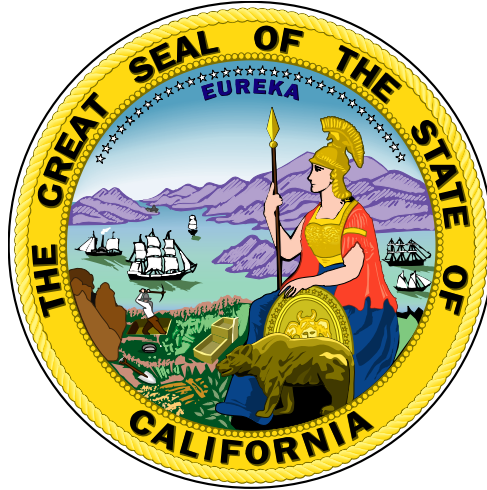


# California Commission on Health and Safety and Workers' Compensation



## CHSWC 2021 Annual Report

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**State of California**  
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**Department of Industrial Relations**  
**December 2021**

**California Commission on Health and Safety  
and Workers' Compensation**

**2021 Annual Report**

**California State Department of Industrial Relations  
December 2021**

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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](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



#### **Sean McNally**

Sean McNally is President and CEO of Houchin Community Blood Banks. 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; he is also past President of KBA Engineering in Bakersfield, California.

He 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 of Arts degrees in English and Theology. Following that, he did graduate studies at Hebrew University in Jerusalem Israel.

Appointed by: Governor

## ABOUT CHSWC

### CHSWC Members Representing Employers

#### Nicholas Roxborough

Nicholas Roxborough is the co-managing partner of Roxborough, Pomerance, Nye & Adreani, LLP, and specializes in representing insured and self-insured employers as well as large stakeholders in complex workers' compensation insurance and regulatory issues across the country. He has obtained, over the last 30 years, numerous successful verdicts and landmark appellate decisions concerning the insurance and employment industry.

Mr. Roxborough received his Juris Doctorate from Southwestern School of Law, studied at the Institute of European Studies in Vienna, Austria, and received his Bachelor of Arts Degree from the University of California, Berkeley. Mr. Roxborough serves on various Boards and Commissions, including the California Organized Investment Network ("COIN") Advisory Board, appointed by then Insurance Commissioner Dave Jones and recently by current Insurance Commissioner Ricardo Lara. Mr. Roxborough also serves on the Board of Airport Commissioners at LAX.



Appointed by: Speaker of the Assembly

## 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.

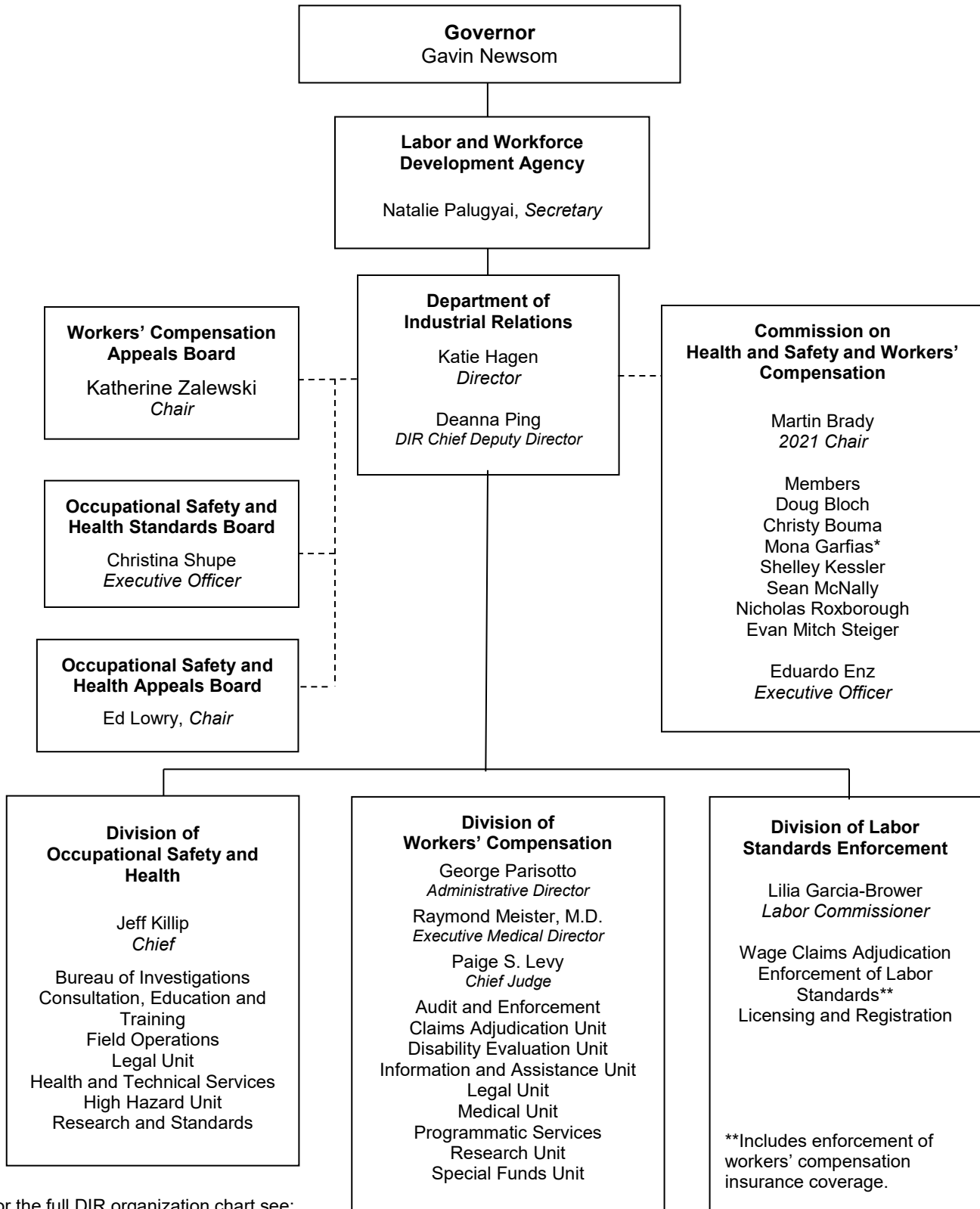
Mitch has been with the California Labor Federation since 2010, and prior to that served as researcher/organizer for United Food & Commercial Workers Local 21 and legislative advocate for the Washington State Building & Construction Trades Council, AFL-CIO. He is a member of the Pacific Media Workers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

Appointed by: Senate Rules Committee



ABOUT CHSWC

State of California Health and Safety and Workers' Compensation Functions in 2021



For the full DIR organization chart see:  
[http://www.dir.ca.gov/org\\_chart/org\\_chart.pdf](http://www.dir.ca.gov/org_chart/org_chart.pdf).

\* Mona Garfias served as Commissioner through 3/31/21.

## 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. Although the economy has fully reopened and the administration of over 48 million vaccines<sup>1</sup> has prevented numerous illnesses and deaths from COVID-19 infections, a significant percentage of the population remains unvaccinated and hospitalizations and deaths from the virus and its variants continue to occur. The Commission on Health and Safety and Workers' Compensation (CHSWC) recommends continuing to monitor the COVID-19 pandemic as the economy reopens and supporting efforts to help ensure that workers and employers are protected from this particularly contagious virus and its variants.

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 (MPNs)
  - Carve outs
  - Utilization Review (UR)
  - Independent Medical Review (IMR)
  - 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.

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<sup>1</sup> <https://covid19.ca.gov/state-dashboard/#todays-update>. Data as of September 14, 2021.

## CHSWC RECOMMENDATIONS

- 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
- 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 §139.48 requires the Department of Industrial Relations (DIR) [Return-to-Work Supplemental Program](#) (RTWSP) to administer a \$120 million dollar fund, that makes supplemental payments to workers whose permanent disability benefits are disproportionately low in comparison to their earnings losses.<sup>2</sup> 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](#),”<sup>3</sup> 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.

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<sup>2</sup> <https://www.dir.ca.gov/rtwsp/rtwsp.html>.

<sup>3</sup> [https://www.rand.org/content/dam/rand/pubs/research\\_reports/RR2500/RR2548/RAND\\_RR2548.pdf](https://www.rand.org/content/dam/rand/pubs/research_reports/RR2500/RR2548/RAND_RR2548.pdf).



## CHSWC RECOMMENDATIONS

- Continue to partner with organizations to support and promote early and safe return-to-work efforts and projects.

### 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 DIR studies by RAND "[Wage Loss Monitoring for Injured Workers in California's Workers' Compensation System](#),"<sup>4</sup> which include continuing the following:
  - Monitoring earnings losses and the adequacy of permanent partial disability (PPD) benefits.
  - Researching and understanding 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.
  - Focusing efforts on improving sustained return to work for injured workers to enhance benefit adequacy and worker well-being.

#### Presumptions

The COVID-19 pandemic has had a tremendous impact on the workers' compensation (WC) and health and safety systems in California and on its economy. As of September 14, 2021, California had over 4.3 million positive confirmed COVID-19 cases, with deaths exceeding 66,000,<sup>5</sup> and over 145,000 COVID-19 claims have been filed in the WC system.<sup>6</sup> In addition, California's unemployment rate of 7.6 percent<sup>7</sup>, although down from its peak in April 2020, is still 3.7 percentage points higher than the pre-pandemic level of 3.9 percent in January 2020.<sup>8</sup> Several states, including California, implemented presumptions of compensability for employees related to COVID-19. In California, Governor Newsom issued an executive order in May of 2020, providing for a rebuttable presumption of compensability for all workers directed by their employer to work outside their home, that applies to the period between March 19 to July 5, 2020.<sup>9</sup> The Workers' Compensation Insurance Rating Bureau estimated the impact of the presumption at approximately \$1.2 billion.<sup>10</sup> SB 1159, enacted on September 17, 2020, codifies the COVID-19 presumption created by the executive order and provides two new rebuttable presumptions that an employee's illness related to COVID-19 is an occupational injury and therefore eligible for workers' compensation benefits if

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<sup>4</sup> [https://www.rand.org/pubs/research\\_reports/RR2572.html](https://www.rand.org/pubs/research_reports/RR2572.html); [https://www.rand.org/pubs/research\\_reports/RR2807.html](https://www.rand.org/pubs/research_reports/RR2807.html).

<sup>5</sup> [cdph.ca.gov/covid19](https://cdph.ca.gov/covid19)

<sup>6</sup> <https://data.ca.gov/dataset/dwc-covid-19-claims/resource/747afc27-a914-4f5f-9032-c462e9b7abb8>. Data as of June 10, 2021.

Accessed on September 14, 2021.

<sup>7</sup> <https://www.edd.ca.gov/newsroom/unemployment-july-2021.htm>

<sup>8</sup> <https://edd.ca.gov/newsroom/unemployment-february-2020.htm>

<sup>9</sup> <https://www.gov.ca.gov/wp-content/uploads/2020/05/5.6.20-EO-N-62-20-text.pdf>.

<sup>10</sup> [https://www.wcirb.com/sites/default/files/documents/rb-covid19-cost\\_impact\\_of\\_governor\\_executive\\_order\\_0.pdf](https://www.wcirb.com/sites/default/files/documents/rb-covid19-cost_impact_of_governor_executive_order_0.pdf).

## CHSWC RECOMMENDATIONS

specified criteria are met.<sup>11</sup> 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 posttraumatic stress disorder (PTSD) that developed or manifested while the injured person was in the service of the department or unit. Recent research has indicated that workers' compensation claims filed by firefighters and peace officers are more likely to involve PTSD than the average worker in California, and mental health stigma and fear of professional consequences were identified as a major barrier to care-seeking for first responders.<sup>12</sup>

### Recommendations:

- Continued evaluation and 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.
- Consider the findings of the CHSWC study by RAND, “Posttraumatic Stress in California’s Workers’ Compensation System-A Study of Mental Health Presumptions for Firefighters and Peace Officers Under Senate Bill 542”, which in part supports rationale for PTSD presumption, but also raises concerns about costs to state and local government.

## 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](#),<sup>13</sup> 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.<sup>14</sup>

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. Subsequently, DWC worked 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.

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<sup>11</sup> <https://www.dir.ca.gov/dwc/Covid-19/FAQ-SB-1159.html>

<sup>12</sup> CHSWC Study by RAND “Posttraumatic Stress in California’s Workers’ Compensation System-A Study of Mental Health Presumptions for Firefighters and Peace Officers Under Senate Bill 542. 2021. [https://www.rand.org/pubs/research\\_reports/RRA1391-1.html](https://www.rand.org/pubs/research_reports/RRA1391-1.html)

<sup>13</sup> Text of SB 1160, [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201520160SB1160](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB1160).

<sup>14</sup> DWC website, SB 1160 page, <https://www.dir.ca.gov/dwc/SB1160-AB1244/SB1160.htm>.

## CHSWC RECOMMENDATIONS

DWC held a public hearing on the revised, proposed medical-legal fee schedule regulations on December 14, 2020, and adopted a new Medical-Legal Fee Schedule (MLFS) with an effective date of April 1, 2021.<sup>15</sup>

In response to the COVID-19 pandemic, DWC made several changes to its Official Medical Fee Schedule including adopting changes to its Physician Services/Non-Physician Practitioner Services Fee Schedule to encourage greater use of telehealth services.<sup>16</sup>

### *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.
- 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.
- Monitor the impact of the newly adopted Medical-Legal Fee Schedule.
- Promote and support the recommendations in the [RAND Medical-Legal white paper](#).<sup>17</sup>
- Incentivize the use of Medical Provider Networks (MPNs) in post-employment claims as discussed in the RAND report "[Provider Fraud in Workers' Compensation](#)."<sup>18</sup>

### **Pharmaceuticals**

Labor Code § 5307.27 requires that DWC's Administrative Director establish a drug formulary using evidence-based medicine, as part of the medical treatment utilization schedule (MTUS). DWC's 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.

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<sup>15</sup> <https://www.dir.ca.gov/dwc/DWCPropRegs/2020/Medical-Legal-Fee-Schedule/Med-Legal-Fee-Schedule.htm>

<sup>16</sup> <https://www.dir.ca.gov/DIRNews/2020/2020-41.html>.

<sup>17</sup> California Workers' Compensation Medical-Legal Fee Schedule, Analysis and Recommendations, RAND, 2018, [https://www.rand.org/pubs/working\\_papers/WR1279.html](https://www.rand.org/pubs/working_papers/WR1279.html).

<sup>18</sup> Provider Fraud in California Workers' Compensation, RAND, 2017, [https://www.dir.ca.gov/Fraud\\_Prevention/Reports/Provider-Fraud-In-CA-Workers-Compensation.pdf](https://www.dir.ca.gov/Fraud_Prevention/Reports/Provider-Fraud-In-CA-Workers-Compensation.pdf).

## CHSWC RECOMMENDATIONS

### 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 billion to \$10 billion in uncollected tax revenues every year.<sup>19</sup>

#### *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 DIR booklet "[All Workers Have Rights](#)."<sup>20</sup>
- 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.<sup>21</sup>

[Assembly Bill 1244](#)<sup>22</sup> and [SB 1160](#),<sup>23</sup> which were signed into law in September 2016, added Labor Code § 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 Labor Code § 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 DIR and support the investigation of medical provider ownership interests that may conflict with the rules.

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<sup>19</sup> EDD website, The Underground Economy page, [https://www.edd.ca.gov/payroll\\_taxes/underground\\_economy\\_cost.htm](https://www.edd.ca.gov/payroll_taxes/underground_economy_cost.htm)

<sup>20</sup> DIR, LETF "All Workers Have Rights" booklet, 2020, [https://www.dir.ca.gov/letf/What\\_are\\_your\\_rights\\_as\\_a\\_worker.pdf](https://www.dir.ca.gov/letf/What_are_your_rights_as_a_worker.pdf).

<sup>21</sup> [Senate Labor and Industrial Relations Bill Analysis of SB 1160, August 31, 2016](#), [https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill\\_id=201520160SB1160](https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201520160SB1160).

<sup>22</sup> Text of AB 1244, [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201520160AB1244](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB1244).

<sup>23</sup> Text of SB 1160, [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201520160SB1160](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB1160).

## CHSWC RECOMMENDATIONS

- Promote the voluntary use of the Department of Insurance Workers' Compensation Insurance SIU Guidelines and Protocols,<sup>24</sup> which were last updated in 2011.
- Consider recommendations in the RAND report "[Provider Fraud in California Workers' Compensation](#)"<sup>25</sup> related to provider fraud, including:
  - 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.<sup>26</sup> 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.<sup>27</sup>
- 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.<sup>28</sup>

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<sup>24</sup> 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>.

<sup>25</sup> Provider Fraud in California Workers' Compensation, RAND, 2017, [https://www.dir.ca.gov/Fraud\\_Prevention/Reports/Provider-Fraud-In-CA-Workers-Compensation.pdf](https://www.dir.ca.gov/Fraud_Prevention/Reports/Provider-Fraud-In-CA-Workers-Compensation.pdf).

<sup>26</sup> "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](https://www.dir.ca.gov/chswc/Reports/2011/Final_Report_FAC_Premium_Avoidance.pdf).

<sup>27</sup> 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](https://www.dir.ca.gov/Fraud_prevention/FRAUD-white-paper.pdf).

<sup>28</sup> CDI, Workers' Compensation Fraud Convictions page, <https://www.insurance.ca.gov/0300-fraud/0100-fraud-division-overview/25-wc-conv/index.cfm>.

## CHSWC RECOMMENDATIONS

### **PUBLIC SELF-INSURED**

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 Labor Code § 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.<sup>29</sup>

In 2016, Bickmore prepared a study for DIR to identify various data reporting elements that, after having been collected by DIR's Office of Self-Insurance Plans, would further the intent of Labor Code § 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's Office of Self-Insurance Plans [rulemaking](#)<sup>30</sup> related to the annual reporting of public-self-insured employers.

#### *Recommendations*

- Monitor the impact 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](#),<sup>31</sup> including [Coronavirus resources for California employers and workers](#)<sup>32</sup> 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,

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<sup>29</sup> "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.)

<sup>30</sup> Office of Self-Insurance Plans, Proposed Regulations, [https://www.dir.ca.gov/osip/rulemaking/osip\\_rulemaking\\_proposed.html](https://www.dir.ca.gov/osip/rulemaking/osip_rulemaking_proposed.html).

<sup>31</sup> [covid19.ca.gov](https://www.covid19.ca.gov)

<sup>32</sup> LWDA, Coronavirus 2019 (COVID-19) Resources for Employers and Workers, <https://www.labor.ca.gov/coronavirus2019/>.

## CHSWC RECOMMENDATIONS

including young workers, in a wide range of workplaces and in agriculture on proven injury and illness prevention measures.

- Collaborate with DIR Communications unit and WOSHTEP's three regional UC resource centers to promote and extend WOSHTEP's reach to ensure effective outreach and to promote WOSHTEP messages and services.
- 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 safety and health 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 safety and health 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 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](#)<sup>33</sup> 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 DLSE, and report on the number of registered janitorial providers in DLSE's 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.

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<sup>33</sup> DIR, Sexual Harassment Prevention Training for Janitorial Services Employers, <https://www.dir.ca.gov/dlse/Janitorial-Training.html>.

# SPECIAL REPORT: 2021 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](http://www.leginfo.legislature.ca.gov). The chaptered bills take effect January 1, 2022, 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.<sup>34</sup>

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 2020 and 2021 LEGISLATION SPECIFIC TO THE COMMISSION

Below, are highlights from the two most recent legislative years in which a CHSWC report or study was requested and is in progress. There was no legislation in 2021 specific to CHSWC.

### SB 1159 (2020)

In addition to the new Covid-19 presumptions discussed elsewhere, this bill required 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 SB 1159 and CHSWC 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 delivered by April 30, 2022.

## HEALTH AND SAFETY

### Health and Safety Legislation

#### **AB 73, Assembly Member Robert Rivas.**

**Health emergencies: employment safety: agricultural workers: wildfire smoke.**

**Amends Section 131021 of the Health and Safety Code, and to add Part 12 (commencing with Section 9110) to Division 5 of the Labor Code, relating to employment safety, and declaring the urgency thereof, to take effect immediately**

**Status: Enrolled on September 22, 2021 and chaptered on September 27, 2021.**

[https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=202120220AB73](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB73)

Summary: (1) Existing law establishes the State Department of Public Health (department) to implement various programs throughout the state relating to public health, including licensing and regulating health facilities and control of infectious diseases. Existing law requires the department 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. Existing law requires the department to establish guidelines for the procurement, management, and distribution of PPE, taking into account, among other

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<sup>34</sup> The information on enrollment and chaptered dates for the bills in this section is found after researching a bill at: <https://leginfo.legislature.ca.gov/faces/billSearchClient.xhtml> and then selecting the History tab.



## SPECIAL REPORT: 2021 LEGISLATION AND REGULATIONS ON HEALTH AND SAFETY AND WORKERS' COMPENSATION

things, the amount of each type of PPE that would be required for all health care workers and essential workers, as defined, in the state during a 90-day pandemic or other health emergency.

This bill specifically includes wildfire smoke events among health emergencies for these purposes. The bill includes agricultural workers, as defined, in the definition of essential workers.

Existing law also establishes the Personal Protective Equipment Advisory Committee (committee), consisting of representatives from, among other groups, an association representing skilled nursing facilities, a statewide association representing physicians, two representatives of labor organizations that represent health care workers, and two representatives of labor organizations that represent essential workers, as defined, to make recommendations to the department for the development of guidelines for the procurement, management, and distribution of PPE, as specified.

This bill requires the committee to include a representative of a labor organization representing agricultural workers and a representative of an organization that represents agricultural employers. The bill also requires the department to report to the Legislature regarding the PPE stockpile within six months of the effective date of these provisions.

(2) Existing law establishes the Division of Occupational Safety and Health and the Occupational Safety and Health Standards Board within the Department of Industrial Relations and sets forth their powers and duties relating to the adoption of health and safety standards for workers. Under existing law, certain violations of a standard, order, or special order pursuant to these provisions are crimes.

Existing regulations of the division protect employees exposed to wildfire smoke and include control by respiratory protective equipment among the methods to control harmful exposure.

This bill requires the division to review and update the contents of the protection from wildfire smoke training and thereafter post it on its internet website. The bill requires that training provided by the employer is required to be in a language and manner readily understandable by employees, taking into account their ethnic and cultural backgrounds and education levels, including the use of pictograms, as necessary.

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

### **AB 263, Assembly Member Arambula. Private detention facilities.**

**Adds Section 7321 to the Government Code, relating to private detention facilities, and declaring the urgency thereof, to take effect immediately.**

**Status: Enrolled September 8, 2021 and chaptered on September 24, 2021.**

[https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=202120220AB263](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB263)

Summary: Existing law requires the operator of a private detention facility, as defined, to comply with, and adhere to, the detention standards of care and confinement agreed upon in the facility's contract for operations, as specified.

This bill requires a private detention facility operator to comply with, and adhere to, all local and state public health orders and occupational safety and health regulations. The bill would state that its provisions are declaratory of existing law.

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

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WORKERS' COMPENSATION

**AB 654, Assembly Member Reyes.**

**COVID-19: exposure: notification.**

**Amends Section 6325 of, and to amend and repeal Section 6409.6 of, the Labor Code, relating to occupational safety, and declaring the urgency thereof, to take effect immediately.**

**Status: Enrolled September 22, 2021 and chaptered on October 5, 2021.**

[https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=20210220AB654](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=20210220AB654)

Summary: Existing law, the California Occupational Safety and Health Act of 1973, authorizes the Division of Occupational Safety and Health to prohibit the performance of an operation or process, or entry into that place of employment when, in its opinion, a place of employment, operation, or process, or any part thereof, exposes workers to the risk of infection with COVID-19, so as to constitute an imminent hazard to employees. Existing law requires that the prohibition 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. Existing law requires that these provisions not prevent the entry or use, with the division's knowledge and permission, for the sole purpose of eliminating the dangerous conditions.

This bill adds the delivery of renewable natural gas to the list of utilities that the division's prohibitions are not allowed to materially interrupt.

Under existing law, if an employer or representative of the employer receives a notice of potential exposure to COVID-19, the employer is required to take specified actions within one business day of the notice of potential exposure, including providing written notice to all employees on the premises at the same worksite that they may have been exposed to COVID-19. Existing law requires, if an employer or the employer's representative is notified of enough COVID-19 cases to meet the definition of an outbreak, the employer, with the exception of a health facility, to notify the local public health agency within 48 hours, as provided. Existing law also requires the State Department of Public Health to make workplace industry information received from local public health departments pursuant to these provisions available on its website in a manner that allows the public to track the number and frequency of COVID-19 outbreaks and the number of COVID-19 cases and outbreaks by industry reported by any workplace.

This bill, among other things, requires the employer, when giving notice to the local public health agency of a COVID-19 outbreak, to give that notice within 48 hours or one business day, whichever is later. The bill expands the employers exempt from the COVID-19 outbreak reporting requirement to various licensed entities, including, but not limited to, community clinics, adult day health centers, community care facilities, and child day care facilities. The bill repeals these provisions on January 1, 2023.

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

**AB 701, Assembly Member Lorena Gonzalez.**

**Warehouse distribution centers**

**Amends Section 138.7 of, and to add Part 8.6 (commencing with Section 2100) to Division 2 of, the Labor Code, relating to employment.**

**Status: Enrolled September 20, 2021 and chaptered on September 22, 2021.**

[https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=20210220AB701](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=20210220AB701)

Summary: (1) Existing law relating to employment regulation and supervision imposes special provisions on certain occupations and industries. Existing law charges the Labor Commissioner and the Division of Labor Standards Enforcement with the enforcement of labor laws.

This bill, among other things, requires specified employers to provide to each employee, defined as a nonexempt employee who works at a warehouse distribution center, upon hire, or within 30 days of the effective date of these provisions, with a written description of each quota to which the employee is subject, including the quantified number of tasks to be performed, or materials to be produced or handled, within the defined time period, and any potential adverse employment action that could result from failure to meet

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the quota. The bill provides that an employee shall not be required to meet a quota that prevents compliance with meal or rest periods, use of bathroom facilities, or occupational health and safety laws, as specified. The bill prohibits an employer from taking adverse action against an employee for failure to meet a quota that has not been disclosed or for failure to meet a quota that does not allow a worker to comply with meal or rest periods or occupational health and safety laws. The bill requires that any action taken by an employee to comply with occupational health and safety laws or division standards be considered time on task and productive time for the purposes of any quotas or monitoring system.

This bill provides that if a current or former employee believes that meeting a quota caused a violation of their right to a meal or rest period or required them to violate any occupational health and safety law or standard, they have the right to request, and the employer is required to provide, a written description of each quota to which the employee is subject and a copy of the most recent 90 days of the employee's own personal work speed data. The bill limits a former employee to one of these requests. The bill would also authorize a current or former employee to bring an action for injunctive relief to obtain compliance with specified requirements, and may, upon prevailing in the action, recover costs and reasonable attorney's fees in that action.

This bill requires the Labor Commissioner to enforce these provisions by engaging in coordinated and strategic enforcement efforts with the Department of Industrial Relations, including the Division of Occupational Safety and Health and the Division of Workers' Compensation. The bill would authorize the commissioner to have access to data from the department including employer-reported injury data and enforcement actions in warehouses, the identity of uninsured employers, and employers who are committing workers' compensation fraud, wage theft, or other information relevant to the commissioner's authority, and would make other conforming changes. The bill would require the commissioner to report to the Legislature by January 1, 2023 the number of claims filed with the commissioner, data on warehouse production quotas in warehouses in which annual employee injury rates are above the industry average, and the number of investigations undertaken and enforcement actions initiated, per employer, as specified.

This bill requires the Division of Occupational Safety and Health or the Division of Workers' Compensation to notify the commissioner, who is required to determine whether an investigation of violations pursuant to these provisions is appropriate, if a particular worksite or employer is found to have an annual employee injury rate of at least 1.5 times higher than the warehousing industry's average annual injury rate. The bill would authorize the commissioner to adopt regulations relating to the procedures for an employee to make a complaint alleging a violation of this part.

### **SB 321, Assembly Member Durazo.**

**Employment safety standards: advisory committee: household domestic services.**

**Adds Section 6305.1 to the Labor Code, relating to employment.**

**Status: Enrolled September 17, 2021 and chaptered on September 27, 2021.**

[https://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=202120220SB321](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=202120220SB321)

Summary: Existing law, the California Occupational Safety and Health Act of 1973, requires employers to comply with certain standards ensuring healthy and safe working conditions, as specified. Existing law charges the Division of Occupational Safety and Health within the Department of Industrial Relations with enforcement of the act, subject to oversight by the Chief of the Division of Occupational Safety and Health (chief).

This bill would require the chief or a representative of the chief to convene an advisory committee, comprised of no fewer than 13 and no more than 18 individuals, including representatives from specified groups, to make recommendations, in consultation with other specified divisions and entities, to the department or Legislature to protect the health and safety of household domestic service employees, and develop voluntary industry-specific occupational health and safety guidance for the purpose of educating household domestic service employees and employers, as specified. The bill would require the Division of Occupational Safety and Health to post the report to its internet website and submit a copy to the Legislature, as specified, no later than January 1, 2023.

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### **SB 606, Senator Gonzalez.**

**Workplace safety: violations of statutes: enterprise-wide violations: egregious violations.**

**Amends Sections 6317, 6323, 6324, 6429, and 6602 of, and to add Sections 6317.8 and 6317.9 to, the Labor Code, relating to occupational safety.**

**Status: Enrolled September 17, 2021 and chaptered on September 27, 2021.**

[https://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=202120220SB606](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=202120220SB606)

Summary: Existing law gives the Division of Occupational Safety and Health, within the Department of Industrial Relations, the power, jurisdiction, and supervision over every employment and place of employment in this state, which is necessary to adequately enforce and administer all laws requiring that employment and places of employment be safe, and requiring the protection of the life, safety, and health of every employee in that employment or place of employment. Existing law requires the division to issue a citation for a violation of provisions relating to the spraying of asbestos, or any standard, rule, order, or regulation established pursuant to specified provisions of the California Occupational Safety and Health Act of 1973 if, upon inspection or investigation, the division believes that an employer has committed a violation. Existing law imposes penalties of certain maximum amounts depending on whether the violation is serious, uncorrected, or willful or repeated. Existing law authorizes the division to seek an injunction restraining certain uses or operations of employment that constitute a serious menace to the lives or safety of persons, as specified. Existing law establishes requirements for a prima facie showing by the division to warrant, in the discretion of the court, the granting of a temporary restraining order.

This bill creates a rebuttable presumption that a violation committed by an employer that has multiple worksites is enterprise-wide if the employer has a written policy or procedure that violates these provisions, except as specified, or the division has evidence of a pattern or practice of the same violation committed by that employer involving more than one of the employer's worksites. The bill would authorize the division to issue an enterprise-wide citation requiring enterprise-wide abatement if the employer fails to rebut such a presumption. The bill would impose specified requirements for a stay of abatement pending appeal of an enterprise-wide citation. The bill would subject an enterprise-wide violation to the same penalty provision as willful or repeated violations.

This bill requires the division to issue a citation for an egregious violation, as defined, for each willful and egregious violation determined by the division, as provided. The bill, except as specified, would require each instance of an employee exposed to that violation to be considered a separate violation for purposes of the issuance of fines and penalties.

The bill exempts certain state agencies from the rebuttable presumption, enterprise-wide citation, and egregious violation citation provisions.

The bill authorizes the division, in the investigation of the policies and practices of an employer or a related employer entity, to issue a subpoena if the employer or the related employer entity fails to promptly provide the requested information, and to enforce the subpoena if the employer or the related employer entity fails to provide the requested information within a reasonable period of time. The bill would authorize the division to seek an injunction restraining certain uses or operations of employment if it has grounds to issue a citation, as specified. The bill would expand grounds for granting a temporary restraining order to include grounds to issue a citation, as prescribed.

## **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.

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(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](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](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).

### **WORKERS' COMPENSATION**

#### **Workers' Compensation Legislation**

There were no workers' compensation bills signed into law in 2021. Covid-19 workers' compensation bills were signed in 2020 and regulations were updated in 2021; no new Covid-19 workers' compensation bills were passed in 2021.

#### **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 DWC rulemaking page at:

[https://www.dir.ca.gov/dwc/Laws\\_Regulations.htm](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](http://www.dir.ca.gov/DWC/dwcrulemaking.html)

DWC Approved Regulations 2021 are available at:  
<https://www.dir.ca.gov/dwc/rulemaking/DWCRulemaking2021.html>

DWC Approved Regulations 2022 are available at:  
[https://www.dir.ca.gov/dwc/rulemaking/dwc\\_rulemaking\\_approved.html](https://www.dir.ca.gov/dwc/rulemaking/dwc_rulemaking_approved.html)

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DWC Proposed Regulations 2022 are available at:

[http://www.dir.ca.gov/dwc/rulemaking/dwc\\_rulemaking\\_proposed.html](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](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](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 2020. The majority of the information reflected in this report is through December 31, 2020, and, as a result, it covers a year marked by an unpredictably evolving workplace health and economic crisis caused by the COVID-19 pandemic, before the accelerated rollout of vaccines in California in the spring of 2021.

The State laws and regulations adopted in response to the COVID-19 pandemic, including the stay-at-home executive order and the rebuttable presumptions of compensability laws, were periodically extended and modified affecting the analysis, assumptions, and estimates essential for administration of WC programs. The pandemic's ultimate impact on the WC industry may not be known for years and can only be comprehensively evaluated using post-COVID-19 data 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 2020 environment where the main components of the WC costs emerge. Whereas the impact of COVID-19 on administrative and health and safety activities will be included in designated sections with related details, the effect of one-time aberrations like COVID-19 on WC cost methodology, based on a specific rate for every \$100 of employers' payroll, will be neutralized. According to the Department of Insurance's Special Regulatory Filing Decision, the occurrence or non-occurrence of COVID-19 WC claims incurred by an employer are unlikely to be a strong predictor of that employer's future WC claim costs and therefore inclusion of such claims in experience modification calculations would not meet the intended goal of experience rating.<sup>35</sup> Similarly, the California Insurance Commissioner also approved rule changes to exclude from reported payroll any payments made to employees not performing duties of any kind in the service of the employer during the stay-at-home orders.<sup>36</sup> Excluding this payroll recognizes the extraordinary circumstances resulting from the stay-at-home order and the fact that employees not engaged in work activities have no work-related exposure.

The California WC system covers an estimated 17,385,000 employees<sup>37</sup> working for over 1,039,079 employers<sup>38</sup> in the state. These employees and employers generated a gross domestic product of \$3.01 trillion in 2020.<sup>39</sup> A total of 645,409 occupational injuries and illnesses were reported for 2020,<sup>40</sup> ranging from minor medical treatment cases to catastrophic injuries and deaths. The total paid cost to employers for workers' compensation in 2020 was an estimated \$18.7 billion. (see Tables 4 and 5 in the box "Systemwide Cost: Paid Dollars for 2020 Calendar Year" on page 27.)

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

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<sup>35</sup> Department of Insurance: Special Regulatory Filing Decision, [July 1, 2020 Regulatory Filing Decision \(wcirb.com\)](https://www.wcirb.com/July-1-2020-Regulatory-Filing-Decision)

<sup>36</sup> Ibid.

<sup>37</sup> NASI Report: Workers' Compensation: Benefits, Costs, and Coverage, 2019, October 2021.

<https://www.nasi.org/wp-content/uploads/2021/10/2021-Workers-Compensation-Report-2019-Data.pdf>.

<sup>38</sup> CHSWC estimates are based on an Employment Development Department report, as above, showing 1,642,918 businesses in 2020. Of these, 1,207,678 were businesses with 0 to 4 employees. For this estimate, half of those businesses are assumed to have no employees subject to workers' compensation.  $1,642,918 - (1,207,678/2) = 1,039,079$ .

[https://www.labormarketinfo.edd.ca.gov/LMID/Size\\_of\\_Business\\_Data\\_for\\_CA.html](https://www.labormarketinfo.edd.ca.gov/LMID/Size_of_Business_Data_for_CA.html).

<sup>39</sup> US Bureau of Economic Analysis, <https://apps.bea.gov/itable/iTable.cfm?ReqID=70&step=1&acrdn=1>.

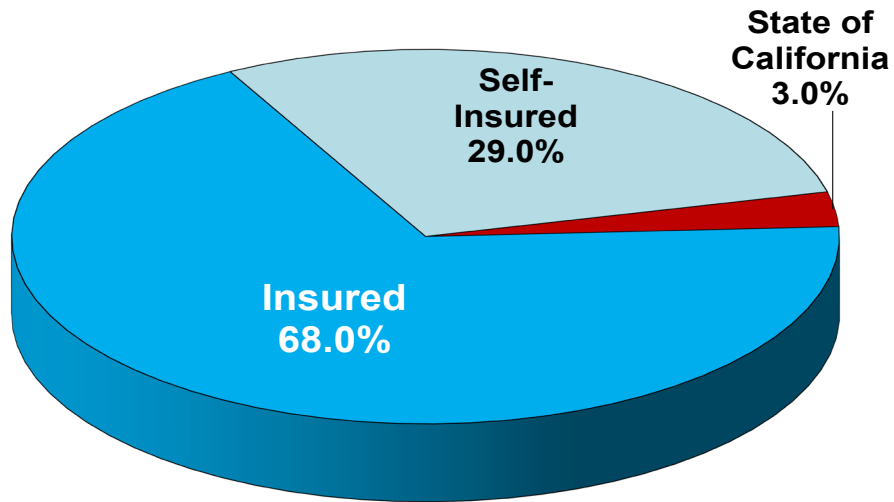
<sup>40</sup> The latest year for which Workers' Compensation Information System (WCIS) reports are reasonably complete. Data are from the Division of Workers' Compensation (DWC) report from the WCIS database, "FROI and SROI Data Summary, by Year of Injury," April 2021, [https://www.dir.ca.gov/dwc/wcis/WCIS\\_tables/AggregateFROISROIData/AggregateFROISROIData.html](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

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.

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, 29.0 percent of injuries occur to employees of self-insured employers, and 3.0 percent of injuries occur to employees of the State of California.<sup>41</sup> (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 25-26.)

**Figure 1: Market Shares Based on Claim Counts Reported to WCIS (2018-2020 average)**



Data Source: DWC - WCIS

<sup>41</sup> WCIS, Table 4, "Workers' Compensation Claims by Market Share," April 2021, [https://www.dir.ca.gov/dwc/wcis/WCIS\\_tables/Table-4/WCIS\\_Reports-Table-4.html](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 2020 is estimated at 1.47 times the insured sector size. This multiplier is based on claims counts in the Workers' Compensation Information System (WCIS).<sup>1</sup> CHSWC is using a three-year moving average of WCIS claim counts available since 2000 because it blunts the effect of one-time aberrations. (See the market shares for 2020 in Table 1). 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.

#### Claim Counts-Based Method

The number of claims for all sectors increased by 4 percent from 619,647 claims in 2013 to 645,409 claims in 2020. The market share of the insured sector ranged from a three-year moving average of 65.3 in 2013-2015 to 68.0 percent in 2018-2020. The market share of the self-insured sector decreased from the average of 31.3 percent in 2013-2015 to 29.0 percent in 2018-2020. The three-year moving average share of the State of California steadily decreased from 3.3 percent in 2013-2015 to the average of 3.0 percent in 2018-2020. In 2020, the three-year average market shares based on claims counts were 68.0 percent insured, 29.0 percent self-insured, and 3.0 percent state. Using these values, a multiplier for extending the insured sector information to the overall system can be calculated as  $100\%/68.0\% = 1.47$ , the same as in 2019.

**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 (%)
2018	483.4	68.3	205.7	29.1	18.9	2.7
2019	487.4	68.6	204.0	28.7	18.9	2.7
2020	432.5	67.0	189.9	29.4	23.1	3.6
<b>Average for 3 years</b>		<b>68.0</b>		<b>29.0</b>		<b>3.0</b>

Source: WCIS.

<sup>1</sup> WCIS Database as of April, 2021, [https://www.dir.ca.gov/dwc/wcis/WCIS\\_tables/Table-4/WCIS\\_Reports-Table-4.html](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 in the normal economic cycle without the effect of one-time aberrations and disruptions like COVID-19, causing sharp downturns in the economy as the result of stay-at-home orders and closures or acute worker shortages during the pandemic and outbreaks. Similarly, 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 64 percent of the market in 2020 was insured, 31 percent was self-insured, and 5 percent was the state. This was the first year since 2010 when the market share of insured sector was 2 percentage points below the average range of 66-68 percent of WC market for the sector, as shown in Tables 2 and 3. While statewide unemployment soared during the pandemic, workers of many large, private self-insured employers were less impacted than the insured work force by furloughs, layoffs, and remote work. In a normal economic cycle, these percentages would be similar when using 2020 data for the insured and private self-insured sectors and either 2019-2020 or 2020-2021 data for the State and public self-insured sector. The multiplier for extending insured sector information to the overall system can be calculated as  $100\%/66.0\% = 1.562$  (is 0.091 higher than estimated 1.47 based on a three-year (2018-2020) moving average of claim counts in order to blunt the effect of one-time aberrations. see Table 1).

**Table 2: Percent Distribution of Workers' Compensation Paid Costs by Sectors (excluding Administrative Expenses) using public self-insured and state data for FY 2020-2021**

	Indemnity	Medical	Subtotal	% in Total
a. Private Self-Insured <sup>1</sup> (2020)	\$637,670,804	\$636,310,387		
b. Public Self-Insured <sup>2</sup> (2019/2020)	\$1,467,379,653	\$1,096,654,734		
<b>SELF-INSURANCE PLAN (a + b)</b>	<b>\$2,105,050,457</b>	<b>\$1,732,965,121</b>	<b>\$3,838,015,578</b>	<b>31%</b>
<b>INSURED (2020)<sup>3</sup></b>	<b>\$3,688,864,000</b>	<b>\$4,216,394,000</b>	<b>\$7,905,258,000</b>	<b>64%</b>
<b>STATE (2020/2021)<sup>4</sup></b>	<b>\$253,186,993</b>	<b>\$313,091,347</b>	<b>\$566,278,340</b>	<b>5%</b>
<b>Total</b>			<b>\$12,309,551,918</b>	

**Table 3: 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 <sup>1</sup> (2019)	\$641,844,631	\$725,360,934		
b. Public Self-Insured <sup>2</sup> (2019/2020)	\$1,394,483,000	\$1,087,617,896		
<b>SELF-INSURANCE PLAN (a + b)</b>	<b>\$2,036,327,631</b>	<b>\$1,812,978,830</b>	<b>\$3,849,306,461</b>	<b>30%</b>
<b>INSURED (2019)<sup>3</sup></b>	<b>\$3,825,261,000</b>	<b>\$4,610,154,000</b>	<b>\$8,435,415,000</b>	<b>66%</b>
<b>STATE (2019/2020)<sup>4</sup></b>	<b>\$233,540,539</b>	<b>\$292,750,447</b>	<b>\$526,290,986</b>	<b>4%</b>
<b>Total</b>			<b>\$12,811,012,447</b>	

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

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

<sup>3</sup> WCIRB, 2020 Losses and Expenses Report, Exhibit 18.1, released June 25, 2021.

[https://www.wcirb.com/sites/default/files/documents/2020\\_ca\\_wc\\_losses\\_and\\_expenses\\_report-complete.pdf](https://www.wcirb.com/sites/default/files/documents/2020_ca_wc_losses_and_expenses_report-complete.pdf)

<sup>4</sup> 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 2020 Calendar Year

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

	Insured	Self-Insured and the State	All Employers
Indemnity*	\$3,689**	\$1,734	\$5,423
Medical*	\$4,216***	\$1,982	\$6,198
Changes to Total Reserves	-\$698	-\$328	-\$1,026
Insurer Pre-Tax Underwriting Profit/Loss and Insurer Policyholder Dividends	\$1,956	N/A	\$1,956
Expenses (see Table 5 below: Breakdown of Expenses)	\$4,853	\$1,268	\$6,121
<b>TOTAL for 2020*</b>	<b>\$14,016</b>	<b>\$4,656</b>	<b>\$18,672</b>

\* Include CIGA payments totaling \$85 million in 2020.

\*\* Include \$26 million in indemnity payments made in 2020 for COVID-19 claims.

\*\*\* Include \$21 million in medical payments made in 2020 for COVID-19 claims.

Source for Insured figures in Tables 4 and 5 is WCIRB Losses and Expenses report released on June 25, 2021. 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>	\$1,734	\$815	\$2,549
<i>Commissions and Brokerage</i>	\$1,207	N/A	\$1,207
<i>Other Acquisition Expenses</i>	\$609	N/A	\$609
<i>General Expenses</i>	\$963	\$453	\$1,416
<i>Premium and Other Taxes</i>	\$340	N/A	\$340
<b>Total</b>	<b>\$4,853</b>	<b>\$1,268</b>	<b>\$6,121</b>

### 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 = \$13.9 billion in calendar year 2020.<sup>42</sup>

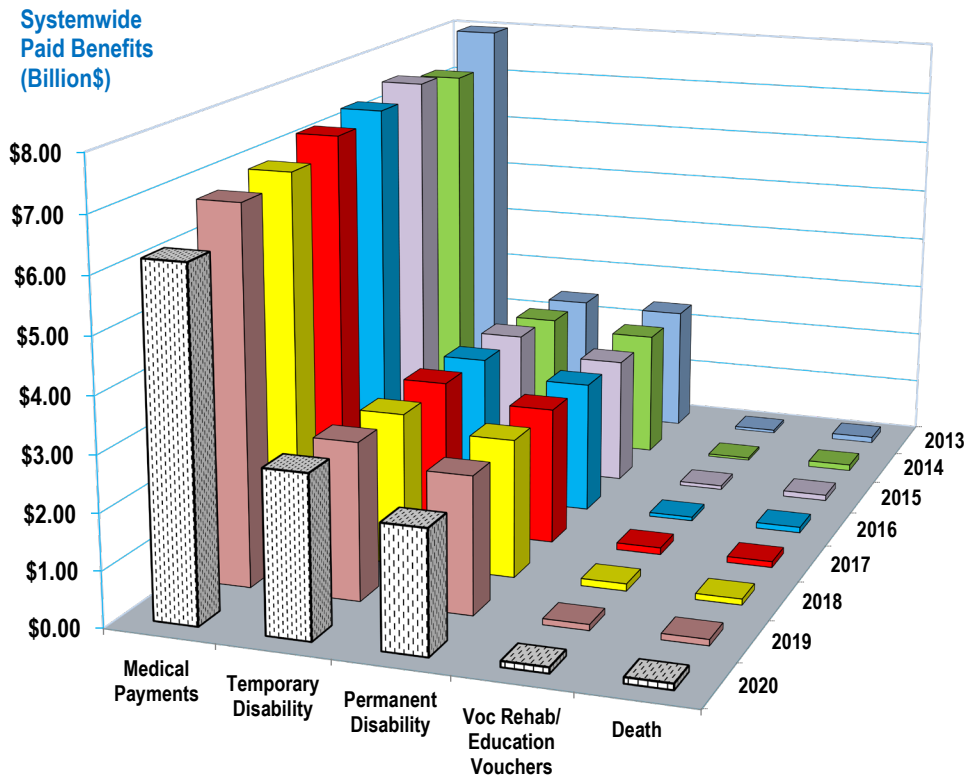
$$\text{\$13.9 billion} \times 1.47 = \text{\$20.4 billion systemwide costs for employers.}$$

<sup>42</sup> WCIRB Quarterly Experience Report as of December 31, 2020, Chart 1.

[https://www.wcirb.com/sites/default/files/documents/wcirb-quarterlyexpreport-2020-4q-ar\\_0.pdf](https://www.wcirb.com/sites/default/files/documents/wcirb-quarterlyexpreport-2020-4q-ar_0.pdf).

## SYSTEM COSTS AND BENEFITS

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



\* Systemwide amounts for CY 2020 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

The COVID-19 pandemic and the subsequently adopted stay-at-home order have significantly affected California's economic, health-care, and WC systems. In order to alleviate the adverse impact of COVID-19 illnesses sustained in the course of employment by designated types of employees, SB 1159 (Hill) was enacted on September 17, 2020.<sup>43</sup> Its statutes took effect immediately and remain in effect until January 1, 2023. This bill codified the COVID-19 compensability presumption created by Executive Order N-62-20<sup>44</sup> that Governor Newsom signed on May 6, 2020, and provided 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.

#### *WCIRB Cost Projections for Executive Order N-62-20 Covering a Period from March 19, 2020 to July 5, 2020*

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

<sup>43</sup> SB 1159, COVID-19 Critical Workers, [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201920200SB1159](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200SB1159).

<sup>44</sup> <https://www.gov.ca.gov/wp-content/uploads/2020/05/5.6.20-EO-N-62-20-text.pdf>.

## SYSTEM COSTS AND BENEFITS

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 varied 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 comprised 7 percent of the \$18.3 billion WC systemwide cost estimated for 2020 prior to the pandemic.<sup>45</sup> According to the WCIRB, these estimates did not apply after July 5, 2020, and did not reflect costs for later extensions of the Order or new legislation such as SB 1159.

### *DWC's COVID-19-specific changes to the Official Medical Fee Schedule*

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).<sup>46</sup> The OMFS changes include the Physician Services/Non-Physician Practitioner Services Fee Schedule, Durable Medical Equipment, Prosthetics, and 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 Labor Code § 5307.1.<sup>47</sup> requires adjustments in the OMFS to conform to Medicare fee schedule changes. Depending on the effective dates, these adjustments were made retroactively to the Medicare effective dates and required 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, 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. In 2021, the Workers Compensation Insurance Organizations (WCIO) has updated the Injury Description Tables with a new Nature of Injury Code 38 (Adverse reaction to a vaccination or inoculation) to reflect specific coding for adverse reactions to vaccinations.

### *WCIRB's Projected COVID-19 Claim Costs in the Insured Sector in 2020<sup>48</sup>*

For 2020, the estimated total cost of COVID-19 claims in California's WC insured sector is based on WCIRB's projected number of COVID-19 claims and the projected average cost of a COVID-19 claim in 2020, as referenced further in Figures 3 and 4. Currently the projected costs of COVID-19 claims in the insured sector for accident years 2020 and 2021 are over \$1 billion in total, with over \$850 million in 2020 and \$210 million in 2021, when estimated using the actual claim counts and reported cost information as shown in Figures 3 and 4. The estimated systemwide cost of the COVID-19 claims in 2020 is \$1.25 billion.<sup>49</sup>

For the dates of injury from late 2019 to June 1, 2021, about 150,000 COVID-19 claims had been filed in the California WC system. Over one-half of these COVID-19 claims were filed within the insured system.

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<sup>45</sup> 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>.

<sup>46</sup> DWC emergency regulations filed with the state's Office of Administrative Law (OAL), [https://www.dir.ca.gov/dwc/rulemaking/dwc\\_rulemaking\\_proposed.html](https://www.dir.ca.gov/dwc/rulemaking/dwc_rulemaking_proposed.html) and [https://www.dir.ca.gov/dirnews/link\\_page.html](https://www.dir.ca.gov/dirnews/link_page.html).

<sup>47</sup> Labor Code § 5307.1, [http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=5307.1.&lawCode=LAB](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=5307.1.&lawCode=LAB)

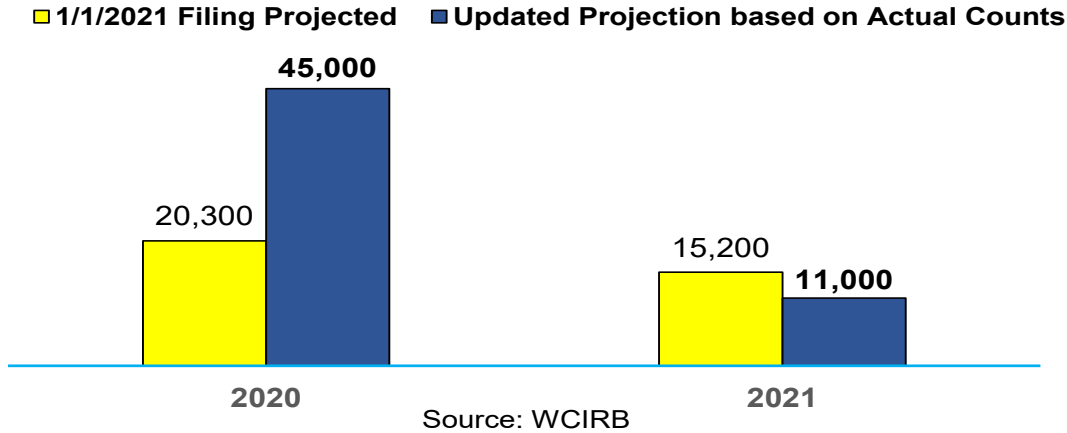
<sup>48</sup> WCIRB 2021 State of the System Report, [https://www.wcirb.com/sites/default/files/documents/wcirb-report-2021\\_state\\_of\\_the\\_system-ho.pdf](https://www.wcirb.com/sites/default/files/documents/wcirb-report-2021_state_of_the_system-ho.pdf).

<sup>49</sup> Calculations based on applying the multiplier of 1.47 to extend the insured sector amount to the overall WC system to include private self-insured employers, the State government, and public self-insured sector.

## SYSTEM COSTS AND BENEFITS

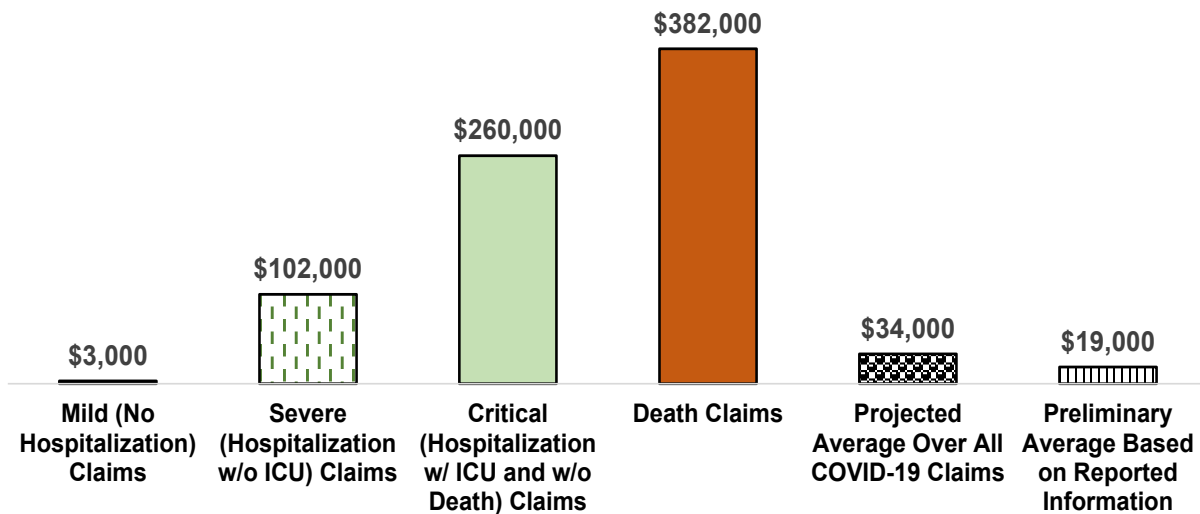
Figure 3 shows the number of COVID-19 WC claims filed as projected in the January 1, 2021 Pure Premium Rate Filing and updated projections based on actual counts. In part due to the winter surge of infections, the estimated number of ultimate COVID-19 claims for accident year 2020 (excluding denied claims) in the insured system was more than twice the WCIRB's projection in the January 1, 2021 Pure Premium Rate Filing. The updated projection of the ultimate number of COVID-19 claims for accident year 2021 were somewhat below the WCIRB's January 1, 2021 filing projection due to the accelerated rollout of vaccines in California.

**Figure 3: The Projected Number of COVID-19 Claims in Insured Sector, Accident Years 2020 and 2021**



As Figure 4 shows the projected average cost of a COVID-19 claim differs significantly by the severity of the illness, increasing from \$3,000 for the mild symptom cases to \$382,000 for the death claims. The average cost of all COVID-19 claims based on reported information was \$19,000 which is below the initial projections of \$34,000 due to a higher proportion of mild claims being filed than initially projected. Also a much higher than projected share of COVID-19 claims were filed by younger workers who are more likely to have mild COVID-19 symptoms (see Figure 7).

**Figure 4: Average Cost of a COVID-19 Claim as projected by WCIRB in January 1, 2021 Pure Premium Rate Filing**



Source: WCIRB

## SYSTEM COSTS AND BENEFITS

### *Potential cost-related COVID-19 risks*

While the early estimates of possible large-scale WC losses associated with the COVID-19 pandemic have not yet been realized, possibly due to fewer claims filed than anticipated and claim denials, there are factors and risks for potential WC cost increases.

Although the WC system generally precludes litigation protecting the employer from big losses, some significant future awards are possible. Litigation cases have already been filed in some states,<sup>50</sup> with employers facing allegations of negligence resulting in illness and/or death due to COVID-19 transmission in the workplace.

The potential losses are associated with aggravation of preexisting conditions and the possibility that a claimant could become a “long-hauler” (one who continues to suffer the effects of COVID-19 long after a typical recovery course). Up to an estimated 10 percent of COVID-19 cases will experience prolonged symptoms occurring across all levels of disease severity – from mild cases to those requiring hospitalization and intensive care. Management of procedures and treatments related to long-haul COVID-19 cases are considered serious medical cost drivers. The federal National Institutes of Health launched an initiative to study the causes, means of prevention, and treatment of long-haul COVID-19 cases.<sup>51</sup>

In addition, the increased costs from the COVID-19 pandemic are associated with treatment delays in the WC system<sup>52</sup> along with more frequent ergonomic injuries for remote workers resulting from the mass transition to hastily established telework programs.

### **WCIS COVID-19 claim counts and characteristics**<sup>53</sup>

Whereas the WCIRB’s COVID-19 claims data, as described in the previous subsection, are collected from the WC-insured sector exclusively, DWC’s WC Information System (WCIS) collects the data from the private WC-insured employers, the State of California, and private and public self-insured employers.<sup>54</sup>

Prior to Executive Order N-62-20, 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) was 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.<sup>55</sup> According to Governor Newsom, these laws help California workers stay safe at work and get the support they need if they are exposed to COVID-19.

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<sup>50</sup> COVID-19 Related Workplace Litigation Tracker, <https://btlaw.com/insights/publications/2020/covid-19-related-workplace-litigation-tracker>.

<sup>51</sup> NIH launches new initiative to study “Long COVID” | National Institutes of Health (NIH).

<sup>52</sup> Cost Impacts of Medical Care Delays in the California Workers’ Compensation System, <https://www.wcirb.com/news/wcirb-studies-cost-impacts-delayed-medical-care-due-covid-19>.

<sup>53</sup> The data on WCIS COVID-19 claims was provided by DWC WCIS based on reports run on February 10, 2022. The figures cover 23 months from March 2020, when the Executive Order N-62-20 became effective, to January 2022, the peak of the Omicron pandemic.

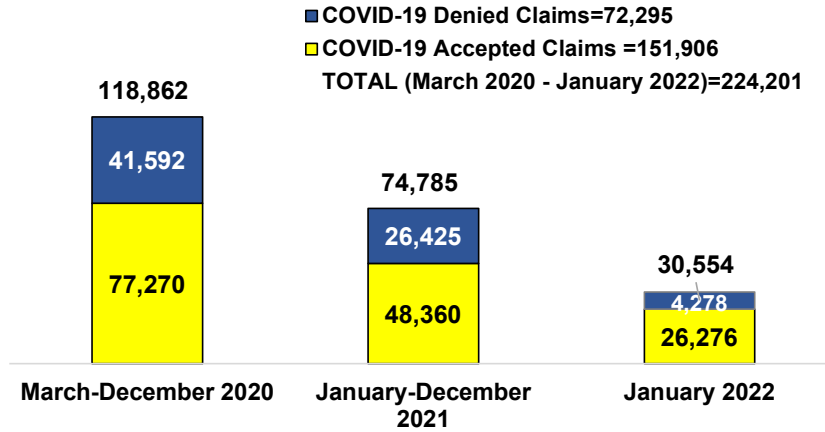
<sup>54</sup> WCIS definitions of WC market sectors, [https://www.dir.ca.gov/dwc/wcis/WCIS\\_tables/Table-4/WCIS\\_Reports-Table-4.html](https://www.dir.ca.gov/dwc/wcis/WCIS_tables/Table-4/WCIS_Reports-Table-4.html).

<sup>55</sup> 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 5 shows the total number of accepted (compensable) and denied COVID-19 claims in 2020, 2021, and January 2022, with the last column including the peak of the Omicron pandemic. Seventeen percent of all compensable COVID-19 claims filed from March 2020 to January 2022 were filed at the peak of the Omicron pandemic in January 2022, while the accepted COVID-19 claims for the whole year of 2021 accounted for 32 percent of the total compensable claims.

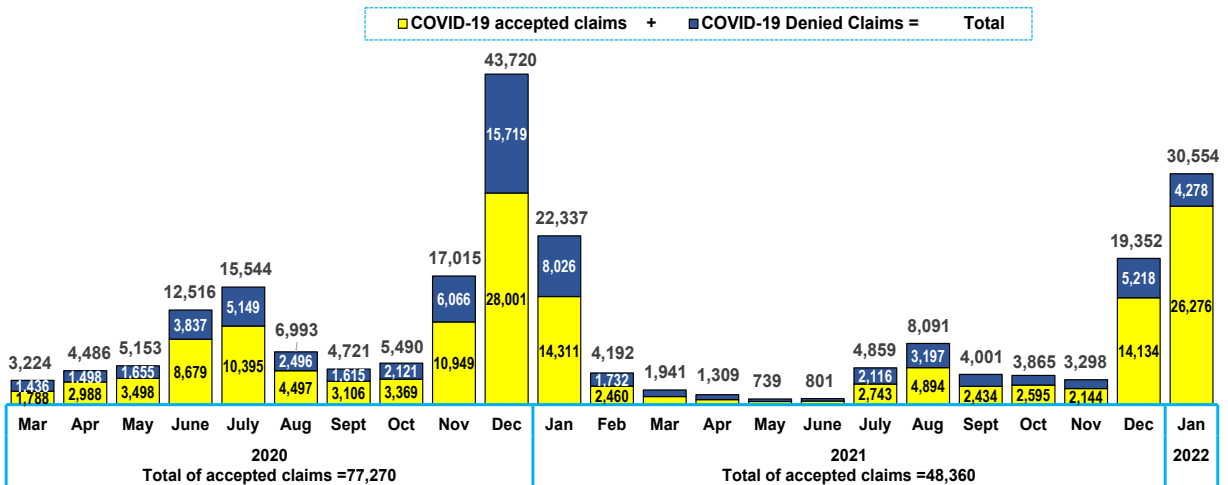
**Figure 5: Total Number of Compensable and Denied COVID-19 Claims**



Data Source: DWC - WCIS FROI

Figure 6 shows the number of COVID-19 WC claims filed monthly, including accepted or denied claims from March 2020 to January 2022. COVID-19 claims filed during the three month period between November 2020 and January 2021 accounted for 37 percent and those filed in December 2021 and January 2022 accounted for 22 percent of COVID-19 claims filed during the entire 23-month period.

**Figure 6: Monthly Numbers of Compensable and Denied COVID-19 Claims**



Data Source: DWC - WCIS FROI

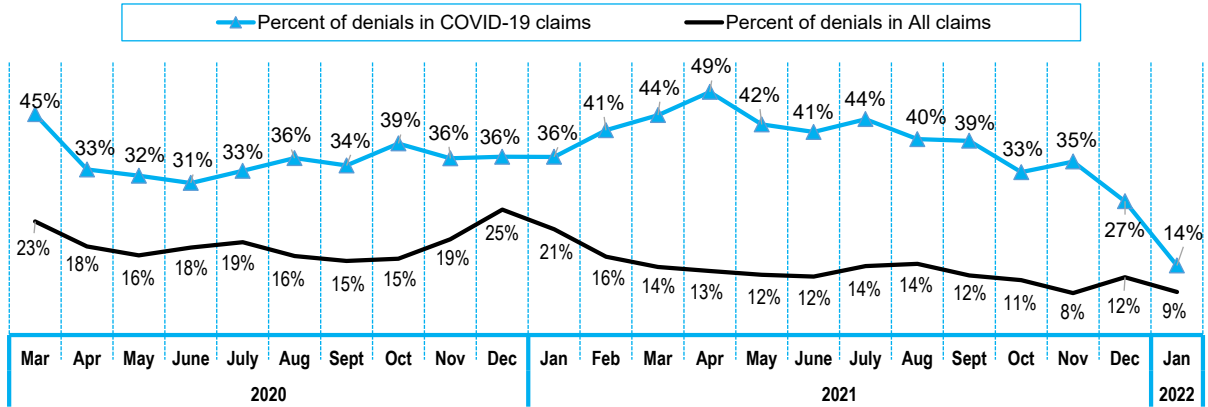
The COVID-19 pandemic presents unique conditions, in which many jobs that had not been typically considered hazardous suddenly became dangerous, and the mandatory rules of claim denials were changed by the State of California. Workers at a high risk of exposure to the virus while at work received WC insurance coverage due to efforts by Governor Newsom and his administration that started as



## SYSTEM COSTS AND BENEFITS

Executive Order N-62-20 and culminated in SB 1159 on September 17, 2020. Figure 7 compares the monthly denial rates of COVID-19 cases to denials in all WC claims filed from March 2020 to January 2022.

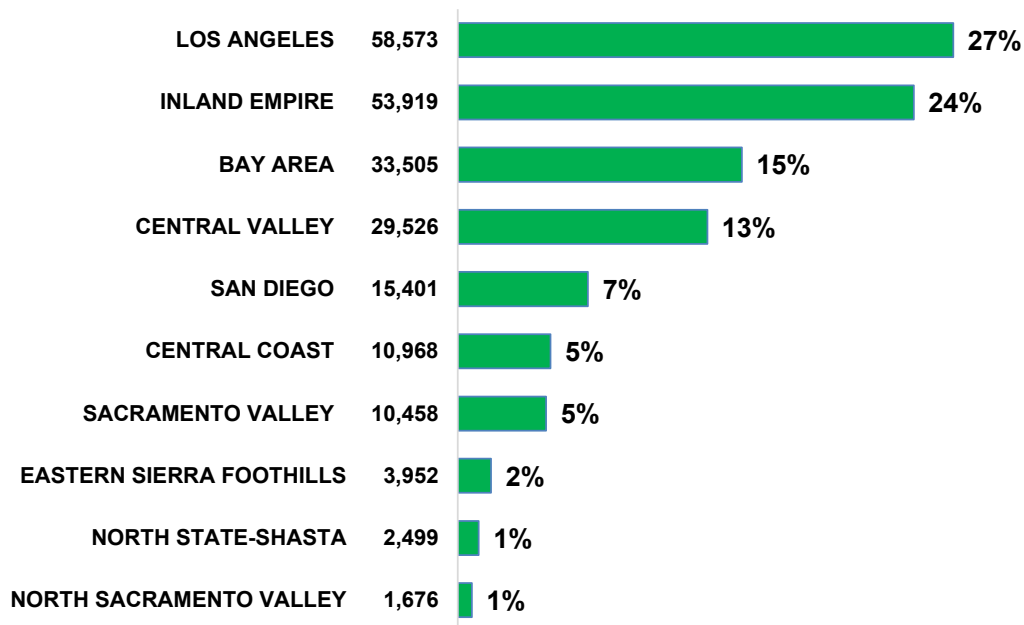
**Figure 7: Percent of Denials in All and COVID-19 Workers' Compensation Claims**



Source: DWC- WCIS FROI

Figure 8 shows that from March 2020 to January 2022, Los Angeles (27 percent) and the Inland Empire (24 percent) regions together accounted for 51 percent of California's COVID-19 WC claims, followed by the Bay Area (15 percent), the Central Valley (13 percent), San Diego (7 percent), and the more rural Central Coast (5 percent) and the Sacramento Valley (5 percent). The Eastern Sierra Foothills, North State-Shasta, and the North Sacramento Valley regions, comprised of several counties with a small number of claims, together accounted for 4 percent of the COVID-19 WC claims filed during the same period.

**Figure 8 Number and Distribution of COVID-19 Claims Filed from March 2020 to January 2022 by California Regions**

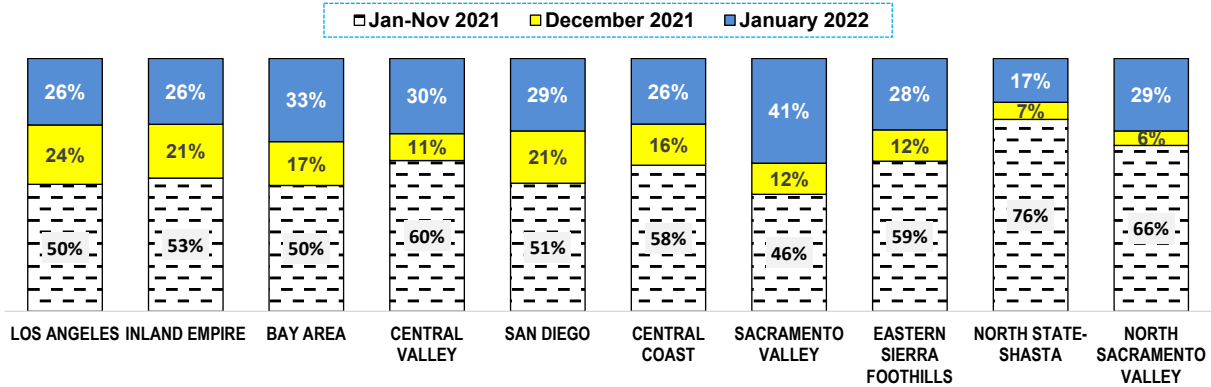


Data Source: DWC - WCIS FROI

## SYSTEM COSTS AND BENEFITS

Figure 9 shows the shares of COVID-19 WC claims filed during 11 months of 2021 and during the peak of the Omicron pandemic in December 2021 and January 2022. The biggest filers of COVID-19 claims like Los Angeles, the Inland Empire, the Bay Area, and San Diego accounted for about 50 percent of COVID-19 claims filed in the two months period from December 2021 to January 2022, the peak of the Omicron pandemic.

**Figure 9: Regional Distribution of COVID-19 Claims in 2021 and during the Peak of the Omicron Pandemic through January 2022**

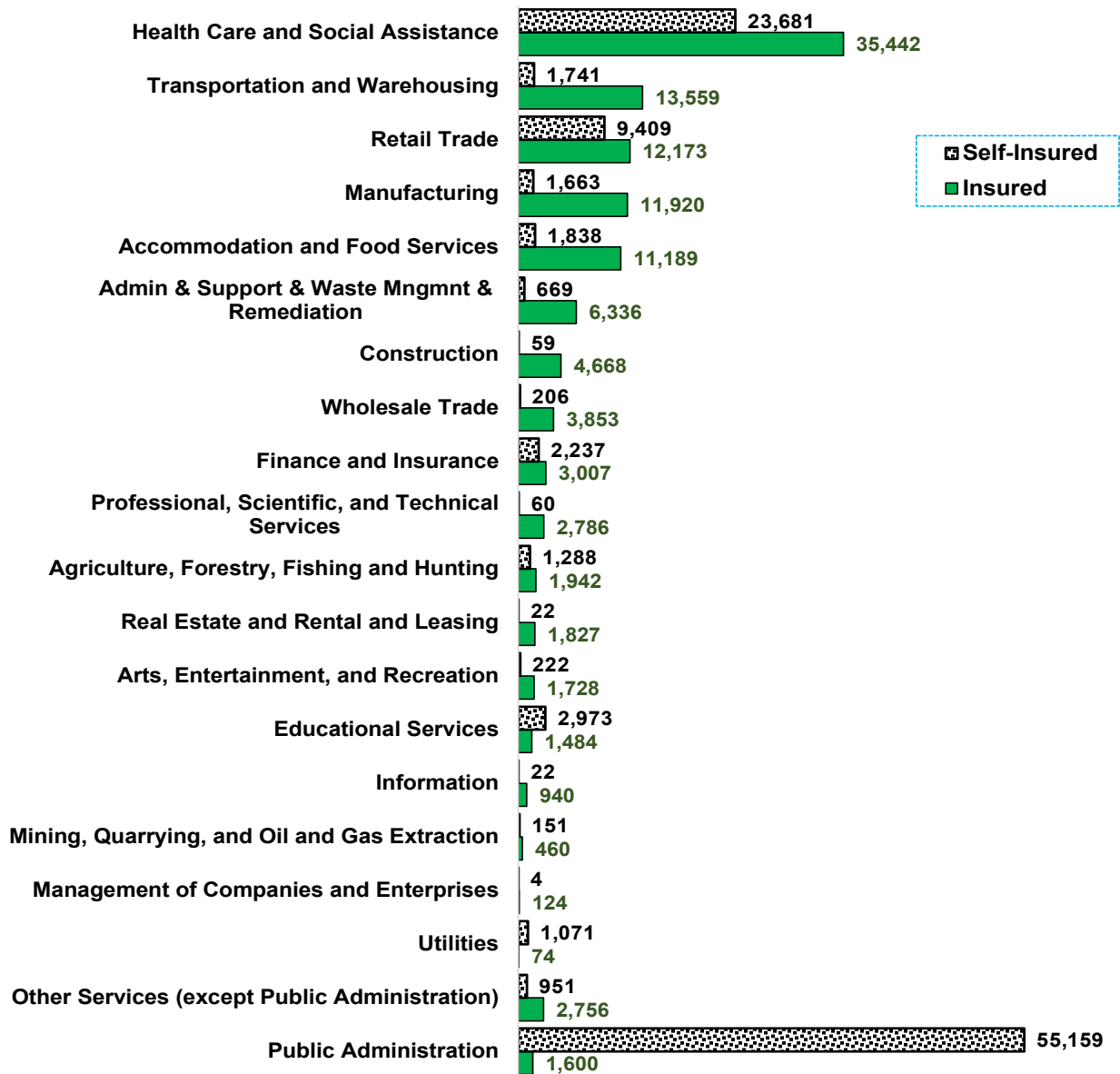


Data Source: DWC - WCIS

Figure 10 shows the total number of COVID-19 claims filed by insured and self-insured employers by industry from March 2020 to January 2022. The five insured industries that filed the most COVID-19 claims were health care and social assistance, transportation and warehousing, retail trade, manufacturing, and accommodation and food services. The five self-insured industries accounting for the most COVID-19 claims were public administration, health care and social assistance, retail trade, educational services, and finance and insurance. The public administration sector accounted for 25 percent of all COVID-19 claims filed in the whole period. In general, the state and local government establishments in the public administration sector oversee governmental programs and activities that are not performed by private establishments. These agencies provide public safety, adjudicate civil and criminal legal cases, set policy, and create laws.

## SYSTEM COSTS AND BENEFITS

**Figure 10: Total Number of COVID-19 Claims in Insured and Self-Insured Sectors by Industry (March 2020 – January 2022)**

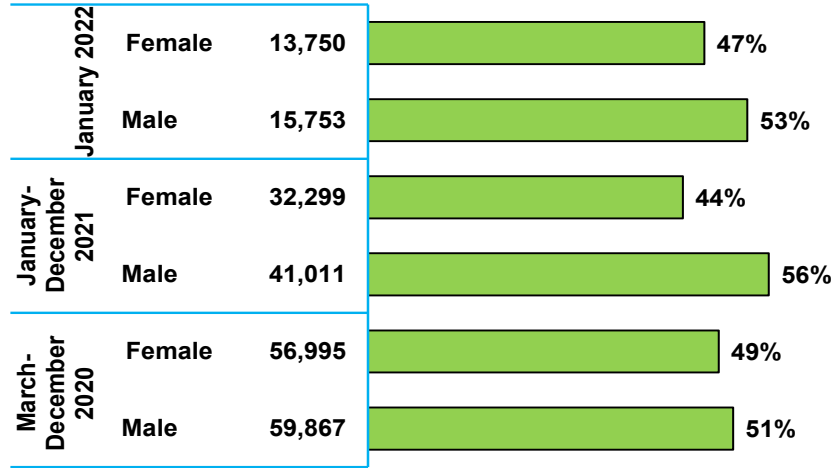


Source: DWC - WCIS

Figure 11 shows the gender of the COVID-19 WC claimants from March 2020 to January 2022. Almost half (49 percent) of all COVID-19 claims in the first year of the pandemic in 2020 were filed by women. This share was 10 percentage points higher than the average share (39-40 percent) of women in claims for all non-fatal work injuries in California (see Figure 130). Women make up a large share of the labor force on the front lines of the pandemic and in industries and occupations that have taken particularly large hits during the COVID-19 crisis. In 2021, 44 percent of COVID-19 WC claims were filed by women and 55 percent by men. During the peak of the Omicron pandemic in January 2022, 47 percent of COVID-19 claims were filed by women and 53 percent by men.

## SYSTEM COSTS AND BENEFITS

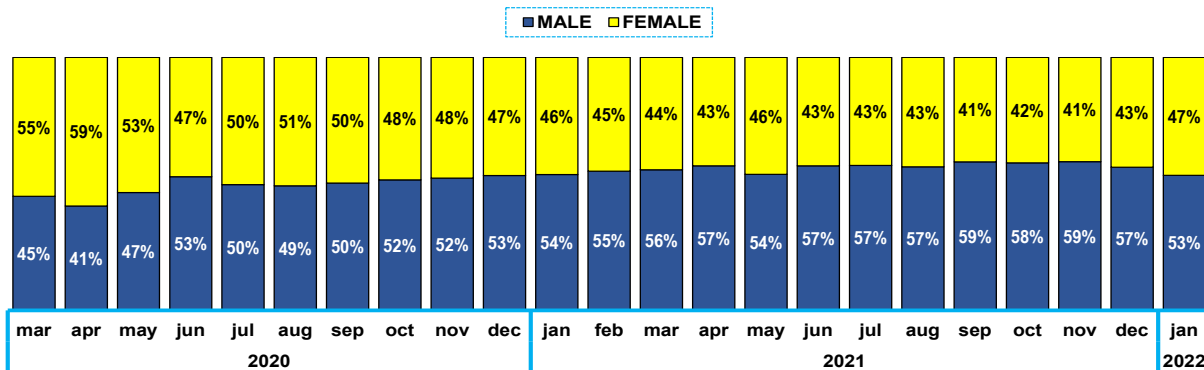
**Figure 11: Number and Distribution of COVID-19 Claims by Gender**



Data Source: DWC - WCIS FROI

Figure 12 demonstrates the monthly distribution of COVID-19 claims between male and female workers. The share of women in COVID-19 WC claims started with a high of 55 percent and 59 percent in March and April of 2020, respectively, when the pandemic hit the industries hard that employ big numbers of female workers like healthcare, hotels, food, and retail industries, and then gradually went down to 47-48 percent by the end of 2020. In 2021, the share of women gradually decreased from 46 percent in January to a monthly average of 42 percent from August to December of 2021, with the share of men increasing accordingly from 54 percent to a monthly average of 58 percent during the last five months of 2021. During the peak of the Omicron pandemic in January 2022, the share of women in COVID-19 claims increased again to 47 percent.

**Figure 12: Monthly Distribution of COVID-19 Claims by Gender from March 2020 to January 2022**

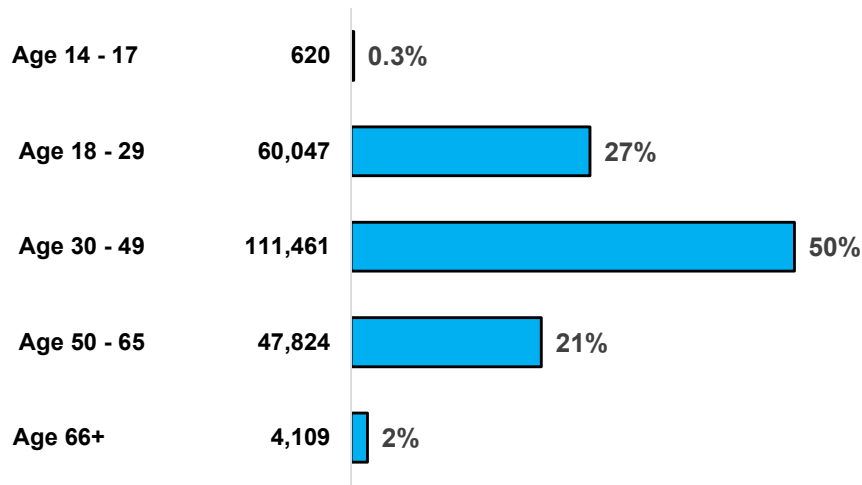


Data Source: DWC - WCIS FROI

Figure 13 shows the total number and distribution of COVID-19 claims by age group from March 2020 to January 2022. The highest number of COVID-19 WC claims were filed by workers in the 30-to-49 age group, followed by the 18-to-29 and the 50-to-65 age groups.

## SYSTEM COSTS AND BENEFITS

**Figure 13: Total Number and Distribution of COVID-19 Claims by Age Groups (March 2020-January 2022)**



Data 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.<sup>56</sup> The major reform bills are summarized as follows.<sup>57</sup>

#### **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.

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.<sup>58</sup> SB 863 medical reforms have resulted in over \$2 billion in annual savings.

<sup>56</sup> [https://www.wcirb.com/sites/default/files/documents/2019\\_state\\_of\\_the\\_system\\_report.pdf](https://www.wcirb.com/sites/default/files/documents/2019_state_of_the_system_report.pdf)

<sup>57</sup> Information on other legislation related to workers' compensation is in CHSWC legislative reports at: <https://www.dir.ca.gov/chswc/AnnualReportpage1.html>.

<sup>58</sup> 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](http://www.wcirb.com/sites/default/files/documents/sb_863_cost_monitoring_report_2016.pdf)

## SYSTEM COSTS AND BENEFITS

Table 6 reproduced from WCIRB's SB 863 Cost Monitoring Update<sup>59</sup>, 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
<b>Indemnity Cost Components</b>		
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%
<b>Med and LAE Cost Components</b>		
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%
<b>TOTAL ESTIMATE—ALL ITEMS</b>	<b>(\$2,270)</b>	<b>-11.9%</b>

Source: WCIRB

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

AB 1124 required DWC's 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 and Environmental Medicine (ACOEM) guidelines.<sup>60</sup> 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.<sup>61</sup>

<sup>59</sup> [https://www.wcirb.com/sites/default/files/documents/research\\_brief\\_october\\_2019\\_sb\\_863\\_cost\\_monitoring\\_update.pdf](https://www.wcirb.com/sites/default/files/documents/research_brief_october_2019_sb_863_cost_monitoring_update.pdf)

<sup>60</sup> <https://www.dir.ca.gov/dwc/MTUS/MTUS-Webinar-Transcript-Nov2017.pdf>

<sup>61</sup> [https://www.wcirb.com/sites/default/files/documents/2018\\_state\\_of\\_the\\_system\\_report\\_0.pdf](https://www.wcirb.com/sites/default/files/documents/2018_state_of_the_system_report_0.pdf)

## SYSTEM COSTS AND BENEFITS

### **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)<sup>62</sup> passed into law and required the Administrative Director of 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.<sup>63</sup>

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)<sup>64</sup> 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.<sup>65</sup>

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.<sup>66</sup> According to the WCIRB, 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.<sup>67</sup>

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<sup>62</sup> [http://leginfo.ca.gov/faces/billNavClient.xhtml?bill\\_id=201520160AB1244](http://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB1244)

<sup>63</sup> <https://www.dir.ca.gov/dwc/SB1160-AB1244/AB1244.htm>

<sup>64</sup> [http://leginfo.ca.gov/faces/billNavClient.xhtml?bill\\_id=201520160SB1160](http://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB1160)

<sup>65</sup> [https://www.wcirb.com/sites/default/files/documents/2019\\_state\\_of\\_the\\_system\\_report.pdf](https://www.wcirb.com/sites/default/files/documents/2019_state_of_the_system_report.pdf)

<sup>66</sup> [https://www.dir.ca.gov/fraud\\_prevention/fraud-white-paper.pdf](https://www.dir.ca.gov/fraud_prevention/fraud-white-paper.pdf)

<sup>67</sup> 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](https://www.wcirb.com/sites/default/files/documents/2018_state_of_the_system_report_0.pdf)

## SYSTEM COSTS AND BENEFITS

### **2016 Workers' Compensation Reforms: Utilization Review (SB 1160)<sup>68</sup>**

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 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.<sup>69</sup> Those public comments can be reviewed on the forum website.

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<sup>68</sup> <https://www.dir.ca.gov/dwc/SB1160-AB1244/SB1160.htm>;  
[https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201520160SB1160](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB1160)

<sup>69</sup> <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 2020, workers' compensation insurers' earned premium totaled \$14.1 billion paid by California employers.<sup>70</sup>

In the past seventeen 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 9 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 WCIRB submits advisory pure premium rates to the California Department of Insurance (CDI) for approval. Insurer rates are usually derived from the advisory pure premium rates developed by the WCIRB and approved by the Insurance Commissioner. Advisory pure premium rates, expressed as a rate per \$100 of payroll, are based upon loss and payroll data submitted to the WCIRB by all insurance companies. These rates reflect the amount of losses an insurer can expect to pay in benefits due to workplace injuries as well as the cost for adjusting and settling WC claims. Pure premium rates do not account for administrative and other overhead costs that an insurer will incur and, consequently, an insurer's rates are typically higher than the pure premium rates. Between the first periods of 2013 and 2015, the charged rate was on average 11 percent higher than the approved advisory rate, and then from the first periods of 2016 to 2020, the charged rate was on average 18 percent higher than the approved advisory rate. 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.

The charged rate rose on average by 5 percent from 2013 to its peak in the first period of 2015 and then decreased by 43 percent from the first period of 2015 to the first period of 2020. According to the WCIRB the decrease from 2016 to 2019 was largely due to the significant savings from SB 863<sup>71</sup>. The COVID-19 economic slowdown resulted in 2020 payroll levels comparable to 2019. With continued decreases in insurer rates, premium declined significantly in 2020.<sup>72</sup> The pure premium rates approved by the IC are only advisory. Under California law, insurers are permitted to make their own determinations regarding the

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<sup>70</sup> "2020 California's Workers' Compensation Losses and Expenses." WCIRB, June 25, 2021. 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.

<sup>71</sup> 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](https://www.wcirb.com/sites/default/files/documents/2020_state_of_the_system_report-ar.pdf).

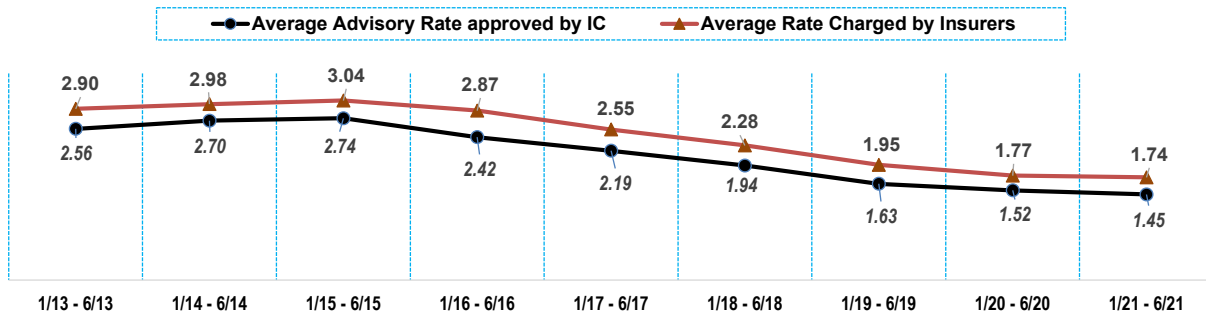
<sup>72</sup> WCIRB 2021 report on State of the System Report, Chart 13, [https://www.wcirb.com/sites/default/files/documents/wcirb-report-2021\\_state\\_of\\_the\\_system-ho.pdf](https://www.wcirb.com/sites/default/files/documents/wcirb-report-2021_state_of_the_system-ho.pdf).

## SYSTEM COSTS AND BENEFITS

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 14, the advisory pure premium rates approved for January 1, 2021, are on average 47 percent below those as of January 1, 2015.<sup>73</sup> Whereas the level of the WC pure premium rates depends on the experience modification rate (EMR) metric that insurers use to calculate premiums, these rates are not predictive of an individual employer’s insurance premium which may fluctuate greatly from these figures. The EMR takes into account the number of injuries a company experienced over certain period, their corresponding costs, and payroll and compares these individual experiences to the statistical average losses that a business of a similar size in the same industry is expected to incur. In other words, an employer’s specific mix of employees and operations and its actual claims experience can result in charged rates that significantly differ from the average pure premium rates. According to the 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.<sup>74</sup> 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.<sup>75</sup>

**Figure 14: Average Advisory Rate per \$100 of Payroll approved by Insurance Commissioner (IC) and Average Charged by Insurers Rate per \$100 of Payroll<sup>76</sup>**



Note: The figure shows the first rating periods from 2013 to 2021 for consistency. 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.

Source: WCIRB

<sup>73</sup> Advisory Workers’ Compensation Pure Premium Rates, A History since the 2013 Reform Legislation, pp. 219-224 of this report.

<sup>74</sup> WCIRB Quarterly Experience Report as of June 30, 2020, [https://www.wcirb.com/sites/default/files/documents/quarterly\\_experience\\_report\\_2020\\_2q-handout.pdf](https://www.wcirb.com/sites/default/files/documents/quarterly_experience_report_2020_2q-handout.pdf).

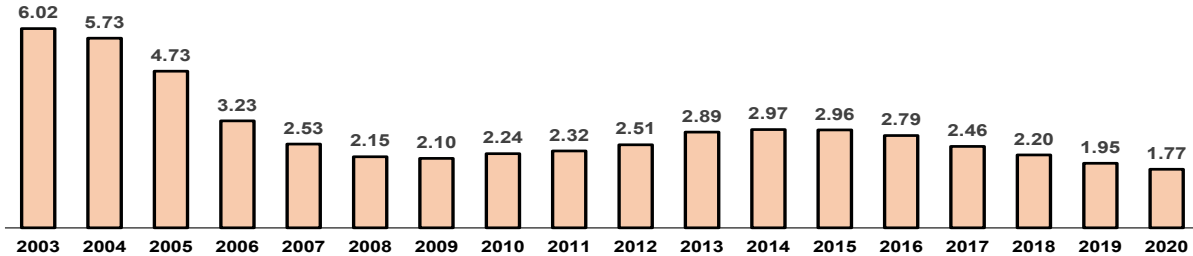
<sup>75</sup> WCIRB Submits Amended January 1, 2021, Pure Premium Rate Filing to CDI, <https://www.wcirb.com/news/wcirb-submits-amended-january-1-2021-pure-premium-rate-filing-cdi>.

<sup>76</sup> WCIRB 2021 State of the System Report, Chart 15, [https://www.wcirb.com/sites/default/files/documents/wcirb-report-2021\\_state\\_of\\_the\\_system-ho.pdf](https://www.wcirb.com/sites/default/files/documents/wcirb-report-2021_state_of_the_system-ho.pdf) and Advisory Workers’ Compensation Pure Premium Rates, A History since the 2013 Reform Legislation, pp. 219-224 of this report.

## SYSTEM COSTS AND BENEFITS

Largely because of the SB 863 reforms, which took effect in 2013 and saved about \$1.3 billion annually<sup>77</sup>, the cost of insurance began to fall again in 2015. In particular, as shown in Figure 15, the cost of \$1.77 per \$100 of payroll in 2020 was about 71 percent below the 2003 peak of \$6.02 per \$100 of payroll, 40 percent below the second peak in 2014, and 9 percent below the 2019 rate.<sup>78</sup>

**Figure 15: Industry Average Charged Pure Premium Rate per \$100 of Payroll, 2003–2020**



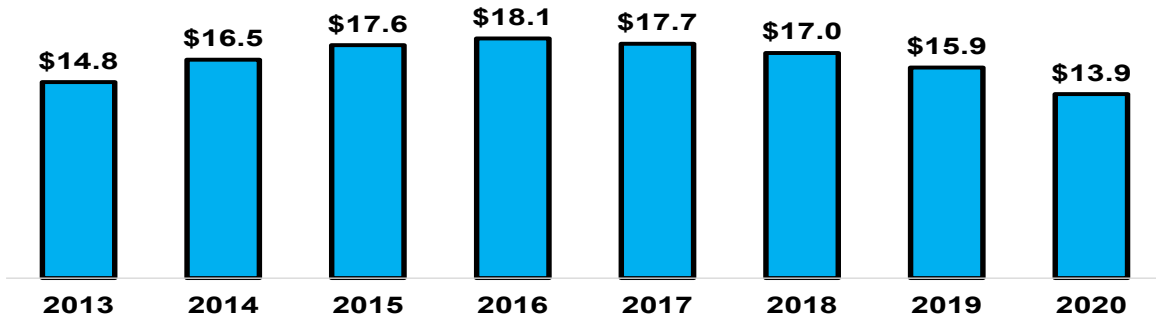
Source: WCIRB

### *Workers' Compensation Written Premium*

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

According to Figure 16, written premium increased by 22 percent from 2013 to 2016 and then declined 23 percent from its peak in 2016 to 2020, including a 13 percent decline from 2019 to 2020.<sup>79</sup> The decreases from 2017 to pre-pandemic 2019 following seven consecutive years of increases from 2009 (not included in Figure 16) was driven primarily by decreases in rates charged by insurers, as shown in Figures 14 and 15, more than by offsetting increases in employer payroll. Similarly, the continued decreases in average insurer charged rates were driving the 2020 premium decrease as 2020 payroll levels were relatively consistent with 2019.<sup>80</sup>

**Figure 16: Workers' Compensation Written Premium, Gross of Deductible Credits as of December 31, 2020 (\$ in billions)**



Source: WCIRB

<sup>77</sup> 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](https://www.wcirb.com/sites/default/files/documents/sb_863_cost_monitoring_report_2016.pdf).

<sup>78</sup> WCIRB Quarterly Experience Report as of December 31, 2020, Chart 2 [https://www.wcirb.com/sites/default/files/documents/wcirb-quarterlyexpreort-2020-4q-ar\\_0.pdf](https://www.wcirb.com/sites/default/files/documents/wcirb-quarterlyexpreort-2020-4q-ar_0.pdf).

<sup>79</sup> WCIRB Quarterly Experience Report as of December 31, 2020, Insurer Experience, Chart 1. [https://www.wcirb.com/sites/default/files/documents/wcirb-quarterlyexpreort-2020-4q-ar\\_0.pdf](https://www.wcirb.com/sites/default/files/documents/wcirb-quarterlyexpreort-2020-4q-ar_0.pdf).

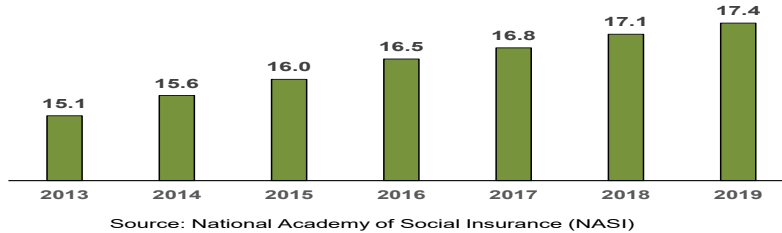
<sup>80</sup> *Ibid.*

## SYSTEM COSTS AND BENEFITS

### Workers Covered by Workers' Compensation Insurance

The estimated number of California workers covered by workers' compensation insurance grew by 15 percent from 15.1 million in 2013 to 17.4 million in 2019<sup>81</sup> (see Figure 17).

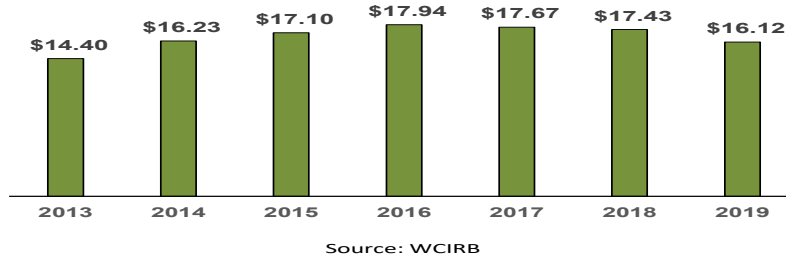
**Figure 17: Estimated Number of Workers Covered by Workers' Compensation Insurance in California (millions)**



### 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 18, earned premium increased by 24.6 percent from 2013 to 2016 and then decreased by 10 percent from 2016 to 2019.

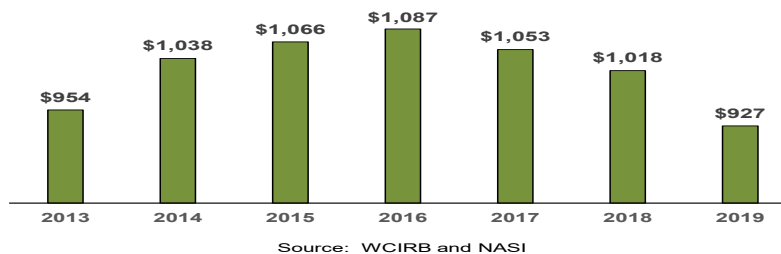
**Figure 18: Workers' Compensation Earned Premium (\$ in billions)**



### Average Earned Premium per Covered Worker

As shown in Figure 19, the average earned premium per covered worker increased by 14 percent from 2013 to 2016 and then decreased by 15 percent from 2016 to 2019 as the workers' compensation earned premium decreased and the number of California workers covered by workers' compensation insurance increased from 2016 to 2019.

**Figure 19: Average Earned Premium per Covered Worker**



<sup>81</sup> Latest available data in 2020 from NASI Report: Workers' Compensation Benefits, Coverage, and Costs, 2019, October 2021, <https://www.nasi.org/wp-content/uploads/2021/10/2021-Workers-Compensation-Report-2019-Data.pdf>.

## SYSTEM COSTS AND BENEFITS

### ***Costs Paid by Self-Insured Private and Public Employers***<sup>82</sup>

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' compensation<sup>83</sup>.

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-insured 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,

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<sup>82</sup> The information was provided by OSIP in July 2021.

<sup>83</sup> <https://www.dir.ca.gov/osip/StatewideTotals.html>.

## SYSTEM COSTS AND BENEFITS

OSIP focused on drafting regulations to clarify the solvency, performance, and costs of public self-insurers' workers' compensation programs.<sup>84</sup>

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 2020 of \$4.7 billion (see Table 4 in the box "Systemwide Cost: Paid Dollars for 2020 Calendar Year" on page 27).

OSIP's focus in 2019 was the proposed rulemaking<sup>85</sup>, 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.

In the fiscal year 2020-2021, OSIP closely monitored the financial solvency of all private self-insured employers because of the pandemic-caused economic downturn and the expected high default forecast for many industries. This was done in collaboration with the Self-Insurers' Security Fund (SISF). There were no significant defaults in fiscal year 2020-2021.

Self-insured employers were credited a total of \$10 million in the assessment for the Alternatives Security Program within the SISF for employers who contributed to the program that started in 2004, using excess funds collected each year. This further lowered the cost of being self-insured in California.

OSIP also focused on working closely with public self-insured employers on the new requirements to provide financial information and claims data. This was a big accomplishment, especially because OSIP analysts were working remotely from home full time and this was the first year the reports were being gathered. OSIP is currently updating the online filing portal to allow submission of new financial forms online.

### Private Self-Insured Employers<sup>86</sup>

*Number of Employees.* Figure 20 shows the number of employees working for private self-insured employers between 2013 and 2020. 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 the first period of 2013 to \$3.04 in the first period of 2015 (see Figure 14), 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

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<sup>84</sup> 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.

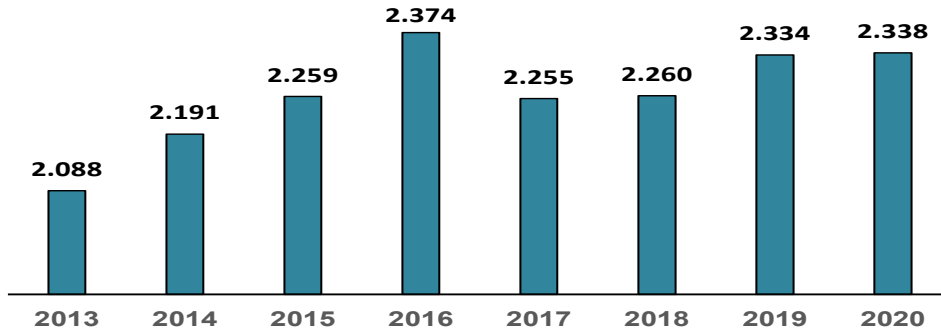
<sup>85</sup> [https://www.dir.ca.gov/osip/rulemaking/osip\\_rulemaking\\_approved.html](https://www.dir.ca.gov/osip/rulemaking/osip_rulemaking_approved.html).

<sup>86</sup> Data on private self-insured employers are from DIR's Office of Self-Insurance Plans correspondence received by CHSWC in July 2021.

## SYSTEM COSTS AND BENEFITS

5 percent from 2016 to 2018. The number of employees covered by self-insurance plans increased by 4 percent in four years from 2017 through 2020.

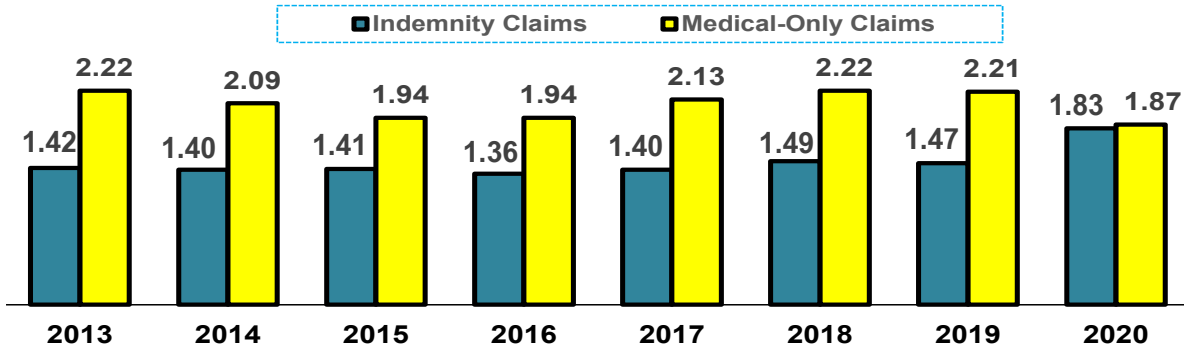
**Figure 20: Number of Employees of Private Self-Insured Employers (Millions)**



Source: DIR Self-Insurance Plan

*Indemnity or Medical-Only Claims.* Figure 21 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, increased overall by 8 percent from 2016 to 2019, and then increased sharply by 24.5 percent from 2019 to 2020. 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 in three years from 2016 to 2019. From 2019 to 2020, the rate of medical-only claims per 100 employees decreased by 15 percent.

**Figure 21: Number of Indemnity or Medical-Only Claims per 100 Employees of Private Self-Insured Employers**

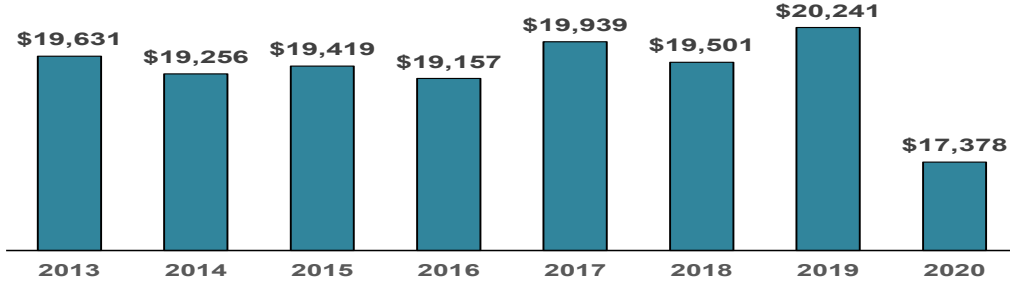


Source: DIR Self-Insurance Plan

*Incurred Cost per Indemnity Claim.* Figure 22 shows the incurred cost per indemnity claim for private self-insured employers. The average incurred cost per indemnity claim fluctuated by less than 6 percent between \$19,150 and \$20,240 from 2013 to 2019. From 2019 to 2020, the incurred cost per indemnity claim decreased by 14 percent.

## SYSTEM COSTS AND BENEFITS

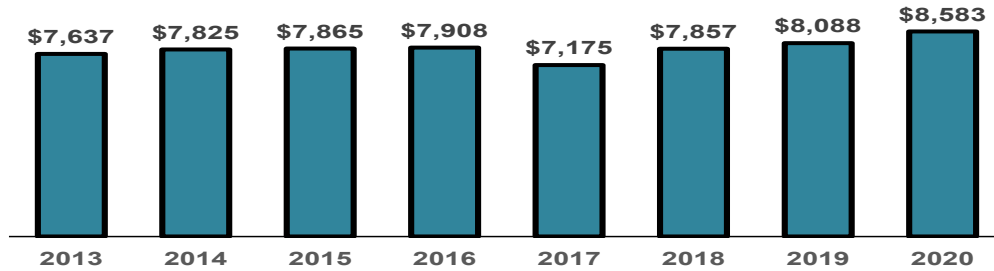
**Figure 22: Incurred Cost Per Indemnity Claim of Private Self-Insured Employers**



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. The data showed a steady overall increase of 6 percent in eight years from 2013 to 2019, with a one time 9 percent decrease from 2016 to 2017. From 2019 to 2020, the average cost of all claims, including both indemnity and medical-only claims, increased also by 6 percent, though in one year. See Figure 23.

**Figure 23: Incurred Cost per Claim, Indemnity and Medical of Private Self-Insured Employers**



Source: DIR Self-Insurance Plan

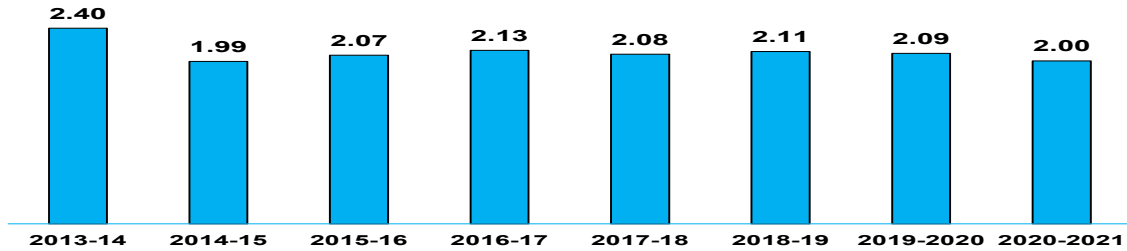


## SYSTEM COSTS AND BENEFITS

### Public Self-Insured Employers<sup>87</sup>

*Number of Employees.* Figure 24 shows the number of employees of public self-insured employers between fiscal years 2013-2014 and 2020-2021. 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. From 2019-2020 to 2020-2021, there was a 4 percent decrease in the number of employees of public self-insured employers.

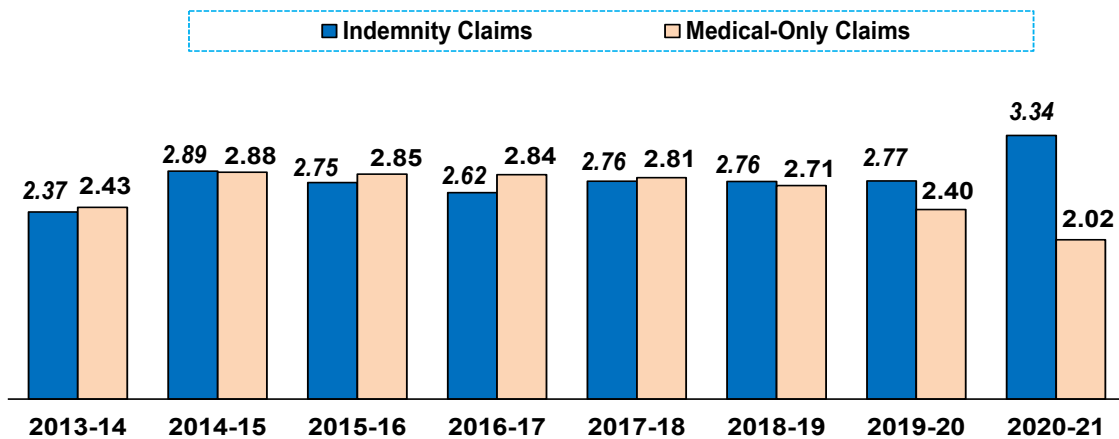
**Figure 24: Number of Employees of Public Self-Insured Employers (Millions)**



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. From 2013-2014 to 2019-2020, the number of indemnity claims, that are more costly compared to relatively inexpensive medical-only claims, did not exceed its 2018-2019 maximum of 58,287, but in 2020-2021 it reached 66,787, an increase of 15.5 percent that explains an almost 21 percent increase in the rate of indemnity claims per employees working for public self-insured employers from 2019-2020 to 2020-2021. 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, and then decreased again by 16 percent from 2019-2020 to 2020-2021. This decrease could be explained by a 19.7 percent decrease in medical-only claims from its minimum of 50,250 since 2013-2014 to 40,374 claims in 2020-2021. See Figure 25.

**Figure 25: Number of Indemnity or Medical-Only Claims per 100 Employees of Public Self-Insured Employers**



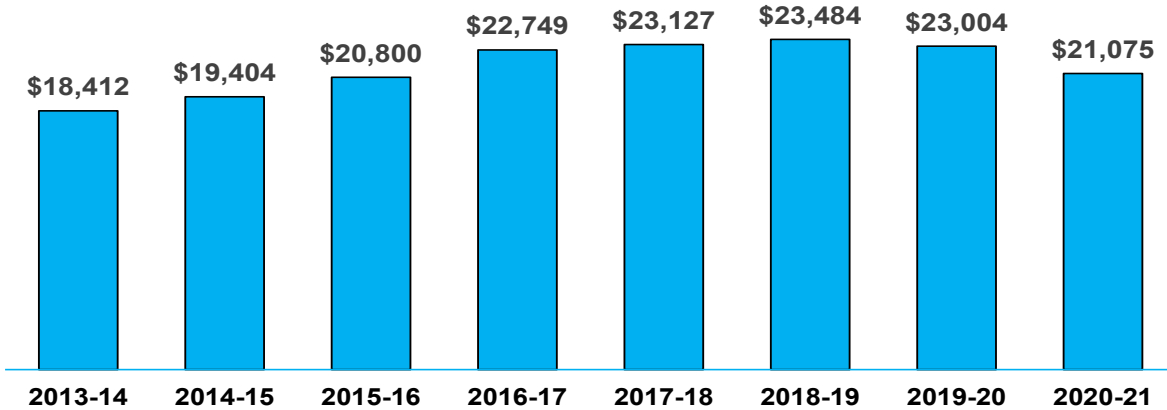
Source: DIR Self-Insurance Plan

<sup>87</sup> Data on public self-insured employers are from DIR's Office of Self-Insurance Plans correspondence received by CHSWC in December 2021.

## SYSTEM COSTS AND BENEFITS

*Incurred Cost per Claim.* Figure 26 shows the incurred cost per indemnity claim for public self-insured employers between 2013-2014 and 2020-2021. 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. From 2019-2020 to 2020-2021, the incurred cost per indemnity claim for public self-insured employers decreased by 8 percent

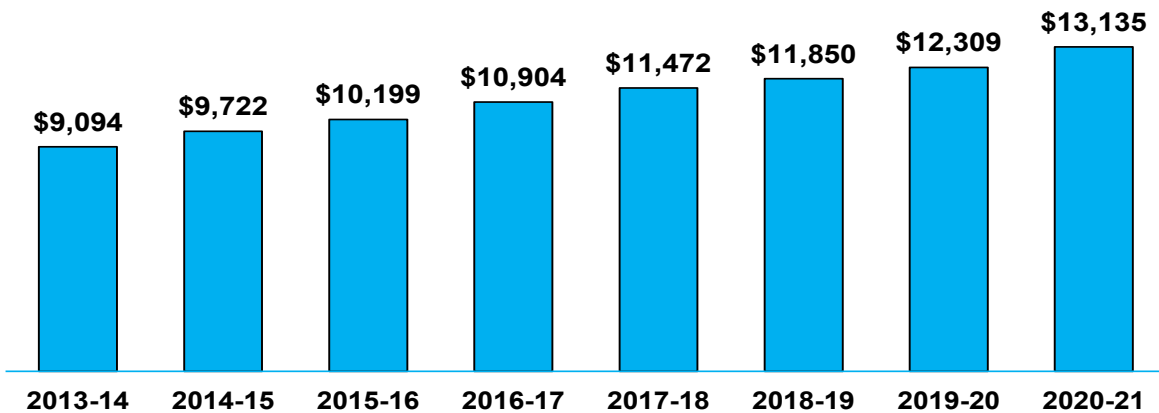
**Figure 26: Incurred Cost per Indemnity Claim of Public Self-Insured Employers**



Source: DIR Self-Insurance Plan

*Incurred Cost per Indemnity and Medical Claim.* Figure 27 shows the incurred cost per indemnity and medical claim for public self-insured employers between 2013-2014 and 2020-2021. The incurred cost per indemnity and medical claim increased steadily from 2013-2014 to 2019-2020, rising by 35 percent, from \$9,094 in 2013-2014 to \$12,309 in 2019-2020 and from 2019-2020 to 2020-2021, it grew again by 7 percent.

**Figure 27: Incurred Cost per Claim—Indemnity and Medical—Public Self-Insured Employers**



Source: DIR Self-Insurance Plan

## SYSTEM COSTS AND BENEFITS

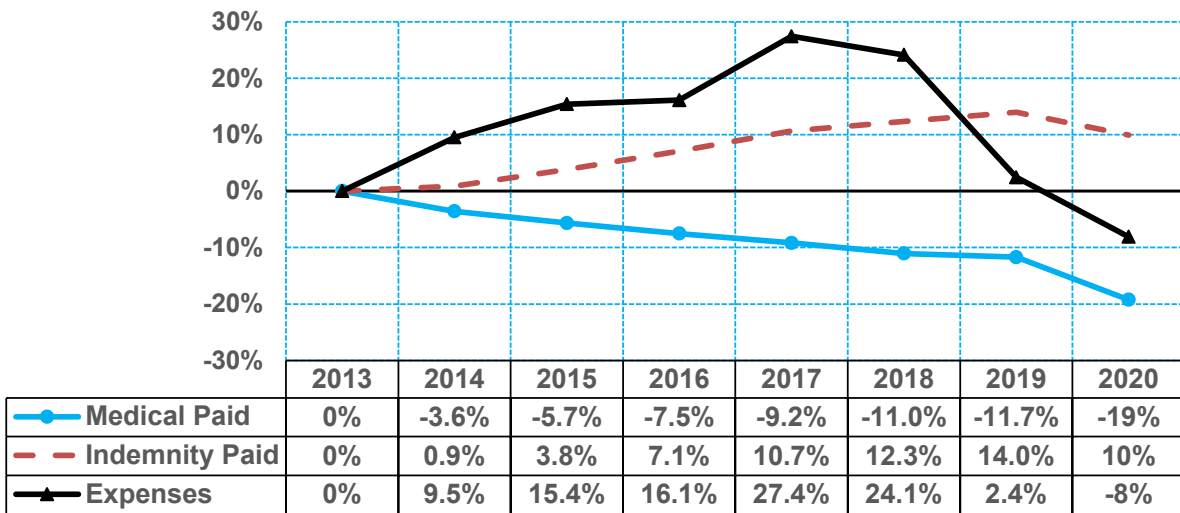
### **Estimated Workers' Compensation Systemwide Expenditures: Indemnity and Medical Benefits**

#### *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 2020, 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 25.)

#### *Growth of Workers' Compensation Costs*

**Figure 28: Workers' Compensation Costs: Annual Change Compared with 2013**



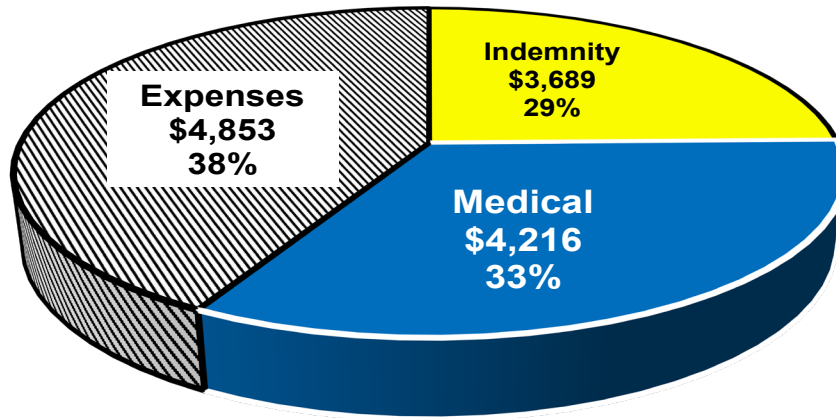
Source: WCIRB

## SYSTEM COSTS AND BENEFITS

### *Distribution of Workers' Compensation Costs by Type.*

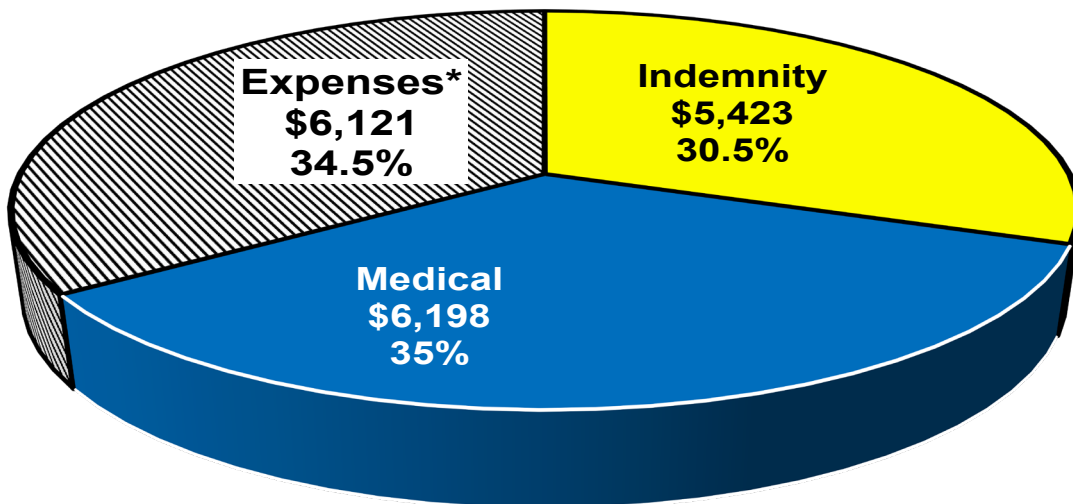
Figures 29 and 30 show the distribution of workers' compensation paid costs for insured employers and systemwide.

**Figure 29: Estimated Distribution of Insured Employers' Workers' Compensation Paid Costs, 2020 (\$ in millions)**



Data Source: WCIRB

**Figure 30: Estimated Distribution of Systemwide Workers' Compensation Paid Costs, 2020 (\$ 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	2019	2020	Change
<b>Systemwide, paid by all sectors</b>			
Temporary Disability	\$2,823,927	\$2,886,402	\$62,475
Permanent Total Disability	\$249,900	\$255,423	\$5,523
Permanent Partial Disability	\$2,206,025	\$1,935,736	-\$270,289
Death	\$110,622	\$110,573	-\$49
Funeral Expenses	\$3,293	\$3,219	-\$73
Life Pensions	\$121,941	\$123,945	\$2,004
Vocational Rehab/Nontransferable Education Voucher	\$107,426	\$107,331	-\$96
Total	\$5,617,439	\$5,422,630	-\$200,504
<b>Paid by Insured Employers</b>			
Temporary Disability *	\$1,921,039	\$1,963,539	\$42,500
Permanent Total Disability *	\$170,000	\$173,757	\$3,757
Permanent Partial Disability *	\$1,500,697	\$1,316,827	-\$183,870
Death *	\$75,253	\$75,220	-\$33
Funeral Expenses	\$2,240	\$2,190	-\$50
Life Pensions	\$82,953	\$84,316	\$1,363
Vocational Rehab/Nontransferable Education Voucher *	\$73,079	\$73,014	-\$65
Total	\$3,825,261	\$3,688,864	-\$136,397
<b>Paid by Self-Insured Employers and the State**</b>			
Temporary Disability	\$902,888	\$922,863	\$19,975
Permanent Total Disability	\$79,900	\$81,666	\$1,766
Permanent Partial Disability	\$705,328	\$618,909	-\$86,419
Death	\$35,369	\$35,353	-\$16
Funeral Expenses	\$1,053	\$1,029	-\$24
Life Pensions	\$38,988	\$39,629	\$641
Vocational Rehab/Nontransferable Education Voucher	\$34,347	\$34,317	-\$31
Total	\$1,797,873	\$1,733,766	-\$64,107

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

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

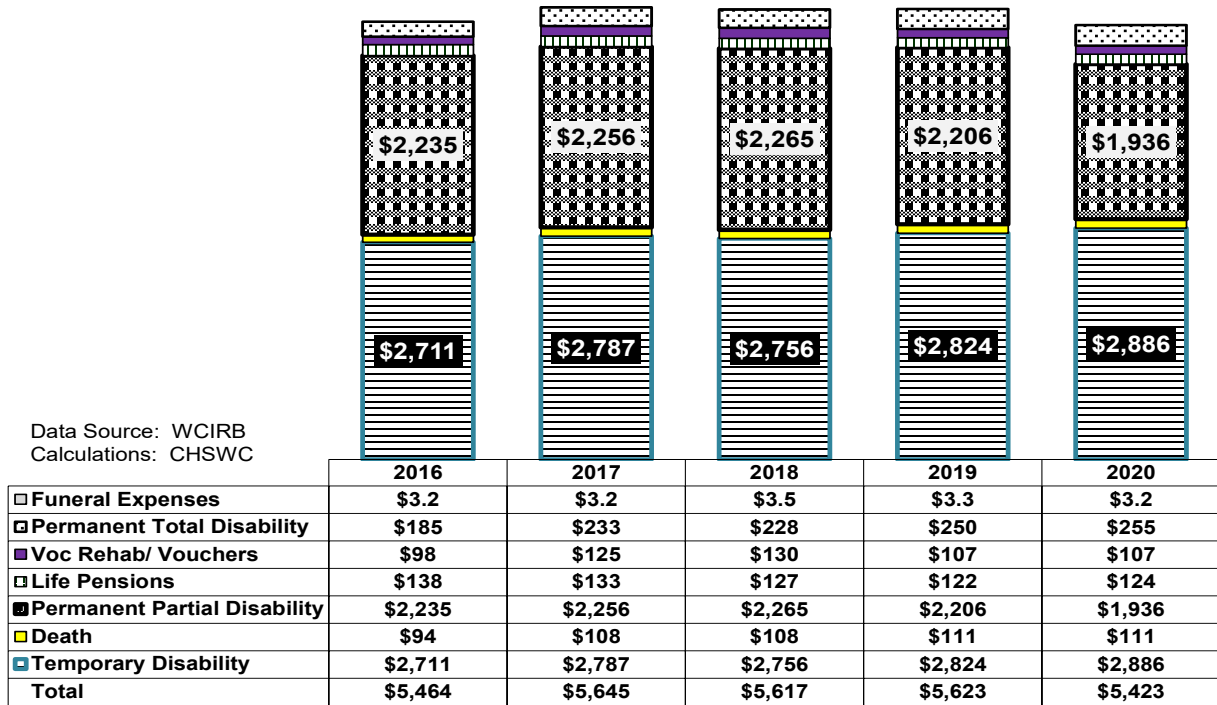
\*\* Figures estimated based on insured employers' costs. Self-insured employers and the State of California are estimated to comprise 32 percent of all California workers' compensation claims that translates into a 0.47 multiplier applied to indemnity benefits paid by insured employers.

## SYSTEM COSTS AND BENEFITS

### *Trends in Paid Indemnity Benefits.*

The estimated systemwide paid indemnity benefits for 2016-2020 are displayed in Figure 31. Paid indemnity benefits increased by 3 percent from 2016 to 2017 as the result of SB 863 reforms, slightly decreased by 0.4 percent from \$5,645 million in 2017 to an average of \$5,620 million in 2018 and 2019, and then decreased again by 4 percent from 2019 to 2020. Total costs in 2020 were highly impacted by the COVID-19 pandemic, which led to reductions in premiums and a slowdown of claims activity.<sup>88</sup> Temporary disability and permanent partial disability benefits comprise approximately 90 percent of indemnity benefits. Payments for permanent partial disability stabilized at an average of \$2,252 million from 2016 to 2018, decreased slightly by 3 percent from 2018 to 2019, and then fell by 12 percent from 2019 to 2020. According to WCIRB, the share of the permanent partial disability in total indemnity benefits decreased over the last five years since, unlike most other types of indemnity benefits, there are no annual cost-of-living adjustments. The temporary disability benefits increased overall by 4 percent from 2016 to 2019 and then again - by 4 percent from 2019 to 2020. Supplemental Job Displacement Benefits (SJDB) increased by 32 percent from 2016 to 2018, decreased by 17 percent from 2018 to 2019, and did not change from 2019 to 2020.

**Figure 31: Workers' Compensation Paid Indemnity Benefit by Type, Systemwide Estimated Costs (\$ in millions)**



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.

<sup>88</sup> WCIRB 2021 State of the System Report, Chart 52, [https://www.wcirb.com/sites/default/files/documents/wcirb-report-2021\\_state\\_of\\_the\\_system-ho.pdf](https://www.wcirb.com/sites/default/files/documents/wcirb-report-2021_state_of_the_system-ho.pdf).

## SYSTEM COSTS AND BENEFITS

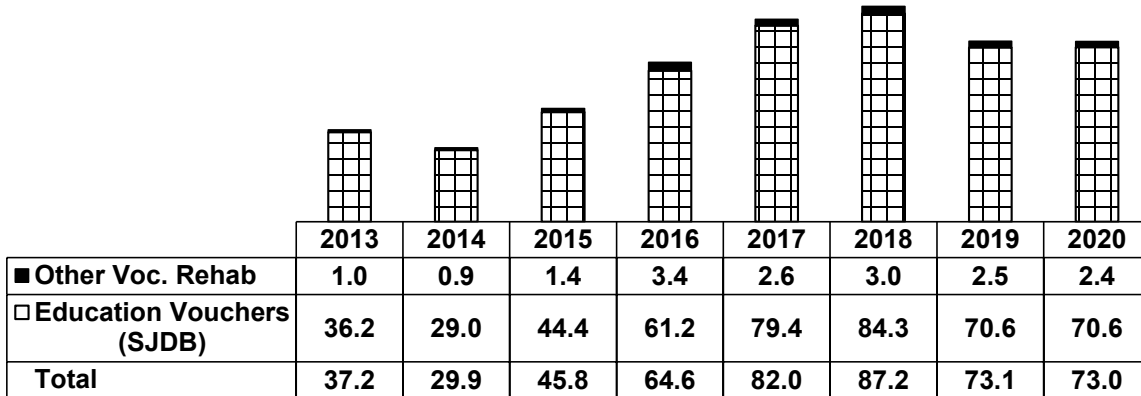
### *Supplemental Job Displacement Benefit Vouchers*

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 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 § 4658.7 was added that modified the system of supplemental job displacement benefits. According to Labor Code § 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 32 shows that the amounts paid for SJDB vouchers by insured employers in 2018 increased 2.3-fold compared to 2013 and almost 3-fold compared to 2014. From 2018 to 2019, the amounts paid for SJDB vouchers decreased by 16 percent and did not change from 2019 to 2020. The proportion of amounts paid for SJDB vouchers in total Vocational Rehabilitation was 97 percent from 2013 to 2020, with a slight decrease to 95 percent in 2016.

**Figure 32: Amounts Paid for Supplemental Job Displacement Benefit (SJDB) Vouchers by Insured Employers (\$ in millions)**



Source: WCIRB

### **Medical Benefits**

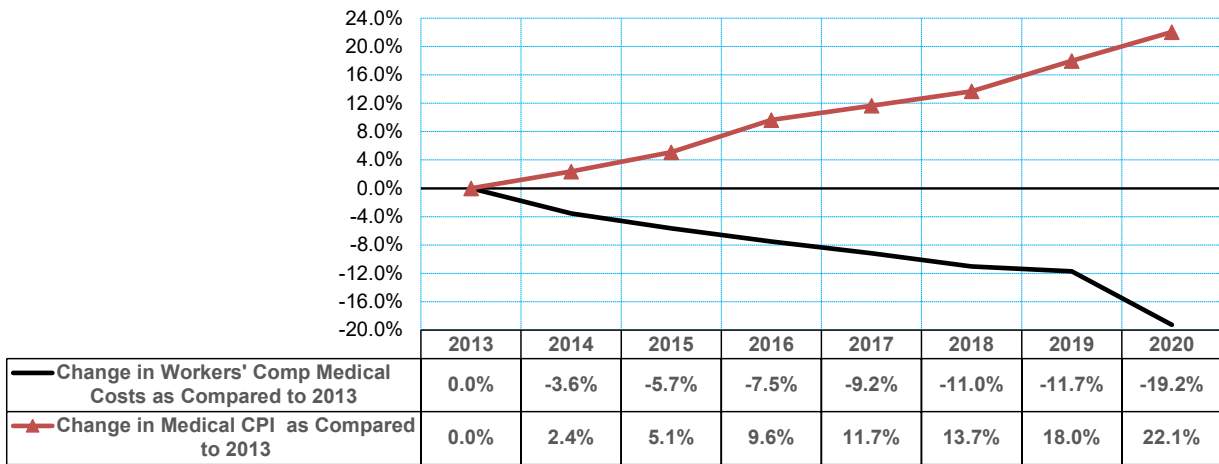
#### *Workers’ Compensation Medical Costs vs. Medical Inflation*

Figure 33 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.

## SYSTEM COSTS AND BENEFITS

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. There was a cumulative 19 percent decrease in WC medical costs from 2013 to 2020. 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. From 2013 to 2020, the medical CPI increased by a cumulative of 22 percent. Figure 33 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 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 33: 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	2019	2020	Change
<b>Systemwide, paid by all sectors</b>			
Physicians	\$1,795,489	\$1,698,510	-\$96,979
Hospital (Inpatient and Outpatient)	\$858,920	\$803,305	-\$55,615
Medical Supplies and Equipment	\$350,767	\$316,154	-\$34,613
Pharmacy	\$127,177	\$112,862	-\$14,315
Medical-Legal Evaluation	\$428,070	\$398,862	-\$29,207
Payments Made Directly to Patients*	\$2,160,640	\$1,919,422	-\$241,218
Medical Cost-Containment Programs**	\$212,493	\$172,340	-\$40,153
Medicare Set-aside and Reimbursements	\$464,840	\$423,936	-\$40,904
Capitated Medical	\$29,335	\$51,309	\$21,974
Other (Med Liens, Dental, Interpreter***, & Copy Services***)	\$349,199	\$301,400	-\$47,799
Total	\$6,776,929	\$6,198,101	-\$578,826
<b>Paid by Insured Employers</b>			
Physicians	\$1,221,421	\$1,155,449	-\$65,972
Hospital (Inpatient and Outpatient)	\$584,299	\$546,466	-\$37,833
Medical Supplies and Equipment	\$238,617	\$215,071	-\$23,546
Pharmacy	\$86,515	\$76,777	-\$9,738
Medical-Legal Evaluation	\$291,204	\$271,335	-\$19,869
Payments Made Directly to Patient*	\$1,469,823	\$1,305,729	-\$164,094
Medical Cost-Containment Programs**	\$144,553	\$117,238	-\$27,315
Medicare Set-aside and Reimbursements	\$316,218	\$288,392	-\$27,826
Capitated Medical	\$19,956	\$34,904	\$14,948
Other (Med Liens, Dental, Interpreter***, & Copy Services***)	\$237,550	\$205,034	-\$32,516
Total	\$4,610,154	\$4,216,394	-\$393,760
<b>Paid by Self-Insured Employers and the State****</b>			
Physicians	\$574,068	\$543,061	-\$31,007
Hospital (Inpatient and Outpatient)	\$274,621	\$256,839	-\$17,782
Medical Supplies and Equipment	\$112,150	\$101,083	-\$11,067
Pharmacy	\$40,662	\$36,085	-\$4,577
Medical-Legal Evaluation	\$136,866	\$127,527	-\$9,338
Payments Made Directly to Patient*	\$690,817	\$613,693	-\$77,124
Medical Cost-Containment Programs**	\$67,940	\$55,102	-\$12,838
Medicare Set-aside and Reimbursements	\$148,622	\$135,544	-\$13,078
Capitated Medical	\$9,379	\$16,405	\$7,026
Other (Med Liens, Dental, Interpreter***, & Copy Services***)	\$111,649	\$96,366	-\$15,283
Total	\$2,166,773	\$1,981,706	-\$185,067

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 2020 is \$283 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.

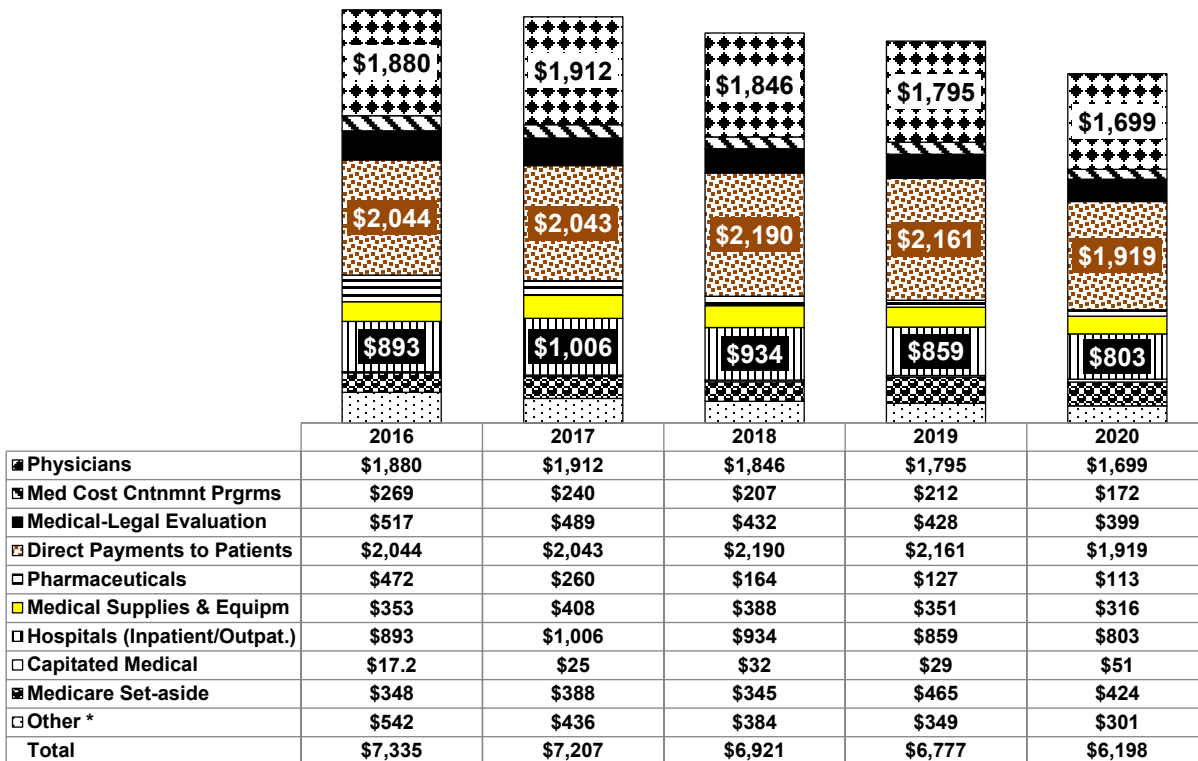
## SYSTEM COSTS AND BENEFITS

### Trends in Paid Medical Benefits

The estimated systemwide paid medical costs for the past several years are shown in Figure 34. The following trends may result from the impact of SB 863 reforms and from 2020 contractions –the impact of the COVID-19 pandemic economic slowdown which in turn led to decreased premiums and a reduction of claims activity in that year.

The cost of the total medical benefit decreased by 8 percent from 2016 to 2019 and by 9 percent from 2019 to 2020. Payments to physicians increased slightly by 2 percent from 2016 to 2017, decreased by 6 percent from 2017 to 2019, and then decreased again by 5 percent from 2019 to 2020. Hospital costs increased by 13 percent from 2016 to 2017, and then declined by 20 percent from 2017 to 2020. Medical supplies and equipment increased by 16 percent from 2016 to 2017 and then fell by 23 percent from 2017 to 2020. Medical-legal evaluation costs decreased by 23 percent from 2016 to 2020. Pharmacy costs decreased more than 4 times from \$472 million in 2016 to \$113 million in 2020. 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 by 7 percent from 2016 to 2018, stabilized at an average of \$2,175 million in 2018 and 2019, and then decreased by 11 percent from 2019 to 2020. Expenditures on medical cost-containment programs decreased by 23 percent from 2016 to 2018, stabilized at an average of \$210 million in 2018 and 2019, and then decreased by 19 percent from 2019 to 2020.<sup>89</sup>

**Figure 34: Workers' Compensation Paid Medical Benefits by Type, Systemwide Estimated Costs (\$ in millions)**



\* Other includes Medical Liens, Dental, Interpreter Services, and Copy Services.

Source: WCIRB's MDC (Calculations by CHSWC)

<sup>89</sup> 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

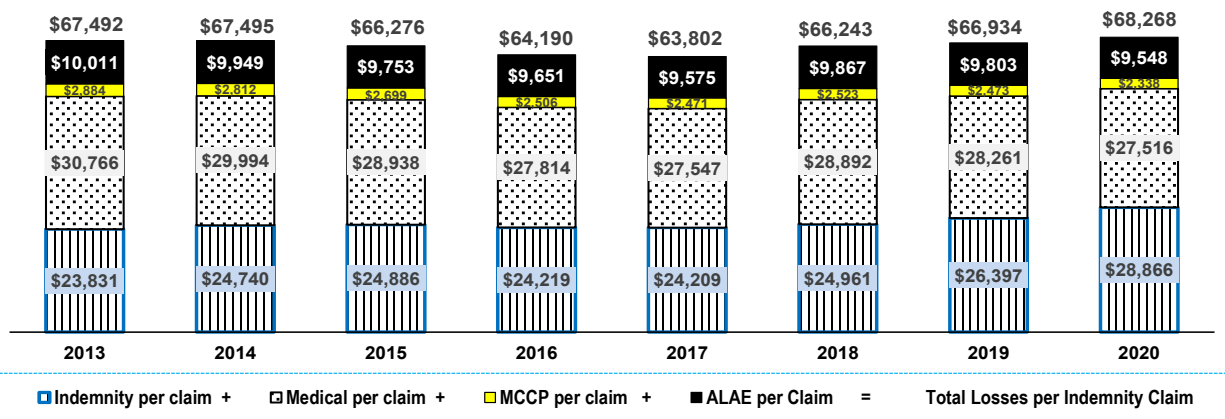
### Average Ultimate Total Loss

Figure 35 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 2020 claim, excluding COVID-19 claims, to be \$68,268, which is generally consistent with changes in total claim severity since 2013, although with a slight third year increase following several years of modest decline in claim severities.<sup>90</sup> 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 2020 was 9 percent higher than in 2019 and 19 percent higher than in 2017. Following a steady 10 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. The relatively flat medical severities since 2015 were driven by recent reforms, reduced pharmaceutical costs and efforts to fight fraud. From 2018 to 2020, the projected medical severity decreased by 5 percent. According to WCIRB, decreases in the utilization of medical services and flattening claim settlement rates had an impact on average medical costs decline in 2019.<sup>91</sup> Projected medical severity for 2020 is preliminary and is likely impacted by shifts in the mix of injuries and delay or deferral in medical treatment during the pandemic period. The projected average ALAE cost, excluding MCCP, has been flat from 2013 to 2020, with a slight 5 percent decrease over eight years and an average of \$9,770 per year in that period.<sup>92</sup> As with average indemnity and medical costs, projected ALAE severity excluding COVID-19 claims for 2020 may be impacted by the contraction of the claims process during the pandemic period. According to the WCIRB, generally the average ALAE costs tend to rise shortly after the implementation of reforms, even during periods when the medical costs have declined. Another factor is improving claim settlement rates that may moderate ALAE costs as well.

**Figure 35: Projected Ultimate Total Loss and ALAE per Indemnity Claim as of December 31, 2020**



Source: WCIRB

<sup>90</sup> WCIRB Quarterly Experience Report as of December 31, 2020, Charts 9–13, [https://www.wcirb.com/sites/default/files/documents/wcirb-quarterlyexpreport-2020-4q-ar\\_0.pdf](https://www.wcirb.com/sites/default/files/documents/wcirb-quarterlyexpreport-2020-4q-ar_0.pdf).

<sup>91</sup> WCIRB Quarterly Experience Report as of December 31, 2019, Chart 10.

<sup>92</sup> WCIRB Quarterly Experience Report as of December 31, 2020, Chart 12.

## SYSTEM COSTS AND BENEFITS

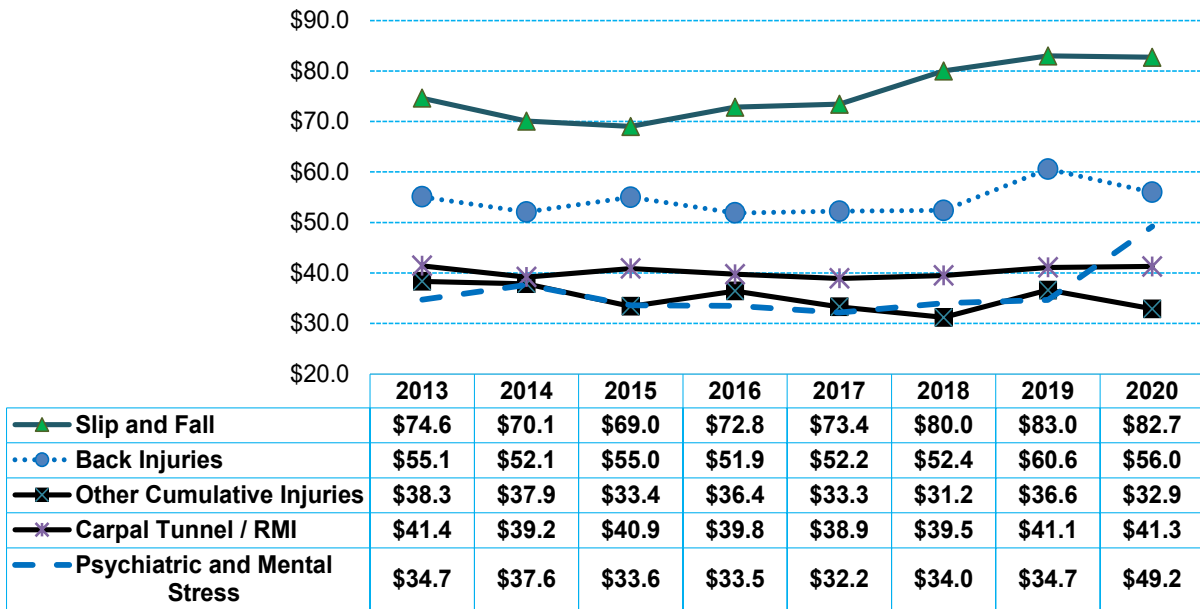
Please note that the WCIRB's estimates of average indemnity claim costs have not been indexed to take into account wage increases and medical inflation.

### *Average Cost per Claim by Type of Injury*

Figure 36 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, increased by 20 percent from 2015 to 2019, and then declined slightly by 0.3 percent from 2019 to 2020. 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. From 2019 to 2020, the average cost of back injuries decreased by 8 percent. The average cost of carpal tunnel (RMI) stabilized at around \$40,000 per year from 2013 and 2020. The average cost of other cumulative injuries went up and down between \$31,000 and \$38,000 from 2013 to 2020. It 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, grew again by 17 percent from 2018 to 2019, and decreased by 10 percent from 2019 to 2020. The average costs of psychiatric and mental stress claims increased by 6 percent from 2013 to 2014, decreased by 14 percent from 2014 to 2017, and then increased by 8 percent from 2017 to 2019. From 2019 to 2020, the average costs of psychiatric and mental stress claims increased by 42 percent.

**Figure 36: Average Cost per PD Claim by Type of Injury, 2013 - 2020 (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.<sup>93</sup> 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 (as of today there were no cost updates):<sup>94</sup>

<sup>93</sup> Labor Code Section 3208.1, p. 9, <https://www.dir.ca.gov/dwc/medicalunit/toc.pdf>

<sup>94</sup> 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](https://www.wcirb.com/sites/default/files/documents/the_world_of_cumulative_traum_claims_study_102018.pdf)

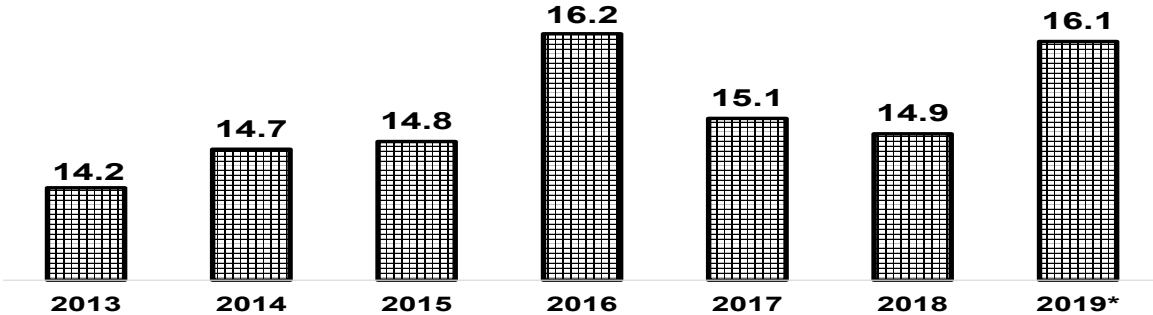
## SYSTEM COSTS AND BENEFITS

- 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.

### Cumulative Trauma Claim Counts

Figure 37 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. From 2016 to 2018, the CT claim rates have declined but were still well above the pre-Great Recession levels.<sup>95</sup> The CT claim rates in 2019 went back to their 2016 level.

**Figure 37: Cumulative Trauma Claims per 100 Indemnity Claims**



\* Preliminary Data.

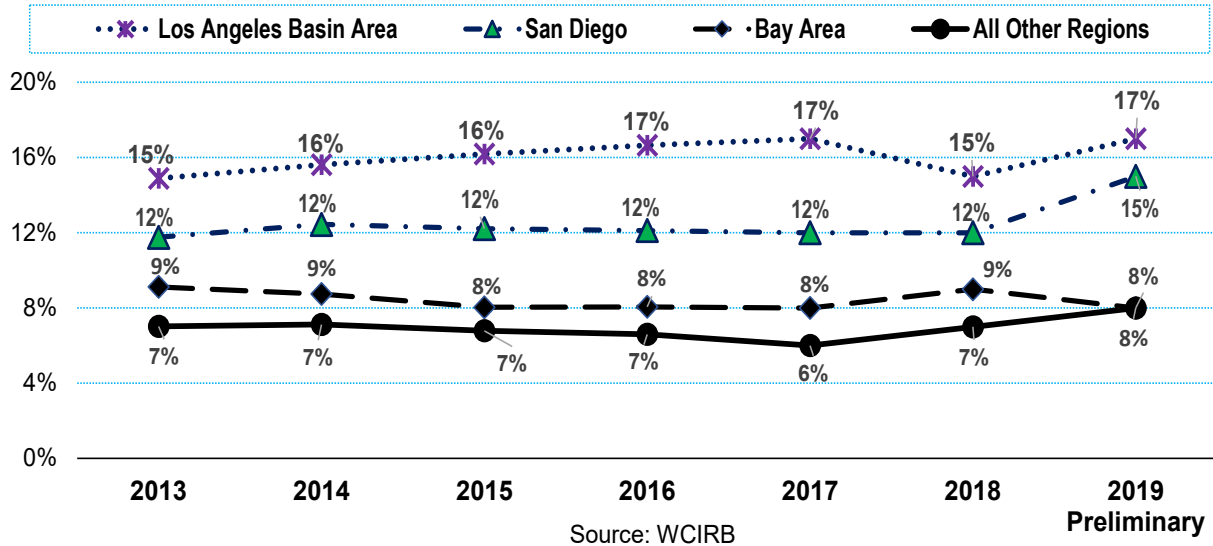
Source: WCIRB

As seen in Figure 38, 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. From 2018 to 2019, the share of CT claims went back to 17 percent in the Los Angeles area and increased by 3 percentage points in San Diego. Although not included in the Figure 38, CT claims historically trended at the same levels throughout the state, with the lowest rates in more rural areas.

<sup>95</sup> WCIRB Report as of December 31, 2020, Insurer Experience, Chart 8, [https://www.wcirb.com/sites/default/files/documents/wcirb-quarterlyexpreport-2020-4q-ar\\_0.pdf](https://www.wcirb.com/sites/default/files/documents/wcirb-quarterlyexpreport-2020-4q-ar_0.pdf).

## SYSTEM COSTS AND BENEFITS

**Figure 38: Percent of Cumulative Trauma Indemnity Claims by Region<sup>96</sup>**



### *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.<sup>97</sup> 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.

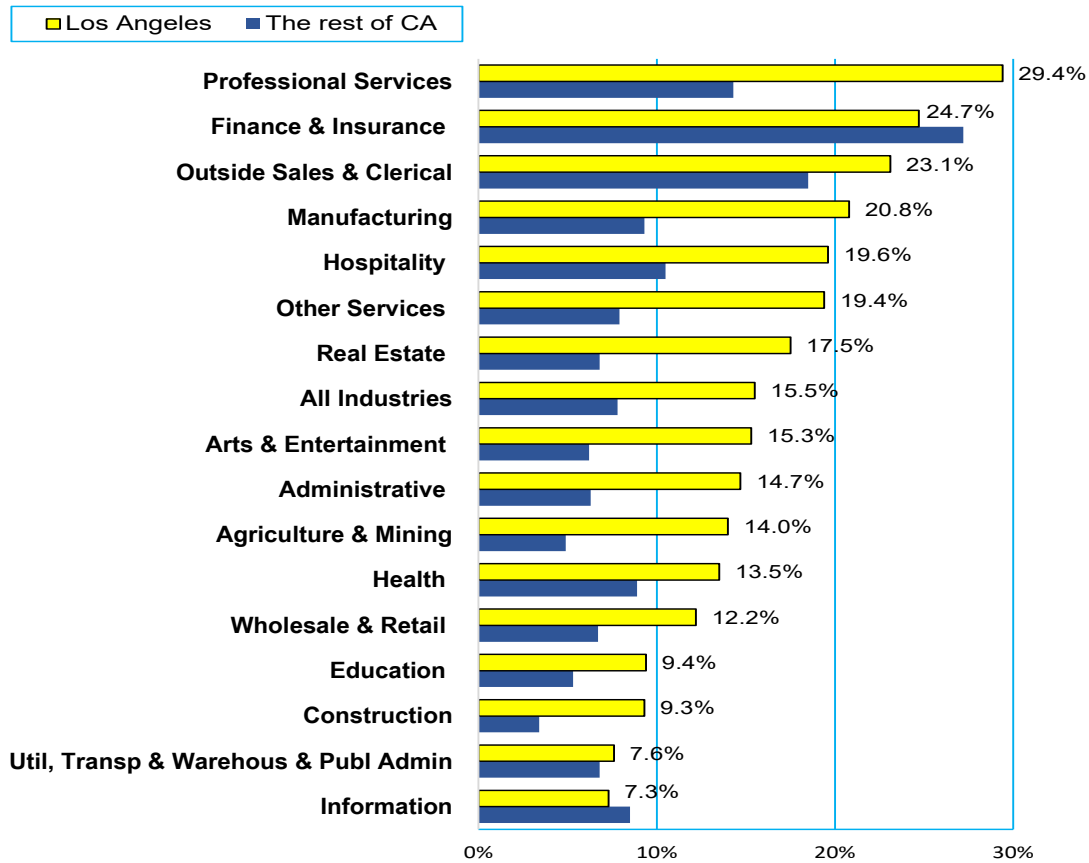
Figure 39 shows that the majority of CT claims originated in the Los Angeles area and were concentrated in the professional services, finance and insurance, manufacturing, and hospitality industries. According to WCIRB data, the proportion of CT claims in white-collar industries has increased since 2015.

<sup>96</sup> WCIRB 2021 State of the System Report, Chart 26, [https://www.wcirb.com/sites/default/files/documents/wcirb-report-2021\\_state\\_of\\_the\\_system-ho.pdf](https://www.wcirb.com/sites/default/files/documents/wcirb-report-2021_state_of_the_system-ho.pdf).

<sup>97</sup> 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](https://www.wcirb.com/sites/default/files/documents/rb-impact_of_economic_downturn-audienceready_0.pdf).

## SYSTEM COSTS AND BENEFITS

**Figure 39: Share of Cumulative Trauma Indemnity Claims by Industry  
(Los Angeles and the Rest of CA, Policy Year 2017, 1<sup>st</sup> Report Level)**



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

Source: WCIRB

### Cumulative Trauma Claim Costs

According to WCIRB, the CT loss payouts are much slower than for specific injury claims and on average ultimate costs for CT claims are higher than for specific injury claims. The CT claims incur significantly more medical-legal and lien payments than other types of claims, particularly at early and mid-maturity levels.

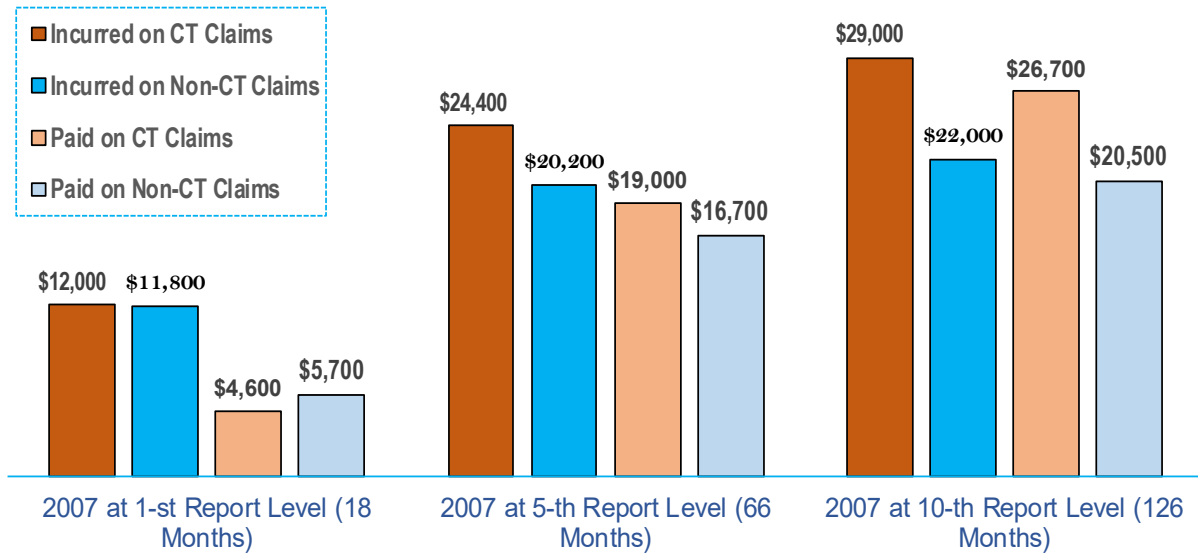
Figures 40 and 41 illustrate the indemnity and medical costs of CT claims at 1.5, 5.5, and 10.5 years of maturity. In 2017, the ten and a half year mature claims originated in the 2007 accident year as the two figures demonstrate a cost development of aging CT claims.

It takes over seven years for CT claims to be 98 percent reported or 3 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 40 and 41.

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.

## SYSTEM COSTS AND BENEFITS

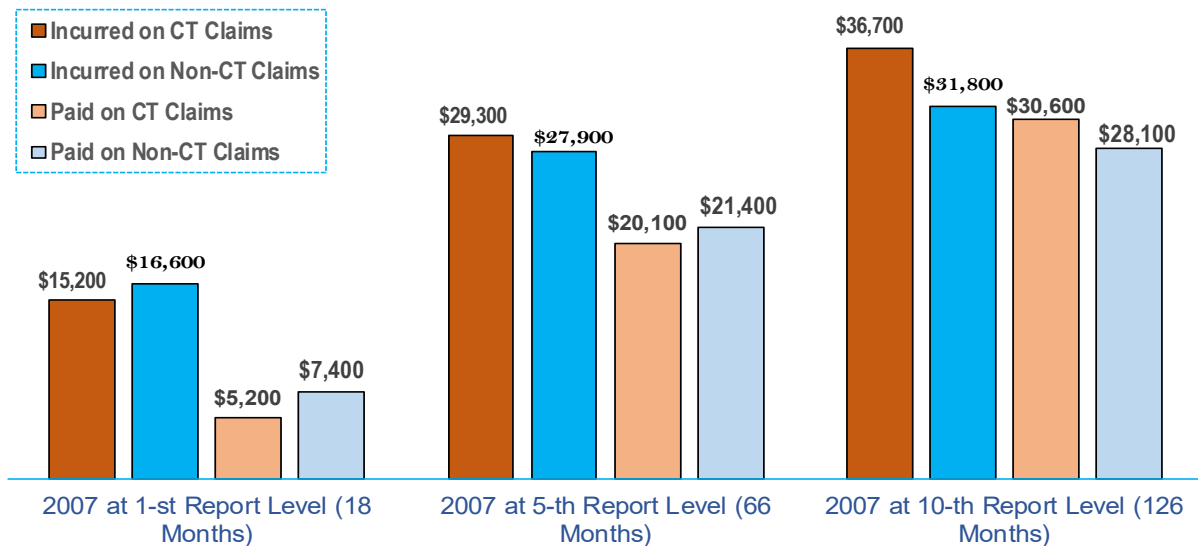
**Figure 40: Development of Average Indemnity (Incurred or Paid) Costs per Cumulative Trauma Claims**



Source: WCIRB

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 41: Development of Average Medical (Incurred or Paid) Costs per Cumulative Trauma Claims**



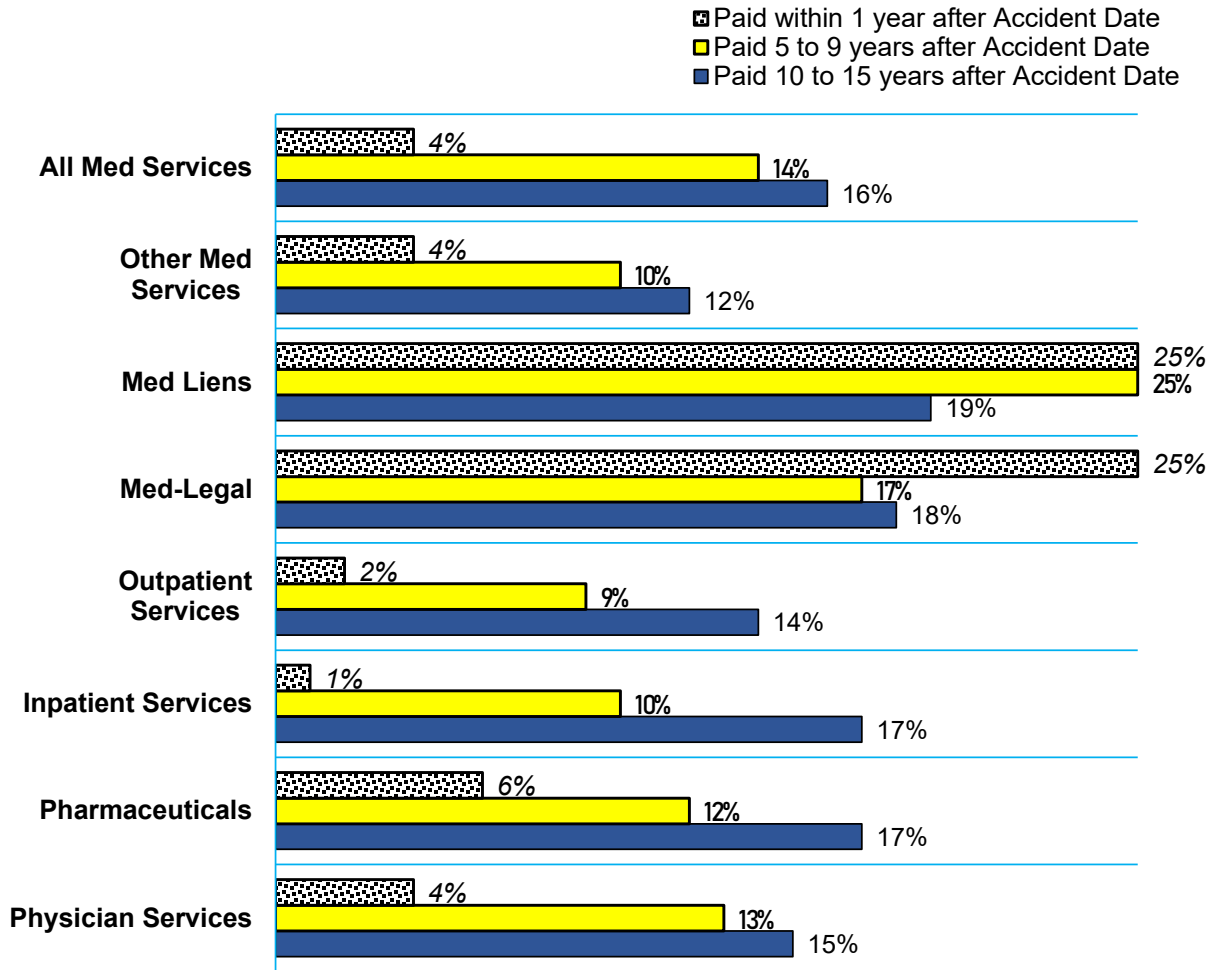
Source: WCIRB



## SYSTEM COSTS AND BENEFITS

Figure 42 shows the share of the medical payments by type of services on CT claims in total medical payments. CT claims represent only 4 percent of all medical paid in the first year of claims, but 25 percent of medical-legal and lien payments. In later periods, CT claims account for 16 percent of all medical paid amounts with somewhat higher shares of medical-legal and lien payments.

**Figure 42: Percentage of Medical Payments by Service Type on CT Claims in Total Medical Paid<sup>98</sup>**



Source: WCIRB

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

Figure 43 illustrates the impact of the reforms on selected types of injury. The six-year trend from 2014 to 2020 shows decreases in medical costs for other cumulative, carpal tunnel/RMI, and back illnesses and injuries, while psychiatric and mental stress and slip and fall injuries experienced 56 and 8 percent increases respectively during the same period. Psychiatric and mental stress illnesses showed the highest six-year increase in average medical costs. The same six-year trend for indemnity costs showed increases in indemnity costs for all types of injury with the highest increase of 36 percent for slip and fall injuries.

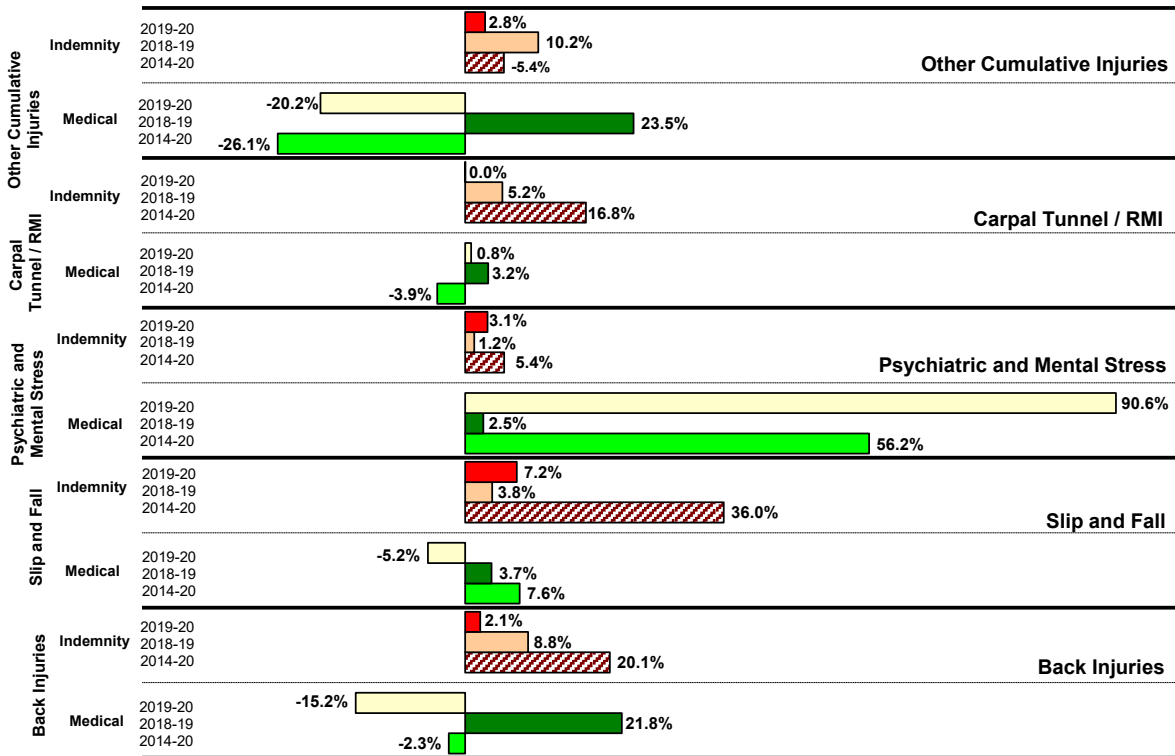
<sup>98</sup> WCIRB report "The World of Cumulative Trauma Claims", October 17, 2018, <https://static1.squarespace.com/static/5589b2a1e4b075cc91205d5c/t/5c93d9e6b208fc2cf3f70d66/1553193456632/WCIRB+CT+Report.pdf>.

## SYSTEM COSTS AND BENEFITS

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.

From 2019 to 2020, medical costs increased by 91 percent for psychiatric and mental stress illnesses and by 1 percent for carpal tunnel injuries. In the same period, there was a 20 percent decrease in the average medical cost of claim for other cumulative injuries, 15 percent decrease for back injuries, and 5 percent decrease for slip and fall injuries. In the same year, the indemnity costs increased for all types of injuries except for carpal tunnel injuries that experienced no change in indemnity costs.

**Figure 43: Percent Change in Average Medical and Indemnity Costs per Claim by Type of Injury (From 2014 through 2020, from 2018 to 2019, and from 2019 to 2020)**



Data Source: WCIRB

## SYSTEM COSTS AND BENEFITS

### Medical-Legal Expenses

This section contains estimated California WC medical-legal costs for 2020. The information regarding the medical-legal costs in this report is through December 31, 2020 and, as a result, does not reflect the latest changes in the Official Medical-Legal Fee Schedule that became effective for services rendered on or after April 1, 2021. As mentioned earlier, the ultimate impact of the COVID-19 pandemic on WC medical and medical-legal costs may not be known for years and can only be comprehensively evaluated using post-COVID-19 data.

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.

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>

### *DWC COVID-19 Medical-Legal Emergency Measures<sup>99</sup>*

DWC adopted emergency regulations for medical-legal evaluations that took effect May 14, 2020 and were set to expire on October 12, 2021, as outlined in Executive Order N-40-20. These emergency regulations (36.7 and 46.2) have been extended until January 11, 2022. 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.

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, 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.

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<sup>99</sup> DWC Medical-Legal Emergency Regulations, [https://www.dir.ca.gov/dwc/DWCPropRegs/2020/QME-Regulations/QME\\_Regs.htm](https://www.dir.ca.gov/dwc/DWCPropRegs/2020/QME-Regulations/QME_Regs.htm).

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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
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.

### *Impact of SB 863 on Medical-Legal Process*

The most recent reform, 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. The reform did not change the reimbursement procedures or parameters for reimbursement of medical-legal reports. 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. As a result of these changes, the average cost of a medical-legal evaluation on both PD claims and all claims decreased by 9 percent (see Figure 50) and the total medical-legal cost declined by 23 percent from 2016 to 2020 (see Figure 34). As a result of these changes the total medical-legal cost declined by 15 percent from CY 2015 to CY 2019 (see Figure 47).

According to 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

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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.

### **Status of the Revision of the Medical-Legal Fee Schedule (MLFS) and DWC's Efforts to Address the Bureau of State Audit Recommendations with Respect to MLFS<sup>100</sup>**

On August 19, 2019, 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, DWC decided to hold stakeholder meetings to discuss changes to update the Medical-Legal Fee Schedule.

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, DWC redrafted proposed regulations for a new fee schedule. 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 regulations<sup>101</sup> 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.

The Division of Worker's Compensation's review of empirical evidence indicates that it has fully implemented all of the State Auditor's recommendations. DWC has implemented written policies and procedures that define DWC's internal processes for evaluating QME concerns and administering the discipline program. An assessment of the performance of the Discipline Unit over the past year indicates that adherence to these written policies has accomplished the goals of fulfilling the two recommendations that were deemed partially implemented by the State Auditor at the one year audit review.

### ***Medical-Legal Fee Schedule***

On October 28, 2020, the Division of Workers' Compensation (DWC) issued and published a Notice of Public hearing for proposed regulations revising the Medical-Legal Fee Schedule (MLFS). This was the initiation of the formal rulemaking process for regulations that were first proposed on August 19, 2019. After more than a year of working collaboratively with industry stakeholders including employers, insurance companies, medical providers and medical management companies, the proposal to change the MLFS to a flat fee based system was ready for the final phase of the rulemaking process.

On December 14, 2020, the public hearing was held, and DWC received comments on the final version of the proposed regulations. Those comments were taken into account and the revised version of the MLFS was submitted to the Office of Administrative Law on February 18, 2021 for file and print pursuant to the Administrative Procedures Act exemption embodied in Government Code section 11340.9(g).

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<sup>100</sup> 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.

<sup>101</sup> <https://www.dir.ca.gov/dwc/DWCPropReqs/2020/Medical-Legal-Fee-Schedule/Med-Legal-Fee-Schedule.htm>

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The request for approval of the regulations under the exemption statute was granted by the Office of Administrative Law on March 30, 2021 and the regulations were sent to the Secretary of State for printing. The new MLFS went into effect on April 1, 2021.<sup>102</sup>

On April 8, 2021, DWC published a Newline announcing that the Agency would host two question and answer sessions regarding the implementation of the new fee schedule. The sessions were held via Zoom meetings on April 13, 2021 and April 20, 2021. Those sessions were recorded and posted on the Agency's website for easy continuous access by the Workers' Compensation Community.

Conservative estimates of the effect of the new MLFS by some medical management companies predicted at least a 20 percent increase in income for providers. This prediction was in line with the stated goal of DWC to increase provider compensation by 25 percent, normalize the predictability of billing and minimize underpayments and/or overpayments that were perceived elements of the former MLFS.

The increase in the provider remuneration reflected in the new MLFS provides a long awaited cost-of-living increase for the providers and achieves one of the recommendations of the audit of the QME program that was completed by the State Auditor's Office on November 19, 2019.

DWC intends to monitor the effectiveness of the new MLFS in practice to ensure that it continues to adequately compensate providers for their efforts, attracts new physicians to the QME program and remains economically feasible as a component cost driver in the Workers' Compensation System.

### *Medical-Legal Fee Schedule Regulations Effective April 1, 2021*

The previous fees for preparing the written reports and the rules for determining the fees had been established in CCR, Title 8, sections 9793, 9794 and 9795. As was mentioned above, the MLFS was last changed in June 2006, while the rules relating to the fees were last amended in September 2013.

The Medical-Legal Fee schedule adopted by the Administrative Director in 2006 determined the cost per medical-legal evaluation for dates of services on or after July 1, 2006. Table 9 shows the costs and description from 2006 MLFS. (The estimated medical-legal costs in this 2021 report are based on the 2006 MLFS.)

**Table 9: 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.

<sup>102</sup> <https://www.dir.ca.gov/dwc/DWCPropRegs/2020/Medical-Legal-Fee-Schedule/Med-Legal-Fee-Schedule.htm>

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The MLFS adopted by the Administrative Director in 2021 increases the payments per medical-legal evaluation for dates of service on or after April 1, 2021. Table 10 shows the costs and description from 2021 MLFS.

**Table 10: Medical-Legal Evaluation Costs for Dates of Service on or After April 1, 2021**

New Evaluation Type	Description and Amounts Presumed Reasonable
ML-200 Missed Appointment for a Comprehensive or Follow-Up Medical-Legal Evaluation	Flat fee of \$503.75
ML-201 Comprehensive Medical-Legal Evaluation	Flat fee of \$2,015 with the addition of an excess medical records review fee
ML-202 Follow-Up Medical-Legal Evaluation	Flat fee of \$1,316.25 with the addition of an excess medical records review fee
ML-203 Fees for Supplemental Medical-Legal Evaluations	Flat fee of \$650 with the addition of an excess medical records review fee (not previously reviewed records only)
ML-204 Fees for Medical-Legal Testimony	\$455.00 per hour including travel time
ML-205 Fees for review of Sub Rosa Recordings	\$325.00 per hour
ML-206 Unreimbursed Supplemental Medical-Legal Evaluations	The code is designed for communication purposes only when a supplemental report is provided to account for deficiencies in prior reporting by the physician. This code does not indicate that compensation is due for the service.
ML-PRR Record Review	A billing code used to identify charges for review of records in excess of pages included in medical-legal numerical billing codes.

With introduction of the new MLFS, DWC implemented extensive changes to regulations governing the reimbursement of medical-legal services. The most significant changes to MLFS could be outlined as following:

- Replacing the time-based billing for ML-101, ML-104, and ML-106 with flat fees to eliminate the hourly billing components of MLFS. (See Table 9 for 2006 fees and descriptions.)
- A standardized missed appointment reimbursement (\$503.75) and a provision for payment for records reviewed in anticipation of the appointment.
- Page-based reimbursement for medical record review (\$3.00 per page in excess of certain number of pages depending on the type of report.)
- Elimination of complexity factors that were open to subjective interpretation by providers and led to disputes regarding their proper application.
- Increases in reimbursement for medical-legal testimony.
- Increases in reimbursement for reports involving psychiatric issues.
- Replacement of 100 series designation (ML-100 through ML-106) for the billing codes by a 200 series (ML-200 to ML-206) for purposes of clarification and comparisons between the old and new fee schedules.
- Adding ML-PRR Record Review to 200 series in order to identify charges for review of records in excess of pages included in medical-legal numerical billing codes.

According to DWC, although the 2006 MLFS paid both flat and hourly fees to review medical records, write medical-legal reports, and testify in trials, there was a substantial increase in incidence of hourly billing in

## SYSTEM COSTS AND BENEFITS

recent years that was not matched by an increase in complexity of matters reviewed by physicians.<sup>103</sup> A flat-fee-based MLFS will eliminate the need to interpret regulations to determine the appropriate fees for medical-legal evaluations. The empirical data evidenced in the cited studies<sup>104</sup> by DWC indicated that some current interpretations of the fee schedule regulations were done in a manner that completely circumvented the original intent of the fee schedule. The implementation of a new fee schedule is expected to result in objective and standardized outcomes and to reduce the frictional costs.

The new MLFS is expected to raise the reimbursements for medical-legal evaluations by approximately 25 percent and thereby improve the quality of medical-legal reports and attract new physicians to the QME program.

### ***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 44 shows the number of permanent disability (PD) and all claims originating in three California regions in Service Years (SY) 2016 to 2020. The share of claims statewide, involving a permanent disability, increased from 29 percent in 2016 to 34 percent in 2018 and stayed at that level from 2018 to 2020.

Around 60 percent of all claims and 67 percent of PD claims originated in Southern California and 23-24 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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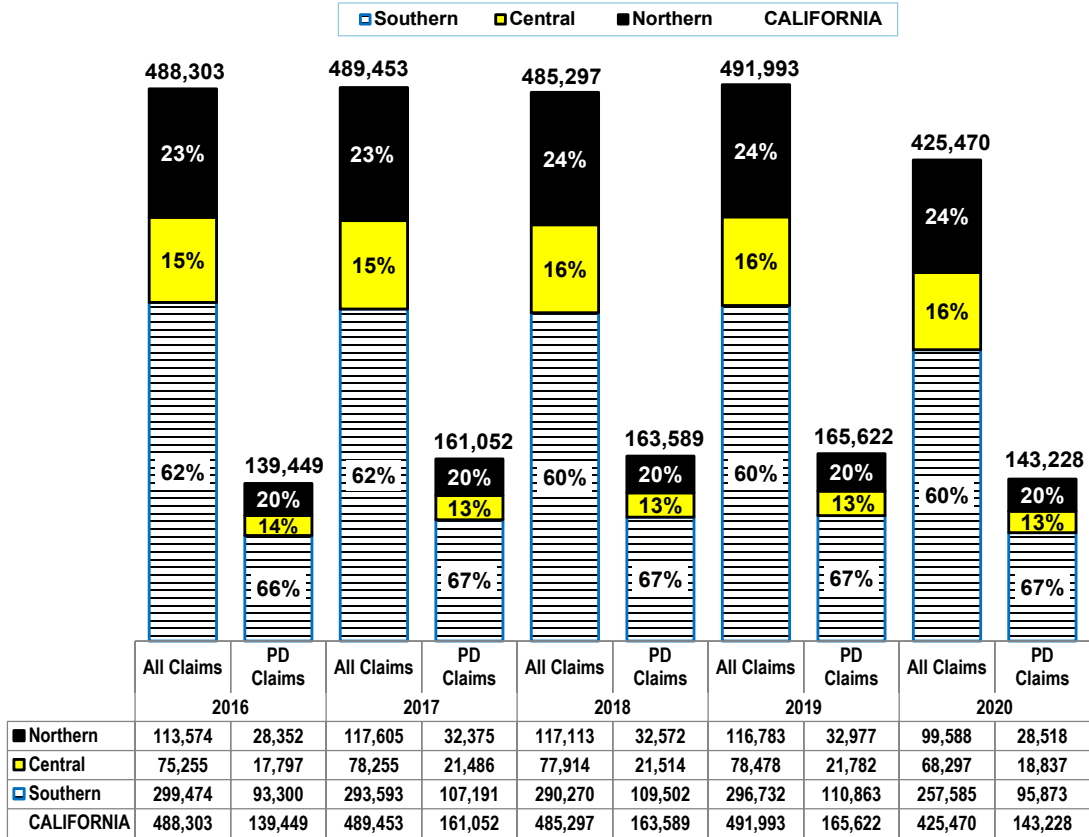
<sup>103</sup> WC-Medical-Legal Fee Schedule, Initial Statement of Reasons,  
<https://www.dir.ca.gov/dwc/DWCPropRegs/2020/Medical-Legal-Fee-Schedule/Med-Legal-Fee-Schedule.htm>

<sup>104</sup> Ibid.



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**Figure 44: Workers' Compensation Claims, All and with Permanent Disability, by California Region, SY 2016-SY 2020**

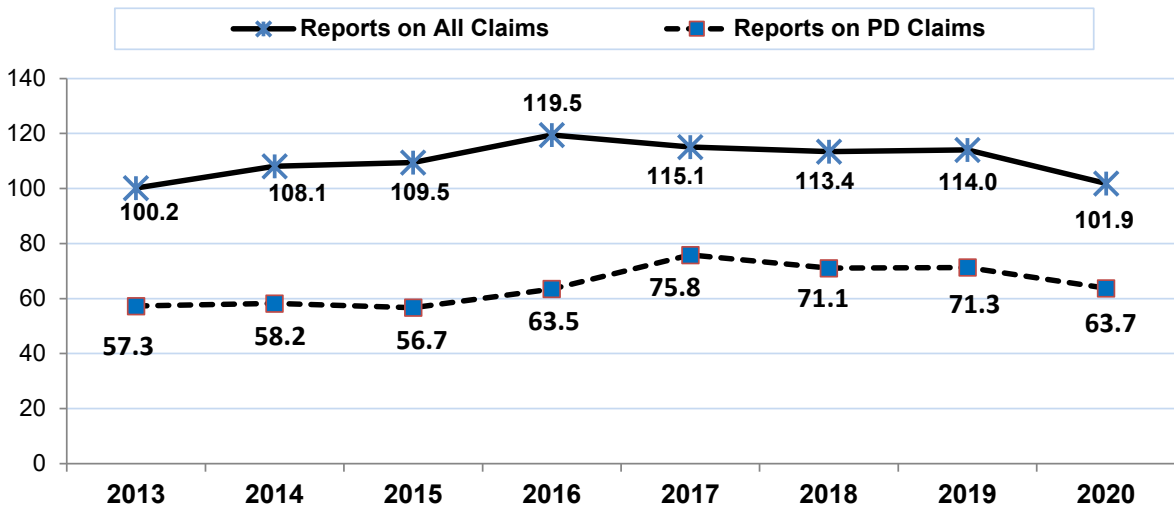


Source: WCIRB

Figure 45 shows the number of medical-legal reports conducted on PD and all claims in California for SY 2013 to SY 2020. The number of medical-legal reports on all claims increased steadily by 19 percent from SY 2013 to SY 2016 and then decreased overall by 5 percent from 2016 to 2019. In 2014 and 2015, the 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. From 2019 to 2020, the number of medical-legal reports on all claims decreased by 11 percent due mostly to the COVID-19 pandemic. The number of medical-legal reports on PD claims was an average of 57,400 medical-legal reports per year from 2013 to 2015, increased by 34 percent from 2015 to 2017, and then decreased by 6 percent from 2017 to 2019. From 2019 to 2020, the number of medical-legal reports on PD claims decreased at the same rate (11 percent) as the number of non-PD medical-legal reports. The share of all medical-legal reports in California conducted on PD claims decreased from 57 percent in 2013 to 52-53 percent in 2015 and 2016. There was a 13 percentage points increase in the share of all medical-legal reports conducted on PD claims from 2016 to 2017, which stabilized at 63 percent from 2018 through 2020 after a 3 percentage points decline from 2017 to 2018.

## SYSTEM COSTS AND BENEFITS

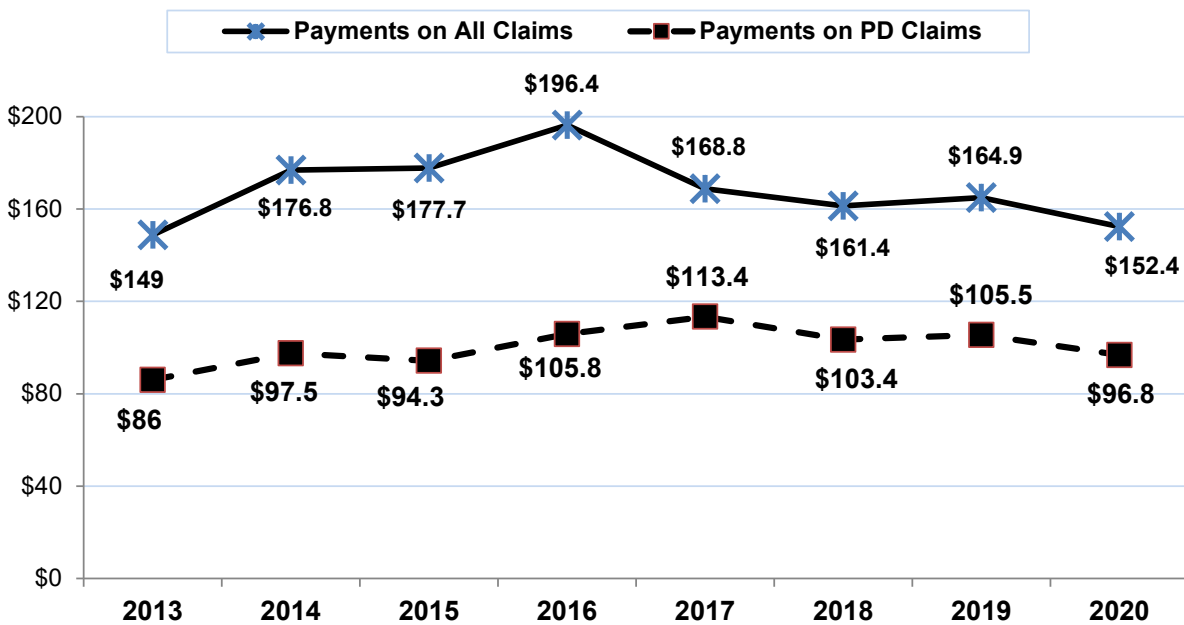
**Figure 45: Number of Medical-Legal Reports on PD and All Claims (Thousands)**



Source: WCIRB

Figure 46 shows statewide medical-legal payments on PD and all claims in California for SY 2013 to SY 2020. The medical-legal payments on all claims increased by 32 percent from SY 2013 to SY 2016, based in part on an overall 23 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 experienced an overall decrease by 16 percent followed by 8 percent decline from 2019 to 2020. The share of medical-legal payments for PD claims decreased from 58 percent in 2013 to an average of 54 percent of all yearly medical-legal payments in SY 2014 through SY 2016. That share increased by 13 percentage points to 67 percent from SY 2016 to SY 2017, and then stabilized at about 64 percent from 2018 to 2020.

**Figure 46: Medical-Legal Payments on PD and All Claims (Million \$)**

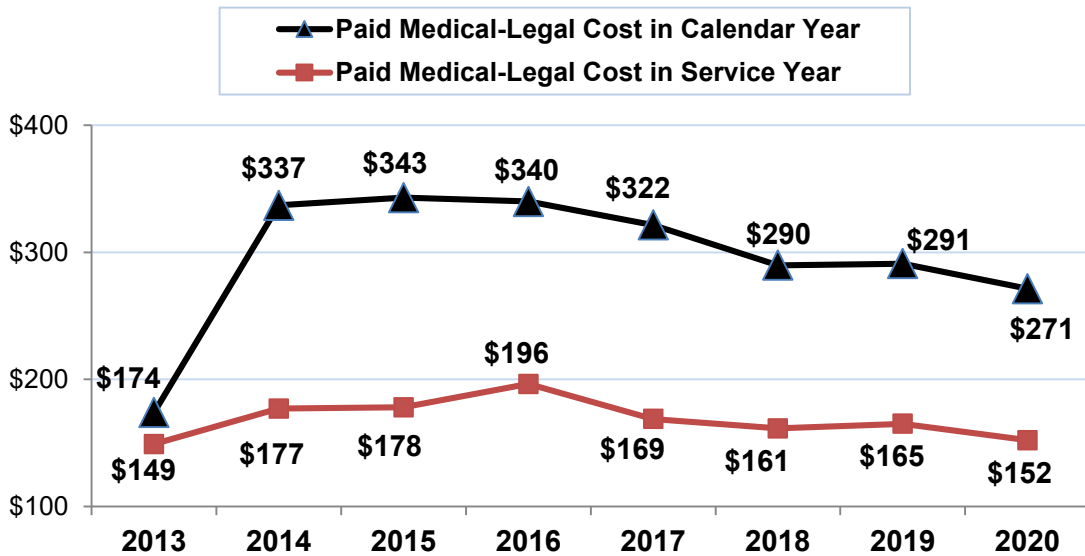


Source: WCIRB

## SYSTEM COSTS AND BENEFITS

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 Report<sup>105</sup> 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 47 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 47 shows paid medical-legal amounts in CY 2013 to CY 2020 from the Losses and Expenses Report against the paid medical-legal amounts in SY 2013 to SY 2020 from the current CHSWC report.

**Figure 47: 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, policy, 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.

<sup>105</sup> WCIRB, 2018 Losses and Expenses Report, Exhibit 1.1, June 28, 2019.

## SYSTEM COSTS AND BENEFITS

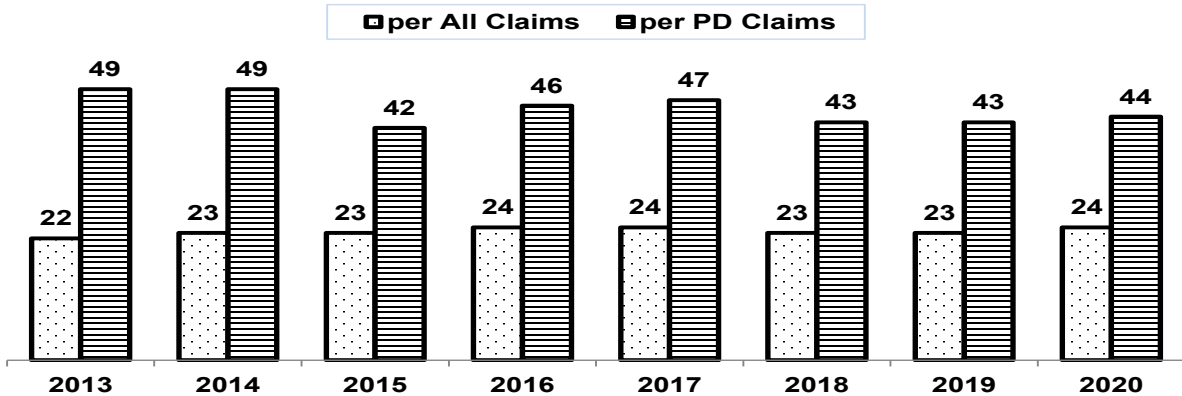
Also, the methods for calculating medical expenses could differ by the inclusion or exclusion of different categories of medical expenses, such as medical cost containment program (MCCP) expenses, thereby increasing or decreasing the total.

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 48 compares the frequency of medical-legal reports for all claims and PD claims statewide from SY 2013 to SY 2020. 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 2013 and SY 2020, the same rate for PD claims decreased overall by 10 percent from 49 reports per 100 PD claims in SY 2013 and SY 2014 to 43-44 reports per 100 PD claims in the last three years from 2018 to 2020.

**Figure 48: Number of Medical-Legal Evaluations per 100 Workers' Compensation Claims (PD and All) in California**



Source: WCIRB

### **Medical-Legal Reporting by the California Regions**

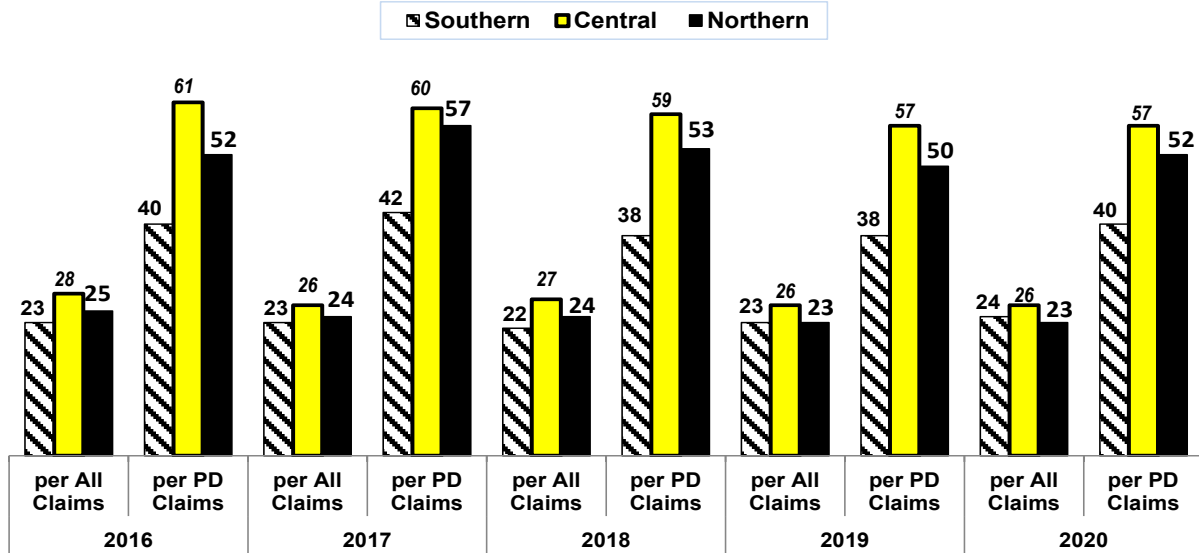
The different regions in California are often thought to have different patterns of medical-legal reporting. Figure 49 compares the frequency of medical-legal reports for all claims and PD claims in three California regions in the last five years from SY 2016 to SY 2020. During this period, all three California regions showed a similar trend in changes of the average number of medical-legal evaluations per 100 PD claims.

From SY 2016 to SY 2017, the Northern and Southern regions of California experienced an increase in the average number of medical-legal evaluations per 100 PD claims while the Central region experienced no change in the same period. 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 SY 2019 to SY 2020, both Northern and Southern California experienced an increase in the average number of medical-legal evaluations per 100 PD claims with no changes in the rate for the Central region. From SY 2016 to SY 2020, 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.

## SYSTEM COSTS AND BENEFITS

In the same period, the average number of medical-legal evaluations per 100 claims did not change in both regions, the origin of the majority of PD claims and medical-legal evaluations in California, with an average of 23 in the South and an average of 24 medical-legal evaluations per 100 claims in the North.

**Figure 49: Average Number of Medical-Legal Evaluations per 100 Claims (PD and All), by Region**

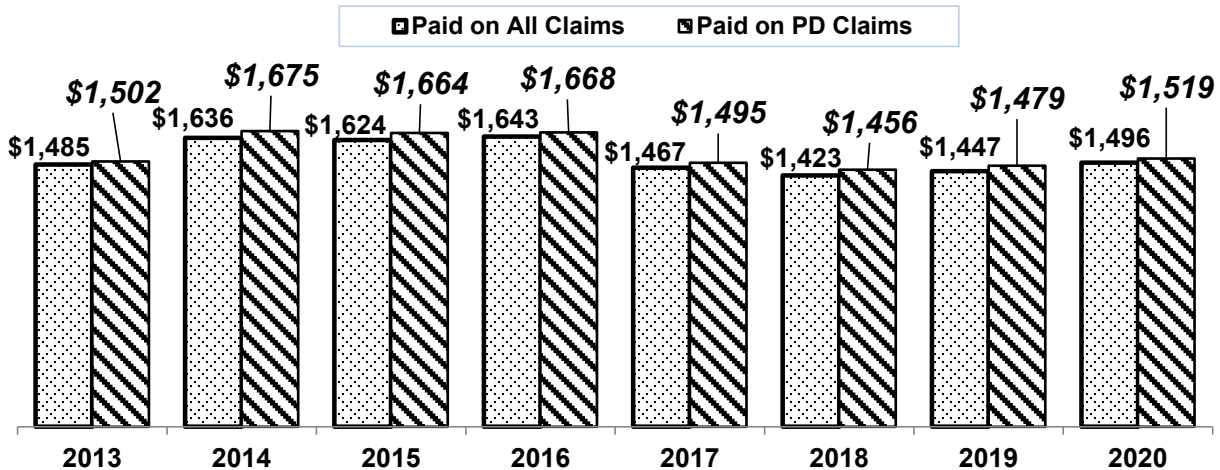


Source: WCIRB

### Average Cost per Medical-Legal Evaluation

According to Figure 50, both the average cost of a medical-legal evaluation on PD claims and the average cost of a medical-legal evaluation on all claims stabilized from SY 2014 to SY 2016 after their increase by 10 percent from 2013 to 2014. 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. From SY 2019 to SY 2020, both the average cost of a medical-legal evaluation on PD claims and the average cost of a medical-legal evaluation on all claims increased by 3 percent.

**Figure 50: Average Cost of a Medical-Legal Evaluation on All and PD Claims, California**

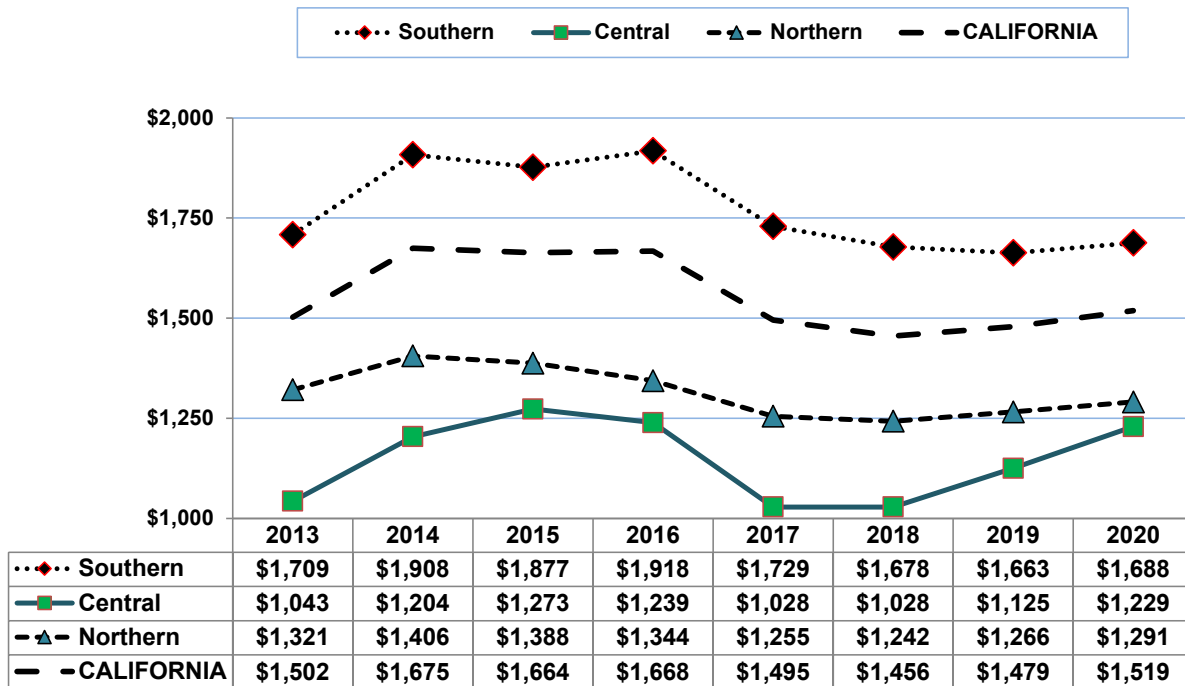


Source: WCIRB

## SYSTEM COSTS AND BENEFITS

According to Figure 51, both Southern and Northern California showed no change in the average cost of a medical-legal evaluation on PD claims from 2014 to 2016 after some increase for both regions from 2013 to 2014. 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 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. From SY 2019 to SY 2020, the average cost of a medical-legal evaluation on PD claims increased slightly by 1.5 percent in the Southern region and by 2 percent in the Northern region.

**Figure 51: 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 51 and Table 11. About 60 percent of medical-legal evaluations originated in Southern California in SY 2013 to SY 2020, reflecting the similar share of Southern California in workers' compensation claims.

**Table 11: Distribution of Medical-Legal Reports on PD Claims by California Regions**

	2013	2014	2015	2016	2017	2018	2019	2020
<b>Southern</b>	58%	60%	60%	60%	59%	58%	60%	60%
<b>Central</b>	16%	16%	15%	17%	17%	18%	17%	17%
<b>Northern</b>	26%	24%	25%	23%	24%	24%	23%	23%

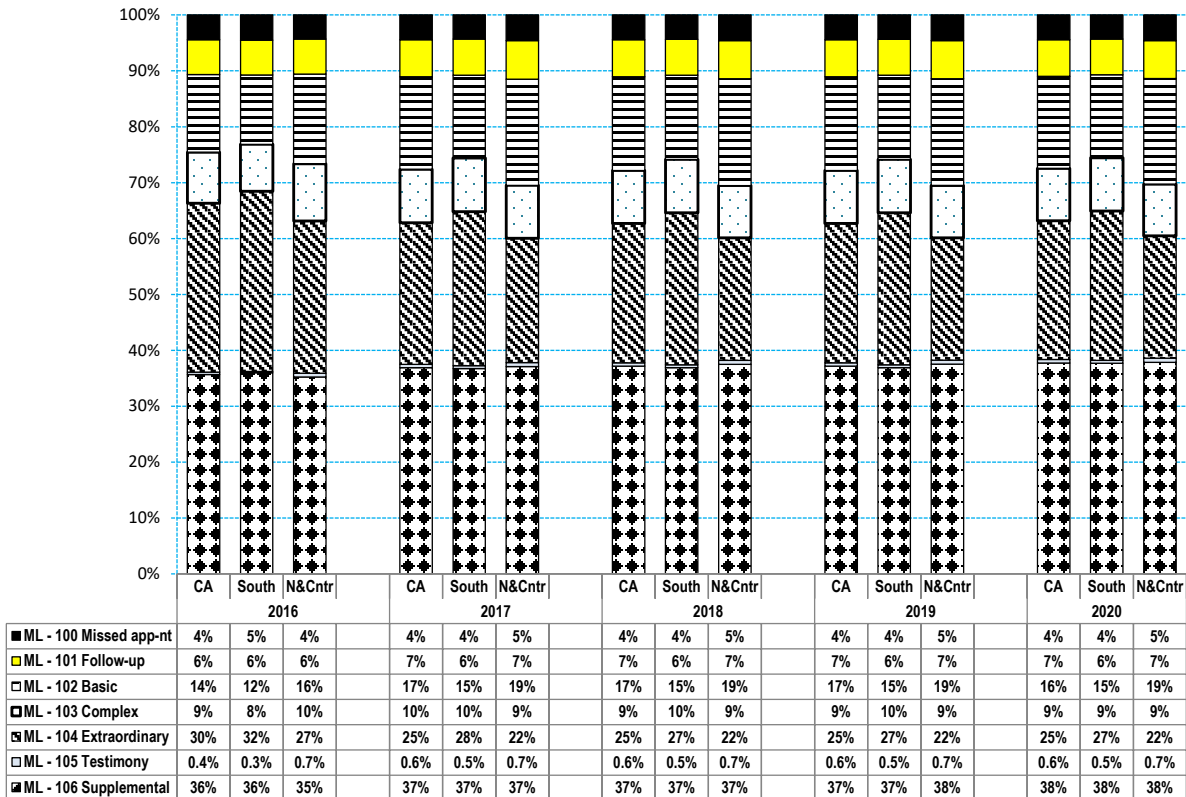
Source: WCIRB

# SYSTEM COSTS AND BENEFITS

## Medical-Legal Cost Drivers

The primary cost driver for California and its Southern region was not the price paid for specific types of evaluations. Rather, the mix of codes used for billing the evaluations continued 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. The distribution of medical-legal evaluations by categories of "fee schedule type" in Figure 52 show that, in 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 32 percent in SY 2016 to 27 percent in SY 2020, as the share of Supplemental reports was increasing from 36 percent in SY 2016 to 38 percent in SY 2020. In SY 2020, 65 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 were priced at \$62.50 for every 15 minutes for QMEs or \$78.13 for every 15 minutes for AMEs. In MLFS 2006 some medical-legal evaluation activities were 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 made 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 2016 to 17 percent in SY 2017, stabilized at 17 percent from SY 2017 to SY 2019, and then slightly decreased from SY 2019 to SY 2020.

**Figure 52: Distribution of Medical-Legal Evaluations on PD Claims by Procedure Code in California and Regions, SY 2016 - SY 2020**



"N&Cntr" - Northern and Central regions

Data Source: WCIRB

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,

## SYSTEM COSTS AND BENEFITS

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 DWC to ensure that sufficient documentation of the complexity 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 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 12 percent and the total medical-legal cost declined by 16 percent from 2016 to 2019. A 3 percent increase in the average cost of a medical-legal evaluation on both PD claims and all claims from 2019 to 2020 might be a result of the COVID-19 pandemic.

Although the average cost of ML-104 reports is still high (see Table 12 and Figure 53), 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 both Southern and Northern regions to decrease by about 10 percentage points from SY 2016 to SY 2020 (see Table 12).

Table 12 shows that in the three years from SY 2017 to SY 2020, about 60 percent of medical-legal payments in the Southern region and around 52 percent in the Northern 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 53) and increases costs on a per-transaction basis as well. All these factors explain why the average cost of a medical-legal evaluation on PD claims did not show a notable decrease earlier than CY 2017 before the share of ML-104 reports began decreasing.

**Table 12: Characteristics of ML-104 coded Reports done on PD Claims in California Regions**

		2016	2017	2018	2019	2020
<b>Southern</b>	Share of region in Total Med-Legal Payments	67%	68%	67%	67%	66%
	Share of ML-104 in regional payment	68%	62%	59%	58%	57%
	Avg Cost of ML-104 Report	\$3,952	\$3,924	\$3,839	\$3,818	\$3,913
	ML-104 Reports per 100 PD Claims	13	11	10	10	11
<b>Central</b>	Share of region in Total Med-Legal Payments	13%	12%	13%	13%	14%
	Share of ML-104 in regional payment	58%	47%	46%	49%	52%
	Avg Cost of ML-104 Report	\$2,924	\$2,718	\$2,751	\$3,002	\$3,333
	ML-104 Reports per 100 PD Claims	16	13	13	12	12
<b>Northern</b>	Share of region in Total Med-Legal Payments	20%	20%	21%	20%	20%
	Share of ML-104 in regional payment	61%	54%	52%	52%	52%
	Avg Cost of ML-104 Report	\$3,081	\$3,208	\$3,192	\$3,248	\$3,493
	ML-104 Reports per 100 PD Claims	14	13	12	11	12

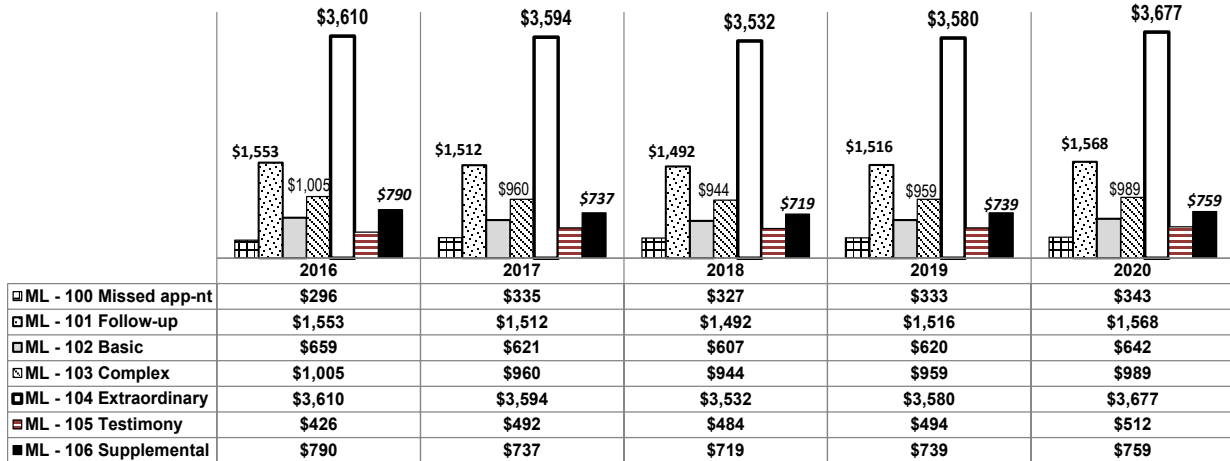
Source: WCIRB

According to Figure 53, the average cost of all medical-legal evaluations in California billed under the time-based codes, such as ML-101, ML-104, or ML-106, showed a slight decrease from SY 2016 to SY 2018, and then again a small increase from SY 2018 to SY 2020. The cost of an extraordinary report stabilized at an average of \$3,600 from SY 2016 to SY 2020.



## SYSTEM COSTS AND BENEFITS

**Figure 53: 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. Increasing payments for psychiatric evaluations is one of the main goals of the new MLFS 2021.

On average, psychiatric and psychological/behavioral evaluations were around \$3,000, the most expensive evaluations by specialty of provider, and were nearly always billed under the ML-104 code. Table 13 shows that the average cost of a psychiatric evaluation in California increased by 21 percent from SY 2013 to SY 2016 and then decreased by 5 percent from \$3,458 in SY 2016 to an average of \$3,270 per year in SY 2017 and SY 2018. A 12 percent increase in the average cost of a psychiatric evaluation in California from SY 2018 to SY 2019 followed by a 3 percent decrease from SY 2019 to SY 2020. After fluctuating between \$2,600 and \$3,000 between SY 2013 and SY 2017, the average cost of a psychological/behavioral evaluation increased by 11 percent from SY 2017 to SY 2018 and then averaged \$3,360 per year from SY 2018 to SY 2020.

**Table 13: Average Cost of a Psychiatric or Psychological/Behavioral Report by Region**

		2013	2014	2015	2016	2017	2018	2019	2020
Southern	Psychiatry	\$2,965	\$3,300	\$3,464	\$3,665	\$3,631	\$3,481	\$3,930	\$3,611
	Psychol/Behav.	\$2,758	\$3,193	\$2,810	\$3,142	\$3,117	\$3,446	\$3,472	\$3,476
Central	Psychiatry	\$2,379	\$2,537	\$3,225	\$2,876	\$2,522	\$3,001	\$3,384	\$3,982
	Psychol/Behav.	\$2,688	\$2,983	\$2,913	\$2,792	\$2,794	\$2,902	\$2,857	\$2,953
Northern	Psychiatry	\$2,688	\$2,761	\$2,922	\$2,993	\$2,402	\$2,527	\$2,600	\$2,959
	Psychol/Behav.	\$2,408	\$2,747	\$2,784	\$2,832	\$2,764	\$3,124	\$3,167	\$3,298
CALIFORNIA	Psychiatry	\$2,865	\$3,101	\$3,312	\$3,458	\$3,275	\$3,266	\$3,645	\$3,536
	Psychol/Behav.	\$2,626	\$3,034	\$2,810	\$3,029	\$3,008	\$3,326	\$3,364	\$3,400

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 psychiatric per 100 PD reports and 9 combined psychiatric and psychological/behavioral evaluations per 100 PD reports yearly in the five years from SY 2016 to SY 2020 (Tables 14 and 15).

## SYSTEM COSTS AND BENEFITS

**Table 14: Rate of Psychiatric Evaluations per 100 PD Reports**

	2013	2014	2015	2016	2017	2018	2019	2020
Southern	6	6	5	5	5	5	5	5
Central	5	5	5	4	4	4	4	4
Northern	5	6	6	4	4	4	4	4
CALIFORNIA	6	6	5	4	4.5	4.5	4.5	4.5

Source: WCIRB

**Table 15: Rate of Psychiatric and Psychologist/Behavioral Evaluations per 100 PD Reports**

	2013	2014	2015	2016	2017	2018	2019	2020
Southern	7	5	6	9	9	9	9	9
Central	8	6	5	8	9	9	9	9
Northern	8	7	6	9	9	9	9	9
CALIFORNIA	7	6	6	9	9	9	9	9

Source: WCIRB

Table 16 shows that the psychiatric and psychological/behavioral evaluations combined made up one fifth of total medical-legal payments from SY 2013 to SY 2015 in Southern and Northern regions of California, which made them important cost drivers of California’s medical-legal expenses. Although payments for the psychiatric and psychological/behavioral evaluations were declining in all California regions starting in 2016, their share in total medical-legal payments averaged 15 percent of the paid amounts from 2016 to 2020.

**Table 16: Share of Payments for Psychiatric and Psychological Reports in California Medical-Legal Payments, by Region**

	2013	2014	2015	2016	2017	2018	2019	2020
Southern	21%	20%	19%	17%	17%	17%	17%	16%
Central	12%	12%	11%	9%	7%	6%	6%	7%
Northern	24%	23%	21%	18%	15%	14%	12%	12%
CALIFORNIA	21%	20%	18%	16%	16%	15%	15%	14%

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 Information Service Center
- 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

## WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

### **Impact of COVID-19 shutdowns/interruptions on workload and countermeasures to maintain workflow in the system<sup>106</sup>**

DWC, like every other operation in the state, has been significantly impacted by the COVID-19 crisis. Although 2020 presented many challenges, we were able to put processes into place to remotely serve the workers' compensation community. 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, remained open and operational with no significant backlogs. As pandemic conditions continued into 2021, DWC maintained and improved its operations while most staff worked from home.

To assist the workers' compensation 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. On October 29, 2021, DWC initiated formal rulemaking to make the electronic service of documents regulations permanent, while on December 20, 2021, the division proposed new emergency telehealth rules in response to the surge of the COVID-19 Omicron variant. (The rules became effective on January 22, 2022.)

In regard to its adjudicative function, since pandemic conditions continued into 2021 DWC maintained its operations primarily remote at the beginning of the year. DWC was able to keep up with all requests for hearings and provide those hearings either by telephone or video conferencing using processes that DWC had implemented in 2020.

Throughout most of 2021, DWC continued to hear all conferences on assigned conference lines. Each judge had been provided a conference line in 2020. Those continued in use throughout 2021. DWC also continued to hear all trials on the video conference platform called Lifesize. All judge's conference line numbers are posted on the [DWC website](#) to provide access.

In January of 2021, DWC added a walk-through calendar on our Lifesize platform that allows parties to appear virtually to have settlement documents approved. This was made available in all district offices in early 2021. Links to those "video courtrooms" were made available on the DWC website at that time.

DWC continued to staff district offices at about 25 percent capacity until approximately July of 2021. In July, as pandemic conditions lifted, DWC opened all offices statewide for parties or anyone else needing assistance to obtain that assistance at a district office. DWC, throughout 2021, continued to process all incoming work with minimal delays.

In September, DWC worked with the DIR IT team to provide a "dashboard" in the EAMS system to make changes on the DWC hearing notices when needed. This was necessary as DWC returned to in-person trials in October of 2021. All conferences remained on the judge's conference lines. This dashboard allows DWC to change notices more easily to advise parties if a hearing is to be telephonic or in-person. As a result, in September of 2021 DWC updated its notices to reflect that conferences would be heard on the judge's conference lines with trials taking place in the district offices in which they are venued.

As a result of the return to in-person trials, staff returned to offices in September and additional staff were brought back on December 1, 2021 to support additional in-person operations. Staff began working a minimum of three days a week in office and sometimes more based on the need of the office.

In the latter part of 2021, the Workers' Compensation Appeals Board through their regulatory authority proposed regulations to support long term use of virtual hearings. These rules set forth guidelines as to how a party may object to a virtually noticed hearing or how a party could appear virtually for testimony when a case is set in person.

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<sup>106</sup> Information on the impact of COVID-19 shutdowns/interruptions was provided by DWC.

## WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

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

DWC heard between 21,000-25,000 cases per month throughout 2021. Although this is fewer than when DWC is handling exclusively in-person hearings, DWC has found that remote work is more time-consuming for judges and staff, so DWC is unable to set as many hearings as it would when operations are exclusively in-person. Until October of 2021, all cases were heard either by telephone conference or video conference. As of October 2021, some trials were heard in-person, others by video and all conferences continued to be heard by telephone. DWC also continued to handle all walk through settlements via video conferencing. All other services were available in person by July of 2021 in district offices. 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.<sup>107</sup> 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 54 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).

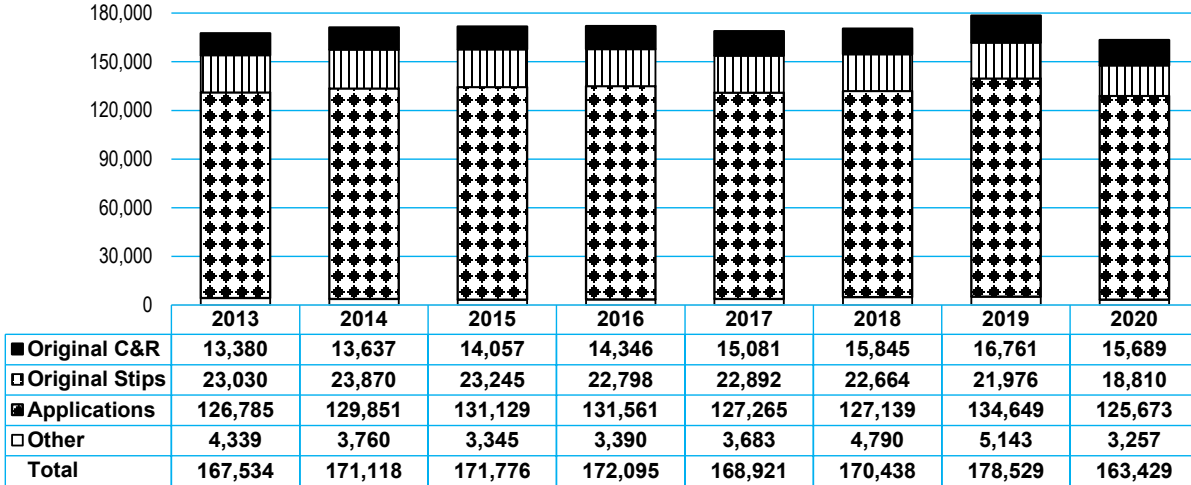
As Figure 54 shows, the total number of Opening Documents increased slightly by 2 percent from 2013 to 2016, went back to its 2013 level in 2017, and then increased by 6 percent from 2017 to 2019. The number of applications, the largest component of opening documents and therefore a trendsetting factor, 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. From 2019 to 2020, both the number of applications and total number of Opening Documents decreased by 7 percent and 8 percent respectively.

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<sup>107</sup> <https://www.dir.ca.gov/wcab/wcab.htm> and <https://www.dir.ca.gov/dwc/dir2.htm>.

## WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

**Figure 54: DWC Opening Documents (as of September 15, 2021)**

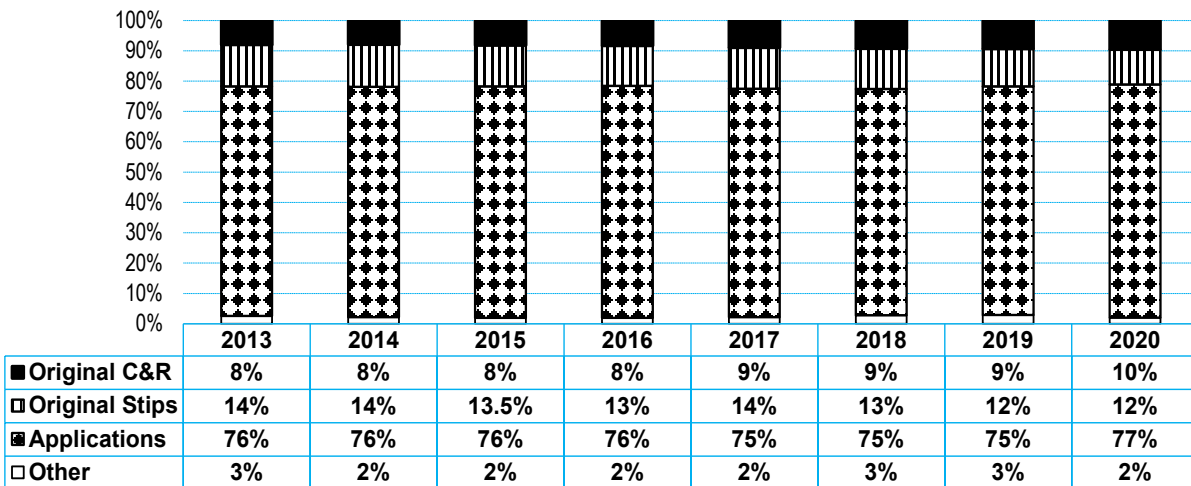


Source: DWC

### **Mix of DWC Opening Documents**

As Figure 55 shows, the applications for adjudication comprised on average 75-77 percent of the opening documents yearly from 2013 to 2020. The proportion of original (case-opening) stips leveled off at 12-14 percent per year from 2013 to 2020. In the same period, the proportion of original C&Rs also stabilized at 8-9 percent through 2019, with an increase to 10 percent during the COVID-19 pandemic.

**Figure 55: Percent Distribution by Type of Opening Documents (as of September 15, 2021)**

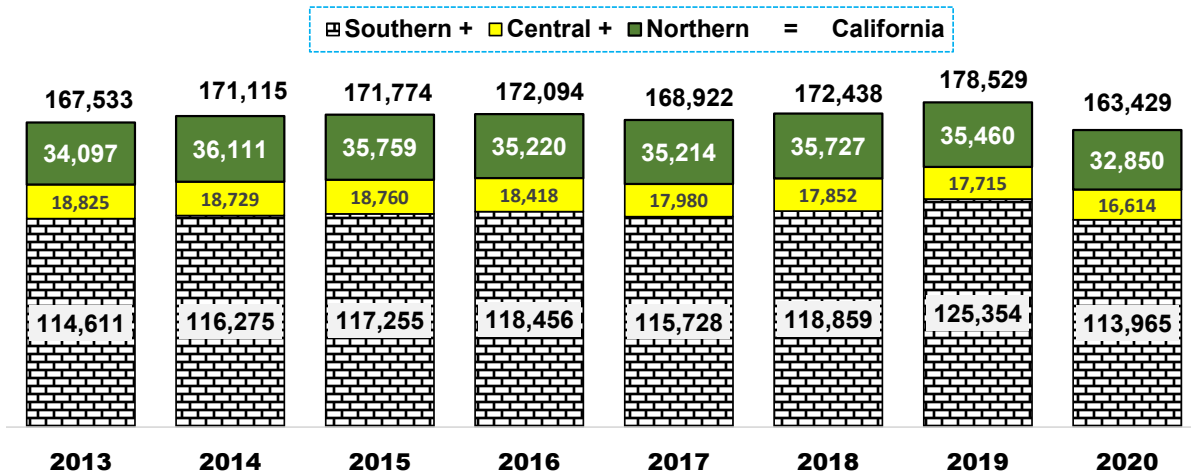


Source: DWC

According to Figure 56, about 70 percent of yearly DWC opening documents originated in Southern California between 2013 and 2020. Northern and Central California comprised about 20 and 10 percent of opening documents respectively in the same period.

## WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

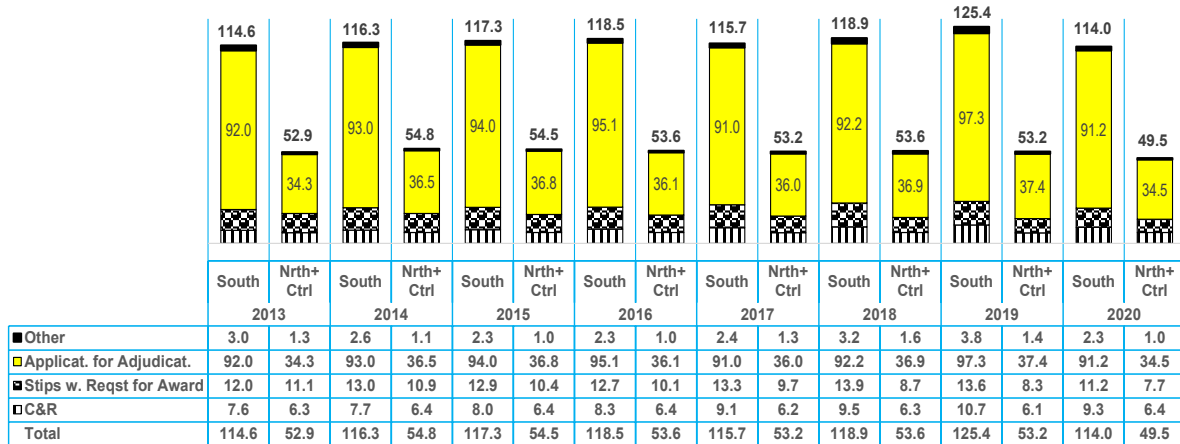
**Figure 56: DWC Opening Documents by California Regions** (as of September 15, 2021)



Source: DWC

Figure 57 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 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 2020. 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 57: Types of DWC Opening Documents by California Regions** (as of September 15, 2020)  
(Thousand)



Source: DWC

## WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

### ***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:

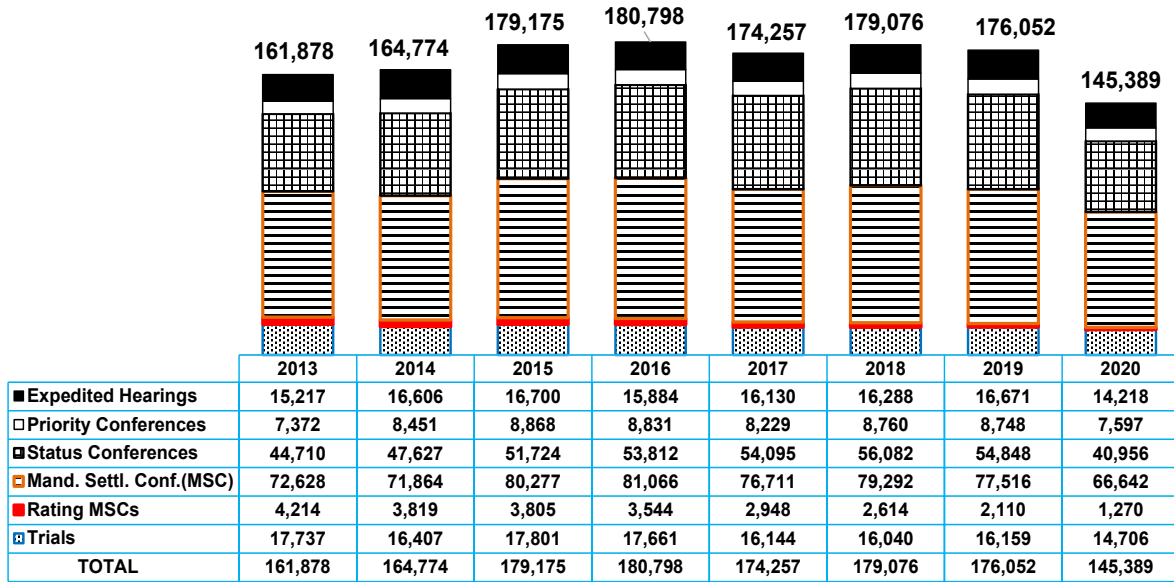
- A. Expedited Hearing and Decision. Labor Code Section 5502(b) directs the Court Administrator to establish a priority calendar for issues requiring an expedited hearing and decision. These cases must be heard and decided within 30 days following the filing of a DOR.
- B. Priority Conferences. Labor 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.
- 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 58 indicates the number of different types of LC 5502 hearings held in DWC from 2013 through 2020. The total number of hearings held increased by 12 percent from 2013 to 2016, fluctuated from 2016 to 2019 at around 2 percent yearly, and then decreased by 17.4 percent from 2019 to 2020. 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. From 2019 to 2020, the number of MSCs decreased by 14 percent. Rating MSCs decreased by twice from 2013 to 2019 and then again – more than one-and-a-half times from 2019 to 2020. 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. From 2019 to 2020, the number of expedited hearings decreased by 15 percent. The number of status conferences increased steadily by a total of 25 percent from 2013 to 2018, decreased slightly from 2018 to 2019, and then fell by 25 percent from 2019 to 2020. The priority conferences increased by 20 percent from 2013 to 2015, stabilized at 8,700 conferences per year from 2015 to 2019, and then decreased by 13 percent from 2019 to 2020. 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. From 2019 to 2020, the number of trials decreased by 9 percent.



WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

Figure 58: DWC Labor Code 5502 Hearings Held



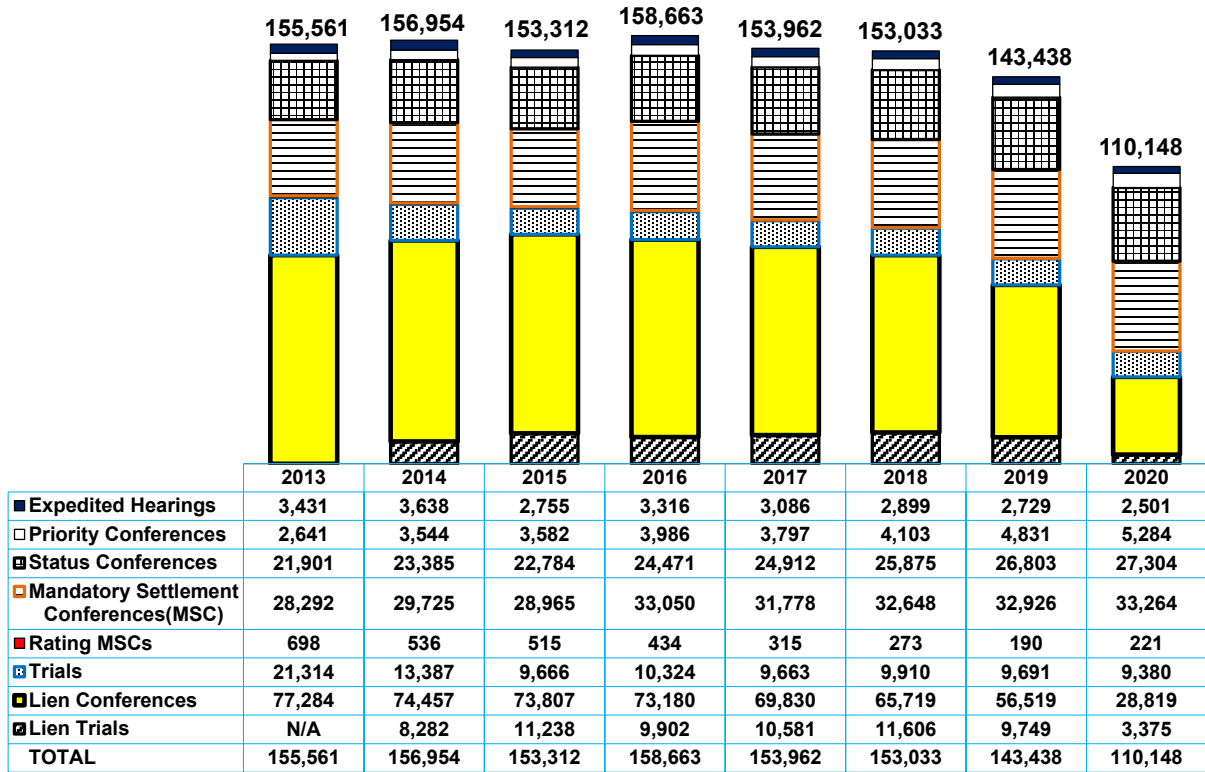
Source: DWC

The non-Section 5502 hearings are continuances or additional hearings after the first hearing. Figure 59 shows non-Section 5502 hearings held from 2013 to 2020.

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. From 2019 to 2020, there were decreases in lien trials (-65 percent), lien conferences (-49 percent), expedited hearings (-8 percent), and trials (-3 percent). At the same time, such non-Section 5502 hearings as rating MSCs (+16 percent), priority conferences (+9 percent), status conferences (+2 percent), and MSCs (+1 percent) experienced an increase from 2019 to 2020.

WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

Figure 59: DWC Non-5502 Hearings Held

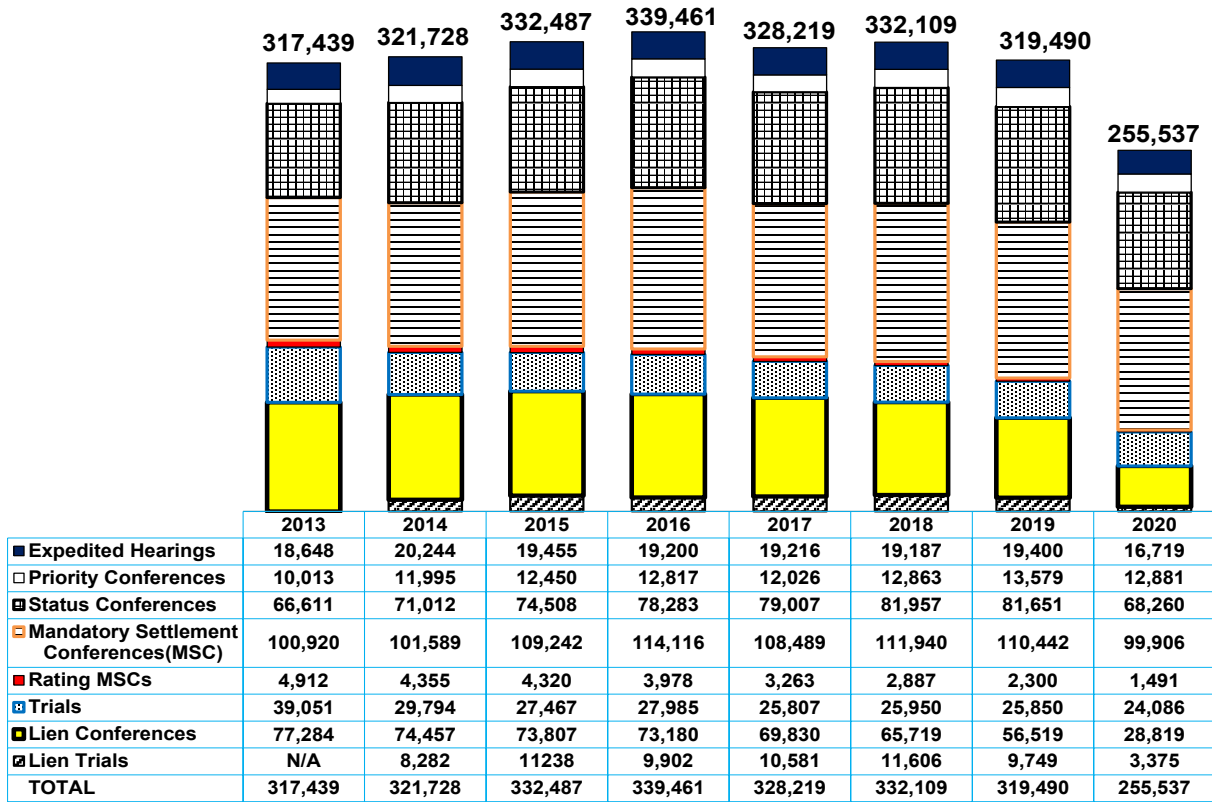


Data Source: DWC

Figure 60 shows the total hearings held from 2013 to 2020 including Labor Code Section 5502 hearings, non-Section 5502 hearings, and lien conferences.

## WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

**Figure 60: 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:

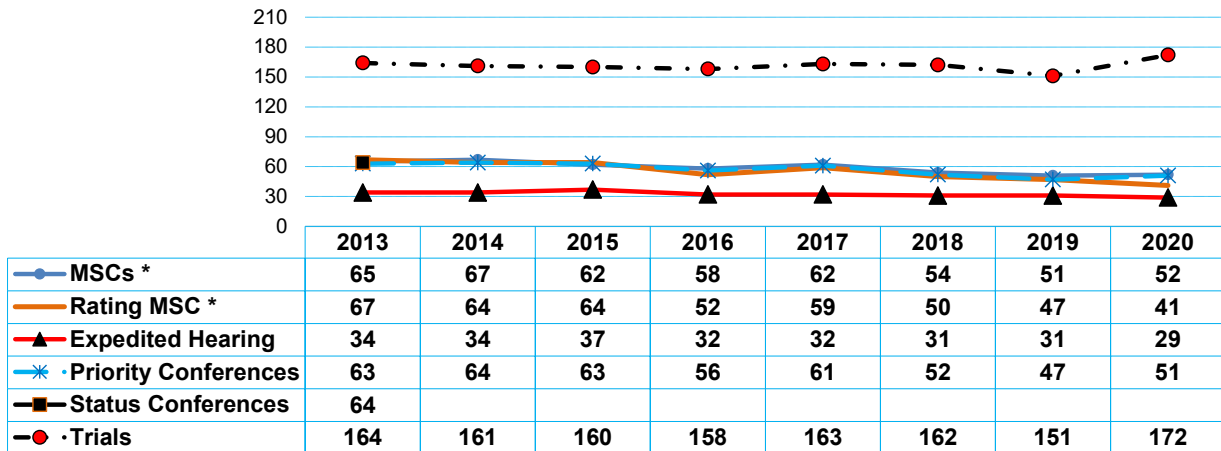
- An expedited hearing must be held within 30 days of the receipt of a DOR.
- The conference shall be conducted within 30 days after the filing of a DOR.
- MSCs, rating MSCs, and priority conferences are required to be held within 30 days of the receipt of a request in the form of a DOR.
- A trial must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

Figure 61 shows the average elapsed time from a request to a DWC hearing in the fourth quarter of each year, from 2013 to 2020. 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 decrease 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, and then to 29 days in 2020. 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. There was a one day increase (from 51 days to 52 days) in average elapsed time for MSCs. 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. From 2019 to 2020, the average elapsed time from a request to hearing for priority conferences increased from 47 to 51 days. The average

## WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

elapsed time from a request to a DWC trial decreased overall from 164 to 151 days from 2013 to 2019 and increased 14 percent from 151 days to 172 days from 2019 to 2020.

**Figure 61: Elapsed Time in Days from Request to DWC Hearing (4th Quarter)**



\* Mandatory Settlement Conferences

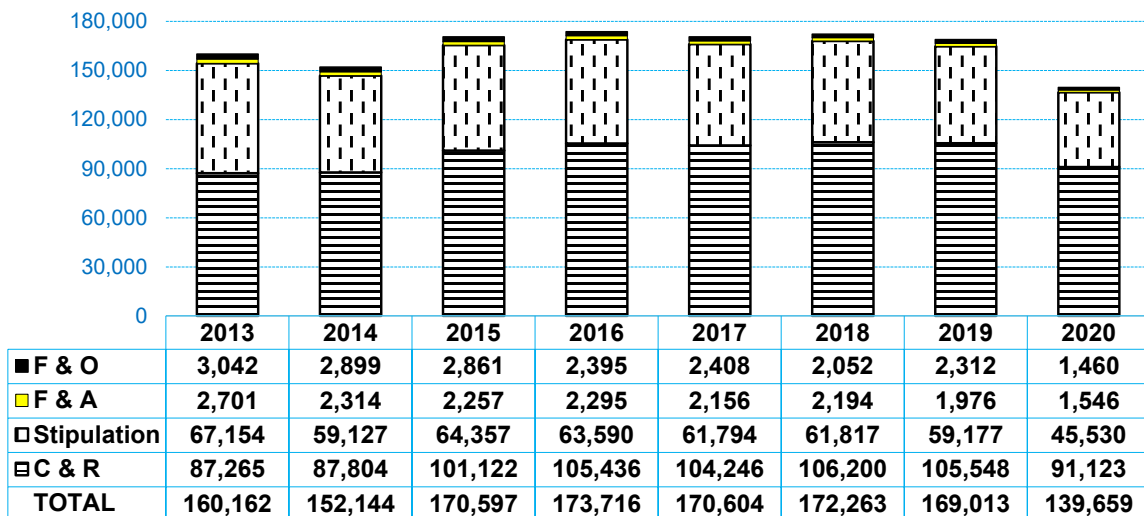
Source: DWC

### Division of Workers' Compensation Decisions

#### DWC Case-Closing Decisions

Figure 62 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 20 percent increase in Compromise and Releases (C&Rs) from 2014 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. A seventeen (17) percent decline in the total number of case-closing decisions from 2019 to 2020 was due to decreases in all four types of hearings, including a 14 percent decrease in Compromise and Releases (C&Rs) and a 23 percent decrease in Stipulations.

**Figure 62: DWC Case-Closing Decisions**



Source: DWC

## WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

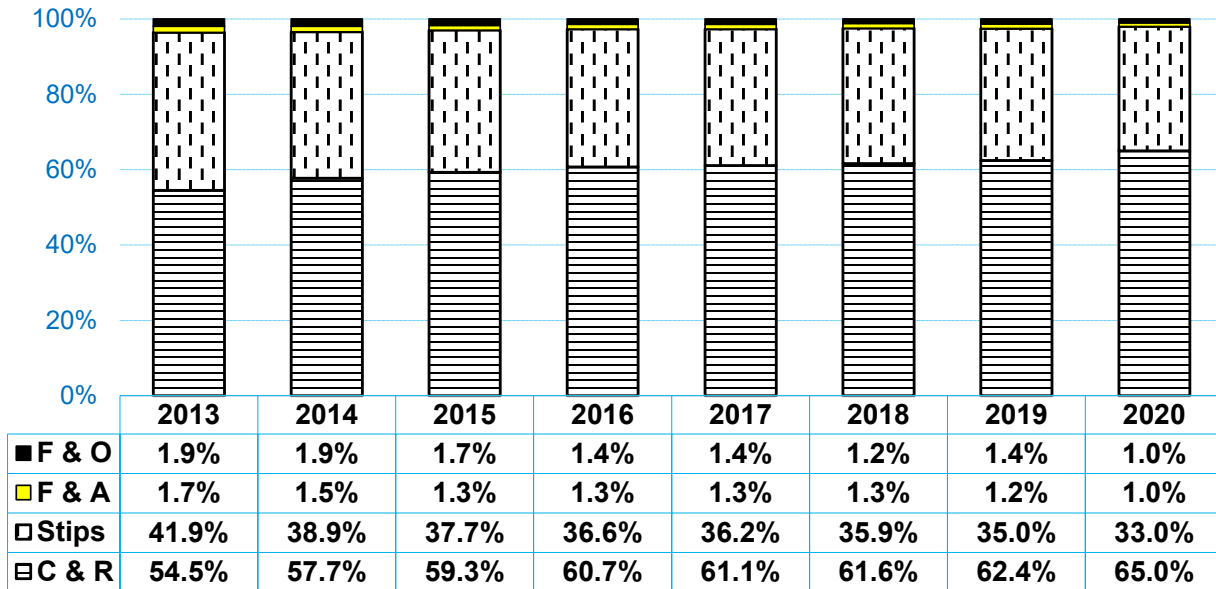
### *Mix of DWC Decisions*

As shown in the previous figures and in the Figure 63, 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 with an additional decrease to 33 percent in 2020 and the proportion of C&Rs increased from 54.5 to 62.4 percent with further growth to 65 percent in 2020.

Figure 63 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 2020.

**Figure 63: 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:

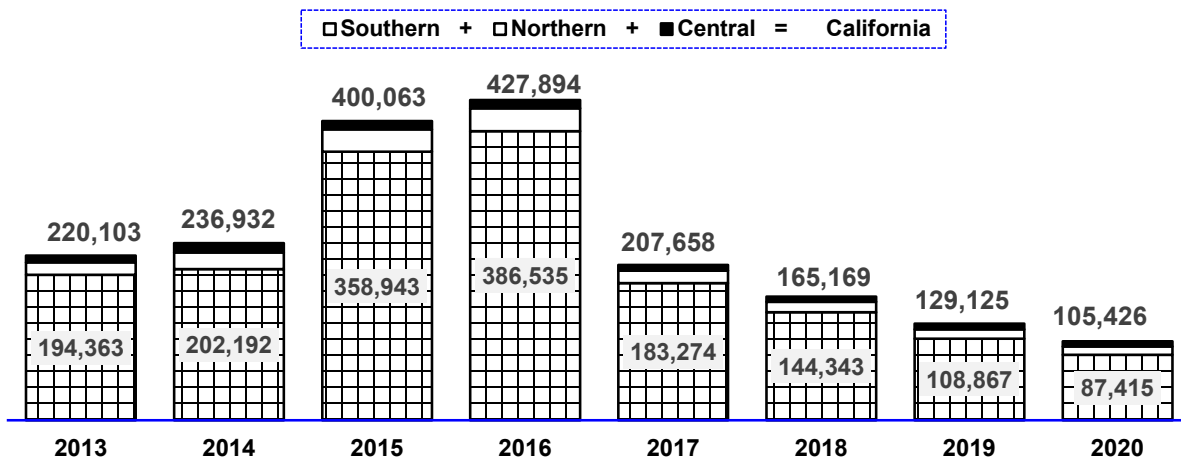
- Labor Code section 4615 places an automatic stay on liens filed by or on behalf of physicians and providers who are criminally charged with certain types of fraud. The automatic stay prevents those liens from being litigated or paid while the prosecution is pending.

## WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

- 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 64 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 originated in Southern California in 2013 through 2019. The share of the Southern region in liens filed averaged 88 percent from 2013 to 2017 and then decreased to 84 percent in 2019 and to 83 percent in 2020. Northern California increased its share of the liens filed from an average of 8 percent from 2013 to 2018, to 10 percent in 2019 and 11 percent in 2020. Central California also increased its share of the liens filed from an average of 4 percent in 2013 through 2018 to 6 percent in both 2019 and 2020.

**Figure 64: Number of Liens Filed by California Regions, 2013-2020**



Source: DWC

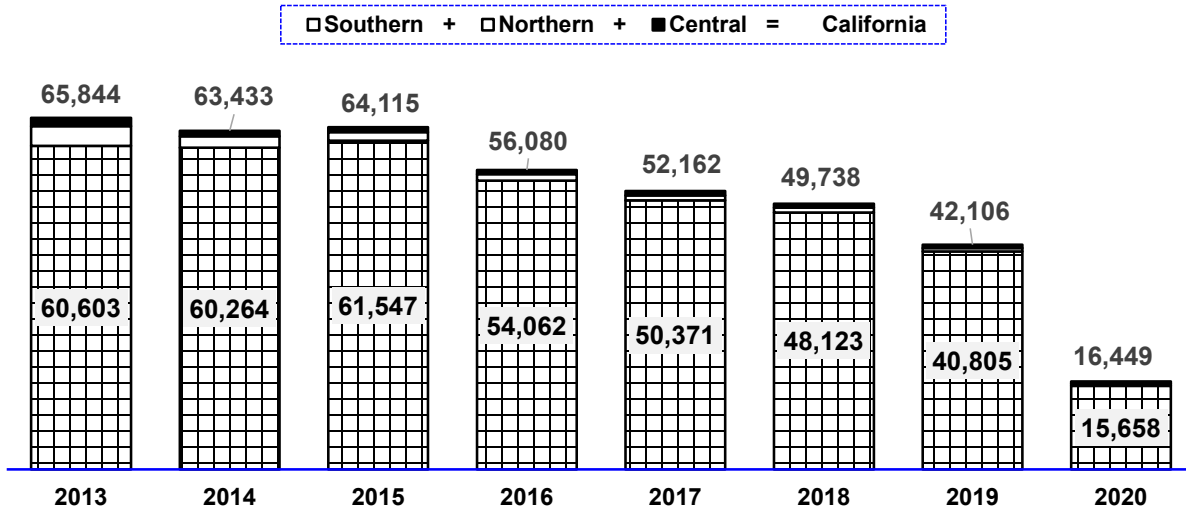
Figure 65 shows that the number of decisions regarding liens filed on WCAB cases reached its peak in 2013, thereby increasing concomitant expenditure of DWC staff resources for resolution of those liens. The number of lien decisions decreased overall by 36 percent between 2013 and 2019 and then fell by 61 percent from 2019 to 2020. Because of the addition of Labor Code § 4615, many liens are stayed and cannot be decided until the criminal case is resolved.<sup>108</sup> 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, before declining to 95 percent in 2020. The Northern region comprised 6 percent of lien decisions

<sup>108</sup> <https://www.dir.ca.gov/dwc/SB1160-AB1244/Special-Adjudication-Unit-Calendar.htm>

## WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

in California in 2013. That share decreased to between 2 and 3 percent in 2014 through 2020. 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.

**Figure 65: Number of DWC Lien Decisions, by California Regions in 2013-2020**



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. DWC's 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.<sup>109</sup>

#### **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.

<sup>109</sup> In addition, LC 129 (f) requires an audit of the Uninsured Employers Benefits Trust Fund (UEBTF) by the claims and collections unit of DWC.

## WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

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 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.

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 Labor Code § 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.



## WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

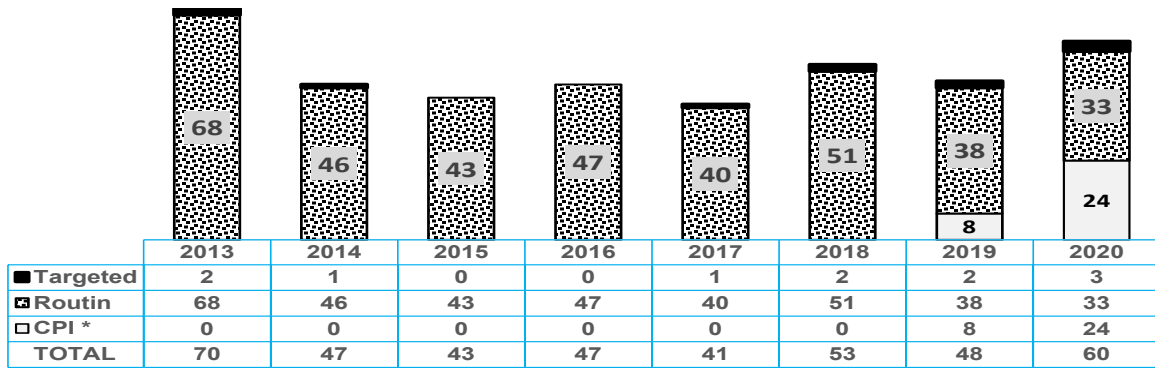
- Discharged or administered compensation obligations in a dishonest manner.
- Discharged or administered compensation obligations in a manner as to cause injury to the public or those dealing with the employer or insurer.

### Audit and Enforcement Unit Data

#### Routine and Targeted Audits

Figures 66 to 72 depict workload data from 2013 through 2020. Figure 66 shows the number of routine and targeted audits and the total number of audits conducted each year. In 2020, the Audit Unit completed 60 audits, of which 33 were routinely selected for PAR, 3 targeted audits were based on the failure of a prior audit, and 24 audits were based on credible referrals and/or complaints filed with the Unit. Civil Penalty Audits and Investigations are based on CCR, Title 8, section 10106.1(b) and include targeted claim files based on credible complaints and referrals received by DWC.

**Figure 66: Routine and Targeted Audits and Civil Penalties Assessed**



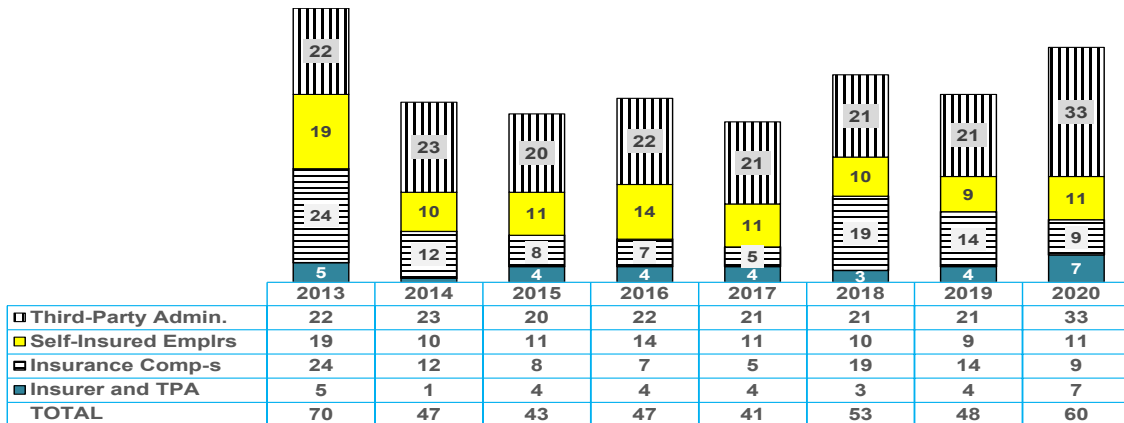
\* Civil Penalty Issues

Source: DWC Audit and Enforcement Unit

#### Audits by Type of Audit Subject

Figure 67 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 67: DWC Audits by Type of Audit Subject**



Source: DWC Audit and Enforcement Unit

## WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

### *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:

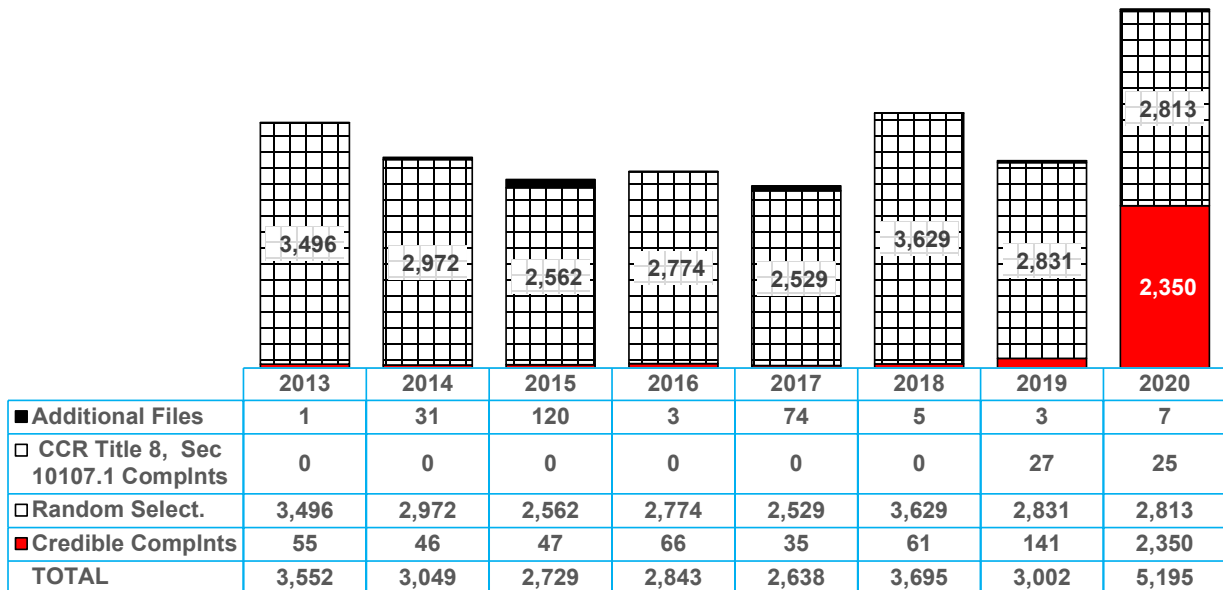
- Some valid complaint files may be selected to undergo targeted audits, and penalties may be issued.
- Additional files include claims chosen based on criteria relevant to a targeted audit but for which no specific complaints had been received.
- The number of claims audited is based upon the total 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 68 shows the total number of claim files audited each year broken down by the method used to select them. In 2020, within the PAR/FCA audits, compliance officers audited 5,195 claim files, of which 2,820 were randomly selected claims<sup>110</sup> in which some form of indemnity benefits was paid. Targeted claims audited included 2,350 files based on valid complaints received by DWC. Another 7 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 68: Files Audited by Method of Selection**



Source: DWC Audit and Enforcement Unit

<sup>110</sup> 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.

## WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

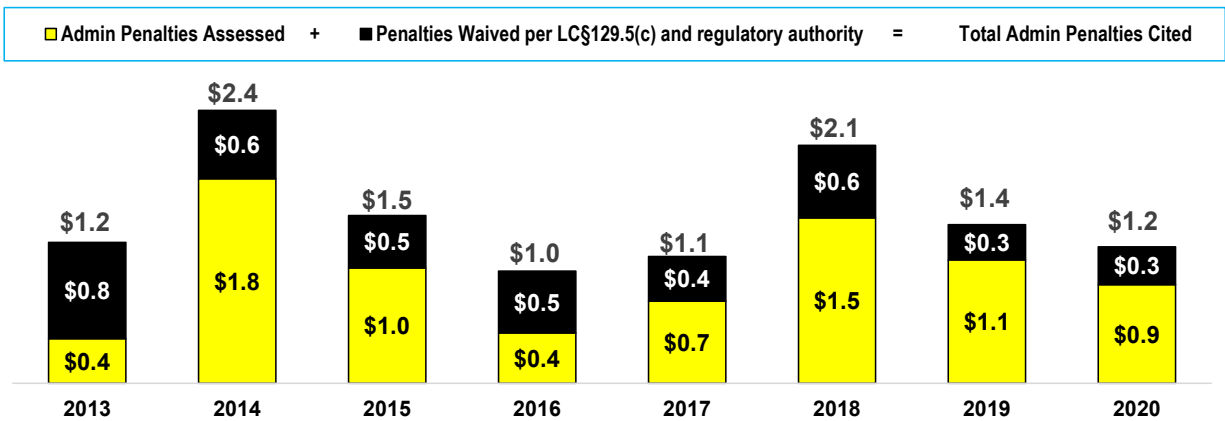
### Administrative Penalties

Figure 69 shows the administrative penalties cited from 2013 to 2020. As a result of PAR/FCA audits conducted during the calendar year 2020, the Audit & Enforcement Unit found and cited 5,051 violations against claims administrators, with initial administrative penalties cited totaling \$1,199,021.

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.<sup>111</sup>

In accordance with Labor Code section 129.5(c) and regulatory authority, the Audit & Enforcement Unit did not assess or waived \$330,703 of the potential administrative penalties of the cited violations. The violations which, by law, were not assessed occurred within 31 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 \$868,318.

**Figure 69: DWC Audit Unit—Administrative Penalties Cited (Million \$)**



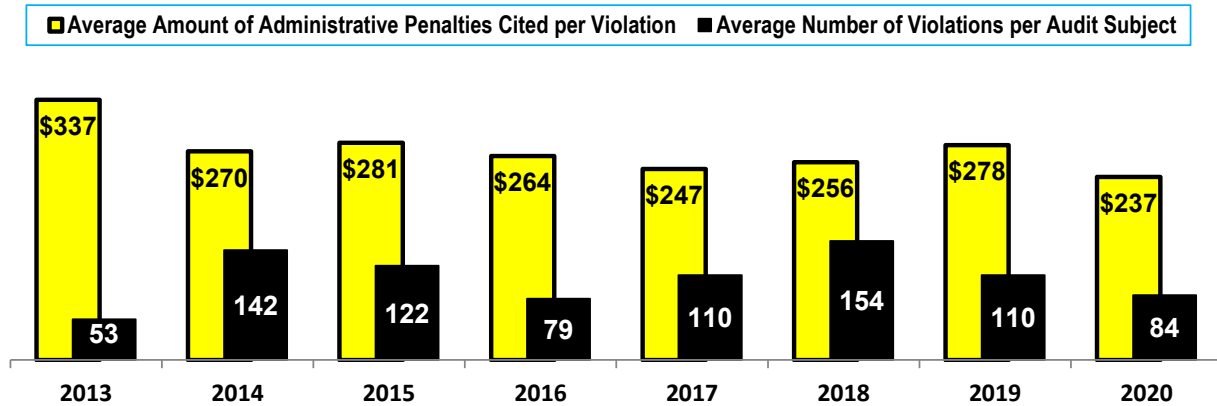
Source: DWC Audit and Enforcement Unit

Figure 70 shows the average number of violations per audit subjects each year and the average dollar amount of administrative penalties cited per violation. In 2020, the average number of violations per 60 completed profile audits was 84 and the average penalty cited per 5,051 violations was about \$237, including penalties waived.

<sup>111</sup> DWC Annual Audit Report, page 5, <https://www.dir.ca.gov/dwc/AuditUnit/Audit-Annual-Report2020.pdf>.

## WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

**Figure 70: Average Amount of Administrative Penalties Cited per Violation and Average Number of Violations per Audit Subject**



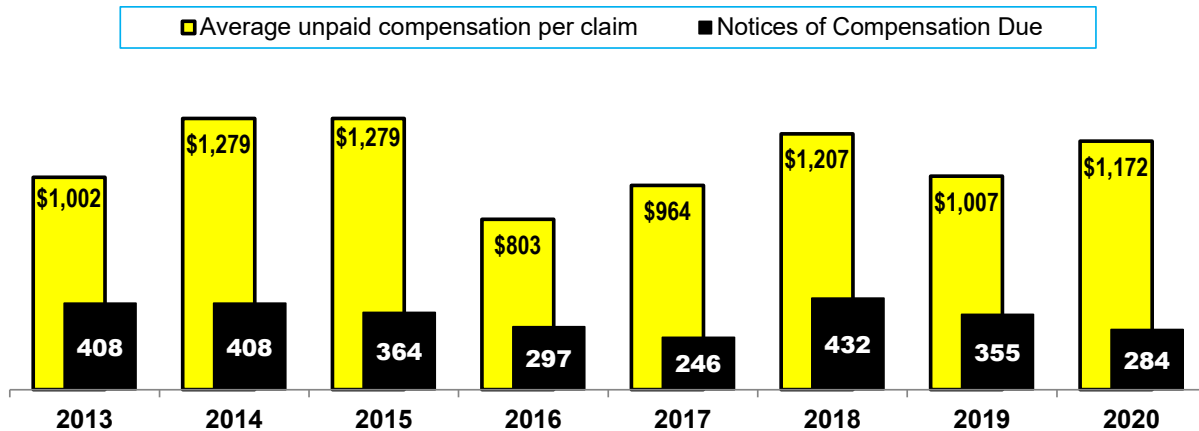
Data Source: Audit and Enforcement Unit

### *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 71 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 71: Average Amount of Unpaid Compensation per Claim and Number of Notices of Compensation**

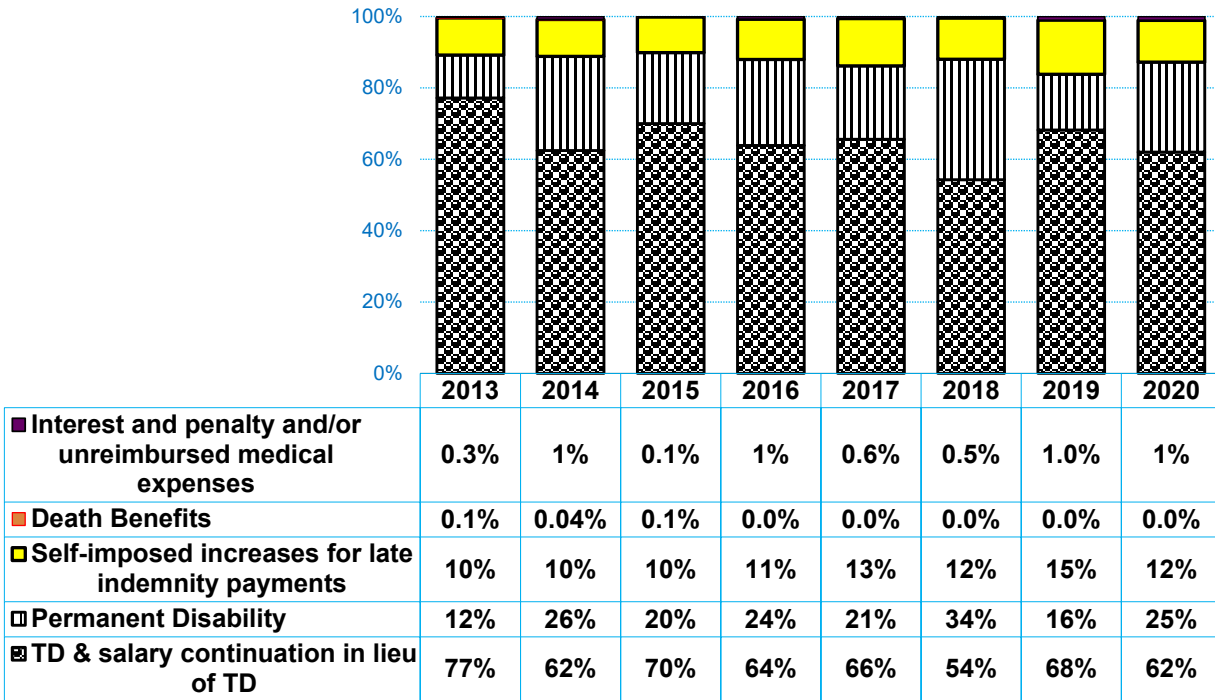


Data Source: Audit and Enforcement Unit

## WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

Figure 72 shows yearly distribution of unpaid compensation by specific type.

**Figure 72: 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/AuditUnit/Audit-Annual-Report2020.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

DWC’s 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:

## WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

- 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.

### *Impact of COVID-19 Pandemic*

Claim frequencies were down for workers' compensation overall in 2020, when excluding COVID-19 claims, because business closures and reduced numbers of worksite employees resulted in less exposure and fewer numbers of non-COVID-19 claims filed with the WC insurers<sup>112</sup>. Moreover, the WC insurers didn't get large aggregate volumes of COVID-related claims projected during the early months of the pandemic. Consequently, both rating production based on incoming cases to be rated (-18%) and pending backlog (-13%) decreased at the DEU.

Beginning in March 2020 both the WCAB offices and claims administrators suspended their in-office activities replacing them with telework. In response to COVID-19 pandemic the vast majority of DEU staff also worked remotely from March 2020 through the end of 2020.

Figure 73 illustrates DEU's workload from 2013 to 2020 and shows the total ratings and ratings by type.

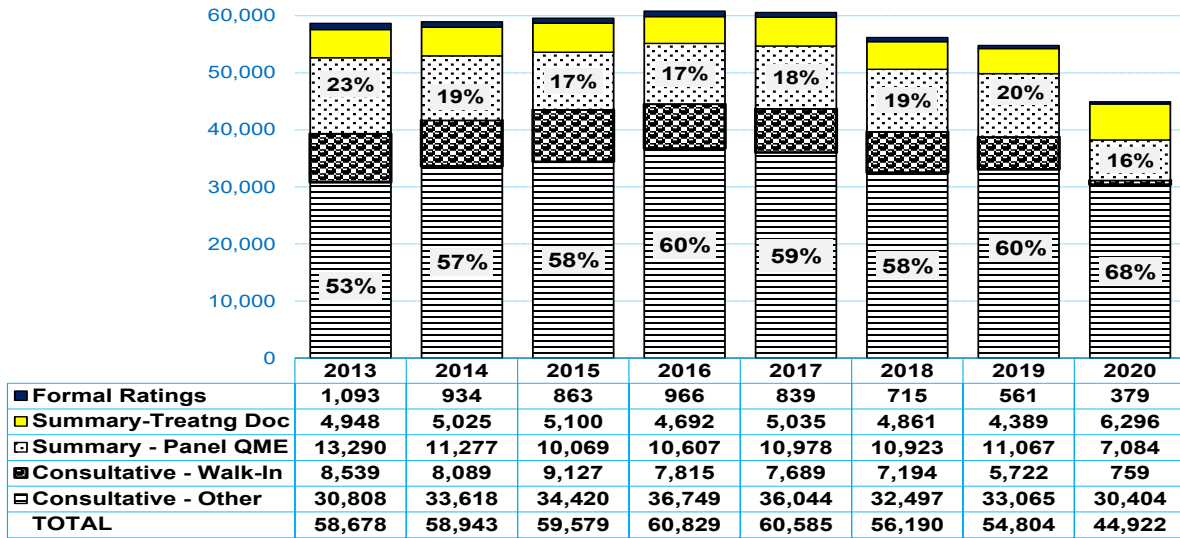
The total number of DEU written ratings increased by 4 percent from 2013 to 2016, declined by 9 percent between 2016 and 2019, and then fell again by 18 percent from 2019 to 2020. The combined share of consultative ratings in total ratings increased from 67 percent in 2013 to 69 percent in 2020 as the share of non-walk-in consultative ratings increased overall from 53 percent in 2013 to 68 percent in 2020. The share of non-walk-in consultative ratings increased, although its yearly numbers decreased by 17 percent in the last five 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 25 percent in 2016 and then went back to 30 percent from 2016 to 2020. The number of summary ratings by panel QMEs fell overall by 17 percent from 2013 to 2019 and by 36 percent from 2019 to 2020. The number of summary ratings by treating doctors decreased by 11 percent from 2013 to 2019 and then increased by 43 percent from 2019 to 2020. From 2013 to 2020, the number of formal ratings, the smallest component of DEU written ratings, fell almost by 3-fold.

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<sup>112</sup> Please note that per WCIRB, the overall claim frequencies increased in 2020, but excluding the COVID-19 claims, the frequency decreased by 6 percent: [https://www.wcirb.com/sites/default/files/documents/wcirb-report-2021\\_state\\_of\\_the\\_system-ho.pdf](https://www.wcirb.com/sites/default/files/documents/wcirb-report-2021_state_of_the_system-ho.pdf) (Chart 19, Slide 26).

WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

Figure 73: DEU Written Ratings, 2013-2020



Data Source: DWC Disability Evaluation Unit

Table 17 shows the number of ratings issued in 1997, 2005, and 2013 by type and rating schedules in effect.

Table 17: DEU Ratings in 2020 by Type and Year when the Rating Schedules Took Effect

Type of Rating	1997	2005	2013
Summary rating based on QME report	22	3,386	3,676
Summary rating treating based on physician report	3	2,641	3,652
Walk-in consultative ratings	10	293	456
Other consultative ratings	961	14,682	14,761
Formal ratings requested by judge	33	172	174
<b>TOTAL</b>	<b>1,029</b>	<b>21,174</b>	<b>22,719</b>
Percent of each rating schedule in effect in grand total number of ratings (=54,804)	2.3%	47%	51%

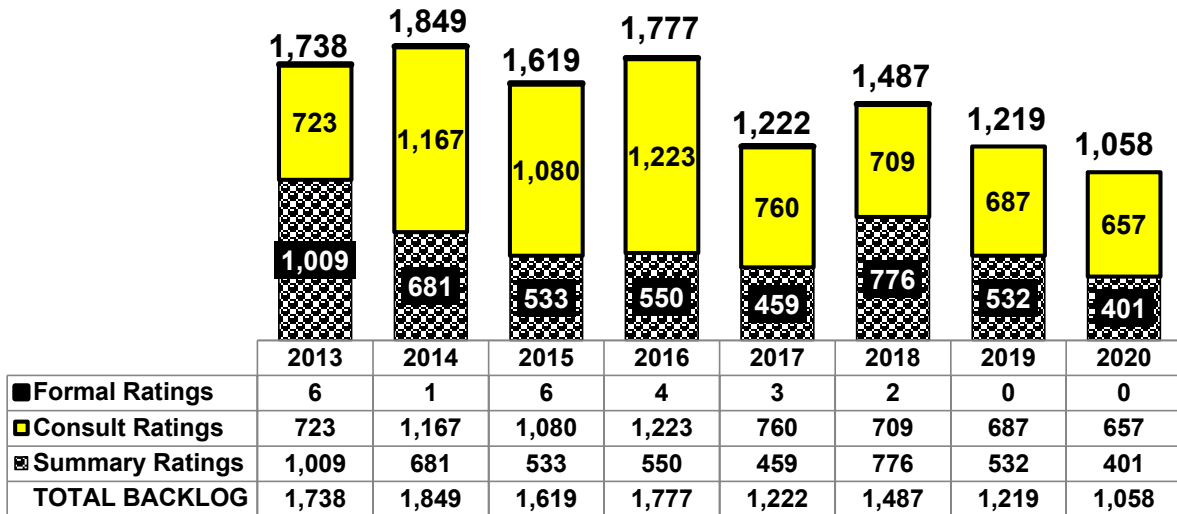
Data Source: DWC Disability Evaluation Unit

**DEU Rating 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 74, 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 in the pre-pandemic period. The reduction in the backlog provides quicker delivery of benefits to injured workers and resolution of workers' compensation cases. Due to pandemic disruptions and a decrease in exposure to workplace injuries, the total backlog decreased by 13 percent from 2019 to 2020.

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**Figure 74: 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 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 1,314 commutations, averaging 109.5 commutation calculations per month in 2020.

**Table 18: Number of DEU Commutations, 2015-2020**

	2015	2016	2017	2018	2019	2020
<b>Commutations</b>	1,431	1,473	1,463	1,621	1,460	1,314

### Staffing

As of August 2021, the staffing levels were 41 Disability Evaluators (37 WCC and 4 WCA positions), with 1 Evaluator vacancy, 3 supervisors, 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.



## WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

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 composes panels of three qualified medical evaluators (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. One QME physician is selected from the list to evaluate the injured worker and write a medical-legal report addressing the disputed medical issues in the workers' compensation case. The medical-legal report is used in the adjudication of the claim to determine entitlement to benefits. Before April 19, 2004, only an injured worker unrepresented by an attorney could request a panel. SB 899, which went into effect April 19, 2004, allows the claims administrator to request a panel in an unrepresented case if the injured worker failed to do so within 10 days. Likewise, in the case of a represented worker, 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. QMEs are also now limited to ten offices and can no longer be certified for an unlimited number of locations.<sup>113</sup>

An increase in the number of panel requests over the years was a result of various legislative reforms like SB 899, effective April 19, 2004 and SB 863, effective January 1, 2013, 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 in pre-pandemic period.

The request for a panel in unrepresented cases must be submitted by mail for processing and be submitted online in a represented case. 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. 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.<sup>114</sup> In a represented case, the parties mail Form 31.7<sup>115</sup> 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

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<sup>113</sup> This was part of the SB 863 reforms intended to prevent a small number of QMEs from being assigned a disproportionate number of panels by listing a large number of locations for exams.

[https://www.dir.ca.gov/chswc/reports/2017/QME\\_2017\\_Trends.pdf](https://www.dir.ca.gov/chswc/reports/2017/QME_2017_Trends.pdf).

<sup>114</sup> Obtaining Additional QME Panel in a Different Specialty, [https://www.dir.ca.gov/t8/31\\_7.html](https://www.dir.ca.gov/t8/31_7.html).

<sup>115</sup> QME Panel Request Form 31.7, [https://www.dir.ca.gov/dwc/FORMS/QMEForms/QMEForm31\\_7.pdf](https://www.dir.ca.gov/dwc/FORMS/QMEForms/QMEForm31_7.pdf).

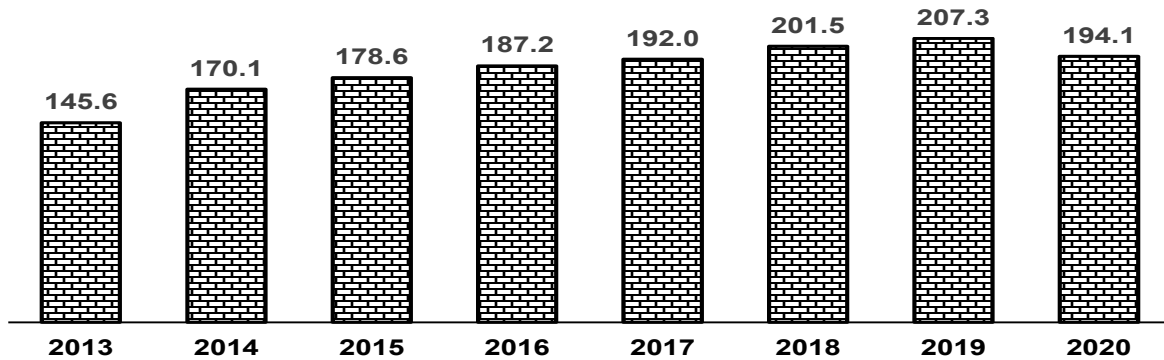
## WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

regulation section 31.5.<sup>116</sup> Form 31.5<sup>117</sup> must be mailed to the medical unit for processing, whether the case is represented or unrepresented.

### QME Panel Requests

Figure 75 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. There was a 6 percent decrease in the number of QME Panel Requests from 2019 to 2020.

**Figure 75: Number of Qualified Medical Evaluator (QME) Panel Requests (Thousand)**



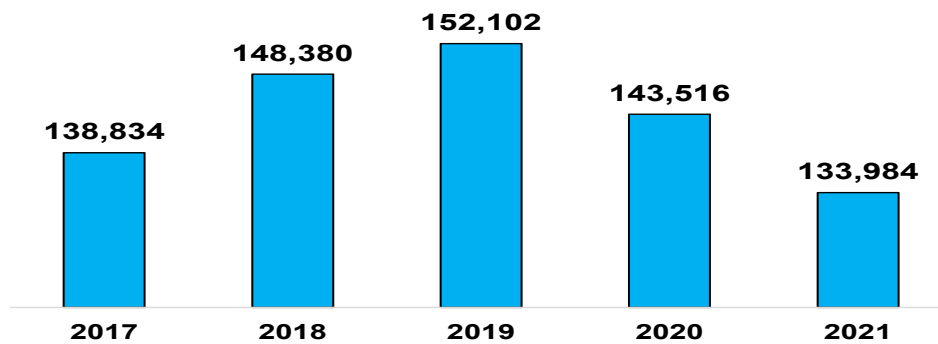
Note: Data for 2013 were incomplete and are missing a full count of all requests received.

Source: DWC

### QME Panels Assigned<sup>118</sup>

According to Figure 76, the total number of QME panels assigned increased by 9.6 percent from 2017 to 2019 and then decreased overall by 12 percent from 2019 to 2021, including a 7 percent decrease from 2020 to 2021.

**Figure 76: Total Number of QME Panels Assigned for 31 Specialties, 2017-2021**



Data Source: DWC - Medical Unit

<sup>116</sup> QME Replacement Request, [https://www.dir.ca.gov/t8/31\\_5.html](https://www.dir.ca.gov/t8/31_5.html).

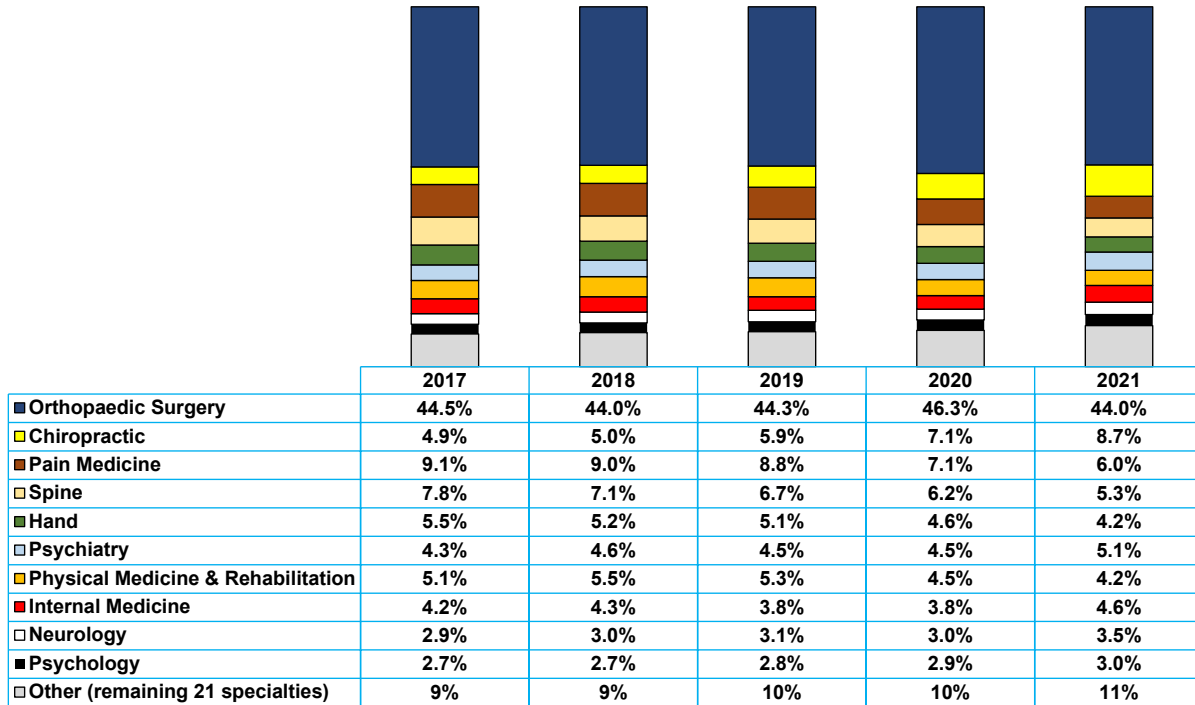
<sup>117</sup> Replacement QME Panel Request Form 31.5, [https://www.dir.ca.gov/dwc/FORMS/QMEForms/QMEForm31\\_5.pdf](https://www.dir.ca.gov/dwc/FORMS/QMEForms/QMEForm31_5.pdf).

<sup>118</sup> The data on QME panels was provided by DWC Medical Unit as based on reports run on January 27, 2022.

## WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

Figure 77 shows the yearly distribution of QME panels assigned by specialty from 2017 to 2021. The top 10 specialties out of a total of 31 QME specialties, demonstrated in Figure 77, account for close to 90 percent of all QME panels. The top four specialties, including orthopedic surgery, chiropractors, pain medicine, and spine specialties account for almost two-thirds or a yearly average of 65.5 percent of all QME panels from 2017 to 2021.

**Figure 77: Distribution of QME Panels Assigned by top 10 QME Specialties, 2017-2021**

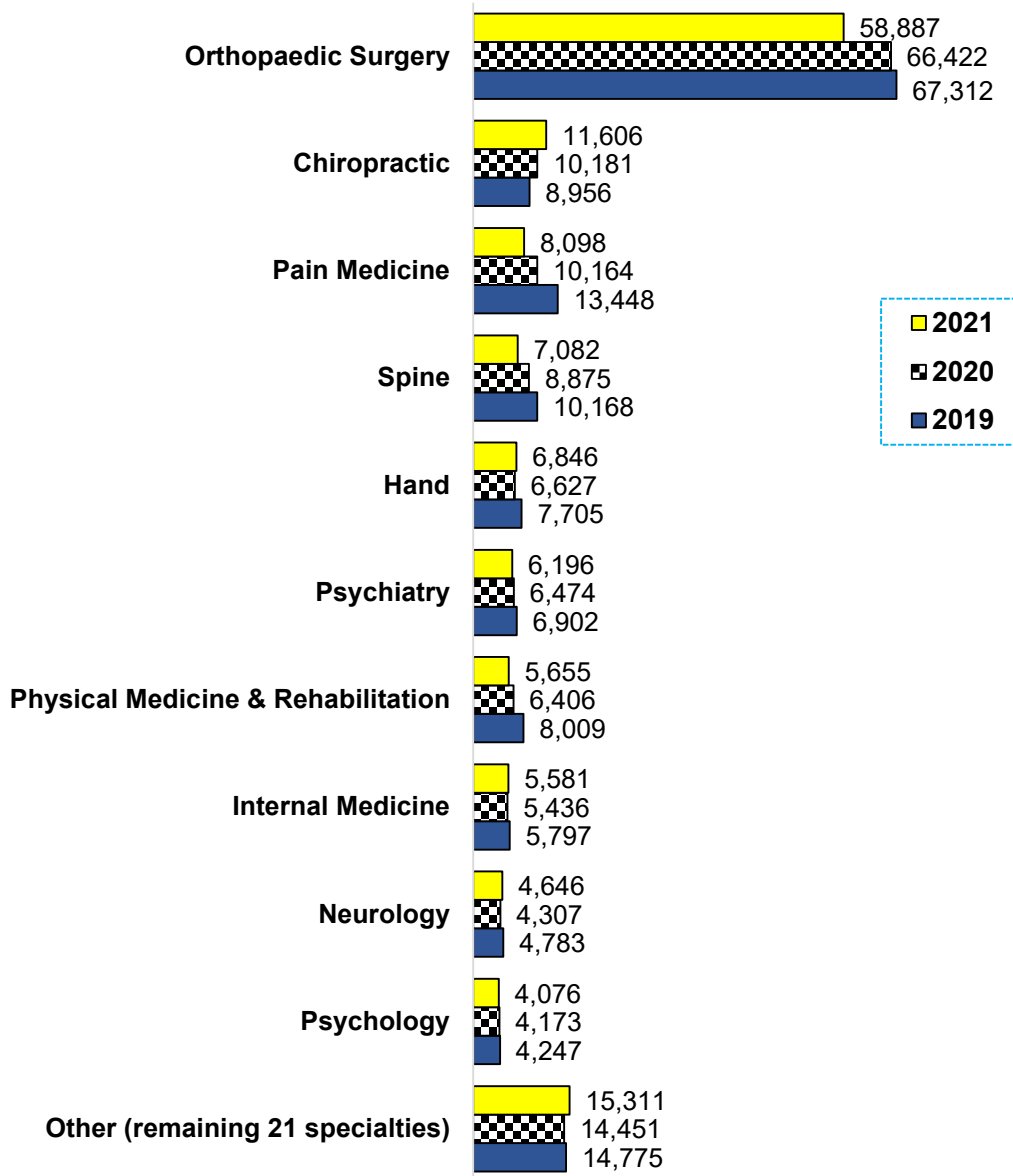


Data Source: DWC-Medical Unit

Figure 78 shows the total number of QME panels assigned by specialty in 2019, 2020, and 2021. The prevailing majority of the QME panels in 2019-2021 were assigned for orthopedic surgeries followed by chiropractic, pain medicine, and spine specialties. A steady decrease in QME panels assigned from 2019 through 2021 was experienced in pain medicine (-40 percent), spine (-30 percent), physical medicine and rehabilitation (-29 percent), orthopedic surgery ((-13 percent), psychiatry (-10 percent), and psychology (-4 percent) specialties. Hand, internal medicine, neurology, and other specialties experienced a decrease from 2019 to 2020 followed by an increase from 2020 to 2021 in the number of QME panels assigned. Only chiropractic specialty showed an uninterrupted increase of 30 percent in QME panels assigned from 2019 to 2021.

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Figure 78: Number of QME Panels Assigned by Top 10 QME Specialties, 2019, 2020, and 2021



Data Source: DWC-Medical Unit

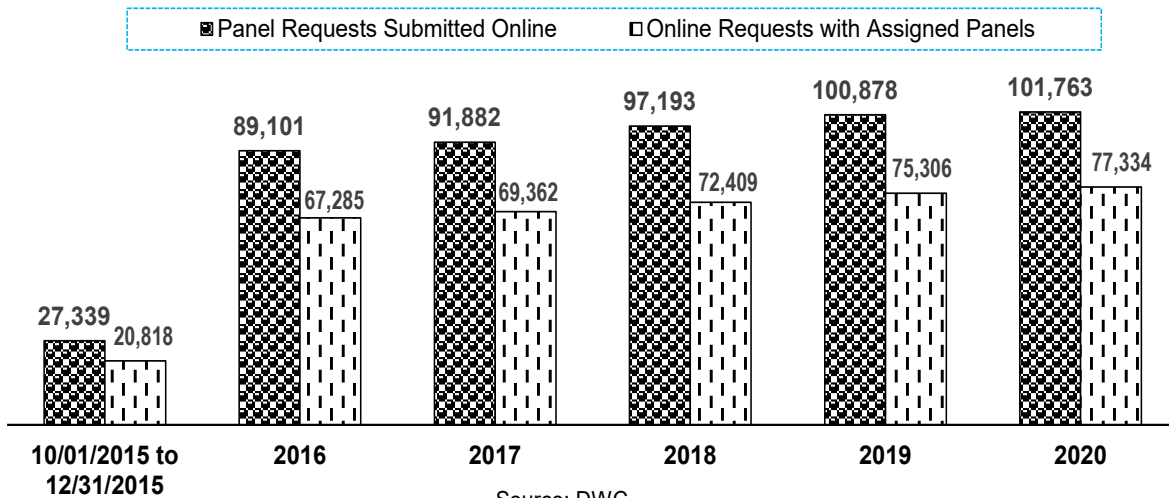
## WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

### Online and Mailed QME Panel Requests and QME Panels Assigned

Effective October 1, 2015, DWC implemented an online system to enable electronic completion and submission of panel requests on Form 106 and immediate provision of panels. 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 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. The online panel request submissions made up 48 percent of all panel requests submitted each year from 2016 to 2020.

Figure 79 shows the number of represented initial requests submitted online, as defined above, and the requests with assigned panels. From 2015, when the online system was implemented, to 2020, 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 89,101 in 2016 and since then have comprised a big share of incoming panel requests. The number of represented panel requests increased by 13 percent from 2016 to 2019, with an average 4 percent yearly increase in these panel submissions from 2016 to 2019. From 2019 to 2020, the number of represented panel requests increased by 1 percent.

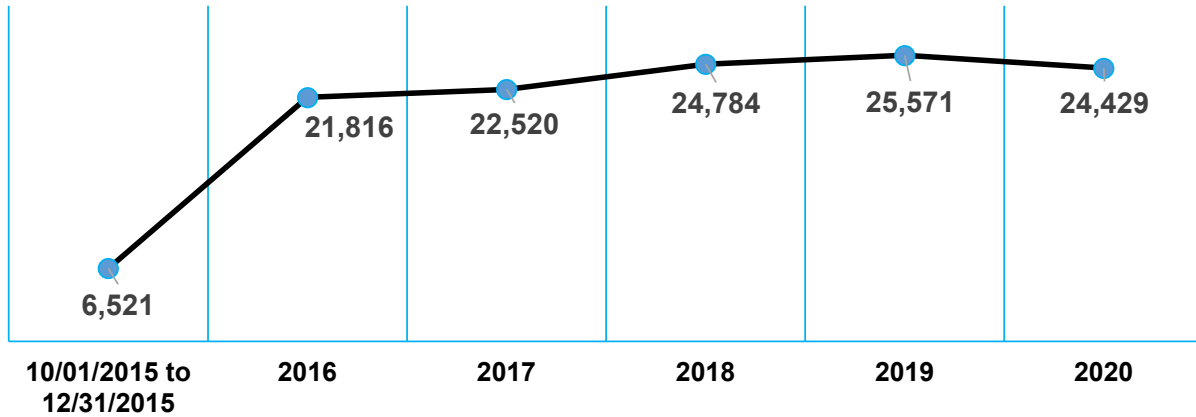
**Figure 79: Online QME Panel Requests Submitted and Requests Assigned Panels**



## WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

Figure 80 shows the number of rejected on-line panels that comprise about 25 percent yearly as it was described in relation to Figure 79.

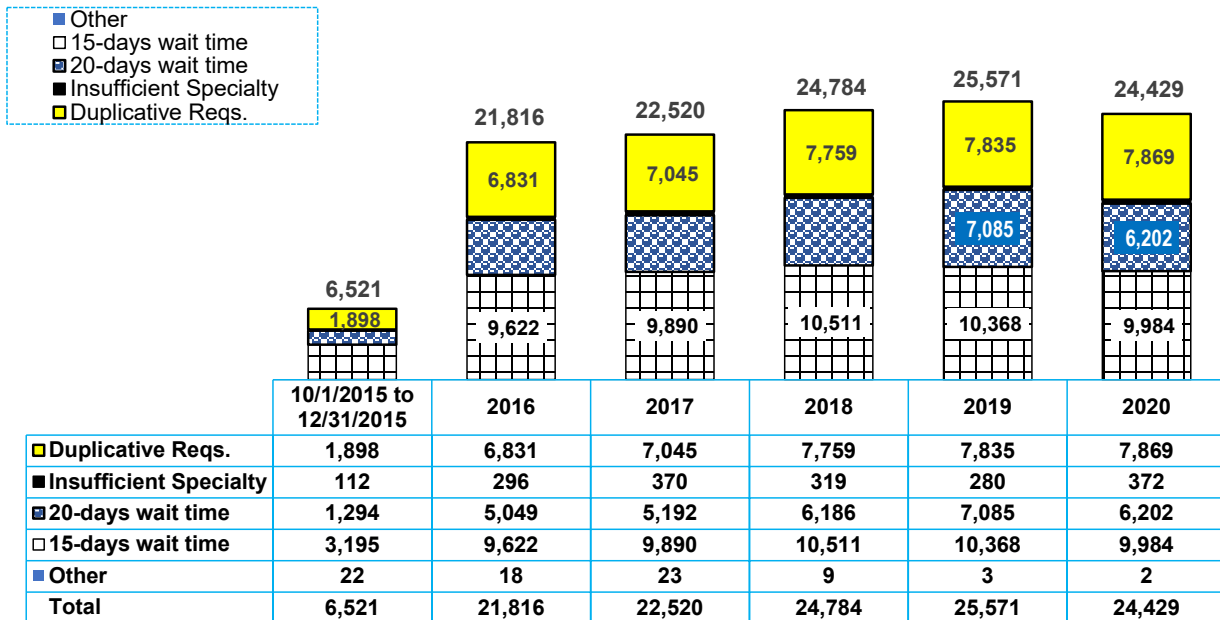
**Figure 80: On-Line QME Panel Requests Rejected at Submission**



Source: DWC

Figure 81 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. From 2019 to 2020, 4 percent and 12 percent decreases in rejection of online requests based on noncompliance with 15- or 20-day waiting times respectively, resulted in a 4 percent decrease in the total number of rejected online QME panel requests.

**Figure 81: Number of Rejected On-Line QME Panel Requests by Rejection Reasons**



Source: DWC

## WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

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

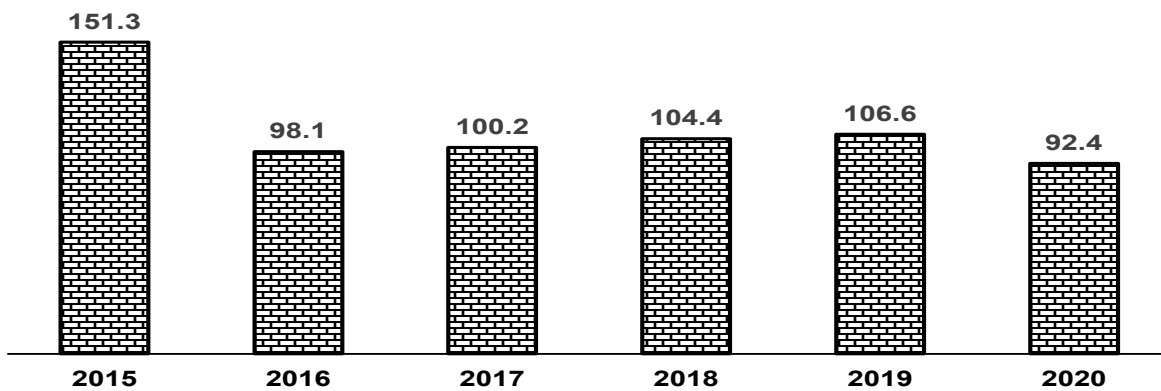
Panel requests mailed for processing include the following types: unrepresented initial panel requests sent by either an unrepresented applicant or his defense on Form 105; requests for a panel by represented applicants with a date of injury before January 1, 2005; requests for panels in cases involving an uninsured employer; requests for obtaining additional specialty panels under certain specified conditions as in 8 CCR section 31.7, requests for replacement<sup>119</sup> 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 82 and 83 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 82, 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. From 2019 to 2020, the QME panel requests received by mail decreased by 13 percent.

**Figure 82: Number of QME Panel Requests Received by Mail (Thousand)**



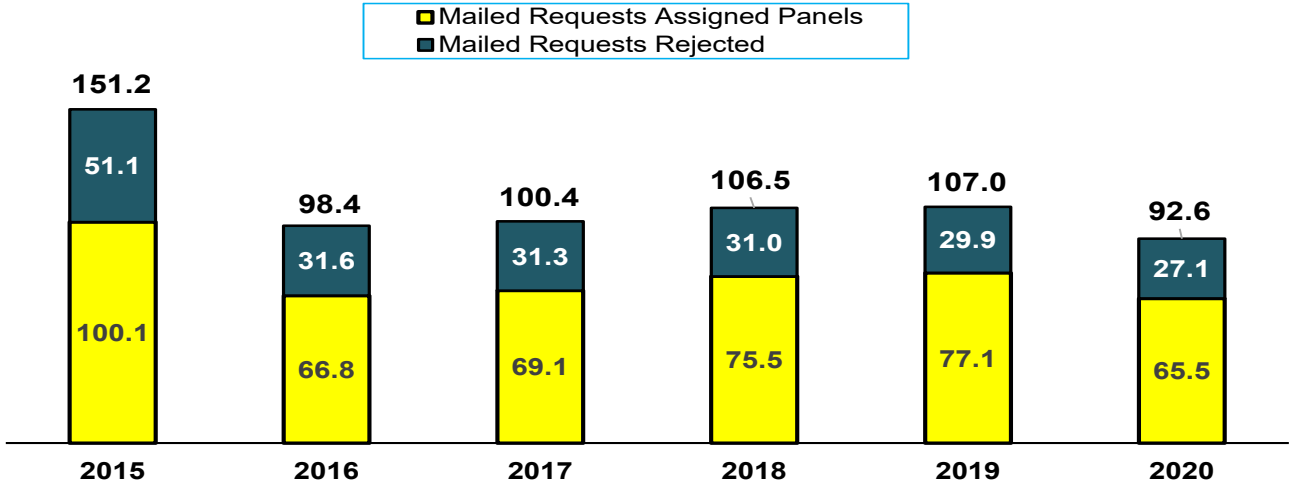
Source: DWC

Figure 83 shows the count of mailed QME requests received by the Medical Unit and processed and issued panels or rejected from 2015 to 2020. 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.

<sup>119</sup> 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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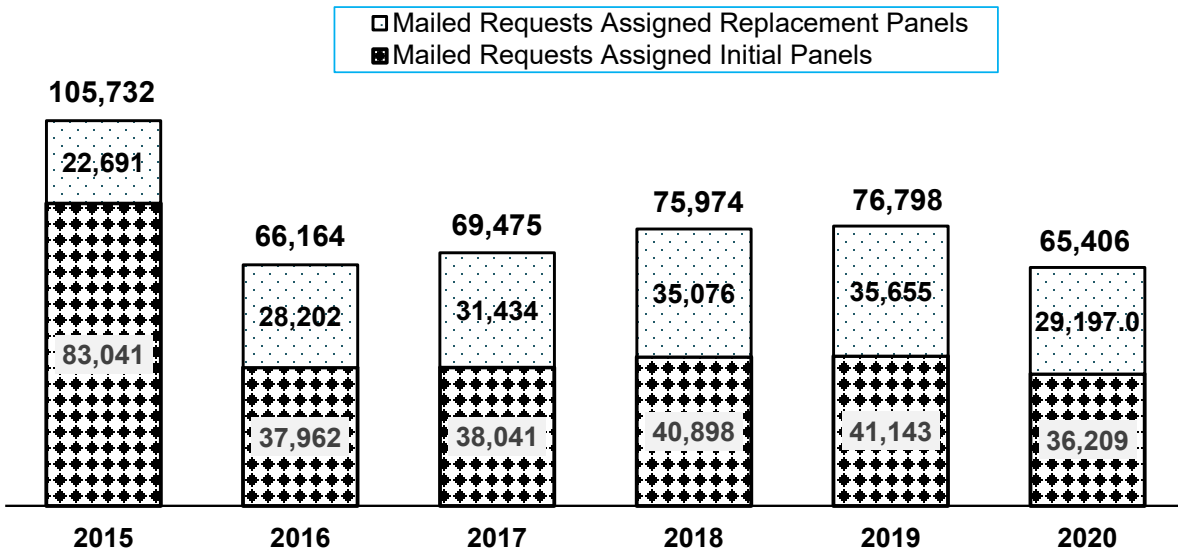
Figure 83: Mailed QME Requests Processed by MU and Assigned Panels or Rejected (Thousand)



Source: DWC

Figure 84 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. There was a 15 percent decrease in assigned panels from 2019 to 2020 due to a decrease in mailed requests. On average, about 55 percent of mailed QME requests were assigned the initial panels from 2016 to 2020.

Figure 84: Mailed QME Requests Assigned Initial or Replacement Panels

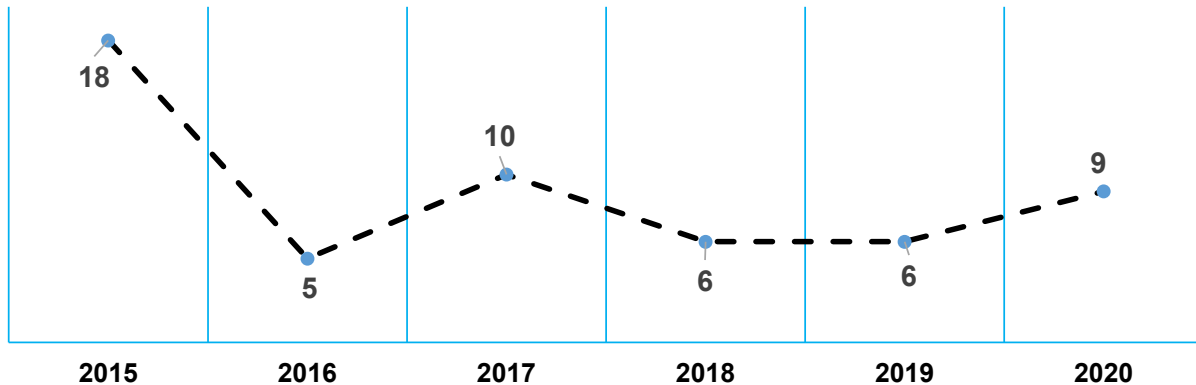


Source: DWC

Figure 85 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. After reaching 18 days in 2015, the number of days required to process the panels from date of receipt to assigned date averaged 7 days from 2016 to 2020.



**Figure 85: 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 Labor Code § 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 Labor Code § 4600. UR begins when the completed DWC 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. Effective January 1, 2004, each employer is required to file a UR plan with the Administrative Director (AD) pursuant to Labor Code § 4610. 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 (Labor Code § 4610(c) and 5307.27(a)). 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.

Effective July 1, 2018, under Senate Bill 1160, entities engaging in modifying or denying requests for authorization of medical treatment via UR were required to obtain and maintain accreditation by an independent, nonprofit organization. Until and unless the AD named another accreditation organization, the legislature named URAC<sup>120</sup> as the accrediting organization. The accreditation requirement certifies that the entities meet specified criteria following industry best practices. These entities are also required to submit a description of their UR policies and procedures to DWC for approval. Regulations implementing these rules are pending.

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 DWC the authority to investigate all UROs that have submitted a UR plan. Investigations to enforce UR requirements have been ongoing every 5 years as required by law.

<sup>120</sup> [www.urac.org](http://www.urac.org)

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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. 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 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 by appropriate personnel and 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.

If a URO has a failing score, it may request abatement, a process in which the URO agrees to remediate its errors and submit to a return investigation within 18 months of the routine investigation in return for abatement of its penalties. If the return target investigation reflects a failure by the URO to remediate its processes, the original penalty amounts are multiplied, as specified. Alternatively, a mitigation process is also available upon request with respect to penalty amounts.

After the conference and review of additional documentation, abatement, and mitigation, 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.

According to Table 19, \$175,700 was assessed in penalties after completing 17 UR investigations in 2020 and \$15,600 in penalties after 2 investigations were completed in the first 6 months of 2021. According 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.<sup>121</sup>

**Table 19: Status of UR Investigations**

	2015	2016	2017	2018	2019	2020	2021*
Number of UR investigations completed	27	11	4	6	7	17	2
Number of UR investigations pending	0	0	0	0	0	0	5
Number of failed investigations	2	0	0	0	0	0	0
Amount of UR penalty assessments	\$39,000	\$8,000	\$30,500	\$2,000	\$15,500	\$175,700	\$15,600

\* As of June 2021.

Source: DWC

<sup>121</sup> The information was provided by the Medical Unit in October 2020.

## WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

### **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.

The passage of SB 1160 also requires DWC's Administrative Director to develop a system for the electronic submission of information on each UR decision to DWC. The proposed system requires the secure electronic transmission directly from the Utilization Review Organizations (UROs) to 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/](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>

### **Independent Medical Review**

SB 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. DWC administers the IMR program with costs borne by the employer, and the process is similar to the group health process for medical treatment dispute resolution.

Figure 86 shows the annual numbers of IMR applications with duplicates, the number of unique medical review requests, and IMR determinations between 2013 through June 2021, when the IMR program was in its ninth year.

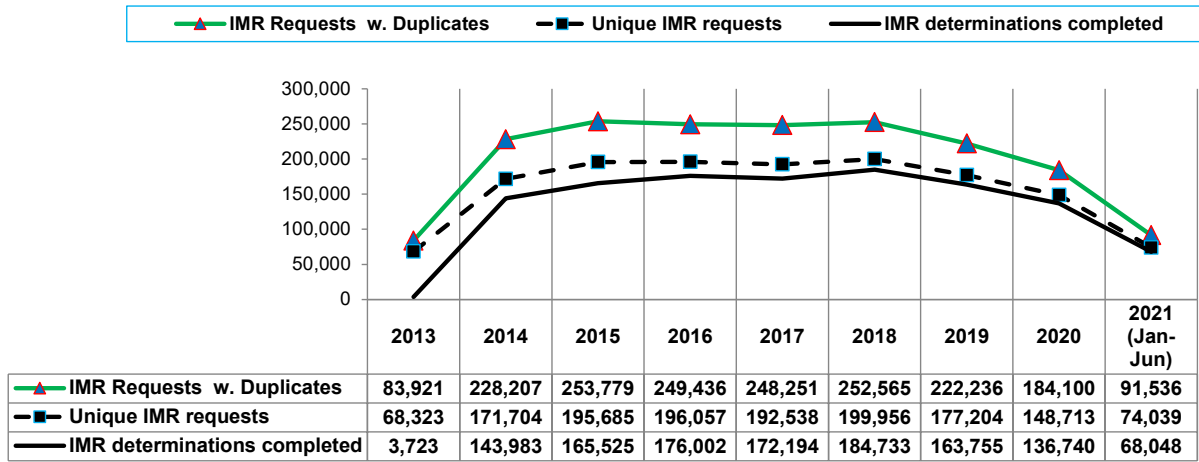
Over 1.8 million IMR requests were filed in the first eight-and-a-half years of the program from January 2013 to June 2021. According to Figure 86, in 2013, the first year of the program, 83,921 IMR applications were received. Following an initial ramp-up period that occurred when the program was open for all dates of injury and the IMR applications increased 3 times from 2013 to 2014 and then again grew by 11 percent from 2014 to 2015, IMR applications held remarkably steady from 2015 to 2018. From 2018 to 2019, the number of IMR applications decreased 12 percent and then due to the COVID-19 pandemic declined 17 percent from 2019 to 2020. Based on the number of filings in the first half of the current year (91,536), the total number of applications received in 2021 is estimated to be equivalent to the total for 2020.

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The number of unique IMR requests received from 2013 through June 2021 totaled more than 1.4 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, followed by a 16 percent decline from 2019 to 2020.

The number of IMR determinations completed from 2013 through June 2021 totaled more than 1.2 million. The total number of IMR decisions issued per year increased each of the first four years of the program. After uninterrupted growth to 176,002 issued decisions from 2013 to 2016, the number of decisions fluctuated between 163,755 to 184,733 per year from 2016 to 2019. An eleven (11) percent decrease in the number of IMR determinations from 2018 to 2019 was followed by a 16 percent decline from 2019 to 2020.

**Figure 86: Number of Independent Medical Review Requests (IMR) Received and Determinations Completed, 2013 - June 2021**

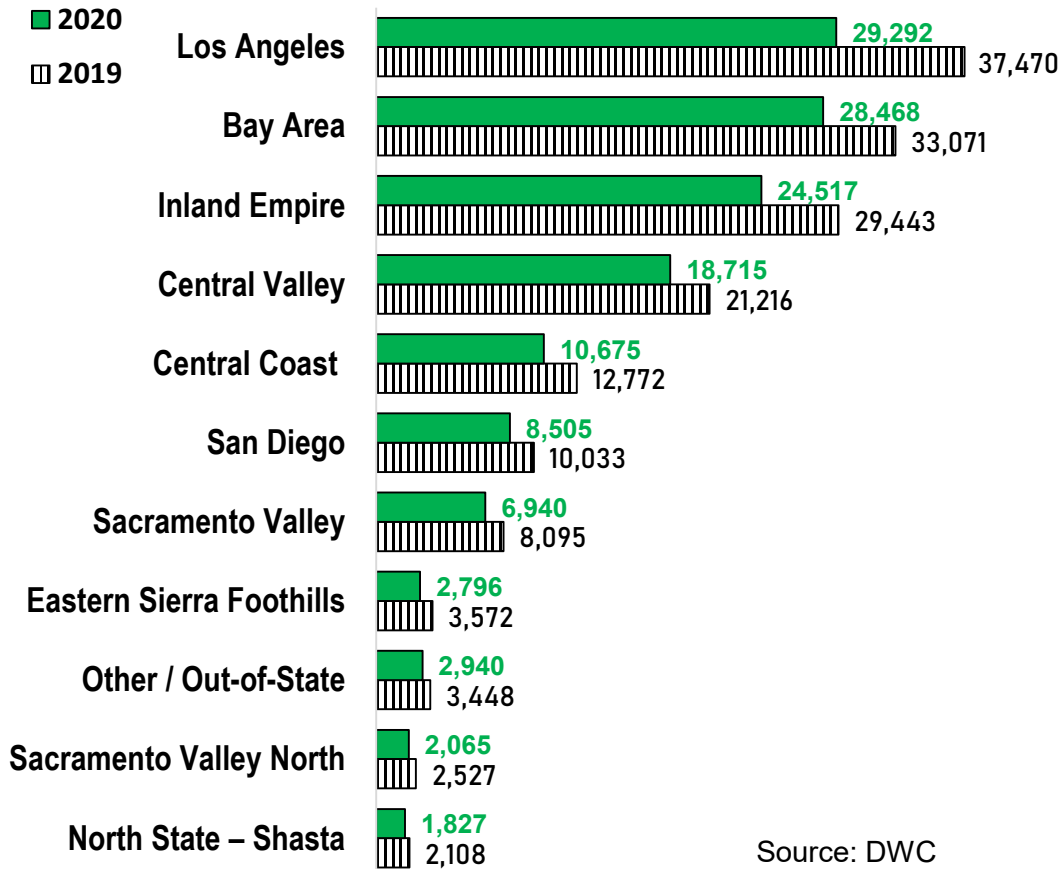


Data Source: DWC

## WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

Figure 87 shows the number of IMR case decisions issued in 10 regions of California in 2019 and 2020. Southern California accounted for about 47 percent of all IMR decisions in both 2019 and 2020.

**Figure 87: IMR Case Decisions Issued by Region in 2019 and 2020**  
(Total in 2020=136,740 and 2019=163,755)



For further information ...

DWC, "2021 Independent Medical Review (IMR) Report: Analysis of 2020 Data" (2021).

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

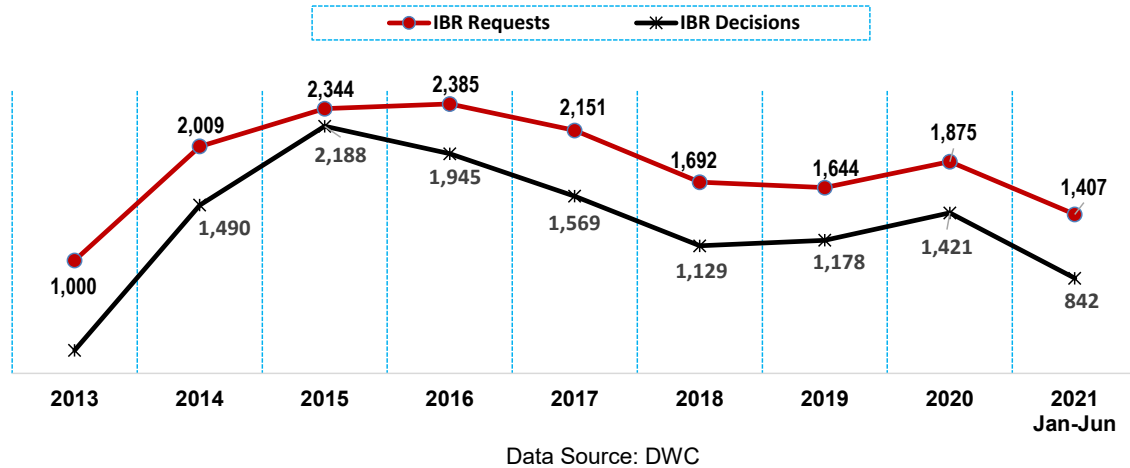
### Independent Bill Review

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 DWC, the IBR is used to decide disputes when a medical provider disagrees with the amount paid by a claims administrator. 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 review fee.

## WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

Figure 88 shows the yearly numbers of IBR requests received and IBR decisions completed between 2013 and the first half of 2021. In 2013, when IBR became effective, 1,000 applications were received and 204 IBR decisions 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. From 2019 to 2020, the total number of IBR requests increased by 14 percent. Based on the number of filings in the first half of 2021 (1,407), it could be expected to be the most IBR applications filed for a single year. As of June 2021, the number of IBR requests received totaled 16,507, and the number of decisions completed totaled 11,966, with a peak of 2,188 in 2015.

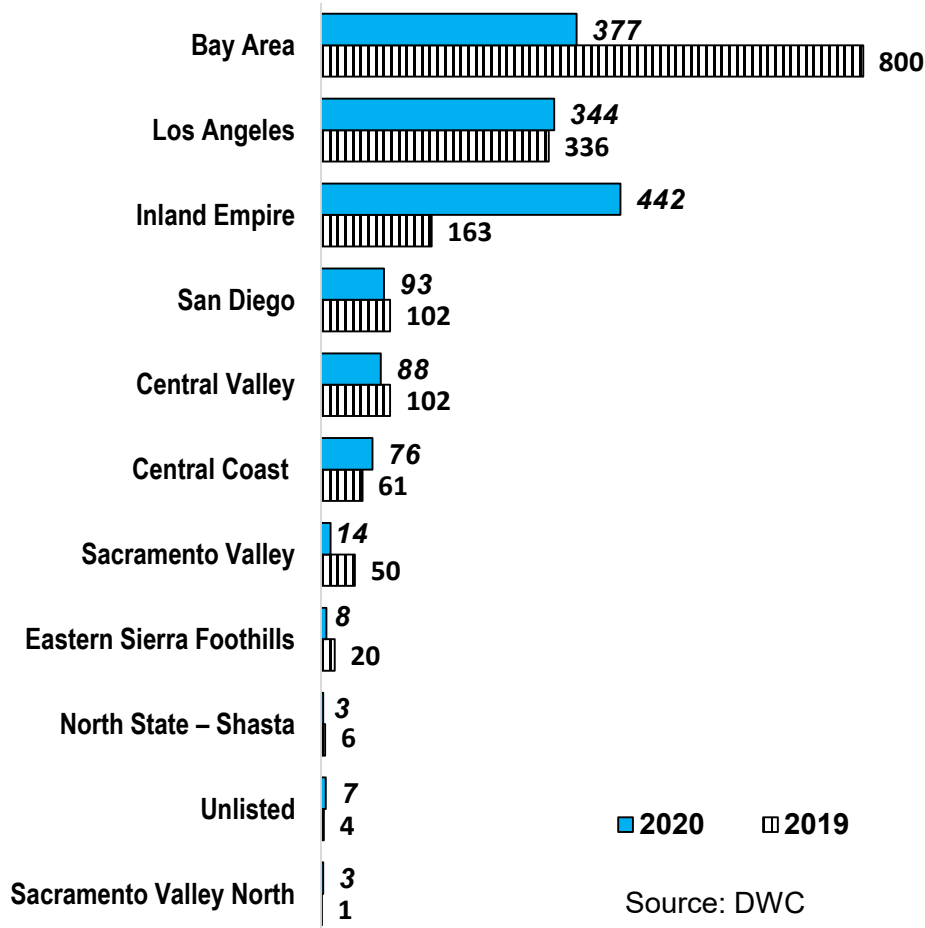
**Figure 88: Number of Independent Bill Review Requests and Decisions, 2013–June 2021**



## WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

Figure 89 shows the number of IBR applications filed in 10 regions of California, and the Northern regions comprised about 47 percent in 2020.

**Figure 89: Number of IBR Applications Filed, by Regions in 2019 and 2020**  
(Total for 2020=1,875 and 2019=1,645)



### Medical Provider Networks and Health Care Organizations<sup>122</sup>

#### **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,<sup>123</sup> 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

<sup>122</sup> The information in this section was provided by DWC Medical Unit, with minor edits by CHSWC staff.

<sup>123</sup> Based on the WCIRB annual report *California Workers' Compensation Losses and Expenses Report*, prepared pursuant to the California Insurance Code, Section 11759.1.

## WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

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 DWC for review and approval, pursuant to 8 CCR Section 9767.1 et seq.

DWC provides all the data on MPNs in this section.

### *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 DWC does not act on the plan within 60 days, the plan is deemed approved by default.

Upon receipt of an MPN application, 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 DWC should act starts the day a complete application is received by 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.



## WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

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 20 summarizes the number of MPN activities from their inception in November 1, 2004, to December 31, 2020. During this time, the MPN program received 2,654 MPN applications. Of these, 53 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, 2020, 2,457 applications were approved. 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. Four hundred and six applications were withdrawn 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. One thousand seven hundred and one applications were terminated after approval. The reason for the termination was the applicant's decision to stop using the MPN. In 2020, DWC reached out to expired MPNs that were past their four-year approval period. In response, DWC received confirmation that over 633 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.

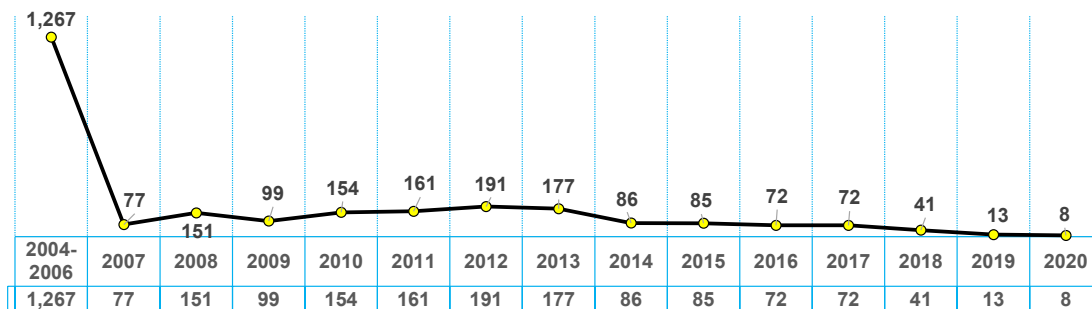
**Table 20: MPN Program Activities from November 1, 2004, to December 31, 2020**

MPN Application Status	Number
Received	2,654
Approved	2,457
Material Modifications	4,703
Withdrawn	406
Revoked	32
Ineligible	53
Terminated	1,701

Source: DWC

Figure 90 shows the receipt of MPN applications from 2004 to 2020. The bulk of applications, 28 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 then to 8 applications in 2020.

**Figure 90: Number of MPN Applications Received, 2004-2020  
(Total = 2,654)**

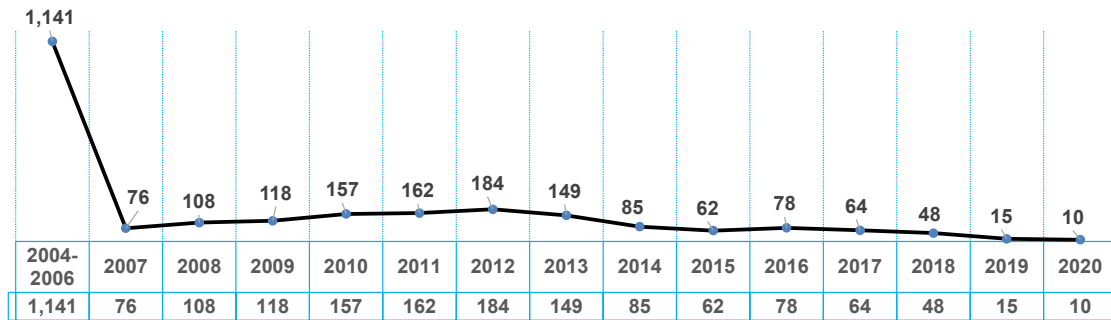


Source: DWC

## WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

Figure 91 shows the MPN applications approved from 2004 to 2020. 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 10 approvals in 2020.

**Figure 91: Number of MPN Applications Approved, 2004-2020**  
(Total = 2,457)



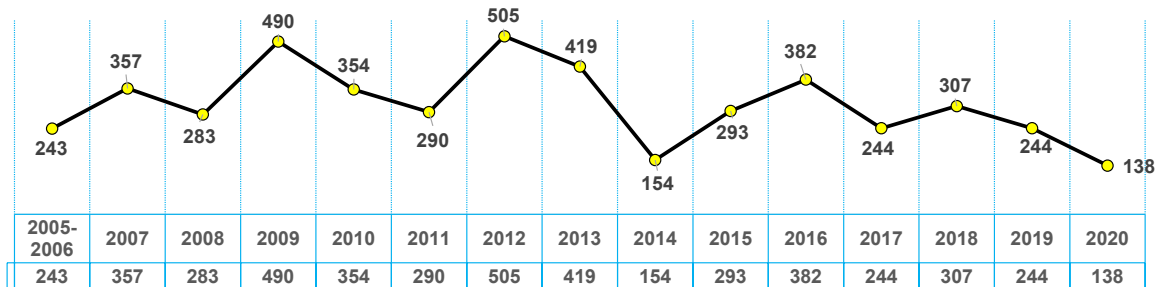
Source: DWC

### *Material Modifications*

MPN applicants are required by 8 CCR Section 9767.8 to provide notice to 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 92 shows the number of material modification filings received by DWC from 2005 to 2020. 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. From 2019 to 2020, the number of material modification filings decreased by 43 percent.

**Figure 92: Number of MPN Material Modifications Received, 2005-2020**  
(Total = 4,703)



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 DWC for reapproval at least six months before the expiration of the four-year approval period. The amended MPN regulations that

## WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

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 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 DWC for a noncompliant plan.

Table 21 shows the number of MPN approved plans that will require a filing for a plan for reapproval through 2024. 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 21: Expiring MPN Application Plans by Quarter and Year Through December 31, 2024**

<b>Quarter</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>2023</b>	<b>2024</b>	<b>Total</b>
<b>Q1</b>	13	15	31	16	18	80
<b>Q2</b>	37	56	19	16	72	163
<b>Q3</b>	43	34	21	22	17	94
<b>Q4</b>	19	42	23	10	17	93
<b>TOTAL</b>	<b>112</b>	<b>147</b>	<b>94</b>	<b>64</b>	<b>124</b>	<b>430</b>

Source: DWC

Table 22 shows the number of MPN application plans for reapprovals received and approved at DWC from 2014 through 2019.

**Table 22: MPN Application Plans for Reapproval Received and Approved by Month Through December 31, 2020**

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

WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

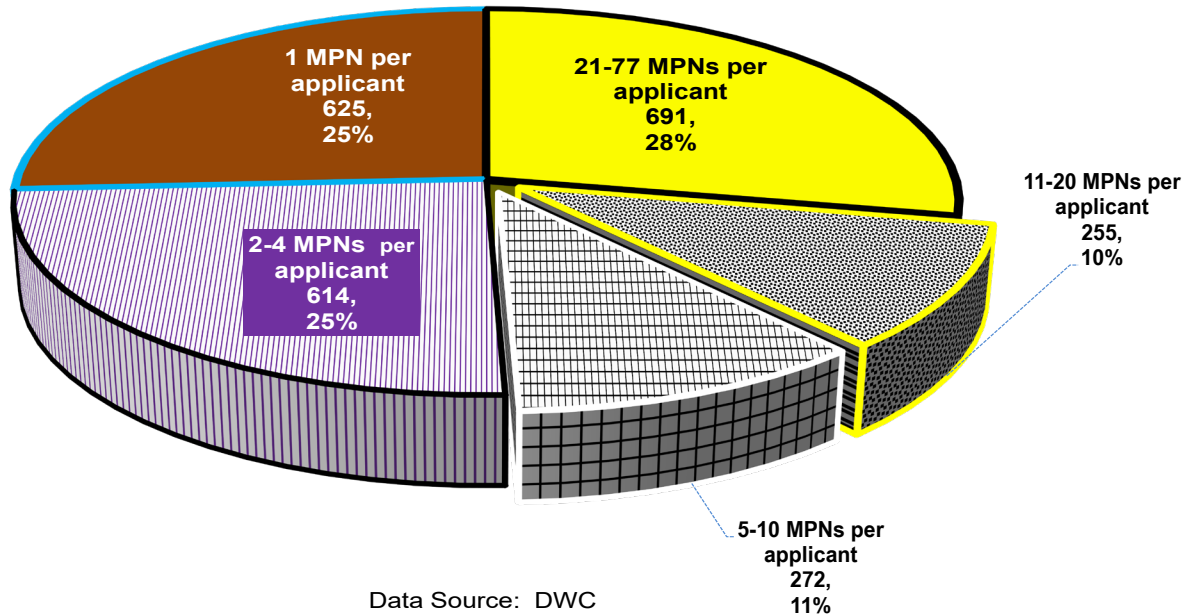
		Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sep	Oct	Nov	Dec	Total
2019	Received	3	9	6	3	2	2	3	12	6	11	8	29	94
	Approved	1	6	7	2	3	4	7	3	8	2	2	3	48
2020	Received	8	15	3	9	3	2	2	15	6	5	3	3	74
	Approved	5	3	6	10	31	20	6	8	2	1	9	6	107

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 75 percent of all MPNs, including 691 approved applicants with 21 to 71 MPNs (see Figure 93). 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 93: Distribution of Approved MPNs by Number of MPNs per Applicant, 2020 (Total=2,457)**



**Table 23: Names of MPN Applicants with 10 or More Approved MPNs**

Name of applicant	No. of MPNs
Ace American Insurance Company	77
Zurich American Insurance Company	46
OCM Coastal Acquisition Co., LLC	45
National Union Fire Insurance Company Of Pittsburg, PA	43

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<b>Name of applicant</b>	<b>No. of MPNs</b>
American Home Assurance Company	41
Safety National Casualty Corporation	36
The Insurance Company Of The State Of Pennsylvania	35
Federal Insurance Company	35
Old Republic Insurance Company	32
Fidelity And Guaranty Insurance Company	32
Medex Healthcare	32
New Hampshire Insurance Company	31
Arch Insurance Company	29
Discover Property & Casualty Insurance Company	27
Hartford Accident And Indemnity Company	27
United States Fidelity And Guaranty Company	26
XL Specialty Insurance Company	26
American Zurich 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
American Guarantee And Liability Insurance Company	16
Hartford Fire Insurance Company	16
Twin City Fire Insurance Company	16
Continental Casualty Company	15
Granite State Insurance Company	15
Hartford Underwriters 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
Indemnity Insurance Company Of North America	11
The North River Insurance Company	11
Zurich American Insurance Company Of Illinois	11
Sparta Insurance Company	10
Hartford Casualty Insurance Company	10
Tokio Marine & Nichido Fire Insurance Co., LTD	10
St. Paul Fire and Marine Insurance Company	10
XL Insurance America, Inc.	10
SPARTA American Insurance Company	10

Source: DWC

## WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

Table 24 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. In 2020, the share of MPN applications filed by insurers fell to 20 percent. 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.

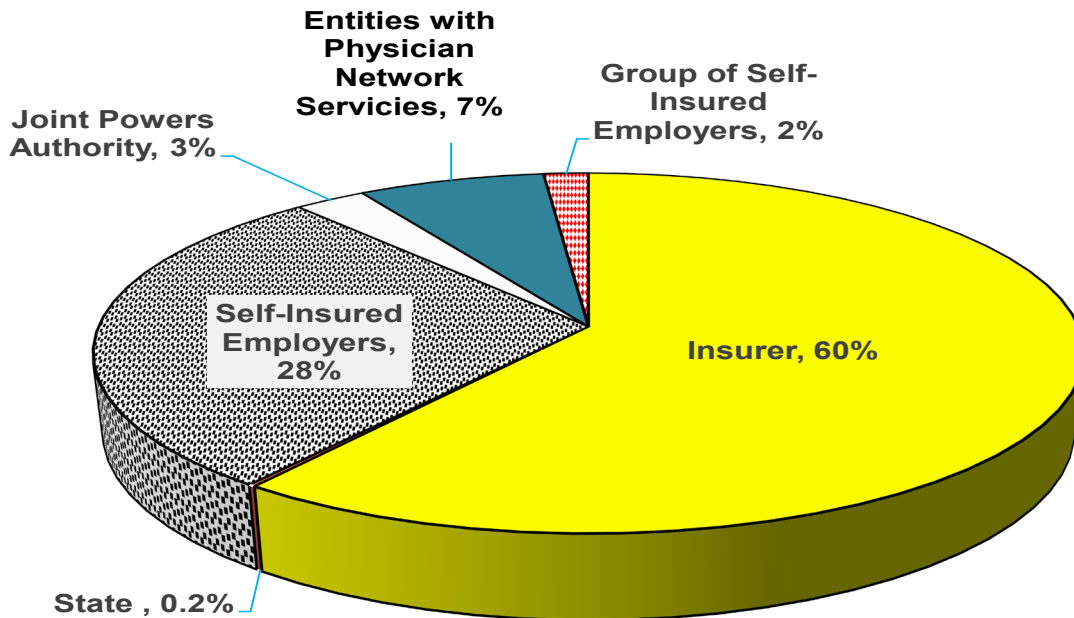
**Table 24: Number of Approved MPN Applications by Type of Applicant, 2004–2020**

Type of Applicant	2004-2013	2014	2015	2016	2017	2018	2019	2020	TOTAL
Insurer	1,375	38	17	24	18	7	5	2	1,485
Self-Insured Employers	614	29	9	5	12	12	0	0	681
Entities with Physician Network Services	6	15	32	45	33	29	10	0	172
Joint Powers Authority	56	3	3	4	0	0	0	0	66
State	4	0	0	0	0	0	0	0	4
Group of Self-Insured Employers	40	0	1	0	0	0	0	8	49
<b>Total</b>	<b>2,095</b>	<b>85</b>	<b>62</b>	<b>78</b>	<b>64</b>	<b>48</b>	<b>15</b>	<b>10</b>	<b>2,457</b>

Source: DWC

Figure 94 shows the distribution of MPN applications approved from 2014 through 2020 by the type of applicant when the entities providing physician network services prevailed. On average, 60 percent of approved MPN applications were submitted by insured employers, followed by 28 percent of self-insurers and 7 percent of entities providing physician network services.

**Figure 94: Distribution of All Approved MPN Applications by Type of Applicant, 2014 - 2020**



Source: DWC

## WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

### ***MPN Plans Using HCO Networks***

Health Care Organizations (HCOs) networks are used by 152 (5.7 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 25. CorVel HCO has an MPN market share of 3.4 percent, followed by MedEx, which has a share of 1.2 percent, and CompAmerica (First Health), which has a share of 1.0 percent.

**Table 25: Number of MPN Applicants Using HCO Networks**

<b>Name of HCO</b>	<b>Approved MPN Plans Using HCO Network</b>	<b>Percentage of Applications Received</b>	<b>Percentage of Applications Approved</b>
CorVel	91	3.4%	3.7%
CompAmerica (First Health)	27	1.0%	1.1 %
MedEx	32	1.2%	1 .3%
Promesa	2	0.08%	0.08%
<b>Total Using HCO</b>	<b>152</b>	<b>5.7%</b>	<b>6.2%</b>

Source: DWC

### ***Status of the MPN Program***

The MPN program is in its fifteenth 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 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 3 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, 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.

## WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

HCOs are managed care organizations established to provide health care to employees injured at work. A health-care service plan or Health Maintenance Organization (HMO), disability insurer, workers' compensation insurer, or a workers' compensation third-party administrator referred to as a Workers' Compensation Health Care Provider Organization (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 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 prior calendar 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 26.

**Table 26: Currently Certified HCOs by Date of Certification/Recertification, 2020**

<b>Name of HCO</b>	<b>Date of Certification/Recertification</b>
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

### ***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. The total employee enrollment under HCOs fell by 56 percent from 481,337 in 2004 to 261,304 in December 2020. Table 27 shows the number of enrollees as of December 31 of each year from 2004 through 2020.



WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

**Table 27: HCOs by Number of Enrollees for 2004 through 2020**

Name of HCO	Medex/ Medex 2	Kaiser Perman.- on-the-Job	Comp Partners	Promesa	CorVel	Intracorp	NetWork	First Health CompAmerica Primary/Select	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
2020	153,013	97,620	n/a	10,671	0	n/a	n/a	0	n/a	n/a	261,304

Source: DWC

**Health Care Organization Program Status**

HCO enrollment has decreased by about 7 percent between 2019 and 2020. Currently, four HCOs continue to operate for the purpose of functioning as a vehicle for the provision of health care to injured workers while the remaining three HCOs exist as deemed network entities for MPN programs.

For further information ...

[www.dir.ca.gov/dwc](http://www.dir.ca.gov/dwc) and [http://www.dir.ca.gov/dwc/MPN/DWC\\_MPN\\_Main.html](http://www.dir.ca.gov/dwc/MPN/DWC_MPN_Main.html)

**Medical Treatment Utilization Schedule Updates**

**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>

## WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

### ***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](#).

During 2020, the evidence base on the management of this disease was evolving at such a rapid pace that updates to this guideline were being published frequently. As a result, DWC waited to adopt and incorporate ACOEM's COVID-19 Guideline into the MTUS until the frequency of updates had slowed to the point that the formal guideline adoption process could be completed. The ACOEM COVID-19 treatment guideline was formally adopted into the MTUS in June 2021.

### **Physician Training**

#### *MTUS Training Modules*

Physicians treating in the California workers' compensation system are required to follow the evidence-based recommendations in DWC's medical treatment utilization schedule (MTUS). The online course below provides an excellent introduction to the MTUS with helpful instructions on its use. In 2016, DWC introduced a free online 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. In 2019, DWC released a revised and expanded online MTUS course to include the Formulary and information on obtaining free MTUS-ACOEM guidelines access.

Topics covered include:

- What the MTUS is and how to use it
- How to navigate the MTUS/ACOEM treatment guidelines and apply recommendations via case scenarios
- Free provider access to the MTUS/ACOEM treatment guidelines
- When to consider recommendations outside of the MTUS guidelines for the care of your patient
- How to use the MTUS Formulary and Drug List
- The role of utilization review (UR) and independent medical review (IMR) physicians

### ***Qualified Medical Evaluator (QME) Training Module***

Qualified Medical Evaluators (QMEs) play a critical role in resolving disputes within the workers' compensation system and DWC has a free online Continuing Medical Education (CME) course on this topic. This course was developed for current QMEs, those who are interested in becoming a QME, or anyone interested in the QME process.

Topics covered include:

- How to prepare for a QME evaluation
- The components of a quality report
- A review of the administrative regulations to stay in compliance as a QME

An updated online QME course was released by DWC in October 2021 and includes additional topics such as detailed guidance on apportionment.

This course is open to the public and may also be useful for attorneys, claims administrators, and medical providers participating in the California workers' compensation system.

## WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

The online courses can be found at the following website:  
<https://www.dir.ca.gov/dwc/CaliforniaDWCCME.htm>

### DIVISION OF WORKERS' COMPENSATION INFORMATION & ASSISTANCE UNIT

DWC's 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 received approximately 3,025 calls a week on its toll-free line, 800-736-7401, or a total of 157,294 calls in 2020. These callers get prerecorded messages in English and Spanish about the workers' compensation system and can request forms, fact sheets, or guides.

**Table 28: Information & Assistance Unit Workload**

No. of	2013	2014	2015	2016	2017	2018	2019	2020
Calls from public handled	300,515	308,221	307,242	311,473	299,674	201,050	190,647	157,294
Outgoing calls placed	33,965	33,015	34,017	31,985	29,922	27,578	26,772	25,773
Settlements reviewed and assisted	13,055	14,129	14,535	13,988	10,841	9,332	8,509	7,346
Face-to-face meetings with walk-ins	24,588	25,105	26,858	25,715	20,987	18,900	16,666	5,497
Injured Worker Workshop presentations	243	239	245	229	238	185	183	50
Workshops for injured workers attended	3,013	2,615	2,377	2,714	1,593	1,053	899	548
Correspondence written	13,005	12,996	11,557	13,511	14,805	14,700	14,765	42,869
Conference with WC Judge	NA	9,125	9,334	9,313	7,314	7,700	7,329	5,563
Audit Unit referrals	NA	70	58	NA	46	25	2	0

Source: DWC

Spanish Outreach Attendance data by the type of outreach was available only since 2017 (see Table 29). Beginning in the middle of March 2020, all 24 DWC district offices were closed to the public. Small numbers of injured workers continue visiting the district offices and getting assistance from the I&A Officers.

**Table 29: Spanish Outreach Attendance**

	No. of Events				Avg No. of Attendees per Event			
	2017	2018	2019	2020	2017	2018	2019	2020
Mexican consulates	27	40	40	5	60	50	45	45
Radio	1	1	1	0	NA	NA	NA	NA
Workshops	3	6	3	1	50-75	25-50	25-50	10
Farmworker-related fairs/events	27	29	10	3	200-300	200-300	200-300	200-300

Source: DWC

The annual DWC Educational Conference is the largest workers' compensation training in the state and allows claims administrators, attorneys, medical providers, return-to-work specialists, employers, human resources, and others to learn firsthand about the most recent developments in the system, including any new laws or requirements. Speakers from the Division of Workers' Compensation and the private sector address topics pertinent to claims administrators, medical providers, attorneys, rehabilitation counselors, and others involved in workers' compensation. The 28th conference took place on a virtual platform from

WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

March 24 to March 26, 2021, with support from 7 conference sponsors with a total of 1,125 attendees and 15 vendors.

**Table 30: DWC Educational Conferences Attendance, 2013–2020**

		Attendees	Exhibitors
<b>Los Angeles</b>	<b>2013</b>	1,091	87
	<b>2014</b>	1,058	85
	<b>2015</b>	1,162	89
	<b>2016</b>	1,191	95
	<b>2017</b>	1,190	91
	<b>2018</b>	1,039	74
	<b>2019</b>	1,045	74
<b>Oakland</b>	<b>2013</b>	762	53
	<b>2014</b>	740	53
	<b>2015</b>	836	61
	<b>2016</b>	878	59
	<b>2017</b>	803	66
	<b>2018</b>	733	54
	<b>2019</b>	800	50
	<b>2020</b>	559	41

Note: Due to the COVID-19 pandemic, the 2020 Los Angeles conference was canceled.

Source: DWC

**DIVISION OF WORKERS' COMPENSATION INFORMATION SERVICE CENTER**

DWC's 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 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	2020
Incoming calls	306,026	180,144	198,232	184,463	177,281	163,119	155,072
Outgoing calls*	9,425	3,532	184	312	264	133	149
Calls in Spanish	22,054	14,908	13,465	12,609	11,798	11,766	9,985
Calls in Spanish for Return to Work Unit**	na	na	na	na	na	1,256	1,132
Calls transferred to district offices	58,523	33,191	47,271	45,851	39,514	39,102	23,969

**WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE**

<b>Activities</b>	<b>2013 &amp; 2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>
EAMS Help Desk emails	32,147	21,000	16,208	20,025	22,594	18,724	16,009
Correspondence mailed out	10,309	5,346	5,492	4,697	4,477	3,490	3,736
NOR-related questions processed	78,647	47,548	30,243	29,547	25,045	27,381	16,730
VEST/Issue tracker of EAMS related problems	381	53	18	47	30	13	10

\* 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

**RETURN-TO-WORK SUPPLEMENT PROGRAM**

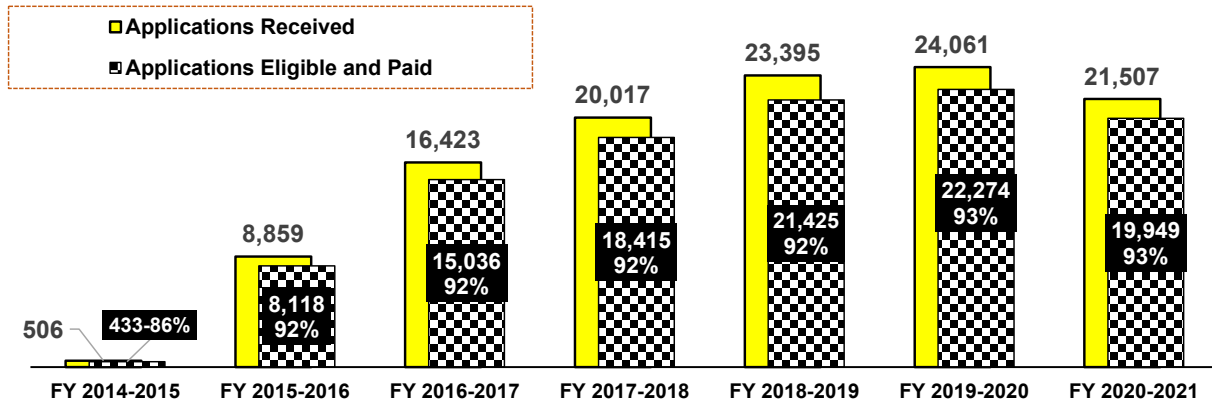
The Return-to-Work (RTW) Fund was created under Labor Code Section 139.48 as one of the components of SB 863 enacted in September 2012. This section requires that the Department of Industrial Relations (DIR)'s Return-to-Work Supplement Program (RTWSP) administer a \$120 million fund for the purpose of 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, 2017<sup>124</sup>. 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 95, 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. From FY 2019-2020 to FY 2020-2021, mainly due to the COVID-19 pandemic, the number of applications received decreased by 11 percent and the number of eligible RTWSP applications decreased by 10 percent.

<sup>124</sup> <http://www.dir.ca.gov/ODRegulations/ReturnToWorkRegulations/ReturnToWork.html>;  
<http://www.dir.ca.gov/ODRegulations/ReturnToWork/ReturnToWork.html>.

WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

Figure 95: 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 95, 7-8 percent of the applications received from FY 2015-2016 to FY 2020-2021 were ineligible according to the RTWSP rules and standards. The reasons for ineligibility from FY 2015-2016 to FY 2020-2021 are detailed in Table 32 and included those falling under 8 CCR Sections: 17302(a), 17302(b), 17304, and 17306.

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. During the COVID-19 pandemic, DWC office closures slowed down the application processing time, increasing the Average Days of Benefit Issuance from Application Received Date from 44 days in FY 2019-2020 to 59 days in FY 2020-2021.

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	FY 2020-2021
Average Days of Benefit Issuance from Application Received Date (days)	10	11	13	20	33	44	59
Average Days of Benefit Issuance from Decision of Eligibility (days)	6	5	5	5	5	5	5

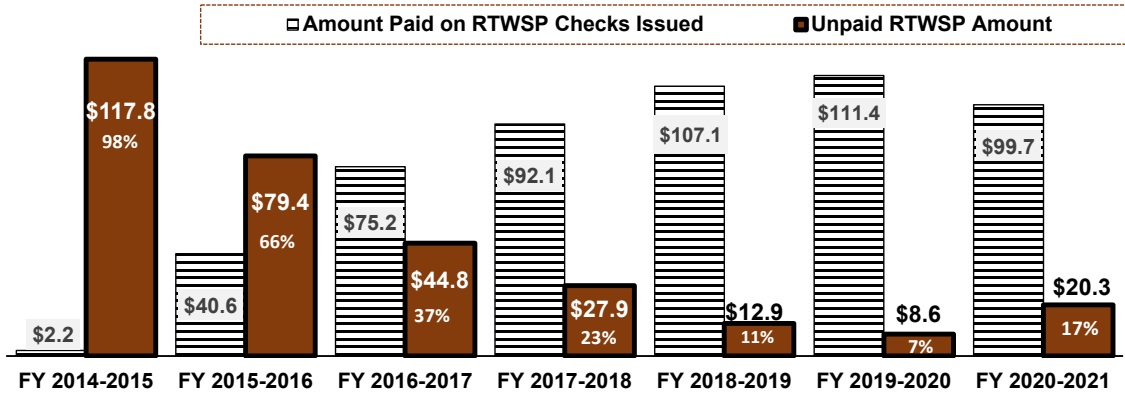
\* Note: Data in FY 2014-2015 are for 4/13/2015 - 6/30/2015.

Source: DWC

## WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

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 96 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.<sup>125</sup> During the pandemic, the amount disbursed in FY 2020-2021 decreased by 10 percent compared to FY 2019-2020, with the share of the unpaid benefit increasing from 7 to 17 percent in that period.

**Figure 96: 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

## DIVISION OF WORKERS' COMPENSATION UNINSURED EMPLOYERS BENEFITS TRUST FUND<sup>126</sup>

### 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 DIR's 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

<sup>125</sup> 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](https://www.rand.org/content/dam/rand/pubs/research_reports/RR2500/RR2548/RAND_RR2548.pdf).

<sup>126</sup> Data for Figures 98 and 101 in this subsection is not available at the time.

## WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

System (EAMS). EAMS provides UEBTF business analytics and maintains document processing workflows supporting the judicial review process, and expands document processing for UEBTF. 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 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

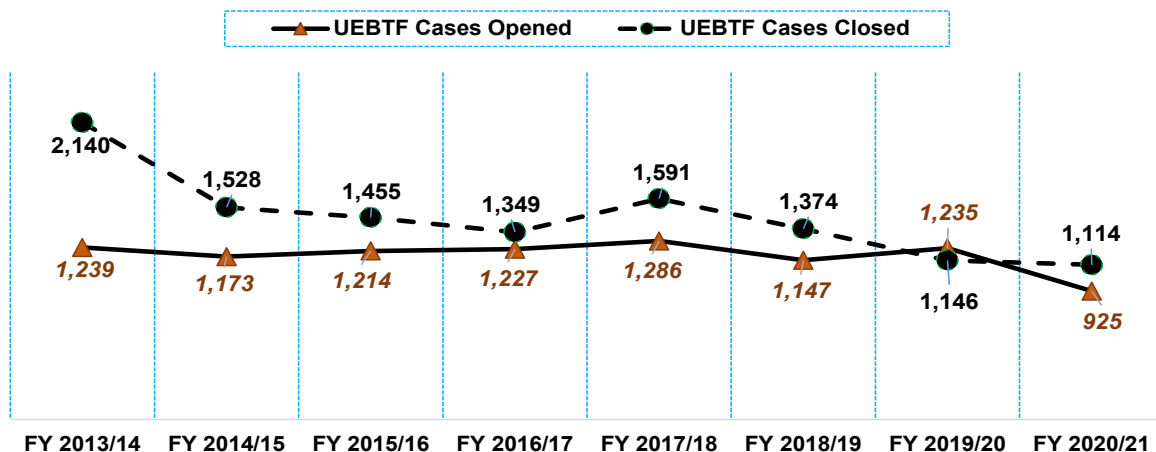
#### UEBTF Funding Mechanisms

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.”<sup>127</sup> 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.

The number of new and closed UEBTF cases is shown in Figure 97. Over the period FY 2013-2014 to FY 2020-2021, excluding 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 2020-2021 this decreased to an average of 1.2 yearly closed cases for each UEBTF case opened.

**Figure 97: UEBTF Cases Opened and Closed, FY 2013-2014 to FY 2020-2021**



Source: DWC

<sup>127</sup> Prior to the workers' compensation reforms of 2004, the funding for UEBTF came from the General Fund.

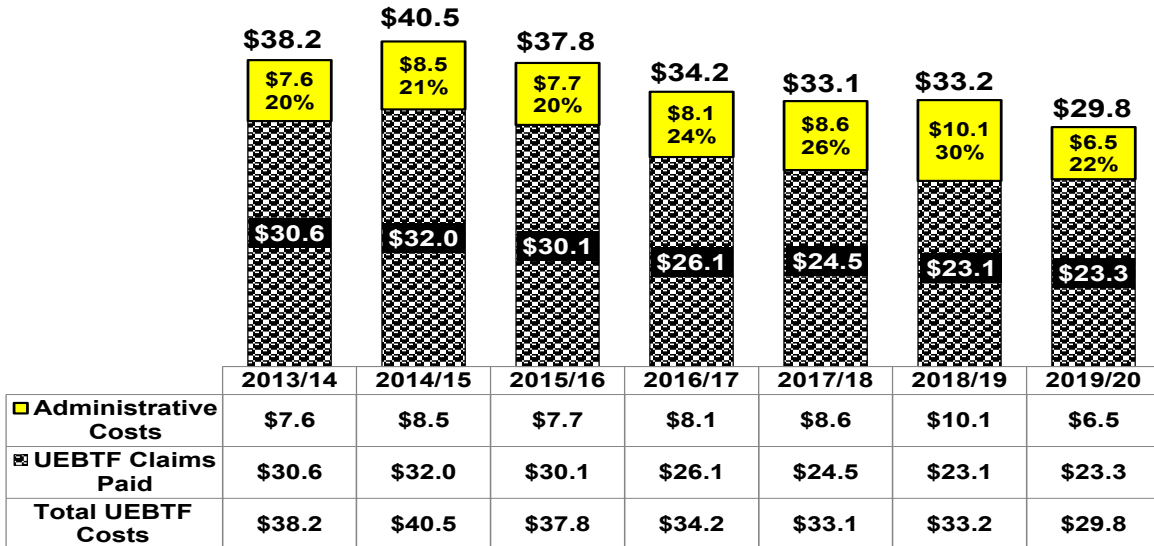


## WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

### **Cost of the Uninsured Employers Benefits Trust Fund**

Figure 98 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 98: Payments on UEBTF Claims and Administrative Costs, FY 2013-2014 to FY 2019-2020**  
(in \$ million)



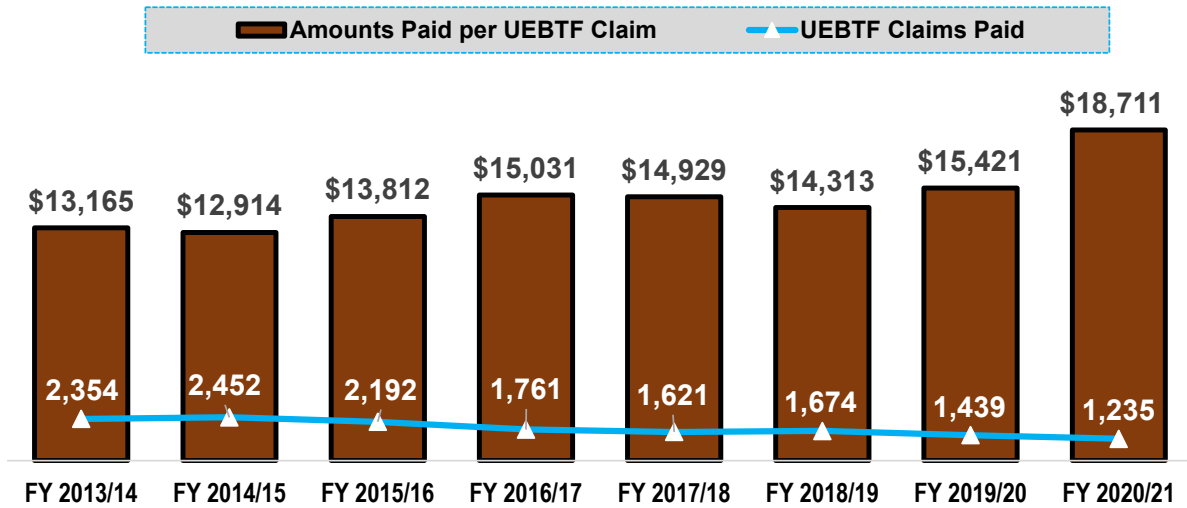
Note: UEBTF Costs for the last Fiscal Year are estimates done before the DIR's books are closed and subject to final adjustments.

Data Source: DWC

As shown in Figure 99, 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. The trend developed from FY 2018-2019 to FY 2019-2020, when the average amount paid per UEBTF claim increased by 8 percent as the number of uninsured claims paid decreased by 14 percent, continued from FY 2019-2020 to FY 2020-2021. In that period the average amount paid per UEBTF claim increased by 21 percent as the number of uninsured claims paid decreased by 14 percent.

WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

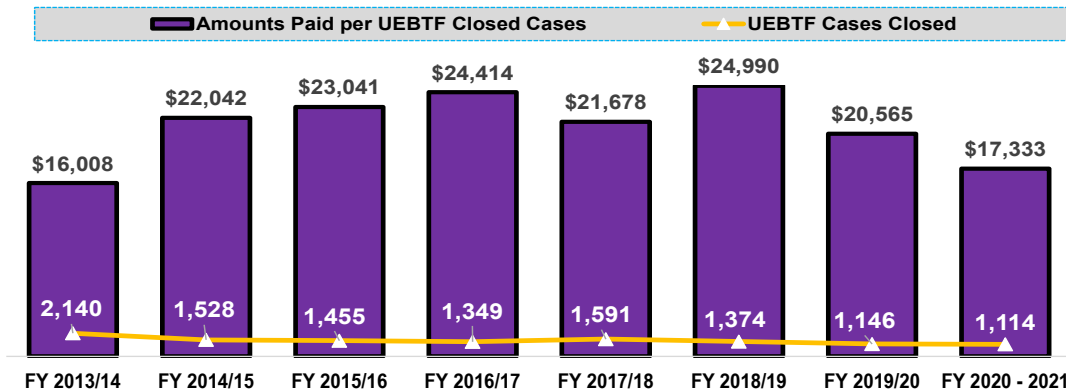
Figure 99: Average Amount Paid per UEBTF Claim and the Number of UEBTF Claims Paid, FY 2013-2014 to FY 2020-2021



Source: DWC

Figure 100 shows the number and the average amount paid on 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.<sup>128</sup> Between FY 2013-2014 and FY 2018-2019, the average number of cases closed was 1,600.<sup>129</sup> 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 the last two periods from FY 2018-2019 to FY 2019-2020 and FY 2019-2020 to FY 2020-2021, both the average number of cases closed and the amount paid per closed case declined.

Figure 100: Average Amount Paid per UEBTF Closed Case and the Number of UEBTF Cases Closed, FY 2013-2014 to FY 2020-2021



Source: DWC

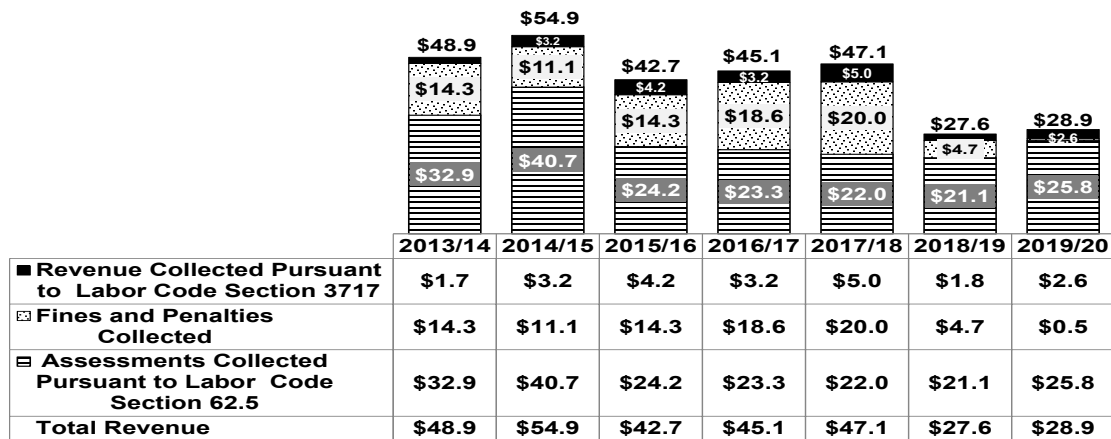
<sup>128</sup> UEBTF normally closes a case on the grounds of inactivity for one year at the discretion of the adjuster. However, the case could be reopened if the applicant reappears for reasons such as medical treatment or case settlement.

<sup>129</sup> 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 101 shows monies collected by the source of the revenue. Values for the two components of UEBTF revenue such as revenue collected pursuant to Labor Code § 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 DIR accounting books are closed. The value of assessments collected pursuant to Labor Code § 62.5 include assessments collected by OSIP and DWC and are final as reported in Figure 98. 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 Labor Code § 62.5. The share of assessments collected pursuant to Labor Code § 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 101: 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

### DIVISION OF WORKERS' COMPENSATION SUBSEQUENT INJURIES BENEFITS TRUST FUND<sup>130</sup>

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:<sup>131</sup>

- 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.<sup>132</sup>

<sup>130</sup> Fiscal Year 2020-2021 data for Figures 103, 104, and 105 in this subsection is not available at the time.

<sup>131</sup> <https://www.dir.ca.gov/dwc/claims.html>.

<sup>132</sup> [https://leginfo.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=LAB&sectionNum=4751](https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=LAB&sectionNum=4751).

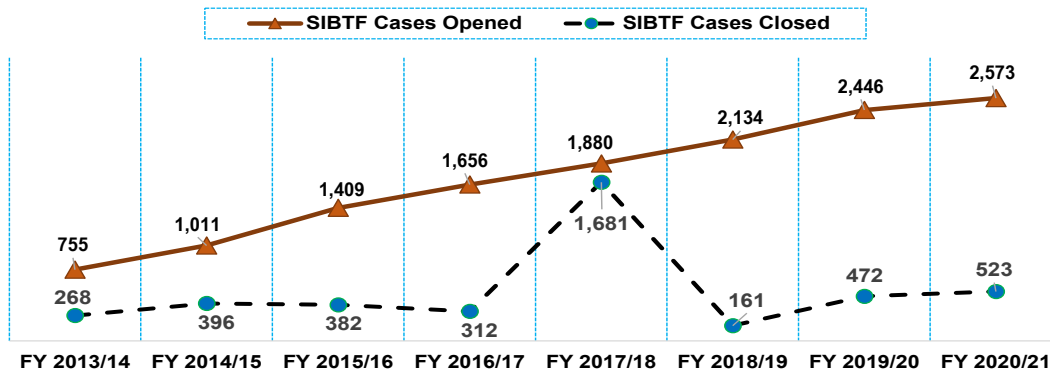
## WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

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:
  - o 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.
  - o 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.<sup>133</sup>

The number of workers' compensation cases involving SIBTF have been steadily increasing since FY 2013-2014. Figure 102 shows that, from FY 2013-2014 to FY 2020-2021, the number of SIBTF cases opened more than tripled, totaling 13,864 cases in 8 years. Over the same period, 4,195 cases were closed, with a spike of 1,681 cases closed in FY 2017-2018 because of identification of abandoned cases.<sup>134</sup>

**Figure 102: Number of SIBTF Cases, Opened and Closed**



Source: DWC

As shown in Figure 103, 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

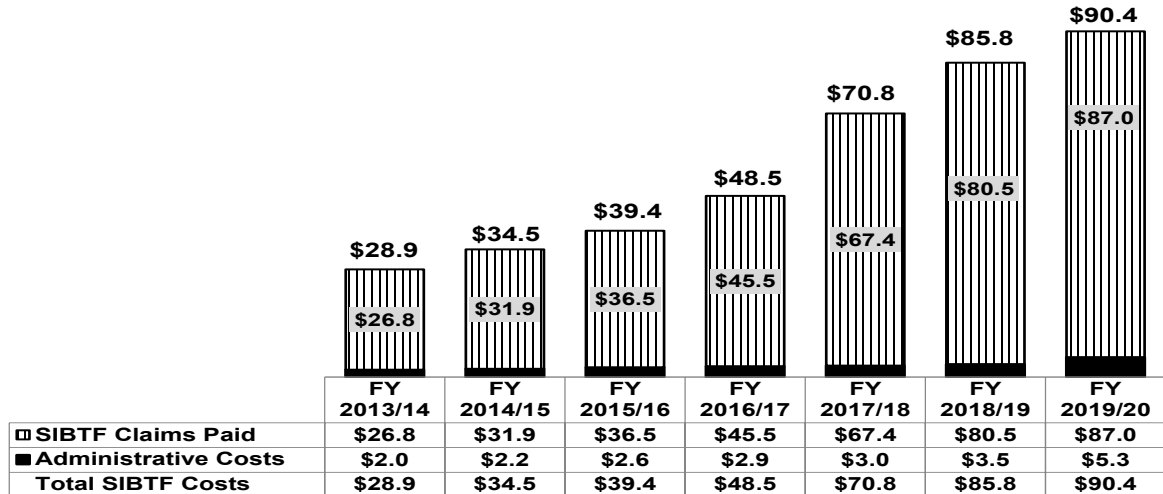
<sup>133</sup> See DWC Electronic Adjudication Management System (EAMS) section in this chapter for a more detailed description of EAMS activities.

<sup>134</sup> 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](https://esd.dof.ca.gov/Documents/bcp/1920/FY1920_ORG7350_BCP2832.pdf).

## WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

legislation such as SB 899 and Labor Code Sections 4663 and 4664.<sup>135</sup> 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.<sup>136</sup>

**Figure 103: SIBTF Total Costs (in \$ million)**

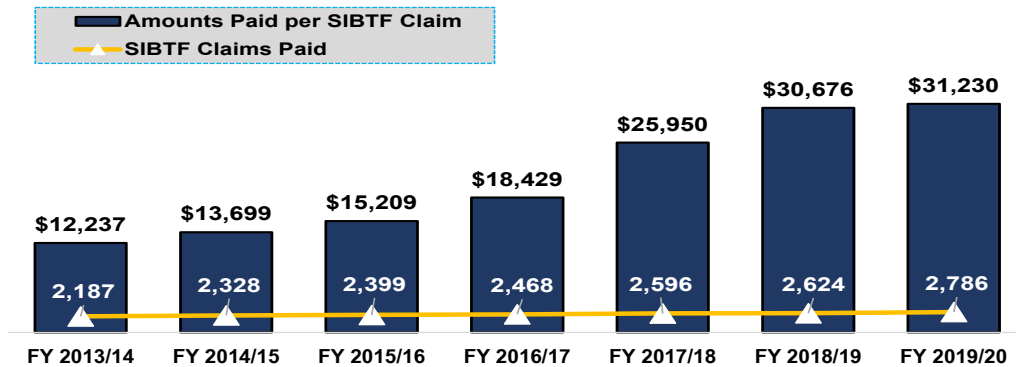


Note: The SIBTF Administrative Costs for the last Fiscal Year are estimates done before the DIR's books are closed and subject to final adjustments.

Data Source: DWC

According to Figure 104, 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 104: 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 105 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

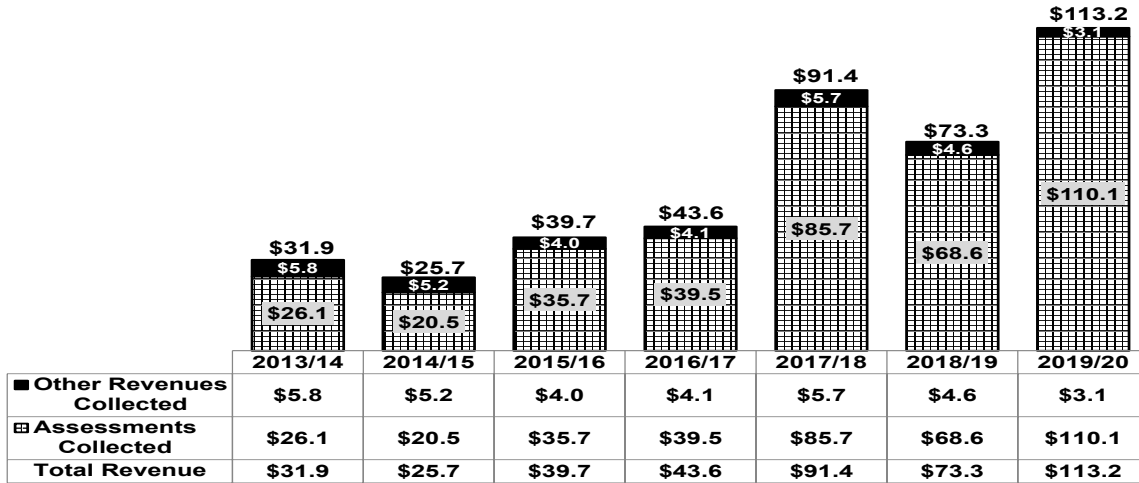
<sup>135</sup> According to these amended provisions of Labor Code § 4663 and 4664, the apportionment of permanent disability was based on the causation of disability. This means that workers were not entitled to compensation for the worsening of a pre-existing condition.

<sup>136</sup> [https://esd.dof.ca.gov/Documents/bcp/1920/FY1920\\_ORG7350\\_BCP2832.pdf](https://esd.dof.ca.gov/Documents/bcp/1920/FY1920_ORG7350_BCP2832.pdf)

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amount paid per claim, changes in the timing of permanent disability (PD) payments in which 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 105: 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

### ADJUDICATION SIMPLIFICATION EFFORTS

#### Division of Workers' Compensation Information System

WCIS receives about 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 WC claims administrators. Due to the impact of Covid-19, the number of FROI claims received in 2020 was about 40,000 less than a regular year, and among the claims received in 2020, 18 percent were Covid-19 claims. This similar pattern is continuing in 2021. WCIS data is being used more than ever to help monitor and improve the WC system in California. The quality of the data has enabled rigorous empirical research and provided 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.

The adoption of new WCIO cause and nature codes enables WCIS FROI/SROI to track Covid-19 exposures and Covid-19 vaccine side effect claims when possible.

WCIS FROI/SROI data is used for:

- Evaluating the efficiency and adequacy of benefit delivery
- Monitoring Covid-19 exposures in workplace and identifying high Covid-19 exposure risk occupation and industry groups
- Assisting the department and CalOSHA in the safety and health rulemaking process
- Supporting the department in its evaluation of health and safety hazards
- Analyzing the impact of assembly and senate bills

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- External inquiries and research requests coming from universities, research organizations, stakeholders, trading partners and the media.

Since switching to California Medical Version 2.0 on April 6, 2016 to September 8, 2021, 64.5 million bills with 187.5 million bills lines were collected. This data is being used by DIR, other CA state entities, and bona fide researchers and the public at large. State agencies such as the California Department of Health Services continue to use the WCIS data in their health surveillance efforts including the current Coronavirus and its variants. While most data is provided via an MOU between DWC and data requestors, the WCIS team also makes aggregated data available through DWC's website.

WCIS medical data provides supportive evidence for California's:

- Battle 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.

### **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) 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, 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.

## WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

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.

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.
- In November, DIR 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.



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- 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.

2018 DIR activities:

- 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.
- Reduced redundancy and increased efficiency in EAMS software by updating Curam case management software according to current industry standards.

In 2019, DIR updated EAMS software and hardware and expanded JET filing.

2019 DIR activities:

- 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.
- Continued to improve SIBTF and UEBTF business analytics while enhancing tracking capabilities for case outcomes.
- Increased efficiency in EAMS software for internal staff by adding bulk case reassignment processing.
- Upgraded EAMS electronic service, FileNet's search application, and data transfer software to meet current industry standards.
- Expanded the number of forms and documents to be submitted through JET filing.
- Began adding upfront UAN validations for structured E-form submissions.

In 2020, DIR updated EAMS software and hardware and expanded the JET filing.

2020 DIR activities:

- Expanded the number of forms and documents to be submitted through JET filing and updated the internal processing of erred case opening documents.
- Completed the process of updating E-forms to remove watermark comments and populate information entered into previously blocked fields.
- 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.
- 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 Labor Code § 139.2(d)(2).
- Upgraded EAMS reporting software and document repository and viewing software to current industry standards.
- Improved the ease of viewing scheduled hearings.
- Collected data on employment disputes to conform to AB 5.

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- Added and updated Orders, work queues, related workflows and Communications templates.
- Updated security roles for SAU and UEBTF.
- Improved the processing of unstructured documents.
- Added access to DEU forms by Claims Administrators.
- Created the ability to view, add and modify the Judge Conference Lines in EAMS to integrate ADJ and SAU virtual conferences.
- Modified hearing notices to provide notice of virtual conferences.
- Updated processing of ADJ, UEBTF and SIBTF forms.

### 2021 DIR activities:

- Migrated to a new JET software and enhanced the JET incomplete filing queue.
- Enhanced the registration of employers and employer roles.
- Automated some repetitive portions of the UEBTF Lien Recovery Process and adjusted payment schedule editing.
- Updated security roles for ADJ and UEBTF.
- Revised the EDD Golden Rod Lien.
- Expanded SIBTF workflows.
- Amended the hearing schedule to allow options for in-office or virtual hearings as well as sending out the appropriate hearing notices.

### **Carve-Outs: Alternative Workers' Compensation Systems**

The Legislature has enacted reforms to California's statutory WC system by authorizing employers and unions to review, negotiate and settle the WC claims of union-represented workers through an approved alternative dispute resolution program (ADR)<sup>137</sup> that has been approved by DIR/DWC.

A provision of the WC reform legislation in 1993, implemented through Labor Code Section 3201.5, allowed construction contractors and unions, via the collective bargaining process, to establish ADRs. In 2002, the Legislature extended the program to cover alternative dispute resolution labor-management agreements to include members of the aerospace and timber industries and shortly thereafter to include members of all non-construction industries as of January 1, 2004. This is codified in Labor Code § 3201.7.

CHSWC is monitoring the carve-out program (Labor Code Section 77), which is administered by DWC. Consistent with its mandate to oversee California's WC system, DIR/DWC administers the ADR program, ensuring that individual participants meet the requirements for participation set out in statute and regulation (Labor Code § 54, 111, 133, and 3201). DWC has promulgated regulations pursuant to Labor Code sections 3201.5 and 3201.7; those regulations are codified at Title 8, section 10200 et seq. of the California Code of Regulations (CCR).<sup>138</sup>

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<sup>137</sup> These programs are sometimes colloquially referred to as "carve outs" because they are an approved exception to the WC claims system created and governed by the Labor Code and corresponding regulations.

<sup>138</sup> Collective Bargaining Agreements Under Labor Code Sections 3201.5 and 3201.7:

[https://govt.westlaw.com/calregs/Browse/Home/California/CaliforniaCodeofRegulations?guid=I59F299E0D47F11DE8879F88E8B0DAAAE&originationContext=documenttoc&transitionType=Default&contextData=\(sc.Default\)](https://govt.westlaw.com/calregs/Browse/Home/California/CaliforniaCodeofRegulations?guid=I59F299E0D47F11DE8879F88E8B0DAAAE&originationContext=documenttoc&transitionType=Default&contextData=(sc.Default))

## WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

### *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.

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.

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- 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.

### *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.”<sup>139</sup> As of the date of this annual report, no subsequent legislation has amended the substantive rights or obligations of parties to an authorized ADR program.

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 Labor Code § 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*

Employer participants in authorized ADR programs are obligated to make regular reports to the Division of Workers' Compensation. Section 10203 of title 8 of the California Code of Regulations details those obligations. Section 10203 requires that every employer participating in an authorized ADR program provide DWC with specified information about workers' compensation claims 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 is to 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 employer-members, either submit data directly to DWC, or “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.” (Cal. Code Regs., tit. 8, § 10203, subd. (a)(2).)

### *Person hours and payroll covered by agreements filed*

As Table 34 shows, for calendar year 2020, 64 reporting programs reported payroll and person-hours. Carve-out programs reported that for the 2020 calendar year, they covered 126 million work hours and \$3.4 billion in payroll. The reported average wage per carve-out person-hours worked was \$27 per hour.

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<sup>139</sup> Sen. Bill No. 899 (2003 – 2004 Reg. Sess.) §6 & §7 [Stats. 2004, ch. 34, §6]

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**Table 34: Estimated Person-Hours Worked and Payroll, 2008–2020**

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	47,000	\$32
2018	19	187	\$3,597	101	50,500	\$36
2019	59	360	\$4,210	126	63,000	\$33
2020	64	150	\$3,406	126	62,800	\$27

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>.

Labor Code Section 3201.5.

[https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=3201.5.&lawCode=LAB](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=3201.5.&lawCode=LAB).

Labor Code Section 3201.7.

[https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=3201.7.&nodeTr eePath=5.1.1&lawCode=LAB](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=3201.7.&nodeTr eePath=5.1.1&lawCode=LAB).

*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).

*Carve-Outs' in Workers' Compensation: An Analysis of Experience in the California Construction Industry (1999).* <http://www.dir.ca.gov/CHSWC/CarveOutReport/Carveoutcover.html>.

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**DIVISION OF LABOR STANDARDS ENFORCEMENT BUREAU OF FIELD ENFORCEMENT<sup>140</sup>**

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.

Table 35 lists the violations and related penalties from FY 2019–2020 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: BOFE (including Public Works) Violations and Penalties by Category, FY 2019–2020**

Citation Category	Number of Violations	Penalties Assessed	Wages Assessed
<b>Workers' Compensation</b>	<b>888</b>	<b>\$16,016,021.74</b>	<b>NA</b>
Itemized Statement (L.C. 226)	297	\$8,633,250	\$5,565,799.97
Overtime	102	\$ 665,700	\$ 8,523,972.70
Rest and Meal Period	74	\$628,950	\$3,693,262.99
Minimum Wage	141	\$1,511,750	\$28,182,627.48
Child Labor	66	\$162,000	NA
Garment Registration	9	\$24,060.33	NA
Garment	27	\$135,000	NA
Janitorial Registration	8	\$72,600	NA
Car Wash Registration	23	\$168,600	NA
Unlicensed Farm Labor Contractor	1	\$10,000	NA
Unlicensed Construction Contractor	17	\$341,800	NA
Violation of Payment of Wages Provision (L.C. 204)	12	\$1,540,305.45	NA
Misclassification	9	\$1,605,000	NA
Reimbursable Business Expenses	2	\$9,300	\$12,611.34
Failure to Maintain Records	3	\$1,500	NA
Violation of Reporting Time	1	\$150	\$105.49
Contract Wages Above Minimum Wage	NA	NA	\$7,296,228.65
Waiting Time Penalties	NA	NA	\$10,275,429.27
<b>Total</b>	<b>1,680</b>	<b>\$31,525,987.52</b>	<b>\$63,550,037.89</b>
Public Work Totals	659 <sup>a</sup>	\$23,952,406.10 <sup>b</sup>	\$23,197,217.39
<b>GRAND TOTAL</b>	<b>2,339</b>	<b>\$55,478,393.62</b>	<b>\$86,747,255.28</b>

<sup>a</sup> The Public Works Unit does not conduct inspections but, rather, measures performance based on cases opened for audit purposes. The data in this table should be understood as 1,660 audits conducted, with 659 civil wage and penalty assessments (CWPAAs) issued (rather than the number of citations/violations). These measurements are included here to provide a full picture of the Division's performance.

<sup>b</sup> Includes Labor Code Sections 1775, 1777.7, 1813, and 1776 penalty collections.

Source: DLSE

<sup>140</sup> The latest available data for Bureau of Field Enforcement (BOFE) activities are for FY 2019-2020.

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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.

Effective July 1, 2018, all janitorial service provider employers were required to register with DLSE by mail or online by October 1, 2018. The registration fee is \$500 annually and pursuant to L.C. section 1423, failure to register is subject to a fine of \$100 per day, up to \$10,000. 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.<sup>141</sup>

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.<sup>142</sup>

To disincentivize businesses from hiring unregistered janitorial services, any person or entity that contracts with a janitorial employer lacking a current and valid registration can be fined between \$2,000 and \$10,000 for the first violation, and between \$10,000 and \$25,000 for a subsequent violation under the L.C. section 1432(b).

The data in the Table 36 represent the first three full years of the registration requirement:

**Table 36: Janitorial Service Providers: Registration and Labor Code Sections 1423 and 1432(b) Penalties**

	FY 2018-2019	FY 2019-2020	FY 2020-2021
Number of new janitorial service providers and contractors registered.	1,669	1,283	1,006
Number of newly registered janitorial service providers who incurred a penalty.	5	2	3
Total Labor Code § 1423 penalties incurred by janitorial service providers and contractors for failure to register by required date.	3 employers were assessed a civil penalty of a total of \$30,000	8 companies were assessed a civil penalty of a total of \$62,600 and \$2,600 had been received.	3 companies were assessed a civil penalty of a total of \$23,900 (amounts received haven't been reported yet.)

<sup>141</sup> [https://www.dir.ca.gov/DLSE/Janitorial\\_Registration\\_FAQs.html](https://www.dir.ca.gov/DLSE/Janitorial_Registration_FAQs.html).

<sup>142</sup> <https://www.dir.ca.gov/dlse/Janitorial-Training.html>

## WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

	FY 2018-2019	FY 2019-2020	FY 2020-2021
Total Labor Code § 1432(b) penalties incurred by persons or entities contracting with unregistered janitorial services	NA	2 companies were assessed a civil penalty of a total of \$12,000.	\$0.0
Number of janitorial service providers and contractors who renewed their registration in one year.	NA	0	1,001

Source: DLSE

- Number of new janitorial service providers and contractors registered in FY 2019-2020: 1,238
- Number of new janitorial service providers and contractors who registered in 2019-2020 after October 1, 2018, and incurred a penalty: 3
- Total Labor Code § 1423 penalties incurred by janitorial service providers and contractors in FY 2019-2020 for failure to register by required date: 3
- Total amount of Labor Code § 1423 penalties in FY 2019-2020: \$23,900.00.
- Total Labor Code § 1432(b) penalties incurred by companies contracting with unregistered janitorial services in FY 2019-2020: \$0.0

*For further information ...*

[https://www.dir.ca.gov/dlse/Janitorial\\_Providers\\_Contractors.html](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 (CWC).

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.<sup>143</sup> 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.

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<sup>143</sup> She is currently serving on the Fraud Assessment Commission at the Department of Insurance as an appointee of former Governor Jerry Brown.



## WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

- 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 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:<sup>144</sup>

- 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 2019-2020 is 3,501.

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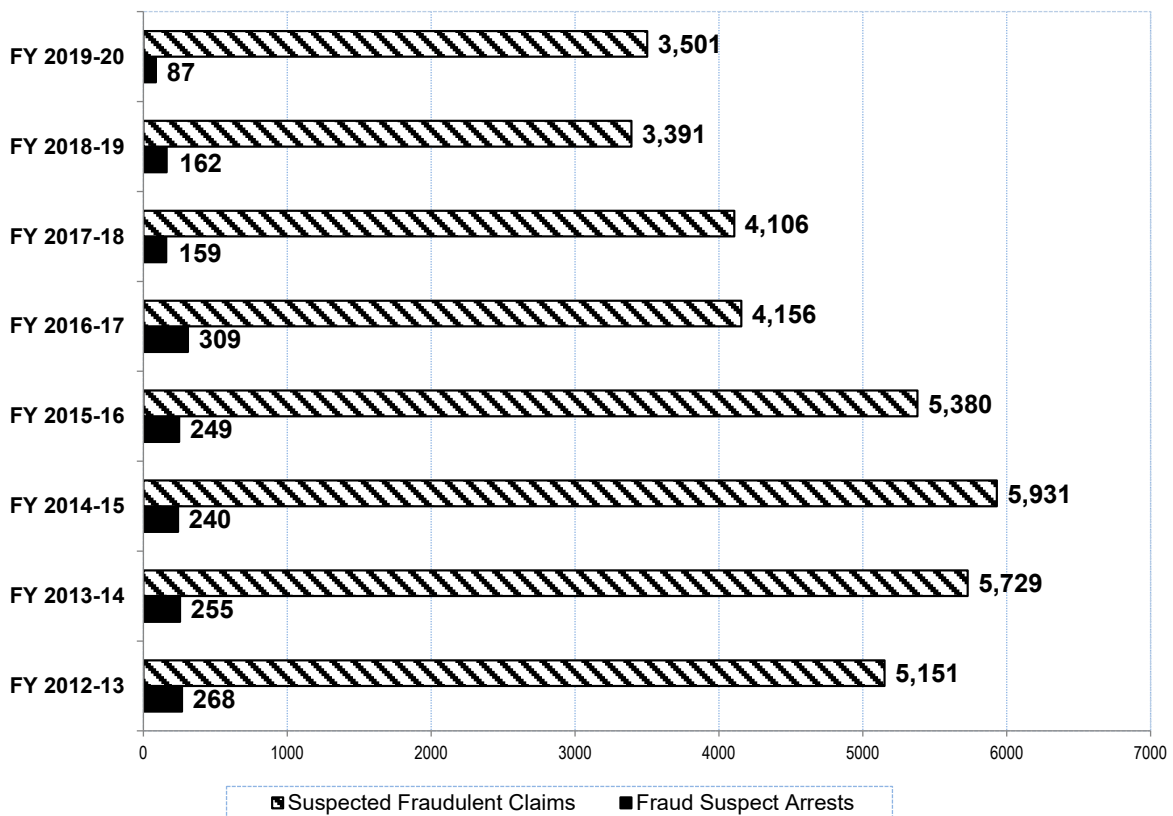
<sup>144</sup> 2014 Annual Report of the Insurance Commissioner, August 1, 2015.  
<http://www.insurance.ca.gov/0400-news/0200-studies-reports/0700-commissioner-report/>.

## WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

### 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 106). 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. From FY 2018-2019 to FY 2019-2020, the number of identified and reported SFCs increased slightly by 3 percent as the number of arrests fell by almost half in that period.

**Figure 106: Suspected Workers' Compensation Fraudulent Claims and Suspect Arrests**



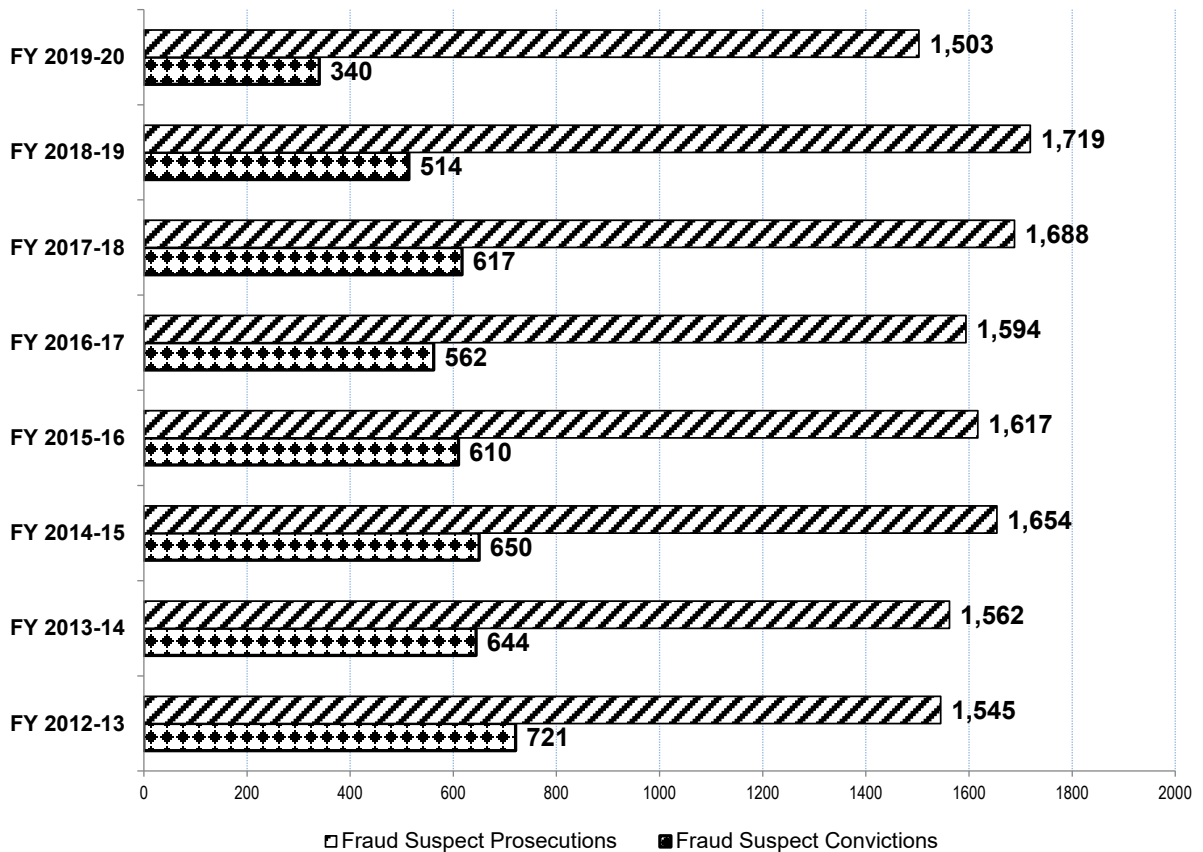
Data Source: CDI - Fraud Division and CWCI

## WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

### 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 107. From FY 2012-2013 to FY 2018-2019, district attorneys prosecuted about 1,550 to 1,720 suspects per fiscal year, with an overall increase of 11 percent, and convictions decreasing by 29 percent from 721 in FY 2012-2013 to 514 in FY 2018-2019.<sup>145</sup> In FY 2019-2020, both prosecutions and convictions decreased by 13 and 34 percent, respectively, compared to FY 2018-2019.

**Figure 107: 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 108 and 109 indicate the number and type of investigations opened and carried from fiscal years FY 2012-2013 to FY 2019-2020 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.

<sup>145</sup> 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/>

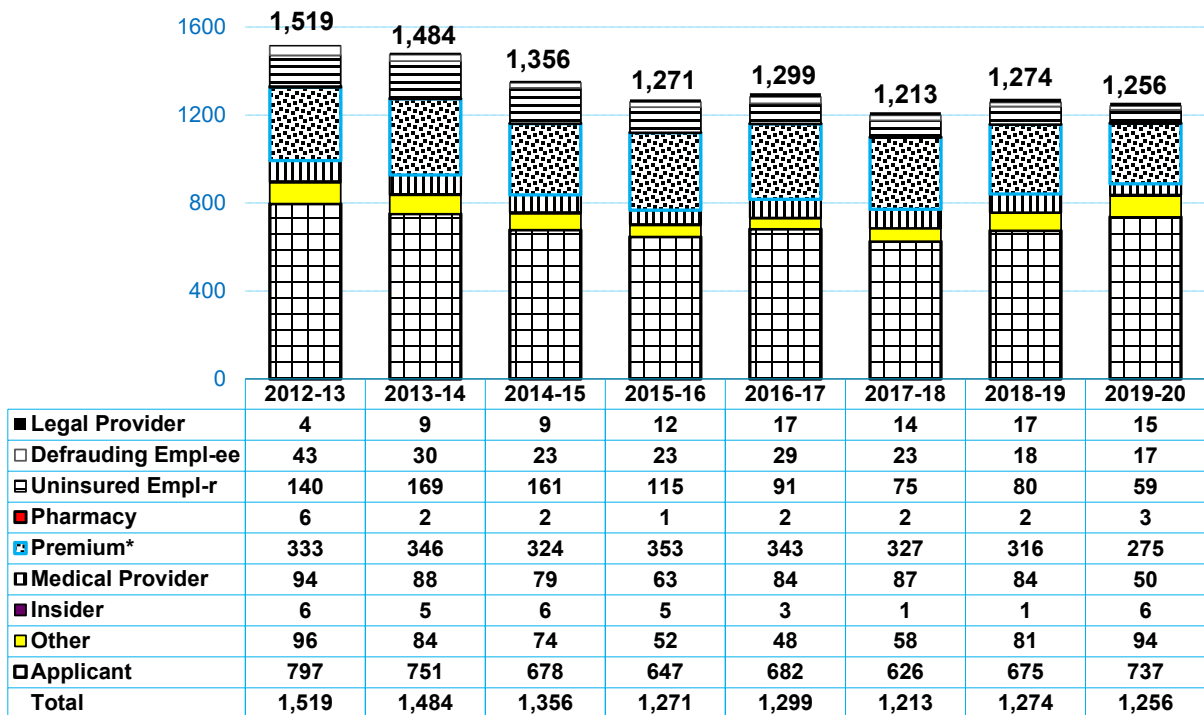
## WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

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.

### ***Trends in Workers' Compensation Fraud Investigations***

Figure 108 shows that the number of workers' compensation fraud investigations decreased by 20 percent from FY 2012-2013 to FY 2017-2018 and then slightly increased by 4 percent from FY 2017-2018 to an average of 1,265 investigations in FY 2018-2019 and FY 2019-2020. The decrease from FY 2012-2013 to FY 2017-2018 was mostly due to a 21.5 percent decrease in claimant fraud (also called applicant fraud) and an almost two-fold decline in uninsured employer investigations. The increase in the number of workers' compensation fraud investigations from FY 2017-2018 to FY 2019-2020 was due to an 18 percent increase in claimant fraud.

**Figure 108: Caseload by Type of Fraud Investigations, FY 2012-2013–FY 2019-2020**



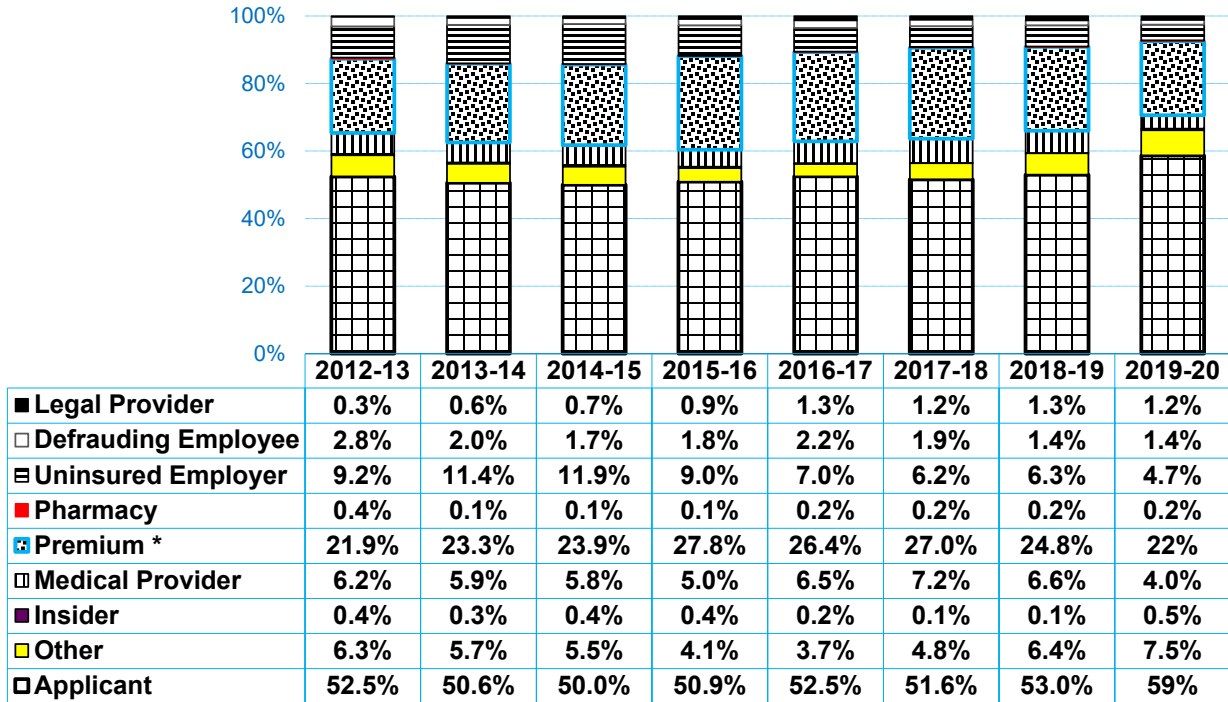
\* Includes Misclassification, Underreported Wages, and X-Mod Evasion

Data Source: California Department of Insurance, Fraud Division

As seen in Figure 109, 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 and then increased by 6 percentage points from FY 2018-2019 to FY 2019-2020. 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 again to 22 percent from FY 2017-2018 to FY 2019-2020. From FY 2012-2013 to FY 2019-2020, investigations of uninsured employer fraud decreased from about 10 percent to 5 percent respectively and decreased for defrauding employees by 1.4 percentage points.

## WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

**Figure 109: Distribution by Type of Fraud Investigations, FY 2012-2013–FY 2019-2020**



\* Includes Misclassification, Underreported Wages, and X-Mod evasion.

Data Source: California Department of Insurance, Fraud Division

In addition, the [2020 Annual Report of the Insurance Commissioner](#)<sup>146</sup> notes that the majority of suspected fraudulent claims in calendar year 2020 came from Los Angeles County (1,249, or 37 percent of total cases) followed by Orange County (342, or 10 percent), and Riverside (206, or 6 percent) or San Bernardino (201, or 6 percent).

### 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.<sup>147</sup>

### 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

<sup>146</sup> <https://www.insurance.ca.gov/0400-news/0200-studies-reports/0700-commissioner-report/upload/2020-Annual-Report-of-the-Insurance-Commissioner.pdf>.

<sup>147</sup> [https://www.edd.ca.gov/payroll\\_taxes/underground\\_economy\\_cost.htm](https://www.edd.ca.gov/payroll_taxes/underground_economy_cost.htm).

## WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

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/](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, 166 remaining criminally charged individuals had their liens stayed under Labor Code § 4615, representing 633,094 remaining liens stayed. There were 28 lien consolidation orders issued pursuant to LC 139.21(f), among which 17 are still in process and 11 were resolved. Nineteen providers have had 50,144 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 Labor Code § 4615. Four hundred and sixty seven providers have been suspended, and 8 providers have been sent a suspension notice with no Order of Suspension issued under Labor Code § 139.21.<sup>148</sup>

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/](http://www.dir.ca.gov/fraud_prevention/).

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<sup>148</sup> Data for 2020-2021 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.

It should also be noted that the fatality counts do not reflect any COVID-19 work-related illness deaths. The Bureau of Labor Statistics (BLS) fatality surveillance system does not include the tracking of illness deaths.

The National Academy of Social Insurance (NASI) estimated that in 2019<sup>149</sup> 144.4 million workers were covered by workers’ compensation in the U.S., including 17.4 million in California.

#### *Claim Counts and Incidence Rates during the COVID-19 pandemic*

Figure 110 shows that the number of all recordable cases of non-fatal occupational injuries and illnesses in California’s private industry and state and local government decreased by 7 percent from 2019 to 2020, while the number of days-away-from-work cases increased sharply by 32 percent from 2019 to 2020, altering the general pattern of changes in all recordable cases, lost-work-time, and days-away-from-work cases. According to the BLS, which has a capability to separate injuries from illnesses, this decline in the total number of injury and illness cases was due to a drop in injury cases. Private industry employers in the U.S. reported 2.7 million nonfatal workplace injuries and illnesses in 2020, down from 2.8 million in 2019, a decrease of 5.7 percent. The rate of injury cases in the U.S. also decreased in 2020, with private industry employers reporting a rate of 2.2 cases per 100 full-time equivalent (FTE) employees compared to 2.6 cases in 2019. At the same time, the total reported illness cases in the U.S. more than quadrupled to 544,600 cases, up from 127,200 cases in 2019. This increase was driven by a nearly 4,000 percent increase in employer reported respiratory illness cases in 2020 at 428,700, up from 10,800 in 2019. As for the days-away-from-work cases versus all recordable cases, there were 1,176,340 nonfatal injuries and illnesses that caused a private industry worker to miss at least one day of work in 2020, 32.4 percent higher than in 2019. Of these cases, 33.2 percent (390,020 cases) were categorized as other diseases due to viruses not elsewhere classified, which includes reported COVID-19-pandemic related illnesses.<sup>150</sup> The same

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<sup>149</sup> 2019 is the latest available year for which these data were available from NASI.

<sup>150</sup> Bureau of Labor Statistics (BLS), “Employer-Reported Workplace Injuries and Illnesses – 2020”, [https://www.bls.gov/news.release/archives/osh\\_11032021.pdf](https://www.bls.gov/news.release/archives/osh_11032021.pdf).

## WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

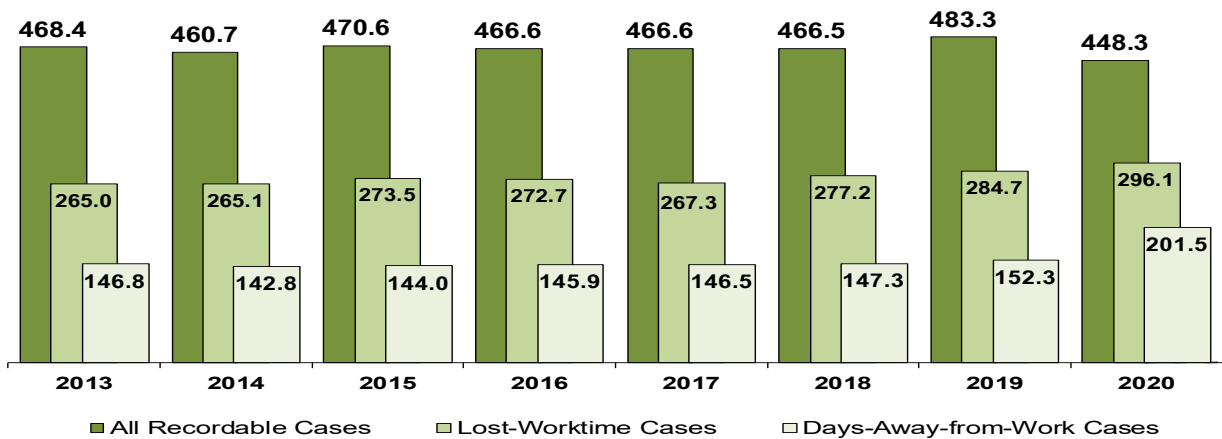
explanation is applicable to the 2019-2020 patterns of all recordable cases and days-away-from-work cases for non-fatal injuries and illnesses in California shown in Figures 110, 112, and 116 for claim counts and Figures 118, 119, and 121 for incidence rates.

### Comparison of the Public and Private Sectors

#### *Non-Fatal Occupational Injuries and Illnesses*

Figure 110 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. From 2019 to 2020, the number of all recordable cases decreased by 7 percent. 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 11 percent from 2017 to 2020, including a 4 percent increase from 2019 to 2020. The days-away-from-work cases decreased by 3 percent from 2013 to 2014, increased by 7 percent from 2014 to 2019, and then increased sharply by 32 percent from 2019 to 2020.

**Figure 110: California Non-Fatal Occupational Injuries and Illnesses: Private Industry and State and Local Governments (Thousands)**



Source: DIR, Office of the Director-Research

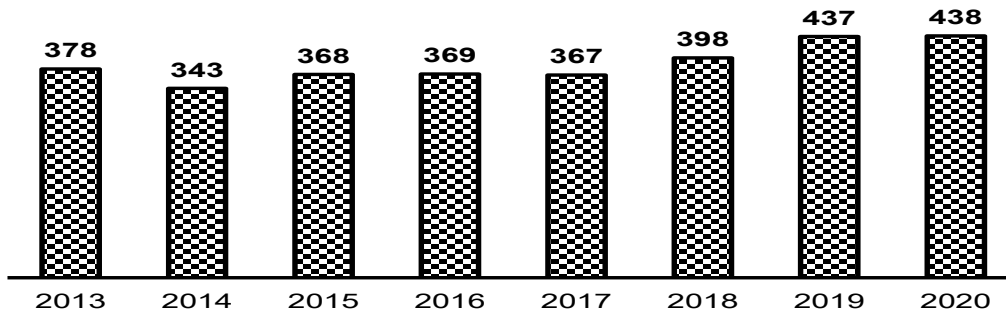
#### *Fatal Occupational Injuries and Illnesses*

Fatal occupational injuries and illnesses in California are shown in Figure 111. The number of fatal occupational injuries and illnesses in California, excluding the federal government, 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 2020, the number of fatal occupational injuries and illnesses in California increased by 19 percent with almost the same number of fatalities in 2019 and 2020.



## WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

**Figure 111: California Fatal Occupational Injuries and Illnesses—Private Industry and State and Local Governments**



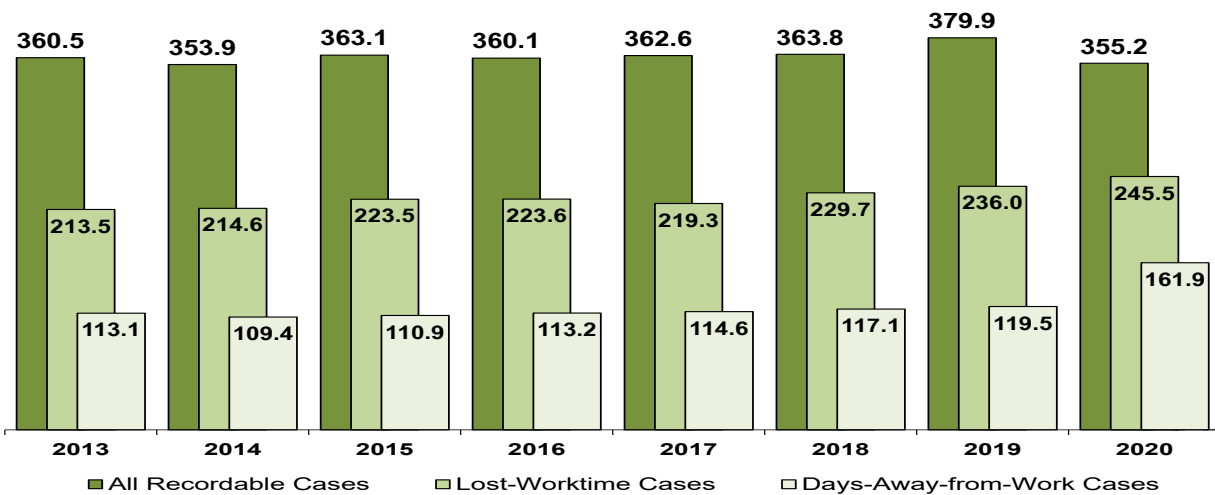
Data Source: BLS and DIR, Office of the Director-Research

### 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 and 2016 and then increased by 5.5 percent from 2016 to 2019. From 2019 to 2020, the number of all recordable cases decreased by 6.5 percent. The number of lost-work-time cases increased overall by 15 percent from 2013 to 2020, including a 4 percent increase from 2019 to 2020. The number of days-away-from-work cases decreased by 3 percent from 2013 to 2014, increased by 9 percent from 2014 to 2019, and then increased further by 35.5 percent from 2019 to 2020.

**Figure 112: California Non-Fatal Occupational Injuries and Illnesses: Private Industry (Thousands)**



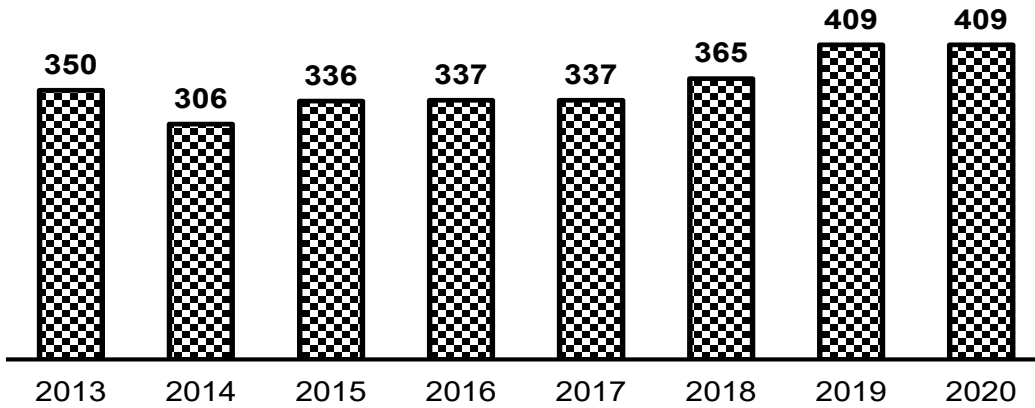
Source: DIR, Office of the Director-Research

#### *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 2020, the number of fatal occupational injuries and illnesses in private sector increased by 21 percent with the same number of fatalities in 2019 and 2020.

## WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

**Figure 113: California Fatal Occupational Injuries and Illnesses—Private Industry**



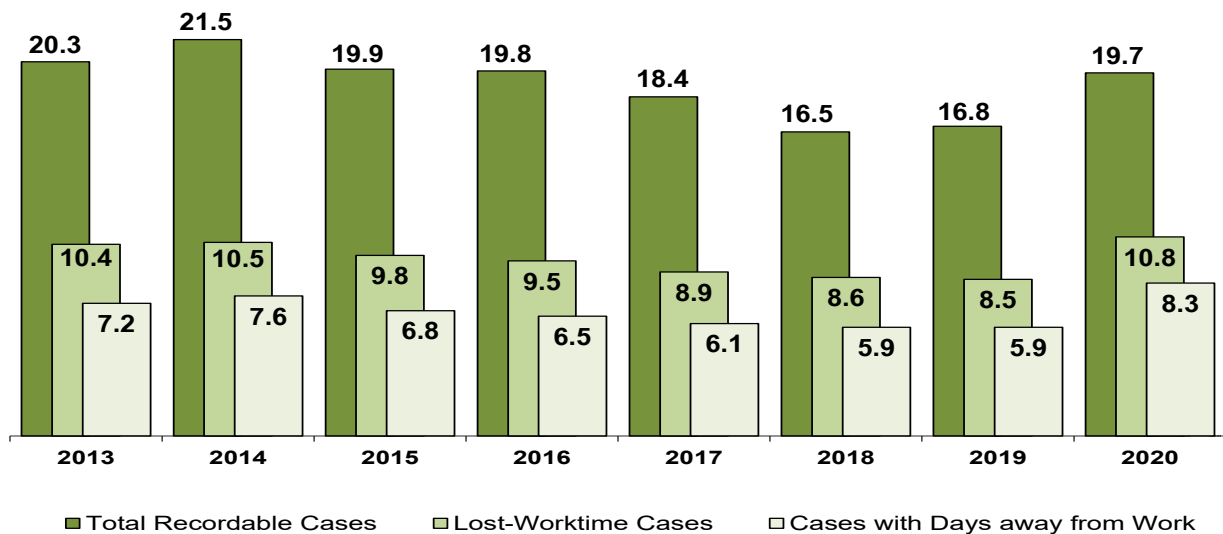
Source: BLS and DIR, Office of the Director-Research

### 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. From 2019 to 2020, the number of all recordable cases increased sharply by 17 percent. 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. After 5 years of a steady decline in both the lost-work-time and days-away-from-work cases in the state government, the lost-work-time cases increased by 27 percent and days-away-from-work cases increased by 41 percent from 2019 to 2020.

**Figure 114: California Non-Fatal Occupational Injuries and Illnesses: State Government (Thousands)**



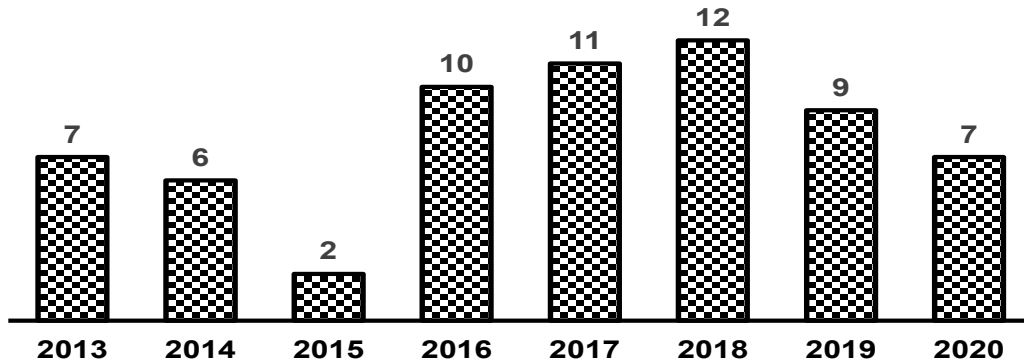
Source: DIR, Office of the Director-Research

## WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

### *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 and 7 fatalities in 2020.

**Figure 115: California Fatal Occupational Injuries and Illnesses—State Government**



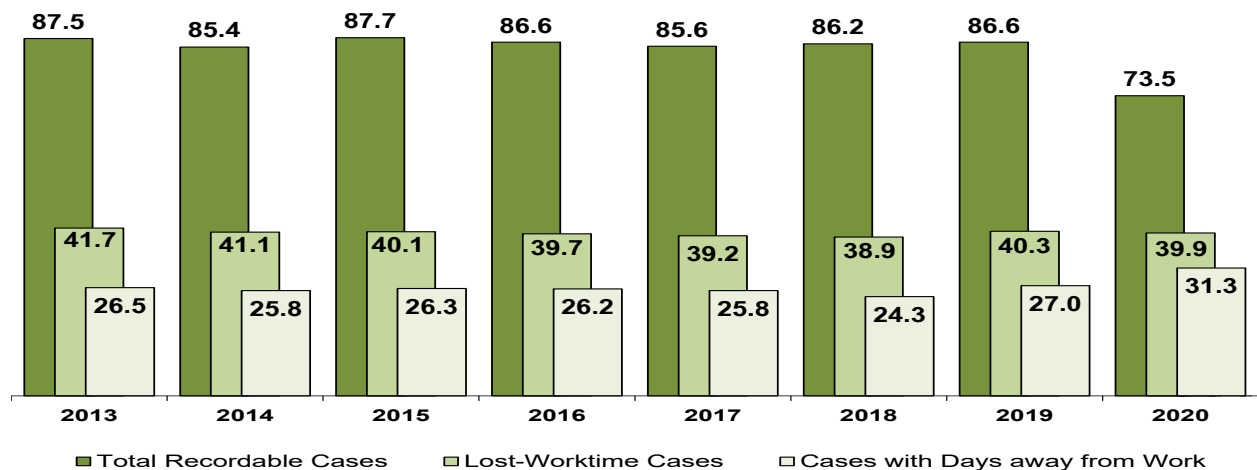
Source: BLS and DIR, Office of the Director-Research

### **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 2019 to 2020, the number of all recordable cases decreased by 15 percent. 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. From 2019 to 2020, the number of lost-worktime cases decreased slightly by 1 percent. The number of cases with days away from work decreased overall by 8 percent from 2013 to 2018, increased by 11 percent from 2018 and 2019, and then increased again by 16 percent from 2019 to 2020.

**Figure 116: California Non-Fatal Occupational Injuries and Illnesses: Local Government (Thousands)**



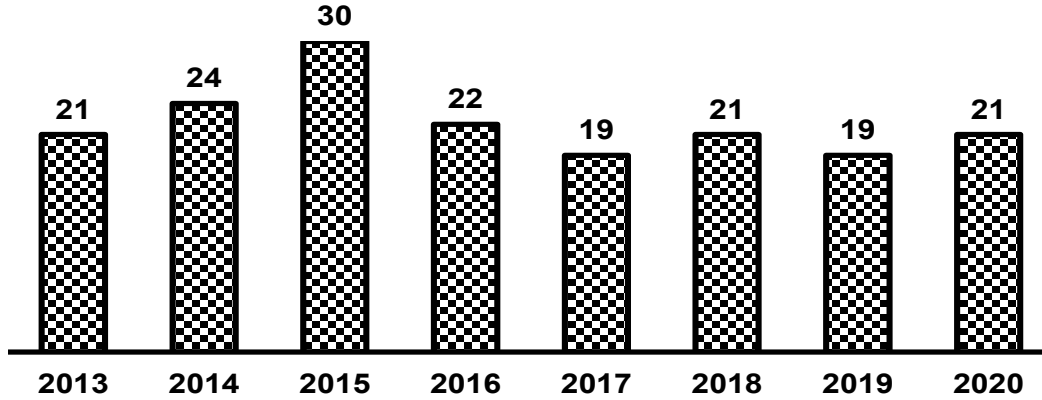
Source: DIR, Office of the Director-Research

## WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

### *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 overall by 30 percent from 2015 to 2020.

**Figure 117: California Fatal Occupational Injuries and Illnesses—Local Government**



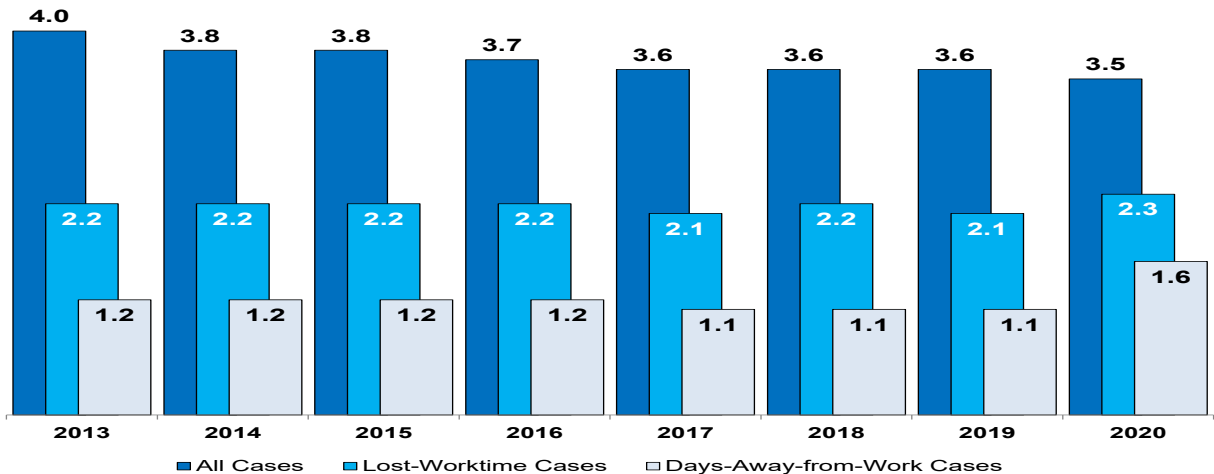
Source: BLS and DIR, Office of the Director-Research

### **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. There was a 3 percent decrease in the incidence rates for all cases from 2019 to 2020. The incidence rates for lost-work-time cases remained prevailingly at 2.2 cases per 100 FTE from 2013 to 2018, decreasing to a rate of 2.1 in 2017 and 2019. From 2019 to 2020, the incidence rates for lost-work-time cases increased by 9.5 percent. The incidence rate for days-away-from-work cases stabilized at 1.2 per 100 FTE from 2013 to 2016, decreased to 1.1 from 2016 to 2017, and remained at that level from 2017 to 2019. From 2019 to 2020, the incidence rate for days-away-from-work cases increased by 45 percent from 1.1 per 100 FTE in 2019 to 1.6 per 100 FTE in 2020.

**Figure 118: California Occupational Injury and Illness Incidence Rates: Private, State and Local (Cases per 100 Full-Time Employees)**



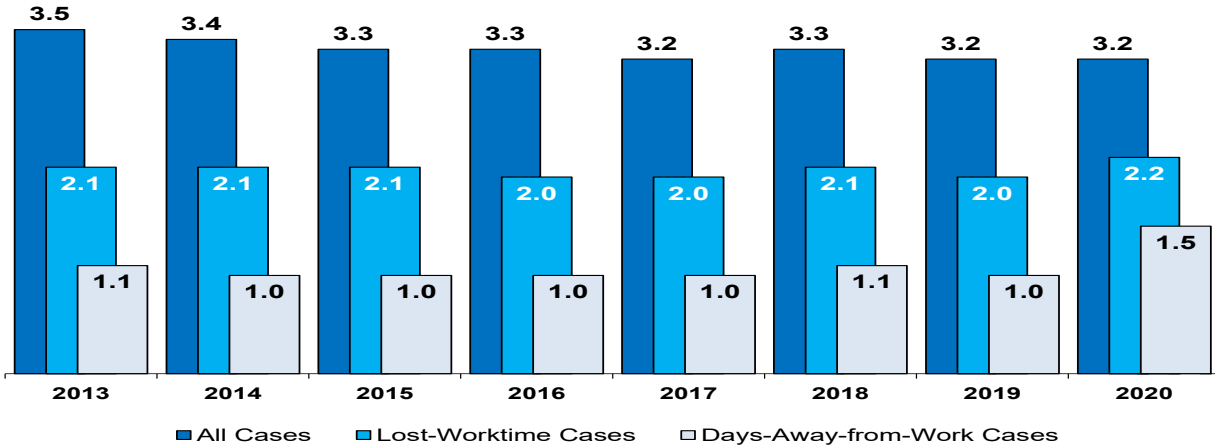
Data Source: DIR, Office of the Director-Research

## WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

### Private Sector

According to Figure 119, the incidence rate for all cases declined from 2013 to 2017, increased from 2017 to 2018, and then returned to the 2017 level in both 2019 and 2020. After stabilizing at 2.0 or 2.1 cases per 100 FTE from 2013 to 2019, the incidence rate for lost-work-time cases increased to 2.2 cases per 100 FTE in 2020. After stabilizing at 1.0 cases per 100 FTE from 2013 to 2019, the incidence rates for days-away-from-work cases increased by 50 percent from 2019 to 2020.

**Figure 119: California Occupational Injury and Illness Incidence Rates: Private Industry  
(Cases per 100 Full-Time Employees)**

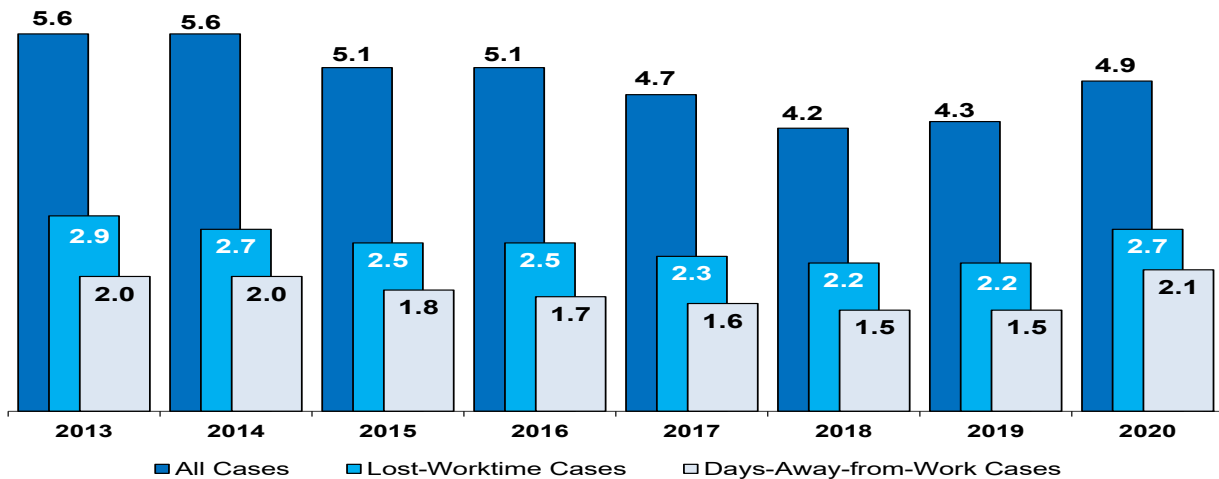


Data Source: DIR, Office of the Director-Research

### Public Sector: State Government

California state government occupational injury and illness incidence rates for all cases decreased by 25 percent from 2013 to 2018, increased by 2 percent from 2018 to 2019, and then increased again by 14 percent from 2019 to 2020. The incidence rate for lost-time cases decreased by 24 percent between 2013 and 2019 and increased by 23 percent from 2019 to 2020. The incidence rate for days-away-from-work cases decreased by 25 percent from 2013 to 2019 and then increased by 40 percent from 2019 to 2020.

**Figure 120: California Occupational Injury and Illness Incidence Rates: State Government  
(Cases per 100 Full-Time Employees)**



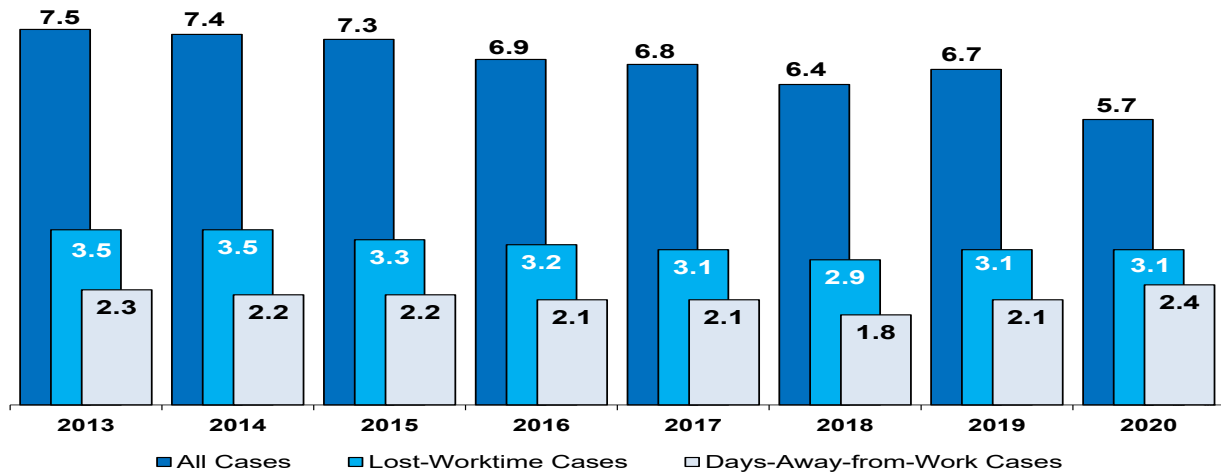
Source: DIR, Office of the Director-Research

## WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

### Public Sector: Local Government

Local government occupational injury and illness incidence rates for all cases averaged at 7.4 cases per 100 FTE from 2013 to 2015, decreased by 12 percent from 2015 to 2018, and then increased by 5 percent from 2018 to 2019. From 2019 to 2020, the incidence rates for all cases decreased by 15 percent. 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 and 2020. 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. From 2019 to 2020, the incidence rate for days-away-from-work cases increased by 14 percent.

**Figure 121: California Occupational Injury and Illness Incidence Rates: Local Government (Cases per 100 Full-Time Employees)**



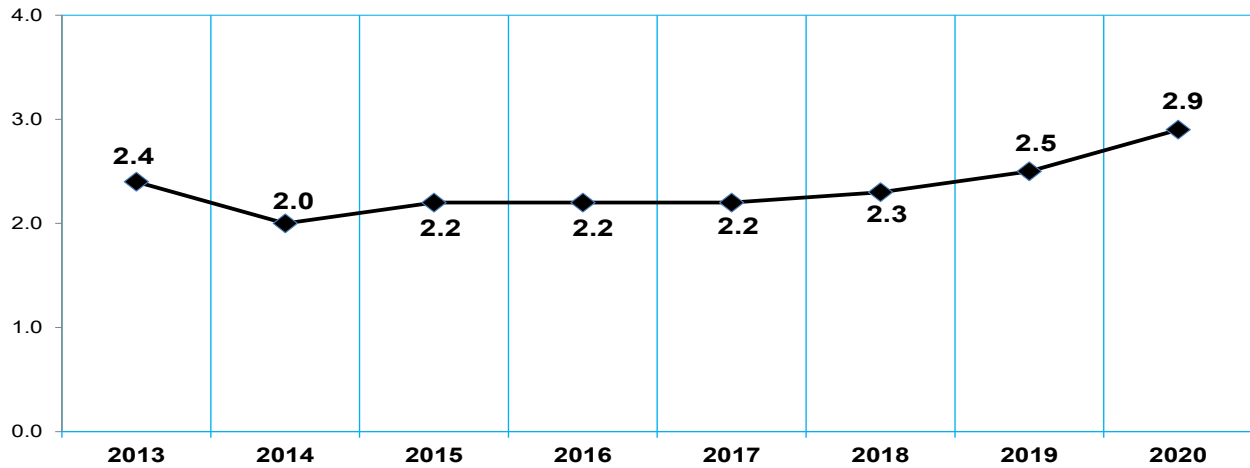
Source: DIR, Office of the Director-Research

### 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 FTE workers 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 FTE workers in 2015. The fatality rates in California increased by 32 percent from 2.2 in 2017 to 2.9 fatalities per 100,000 FTE workers in 2020, including a 16 percent increase from 2019 to 2020.

## WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

**Figure 122: 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.

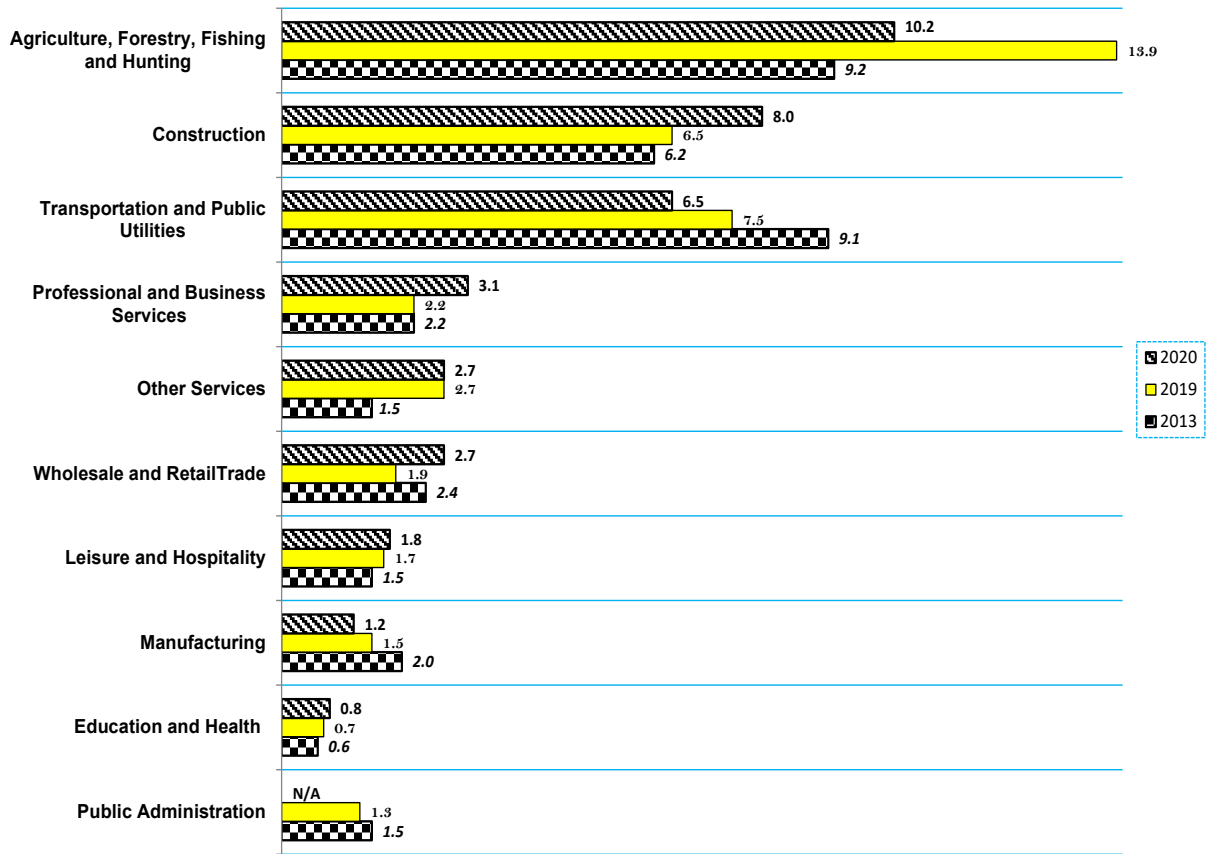
\*\* Incidence Rates for Fatal Occupational Injuries computed using estimates of civilian workers (age 16 and older) from the Current Population Survey (CPS) and are expressed as the number of fatalities per 100,000 employed.

Data Source: U.S. Department of Labor, BLS, in cooperation with State and Federal agencies, Census of Fatal Occupational Injuries.

Figure 123 shows the fatality incidence rates by major industries in 2013, 2019, and 2020. For the three years depicted in the figure, agriculture, forestry, fishing, and hunting, construction, and transportation and public utilities were the top three industries with highest fatality rates in California. The industries with the greatest increase in fatality rates between 2019 and 2020 were wholesale and retail trade (42 percent), professional and business services (41 percent), and construction (23 percent).

## WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

**Figure 123: California Fatality Rates by Industries (per 100,000 employed), 2013, 2019, and 2020\***



Data Source: BLS, U.S. Department of Labor, Survey of Occupational Injuries and Illnesses, in cooperation with participating State agencies.

\* Note: The source is released annually and doesn't have separate or specific incidence rates for healthcare-related industries.

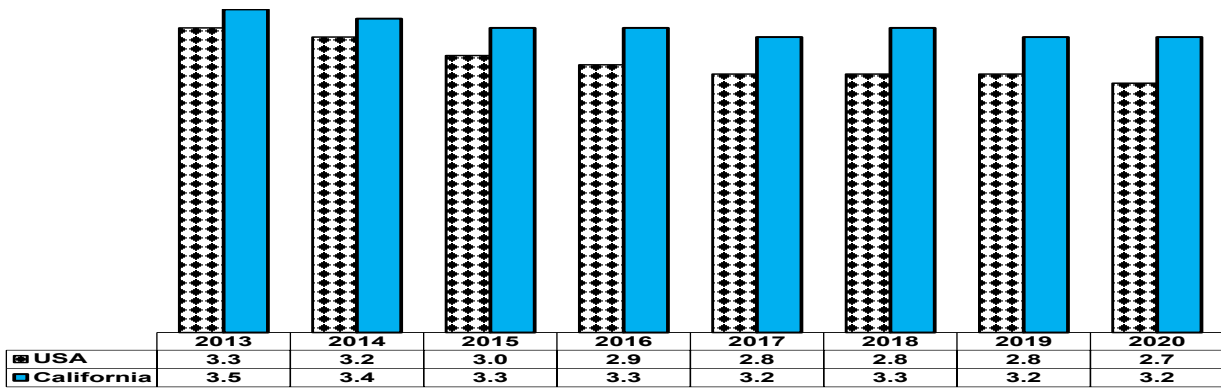
### Comparison of Incidence Rates in the United States and California

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. The U.S. incidence rates dropped by about 18 percent from 2013 to 2017, remained at 2017 level until 2019, and then decreased slightly to 2.7 cases per 100 full-time workers from 2019 to 2020. 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, remaining at 2019 level in 2020. Since 2013, the incidence rate in California has been slightly above the national average with slower decreasing trend during the whole period.



## WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

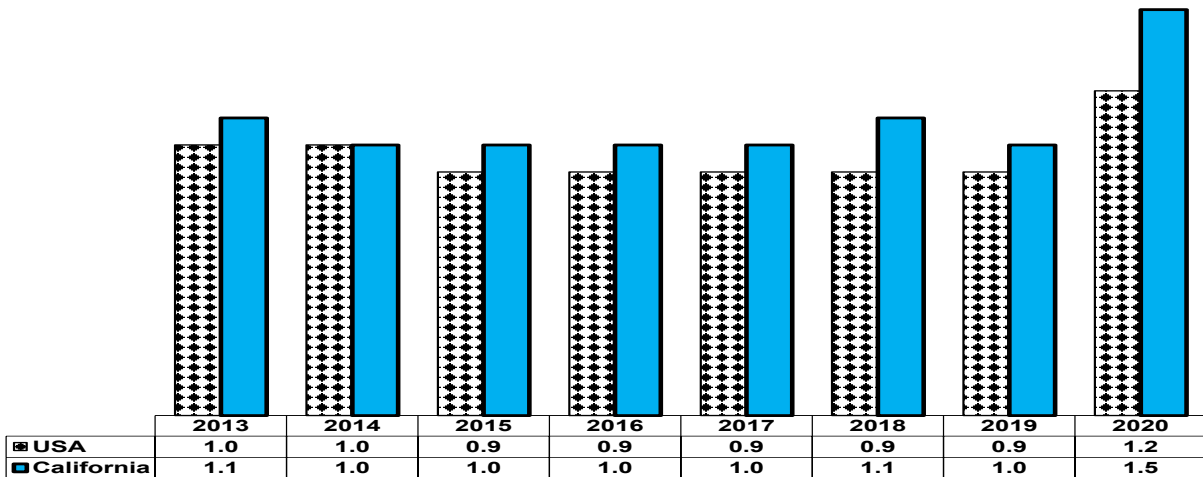
**Figure 124: Injury and Illness Incidence Rate per 100 Full-Time Workers: Private Industry, Total Recordable Cases. U.S. and California**



Source: US Department of Labor, Bureau of Labor Statistics

The incidence rate of occupational injury and illness days-away-from-work cases declined in the U.S. from 2013 to 2015, stabilized at 0.9 cases per 100 full-time workers from 2015 to 2019, and then increased to 1.2 cases per 100 full-time workers from 2019 to 2020. In California, after a decrease from 1.1 in 2013 to 1.0 from 2014 to 2019, with an exception of 1.1 cases per 100 full-time workers in 2018, the incidence rate increased from 1.0 in 2019 to 1.5 in 2020, the surge explained by growth of illnesses during the COVID-19 pandemic rather than workplace injuries.

**Figure 125: Injury and Illness Incidence Rate per 100 Full-Time Workers: Private Industry Cases with Days Away from Work. U.S. and California**



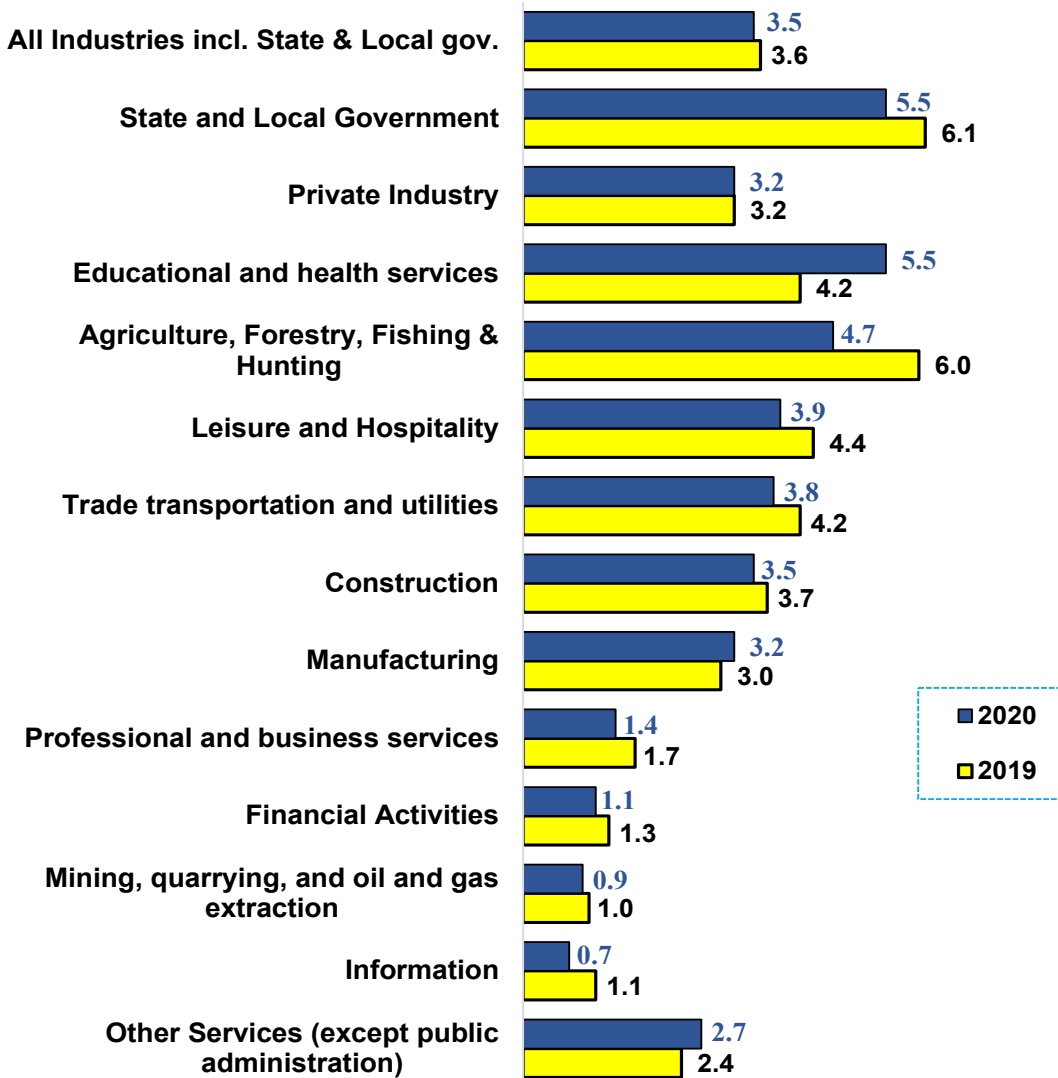
Source: US Department of Labor, Bureau of Labor Statistics

## WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

### Characteristics of California Occupational Injuries and Illnesses

Figure 126 compares incidence rates for total recordable cases in 2019 and 2020 by major industries, private sector and state and local governments. The incidence rates in 10 out of 14 major industries, declined from 2019 to 2020. The overall California occupational injury and illness incidence rates for all industries, including state and local government declined by 3 percent from 2019 to 2020. During this period, the biggest decline in incidence rates (-36 percent) was in information followed by agriculture, forestry, fishing, and hunting (-22 percent), professional and business services (-18 percent), financial activities (-15 percent), leisure and hospitality (-11 percent), mining, quarrying, and oil and gas extraction (-10 percent), and trade, transportation and utilities (-10 percent). State and local government experienced a decline of 10 percent from 2019 to 2020. From 2019 to 2020, the biggest increase in incidence rates (31 percent) was in educational and health services followed by other services, except public administration (13 percent), and manufacturing (7 percent).

**Figure 126: Incidence rates of nonfatal occupational injuries and illnesses per 100 FTE workers by major industries, Private Sector and State and Local Government, 2019 and 2020 (Total Recordable Cases)**

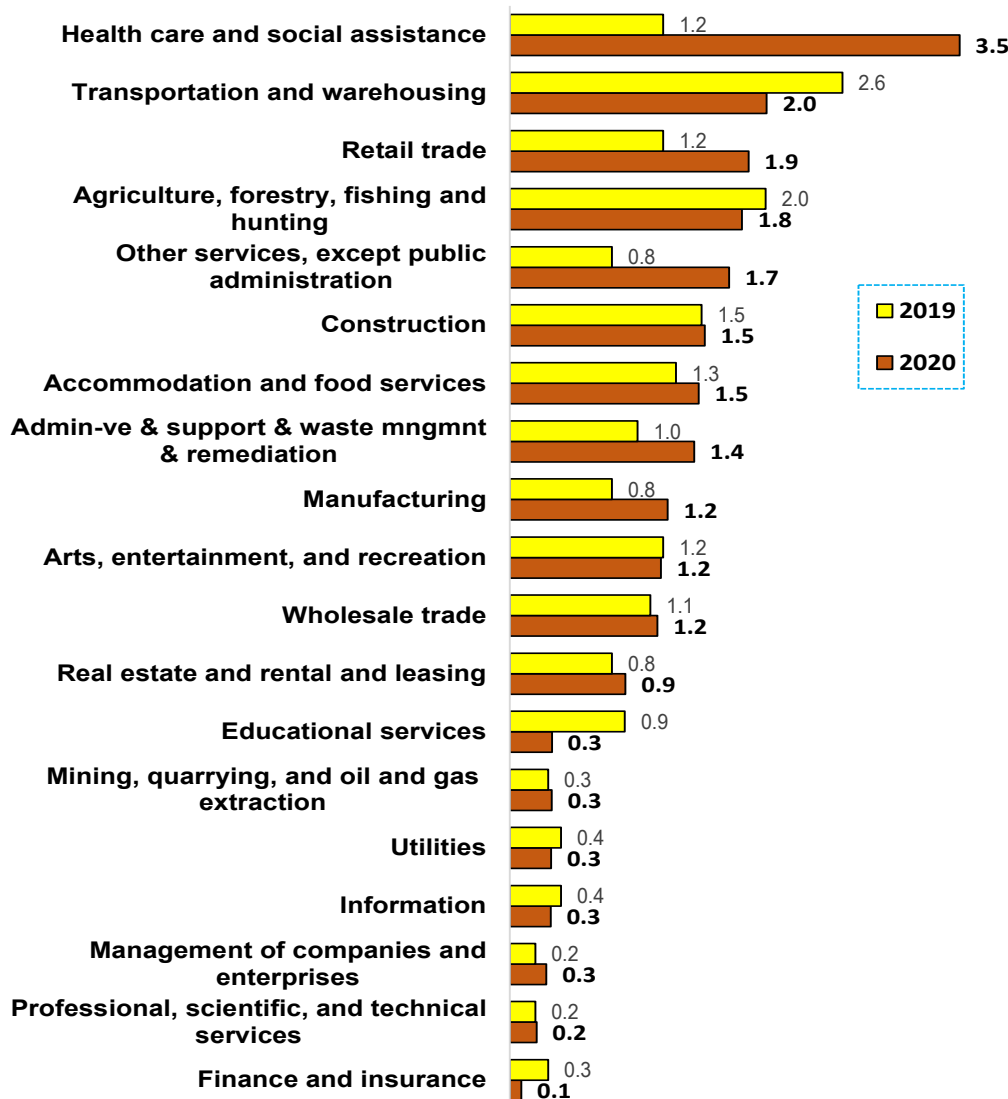


Data Source: DIR, Office of the Director- Research

## WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

Figure 127 compares non-fatal occupational incidence rates for days away from work (DAFW) cases in 2019 and 2020 in private sector. The top three industries by incidence rates in 2019 were transportation and warehousing, agriculture, forestry, fishing, and hunting, and construction. In 2020, the top three industries were health care and social assistance, transportation and warehousing, and retail trade. The biggest increases in incidence rates for DAFW cases from 2019 to 2020 were in health care and social assistance (193 percent), other services, except public administration (114 percent) followed by retail trade (56 percent), manufacturing (54 percent), administrative and support and waste management and remediation (44 percent), and management of companies and enterprises (43 percent). Finance and insurance (-70 percent) and educational services (-63 percent) experienced the biggest decreases in incidence rates from 2019 to 2020, followed by transportation and warehousing (-23 percent), information (-20 percent), utilities (-19 percent), and agriculture, forestry, fishing and hunting (-9 percent). Despite the decrease in its incidence rate from 2019 to 2020, the transportation and warehousing was still among the top 3 major industries by incidence rates in 2020.

**Figure 127: Incidence rates of nonfatal occupational injuries and illnesses per 100 FTE workers by selected industries, Private Sector (Cases with days away from work), 2019 and 2020**



Data Source: DIR, Office of the Director-Research

## WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

Figure 128 compares non-fatal occupational incidence rates for days away from work cases in 2019 and 2020 in the state government. The biggest increases in incidence rates for DAFW cases from 2019 to 2020 were in administration of economic programs (167 percent), administration of human resource programs (83 percent), administration of environmental quality programs (58 percent) followed by justice, public order, and safety activities (47 percent), health care and social assistance (43 percent), and hospitals (43 percent). Executive, legislative, and other general government support (-71 percent) and educational services (-20 percent) experienced a decrease from 2019 to 2020.

**Figure 128: Incidence rates of nonfatal occupational injuries and illnesses per 100 FTE workers by selected industries, State Government (Cases with days away from work), 2019 and 2020**

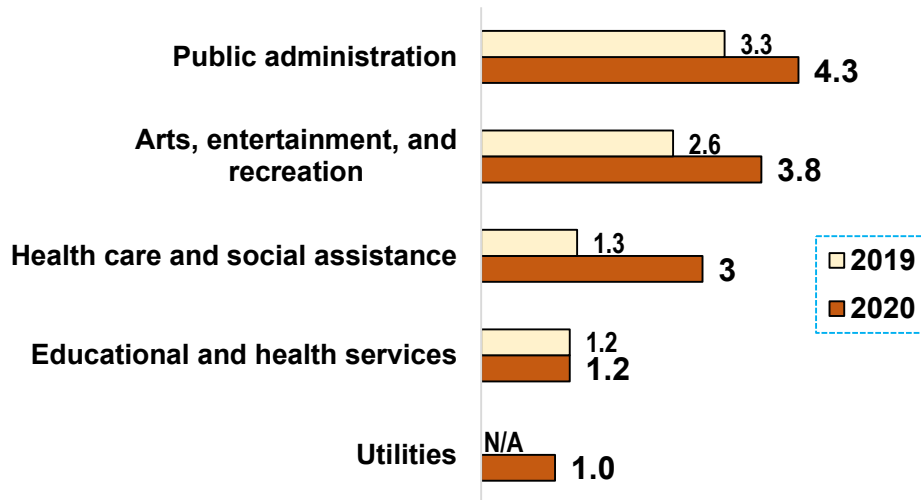


Data Source: DIR, Office of the Director-Research

## WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

Figure 129 compares non-fatal occupational incidence rates for days away from work cases in 2019 and 2020 in the local government. From 2019 to 2020, the health care and social assistance experienced the biggest increase (131 percent) in non-fatal occupational incidence rates for days away from work cases followed by arts, entertainment, and recreation (46 percent), and public administration (30 percent).

**Figure 129: Incidence rates of nonfatal occupational injuries and illnesses per 100 FTE workers by selected industries, Local Government (Cases with days away from work), 2019 and 2020**



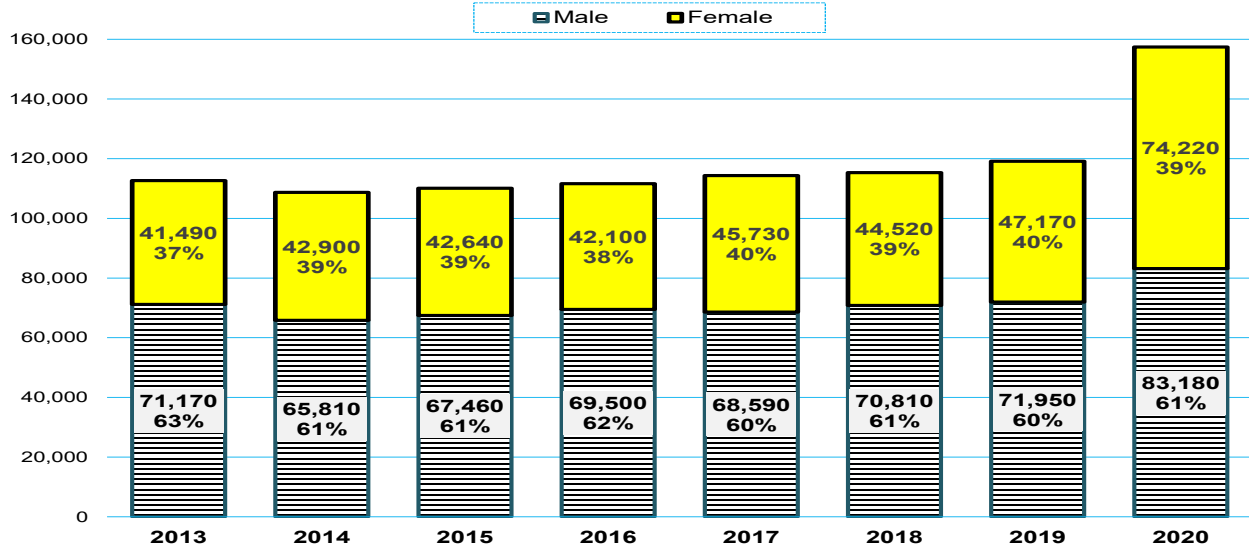
Data Source: DIR, Office of the Director-Research

# WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

## Characteristics of California Non-Fatal Occupational Injuries and Illnesses

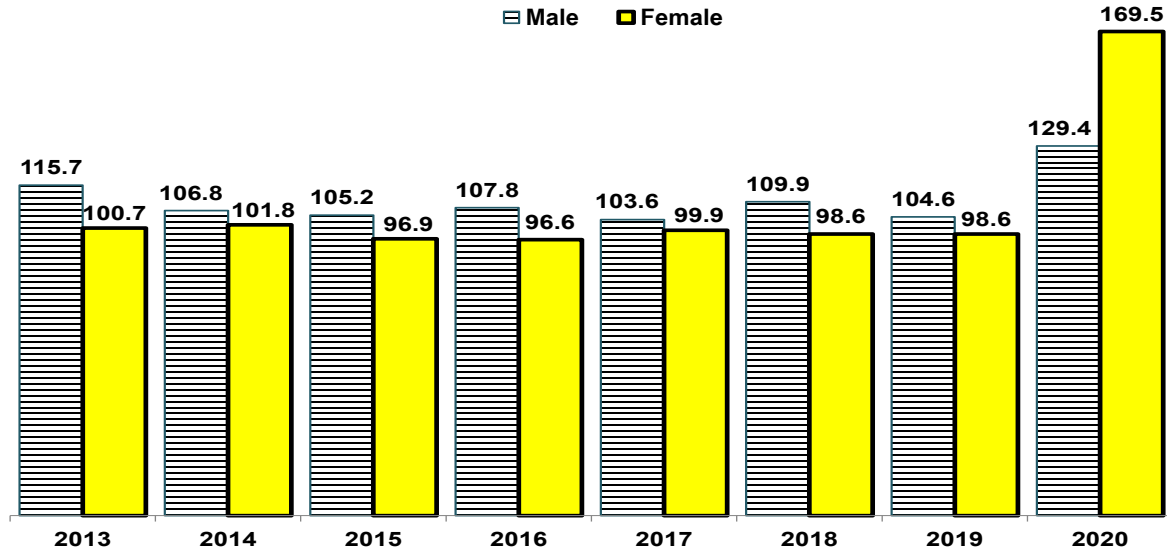
Figures 130-135 illustrate various demographic characteristics of non-fatal occupational injuries and illnesses in private industry in California. According to Figure 130, the largest increase for females (57 percent) and males (16 percent) in the number of non-fatal occupational injuries and illnesses over the past eight years was between 2019 and 2020.

**Figure 130: Number of Non-Fatal Occupational Injuries and Illnesses involving days away from work cases in California by Gender, Private Industry, 2013-2020**



Source: DIR, Office of the Director-Research

**Figure 131: California Non-Fatal Occupational Injuries and Illnesses Incidence Rates by Gender, Private Industry, 2013-2020 (Days Away from Work Cases per 10,000 full-time employees)**

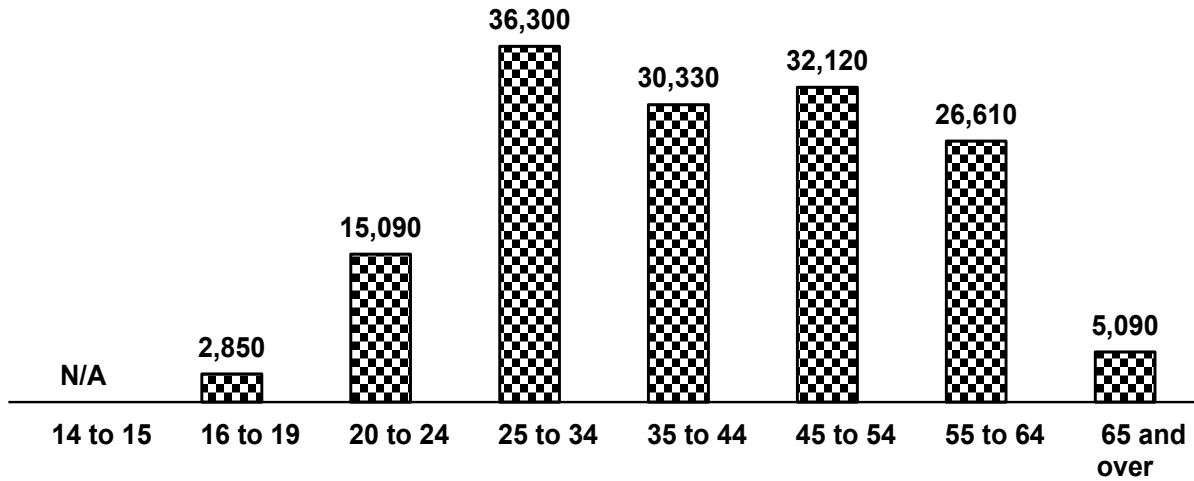


\* With days away from work with or without job transfer or restriction.

Data Source: BLS, U.S. Department of Labor, Survey of Occupational Injuries and Illnesses in cooperation with participating State agencies.

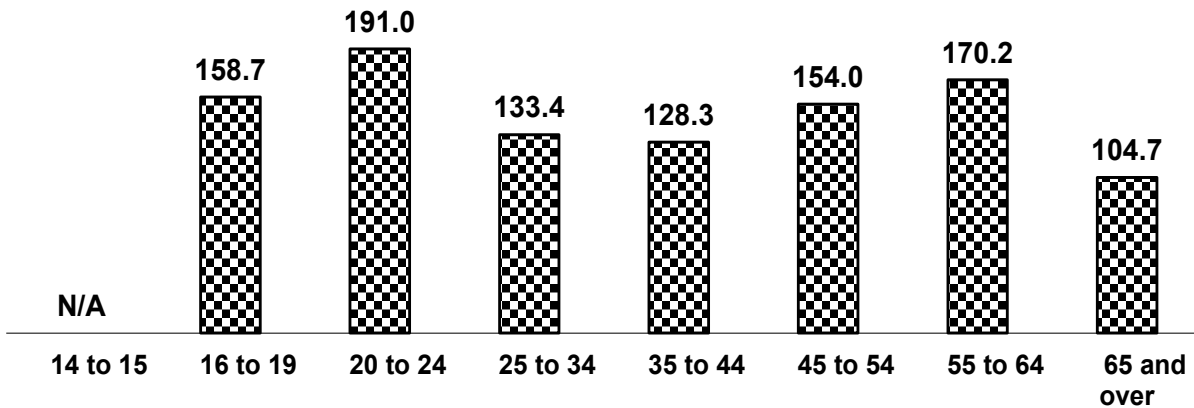
WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

**Figure 132: Number of Non-Fatal Occupational Injuries and Illnesses in California by Age, Private Industry, 2020**



Data Source: DIR, Office of the Director-Research

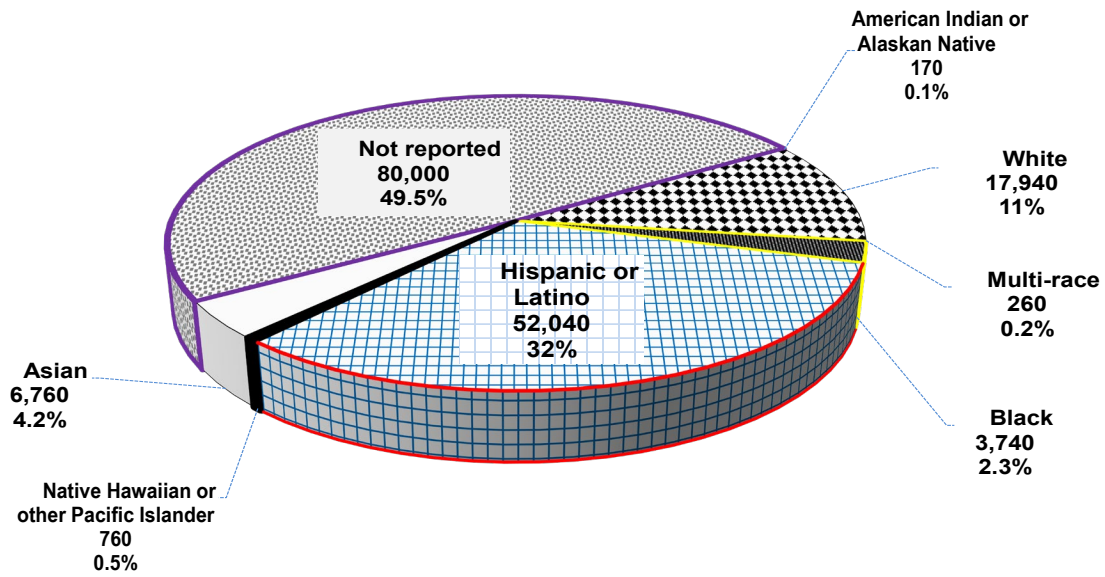
**Figure 133: California Occupational Injury and Illness Incidence Rates by Age, Private Industry 2020 (Days Away from Work Cases per 10,000 Full-Time Workers)**



Data Source: BLS, Department of Labor, Survey of Occupational Injuries and Illnesses in cooperation with participating State Agencies

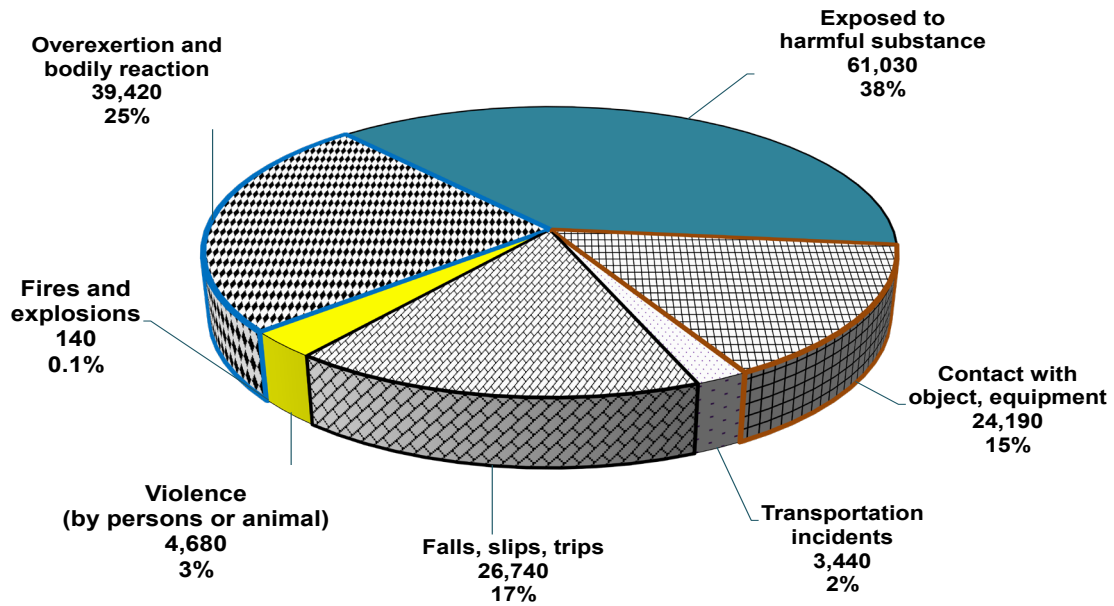
## WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

**Figure 134: California Non-Fatal Occupational Injuries and Illnesses by Race or Ethnic Origin, Private Industry, 2020**



Data Source: DIR, Office of the Director-Research

**Figure 135: California Non-Fatal Occupational Injuries and Illnesses by Event and Exposure, Private Industry, 2020**



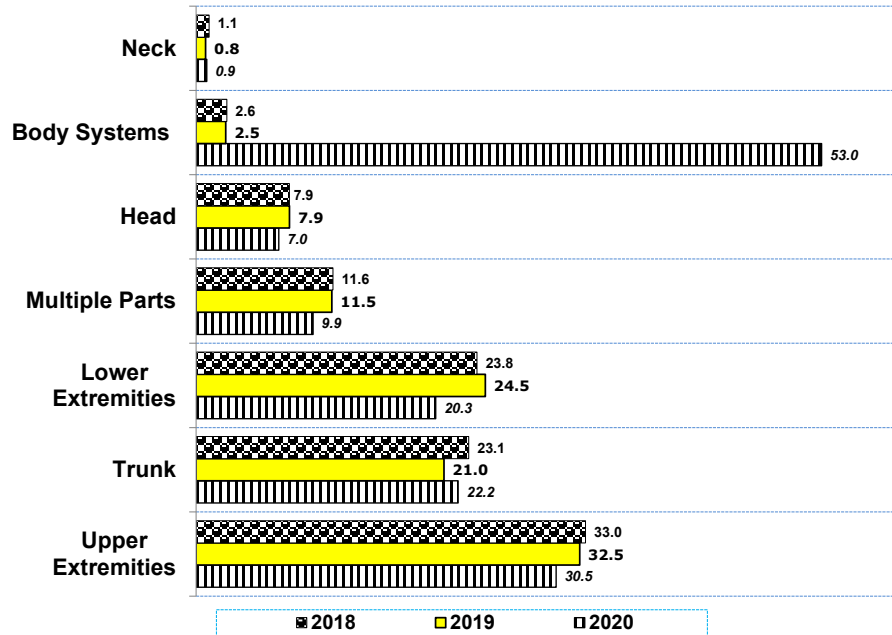
Data Source: DIR, Office of the Director-Research



## WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

Figure 136 shows that the upper extremities, lower extremities, and trunk were the major body parts with the highest incidence rates in 2018, 2019, and 2020. DWC and WCAB forms<sup>151</sup> were changed to identify injuries related to COVID-19 by using body part code “900”<sup>152</sup>, and likely where this choice was not included in a form, body systems was used instead to report the illness.

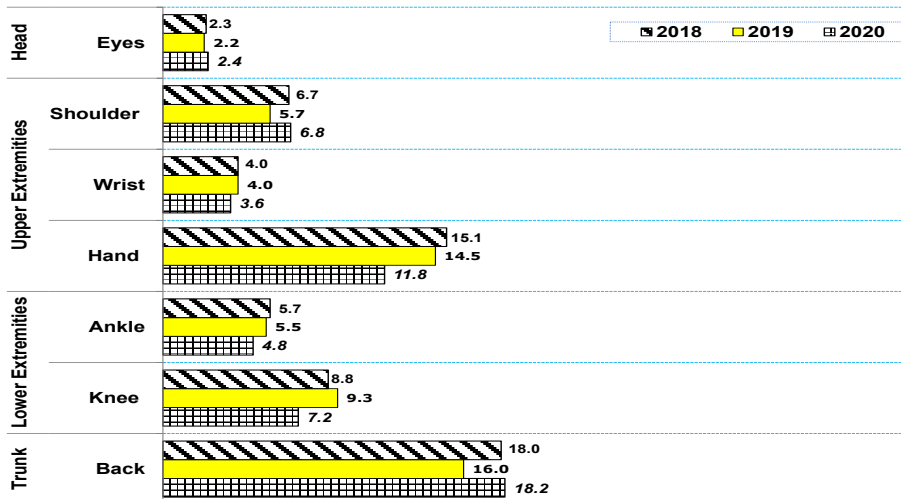
**Figure 136: Incidence Rates for Non-Fatal Occupational Injuries and Illnesses by Major Body Parts, Private Industry, 2018, 2019, and 2020 (per 10,000 Full-Time Workers)**



Data Source: BLS, U.S. Department of Labor, Survey of Occupational Injuries and Illnesses (SOII) in cooperation with participating State agencies.

Figure 137 shows that the back was the body part with the highest incidence rate in 2018, 2019, and 2020.

**Figure 137: Incidence Rates for Non-Fatal Occupational Injuries and Illnesses by Selected Elements of Major Body Parts, Private Industry, 2018, 2019, and 2020 (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.

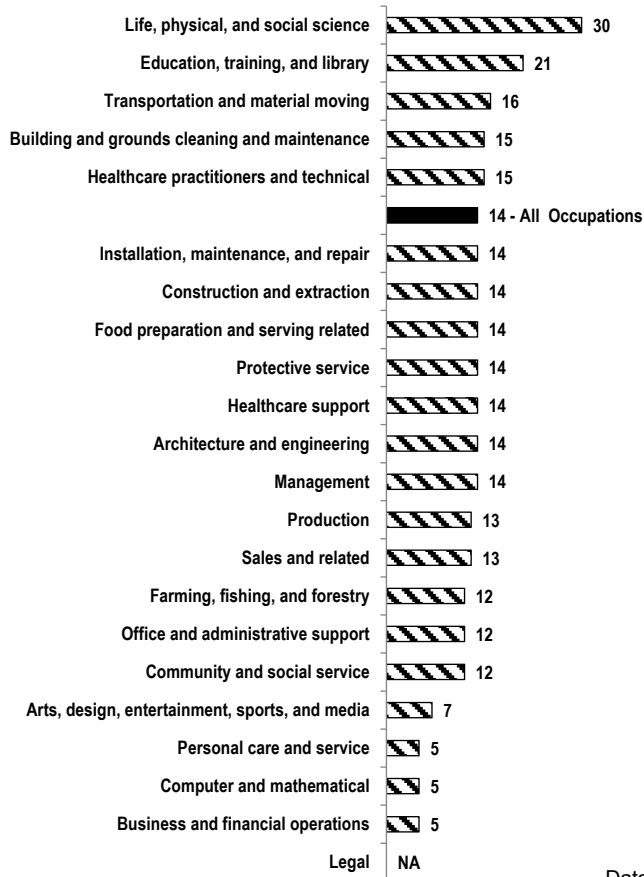
<sup>151</sup> DWC, WCAB Update Forms to Identify Injuries Related to COVID-19, <https://www.dir.ca.gov/DIRNews/2020/2020-44.html>.

<sup>152</sup> EAMS Body Part Codes List, [https://www.dir.ca.gov/dwc/EAMS/EAMS\\_BodyPartsCodeList.pdf](https://www.dir.ca.gov/dwc/EAMS/EAMS_BodyPartsCodeList.pdf).

## WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

Figures 138 to 140 compare the median days away from work for private industry and state and local government occupations. Life, physical, and social science, education, training, and library, and transportation and material moving, had the greatest median days away from work in 2020.

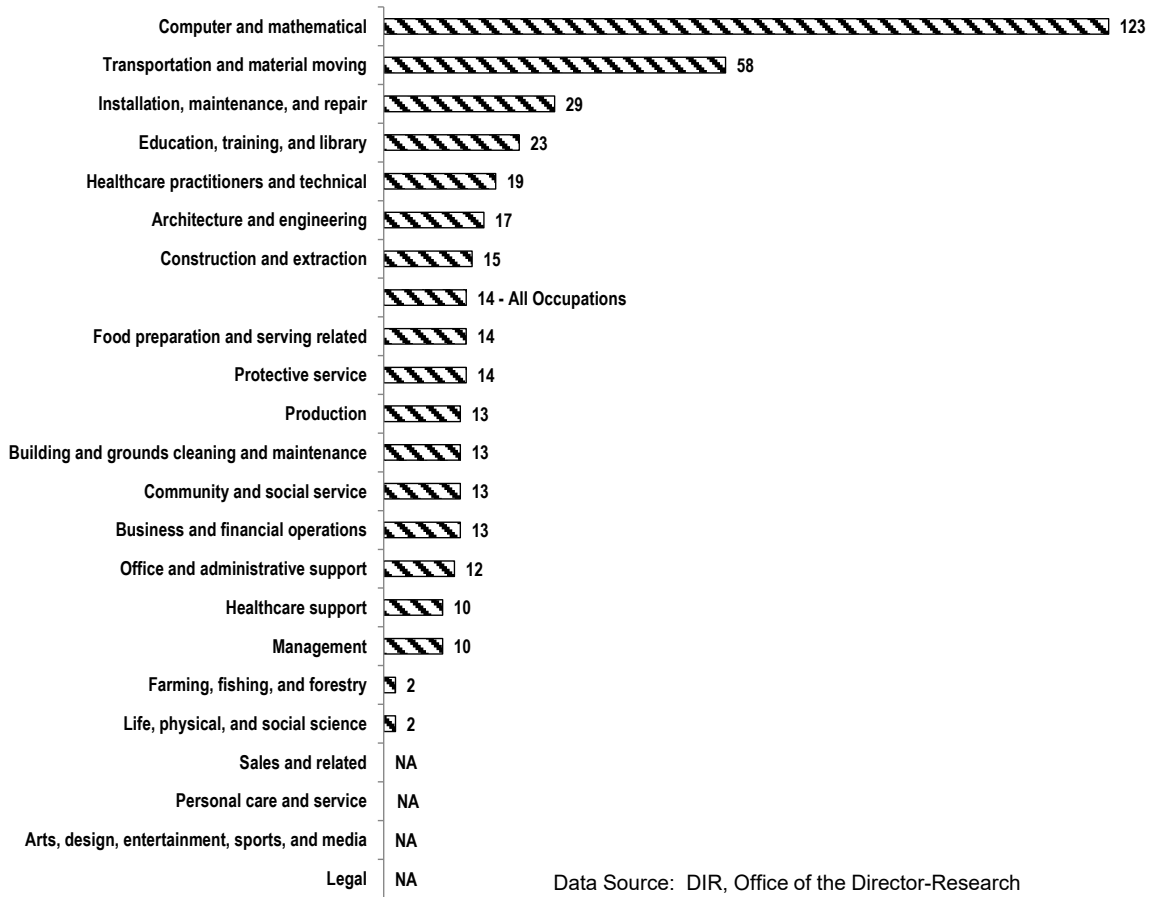
**Figure 138: Non-Fatal Injuries and Illnesses by Major Occupational Group: Median Days Away from Work, Private Industry, 2020**



Data Source: DIR, Office of the Director-Research

## WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

**Figure 139: Non-Fatal Injuries and Illnesses by Major Occupational Group: Median Days Away from Work, State Government, 2020**



Data Source: DIR, Office of the Director-Research

## WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

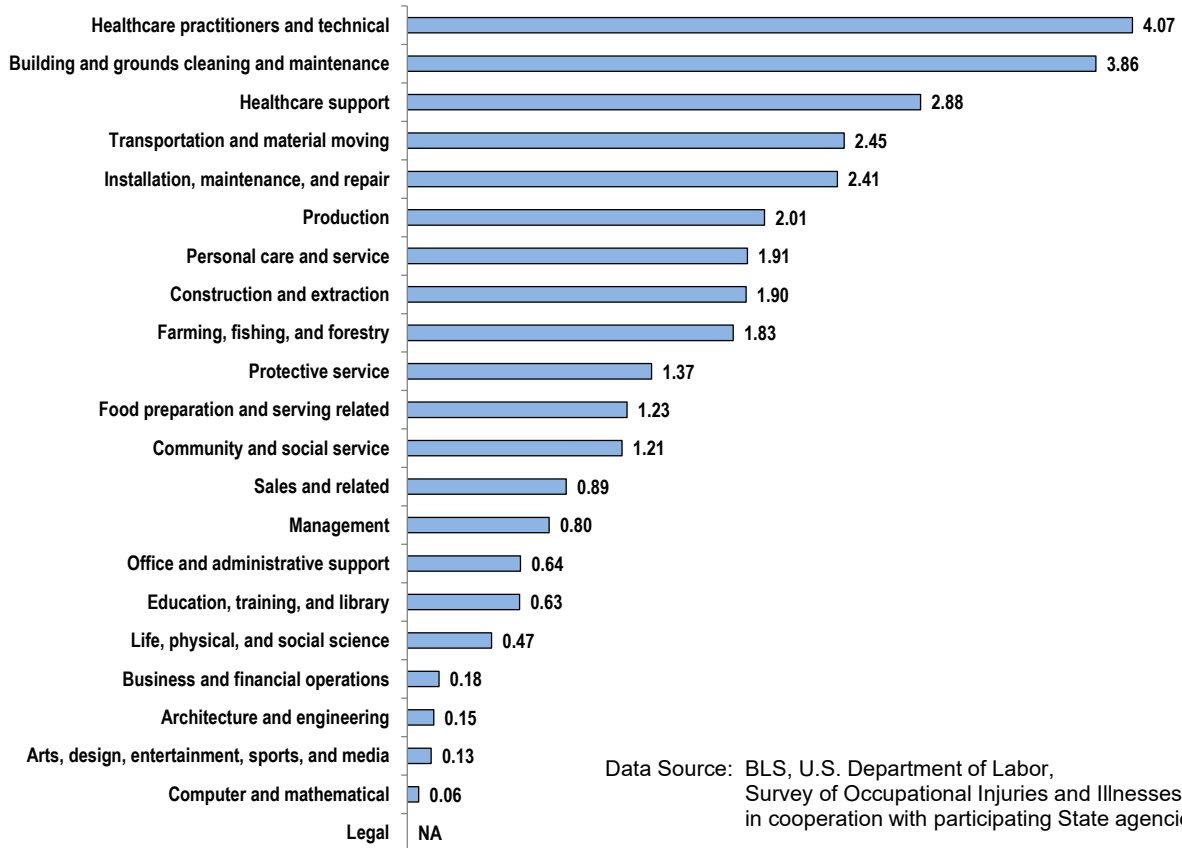
**Figure 140: Non-Fatal Injuries and Illnesses by Major Occupational Group: Median Days Away from Work, Local Government, 2020**



## WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

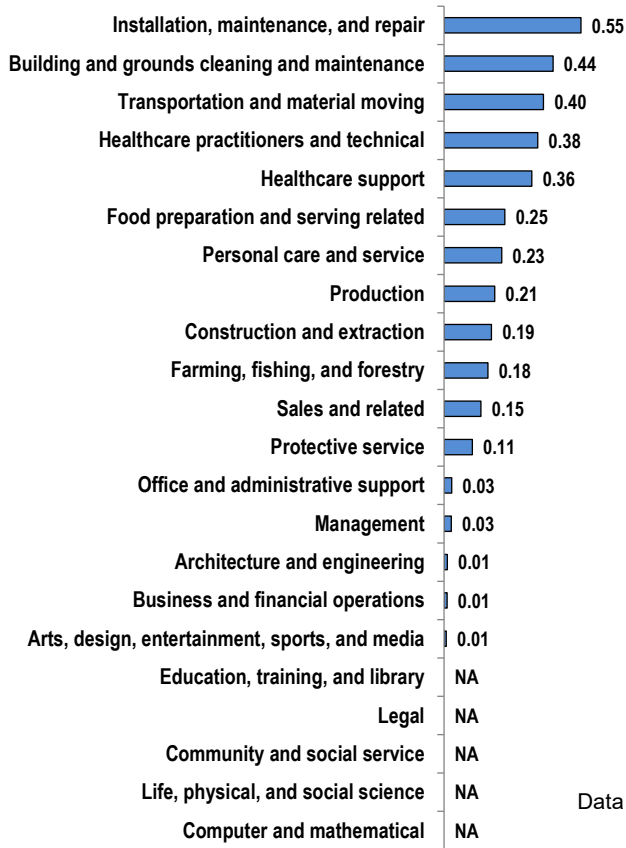
Figures 141 and 142 compare the injury and illness incidence rates, including back injury, for various occupations. The healthcare practitioners and technical occupations had the highest incidence rate in 2020, followed by building and grounds cleaning and maintenance occupations and healthcare support.

**Figure 141: Incidence Rates by Private Sector Occupational Group (per 100 Full-Time Workers)  
Non-Fatal Occupational Injuries and Illnesses with Days Away from Work, 2020**



## WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

**Figure 142: 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, 2020**



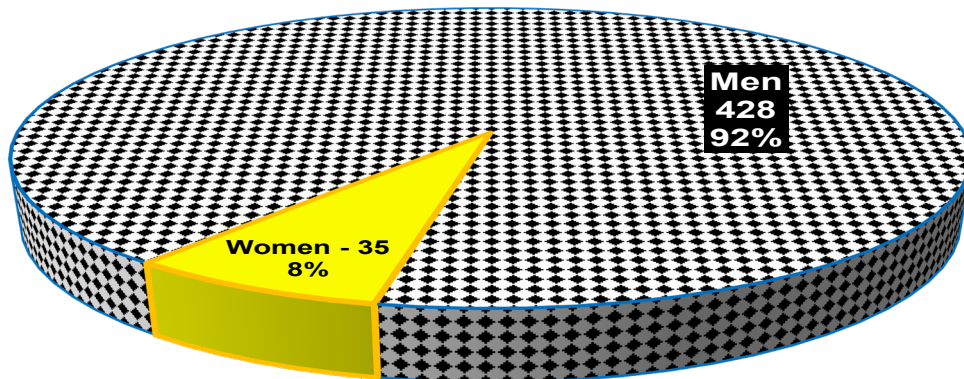
Data Source: BLS, U.S. Department of Labor, Survey of Occupational Injuries and Illnesses in cooperation with participating State agencies

# WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

## Characteristics of California Fatal Occupational Injuries and Illnesses

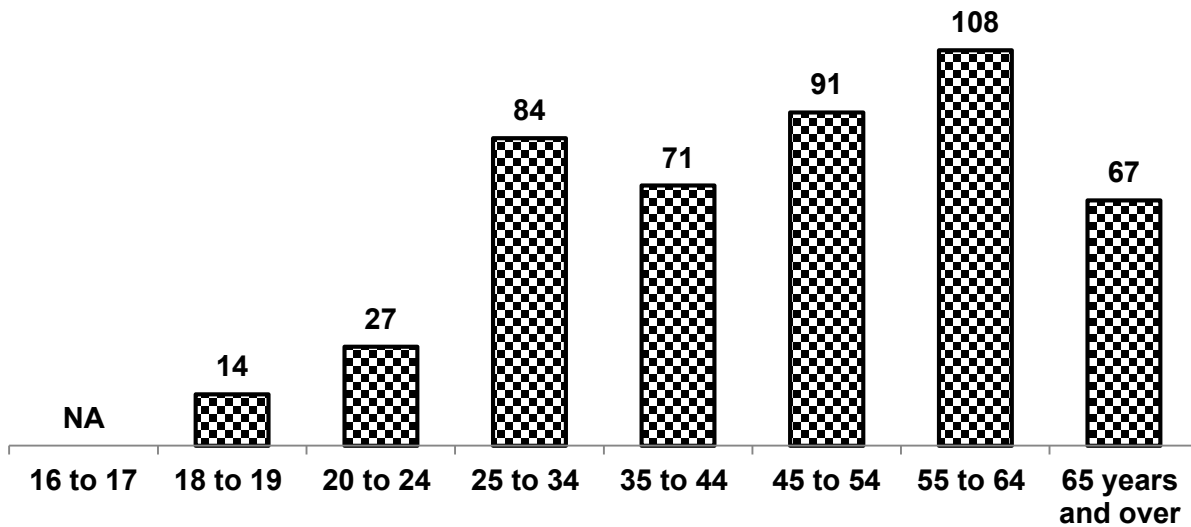
Figures 143-147 illustrate various characteristics of fatal occupational injuries and illnesses in private industry and federal, state, and local governments in California.

**Figure 143: California Fatal Occupational Injuries and Illnesses by Gender, 2020**



Data Source: BLS

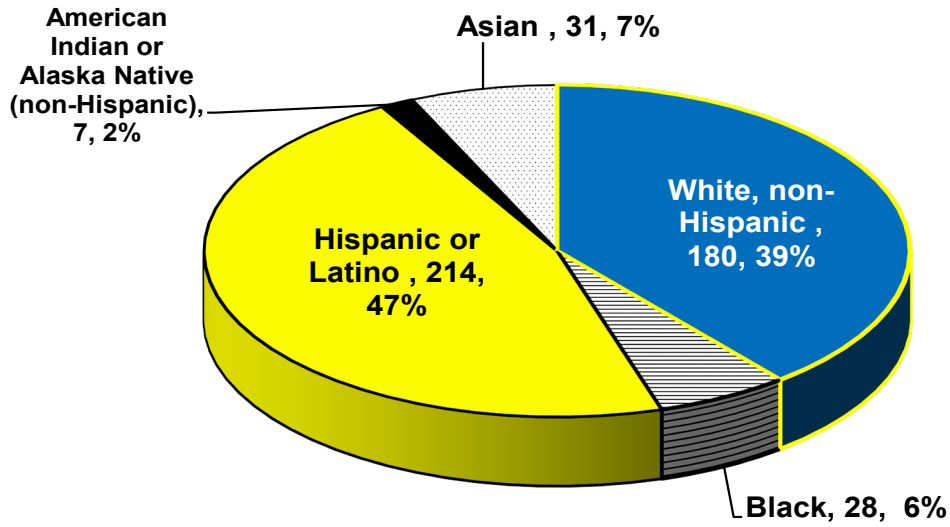
**Figure 144: California Fatal Occupational Injuries and Illnesses by Age of Worker, 2020**



Source: BLS

## WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

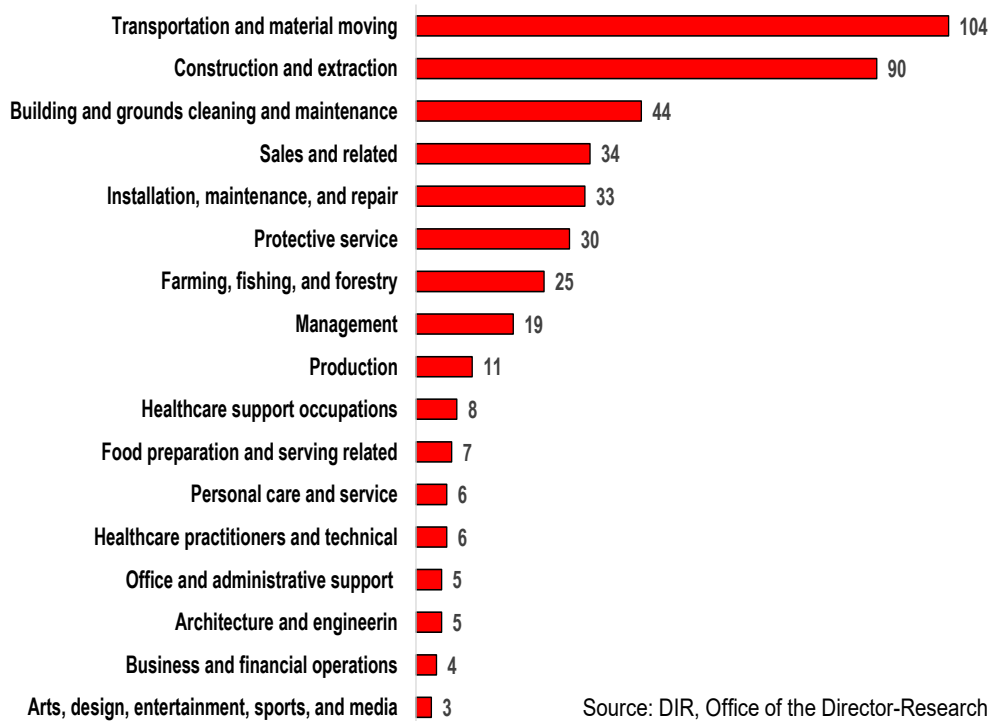
**Figure 145: California Fatal Occupational Injuries and Illnesses by Race and Ethnic Origin, 2020**



Source: BLS

Figure 146 compares the number of fatalities for various occupations. The transportation and material-moving occupation had the highest number of fatalities in 2020, followed by the construction and extraction occupations.

**Figure 146: Fatal Occupational Injuries by Selected Occupations, All Ownerships, 2020**

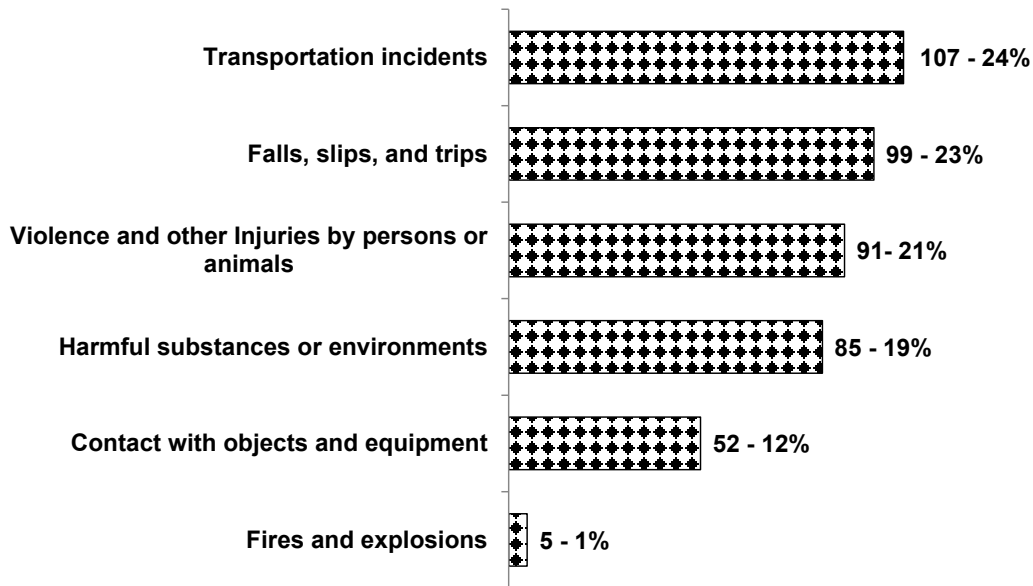


Source: DIR, Office of the Director-Research



## WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

**Figure 147: California Fatal Occupational Injuries and Illnesses by Event and Exposure, 2020**



Note: The data exclude the Federal government.

Source: BLS

### *Fatal Injuries among Contracted and Independent Workers*<sup>153</sup>

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.<sup>154</sup> 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.<sup>155</sup>

Figure 148 shows that from 2011 to 2015, the number of fatal occupational injuries among contracted workers in the U.S. increased by 53 percent.

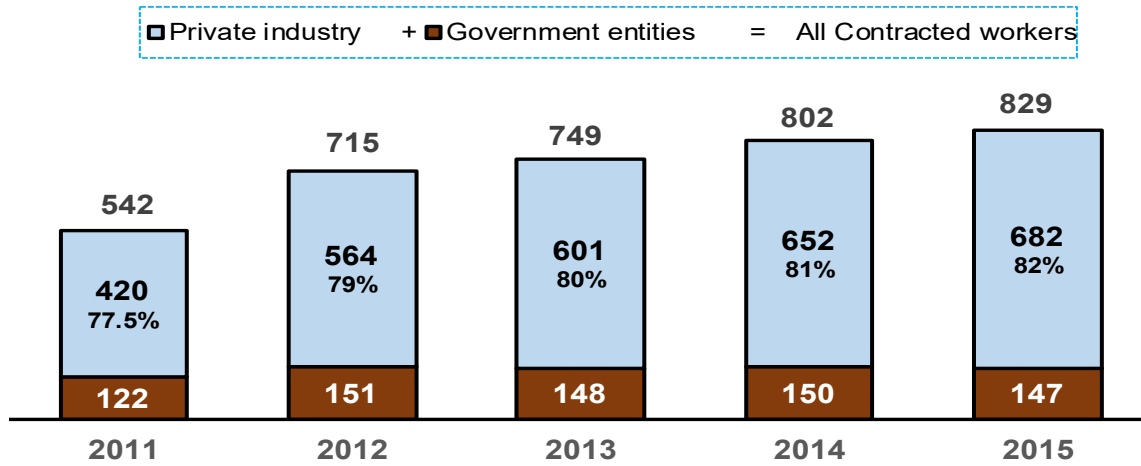
<sup>153</sup> Data in this section were created on an ad hoc basis by the Bureau of Labor Statistics (BLS) and not updated in 2020.

<sup>154</sup> <https://www.bls.gov/iif/oshwc/cfoi/contractor.htm>.

<sup>155</sup> [https://www.bls.gov/opub/ted/2018/independent-contractors-made-up-6-point-9-percent-of-employment-in-may-2017.htm?view\\_full](https://www.bls.gov/opub/ted/2018/independent-contractors-made-up-6-point-9-percent-of-employment-in-may-2017.htm?view_full).

## WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

**Figure 148: 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**

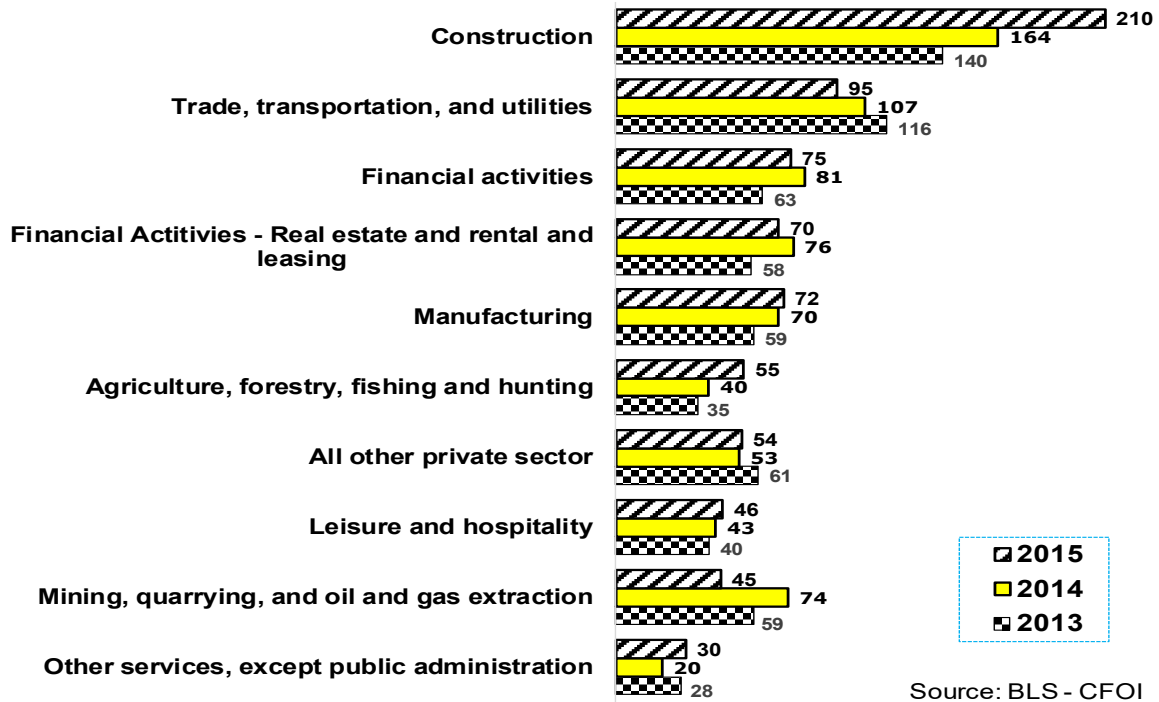
	2016	2017	2018
<b>U.S.</b>	662	613	621
<b>California</b>	52	75	60

Source: BLS

As Figure 149 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.

## WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

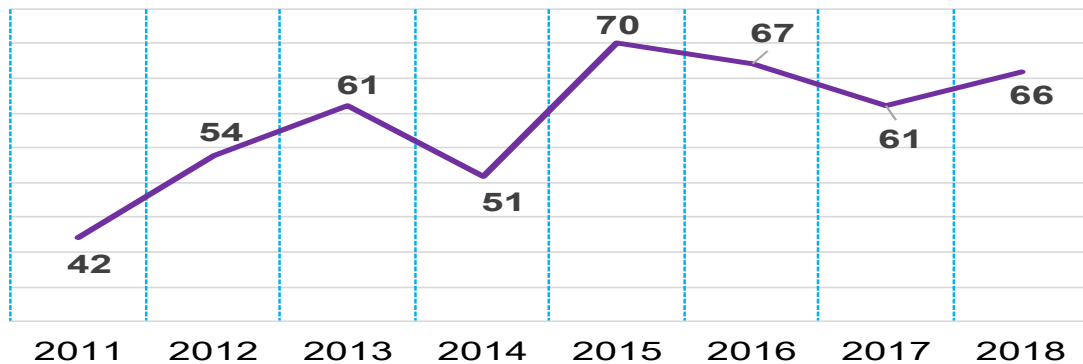
**Figure 149: Number of Fatal Occupational Injuries by Contracted Workers in the U.S., by Contracting Industry, 2013–2015**



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 150 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 150: Number of Fatal Occupational Injuries Incurred by Contracted Workers in California**



Source: BLS—CFOI

## WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

### 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 2020 indicate a non-fatal injury and illness incidence 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 the same as the previous 2019 year's rate.
- The trend in California mirrored a national trend from 2013 to 2020. 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 2020 with a slight decreases from 2.8 in 2019 to 2.7 in 2020. The reduced incidence rate of job injuries from 2013 to 2017 was likely due to factors including a greater emphasis on job safety and the continuing shift from manufacturing to service jobs in the U.S.
- In contrast to the private sector rates, California's public sector incidence rates are significantly higher than in the private sector. California's state and local government rate for 2020 is 5.5 cases per 100 full-time employees. While this is a 22.5 percent decline from the 2013 rate of 7.1, in 2020, the state and local government rate of 5.5 in California is almost 29 percent higher than the national rate of 3.9 for state and local government.
- The national fatality rate increased by 3 percent between 2013 and 2020, from 3.3 to 3.4 cases per 100,000 employed, and California's fatality rate increased by 21 percent from 2.4 per 100,000 employed in 2013 to 2.9 cases in 2020.<sup>156</sup>
- Among the Western region states (Alaska, Arizona, California, Hawaii, Nevada, Oregon, and Washington), Arizona's (3.0), Hawaii's (3.0), and both California's and Nevada's (3.2) private industry rates in 2020 for non-fatal occupational injuries and illnesses were the lowest.<sup>157</sup> The 2020 fatality rates among these states were the lowest for Washington (2.5), California and Hawaii (2.9 each) and Nevada (3.0).<sup>158</sup>

#### **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, increased by 36 percent from 1.1 case per 100 full-time employees in 2013 to 1.5 case per 100 full-time employees in 2020. The national rate of the days-away-from-work cases per 100 full-time employees increased from 1.0 to 1.2 cases in the private sector during the same period.
- Nationally, the overall days-away-from-work rate increased from 0.9 to 1.2 cases per 100 full-time employees from 2019 to 2020. California's days-away-from-work rate increasing from 1.0 to 1.5 cases per 100 full-time employees from 2019 to 2020 during the COVID-19 pandemic.

#### **Industry Data**

- In 2020, injury and illness incidence rates varied greatly among private industries ranging from 0.7 injury/illness per 100 full-time workers in the professional, scientific, and technical services and information industries to 6.1 in health care and social assistance. California's private industry rates for total cases were higher than the national rates in every major industry division, except for mining,

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<sup>156</sup> 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.

<sup>157</sup> The comparisons of industry rates have not been adjusted for industry mix in each state.

<sup>158</sup> <https://www.bls.gov/iif/oshwc/cfoi/staterate2019.htm>.

## WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

quarrying, and oil and gas extraction (0.9 and 1.2), educational services (0.9 and 1.1), and information (0.7 and 0.8).

- The California private industry total case rate for non-fatal injuries experienced no change from 3.2 cases per 100 full-time workers in both 2019 and 2020, and the rate for the public sector (state and local government) decreased by 10 percent from 6.1 in 2019 to 5.5 in 2020.
- According to the OD-Research, and the Office of Legislative Affairs, the largest decrease in injury and illness by major industry category from 2019 to 2020, was in the educational services (64 percent), from 2.5 to 0.9, in both professional, scientific, and technical services and information (36 percent), from 1.1 to 0.7 per 100 full-time worker injuries, followed by a decrease in transportation and warehousing (25 percent) from 5.9 to 4.4 per 100 full-time worker injuries in 2019 and 2020, and by a decrease in agriculture, forestry, fishing and hunting (22 percent), from 6.0 to 4.7 per 100 full-time worker injuries in 2019 and 2020.<sup>159</sup>
- According to the OD-Research, the largest increase in injury and illness by industry sectors was in management of companies and enterprises (43 percent), from 0.7 to 1.0 per 100 full-time worker injuries in 2019 and 2020 respectively, followed by health care and social assistance (39 percent), with an increase from 4.4 to 6.1, real estate and rental and leasing, with a 13 percent increase from 2.3 to 2.6 per 100 full-time worker injuries in 2019 and 2020, and other services (except public administration) (13 percent), from 2.4 to 2.7 between 2019 and 2020.<sup>160</sup>
- From 2013 to 2020, the number of fatal injuries<sup>161</sup> increased by almost 16 percent, from 378 to 438.<sup>162</sup> From 2019 to 2020, there was a very slight increase in the number of fatal injuries from 437 to 438 respectively. In 2020, the highest number of fatal injuries in the private sector was in construction (80), followed by transportation and warehousing (74) and administrative and support and waste management and remediation services (52).
- In private industry, the top ten occupations with the most non-fatal injuries and illnesses in 2020 were: registered nurses; laborers and freight, stock and material movers, hand; nursing assistants; stockers and order fillers; personal care aids; heavy and tractor-trailer truck drivers; retail salespersons; farmworkers and laborers, crop, nursery, and greenhouse; maids and housekeeping cleaners; janitors and cleaners, except maids and housekeeping cleaners.
- In California's state government, the top ten occupations with the most non-fatal injuries and illnesses in 2020 were: correctional officers and jailers; police and sheriff's patrol officers; registered nurses; firefighters; highway maintenance workers; psychiatric technicians; first-line supervisors of correctional officers; janitors and cleaners, except maids and housekeeping cleaners; first-line supervisors of firefighting and prevention workers; health information technologists, medical registrars, surgical assistants, and healthcare practitioners and technical workers, all other.
- In local government, the top ten occupations with the most non-fatal injuries and illnesses in 2020 were: police and sheriff's patrol officers; correctional officers and jailers; firefighters; janitors and cleaners, except maids and housekeeping cleaners; first-line supervisors of police and detectives; first-line supervisors of firefighting and prevention workers; landscaping and groundskeeping workers; registered nurses; maintenance and repair workers, general; nursing assistants.
- Transportation and material moving (104), construction and extraction (90), and building and grounds cleaning and maintenance (44) occupations accounted for 51 percent of the fatal injuries in 2020. Sales and related (34), installation, maintenance, and repair (33), protective services (30), farming, fishing, and forestry (25), management (19), and production (11), were the other occupations with the most number of fatal injuries in 2020. Transportation and material-moving occupations were the top cause of fatal injuries accounting for 22.5 percent of fatal injuries in 2020.

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<sup>159</sup> DIR, Office of the Director-Research, Table 1: Incidence rates of non-fatal occupational injuries and illnesses by selected industries and case types, 2019, 2020.

<sup>160</sup> Ibid.

<sup>161</sup> BLS preliminary data.

<sup>162</sup> The number of fatalities excludes those for the Federal government.

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- Transportation incidents (including the federal government) accounted for 24 percent of fatal injuries in 2020 and were a major cause of fatalities among: transportation and material moving (56); construction and extraction (14), and building and grounds cleaning and maintenance (7) occupations.

### ***Establishment Size and Type***

- The lowest rate for the total recordable non-fatal cases in 2020 was experienced by the private employers having fewer than 50 employees. Smallest employers with 1 to 10 and 11 to 49 employees had incidence rates of 1.4 and 2.6 cases, respectively, per 100 full-time employees. Establishments with 11 to 49 and 250 to 999 employees experienced 13 percent and 5 percent decreases respectively in incidence rates from 2019 to 2020.
- Establishments with 50 to 249 employees reported the highest rate of 4.2 per 100 full-time employees, followed by 3.7 and 3.3 cases per 100 full-time employees respectively for establishments with 250 to 999 and 1,000 or more employees in 2020. Employers with 1 to 10, 1,000 or more, and 250 to 999 employees experienced 27 percent, 18 percent, and 5 percent increases respectively from 2019 to 2020.

### ***Types of Injuries***

- Eight out of eleven types of work illnesses and injuries decreased from 2013 to 2020 in the private sector. The number of sprains, strains, and tears decreased by 8 percent from 2013 to 2020; these injuries remain by far the most common type of work injury accounting for 40 percent of days-away-from-work cases in the private sector in 2020. The biggest decrease of 64 percent from 470 cases in 2013 to 170 in 2020 was in tendonitis, followed by carpal tunnel syndrome (-15 percent), multiple traumatic injuries (-11 percent), and equally decreased heat (thermal) burns (-10 percent) and cuts, lacerations, punctures (-10 percent). The biggest increase (39 percent) from 180 cases in 2013 to 250 cases in 2020 was in chemical burns and corrosions. Soreness and pain increased 35 percent and fractures increased 9 percent between 2013 and 2020.
- In the private sector, exposure to harmful substances or environment were the leading causes of days-away-from-work injuries, cited in 38 percent of cases in 2020. Overexertion and bodily reaction was the second-most common cause of injury, accounting for 24 percent of injuries.
- In California state government, the two main causes of injury were exposure to harmful substances or environment and overexertion and bodily reaction, accounting for 44 and 19 percent of days-away-from-work cases, respectively, in 2020.
- In local government, the main causes of injury were overexertion and bodily reaction and exposure to harmful substances or environment, accounting for 32.4 and 32.2 percent of days-away-from-work cases, respectively, in 2020.
- The most frequently injured body part was the body systems, accounting for 45 percent of the cases in state government and 30 percent of the cases in local government in 2020. In the private sector, the body systems account for 37 percent of the non-fatal cases.

### ***Demographics***

- Over the period from 2013 to 2020 in the California private sector, the number of days-away-from-work cases for women increased by 21 percent. Days-away-from-work cases for men increased by 20 percent. Some of the increase (28 percent and 16 percent for women and men respectively) from 2013 to 2019 can be attributed to an increase in employment and total hours worked. From 2019 to 2020, there was a 3 percent increase in the number of fatalities for men and 3 percent decrease for women.
- Between 2013 and 2020, in private industry, all the age groups experienced increase in the number of cases with days away from work. The biggest increase (78 percent and 60 percent) occurred among workers 65 and over and 55-64 age group respectively. The 16-19 age group increased 50 percent

## WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

and the 20-24 age group grew 49 percent from 2013 to 2020. The 25-34 age group increased 37 percent, 45-54 age groups increased 31 percent, and 35-44 age group increased 26 percent from 2013 to 2020.

- In 2020, out of 463 fatalities (including the federal government), 92 percent were male and 8 percent were female. Compared to 2013, the biggest and decrease in the number of fatalities (23 percent) was in the 35–44 age group (from 92 to 71 cases), followed by the 45-54 age group with a 7 percent decrease from 98 fatalities in 2013 to 91 fatalities in 2020. The age groups that experienced the biggest increase in the number of fatalities was the 18 to 19 age group (133 percent increase) from 6 to 14 cases, followed by a 91 percent increase from 35 to 67 in the 65 and over age group, a 44 percent increase from 75 to 108 in the age group of those 55 to 64, a 29 percent increase from 21 to 27 in the 20 to 24 age group, and 22 percent increase from 69 to 84 in the 25 to 34 age group.
- The highest number of fatalities by race or ethnic origin categories in 2020 was experienced by “Hispanic or Latino” (214) and “White, non-Hispanic” (180) groups, accounting for 47 percent and 39 percent of the fatalities respectively. From 2013 to 2020, all ethnic groups experienced an increase in the number of fatalities. The highest increase in fatal injuries from 2013 to 2020, 75 percent, was in the group “Black, non-Hispanic” (from 16 to 28 cases), followed by 55 percent increase from 20 to 31 cases in the “Asian” group. The “White, non-Hispanic” ethnic group experienced a 10.4 percent increase in fatal injuries, from 163 cases in 2013 to 180 cases in 2020 and there was another 10.3 percent increase from 194 in 2013 to 214 cases in 2020 in the “Hispanic or Latino” group.

### ***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.

## WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

### *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.

### *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*

Cal/OSHA's 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.

[Cal/OSHA's 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.

[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)*<sup>163</sup> presentation.

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<sup>163</sup> <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>.

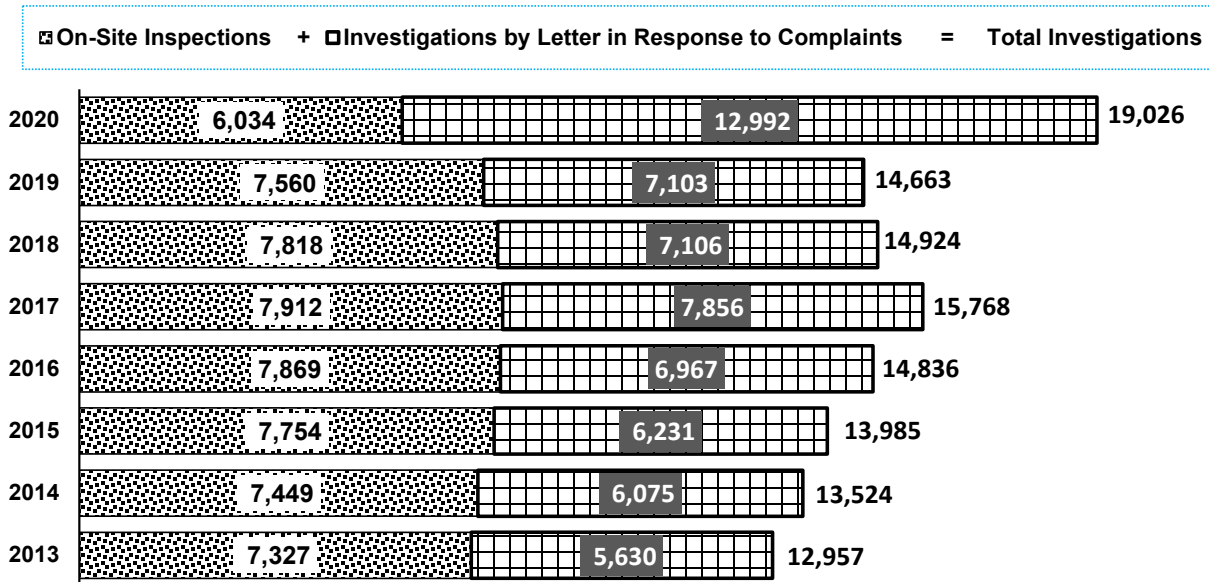


## WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

### Profile of Division of Occupational Safety and Health (DOSH) Investigations and Violations Cited

Figure 151 shows the number of on-site inspections and investigations by letter<sup>164</sup> in response to complaints for the period from calendar year (CY) 2013 to CY 2020.<sup>165</sup> The on-site inspections increased by 8 percent from 2013 to 2017, decreased by 4 percent from 2017 to 2019, and then fell by 20 percent from 2019 to 2020. Investigations by letter in response to complaints increased by 40 percent from 2013 to 2017, decreased by 10 percent from 2017 to 2019, and increased by 83 percent from 2019 to 2020. Accordingly, reflecting DOSH enforcement activities, the total number of investigations increased by 22 percent from 2013 through 2017, decreased by 7 percent from 2017 to 2019, and increased by 30 percent from 2019 to 2020. Sending a letter instead of an on-site inspection, according to Figure 151, might have been a preferred way of conducting investigations during the COVID-19 pandemic.

**Figure 151: DOSH Enforcement Activities, 2013–2020**



Source: DOSH

Figure 152 shows the distribution of DOSH on-site inspections with and without violations from 2013 to 2020.

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. From 2019 to 2020, the share of inspections triggered by accidents increased by 9 percentage points to 42 percent.

Unprogrammed inspections triggered by complaints fluctuated slightly around an average of 28 percent from 2013 to 2019, and then decreased to 23 percent from 2019 to 2020.

<sup>164</sup> Investigations by letter are conducted in response to non-formal complaints alleging nonserious (general or regulatory) hazards. Investigations by sending a letter require the employer to conduct an investigation and correct any hazards discovered. <https://www.dir.ca.gov/dosh/caloshacomplaintflowchart.html>; items 3D and 3E

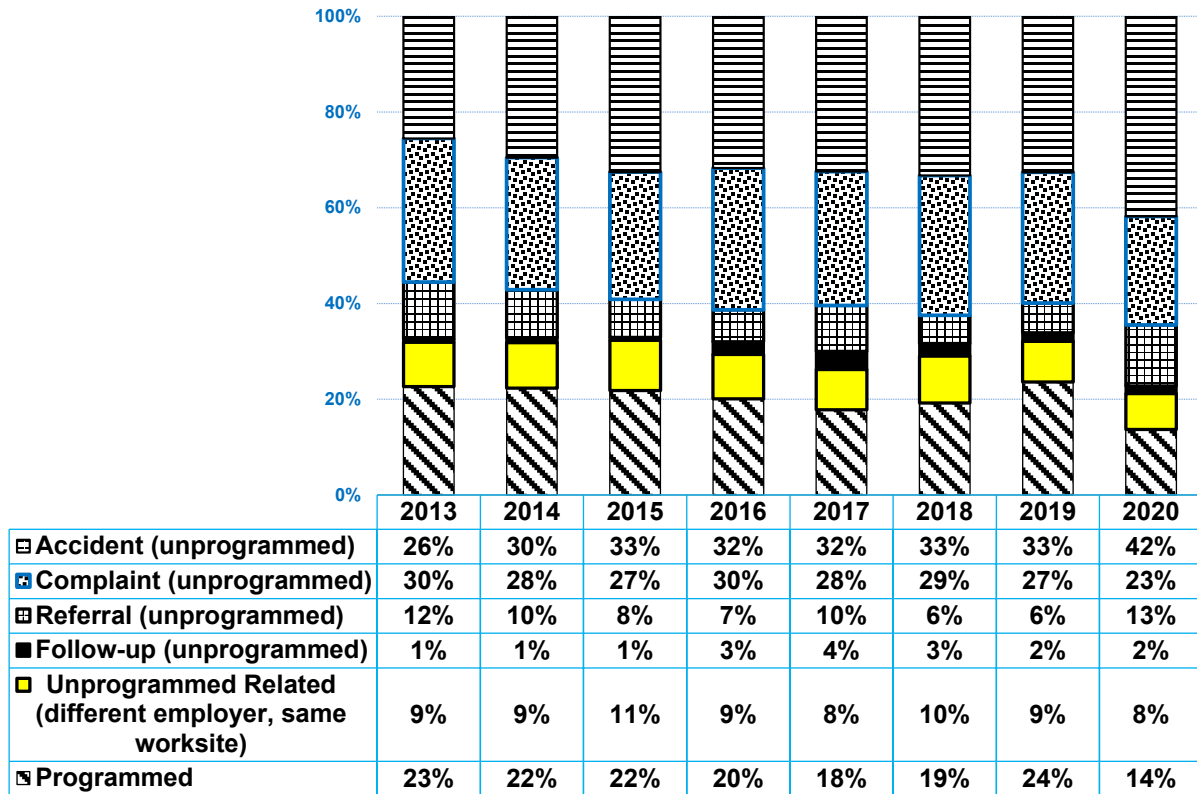
<sup>165</sup> The number of investigations, on-site inspections, and violations for calendar years could differ from those in fiscal years below in this section.

## WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

Programmed inspections decreased from an average of 22 percent per year from 2013 through 2016 to 18 percent in 2017 and then increased to 24 percent in 2019. From 2019 to 2020, the share of programmed inspections decreased by 10 percentage points to 14 percent.

From 2013 to 2020, accidents and complaints were consistently the predominant types of inspections.

**Figure 152: Distribution of DOSH on-Site Inspections by Type (All, with and without Violations), 2013–2020**

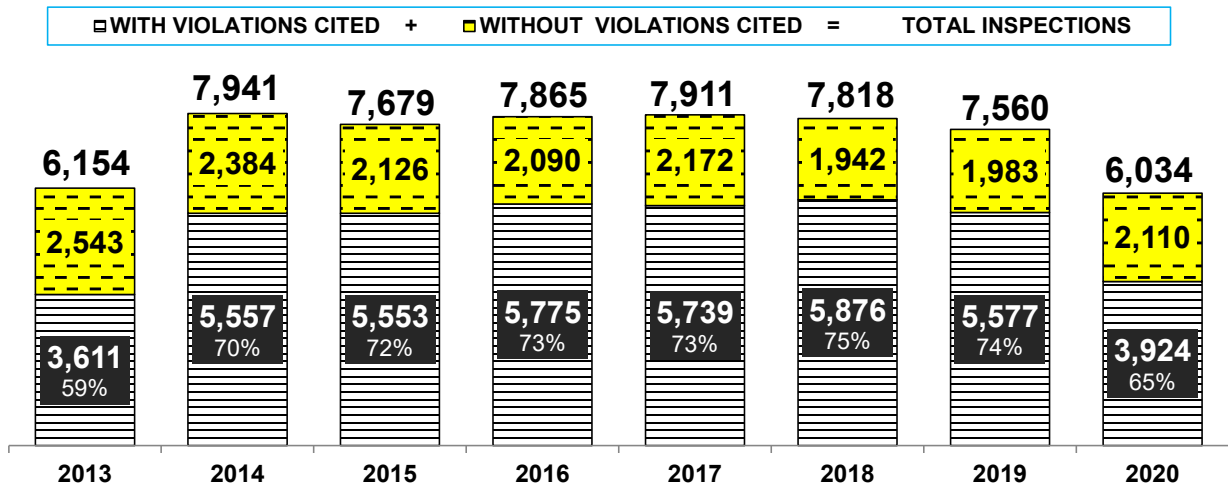


Source: DOSH

According to Figure 153, the number of inspections without violations decreased overall by 22 percent from 2013 to 2019 while the number of inspections with violations increased 63 percent from 2013 to 2018, decreased 5 percent from 2018 to 2019, and then fell by 30 percent from 2019 to 2020. 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 to an average of 74 percent from 2017 to 2019. From 2019 to 2020, the share of DOSH inspections that resulted in violations cited decreased by almost 10 percentage points to 65 percent of all inspections.

## WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

**Figure 153: DOSH Inspections (with and without Violations Cited), 2013–2020**



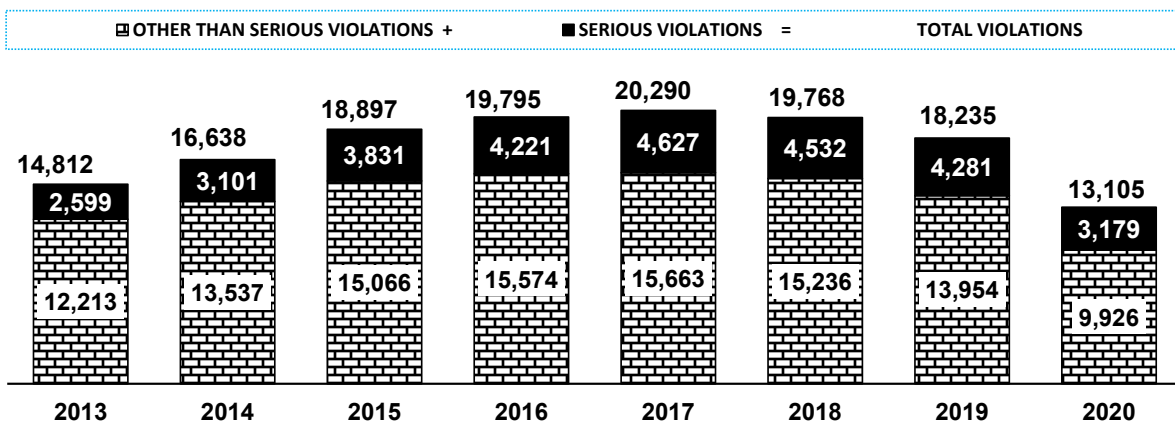
Data Source: DOSH

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 2020 are shown in Figure 154.

According to Figure 154, the number of all violations increased by 37 percent from 2013 to 2017, decreased by 10 percent from 2017 to 2019, and then fell by 28 percent from 2019 to 2020. The number of serious violations increased by 78 percent from 2013 to 2017, decreased by 7.5 percent from 2017 to 2019, and then declined - proportionally to the decline in total number of violations - by 26 percent from 2019 to 2020. (See Figures 167 and 168 for OSHAB statistics on the number of appeals of DOSH violations that were filed and resolved.)

**Figure 154: DOSH Violations (Serious and Other Than Serious), 2013-2020**

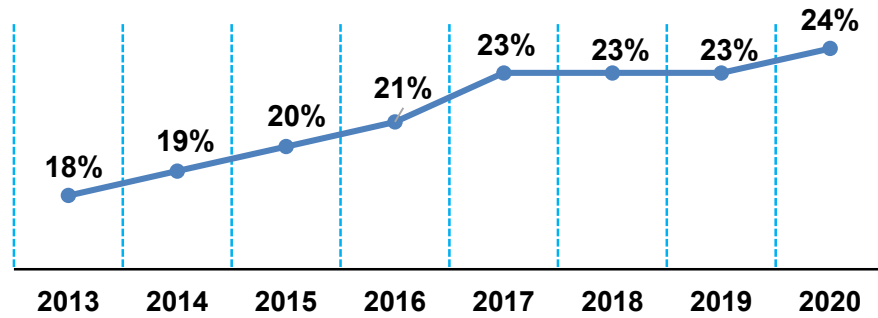


Source: DOSH

Figure 155 shows the trend in serious DOSH violations as a share of all violations from 2013 to 2020. The share of serious DOSH violations gradually increased from 18 percent in 2013 to 23 percent yearly from 2017 to 2019, and to 24 percent in 2020

## WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

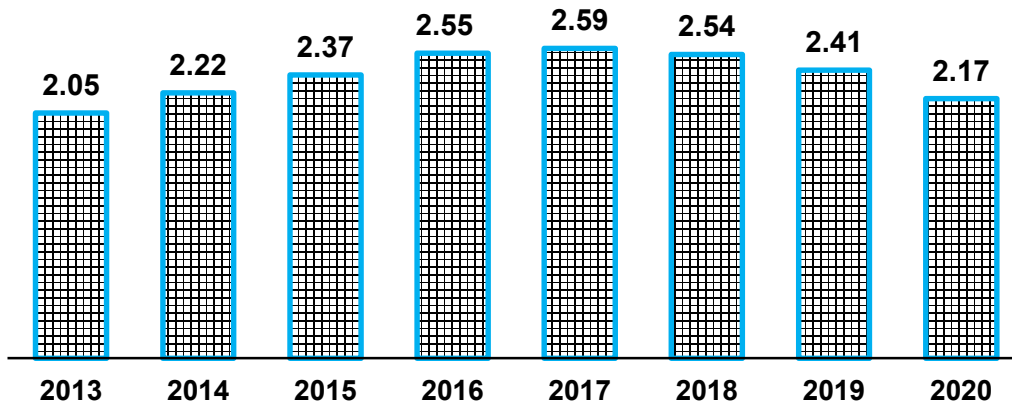
**Figure 155: Serious Violations as a Share of Total DOSH Violations, 2013-2020**



Source: DOSH

The average number of DOSH violations per inspection increased by 24 percent from 2013 to 2016, averaged 2.55 from 2016 to 2018, and after a slight decrease from 2018 to 2019, it declined by 10 percent to 2.17 DOSH violations per inspection in 2020.

**Figure 156: Average Number of DOSH Violations per Inspection, 2013–2020**



Source: DOSH

Table 38 lists the top twenty-five most frequently cited CCR Title 8 standards in 2020.

**Table 38: Twenty-Five Most Frequently Cited CCR Title 8 Standards, 2020**

Standard	Description	Total Violations	Serious Violations	Percent Serious
3203	Injury and Illness Prevention Program	1458	199	13.6%
3395	Heat Illness Prevention	1287	189	14.7%
1509	Construction Injury and Illness Prevention Program	757	41	5.4%
342	Reporting Work-Connected Fatalities and Serious Injuries	471	15	3.2%
3314	Control of Hazardous Energy, Including Lockout/Tagout	444	178	40.1%
5144	Respiratory Protection	373	30	8.0%
5194	Hazard Communication	345	11	3.2%

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Standard	Description	Total Violations	Serious Violations	Percent Serious
5162	Emergency Eyewash and Shower Equipment	264	120	45.5%
6151	Portable Fire Extinguishers	264	1	0.4%
5204	Occupational Exposures to Respirable Crystalline Silica	259	111	42.9%
461	Permits to Operate Air Tanks	246	1	0.4%
3276	Portable Ladders	233	65	27.9%
3650	Industrial Trucks: General Requirements	210	85	40.5%
1512	Construction: Emergency Medical Services	201	4	2.0%
3328	Safe Practices, Personal Protection: Machinery and Equipment	177	70	39.5%
3668	Powered Industrial Truck Operator Training	176	25	14.2%
2340.16	Work Space About Electric Equipment	172	2	1.2%
5199	Aerosol Transmissible Diseases	133	75	56.4%
341	Permit Requirements: Excavations, Trenches, Construction and Demolition and the Underground Use of Diesel Engines in Work in Mines and Tunnels	129	10	7.8%
1670	Personal Fall Arrest Systems, Personal Fall Restraint Systems and Positioning Devices	117	77	65.8%
4650	Compressed Gas and Air Cylinders: Storage, Handling, and Use	115	18	15.7%
4002	Moving Parts of Machinery or Equipment	109	77	70.6%
2500.8	Flexible Electrical Cords and Cables: Uses Not Permitted	107	0	0.0%
3380	Personal Protective Devices	93	9	9.7%
3664	Industrial Trucks, Operating Rules	91	6	6.6%

Note: "Serious" includes Serious, Willful, and Repeat Violations  
 Source: DOSH Budget and Program Office.

Figure 157 demonstrates the trends in penalties and collections. Total penalties assessed were \$36.7 million in 2020, a decrease of 30 percent from its 2019 pre-pandemic level and a 39 percent decrease from its peak of about \$60 million in 2017. Many employers appeal those "recommended" penalties with Cal/OSHA's 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 \$28 million and \$11 million, respectively, in 2020.

Although Figure 157 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.

## WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

**Figure 157: Total DOSH Penalties Assessed and Collected, 2013–2020  
(Million \$)**

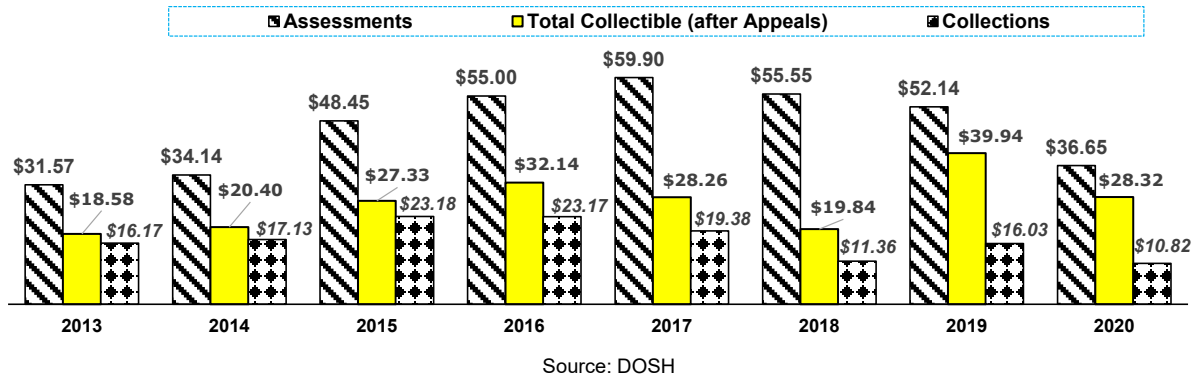
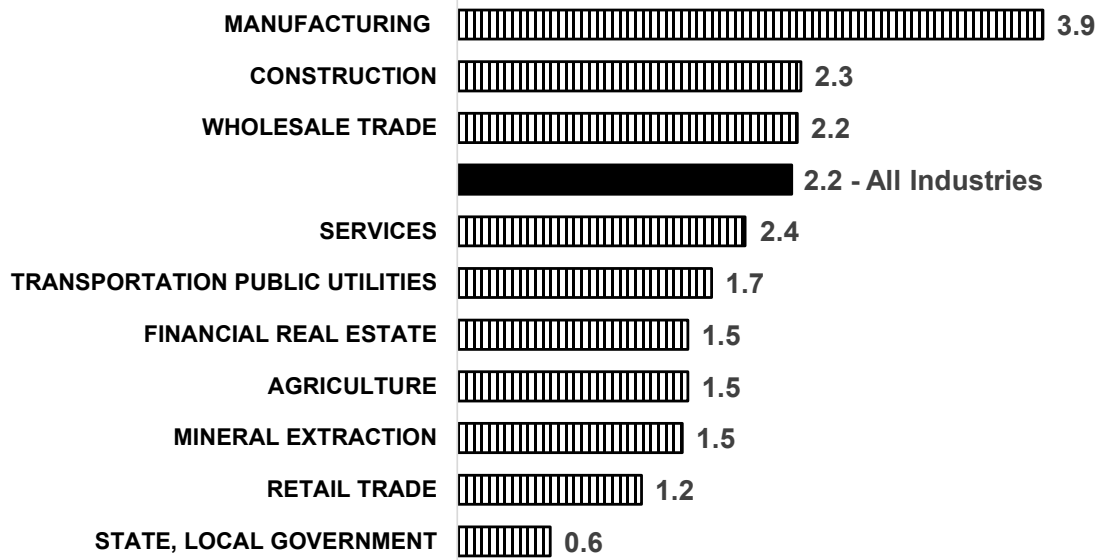


Figure 158 shows the rate of DOSH violations per on-site inspection for each major industry group in 2020. Except for the higher-than-average rate in manufacturing and lower-than-average rate in industries with a small proportion of both inspections and violations such as government and financial real estate, the industry groups with a bigger share of inspections and violations have a nearly average rate of DOSH violations per on-site inspection, which explains the similar industry group proportions in on-site inspections and DOSH violations. (See Figures 159 and 160).

**Figure 158: Rate of DOSH Violations per on-Site Inspection, by Major Industry Groups, 2020**

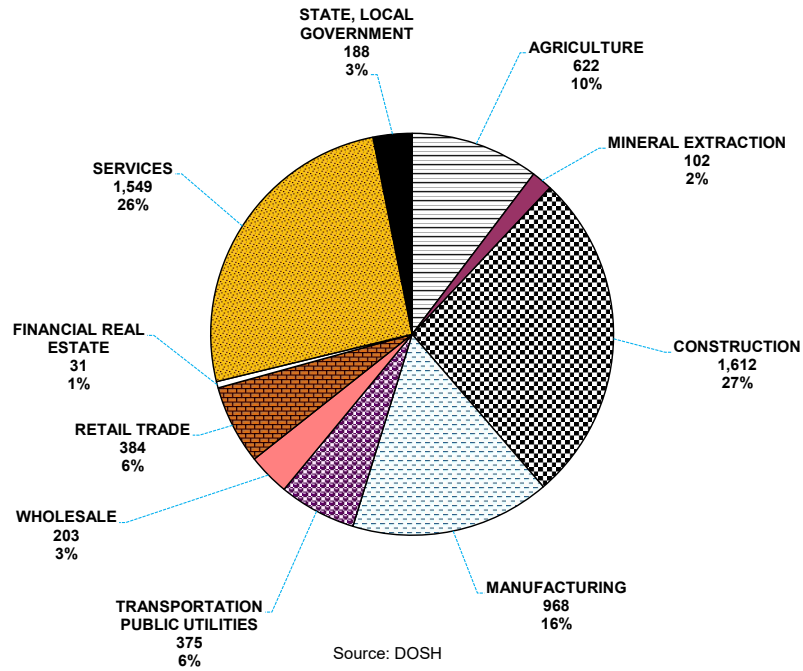


Source: DOSH

Figure 159 illustrates the proportion of on-site inspections in major industrial groups. Of the 6,034 workplace health and safety inspections conducted in 2020, 1,612 (27 percent) were in construction and 4,422 (73 percent) were in non-construction.

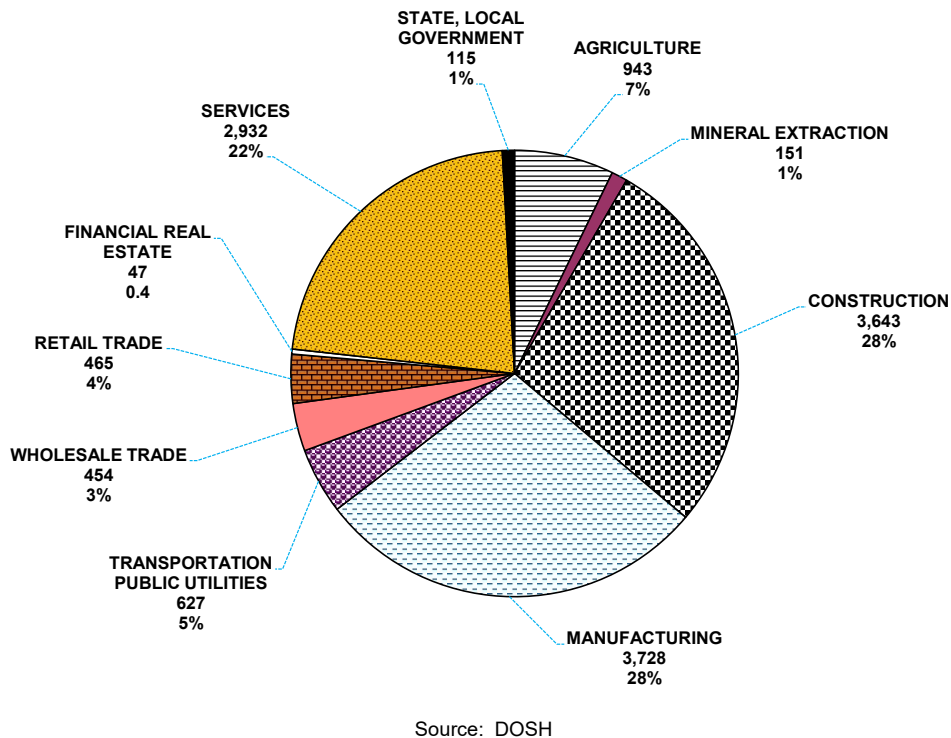
## WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

**Figure 159: Distribution of on-Site Inspections by Major Industry, 2020  
(Total Inspections = 6,034)**



As shown in Figure 160, the highest percentage of violations was in manufacturing (28 percent) and construction (28 percent), followed by services (22 percent).

**Figure 160: Distribution of Violations by Major Industry, 2020  
(Total Violations = 13,105)**



## WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

### COVID-19-related DOSH Investigations and Inspections<sup>166</sup>

As a result of the COVID-19 pandemic, there was a significant increase in the demand for DOSH enforcement. DOSH enforcement activities related to identification and prevention of COVID-19 hazards are reflected in Figures 161-163. The data covers 20 months of DOSH COVID-19-related activities starting from February 2020 to September 30, 2021, based on reports run on October 3, 2021. These data come with the caveat that the numbers of COVID-19 non-fatal illnesses and fatalities and related complaints in 2020 and 2021 may not be complete or may include duplicates when more than 1 employee calls in similar complaints for the same employer, or a reported illness results in an additional report when the illness leads to a fatality, and those also may include invalid complaints, unprocessed complaints, illnesses, fatalities, and referrals. The complaints and reports of non-fatal illnesses and fatalities may include both the confirmed and unconfirmed cases in terms of work-relatedness.<sup>167</sup> According to DOSH, despite the caveats, the general data trends reflected in the figures below are correct.

Figure 161 shows the numbers of COVID-19 non-fatal illnesses and fatalities reported to DOSH in 2020 and 2021. Over the 20 months, 3,762 non-fatal illnesses and 964 fatalities were reported to DOSH, with 45 percent of all non-fatal cases reported in November and December of 2020 and January of 2021 with a one month lag for fatalities, when 51 percent of all fatalities were reported in December of 2020 and January and February of 2021.

**Figure 161: Numbers of COVID-19 Non-Fatal Illnesses and Fatalities Reported to DOSH**

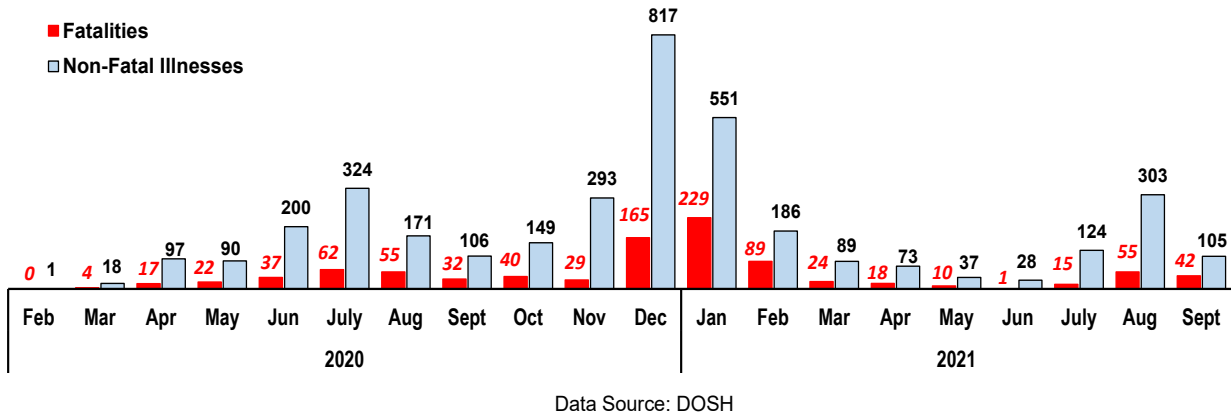


Figure 162 shows the numbers of COVID-19-related complaints received and DOSH investigations by letter conducted in 2020 and 2021. In the first months of the pandemic, DOSH developed and implemented a revised complaint response procedure for COVID-19 cases to ensure that the hazards reported were addressed. The procedure consists of an investigation by letter of most complaints that require the employer to conduct an investigation and correct any hazards discovered. The investigation by letter is supplemented by an offer to the employer to provide assistance in correcting the hazards. Investigations by letter are conducted in response to non-formal complaints, but in response to pandemic conditions, many formal complaints were also investigated in this manner. Over the 20 months, 12,248 letters have been sent in response to 14,737 complaints with 72 percent of all the letters sent in 2020.

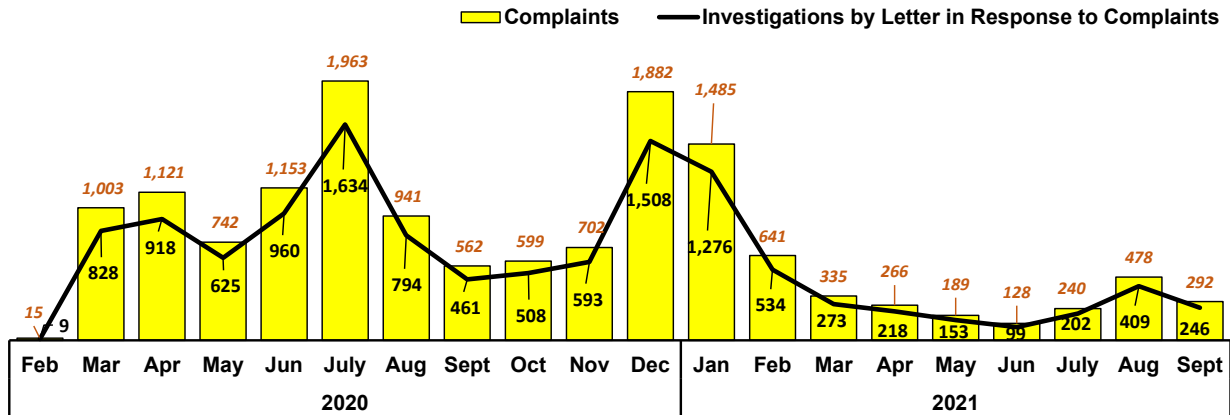
<sup>166</sup> The data on COVID-19-related DOSH Investigations and Inspections was provided by DWC Medical Unit based on reports run on October 3, 2021.

<sup>167</sup> Reporting is required if the fatality or serious injury/illness occurs “in connection with any employment.” (8 CCR 342)



## WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

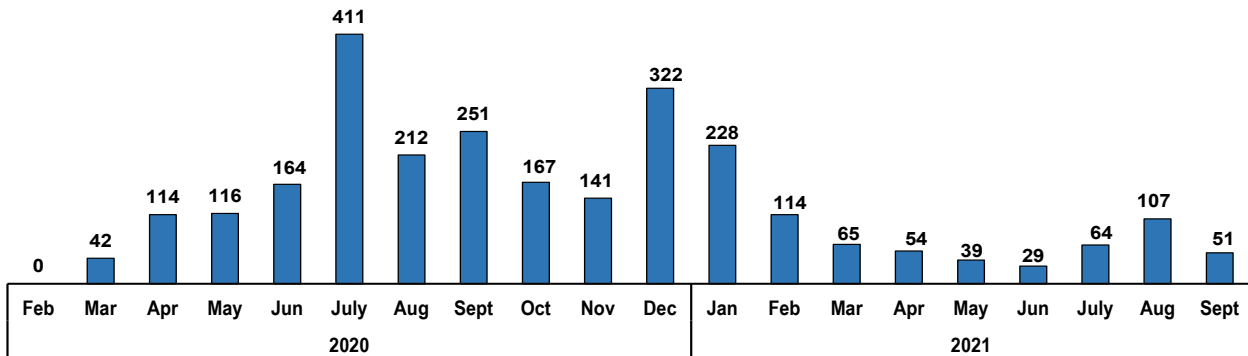
**Figure 162: Number of COVID-19-Related Complaints and DOSH Investigations by Letter**



Data Source: DOSH

Figure 163 shows the number of COVID-19 on-site inspections in 2020 and 2021. DOSH on-site COVID-19 Inspections take place for some of the following reasons: in response to reported illnesses and deaths, complaints and referrals, as part of un-programmed and programmed inspections, and follow-up inspections. Onsite inspections resulting from complaints are prioritized by the most serious hazards, including complaints alleging COVID-19 outbreaks and complaints of potentially serious hazards in higher risk industries, as well as instances where employers do not cooperate with DOSH or address workplace hazards. In 2020 and 2021, a total of 2,691 DOSH COVID-19 on-site inspections have been conducted, with 72 percent of inspections taking place in 2020. The monthly numbers of on-site inspections in Figure 163 mirror the patterns of both the non-fatal reported illnesses and fatalities and complaints.

**Figure 163: Number of COVID-19 DOSH On-Site Inspections**



Data Source: DOSH

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### **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.

In 1999, the passage of 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.

In 2008, the passage of 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, Cal/OSHA's 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.

Cal/OSHA's Consultation Services Branch reports that in 2020, it provided on-site high hazard consultative assistance to 703 employers. During consultation with these employers, 6,553 Title 8 violations were observed and corrected as a result of the provision of consultative assistance (see Figure 164).

From 1994, 29,196 employers have been provided direct on-site consultative assistance, and 199,736 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.

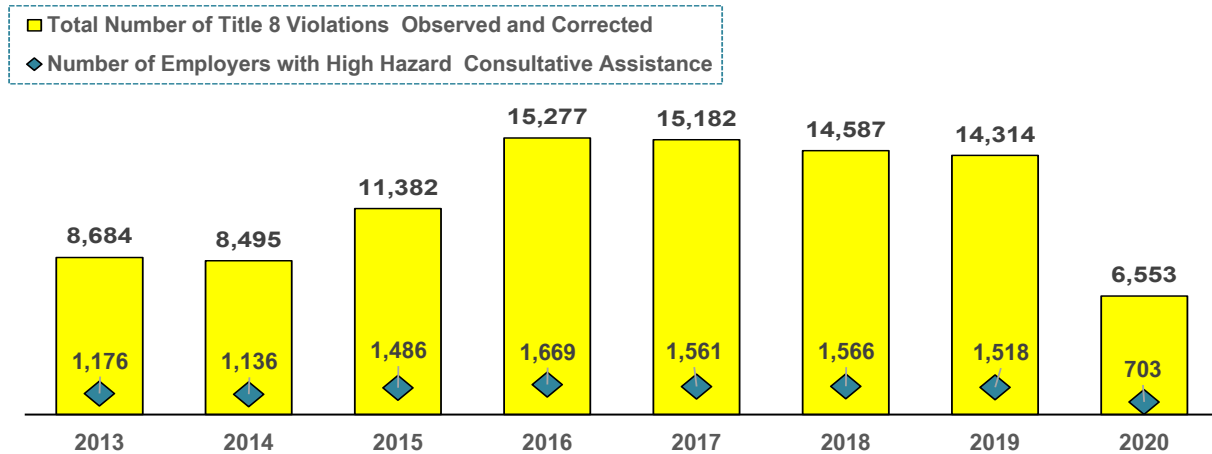
Cal/OSHA's Consultation Services Branch conducts annual surveys to measure the efficacy of the services provided. One of the efficacy measures is the comparison of employer lost-and-restricted-workday data (DART) before and after receiving on-site consultative assistance. The other efficacy measure compares individual employer's workers' compensation ExMod rate data again before and after receiving onsite consultative assistance.

Figure 164 shows that the number of Title 8 violations observed and corrected averaged 8,590 per year with an average of 1,156 employers receiving high hazard consultative assistance in 2013 and 2014, increased by 80 percent from 2014 to 2016 with a 47 percent increase in assisted employers during that

## WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

period, and then gradually decreased by 6 percent from 2016 to 2019 before falling twice from its 2019 level. The number of employers who received high hazard consultative assistance decreased overall by 9 percent from 2016 to 2019, and in 2020 accounted for about a half of the number of employers that received high hazard consultative assistance in 2019.

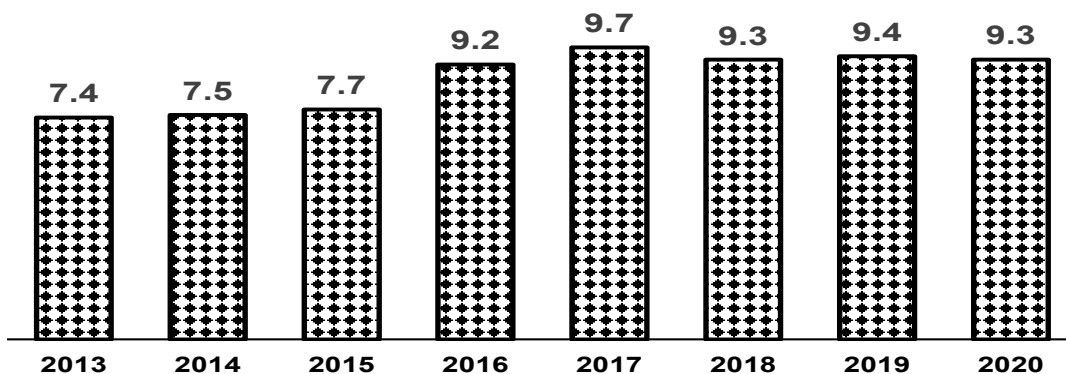
**Figure 164: High Hazard Consultation Program, 2013-2020**



Source: DOSH

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 165: Average Number of Title 8 Violations per Employer with High Hazard Consultative Assistance, 2013-2020**



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 2020, the High Hazard Unit opened 355 inspections and Regions 1-4 opened 21 inspections. The majority of inspections, a total of 317 (84 percent), were targeted programmed-planned. Other types of

## WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

inspections opened by the High Hazard Unit were programmed-related, follow-up, accidents, complaints, and referrals. A total of 2,048 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 2020 was 6.1.

The high hazard enforcement program activity measures are shown in Tables 39-41 and Figure 166.

The distributions of high hazard targeted inspections by North American Industrial Classification System (NAICS) from 2018 to 2020 are shown in Table 39.

**Table 39: Number and Percent of High Hazard Inspections by NAICS Code, 2018- 2020**

NAICs code	Description	2018		2019		2020	
		Number	%	Number	%	Number	%
11	Agriculture, Forestry, Fishing and Hunting	27	7%	59	12%	26	7%
21	Mining, Quarrying, and Oil and Gas Ext.	1	0.26%	0	0%	0	0%
22	Utilities	0	0%	0	0%	0	0%
23	Construction	5	1%	1	0%	0	0%
31-33	Manufacturing	177	46%	230	48%	219	58%
42	Wholesale Trade	5	1%	3	1%	3	1%
44-45	Retail Trade	1	0.26%	4	1%	20	5%
48-49	Transportation and Warehousing	45	12%	58	12%	37	10%
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%	1	0%	1	0%
54	Professional, Scientific, and Technical Services	0	0%	0	0%	0	0%
56	Admin and Support and Waste Management and Remediation	14	4%	41	9%	54	14%
61	Educational Services	0	0%	0	0%	0	0%
62	Health Care and Social Assistance	102	27%	48	10%	2	1%
71	Arts, Entertainment, and Recreation	0	0%	3	1%	0	0%
72	Accommodation and Food Services	0	0%	2	0%	10	3%
81	Other Services	5	1%	25	5%	4	1%
92	Public Administration	0	0%	0	0%	0	0%
	Total	382		475		376	

Source: DOSH

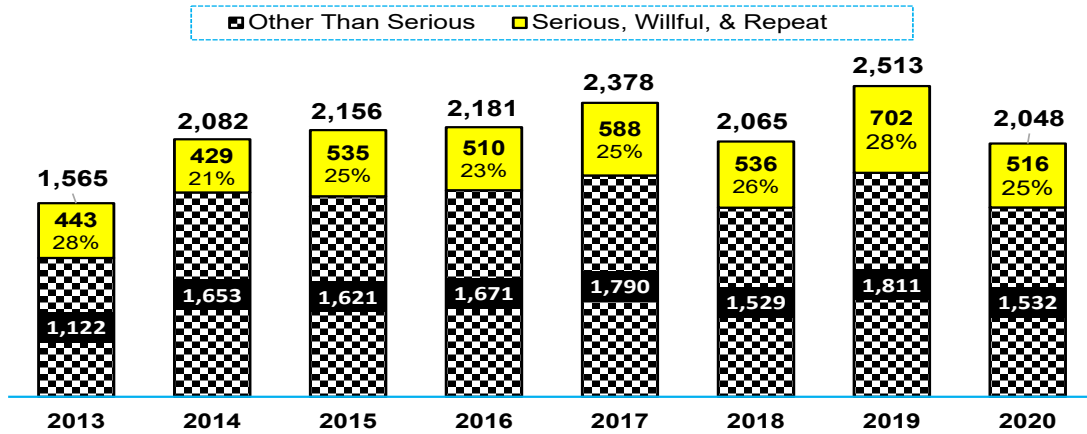
Violations observed<sup>168</sup> during high hazard targeted inspections are divided into two categories: “serious, willful, and repeat (SWR)” and “other than serious” violations. According to Figure 166, the total number of violations observed increased overall by 60.5 percent from 2013 to 2019 and decreased by 18.5 percent from 2019 to 2020. 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

<sup>168</sup> 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>.

## WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

increased steadily from 21 to 28 percent. From 2019 to 2020, the share of SWRs in High Hazard inspection violations went back to 25 percent that prevailed as an average from 2015 to 2018.

**Figure 166: Violations Observed during High Hazard Inspections, 2013-2020**



Source: DOSH

Table 40 shows the number of enforcement actions taken during high hazard inspections by type from 2012 to 2020.

**Table 40: Types of Enforcement Actions during High Hazard Targeted Inspections, 2012-2020**

Types of enforcement actions	2012-2014	2015	2016	2017	2018	2019	2020
Warrants	0	0	0	0	0	0	1
Order Prohibiting Use (Stop Order)	95	8	12	5	1	1	0
Information Memorandums	143	71	25	14	40	19	8
Violations	5,420	2,156	2,181	2,378	2,065	2,513	2,048

Source: DOSH

Table 41 shows the most frequently observed violations during high hazard inspections in 2020.

**Table 41: Most Frequently Cited Violations during High Hazard Targeted Inspections, 2020**

Title 8 Section	Description
3203	Injury and Illness Prevention Program
5162	Eyewash and Shower
6151	Portable Fire Extinguishers
461	Permits to Operate (Air Tanks)
3314	The Control of Hazardous Energy
2500.8	Flexible Cords and Cables (Uses Not Permitted)
5194	Hazard Communication
2340.16	Work Space about Electric Equipment
5185	Changing and Charging Storage Batteries
5144	Respiratory Protection Program
2473.1	Conductors Entering Boxes, Cabinets, or Fittings
3668	Powered Industrial Truck Operator Training
4002	Moving Parts of Machinery or Equipment
4184	Machine Guarding
3395	Heat Illness Prevention Program

Source: DOSH

## WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

### 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.<sup>169</sup>
- The Pressure Vessel Unit conducts public safety inspections of boilers and pressure vessels to ensure their safe operation in places of employment.

### 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 2019, serving as a basis for the FY 2021-2022 High Hazard Industry threshold, was 2.0. Accordingly, the high hazard industry threshold for that fiscal year is 4.0.

*For further information ...*

Cal/OSHA's Highest Hazard Industry List for FY 2021-2022,  
<https://www.dir.ca.gov/dosh/documents/hhu-list-2021-2022.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 Cal/OSHA's 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>

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<sup>169</sup> For a list of conveyances, see <http://www.dir.ca.gov/Title8/sub6.html>.

## WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

### Occupational Safety and Health Appeals Board (OSHAB)

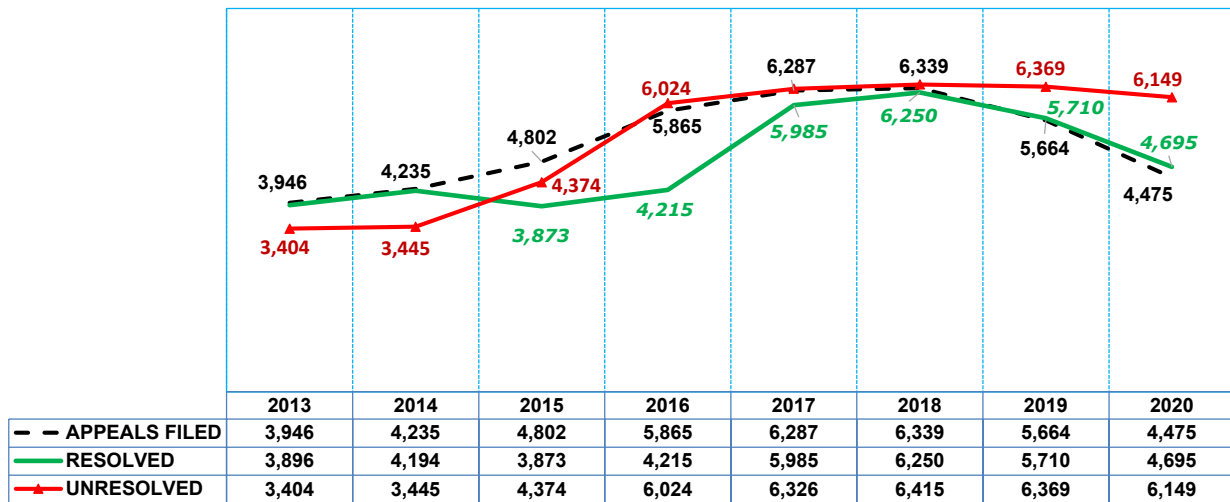
The Occupational Safety and Health Appeals Board (OSHAB) consists of three members appointed by the governor for four-year terms. By statute, the members are selected from among management, labor, and the general public. The chairman is selected by the governor.

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 167 shows the OSHAB workload: appeals filed, appeals 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 3,946 in 2013 to 6,339 in 2018, decreased by 11 percent from 2018 to 2019, and then fell by 21 percent from 2019 to 2020.

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 respectively. 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. As the activities of the OSHAB contracted due to the COVID-19 pandemic and fewer appeals were filed in 2020, about 105 percent of appeals had been resolved in that year, with the number of unresolved appeals decreasing by 3.5 percent.

**Figure 167: Occupational Safety and Health Appeals Board (OSHAB) Workload, 2013-2020**



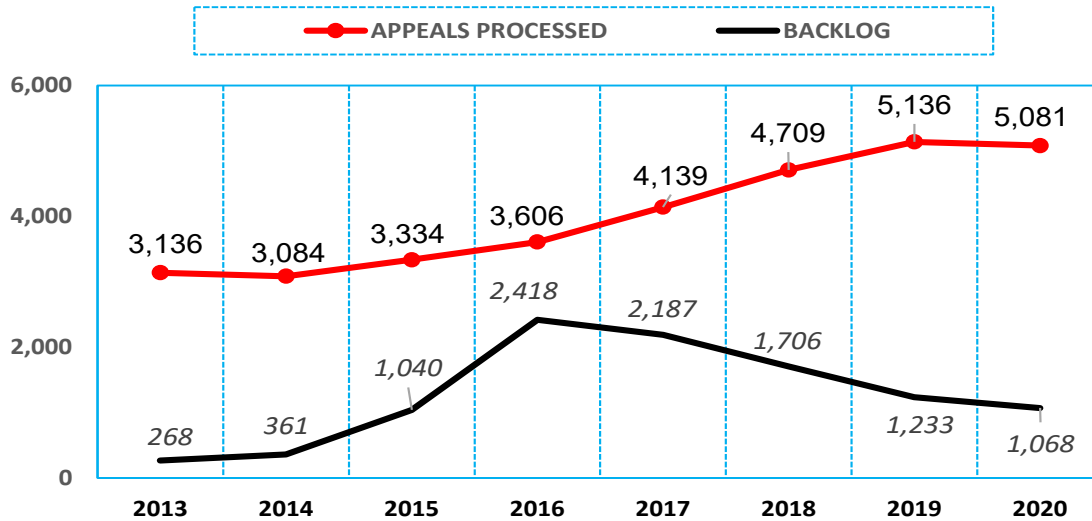
Data Source: OSHAB

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.

## WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

Figure 168 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 167). The number of filed appeals and unresolved cases leveled out from 2016 to 2018 and then the number of appeals filed decreased by 29 percent from 2018 to 2020. While the number of appeals processed increased by 42 percent from 2016 to 2019, the backlog decreased by 49 percent from 2016 to 2019. Due to a decrease in appeals filed and a levelling off in the number of appeals processed from 2019 to 2020, the backlog fell by 13 percent from 2019 to 2020. There was a 56 percent overall decrease in the number of backlogged appeals from 2016 to 2020.

**Figure 168: Occupational Safety and Health Appeals Board Backlogs, 2013-2020**



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."



## WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

### *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.”

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 2020-2021 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.<sup>170</sup> 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

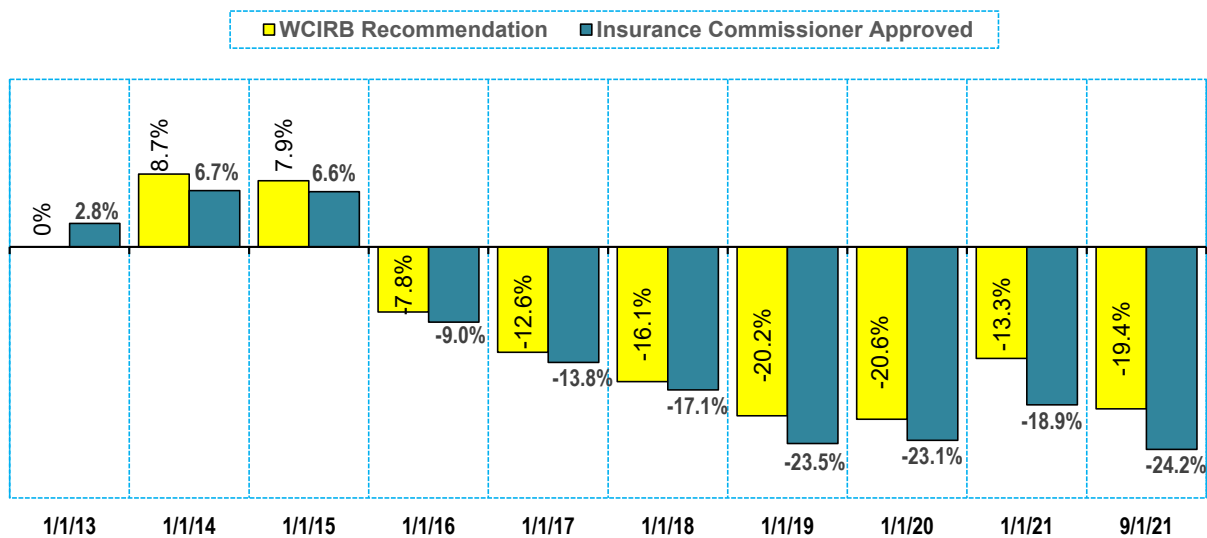
As a result of the 2003 legislative reforms, WCIRB recommended changes and the Insurance Commissioner (IC) either approved them or declared no changes in the pure premium advisory rates. The pure premium rates, which reflect loss costs, including loss adjustment expenses per unit of exposure, are only 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.

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. Figure 169 shows the percentage changes in WC's Advisory Premium Rates, including both the WCIRB's recommendations and the IC's decisions, compared to the industry-filed average pure premium rate in the previous filing period of each year from 2013 to 2021. This comparison, according to the WCIRB, provides an appropriate basis for assessing both the industry's ability to adapt to the proposed pure premium rate level and the size of the potential market impact of such an adjustment. According to Figure 169, when the decisions were issued, the IC approved increases for three periods from January 1, 2013 to January 1, 2015 filings. The IC approved decreases in the pure premium advisory rates in six consecutive years and for the September 1, 2021 period, beginning from January 1, 2016 to September 1, 2021.

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<sup>170</sup> Please note that the state of California is legally uninsured.

**Figure 169: Percentage Changes in Workers' Compensation Advisory Premium Rates: WCIRB Recommendation and Insurance Commissioner's Decision Compared to Corresponding Industry Average Filed Pure Premium Rate**



Source: WCIRB

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.<sup>171</sup> 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), ranged from \$0.01 per \$100 of payroll in the information industry sector to \$0.24 per \$100 of payroll for segments of the healthcare and social assistance industry sector.<sup>172</sup> In his decision on the January 1, 2021 advisory pure premium rates with an average \$1.45 per \$100 of payroll, the IC approved pure premium rates that did not include a provision for COVID-19 estimated claims costs, and ordered that any provision in the rates filed by the insurers to cover the estimated costs of the COVID-19 claims be accounted for and tracked separately.

The \$1.50 per \$100 of payroll average pure premium rate recommended by the WCIRB for the September 1, 2021 filing period does not include any provision for the estimated cost of the COVID-19 claims that will incur during the September 1, 2021 policy period. The WCIRB has determined that, in light of the current success of the COVID-19 vaccines and the research published by the sources that the WCIRB has historically relied on, inclusion of such a provision was not recommended for policies incepting on September 1, 2021 and later. The WCIRB refined the projection methodologies to adjust for distortions caused by the pandemic and largely relied upon pre-pandemic experience to project cost levels for the period the proposed advisory pure premium rates apply. The IC approved advisory pure premium rates averaging \$1.41 per \$100 of payroll. That is 24.2 percent less than the corresponding industry average filed pure premium rate of \$1.86 per \$100 of payroll as of January 1, 2021 and 3.4 percent less than the average approved January 1, 2021 advisory pure premium. (A history of pure premium rates since 2013 appears later in this section.)

<sup>171</sup> 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](https://www.wcirb.com/sites/default/files/documents/20210101_jan_1_2021_ppr_filing.pdf).

<sup>172</sup> 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>.

### 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 10.65 percent in 2020 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, 2020, averaged \$1.52 per \$100 of payroll and were 7.2 percent less than the average of the approved January 1, 2019, advisory pure premium rates of \$1.63. Approved pure premium rates effective January 1, 2021, averaged \$1.45 per \$100 of payroll and were 4.6 percent lower than the approved January 1, 2020, pure premium rate of \$1.52 per \$100 of payroll. (See "Advisory Workers' Compensation Pure Premium Rates. A History since the 2013 Reform Legislation" on pages 219-224.)

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 24, 2020 that, "insurance 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* that average \$0.05 per \$100 of payroll.<sup>173</sup> 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 as of April 1, 2021.

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<sup>173</sup> <https://www.wcirb.com/news/insurance-commissioner-issues-decision-regarding-2021-pure-premium-rate-filing>.

**Table 42: California Workers' Compensation Top 10 Insurers Rate Filing Changes**

COMPANY NAME	GROUP NAME	Market Share 2020	Cumulative Rate Change 1-04 to 4-21	4-1-2021 % Filed Rate Change*	4-1-2020 % Filed Rate Change*	4-1-2019 % Filed Rate Change*	4-1-2018 % Filed Rate Change*
State Compensation Insurance Fund	N/A	10.65%	-56.88%	0.00%	-10.0%	-10.00%	-8.00%
Insurance Company of the West	American Assets Group	6.86%	-59.52%	-1.30%	-9.00%	-17.80%	-10.60%
Travelers Property Casualty Company of America	Travelers Group	5.33%	-55.26%	0.00%	-17.39%	-10.00%	-6.40%
Zurich American Insurance Co.	Zurich Ins. Group	3.15%	-51.62%	-1.50%	-0.20%	-7.00%	-9.10%
Zenith Insurance Company	Fairfax Financial	2.48%	-25.23%	-6.52%	-6.52%	-8.50%	-2.50%
Cypress Insurance Company	Berkshire Hathaway Group	2.29%	-61.93%	0.00%	-4.30%	-16.70%	-7.00%
Pacific Compensation Insurance Co	Copperpoint Group	2.27%	-55.07%	2.00%	-4.66%	-2.60%	-9.40%
Technology Insurance Co.	Am Trust NGH Group	2.01%	-23.19%	0.00%	-1.22%	-0.60%	-9.10%
Ace American Insurance Co.	Chubb Group	1.98%	-84.70%	-2.20%	-14.30%	-11.50%	-7.70%
Benchmark Insurance Company	Benchmark Grp	1.90%	-31.00%	0.80%	0.00%	-17.80%	-3.00%

\* Indicated % filed rate change reflects cumulative rate change(s) in effect as of that date from the rates in effect on the preceding date.

### Workers' Compensation Premium

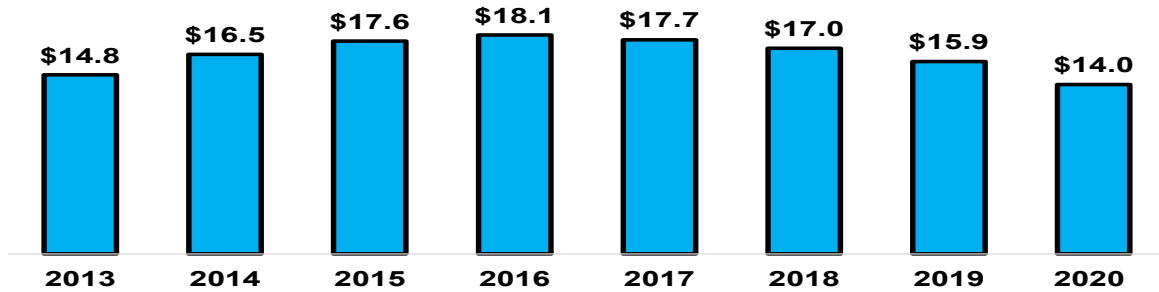
After elimination of the minimum rate law, the total written premium declined from a high of \$8.9 billion in 1993 to a low of \$5.7 billion (\$5.1 billion net of deductible) in 1995. The written premium grew slightly from 1996 to 1999 due to growth of insured payroll, an increase in economic growth, 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 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 170 shows the California workers' compensation written premium gross of deductible credits between 2013 and 2020. Note that these amounts exclude dividends. In 2020, with the rapid economic downturn brought on by the COVID-19 pandemic, combined with continued insurer rate decreases and reduced employer payroll, the written premium reached a seven-year low and was 23 percent below its 2016 peak and 12 percent below its 2019 level.<sup>174</sup>

<sup>174</sup> WCIRB Quarterly Experience Report as of June 30, 2021, Insurer Experience, Chart 1. [WCIRB Quarterly Experience Report 2021 Second Quarter](#).

**Figure 170: Workers' Compensation Written Premium as of June 31, 2021 (Billion \$)**



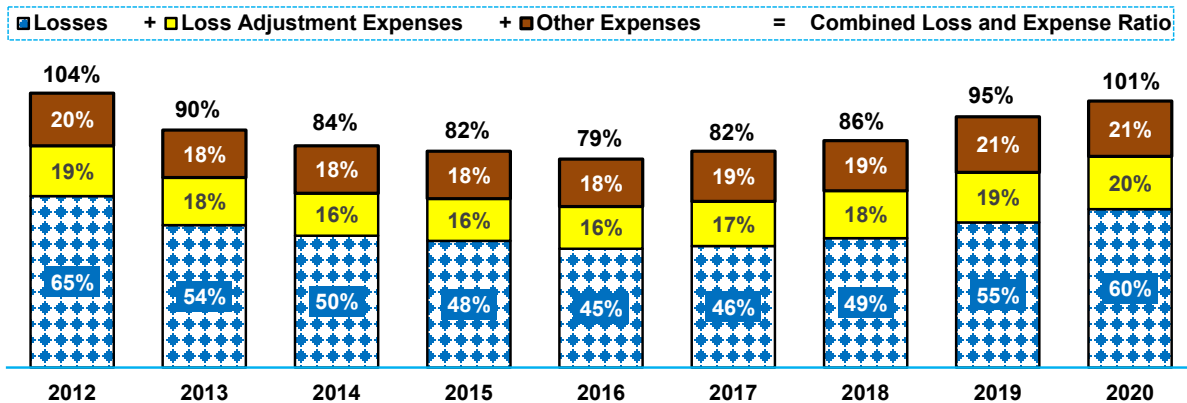
Source: WCIRB

**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 171, in accident year 2020, insurers' claim projected costs and expenses amounted to \$1.01 for every dollar of premium collected.<sup>175</sup> Although the combined ratios in California have historically been volatile, the industry ratio was fairly stable between 2013 and 2019, and 2019 was the seventh consecutive year with a combined ratio below 100 percent. The projected combined ratio is 6 points higher for 2020 than 2019, 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. The combined ratio for 2020 was the first time it was above 100 percent since 2012 when it reached 104 percent. Excluding the impact of COVID-19 claims, the 2020 combined ratio would be 96 percent.

**Figure 171: California Workers' Compensation Combined Loss and Expense Ratios**



Source: WCIRB

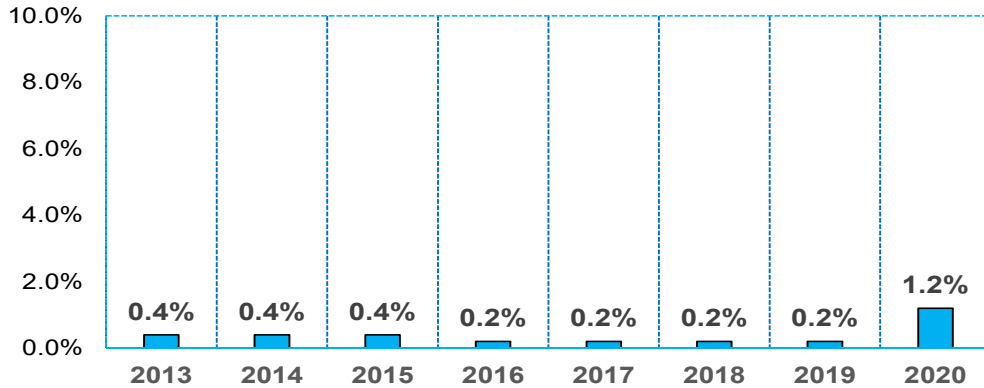
**Policy Holder Dividends**

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

<sup>175</sup> WCIRB 2021 State of the System Report, Chart 58. [https://www.wcirb.com/sites/default/files/documents/wcirb-report-2021\\_state\\_of\\_the\\_system-ho.pdf](https://www.wcirb.com/sites/default/files/documents/wcirb-report-2021_state_of_the_system-ho.pdf).

percent of the earned premium. These estimated insurer policyholder dividends totaled \$32 million incurred in 2019, or 0.2 percent of earned premium, as shown in Figure 172. Based on insurer statutory Annual Statement information, the WCIRB estimates policyholder dividends incurred in 2020 to be 1.2 percent of 2020 earned premium.

**Figure 172: Insurer Policy Holder Dividends as a Percentage of Earned Premium (by Calendar Year)**



Source: WCIRB

### Projected Ultimate Total Loss

Figure 173 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 2020 claim, excluding COVID-19 claims, to be \$68,268, which is generally consistent with changes in total claim severity since 2013, although with a slight third year increase following several years of modest decline in claim severities.<sup>176</sup> 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 2020 was 9 percent higher than in 2019 and 19 percent higher than in 2017. Following a steady 10 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 2020, the projected medical severity decreased by 5 percent. According to WCIRB, decreases in the utilization of medical services and flattening claim settlement rates had an impact on average medical costs decline in 2019.<sup>177</sup> The relatively flat medical severities since 2015 were driven by recent reforms, reduced pharmaceutical costs and efforts to fight fraud. Projected medical severity for 2020 is preliminary and is likely impacted by shifts in the mix of injuries and delay or deferral in medical treatment during the pandemic period. The projected average ALAE cost, excluding MCCP, was flat from 2013 to 2020, with a slight 5 percent decrease over 8 years and an average of \$9,770 per year in that period.<sup>178</sup> As with average indemnity and medical costs, projected ALAE severity excluding COVID-19

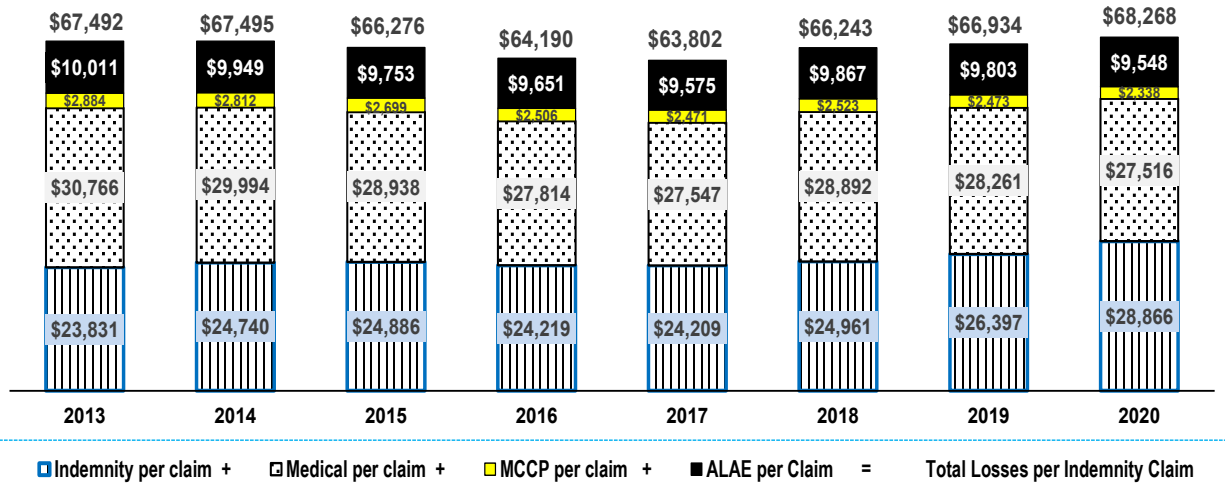
<sup>176</sup> WCIRB Quarterly Experience Report as of December 31, 2020, Charts 9–13, [https://www.wcirb.com/sites/default/files/documents/wcirb-quarterlyexpreport-2020-4q-ar\\_0.pdf](https://www.wcirb.com/sites/default/files/documents/wcirb-quarterlyexpreport-2020-4q-ar_0.pdf).

<sup>177</sup> WCIRB Quarterly Experience Report as of December 31, 2019, Chart 10.

<sup>178</sup> WCIRB Quarterly Experience Report as of December 31, 2020, Chart 12.

claims for 2020 may be impacted by the slowdown of the claims process during the pandemic period. 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.

**Figure 173: Projected Ultimate Total Loss and ALAE per Indemnity Claim, as of December 31, 2020**



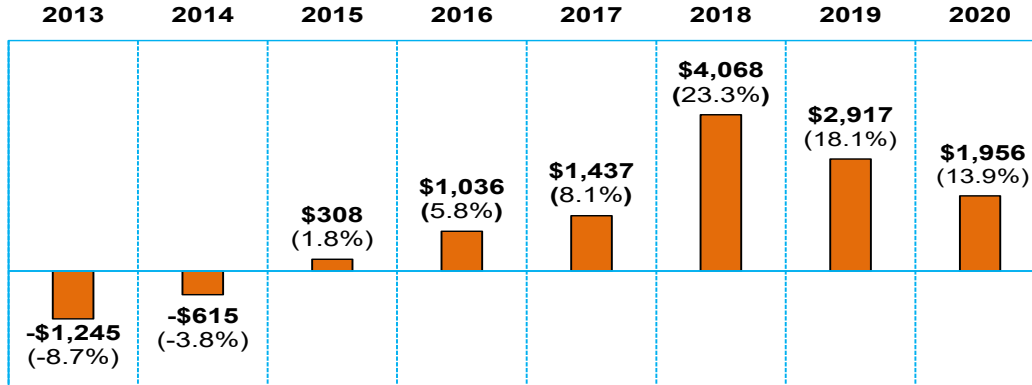
Source: WCIRB

### 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 174, were 8.7 percent of earned premium in 2013, declining again from 2013 to 2014. In 2015, insurers experienced the underwriting profits of 1.8 percent after 7 years of losses. In 2020, the underwriting profits were 12.1 percentage points higher than 1.8 percent in 2015.



**Figure 174: Insurer Pre-Tax Underwriting Profit/Loss<sup>179</sup>, 2013-2020  
(Million \$ and as a Percentage of the Earned Premium)**



Source: WCIRB

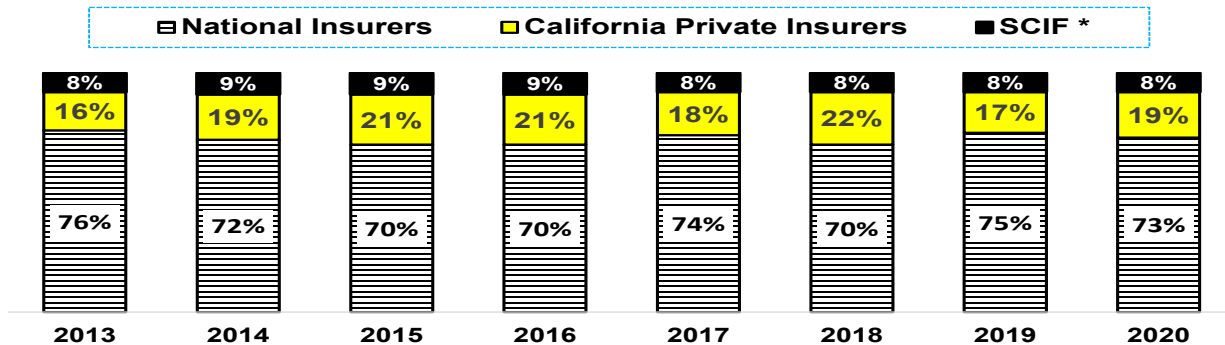
## Current State of the Insurance Industry

### 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 175 shows changes in the workers' compensation insurance market share from 2013 to 2020.

According to WCIRB, from 2013 to 2020, SCIF attained between 8 to 9 percent of the California workers' compensation insurance market. The share of private insurers that focus most of their workers' compensation business in California has been relatively consistent since 2013. The market share of these domestic insurers, excluding SCIF, increased overall, from 16 percent in 2013 to 22 percent in 2018, and then declined to an average of 18 percent per year in 2019 and 2020.

**Figure 175: Workers' Compensation Insurance Market Share in California by Type of Insurer  
Based on Written Premium Prior to Deductible Credits**



\* State Compensation Insurance Fund

Note: California Insurers are defined as private insurers who write at least 80 percent of their workers' compensation business in California.

Data Source: WCIRB

<sup>179</sup> 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 amended the expiration date of the Terrorism Risk Insurance Program (TRIP) to December 31, 2020. On December 20, 2019, the President signed into law the Terrorism Risk Insurance Program Reauthorization Act of 2019 (Pub. L. 116-94, 133 Stat. 2534) which extended TRIP through December 31, 2027.<sup>180</sup>

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<sup>180</sup> <https://home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/federal-insurance-office/terrorism-risk-insurance-program>

**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.

**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 24, 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.

**September 1, 2021**

***WCIRB recommendations:***

On April 29, 2021, the WCIRB submitted its September 1, 2021 Pure Premium Rate Filing to the California Department of Insurance proposing advisory pure premium rates that are, on average, 2.7 percent above the average approved January 1, 2021 advisory pure premium rates. The average of the proposed September 1, 2021 advisory pure premium rates is \$1.50 per \$100 of payroll.

***Insurance Commissioner action:***

On July 21, 2021, the Insurance Commissioner issued a decision regarding the WCIRB's September 1, 2021 pure premium rate filing, approving advisory pure premium rates that averaged \$1.41 per \$100 of payroll. The average approved September 1, 2021 advisory pure premium rate is 3.4 percent below the average approved January 1, 2021 advisory pure premium rate. The difference between the WCIRB proposed and CDI approved advisory pure premium rates is due to somewhat different assumptions regarding medical loss development, future indemnity claim frequency and future claim severity trends.

Source: WCIRB.



# SPECIAL REPORT: IMPACTS OF COVID-19 CLAIMS AND SB 1159 PRESUMPTIONS OF COMPENSABILITY ON THE CALIFORNIA WORKERS' COMPENSATION SYSTEM STUDY

## Introduction

On September 17, 2020, Governor Gavin Newsom signed into law Senate Bill (SB) 1159<sup>181</sup>, which took effect immediately as an urgency statute. SB 1159 codified the Governor's previous Executive Order N-62-20<sup>182</sup> assigning COVID-19 a presumption and created two new presumptions dependent on testing positive, as defined, for COVID-19. The first covers public safety workers<sup>183</sup> as well as health-care providers. The second covers all other workers, during an "outbreak,"<sup>184</sup> as defined. They cover all new claims from July 6, 2020, to January 1, 2023, for both public and private sector employees.

SB 1159 also required CHSWC to conduct a study of the impacts of COVID-19 claims on California's workers' compensation system, including an assessment of differences in the impacts across differing occupational groups and of the presumption statutes. In May 2021 CHSWC contracted with RAND to conduct this study.

## Objectives

The objectives of the study include:

- Evaluate the overall impacts of COVID-19 claims on California's workers' compensation system.
- Evaluate the overall impacts of COVID-19 claims on California's workers' compensation indemnity benefits, medical benefits, and death benefits, including differences in the impacts across differing occupational groups.
- Assess the overall and cost impacts of the specific presumptions created by SB 1159 on California workers' compensation system.
- Present a framework for evaluation of SB 1159, including information on outbreaks, timeframes and costs for care.

### **Project Team**

#### **CHSWC Staff**

Eduardo Enz  
*CHSWC Executive Officer*  
Irina Nemirovsky  
Nurgul Toktogonova

#### **OD Staff**

Dominic Forrest  
*Chief, Labor Enforcement Task Force*

#### **DWC Staff**

George Parisotto  
*DWC Administrative Director*  
Ray Meister, M.D.  
*DWC Executive Medical Director*

#### **RAND**

Michael Dworsky, *Ph.D.*  
Denise Quigley, *Ph.D.*

<sup>181</sup> Text of SB 1159 at [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201920200SB1159](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200SB1159).

<sup>182</sup> Text of order at <https://www.gov.ca.gov/wp-content/uploads/2020/05/5.6.20-EO-N-62-20-text.pdf>.

<sup>183</sup> See Labor Code Section 3212.87 (a) of SB 1159 at [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201920200SB1159/](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200SB1159/).

<sup>184</sup> 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: IMPACTS OF COVID-19 CLAIMS AND SB 1159 PRESUMPTIONS OF COMPENSABILITY ON THE CALIFORNIA WORKERS' COMPENSATION SYSTEM STUDY

### Methods

To address the above study objectives, RAND will conduct a literature review of COVID-19 issues. The researchers will also use a mixed-methods approach, including rigorous quantitative analysis, using data from the Workers' Compensation Information System, and qualitative interviews to capture diverse perspectives on COVID-19 claims and SB 1159.

A Technical Advisory Group (TAG) meeting was held on July 1, 2021, to solicit key stakeholders' feedback on both qualitative and quantitative aspects of this study. A second TAG meeting was held on October 26, 2021.

**Status:** In process.

A final study report to the Legislature and the Governor will be provided by April 30, 2022.

*For further information..*

Denise D. Quigley, Michael S. Dworsky, Nabeel Qureshi, Shannon Prier, and Courtney Gidengil, COVID-19 in the California Workers' Compensation System-A Study of COVID-19 Claims and Presumptions Under Senate Bill 1159, RAND, Pre-Publication, January 2022, <https://www.dir.ca.gov/chswc/Reports/2022/RAND-COVID-claims-presumptions.pdf>

Denise D. Quigley, Nabeel Qureshi, Grace Gahlon, and Courtney A. Gidengil, Worker and Employer Experience with COVID-19 and the California's Workers' Compensation System: A Review of the Literature. American Journal of Industrial Medicine, January 29, 2022, <https://onlinelibrary.wiley.com/doi/10.1002/ajim.23326>

# 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, which created a rebuttable presumption that posttraumatic stress disorder (PTSD) in firefighters and peace officers is a work-related injury and thus compensable under workers' compensation.<sup>185</sup> Department chiefs noted the significant impacts of suicide being a primary motivator to improving mental health supports for firefighters and peace officers. On the other hand, having a healthy workforce was noted as being among the biggest cost-savers that would result from the presumption. The rebuttable presumption, according to Labor Code § 3212.15 added by SB 542, is in effect for specified injuries occurring between January 1, 2020, and January 1, 2025.

Assemblymember Tom Daly requested that the Commission on Health and Safety and Workers' Compensation (CHSWC) undertake a study evaluating a wide range of topics from differences in mental health and suicide risk across occupations to cost impact of SB 542, all condensed in 12 research questions posed in his letter.<sup>186</sup> CHSWC has contracted with RAND to conduct this study that would guide future policymaking.

## Research Questions

The study addresses the main research questions with its final report providing a designated appendix of question-by-question answers in addition to detailed analysis of each question in designated sections. The answers to the 12 research questions listed below are generalized in the summary of findings section of this special report:

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?

### **Project Team**

#### **CHSWC Staff**

Eduardo Enz  
*CHSWC Executive Officer*  
Irina Nemirovsky  
Nurgul Toktoganova

#### **OD Staff**

Dominic Forrest  
*Chief, Labor Enforcement Task Force*

#### **DWC Staff**

George Parisotto  
*DWC Administrative Director*  
Yvonne Hauscarriague  
*Former Acting Chief Counsel*  
Ray Meister, M.D.  
*DWC Executive Medical Director*

#### **RAND**

Michael Dworsky, Ph.D.  
Denise Quigley, Ph.D.  
J. Scott Ashwood, Ph.D.  
Roald Euler  
Lisa Meredith, Ph.D.  
Kelsey O'Hollaren  
Lynn Polite  
Nabeel Qureshi

<sup>185</sup> <https://www.gov.ca.gov/2019/10/01/governor-newsom-signs-bills-to-support-firefighters-and-first-responders/>.

<sup>186</sup> [https://www.dir.ca.gov/chswc/Meetings/2019/Assembly-Letter-Tom-Daly\\_091119.pdf](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

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?
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 the research questions posed by CHSWC, RAND used a mixed-methods approach that included rigorous quantitative analysis of data from the Workers' Compensation Information System (WCIS) for 2008–2019 accident years and the California Health Interview Survey (CHIS) from the 2013–2019 period, projection of the costs to state and local government that may result from SB 542, and qualitative interviews with first responders, department leaders, mental health professionals, attorneys, and claims administrators.

A Technical Advisory Group (TAG) containing various stakeholders and experts was convened to gather input on study design and research questions in an October 13, 2020, meeting and then to gain stakeholder community's feedback on preliminary qualitative and quantitative findings towards the end of the project on May 11, 2021.

The quantitative analyses in this study reflect the pre-SB 542 status quo and not the events since SB 542 took effect on January 1, 2020, although some qualitative research findings on stakeholders' experiences since SB 542 took effect are discussed in this study.

The estimates in the study do not directly address the question of how PTSD prevalence varies across occupations, since the PTSD was not measured as the mental distress was. The study includes requests to interpret most findings with caution and to take into account the limitations of the preliminary information and data.

# SPECIAL REPORT: EVALUATION OF INCIDENCE OF MENTAL HEALTH CONDITIONS OR ILLNESSES AMONG FIREFIGHTERS AND PEACE OFFICERS

## Summary of Key Findings

- Mental distress and suicidality are not more prevalent among California's first responders than among workers in other occupations who are exposed to trauma on the job.
- Claims filed by firefighters and peace officers are more likely to involve PTSD than are claims by the average worker in California but are also denied more often.
- First responders' PTSD claims are denied more often than claims for other conditions (e.g., cancer or heart trouble) with a presumption of being work-related.
- Although it is often feasible to prove that a mental health condition is job-related, there are barriers that contribute to potentially avoidable claim denials.
- Firefighters and peace officers also face barriers to care-seeking — primarily, mental health stigma, fear of professional consequences, and lack of access to culturally competent mental health providers who understand the realities and exceptional demands of their work.
- Nearly all workers interviewed filed workers' compensation claims for mental health conditions, but almost none received PTSD care paid for by workers' compensation; rather, nearly all paid for care out-of-pocket, sometimes causing severe financial strain.
- Without SB 542, first responders' workers' compensation claims involving PTSD would cost state and local governments an average of \$20 million per year in benefit costs. Under SB 542, costs for claims involving PTSD may increase substantially. Costs under SB 542 are highly uncertain, however, and could range from \$48 million to \$347 million per year.
- A retroactive presumption covering PTSD with 2017–2019 injury dates might cost \$79 million, although these costs are also highly uncertain.

## Summary of Key Recommendations for Future Research:

- Revisit the questions discussed in this report closer to the expiration of the SB 542 presumption, perhaps in 2023. A retrospective evaluation could provide clearer evidence on care-seeking patterns, claims denial rates, and claims costs with the presumption in place.
- Conduct a qualitative investigation to examine whether SB 542 succeeded in reducing mental health stigma or promoting other changes in department culture.
- Scope an *ex post* evaluation to measure the effects of first responder turnover, training, and early retirement and to quantify their implications for the net costs of SB 542.
- Gather more information about what details and evidence are requested by claims administrators and examine claim denials resulting from disconnects in mental health provider documentation.
- Further examine the availability of culturally competent mental health providers and explore ways to provide first responders with a wider choice of providers, care, and treatment.
- Start building an evidence base for better-integrated systems that help to deliver and finance mental health care for first responders with work-related trauma exposure.
- Instead of making piecemeal improvements to employee assistance programs, employer-sponsored insurance, or workers' compensation programs, investigate the costs and benefits of alternative models used in some police departments for delivering mental health care through direct care provision.
- Consult policymakers, departments, labor unions, and providers to find avenues for improving and accelerating first responder access to mental health treatment.
- Consider the mental health effects of occupational trauma exposures and working conditions across a much wider set of occupations and industries.

SPECIAL REPORT: EVALUATION OF INCIDENCE OF MENTAL HEALTH CONDITIONS OR ILLNESSES  
AMONG FIREFIGHTERS AND PEACE OFFICERS

**Status:** Complete.

*For Further Information...*

"Posttraumatic Stress in California's Workers' Compensation System: A Study of Mental Health Presumptions for Firefighters and Peace Officers Under Senate Bill 542", RAND, 2021.

[https://www.rand.org/pubs/research\\_reports/RRA1391-1.html](https://www.rand.org/pubs/research_reports/RRA1391-1.html)

"First Responder Claims for PTSD in Workers' Compensation: Assessing the Effects of Senate Bill 542 in California", Research Brief, RAND, September 20, 2021.

[https://www.rand.org/pubs/research\\_briefs/RBA1391-1.html](https://www.rand.org/pubs/research_briefs/RBA1391-1.html)

## SPECIAL REPORT: JANITORIAL TIME MOTION STUDY

### Background

On December 11, 2020, Assemblymember Miguel Santiago submitted a request for CHSWC to work with the University of California to study the role of janitors in the safe re-opening of California during the Covid-19 epidemic.

In the submitted request, Assemblymember Santiago noted that California's public health guidelines recommend all high touch surfaces be disinfected at least daily and those with high traffic be disinfected more often. However, he also cites the 2017 CHSWC study, "Excessive Workload in the Janitorial Industry", which states that janitors are already stretched thin because they are required to clean tens of thousands of square feet nightly. In the request, other limitations on janitors' performance were mentioned. Assemblymember Santiago requested that CHSWC partner with a research team led by the following UC Departments: the UC San Francisco Department of Medicine's Division of Occupational and Environmental Medicine; the UC Ergonomics Research and Graduate Training Program; the UC Berkeley School of Public Health's Division of Environmental Health Sciences; and the UC Berkeley School of Public Health's Labor and Occupational Health Program.<sup>187</sup>

At the March 2021 CHSWC virtual meeting, the University of California principal research staff and advisors presented a proposal for discussion to the assembled Commissioners.<sup>188</sup> The presentation showed that the occupation of janitors and cleaners ranked third in the number of nonfatal injuries and illnesses with days away from work, with 35,260 cases reported in 2018<sup>189</sup>, and that janitors and cleaners are exposed to high physical demands that increase the risk of musculoskeletal and cardiovascular conditions. Ergonomic workload, measured by task frequencies, posture risk assessment tools and perceived exertion scores, have also been described as positively associated with injury occurrence. CHSWC subsequently contracted with the University of California to more methodically examine the cleaning productivity standards in the janitorial services industry, and the working conditions and productivity expectations of janitorial employees both during and beyond the Covid-19 pandemic.<sup>190</sup>

### Study Proposal

The overall purpose of this project is to determine safe and effective workloads for California janitors that are specific to square footage, cleaning tasks and venue. A statewide survey will assess current working conditions (prevention measures, productivity requirements, etc.) and workers' knowledge of CDC recommendations for cleaning and disinfecting during the COVID-19 pandemic. Focus groups and key informant interviews will solicit feedback on productivity guidelines and adjustments to contracts. A detailed time motion study and ergonomic analysis will provide physical exposure measurements and time on-task information while assessing for risk of musculoskeletal disorders.

### Proposed Project Aims

The primary aims/goals of this study are to:

<sup>187</sup> <https://www.dir.ca.gov/chswc/Meetings/2021/SantiagoLetter.pdf>

<sup>188</sup> <https://www.dir.ca.gov/chswc/Meetings/2021/JanitorTimeMotionPropPrezo.pdf>

<sup>189</sup> <https://www.dir.ca.gov/chswc/Meetings/2021/JanitorTimeMotion.pdf>

<sup>190</sup> <https://www.dir.ca.gov/chswc/Meetings/2021/JanitorTimeMotion.pdf>

#### **Project Team**

##### **CHSWC Staff**

Eduardo Enz  
*CHSWC Executive Officer*  
CHSWC Staff

##### **UCSF Staff**

Carisa Harris-Adamson, *Ph.D.*  
Melissa Afterman  
Meg Honan,  
Alan Barr

##### **UC-Davis Staff**

Fadi Fathallah, *Ph.D.*

##### **UC Berkeley, LOHP**

Laura Stock  
Suzanne Teran

## SPECIAL REPORT: JANITORIAL TIME MOTION STUDY

- 1) Assess the knowledge of worksite CDC Cleaning & Disinfection Recommendations among janitors.
- 2) Determine the types of COVID-19 prevention measures implemented at janitorial workplaces, including: engineering controls (i.e., ventilation), administrative controls (e.g., symptom screening, six foot separation markings), and personal protective equipment e.g., provision and use of masks/gloves/hand sanitizer).
- 3) Describe the relationship between janitor workload, work climate, prevention measures, organizational policies and health (mental and physical) while working during the COVID 19 pandemic.
- 4) Describe janitor's experiences with the COVID-19 modified tasks, work culture and impact on physical and mental health; solicit feedback on productivity guidelines based on findings from the online survey.
- 5) Describe the experience of contractors and building owners/managers in adjusting contracts to ensure adequate staffing and providing janitors with the time, training and tools needed to fulfill the cleaning standards requirements.
- 6) Quantify biomechanical exposures and risk of injury while performing various tasks at different venues.
- 7) Quantify the time required to clean and disinfect different types of spaces, according to CDC recommendations, to develop safe production rates for janitorial work by venue type; determine reasonable production rates based on tasks per square foot (density) and task duration (rate) by venue.

### Methods

This project utilizes a mixed methods approach that incorporates qualitative and quantitative data from janitors in the Northern California region.

#### 1) Online Survey

An online survey will be sent to over 30,000 janitors statewide to assess workers' experiences with COVID-19 prevention measures at their worksites. This survey will be distributed by the SEIU-USWW to their members, by the Maintenance Cooperation Trust Fund to non-union workers, and by Building Skills Partnership and others who are interested and able to promote this effort with janitors. The researchers expect approximately 2,000 responses.

#### 2) Qualitative Study

Methods will include one focus group and six key informant interviews with workers (estimated eight to ten workers in the focus group plus six interviews = 16 worker participants) and four-five interviews with employer representatives.

#### 3) Quantitative Job Analysis & Time Motion Study

A quantitative time and motion study will be used to determine the task durations and frequency, magnitudes of physical exposures and the physiological workload for cleaning and disinfecting over typical eight-hour shifts. This psychophysical study will involve observations of workers carrying out their tasks at a pace that they can sustain for the duration of their shifts. Workers will be videotaped while wearing biomechanical and physiological measurement tools.

**Status:** In process.



## SPECIAL REPORT: JANITORIAL TIME MOTION STUDY

*For further information...*

Initial proposal: "Safe cleaning and disinfection during the Covid-19 pandemic: The role of Janitors in the safe re-opening of California," undated, University of California letterhead, posted in March 2021. [https://www.dir.ca.gov/chswc/Meetings/meeting\\_index.html](https://www.dir.ca.gov/chswc/Meetings/meeting_index.html) and

<https://www.dir.ca.gov/chswc/Meetings/2021/JanitorTimeMotion.pdf>

Presentation of Time & Motion Study with Human Factors Framework – Janitors, March 4, 2021. <https://www.dir.ca.gov/chswc/Meetings/2021/JanitorTimeMotionPropPrezo.pdf>

See also minutes of March 4, 2021 meeting starting on page 5 at

[https://www.dir.ca.gov/chswc/Meetings/2021/Minutes\\_03-04-21.pdf](https://www.dir.ca.gov/chswc/Meetings/2021/Minutes_03-04-21.pdf)

## **SPECIAL REPORT: THE USE OF PREPAID CARDS FOR WORKERS’ COMPENSATION INDEMNITY BENEFITS AND SENATE BILL (SB) 880 ENABLING LEGISLATION**

In 2018, SB 880<sup>191</sup> was introduced to provide for the transfer of workers’ compensation indemnity benefits with prepaid cards in the cases of injured workers and worker households that are “unbanked” and have no access to direct deposit of paychecks. Unbanked workers, who lack of access to financial institutions, often incur significant fees when cashing checks. According to Senate and Assembly analyses<sup>192</sup>, although some entities (employers and insurers) already use prepaid cards, most other employers and insurers assumed these cards were not allowed since they were not expressly authorized in statute. SB 880 expressly authorized the use of prepaid cards, making it cheaper and easier for all people – not just the unbanked -- to receive their benefits via prepaid cards.

According to the legislature’s analysis of the bill, authorization for use of the prepaid cards is considered a pilot program that expires on January 1, 2023. This pilot program is modeled on the existing Unemployment Insurance (UI) prepaid benefit card program, that provides unemployed workers with UI benefits on a prepaid card. That program, in turn, was modeled on an existing electronic benefit transfer (EBT) program for individuals to receive CalFresh, CalWORKs, and other food and cash aid benefits. The legislative analysis further explains that SB 880 requires that an injured worker provide written consent prior to receiving his or her benefits on a prepaid card. Since the bill was silent on what constitutes written consent, it may require clarification through regulations from the Department of Workers’ Compensation. The program will sunset on January 1, 2023 if not extended or made permanent by a new law.

SB 880 can reduce financial burdens by barring nearly all vendor fees incurred by injured workers. As part of this enabling legislation, the legislature requested a study on the deposit of disability indemnity payments for employees in a prepaid card account with reasonable access to in-network automatic teller machines. To facilitate an impact study, SB 880 amended Labor Code Section 4651 and requires employers that use prepaid card programs to provide all necessary aggregated data requested by CHSWC.

This study will examine the prepaid account program created by SB 880 in 2018. In particular, the study will examine the adoption of a prepaid card account system by employers and insurers, using available data provided and required by law.

Status: In process in alignment with pilot program rollout. Study due to the Legislature on or before December 1, 2022.

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<sup>191</sup> See copy of original bill at [https://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=201720180SB880](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB880)

<sup>192</sup> See California government legislature’s website for SB 880 in 2018 at [https://leginfo.ca.gov/faces/billAnalysisClient.xhtml?bill\\_id=201720180SB880](https://leginfo.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201720180SB880)

## **SPECIAL REPORT: LABOR ENFORCEMENT TASK FORCE<sup>193</sup>**

### **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 since LETF's inception.

### **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.

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<sup>193</sup> The information in this special report is derived from the following LETF Report to the Legislature:  
<https://www.dir.ca.gov/letf/LETF-Legislative-Report-2021.pdf>

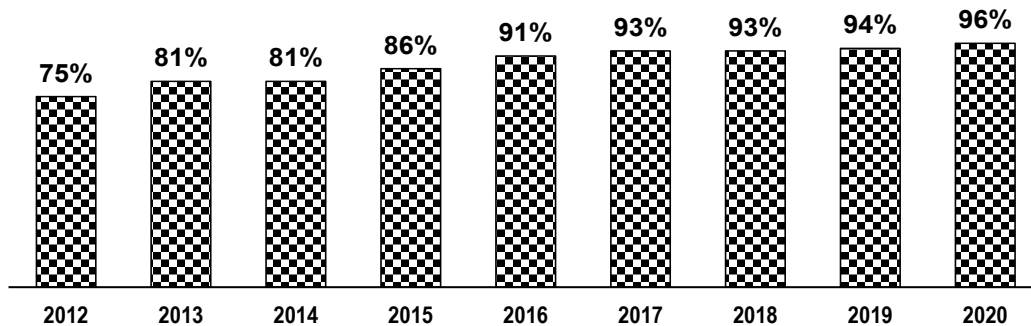
## SPECIAL REPORT: LABOR ENFORCEMENT TASK FORCE

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.

As illustrated in Figure 176, LETF continues to improve the effectiveness of targeted joint enforcement by focusing on inspecting noncompliant businesses. In 2019 and 2020, LETF found that an average of 94 percent and 96 percent, respectively, of businesses inspected each month were found to be out of compliance by at least one LETF partner agency. Figure 176 shows that successful targeting is based on enforcement results (and should not be misinterpreted to represent noncompliance in the overall business community).

**Figure 176: Average Percentage of Inspected Businesses Found out of Compliance per Year 2012–2020**



Source: LETF

### 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.

**SPECIAL REPORT: LABOR ENFORCEMENT TASK FORCE**

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.

Tables 43-48 show the enforcement results by year for participating agencies.

**Table 43: Cal/OSHA Results**

	<b>2012-2018</b>	<b>2019</b>	<b>2020*</b>	<b>2020 Non-LETF**</b>	<b>Total</b>
Businesses Inspected	5,671	750	151	186	6,756
Percent of Businesses Out of Compliance	87%	96%	93%	30%	87%
Orders Prohibiting Use (OPUs)	170	12	0	1	183
Total Number of Violations	20,874	3,167	546	152	24,739
Percent of Violations That Were Serious	15%	15%	16%	14%	15%
Percent of Programmed Inspections with SWR† Violations	41%	66%	58%	50%	44%
Initial Assessment Amounts	\$20,516,012	\$2,646,963	\$334,170	\$240,528	\$23,737,673

\* Totals for 2020 do not reflect information for 29 and 131 Non-LETF inspections that are still pending citation issuance.  
 \*\* Starting in March 2020 LETF Cal/OSHA staff were redirected to perform Non-LETF inspections. These were mostly COVID-19 related inspections. For more details, see page 238-239. †Serious, willful, and repeat violations.

**Table 44: DLSE Results**

	<b>2012-2018</b>	<b>2019</b>	<b>2020</b>	<b>Total</b>
Businesses Inspected	6,049	691	118	6,858
Businesses Out of Compliance	3,167	343	62	3,572
Percent of Businesses Out of Compliance	52%	50%	53%	52%
Number of Workers' Compensation Insurance Violations	2,359	292	53	2,704
Number of Child Labor Violations	84	19	4	107
Number of Deduction Statement Violations	1,761	232	73	2,066
Number of Minimum Wage Violations	238	18	10	266
Number of Overtime Violations	246	14	10	270
Number of Garment Violations	262	34	11	307
Number of Contractor's License (1021/1021.5) Violations	224	9	4	237
Number of Car Wash Registration Violations	138	22	0	160
Number of Rest Period Violations	29	0	1	30
Number of Meal Period Violations	26	1	3	30
Number of Split Shift Violations	26	6	4	36
Number of Misclassification Violations	2	1	0	3
Number of Unlicensed Farm Labor Contractor (1683) Violations	1	0	0	1
<b>Total Number of Violations</b>	<b>5,396</b>	<b>648</b>	<b>173</b>	<b>6,217</b>
<b>Assessment Amounts</b>	<b>\$51,247,392</b>	<b>\$8,413,896</b>	<b>\$1,588,122</b>	<b>\$61,249,410</b>

**SPECIAL REPORT: LABOR ENFORCEMENT TASK FORCE**

**Table 45: EDD Results**

	<b>2012-2018</b>	<b>2019</b>	<b>2020</b>	<b>Total</b>
Businesses Inspected	6,406	781	168	7,355
Percent of Audit Referrals*	57%	39%	112%†	56%
Estimated Unreported Wages**	\$914,846,780	\$87,087,610	\$47,785,312	\$1,049,719,702
Estimated Unreported Employees	18,359	1,547	925	20,831
Completed Audits	2,583	386	94	3,063
Audit Liability Change	\$79,008,964	\$17,771,220	\$3,663,867	\$100,444,051

\*Based on closed LETF cases.

\*\*Closed LETF leads. †Percent of Audit Referrals exceeded 100 percent in 2020 because the referrals number used to calculate the share of Audit Referrals includes work in progress from inspections in earlier years.

**Table 46: CSLB Results**

	<b>2012-2018*</b>	<b>2019</b>	<b>2020</b>	<b>Total</b>
Businesses Inspected	3,017	240	54	3,310
Percent of Businesses Out of Compliance**	37%	47%	56%	38%
Civil Penalties Assessed	\$1,621,950	\$116,250	\$25,200	\$1,763,400

\*Totals for 2012 followed different methodology than totals for the other years, which both reflect joint inspection results when CSLB partnered with at least one other LETF enforcement partner.

\*\*Includes violations for contracting without a license, contracting with an expired or suspended license, illegal advertising, and other violations.

**Table 47: BAR Results**

	<b>2012-2018</b>	<b>2019</b>	<b>2020</b>	<b>Total</b>
Businesses Inspected	710	90	33	833
Percent of Businesses Out of Compliance*	26%	23%	36%	26%

\*Includes both unlicensed businesses and businesses with delinquent licenses.

**Table 48: CDTFA Results**

	<b>2012-2018</b>	<b>2019</b>	<b>2020</b>	<b>Total</b>
Businesses Inspected	1,590	173	54	1,817
Percent of Businesses Out of Compliance*	33%	23%	28%	32%

\*Includes businesses operating without a seller's permit and leads generated by CDTFA.

**Effects of COVID-19 Emergency**

In March 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. Therefore, LETF did not conduct joint inspections from April to December 2020 and conducted few inspections in March. However, during this period, DIR staff at DLSE and Cal/OSHA participated in the COVID-19 task force created by the Governor to provide education and enforcement efforts related to employers' COVID-19 requirements. Table 49 shows the number and type of contacts made by DLSE and Cal/OSHA staff as part of these ongoing task force activities. In addition to these efforts, LETF staff in Cal/OSHA assisted Cal/OSHA district offices in performing heat illness and COVID-19 inspections. LETF staff in DLSE assisted with phone operations and remote audits. DIR management is currently preparing for the resumption of LETF operations in the context of the ongoing pandemic.

SPECIAL REPORT: LABOR ENFORCEMENT TASK FORCE

**Table 49: DIR COVID-19 Task Force Contacts, as of January 22, 2021**

	In-Person	Phone	Mail	Email	Webinar	Other	Type of Contact Not Identified	Total
Cal/OSHA	14,974	1,213	4,934	154,480	2,480	7	201	178,289
DLSE	1,549	58,691	47	1,569	0	2	0	61,858
Total	16,523	59,904	4,981	156,049	2,480	9	201	240,147

**Education and Outreach**

LETF uses multiple education and outreach methods to ensure that employers know their responsibilities and workers know their rights. LETF has designed and produced effective educational materials for workers and employers in coordination with other agencies. LETF produced the widely referenced employee handbook “All Workers Have Rights in California,” which is available in English, Spanish, Chinese, Korean, and Vietnamese and covers topics such as minimum wages and overtime, rest and meal breaks, workplace safety and health, and benefits for those injured or unemployed. LETF has also produced fact sheets to help employers understand and follow labor, licensing, and payroll tax laws. The fact sheets have been designed for employers in specific industries, including agriculture, automotive, construction, garment, landscaping, and restaurants. Printable and mobile versions of these materials for workers and employers have been recently updated to reflect the minimum wage increases in 2021 and other important labor law updates. The mobile versions are readable on smartphones and other mobile devices. All the LETF educational materials are available on the LETF website under [Information for Workers and Employers](#).<sup>194</sup>

The [LETF website](#)<sup>195</sup> is available in English and Spanish. DIR publicizes LETF’s efforts and notable cases via speaking engagements, press releases, website features, and email alerts. [The public can subscribe to get LETF email alerts at Get Email Notices](#).<sup>196</sup>

**Recommended Changes to Statutes**

Though LETF does not currently have any active plans for legislation, task force partners are continuously looking for ways to improve effectiveness and interagency collaboration.

**Objectives for 2021**

Objectives for 2021 include the following:

1. **Continue to foster interagency collaboration.** LETF will continue to work with various enforcement partners to facilitate information sharing (as permitted by the law), refine joint operation protocols, and combine resources in order to streamline interagency collaboration, focus on operators in the underground economy, and avoid duplication of efforts. The COVID-19 pandemic has highlighted the importance of interagency collaboration. LETF will continue to partner with other agencies to provide education and enforcement efforts related to employers’ COVID-19 requirements.
2. **Strengthen and increase engagement with community partners.** Working with a wide range of community partners is essential for LETF to understand and combat the multifaceted nature of the underground economy. LETF aims to strengthen existing partnerships and develop new ones with community partners, such as worker advocates, employer groups, and union representatives.

<sup>194</sup> [https://www.dir.ca.gov/letf/Information\\_for\\_workers\\_and\\_employers.html](https://www.dir.ca.gov/letf/Information_for_workers_and_employers.html)

<sup>195</sup> <https://www.dir.ca.gov/LETf/LETf.html>

<sup>196</sup> <https://www.dir.ca.gov/email/listsab.asp?choice=1/>

## SPECIAL REPORT: LABOR ENFORCEMENT TASK FORCE

3. **Expand outreach and education.** LETF will continue to work with partners to raise awareness about the widespread harmful effects of the underground economy. Additionally, LETF seeks to promote compliance by partnering with employer groups and educating employers in multiple industries on their responsibilities and on how to remain in compliance with labor laws.

*For Further Information...*

<https://www.dir.ca.gov/LETF/LETF.html>



# 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

### **Project Team**

#### **CHSWC Staff**

Eduardo Enz  
*CHSWC Executive Officer*  
Irina Nemirovsky  
Nabeela Khan  
Nurgul Toktonogova

#### **DWC**

George Parisotto  
*DWC Administrative Director*  
Ray Meister, M.D.  
*DWC Executive Medical Director*  
DWC staff

#### **RAND**

Barbara Wynn  
Andrew Mulcahy, Ph.D.  
Kandice Kapinos, Ph.D.  
Preethi Rao, Ph.D.  
Rosalie Malsberger  
Brian Phillips  
Spencer Case

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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 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 1 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. 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 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...*

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[https://www.rand.org/pubs/research\\_reports/RR2045.html](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](https://www.rand.org/pubs/working_papers/WR1279.html).

# SPECIAL REPORT: WAGE LOSS MONITORING FOR INJURED WORKERS IN CALIFORNIA'S WORKERS' COMPENSATION SYSTEM

## Introduction

Occupational injury and illness poses a major risk to the health and financial well-being of workers. Each year in California, 600,000 to 700,000 workers file workers' compensation claims as a result of on-the-job injuries. 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. Workers' compensation systems also promote favorable labor market outcomes for injured workers because employment and earnings of disabled workers have been shown to reflect successful recovery, rehabilitation, or adaptation and, thus, are potential indicators of worker well-being after injury.

Poor labor market outcomes, which often lead to more substantial earnings losses, also make it more difficult and costly for the workers' compensation system to meet its objective of providing adequate disability benefits to workers. To provide policymakers and system stakeholders with an understanding of how workplace injuries affect workers' labor market outcomes and economic security, the California Department of Industrial Relations (DIR) contracted with RAND to develop a program of ongoing wage loss monitoring for injured workers in California between 2013 and 2017.

## Background

This Wage Loss Monitoring project was initiated in 2017 and produced three interim reports that described historical trends in labor market outcomes for workers injured between 2013 and 2017, including comparisons to labor market outcomes for workers injured in earlier years (2005-2012). Those reports showed that labor market outcomes—earnings, employment, and return to work at the employer where the injury took place—for workers with lost-time injuries improved slowly for cohorts injured between 2013 and 2017, but these outcomes have not fully returned to the levels observed before the 2008-2009 Great Recession (using a similarly-situated control group method). The project's final policy report provides a deeper exploration of key findings and trends identified in the interim reports. In particular, it answers four key research questions (identified below) that may inform future policy changes.

## Research Questions

The topics and research questions addressed in the final policy report include:

1. How did earnings losses experienced by injured workers evolve over time for workers injured between 2005 and 2017?
2. What explains earnings loss trends and the slow recovery after the Great Recession?
3. What factors drive the regional differences in earnings losses after cumulative trauma injuries?
4. How do benefits paid to injured workers compare to their earnings losses, and how has the adequacy of benefits changed over time for workers injured between 2005 and 2017?

### **Project Team**

#### **CHSWC Staff**

Eduardo Enz,  
*CHSWC Executive Officer*  
Irina Nemirovsky

#### **DIR Staff**

Dominic Forrest,  
*Chief, Labor Enforcement Task Force*

#### **DWC**

George Parisotto,  
*Administrative Director, DWC*

#### **RAND**

Michael Dworsky, *Ph.D.*  
Stephanie Rennane, *Ph.D.*  
Nicholas Broten

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### Key Findings

- Wage losses from injury and illness through 2017 remain larger than they were before the Great Recession, but have started to recover slightly starting in 2013. At least part of this recovery is related to increasing labor force participation among injured workers, who have become less likely to exit the workforce as the economy has improved. However, injured workers remain less likely to have sustained return to work at the same employer as prior to injury.
- RAND explored the role of several factors in explaining the overall trends that were observed, including changes in the case mix or composition of injured workers across cohorts, the role of local labor market conditions, and changes in the rates of sustained return to work.
  - While much of the initial drop in relative earnings was associated with the business cycle around the onset of the Great Recession, the recovery for injured workers has been incomplete, even as unemployment rates in the general population have fallen. Some of this incomplete recovery can be explained by the fact that the characteristics of workers in more recent cohorts are different, particularly those with permanent disability (PD). RAND speculated that the incomplete recovery may also reflect broader and more permanent demographic and economic changes, including an aging workforce and a decline in demand for lower-skilled workers that is unlikely to be reversed in the future.
- The report highlights that outcomes for some groups of workers are especially poor, particularly those with multiple injuries and workers with cumulative trauma.
  - Outcomes for workers with cumulative trauma were particularly poor for workers in Southern California in the early years of the economic recovery, but have improved in the later cohorts in our analyses (2016-2017).
  - The timing of improvements for workers with cumulative trauma in Southern California coincides with new anti-fraud activities. This improvement in outcomes for workers with cumulative trauma in Southern California is a bright spot in the workers' compensation policy landscape, and future study should seek to verify if removing fraudulent providers directly contributed to improved economic outcomes for these workers.
- RAND found that benefit adequacy declined during the Great Recession, particularly for workers with permanent disability (PD). Despite some increases in payments after SB 863 reforms took effect, wage replacement rates have not improved as much as expected given these statutory increases in benefit generosity. While benefits did increase over time, the majority of the increase did not come from growth of PD benefits.
  - Much of the increase in benefits came from settlements, and medical settlements in particular. RAND found that wage replacement rates would have been even lower without payments from special funds administered by DIR, including the Return-to-Work Supplement Program (RTWSP) and Subsequent Injuries Benefit Trust Fund (SIBTF).
- A comparison of replacement rates across body part of injury and type of injury suggested that California's long-standing challenges with horizontal equity also have not been resolved by SB 863 reforms. In many ways, the findings in the report highlight the importance of continued monitoring for outcomes of injured workers.
- After the Great Recession, RAND's monitoring effort revealed that outcomes for injured workers were improving more slowly than the overall economy. For many subgroups, relative earnings and employment have not yet returned to pre-recession levels.
- The California workers' compensation system (WC) is becoming increasingly complex, meaning that there are additional components to incorporate into a comprehensive monitoring effort. According to the RAND study, the ideal monitoring environment would have one comprehensive data source with all WC benefits including special funds, disability ratings, medical care, disputes and earnings information all in one place, or the correct identifiers in place across all of these data sources in order to easily link them.

SPECIAL REPORT: WAGE LOSS MONITORING FOR INJURED WORKERS IN CALIFORNIA'S  
WORKERS' COMPENSATION SYSTEM

**Status:** Completed.

*For further information ...*

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[https://www.rand.org/pubs/research\\_reports/RR964-1.html](https://www.rand.org/pubs/research_reports/RR964-1.html)

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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](https://www.rand.org/content/dam/rand/pubs/research_reports/RR4200/RR4209/RAND_RR4209.pdf)

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# 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 5 times the rate of injury per 10,000 FTE that workers face, on average, in the private sector (89.4).<sup>197</sup> 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.<sup>198</sup> 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

### **Project Team**

#### **CHSWC Staff**

Eduardo Enz  
*CHSWC Executive Officer*

Irina Nemirovsky

#### **RAND**

Michael Dworsky, *Ph.D.*

Seth A. Seabury, *Ph.D.*

Nicholas Broten

Roald Euler

#### **UC Berkeley**

Frank Neuhauser

<sup>197</sup> Bureau of Labor Statistics, Survey of Occupational Illnesses and Injuries, <https://data.bls.gov/gqt/InitialPage/> (accessed October 15, 2020).

<sup>198</sup> 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>.

## SPECIAL REPORT: THE FREQUENCY AND ECONOMIC IMPACT OF MUSCULOSKELETAL DISORDERS FOR CALIFORNIA FIREFIGHTERS

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](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.

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](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB1978).

#### **Project Team**

##### **CHSWC Staff**

Eduardo Enz  
*CHSWC Executive Officer*  
Irina Nemirovsky

##### **DIR Staff**

Kumani Armstrong  
*Attorney IV*  
Linette Davis

##### **UC Berkeley, LOHP**

Laura Stock  
Suzanne Teran  
Helen Chen  
Alejandra Domenzain

# 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.<sup>199</sup>

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

*For further information...*

<https://www.dir.ca.gov/CHSWC/Reports/2021/Childcare-OSH-Curriculum.pdf>

<https://www.dir.ca.gov/CHSWC/Reports/2021/Childcare-OSH-Curriculum-SP.pdf>

### **Project Team**

#### **CHSWC Staff**

Eduardo Enz  
*CHSWC Executive Officer*  
Irina Nemirovsky  
Nabeela Khan

#### **UC Berkeley/LOHP**

Laura Stock  
Helen Chen, *J.D.*  
Charlotte Chang, *Ph.D.*  
Suzanne Terán

<sup>199</sup> [https://www.dir.ca.gov/chswc/Meetings/2017/Childcare\\_worker\\_proposal.pdf](https://www.dir.ca.gov/chswc/Meetings/2017/Childcare_worker_proposal.pdf)

## 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 that meets annually to oversee program activities and identify emergent issues.* The WOSHTEP Advisory Board consists of employers and workers or their union 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

#### **Project Team**

##### **CHSWC Staff**

Eduardo Enz  
*CHSWC Executive Officer*  
Irina Nemirovsky  
Chris Bailey  
Nabeela Khan  
Nurgul Toktogonova  
Chellah Yanga

##### **UC Berkeley-LOHP**

Laura Stock  
Robin Dewey  
Diane Bush  
Alejandra Domenzain  
Yasin Khan  
Joel Rubio

##### **UCLA-LOSH**

Kevin Riley, *Ph.D.*  
Deogracia Cornelio  
Verónica Ponce de León  
Valerie Serrano

##### **UC Davis-WCAHS**

Kent E. Pinkerton, *Ph.D.*  
Fadi Fathallah, *Ph.D.*  
Christopher Simmons, *Ph.D.*  
Heather Riden  
Teresa Andrews  
Leslie Olivares  
Yajaira Ramirez Sigala

## SPECIAL REPORT: CHSWC'S HEALTH AND SAFETY PROGRAMS

training materials to provide information and technical assistance to the workers' compensation community and to support trained WOSH Specialists and WOSHTEP trainers.

- *Established, and continue to support a 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 changes brought about by the COVID-19 pandemic, an online interactive version of the in-person training was developed in 2020.
- *Established, and support a 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 by employers and other health and safety advocates.* WOSHTEP developed industry-specific training for restaurant owners and managers on identifying and controlling hazards in their workplace in partnership with the State Compensation Insurance Fund (SCIF) and the California Restaurant Association (CRA). WOSHTEP also created materials and provided training for employees in the janitorial, restaurant, and dairy industries.
- *Developed, disseminated, and continue to update [materials on creating and implementing an Injury and Illness Prevention Program \(IIPP\)](#) for both 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, as well as for the agricultural industry. In addition, an online version of the training was developed in 2020 to offer the training remotely in order to extend the reach of the program and to adapt to the changed circumstances created by the Covid-19 pandemic.
- *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 CHSWC's website.
- *Developed a [Construction Case Study Training Guide](#)<sup>200</sup> for the construction industry for apprenticeship and pre-apprenticeship programs.* WOSHTEP also 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 leadership skills and provide training on health and safety issues and their rights and responsibilities in the workplace.* The three-day Academy is conducted once a year with participants from throughout the state. Academy youth learn how to take a leadership role in promoting 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.*
- *Developed a day-laborer handout to serve as a concise guide to basic laws and best practices for health and safety.* The handout is for day-labor centers to give to employers hiring day laborers. Day laborers also benefit by learning about their rights. The handout is available in [English](#) and [Spanish](#).

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<sup>200</sup> The link will be restored when the report is compliant with web accessibility standards.

## SPECIAL REPORT: CHSWC'S HEALTH AND SAFETY PROGRAMS

### **Next Steps**

Every year, CHSWC assesses fees to California WC insurance carriers pursuant to Labor Code § 6354.7 in order to fund the Workers' Occupational Safety and Health Education Fund (WOSHTEP) 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 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/>
- Notice of upcoming WOSH Specialist and IIPP Trainings are available at <https://lohp.berkeley.edu/trainings/>

### **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.

#### **Project Team**

##### **CHSWC Staff**

Eduardo Enz  
*CHSWC Executive Officer*  
Irina Nemirovsky  
Chris Bailey  
Nabeela Khan  
Nurgul Toktogenova  
Chellah Yanga  
Ondine Young

##### **UC Berkeley-LOHP**

Laura Stock  
Robin Dewey  
Diane Bush  
Yasin Khan  
Rosa Martinez

##### **UCLA-LOSH**

Kevin Riley  
Sarah Jacobs  
Yodit Semu

## SPECIAL REPORT: CHSWC'S HEALTH AND SAFETY PROGRAMS

### ***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.

Participants learn valuable skills in how to identify and solve safety problems, prepare, update, and improve written IIPPs, 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 101 SASH training classes have been conducted for 2,118 attendees from



## SPECIAL REPORT: CHSWC'S HEALTH AND SAFETY PROGRAMS

school districts in 43 counties with school district and county office of education staff, including two pilot training sessions. Post-training surveys indicate that the content has been well received. In 2021, an online version of the SASH IIPP training was developed to offer remote training during the pandemic. These online classes were a half-day in length and maintained the interactivity of the in-person classes. The activities kept the participants engaged and provided the opportunity to practice key skills. Notice of upcoming SASH training is at <https://lohp.berkeley.edu/trainings/>.

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 special education paraeducators on handling uncontrolled aggressive student behaviors, and those on addressing safety in the event of an active shooter on school grounds.

A number of webinars were conducted over the past year for school employees. These included the following:

- Managing Stress and Building Resilience Among School Employees
- School Worker Health and Safety: COVID-19 Vaccinations
- Expeditiously Assessing School and Workplace Ventilation for COVID Mitigation

The notices of upcoming webinars could be found at <https://lohp.berkeley.edu/webinar-directory/>.

### ***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 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: factsheets on wildfire smoke, 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 school-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, SASH IIPP trainings dates, and webinars are available at <https://www.dir.ca.gov/chswc/SASH/index.htm>

## SPECIAL REPORT: CHSWC'S HEALTH AND SAFETY PROGRAMS

### 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 were distributed to 1,600 schools and hundreds of other organizations that serve youth), a social media campaign for youth and youth-serving organizations, development 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 virtually on March 4–6, 2021 due to the COVID-19 pandemic. 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, WorkSafe, and the Equal Employment Opportunity Commission (EEOC). Young people from four 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 Academy. This year, all four teams and youth mentors also attended

#### **Project Team**

##### **CHSWC Staff**

Eduardo Enz  
*Executive Officer, CHSWC*

Nabeela Khan  
Irina Nemirovsky  
Chellah Yanga  
Ondine Young

##### **UC Berkeley-LOHP**

Diane Bush  
Robin Dewey  
Yasin Khan  
Rosa Martinez  
Maria Pritchard

##### **UCLA-LOSH**

Verónica Ponce de León

## SPECIAL REPORT: CHSWC'S HEALTH AND SAFETY PROGRAMS

a “YWLA zoom reunion” in June to reconnect and share the results of their community activities. 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. LOHP has continued to partner 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, as well as with the national AIHA Teen Workplace Task Force. In addition, LOHP joined a network of professional development providers at UC Berkeley to promote training for work-based learning educators. LOHP also developed partnerships with two local youth employment programs—Richmond YouthWorks and Berkeley YouthWorks, including developing a piloting a short online workshop with the Richmond program focused on workplace discrimination and harassment for young workers.

Partnership accomplishments include:

- Provided more than 150 teachers and youth with direct training or presentations through zoom or online conference workshops.
- Distributed factsheets with information on young worker health safety to thousands of teachers, employers, and youths through our own or partnership member outreach platforms, including social media, listserv postings, email announcements and newsletters, radio and video public service announcements, and distribution of the posters. For example, the annual [Work Permit Quiz](#) was taken over 5,200 times, almost double the previous year.
- About 25 teachers, employers, and youth received direct technical assistance via phone or email.
- The [www.youngworkers.org](http://www.youngworkers.org) website: During 2020-2021 (12 months of tracking), the website had 106,420 page views, comprising a broad range of webpages. The most frequently visited pages are the "Work Permits" page (28,412 views), the "Homepage" (14,930 views), the "Teacher Materials" page (8,975 views), the "Teen Workers Rights" page (7,471 views), and the "Hazards Activity Page" (5,360 views).
- Published at least three articles in newsletters, newspapers, and on the Internet.
- Continued to integrate health and safety information 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 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>

<https://youngworkers.org/summary-of-2021-virtual-leadership-academy/>

# 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, 451<sup>201</sup> workers died from injuries sustained on the job, over 645,000<sup>202</sup> filed workers' compensation claims for nonfatal injuries, and workers' compensation (WC) system costs exceeded \$21.4 billion.<sup>203</sup> 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 mechanisms for funding the research priorities specific to the needs of California's workforce.

## Objectives

The initial objectives of this project included:

- 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 statewide and 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 proposal 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 initial 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 analyzed the fatal and nonfatal occupational illness and injury data and the National Occupational Research Agenda sectors pertinent to California.

## Preliminary Findings from the Project Initial Objectives 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.

### **Project Team**

#### **CHSWC Staff**

Eduardo Enz  
*CHSWC Executive Officer*

Chris Bailey  
Nabeela Khan  
Irina Nemirovsky  
Nurgul Toktogonova

#### **Cal/OSHA Staff**

Eric Berg  
Kevin Graulich

#### **COEH**

Carisa Harris-Adamson, *Ph.D.*

#### **UC Berkeley/LOHP**

Laura Stock

#### **CDPH-OHB**

Kristin Cummings, *M.D.*  
Robert Harrison, *M.D.*  
Barbara Materna, *Ph.D.*

<sup>201</sup> [https://www.dir.ca.gov/DOSH/CFI/cfoi\\_2019/cfoi2019-A-1.pdf](https://www.dir.ca.gov/DOSH/CFI/cfoi_2019/cfoi2019-A-1.pdf).

<sup>202</sup> [https://www.dir.ca.gov/dwc/wcis/WCIS\\_tables/AggregateFROISROIData/AggregateFROISROIData.html](https://www.dir.ca.gov/dwc/wcis/WCIS_tables/AggregateFROISROIData/AggregateFROISROIData.html).

<sup>203</sup> [https://www.dir.ca.gov/chswc/Reports/20209/CHSWC\\_AnnualReport20209.pdf](https://www.dir.ca.gov/chswc/Reports/20209/CHSWC_AnnualReport20209.pdf).

## SPECIAL REPORT: CALIFORNIA OCCUPATIONAL RESEARCH AGENDA

- The three industries with the greatest incidence rates of fatalities in 2019 were agriculture, forestry, fishing and hunting, transportation and utilities, and construction.<sup>204</sup>
- The three occupations with the highest number of fatalities in 2019 were transportation and material moving occupations, construction and extraction occupations, and building and grounds cleaning and maintenance occupations.<sup>205</sup>
- The three occupations with the highest incidence rates of nonfatal days away from work injuries and illnesses in 2019 were: building and grounds cleaning and maintenance, transportation and material moving, and construction and extraction.<sup>206</sup>
- NORA topic areas are very detailed and have been examined using sector and cross-sector approaches; there are California representatives on several NORA sector committees.

### Next Steps: From Project to Program

The initial project identified a general direction and an interest in funding additional research if funds were made available. The team is now examining ways that a program could contribute directly to injury and illness prevention through setting priorities and is currently considering the following components:

- A comprehensive **system for tracking injuries, illnesses, and hazards** in California workplaces that would provide the basis for setting research priorities;
- A program offering targeted **funding for applied occupational health research** projects that are prevention focused and designed to offer practical solutions to address California's highest priority workplace health and safety needs;
- A focus on **research-to-practice and dissemination of research findings** through funding education, outreach and implementation projects to ensure that CORA has a direct impact on improving conditions in California's workplaces;
- Ongoing **evaluation of the CORA process** to identify needed improvements and optimize its value to California's employers and workers.

**Status:** In process.

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<sup>204</sup> [https://www.dir.ca.gov/DOSH/CFI/CFI\\_2019/Fatal-occupational-injury-rates-by-industry-2019-California.pdf](https://www.dir.ca.gov/DOSH/CFI/CFI_2019/Fatal-occupational-injury-rates-by-industry-2019-California.pdf).

<sup>205</sup> [https://www.dir.ca.gov/DOSH/CFI/cfoi\\_2019/cfoi2019-A-5.pdf](https://www.dir.ca.gov/DOSH/CFI/cfoi_2019/cfoi2019-A-5.pdf).

<sup>206</sup> <https://www.dir.ca.gov/oprl/Injuries/Demographics/2019/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 CHSWC projects and studies for 2021; lists of CHSWC projects and studies for prior years are in earlier reports, with an historical list last printed in the 2017 Annual Report.<sup>207</sup>

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 or were in process in 2021:**

Evaluation of Incidence of Mental Health Conditions or Illnesses Among Firefighters and Peace Officers Study, RAND (Category IV)

Initiated by a legal request written into Senate Bill (SB) 542 in 2019.

Status: Completed

"Posttraumatic Stress in California's Workers' Compensation System: A Study of Mental Health Presumptions for Firefighters and Peace Officers Under Senate Bill 542," RAND, September 2021. [https://www.rand.org/pubs/research\\_reports/RRA1391-1.html](https://www.rand.org/pubs/research_reports/RRA1391-1.html) or [https://www.dir.ca.gov/chswc/Meetings/2021/RAND\\_mentalhealth\\_report.pdf](https://www.dir.ca.gov/chswc/Meetings/2021/RAND_mentalhealth_report.pdf) with shorter research brief at [https://www.dir.ca.gov/chswc/Meetings/2021/RAND\\_mentalhealth\\_brief.pdf](https://www.dir.ca.gov/chswc/Meetings/2021/RAND_mentalhealth_brief.pdf).

Public comments on First Responder Mental Health Presumption study from CHSWC Commissioners Kessler, Bouma, and Roxborough, submitted October 5, 2021 <https://www.dir.ca.gov/chswc/Meetings/2021/Rand-PTSD-Study-Comments-Commissioners-Kessler-Bouma-Roxborough.pdf>

RAND Response to Commissioner Comments [https://www.dir.ca.gov/chswc/Meetings/2021/RAND\\_Response-to-Comments.pdf](https://www.dir.ca.gov/chswc/Meetings/2021/RAND_Response-to-Comments.pdf)

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<sup>207</sup> CHSWC projects and studies for recent years are listed in their proper section for each year at <https://www.dir.ca.gov/chswc/AnnualReportpage1.html>; and all previous CHSWC projects and studies up to and including 2017 (inventory) are listed in the 2017 Annual Report: [https://www.dir.ca.gov/chswc/Reports/2017/CHSWC\\_AnnualReport2017.pdf](https://www.dir.ca.gov/chswc/Reports/2017/CHSWC_AnnualReport2017.pdf), 174. (Please note that where there are also URL links, many have been disabled on the internet and the reports have been archived.)

## LIST OF PROJECTS AND STUDIES, 2021

Assessment of Risk of Carcinogens Exposure and Incidents of Occupational Cancer among Mechanics and Cleaners of Firefighting Vehicles, ToxStrategies (Category IV)

Initiated by a legal request written into Assembly Bill (AB) 1400 in 2019.

Status: Draft report available, but not approved by the Commission. RFP for a new study to meet AB 1400 mandate will be undertaken. <sup>208</sup>

“AB 1400 Draft Study Report,” ToxStrategies, February 2021.

[https://www.dir.ca.gov/chswc/Meetings/2021/FireMechanicsCancer\\_draft.pdf](https://www.dir.ca.gov/chswc/Meetings/2021/FireMechanicsCancer_draft.pdf)

Study of the impacts of COVID-19 claims and the 2020 AB (Assembly Bill) 1159 presumptions of compensability on the California workers compensation system (Category III)

Initiated by a legal request written into AB 1159 in 2020.

Status: In Process

“COVID-19 in the California Workers' Compensation System. A Study of COVID-19 Claims and Presumptions Under Senate Bill 1159,” RAND, January 2022.

[https://www.rand.org/pubs/research\\_reports/RRA1430-1.html](https://www.rand.org/pubs/research_reports/RRA1430-1.html) (RAND pre-publication) or <https://www.dir.ca.gov/chswc/Reports/2022/RAND-COVID-claims-presumptions.pdf> (pre-publication for CHSWC website)

Related literature review article from RAND:

Worker and employer experiences with COVID-19 and the California Workers' Compensation System: a review of the literature. Quigley, DD, Qureshi, N, Gahlon, G, Gidengil, C. Am J Ind Med. 2022; 1- 11. doi:10.1002/ajim.23326

[https://www.rand.org/pubs/external\\_publications/EP68841.html](https://www.rand.org/pubs/external_publications/EP68841.html)

Study on the deposit of disability indemnity payments for employees in a prepaid card account with reasonable access to in-network automatic teller machines.

Report request initiated by SB 880, effective 2019 as Labor code 4651.

Status: In Process

Janitorial Time Motion Study (Category IV)

Study requested by Assemblymember Miguel Santiago.

Status: In Process

Health and Safety Training for Childcare Workers (in English and Spanish) (Category IV)

Training curriculum requested by Assemblyperson Monique Limón

Status: Completed

“Occupational Health and Safety Training: Center-Based Early Care & Education Workers Peer Educator Training Guide,” LOHP, UC Berkeley, 2021.

<https://www.dir.ca.gov/chswc/Reports/2021/Childcare-OSH-Curriculum.pdf>

<https://www.dir.ca.gov/chswc/Reports/2021/Childcare-OSH-Curriculum-SP.pdf>

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<sup>208</sup> Additional discussion of issues by Cal/OSHA in final minutes of 9/30/2021 CHSWC public meeting minutes posted at [https://www.dir.ca.gov/chswc/Meetings/2021/Minutes\\_09-30-21.pdf](https://www.dir.ca.gov/chswc/Meetings/2021/Minutes_09-30-21.pdf).

## CHSWC AND THE COMMUNITY

**For Information about the Commission on Health and Safety and Workers' Compensation (CHSWC) and its activities:**

**Write:**

DIR-CHSWC  
1515 Clay Street, 17th Floor  
Oakland, CA 94612

**Phone:**

510-622-3959

**FAX:**

510-286-0499

**Email:**

chswc@dir.ca.gov

**Internet:**

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](http://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, 1994–2020  
CHSWC Strategic Plan, 2002  
Worker's Occupational Safety and Health Training and Education Program (WOSHTEP) Advisory Board Annual Reports, 2004–2020



## CHSWC AND THE COMMUNITY

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Denise Zoe Algire, National Medical Director, Director of Risk Initiatives

#### **American Medical Association (AMA)**

AMA staff

#### **American Property Casualty Insurance Association (APCIA)**

Jeremy Merz, Vice President Western Region

#### **Boeing**

Christine Coakley, Regulatory and Legislative Analyst

#### **Boston University (BU)**

Leslie I. Boden, Ph.D., Professor, School of Public Health

#### **California Applicants' Attorneys Association (CAAA)**

Diane Worley, Executive Director

Sandra Rocca, President

Jason Marcus, Legislative Committee Chair

#### **California Chamber of Commerce (CCC)**

Allan Zaremborg, President and Chief Executive Officer

Robert Moutrie, Policy Advocate

#### **California Coalition on Workers' Compensation (CCWC)**

Paul J. Yoder, Managing Director

Jason Schmelzer, Legislative Advocate

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Ed Cho, Workers' Compensation Program manager

Keith Mentzer, Benefit Program Administrator

#### **California Small Business Association**

Betti Jo Toccoli, President

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Katie Hagen, Director

Deanna Ping, Chief Deputy Director

Doris Ng, Chief Counsel, Office of the Director, Legal

Bonita Estrada, Diversity and Inclusion Office, Director's Office, Diversity of Inclusion

Joshua Iverson, Chief Financial Officer, Office of Fiscal Services

Erika Monterroza, Deputy Director, Office of Communications

Benjamin Bonte, Chief Information Officer, Office of Information Services

Dominic Forrest, Chief, Office of Strategic Enforcement

John White, Associate Governmental Program Analyst

Office of the Director staff

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### **Division of Administration (DOA)**

DOA staff

### **Division of Apprenticeship Standards (DAS)**

Eric Rood, Chief  
DAS staff

### **Division of Labor Standards Enforcement (DLSE)**

Lilia García-Brower, Labor Commissioner  
Lizbeth Woo, Senior Deputy Labor Commissioner, DLSE Licensing and Registration  
DLSE staff

### **Division of Occupational Safety and Health (DOSH)**

Jeff Killip, Chief  
Danielle Lucido, Chief Counsel  
Eric Berg, Deputy Chief, Health and Research Standards  
Cora Gherga, Former Assistant to the Chief, Enforcement Administration  
Eugene Glendenning, Acting Program Manager, Consultation Services  
Brandon Hart, Regional Manager, Training, Publications and Outreach Unit  
Debra Lee, Deputy Chief, Field Enforcement  
Glenn Shor, Research Data Specialist III (RA), CFI program  
Nancy López, Associate Governmental Program Analyst  
DOSH staff

### **Division of Workers' Compensation (DWC)**

George Parisotto, Administrative Director  
Mark Fudem, Associate Chief Judge  
Paige Levy, Chief Judge  
Raymond Meister, M.D., Executive Medical Director  
Denise Vargas, Chief of Programmatic Services  
Rudy Arrieta, Manager, UEBTF  
Stephanie Barber, Manager, SIBTF  
Christina Fenimore, Workers' Compensation Compliance Manager, Audit and Enforcement Unit  
Melissa Hicks, Chief, Medical Services  
Alissa Huang, Compliance Manager, Medical Unit  
Barry Knight, Manager Disability Evaluation Unit  
Elda Llamas, Manager, DWC Information Service Center  
DWC staff

### **Labor and Workforce Development Agency (LWDA)**

Natalie Palugyai, Secretary  
LWDA staff

### **Occupational Safety and Health (OSHAB/Cal/OSHA) Appeals Board**

Ed Lowry, Chair  
Patricia Hapgood, Acting Executive Officer  
OSHAB staff

### **Occupational Safety and Health Standards Board (OSHSB)**

David Thomas, Chair  
Christine Shupe, Executive Officer  
OSHSB Staff

### **Office of Information Services (DIR)**

Ben Bonte, Chief Information Technology Officer  
Jack Chu, Chief, Enterprise Systems  
Rebecca Kramer, Enterprise System Engineering Manager

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Jackie Chang, Software Engineering Manager  
Norman Núñez, Information Technology Supervisor  
Deepali Potnis, DIR Business Intelligence Supervisor  
IT staff

### **Office of the Director, Research (DIR)**

Silvestre Rojas, Deputy Chief  
Jessica Nguyen, Research Data Supervisor II  
OD Research Staff

### **Self-Insurance Plans (SIP)**

Lynn Asio-Booz, Chief  
SIP staff

### **Workers' Compensation Appeals Board (WCAB)**

Katherine Zalewski, Chair

Commissioners:

Deidra E. Lowe  
Marguerite Sweeney  
José H. Razo  
Juan Pedro Gaffney  
Katherine Dodd  
Craig Snellings

Deputy Commissioners:

Patricia A. García  
Anne Schmitz, Secretary  
Amber Ingels  
WCAB staff

### **California Department of Insurance (CDI)**

Ricardo Lara, Insurance Commissioner  
Jerome Tu, Bureau Chief Rate Regulation Branch  
CDI staff

### **California Health-Care Foundation (CHCF)**

Sandra R. Hernández, President & Chief Executive Officer

### **California Association of Joint Powers Authorities (CAJPA)**

Gina Dean, President

### **California Labor Federation, AFL-CIO**

Art Pulaski, Executive Secretary

### **California Legislature**

The Honorable Toni G. Atkins, President pro Tempore, California Senate  
The Honorable Anthony Rendon, Speaker of the Assembly

### **California Manufacturers and Technology Association (CMTA)**

Lance Hastings, President

### **California Schools Insurance Authority**

Martin Brady, Executive Director

### **California Self-Insurers Association (CSIA)**

Jill Dulich, Executive Director

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### **California Workers' Compensation Institute (CWCI)**

Alex Swedlow, President  
Ellen Sims Langille, General Counsel  
Rena David, Senior Vice President & Research and Operations  
Jackie Secia, Claims and Medical Director

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John Maloch, National Chair  
Laura Clifford, Executive Director

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Jennifer Wolf, Executive Director  
Greg Krohm, Consultant  
IAIABC staff

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Roman Kownacki, MD., Occupational Medical Specialist, Regional Occupational Health for Northern California

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Dr. Rajiv Das, M.D., Medical Director, Corporate Workers' Compensation

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Scott Hauge, President

### **State Building & Construction Trades Council of California (SBCTC)**

Robbie Hunter, President  
Laura Boatman, Program Coordinator

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Vernon Steiner, President/Chief Executive Officer  
Dinesh Govindarao, Chief Medical Officer  
Kate Smith, Chief Actuarial Officer

### **University of California (UC), Berkeley**

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Frank Neuhauser, Senior Researcher, Public Policy

### **Labor Occupational Health Program (LOHP)**

Laura Stock, Director, LOHP  
Suzanne Terán, Associate Director  
Robin Dewey, Program Coordinator  
Diane Bush, Program Coordinator  
LOHP staff

### **University of California (UC), Davis**

#### **Western Center for Agricultural Health and Safety (WCAHS)**

Kent Pinkerton, Center Director  
Heather Riden, Manager  
Teresa Andrews, Education and Outreach Specialists  
Leslie Olivares, Education and Outreach Specialist  
WCAHS staff

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### **University of California, Los Angeles (UCLA) Labor Occupational Safety and Health Program (LOSH)**

Kevin Riley, Director  
Linda Delp, Former Director  
Deogracia Cornelio, Former Associate Director of Education  
Verónica Ponce de León, Health and Safety Educator  
LOSH staff

### **University of Southern California**

Seth Seabury, Ph.D., Associate Professor of Research

### **Western Occupational & Environmental Medicine Association (WOEMA)**

Erik J. Won, D.O., Chairman of the Board  
Scott Krasner, M.D., President  
Rupali Das, M.D., President Elect  
WOEMA staff

### **Members of the Public**

Participants in CHSWC meetings, fact-finding hearings, and public forums  
Participants in CHSWC project advisory committees

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Nabeela Khan, Research Data Specialist II  
Chris Bailey, Research Data Specialist I  
Chellah Yanga, Staff Services Manager  
Ondine Young, Associate Governmental Program Analyst