

ALTERNATIVE DISPUTE RESOLUTION/CARVE-OUT PROGRAM
Labor Code Sections 3201.5 and 3201.7

REPORT ON ACTIVITIES
FOR THE CALENDAR YEAR 2008

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Summary

Labor Code sections 3201.5(i) and 3201.7(h) require the Administrative Director of the Division of Workers' Compensation (DWC) to submit to the Legislature this report on alternative dispute resolution (ADR)/carve-out program activity for 2008.

Title 8, California Code of Regulations (CCR) section 10203 requires that, as of March 31 of each year, all employers participating in a Section 3201.5 or 3201.7 ADR/carve-out program are to report annual claims and payroll data to the DWC.

For 2008, California's twenty-three eligible and active ADR/carve-out programs reported 4,855 workers' compensation claims with more than \$35 million in paid medical and indemnity benefits. The nineteen programs with adequate payroll data reported covering \$2.3 billion in payroll, and the eighteen programs with adequate person hours data reported covering 76.5 million working hours.

An Overview of the ADR/Carve-out Program

With the 1993 passage of Senate Bill (SB) 983 (Chapter 117, Statutes of 1993), the California Legislature established the "Construction Carve-Out Program" in Labor Code section 3201.5. In doing so, it permitted employers, groups of employers, and employee organizations involved in the construction industry to use the collective bargaining process as a mechanism for the creation of alternatives to the traditional workers' compensation dispute resolution process.

From the beginning, all potential ADR/carve-out programs needed to meet certain ground rule requirements for bargaining and eligibility. First, an employee representative must initiate the ADR/carve-out bargaining process. Second, all decisions made by a program's arbitrator or board of arbitration must be subject to review by the Workers' Compensation Appeals Board (WCAB). Third, the collective bargaining agreement could not diminish the entitlement of an employee to compensation payments for total or partial disability, temporary disability, vocational rehabilitation, or medical treatment fully paid by the employer. Fourth, all employers and groups of employers must allow the DWC to collect data on work and claims activity.

Over time, the Legislature has strengthened the eligibility requirements (Chapter 963, Statutes of 1994) and tightened the statute's language (Chapter 886, Statutes of 1995 and Chapter 866, Statutes of 2002), and with the passage of SB 228 (Chapter 639, Statutes of 2003), the Legislature expanded the ADR/carve-out system to allow non-construction industry employers and unions to negotiate and establish their ADR/carve-out programs under Labor Code section 3201.7.

The creation of 3201.7 programs was quickly followed by the second fundamental change to the ADR/carve-out program since its inception, with the passage of SB 899 (Chapter 34, Statutes of 2004). After SB 899, employers, groups of employers, and employee representatives are permitted 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 that are eligible for group health benefits and non-occupational disability benefits through their employer" as part of the ADR/carve-out program.

Reporting Requirements

Both sections 3201.5 and 3201.7 require the Administrative Director of DWC to prepare a report to the Legislature by June 30 of each year based upon aggregate data that shall include the following:

- (1) Person hours and payroll covered by agreements filed
- (2) The number of claims filed
- (3) The average cost per claim reported by cost components whenever practical
- (4) The number of litigated claims, including the number of claims submitted to mediation, the WCAB, or the Court of Appeal
- (5) The number of contested claims resolved prior to arbitration
- (6) The projected incurred costs and actual costs of claims
- (7) Safety history
- (8) The number of workers participating in vocational rehabilitation programs
- (9) The number of workers participating in light-duty programs

Labor Code section 3201.7 requires that the report of non-construction ADR/carve-outs also include information on worker satisfaction.

The carve-out data reporting requirements, initially adopted by DWC in 1996, can be found in CCR section 10203. Section 10203 requires that every employer subject to either Labor Code section 3201.5 or 3201.7 shall provide the DWC with the required information for the previous calendar year on or before March 31 of each year. For each claim with a date of injury on or after January 1, 2004, the information shall be updated annually for the following three calendar years on a bi-annual basis, thereby allowing longer-term claims trajectories and costs to be determined. In order to fulfill the reporting requirement, groups of employers must on behalf of their members either submit data directly to the DWC, or "(a)(2)(B) Provide the Administrative Director with written authorization to collect the information from the appropriate claims administrator. [However], [i]f the Administrative Director is unable to obtain the information with the written authorization, the employer shall remain responsible for obtaining and

submitting the information.” Employers are required to submit data using the Aggregate Employer Annual Report (DWC Form GV-1) (CCR section 10103.1) and the Individual Employer Annual Report (DWC Form GV-2) (CCR section 10103.2).

The 2008 Data

Data Collection:

This report is based on aggregate data collected during the 2009 reporting cycle. The data were collected via both a traditional mail-in collection of GV-1 and GV-2 forms and electronic submission of GV-1 forms. The initial phase of collection ended as scheduled on March 31, 2009. After initial review of the data submitted, DWC worked with individual programs through July 2009 to clarify omissions and discrepancies between what was reported and what CCR section 10203 requires. As of the close of the data collection phase for this report, all but one of the twenty-three active carve-out programs had correctly submitted all of their 2008 claims cost data. Nine programs had submitted data of acceptable quality on the number of claims resolved, nineteen programs had submitted data of acceptable quality on payroll, and eighteen programs on person hours.

Data Presentation:

The data included in this report represents all of the data requested in Labor Code sections 3201.5(i) and 3201.7(h). Since there are only three active and reporting Labor Code section 3201.7 “non-construction” programs, this report combines the data collected from both the 3201.5 and 3201.7 programs in order to protect the confidentiality of data presented and analyzed.

2008 Data Analysis

(1) Person hours and payroll covered by agreements filed

Among the carve-out programs with acceptable data quality, 76.5 million person hours and \$2.3 billion in payroll were reported for employees covered in the 2008 calendar year. This amounts to 38,269 full-time employee equivalents.¹

(2) Number of claims filed

During 2008, there were a total 4,855 of claims filed, of which 2,425 (49.9%) claims were medical only claims, and 2,430 (50.1%) were indemnity claims.

(3) Average cost per claim by cost component

The following table shows the average actual and incurred cost per claim, for all cost components combined and by individual cost component. The average actual cost per claim was \$8,284 as of the end of the 2008 calendar year, while the average incurred cost per claim was \$19,552.

¹ The number of full-time employee equivalents is calculated by dividing the number of person hours by 2,000 hours.

**Average Actual and Incurred Costs per Claim,
Overall and by Cost Component**

	Average Actual Cost per Claim	Average Incurred Cost per Claim
All Claim Components²	\$8,284	\$19,552
Medical	\$4,273	\$11,177
Temporary Disability ³	\$3,486	\$5,922
Permanent Disability	\$430	\$1,528
Death Benefit	\$24	\$258
Life Pension	\$0	\$0
Vocational Rehabilitation	\$5	\$157
Medical-legal	\$108	\$512

(4) Number of litigated claims

CCR section 10203(b)(11) requires carve-outs to report the number of claims that were resolved at each of five stages: before mediation, at or after mediation, at or after arbitration, at or after the appeals board, and at or after the court of appeals. Section 10203(b)(9) defines “resolved” as having occurred when ultimate liability has been determined, even though payments for the claim may be made beyond the reporting period. The number resolved at each stage is to be reported for claims that were filed in the previous calendar year and/or resolved in the previous calendar year. Therefore, the sum of the number of claims resolved at each stage should equal or exceed the number of claims in the previous calendar year that were resolved, which is reported separately pursuant to CCR section 10203(b)(9). The latter section also states that the number of claims filed in the previous calendar year should equal the sum of the number of claims filed in the previous calendar year that were resolved and the number that remained unresolved as of December 31 of the previous calendar year.

Upon review of the submitted data, the majority of carve-outs were found to not be reporting this information correctly. On the one hand, discrepancies were found between the number of claims reported as resolved under CCR section 10203(b)(9), and the sum of the number of claims resolved at each stage under CCR section 10203(b)(11), that are inconsistent with the regulations. Only 10 of the 23 programs submitted acceptable data in this regard (values discrepant by no more than 5%). On the other hand, discrepancies were found between the number of resolved and unresolved claims together, reported under CCR section 10203(b)(9), and the number of claims filed in the previous calendar year, reported under CCR section 10203(b)(8). Sixteen programs reported acceptable values under these sections (values discrepant by no more than 5%). In order for the data on the number of claims resolved at each stage to be valid, both of the aforementioned conditions must be met. For the 2008 reporting year, data from only 3 carve-outs completely met these conditions. An additional 6 carve-outs reported data with a discrepancy of not more than 5% between data values that were expected to

² The calculation of average actual cost per claim for all claim components excludes data from one carve-out that failed to provide accurate information on actual temporary disability costs.

³ The calculation of average actual temporary disability cost per claim excludes data from one carve-out that failed to provide accurate information on actual temporary disability costs.

be concordant. Due to these data quality issues, presentation of data on the number of litigated claims in this and the following section is limited to those 9 carve-outs whose data were found to be of acceptable quality.

Total Number of Litigated Claims

Number of Programs	9
Total Number of Claims	1,157
Total Number Litigated	44
Percent Litigated	3.8%
Claims submitted to mediation	32
Claims submitted to arbitration	11
Claims submitted to the Worker' Compensation Appeals Board	1
Claims submitted to the Court of Appeals	0

Among the subset of carve-outs with acceptable data reporting, 44 (3.8%) of the 2008 claims were litigated. Of these 44 contested claims, 32 (72.7%) were resolved at or after mediation, 11 (25.0%) were resolved at or after arbitration, and 1 (2.3%) was resolved at or after the WCAB.

(5) Number of contested claims resolved prior to arbitration⁴

Among the 9 programs with acceptable data quality, 32 contested claims were resolved prior to arbitration, averaging 3.6 claims per program.

(6) Projected incurred costs and actual costs of claims

The actual costs for claims filed in 2008 totaled \$35,063,167, while the incurred costs totaled \$79,639,281. The largest share of costs is attributable to payment of medical and temporary disability benefits. These benefits accounted for 44.5% and 47.6% of total actual costs, and 60.4% and 27.3% of total incurred costs, respectively.

**Total Actual and Incurred Costs,
Overall and by Cost Component**

	Total Actual Cost	Total Incurred Cost
All Claim Components⁵	\$ 35,063,167	\$ 79,639,281
Medical	\$ 15,619,355	\$ 48,137,679
Temporary Disability ⁶	\$ 16,676,018	\$ 21,778,468

⁴ The total number of contested claims resolved prior to arbitration was calculated by aggregating each program's answer to the GV-1 Form question on the number of claims that were resolved at or after mediation.

⁵ The calculation of total actual cost for all claim components excludes temporary disability data from one carve-out that failed to provide accurate information on actual temporary disability costs. However, the remainder of the individual cost components for this carve-out are included in the calculation of the total actual costs of all claim components.

⁶ The calculation of average actual temporary disability cost per claim excludes data from one carve-out that failed to provide accurate information on actual temporary disability costs.

Permanent Disability	\$ 2,053,041	\$ 5,086,155
Death Benefit	\$ 279,913	\$ 2,824,359
Life Pension	\$0	\$0
Vocational Rehabilitation	\$ 39,573	\$ 752,312
Medical-legal	\$ 395,268	\$ 1,060,309

(7) Safety history

OSHA requires employers to file form No. 300 for work-related injuries resulting in death, a loss of consciousness, days away from work, restricted work activity, and/or medical care beyond first aid. In 2008, the carve-outs reported 2,059 injuries and illnesses were filed with the U.S. Department of Labor using OSHA Form No. 300 for employees covered under the carve-out program. This figure is 57.6% lower than the 4,855 workers' compensation claims reported for 2008.

(8) Number of workers participating in vocational rehabilitation programs

Two hundred forty-nine workers participated in a vocational rehabilitation program in 2008. Of the 23 programs reporting, one program reported actual and incurred costs for vocational rehabilitation but no corresponding workers participating in a program. The average number of workers participating in a vocational rehabilitation program in 2008 among the remaining 22 carve-outs was 11.

(9) Number of workers participating in light-duty programs

Two hundred ninety workers participated in a light-duty program in 2008, for an average of 12.6 workers per carve-out program.

(10) Worker Satisfaction

Labor Code section 3201.7(h) requires that DWC include information on worker satisfaction in its annual report to the Legislature on non-construction ADR programs. Two 3201.7 programs did not report the results of a worker satisfaction survey for 2008. One 3201.7 program reported that 78.3% of injured workers surveyed were satisfied with how their workers' compensation claim was handled by their ADR/carve-out program.