, Willful, and Repeat Violations

Source: DOSH Budget and Program Office.

Figure 142 demonstrates the trends in penalties and collections. Total penalties assessed were \$52.1 million in 2019, an increase of 65 percent from its 2013 level and a 13 percent decrease from its peak of about \$60 million in 2017. Many employers appeal those "recommended" penalties at the Cal/OSHA Appeals Board, and they may be ordered to pay in full, pay a reduced amount, or have penalties eliminated due to procedural issues. Because of the appeals process, penalties collectible and collected are almost always less than the initial recommended penalties assessed. Total penalties collectible after appeals and collections were about \$40 million and \$16 million, respectively, in 2019.

Although Figure 142 demonstrates the trends in penalties and collections, it cannot be viewed entirely as an indicator of progress in health and safety at places of employment, due to related impacts on the data from DOSH staffing changes and resource changes from year to year, as well as activities at the Appeals Board. Nevertheless, the data give a sense of the general magnitude and accounting of penalties and collections, as well as provide a starting point for further analysis.

**Figure 142: Total DOSH Penalties Assessed and Collected, 2013–2019
(Million \$)**



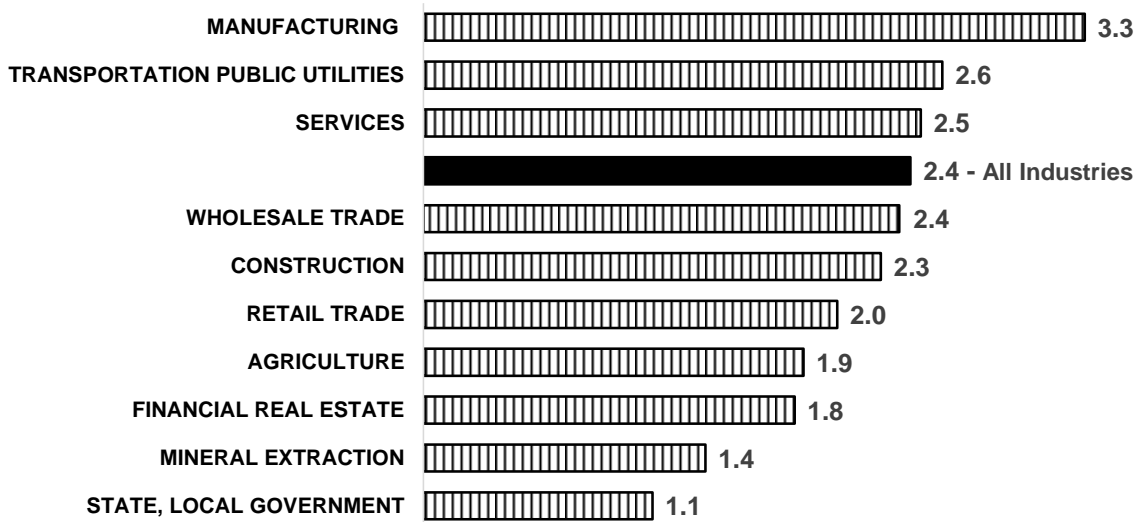
Source: DOSH

Figure 143 shows the rate of DOSH violations per on-site inspection for each major industry group in 2019. Except for the higher-than-average rate in manufacturing and lower-than-average rate in agriculture and industries with a small proportion of both inspections and violations such as government and financial real estate, the industry groups with a bigger share of inspections and violations have a nearly average rate of

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DOSH violations per on-site inspection, which explains the similar industry group proportions in on-site inspections and DOSH violations. See Figures 144 and 145.

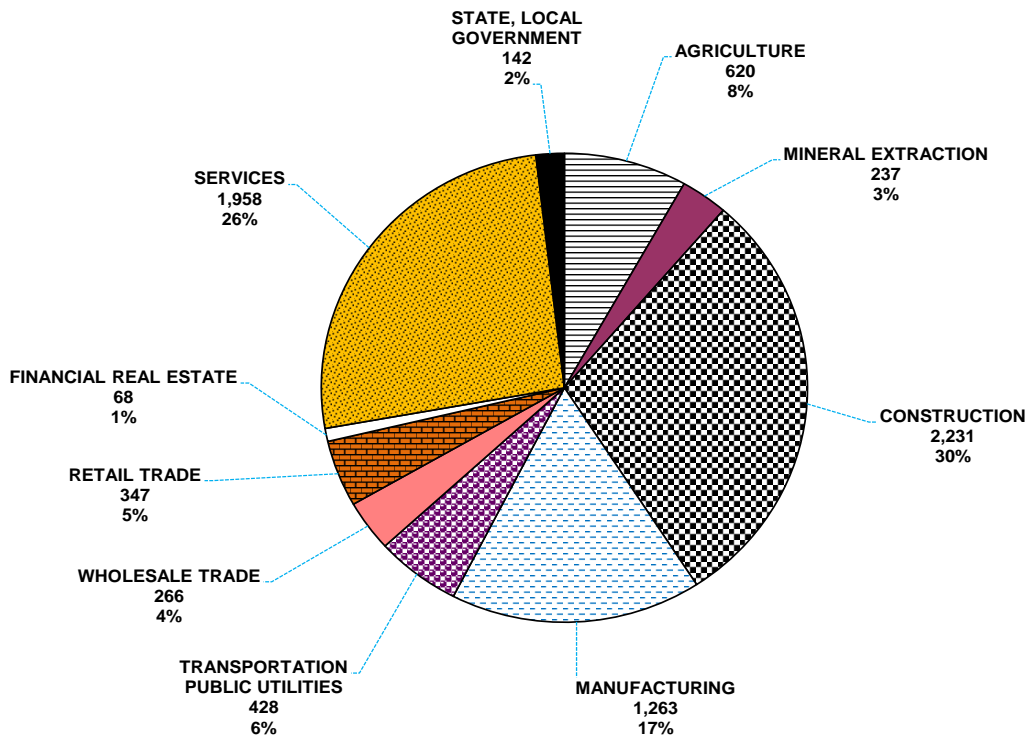
Figure 143: Rate of DOSH Violations per on-Site Inspection, by Major Industry Groups, 2019



Source: DOSH

Figure 144 illustrates the proportion of on-site inspections in major industrial groups. Of the 7,560 workplace health and safety inspections conducted in 2019, 2,231 (30 percent) were in construction and 5,329 (70 percent) were in non-construction.

**Figure 144: Distribution of on-Site Inspections by Major Industry, 2019
(Total Inspections = 7,560)**

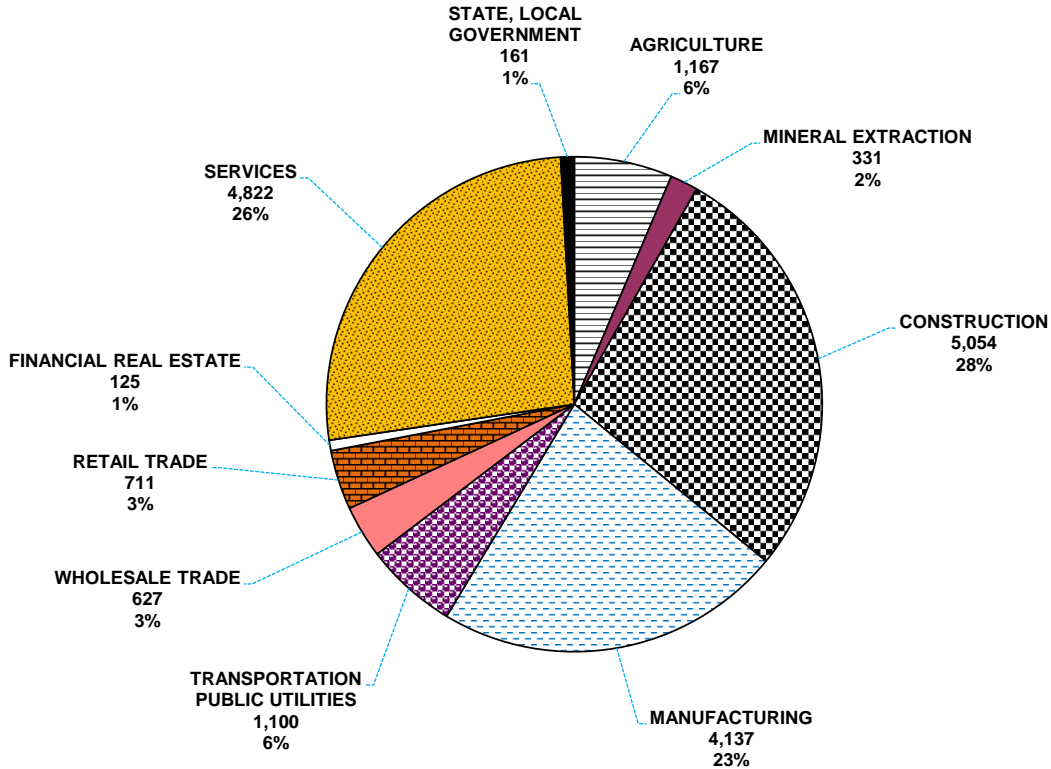


Source: DOSH

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As shown in Figure 145, the highest percentage of violations was in construction (28 percent), closely followed by services (26 percent) and by manufacturing (23 percent).

**Figure 145: Distribution of Violations by Major Industry, 2019
(Total Violations = 18,235)**



Source: DOSH

High Hazard Identification, Consultation, and Compliance Programs

The 1993 reforms of the California workers' compensation system required Cal/OSHA to focus its consultative and compliance resources on "employers in high hazardous industries with the highest incidence of preventable occupational injuries and illnesses and workers' compensation losses."

High Hazard Employer Program

The High Hazard Employer Program (HHEP) is designed to:

- Identify employers in hazardous industries with the highest incidence of preventable occupational injuries and illnesses and workers' compensation losses.
- Offer and provide consultative assistance to those employers to eliminate preventable injuries and illnesses and workers' compensation losses.
- Inspect those employers on a random basis to verify that they have made appropriate changes in their health and safety programs.
- Develop appropriate educational materials and model programs to aid employers in maintaining a safe and healthful workplace.

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Assembly Bill (AB) 1655 gave DIR the statutory authority to levy and collect assessments from employers to support the targeted inspection and consultation programs on an ongoing annual basis. The collection of the Targeted Inspection Consultation Fund ceased with the passage of Assembly Bill (AB) 1389 in 2008.

Assembly Bill (AB) 1389 gave DIR the statutory authority to levy and collect assessments from employers to fund DOSH's operations.

High Hazard Consultation Program

Using workers' compensation data, the Cal/OSHA Consultation Services Branch identifies employers in hazardous industries with the highest incidence of preventable occupational injuries and illnesses and workers' compensation losses. "Hazardous industries" are identified using published annual workers' compensation pure premium rates. Individual employers are identified using workers' compensation experience modification (ExMod) rate data.

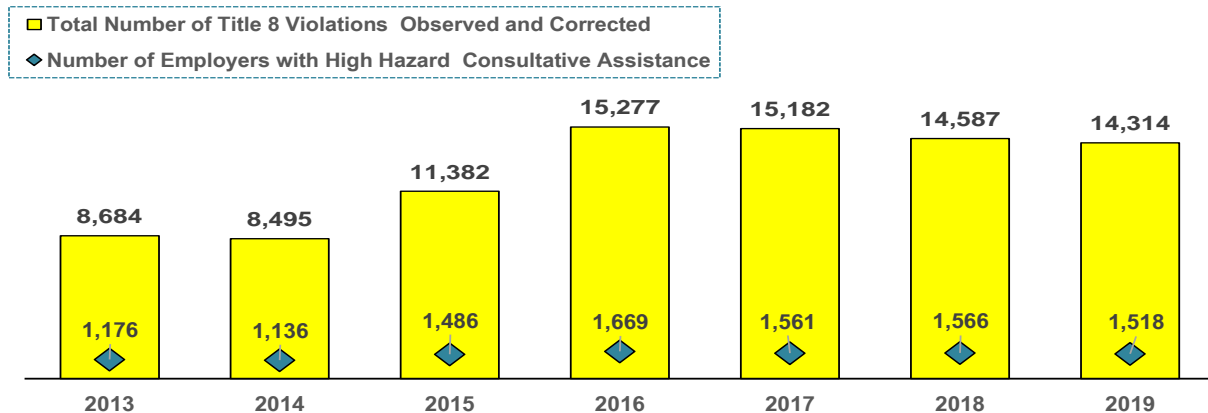
The Cal/OSHA Consultation Services Branch reports that in 2019, it provided on-site high hazard consultative assistance to 1,518 employers. During consultation with these employers, 14,314 Title 8 violations were observed and corrected as a result of the provision of consultative assistance (see Figure 132).

From 1994 to 2019, 27,334 employers have been provided direct on-site consultative assistance, and 193,183 Title 8 violations have been observed and corrected. Of these violations, 34.1 percent were classified as "serious." It should be noted that for 2002 and 2003, all Consultative Safety and Health Inspection Projects (SHIPs) were included in the High Hazard Consultation Program figures. Effective 2004, only employers with ExMod rates of 125 percent and above are included in the High Hazard Consultation Program figures.

The Cal/OSHA Consultation Services Branch conducts annual surveys to measure the efficacy of the services provided. One of the efficacy measures is the comparison of employer lost-and-restricted-workday data (DART) before and after receiving on-site consultative assistance. The other efficacy measure compares individual employer's workers' compensation ExMod rate data again before and after receiving onsite consultative assistance.

Figure 146 shows that the number of Title 8 violations observed and corrected averaged 8,590 per year in 2013 and 2014, increased by 80 percent from 2014 to 2016, and then gradually decreased by 6 percent from 2016 to 2019. The number of employers who received high hazard consultative assistance averaged 156 per year in 2013 and 2014, increased by 47 percent from 2014 to 2016, and then decreased overall by 9 percent from 2016 to 2019.

Figure 146: High Hazard Consultation Program, 2013-2019

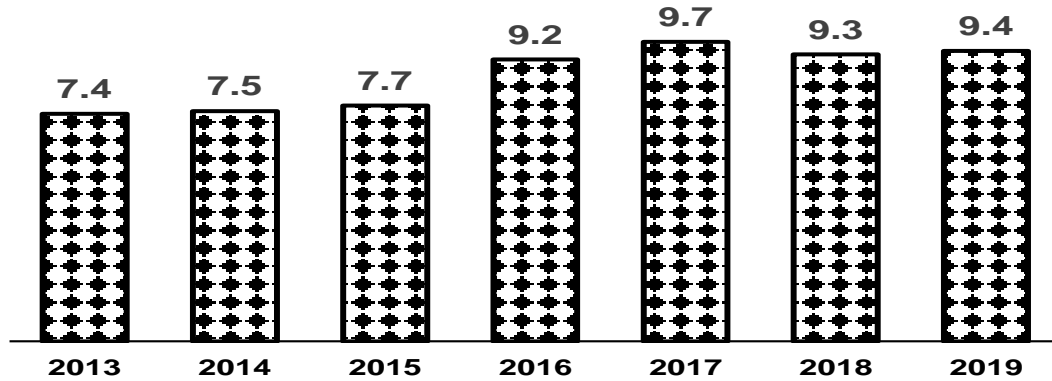


Source: DOSH

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The efficacy of High Hazard Consultation is measured by comparing employer lost-and-restricted-workday data. In 2001, Log 300 replaced Log 200 as the source for lost-and-restricted-workday data. The use of the Lost Work Day Case Incidence (LWDI) rate was replaced with the Days Away, Restricted, or Transferred (DART) rate. Additionally, High Hazard Consultation uses ExMod rates to measure efficacy.

Figure 147: Average Number of Title 8 Violations per Employer with High Hazard Consultative Assistance, 2013-2019



Source: DOSH

High Hazard Enforcement Program

It is the policy of DOSH to protect California’s workers from serious injury and illness and to establish and implement a program for inspecting high hazard businesses operating in California. The High Hazard Unit, which consists of two offices (Northern and Southern) and a regional office, is dedicated to conducting targeted programmed inspections in “High Hazard Industries” throughout California.

In 2019, the High Hazard Unit opened 358 inspections and Regions 1-4 opened 117 inspections. The majority of inspections, a total of 434 (91 percent), were targeted programmed-planned. Other types of inspections opened by the High Hazard Unit were programmed-related, follow-up, accidents, complaints, and referrals. A total of 2,513 violations were identified and cited during inspections. Violations were identified in 94 percent of the inspections conducted. The violation per inspection ratio for targeted programmed-planned inspections in 2019 was 5.6.

The high hazard enforcement program activity measures are shown in Tables 39-41 and Figure 148.

The distributions of high hazard targeted inspections by North American Industrial Classification System (NAICS) from 2017 to 2019 are shown in Table 39.

Table 39: Number and Percent of High Hazard Inspections by NAICS Code, 2017- 2019

NAICS code	Description	2017		2018		2019	
		Number	%	Number	%	Number	%
11	Agriculture, Forestry, Fishing and Hunting	33	8%	27	7%	59	12%
21	Mining, Quarrying, and Oil and Gas Ext.	0	0%	1	0.26%	0	0%
22	Utilities	0	0%	0	0%	0	0%
23	Construction	4	1%	5	1%	1	0%
31-33	Manufacturing	215	49%	177	46%	230	48%
42	Wholesale Trade	5	1%	5	1%	3	1%

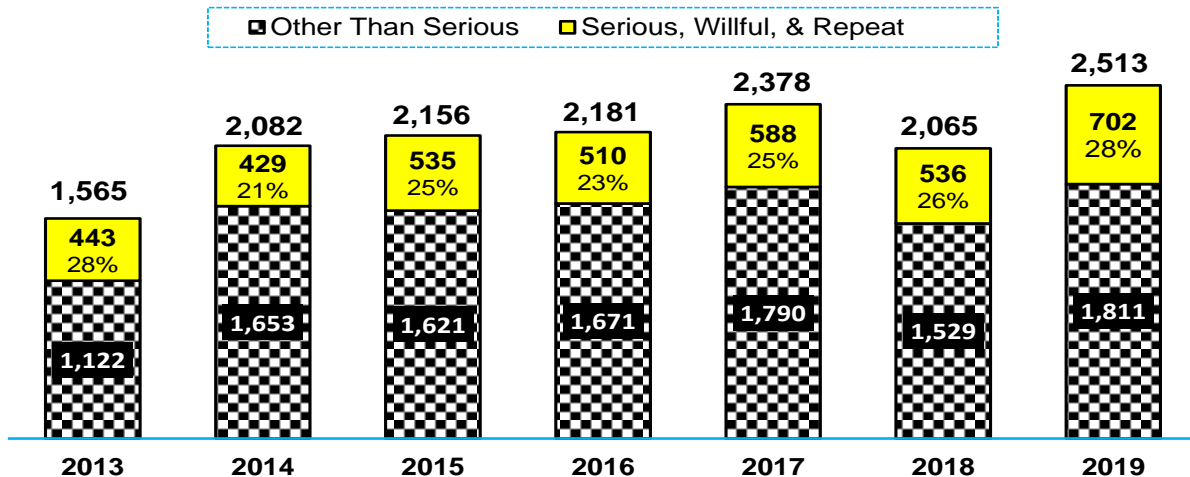
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NAICs code	Description	2017		2018		2019	
		Number	%	Number	%	Number	%
44-45	Retail Trade	0	1%	1	0.26%	4	1%
48-49	Transportation and Warehousing	8	2%	45	12%	58	12%
51	Information	0	0%	0	0%	0	0%
52	Finance and Insurance	0	0%	0	0%	0	0%
53	Real Estate and Rental/Leasing	0	0%	0	0%	1	0%
54	Professional, Scientific, and Technical Services	5	1%	0	0%	0	0%
56	Admin and Support and Waste Management and Remediation	132	30%	14	4%	41	9%
61	Educational Services	0	0%	0	0%	0	0%
62	Health Care and Social Assistance	11	3%	102	27%	48	10%
71	Arts, Entertainment, and Recreation	0	0%	0	0%	3	1%
72	Accommodation and Food Services	2	0%	0	0%	2	0%
81	Other Services	24	5%	5	1%	25	5%
92	Public Administration	1	0%	0	0%	0	0%
	Total	440		382		475	

Source: DOSH

Violations observed¹³⁵ during high hazard targeted inspections are divided into two categories: “serious, willful, and repeat (SWR)” and “other than serious” violations. According to Figure 148, the total number of violations observed increased overall by 60.5 percent from 2013 to 2019. The share of SWRs decreased from 28 percent of all High Hazard inspection violations in 2013 to 21 percent in 2014. From 2014 to 2019, the share of SWRs in High Hazard inspection violations increased steadily from 21 to 28 percent.

Figure 148: Violations Observed during High Hazard Inspections, 2013-2019



Source: DOSH

¹³⁵ Classification of Violations and Definitions, <https://www.dir.ca.gov/title8/334.html> and DOSH Policy and Procedures Manual, <https://www.dir.ca.gov/DOSHPol/P&PC-2.htm>.

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Table 40 shows the number of enforcement actions taken during high hazard inspections by type from 2012 to 2019.

Table 40: Types of Enforcement Actions during High Hazard Targeted Inspections, 2012-2019

Types of enforcement actions	2012-2013	2014	2015	2016	2017	2018	2019
Warrants	0	0	0	0	0	0	0
Order Prohibiting Use (Stop Order)	95	0	8	12	5	1	1
Information Memorandums	68	75	71	25	14	40	19
Violations	3,338	2,082	2,156	2,181	2,378	2,065	2,513

Source: DOSH

Table 41 shows the most frequently observed violations during high hazard inspections in 2019.

Table 41: Most Frequently Cited Violations during High Hazard Targeted Inspections, 2019

Title 8 Section	Description
5162	Eyewash and Shower
6151	Portable Fire Extinguishers
461	Permits to Operate (Air Tanks)
5144	Respiratory Protection Program
3203	Injury and Illness Prevention Program
2340.16	Work Space about Electric Equipment
5194	Hazard Communication
5185	Changing and Charging Storage Batteries
14300.32	Annual Summary of Employer Records of Occupational Injury or Illness
2473.1	Conductors Entering Boxes, Cabinets, or Fittings
2500.8	Flexible Cords and Cables (Uses Not Permitted)
3668	Powered Industrial Truck Operator Training
4184	Machine Guarding
3314	The Control of Hazardous Energy
3578	Permissible Wheel Exposures for Grinders

Source: DOSH

Safety Inspections

DOSH has three major public safety programs devoted to conducting inspections to protect the public from safety hazards:

- The Amusement Ride and Tramway Unit conducts public safety inspections of amusement rides, both portable and permanent, and aerial passenger tramways and ski lifts.
- The Elevator Unit conducts public safety inspections of different conveyances, including power-cable driven passenger and freight elevators, manlifts, and escalators.¹³⁶
- The Pressure Vessel Unit conducts public safety inspections of boilers and pressure vessels to ensure their safe operation in places of employment.

¹³⁶ For a list of conveyances, see <http://www.dir.ca.gov/Title8/sub6.html>.

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Cal/OSHA's Highest Hazard Industries List

Pursuant to Labor Code 6401.7(e)(3)(A), Cal/OSHA issues the Highest Hazard Industry List annually. The methodology for Cal/OSHA's High Hazard Industry threshold is based on >200 percent of the annual private sector average DART (Days Away, Restricted, and Transferred) rate. The DART rate in 2018, serving as a basis for the FY 2020-2021 High Hazard Industry threshold, was 2.1. Accordingly, the high hazard industry threshold for that fiscal year is 4.2.

For further information ...

Cal/OSHA's Highest Hazard Industry List for FY 2020-2021,
<https://www.dir.ca.gov/dosh/documents/hhu-list-2020-2021.pdf>

Safety and Health Standards

The Occupational Safety and Health Standards Board (OSHSB), a seven-member body appointed by the Governor, is the standards-setting agency within the Cal/OSHA program. The mission of OSHSB is to promote, adopt, and maintain reasonable and enforceable standards that will ensure a safe and healthy workplace for California workers.

To meet DIR's goal to ensure that California workplaces are lawful and safe, the Board shall pursue the following goals:

- Adopt and maintain effective occupational safety and health standards.
- Evaluate petitions to determine the need for new or revised occupational safety and health standards.
- Evaluate permanent variance applications from occupational safety and health standards to determine if equivalent safety will be provided.

OSHSB also has the responsibility to grant or deny applications for variances from adopted standards and respond to petitions for new or revised standards. The OSHSB safety and health standards provide the basis for Cal/OSHA enforcement.

For further information ...

<http://www.dir.ca.gov/oshsb/apprvd.html>

Occupational Safety and Health Appeals Board (OSHAB)

The Occupational Safety and Health Appeals Board (OSHAB) consists of three members appointed by the governor for four-year terms. By statute, the members are selected from among management, labor, and the general public. The chairman is selected by the governor.

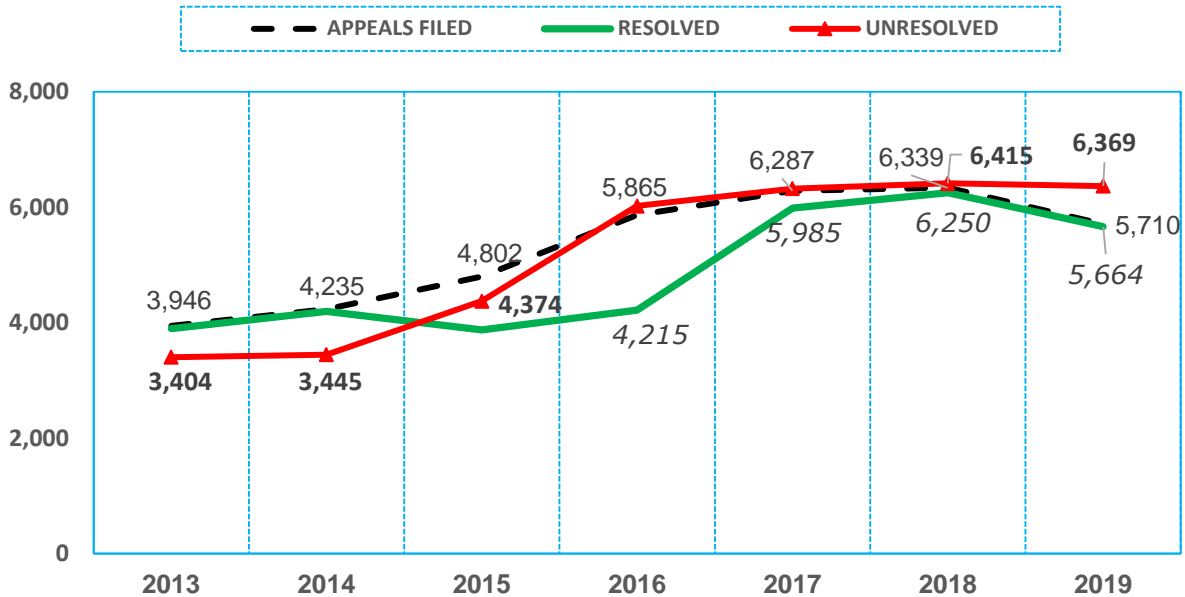
The mission of OSHAB is to resolve appeals and to provide clear, consistent guidance to the public, thereby promoting workplace health and safety fairly, efficiently, and in a timely manner. OSHAB handles appeals from private and public sector employers regarding citations issued by DOSH for alleged violations of workplace health and safety laws and regulations.

Figure 149 shows the OSHAB workload: appeals filed, resolved, and unresolved that are defined as "all appeals unresolved at a year's end" and include balances accumulated from previous years. The number of appeals filed yearly increased by 61 percent from 2013 to 2018 and decreased by 10 percent from 2018 to 2019.

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In 2013 and 2014, almost 100 percent of filed appeals were resolved each year; therefore, the average number of unresolved appeals per year reached its minimum of 3,400 cases on average in 2013 and 2014. In 2015 and 2016, the number of resolved appeals slowed down to 81 and then to 72 percent of filed appeals correspondingly. The number of unresolved cases increased from 2015 to 2017. Resolved appeals as a share of yearly filed appeals increased to 95 percent in 2017 and to 99 percent in 2018, as the number of unresolved cases leveled out. In 2019, almost 100 percent of the filed appeals were resolved, but the number of unresolved cases, accumulated from previous years, reached almost 6,400.

Figure 149: Occupational Safety and Health Appeals Board (OSHAB) Workload, 2013-2019



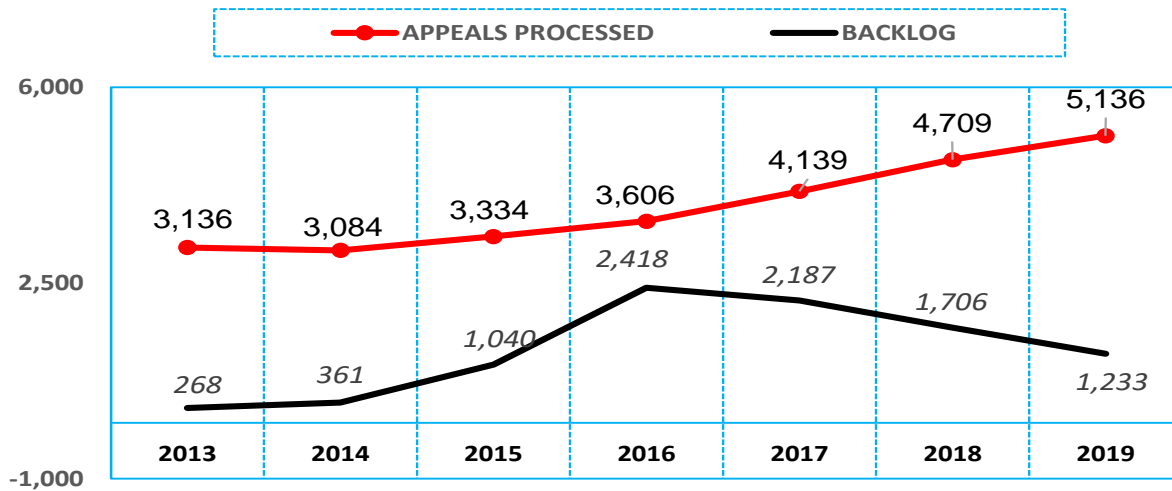
Data Source: OSHAB

The trend and level of backlogged citation appeals reflect changes in unresolved cases as they accumulate from previous years and a methodology of estimating backlogs based on a cumulative three-year moving average of processing the citations appealed (appeals filed). The formula for estimating yearly backlogs considers 10 months of incoming averaged appeals as the target process time for estimating the number of processed appeals against the unresolved cases.

Figure 150 shows that the number of backlogged appeals increased from 268 in 2013 to 2,418 cases in 2016. This growth in the backlog was the result of an increase in filing appeals and the accumulation of unresolved cases in 2015 and 2016 (see Figure 149). The number of filed appeals and unresolved cases leveled out from 2016 to 2018 and then decreased from 2018 to 2019. While the number of appeals processed increased by 42 percent from 2016 to 2019, the backlog decreased by 49 percent from 2016 to 2019.

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Figure 150: Occupational Safety and Health Appeals Board Backlogs, 2013-2019



Data Source: OSHAB

Educational and Outreach Programs

In conjunction and in cooperation with the health and safety and workers’ compensation community, CHSWC administers and participates in several major efforts to improve occupational health and safety through education and outreach programs.

Worker Occupational Safety and Health Training and Education Program

The Commission on Health and Safety and Workers’ Compensation (CHSWC) is mandated by Labor Code Section 6354.7 to maintain the Worker Occupational Safety and Health Training and Education Program (WOSHTEP). The purpose of WOSHTEP is to promote injury and illness prevention programs. For further information about WOSHTEP and its activities, see the “Special Report: CHSWC’s Health and Safety Programs.”

School Action for Safety and Health

Per the mandate set forth in the Labor Code 6434, CHSWC is to assist school districts and other local education agencies (LEAs) in implementing effective occupational injury and illness prevention programs (IIPPs). CHSWC has established a model program, California’s School Action for Safety and Health (SASH) program, to help schools statewide improve their injury and illness prevention programs. For further information about SASH and its activities, see the “Special Report: CHSWC’s Health and Safety Programs.”

The California Partnership for Young Worker Health and Safety

CHSWC has convened the California Partnership for Young Worker Health and Safety. The Partnership is a statewide task force that brings together government agencies and statewide organizations representing educators, employers, parents, job trainers, and others. The Partnership develops and promotes strategies to protect youth at work and provides training, educational materials, technical assistance, and information and referrals to help educate young workers. For further information about the Partnership see the “Special Report: CHSWC’s Health and Safety Programs.”

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In addition, DIR oversees these educational and outreach programs through Cal/OSHA:

Cal/OSHA Consultation

Consultative assistance is provided to small employers through on-site visits, telephone support, publications and educational outreach. All services provided by Cal/OSHA Consultation are provided free of charge to California employers.

Partnership Programs

California has developed several programs that rely on industry, labor, and government to work as partners in encouraging and recognizing workplace health and safety programs that effectively prevent and control worker injuries and illnesses. These partnership programs include the Voluntary Protection Program (VPP), Golden State, SHARP, Golden Gate, and special alliances formed among industry, labor, and OSHA.

UPDATE: THE CALIFORNIA WORKERS' COMPENSATION INSURANCE INDUSTRY

Background

In California, approximately two-thirds of the total State payroll is covered for workers' compensation through insurance policies, while the remainder is through self-insurance.¹³⁷ There are more than 200 private for-profit insurers and one public nonprofit insurer, the State Compensation Insurance Fund (SCIF).

The California Department of Insurance (CDI) oversees these insurers, as well as providers of all other non-federal lines of insurance within the jurisdiction of California. To accomplish its principal objective to protect insurance policyholders in the state, the CDI examines and regulates insurance companies to ensure that operations are consistent and comply with Insurance Code requirements.

Minimum Rate Law and Open Rating

In 1993, workers' compensation reform legislation repealed California's 80-year-old minimum rate law and in 1995 replaced it with an open-competition system of rate regulation, in which insurers set their own rates based on "pure premium advisory rates" developed by the Workers' Compensation Insurance Rating Bureau (WCIRB). These rates, approved by the Insurance Commissioner (IC) and subject to annual adjustment, are based on historical loss data for more than 500 job categories.

Under this "open rating" system, these recommended, non-mandatory pure premium rates are intended to cover the average costs of benefits and loss-adjustment expenses for all employers in an occupational class and thus provide insurers with benchmarks for pricing their policies. Insurers typically file rates intended to cover other costs and expenses, including unallocated loss-adjustment expenses, as well as an operating profit.

Workers' Compensation Advisory Premium Rates

As a result of the 2003 legislative reforms, WCIRB recommended changes and the Insurance Commissioner (IC) either approved them or declared no changes in the pure premium advisory rates. The pure premium rates, which reflect loss costs, including loss adjustment expenses per unit of exposure, are only advisory in that an insurer is not required to use either the proposed or the approved pure premium rates in establishing the rates that it will charge. When decisions were issued, the IC approved increases for three periods from January 1, 2013, to January 1, 2015, filings. According to Figure 151, the IC approved decreases in the pure premium advisory rates in nine consecutive periods beginning from July 1, 2015 to January 1, 2020. The WCIRB did not submit its July 1, 2013, July 1, 2014, July 1, 2019, and July 1, 2020 pure premium rate filings, and the IC did not issue the interim advisory rates for these periods. Recognizing that mid-year filings and adjustments to advisory pure premium rates can be disruptive to employers, agents, and brokers as well as insurers, the Committee established a guideline in 2011 stating that midyear filings would generally not be made by the WCIRB unless there was highly unusual volatility in experience or major legislative, regulatory, or judicial action. Before the impact of COVID-19 claims, the projected January 1, 2021, average pure premium rate was \$1.50 per \$100 of payroll. Based, among other things, on information related to COVID-19 infections, hospitalizations, and deaths through approximately August 1, 2020, the WCIRB proposed a 2.6 percent increase in its average January 1, 2021, advisory pure premium rates above the January 1, 2020, rates.¹³⁸ Although the overall average pure premium rate of \$1.56 per \$100 of payroll was not amended in its September 15, 2020, revised proposal, the WCIRB revised the individual proposed advisory pure premium rates by classification to reflect the updated information on the frequency and severity of COVID-19 claims by industry sector. These amounts, which averaged \$0.06 per \$100 of payroll as in the WCIRB's original January 1, 2021, filing (submitted on August 26, 2020), range from \$0.01 per \$100 of payroll in the information industry sector to \$0.24 per \$100 of payroll for segments

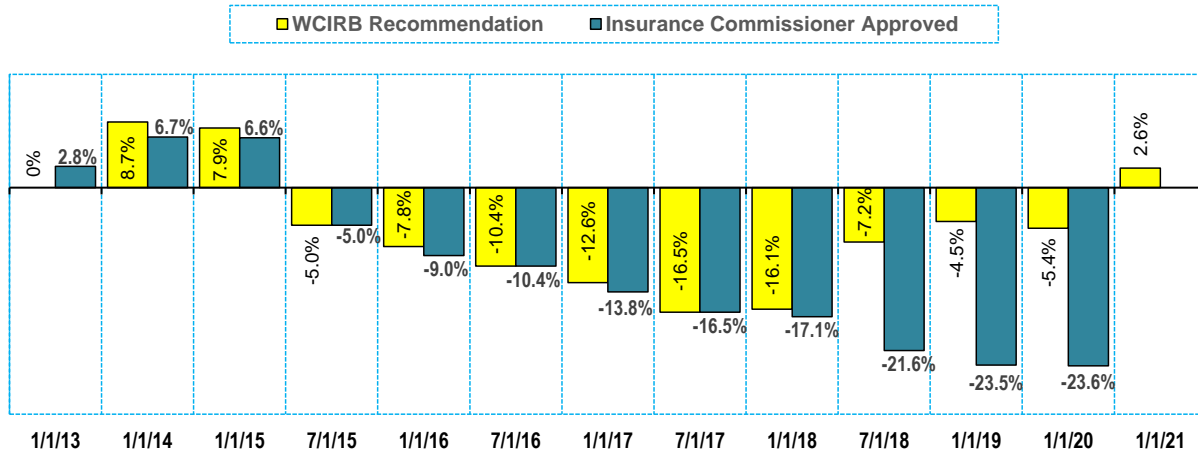
¹³⁷ Please note that the state of California is legally uninsured.

¹³⁸ WCIRB's January 1, 2021 Advisory Pure Premium Rate Filing, https://www.wcirb.com/sites/default/files/documents/20210101_jan_1_2021_ppr_filing.pdf.

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of the healthcare and social assistance industry sector.¹³⁹ (A history of pure premium rates since 2013 appears later in this section.)

Figure 151: Percentage Changes in Workers' Compensation Advisory Premium Rates, WCIRB Recommendation and Insurance Commissioner's Decision Compared to Corresponding Industry Average Filed Pure Premium Rate



Note: The WCIRB did not submit its July 1, 2013, July 1, 2014, July 1, 2019, and July 1, 2020 pure premium rate filings, and the IC did not issue the interim advisory rates for these periods.

Source: WCIRB

California Workers' Compensation Rate Changes

Workers' compensation legislative reforms enacted in 2003 and subsequent decisions by the IC on advisory claims cost benchmarks and pure premium rates led insurers to file a series of significant manual rate reductions from 2004 through 2008. Despite manual rate increases filed by insurers, which helped lead to additional legislative reforms passed in 2012 (SB 863), the top ten California workers' compensation insurers still maintain greatly reduced filed manual rates from those in 2003 (see Table 42).

Since the first reform package was chaptered in 2003, new insurers have continued to enter the California market and existing private insurers have increased their underwritings. The significant rate reductions since the first reforms were enacted, and SCIF's declining market share from its peak of 53 percent in 2003 to 10.56 percent in 2019 point to the dramatic initial success of the 2003 cost containment reforms and a stabilizing market with increased capacity and greater rate competition.

The impact of savings from the latest reform, SB 863 passed in 2012 and effective January 1, 2013, are being realized as the advisory pure premium rates effective January 1, 2019, averaged \$1.70 per \$100 of payroll and were 5.6 percent less than the average of the approved July 1, 2018, advisory pure premium rates of \$1.80. Approved pure premium rates effective January 1, 2020, averaged 1.52 per \$100 of payroll and were 7.2 percent lower than the approved January 1, 2019, pure premium rate of \$1.63 per \$100 of payroll. (See "Advisory Workers' Compensation Pure Premium Rates. A History since the 2013 Reform Legislation" on pp. 199-203.)

In response to the COVID-19 pandemic, on April 13, 2020, Commissioner Ricardo Lara ordered California WC insurers to provide a premium credit, reduction, return of premium, or other appropriate premium adjustment to all adversely impacted California policyholders with reduced exposure. In addition, the Insurance Commissioner indicated in his decision issued on November 25, 2020¹⁴⁰ that, "insurance

¹³⁹ WCIRB Submits Amended January 1, 2021 Pure Premium Rate Filing to CDI, <https://www.wcirb.com/news/wcirb-submits-amended-january-1-2021-pure-premium-rate-filing-cdi>.

¹⁴⁰ <https://www.wcirb.com/news/insurance-commissioner-issues-decision-regarding-2021-pure-premium-rate-filing>.

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companies are encouraged to take under advisement the actuarial analyses provided in the proposed decision as well as ongoing developments when evaluating whether and to what extent an adjustment or the costs of COVID-19 should be incorporated into a given insurer's rate filing." The CDI's proposed decision includes a *Table of Recommended COVID-19 Additive Adjustment per \$100 of Payroll*¹⁴¹ that average \$0.05 per \$100 of payroll. The IC's decision directed insurers to clearly identify any filed rate or rating plan component that includes an adjustment for COVID-19 in rate filings submitted to the CDI and directed the WCIRB to collect data on the aggregate premium charged for any rate or rating plan component that includes an adjustment for COVID-19. At this time, the impact of COVID-19 has not been reflected in current WC rate filings submitted to the Department of Insurance.

Table 42: California Workers' Compensation Top 10 Insurers Rate Filing Changes

COMPANY NAME	GROUP NAME	Market Share 2019	Cumulative Rate Change 1-04 to 4-20	4-1-2020 % Filed Rate Change*	4-1-2019 % Filed Rate Change*	4-1-2018 % Filed Rate Change*	4-1-2017 % Filed Rate Change*
State Compensation Insurance Fund	N/A	10.56%	-52.09%	-10.00%	-10.0%	-8.00%	-9.50%
Insurance Company of the West	American Assets Group	6.94%	-58.99%	-9.00%	-17.80%	-10.60%	-10.32%
Travelers Property Casualty Company of America	Travelers Group	5.43%	-48.99%	-5.80%	-10.0%	-6.40%	-5.20%
Zurich American Insurance Co.	Zurich Ins. Group	2.97%	-50.88%	-0.20%	-7.00%	-9.10%	-8.73%
Cypress Insurance Company	Berkshire Hathaway Group	2.68%	-61.93%	-4.30%	-16.7%	-7.00%	-5.00%
Zenith Insurance Company	Fairfax Financial	2.57%	-24.48%	-6.52%	-8.50%	-2.50%	-0.40%
Redwood Fire & Casualty Ins.	Berkshire Hathaway	2.15%	-75.45%	-4.40%	-16.7%	-6.90%	-9.60%
Security National Insurance Co**	Am Trust NGH Group	2.09%	36.33%	-2.47%	-0.60%	-0.30%	-0.80%
Federal Insurance Company	Chubb Group	1.83%	-57.53%	-11.90%	-4.80%	-8.80%	0.10%
Benchmark Insurance Company	Benchmark Grp	1.67%	-31.55%	0.00%	-17.8%	-3.00%	-10.3%

* Indicated % filed rate change reflects cumulative rate change(s) in effect as of that date from the rates in effect on the preceding date.

** Security National Insurance Company entered the California market in 2008.

Workers' Compensation Premium

After elimination of the minimum rate law, the total written premium declined from a high of \$8.9 billion in 1993 to a low of \$5.7 billion (\$5.1 billion net of deductible) in 1995. The written premium grew slightly from 1996 to 1999 due to growth of insured payroll, an increase in economic growth, movement from self-insurance to insurance, and other factors, rather than due to increased rates. However, even with well over a million new workers covered by the system, the total premium paid by employers remained below the level seen at the beginning of the 1990s.

At the end of 1999, the IC approved an 18.4 percent pure premium rate increase for 2000, and the market began to harden after five years of open rating, though rates remained less than two-thirds of the 1993 level. Since then, the market has continued to firm, with the IC approving a 10.1 percent increase in the advisory rates for 2001 and a 10.2 percent increase for 2002. The total written premium increased by 37 percent to \$21.4 billion from 2002 to 2003 and increased by about 10 percent to a peak of \$23.5 billion from

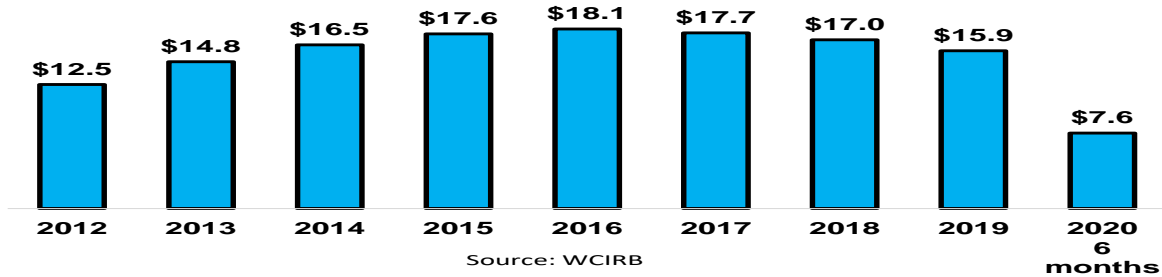
¹⁴¹ <https://www.wcirb.com/news/insurance-commissioner-issues-decision-regarding-2021-pure-premium-rate-filing>.

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2003 to 2004. The written premium declined by almost 63 percent from \$23.5 billion to \$8.8 billion between 2004 and 2009 due to rate decreases. From 2009 to 2016, the written premium more than doubled.

Figure 152 shows the California workers' compensation written premium gross of deductible credits between 2012 and 2019. Note that these amounts exclude dividends. According to WCIRB, written premium for the first two quarters of 2020 was 11 percent below that for the first two quarters of 2019. The impact of the COVID-19 crisis on the California economy is expected to significantly reduce employer payroll and insurer premium for the remainder of 2020.¹⁴²

Figure 152: Workers' Compensation Written Premium as of June 30, 2020 (Billion \$)

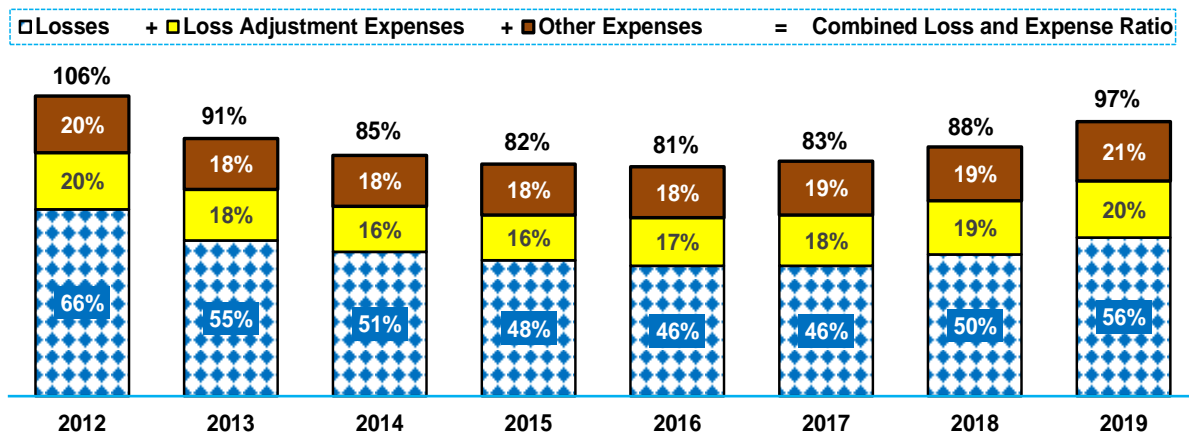


Combined Loss and Expense Ratio

The accident year combined loss and expense ratio measures workers' compensation claims payments and administrative expenses against the earned premium.

According to Figure 153, in accident year 2019, insurers' claim projected costs and expenses amounted to \$.97 for every dollar of premium collected.¹⁴³ The industry ratio was fairly stable between 2012 and 2019, and 2019 was the seventh consecutive year with a combined ratio below 100 percent. The projected combined ratio is nine points higher for 2019 than 2018, as premium levels decreased while average claim severity increased. Since 2016, combined ratios have increased primarily because of lower premium levels driven by lower insurer rates and higher expense ratios.

Figure 153: California Workers' Compensation Combined Loss and Expense Ratios



¹⁴² WCIRB Quarterly Experience Report as of June 30, 2020, Insurer Experience, Chart 1.

https://www.wcirb.com/sites/default/files/documents/quarterly_experience_report_2020_2q-handout.pdf

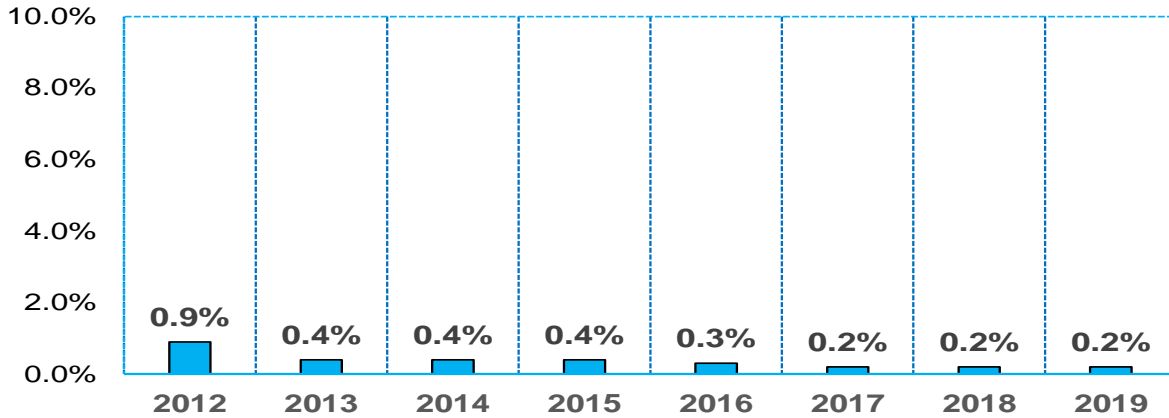
¹⁴³ WCIRB 2020 State of the System Report, Chart 52.

https://www.wcirb.com/sites/default/files/documents/2020_state_of_the_system_report-ar.pdf

Policy Holder Dividends

Dividends to policyholders were not paid in 2004 and were then reinstated from 2005 through 2011 at a very low rate. Dividends paid to policyholders increased up to 0.9 percent in 2012 and then decreased to 0.4 percent in 2013. From 2013 to 2019, dividends paid to policyholders decreased steadily, from 0.4 to 0.2 percent of the earned premium. These estimated insurer policyholder dividends totaling \$32 million incurred in 2019 resulted in an underwriting profit of \$2.9 billion, or 18 percent of the earned premium, as shown in Figure 154.

Figure 154: Insurer Policy Holder Dividends as a Percentage of Earned Premium (by Calendar Year)



Source: WCIRB

Projected Ultimate Total Loss

Figure 155 shows changes in the projected average indemnity, medical, and allocated loss adjustment expense (ALAE) cost components of the projected ultimate total loss or projected average cost (“severity”) per workers’ compensation indemnity claim.

Beginning with claims incurred on policies incepting on or after July 1, 2010, the cost of medical cost containment programs (MCCP) is reported to WCIRB as allocated loss adjustment expenses (ALAE) rather than as medical loss.

The WCIRB projected the average cost or “severity” of a 2019 claim¹⁴⁴ to be \$68,662, which is generally consistent with the projected severity for 2018, although with a slight second year increase following several years of modest decline in claim severities.¹⁴⁵ The projected average indemnity cost showed a relatively modest increase from 2013 to 2015, primarily a result of SB 863 increases to permanent disability benefits effective in 2013 and 2014. After a slight decrease from 2015 to 2016, the severity of indemnity claims was flat in 2016 and 2017 before starting to increase again. The projected indemnity severity was 4 percent higher in 2019 than in 2018 and 8 percent higher than in 2017. Following a steady 11 percent decrease in medical severities from 2013 to 2017, driven by medical cost savings arising from SB 863, there was a 5 percent increase from 2017 to 2018. According to the WCIRB, this increase was driven in part by a higher volume of large claims and annual inflation adjustments to the medical fee schedule. From 2018 to 2019, the projected medical severity decreased by 2 percent. An initial review of the experience in 2019 by the WCIRB suggests that decreases in the use of medical services and flattening claim settlement rates had an impact on average medical costs.¹⁴⁶ The relatively flat medical severities since 2015 were driven by

¹⁴⁴ Only indemnity claims (excluding medical-only ones) are included in these estimates. See “WCIRB Quarterly Experience Report, as of December 31, 2019” More Information, page 21.

¹⁴⁵ WCIRB Quarterly Experience Report, as of December 31, 2019, Charts 8–12.

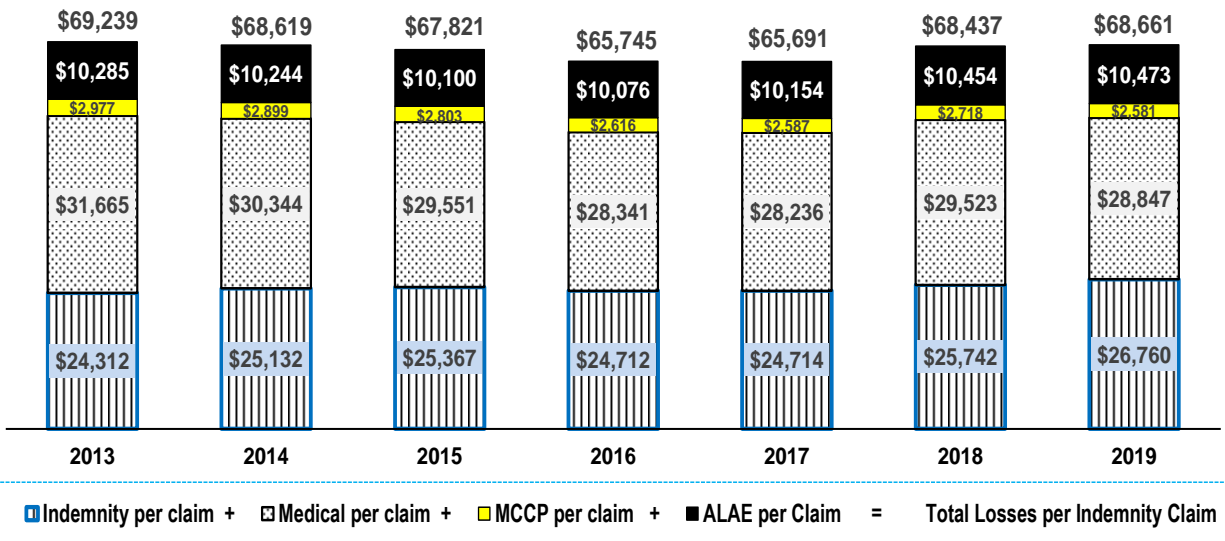
¹⁴⁶ WCIRB Quarterly Experience Report, as of December 31, 2019, Chart 10.

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recent reforms, reduced pharmaceutical costs and efforts to fight fraud. The projected average ALAE cost, excluding MCCP, was flat from 2013 to 2019, with an average of \$10,250 despite reductions in average loss severity driven by reforms.¹⁴⁷ According to the WCIRB, the average ALAE costs tend to rise shortly after the implementation of reforms, even during periods when medical costs have declined. Another factor is improving claim settlement rates, which might moderate ALAE costs as well.

According to the WCIRB, the average claim severity for accident year 2020 will be heavily affected by COVID-19 claims and other issues arising from the pandemic.

Figure 155: Projected Ultimate Total Loss and ALAE per Indemnity Claim, as of December 31, 2019



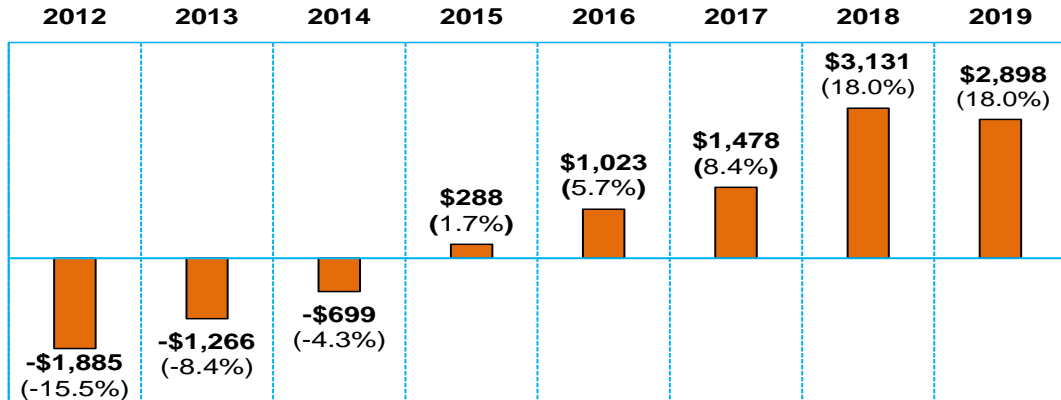
Source: WCIRB

Insurer Profit/Loss

Workers' compensation insurers experienced large fluctuations in profits and losses during the past decade, as measured by actual dollars and percentage of earned premium. From the implementation of the reforms of 2004 until 2008, insurer underwriting profits were uncharacteristically high. Investment income typically was the main source of insurer profits, but underwriting profits from policies was a new development. In 2008, workers' compensation insurers experienced losses for the first time since 2004. The pre-tax underwriting losses increased to 17 percent in both 2009 and 2010, and then according to Figure 156, was 15.6 percent of earned premium in 2012, and then declined steadily from 2012 to 2014. In 2015, insurers experienced the underwriting profits of 1.8 percent after 7 years of losses. In 2019, the underwriting profits increased 16.2 percentage points from 1.8 percent.

¹⁴⁷ WCIRB Quarterly Experience Report, as of December 31, 2019, Chart 11.

**Figure 156: Insurer Pre-Tax Underwriting Profit/Loss¹⁴⁸, 2012-2019
(Million \$ and as a Percentage of the Earned Premium)**



Source: WCIRB

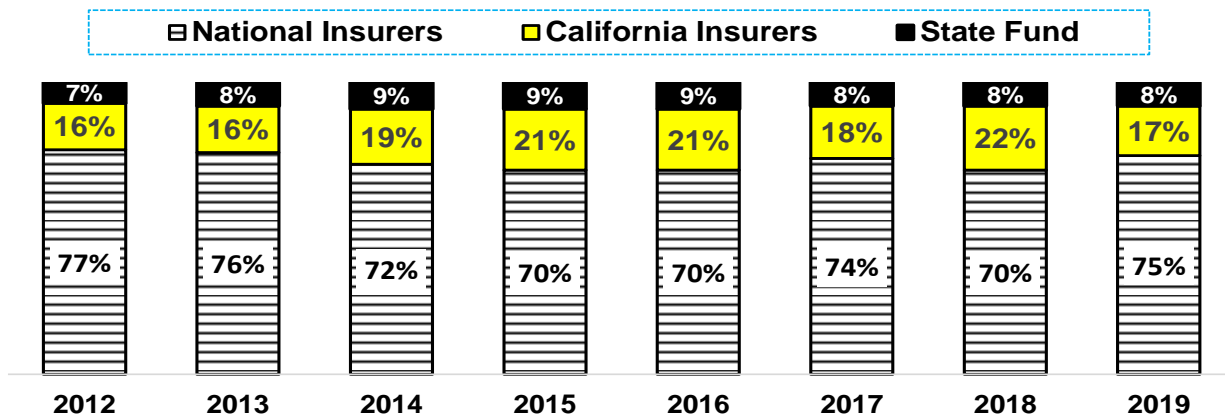
Current State of the Insurance Industry

Market Share

A number of California insurers left the market or reduced their underwritings as a result of the decrease in profitability, contributing to a major redistribution of market share among insurers since 1993. Figure 157 shows changes in the workers' compensation insurance market share from 2012 to 2018.

According to WCIRB, from 2012 to 2019, SCIF attained between 7 to 9 percent of the California workers' compensation insurance market. The market share of California domestic insurers, excluding SCIF, increased overall, from 16 percent in 2012 to 22 percent in 2018, and then declined to 17 percent in 2019.

Figure 157: Workers' Compensation Insurance Market Share in California by Type of Insurer Based on Written Premium Prior to Deductible Credits



Note: California Insurers are defined as private insurers who write at least 80 percent of their workers' compensation business in California.

Data Source: WCIRB

¹⁴⁸ Underwriting profits or losses in this report represent only insured policies prior to reinsurance assumed or ceded and before the application of deductible credits or advisory retrospective rating plan adjustments. Also these numbers reflect underwriting results only, not overall profitability, taking into account measures of investment income or federal income taxes.

Impact of September 11, 2001, on Insurance Industry

The problems in the reinsurance market caused by the tragic events of September 11, 2001, significantly affected the cost and availability of catastrophe reinsurance and, correspondingly, had a significant effect on the cost of workers' compensation insurance. This effect extended to more than acts of terrorism and is a critical component of any evaluation of the California workers' compensation insurance marketplace. The insurance industry remained concerned about the renewal of the Terrorism Risk Insurance Act, often known as TRIA, which was reauthorized in 2007 and extended to December 2014. Now known as TRIPRA, the Terrorism Risk Insurance Program Reauthorization Act of 2015 amends the expiration date of the Terrorism Risk Insurance Program (TRIP) to December 31, 2020.

**Advisory Workers' Compensation Pure Premium Rates
A History since the 2013 Reform Legislation**

January 1, 2013

WCIRB recommendations:

On October 1, 2012, the WCIRB submitted its January 1, 2013, pure premium rate filing to the California Insurance Commissioner. The WCIRB did not recommend a January 1, 2013, increase in the advisory pure premium rate level. Instead, the WCIRB proposed January 1, 2013, pure premium rates that average \$2.38 per \$100 of payroll, which is the industry average filed pure premium rate as of July 1, 2012. The amended January 1, 2013, Pure Premium Rate Filing incorporated new proposed advisory pure premium rates as well as proposed changes to the reporting requirements of the *California Workers' Compensation Uniform Statistical Reporting Plan—1995* and to the eligibility threshold of the *California Workers' Compensation Experience Rating Plan—1995*.

Insurance Commissioner action:

On November 30, 2012, the Commissioner issued a decision approving new advisory pure premium rates effective January 1, 2013, that average \$2.56 per \$100 of payroll which is 2.8 percent higher than the industry average filed pure premium rate of \$2.49 per \$100 of payroll as of November 9, 2012.

July 1, 2013

WCIRB recommendations:

On April 3, 2013, after some discussion, the WCIRB Governing Committee unanimously agreed not to submit a July 1, 2013, Pure Premium Rate Filing. Instead, the Actuarial Committee agreed to continue reviewing insurer experience in preparation for the regular January 1, 2014, Pure Premium Rate Filing to be submitted in August.

Insurance Commissioner action:

The Insurance Commissioner did not issue an interim advisory rate for this period.

January 1, 2014

WCIRB recommendations:

On October 23, 2013, the WCIRB and public members voted unanimously to amend the WCIRB's January 1, 2014, Pure Premium Rate Filing to propose an additional 1.8 percent increase in pure premium rates to reflect the increased costs of the new physician fee schedule recently adopted by the Division of Workers' Compensation (DWC). With this amendment, the WCIRB proposed January 1, 2014, advisory pure premium rates that average \$2.75 per \$100 of payroll which is 8.7 percent greater than the industry average pure premium rate of \$2.53 as of July 1, 2013. (The original Filing submitted on September 13, 2013, proposed an industry average pure premium rate of \$2.70, which is 6.9 percent higher than the July 1, 2013, industry average pure premium rate.)

Insurance Commissioner action:

On November 22, 2013, the California Department of Insurance (CDI) issued a decision regarding the WCIRB's January 1, 2014, Pure Premium Rate Filing approving advisory pure premium rates effective January 1, 2014, that average \$2.70 per \$100 of payroll, which is 6.7 percent higher than the average filed pure premium rate as of July 1, 2013.

July 1, 2014

WCIRB recommendations:

On April 3, 2014, after some discussion, the WCIRB Governing Committee unanimously agreed not to submit a July 1, 2014, Pure Premium Rate Filing.

Insurance Commissioner action:

The Insurance Commissioner did not issue a decision with respect to the pure premium rate for this period.

January 1, 2015

WCIRB recommendations:

On September 4, 2014, the WCIRB voted to amend the WCIRB's January 1, 2015, Pure Premium Rate Filing to propose advisory pure premium rates that average \$2.77 per \$100 payroll in lieu of the advisory pure premium rates averaging \$2.86 per \$100 of payroll that were proposed in the WCIRB's initial August 19, 2014, Filing. The new proposed average pure premium rate of \$2.77 is 7.9 percent higher than the corresponding industry average filed pure premium rate of \$2.57 as of July 1, 2014.

Insurance Commissioner action:

On November 14, 2014, the Insurance Commissioner issued a decision regarding the WCIRB's January 1, 2015, Pure Premium Rate Filing approving advisory pure premium rates effective January 1, 2015, that average \$2.74 per \$100 of payroll, which is 6.6 percent higher than the average filed pure premium rate as of July 1, 2014, of \$2.57 per \$100 of payroll and 2.2 percent above the average approved January 1, 2014, pure premium rate of \$2.68 per \$100 of payroll.

July 1, 2015

WCIRB recommendations:

On April 6, 2015, the WCIRB submitted a July 1, 2015, Pure Premium Rate Filing to the California Department of Insurance (CDI) proposing advisory pure premium rates effective July 1, 2015, that average \$2.46 per \$100 of payroll. The average proposed advisory pure premium rate is 5.0 percent lower than the corresponding industry average filed pure premium rate of \$2.59 as of January 1, 2015, and 10.2 percent less than the approved average January 1, 2015, advisory pure premium rate of \$2.74.

Insurance Commissioner action:

On May 7, 2015, the Commissioner approved the WCIRB's proposed advisory pure premium rates that average \$2.46 per \$100 of payroll. The approved pure premium rates are, on average, 5.0 percent less than the industry average filed pure premium rate as of January 1, 2015, of \$2.59 and 10.2 percent less than the average of the approved January 1, 2015, advisory pure premium rates of \$2.74. The approved advisory pure premium rates are effective July 1, 2015, for new and renewal policies.

January 1, 2016

WCIRB recommendations:

On August 19, 2015, the WCIRB submitted its January 1, 2016, Pure Premium Rate Filing to the California Insurance Commissioner. The pure premium rates for the 491 standard classifications proposed to be effective January 1, 2016, average \$2.45 per \$100 of payroll, which is \$0.21, or 7.8 percent, less than the corresponding industry average filed pure premium rate of \$2.66 as of July 1, 2015, and \$0.02 or 0.8 percent less than the average approved July 1, 2015, advisory pure premium rate of \$2.47

Insurance Commissioner action:

On October 20, 2015, the Insurance Commissioner issued a decision regarding the WCIRB's January 1, 2016, Pure Premium Rate Filing, approving advisory pure premium rates that averaged \$2.42 per \$100 of payroll. The approved pure premium rates were, on average, 9.0 percent less than the industry average filed pure premium rate as of July 1, 2015, of \$2.66 and 2.0 percent less than the average of the approved July 1, 2015, advisory pure premium rates of \$2.47.

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July 1, 2016

WCIRB recommendations:

On April 11, 2016, the WCIRB submitted its July 1, 2016, Pure Premium Rate Filing to the California Insurance Commissioner. The pure premium rates proposed to be effective July 1, 2016, average \$2.30 per \$100 of payroll, which is 10.4 percent lower than the corresponding industry average filed pure premium rate of \$2.57 as of January 1, 2016, and 5.0 percent less than the average approved January 1, 2016, advisory pure premium rate of \$2.42.

Insurance Commissioner action:

On May 31, 2016, the Insurance Commissioner issued a decision regarding the WCIRB's July 1, 2016, Pure Premium Rate Filing, approving advisory pure premium rates that averaged \$2.30 per \$100 of payroll. The approved pure premium rates were, on average, 10.4 percent less than the industry average filed pure premium rate as of January 1, 2016, of \$2.57 and 5.0 percent less than the average of the approved January 1, 2016, advisory pure premium rates of \$2.42.

January 1, 2017

WCIRB recommendations:

On August 19, 2016, the WCIRB submitted its January 1, 2017, Pure Premium Rate Filing to the California Insurance Commissioner. The pure premium rates proposed to be effective January 1, 2017, averaged \$2.26 per \$100 of payroll. On October 3, 2016, after completing evaluations of June 30, 2016 experience, the WCIRB submitted an amended advisory pure premium rate averaging \$2.22 per \$100 of payroll. The proposed rate is 12.6 percent less than the corresponding industry average filed pure premium rate of \$2.54 as of July 1, 2016 and 4.3 percent less than the average approved July 1, 2016 advisory pure premium rate of \$2.32.

Insurance Commissioner action:

On October 27, 2016, the Insurance Commissioner issued a decision regarding the WCIRB's January 1, 2017, Pure Premium Rate Filing, approving advisory pure premium rates that averaged \$2.19 per \$100 of payroll. The approved pure premium rates were, on average, 13.8 percent less than the industry average filed pure premium rate as of July 1, 2016, of \$2.54 and 5.6 percent less than the average of the approved July 1, 2016, advisory pure premium rates of \$2.32 per \$100 of payroll.

July 1, 2017

WCIRB recommendations:

On April 11, 2017, the WCIRB submitted its July 1, 2017, Pure Premium Rate Filing to the California Insurance Commissioner. The pure premium rates proposed to be effective July 1, 2017, averaged \$2.02 per \$100 of payroll. The average proposed rate is 16.5 percent less than the corresponding industry average filed pure premium rate of \$2.42 as of January 1, 2017 and 7.8 percent less than the average approved January 1, 2017 advisory pure premium rate of \$2.19.

Insurance Commissioner action:

On May 22, 2017, the Insurance Commissioner issued a decision regarding the WCIRB's July 1, 2017, Pure Premium Rate Filing, approving advisory pure premium rates that averaged \$2.02 per \$100 of payroll. The approved advisory pure premium rates were, on average, 16.5 percent less than the corresponding industry average filed pure premium rate as of January 1, 2017, of \$2.42 and 7.8 percent less than the average of the approved January 1, 2017, advisory pure premium rates of \$2.19 per \$100 of payroll.

January 1, 2018

WCIRB recommendations:

On August 18, 2017, the WCIRB submitted its January 1, 2018, Pure Premium Rate Filing to the California Insurance Commissioner. The pure premium rates proposed to be effective January 1, 2018, averaged \$2.01 per \$100 of payroll. On September 8, 2017, the WCIRB submitted an amended January 1, 2018 Pure Premium Rate Filing. The proposed amended rate average \$1.96 and is 16.1 percent less than the corresponding industry average filed pure premium rate of \$2.00 as of July 1, 2017 and 2 percent less than the average approved July 1, 2017 advisory pure premium rate of \$2.00.

Insurance Commissioner action:

On October 26, 2017, the Insurance Commissioner issued a decision regarding the WCIRB's January 1, 2018, Pure Premium Rate Filing, approving advisory pure premium rates that averaged \$1.94 per \$100 of payroll. The approved pure premium rate was, on average, 17.1 percent less than the industry average filed pure premium rate as of July 1, 2017, of \$2.34 and 3 percent less than the average of the approved July 1, 2017, advisory pure premium rates of \$2.00 per \$100 of payroll.

July 1, 2018

WCIRB recommendations:

On April 9, 2018, the WCIRB submitted its July 1, 2018, Pure Premium Rate Filing to the California Insurance Commissioner. The pure premium rates proposed to be effective July 1, 2018, averaged \$1.80 per \$100 of payroll. The proposed advisory pure premium rate was 7.2 percent less than the average approved January 1, 2018 advisory pure premium rates.

Insurance Commissioner action:

On May 29, 2018, the Insurance Commissioner issued a decision regarding the WCIRB's July 1, 2018, Pure Premium Rate Filing, approving advisory pure premium rates that averaged \$1.74 per \$100 of payroll. The approved pure premium rate was, on average, 21.6 percent less than the industry average filed pure premium rate as of January 1, 2018, of \$2.22 and 10.3 percent less than the average of the approved January 1, 2018, advisory pure premium rates of \$1.94 per \$100 of payroll.

January 1, 2019

WCIRB recommendations:

On August 20, 2018, the WCIRB submitted its January 1, 2019, Pure Premium Rate Filing to the California Insurance Commissioner. The pure premium rates proposed to be effective January 1, 2019, averaged \$1.70 per \$100 of payroll. The proposed advisory pure premium rate was 4.5 percent less than the average approved July 1, 2018 advisory pure premium rates.

Insurance Commissioner action:

On November 7, 2018, the Insurance Commissioner issued a decision regarding the WCIRB's January 1, 2019, Pure Premium Rate Filing, approving advisory pure premium rates that averaged \$1.63 per \$100 of payroll. The approved pure premium rate was, on average, 23.5 percent less than the industry average filed pure premium rate as of July 1, 2018, of \$2.13 and 8.4 percent less than the average of the approved July 1, 2018, advisory pure premium rates of \$1.78 per \$100 of payroll.

July 1, 2019

WCIRB recommendations:

On April 3, 2019, the WCIRB Governing Committee agreed not to submit a July 1, 2019, Pure Premium Rate Filing. Recognizing that midyear filings and adjustments in advisory pure premium rates can be disruptive for employers, agents, and brokers as well as insurers, the Committee established a guideline in 2011 stating that midyear filings would generally not be made by the WCIRB unless there was highly unusual volatility in experience or major legislative, regulatory, or judicial action. Based on the December 31, 2018, experience and analysis, the Committee determined that the overall improvement in experience since the January 1, 2019, approved pure premium rates was more moderate, approximately \$0.06 per \$100 of payroll or less than 4 percent than in recent years.

Insurance Commissioner action:

The Insurance Commissioner did not issue a decision with respect to the pure premium rate for this period.

January 1, 2020

WCIRB recommendations:

On August 20, 2019, the WCIRB submitted its January 1, 2020, Pure Premium Rate Filing to the California Insurance Commissioner. The pure premium rates proposed to be effective January 1, 2020, averaged \$1.58 per \$100 of payroll. The proposed advisory pure premium rate is 5.4 percent less than the average current January 1, 2019, advisory pure premium rates.

Insurance Commissioner action:

On November 13, 2019, the Insurance Commissioner issued a decision regarding the WCIRB's January 1, 2020, Pure Premium Rate Filing, approving advisory pure premium rates that averaged \$1.52 per \$100 of payroll. The average approved pure premium rate is about 23.6 percent lower than the industry filed average pure premium rate of \$1.99 as of July 1, 2019 and 9.0 percent lower than the average approved January 1, 2019 advisory pure premium rate of \$1.67 per \$100 of payroll.

January 1, 2021

WCIRB recommendations:

On September 15, 2020, the WCIRB amended its January 1, 2021, Pure Premium Rate Filing submitted to the California Insurance Commissioner on August 26, 2020. The overall average pure premium rate proposed to take effect January 1, 2021, was not amended and averaged \$1.56 per \$100 of payroll, reflecting the average provision of \$0.06 per \$100 of payroll COVID-19 adjustment, based on the relative frequency of COVID-19 claims by industry sector. Projected average PPR prior to the impact of COVID-19 claims is \$1.50 per \$100 of payroll. The WCIRB amended individual proposed advisory pure premium rates by classification to reflect updated information on the frequency of COVID-19 claims by industry sector. The proposed advisory pure premium rate is 2.6 percent above the average approved January 1, 2020, advisory pure premium rates. The regulatory filing for January 1, 2021, PPR includes a new classification for Clerical Telecommuter Employees approved by the IC on June 25, 2020, which applies to Clerical Office Employees who work more than 50 percent of their time at home or any office space other than the location of their employer.

Insurance Commissioner action:

On November 25, 2020, the Insurance Commissioner issued a decision regarding the WCIRB's January 1, 2021, pure premium rate filing, approving advisory pure premium rates that averaged \$1.45 per \$100 of payroll. The average approved 2021 advisory pure premium rate, which does not reflect a provision for projected COVID-19 claim costs, is 4.6 percent below the average approved January 1, 2020 advisory pure premium rate. While the approved advisory pure premium rates do not reflect a provision for projected COVID-19 claim costs on 2021 policies, the IC's decision directed insurers to clearly identify any filed rate or rating plan component that includes an adjustment for COVID-19 in rate filings submitted to the CDI and directed the WCIRB to collect data on the aggregate premium charged for any rate or rating plan component that includes an adjustment for COVID-19.

Source: WCIRB.

SPECIAL REPORT: COVID-19 PRESUMPTIONS AND WORKERS' COMPENSATION BENEFITS STUDY RELATED TO SB 1159

Background

The first case of COVID-19 in California was confirmed on January 26, 2020. A state of emergency was declared by Governor Newsom on March 4, 2020. A mandatory statewide stay-at-home order was issued on March 19. As of October 11, 2020, the California Department of Public Health (CDPH) reported 850,028 confirmed cases and 16,572 deaths in the state.¹⁴⁹

When COVID-19 was detected and diagnosed in California, public health officials immediately became concerned about the capacity of hospitals to accommodate the potentially high number of COVID-19 patients with symptoms and the large number of patients in need of intensive care unit (ICU) occupancy, with therapies ranging from oxygen or surgical intubation with ventilators to experimental drugs not yet approved by the Food and Drug Administration for marketing to physicians and used according to evidence-based guidelines.

Individual states gathered resources and expertise to address the challenging transmissible disease as incomplete medical information was collected and proposed solutions evolved. COVID-19 was quickly recognized as a global pandemic, and as such the U.S. medical community looked at how other countries were responding and protecting their inhabitants, especially those who first experienced the rapid spread of the disease,¹⁵⁰ before conditions in the U.S. spiraled out of control. The necessity of several measures to contain the spread of the disease until research could determine more scientific solutions in order to reduce the risk of infection and widespread disease became evident: isolation¹⁵¹ and social distancing, wearing facial masks, and hand washing. The risk factors vary across population and age groups, but addressing them properly was challenged by the high degree of spread from asymptomatic cases and other transmission anomalies. Pinpointing how to achieve immunity and limit surges in community transmission was difficult. In California, Governor Newsom issued many executive orders related to public health and safety¹⁵² to deal with the consequent impacts of these measures on society in the “new normal” and the economy.

At the same time, public health officials became concerned about the occupational health impacts from potential workforce exposure to COVID-19. They needed to strike a balance between limiting all but the most essential workers from daily social interaction in order to maintain the flow of vital goods and services and protecting the public and private sector workers who would deliver those goods and services.

On May 6, 2020, Governor Newsom signed into law Executive Order N-62-20¹⁵³ to provide a direct path to insurance and relatively undisputed¹⁵⁴ medical care and benefits in the event that a worker became infected, covering claims between March 19 and July 5, 2020. This direct path took the form of a workers' compensation (WC) presumption. Establishing this presumption as work related offers certain benefits related to retaining employment, rather than being discharged, as if there were fault or no job protection.¹⁵⁵

¹⁴⁹ “COVID-19 pandemic in California,” Wikipedia, at https://en.wikipedia.org/wiki/COVID-19_pandemic_in_California, accessed 10/19/2020. See also “Timeline: California reacts to coronavirus,” CalMatters at <https://calmatters.org/health/coronavirus/2020/04/gavin-newsom-coronavirus-updates-timeline/#First%20case%20of%20COVID-19%20in%20California>, accessed 10/19/2020.

¹⁵⁰ Wuhan and other provinces in China, then Italy and Spain, and later the United Kingdom.

¹⁵¹ Quarantine after detection as infected or testing positive.

¹⁵² See “California Takes Action to Combat COVID-19,” at <https://www.gov.ca.gov/california-takes-action-to-combat-covid-19/>, accessed 10/20/2020.

¹⁵³ Text of order at <https://www.gov.ca.gov/wp-content/uploads/2020/05/5.6.20-EO-N-62-20-text.pdf>, accessed 10/20/2020.

¹⁵⁴ That is, a rebuttable presumption.

¹⁵⁵ Presumption status does not guarantee a job but does offer certain protections and can lead to a return-to-work pathway of mutual benefit to employee and employer.

SPECIAL REPORT: COVID-19 PRESUMPTIONS AND WORKERS' COMPENSATION BENEFITS STUDY RELATED TO SB 1159

SB 1159 Presumptions for Public Safety Workers and Outbreaks in the Workplace

During the summer, legislators became aware of the prolonged nature of exposure to COVID-19. On September 17, 2020, Governor Newsom signed into law SB 1159,¹⁵⁶ which took effect immediately as an urgency statute. SB 1159 was authored by Senator Jerry Hill of District 13 in Santa Clara and San Mateo Counties; he is chair of the Senate Committee on Labor, Public Employment, and Retirement. SB 1159 codified the Governor's previous executive order assigning COVID-19 a presumption and created two new presumptions dependent on testing positive, as defined, for COVID-19. The first one was for public safety workers¹⁵⁷ as well as health-care providers. The second one was for all other workers, during an "outbreak,"¹⁵⁸ as defined. They cover all new claims from July 6, 2020, to January 1, 2023, for both public and private sector employees.

Commission on Health and Safety and Workers' Compensation (CHWSC) Study of Impact from SB 1159 Covid-19 Presumptions

SB 1159 also requires CHSWC to conduct a study of the impacts of COVID-19 claims on the WC system, including an assessment of differences in the impacts across different occupational groups and of the presumption statutes. Because of the unusual or uncommon extension of presumptions beyond the relatively narrow focus of public safety workers due to their unique exposure to a wide range of toxic chemicals and pathogens, this study creates a unique opportunity to examine infection rates by occupation and by workplace, as well as the ability of insurers to obtain data from employers. As the medical community better understands the long-term effects of COVID-19, such as damage to human organs, the true cost of prevention versus cure or relief will be examined but perhaps not in time for this particular study. The real-time costs and the nature of these COVID-19 presumptions will be examined to the extent that data is available—upon request using the authority of existing statutes. The discovery of an effective vaccine that could be efficiently administered to everyone is the goal, of course, but until that time, prudent measures to protect the livelihood as well as the lives of workers will be examined by CHSWC when requested.

SB 1159 states that a preliminary report from CHSWC is due to the Legislature and the Governor by December 31, 2021, with a final report delivered by April 30, 2022.

Status: In Progress

¹⁵⁶ Text of SB 1159 at https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200SB1159, accessed 10/20/2020.

¹⁵⁷ See Labor Code Section 3212.87 (a) of SB 1159 at https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200SB1159/.

¹⁵⁸ A condition of 4 percent of employees testing positive for Covid-19 or otherwise closed by public health officials for risk of Covid-19 infection.

SPECIAL REPORT: EVALUATION OF INCIDENCE OF MENTAL HEALTH CONDITIONS OR ILLNESSES AMONG FIREFIGHTERS AND PEACE OFFICERS

Introduction

On October 1, 2019, Governor Gavin Newsom signed into law Senate Bill (SB) 542, adding occupational post-traumatic stress as an “injury” for workers’ compensation (WC) purposes. In particular, SB 542 establishes a rebuttable presumption of injury for firefighters and law enforcement personnel when they develop an occupational post-traumatic stress disorder (PTSD).¹⁵⁹ In particular, LC section 3212.15, added by SB 542, created the rebuttable presumption for specified injuries suffered between January 1, 2020, and January 1, 2025.

Assemblyman Tom Daly requested that CHSWC undertake a study evaluating the cost impact of SB 542 and assessing the occurrence of mental health conditions or illnesses that affect active firefighters and peace officers and whether claims of mental health conditions or illnesses filed by active firefighters and peace officers are accepted or denied.¹⁶⁰ The Commission on Health and Safety and Workers’ Compensation (CHSWC) has contracted with RAND to conduct this study.

Research Questions

The report will address the following main research questions and topics:

1. Do firefighters and peace officers have a higher incidence of traumatic stress injuries than people in non-public employment that poses similar exposure to traumatic stress, such as emergency room personnel, security guards, and private ambulance service employees?
2. Do firefighters and peace officers experience a significantly higher incidence of suicide, attempted suicide, or other serious mental health conditions than other employees in general?
3. Are claims by firefighters and peace officers for mental health conditions denied when the condition appears to be job related but the employee had difficulty in proving that fact, and was the rate of denial statistically different from denial of other claims by firefighters (or peace officers) that are subject to presumptions of compensability?
4. Do firefighters and peace officers file claims for mental health conditions at a rate statistically different from that of other employees?
5. Are claims by firefighters and peace officers for mental health conditions denied when the condition appears to be job related but the employee has difficulty in proving that fact, and is the rate of denial statistically different from that for other claims and from other types of employees?

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¹⁵⁹ <https://www.gov.ca.gov/2019/10/01/governor-newsom-signs-bills-to-support-firefighters-and-first-responders/>.

¹⁶⁰ https://www.dir.ca.gov/chswc/Meetings/2019/Assembly-Letter-Tom-Daly_091119.pdf.

SPECIAL REPORT: EVALUATION OF INCIDENCE OF MENTAL HEALTH CONDITIONS OR ILLNESSES AMONG FIREFIGHTERS AND PEACE OFFICERS

6. In addition to quantifying the data for #4, consult with the professional mental health community to determine the feasibility of proving or disproving whether these mental health conditions are job related.
7. To the extent that claims for mental health conditions filed by firefighters (or peace officers) are denied by employers, does this occur after prior treatment that was covered by employer-sponsored or other health-care coverage, when the treating provider(s) concluded the condition was job related or when there was no prior treatment or diagnosis?
8. Of the claims that involve mental health conditions, what was the percentage of these claims primarily for mental health issues, and what was the percentage of these claims that involved a mental health claim as a compensable consequence of a claim for physical injuries?
9. To what extent are mental health claims filed by public safety officers' post-separation/termination claims, as opposed to claims for which the employer had notice during the term of employment?
10. In the case of denied WC claims by firefighters and peace officers for mental health conditions, is there evidence that the claimant later sought and obtained care through employer-sponsored or other health-care coverage?
11. What is the estimated cost to state and local governments for each of the next five years, under SB 542 as enacted?
12. What is the estimated cost to state and local governments of applying SB 542 retroactively?

Methods

To address these research questions posed by CHSWC, RAND will use a mixed-methods approach with rigorous quantitative analysis using data from the Workers' Compensation Information System and qualitative interviews with first responders, department leaders, mental health professionals, and claims administrators.

A Technical Advisory Group (TAG) meeting was held October 13, 2020, to solicit key stakeholders' feedback on both qualitative and quantitative aspects of this study. A second TAG meeting is expected to be held in the spring of 2021.

Status: In Process.

SPECIAL REPORT: ASSESSMENT OF RISK OF EXPOSURE TO CARCINOGENS AND INCIDENTS OF OCCUPATIONAL CANCER AMONG MECHANICS AND CLEANERS OF FIREFIGHTING VEHICLES

Background

Assembly Bill 1400, sponsored by California Assembly Member Sydney Kamlager-Dove, requires the Commission on Health and Safety and Workers' Compensation, in partnership with the County of Los Angeles and relevant labor organizations, to submit a study to the Legislature, the Occupational Safety and Health Standards Board, and the Los Angeles County Board of Supervisors on or before January 1, 2021. The subject of the study is an examination of the risk of exposure to carcinogenic materials and the incidence of occupational cancer among mechanics who repair and clean firefighting vehicles. In May 2020, CHSWC contracted with ToxStrategies, a multidisciplinary scientific consulting firm, to conduct this study.

Objectives

The objectives of this study should include at a minimum the following:

- Site visits to a representative sample of facilities, including, but not limited to, facilities in the County of Los Angeles, where firefighting equipment is cleaned and repaired.
- Interviews and surveys with current and former mechanics of firefighting equipment in a sample of facilities regarding the frequency of exposure to potential carcinogens, the use and availability of safety equipment, and experience or knowledge of cancer incidence among current or former mechanics who cleaned or repaired firefighting equipment.
- A measurement of the current levels of exposure to carcinogenic material by mechanics who repair and clean firefighting vehicles in the County of Los Angeles and other facilities in the study, in order to develop a baseline of exposure to carcinogenic materials.

Data and Methods:

The study has six tasks.

- Literature review
 - This includes conducting a comprehensive structured literature search for relevant data on cancer risks for mechanics and cleaners of firefighting vehicles.
 - Generate hypotheses essential for designing an exposure assessment and epidemiologic study.
 - Identify chemicals of concern.
- Qualitative exposure assessment
 - Conduct site visits to representative facilities to identify carcinogens in the workplace and rank various jobs and tasks according to potential for exposure.
- Epidemiological assessment
 - Evaluate employee records for completeness and suitability for cancer study.

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SPECIAL REPORT: ASSESSMENT OF RISK OF EXPOSURE TO CARCINOGENS AND INCIDENTS OF OCCUPATIONAL CANCER AMONG MECHANICS AND CLEANERS OF FIREFIGHTING VEHICLES

- Ascertain availability of information in employee records for assessing disease confounders (e.g., smoking).
 - Develop recommendation for the appropriate epidemiology design.
- Quantitative exposure assessment
 - Assess exposure to specific chemicals by collecting air, equipment surface, and hand-wipe samples.
 - Characterize how employees might be exposed and the potential magnitude of exposure.
- Cancer risk assessment
 - Conduct cancer risk assessment by combining quantitative measures of exposure with cancer potency estimates by chemical and route of exposure.
 - Estimate the theoretical probability of increased cancer risk by worker scenario.
- Additionally, ToxStrategies will provide DIR with technical assistance on legislative and/or regulatory issues. The objective is to communicate study findings to the State and stakeholders. ToxStrategies projects that this task will be conducted throughout the duration of the project on an as-needed basis and will be focused on the period after the risk assessment results are published.

Status: In Progress

SPECIAL REPORT: LABOR ENFORCEMENT TASK FORCE¹⁶¹

Introduction

The mission of the Labor Enforcement Task Force (LETF) is to combat the underground economy in order to ensure safe working conditions and proper payment of wages for workers, create an environment in which legitimate businesses can thrive, and support the collection of all California taxes, fees, and penalties due from employers. Task force members include the following:

- Labor & Workforce Development Agency (LWDA)
- Department of Industrial Relations (DIR), including the Division of Labor Standards Enforcement (DLSE) and the Division of Occupational Safety and Health (Cal/OSHA)
- Employment Development Department (EDD)
- Contractors State License Board (CSLB)
- California Department of Insurance (CDI)
- California Department of Tax and Fee Administration (CDTFA)
- Bureau of Automotive Repair (BAR)
- Alcoholic Beverage Control (ABC)
- State Attorney General and district attorneys throughout California

Established in January 2012, LETF is administered by DIR, as directed by Governor Newsom. DIR developed executive and strategic operations teams to plan, operate, evaluate, and monitor the program. This report covers activities conducted in Fiscal Year (FY) 2019-2020.

Targeting Methods: Value Added by LETF

LETF is tasked with ensuring efficacy, resource maximization, and the avoidance of overlap in agency enforcement. Targeted inspections are the most effective approach for meeting these central objectives. To accurately target noncompliant businesses, DIR continually refines its methods, which are both data driven (proactive) and complaint driven (responsive).

LETF teams comprise staff from the member agencies listed above, customized for inspections in each industry. On its own, each agency does not have access to the full range of data and other information that the LETF teams can access collectively.

- DLSE uses wage claim data, Bureau of Field Enforcement (BOFE) data, and contacts with local district attorneys and community-based organizations.
- Cal/OSHA uses contacts with the local Agricultural Commissioner's office, the local US Department of Agriculture's office, and community-based organizations.
- EDD uses complaint data and their Automated Collection Enhancement System (ACES) that includes multiple databases, including tax and DMV records. Their data on taxpayers are protected by federal privacy laws.
- CSLB uses complaint data, licensing data, and contacts with industry partners.

¹⁶¹ The information in this special report is derived from the LETF Activity Report for FY 2019-2020.

SPECIAL REPORT: LABOR ENFORCEMENT TASK FORCE

In addition, DIR receives complaints and tips submitted directly by the public to identify potential targets. The public may report through the LETF hotline, the LETF online form, or the LETF email address, as provided online at <http://www.dir.ca.gov/letf/>.

LETF targeting protocol involves a multiphase process that all inspectors follow. Teams identify potential targets and conduct research to develop a business profile. Lists of potential targets are sent to EDD for screening to learn if the employer is registered with EDD and to determine how many employees the employer has reported. The target lists are screened through the Workers' Compensation Insurance Rating Bureau (WCIRB) to determine if the employer is adequately insured. In addition, LETF screens business names using other agency databases to match on a variety of fields that may indicate areas of noncompliance. The results are added to the business profile and used to prioritize and prepare inspectors for joint enforcement action.

Prior to the joint inspections, teams conduct physical surveillance to confirm the information obtained in the targeting process and gather additional information. Physical surveillance can include both visual examination from a distant location and on-site visits to the premises.

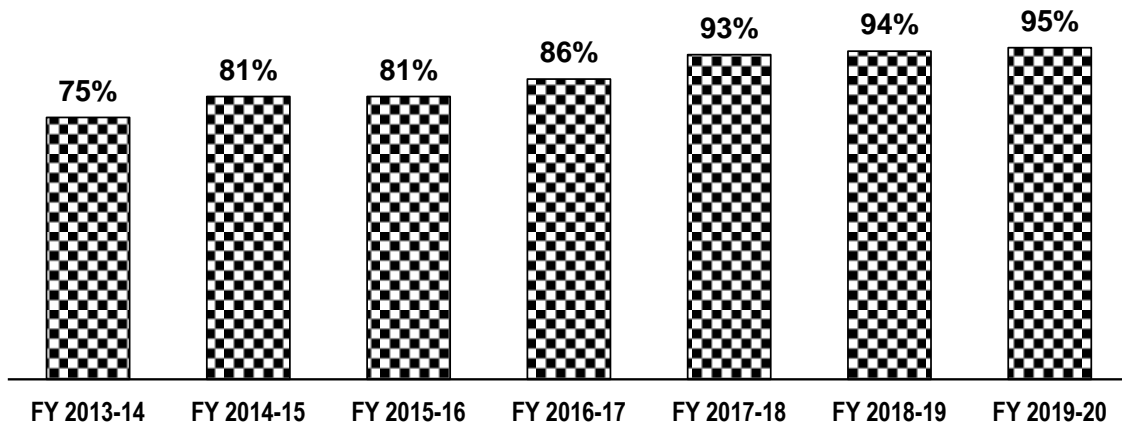
Table 43: LETF Inspection Results in FY 2019-2020

Total number of businesses inspected	578
Percentage of businesses out of compliance	95%
Total amount of initial assessments*	\$5,247,634
Total wages assessed	\$386,992

*The total amount assessed by Cal/OSHA, DLSE, and CSLB at the time of the initial inspection; the amount is subject to change.
Source: LETF

As illustrated in Table 43, LETF inspected 578 businesses in FY 2019-2020, citing 95 percent of the businesses for noncompliance with at least one LETF partner agency. Enforcement resulted in initial assessments exceeding \$5 million.

**Figure 158: Average Percentage of Inspected Businesses Found out of Compliance per Year
FY 2013-2014 to FY 2019-2020**



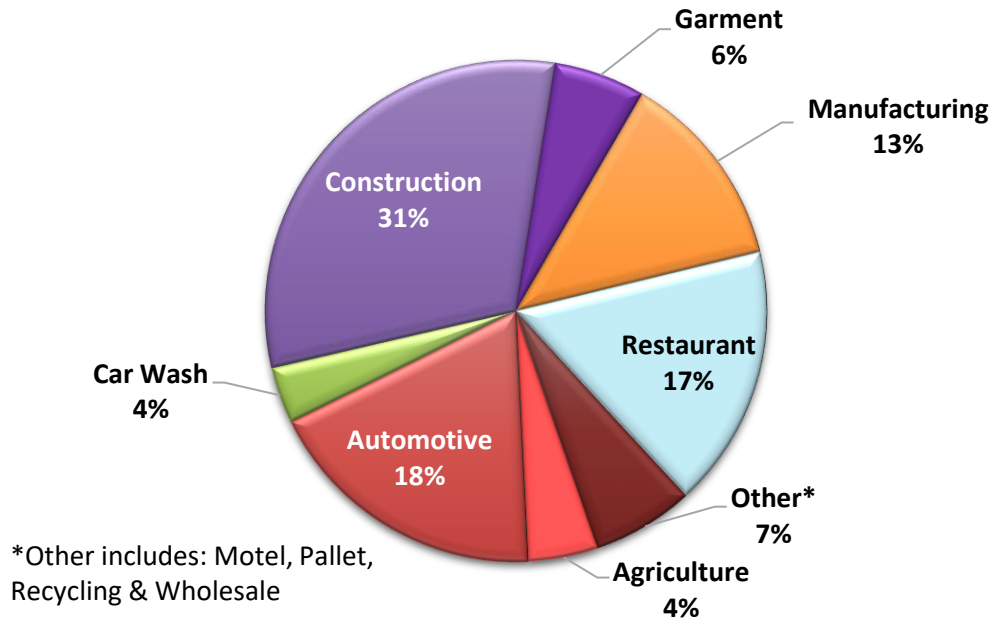
Source: LETF

LETF uses a targeted joint enforcement approach to leverage interagency authority and maximize resource use. LETF has demonstrated high and steadily increasing effectiveness in targeting noncompliant businesses for inspection since the program began (see Figure 158). The program focuses on specific industries in which underground economy activity is most prevalent, including the agriculture, automotive repair, car wash, construction, garment, manufacturing, and restaurant industries. The scope of enforcement efforts in these industries is determined in part by their contribution to California's workforce.

SPECIAL REPORT: LABOR ENFORCEMENT TASK FORCE

Enforcement strategy is guided by several factors, such as geographical, seasonal, and other considerations. The composition of inspections by industry type for FY 2019-2020 is shown in Figure 159.

Figure 159: Industry Composition of Businesses Inspected by LETF in FY 2019-2020



Joint Enforcement Activity: Value Added by LETF

Working together with combined authority, LETF teams have access to a fuller range of enforcement tools than does each agency on its own:

- DLSE has the authority under Labor Code Section 90 to access all places of employment. Other LETF partners do not have this full authority. DLSE may also issue stop orders requiring employers to cease illegal operations immediately.
- Cal/OSHA has the authority to issue citations for serious, willful, and repeat (SWR) violations. Cal/OSHA may also issue an order prohibiting use where a condition or practice exists that creates an imminent hazard to the safety and health of employees.
- EDD has authority under Section 1092 of the California Unemployment Insurance Code to require employers to provide records for inspection at any time during the employing unit's business hours.
- CSLB is able to suspend contractors' licenses until penalties issued by DLSE and state payroll taxes, penalties, and interest due to EDD are paid or formal arrangements have been made to pay off the liability due in installments. Penalties are far more likely to be paid promptly when the license is suspended until payment is made.

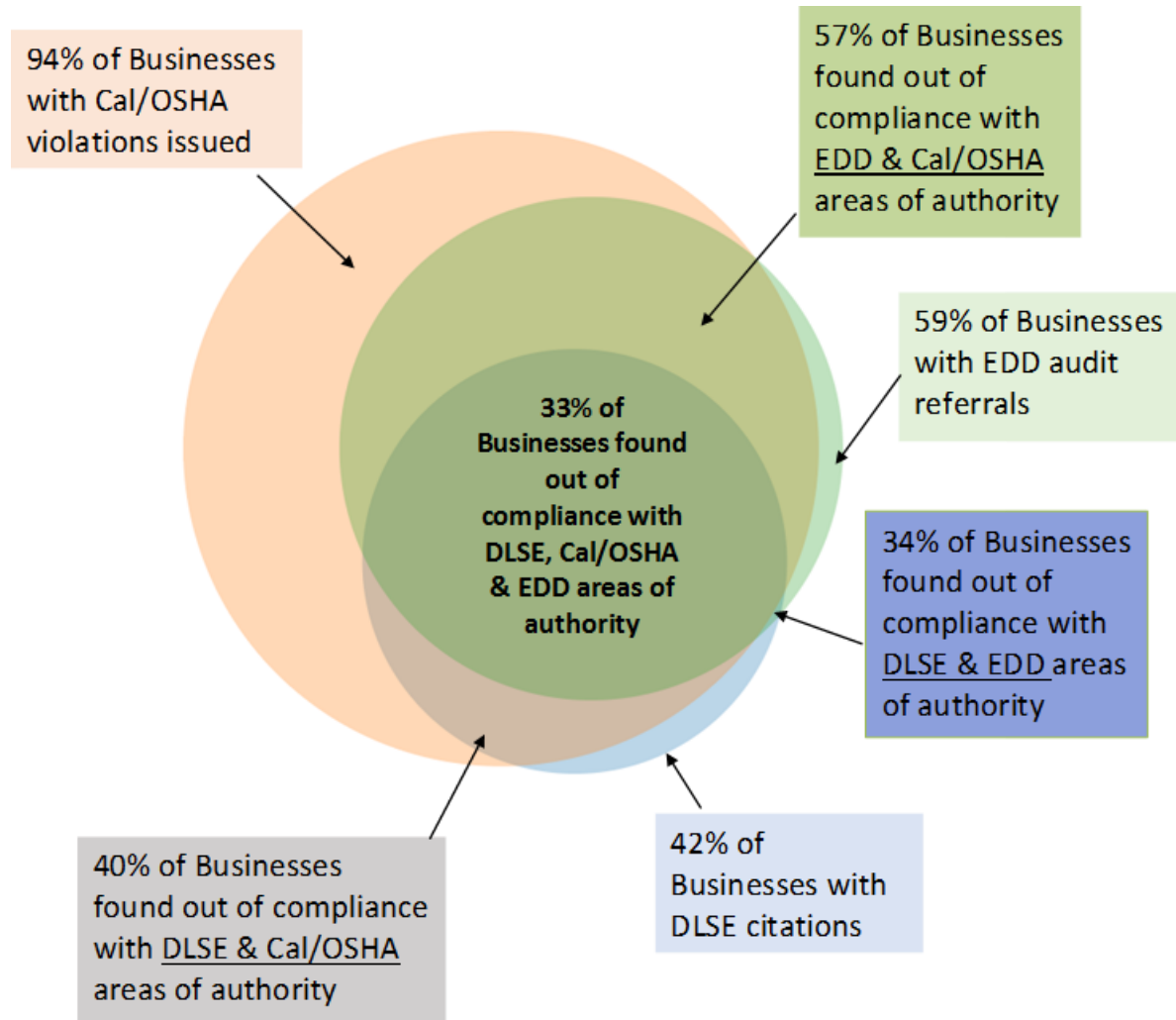
Joint enforcement has two key comparative advantages for the business community. First, because LETF inspection teams comprise members from multiple agencies, one LETF inspection has less impact on business operations than multiple separate inspections by the individual agencies. Second, when several agencies working together find egregious employer misconduct, the ensuing publicity has a deterrent effect that is much more powerful than that of a single agency's enforcement.

LETF monitors joint enforcement (businesses that were concurrently inspected by DLSE, EDD and Cal/OSHA) outcomes for two purposes: (1) to assess the effectiveness of the LETF targeting methodology

SPECIAL REPORT: LABOR ENFORCEMENT TASK FORCE

and (2) to test the underlying assumption that businesses operating in the underground economy are likely to have violations in multiple areas of the law. As shown in Figure 160, the majority of inspected businesses were found to be in violation by at least two agencies. In fact, 33 percent of joint LETF inspections in FY 2019-2020 resulted in violations with all three agencies.

Figure 160: LETF Joint Inspection Outcomes: 435 Businesses were jointly inspected by DLSE, EDD, and Cal/OSHA in FY 2019-2020



Analysis of Workers' Compensation Coverage in the Underground Economy

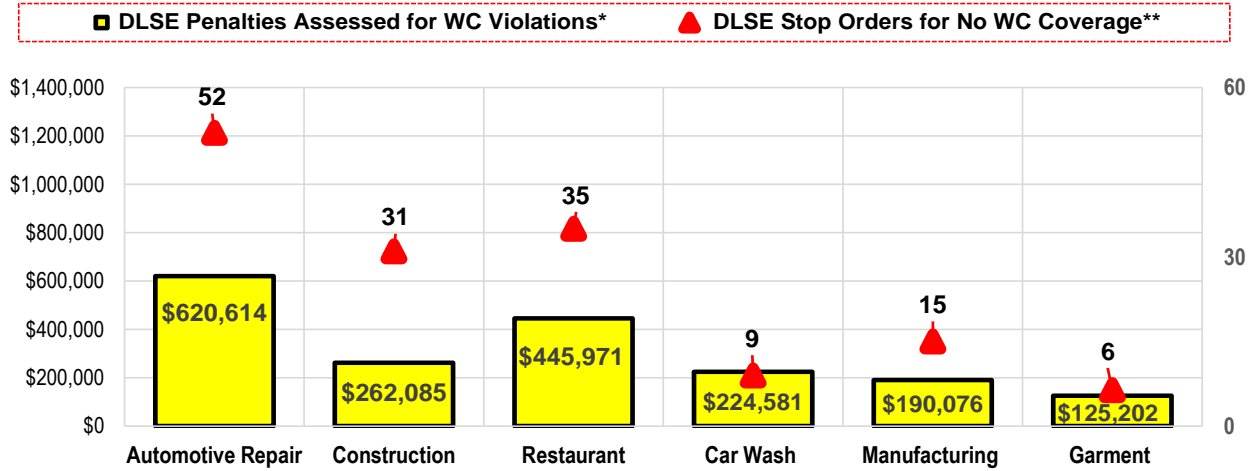
Employers' failure to carry a workers' compensation policy is a common violation in the underground economy. A key step in the LETF-targeted enforcement protocol includes digital surveillance. As detailed above, investigators match across partner agencies' databases to screen for potential violations and complaints. To determine whether an employer is adequately insured, inspectors consult the Workers' Compensation Insurance Rating Bureau (WCIRB) database. LETF prioritizes inspection of businesses that appear to have no workers' compensation policy.

Figure 161 shows the number of workers' compensation coverage violations and related penalties across the industries that LETF inspected in FY 2019-2020. The DLSE issued 52 violations to automotive

SPECIAL REPORT: LABOR ENFORCEMENT TASK FORCE

businesses and 35 violations to restaurants for workers' compensation coverage violations. In addition, the DLSE assessed \$0.6 million and \$0.45 million, respectively, in penalties to automotive and restaurant businesses.

Figure 161: Number of DLSE Violations and Total Penalty Amounts, by Industry in 2019—2020



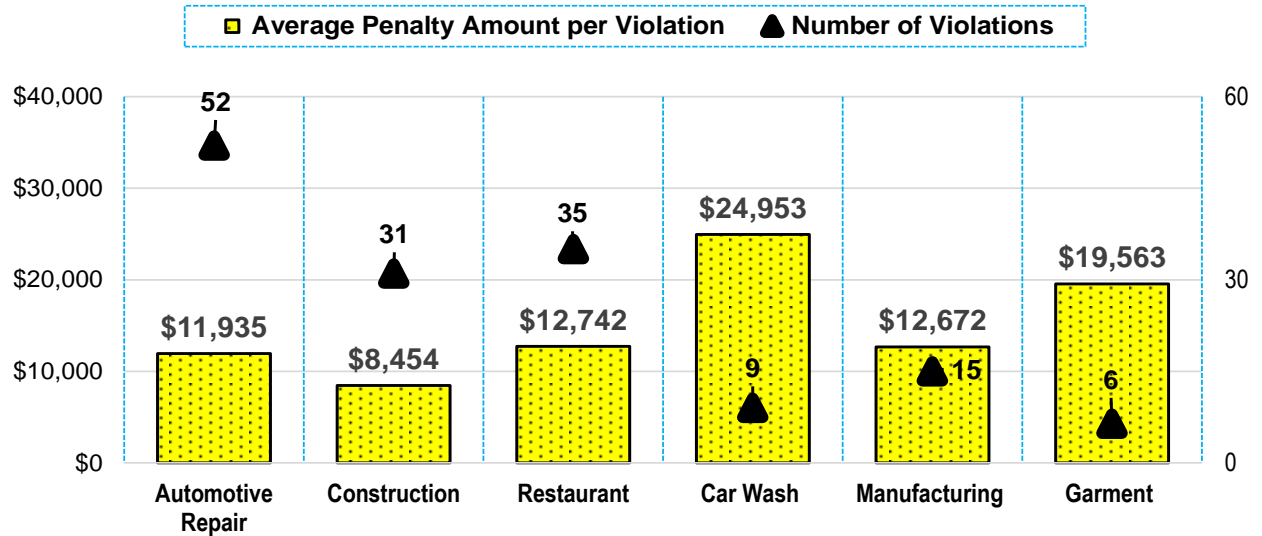
Source: LETF

* The initial penalty amounts (left-hand axis) for failure to cover employees with workers' compensation insurance assessed at the time of the initial inspection. These amounts are subject to change.

**The number of violations (right-hand axis) issued to employers for failure to cover employees with workers' compensation insurance.

Figure 162 shows the average penalty amount per workers' compensation violation by industry. In 2019-2020, severity of violations was the highest in the car wash and garment industries.

Figure 162: Average Penalty Amount per Workers' Compensation Violation, by Industry in FY 2019—2020



Source: LETF

LETF examined the correlation of workers' compensation violations with other types of violations and areas of noncompliance (see Table 50). The key findings include:

SPECIAL REPORT: LABOR ENFORCEMENT TASK FORCE

- 88 percent of car wash and construction businesses cited for workers' compensation violations were also referred to the EDD audit program for further investigation.
- 80 percent of garment businesses and 50% of manufacturing businesses cited for workers' compensation violations were also cited by Cal/OSHA for serious health and safety violations.
- 63 percent of car wash businesses cited for workers' compensation violations were also cited for violating the car wash registration provision and 75% for failing to provide car wash employees with itemized wage statements.
- 40 percent of garment businesses cited for workers' compensation violations were also cited for violating the garment registration provision.

Table 44: Percentage of Businesses Cited for Workers' Compensation Violations That Violated Other Laws in FY 2019—2020

Industry	Licensing and Registration Violations*	Cal/OSHA Serious Violations	EDD Audit Referrals	Itemized Wage Statement Violations
Automotive	N/A	49%	83%	21%
Car Wash	63%	38%	88%	75%
Construction	15%	27%	88%	21%
Garment	40%	80%	80%	20%
Manufacturing	N/A	50%	56%	13%
Restaurant	N/A	37%	63%	29%

*Car wash and garment employers are cited if they do not register with DLSE. Construction employers/contractors are cited by CSLB if they are unlicensed and perform work that requires a contractor's license.

LETF Leads and Referrals

The public reports underground economy activity to LETF using the hotline (855-297-5322), email (letf@dir.ca.gov), and an [online form](#). Following LETF's protocol, staff review and refer leads to LETF inspectors, other task forces, or partner agencies as appropriate, based on the nature of the reported violations. In FY 2019-2020, 830 leads received from the public were referred to LETF teams or other enforcement programs.

Monitoring Performance Results

LETF uses spatial analysis and activity mapping to monitor trends in team performance. The enclosed maps (see Figures 163 and 164) document the wide-ranging field presence in California.

Figure 163: Counties Inspected in Northern California for Fiscal Year 2019-2020

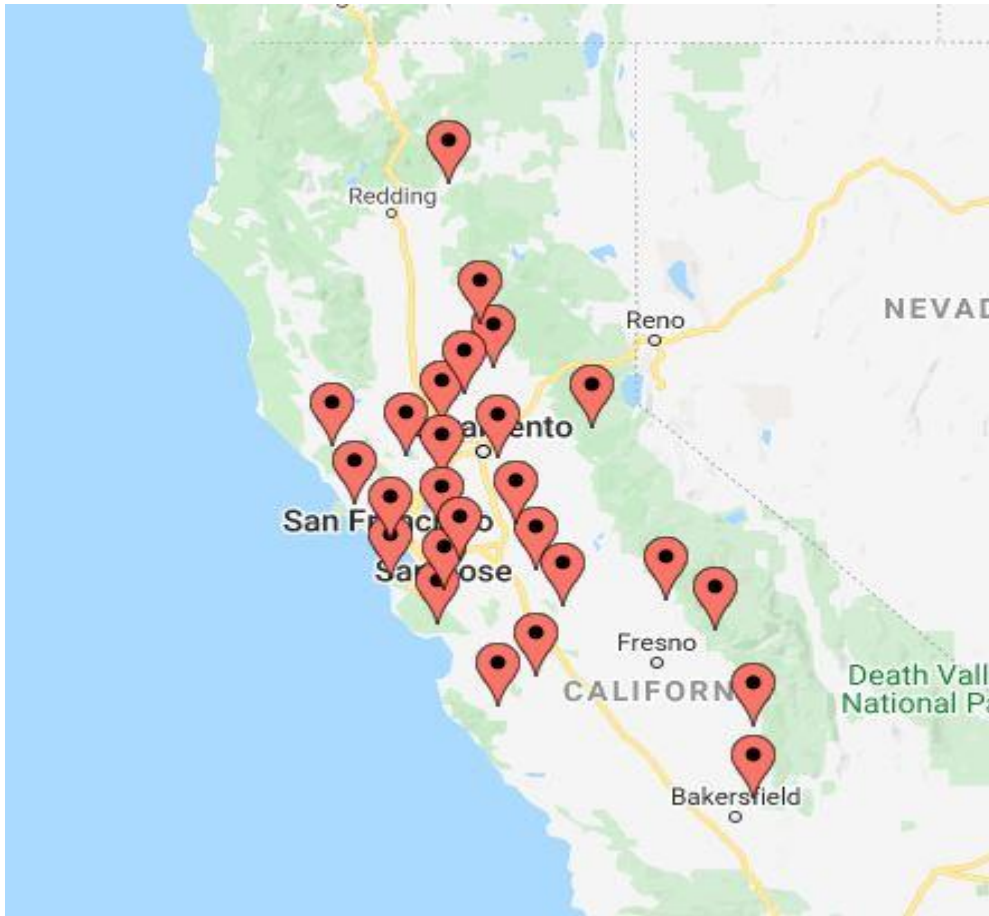


Figure 164: Counties Inspected in Southern California for Fiscal Year 2019-2020



SPECIAL REPORT: LABOR ENFORCEMENT TASK FORCE

Education and Outreach

LETF is committed to outreach and education to ensure that employers know their responsibilities and workers know their rights.

LETF produced the widely referenced employee handbook *All Workers Have Rights in California* in English, Spanish, Chinese, Korean, and Vietnamese. The material covers minimum wages and overtime, rest and meal breaks, workplace safety and health, benefits for those injured or unemployed, and new legislative mandates, such as paid sick leave. LETF also produced industry-specific, employer-focused fact sheets covering relevant labor, licensing, and payroll tax laws for agriculture, automotive, construction, garment, landscaping, and restaurants.

Printable and mobile versions of these materials for workers and employers are available [online](#).

LETF initiated a statewide program in collaboration with UC Berkeley to achieve the following:

- Design and produce effective educational materials for workers and employers in coordination with other agencies
- Translate educational materials into the languages commonly spoken by employers and employees in specific low-wage industries across California
- Inform and train local and regional organizations serving low-wage workers using enhanced materials and industry-specific information
- Publicize the campaign and enforcement efforts via speaking engagements, press releases, website features, television, radio, email news releases, and newspapers, as well as social media, such as Facebook and Twitter

DIR makes continuous improvements in the LETF website, including a Spanish-language version of the website at www.dir.ca.gov/letf/Spanish/LETF.html and offering an online LETF referral form at <https://www.dir.ca.gov/LETF/Referral/LETFReferral.asp>. The public can now use this online form, available in English and Spanish, to report leads to LETF on activity in the underground economy.

Partnerships

To tackle the multifaceted nature of the underground economy, LETF works in partnership with other agency enforcement programs to share information and draw upon each program's respective strengths.

To help combat California's underground economy and protect workers' rights, DIR and EDD have joined efforts through their respective enforcement programs, namely, LETF and JESF, to coordinate activity and share effective strategies.

The LETF/JESF Collaborative Enforcement Partnership merges best practices based on a wide range of experiences and innovation. The joint effort draws upon both programs' respective strengths through training, refinement of targeting methods, and strategic planning. While LETF and JESF remain under the guidance of their respective agencies, enforcement coordination has allowed a streamlining of administration to leverage resources and mitigate overlap. The results include broader statewide operations, stronger communications, and knowledgeable cross-trained staff.

DIR has hosted four annual LETF/JESF joint training sessions, where investigators and supervisors from around the state come together to share best practices on joint enforcement operations. Additionally, DIR has hosted a series of webinar training sessions for LETF and JESF staff.

SPECIAL REPORT: LABOR ENFORCEMENT TASK FORCE

Through LETF, DIR has facilitated collaboration among local district attorneys' offices, roofing contractors, and labor groups to form the Roofing Compliance Working Group. This multi-agency coalition combats unsafe and unfair practices in the roofing industry, where the incidence of serious workplace injuries and fatalities is higher than in other industries.

Effects of COVID-19 Emergency

In March of 2020, LETF inspections were postponed indefinitely due to the COVID-19 emergency and the statewide stay-at-home order issued by the State Public Health Officer on March 19, 2020. Because of this, LETF did not conduct joint inspections from April to June 2020, and conducted few inspections in March. However, during this time period, DIR staff in DLSE and Cal/OSHA did participate in the COVID-19 “strike teams” created by the Governor to provide education and enforcement efforts related to employers’ COVID-19 requirements. In addition to these efforts, LETF staff within Cal/OSHA assisted Cal/OSHA district offices in performing heat illness and COVID-19 inspections. LETF staff within DLSE assisted with phone operations and remote audits. DIR management is currently making plans for how to resume LETF operations in the context of the ongoing pandemic.

Conclusion

Going forward, LETF will continue its existing collaborations and engage in new partnerships to further the state’s efforts to combat the underground economy. Using data and surveillance to effectively target investigative resources, LETF has led the state in efficient, innovative enforcement, with demonstrated success. The partner agencies are committed to detecting and stopping bad actors in support of profitable business, thriving jobs, and a prosperous economy in California.

SPECIAL REPORT: EVALUATION OF SB 863 MEDICAL CARE REFORMS

Introduction

California's workers' compensation (WC) program provides medical care and wage-replacement benefits to workers who suffer on-the-job injuries and illnesses. Injured workers are entitled to receive all medical care reasonably required to cure or relieve the effects of their injury with no deductibles or copayments. Over the years, WC medical care expenses have fluctuated. Total medical expenses increased by 24 percent from 2007 to 2011, with particularly significant increases in medical cost containment expenses and medical-legal costs. The latest WC medical care reforms were enacted by Senate Bill 863 in 2012.

The intention of SB 863 provisions was to constrain the rate of increase in medical expenses through a combination of measures designed to improve the quality, efficiency, and timeliness of medical care given to injured workers through improvements in the fee schedules and dispute resolution processes and increased accountability and oversight

Key SB 863 provisions include:

- *Fee Schedule Changes.* Changes in the Official Medical Fee Schedule (OMFS) were designed to promote the efficient delivery of medical care. These changes include modifications to the inpatient hospital and ambulatory surgery facility fee schedules effective January 1, 2013, replacement of the existing OMFS for physician services with a Resource-Based Relative Value System (RBRVS) fee schedule effective January 1, 2014, and development of new fee schedules for home health care, copying services, and interpreter fees.
- *Medical Provider Networks (MPN).* SB 863 aimed to improve the operation and oversight of medical provider networks (MPNs). Since January 1, 2004, injured workers of employers with MPNs have been required to use network providers throughout the course of the treatment. The SB 863 provisions, including medical access assistants for injured workers, written contracts between MPNs and providers including language that providers will follow Medical Treatment Utilization Schedule (MTUS) guidelines, and additional oversight by the Division of Workers' Compensation (DWC) over MPN lists of providers, took effect January 1, 2014.
- *Medical-Legal Evaluations.* Improving the process of medical-legal evaluation included addressing deficiencies in the composition of qualified medical evaluator (QME) panels, streamlining the process and timelines for evaluations by agreed medical evaluators (AME) and QMEs, and increasing DWC oversight of the evaluators and their decisions; these regulatory changes took effect September 16, 2013. With respect to medical necessity disputes, the Independent Medical Review (IMR) process replaced the AME/QME process. Effective July 1, 2013, an evaluator no longer provides an opinion on any disputed medical treatment issue; evaluators continue to be needed to provide an opinion about whether the injured worker will require future medical care to mitigate the effects of an industrial injury.
- *Independent Medical Review (IMR).* Replacing the existing dispute resolution process with IMR was intended to improve the quality and timeliness of the process for resolving medical necessity determinations. The IMR process took effect January 1, 2013, for injuries that occurred in 2013 and

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SPECIAL REPORT: EVALUATION OF SB 863 MEDICAL CARE REFORMS

on July 1, 2013, for any adverse utilization review (UR) decisions communicated on or after that date, regardless of the year in which the injury took place.

- *Independent Bill Review (IBR)*. SB 863 provisions established requirements for bill submissions and processing to improve the timeliness of payment for medical treatment and implemented the IBR process to resolve payment disputes. The IBR process was effective for services furnished on or after January 1, 2013.

Study Objectives

The report presents results from two types of analyses. The first type includes analyses of specific SB 863 provisions, for example, specific fee schedule changes, with the goal of describing how the provision in question is related to changes in WC-paid medical care use and spending. The second type is an analysis evaluating SB 863 as a whole. This “consolidated” analysis relies on pre-post comparisons with control groups to identify changes in medical care use and spending.

Research Questions

The report addresses the following main research questions:

1. How has medical care utilization and spending changed over the SB 863 implementation period in terms of both overall levels (i.e., utilization and spending per injury) and the mix of services?
2. How have utilization and spending changed for specific medical care services affected by the implementation of RBRVS? What are the overall impacts of the transition to RBRVS?
3. Did other specific fee schedule changes introduced in SB 863—including changes to inpatient hospital and ambulatory surgery center services and the medical-legal fee schedule—change utilization and spending on these and related services?
4. How did changes in the IMR process affect IMR and UR frequency and other outcomes?
5. Was SB 863 associated with changes in medical care utilization and spending for injured workers, after controlling for unrelated trends through comparison to control patients?

Data Source

The primary data source for the study comes from the Workers’ Compensation Information System (WCIS) database maintained by the DWC for services provided from 2007 to 2015.

Summary of Findings

Medical care use and spending. There were significant changes in the use of and spending on medical services affected by SB 863, including marked increases in spending on evaluation and management (E&M) services for which RBRVS fee schedule changes raised payment rates and declines in laboratory and pathology service use and payments (reflecting RBRVS changes). Researchers found some changes that were not anticipated, for example, increases in spending within 12 months of injury on physical medicine services. In 2014, spending on E&M increased to nearly 30 percent of total payments in the year of injury and to approximately 35 percent in 2015. They found that two-thirds of this growth can be attributed to RBRVS changes and the rest to an increase in E&M service utilization. However, most of the increase in utilization appears to have been due to consultation visits that were billed as office visits in 2014 because consultation visits were no longer paid under RBRVS.

RBRVS implementation and transition. When the RBRVS was fully implemented in 2017, payments under RBRVS were set at 120 percent of Medicare payment rates in July 1, 2012, before application of an inflation factor and a relative value scale adjustment factor.

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The transition to RBRVS increased payments for E&M services, which are commonly delivered by general practitioners, and lowered payments for specialists. From the perspective of an individual provider, the net impact of the transition to RBRVS depends on the provider's mix of services before the transition and the change in rates for these services. The transition to RBRVS from 2013 to 2014 shifted the distribution of payments and volume of WC services in California. E&M visits accounted for a larger share of total payments and spending in 2013 and 2014.

The change in volume and payment for medical services varied significantly from 2013 to 2014 across different types of services. Payments for E&M services accounted for a larger share of total payments in 2014 than in 2013 (36.2 percent versus 29.5 percent). The volume for E&M services increased much more modestly (by less than one percentage point), which suggests that the increase in payment was driven by higher prices under RBRVS.

Other Specific Fee Schedule Changes

Inpatient hospital schedule. RAND found a reduction in inpatient hospital stays per claim from 2012 to 2014. Across all inpatient stays in acute care hospitals subject to the OMFS for inpatient hospital services, from 2012 to 2014 total discharges decreased 12.6 percent, whereas the average allowance per discharge decreased 8.7 percent.

Ambulatory Surgery Center (ASC) schedule. The fee schedule comparison also highlights the generosity of the OMFS ASC facility allowances relative to other Medicare-based fee schedules. In addition to the overall finding that estimated payments are 138 percent of the Medicare ASC allowances, the differences across types of procedures are of concern. SB 863 reduced the aggregate allowance for ASC facility services to 80 percent of Medicare's hospital outpatient prospective payment system (OPPS) rate.

The Medicare ASC fee schedule is designed to create neutral incentives regarding where services are rendered. In contrast, the current OMFS provides incentives that are inconsistent with the efficient delivery of medically appropriate services in the least costly setting. These incentives drive device-intensive procedures to take place in the hospital and shift services commonly performed in an office setting to ASCs. Both incentives potentially increase WC expenditures for ambulatory surgery.

RAND analyzed the potential alternatives to current policies on OMFS facility fees for ASC surgical services. It considered the following options for refining the OMFS:

- Continue to pay using the OPPS framework, including the Comprehensive Ambulatory Payment Classifications (C-APC) bundling policies. This represents no change in OMFS policies for ASC facility fees.
- Continue to pay using the OPPS framework but determine allowances for procedures without the C-APC bundling policies. This would continue to use the current OMFS policies to determine the other factors that affect the allowances and represents the smallest change from pre-C-APC policies.
- Determine the allowances for ASC services based on 120 percent of the Medicare fee schedule for ASC facility services. This would conform the OMFS allowances for ASC facility services to the Medicare ASC fee schedule.

Medical-Legal Fee Schedule. The medical-legal (ML) fee schedule has not been updated since 2007, whereas estimated payments for E&M services were projected to increase when the RBRVS was fully implemented, before further adjustments for inflation. Instead, RAND found that the cost of \$250 per hour used to determine the ML allowances is significantly higher than the fully transitioned 2017 allowances for E&M services, which consist of similar activities. Despite these increases, the number of subsequent follow-up evaluations has also increased significantly. Together, the trends suggest that the allowances for extraordinarily complex evaluations should be restructured.

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RAND discusses several considerations that might motivate the efficient completion of high-quality evaluations, including flat rates for complex ML 104 evaluations, limitation of supplemental reports, performing all diagnostic testing before an evaluation, and orderly control over medical documentation.

Medical Necessity Dispute Resolution Process and IMR and UR frequency. The medical necessity dispute resolution process begins with UR of medical care provided to an injured worker. Only a physician can issue an adverse UR decision to modify or deny the requested treatment. SB 863 streamlined the medical necessity dispute resolution process and shifted responsibility for resolving the disputes from WC administrative law judges to medical experts. The DWC contracted with Maximus to perform the independent medical review organization functions.

The issues that occurred when the IMR process was implemented have largely been addressed. Maximus has eliminated the initial backlog of IMR reviews and is issuing IMR decisions in a timely fashion after the supporting documentation is submitted by the claims administrator. Effective January 1, 2018, SB 1160 revised the Labor Code to require that the employer electronically submit the required medical documentation within 10 days of being notified that a request for IMR has been approved and has been assigned to the independent medical review organization, with copies to the employee and the requesting physician. The penalties for not complying with the IMR notice and reporting requirements were also strengthened.

Most claims administrators are processing UR requests in a timely way, but some are not doing so or issuing UR decisions for a significant percentage of their UR requests, and the same is true for some UROs. Claims administrator practices vary widely in terms of the proportion of requests for authorization approved at the claims adjuster level, and prior authorization policies are fairly limited. Both policies have implications for administrative costs and medical cost containment expenses.

The SB 1160 provision requiring the electronic submission of UR documents to the DWC offers an opportunity to introduce more performance accountability to the system and more transparency about how the UR process actually functions.

Recommendations

The report's recommendations include

- For ambulatory surgery facility services, consideration should be given to replacing the OPPS-based fee schedule with an ASC-based fee schedule.
- For medical-legal services, consideration should be given to converting the allowance for an extraordinarily complex evaluation into a flat rate based on the complexity of the issues that need to be addressed by the evaluator.
- For medical-legal services, consideration should be given to establishing policies that provide incentives for completing high-quality reports that address the issues outlined in the cover letter(s) from the parties requesting the evaluation. For example, timely completion of reports and comprehensive reporting could be incentivized by establishing a higher payment for timely submissions and by not paying for an initial evaluation unless the issues have been addressed respectively.
- Continue to monitor trends in utilization and spending for different medical service categories.
- Continue to monitor trends in work-related outcomes for injured workers.
- Pursue additional analyses comparing changes in outcomes for California injured workers to comparison groups, including possibly injured workers in other states or patients in California with injuries that are not work related.

SPECIAL REPORT: EVALUATION OF SB 863 MEDICAL CARE REFORMS

For further information...

“Evaluation of California Senate Bill 863 Medical Care Reforms. State of California Department of Industrial Relations,” RAND, September 2020.

https://www.rand.org/pubs/research_reports/RR2045.html.

“California Workers’ Compensation Medical-Legal Fee Schedule, Analysis and Recommendations,” RAND, October 2018.

https://www.rand.org/pubs/working_papers/WR1279.html.

SPECIAL REPORT: QUALIFIED MEDICAL EVALUATORS: UPDATING TRENDS IN EVALUATIONS, AVAILABILITY, AND EQUITY

Executive Summary

The Qualified Medical Examiner (QME) process is at the heart of the California workers' compensation dispute resolution process. The current process is the result of a series of reforms over the past 15 years that were meant to improve the delivery of medical-legal evaluations expeditiously and equitably for both parties.

This QME report updates the original 2010 review of the QME process for the Commission. The update was requested by Senate Committee on Labor and Industrial Relations Chair Tony Mendoza on October 17, 2016, and was approved by the Commission on December 9, 2016. The report examines how the QME process has changed over the past decade (2007-2017), with special attention on the issues raised in the previous report.

UC-Berkeley used extensive electronic administrative data made available by the Division of Workers' Compensation (DWC) Medical Unit and Disability Evaluation Unit (DEU), supplemented with summary data from several sources. The study covers the period from 2007 through 2017, during which much of the evolution occurred after the 2004 reforms, which introduced utilization and treatment guidelines, a new permanent disability rating schedule based on the AMA Guides, and changes in how parties in represented cases can select QMEs. Subsequently, SB 863 made additional important changes, including the Independent Medical Review (IMR) process, which was anticipated to replace the need for medical-legal exams to decide treatment issues. SB 863 also imposed restrictions on the number of locations at which QMEs could schedule exams.

Key Findings in This Study

- *The number of providers registered as QMEs continues to decline (17 percent since 2007), but less rapidly than it did prior to 2007.*
- *The number of requests for QME panels has increased rapidly, 87 percent since 2007.*
- *The decline in QMEs and increase in panel requests means that the number of requests per QME has doubled (+101 percent).*
- *Coupled with a continuing increase in the average paid amount for QME reports, the average QME earns 240 percent more from panel reports now than in 2007.*
- *All the increase in panel requests is from represented track cases, up 400 percent despite the elimination of panels for most medical treatment issues (replaced by the IMR process). This increase was equally driven by requests from both applicants and defendants.*
- *Panel requests for unrepresented cases declined 55 percent, driven entirely by a decline in requests by injured workers. The number of requests by claims administrators in unrepresented cases changed little.*
- *The DWC began collecting the reasons for panel requests on represented cases in 2015. Those data show that the primary reasons for panels are: compensability (42.5 percent), permanent disability (21.4 percent), and Permanent & Stationary (P&S) status (11.4 percent).*

In response to the earlier study, SB 863 placed limits on the number of locations (10) at which QMEs can be registered. This has had the effect of distributing QME panels more evenly and widely among registered providers.

- *Very-high-volume QMEs (with 11-100+ registered locations) have been eliminated.*

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- *However, a high proportion of panel assignments (55%-60%) are still assigned to the busiest 10 percent of QMEs, nearly all of whom have exactly 10 offices and are in orthopedic specialties.*
- *Unlike the very-high-volume QMEs studied earlier, the top 10 percent and 5 percent of QMEs by the number of panels in the current system produce reports that show less bias. Even the top 5 percent of QMEs by volume give ratings that are only slightly more conservative than average.*

Access to QMEs does not appear to be an important current problem, but some signs indicate that delays in getting an evaluation may be developing.

- *Orthopedic specialties are under-represented among registered QMEs relative to requests.*
- *The number of panels for which a subsequent panel is requested because the QME was not available within 60 days (a measure of access), while still low, has increased from 1 percent to 2.8 percent for unrepresented cases and 0.7 percent to 4.7 percent for represented cases. Almost all of this increase took place from 2013 to 2016.*

DWC has made an effort to eliminate providers who are accused or convicted of fraudulent activity or violations of professional standards from the workers' compensation system. This study examined the activity of these doctors in the QME process and how their suspension may affect QME evaluations. This study found:

- *Of providers suspended or restricted under Labor Code sections 139.21 and 4615, 41 were registered as QMEs at least one year between 2007 and 2016.*
- *They represented a small minority of all QMEs (1.6 percent) and were assigned to a minority of the three-doctor panels (4.6 percent).*
- *Although these percentages are low overall, in some areas problem providers appear to be concentrated and present a special problem. The pain specialties (PAP, MAA, & MPP) stood out, and 40-50 percent of QME panels include at least one restricted or suspended provider.*
- *The more general pain category (MPA), which is more commonly used now, as well as Physical Medicine and Rehabilitation (PM&R) and Internal Medicine-Hematology (MMH) had 15-17 percent of panels with a restricted or suspended provider.*
- *Overall, the restricted and suspended doctors gave much more generous evaluations to injured workers than the average QME: higher ratings, less frequent use of apportionment, and more frequent Almaraz ratings.*

Recommendations for Possible Modifications in the QME Process and Future Monitoring

- *DWC could use QME registration data linked with WCIS medical-legal payment data to examine whether the increases observed in average cost of medical-legal reports is driven primarily by providers acting through aggregators.*
- *The very high concentration of restricted and suspended doctors in the pain specialties suggests that DWC could examine the costs and benefits of maintaining separate pain specialties in the QME system. If the specialties are retained, DWC could concentrate special monitoring and outreach to this community of providers and related professional associations. This could involve additional testing and/or other restrictions on registering for these specialties*
- *The number of QMEs who are unavailable in the 60-day period is still small, but the recent increase suggests the need for continued close monitoring by DWC, with special attention on the orthopedic specialties.*

SPECIAL REPORT: QUALIFIED MEDICAL EVALUATORS: UPDATING TRENDS IN EVALUATIONS, AVAILABILITY, AND EQUITY

DWC should consider eliminating the requirement that unrepresented workers serve the claims administrator with notice and confirm the proof of service under penalty of perjury. This may be intimidating workers and reducing their use of the QME process when challenging the primary treating physician's (PTP's) findings. DWC could supply notice to the claims administrator and eliminate the need for workers to do so.

Advancing the Division of Workers' Compensation's Research Efforts

The division is hampered in evaluating how efficient and equitable the QME system is in evaluating issues of compensability, permanent disability (PD), and future medical because of substantial gaps in the data on which claimants are evaluated by QMEs and which of those evaluations are rated by the DEU.

- *DWC should consider drawing a random sample of initial workers' compensation first reports of injury and examine how they are resolved, including issues of compensability and permanent disability. Key questions could include:*
 - *What are the characteristics of claims and claimants using the QME process vs. resolving disputes based on the PTP's report?*
 - *What are the characteristics of PD claims and claimants who are rated by the DEU vs. other sources such as the claims administrator in unrepresented cases and private raters or the parties in represented cases?*
- *DWC should consider identifying more information about the operation of aggregators managing the QME location and appointment process. The consolidation of QMEs under a small number of aggregators with a substantial share of the market may be having an impact on the system.*
- *DWC should collect electronically the reason for panel requests in unrepresented cases, similar to the data collected on represented cases. The main reasons for requesting a QME panel are already included on the documentation submitted by workers and claims administrators.*

For further information...

"Qualified Medical Evaluators: Updating Trends in Evaluations, Availability, and Equity."
University of California, Berkeley, 2017.

http://www.dir.ca.gov/chswc/reports/2017/QME_2017_Trends.pdf

SPECIAL REPORT: EVALUATION OF THE RETURN-TO-WORK FUND IN CALIFORNIA'S WORKERS' COMPENSATION SYSTEM

Introduction

In September 2012, California enacted Senate Bill 863, a major workers' compensation reform bill. The Return-to-Work (RTW) Fund was created under Labor Code Section 139.48 as one of the components of SB 863. This section requires that the Department of Industrial Relations (DIR)'s Return-to-Work Supplemental Program (RTWSP) administer a \$120 million fund for the purpose of making supplemental payments to workers whose permanent disability benefits are disproportionately low in comparison to their earnings losses. Injured workers may be eligible for a one-time \$5,000 Return-to-Work supplement if they have a date of injury on or after January 1, 2013, and have received a Supplemental Job Displacement Voucher (SJDB) because of that injury. The benefit is administered by DIR's RTWSP in accordance with the regulations implemented on April 13, 2015, and amendment effective March 20, 2017¹⁶².

A prior CHSWC study¹⁶³ pointed out that the RTW Fund is a highly progressive benefit that greatly assists low wage workers. However, stakeholders have raised concern that not all workers who are eligible for supplemental payments from this fund are applying for these payments, and the appropriate level of the benefit is also under discussion.

In 2016, Senator Tony Mendoza requested that CHSWC conduct a review of the RTW Fund. CHSWC commissioned RAND to conduct the study to assist with assessment of the fund's payments to injured workers.

Study Objectives

The main objectives of the study are to:

- A. Evaluate the adequacy and equity of the RTW Fund benefit.
- B. Identify any practices and policies that would improve the adequacy, equity and efficiency of administration of the RTW Fund.

Research Questions

The study addresses these study objectives through the following main research questions:

- How many workers are eligible for, apply for, and receive the RTW Supplement?
- Does the RTWSP accurately target workers whose permanent disability benefits are disproportionately low in comparison to their earnings loss?
- Are the RTWSP and its related processes vulnerable to fraud and abuse?
- Are barriers to access preventing eligible workers from receiving the RTW Supplement?
- What modifications should DIR consider to help the RTWSP more fully meet its goals?

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¹⁶² <http://www.dir.ca.gov/ODRegulations/ReturnToWorkRegulations/ReturnToWork.html>;
<http://www.dir.ca.gov/ODRegulations/ReturnToWork/ReturnToWork.html>.

¹⁶³ The link will be restored when the report is compliant with web accessibility standards.

SPECIAL REPORT: EVALUATION OF THE RETURN-TO-WORK FUND IN CALIFORNIA'S WORKERS' COMPENSATION SYSTEM

Data Sources

The quantitative part of the study conducted by RAND uses data from a variety of sources, including the Workers' Compensation Information System (WCIS), program records from the RTWSP, the Electronic Adjudication Management System (EAMS), the Disability Evaluation Unit (DEU), data on use of SJDB vouchers from a convenience sample of claims administrators, and several auxiliary data sets from public sources.

In addition to the quantitative analysis, RAND also conducted a thorough analysis of the program's operations since its inception, which included a review of regulations and practices governing the RTWSP, and held a Technical Advisory Group meeting on January 23, 2018, to obtain input on interim findings and potential modifications.

Summary of Key Findings

- The RTWSP is targeting the intended population: workers with more severe disabilities, who are less likely to return to work and thus may face disproportionate earnings losses.
- Program administration is efficient and rapid, with little evidence of fraud or abuse.
- Although the take-up by eligible workers has increased significantly over the life of the program, just over half of eligible workers apply for the RTWSP.
- The population eligible for the program is larger than was expected when the program was established, and increasing receipt of the SJDB voucher may contribute to continued eligibility growth.
- Language and geography were not as important as legal representation in determining which eligible workers applied for the RTWSP.

Summary of Key Recommendations:

- Make RTW Supplement payment automatic upon SJDB voucher issuance to ensure that the RTWSP reaches the full population of eligible workers.
- Improve notification and awareness of the program to increase take-up among eligible workers under current law.
- Improve monitoring of the SJDB voucher issuance to track emerging changes in the RTWSP-eligible population.
- Better empirical evidence on effectiveness of the SJDB is needed to assess whether the RTWSP promotes better employment outcomes by encouraging greater SJDB utilization.

For further information.....

"Evaluation of the Return-to-Work Fund in the California's Workers' Compensation System: Performance to Date and Options for Modification," RAND, 2018.

https://www.rand.org/pubs/research_reports/RR2548.html.

SPECIAL REPORT: WAGE LOSS MONITORING FOR INJURED WORKERS IN CALIFORNIA'S WORKERS' COMPENSATION SYSTEM

Introduction

The risk of occupational injury and illness poses a major threat to the health and financial well-being of workers.¹⁶⁴ In California and other states, the workers' compensation system bears primary responsibility for providing injured workers with needed medical treatment and compensation for lost earnings. Therefore, the California Department of Industrial Relations (DIR) contracted with RAND to monitor ongoing wage losses for injured workers between 2013 and 2017. RAND will submit the final of four reports (three interim reports and a final report) over the course of a three-year project. RAND built on techniques developed in numerous prior studies to collect the data needed to monitor overall trends in earnings losses and other economic outcomes. This Special Report provides a high-level overview of research questions that RAND is working to answer in the final policy report for the Wage Loss Monitoring Study.

Background

Over the course of the first three interim monitoring reports, RAND documented several trends and features of earnings loss in California since 2005:

- Relative earnings for injured workers slowly increased since the Great Recession but are still lower than pre-recession levels.
- Earnings losses in California vary considerably across regions, injury types, industries, pre-injury earnings, and attachment to the labor market. RAND found more severe earnings losses for cumulative trauma versus other types of injuries, and workers with cumulative trauma injuries in Southern California fared especially poorly but have shown improvements in recent years.
- Outcomes for workers with Permanent Partial Disability benefits have been more difficult to study, given long reporting lags but show large declines in relative earnings during the Great Recession and modest improvements beginning in 2014.
- More severe earnings losses are found for cumulative trauma (CT) than other types of injuries. There were also dramatic differences in outcomes across regions of California: CT injuries in Southern California (defined, narrowly, as Los Angeles, Orange, Riverside, San Bernardino, and Imperial counties) led to earnings losses that were over ten percentage points larger (as a proportion of what workers would otherwise have earned) than losses for CT injuries in the rest of the state.

Objectives and Research Questions

RAND will explore these findings in previous interim reports in greater detail as well as other areas. The topics and research questions to be addressed in the final report will include:

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¹⁶⁴ Wage Loss Monitoring in California's Workers' Compensation System: 2016-2017 Injury Year Findings (Third Interim Report), https://www.rand.org/content/dam/rand/pubs/research_reports/RR4200/RR4209/RAND_RR4209.pdf, page 1.

SPECIAL REPORT: WAGE LOSS MONITORING FOR INJURED WORKERS IN CALIFORNIA'S WORKERS' COMPENSATION SYSTEM

1. What Explains Earnings Loss Trends and the Slow Recovery after the Great Recession?
 - Research Questions
 1. Did changes in the composition of workers filing WC claims contribute to the deterioration in outcomes after the start of the Great Recession?
 2. Is there evidence that local economic conditions affected post-injury earnings losses?
 3. What explains the slow recovery in workers' economic outcomes?
2. Earnings Losses and Benefit Adequacy for Injured Workers
 - Research questions
 1. What is the rate of after-tax wage replacement for workers with lost-time injuries?
 2. How did the rate of wage replacement change after rating/benefit changes under SB 863 were implemented?
 3. Describe wage replacement rates and post-SB 863 changes specifically for workers with permanent disability (PD). Also conduct analyses of PD injury outcomes.
3. Regional Differences in Earnings Losses after Cumulative Trauma (CT) Injury
 - Research Questions
 1. Do case-mix differences in the cumulative trauma population in Southern California compared to the rest of the state explain the regional differences documented in the interim reports?
 2. Are post-separation claims (those filed after the end of employment) more common among CT claims in Southern California, and are these claims associated with worse economic outcomes for workers?
 3. Did differences in local economic performance through the Great Recession explain the different trends in outcomes for CT injuries across regions?

Status: In Process

For further information ...

Michael Dworsky, Stephanie Rennane, and Nicholas Broten, Wage Loss Monitoring in California's Workers' Compensation System, RAND September 26, 2019, https://www.dir.ca.gov/chswc/Meetings/2019/RAND-Wage-Loss-prezo_91919.pdf

Wage Loss Monitoring in California's Workers' Compensation System: 2016-2017 Injury Year Findings (Third Interim Report), https://www.rand.org/content/dam/rand/pubs/research_reports/RR4200/RR4209/RAND_RR4209.pdf

Wage Loss Monitoring in California's Workers' Compensation System: 2014-2015 Injury Year Findings (Second Interim Report), https://www.rand.org/pubs/research_reports/RR2807.html

Wage Loss Monitoring in California's Workers' Compensation System: 2013 Injury Year Findings (First Interim Report), https://www.rand.org/content/dam/rand/pubs/research_reports/RR2500/RR2572/RAND_RR2572.pdf

SPECIAL REPORT: THE FREQUENCY AND ECONOMIC IMPACT OF MUSCULOSKELETAL DISORDERS FOR CALIFORNIA FIREFIGHTERS

Introduction

Firefighters play a vital role in protecting the public, often placing their own lives at risk in order to protect the health and safety of others. Firefighting is one of the most dangerous occupations in the United States in terms of workplace injury risk. The Bureau of Labor Statistics reports approximately 508 nonfatal injuries per 10,000 full-time equivalent (FTE) firefighters in 2017. This is more than five times the rate of injury per 10,000 FTE that workers face, on average, in the private sector (89.4).¹⁶⁵ In California, the risks of firefighting have become even more salient in the past few years, with the record wildfires and resulting deaths.

Discussion

The health risks facing firefighters go beyond burns, automobile crashes, and other acute trauma. Firefighters are widely believed to face an elevated risk of cancer due to smoke inhalation and exposure to other hazardous materials. Additionally, the strenuous nature of the work and its rigorous physical demands can take a physical toll, including wear and tear that increases the risk of back injury, joint pain, or other forms of musculoskeletal disorders (MSDs), particularly for older workers.

As in most occupations, in firefighting the most common type of occupational injury or illness is MSDs, which creates concern that the strenuous physical demands of firefighting could put workers at greater risk of work loss and disability. Moreover, rigorous job requirements often dictate that even a relatively minor work restriction prevents firefighters from performing the full range of activities required of them to remain on active duty. Thus, the risk of an MSD injury can make it more difficult or costly to maintain fully staffed fire departments capable of protecting the public at an optimal level. This has led to considerable interest among policy makers and stakeholders about how to best monitor, prevent, and treat MSDs among firefighters.

A 2010 study by the RAND Corporation compared the frequency and economic consequences of work-related MSDs among firefighters to those for other workers in the public and private sectors.¹⁶⁶ This study found that firefighters experienced MSDs at a significantly higher rate than other workers, even those in other high-risk jobs, such as police or corrections work. Moreover, firefighters were more likely than other workers to experience lost time because of an MSD, when they are older. However, the study also found that the economic impact of MSDs—back injuries, in particular—was more moderate on average for firefighters than for other employees.

In this 2020 study, RAND updated the analyses from its 2010 study and considered the impacts of the SB 863 workers' compensation reforms and the economic shocks of the late 2000s on outcomes for firefighters with MSDs compared to other injured workers. Following the approach used in the prior report, RAND analyzed administrative data from the California Workers' Compensation Information System (WCIS) linked to data on earnings for injured workers, tailoring the results to the reforms and taking advantage of

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¹⁶⁵ Bureau of Labor Statistics, Survey of Occupational Illnesses and Injuries, <https://data.bls.gov/gqt/InitialPage/> (accessed October 15, 2020).

¹⁶⁶ Seabury, Seth A., and Christopher F. McLaren. 2010. "The Frequency, Severity, and Economic Consequences of Musculoskeletal Injuries to Firefighters in California." Santa Monica, CA: RAND Corporation. <https://www.rand.org/pubs/monographs/MG1018.html>.

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previously unavailable data. Where necessary, or to provide context, RAND also examined data in the published literature or national data.

Findings:

- Firefighters continue to face high risk of work-related MSDs, especially injuries to the lower extremities and trunk.
- Earnings losses for firefighters worsened after the Great Recession of 2008-2009, yet firefighters face fewer economic consequences from MSDs than other workers in similar occupations.
- After the implementation of 863, Disability Evaluation Unit ratings and statutory permanent disability benefits for firefighters rose.
- Firefighters with MSDs rarely receive treatment or permanent disability benefits for post-traumatic stress disorder or other psychiatric conditions.
- No evidence was found that treatment caps on chiropractors, occupational therapy, and physical medicine had a substantial impact on most workers, including firefighters.

Status: In Process

For further information...

Michael Dworsky, Seth A. Seabury, and Nicholas Broten, *The Frequency and Economic Impact of Musculoskeletal Disorders for California Firefighters: Trends and Outcomes Over the Past Decade*, RAND, 2020. https://www.rand.org/pubs/research_reports/RR3037.html

Seth A. Seabury and Christopher F. McLaren, *The Frequency, Severity, and Economic Consequences of Musculoskeletal Injuries to Firefighters in California*, RAND, 2010. <https://www.rand.org/pubs/monographs/MG1018.html>

SPECIAL REPORT: JANITORIAL TRAINING PROJECT

Introduction

On September 15, 2016, California Governor Jerry Brown signed into law AB 1978, a bill that established protection against harassment and sexual violence in the workplace for custodial staff. The law focuses on addressing sexual assault and harassment of workers, mainly undocumented female janitors, at night in empty buildings who often do not report the incidents out of fear of deportation or losing their job. AB 1978 protects janitorial workers by requiring employers to register annually with the Labor Commissioner to ensure employer compliance with this bill, starting July 1, 2018, and mandating that the Division of Labor Standards Enforcement (DLSE) establish a biennial in-person sexual violence and harassment prevention training program requirement for employees and employers.

The DIR, in collaboration with the Commission on Health and Safety and Workers' Compensation (CHSWC), contracted with the Labor Occupational Health Program (LOHP) at UC Berkeley to develop the janitorial training program for janitors and supervisors on sexual harassment. To develop the training programs, LOHP used written materials developed by DIR, which include a factsheet for workers and a factsheet for supervisors on sexual harassment and AB 1978 requirements. LOHP provided suggestions on the content of the written materials developed by DIR, based on its work with janitors on this issue. The training program uses interactive methods and is aimed at helping workers play an active role in preventing and addressing workplace issues. The training format and delivery methods are designed with an eye toward feasibility and practicality.

Project Objectives

The main objectives of this project are to:

- Develop a training program and short video for janitors on sexual harassment and assault, based on the requirements of the new regulations in AB 1978, and provide four "Training-of-Trainers" (TOT) sessions for worker leaders, worker representatives, and others so that they are prepared to train workers.
- Develop two training activities that can be included in the supervisor training program.
- Develop a lesson plan for a supervisor training program on sexual harassment.

Status: Completed

For further information...

<https://www.dir.ca.gov/dlse/Janitorial-Training.html>

<https://www.dir.ca.gov/dlse/Spanish/Janitorial-Training.html>

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB1978.

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SPECIAL REPORT: HEALTH AND SAFETY TRAINING FOR CHILD-CARE WORKERS

Background

According to the Labor Occupational Health Program (LOHP), in 2015-2016 the Service Employees International Union (SEIU), with funding from the California Community College Chancellor's Office and the California Workforce Development Board, developed a curriculum for teaching child-care workers in family day-care settings about workplace health and safety.¹⁶⁷

In 2017, Assemblyperson Monique Limón sponsored Assembly Bill (AB) 676 which proposed an Early Educators' Occupational Safety and Health Training Program. She also requested that CHSWC develop a model-training curriculum for occupational safety and health training for early care and education workers and employers, with the goal of prevention and reduced costs for employers and employees.

Training Curriculum

In 2018, CHSWC funded a study for LOHP to assess the effectiveness of the SEIU-created curriculum and training and to develop and pilot a proposed expanded curriculum for center-based and school-based child-care centers in California, adopting some training elements from AB 676 and acknowledging the work of the California Childcare Health Program at the University of California, San Francisco.

That study had the following objectives:

- Review and assess the effectiveness of existing health and safety curriculum for family day-care providers developed by SEIU.
- Adapt that curriculum for child-care workers in center- and school-based settings.
- Provide two training of trainer (TOT) programs in English and Spanish to prepare trainers to conduct the health and safety training.
- Develop a dissemination plan and begin a limited rollout.
- Assess effectiveness of TOT and of initial dissemination/outreach plan.

The curriculum was developed in both English and in Spanish.

Status: Completed

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¹⁶⁷ <http://seiearlyeducatortraining.org/>

SPECIAL REPORT: CHSWC'S HEALTH AND SAFETY PROGRAMS

In conjunction and in cooperation with the health and safety and workers' compensation community, CHSWC administers and participates in several major efforts to improve occupational health and safety through its various training and education programs.

Worker Occupational Safety and Health Training and Education Program

Description

Labor Code Section 6354.7 establishes a Workers' Occupational Safety and Health Education Fund (WOSHEF) for the purpose of establishing and maintaining a statewide worker-training program. CHSWC developed the [Worker Occupational Safety and Health Training and Education Program \(WOSHTEP\)](#) to raise awareness and promote injury and illness prevention through training and dissemination of materials by a statewide network of providers. This program is designed to prepare workers in California to take a leadership role in health and safety programs at work.

CHSWC steps in implementing WOSHTEP include:

- *Created a labor-management Advisory Board to oversee program activities, which meets annually.* The WOSHTEP Advisory Board consists of employers and workers or their representatives who assist in guiding development of curricula and broadening partnerships.
- *Conducted needs assessments with stakeholders.* The needs assessments proceed on an ongoing basis, as emerging issues dictate.
- *Designed a core curriculum and supplemental training materials based on the results of the needs assessment.* The standardized 24-hour curriculum for a Worker Occupational Safety and Health (WOSH) Specialist course is aimed at training workers to take a leadership role in injury and illness prevention in their workplaces. The training consists of six core modules and three to four supplemental modules (selected from a total of eight that are available). Participants who attend the full training receive a certificate of completion. Training is currently conducted statewide in English and Spanish. Materials are available in English and Spanish as well as in Chinese. The WOSH Specialist training program is a unique worker training program and serves as a local, state, and national model. The curriculum is updated on an ongoing basis as needed.
- *Identified and continue to deepen relationships with three Centers of Excellence, the Labor Occupational Health Program (LOHP) at the University of California, Berkeley, the Labor Occupational Safety and Health (LOSH) Program at the University of California, Los Angeles, and the Western Center for Agricultural Health and Safety (WCAHS) at the University of California, Davis, consisting of trainers, curriculum developers, and resource specialists in occupational safety and health.* These three Northern, Southern, and Central California Resource Centers offer libraries and distribution systems of occupational health and safety training materials to provide information and technical assistance to the workers' compensation community and to support trained WOSH Specialists and WOSHTEP trainers.

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- *Established and continue to maintain statewide network of trainers to offer the WOSH Specialist curriculum.* WOSH training is taught primarily by LOHP, LOSH, and WCAHS trainers, and training-of-trainer courses have been offered to WOSH Specialist trainers to broaden the reach of the program. These trainers receive ongoing mentoring from experienced trainers from LOHP and LOSH. Due to the COVID-19 pandemic, an online interactive version of the in-person training was developed in 2020.
- *Established and maintain network of community educators to help WOSHTEP trainers deliver short awareness classes to vulnerable working populations.* Training of trainer (TOT) courses are conducted to prepare WOSH Specialists and community educators/promotoras to teach awareness classes on such topics as chemical hazards, hazard communication, heat illness prevention, and the best practices for reaching and educating low-wage immigrant workers.
- *Created and continue to update a [small business health and safety training resources](#) program across a range of industries, with materials adapted for use nationwide.* It developed industry-specific materials for restaurant owners and managers on identifying and controlling hazards in their workplace, working with the State Compensation Insurance Fund (SCIF) and the California Restaurant Association (CRA) to offer training. It created materials for the janitorial, restaurant, and dairy industries and conducted training for employers in these industries.
- *Developed, disseminated, and continue to update [materials on creating and implementing an Injury and Illness Prevention Program \(IIPP\)](#) for small and large businesses in general industry.* The materials are available in multiple languages. The training has also been adapted for staffing agencies to include guidance on protecting workers in dual-employer situations and for the agricultural industry. In addition, an online version of the training was developed in 2020 to offer the training remotely during the pandemic as well as to extend the reach of the program.
- *Developed a [Multilingual Health and Safety Resource Guide](#) to address the need for easily accessible multilingual materials.* This guide is updated regularly. It includes worker training materials in over 20 languages, including factsheets, checklists, and other educational resources that are available online in the WOSHTEP section of the CHSWC website.
- *Developed a [Construction Case Study Training Guide](#)¹⁶⁸ for the construction industry for apprenticeship and pre-apprenticeship programs.* It developed additional materials on health and safety topics, such as indoor and outdoor heat illness, motor vehicle safety, and emergency preparedness.
- *Created and continue to maintain a successful Young Worker Leadership Academy (YWLA) for youth statewide to develop knowledge of health and safety issues and their rights and responsibilities in the workplace, as well as leadership skills.* The three-day, statewide Academy is conducted once per year. Academy youth take a leadership role as promoters of workplace health and safety in their communities during Safe Jobs for Youth Month in May. WOSHTEP staff also developed a guide for use by other states to implement a Young Worker Leadership Academy.
- *Developed a [guide](#) for integrating occupational health and safety with workplace wellness programs.*

Next Steps

Every year, CHSWC assesses fees to California WC insurance carriers pursuant to LC section 6354.7 in order to fund the Workers' Occupational Safety and Health Education Fund (WOSHEF) for the next fiscal year and thereby fund WOSHTEP and its programs.

The next steps for WOSHTEP include continuing training both in-person and online in a variety of industries for participants in diverse occupations and work settings, ongoing development of a statewide network of

¹⁶⁸ The link will be restored when the report is compliant with web accessibility standards.

SPECIAL REPORT: CHSWC'S HEALTH AND SAFETY PROGRAMS

trainers, ongoing development and dissemination of materials on health and safety topics, continuing training for small businesses and young workers, broad outreach for all aspects of the program, and ongoing evaluation.

Status: Ongoing.

For further information ...

- The WOSHTEP materials are available at <http://www.dir.ca.gov/chswc/woshtep.html>
- The WOSHTEP Advisory Board Annual Reports are available at <http://www.dir.ca.gov/chswc/WOSHTEP.html#1>
- The IIPP resources and materials are available at <https://www.dir.ca.gov/chswc/WOSHTEP/iipp/>

School Action for Safety and Health Program

Per the mandate set forth in Labor Code section 6434, CHSWC is to assist school districts and other Local Education Agencies (LEAs) in establishing effective occupational injury and illness prevention programs (IIPPs), with a priority on high-risk schools or districts.

CHSWC established a model program for LEAs called the California School Action for Safety and Health (SASH) program, to help schools statewide improve their injury and illness prevention practices to protect school employees. The program is administered by CHSWC through an interagency agreement with the Labor Occupational Health Program at UC Berkeley and with the collaboration of the Labor Occupational Safety and Health (LOSH) Program at UCLA.

The program includes training and resources to enable schools or school districts to develop or improve their IIPPs and to make other health and safety improvements that will help protect school or school district employees from workplace injuries and illnesses. The target audience is K–12 schools and school districts at high risk of occupational injury and illness. The SASH program is also helpful as Cal/OSHA enforcement can and does cite violations of health and safety standards at schools, primarily arising from complaints, and expects remediation of hazardous conditions and other deficiencies.

Program Components

The SASH Program offers:

- A free training program to help build the capacity of district-level health and safety coordinators to act as resources to other employees and develop an IIPP to identify, prevent, and eliminate hazards.
- Written materials that support injury and illness prevention activities.
- Ongoing problem-solving assistance provided by a statewide SASH Resource Center, including a network of trained safety staff in schools.

The free one-day SASH training program is designed for school district staff responsible for employee safety and health. These employees are typically from County Offices of Education (just under 60 offices), School Districts (of which there are almost 1,000) and individual schools' human resources/administration and/or the maintenance and operations departments. Training is provided by University of California trainers.

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Participants learn valuable skills in how to identify and solve safety problems, prepare, update, and improve written IPPs, record training activities, and involve other employees in carrying out prevention activities.

After participants complete the training, they become "SASH coordinators" in their district and receive a certificate from CHSWC and the University of California. SASH materials are free and designed to help school employees identify and address health and safety issues in the school environment. Materials include:

- An online template for writing an IIPP, with an accompanying guidebook.
- Factsheets on hazards commonly found in schools.
- Checklists and other tools to help identify problems, investigate and learn from accidents, and keep track of safety activities.
- Tip sheets for employees on hazards and solutions for their particular occupation, including:
 - Teachers and teaching aides
 - Maintenance staff
 - Groundskeepers
 - Food service employees
 - Custodians
 - Administrative and office staff
 - Bus drivers
- A poster for school employees promoting their involvement in safety activities.
- An online Resource Guide that provides additional school-related materials on particular hazards/issues and a list of agencies and organizations.

The SASH Resource Center is located at LOHP. In collaboration with UCLA's LOSH Program, the Resource Center is available to help school districts find additional information and obtain assistance after the training.

Accomplishments

In addition to the materials described above, training classes have been offered and will continue to be offered statewide. To date, 94 one-day SASH training classes have been conducted for 2,047 attendees from school districts in 39 counties with school district and county office of education staff, including two pilot training sessions. The training has been very well received.

Follow-up activities after attending a SASH class include sending attendees a class roster so that they can stay in touch and use one another as resources and sending out a newsletter. Two-page SASH newsletters for SASH coordinators (SASH training attendees) have been distributed by email. The newsletters include the answers to common questions asked during training sessions as well as other relevant information.

New factsheets are being developed as needed each year. Factsheets developed in the past two years have included those for para-educators on handling uncontrolled aggressive student behaviors and those on addressing safety in the event of an active shooter on school grounds.

SASH Expansion

Although the injury rate among school district employees has declined to some degree since the SASH program began, it is still high relative to the overall injury rate. Consequently, additional training and support are needed to accomplish the goals of this statewide initiative. Therefore, CHSWC has expanded the reach of the program by increasing the number of training sessions and webinars offered and by updating the SASH curriculum and materials, as needed, to include information about new health and safety issues

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identified by the SASH Advisory Committee and course participants, including any new Cal/OSHA standards that apply to schools. Expansion of the SASH program also includes an evaluation of the training program.

Next Steps:

The SASH program is developing additional materials and resources in light of the COVID-19 pandemic. These include: an online version of the SASH IIPP course, factsheets on COVID-19, and tips for addressing work-related stressors faced by school employees. In addition, the SASH IIPP training curriculum will be updated to incorporate information about any schools related health and safety issues and recommended solutions including Cal/OSHA's guidance of employee protections related to COVID-19.

Status: Ongoing.

For further information ...

- The SASH materials are available at <https://www.dir.ca.gov/chswc/SASH/index.htm>

California Partnership for Young Worker Health and Safety

Description

The Commission on Health and Safety and Workers' Compensation (CHSWC) continues to put California in the forefront as a nationwide leader in protecting and educating teen workers. For more than 20 years, CHSWC has sponsored and convened the California Partnership for Young Worker Health and Safety, formalized by Assembly Bill (AB) 1599 in September 2000. The Partnership is coordinated by the Labor Occupational Health Program (LOHP) at the University of California (UC), Berkeley, with key support from the Labor Occupational Safety and Health Program (LOSH) at the University of California, Los Angeles (UCLA), and other members of the partnership. In addition to serving California, these efforts have inspired similar activity throughout the United States and internationally.

The California Partnership for Young Worker Health and Safety is composed of agencies and organizations dealing with youth employment and education issues, as well as others that can play a role in educating and protecting young workers. Members represent educators, parents, employers, youth training programs, government agencies, and others.

The purpose of the partnership is to identify potential strategies to reduce work-related injuries and illnesses among youth in the California workforce, foster awareness and skills in health and safety that youth will retain throughout their working lives and allow them to take an active role in shaping safe work environments, and promote positive, healthy employment for youth.

During the past year, the partnership implemented the following activities:

- *Promoted the annual California Safe Jobs for Youth Month public awareness campaign in May, which was established in 1999 by the then-Governor Gray Davis. This year's public awareness and education activities included a teen poster contest (posters will be distributed to 1,000 schools and hundreds of other organizations that serve youth once schools are in meeting in-person again), a social media campaign for youth and youth-serving organizations, development*

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and promotion of materials for teachers to support online teaching about health and safety and COVID prevention, and distribution of the current Safe Jobs for Youth Month Resource Kit to educators and community groups (via the website), plus resource kit materials from past years (available on the website).

- *Held the annual Young Worker Leadership Academy.* A statewide Young Worker Leadership Academy (YWLA) was held in Berkeley on February 6–8, 2020. The Academy is a part of the CHSWC Worker Occupational Safety and Health Training and Education Program (WOSHTEP). The Leadership Academy was coordinated by LOHP and supported by active participation of other partnership members, including UCLA-LOSH, Cal/OSHA, the Labor Commissioner's Office, the California Department of Public Health's Occupational Health Branch, and the Equal Employment Opportunity Commission (EEOC). Young people from six different organizations around the state attended, along with four YWLA alumni who served as youth mentors.

The goals of the Academy are to teach youth about workplace health and safety and their rights on the job, to help youth start thinking about how to help ensure that young people do not get hurt on the job, and to provide a forum for these youth to plan specific actions that they can take in their own communities to promote safety among young workers. Academy alumni youth led many of the activities at the Academies and developed their own networking project. The California partnership seeks opportunities for building the skills of YWLA young leaders, including those in public speaking.

- *Promoted the institutionalization of health and safety education for California students.* Partnership members guided LOHP efforts to promote health and safety education in a variety of programs, including work experience, career technical education, WorkAbility, and Linked Learning and Career Pathway Programs. This year, LOHP also partnered with the California Industrial Hygiene Council (CIHC), as a keynote presenter at their annual conference and working with regional CIHC leads to promote outreach on young workers. LOHP has also joined a network of professional development providers at UC Berkeley to promote training for work-based learning educators.

Partnership accomplishments include:

- More than 350 teachers, employers and youth received direct training or presentations.
- At least 1,200 teachers, employers, and youths received written information, such as factsheets for teens and employers, the Safe Jobs for Youth Month Resource Kit produced by LOHP, and articles in partnership newsletters, including that of the California Association of Work Experience Educators (CAWEE). In addition, CAWEE estimates that its own members reach approximately 15,000 students, parents, and employers with workplace safety information. Thousands more received information through listserv postings, email announcements, radio and video public service announcements, and posters.
- About 20 teachers, employers, and youth received direct technical assistance via phone or email.
- The www.youngworkers.org website: During 2019–20 (12 months of tracking), the website had 112,060 page views, comprising a broad range of webpages. The most frequently visited pages are the "Work Permits" page (42,800 views), the "Homepage" (8,800 views), the "Stats and Stories" page (8,300 views), the "Teacher Materials" page (7,300 views), and the "Teen Workers Rights" page (7,200 views).
- At least three articles have been published in newsletters, newspapers, and on the web.
- Health and safety information continued to be integrated into ongoing statewide activities by many of the partners, including regular in-service training for work experience educators, widespread use of health and safety curricula in job training and work experience programs, and organizational links to the website <http://www.youngworkers.org>. The WorkAbility program, which

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places youth with learning and cognitive disabilities in the workplace, requires that all its staff receive training on how to teach participants in the program about health and safety.

Status: Ongoing.

For further information ...

Young Worker Websites for information for teens, teen workers in agriculture, employers, parents, and educators:

<https://www.dir.ca.gov/YoungWorker/YoungWorkersMain.html>

<http://www.youngworkers.org>

SPECIAL REPORT: CALIFORNIA OCCUPATIONAL RESEARCH AGENDA

Background

Despite the advances that California has made in promoting occupational health and safety over the years, according to recent data, 422¹⁶⁹ workers died from injuries sustained on the job, over 680,000¹⁷⁰ filed workers' compensation claims for nonfatal injuries, and workers' compensation (WC) system costs exceeded \$23 billion.¹⁷¹ Occupational injuries and illnesses in California take a substantial toll on workers, who lose worktime and wages and may suffer permanent disability or even death. Employers are also negatively affected by lost productivity and higher WC insurance premiums.

To help address these issues, the Department of Industrial Relations (DIR)/Commission on Health and Safety and Workers' Compensation (CHSWC) and its partners, the California Department of Public Health's Occupational Health Branch (CDPH OHB) and the University of California's Centers for Occupational and Environmental Health (COEH), are collaborating to identify the research priorities specific to the needs of California's workforce.

Objectives

The objectives of this project include:

- Reviewing and summarizing illness and injury data and National Occupational Research Agenda (NORA) topic areas relevant to California
- Identifying and recruiting stakeholders to assist in determining the regional workplace and workforce issues and research needs specific to California
- Developing, conducting, and summarizing an online survey of identified stakeholders in California
- Developing a final report that describes the selected research priorities and suggested next steps in developing and implementing a statewide California Occupational Research Agenda (CORA) program to identify key research needs and fund occupational health research.

Data and Methods:

An online survey of stakeholders in the health and safety and WC community was conducted by CHSWC and LOHP via email. In addition, the project team has been analyzing the fatal and nonfatal occupational illness and injury data and the National Occupational Research Agenda sectors pertinent to California.

Preliminary Findings from the Project Include:

- Overall, the top research need identified by respondents in the survey as high priority in promoting safe workplaces and injury and illness prevention in California was, identifying effective solutions for preventing injuries and illnesses in specific jobs and industries.

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¹⁶⁹ https://www.dir.ca.gov/DOSH/CFI/cfoi_2018/cfoi2018-A-1.pdf.

¹⁷⁰ https://www.dir.ca.gov/dwc/wcis/WCIS_tables/AggregateFROISROIData/AggregateFROISROIData.html.

¹⁷¹ https://www.dir.ca.gov/chswc/Reports/2019/CHSWC_AnnualReport2019.pdf.

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- The three industries with the greatest incidence rates of fatalities in 2018 were agriculture, forestry, fishing and hunting, transportation and utilities, and construction.¹⁷²
- The three occupations with the highest number of fatalities in 2018 were transportation and material moving occupations, construction and extraction occupations, and building and grounds cleaning and maintenance occupations.¹⁷³
- The three occupations with the highest incidence rates of nonfatal days away from work injuries and illnesses in 2018 were: building and grounds cleaning and maintenance, construction and extraction, and transportation and material moving.¹⁷⁴

Status: In process.

¹⁷² https://www.dir.ca.gov/DOSH/CFOI/CFOI_2018/Fatal-occupational-injury-rates-by-industry-2018-California.pdf.

¹⁷³ https://www.dir.ca.gov/DOSH/CFOI/cfoi_2018/cfoi2018-A-5.pdf.

¹⁷⁴ <https://www.dir.ca.gov/oprl/Injuries/Demographics/2018/Menu.htm>, Table 15.

LIST OF PROJECTS AND STUDIES

CHSWC Projects and Studies are numerous and often build on work initiated in prior years. As CHSWC refines its approach to the study of the workers' compensation and health and safety systems, the projects incorporate that knowledge to develop more sophisticated lines of inquiry and research. This Annual Report lists the CHSWC projects and studies for 2020 and 2019; lists of CHSWC projects and studies for prior years are in the 2018 and 2017 Annual Reports.¹⁷⁵

CHSWC divides projects and studies on workers' compensation topics into eleven categories:

- I Permanent Disability and Temporary Disability Studies
- II Return to Work
- III Workers' Compensation Reforms
- IV Occupational Safety and Health
- V Workers' Compensation Administration
- VI Information for Workers and Employers
- VII Medical Care
- VIII Community Concerns
- IX Disaster Preparedness and Terrorism
- X CHSWC Issue Papers
- XI Other

The following projects and studies were produced in 2020:

- Evaluation of Incidence of Mental Health Conditions or Illnesses Among Firefighters and Peace Officers Study, RAND (Category IV)
 - Status: In Process
- Assessment of Risk of Carcinogens Exposure and Incidents of Occupational Cancer among Mechanics and Cleaners of Firefighting Vehicles, ToxStrategies (Category IV)
 - Status: In Process
- Study of the impacts of COVID-19 and the specific presumptions created by AB 1159 (Assembly Members Hill and Daly) in 2020 and valid through January 1, 2023 (Category III)
 - Status: In Process
- Study of Evaluation of SB 863 Medical Care Reforms, Andrew Mulcahy, Barbara Wynn, Kandice Kapinos, Preethi Rao, Rosalie Malsberger, Brian Phillips, and Spencer Case, RAND (Category III)
https://www.rand.org/pubs/research_reports/RR2045.html
 - Status: Completed

¹⁷⁵ The CHSWC projects and studies for 2018 are listed in the 2018 Annual Report: https://www.dir.ca.gov/chswc/Reports/2018/CHSWC_AnnualReport2018.pdf, 172; and all the CHSWC projects and studies up to and including 2017 are listed in the 2017 Annual Report: https://www.dir.ca.gov/chswc/Reports/2017/CHSWC_AnnualReport2017.pdf, 193.

LIST OF PROJECTS AND STUDIES

- Health and Safety Training for Childcare Workers (in English and Spanish), UC Berkeley (LOHP) (Category IV)
 - Status: Completed

The following projects and studies were produced in 2019:

- Sexual Violence and Harassment Prevention Training-Curriculum for Janitorial Workers, LOHP, UC-Berkeley, September 2019 (Category IV)
<https://www.dir.ca.gov/dlse/Sexual-Violence-and-Harassment-Prevention-Training-Worker.html> (English version)
<https://www.dir.ca.gov/dlse/Spanish/Sexual-Violence-and-Harassment-Prevention-Training-Worker.html> (Spanish version)
 - Status: Completed
- Sexual Violence and Harassment Prevention Training-Curriculum for Janitorial Supervisors. LOHP, UC Berkeley, September 2109 (Category IV)
<https://www.dir.ca.gov/dlse/Sexual-Violence-and-Harassment-Prevention-Training-Supervisor.html> (English version)
<https://www.dir.ca.gov/dlse/Spanish/Sexual-Violence-and-Harassment-Prevention-Training-Supervisor.html> (Spanish version)
 - Status: Completed
- The Frequency and Economic Impact of Musculoskeletal Disorders for California Firefighters, Misha Dworsky, Seth Seabury, and Nick Broten, RAND, January 2020 (Category IV)
https://www.rand.org/pubs/research_reports/RR3037.html
 - Status: In Process

CHSWC AND THE COMMUNITY

For Information about the Commission on Health and Safety and Workers' Compensation (CHSWC) and its activities:

Write:

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In 2012, most government departments and agencies were asked by the office of Governor Brown to redesign their public website so that information can be located more efficiently. CHSWC participated in the redesign process and, according to its mandate, continues to post useful information for the public and related stakeholders.

Check out www.dir.ca.gov/chswc for:

What's New

- Research Studies and Reports by Topic and by Year
- Information Bulletins
- Commission Members
- Meeting Schedules and Minutes
- DIR/CHSWC Young Workers' Program
- Information for Workers and Employers
- Worker Occupational Safety and Health Training and Education Program (WOSHTEP)
- Past Conferences
- Public Comments and Feedback
- Injury and Illness Prevention Program (IIPP) Resources
- School Action for Safety and Health (SASH) Program
- Other Resources

CHSWC Publications

In addition to the many reports listed in the CHSWC List of Projects and Studies section of this report, CHSWC has published:

CHSWC Annual Reports, 1994–2019

CHSWC Strategic Plan, 2002

Worker's Occupational Safety and Health Training and Education Program (WOSHTEP) Advisory Board Annual Reports, 2004–2019

CHSWC AND THE COMMUNITY

Acknowledgments

CHSWC is pleased to acknowledge and thank the following individuals and organizations from the California health, safety and workers' compensation communities.

Their willingness to share the insights and knowledge derived from their years of experience has assisted CHSWC immeasurably in its mission to examine and recommend improvements in the health and safety and workers' compensation systems in California.

American Medical Association (AMA)

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American Property Casualty Insurance Association (APCIA)

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CHSWC AND THE COMMUNITY

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CHSWC AND THE COMMUNITY

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CHSWC AND THE COMMUNITY

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Participants in CHSWC meetings, fact-finding hearings, and public forums

Participants in CHSWC project advisory committees

Special appreciation is owed to injured workers and employers in the system who have come forward to suggest improvements to the system and provide their insights and comments.

Finally, CHSWC acknowledges and thanks its staff:

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