

# TABLE OF CONTENTS

<b>EXECUTIVE SUMMARY AND RECOMMENDATIONS.....</b>	<b>1</b>
<b>INTRODUCTION .....</b>	<b>1</b>
<b>OVERVIEW OF RECOMMENDATIONS.....</b>	<b>2</b>
<b>RECOMMENDATIONS FOR LEGISLATIVE ACTION.....</b>	<b>5</b>
L1 Consider workers' compensation benefit increases .....	5
L2 Eliminate the 'baseball arbitration' provisions of Labor Code §4065 .....	7
L3 Establish requirements for the provision of information to injured workers....	8
L4 Revise the DWC Workers' Compensation Audit Function.....	10
L5 Revise Labor Code Section 78(b) to change the funding mechanism for the Commission on Health and Safety and Workers' Compensation.....	12
L6 Reconsider the presumption of correctness for treating physician reports .	13
L7 Consider revising the workers' compensation pharmaceutical cost structure for potential savings .....	15
L8 Consider increasing incentives for returning permanently disabled workers to jobs with the same employer .....	17
L9 Clarify Labor Code Section 5814 regarding penalties for 'unreasonable' delays .....	18
L 10 Consider increasing options for injured workers entitled to Vocational Rehabilitation.....	20
L 11 Establish requirements to identify illegally uninsured employers and bring them into compliance.....	22
L 12 Require workers' compensation anti-fraud notices or warnings be given to employers and insurers, similar to those given to workers .....	23
L 13 Consider streamlining provision of benefits by paying indemnity benefits at a single weekly rate.....	24
L 14 Consider establishing statutory limitations on the filing of liens on workers' compensation cases.....	25
<b>RECOMMENDATIONS FOR ADMINISTRATIVE ACTION.....</b>	<b>27</b>
A 1 Evaluate the judicial function of the Division of Workers' Compensation.....	27
A 2 Standardize WCAB judicial operations by eliminating 'local' forms and procedures .....	29
A 3 Consider utilizing technology to support and manage office operations .....	31

TABLE OF CONTENTS

A 4 Improve DWC information systems .....32

**RECOMMENDATIONS FOR CONTINUED EFFORTS.....33**

C 1 Permanent Disability .....33

C 2 Occupational Health and Safety .....34

C 3 Focus on efforts to help injured workers return to sustained employment .....35

C 4 Improve the Workers' Compensation Benefit Notice program .....36

C 5 Protect and educate young workers .....37

C 6 Continue anti-fraud activities in the workers' compensation system .....38

C 7 Evaluate the Workers' Compensation Anti-Fraud Program .....39

C 8 Review statutorily-required safety efforts .....40

C 9 Monitor medical care and costs .....42

**INTRODUCTION .....45**

**ABOUT CHSWC.....47**

**CHSWC MEMBERS REPRESENTING EMPLOYERS .....47**

**CHSWC MEMBERS REPRESENTING LABOR .....50**

**CALIFORNIA HEALTH & SAFETY & WORKERS' COMPENSATION FUNCTIONS.....52**

**FOR INFORMATION ABOUT CHSWC AND ITS ACTIVITIES .....52**

**REFORM OUTCOMES .....57**

**WORKERS' COMPENSATION INSURANCE.....58**

**MEDICAL CARE.....59**

The 24-Hour Care Pilot Project .....59

Health Care Organization Program .....60

Fee Schedules .....60

Utilization Review Regulations .....61

**MEDICAL-LEGAL EVALUATIONS .....62**

Permanent Disability Claims .....62

TABLE OF CONTENTS

Medical-Legal Exams per Claim.....63  
Average Cost per Medical-Legal Exam .....64  
Medical-Legal Cost Calculation .....65  
Medical-Legal Costs .....65  
Sources of Improvement in Medical-Legal Costs .....66  
'Baseball Arbitration' .....67  
Treating Physician Presumption .....67

**WORKPLACE SAFETY AND HEALTH.....69**  
Targeted Consultation Program .....69  
Targeted Enforcement Program .....70  
Loss Control Certification Unit.....70  
Ergonomics Standard.....71

**VOCATIONAL REHABILITATION .....74**

**ADJUDICATION SIMPLIFICATION .....75**  
DWC Information System .....75  
'Carve-Outs' - Alternative Workers' Compensation systems' .....76

**PSYCHIATRIC AND POST-TERMINATION CLAIMS.....79**  
Psychiatric Claims.....79  
Psychiatric Costs .....80

**WORKERS' COMPENSATION DISABILITY BENEFITS.....81**

**WORKERS' COMPENSATION AND THE CALIFORNIA ECONOMY.....85**

**INTRODUCTION .....85**

**SCOPE .....85**

**CALIFORNIA'S WORKERS' COMPENSATION COSTS .....88**

**WORKERS' COMPENSATION BENEFITS .....94**

**WORKERS' COMPENSATION INSURANCE MARKET.....98**

**CALIFORNIA'S INDUSTRIAL INJURIES AND ILLNESSES .....102**

TABLE OF CONTENTS

**CONCLUSIONS.....106**

**SYSTEM PERFORMANCE.....113**

**INTRODUCTION .....113**

**ADMINISTRATIVE OPERATIONS.....114**

    DWC Opening Documents ..... 114

    Mix of Opening Documents ..... 115

    DWC Hearings ..... 116

    DWC Decisions..... 118

    Mix of DWC Decisions ..... 119

    DWC Lien Decisions ..... 120

    Vocational Rehabilitation Plan Approvals ..... 121

    Vocational Rehabilitation Plan Disapprovals ..... 121

    Vocational Rehabilitation Decisions ..... 122

**COSTS .....123**

    Workers' Compensation Premium..... 123

    Advisory Workers' Compensation Pure Premium Rates ..... 124

    Workers' Compensation Expenditures – Insured Employers..... 125

    Workers' Compensation Expenditures - Private Sector Self-Insured Employers . 128

**OUTCOMES.....130**

    Injury and Illness Rates..... 130

    Vocational Rehabilitation..... 133

**PROJECTS AND STUDIES.....135**

**INTRODUCTION .....135**

**OVERVIEW OF CHSWC PROJECTS AND STUDIES .....136**

    Permanent Disability..... 136

    Return to Work ..... 136

## TABLE OF CONTENTS

Workers' Compensation Reforms .....	137
Occupational Health and Safety .....	139
Workers' Compensation Administration.....	139
Information Needs.....	141
Community Concerns .....	142
<b>SYNOPSIS OF CURRENT CHSWC PROJECTS AND STUDIES .....</b>	<b>144</b>
<b>PERMANENT DISABILITY .....</b>	<b>144</b>
Enhancement of the Wage Loss Study to include Self-Insureds .....	145
Impact of Local Economic Conditions on Wage Loss.....	146
Analysis of wage loss and RTW in other states .....	146
Permanent Disability Rating Tool .....	146
<b>RETURN TO WORK.....</b>	<b>148</b>
Alternative or Modified Work in Construction Industry.....	148
Policies and Strategies to Help Injured Workers Return to Sustained Employment.....	149
Primary Treating Physician Effectiveness in RTW After Low Back Injuries .....	151
'Best Practices' Encouraging Return to Work .....	152
<b>WORKERS' COMPENSATION REFORMS.....</b>	<b>153</b>
Medical-Legal Study.....	153
Vocational Rehabilitation Study .....	155
Update of Treating Physician Presumption Study.....	157
<b>OCCUPATIONAL HEALTH AND SAFETY.....</b>	<b>159</b>
California Occupational Research Agenda .....	159
California Study Group on Young Workers' Health and Safety .....	160
Evaluation of Targeting Methods—High Hazard and Loss Control.....	162
California Forum for Workplace Health and Safety.....	164
<b>WORKERS' COMPENSATION ADMINISTRATION .....</b>	<b>166</b>
Study of DWC Judicial Function.....	166
<b>INFORMATION NEEDS .....</b>	<b>169</b>
Benefit Notice Simplification .....	169
<b>COMMUNITY CONCERNS .....</b>	<b>171</b>
Pharmaceutical Costs Study.....	171

TABLE OF CONTENTS

Survey: Workers' Compensation for Public Safety Employees.....173

**CHSWC & THE COMMUNITY .....175**

**ACKNOWLEDGEMENTS.....175**

**COMMUNITY ACTIVITIES.....185**

## **EXECUTIVE SUMMARY AND RECOMMENDATIONS**

### **INTRODUCTION**

The Commission on Health and Safety and Workers' Compensation (CHSWC) was created by the workers' compensation reform legislation of 1993. The Commission is charged with overseeing the health and safety and workers' compensation systems in California and recommending administrative or legislative modifications to improve their operation. CHSWC was 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.

From its inception in 1994, the Commission began the process of assessing the impact of the 1993 workers' compensation reform legislation -- a package of several bills that made widespread and significant changes to the California workers' compensation system.

The Commission has engaged in several projects and studies to evaluate how certain areas of the California workers' compensation system have been affected by the reform legislation and other influences, such as the economy. The Commission has directed its efforts to identify and assess problems and to provide an empirical basis for recommendations and/or further investigations. The Commission contracts with independent researchers to insure objectivity, incorporate a balance of viewpoints, and produce the highest quality analysis and evaluation.

CHSWC activities involve the whole community – employees and employers, labor organizations, insurers, attorneys, medical and rehabilitation providers, administrators, educators, government agencies and members of the public. These individuals and organizations have participated in CHSWC meetings, fact-finding hearings and have served on advisory committees to assist CHSWC and independent researchers on projects and studies. The common goal of all the parties in these efforts is to achieve a system that delivers the proper benefits to injured workers in a prompt and cost-effective manner.

These concerted efforts, combining rigorous analytical approaches with real world data and experience, have yielded insightful findings on important programs. The Commission's recommendations for system improvements are based upon the results of these activities.

The following pages contain the Commission's recommendations for legislative or administrative changes and/or for further study. In some instances, where recommended changes have widespread support and do not require legislative action, the Commission and the community have continued their work together by developing and implementing corrective actions. In addition, some project findings have formed the basis for community members to take action in the legislative arena.

CHSWC looks forward to further cooperative endeavors with the community to improve the health, safety and workers' compensation systems in California.

**RECOMMENDATIONS FOR LEGISLATIVE ACTION**

- L 1. Consider workers' compensation benefit increases.
- L 2. Eliminate the 'baseball arbitration' provisions of Labor Code Section 4065.
- L 3. Establish requirements for the provision of information to injured workers.
- L 4. Revise the DWC workers' compensation audit function.
- L 5. Revise Labor Code Section 78(b) to change the funding mechanism for the Commission on Health and Safety and Workers' Compensation.
- L 6. Reconsider the presumption of correctness for treating physician reports.
- L 7. Consider revising the workers' compensation pharmaceutical cost structure for potential savings.
- L 8. Consider increasing incentives for returning permanent disabled workers to jobs with the same employer.
- L 9. Clarify Labor Code Section 5814 regarding penalties for "unreasonable delays".
- L 10. Consider increasing options for injured workers entitled to Vocational Rehabilitation.
- L 11. Establish requirements to identify illegally uninsured employers and bring them into compliance.
- L 12. Require workers' compensation anti-fraud notices or warnings be given to employers and insurers, similar to those given to workers.
- L 13. Consider streamlining the provision of benefits by paying indemnity benefits at a single rate.
- L 14. Consider establishing statutory limitations on workers' compensation liens.

**RECOMMENDATIONS FOR ADMINISTRATIVE ACTION**

- A 1. Evaluate the judicial function of the Division of Workers' Compensation.
- A 2. Standardize WCAB judicial operations by eliminating 'local' forms and procedures.
- A 3. Consider utilizing technology to support and manage office operations.
- A 4. Improve DWC information systems

**RECOMMENDATIONS FOR CONTINUED EFFORTS**

- C 1. Permanent Disability
- C 2. Occupational Health and Safety
- C 3. Focus on efforts to help injured workers return to sustained employment.
- C 4. Improve the Workers' Compensation Benefit Notice Program
- C 5. Protect and Educate Young Workers
- C 6. Continue anti-fraud activities in the workers' compensation system.
- C 7. Evaluate the Workers' Compensation Anti-Fraud Program
- C 8. Review Statutorily-Required Safety Efforts
- C 9. Monitor Medical Care and Costs

EXECUTIVE SUMMARY AND RECOMMENDATIONS

**DISCUSSIONS OF RECOMMENDATIONS**

Recommendation for Legislative Action – L 1

**Consider workers’ compensation benefit increases.**

The Commission wishes to ensure that workers sustaining industrial injuries and illnesses and their dependents, if the injury is fatal, receive adequate workers’ compensation benefits in a timely manner. The Commission recognizes that the levels of workers’ compensation benefits over the years may not have kept pace with the economic consequences incurred by industrially injured workers. CHSWC recommends that the stakeholders and the workers’ compensation community work together to address this issue.

Various proposals to increase workers’ compensation benefits have been submitted to the Legislature. Concerns have been expressed that increases in benefits would have a negative impact on the California economy and on California employers and employees.

At its December 1999 meeting, the Commission voted to engage in a project to analyze workers’ compensation benefit costs in relation to the larger California economic picture.

Data utilized in these analyses were derived from a variety of sources, including the Legislative Analyst’s Office, the Office of Economic Research, the Department of Finance, the Division of Labor Statistics and Research, the Workers’ Compensation Insurance Rating Bureau of California, the California Workers’ Compensation Institute and other organizations. The Survey Research Center at the University of California at Berkeley contributed expertise and technical models.

The following observations were derived from those analyses:

- California has the largest and most diverse economy in the nation. The California economy is robust and is projected to continue to do very well. Economic growth in California is expected to continue to exceed that of the nation as a whole, reflecting faster population growth and the state’s favorable mix of high-tech industries. The resources appear to be there to provide adequate compensation to those workers who lose their ability to compete in the labor market.
- California’s industrial injuries and illness rates have declined significantly in all industries and sectors between 1988 and 1998 even though California’s economy was growing. This improvement has been ascribed to a number of factors including shifts in the workforce, greater emphasis on work-place safety, continued efforts to combat workers’ compensation fraud, limitations on psychiatric injuries, and changes in employer reporting patterns.

## EXECUTIVE SUMMARY AND RECOMMENDATIONS

- Workers' compensation benefits have not kept up with inflation. For example, the value of the permanent disability benefit after adjustment for inflation has declined to about 80% of its value in 1984. Consideration should be given to indexing benefits.
- Workers' compensation costs decreased from 1992 through 1995 due in large part to declining claim frequency and the elimination of the minimum rate law governing workers' compensation premiums.
- Increases in total workers' compensation costs from 1995 to 1998 are due in part to the growth of the California workforce. Projected increases in cost from 1999 to 2005 also take into account projected workforce growth. These estimates reflect underlying cost increases calculated by the Workers' Compensation Insurance Rating Bureau of California (WCIRB) that led WCIRB to recommend increases in the premium rate.
- The ratio of workers' compensation costs to total payroll (and to the Gross State Product and to Personal Income) has dropped significantly during the 1990s. Proposed increases to benefits do not seem to significantly impact the ratio of benefits to total payroll (and to GSP and PI), but such increases could affect certain sectors more than they might others.
- Whenever a benefit increase goes into effect, the Commission on Health and Safety and Workers' Compensation should study the impact of benefit increase on wage loss of workers, time-out of work, the benefit adequacy and equity, costs and utilization. This should include an ongoing evaluation of the adequacy of workers' compensation benefit levels and recommendations for adjustments as needed.

*For further information...*



See the section in this Annual Report entitled "Special Report – Workers' Compensation and the California Economy"

Recommendation for Legislative Action – L 2

**Eliminate the ‘baseball arbitration’ provisions of Labor Code Section 4065.**

Final offer arbitration – also known as ‘baseball arbitration’ – was introduced into the workers' compensation decision process as a result of the 1993 reforms.

Labor Code Section 4065 provides that where either the employer or the employee have obtained evaluations of the employee's permanent impairment and limitations from a qualified medical evaluator under Section 4061 and either party contests the comprehensive medical evaluation of the other party, the workers' compensation judge or the appeals board shall be limited to choosing between either party's proposed permanent disability rating. The employee's permanent disability award shall be adjusted based on the disability rating selected by the appeals board.

However, the result of the use of such ‘baseball arbitration’ is often perceived as unfair. Experienced triers of fact in the workers' compensation field believe that more often than not an applicant's true disability lies somewhere between the description of permanent disability obtained by the applicant and that procured by the defendant. Concern has been expressed that under Labor Code §4065 the workers' compensation judge may be “forced” to award too much or too little in permanent disability benefits to the injured worker.

In April 1999 the Commission requested a report on the effectiveness and experience of baseball arbitration in the WCAB. CHSWC staff collected data and information in the WCAB district offices. The Commission was informed that Workers' Compensation judges are having problems with the application of Section 4065 and that many are reluctant to use it. This is confirmed by the reported cases in the CHSWC study. The parties are equally adept at avoiding baseball arbitration. The literature review, the preliminary data analysis, and legal and anecdotal evidence all indicate that there are problems with the implementation of final offer arbitration in workers' compensation.

A report entitled “Preliminary Evidence on the Implementation of ‘Baseball Arbitration’ in Workers' Compensation” was issued in November 1999. At its meeting on December 16, 1999 in Los Angeles, the Commission on Health and Safety and Workers' Compensation voted unanimously to recommend the repeal of Labor Code Section 4065.

*For further information...*



CHSWC Report: ‘Preliminary Evidence on the Implementation of Baseball Arbitration’ (1999)



Check out [www.dir.ca.gov/CHSWC/chswc.html](http://www.dir.ca.gov/CHSWC/chswc.html) for CHSWC reports and the latest information.

Recommendation for Legislative Action – L 3**Establish requirements for the provision of information to injured workers.**

The Commission noted that various laws and regulations had been identified as problematic with respect to workers' compensation benefit notices and directed that staff draft proposed statutory changes to the Labor Code to address those problems. A report entitled "Recommendations: Information for Injured Workers" detailing the proposed legislative changes was approved by the Commission at its April 2000 meeting.

The primary purpose of the proposed legislative changes is to make uniform the Labor Code provisions regarding notices to injured workers. The objectives of the proposed changes are to improve the information given to employees by employers prior to and soon after injury, information available at state Information and Assistance offices, information from claims administrators, the content and clarity of benefit notices, and the timing of some of the most problematic benefit notices.

The proposed legislation would specify the following:

*A. Information from Employer Prior to Injury*

Prior to injury, all workers will have basic, introductory information about workers' compensation. This will include, for example: the right to designate one's personal physician prior to injury; how to get emergency medical treatment if needed; and how to report a job injury. The information will be posted in the workplace and given to new employees in writing.

*B. Information from Employer Soon After Injury*

Soon after injury, injured workers who are entitled to receive a claim form will be given practical, instructional information. This will include, for example: how to request workers' compensation benefits; what happens with the claim form after it is filed; from whom the employee can obtain medical care for the injury; the role and function of the primary treating physician; and sources of information and help. The information will be contained on the reverse side of the claim form, and the claim form will instruct the injured worker to read the reverse side.

*C. Information Available from State Information & Assistance Offices*

A comprehensive guide advising employees about the California workers' compensation system will be available from state Information & Assistance offices. (This will expand upon the information currently required under Labor Code Section 139.6.)

*D. Information from Claims Administrator*

If the employer did not give an injured worker who is entitled to receive a claim form the instructional information described in B, above, the claims administrator will provide it to the worker. (This will clarify an existing requirement that claims administrators provide an injured worker with the instructional information that is contained on the reverse side of the claim form, if the employer failed to do so. The existing requirement is set forth in the California Code of Regulations, Title 8, Sections 10117, 10118, and 10119.)

For injured workers who are sent benefit-notice letters, the claims administrator will include, with the first letter, a comprehensive guide about the workers' compensation system. (This will simply modify an existing requirement that claims administrators include an "information pamphlet" with the first benefit-notice letter sent to a claimant. The existing requirement is set forth in Labor Code section 138.4(a) and the California Code of Regulations, Title 8, Sections 9810(d), 9812, and 9813.)

*E. Format of Benefit Notices*

The basic information and concepts given in the comprehensive guide described in D, above, will not be repeated within the main body of benefit-notice letters. Instead, the letters will refer the injured worker to relevant portions of the comprehensive guide.

Information regarding the claimant's remedies and the right to consult with a state Information & Assistance officer or an applicants' attorney (which will be given in the comprehensive guide described in D, above) will not be repeated within the main body of benefit-notice letters. Instead, each benefit notice will be accompanied, outside the main body of the letter, by brief statements describing the right to disagree with a decision and how to contact an I&A officer or the State Bar of California. (This will revise existing requirements to include -- within benefit notices -- vague, difficult-to-understand language describing remedies, I&A services, and attorneys. The existing requirements are set forth in Labor Code sections 138.4 and 4061 and the California Code of Regulations, Title 8, Sections 9811(f), 9812, and 9813.)

*For further information...*

 See the CHSWC Projects section in this Annual Report:  
Benefit Notice Simplification

 CHSWC Report: 'Recommendations: Information for Injured Workers' (2000)

 CHSWC Report: 'Navigating the California Workers' Compensation System: The Injured Workers' Experience' (1996)

 Check out [www.dir.ca.gov/CHSWC/chswc.html](http://www.dir.ca.gov/CHSWC/chswc.html) for CHSWC reports and the latest information.

Recommendation for Legislative Action – L 4

**Revise the DWC Workers' Compensation Audit Function**

The 1989 California workers' compensation reform legislation established an audit function within the Division of Workers' Compensation (DWC) to monitor the performance of insurers, self-insured employers, and third-party administrators to ensure that industrially-injured workers were receiving proper benefits in a timely manner. The purpose of the audit 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.

In April 1998, the Senate Industrial Relations Committee and the Assembly Insurance Committee jointly requested that the Commission undertake an evaluation of the effectiveness of the audit function of the Division of Workers' Compensation.

This legislative initiative was in part a response to considerable concern raised by some members of the workers compensation community. These concerns focused on the results of recent annual audits that showed substantial numbers of violations and found what many felt were excessive levels of unpaid compensation. Some observers also interpreted these data, when extrapolated to the entire population of claims locations, to indicate a trend toward poor performance in the delivery of benefits to injured workers.

The Commission project team researched the issue and conducted thoughtful discussions with DWC Audit Unit management and staff, the Audit Advisory Committee and other community members. The study determined that the current audit procedure did not include all insurers within a reasonable period of time, did not focus on the worst performers and concentrated penalties on relatively inconsequential violations.

The study participants concluded that although much time and effort was being expended by the DWC Audit Unit in performing audits of workers' compensation insurers, a redirection of these activities would produce more effective outcomes.

The Commission is recommending revisions to the audit function, in order to:

- Reward good performers by eliminating administrative penalties and resource requirements,
- Increase incentive to improve benefit delivery by raising administrative penalties substantially on poor performers,
- Focus administrative penalties on important violations,
- Provide balance to the audit process:
  - Bad business practices by claims administrators mean that injured workers are not receiving proper indemnity payments and appropriate medical services in a timely manner.
  - Excessive audit penalties and regulation mean employers are paying higher costs to deliver the same benefits.

Under current DWC audit procedures, locations are rarely subject to random audits and almost never subject to targeted audits. The Commission recommends the replacement of current audit procedures with the following:

- Simplified audit, focusing on key violations.
- Auditing of all locations on a five-year cycle.
- Electronic monitoring of key performance indicators where possible.
- Increased use of targeted audits to identify poor performers.

The results of the routine audits should be used to:

- Identify poor performers for an in-depth review.
- Verify data integrity.
- Benchmark performance on key indicators.
- Rank performance of adjusting locations.

*For further information...*



'CHSWC Report on the Division of Workers' Compensation Audit Function' (1998)



Check out [www.dir.ca.gov/CHSWC/chswc.html](http://www.dir.ca.gov/CHSWC/chswc.html) for CHSWC reports and the latest information.

Recommendation for Legislative Action – L 5

**Revise Labor Code Section 78(b) to change the funding mechanism for the Commission on Health and Safety and Workers' Compensation.**

In order to avoid the appearance of a conflict of interest, funding for CHSWC should not be totally dependent on the amount of the audit penalties collected by the DWC Audit Unit. Currently, audit collections are deposited into the Workplace Health and Safety Revolving Fund and the Commission's budget is appropriated out of that fund. If audit collections are not sufficient to meet the needs of the Commission, there is currently no recourse.

The Commission proposes that audit collections be deposited into the state's Workers' Compensation Administration Revolving Fund (see Labor Code Section 62.5) or into the State General Fund. An adequate amount for the Commission's budget could then be appropriated from the state's Workers' Compensation Administration Revolving Fund or from the State General Fund. If allocated from the state's Workers' Compensation Administration Revolving Fund, the Commission's budget would be included in the 80/20 funding ratio for workers' compensation programs.

Recommendation for Legislative Action – L 6

**Reconsider the presumption of correctness for treating physician reports.**

Before 1993, whenever a medical issue arose in a workers' compensation case, many medical reports were involved in the resolution. In addition to the reports of the treating physician, the applicant and the defendant were each entitled to procure a medical-legal evaluation and report, in each appropriate medical specialty.

In the 1993 reforms, the role of treating physician in evaluating disability was increased in the workers' compensation process. They were required by legislation to report on all medical issues necessary to determine eligibility for compensation. In addition, whenever another medical evaluation is obtained, the findings of the treating physician are presumed to be correct. This gives a much greater weight to the findings of the treating physician, which required rebuttal by preponderance of evidence. The intention was that this would reduce cost of medical-legal reports and give less biased opinions.

The workers' compensation community raised a number of concerns about the presumption. Many people felt that the reports submitted by treating physicians were, in the main, unratable, leading to much duplicative action by both the DWC Disability Evaluation Unit and by insurers. Second, even when the reports were ratable, many felt that these reports were of poorer quality than those supplied by forensic doctors -- qualified medical evaluators appointed and regulated by the Industrial Medical Council. Therefore, giving these poorer quality reports a presumption of correctness caused additional problems for the insurer, the employer and the worker. And finally, because the treating physician has a presumption of correctness that has to be overcome, there was a feeling that parties might 'shop' for a doctor at the time the forensic report was going to be issued.

The Commission contracted with the University of California for a project to evaluate the role of the treating physician, the quality of treating physician reports, and the cost-benefit of the presumption of correctness of treating physician reports. The study utilized a random sample of closed files was drawn from four different WCAB offices. The Commission worked with the IMC and the Disability Evaluation Unit to develop a set of criteria upon which to judge the quality and adequacy of these reports. These reports were then evaluated by the Disability Evaluation Unit managers and raters, against the set of criteria that were developed. Finally, the WCIRB Rating Bureau's Permanent Disability Claim Survey was used to evaluate the impact of the presumption on the frequency of reports and the total cost of medical-legal reports.

The project report concluded that

- Primary treating physician reports compare poorly with reports completed by Qualified Medical Examiners (QME), even when the treating physician was a QME.
- Most of the problem is with reports by primary treating physicians who are not also QMEs.

## EXECUTIVE SUMMARY AND RECOMMENDATIONS

- There is no evidence to demonstrate reductions in medical-legal costs result from the 'presumption'.
- Consideration should be given to eliminating the 'presumption' or replacing it with a lower standard.

In addition, there seems to be consensus within the WCAB that the presumption has increased litigation and curtailed the discretion of the Workers' Compensation Judges to craft reasonable decisions within the range of evidence.

The report recommends that the standard be set at a different level which gives great weight to the treating physician but allows the judges to use judicial discretion and to award based on the range of evidence.

In May 2000, the Legislature requested that the Commission update its study report on the presumption of correction for treating physician reports. An updated report is expected by the summer of 2000.

*For further information...*



See the CHSWC Project Section in this Annual Report.  
'Update of Treating Physician Report and Presumption Study'



CHSWC Report: 'Report on the Quality of the Treating Physician Reports and the Cost-Benefit of Presumption in Favor of the Treating Physician' (1999)



Check out [www.dir.ca.gov/CHSWC/chswc.html](http://www.dir.ca.gov/CHSWC/chswc.html) for CHSWC reports and the latest information.

Recommendation for Legislative Action – L 7

**Consider revising the workers’ compensation pharmaceutical cost structure for potential savings.**

The 1993 reform legislation amended Labor Code Section 5307.1 to require that the Administrative Director of the Division of Workers’ Compensation include ‘drugs and pharmacy services’ in the Official Medical Fee Schedule (OMFS).

In response to that mandate, the 1993 Official Medical Fee Schedule included a “Pharmaceuticals” section which provides that reimbursement for the dispensing of all pharmaceuticals shall be the lesser of

1. The provider’s usual charge, or
2. The fees established by the formulas in the OMFS for brand-name and generic pharmaceuticals.

The formulas for establishing fair and reasonable fees and charges for brand-name and generic pharmaceuticals are specified in the Official Medical Fee Schedule:

*Brand Name Pharmaceutical Formula:*

Average Wholesale Price (AWP) times 1.10 plus a \$4.00 dispensing fee.

*Generic Pharmaceutical Formula:*

Average Wholesale Price (AWP) times 1.40 plus a \$7.50 dispensing fee.

When a generic pharmaceutical costs more than a brand name pharmaceutical, according to these formulas, the fair and reasonable price will be the brand name equivalent, as calculated by the formula.

At the request of the Commission, staff performed initial research, which indicated that California’s workers’ compensation system has high reimbursement rates for pharmaceutical bills relative to Medicaid, employer health benefits, and other states’ workers’ compensation systems reviewed.

At its meeting in November 1999, the Commission voted to engage in a new project to assess workers’ compensation pharmaceutical costs and identify potential savings. The key question of the study is to determine changes in pharmaceutical costs within workers’ compensation under different fee schedule structures.

The research team has made recommendations to the Commission on which fee schedule structures are most consistent with reasonable reimbursement to pharmacists and reasonable costs to employers.

Consideration should be given to resetting the fee schedule. In considering reducing the fee schedule reimbursements, thought should be given to improving the efficiency of the process. This could be accomplished by increasing employers’ ability to negotiate

## EXECUTIVE SUMMARY AND RECOMMENDATIONS

network agreements with pharmacies. In addition, insurers and employers should consider guaranteeing payment for at least the initial prescription when the doctor indicates that the injury arose out of work, even if the claim has not been processed or accepted.

There was consensus that a requirement to issue generic drugs when available, except when the medical provider specifies “dispense as written”, would improve the system. In practice, generics are already dispensed in 90% of the situations.

*For further information...*



See the CHSWC Projects section in this Annual Report:  
Pharmaceutical Costs Study



CHSWC Report: Study of the Cost of Pharmaceuticals in Workers' Compensation (2000)



Check out [www.dir.ca.gov/CHSWC/chswc.html](http://www.dir.ca.gov/CHSWC/chswc.html) for CHSWC reports and the latest information.

Recommendation for Legislative Action – L 8

**Consider increasing incentives for returning permanently disabled workers to jobs with the same employer.**

The Commission study of permanent disability, conducted by the Rand organization, has found that permanently injured workers who return to work at the same employer have reduced levels of uncompensated wage loss over a five-year period.

The Commission's study of the vocational rehabilitation program also found that injured workers have greater success at rehabilitation when they return to alternate or modified work with the same employer.

The Commission is also convening a Task Force to look into creative possibilities in alternate or modified work for the construction industry. Often injured workers in the construction industry are released by the doctor for modified work, but they cannot go back to the construction site. The Task Force, whose members have been dealing with this issue, will provide insight from the worker's and employer's perspective about what works and what does not.

*For further information...*

-  See the CHSWC Project Section of this Annual Report:  
'Task Force on Alternate or Modified Work in the Construction Industry'
-  CHSWC Report: 'Vocational Rehabilitation Reform Evaluation' (2000)
-  CHSWC Report: 'Vocational Rehabilitation Benefit: An Analysis of Costs, Characteristics, and the Impact of the 1993 Reforms' (1997)
-  CHSWC Report: Permanent Disability Study Report (RAND, 1997)
-  Check out [www.dir.ca.gov/CHSWC/chswc.html](http://www.dir.ca.gov/CHSWC/chswc.html) for CHSWC reports and the latest information.

Recommendation for Legislative Action – L 9**Clarify Labor Code Section 5814 regarding penalties for ‘unreasonable delays’**

Labor Code Section 5814 provides when payment of compensation has been unreasonably delayed or refused, either prior to or subsequent to the issuance of an award, the full amount of the ordered decision and award shall be increased by ten percent. The question of delay and reasonableness of the cause thereof shall be determined by the Appeals Board in accordance with the facts.

The purpose of the statute, adopted as part of the 1945 reforms, was first to provide incentive to claims administrators to pay benefits promptly by making delays costly, and secondly to some extent, to compensate the injured worker for the hardships resulting from the delay. Except for a minor amendment as part of the 1965 reforms transferring the jurisdiction of the Industrial Accident Commission to the WCAB, Section 5814 has not been modified by the Legislature.

As early as 1959, however, the appellate courts began a continuing series of decisions interpreting and reinterpreting the section. Some of the results of the judicial interpretation can find no direct support in the language of the statute. The problems that the workers’ compensation community continually encounters with Section 5814 have been discussed over the years but no serious legislative efforts have been made to resolve them.

In October 1998 the Commission issued a ‘call for information’, requesting input from the workers’ compensation community and the public for an issue paper on the Section 5814 penalty provisions. Responses were received from throughout the community. There were general criticisms of the statute that it was confusing, difficult to interpret and complicated to apply. Specific criticisms from the insurer and employer community indicated there was no clear standard of what constituted unreasonable conduct and that penalties imposed were disproportionate and unfair. Concern was also expressed regarding the possible effects of the Stuart and Moore decisions by the California Supreme Court. Applicants and the applicants’ attorneys view Section 5814 as ineffective as indicated by the number of penalty claims filed and imposed, and also that whenever an unreasonable delay occurs and continues, there is no further sanction.

These various responses indicated a need to study Labor Code Section 5814 with an aim for providing an adequate deterrent against unreasonable delay or refusal, but at the same time providing penalties that bear some relationship to the claims administrators’ culpability.

At the Commission’s direction, the project staff reviewed workers’ compensation proceedings at the district office, reconsideration and appellate levels to determine the frequency that delay issues were raised and penalties assessed. A draft report was prepared containing proposed findings and recommendations. The most significant finding was that penalty petitions are raised in one out of four cases – indicating the possibility of substantial delays to injured workers, unnecessary expenses to employers and carriers, and a litigation cost to injured workers, to employers and to the system

## EXECUTIVE SUMMARY AND RECOMMENDATIONS

itself. It was also apparent that there is a higher number and frequency of penalty claims in Southern California than in Northern California.

In December 1999, the Commission released the draft report for public comments. The Commission also offered to serve as a clearinghouse for any suggestions for legislative language to revise Section 5814. The Commission convened an Advisory Committee to review the public comments and submit recommendations.

At its April 2000 meeting, the Commission decided to approve the findings of the Issue Paper but to defer to the Legislature and the workers' compensation community with respect to recommendations on the Labor Code 5814 penalty provisions.

*For further information...*



CHSWC Report: 'Issue Paper on Labor Code Section 5814' (2000)



Check out [www.dir.ca.gov/CHSWC/chswc.html](http://www.dir.ca.gov/CHSWC/chswc.html) for CHSWC reports and the latest information.

Recommendation for Legislative Action – L 10**Consider increasing options for injured workers entitled to Vocational Rehabilitation**

Vocational Rehabilitation (VR), a mandatory workers' compensation benefit established in 1975, is intended to return qualified workers to "suitable gainful employment". VR provides for vocational counseling, training, and "return to work" services.

The legislature enacted a series of reforms in 1993 meant to improve the workers' compensation system. A major component of the legislative package was a set of reforms to the Vocational Rehabilitation benefit, aimed at reducing the cost of VR while maintaining or improving the outcomes for these seriously injured workers.

The 1993 workers' compensation reform legislation made major changes affecting the level and delivery of the vocational rehabilitation benefit:

1. A \$16,000 cap was placed on the vocational rehabilitation benefit.
2. A cap was placed on the total cost of services supplied by a qualified rehabilitation professional (QRR).
3. A qualified injured worker was not eligible to receive rehabilitation benefits if an employer made an offer of modified or alternate work that met certain conditions.
4. A worker was not eligible to receive more than one rehabilitation plan except under special circumstances.
5. The assignment of the QRR at 90 days was eliminated.

The Commission contracted for a study to help evaluate the impact of the workers' compensation reform legislation on the vocational rehabilitation system. The study is assessing whether the reforms reduced the cost of the rehabilitation benefit for employers and determining how those changes have affected outcomes for injured workers qualifying for the benefit. The Commission's study is ongoing, but preliminary results are available on the impact of the reform.

The study finds that as a result of reforms, the cost of the Vocational Rehabilitation benefit was cut in half. Nearly three-quarters of the saving was a result of the cap placed on total cost, the cap placed on QRR services and the limitation placed on the number of plans. Over one-quarter (28%) of the savings resulted from shifting workers from use of vocational rehabilitation services into modified and alternate work with the at-injury employer.

While the cost of the rehabilitation benefit was reduced substantially, the outcomes for workers did not change. Both the level of post-injury employment and the level of post-injury earnings were comparable pre and post-reform. The reforms reduced costs without a negative impact on injured workers.

## EXECUTIVE SUMMARY AND RECOMMENDATIONS

The outcomes for workers qualifying for the rehabilitation benefit are comparable to those injured workers with similar permanent disabilities but who are able to return to their at-injury occupation.

However outcomes for these seriously injured workers remain poor. Much remains to be done to improve post-injury employment outcomes for all seriously injured workers, especially for particularly hard-hit segments of this group. The preliminary results from the Commission's study highlight substantial problems for older workers, seriously injured workers, and workers who suffer injuries that result in substantial levels of chronic pain.

The Commission recommends that consideration be given to increasing options for injured workers entitled to the Vocational Rehabilitation benefit. Such options could include, but are not necessarily limited to, increasing opportunities and incentives for return to work, alternative and/or modified work, or providing cash settlements in lieu of vocational rehabilitation.

*For further information...*



CHSWC Report: 'Vocational Rehabilitation Reform Evaluation' (2000)



CHSWC Report: 'Vocational Rehabilitation Benefit: An Analysis of Costs, Characteristics, and the Impact of the 1993 Reforms' (1997)



Check out [www.dir.ca.gov/CHSWC/chswc.html](http://www.dir.ca.gov/CHSWC/chswc.html) for CHSWC reports and the latest information.

Recommendation for Legislative Action – L 11

**Establish requirements to identify illegally uninsured employers and bring them into compliance**

Employers that are not covered for workers' compensation impose a burden on injured workers, on employers that comply with the workers' compensation insurance requirements, and on the state's taxpayers.

The Department of Industrial Relations and the Division of Workers' Compensation have implemented ongoing procedures to identify illegally uninsured employers and bring them into compliance, based on the Commission's successful pilot projects. These activities involve data matching and coordination among DIR, the Employment Development Department and the Workers' Compensation Rating Bureau of California.

The Commission recommends that these activities be mandated in the Labor Code to ensure their continuation and has drafted proposed legislation to carry out that goal.

The proposed legislation will:

1. Require the Division of Labor Standards Enforcement to establish a program for targeting industries with a high incidence of failure to secure the payment of compensation, to identify employers with payroll but no record of insurance coverage, to follow up with contacts and inspections, and to report annually to the Legislature on the effectiveness of the program.
2. Require the Labor Commissioner to include enforcement of the statute requiring employers to secure the payment of compensation as one of the priorities of the field enforcement.

*For further information...*



CHSWC Report: 'Employers Illegally Uninsured for Workers' Compensation – CHSWC Recommendations to Identify Them and Bring them Into Compliance' (1998)



Check out [www.dir.ca.gov/CHSWC/chswc.html](http://www.dir.ca.gov/CHSWC/chswc.html) for CHSWC reports and the latest information.

Recommendation for Legislative Action – L 12

**Require workers' compensation anti-fraud notices or warnings be given to employers and insurers, similar to those given to workers.**

Various laws are on the books prohibiting workers' compensation fraud by all parties and requiring that anti-fraud warning notices be given to employees. However, there are no statutory provisions that anti-fraud notices or warnings be given to other parties, such as employers or insurers.

In order to broaden the campaign against all types of workers compensation fraud and to promote a more evenhanded approach to the problem, CHSWC recommends that information about consequences for noncompliance with workers' compensation law and regulations be conveyed to all parties, especially at the time they are requesting services or reimbursement.

The Commission is recommending legislation to require notices or warnings be given to employers and insurers, similar to those given to workers. Such notices or warnings could either be specifically targeted toward employers and insurers or could be combined with the existing notices and warnings and disseminated to all parties and the public.

Employers would be notified of the requirement to provide workers' compensation coverage, of their responsibility to report accurately on their workforce when procuring coverage and to report injuries timely. Services providers would be informed of the requirement to keep proper records and the consequences related to falsifying claims for equipment or services rendered.

*For further information...*



CHSWC Report: 'Report on the Campaign Against Workers' Compensation Fraud' (2000)



Check out [www.dir.ca.gov/CHSWC/chswc.html](http://www.dir.ca.gov/CHSWC/chswc.html) for CHSWC reports and the latest information.

Recommendation for Legislative Action – L 13

**Consider streamlining provision of benefits by paying indemnity benefits at a single weekly rate.**

The industrially injured worker receives payment at different weekly rates for the various types of workers' compensation benefits: Temporary Disability (TD), Permanent Disability (PD), and the Vocational Rehabilitation Maintenance Allowance (VRMA). The TD weekly rate can change several times over the life of the claim.

The CHSWC study of the DWC Audit Unit determined that these different and changing weekly rates are confusing to administrators and workers and contribute to errors and delays in benefit payments.

The Commission recommends that consideration be given to the proposal that an injured worker receive payment for all types of workers' compensation indemnity benefits at a single weekly rate. Under this proposal all workers' compensation benefits would be paid at the Temporary Disability rate regardless of the type of benefit.

It is important to note that this would not change the total amount of benefits, only the rate at which they are paid out.

*For further information...*



'CHSWC Report on the Division of Workers' Compensation Audit Function' (1998)



Check out [www.dir.ca.gov/CHSWC/chswc.html](http://www.dir.ca.gov/CHSWC/chswc.html) for CHSWC reports and the latest information.

Recommendation for Legislative Action – L 14

**Consider establishing statutory limitations on the filing of liens on workers' compensation cases.**

One of the most persistent administrative problems facing the Division of Workers' Compensation in recent years has been a large increase in lien filings and the resultant development of a backlog of lien claims at some DWC district offices.

The DWC responded by directing staff resources to deal with the influx of lien claims. Two special units of workers' compensation referees -- one in Santa Ana and the other in Van Nuys -- were specifically set up to handle these medical lien disputes in an expedited manner. The number of lien decisions grew from just over 3,000 in 1990 to over 33,000 in 1995 and 1996. In 1998, the special units were closed and the workers' compensation referees reassigned. In 1999, the DWC issued 17,585 decisions on lien claims.

DWC also instituted a Uniform Lien Policy, which mandates that a good faith effort be made at the mandatory settlement conference to resolve all lien issues. Separate proceedings are not allowed unless a bona fide dispute remains after a good faith effort to resolve it.

Commission staff reviewed this increase in lien filings, and found that in many instances, liens were being filed regarding payments made over 10 years ago for workers' compensation cases.

Despite the diligence and perseverance of the DWC district office staff who are making great efforts to deal with this workload, there appears to be an ongoing lien problem in the Division of Workers' Compensation and a potential for continuing backlogs.

The Commission recommends that statutory limitations be established on the filing of lien claims on workers' compensation cases.

*For further information...*

 See the "System Performance" section of this report  
Chart: 'DWC Lien Decisions'

EXECUTIVE SUMMARY AND RECOMMENDATIONS

Recommendation for Administrative Action – A 1**Evaluate the judicial function of the Division of Workers' Compensation.**

California's workers' compensation (WC) system, since its inception during the early 1900s, has been the subject of ongoing discussions and negotiations between California employers and employees. Legislation is periodically enacted to address system difficulties, including rising costs and premiums, benefit adequacy, benefit delivery, and agency performance.

Perceptions of rising costs, stagnant benefits and of rampant fraud emerged in the late 1980s resulting in significant reforms in 1989, and then again in 1993. Some of the 1993 changes sought to reduce judicial discretion and increase the consistency of case outcomes. While many of the measures were successful in reducing costs, some changes may have had unintended consequences which have made the system increasingly complicated to administer. The perception remains that the system is still too complicated and inefficient.

The Division of Workers' Compensation/Workers' Compensation Appeals Board (DWC/WCAB) judicial function has been the focus of criticism by all parties in the system. Lack of uniform policies and an inadequate infrastructure have led to serious system problems. This prompted a legislative proposal to make major changes to the organizational structure of the workers' compensation trial courts in Senate Bill 320 (1999). This proposal contemplated that a "Chief Judge", appointed by the Governor with the powers of the head of a department, would be responsible for the supervision of the judges, support staff, and the rules of court.

At the November 1999 CHSWC meeting, DWC Administrative Director Richard Gannon proposed that a study be conducted of the DWC judicial function by an independent group with the credibility and expertise, such as the Commission. The study would identify possible statutory and regulatory changes to make the system work more efficiently and look at rules and practices that other judicial jurisdictions follow to address problems such as calendaring, casefile movement, proper staffing ratios among judges, secretaries, and clerical staff.

As requested, a draft proposal for a study of the DWC judicial function was prepared by CHSWC staff and submitted to the Commission for their consideration. At the CHSWC meeting in December 1999, staff made a presentation on the draft proposal and noted that the Commission did not currently have the funds in its budget to carry out this project. CHSWC would have to go to the Legislature in the form of a Finance Letter to request funds to complete the study. The Commission voted unanimously to request the funds from the Legislature so that it may engage in the proposed study of the DWC judicial function.

DIR and the Commission agreed that an independent study and evaluation of the DWC judicial process would be very helpful in addressing problems. The Commission approved a study proposal to identify possible statutory changes to make the system

## EXECUTIVE SUMMARY AND RECOMMENDATIONS

work more efficiently and look at rules and practices of other jurisdictions that have addressed problems such as calendaring, casefile movement, proper staffing ratios, and other issues of concern. The goal of this effort is to assist in meeting the Constitutional mandate to “accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character...”

The Commission has requested additional funds to carry out this study.

*For further information...*

 See the CHSWC Project Section of this Annual Report:  
'Study of DWC Judicial Function'

Recommendation for Administrative Action – A 2

**Standardize WCAB judicial operations by eliminating ‘local’ forms and procedures.**

Disputes regarding workers’ compensation claims are resolved through the services of judges and staff in the 26 district offices of the Division of Workers’ Compensation throughout the state. However, concerns have been expressed that forms and procedures can vary from office to office, which can cause confusion to the parties and delays in case resolution.

It has been reported that some WCAB district offices and workers’ compensation administrative law judges are using forms and procedures that have not been established by the Appeals Board. Such actions would be in violation of Labor Code Section 5500.3, which provides that the Appeals Board establish uniform court procedures and forms and prohibits local offices and workers’ compensation judges from requiring other forms or procedures.

At the May 1999 meeting, CHSWC voted to initiate a ‘call for information’ to the community regarding local forms and procedures. The Commission invited the workers’ compensation community and interested members of the public to submit any positive or negative information they might have on the subject of the effectiveness of and compliance with Labor Code Section 5500.3.

A task force was established by the Commission to review the ‘call for information’ findings and each office’s individual procedures, for the purpose of developing proposed revisions to existing forms and procedures for use statewide. The ‘call for information’ responses fell into three categories:

- (1) Local rules adopted in the absence of controlling Appeals Board Rules, local rules that may be contrary to DWC/WCAB policies and procedures, and use of forms that have not been "established by the appeals board."
- (2) Policies and forms of orders used by individual workers’ compensation administrative law judges that are either matters within their judicial prerogative or subjects for further training or discipline.
- (3) General complaints about the way the workers’ compensation dispute resolution system is being operated.

The Commission is pleased to note that as of February 1, 2000, new uniform forms and procedures went into effect at all DWC/WCAB district offices statewide. This was the result of an initiative by DWC Administrative Director Richard Gannon to achieve uniformity in practices and procedures at the different district offices. A panel of workers’ compensation judges developed the documents and a task force of workers’ compensation community representatives reviewed them.

## EXECUTIVE SUMMARY AND RECOMMENDATIONS

The forms include a new Pretrial Conference Statement to be used after a mandatory settlement conference, and a form that guides the minutes of hearing, continuance requests, taking a case off calendar, and other outcomes subsequent to a hearing. Guidelines for the type of information that should be submitted or requested with settlement requests were also issued to the judges. Training on the guidelines and new forms has already been completed. The new forms are available on the Division's web site.

The Commission recommends that the DWC Administrative Director continue his task force, enforce existing rules, and educate WCJs.

The Commission recommends that the WCAB consider revision of its rules as soon as it gets a chairman to avoid the necessity for local rules.

Recommendation for Administrative Action – A 3

**Consider utilizing technology to support and manage office operations.**

Recent advances in office support technology would assist DWC, DOSH and the other various work groups in the Department of Industrial Relations. The Commission recommends that consideration be given to innovations that may include, but are not limited to, the following:

***Implement electronic filing of documents***

The state's health, safety and workers' compensation systems in California necessarily require the transmission of a lot of information among various entities in the public and private sectors. The evolution of technology now enables the electronic transmission of such data, with savings in time and resources and with increased speed and accuracy.

CHSWC supports efforts by the DWC and the WCAB to implement procedures and methods for the electronic filing of documents among all parties. The capability for electronic filing would assist in the prompt delivery of proper benefits in a cost-beneficial manner.

CHSWC also recommends that consideration be given to an automated, simplified benefit notice system with initial key indicators to be submitted electronically to the State of California.

***Consider concept of 'paperless office'***

Last year, the State Compensation Insurance Fund conducted a walk-through of the operations of their Sacramento office for CHSWC members and staff, who were very impressed with SCIF's 'state of the art paperless claim file system'. The Commission believes that this approach may be helpful to the DIR and particularly to DWC in the management of their many case files.

CHSWC recommends that the DWC continue its efforts to develop and implement the electronic storage of paper files. This could result in significant savings in State Records Center charges and DWC storage space. The Commission recommends that the Workers' Compensation Appeals Board review the applicable statutes and regulations and recommend changes to eliminate unnecessary retention of paper documents while retaining full legal protections for all case parties.

***Consider using 'bar coding' and scanners to track WCAB files***

CHSWC recommends that DIR consider the use of 'bar coding' and scanners to track casefiles and other documents.

Recommendation for Administrative Action – A 4

**Improve DWC information systems**

Labor Code Section 138.6 directs the Division of Workers' Compensation to develop a cost-effective workers' compensation information system (WCIS) compatible with the IAIABC's Electronic Data Interchange (EDI) system:

- to help the Department of Industrial Relations manage the workers' compensation system more effectively,
- to help evaluate the efficiency and effectiveness of the benefit delivery system,
- to help measure how adequately injured workers are indemnified, and
- to provide statistical data for research.

CHSWC recommends that DWC continue its efforts to develop this information system, contingent upon appropriate and effective security and confidentiality measures.

CHSWC encourages the Division of Labor Statistics and Research to revise its regulations to enable data from Form 5020 (Employer's Report of Injury) and Form 5021 (Doctor's Report of Injury) to become part of the DWC Information System. This would eliminate duplicate filings with the State of California and eliminate duplicate data entry.

CHSWC also urges DWC to improve its current computer systems to provide basic data needed for ongoing program administration.

Recommendation for Continued Effort – C 1

**Permanent Disability**

The manner in which California rates and compensates injured workers for total and partial permanent disability has enormous impact on the adequacy of their benefits, their ability to return to gainful employment, the smooth operation of DWC's adjudication system and the cost of the workers' compensation system to employers. The permanent disability benefit has been the subject of concern and debate within the workers' compensation community for many years.

The Commission has entered into a long-term study of permanent disability, assisted by the Rand organization (under contract with the Commission), to assess the adequacy and distribution of the PD benefit. The Commission is also assisted by the CHSWC Permanent Disability Policy Advisory Committee, comprised of representatives from the workers' compensation community.

Due to the cooperation and strictly controlled data sharing among public agencies and private organizations, the study compiled and analyzed information heretofore unavailable and has yielded important and unexpected findings. For example, the study has determined that permanently disabled workers of both insured and private self-insured employers sustain significant uncompensated wage loss.

The Commission commends the community and the Advisory Committee for its cooperation and involvement in this project and urges the continuation of this collective effort to develop an empirically-based permanent disability rating tool, so that the injured worker gets compensated according to the economic losses he or she has sustained.

*For further information...*



See the CHSWC Project Section of this Annual Report:  
'Permanent Disability'



CHSWC Report: Permanent Disability Study Report (RAND, 1997)



Check out [www.dir.ca.gov/CHSWC/chswc.html](http://www.dir.ca.gov/CHSWC/chswc.html) for CHSWC reports and the latest information.

Recommendation for Continued Effort – C 2

**Occupational Health and Safety**

The California workplace is changing rapidly: the economy is shifting from manufacturing to services; new materials, processes, and equipment are introduced every day; work weeks are longer; job insecurity and temporary work have increased. The California workforce is also changing, becoming older and more diverse. These changes present new challenges to improving worker safety and health and reducing the impact of work injuries on workers, their families, and society.

The Commission and the community recognize the importance of occupational health and safety and have demonstrated commitment to its furtherance.

The Commission is working with the International Association of Industrial Accident Boards and Commissions (IAIABC) to address occupational safety and health issues nationwide. The CHSWC Executive Officer is Chair of the IAIABC Loss Prevention and Safety Committee and conducted a presentation at the IAIABC Annual Conference.

The Commission is pleased to participate with the community in several activities to promote workplace health and safety.

*For further information...*



See the CHSWC Project Section of this Annual Report:

- 'Study of Statutorily-Required Safety Efforts'
- 'California Occupational Research Agenda (CORA)'
- 'California Forum for Workplace Health and Safety'
- 'California Study Group on Young Worker Health and Safety'



Check out [www.dir.ca.gov/CHSWC/chswc.html](http://www.dir.ca.gov/CHSWC/chswc.html) for CHSWC reports and the latest information.

Recommendation for Continued Effort – C 3

**Focus on efforts to help injured workers return to sustained employment.**

It is commonly believed that significant numbers of injured workers in California do not return to work as early as feasible, nor do they return to work with appropriate work restrictions. These workers experience unnecessary and often permanent losses in their functional capacity and their ability to work.

The Industrial Medical Council (IMC) believes that an injured worker should return to work at the same employer as soon as it is medically feasible. If the injured worker is unable to immediately engage in his/her usual occupation, the injured worker should be returned to modified or alternative work, provided that such work can be practically accommodated by the employer. The treating or evaluating physician should recommend appropriate and specific work restrictions.

CHSWC concurs with the IMC and recommends that the workers' compensation community focus on returning injured workers to sustained employment at the same employer as soon as medically feasible.

Because of the serious physical, financial and personal problems confronting workers with permanent disability, the Commission recommends continuing efforts to promote injured workers' prompt return to work at sustained employment. With the participation and support of the workers' compensation community, the Commission has engaged in several projects in pursuit of those objectives.

*For further information...*

-  See the CHSWC Project Section of this Annual Report:
  - 'Identify and Develop Practical Strategies for Return-To-Work to Sustained Employment'
  - 'Primary Treating Physician Effectiveness in Return-To-Work'
  - 'Task Force on Alternate or Modified Work in the Construction Industry'
  - 'California Forum for Workplace Health and Safety'
-  CHSWC Report: 'Does Modified Work Facilitate Return to Work for Temporarily or Permanently Disabled Workers?' (1997)
-  CHSWC Report: 'Determinants of Return to Work and Duration of Disability After Work-Related Injury or Illness: Developing a Research Agenda' (1999)
-  Check out [www.dir.ca.gov/CHSWC/chswc.html](http://www.dir.ca.gov/CHSWC/chswc.html) for CHSWC reports and the latest information.

Recommendation for Continued Effort – C 4**Improve the Workers' Compensation Benefit Notice program**

When an employee files a claim for worker's compensation, the employer or insurer is responsible for communicating the status of the claim to the employee by means of a series of benefit notices. The benefit notice program is intended to be a key communication tool between the claims administrator and the injured worker, keeping the worker informed about important changes in the status of his or her workers' compensation claim.

The workers' compensation community has long criticized the benefit notice system as confusing and ineffective. Through its various studies and analyses, the Commission has confirmed that:

- The Benefit Notice system is complex, cumbersome, and not currently designed to provide meaningful information to injured workers regarding benefit levels or to collect appropriate data to monitor prompt delivery of proper benefits.
- Current benefit notices are not readily comprehensible and result in confusion to injured workers and all parties.

The Commission has contracted with the Labor Occupational Health Program to assess the needs and explore methods for improving benefit notices to injured workers. The project team will review and make recommendations on streamlining the Benefit Notice process, clarifying requirements, and ensuring that notices accurately and effectively communicate with injured workers in a format and language that is understandable. As with all CHSWC projects, an Advisory Committee will assist the Commission and project team in this endeavor.

CHSWC also recommends that consideration be given to an automated, simplified benefit notice system with initial key indicators to be submitted electronically to the State of California.

The Commission recommendation for legislation specifying information for injured workers is described in "CHSWC Recommendation for Legislative Action L 3 - Establish requirements for the provision of information to injured workers".

The Commission's next efforts will focus on simplification.

*For further information...*

 See the CHSWC Projects section in this Annual Report:  
Benefit Notice Simplification

 CHSWC Report: 'Recommendations: Information for Injured Workers' (2000)

 CHSWC Report: 'Navigating the California Workers' Compensation System: The Injured Workers' Experience' (1996)

 Check out [www.dir.ca.gov/CHSWC/chswc.html](http://www.dir.ca.gov/CHSWC/chswc.html) for CHSWC reports and the latest information.

Recommendation for Continued Efforts – C 5

**Protect and educate young workers.**

A national report called 'Protecting Youth at Work', commissioned by the National Academy of Science, called on the states to take a number of steps to take a coordinated approach to protecting young people in the work place.

California is on the forefront due to the California Study Group on Young Workers Health and Safety, sponsored and funded by the Commission. The Study Group is charged with coordinating strategies to protect young people from work-related illness and injury. The study group is composed of groups and individuals dealing with California youth employment and education issues. The members represent all of the state agencies that have a role to play in protecting and educating young people in terms of safe work practices. These include the Labor Commissioner, Cal-OSHA, the Department of Education, Apprenticeship Council, EDD, as well as other representatives such as the Chamber of Commerce, Private Industry Councils, Labor Unions, school representatives, and the statewide PTA.

In the first year the group prepared a report listing recommendations to better protect young people in the work force. In the second year, the group assigned priorities to four areas, including improving the student work permit process, developing an interagency working team to identify interagency strategies, proposing a 'Safe Jobs for Youth Month', and developing a network of resource centers.

In 1999 and again in 2000, Governor Gray Davis issued a proclamation designating that May is "Safe Jobs for Youth Month."

*For further information...*



See the CHSWC Project Section of this Annual Report:  
'California Study Group on Young Worker Health and Safety'



CHSWC Report: 'Protecting and Educating California's Young Workers – Report of the California Study Group on Young Worker Health and Safety' (1999)



Check out [www.dir.ca.gov/CHSWC/chswc.html](http://www.dir.ca.gov/CHSWC/chswc.html) for CHSWC reports and the latest information.

Recommendation for Continued Efforts – C 6**Continue anti-fraud activities in the workers' compensation system.**

The Commission and the workers' compensation community recognize that fraud can occur at every stage and in every sector of the workers' compensation system.

CHSWC recommends that anti-fraud efforts be directed at all types of fraud and that the community continue to identify and reduce fraudulent activities perpetrated by anyone and everyone in the system, including but not limited to employers, employees, insurers, and providers.

CHSWC recommends that concept of the 'anti-fraud' warning on workers' compensation claim forms be extended so that that information about consequences for noncompliance with workers' compensation law and regulations be conveyed to all parties, especially at the time they are requesting services or reimbursement. Employers would be notified of the requirement to provide workers' compensation coverage, of their responsibility to report accurately on their workforce when procuring coverage and to report injuries timely. Services providers would be informed of the requirement to keep proper records and the consequences related to falsifying claims for equipment or services rendered.

CHSWC recommends that the penalties for noncompliance with requirements be appropriate and proportionate to the offense. For example, an employer who is illegally uninsured is subject to a misdemeanor, whereas employers who buy insurance but underreport wages or misclassify payroll in order to lower premiums are facing a felony.

CHSWC recommends continued efforts to identify illegally uninsured employers and bring them into compliance. Employers that are not covered for workers' compensation impose a burden on injured workers, on employers that comply with the workers' compensation insurance requirements, and on the state's taxpayers. CHSWC is pleased to note that DIR and DWC have implemented ongoing procedures to identify illegally uninsured employers and bring them into compliance, based on the Commission's successful pilot projects.

The Commission further recommends that coordinated multijurisdictional efforts be continued to identify and bring into compliance those employers who are in the "underground" economy – employers that are unknown in the system, do not have the required business licenses or permits and do not pay the proper taxes.

*For further information...*



CHSWC Report: 'Employers Illegally Uninsured for Workers' Compensation – CHSWC Recommendations to Identify Them and Bring them Into Compliance' (1998)



CHSWC Report: 'Report on CHSWC Fact-Finding Hearing on Workers' Compensation Anti-Fraud Activities' (1997)



Check out [www.dir.ca.gov/CHSWC/chswc.html](http://www.dir.ca.gov/CHSWC/chswc.html) for CHSWC reports and the latest information.

Recommendation for Continued Efforts – C 7**Evaluate the Workers' Compensation Anti-Fraud Program.**

The workers' compensation anti-fraud program is in the Department of Insurance (CDI) and comprises all CDI Fraud Division investigations statewide. Through this program, the Fraud Division presents criminal cases to local and federal prosecutors, provides assistance to law enforcement agencies, and conducts fraud detection training for insurers and employers. Each county in the state is eligible for program funding to prosecute workers' compensation fraud cases.

Dedicated funding for this program was provided by statute in 1991 and is split equally between the Fraud Division and participating county prosecutors. The funding level for this program is set annually by the Workers' Compensation Fraud Assessment Commission (WCFAC).

By statute, each district attorney seeking a portion of the funds must submit an application to the Insurance Commissioner setting forth in detail the proposed use of any funds provided. Any district attorney receiving such funds must agree that the funds will be used solely for investigating and prosecuting cases of workers' compensation fraud and must submit an annual report to the Insurance Commissioner with respect to the success of the district attorney's efforts. The allocation of funds among the district attorneys who apply is made by the Insurance Commissioner with the advice and consent of the Fraud Division and the WCFAC.

The sources of Fraud Division investigations include referrals by insurance companies and self-insured employers, citizen complaints and Division-initiated cases. The types of complaints or cases investigated include

- Fraudulent workers' compensation claims, including claims made by workers, medical providers, pharmacies, attorneys and others.
- Fraudulent denial of workers' compensation benefits, and
- Workers' compensation premium fraud by employers.

Funding for the program is derived from an annual assessment on employers. The assessment applied to insured employers is based on the dollar amount of their workers' compensation insurance. The assessment on self-insured employers is based on payroll. The annual assessment, initially set at \$3 million, increased to \$25 million in 1994 and to \$28.5 million in 1998. The current assessment is approximately \$30 million.

The Commission noted that concern has been expressed in the community about the way that the Workers' Compensation Anti-Fraud Program was being administered and about the millions of dollars per year expended on anti-fraud activities.

*For further information...*



CHSWC Report: 'Report on the Campaign Against Workers' Compensation Fraud' (2000)



Check out [www.dir.ca.gov/CHSWC/chswc.html](http://www.dir.ca.gov/CHSWC/chswc.html) for CHSWC reports and the latest information.

Recommendation for Continued Effort – C 8**Review statutorily-required safety efforts**

California has been a leader in developing several models for cooperative safety efforts involving management and labor and for targeting regulatory efforts and resources at firms where they are most likely to improve workplace safety.

***Loss Control***

A major initiative by California is the regulation of insurer loss control efforts, that is, those efforts by insurers aimed at improving their insured employers' safety experience. During reform, the Legislature enacted requirements dictating certain aspects of insurers loss control effort and assessing fees on employers to fund the effort.

The Loss Control Certification Unit (LCCU) was established by the 1993 workers' compensation reform legislation to ensure that the insurance industry was appropriately engaged in assisting employers to protect workers' safety and health and to enable businesses to benefit from cost savings and productivity gains resulting from improved workplace safety.

This Loss Control effort is often attacked by opponents as interference by government while being lauded by proponents as an efficient way to improve safety. Consequently its future has been the subject of debate within the community.

Insurers report that they have had to divert a reported 50% of their loss control resources to address expensive administrative requirements – including targeting employers -- rather than address substantive loss control challenges. Additionally, it is contended that the regulations have imposed a structure that discourages the flexibility required to help employers who actually want assistance. In response to those and other concerns, LCCU is currently in the process of proposing modifications to the regulations.

The Commission recommends that the regulatory oversight function of workers' compensation loss control be reviewed.

***High Hazard***

In the early 1990s, federal OSHA began an effort to target its resources and interventions where they would have the most effect on workplace safety. The method of targeting and the design of the intervention were largely left up to the states to determine. These programs are generally referred to as "High-Hazard" programs because they target the most hazardous industries, employers, workplace conditions, or a combination of all three. In addition, many states introduced programs that regulated loss control efforts by private insurers and employers, attempting to increase resources these parties focus on the most hazardous work sites.

Despite nearly a decade of efforts and resource expenditure, no systematic assessment of the effectiveness of these programs has been undertaken. There has not even been

an effort to describe how various states implement either the targeting or intervention. Consequently, there is no way to assess what characteristics make targeting most accurate and what interventions have the greatest effect on workplace safety. Neither can policymakers determine whether resources are best focused through state regulators or by private insurers and employers.

The reform legislation directed the Division of Occupational Safety and Health to begin a program targeting especially hazardous employers for consultations and inspections, to be funded by assessments upon employers with higher than average workers' compensation costs. The targeting method to identify high hazards was based on the experience modification (x-mod) on the employer's workers' compensation history. But with the elimination of the minimum rate law for workers' compensation premiums in California, the x-mods do not necessarily target unsafe employers. The x-mod may go up, but in an unstable market, this does not necessarily affect the premium price or identify lack of safe conditions.

Evaluating the effectiveness of these programs is important given the limited resources for occupational injury and illness prevention. The Commission has initiated a study of these statutorily-required safety efforts, including the federal OSHA mandate for implementation of targeting and intervention directed at the most hazardous employers. In conjunction with the International Association of Industrial Accident Boards and Commissions (IAIABC) and in consultation with the Occupational Health and Safety State Plan Association (OSHSPA), the Commission is undertaking an evaluation aimed at improving the way labor, management, and government target resources to improve health and safety in the workplace.

The Commission recommends ongoing evaluation and research to identify unsafe conditions and improve the targeting methodologies.

*For further information...*



See the CHSWC Project Section of this Annual Report:

'Evaluation of Targeting Methods – High Hazard and Loss Control'

Recommendation for Continued Effort – C 9**Monitor medical care and costs**

During the 1990s, medical care under workers' compensation was modified in a number of ways.

Legislation enacted as part of the 1993 workers' compensation reforms was intended to expand the use of managed care in workers' compensation as a means of reducing medical costs and facilitating better management of workers' compensation cases. Other reform innovations include a pilot project to test the feasibility of merging occupational and nonoccupational medical care into one insurance product offering '24 hour' coverage. The reforms also mandated revisions to the Official Medical Fee Schedule and the development of a hospital fee schedule.

The Commission recommends continuing and further evaluation of the impact of such changes and other cost containing mechanisms on the quality of care and access to appropriate care.

***Pharmaceutical Cost Structure***

The Commission is recommending that the workers' compensation pharmaceutical cost structure be revised, which would necessitate appropriate revisions to the OMFS. (See Recommendation for Legislative Action – L 7.)

***Official Medical Fee Schedule***

The Official Medical Fee Schedule (OMFS) has been the subject of controversy and debate within the community for many years. Members of the community have indicated that the OMFS is cumbersome, overly complex, and difficult to update and administer.

The Commission supports the current efforts to explore alternatives for improving the fee schedule. The Commission notes that the Industrial Medical Council contracted with the UCLA Center for Health Policy Research for a study of the resource based relative value scales (RBRVS) used by the Federal government and several states and the possible options of adopting an RBRVS-based schedule in California.

When a revised OMFS is adopted, the Commission recommends that DWC, with the assistance of the IMC, continue with its statewide educational training efforts to inform all parties on the appropriate use of the OFMS. The Commission will follow the IMC studies and the adoption of a revised schedule by the DWC Administrative Director and provide whatever assistance appears warranted from time to time.

***Inpatient Hospital Fee Schedule***

The Inpatient Hospital Fee Schedule (IHFS) was developed to meet the mandate of the reform legislation to establish maximum fees for inpatient hospital services. DWC has received letters from hospitals and doctors expressing dissatisfaction with the IHFS,

contending that it results in negative fiscal impacts. The Commission recommends that any proposed changes to the IHFS be based on empirical data rather than anecdotal reports of perceived underpayments using the current Inpatient Fee Schedule.

***CHSWC Areas of Interest for Possible Further Study***

The Commission is exploring the feasibility of engaging in further research in the following areas pertaining to workers' compensation care:

- Managed Care: Outcomes for workers and Employers
  - Identification of the issues and the best model for workers' compensation
  - A look at other states
  - The California experience with regulation and deregulation of managed care programs.
  - The appeal process for managed care coverage decision making.
- Utilization patterns in occupational and non-occupational injuries.
- Cost shifting in health care coverage
- Medical costs in workers' compensation vs. non-work injuries
- Consistency in physician evaluation of disability
- Incentive effects of workers' compensation fee schedules and physician practice
- Adequacy of occupational injury reporting
- Treatment pattern of doctors in workers' compensation cases
- Use of and adherence to treatment guidelines
- Patterns of care among employer-based physicians
- The implementation of RBRVS in workers' compensation
- Medical benefit adequacy in compromise and release settlements
- Medical treatment in denied or delayed claims.

EXECUTIVE SUMMARY AND RECOMMENDATIONS

## INTRODUCTION

The California Commission on Health and Safety and Workers' Compensation (CHSWC) is pleased to present the sixth annual report of its activities to improve vital programs affecting nearly all Californians.

CHSWC was established by the 1993 workers' compensation reform legislation to oversee the health and safety and workers' compensation systems in California and recommend administrative and/or legislative modifications to improve their operation. The Commission is composed of eight members appointed by the Governor, Senate, and Assembly to represent employers and labor.

Since its inception in 1994, the Commission has directed its efforts towards projects and studies designed to identify and assess problems and to provide an empirical basis for recommendations and/or further investigations. The Commission contracts with independent researchers to insure objectivity, incorporate a balance of viewpoints, and produce the highest quality analysis and evaluation.

CHSWC activities involve the whole community – employees and employers, labor organizations, insurers, attorneys, medical and rehabilitation providers, administrators, educators, government agencies and members of the public. These individuals and organizations have participated in CHSWC meetings, fact-finding hearings and have served on advisory committees to assist CHSWC and independent researchers on projects and studies.

CHSWC projects have dealt with several major areas, including informational services to injured workers, alternative workers' compensation systems, employers that are illegally uninsured for workers' compensation, the health and safety of young workers, and the impact of the reform legislation on the medical-legal process and the vocational rehabilitation program.

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

In its oversight capacity, CHSWC focuses on various aspects of the workers' compensation system in response to concerns raised. These include multi-jurisdictional areas such as anti-fraud activities as well as certain operations of the Division of Workers' Compensation such as the lien case workload in DWC's district offices. At the joint request of the Senate Industrial Relations Committee and the Assembly Insurance Committee, the Commission has undertaken a study of the operations and effectiveness of the DWC audit program.

## INTRODUCTION

These concerted efforts, combining rigorous analytical approaches with real world data and experience, have yielded insightful findings on important programs. The Commission's recommendations for system improvements are based upon the results of these activities.

The common goal of all the parties in these efforts is to achieve a system that delivers the proper benefits to injured workers in a prompt and cost-effective manner.

## The California Commission on Health and Safety and Workers' Compensation

*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 overseeing the health and safety and workers' compensation systems in California and 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 rehabilitation providers, administrators, educators, researchers, government agencies, and members of the public.
- Brings together a wide variety of perspectives, knowledge, and concerns about various programs critical to all Californians.



the community may come together, raise  
and work together to develop solutions.

research organizations for projects and  
critical areas of key programs. This is  
corporate a balance of viewpoints, and to  
analysis and evaluation.

employers

### **Jill Dulich**

Appointed by: Governor

99 - 20

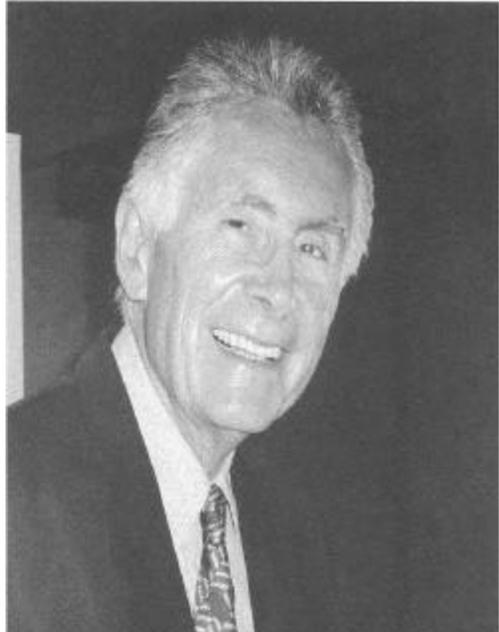
Jill Dulich is Regional Director responsible for

**CHSWC Members Representing Employers**

**Robert B. Steinberg**

Appointed by: Speaker of the Assembly

Robert B. Steinberg is a partner in the law offices of Rose, Klein & Marias and specializes in employee injury, third Party Civil Damage Construction, Product Liability, Asbestos and Toxic Exposure litigation. He is a fellow of the American College of Trial Lawyers (ACTL), a member of the Board of Governors Association of Trial Lawyers of America (ATLA), an advocate of the American Board of Trial Advocates (ABOTA), and trustee of the Asbestos Litigation Group (ALG). He is a Past President of the California Trial Lawyers (CTLA) (1985) and Past Trustee of the Los Angeles County Bar Association (1987). He is a member of the Manville, UNR, 48 Insulation, Raymark and Eagle Picher Industries Chapter 11 Creditors' Committees and a member of the Trustee Advisory committee to the Manville, UNR, and the National Gypsum



**Kristen Schwenkmeyer**

Appointed by: Governor

Kristen Schwenkmeyer is Secretary-Treasurer of Gordon & Schwenkmeyer, a telemarketing firm she started with Mike Gordon in March of 1985. Her primary responsibilities include overall administration of operations, budgeting and

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**John C. Wilson**

Appointed by: Governor

John C. Wilson is the Executive Director of the Schools Excess Liability Fund (SELF). SELF is

**CHSWC Members Representing Labor**



**Leonard McLeod**

Appointed by: Governor

Leonard McLeod is a sergeant at the California Correctional Training Facility at Soledad and has worked for the Department of Corrections since 1981. He also serves as the Early Intervention State Coordinator/State Finance Chairman with the California Correctional Peace Officers Association. Previously, he was police officer with the Watsonville Police Department and a U.S. Army military police sergeant from 1974 to 1978. Mr. McLeod was a member of the Governor's Task force on Workers' Compensation in 1993 and belongs to the Correctional Peace Officer Foundation. He is currently a member of the governing board of the Workers' Compensation Insurance Rating Bureau. His community activities include fund raising for prenatal and health care related issues.



**Gerald P. O'Hara**

Appointed by: Speaker of the Assembly

Gerald P. O'Hara is Director of the California Teamsters Public Affairs Council. He lobbies on behalf of teamsters union members at the California Legislature and before California state administrative agencies. He has been a teamster lobbyist for 30 years. He served as a part-time State of California Occupational Safety and Health Standards Board for 16 years. He served on the Governor's Blue Ribbon Commission on Workers' Compensation in 1973 as well as on Governor Deukmejian's Labor Management Workers' Compensation Insurance Reform Task Force in 1989 and Governor Wilson's Workers' Compensation Reform Task Force in 1993. He has been a member of the Commission on Health and

**CHSWC Members Representing Labor**

**Tom Rankin**

**2000 CHSWC Chair**

Appointed by: Senate Rules Committee

Tom Rankin is the President of the California Labor Federation, the state AFL-CIO federation. For many years, Mr. Rankin also served as the labor member on the Governing Committee of the Workers' Compensation Insurance Rating Bureau, which recommends policy premium rates to the state insurance commissioner. Mr. Rankin's previous employment was as a union representative and organizer. Mr. Rankin received his law degree from Boalt Hall School of Law at the University of California, Berkeley.



**Darrel "Shorty" Thacker**

Appointed by: Governor

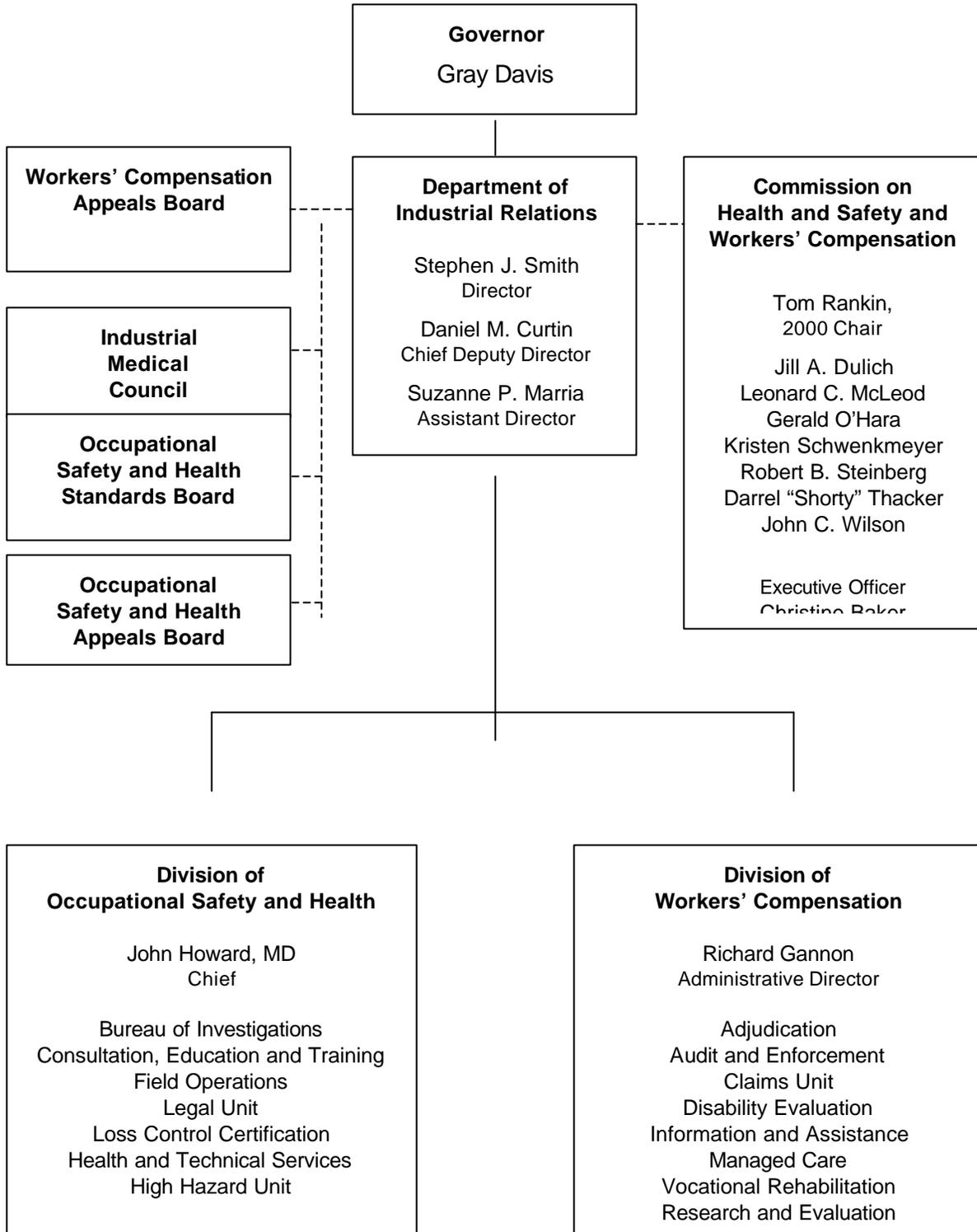
Darrel "Shorty" Thacker is the Senior Business Representative of Local 22, Carpenters. Mr. Thacker also served as the Director of field support operations for the Bay Counties District Council of Carpenters.

Thacker joined the Millwrights in 1973, where he worked in construction as a journeyman, foreman, general foreman and superintendent from 1973 to 1978. He also worked as a Millwright business agent from 1978 to 1983.

Following his service as a United States Marine in the Vietnam War, Thacker earned an associate's degree in mathematics from Fresno City College in 1970.



**State of California**  
**Health and Safety and Workers' Compensation Functions**



**For Information about CHSWC and its Activities**

Write:

California Commission on Health and Safety and Workers' Compensation  
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San Francisco, California 94102

Phone:

415-703-4220

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Internet:

Check out **[www.dir.ca.gov](http://www.dir.ca.gov)** for

- 3 Reports of CHSWC studies and projects
- 3 Information bulletins
- 3 Meeting notices
- 3 Workers' Compensation Fact Sheets
- 3 Workers' Compensation Video

**CHSWC Publications**

**CHSWC Annual Reports**

1994-95, 1995-96, 1996-97, 1997-98, 1998-99, 1999-00

**Audit Report**

"CHSWC Report on the Workers' Compensation Audit Function" (1998)

**Baseball Arbitration**

"Preliminary Evidence on the Implementation of 'Baseball Arbitration' in Workers' Compensation" (1999)

**Carve-Out Report**

"Carve-outs" in Workers' Compensation: An Analysis of Experience in the California Construction Industry" (1999)

**Costs and Benefits Report**

"CHSWC Report on Costs and Benefits After the Implementation of Reform Legislation" (1999) (This is also in the CHSWC 1998-99 Annual Report)

### **Fraud Report**

- “Workers’ Compensation Anti-Fraud Activities - Report on CHSWC Fact-Finding Hearing” (1997)
- “Report on the Campaign Against Workers’ Compensation Fraud” (2000)

### **Illegally Uninsured Employers Report**

- “Issue Paper-Employers Illegally Uninsured for Workers’ Compensation” (1997)
- “CHSWC Recommendations to Identify Illegally Uninsured Employers and Bring Them Into Compliance” (1998)

### **Injured Worker Reports**

- “Navigating the California Workers’ Compensation System: The Injured Workers’ Experience” (1996)
- “Recommendations: Information for Injured Workers” (2000)

### **Labor Code Section 5814 Issue**

- “Issue Paper on Labor Code Section 5814” (2000)

### **Medical-Legal Report**

- “Evaluating the Reforms of the Medical-Legal Process Using the WCIRB Permanent Disability Survey”

### **Modified Work Literature Review**

- “Does Modified Work Facilitate Return to Work for Temporarily or Permanently Disabled Workers? Review of the Literature and Annotated Bibliography” (1997)

### **Permanent Disability Study Report (RAND)**

- Rand Report: “Compensating Permanent Workplace Injuries – A Study of the California System” (1998)
- Rand Executive Summary: “Findings and Recommendations on California’s Permanent Partial Disability System” (1997)

### **Treating Physician Report**

- “Report on the Quality of Treating Physician Reports and Cost-Benefit of Presumption in Favor of the Treating Physician” (1999)

### **Vocational Rehabilitation Interim Report**

- “Interim Report - Vocational Rehabilitation Benefit: An Analysis of Costs, Characteristics, and the Impact of 1993 Reforms” (1997)
- “Vocational Rehabilitation Reform Evaluation” (2000)

### **Young Worker Report**

“Protecting and Educating California's Young Workers: Report and Recommendations of the California Study Group on Young Workers' Health and Safety” (1998)

### **CHSWC Informational Materials**

**CHSWC Brochure** (containing information about the CHSWC members and staff, mission, purpose, activities, projects, publications, web site)

#### **CHSWC Fact Sheets** (English and Spanish)

*What Every Worker Should Know*

*After You Get Hurt on the Job*

*Temporary Disability Benefits*

*Permanent Disability Benefits*

*For More Information*

*Working After a Job Injury*

*Hurt on the Job? Information Alert for Teens*

*Facts for Employer: Safer Jobs for Teens (English only)*

*Are You a Working Teen?*

*Are You a Teen Working in Agriculture?*

### **CHSWC Video**

“Introduction to Workers' Compensation”

## INTRODUCTION



## REFORM OUTCOMES

During its first year of operation, the Commission began the process of assessing the impact of the 1993 workers' compensation reform legislation – a package of several bills that made widespread and significant changes to the California workers' compensation system.

The reform legislation was enacted because, during the late 1980s and early 1990s, California employers had one of the highest workers' compensation premium costs in the nation, while the maximum indemnity benefits to California injured workers for temporary and permanent disability were among the lowest in the nation. Moreover, California had one of the highest rates of workers' compensation claims filing, which also increased costs to employers.

1993 Workers' Compensation Reform Legislation	
AB 110	(Peace)
AB 119	(Brulte)
AB 1300	(W. Brown)
SB 30	(Johnston)
SB 484	(Johnston)
SB 983	(Greene)
SB 1005	(Lockyer)
SB 223	(Lockyer)

This legislation, which produced a sweeping reform of the system, was designed to rein in the cost of a workers' compensation system that many believed to be out of control, causing too much to be spent on litigation, medical and medical-legal costs and causing too little to reach the pockets of injured workers.

The primary purposes of the law were to

- Reduce **insurance** costs by deregulating workers' compensation insurance rates and eliminating the minimum rate law;
- Decrease the cost of **medical care** by tightening the medical fee schedule and increasing the use of managed care for workers' compensation cases;
- Cut the cost of **medical-legal evaluations** and reduce the number of evaluations obtained in disputed cases;
- Decrease overall compensation costs by requiring a greater emphasis on **workplace safety**, especially among high-hazard employers;
- Limit the cost of **vocational rehabilitation** by capping the benefit at \$16,000;
- Streamline **adjudication procedures**;
- Reduce the compensability of **psychiatric and post-termination claims**;
- Increase penalties for workers' compensation **fraud**; and
- Increase **disability benefits** for injured workers.

This section of the CHSWC Annual Report will review these issues by assessing the differences in various measures before and after the implementation of the workers'

compensation reform legislation. These analyses incorporate information derived from CHSWC studies and observations and other sources.

**Workers' Compensation Insurance**

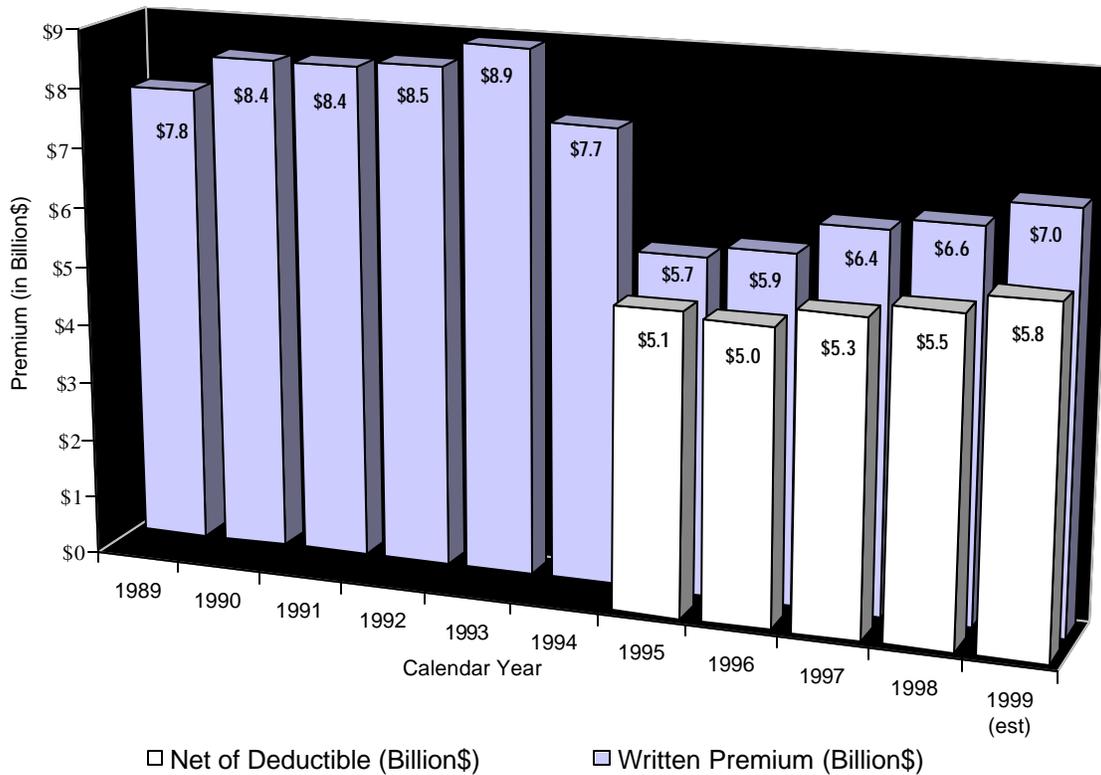
The workers' compensation reform legislation repealed California's 80-year-old minimum rate law and replaced it with an open-competition system of rate regulation in which insurers set their own rates based on advisory rates developed by the Workers' Compensation Insurance Rating Bureau (WCIRB).

Workers' Compensation insurance premiums have declined dramatically since the reform and the 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 in 1995. The written premium has grown slightly since 1996, but still remains far below its level in the first part of the decade. This recent increase in total premium appears to be reflective of

- movement from self-insurance to insurance,
- an increase in economic growth,
- wage growth and
- long-term movement from a manufacturing to a service economy.

The WCIRB estimates, based on a reported \$5.2 billion of written premium through September 30, 1999 (prior to the application of deductible credits), that the written premium for calendar year 1999 is approximately \$7 billion.

**California Workers' Compensation Written Premium  
(in Billion\$)**



Source: Workers' Compensation Insurance Rating Bureau of California

**Medical Care**

**The 24-Hour Care Pilot Project**

Labor Code Section 4612 established three-year pilot programs of 24-hour health care in California to test the administrative efficiencies, cost control potential, and service capabilities of having a single system provide health care for occupational and non-occupational injuries and illnesses. Implemented in 1994 with the participation of five employers in San Diego County, the pilot once included over 65 employers in four counties.

The 24-hour health care pilot project was terminated as of December 31, 1997. DWC issued an interim report in March 1997, which stated that a final report would include analyses of claims filings and costs, patient outcomes and satisfaction, and employer satisfaction.

*For further information...*

 DWC's report may be viewed at [www.dir.ca.gov](http://www.dir.ca.gov). Select 'workers' compensation', then 'Division of Workers' Compensation', then 'Medical/HCO' (under the heading 'DWC/WCAB Organization and Offices').

### Health Care Organization Program

The Health Care Organization (HCO) program, established by the 1993 Workers' Compensation reform package, expanded the use of managed care techniques in the workers' compensation system. This was viewed as a means of reducing medical costs and facilitating better management of workers' compensation cases.

HCOs provide medical care to employees with job-related injuries or illnesses in a managed care setting. Insurance carriers and self-insured employers may contract with a certified HCO as a way of reducing workers' compensation costs while at the same time helping to ensure that injured workers receive quality medical care for their injuries.

An employer in an HCO gains additional medical control over the care of the injured employee, ranging between 90 days (if no group health insurance coverage is offered) to 365 days (if the employee's provider of non-occupational healthcare is also in the HCO network).

Current HCOs and Year Certified	
(As of April 10, 2000)	
1999	CorVel Select HCO Priority Comp Net 2 CorVel Corporation
1998	CompPartners Access CompPartners Direct Medical Group at City Center
1997	Kaiser Foundation Health Plan, Northern California MedEx Health Care
1996	Priority Comp Net
Source: Division of Workers' Compensation	

DWC reports that as of March 2000, the number of enrollees in the HCO program is at an all time high of about 100,000. Currently, there are nine certified HCOs and two additional applications are anticipated shortly. HCOs report a growing interest given reports of rising medical costs in both group health and workers' compensation, and concerns about rising premiums. However, the HCOs also report considerable problems selling the HCOs to insurers because of various requirements associated with using HCOs, primarily the requirements surrounding enrollment of employees into the "managed care" plans.

*For further information...*

 The latest information on Health Care Organizations may be obtained at [www.dir.ca.gov](http://www.dir.ca.gov). Select 'workers' compensation', then 'Division of Workers' Compensation', then 'Medical/HCO'.

### Fee Schedules

## REFORM OUTCOMES

The Official Medical Fee Schedule in use in 1993 was criticized as outdated because it did not cover many common procedures and did not apply to pharmaceutical or hospital charges. The reform legislation directed DWC to update the schedule to address those concerns. Labor Code §5703 requires the Administrative Director to adopt and revise a medical fee schedule every two years.

The Division of Workers' Compensation last updated the Official Medical Fee Schedule (OMFS) by adopting changes to the schedule effective April 1, 1999. The In-Patient Fee Schedule and changes to the Medical Legal Fee Schedule were adopted and implemented as part of the overall package of medical regulations. These fee schedules are for services provided on or after April 1, 1999.

The DWC anticipated that the changes to the schedules, including the OMFS, Inpatient schedule, and Medical-Legal fee schedules would have a very small impact on overall workers' compensation costs. DWC reports that this view was echoed by a Special Committee of the Workers' Compensation Insurance Rating Bureau tasked with estimating the impact of the schedule. The WCIRB committee anticipated that the impact of all aspects of the schedule, which could be estimated, would result in increases in system costs of less than 1%.

DWC has been working with the Industrial Medical Council to define additional information that would be helpful in determining if the next OMFS revision will move to an RBRVS-based system. Additionally, DWC has asked for data to substantiate anecdotal reports of perceived underpayments, particularly for back surgeries, using the Inpatient Fee Schedule.

*For further information...*



The latest information on fee schedules may be obtained at [www.dir.ca.gov](http://www.dir.ca.gov). Select 'workers' compensation', then 'Division of Workers' Compensation', then 'Medical/HCO'.

### Utilization Review Regulations

Legislative changes in 1993 required the DWC Administrative Director to 'adopt model utilization protocols in order to provide utilization review standards' [Labor Code Section 139(e)(8)]. Pursuant to that statutory mandate, utilization review standards – CCR §9792.6 – were adopted as regulations effective July 1995. DWC reports that requests for summaries of utilization review programs have been mailed to claims administrators, to allow DWC to assess implementation of the utilization review standards.

*For further information...*



The latest information on the utilization review standards may be obtained at [www.dir.ca.gov](http://www.dir.ca.gov). Select 'workers' compensation', then 'Division of Workers' Compensation', then 'Medical/HCO' (under the heading 'DWC/WCAB Organization and Offices').

### **Medical-Legal Evaluations**

Reform legislation changes to medical-legal process were intended to reduce both the cost and the frequency of litigation. Starting in 1989, legislative reforms restricted the number and lowered the cost of medical-legal evaluations needed to determine the extent of permanent disability. The reform legislation also limited the WC judge to approving the PD rating proposed by one side or the other ('baseball arbitration'). In addition, the Legislature created the Qualified Medical Examiner (QME) designation and increased the importance of the treating physician's reports in the PD determination process.

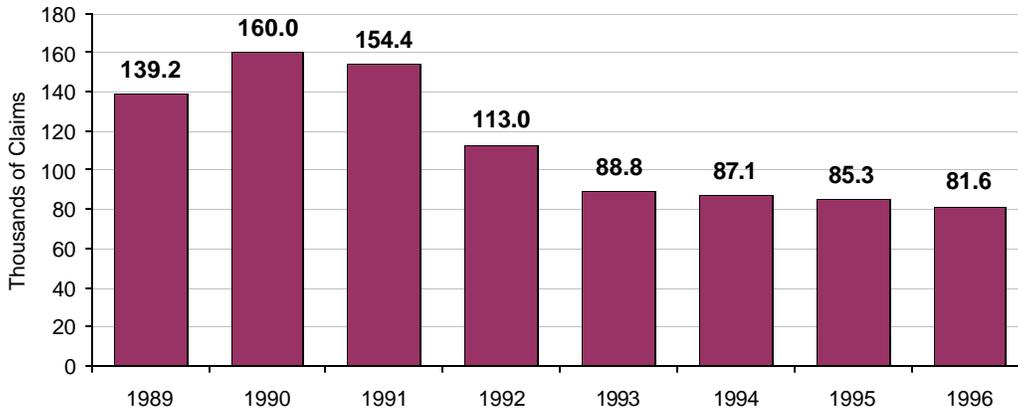
In 1995, CHSWC contracted with the Survey Research Center at UC Berkeley to assess the impact of the workers' compensation reform legislation on the workers' compensation medical-legal evaluation process.

This ongoing study has determined that during the 1990's the cost of medical-legal exams has seen dramatic improvement. As shown in the following discussions, this is due to reductions in the all the factors that contribute to the total cost.

### **Permanent Disability Claims**

During the 1990s, the number of workers' compensation claims with a permanent disability component declined by nearly 50%, as illustrated in the following chart.

**Workers' Compensation Claims  
with a Partial Permanent Disability Component**

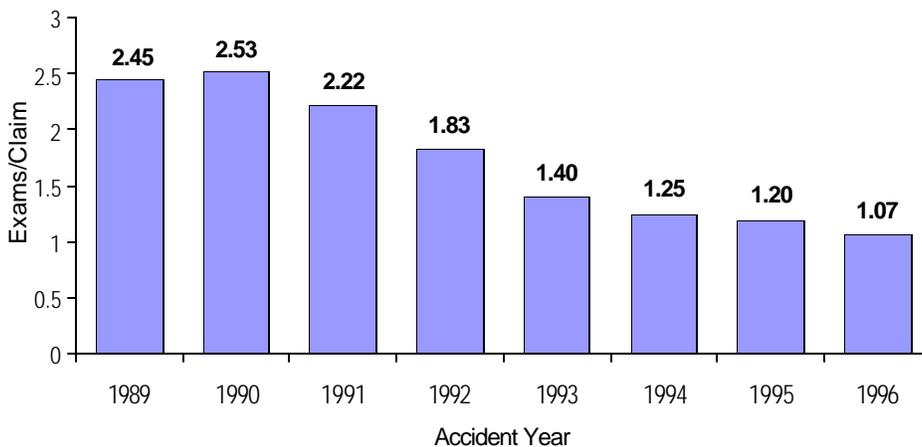


Source: Workers' Compensation Insurance Rating Bureau of California

**Medical-Legal Exams per Claim**

The following chart illustrates the decline in the average number of medical legal exams per claim. The 58% decline reflects a series of reforms since 1989 and the impact of efforts against medical mills.

**Medical-Legal Exams/Claim  
at 40 months from beginning of accident year**



Source: Workers' Compensation Insurance Rating Bureau of California

## REFORM OUTCOMES

Reforms instituted in 1993 that advanced the role of the treating physician in the medical-legal process and granted the opinions of the treating physician a presumption of correctness were expected to reduce the average number of reports even more. However, recent work by the Commission evaluating the treating physician did not find that these reforms had significant effect on the average number of reports per claim.

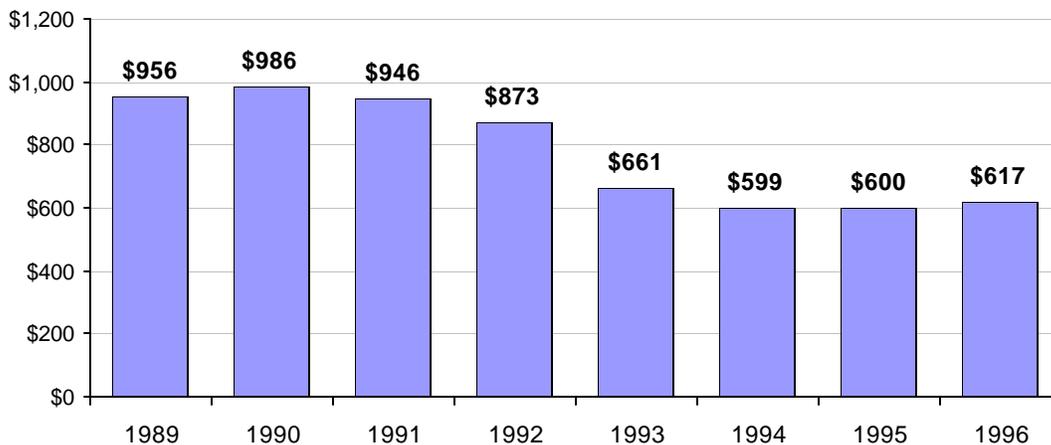
The change in the average number of reports between 1993 and 1994 is entirely the result of improvements that occurred during the course of 1993 calendar year claims. The average number of exams/claim has remained fairly constant each quarter since late 1993. More detailed data from a revised WCIRB permanent disability survey will enable the Commission to examine the drivers behind the decline occurring after 1995.

### Average Cost per Medical-Legal Exam

There are two reasons why the average cost per exam has declined by 37% since its peak in 1990. First, substantial changes were made to the structure of the Medical-Legal Fee Schedule that reduced the rates at which exams are reimbursed. These restrictions were introduced in early 1993 and enforced after the start of August 1993.

During this period, the average cost of exams was also being affected by the frequency of psychiatric exams. On average, psychiatric exams are the most expensive exam by specialty of provider. The relative portion of all exams that are psychiatric exams has declined since hitting a high in 1990-91, leading to a substantial improvement in the overall average cost/exam.

### Average Cost per Medical-Legal Exam



Source: Workers' Compensation Insurance Rating Bureau of California

**Medical-Legal Cost Calculation**

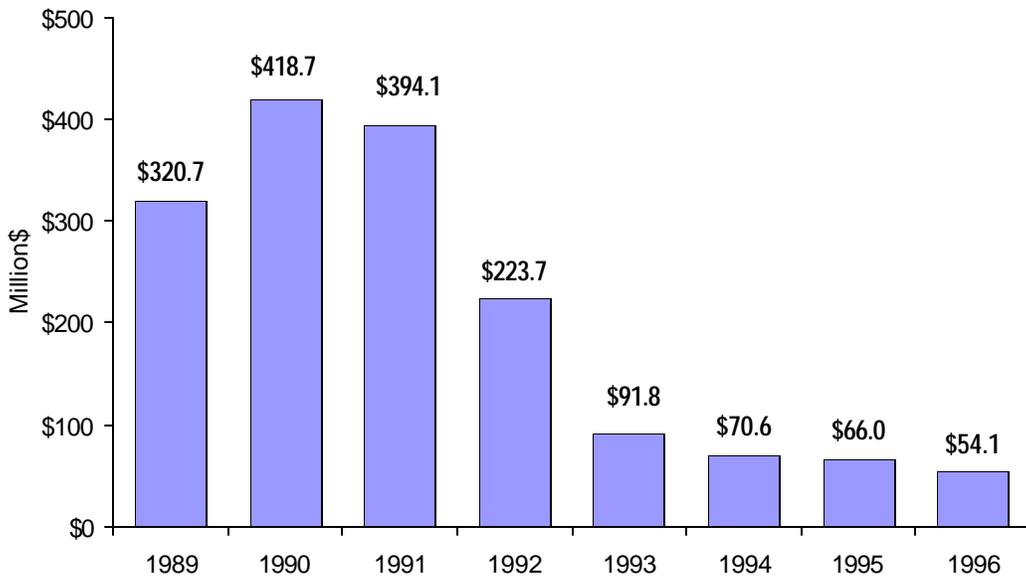
Total medical-legal costs are calculated by multiplying the 'Number of Partial Permanent Disability Claims' by the 'Average number of medical-legal exams per claim' and by the 'Average Cost per Medical-Legal Exam':

$$\text{Total Medical-Legal Cost} = \text{Number of PPD Claims} * \text{Average Number of Exams/Claim} * \text{Average Cost/Exam}$$

**Medical-Legal Costs**

During the 1990's the cost of medical-legal exams has seen dramatic improvement. For the insured community, the total cost of medical-legal exams performed on PPD claims has declined 87% from a high of \$418 million for 1990 injuries to \$54.1 million for injuries occurring in 1996.

**Medical-legal costs (in million\$) on PPD claims  
Insured employers, at 40 months after beginning of accident year**



Source: Workers' Compensation Insurance Rating Bureau of California

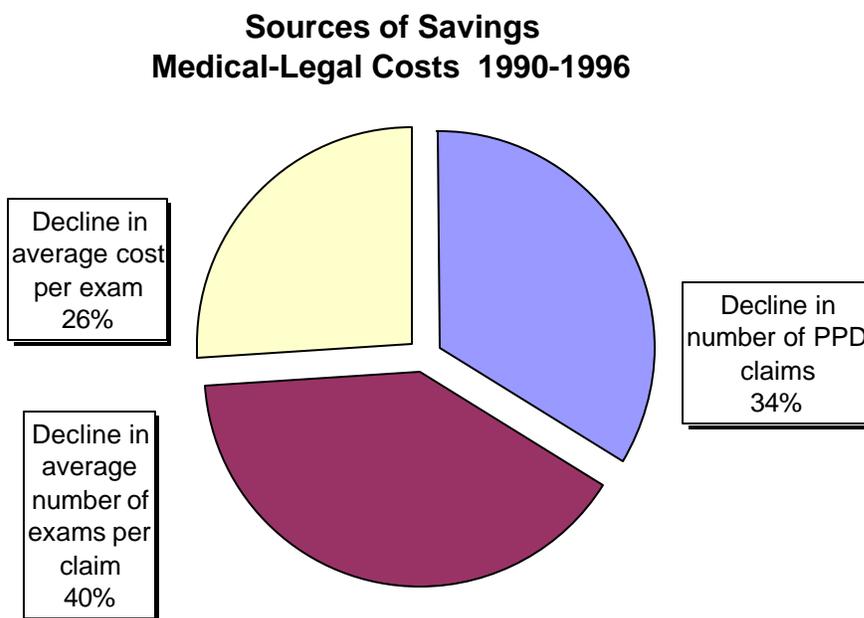
### Sources of Improvement in Medical-Legal Costs

The decline in total medical-legal costs for insurers reflects improvements in all components of the cost structure during the 1990s.

As discussed in the previous sections, this substantial decline in total medical-legal costs for insurers results from significant decreases in all of the components of the cost structure.

The following chart shows how the cost savings break down by component since the beginning of the decade.

- Two-fifths (40%) of the cost savings is due to improvements in the medical-legal process that reduced the number of exams performed per claim.
- One quarter (26%) of the improvement is due to changes to the medical-legal fee schedule and treatment of psychiatric claims that reduced the average cost of exams per claim.
- One third (34%) of the improvement is a result of the overall decline in the frequency of PPD claims.



Source: Workers' Compensation Insurance Rating Bureau of California

### **‘Baseball Arbitration’**

Final offer arbitration – also known as ‘baseball arbitration’ – was introduced into the workers' compensation decision process as a result of the 1993 reforms.

Labor Code Section 4065 provides that where either the employer or the employee have obtained evaluations of the employee's permanent impairment and limitations from a qualified medical evaluator under Section 4061 and either party contests the comprehensive medical evaluation of the other party, the workers' compensation judge or the appeals board shall be limited to choosing between either party's proposed permanent disability rating. The employee's permanent disability award shall be adjusted based on the disability rating selected by the appeals board.

In April 1999, the Commission requested a report on the effectiveness and experience of baseball arbitration. The Commission was informed that Workers' Compensation judges are having problems with the application of Section 4065 and that many are reluctant to use it. This is confirmed by the reported cases in the CHSWC study. The parties are equally adept at avoiding baseball arbitration. The literature review, the preliminary data analysis, and legal and anecdotal evidence all indicate that there are problems with the implementation of final offer arbitration in workers' compensation.

At its meeting on December 16, 1999 in Los Angeles, the Commission on Health and Safety and Workers' Compensation voted unanimously to recommend the repeal of Labor Code Section 4065.

*For further information...*



CHSWC Report: ‘Preliminary Evidence on the Implementation of Baseball Arbitration’ (1999)  
[Available at [www.dir.ca.gov/CHSWC/chswc.html](http://www.dir.ca.gov/CHSWC/chswc.html)]

### **Treating Physician Presumption**

The 1993 reforms increased the role of the primary treating physician (PTP). They require the PTP to render opinions on all medical issues necessary to determine eligibility for compensation, and when additional medical-legal reports are obtained, the findings of the treating physician are presumed to be correct. These legislative changes had the effect of reintroducing the importance of the PTP that had been curtailed by the 1989 reforms and adding the additional authority of rebuttable presumption.

Numerous parties have challenged the value of the change in the treating physician role and particularly the presumption given to the reports. These complaints generally involve a perception of the low quality of the treating physicians' reports and the problem of poor quality reports given special authority. Many observers feel that the presumption has led

## REFORM OUTCOMES

to problems with 'doctor shopping' by the party with medical control and to increased litigation.

The Commission undertook an evaluation of the quality of treating physician reports and the cost-benefit of the PTP presumption under Labor Code Section 4062.9. The study found that

- Treating physician reports are of substantially poorer quality than reports by Agreed Medical Examiners (AME) and Qualified Medical Examiners (QME).
- The application of presumption to the PTP reports has not reduced the number of reports requested by the parties on permanent disability claims at insured employers.

The study concluded that changes to the status of the PTP made during the 1993 reforms have resulted in medical-legal decisions based on poorer quality reports without any apparent cost savings. In addition, there is consensus within the WCAB that the presumption has increased litigation and curtailed the discretion of Workers' Compensation Judges to craft reasonable decisions within the range of evidence.

The Commission recommends that the Legislature consider setting the standard at a different level which gives great weight to the treating physician but allows the judges to use judicial discretion and to award based on the range of evidence.

In May 2000, the Legislature requested that the Commission update its study report on the presumption of correction for treating physician reports. An updated report is expected by the summer of 2000.

*For further information...*



See the project synopsis in this section of this Annual Report.  
Update on Treating Physician Study



CHSWC Report: "Report on the Quality of the Treating Physician Reports and the Cost-Benefit of Presumption in Favor of the Treating Physician" (1999)  
[Available at [www.dir.ca.gov/CHSWC/chswc.html](http://www.dir.ca.gov/CHSWC/chswc.html)]

### **Workplace Safety and Health**

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".

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 these 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 AB 1655 gave DIR the statutory authority to levy and collect assessments from employers to support the Targeted Inspection and Consultation Programs on an annual basis without "sunset".

### **Targeted Consultation Program**

DOSH reports that the targeted consultation program is concentrating its efforts on employers with the most significantly elevated experience modification (ExMOD), i.e., those assessed employers with an ExMOD of 200% or greater. In 1999, a total of 329 of these employers were provided with and completed targeted consultation. A total of 1,330 serious and 2,969 other-than-serious violations of Title 8 regulations were observed and corrected in 1999. In addition, a number of other loss-related deficiencies were observed which are not necessarily violations of Title 8.

These included: Injury and Illness Prevention Program deficiencies; slips, trips and falls; the absence of safe work practices; ergonomics and musculoskeletal injuries from materials handling problems; poor work-related injury and illness record keeping and loss trend analysis; deficiencies in chemical hazard communication programs; absence of machine and tool guarding and electrical hazards.

Employers who received targeted consultation assistance saw their establishments' workplace injury and illness incidence rates, and their workers' compensation loss indicators, improve more than other California employers as a result of the consultation. For example, targeted consultation employers saw their lost workday case incidence rate

(LWDI) decrease by 56%. During the same period of time, the average percentage decrease in the LWDI for California employers in general was only 7%. In addition, targeted consultation employers saw reductions in various other workplace injury and illness rates and workers' compensation loss indicators of from 1% to 45%.

### Targeted Enforcement Program

The 2000 Report describes the status of the Targeted Enforcement Program (see Labor Code Section 6314.1). From 1994-1999, targeted enforcement inspections have been conducted on a total of 2,335 employers in high hazard industries. During these targeted enforcement inspections, 11,747 violations of Title 8 were observed and corrected. These included 4,741 serious, willful or repeat violations and 7,006 other-than-serious violations. The violation per inspection ratio arising from targeted enforcement inspections (i.e., 5.21) continues to be more than twice the violation per inspection ratio arising from non-targeted (complaint and accident) enforcement inspections (i.e., 2.09).

*For further information...*



The latest information may be obtained at [www.dir.ca.gov](http://www.dir.ca.gov). Select 'Occupational Safety & Health', then 'Division of Occupational Safety and Health', then '2000 Report on the Loss Control Certification, and High Hazard Targeted Inspection and Consultation Program'.

### Loss Control Certification Unit

The reform legislation required insurers to provide certified loss control consultation services to help high-hazard employers reduce their incidence of industrial injury. The Loss Control Certification Unit (LCCU) in the Division of Occupational Safety and Health (DOSH) certifies the loss control capabilities of insurers.

As of December 1999, a total of 120 insurer-group plans – representing 281 insurers – have been certified or recertified. To become certified, an insurer must submit an annual plan that outlines the insurer's methodology for selecting insured employers with the greatest workers' compensation losses and the most significant preventable health and safety hazards. The LCCU reports it has conducted 94 evaluations of compliance representing 78% of the certified insurer groups.

In order to provide a quantitative profile of the program, the LCCU, in conjunction with its advisory Working Group, prepared a "Sample Summary of Insured Employers' Experience with the Loss Control Certification Program, as Reported by Their Insurers". The Sample Summary has found:

- (1) Loss control services delivered to targeted employers have had a significant positive impact in reducing the frequency of workplace injuries to California workers;
- (2) The costs to insurers for the Loss Control Certification Program do not present an undue burden on insurers;

- (3) The costs to insurers for the Loss Control Certification Program have declined, both as a percentage of insurers' direct written premium and as a percentage of insurers' total loss control costs;
- (4) Competition under open rating has caused significant turnover in the coverage of targeted employers, which has led to the exclusion of a number of targeted employers identified as eligible for loss control services;
- (5) Adoption of a uniform selection methodology will assure a more consistent population of employers across insurer groups who would most benefit from loss control services under the Loss Control Program; and
- (6) The Loss Control Certification Unit is meeting its mandate contained in Labor Code Section 6354.5.

The LCCU also reports that an Advisory Committee began work on clarifying the insurer's duties and the DOSH's responsibilities under the statute. Significant revisions to 8 CCR Sections 339.1 through 339.11 recommended by the Advisory Committee include:

- Adoption of a single selection methodology based on frequency and severity data published by the WCIRB to be used by insurers to select employers to loss control services.
- Reducing the administrative burden on insurers by simplifying elements of the Annual Plan requirements.
- Clarification of the loss control services required to be delivered to selected employers.
- Clarification of DOSH's responsibilities in evaluating insurer compliance.

The Commission has engaged in a study to evaluate the effectiveness of regulating loss control.

*For further information...*

 See the CHSWC Projects section in this Annual Report:  
Evaluation of Targeting Methods – High Hazard and Loss Control

 The latest information may be obtained at [www.dir.ca.gov](http://www.dir.ca.gov). Select 'Occupational Safety & Health', then 'Division of Occupational Safety and Health', then '2000 Report on the Loss Control Certification, and High Hazard Targeted Inspection and Consultation Program'.

### **Ergonomics Standard**

A provision of the 1993 reform legislation required the Occupational Safety and Health Standards Board (OSHSB) to adopt workplace ergonomics standards by January 1, 1995, in order to minimize repetitive motion injuries (RMI).

## REFORM OUTCOMES

As shown in the timeline, DOSH and the Cal-OSHA Standards Board have worked for years on modifications to Title 8, General Industry Safety Orders, Section 5110 of the California Code of Regulations to establish those “ergonomic standards.”

Section 5110 initially was adopted by the Cal/OSHA Standards Board, approved by the Office of Administrative Law and became effective on July 3, 1997. The standard was then subject to legal challenges brought in Sacramento Superior Court. Judge James T. Ford heard the case and issued a judgment and peremptory writ of mandate on October 16, 1997, in which he invalidated various sections of the regulation.

The Standards Board appealed those orders to the Third District Court of Appeal. On September 27, 1999, the Court of Appeal heard the case and on October 29, 1999 issued an opinion reversing the superior court’s judgement. The Court of Appeal directed the superior court to issue a new judgement in accordance with the instructions contained in its final opinion.

On March 15, 2000 the superior court issued the new judgement and a modified peremptory writ of mandate. In response to the court’s instructions, the Standards Board filed a revision to Section 5110 with the OAL that removes the exemption for ‘employers with 9 or fewer employees’ from the current scope of and application of the standard.

On April 28, 2000 the OAL reviewed and approved the court ordered revision to Section 5110 and it was filed with the Secretary of State to be effective immediately.

*For further information...*



The latest information on the ergonomics standard may be obtained at [www.dir.ca.gov](http://www.dir.ca.gov). Select ‘Occupational Safety & Health, then ‘Cal-OSHA Standards Board’, then ‘Ergonomics Standard’.

### **Ergonomics Standard in California: A Brief History**

**January 18 and 23, 1996**

OSHSB holds public hearings on proposed ergonomics standards and receives over 900 comments from 203 commentors. The proposed standards are revised.

**July 15, 1996**

OSHSB provides 15-day public comment period on revisions to proposed standards.

**July 15, 1996**

California Labor Federation, AFL-CIO, and the American and California Trucking Associations file legal briefs with the Sacramento Superior Court in opposition to the ergonomics standard.

**September 19, 1996**

OSHSB discusses proposal at its business meeting and makes further revisions.

**October 2, 1996**

OSHSB provides a 15-day public comment period on the further revisions.

**October 2, 1996**

California Labor Federation, AFL-CIO, and the American and California Trucking Associations file legal briefs with the Sacramento Superior Court in opposition to the ergonomics standard.

**November 14, 1996**

OSHSB adopts proposal at its business meeting and submits it to the state Office of Administrative Law (OAL) for review and approval.

**January 2, 1997**

OAL disapproves proposed regulations based on clarity issues.

**February 25, 1997**

OSHSB provides 15-day public comment period on new revisions addressing OAL concerns.

**April 17, 1997**

OSHSB adopts new revisions and resubmits proposal to OAL.

**June 3, 1997**

Proposed ergonomics standard approved by OAL.

**July 3, 1997**

Ergonomics standard becomes effective.

**September 5, 1997**

Sacramento Superior Court hearing to resolve the legal disputes filed by labor and business industries

**October 15, 1997**

Judge James T. Ford of the Sacramento Superior Court issued a Peremptory Writ of Mandate, Judgement, and Minute Order relative to challenges brought before the Court. The Order invalidated the four parts of the standard.

**December 12, 1997**

OSHSB appealed Judge Ford's Order with their legal position that the Judge's Order would be stayed pending a decision by the Court of Appeal.

**January 30, 1998**

Judge Ford further ruled that his Order will remain in effect and not be stayed until the Court of Appeal hears the case.

**March 13, 1998**

The Third District Court of Appeal ruled that Judge Ford's Order to eliminate parts of Section 5100 will be stayed until the Court of Appeal issues a decision on the appeal filed in December 1997. The Standard is currently in effect and will remain in effect until the case is decided by the Court of Appeal. No date has been set by the Court of Appeal to issue its decision.

**October 29, 1999**

After hearing the case in September, the Court of Appeal issued an opinion reversing the superior court's judgement. The Court of Appeal directed the superior court to issue a new judgement in accordance with the instructions contained in its final opinion.

**March 15, 2000**

The Superior Court issued the new judgement and a modified writ of mandate. In response to the court's

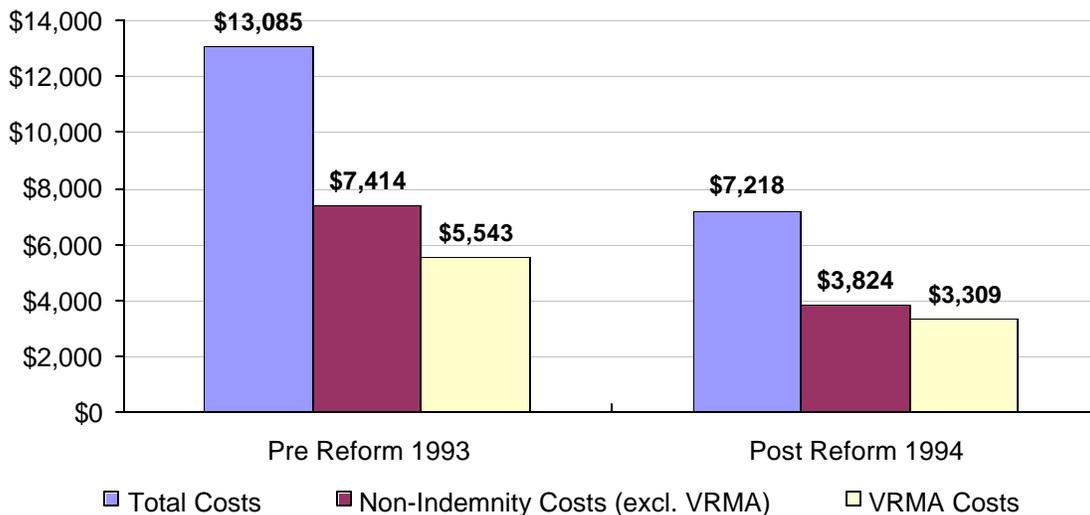
**Vocational Rehabilitation**

The Vocational Rehabilitation Benefit is meant to assist injured workers who suffer occupational injuries resulting in permanent impairments that preclude the injured workers from returning to their usual occupation. A major component of the 1993 legislative package was a set of reforms aimed at reducing the cost of the Vocational Rehabilitation Benefit while maintaining or improving the outcomes for these seriously injured workers.

Research performed for the Commission looked before and after reform at both the cost of rehabilitation and the outcomes for injured workers qualifying for the benefit.

The study finds that as a result of reforms, the cost of the Vocational Rehabilitation Benefit was cut in half. Nearly three-quarters (72%) of the saving was a result of the cap placed on total cost, the cap placed on QRR services and the limitation placed on the number of plans. Over one-quarter (28%) of the savings resulted from shifting workers from use of vocational rehabilitation services into modified and alternate work with the at-injury employer.

**Average Vocational Rehabilitation Costs per Claim**



Source: CHSWC Study of Vocational Rehabilitation

While the cost of the rehabilitation benefit was reduced substantially, the outcomes for workers did not change. Both the level of post-injury employment and the level of post-injury earnings were comparable pre and post-reform.

The outcomes for workers qualifying for the rehabilitation benefit are comparable to those injured workers with similar permanent disabilities but who are able to return to their at-injury occupation.

However outcomes for these seriously injured workers remain poor. Much remains to be done to improve post-injury employment outcomes for all seriously injured workers, especially for particularly hard-hit segments of this group. The preliminary results from the Commission's study highlight serious problems for older workers and workers who suffer injuries that result in substantial levels of chronic pain.

*For further information...*



CHSWC Report: 'Vocational Rehabilitation Reform Evaluation' (2000)  
[Available at [www.dir.ca.gov/CHSWC/chswc.html](http://www.dir.ca.gov/CHSWC/chswc.html)]



CHSWC Report: 'Interim Report - Vocational Rehabilitation Benefit: An Analysis of Costs, Characteristics, and the Impact of the 1993 Reforms' (1997)  
[Available at [www.dir.ca.gov/CHSWC/chswc.html](http://www.dir.ca.gov/CHSWC/chswc.html)]

## **Adjudication Simplification**

### **DWC Information System**

DWC reports that the long-awaited Workers' Compensation Information System (WCIS) -- mandated as part of the 1993 reforms to provide comprehensive data and a means to evaluate how the state's workers' compensation system is performing -- is now a reality.

Electronic submission of First Reports of Injury began on a voluntary basis in September 1999 and on a mandated basis on March 1, 2000. Regulations that establish WCIS reporting requirements became effective November 4, 1999.

DWC has been working actively with the regulated community to help usher in a successful beginning to electronic reporting and 197 individuals have attended a series of five education seminars from affected organizations. A California EDI Implementation Guide has been published and distributed, providing complete instructions for reporting data to the system.

Currently the system is actively receiving data from some 40 claims administrators, and 50 other have begun the process of connecting to the system. Electronic reports have been received for approximately 25,000 claims. Over 100 claims administrators have requested and received variances, delaying their first electronic reports through December 2000.

DWC reports that its efforts to encourage voluntary compliance with the WCIS regulations have been successful. Most claims administrator have either taken the first steps to transmit data or have requested variance. The organizations that have done neither handle less than 3% of all California workers' compensation claims.

The next steps are for WCIS to begin collecting Subsequent Reports (equivalent to electronic Benefit Notices) and Annual Summaries. Claims administrators are required to begin submitting these reports in July 2000 and January 2001, respectively.

## REFORM OUTCOMES

Submission of medical data is not required under current regulations, because no national electronic transaction standards were finalized at the time of DWC's rulemaking. DWC will initiate new rulemaking during 2000 to re-introduce the medical data requirements. The first extensive data reports from WCIS are expected in early 2000, after all variances have expired and (nearly) all claims administrators have begun reporting.

DWC reports that the WCIS fulfills a mandate in Labor Code §138.6, for the Administrative Director to develop a cost-efficient information system. The data reported to DWC electronically by claims administrators is the first and most visible component of WCIS. DWC plans that over time WCIS will grow to include linkages to DWC's internal data on adjudicated cases and a series of supplemental surveys on topics that are not well addressed by any administrative data.

### **'Carve-Outs' - Alternative Workers' Compensation systems**

A provision of the workers' compensation reform legislation, implemented through Labor Code Section 3201.5, allows construction contractors and unions, via the collective bargaining process, to establish alternative workers' compensation programs, also known as 'Carve Outs'.

The Commission is monitoring the "carve-out" program, which is administered by DWC.

As shown in the following table, participation in the carve out program has grown, with significant increases in the numbers of employers and work-hours and in the amount of payroll.

<b>Carve Out Participation</b>	<b>1995</b>	<b>1996</b>	<b>1997</b>	<b>1998</b>
Employers	242	277	550	683
Work Hours	6.9 million	11.6 million	10.4 million	18.5 million
Employees (Full-time equivalent)	3,450	5,822	5,186	9,250
Payroll	\$157.6 million	\$272.4 million	\$242.6 million	\$414.5 million

Source: Division of Workers' Compensation

A listing of employers and unions in carve-out agreements is shown on the following page.

The Commission engaged in a study to identify the various methods of alternative dispute resolution that are being employed in California carve-outs, and to begin the process of assessing their efficiency, effectiveness and compliance with legal requirements.

## REFORM OUTCOMES

Since carve-out programs have operated only since the mid-1990s, data collected is very preliminary and not statistically significant. The study team found indications that neither the most optimistic predictions about carve-outs' effects on increased safety, lower dispute rates, far lower dispute costs, and significantly more rapid return to work, nor the most pessimistic predictions about carve-outs' effect on reduced benefits and access to representation, have occurred.

*For further information...*



The latest information on carve outs may be obtained at [www.dir.ca.gov](http://www.dir.ca.gov). Select 'workers' compensation', then 'Division of Workers' Compensation', then 'Construction Industry Carve-Out Programs' (under 'DWC/WCAB Organization and Offices').



CHSWC Report: "Carve-Outs" in Workers' Compensation: An Analysis of Experience in the California Construction Industry (1999) [Available at [www.dir.ca.gov/CHSWC/chswc.html](http://www.dir.ca.gov/CHSWC/chswc.html)]

**Employers and Unions in Carve-Out Agreements**

(As of March 22, 2000)

1. An agreement between the California Building & Construction Trades Council and the Metropolitan Water District of Southern California for the Eastside Reservoir Project. [Expires November 7, 2000]
2. An agreement between the District Council of the International Brotherhood of Electrical Workers and its 20 local unions and a multi-employer group called the National Electrical Contractors Association, consisting of about 300 contractors. Each individual employer chooses whether to sign the master carve-out agreement. [Expires August 14, 2001]
3. An agreement between the Southern California District of Carpenters and its 19 local unions and six different multi-employer groups consisting of about 1000 contractors. Each individual contractor chooses whether to sign the master carve-out agreement. [Expires August 14, 2001]
4. An agreement between the Southern California Pipe Trades District Council No. 16 and a multi-employer group called the Plumbing & Piping Industry Council, Inc. Each individual contractor chooses whether to sign the master carve-out agreement. [Expires August 24, 2001]
5. Two agreements between the Cherne Contracting Corporation and Steamfitters Local 250 covering two projects at different oil refineries. [Completed in 1996]
6. An agreement between TIMEC Co., Inc., and TIMEC Southern California, Inc., and the International Union of Petroleum and Industrial Workers. [Expires June 30, 2000]
7. An agreement between the Contra Costa Building & Construction Trades Council and the Contra Costa Water District for the Los Vaqueros Project. [Completed in 1998]
8. An agreement between the Southern California District Council of Laborers and four different multi-employer groups: the Associated General Contractors of California, Inc., the Building Industry Association of Southern California, Inc., the Southern California Contractors' Association and the Engineering Contractors' Association. Each individual contractor chooses whether to sign the master carve-out agreement. [Expires July 31, 2002]
9. An agreement between the California Building & Construction Trades Council and the Metropolitan Water District of Southern California for the Inland Feeder Project. [Expires March 11, 2000]
10. An agreement between the Building & Construction Trades Council of Alameda County and Parsons Constructors, Inc. for the National Ignition Facility at Lawrence Livermore National Laboratory. [Expires 2000 - date uncertain]
11. An agreement between the District Council of Painters No. 36 and the Los Angeles County Painting and Decorating Contractors Association. Each individual contract chooses whether to sign the master carve-out agreement. [Expires October 28, 2000]
12. An agreement between the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, Local Union No. 342 and Cherne Contracting Corporation for the construction of an oil refinery. [Expires October 18, 2000]
13. An agreement between the Los Angeles Building and Construction Trades Council, AFL-CIO, and Cherne-ARCO. [Expires July 31, 2001]
14. An agreement between the Operating Engineers Local 12 and the Southern California Contractors Association. [Expires April 1, 2002]
15. An agreement between the Sheet Metal Workers International Association and the Sheet Metal and Air Conditioning Contractors National Association (SMACNA). [Expires April 1, 2002]
16. An agreement between the Building and Construction Trades Council of San Diego

**Psychiatric and Post-Termination Claims**

The reform legislation limited the compensability of workers' compensation psychiatric "stress" claims and post-termination claims. The psychiatric claim must be predominantly caused by work in order to be compensable, unless the claim results from a violent act. The reform precluded compensation for a psychiatric injury if substantially caused by a lawful, nondiscriminatory, good faith personnel action.

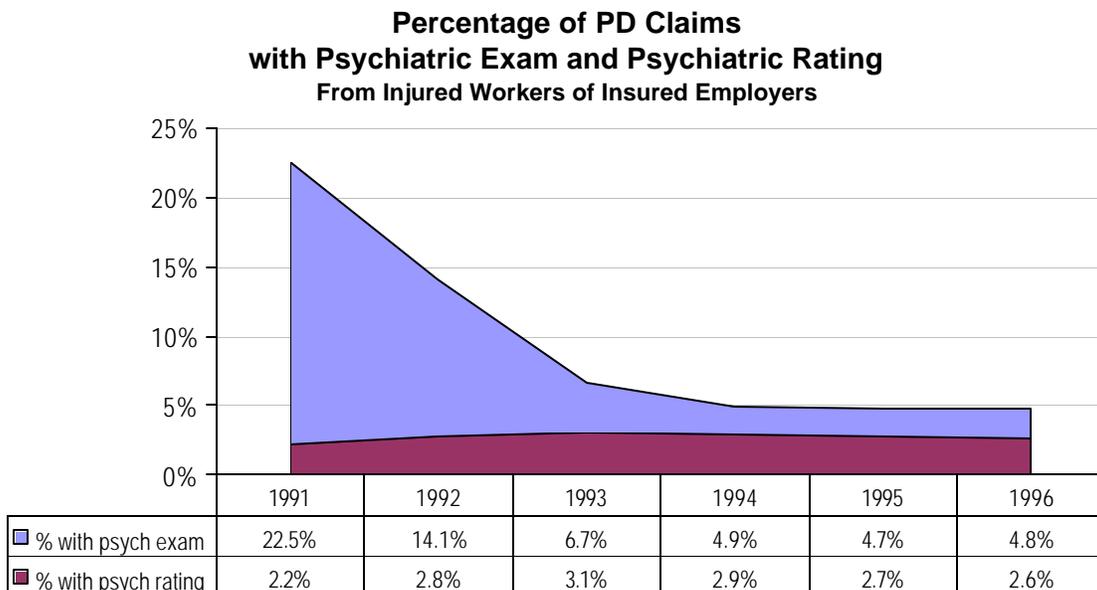
The reforms disallowed claims filed after notice of termination unless the employee demonstrated existence of the injury prior to termination. Psychiatric claims so filed would be compensable only if existence of the injury prior to termination was demonstrated, the injury was caused by a sudden and extraordinary event, or the injury resulted from sexual or racial harassment.

**Psychiatric Claims**

Since the early 1990s, the number of workers' compensation claims with a psychiatric component has dropped dramatically. In 1991 nearly a quarter of all permanent disability claims from injured workers of insured employers involved a psychiatric medical-legal evaluation, but by 1996 this portion had dropped to 1 in 20 claims.

However, during the same period, the proportion of claims receiving a rating that includes a finding of psychiatric disability was essentially unchanged. (Recent updates of the ratings database developed by UC Berkeley for CHSWC has led to a revision of the earlier estimates of the frequency of psychiatric ratings.)

The chart below shows the portion of PPD claims that received a psychiatric disability rating, compared to those that had one or more psychiatric medical-legal exams.



Source: Workers' Compensation Rating Bureau of California

## REFORM OUTCOMES

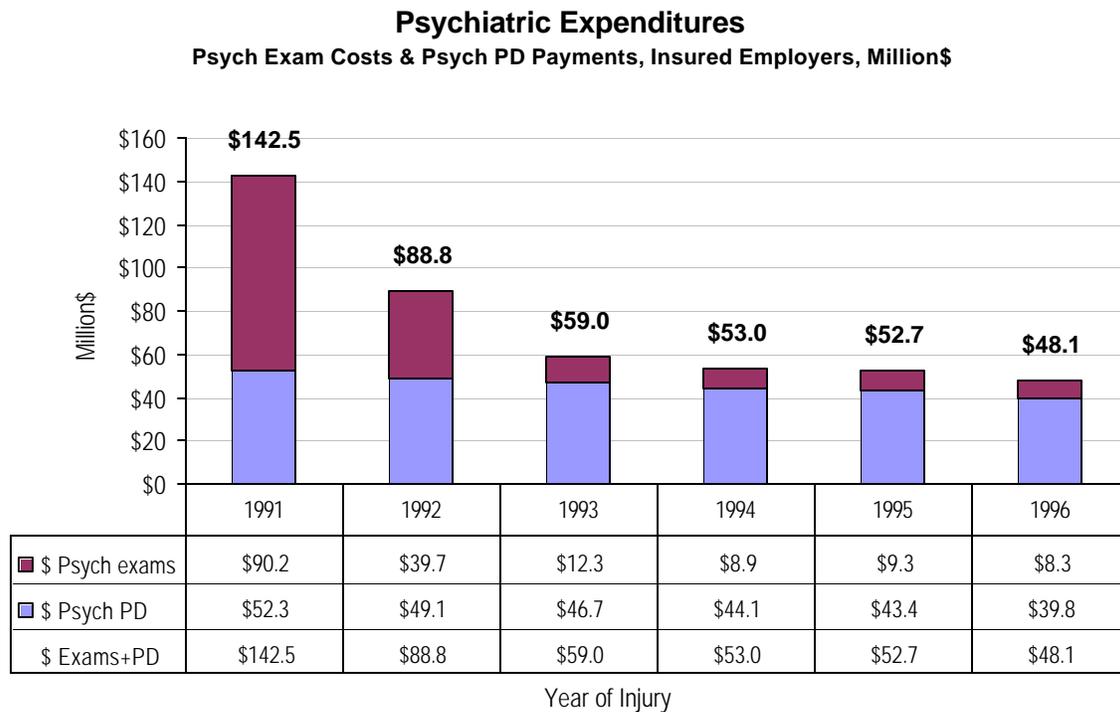
### Psychiatric Costs

Total costs associated with psychiatric claims from injured workers of insured employers have also declined dramatically, from about \$142 million in 1991 to less than \$50 million in 1996.

The chart below shows the costs of psychiatric medical-legal exams have decreased significantly while the PD payments for cases with a psychiatric rating decreased only slightly.

Psychiatric exams are the most expensive exams, costing approximately twice as much as other exams. Also, as can be seen on the previous chart, they do not always result in a finding of permanent disability. The result is that psychiatric medical-legal exams can end up costing more than the indemnity payments workers receive for psychiatric disability.

The cost to insured employers for psychiatric exams in 1991 was 72% more costly than the indemnity payments. By 1996, the number and cost of exams had declined to where psychiatric exams cost, on average, only one-fifth of the psychiatric indemnity awards.



Source: Workers' Compensation Rating Bureau of California

For further information...



CHSWC Report: Evaluating the Reforms of the Medical-Legal Process (1997)  
[Available at [www.dir.ca.gov/CHSWC/chswc.html](http://www.dir.ca.gov/CHSWC/chswc.html)]

**Workers' Compensation Disability Benefits**

The reform legislation provided workers' compensation benefit increases for temporary (TD) and permanent disability (PD).

As shown on the following chart, maximum weekly payment amounts were increased in 1994, 1995 and 1996 for PD and TD ratings, except PD ratings under 15%.

**Maximum Weekly Disability Payments**

Disability Rating	Pre Reform	July 1, 1994	July 1, 1995	July 1, 1996
Permanent Below 15%	\$140	\$140	\$140	\$140
Permanent 15%-24.75%	\$140	\$148	\$154	\$160
Permanent 25%-69.5%	\$148	\$158	\$164	\$170
Permanent 70%-99.75%	\$148	\$168	\$198	\$230
Permanent 100%	\$336	\$406	\$448	\$490
Temporary	\$336	\$406	\$448	\$490

The CHSWC Study of Permanent Disability by the Rand organization has looked at the temporary and permanent disability benefit and the increases provided by the reform legislation.

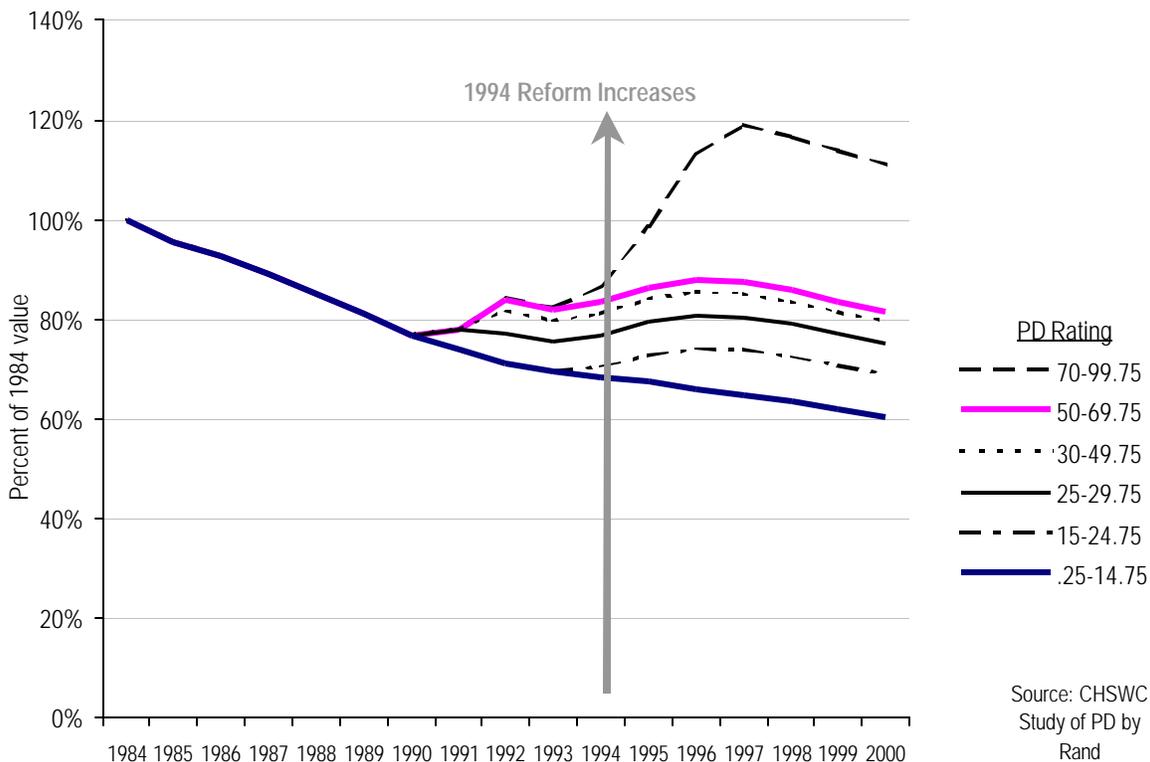
The following chart depicts the value of the permanent disability benefit for those rating categories as expressed in 1984 dollars.

For the highest permanent disability ratings (between 70 and 99.75), the value of the PD benefit was increased significantly, above the 1984 baseline.

The value of the benefit for moderate PD ratings (between 15 and 69.75) increased slightly, but is projected to drop back to the same level before the reforms by 2000.

Since the reforms provided no increase for the lowest ratings (below 15), the value of the PD benefit continued to drop.

**Value of Permanent Disability Benefit by PD Rating Level  
Adjusted for Inflation (1984=100%)**



The Commission’s ongoing study has also been evaluating how well the workers’ compensation PD benefit compensates for wage losses sustained by injured workers.

The study has found that, even with the 1994 reform increases, all permanently disabled injured workers sustain significant uncompensated wage loss, irrespective of the size of the PD rating.

Moreover, injured workers with the lowest-rated claims (about 90% of all claims) have proportionately larger uncompensated wage losses than those with high disability ratings.

*For further information...*

-  Report: Rand’s Findings and Recommendations on California’s Permanent Partial Disability System: Executive Summary (1997) [Available at [www.dir.ca.gov/CHSWC/chswc.html](http://www.dir.ca.gov/CHSWC/chswc.html)]
-  CHSWC 1998-1999 Annual Report: “Special Report on Workers’ Compensation Costs and Benefits After the Implementation of Reform Legislation” (1999) [Available at [www.dir.ca.gov/CHSWC/chswc.html](http://www.dir.ca.gov/CHSWC/chswc.html)]

REFORM OUTCOMES



# WORKERS' COMPENSATION AND THE CALIFORNIA ECONOMY

## Introduction

At its December 1999 meeting, the Commission on Health and Safety and Workers' Compensation (CHSWC) voted to engage in a project to analyze workers' compensation benefit costs in relation to the larger California economic picture.

Various proposals to increase workers' compensation benefits have been submitted to the Legislature. Concerns have been expressed that increases in benefits would have a negative impact on the California economy and on California employers and employees. This report section is intended to provide information and analyses of workers' compensation costs in relation to the California economy<sup>1</sup>.

## Scope

Workers' compensation costs and benefits will be presented in relation to various economic indicators, such as total payroll, California's Gross State Product, and personal income. Information regarding workers' compensation cost as a percent of payroll by industry group is also included. These analyses take into account the growth of costs that led WCIRB to recommend increases in the premium rate.

Data utilized in these analyses were derived from a variety of sources, including the Legislative Analyst's Office, the Office of Economic Research, the Department of Finance, the Division of Labor Statistics and Research, the Workers' Compensation Insurance Rating Bureau of California, the California Workers' Compensation Institute and other organizations. Frank Neuhauser of the Survey Research Center at the University of California at Berkeley contributed his expertise and technical models.

## Economic Outlook for California

According to the report "California: An Economic Profile", published January 2000 by the state Office of Economic Research, California has the largest and most diverse economy in the nation.

In 1999, the state entered into its sixth year of expansion, a duration that has significantly exceeded all expectations. Especially interesting is how the California economy has been changing during this expansion. From an economy that was heavily dependent on aerospace and defense-related jobs in manufacturing and government, California has a much more diverse and knowledge-based service economy. By 1996, this new

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<sup>1</sup> Please note that this Annual Report section has also been issued under separate cover as the CHSWC Report entitled "Workers' Compensation and the California Economy".)

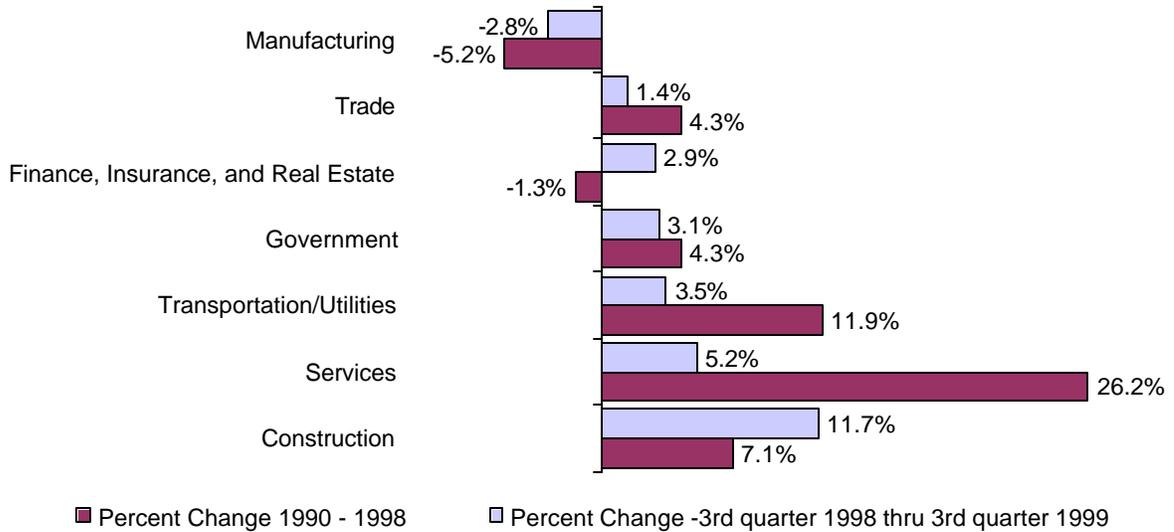
economy had replaced all jobs lost in the recession with new jobs in a variety of traditional and emerging industries.

***California's recent employment performance***

The publication entitled "California's Fiscal Outlook: Legislative Analyst Office's Projections 1999-00 to 2001-02", published November 17, 1999, reports that

- During the past 12 months, California wage and salary employment has increased by about 3.5%. In the previous years between 1990 and 1998, California employment grew by 7.3%. The chart on the next page shows changes in California jobs in various sectors between 1990 and 1998, and between the third quarter of 1998 and the third quarter of 1999.
- The economic crisis in Asia had negative impacts on California's manufacturing sector, where the number of jobs fell by 2.8% between the third quarter of 1998 and the third quarter of 1999.
- Job losses were particularly evident in the electronics and aerospace sectors. According to Department of Finance data, wage and salary employment decreased by about 6.1% and 2.4% respectively in the last 12 months.
- Widespread job gains were realized in non-manufacturing industries, such as construction, services, finance, and transportation. According to Department of Finance forecasts, construction and services are expected to increase by 4.3% and 4.6% respectively between 1999 and 2000.
- Software side of computer industry experienced particularly healthy growth during the year. For example, the business services sector is up about 7% from the prior year, reflecting major gains in software development, computer systems design, and internet related business.
- Home sales and new construction continue to rebound during the first three quarters of 1999. Withholding receipts, which provide a good indication of current trends in wages and stock-option income, were up 14% in the July through September period.

**Percent Change in California Jobs  
1990 through 1998 compared with 3rd Qtr 1998 through 3rd Qtr 1999**



Source: Employment Development Department

**California's Economic Outlook – Short Term (1999 through 2001)**

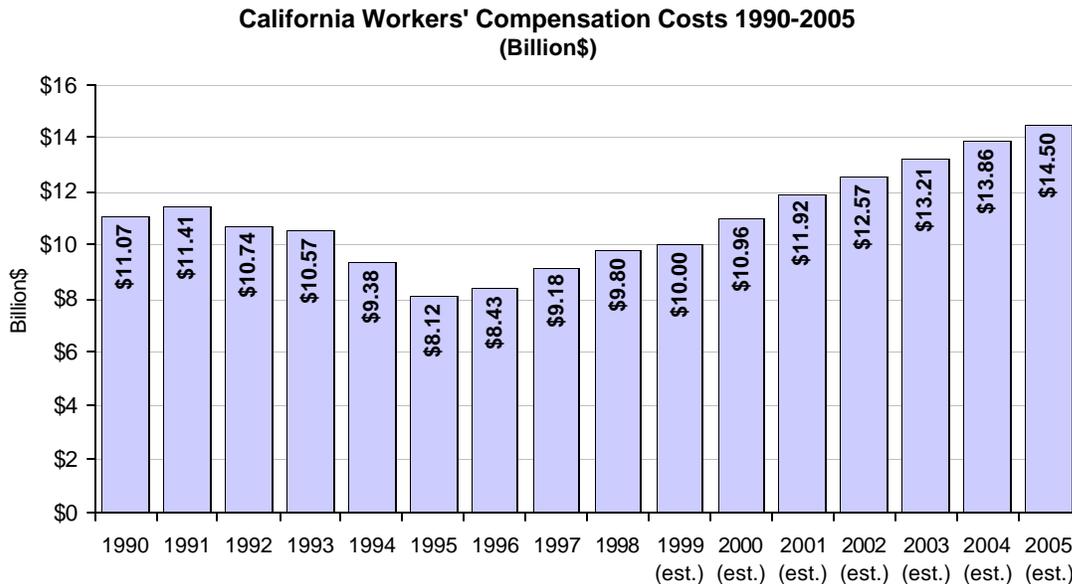
- For the short term (1999 through 2001), it is expected that economic growth in California will follow the same general pattern as for the nation, with income, employment, and spending expanding by solid, but moderating, rates through 2001.
- Economic growth in California is expected to exceed the national average significantly during this period.
- While home construction is expected to slow nationally, strong demand should keep home building on an upward track in California through the forecast period, 2005.
- California's computer and electronics manufacturers will likely benefit from improving economic conditions in Asia, and the expected continuation of generally strong business investment in high-tech labor-saving equipment.

**California's Economic Outlook – Long Term (2002 through 2005)**

- California's economy is expected to grow at a moderate pace through 2005.
- Economic growth in California is expected to continue to exceed that of the nation as a whole, reflecting faster population growth and the state's favorable mix of high-tech industries.

### California's Workers' Compensation Costs

California's workers' compensation costs for all California employers for the past decade and projected into the future are shown in the chart below.



Note that workers' compensation costs decreased from 1992 through 1995 due in large part to declining claim frequency and the elimination of the minimum rate law governing workers' compensation premiums. As "open rating" took effect, insurers competed for business by lowering the premium rates.

Increases in the costs from 1995 to 1998 are due in part to the growth of the California workforce. Projected increases in cost from 1999 to 2005 also take into account projected workforce growth. These estimates reflect underlying cost increases calculated by the Workers' Compensation Insurance Rating Bureau of California (WCIRB) that led WCIRB to recommend increases in the premium rate.

Please note that these estimates would be lower if they were indexed for inflation.

*Appendix A* contains a description of how costs were calculated for 1990 through 1998 and estimated for 1999 through 2005.

#### **Costs of Benefit Alternatives**

For the purposes of illustration, this section will compare the impact of four benefit increase alternatives. The costs shown in the previous section are the 'baseline' costs here. Benefit alternative B1 would add \$0.5 billion to the baseline costs in each year from 2001 through 2005. Benefit alternative B2 would add \$1 billion to the baseline costs in each year from 2001 through 2005. Benefit alternative B3 would add \$0.5 billion to the

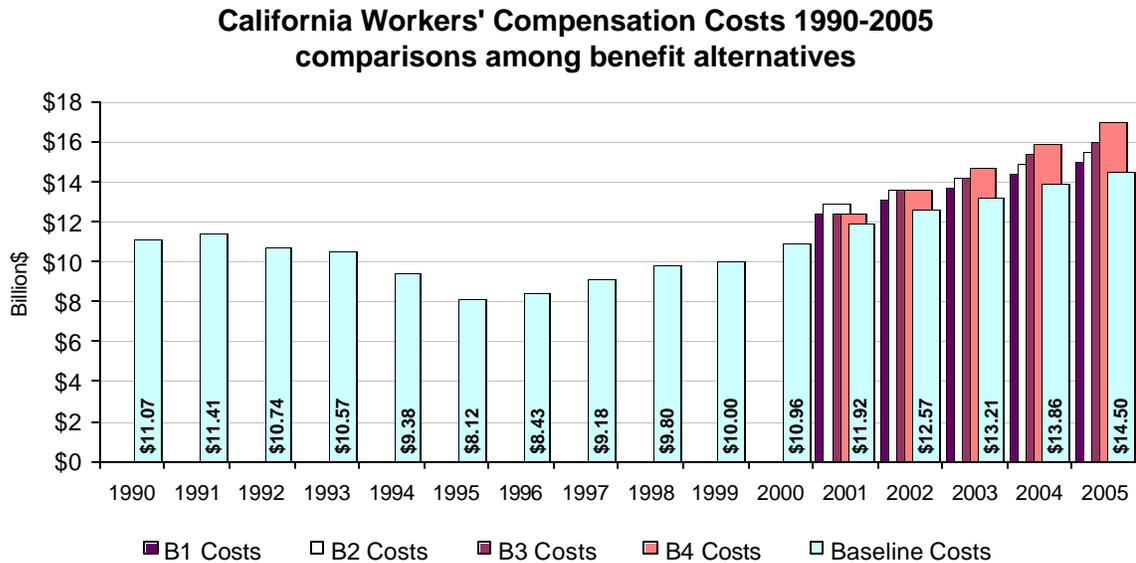
WORKERS' COMPENSATION AND THE CALIFORNIA ECONOMY

baseline costs in 2001, \$1 billion in 2002 and 2003, and \$1.5 billion in 2004 and 2005. Benefit alternative B4 would add \$0.5 billion to the baseline costs in 2001, \$1.0 billion in 2002, \$1.5 billion in 2003, \$2.0 billion in 2004, and \$2.5 billion in 2005. Please note that these benefit alternatives do not differentiate among the different types of benefits (temporary disability, permanent disability, medical) nor do they forecast impacts on specific industries.

These four alternative increases are summarized in the table below:

Benefit Increase Alternatives				
Year	Alt. B1	Alt. B2	Alt. B3	Alt. B4
2001	\$0.5 billion	\$1.0 billion	\$0.5 billion	\$0.5 billion
2002	\$0.5 billion	\$1.0 billion	\$1.0 billion	\$1.0 billion
2003	\$0.5 billion	\$1.0 billion	\$1.0 billion	\$1.5 billion
2004	\$0.5 billion	\$1.0 billion	\$1.5 billion	\$2.0 billion
2005	\$0.5 billion	\$1.0 billion	\$1.5 billion	\$2.5 billion

The following chart shows a comparison among the alternatives and the 'baseline' cost calculated in the previous section.



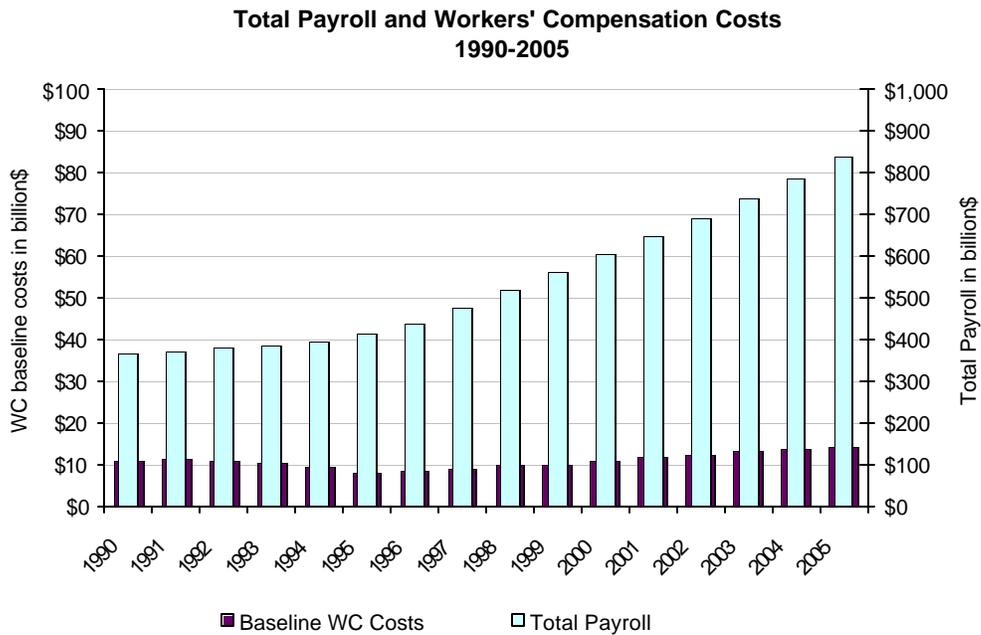
Costs of the current workers' compensation benefit structure are shown as baseline costs. Costs of various benefit alternatives are shown as B1, B2, B3, and B4 costs.

**Workers' Compensation Costs Compared to Total Payroll**

Payroll is probably the best measure against which to compare the cost to employers and labor of workers' compensation. Payroll is the most significant variable cost faced by employers. Employment and wage decisions are made after considering the full cost of an employee, including wage, benefits (health insurance, pension, workers compensation, etc.) and comparing that to a worker's expected productivity.

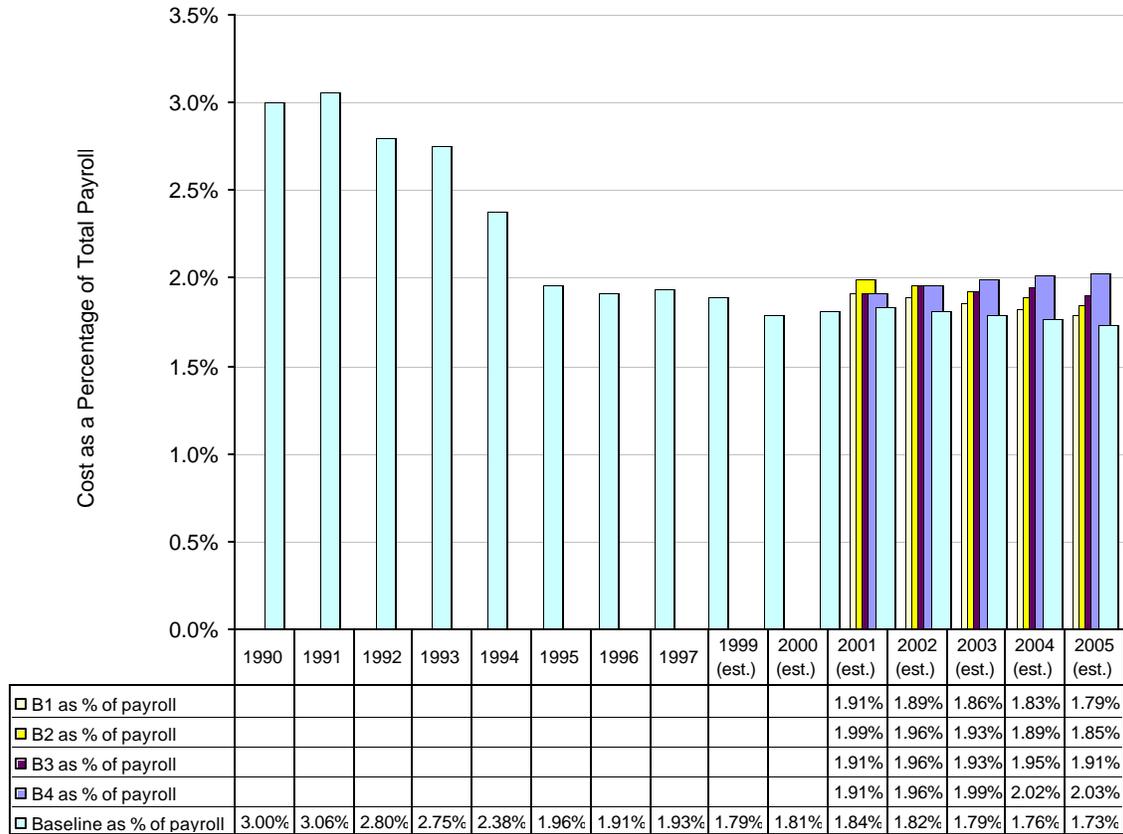
Using payroll also keeps in perspective that benefit costs tend to rise with wages, and comparing workers' compensation costs to payroll will tend to remove overall wage and employment trends from the evaluation of whether benefits are rising or falling. For example, if benefits remain fixed, but wages rise, cost as a percent of payroll will decline (as will workers' replacement rates). On the other hand, if benefits are indexed to wages (e.g., the state average weekly wage) then benefits as a percent of payroll (and workers' wage replacement after injury) will tend to remain steady over time.

The following chart compares total payroll in California to the baseline workers' compensation costs during the period 1990 through 2005. Note that the total payroll is plotted on the right axis. The workers' compensation baseline costs are plotted on the left axis. (If payroll and costs were plotted on the same axis, the columns for payroll in the graph below would be ten times their present height.)



As can be seen, the rate of increase of workers' compensation costs is significantly lower than the rate of increase of total payroll. Consequently, workers' compensation costs as a percentage of payroll has declined substantially, as shown in the following graph.

**Employers' Costs of Workers' Compensation Benefit Alternatives as a Percentage of Total Payroll**



After peaking in the early 1990s at slightly over 3% of payroll, workers' compensation costs have declined to under 2%. The decline was driven primarily by declining claim frequency. In the absence of a change in benefits, costs are projected to continue declining, driven mainly by increasing wage rates subject to fixed benefit maximums.

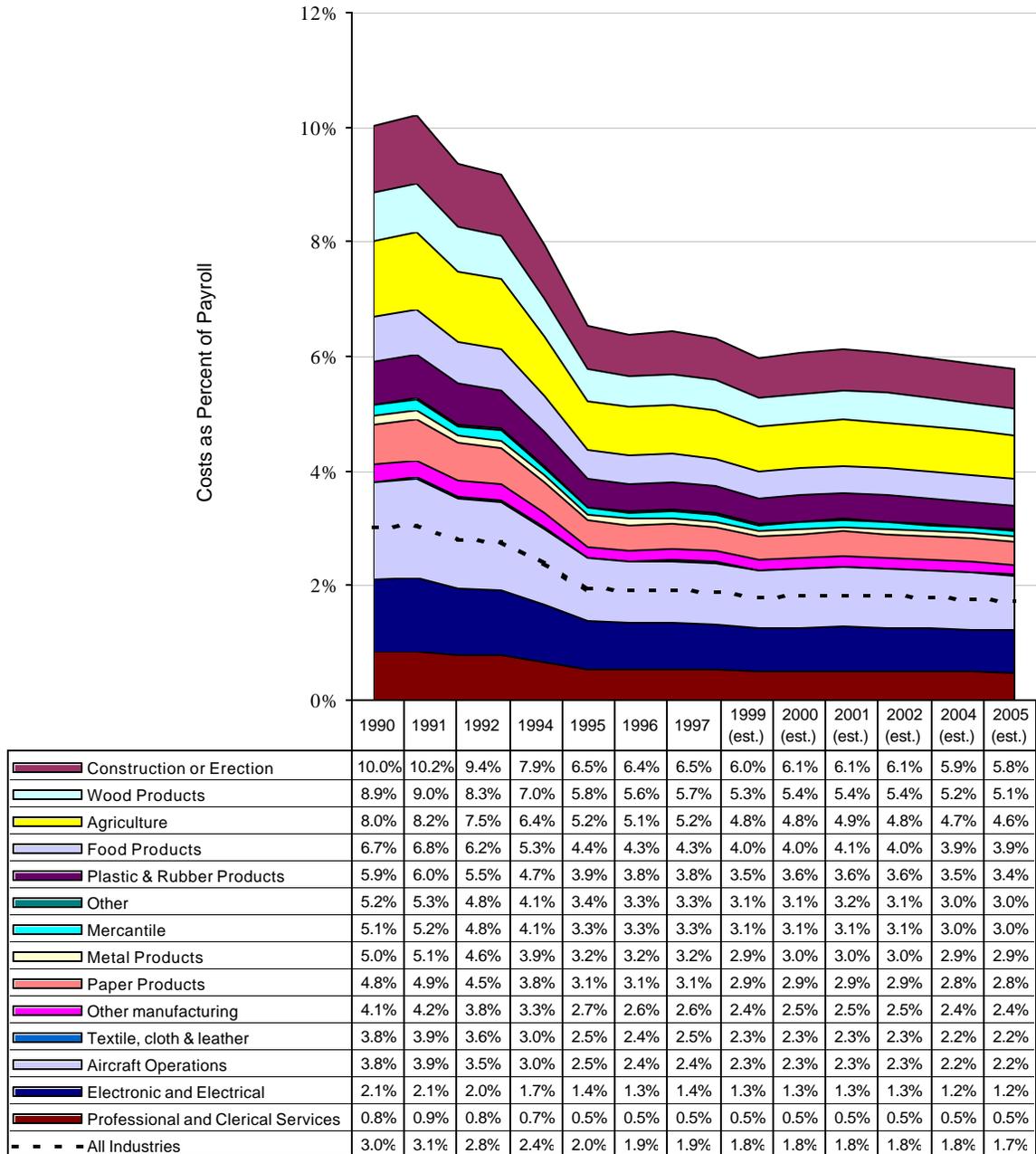
See *Appendix B* for a table of workers' compensation costs (with and without various benefit alternatives) as a percentage of total California payroll.

**Workers' Compensation Costs vs. Payroll among Industry Groups**

These overall average costs mask substantial variation across broad industry groups. For the construction industry, workers compensation costs peaked at over 10% of payroll in 1991 while for professional and clerical professions, costs, even at their peak, were less than 1% of payroll.

However, for all industries, the significant downward trend of workers' compensation costs as a percentage of payroll can clearly be seen in the following graph.

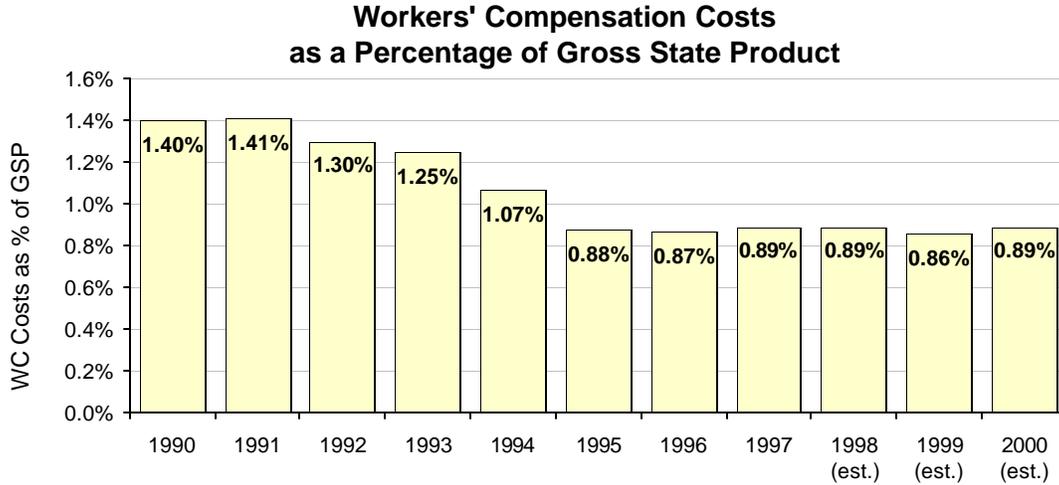
**Workers' Compensation Costs by Industry  
as a Percentage of Payroll (Wages and Salaries, without Benefits)**



**Workers' Compensation Costs compared with Other Economic Indicators**

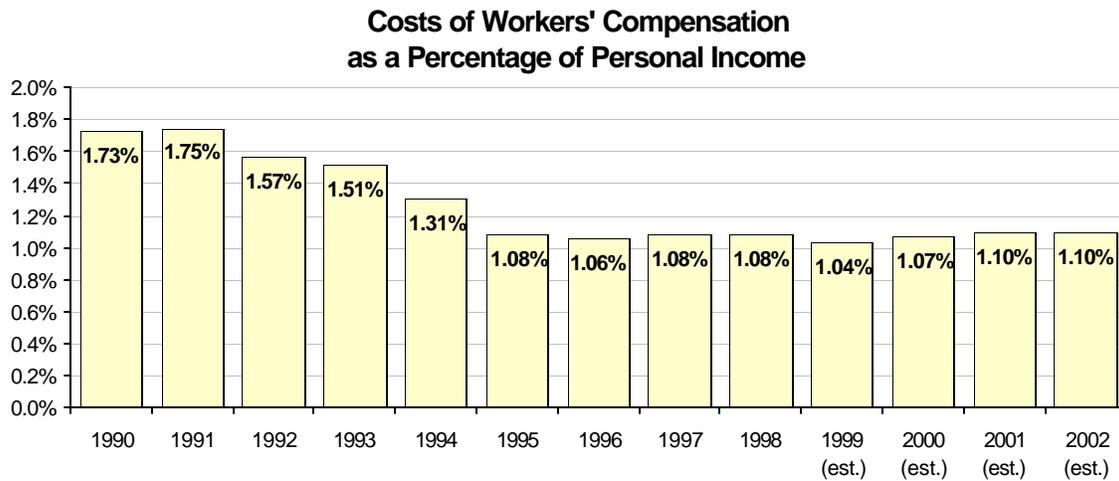
Although 'total payroll' is the preferred indicator against which to compare workers' compensation costs, comparisons of workers' compensation costs against other economic measurements result in similar findings.

For example, when comparing workers' compensation costs against the Gross State Product, we find that 'baseline' costs have dropped from 1.40% of GSP in 1990 to 0.89% of GSP in 2000.



Source: 1990-1997 data - Department of Finance; 1998-2000 data - UCLA Anderson Forecasts

Similarly, when comparing workers' compensation costs against the Total Personal Income, we find that 'baseline' costs have dropped from 1.73% of Total Personal Income in 1990 to 1.10% of Total Personal Income in 2002.



Source: Department of Finance

**Workers' Compensation Benefits**

***Impact of Employment Growth on a Benefit Change***

This section concerns the effect of employment growth on the estimated impact of benefit increases. That is, if employment (or another economic dimension) grows, then the dollar size of a benefit increase will be larger, simply because the economy was larger.

The benefit increase will be larger in dollars (not percent change) because the economy is larger. However, the effect is a second order condition that changes the numbers only slightly and the percent change not at all. For illustration purposes only, a simplified example follows where we look at employment change in a growing economy and the impact on estimates of a benefit increase.

***(PLEASE NOTE: This Chart is for Illustration Purposes Only)***

	Initial Year	Future Period		
		Baseline: <u>No benefit increase</u>	With 10% <u>benefit increase</u>	<u>Difference</u>
		<u>With 5% employment growth</u>		
Employment	10 Million	10.5 Million	10.5 Million	
WC cost per worker	\$1000	\$1000	\$1100	
Total WC cost	\$10 Billion	\$10.50 Billion	\$11.55 Billion	\$1.05 Billion
		<u>Without employment growth</u>		
Employment	10 Million	10 Million	10 Million	
WC cost per worker	\$1000	\$1000	\$1100	
Total WC cost	\$10 Billion	\$10 Billion	\$11.0 Billion	\$1.00 Billion
Difference due to employment growth:		\$0.5 billion	\$0.55 billion	\$0.05 Billion

The chart above shows briefly the impact of employment growth on estimates of the size of a benefit increase. Here we are applying a 10% benefit increase. Employment growth makes the size of total WC costs larger, but this affects the baseline costs as well as the estimate of costs after application of a benefit change. For the most part, these two effects cancel out.

So a 10% benefit increase raises costs by \$1 billion in a system with no growth in employment and \$1.05 billion when there is 5% employment growth. In this example, the effect of the employment growth on a \$1 billion benefit increase is \$50 million.

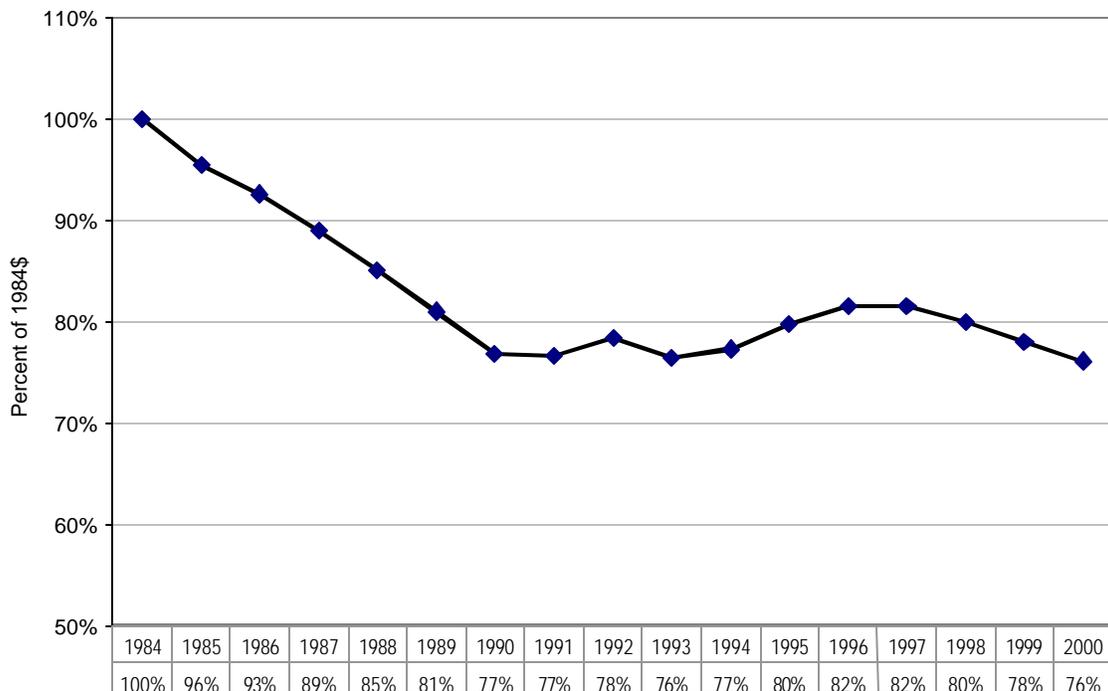
**Impact of Changes to the Permanent Disability Benefit**

Permanent Disability benefit payment levels have been adjusted several times since 1984. These adjustments have included changing both the weekly maximum and the number of weekly payments. In addition, greater distinction was drawn between disability levels by adding higher maximum benefit levels for more severe claims. At the same time, inflation reduced the value of benefits.

The maximum weekly benefit level was increased most for the very highest disability levels. Because the highest disability categories include a small fraction of PD claims, the impact of the increases since 1991 for the majority of PD recipients have been more than offset by the effect of inflation on the value of the benefit.

Overall, the value of the benefit after adjustment for inflation has declined to about 80% of its value in 1984, as illustrated in the chart below. *Appendix C* contains a complete description of the methodology used.

**Weighted Average Permanent Disability Benefit  
(Paid at maximum, 1984=100%)**



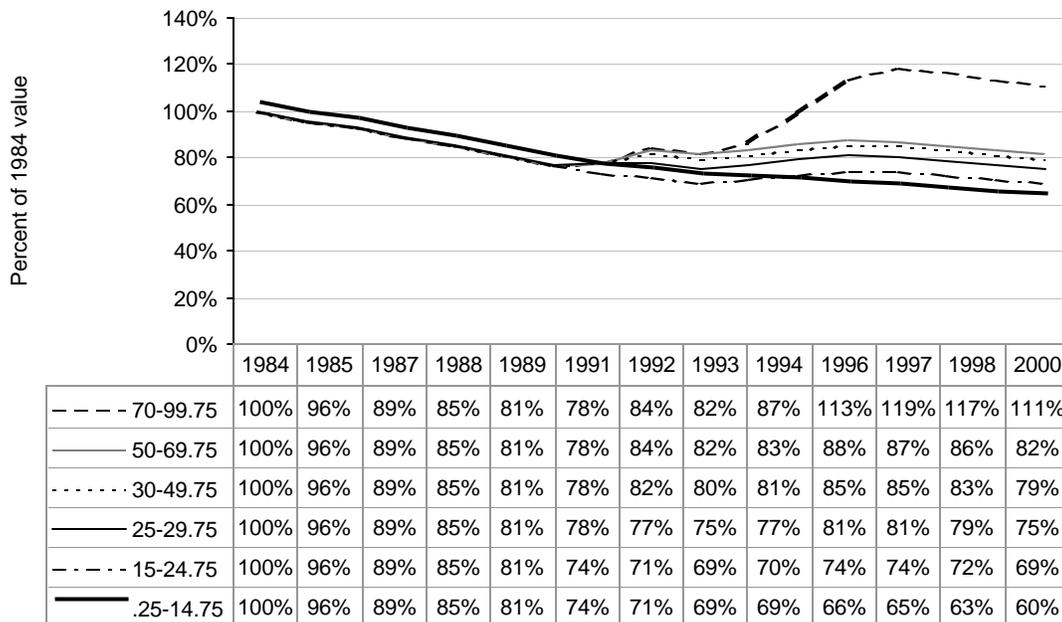


**PD Changes by Rating Level**

The benefit increases that went into effect from 1992 to 1996 applied in the main to the higher permanent disability ratings. For the highest PD interval 70-99.75%, benefit levels were increased substantially, enough that even after the effects of inflation, the level of benefit exceeded that in 1984.

However, for the lowest PD ratings, those under 15%, no benefit increase has been enacted since 1984 and the inflation adjusted value of the benefit is 60% of what it was in 1984. The following chart shows the inflation-adjusted value of the PD benefit for each interval relative to 1984.

**Value of Disability Benefit by PD Rating Level**  
Adjusted for Inflation (1984=100)



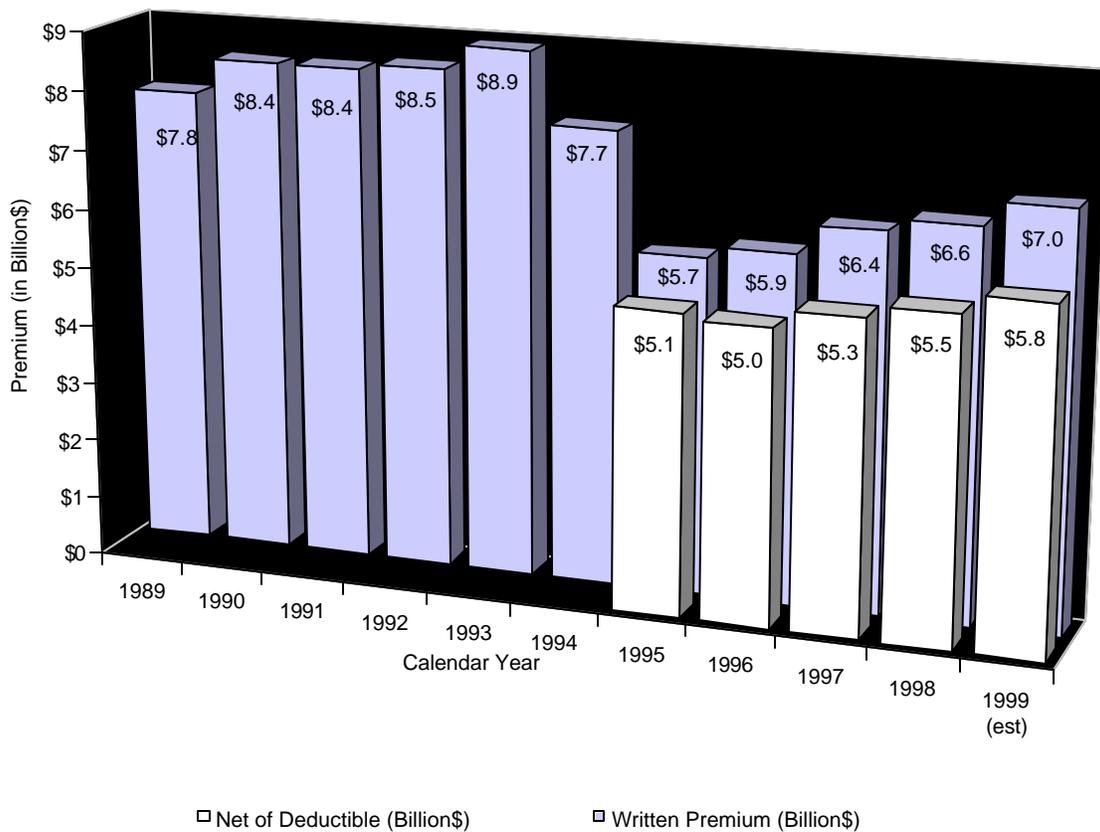
In summary, the value of the permanent partial disability benefit has declined by 20% in the last 15 years. This has been most seriously felt by the over 40% of permanent disability participants who receive ratings under 15%. For this group of lower rated claims, the inflation adjusted value of the benefit is 60% of what was paid in 1984.

**Workers' Compensation Insurance Market**

**California's Workers' Compensation Premiums**

The WCIRB estimates, based on a reported \$5.2 billion of written premium through September 30, 1999 (prior to the application of deductible credits), that the written premium for calendar year 1999 is approximately \$7 billion.

**California Workers' Compensation Written Premium**



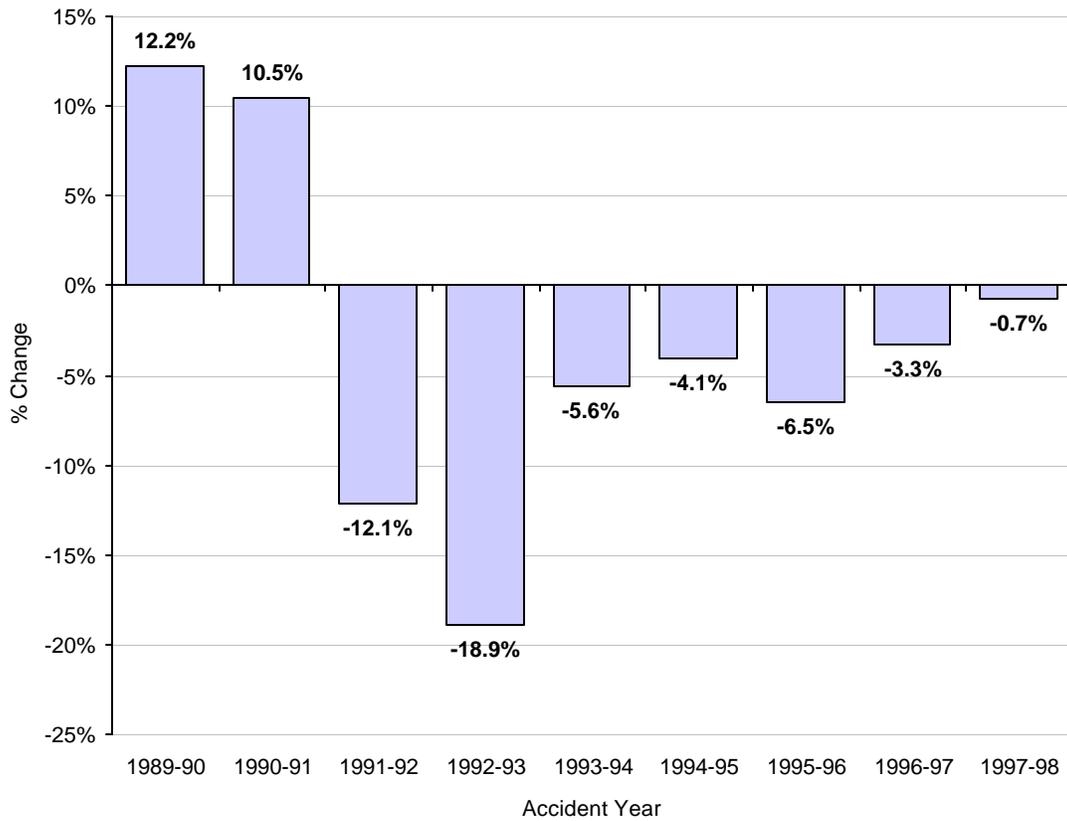
Source: Workers' Compensation Insurance Rating Bureau of California

**Indemnity Claim Frequency**

The following chart shows how the indemnity claim frequency has changed from accident year to accident year. Decreases have been noted since 1991-92.

The decline in frequency has continued despite the robust growth in the number of persons employed in the California economy.

**California Workers' Compensation  
Estimated Percent Change in Indemnity Claim Frequency  
By Accident Year, as of September 30, 1999**



Source: Workers' Compensation Rating Bureau of California

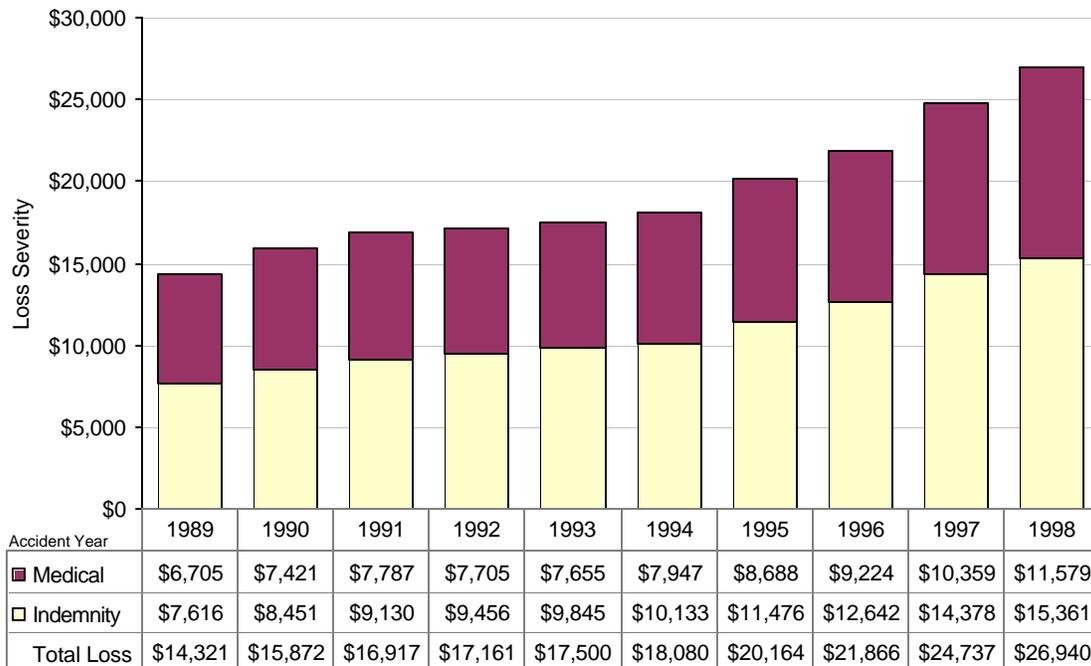
**Estimated Ultimate Total Loss Per Indemnity Claim**

The Workers' Compensation Insurance Rating Bureau of California (WCIRB) has published the following estimates of the ultimate total loss per indemnity claim by accident year, as of September 30, 1999.

The WCIRB predicts that the average cost of a 1998 indemnity claim will be \$26,940, which is 9% greater than in 1997 and 49% greater than in 1994. Please note that the 'mix' of injuries may have changed during this time, which could have led to higher average costs. Certain types of injuries, such as stress injuries, may have decreased substantially.

According to the WCIRB, both average indemnity and medical claim costs have shown significant increases over the last several years, as shown on the following graph. (CHSWC does not have access to data to verify these estimated increases in average claim costs.)

**Estimated Ultimate Total Loss per Indemnity Claim  
By year of accident**



Source: Workers' Compensation Insurance Rating Bureau of California

Please note that these cost estimates have not been indexed to take into account wage increase and medical inflation. The Medical Price Index compiled by the US Department of Labor's Bureau of Labor Statistics (BLS) is not directly applicable to medical costs in California's workers' compensation. Also, workers' compensation costs operate within

fee schedules, which are likely to have an effect on price increases, which again may not be reflective of price changes in the general health arena.

For purposes of illustration, the following chart depicts total losses indexed for inflation -- medical costs are indexed by the Medical Price Index from the BLS, and the indemnity costs are indexed by the Consumer Price Index (CPI). However, please note that the Medical Price Index compiled by the US Department of Labor's Bureau of Labor Statistics (BLS), is not directly applicable to medical costs in workers' compensation. The BLS MPI reflects increases in the costs of medical procedures for all patients nationwide, not just for workers' compensation in California.

**Estimated Total Loss Per Indemnity Claim, Indexed for Inflation**  
(Indemnity by CPI, Medical by MPI, in 1989 dollars)



Source: Division of Workers' Compensation

Data for the chart above was adjusted for inflation using the following indices:

**Medical Price Index and Consumer Price Index, by year**

Index	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998
CPI	121.1	127.4	134.6	138.1	142.6	146.2	150.3	154.4	159.1	161.6
MPI	143.8	155.9	171.0	184.3	196.4	206.4	216.6	225.2	231.8	238.1

**Workers' Compensation Premiums Compared with Insurer Loss and Expenses**

According to the Workers' Compensation Insurance Rating Bureau of California, the following table shows the total workers' compensation premium amounts paid by employers compared with the estimated ultimate losses and expenses borne by insurers.

<b>Accident Year</b>	<b>WC Premiums (million\$)</b>	<b>Estimated Ultimate Losses (million\$)</b>	<b>Expenses (million\$)</b>
1989	\$7,520	\$5,114	\$1,955
1990	\$8,044	\$6,210	\$2,172
1991	\$8,306	\$6,794	\$2,331
1992	\$8,353	\$5,480	\$2,673
1993	\$8,773	\$4,571	\$2,720
1994	\$7,658	\$4,373	\$2,604
1995	\$5,826	\$4,643	\$2,039
1996	\$5,754	\$5,121	\$2,187
1997	\$6,187	\$5,847	\$2,351
1998	\$6,459	\$6,440	\$2,648

Source: Workers' Compensation Rating Bureau of California

**California's Industrial Injuries and Illnesses**

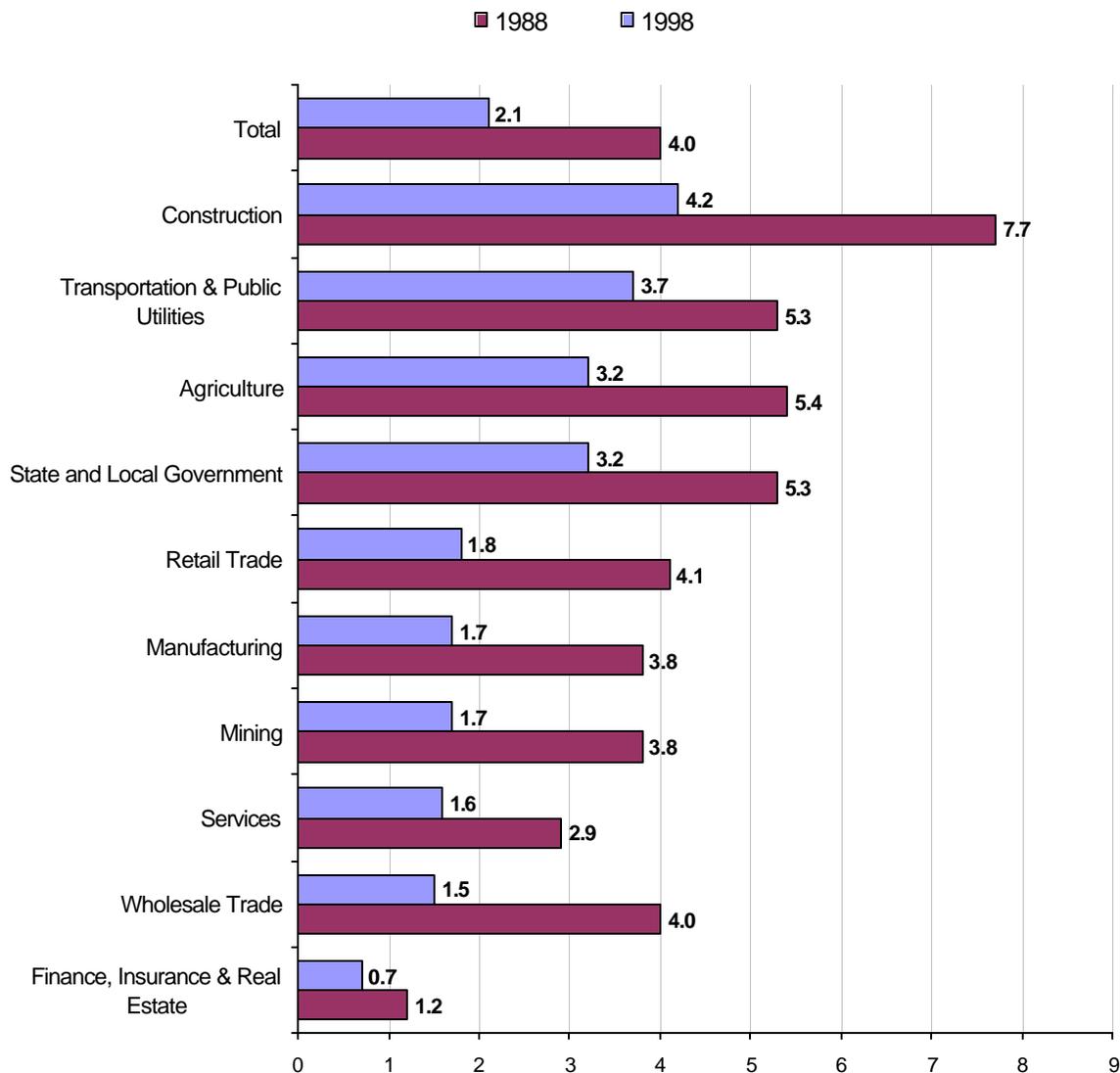
Since 1994, the number of disabling work injuries has continued to decline even though California's economy was growing.

This improvement has been ascribed to a number of factors including shifts in the workforce, greater emphasis on work-place safety, continued efforts to combat workers' compensation fraud, and changes in employer reporting patterns.

**Occupational Injuries and Illness Lost Time Rates by Industry**

Injury and illness lost time rates in all industries have declined in total by 48% between 1988 and 1998. The largest decreases in rates over the decade were seen in the wholesale trade, retail trade, manufacturing, and mining industries with rates of decline of 63%, 56%, 55% and 55% respectively.

**Injury and Illness Rates by Industry 1988 and 1998**  
Lost Time Cases per 100 Full Time Employees

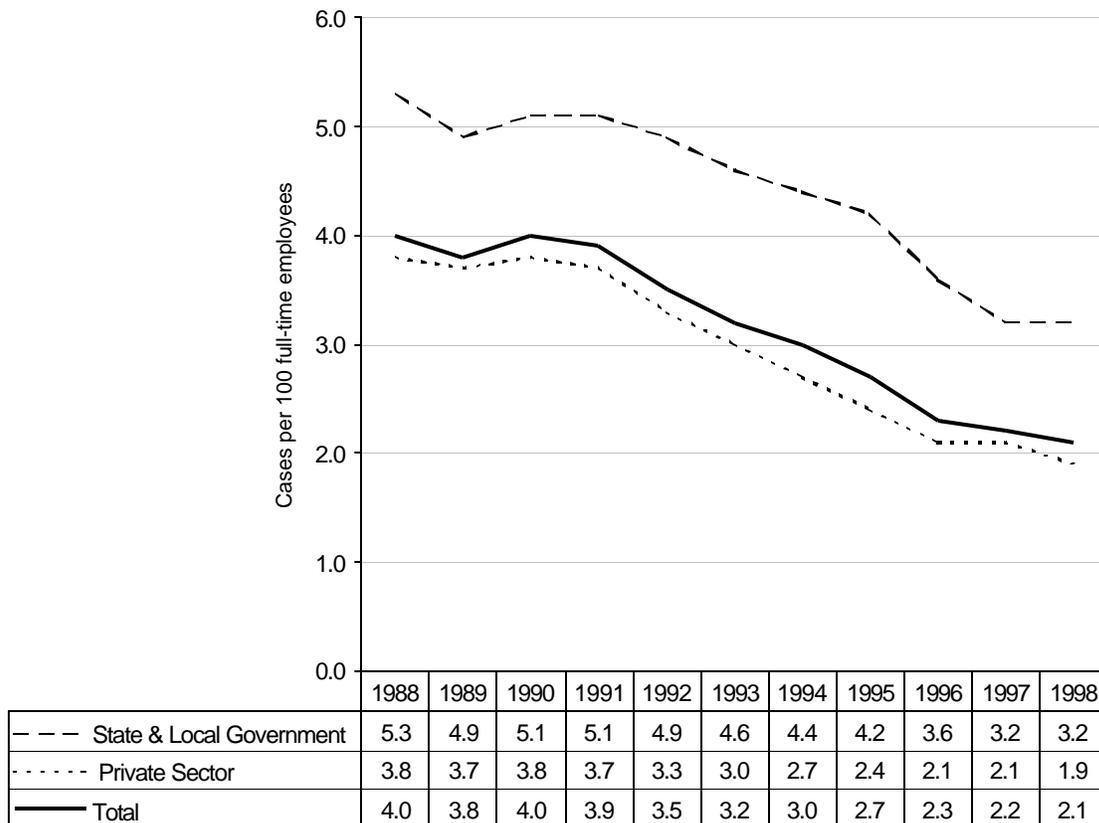


**Occupational Injuries and Illness Lost Time Rates by Sector**

The occupational injury and illness lost time rates in the private sector have declined overall in the same decade, except for a period of leveling off from 1996 to 1997.

Those rates in the State and Local government sectors declined by approximately 40% between 1988 and 1998, leveling off in 1997 and 1998.

**Occupational Injury and Illness Rates in California by Sector  
1988-1998**



Source: DIR Division of Labor Statistics and Research



## Conclusions

- California has the largest and most diverse economy in the nation. The California economy is robust and is projected to continue to do very well. Economic growth in California is expected to continue to exceed that of the nation as a whole, reflecting faster population growth and the state's favorable mix of high-tech industries. The resources appear to be there to provide adequate compensation to those workers who lose their ability to compete in the labor market.
- California's industrial injuries and illness rates have declined significantly in all industries and sectors between 1988 and 1998 even though California's economy was growing. This improvement has been ascribed to a number of factors including shifts in the workforce, greater emphasis on work-place safety, continued efforts to combat workers' compensation fraud, and changes in employer reporting patterns.
- Workers' compensation benefits have not kept up with inflation. For example, the value of the permanent disability benefit after adjustment for inflation has declined to about 80% of its value in 1984. Consideration should be given to indexing benefits.
- Workers' compensation costs decreased from 1992 through 1995 due in large part to declining claim frequency and the elimination of the minimum rate law governing workers' compensation premiums.
- Increases in workers' compensation costs from 1995 to 1998 are due in part to the growth of the California workforce. Projected increases in cost from 1999 to 2005 also take into account projected workforce growth. These estimates reflect underlying cost increases calculated by the Workers' Compensation Insurance Rating Bureau of California (WCIRB) that led WCIRB to recommend increases in the premium rate.
- The ratio of workers' compensation costs to total payroll (and to the Gross State Product and to Personal Income) has dropped significantly during the 1990s. Proposed increases to benefits do not seem to significantly impact the ratio of benefits to total payroll (and to GSP and PI), but such increases could affect certain sectors more than they might others.
- Whenever a benefit increase goes into effect, the Commission on Health and Safety and Workers' Compensation should study the impact of benefit increase on wage loss of workers, time-out of work, the benefit adequacy and equity, costs and utilization. This should include an ongoing evaluation of the adequacy of workers' compensation benefit levels and recommendations for adjustments as needed.

### **Thanks and Acknowledgements**

CHSWC gratefully acknowledges the cooperation and assistance of the Workers' Compensation Actuarial Group in the preparation of this analysis:

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Irina Nemirovsky, Research Assistant  
Janice Yapdiangco, Staff Services Analyst

## Appendix A

## Estimating Costs

An estimate of the cost of workers' compensation as a percent of employer payroll requires the construction of time series data on both insured employer and self-insured employer costs. Because the data are presented as employer costs relative to payroll, the estimates developed here are for the ultimate cost to employers. For insured employers, these costs are represented by net premium (premium after dividends and rebates). For self-insured employers premium data are not available, consequently, employer costs have to be estimated based upon the relationship between direct loss costs (indemnity + medical) and actual employer costs (including administrative costs).

Insured employer costs:

1. For insured employers, historical data on workers' compensation premiums for 1989-1999 were available from the WCIRB.
2. These numbers were available as costs before dividend/rebates. Data on dividend and rebates were not available by year at the time of this report. Instead, generally accepted estimated averages were used. 11% was used for the period 1989-1994. For 1995 to 1999, 2% was used as the estimate. Consequently, premia for insured employers were reduced by 11% and 2% respectively.
3. For the period after 1999, neither actual nor estimated premium data are available. Therefore, employer cost data needed to be constructed. The starting point is the WCIRB estimate of insured employer direct loss costs for the period 2001-2005.
4. Earlier, this author developed post-deregulation estimates for the multiple of employer costs (premium less dividends and rebates) over direct loss costs. This multiple has been an average 1.16. That is, employer costs averaged 1.16 times the direct loss costs estimated by the bureau. Therefore, employer costs for 2001-2005 were calculated as 1.16 times the WCIRB estimates for insured employer direct loss costs.
5. Neither estimated premium nor estimated direct loss costs were available to the author for 2000 at the time this report was written. Therefore, estimates for calendar year 2000 were calculated as the average of calendar years 1999 and 2001.

Self-insured employer costs

1. Both past and future self-insured employer costs are constructed as a multiple of employer estimated direct loss costs. Time series data on actual direct loss costs for self-insured employers is incompletely and inconsistently reported and unreliable for the calculations here. Consequently, self-insured direct loss costs are estimated as a fraction of insured employers' direct loss costs for which consistent time series data are available.
2. The market share of self-insured employers was estimated in a separate paper by this author. The market share estimate for self-insured employers has changed since deregulation. Prior to deregulation, the market share estimate

customarily used was 33%. Current estimates place market share at approximately 28%. Market share estimates for the self-insured market are reduced from 33% in 1994 to 28% in 1999 by reducing the market share 1% per year over this period. Direct loss costs for self-insured employers are then

*(Insured employer loss costs) \* (self-insured market share)/(insured market share)*

3. The estimated direct loss costs are then multiplied by a factor which represents the difference between direct loss costs and employer actual costs. In the estimates presented here, we assume that the employer cost for self-insured employers has been a constant multiple of underlying direct losses. The multiple represents the combined effect of investment income and administrative costs. Insured employers' premium-to-direct loss ratio in the competitive post-deregulation period is probably a close approximation of long-term self-insured actual cost-to-loss cost. Self-insured employers may obtain some savings over insured employers on premium taxes and commissions. Many observers feel, however, that the insurers have priced insurance below cost in the post-deregulation market. Consequently we use the post-deregulation multiple of 1.16 calculated for insured employers to adjust self-insured employers direct loss costs to actual costs.
4. Direct loss costs were not available to the author at the time of this report for insured employers for 1999 and 2000. Therefore, the self-insured employer costs were averaged across 1998 and 2001 to create the estimates for 1999 and 2000.

#### Total employer costs and total wage and salary income

1. Total costs are the combined actual and/or estimated costs for insured and self-insured employers for each calendar year.
2. Total wage and salary income is from actual figures (1989-1998) and projections (1999-2002) from the California Department of Finance (DOF). Projections for 2003-2005 were estimated using the wage and salary growth estimated by DOF for the last year of their projections (6.6%).

#### Industry group estimates

The relative relationship of employer costs between broad industry groups was developed by the WCRIB from 1995 and 1996 policy year data. These relativities are used to estimate employer costs as a percent of payroll for these broad industry categories. While these relativities are based on data for 1995 and 1996, to the extent that the relationship between industries is stable overtime, the relationships are applicable to other years.

It should be noted that the category "Professional and Clerical Services" represents more than half (55%) of all payroll for these industry groups.

Appendix B

**Workers' Compensation Costs with and without a Benefit Increase  
Compared with Total Payroll**

(1) Year	(2) Total Payroll (billion\$)	(3) Total WC costs (billion\$)	(4) Costs as % of payroll (baseline)	(5)-(8) % of payroll under various benefit increases				(9)-(12) Benefit increases in billions of dollars				
				B1 %	B2 %	B3 %	B4 %	B1 \$	B2 \$	B3 \$	B4 \$	
1990	\$368.6	\$11.07	3.00%									
1991	\$372.8	\$11.41	3.06%									
1992	\$383.5	\$10.74	2.80%									
1993	\$384.4	\$10.57	2.75%									
1994	\$394.6	\$9.38	2.38%									
1995	\$414.8	\$8.12	1.96%									
1996	\$440.5	\$8.43	1.91%									
1997	\$475.2	\$9.18	1.93%									
1998	\$517.7	\$9.80	1.89%									
1999 (est.)	\$559.9	\$10.00	1.79%									
2000 (est.)	\$604.3	\$10.96	1.81%									
2001 (est.)	\$649.1	\$11.92	1.84%	1.91%	1.99%	1.91%	1.91%	\$0.5	\$1.0	\$0.5	\$0.5	
2002 (est.)	\$692.1	\$12.57	1.82%	1.89%	1.96%	1.96%	1.96%	\$0.5	\$1.0	\$1.0	\$1.0	
2003 (est.)	\$737.8	\$13.21	1.79%	1.86%	1.93%	1.93%	1.99%	\$0.5	\$1.0	\$1.0	\$1.5	
2004 (est.)	\$786.5	\$13.86	1.76%	1.83%	1.89%	1.95%	2.02%	\$0.5	\$1.0	\$1.5	\$2.0	
2005 (est.)	\$838.4	\$14.50	1.73%	1.79%	1.85%	1.91%	2.03%	\$0.5	\$1.0	\$1.5	\$2.5	

This table presents workers' compensation costs as a percent of payroll. Column 2 is California wage and salary income. Column 3 is the estimated employer cost for workers' compensation in billions of dollars. Cost divided by payroll gives column 4, workers' compensation as a percent of payroll.

Columns 5-8 exhibit the cost of workers compensation as a percent of payroll for the years 2001-2005 under four different benefit increases, which are shown in columns 9 - 12. The benefit increase in column 5 would raise workers compensation costs by \$500 million each year. Column 6 represents a benefit increase that would raise costs by \$1 billion per year. Column 7 shows the impact of benefit increases from \$0.5 billion to \$1.5 billion phased in over five years. Column 8 shows the impact of benefit increases from \$0.5 billion to \$2.5 billion phased in over five years.

**Appendix C**

**Permanent Disability Benefit Levels Over Time**

The following methodology was utilized to compute the value of the permanent disability benefit over time.

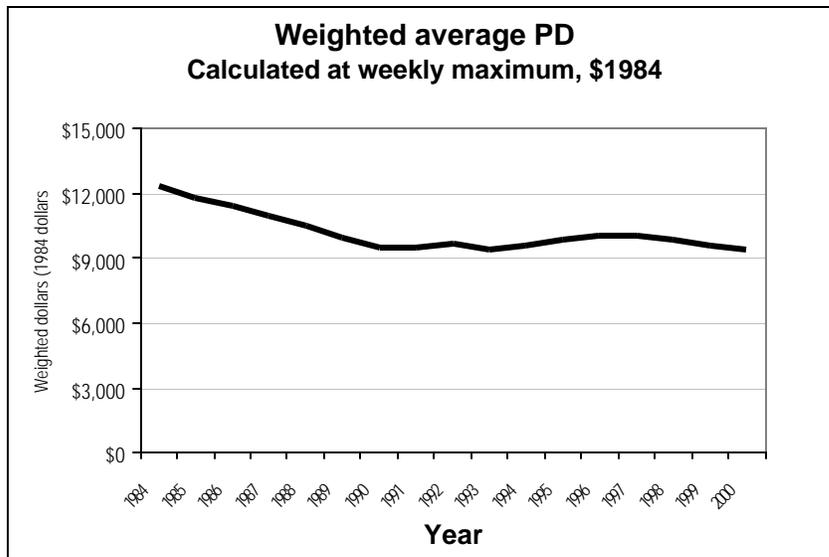
For this analysis, the value of the PD benefit for each calendar period was calculated for a rating at the midpoint of the permanent disability rating interval (.25-9.75, 10-14.75, 15-19.75, 20-24.75, 25-29.75, 30-49.75, 50-69.75, and 70-99.75).

The value was also calculated at the weekly benefit maximum, which applies to over 90% of the recipients.

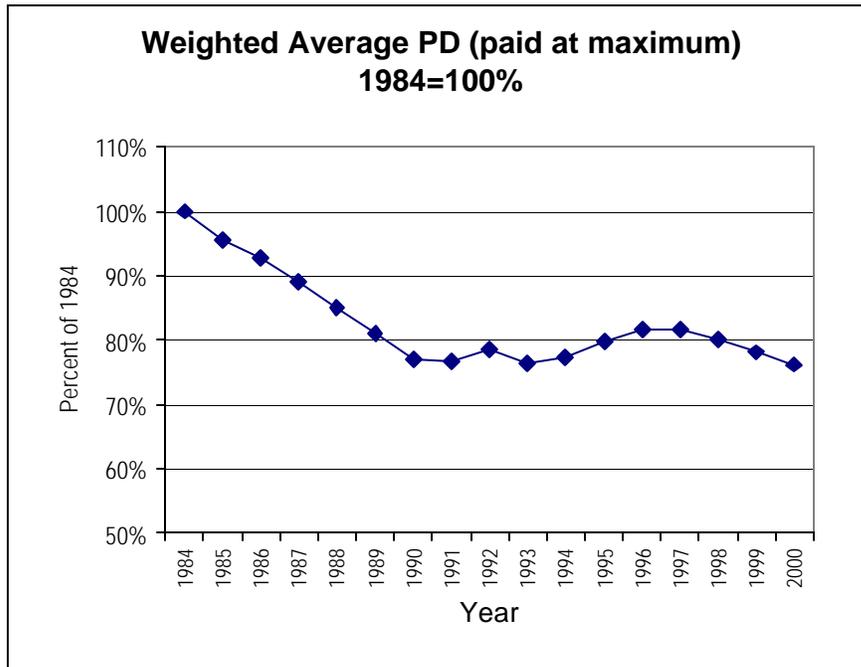
These values were adjusted for inflation each year using the Consumer Price Index for California.

Finally, to get an overall value, each PD interval was weighted according to the percent of all disability ratings that fell in that interval.

The following chart shows the weighted average permanent disability award 1984 – 2000, expressed in 1984 dollars. The 1999 and 2000 amounts are estimated based on the projected change in the CPI.



These data can also be presented as a fraction of the value of the benefit in 1984. The following chart shows the value of the benefit relative to a value of 100% in 1984.



## **SYSTEM PERFORMANCE**

### **Introduction**

CHSWC wishes to monitor the overall performance of the entire system to determine whether it meets the Constitutional objective to “accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character ...”.

In this section, CHSWC has been attempting to provide performance measures to assist in evaluating the system impact on everyone, particularly on workers and employers.

Through its studies and from the community, CHSWC has compiled the following information pertaining to the performance of California's systems for health, safety and workers' compensation. Brief interpretations are provided with the graphical representations.

The first subsection deals with how well the system is operating, in terms of the volumes of workload and the timeliness of actions. This affects both employers and employees. The second subsection discusses the costs, of particular interest to employers. The impact on workers in terms of benefits and outcomes is the focus of the third subsection.

### **Administrative Operations**

- DWC Incoming workload
- DWC Hearings
- DWC Decisions
- DWC Lien decisions
- Vocational rehabilitation plan approvals and disapprovals
- Vocational rehabilitation decisions and orders after conference

### **Costs**

- Premium costs
- Insurer expenditures
- Indemnity
- Medical-legal costs

### **Outcomes**

- Injury and Illness Rates
- Permanent Disability
- Vocational Rehabilitation

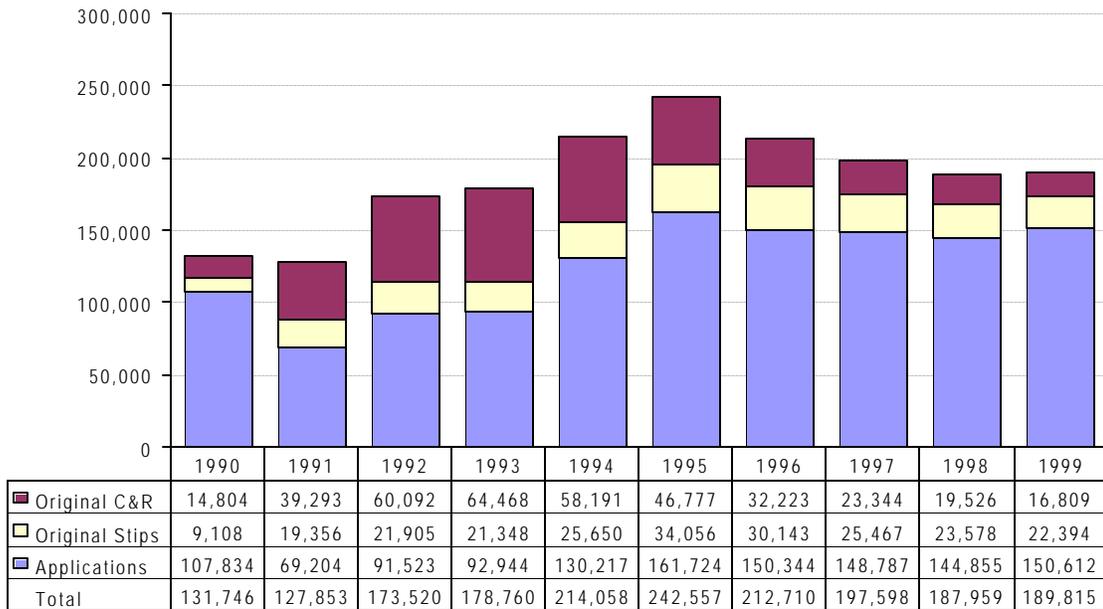
**Administrative Operations**

**DWC Opening Documents**

Three types of documents open a WCAB case. The chart below shows the numbers of Applications for Adjudication of Claim (Applications), Original Compromise and Releases (C&Rs), and Original Stipulations (Stips) received by the Division of Workers' Compensation.

The number of documents filed with the DWC to open a WCAB case on a workers' compensation claim has fluctuated during the 1990's. This variability in pattern is coincident with the implementation of the workers' compensation reform legislation of 1989 and 1993.

**DWC Opening Documents**



The chart above shows that although the number of applications for adjudication of claim dropped significantly, the substantial increases in original C&Rs and Stips made the total numbers filings relatively unaffected from 1990 to 1991.

The period from 1991 to 1992 shows growth in all categories of case opening documents. This was followed by a year of leveling off between 1992 and 1993. The period from 1993 to 1995 is one of substantial increases in applications, slight increases in Stips and significant decreases in C&Rs.

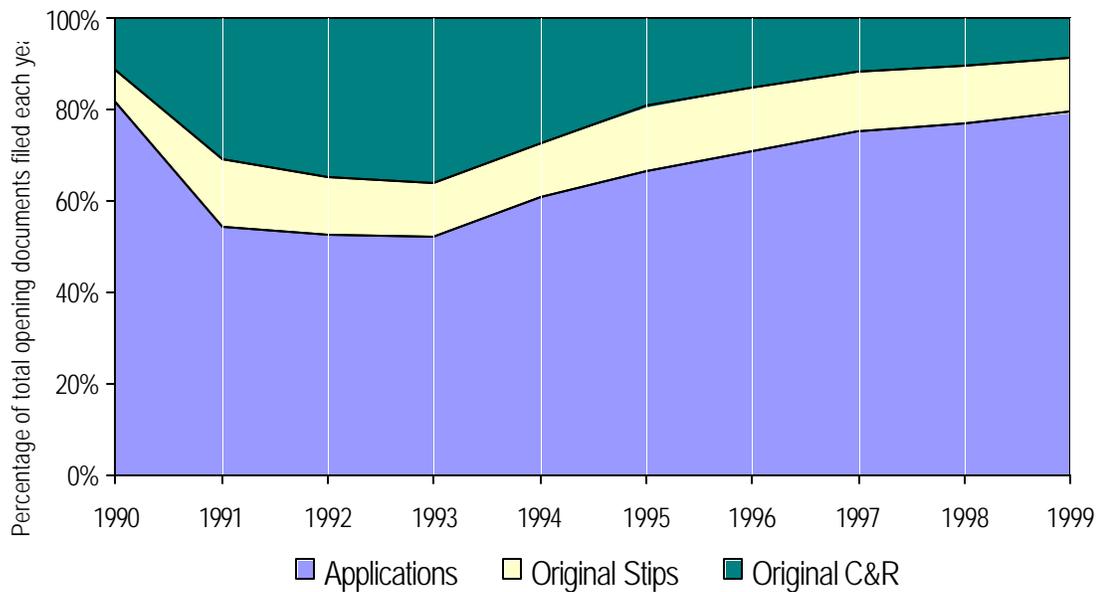
The numbers of opening documents in all categories declined from 1995 to 1998.

From 1998 to 1999, the total number of filings rose slightly, reflecting an increase in the number of applications, a decrease in C&Rs, and a slight decrease in Stips.

**Mix of Opening Documents**

As shown in the graphic below, the proportion or “mix” of the types of case-opening documents received by DWC varied during the 1990’s.

**DWC Opening Documents  
Percentage of each type by year**



Source: Division of Workers' Compensation

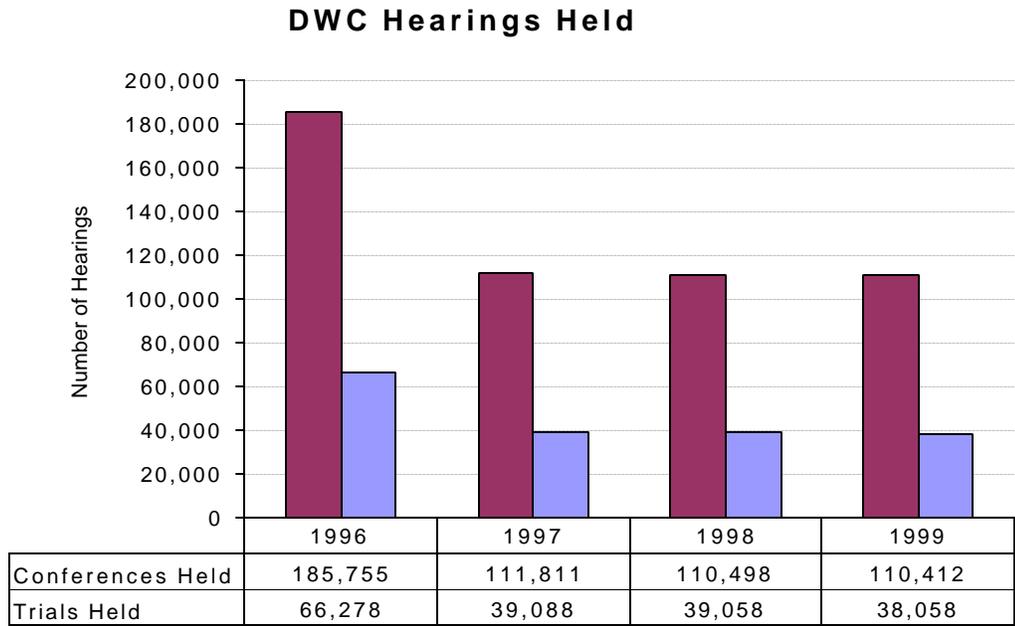
Applications for Adjudication of Claim initially dropped from about 80% of the total in 1990 to less than 60% in 1991, reflecting increases in both original Stips and C&Rs, The numbers of applications were steady from 1991 to 1993, then rose again through 1999.

The proportion of “original” (case-opening) Stipulations rose slightly from 1991 to 1992 then remained fairly constant.

The proportion of original C&Rs filed rose sharply from 1990 to 1991, increased slightly from 1991 to 1993, then declined during the period from 1993 to 1999.

**DWC Hearings**

As shown in the chart below, the numbers of both types of DWC hearings -- trials and conferences – declined sharply from 1996 to 1997, then remained constant from 1997 to 1999.



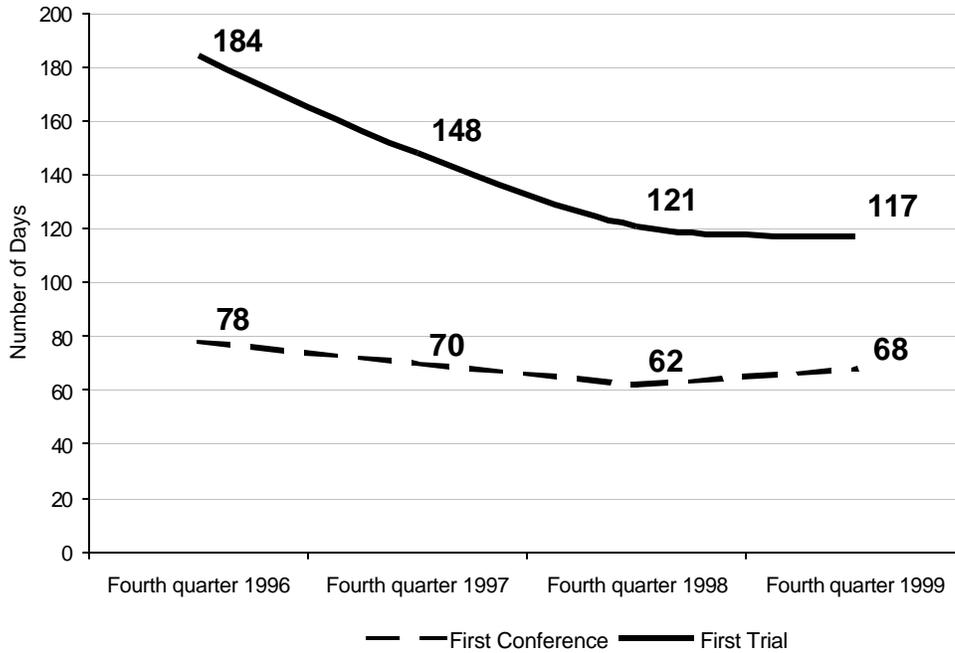
Source: Division of Workers' Compensation

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

In general, a conference is required to be held within 30 days of the receipt of a request in the form of a Declaration of Readiness. A trial must be held within 60 days of the request, or within 75 days if a settlement conference has not resolved the dispute. An expedited hearing must be held within 30 days of the receipt of the Declaration of Readiness.

# SYSTEM PERFORMANCE

## Elapsed Time in Days from Request to DWC Hearing



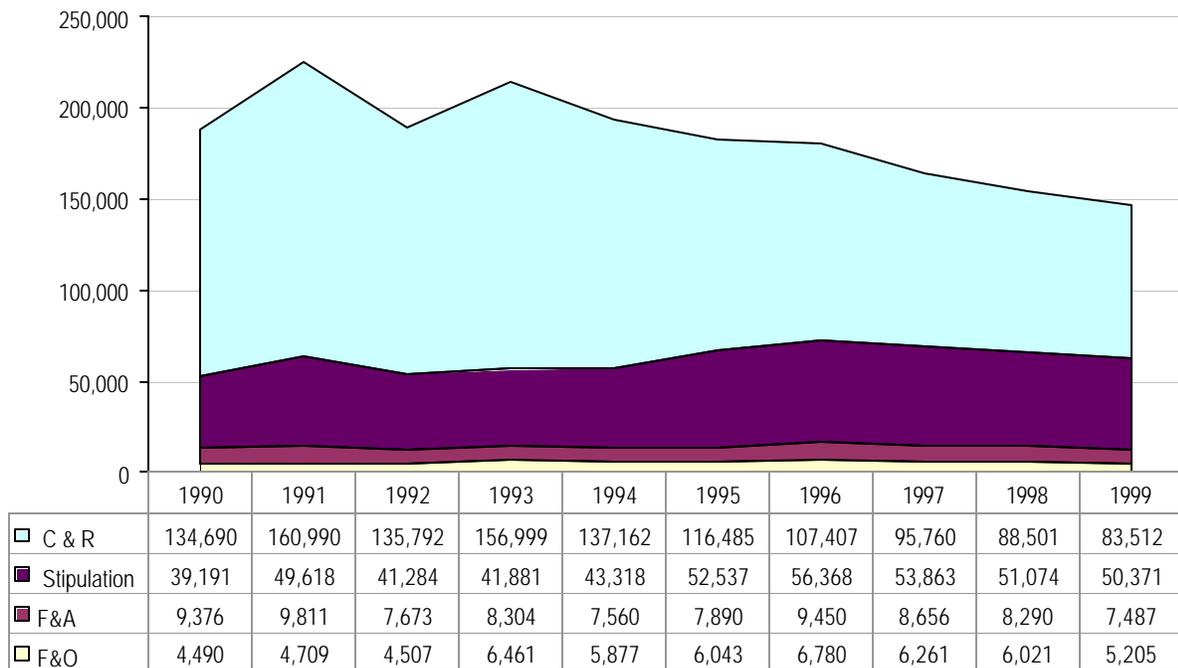
Source: Division of Workers' Compensation

As the above chart shows, although not meeting the statutory mandates, the average elapsed time from request to DWC hearing has decreased significantly over the past few years, with a slight increase from 1998 to 1999.

**DWC Decisions**

These data indicate that the number of decisions made by DWC that are considered to be case closing have declined overall during the 1990s.

**DWC "Case-Closing" Decisions**



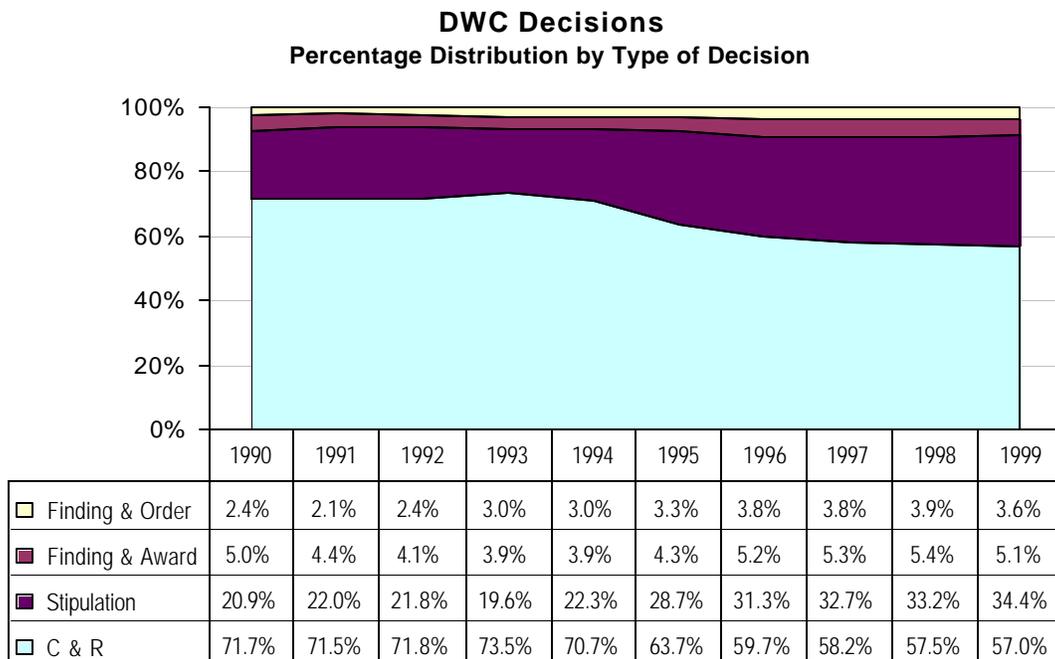
Source: Division of Workers' Compensation

- The numbers of Findings and Awards (F&As) and Findings and Orders (F&Os) have fluctuated slightly during the 1990s. Fewer F&As but more F&Os were issued at the beginning of the 1990s than at the end.
- Stipulations were issued consistently throughout the decade. The numbers of stipulations issued rose from 1990 to 1991, declined from 1991 to 1992, leveled off from 1992 to 1994, rose again in 1995 and 1996, then have declined slightly through 1999.
- The use of Compromise and Releases (C&Rs) decreased dramatically during the 1990s. C&Rs rose from 1990 to 1991, declined from 1991 to 1992, rose again from 1992 to 1993 and then have declined steadily from 1993 through 1999.

**Mix of DWC Decisions**

As shown on the charts on the previous page and below, the vast majority of the case-closing decisions rendered during the 1990s were in the form of WCAB judge approval of Stipulations and Compromise and Releases which were originally formulated by the case parties.

Only a small percentage of case-closing decisions evolve from a Finding and Award or Finding and Order, issued by a WCAB judge after a hearing.



Source: Division of Workers' Compensation

The relative proportion of the types of decisions rendered by the DWC remained fairly constant from 1990 to 1993.

Then during the period from 1993 through 1999, the proportion of Stipulations rose while the proportion of C&Rs declined. This reflects the large decrease in the issuance of C&Rs through the 1990s.

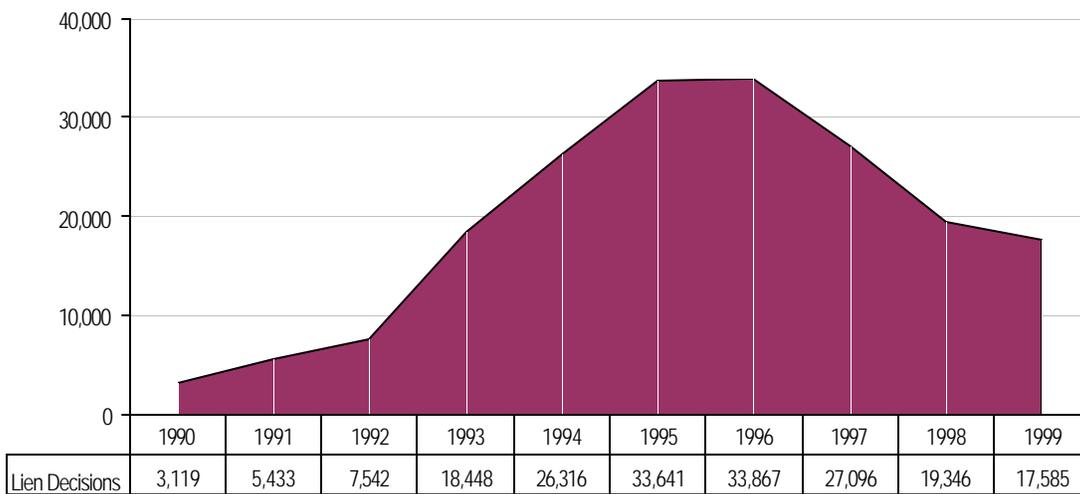
SYSTEM PERFORMANCE

**DWC Lien Decisions**

The DWC has been dealing with a large backlog of liens filed on WCAB cases.

These data indicate a large growth in decisions regarding liens filed on WCAB cases and a concomitant expenditure of DWC staff resources on the resolution of those liens.

**DWC Decisions on Liens**

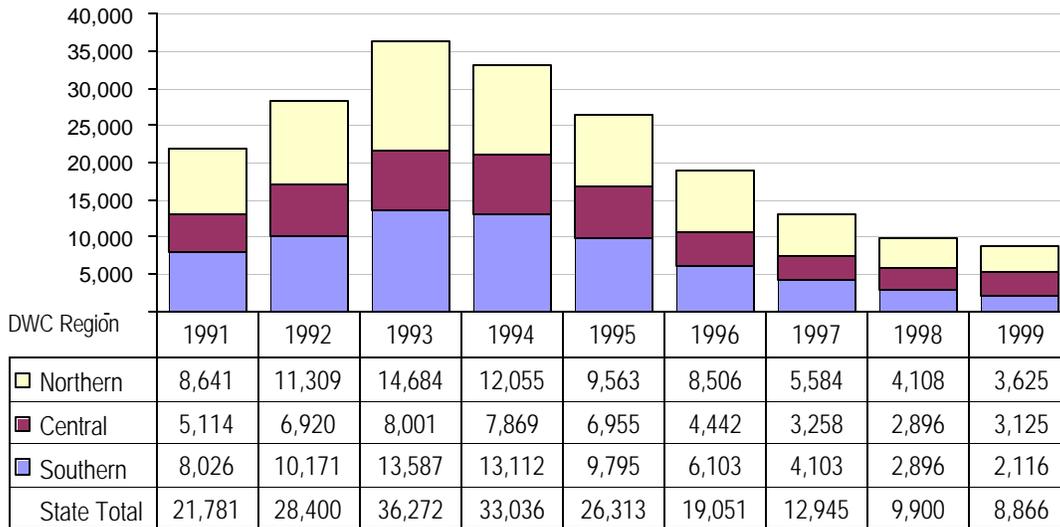


Source: Division of Workers' Compensation

### Vocational Rehabilitation Plan Approvals

The numbers of vocational rehabilitation plans approved by the DWC rose from 1991 to 1993, then have declined steadily and significantly from 1993 to 1999.

**Vocational Rehabilitation Plan Approvals**

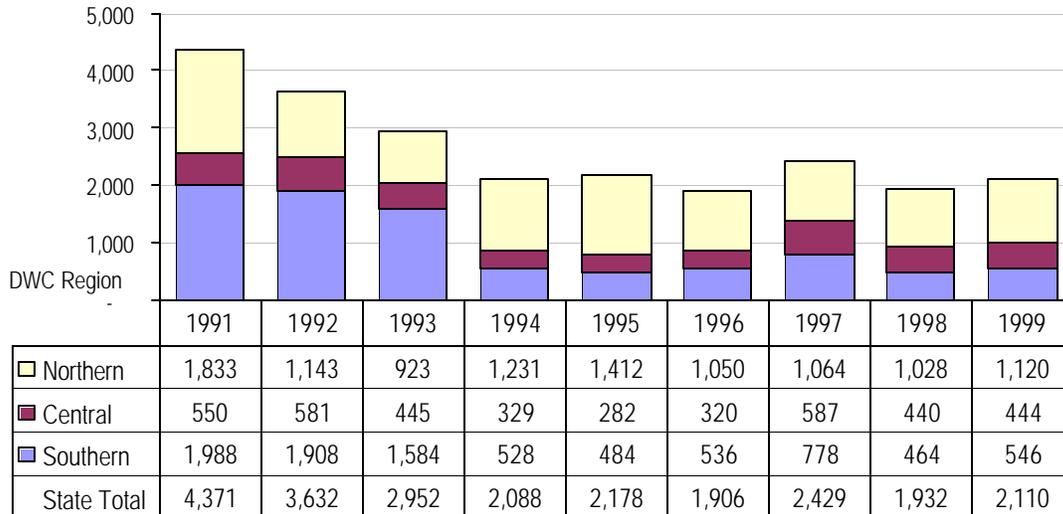


Source: Division of Workers' Compensation

### Vocational Rehabilitation Plan Disapprovals

## SYSTEM PERFORMANCE

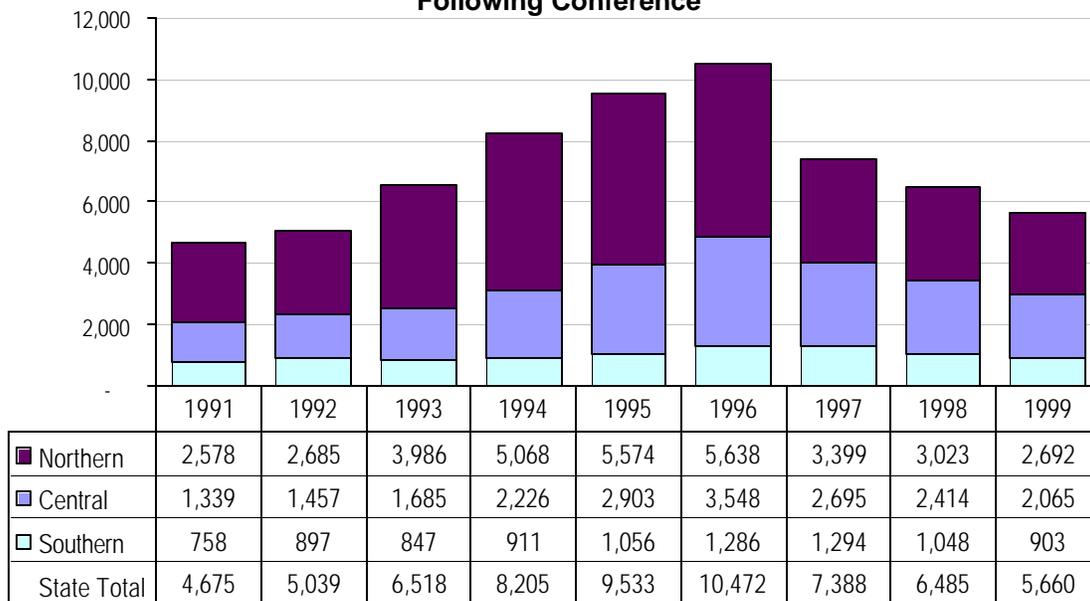
### Vocational Rehabilitation Disapprovals



Source: Division of Workers' Compensation

### Vocational Rehabilitation Decisions

#### Vocational Rehabilitation Decisions and Orders Following Conference



Source: Division of Workers' Compensation

**Costs**

**Workers' Compensation Premium**

While the overall rates charged for workers' compensation insurance have dropped an estimated 5%-6% since the high in 1993, the total amount of earned workers' compensation premium increased slightly in the latter part of the decade.

This increase in total premium appears to be reflective of

- movement from self-insurance to insurance,
- an increase in economic growth,
- wage growth and
- long-term movement from a manufacturing to a service economy.



A history of the 'workers' compensation advisory pure premium rate' recommendations and approvals is depicted on the following page.

**Advisory Workers' Compensation Pure Premium Rates**

*A History since the 1993 Reform Legislation*

**1993**

*Insurance Commissioner approved:*

Pure premium rates reduction of 7% effective July 16, 1993 due to a statutory mandate.

**1994**

*WCIRB recommendation:* No change in pure premium rates.

*Insurance Commissioner approved:*

Two pure premium rate decreases: a decrease of 12.7% effective January 1, 1994 and a second decrease of 16% effective October 1, 1994.

**1995**

*WCIRB recommendation:*

7.4% decrease from the pure premium rates that were in effect on January 1, 1994.

*Insurance Commissioner approved:*

A total 18% decrease to the pure premium rates in effect on 1/1/94 was approved effective January 1, 1995 (Note: this included the already approved 16% decrease effective October 1, 1994).

**1996**

*WCIRB recommendation:* 18.7% increase in pure premium rates.

*Insurance Commissioner approved:* An 11.3% increase effective January 1, 1996.

## SYSTEM PERFORMANCE

### **1997**

*WCIRB recommendation:* 2.6% decrease in pure premium rates.

*Insurance Commissioner approved:* A 6.2% decrease effective January 1, 1997.

### **1998**

*WCIRB recommendation:* The WCIRB initially recommended a 1.4% decrease that was later amended to a 0.5% increase.

*Insurance Commissioner approved:* A 2.5% decrease effective January 1, 1998.

### **1999**

*WCIRB recommendation:* The WCIRB initial recommendation of a 3.6% pure premium rate increase for 1999 was later amended to a recommendation for a 5.8% increase.

*Insurance Commissioner approved:* No change in pure premium rates for 1999.

### **2000**

*WCIRB recommendation:* An 18.4% increase in the pure premium rate for 2000.

*Insurance Commissioner approved:* An 18.4% increase effective January 1, 2000.

### **2001**

*WCIRB recommendation:* To be issued in July 2000.

*Insurance Commissioner approved:* Decision pending evaluation of recommendation.

## **Workers' Compensation Expenditures – Insured Employers**

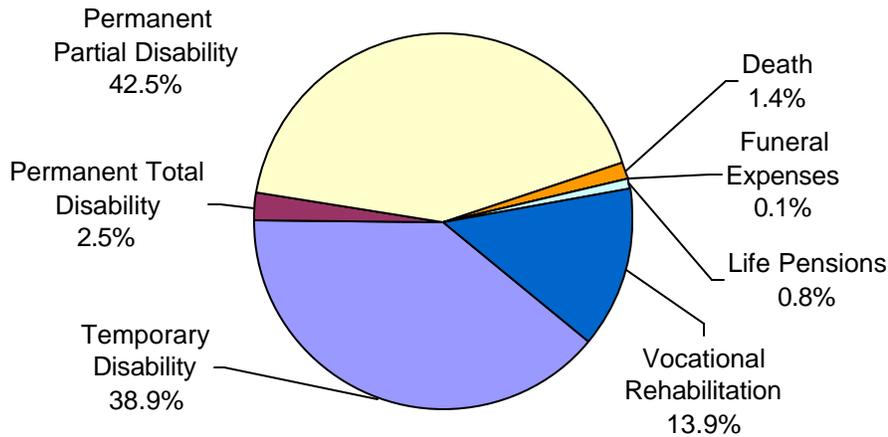
### ***Indemnity Benefits***

According to the Workers' Compensation Insurance Rating Bureau of California (WCIRB), total of \$3.1 billion in workers' compensation indemnity benefits were paid during 1999 by insured employers, an increase from the \$2.9 billion paid in 1998:

<b>Indemnity Benefit</b>	<b>1998</b>	<b>1999</b>
Temporary Disability	\$1,098,689	\$1,194,658
Permanent Total Disability	\$59,006	\$77,246
Permanent Partial Disability	\$1,258,904	\$1,304,567
Death	\$43,963	\$42,648
Funeral Expenses	\$1,965	\$1,880
Life Pensions	\$21,078	\$24,801
Vocational Rehabilitation	<u>\$411,689</u>	<u>\$427,048</u>
	<b>\$2,895,303</b>	<b>\$3,072,848</b>

Note: Figures are in thousands of dollars

**Indemnity Benefits Paid by Insured Employers - 1999**



Source: Workers' Compensation Insurance Rating Bureau of California

**Medical Benefits**

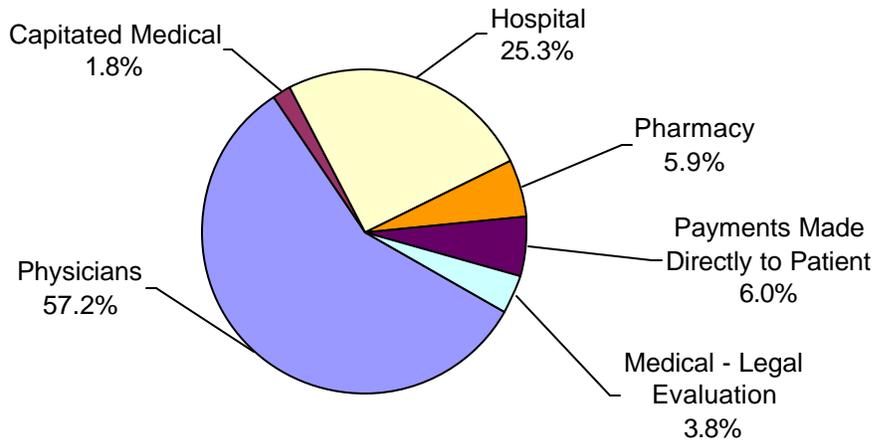
As reported by the WCIRB, workers' compensation medical benefits paid during 1999 by insured employers totaled \$2.5 billion, an increase from the \$2.3 billion paid in 1998.

Medical Benefit	1998	1999
Physicians	\$1,278,388	\$1,448,318
Capitated Medical	\$3,193	\$46,476
Hospital	\$595,075	\$640,579
Pharmacy	\$120,651	\$149,149
Payments Made Directly to Patient	\$160,630	\$152,521
Medical - Legal Evaluation	\$104,931	\$95,188
	<u>\$2,262,868</u>	<u>\$2,532,231</u>

Note: Figures are in thousands of dollars

SYSTEM PERFORMANCE

**Paid Medical Costs for 1999**

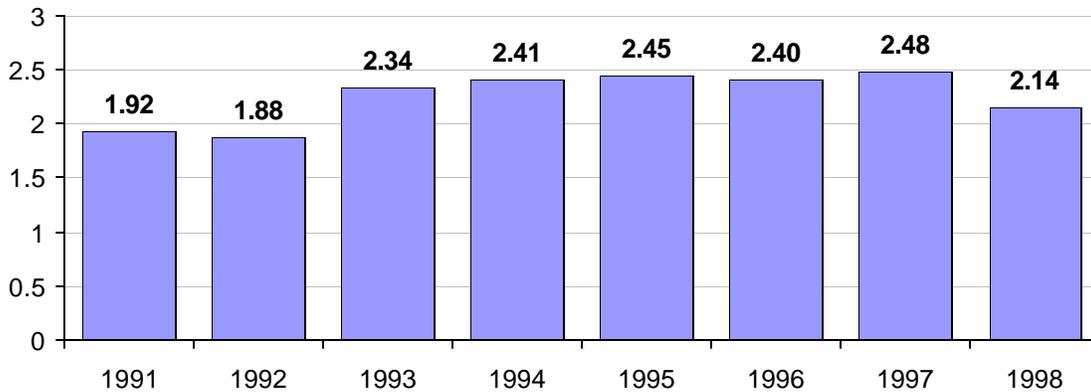


Source: Workers' Compensation Insurance Rating Bureau of California

**Workers' Compensation Expenditures - Private Sector Self-Insured Employers**

***Number of Employees***

**Employees of Private Sector Self-Insured Employers  
(in millions)**

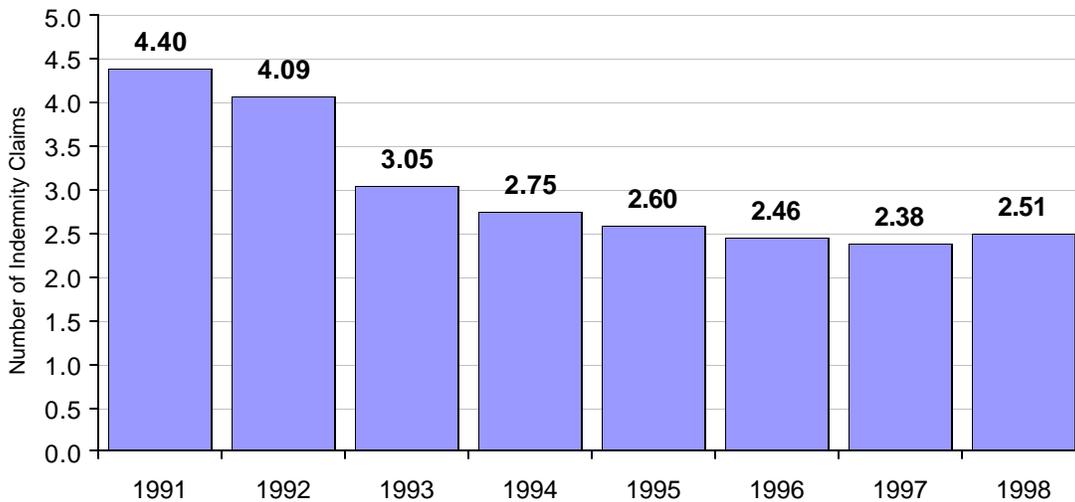


Source: Department of Industrial Relations - Self-Insurance Plans

***Number of Indemnity Claims***

**Indemnity Claims**

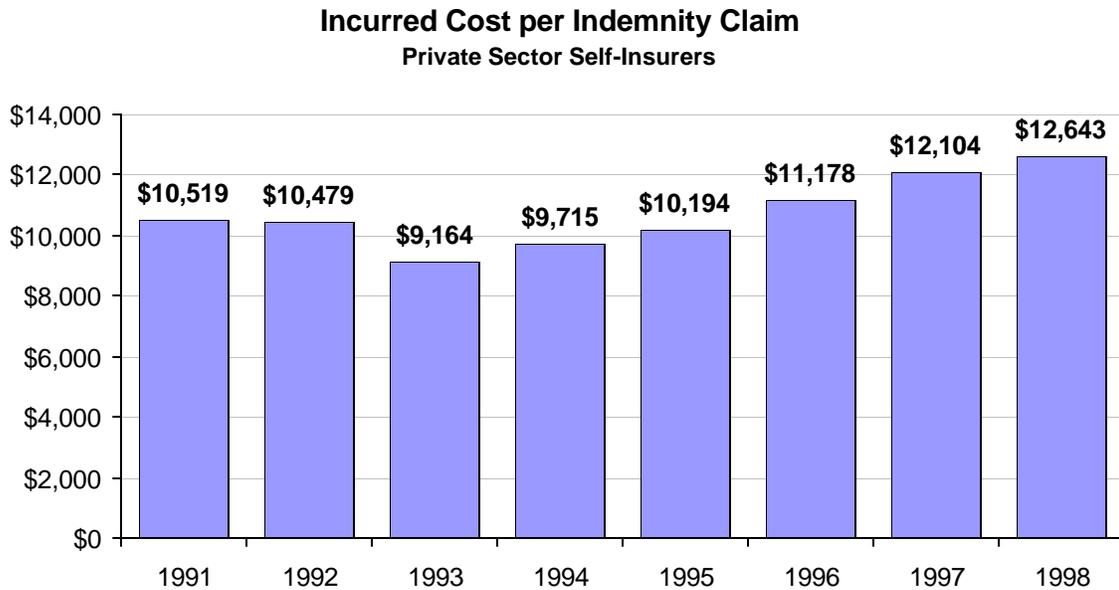
Per 100 employees of Private Sector Self-Insured Employers



Source: Department of Industrial Relations - Self-Insurance Plans

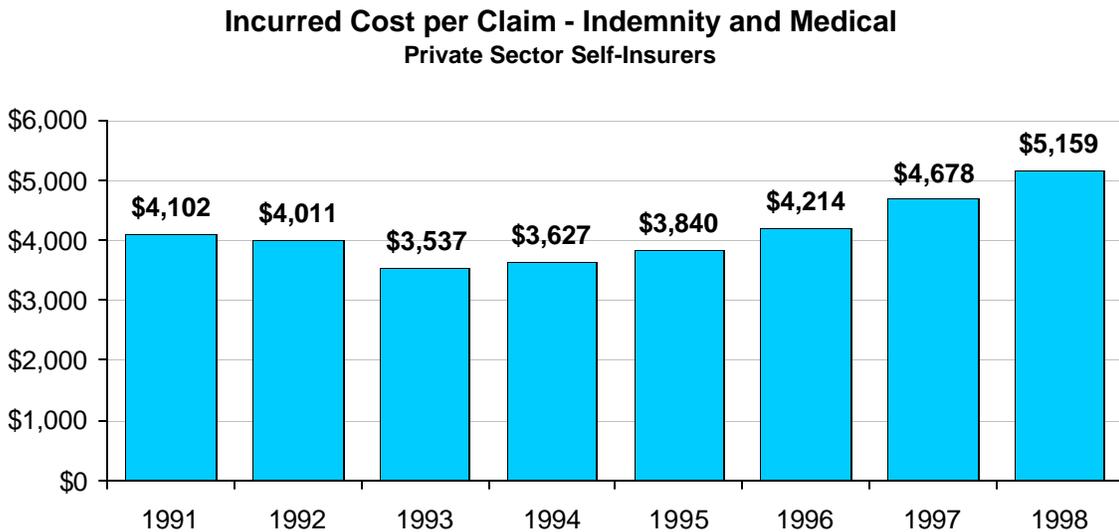
SYSTEM PERFORMANCE

***Incurred Cost per Indemnity Claim***



Source: Department of Industrial Relations - Self-Insurance Plans

***Incurred Cost per Claim – Indemnity and Medical***



Source: Department of Industrial Relations - Self-Insurance Plans

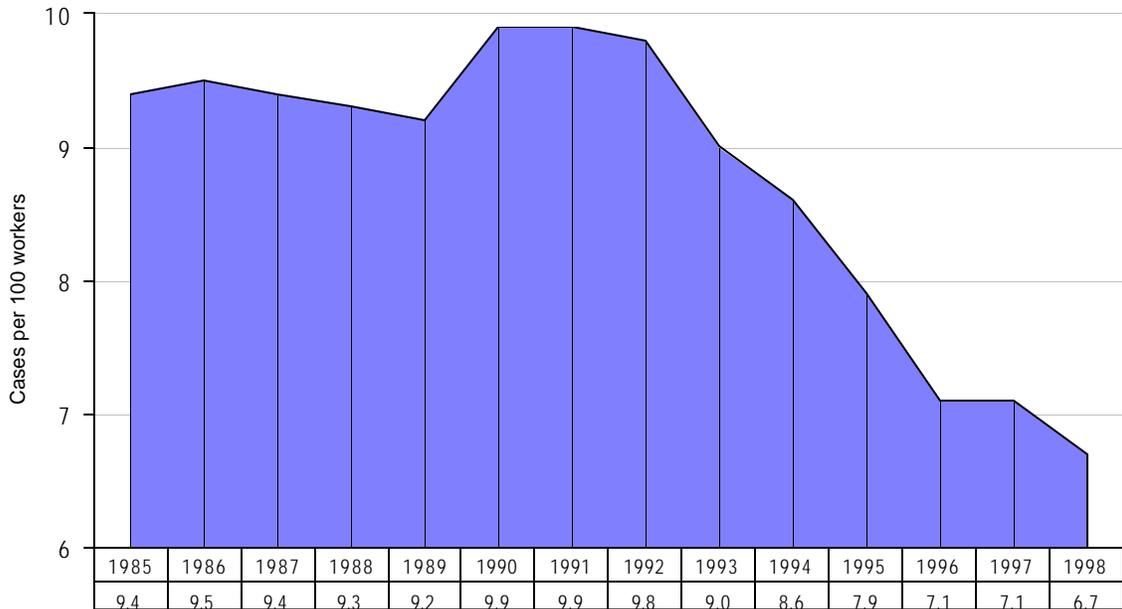
**Outcomes**

**Injury and Illness Rates**

During the 1990's, the injury and illness rates in California have declined steadily and significantly, from a high of 9.9 cases per 100 employees in 1990 and 1991 to 6.7 cases per 100 employees in 1998.

This is the lowest rate since collection of these statistics began in 1971.

**OSHA Injury and Illness Rates in California  
(Cases per 100 workers)**

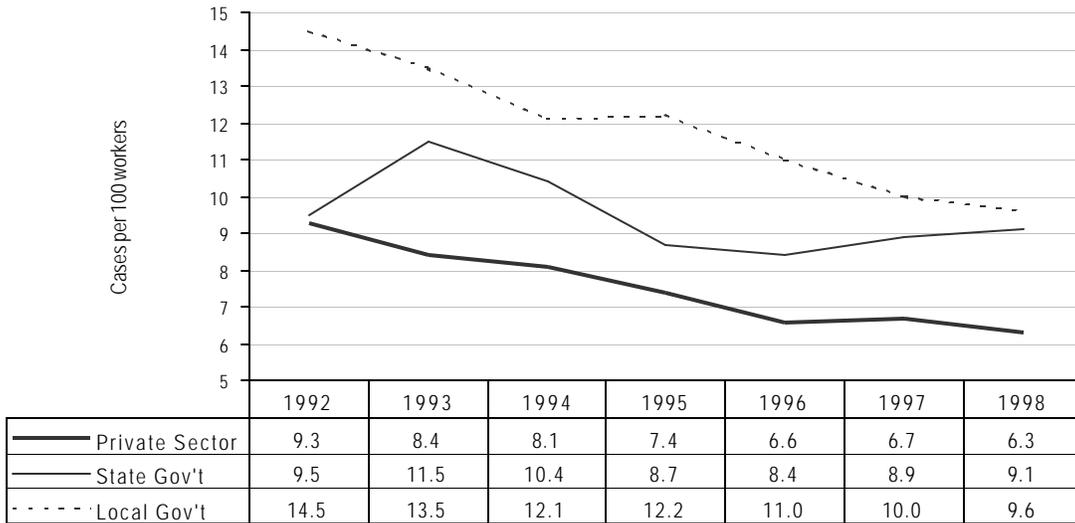


Source: Division of Labor Statistics and Research

As shown on the following page, the injury and illness rates and the lost time injury rates for the public and private sectors are also declining.

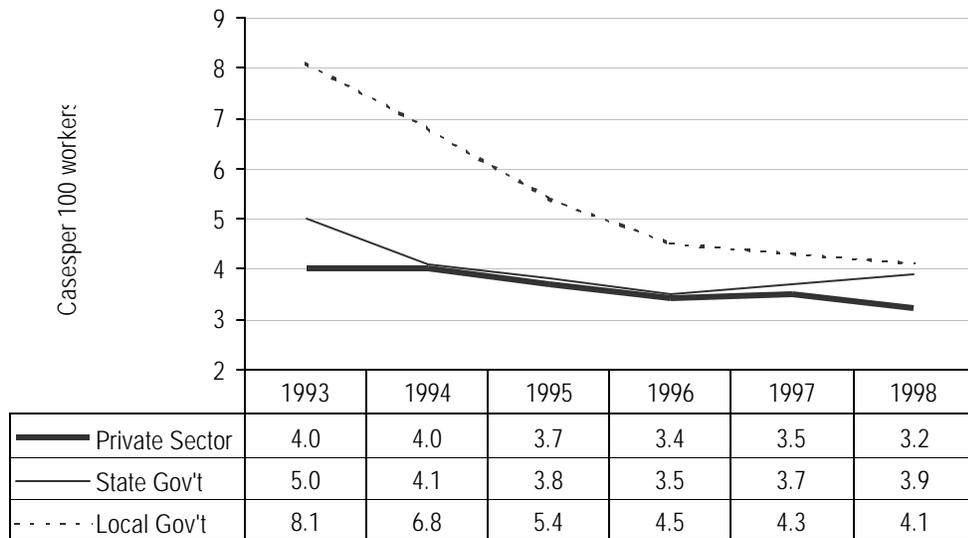
## SYSTEM PERFORMANCE

### Occupational Injury and Illness Rates in California by Sector



Source: Division of Labor Statistics and Research

### Lost Time Injury and Illness Rates in California by Sector



## SYSTEM PERFORMANCE

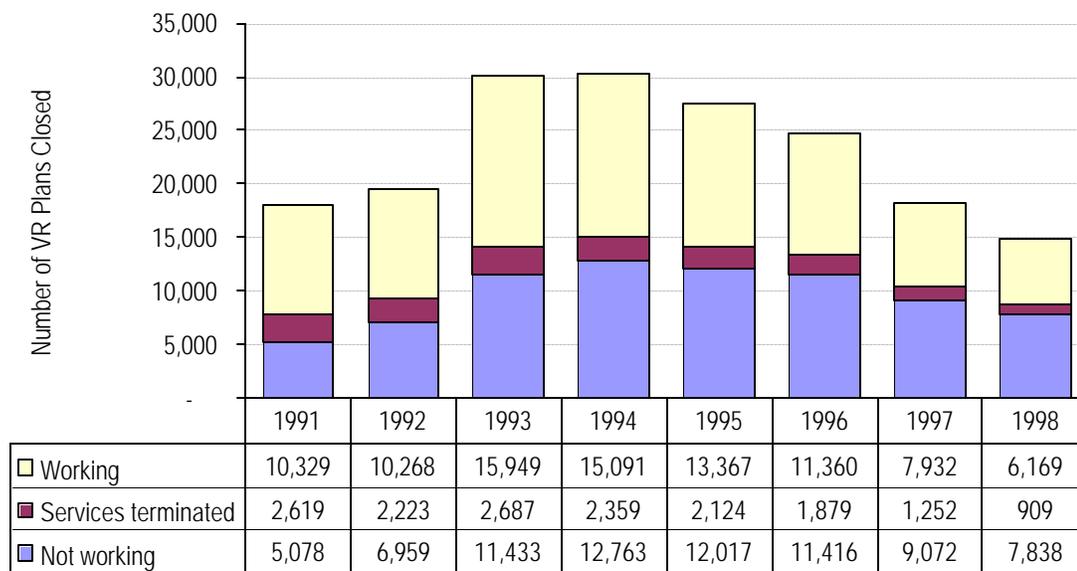
Source: Division of Labor Statistics and Research

**Vocational Rehabilitation**

**Work Status at Plan Closure**

This graph depicts the numbers of Vocational Rehabilitation (VR) plans that were closed during the 1990s by the injured workers' employment status at the time of plan closure.

**Work Status at Vocational Rehabilitation Plan Closure**



Source: Division of Workers' Compensation

The total numbers of vocational rehabilitation plans approved increased slightly from 1991 to 1992, then rose dramatically from 1992 to 1993 and stayed on that high level through 1994. From 1994 to 1997, the total number of plans closed declined each year until reaching the 1991 level.

The numbers of persons working at time of plan closure were static from 1991 to 1992, rose and maintained at that level from 1993 to 1994, then decreased steadily.

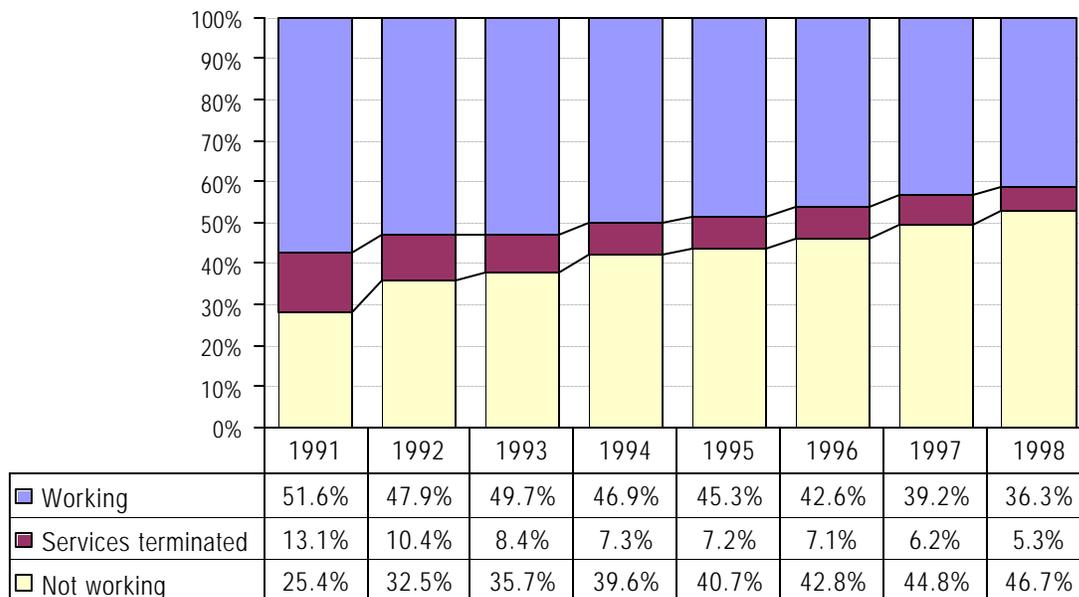
The numbers of injured workers who were not working at the time of VR plan closure rose dramatically from 1991 to 1994, then declined slightly to 1998. The numbers of plan terminations remained fairly constant before declining from 1996-1998.

**Vocational Rehabilitation Plan Outcomes**

The chart below depicts the relative status of injured workers at the time of the completion of their vocational rehabilitation plan.

Clearly, the vocational rehabilitation outcomes for injured workers have worsened during the 1990s.

**DWC Vocational Rehabilitation Plan Outcomes**



Source: Division of Workers' Compensation

The proportion of rehabilitated employees working at the time of plan completion has declined during the 1990's. So has the proportion of those workers whose vocational rehabilitation services were terminated before plan completion.

Consequently, the proportion of workers not working at the time of plan completion has increased steadily during that time.

## PROJECTS AND STUDIES

### INTRODUCTION

In response to its Labor Code mandate, CHSWC has engaged in many studies to examine health, safety and workers' compensation systems in California. CHSWC has concentrated these efforts on areas that are most critical and of concern to the community.

CHSWC studies are conducted by independent researchers, under contract with the State of California. Advisory Committees, composed of interested members of the workers' compensation community and the public, provide comments, suggestions, data and feedback.

Studies were initially formed to evaluate changes to the system after the implementation of workers' compensation legislative reforms in the early 1990's and to assess the impact on workers and employers. While that focus continues, the scope of CHSWC projects has also evolved in response to findings in the initial studies, and to concerns and interests expressed by the Legislature and the workers' compensation community.



#### **California Labor Code Section 77(a)**

"The commission shall conduct a continuing examination of the workers' compensation system ... and of the state's activities to prevent industrial injuries and occupational diseases. The commission may contract for studies it deems necessary to carry out its responsibilities."

This section of the Annual Report contains an overview of all CHSWC projects and studies followed by synopses of current and recently completed projects and studies. These are categorized as follows:

- Permanent Disability
- Return to Work
- Workers' Compensation Reforms
- Occupational Health and Safety
- Workers' Compensation Administration
- Information Services
- Community Concerns

**OVERVIEW OF CHSWC PROJECTS AND STUDIES**

**Permanent Disability**

**Initial Wage Loss Analysis**

Status: Completed

For further information...



CHSWC Report: Permanent Disability Study Report (RAND, 1997)

**Enhancement of Wage Loss Analysis – Self Insureds**

Status: *In process*

For further information...



See the project synopsis in this section of this Annual Report.

**Impact of Local Economic Conditions on Wage Loss**

Status: *In process*

For further information...



See the project synopsis in this section of this Annual Report.

**Analysis of Wage Loss and Return to Work in other states**

Status: *In process*

For further information...



See the project synopsis in this section of this Annual Report.

**Permanent Disability Evaluation Tool**

Status: *In process*

For further information...



See the project synopsis in this section of this Annual Report.

**Return to Work**

**Review of Literature on ‘Modified Work’**

Status: Completed

For further information...



CHSWC Report: ‘Does Modified Work Facilitate Return to Work for Temporarily or Permanently Disabled Workers?’ (1997)

**Predictors and Measures of Return to Work**

Status: Completed

For further information...



CHSWC Report: 'Determinants of Return to Work and Duration of Disability After Work-Related Injury or Illness: Developing a Research Agenda' (Publication Pending)

### **Return to Work (continued)**

#### **Task Force on Alternative or Modified Work in the Construction Industry**

Status: In process

For further information...



See the project synopsis in this section of this Annual Report.

#### **Policies and Strategies to Help Injured Workers Return to Sustained Employment**

Status: In process

For further information...



See the project synopsis in this section of this Annual Report.

#### **Primary Treating Physician Effectiveness in RTW After Low Back Injuries**

Status: In process

For further information...



See the project synopsis in this section of this Annual Report.

#### **Best Practices Encouraging Return-to-Work**

Status: In process

For further information...



See the project synopsis in this section of this Annual Report.

#### **Analysis of Wage Loss and RTW in Other States**

Status: In process

For further information...



See the project synopsis in this section of this Annual Report.

### **Workers' Compensation Reforms**

#### **Evaluation of the DWC Audit Function**

*(Special Study at the Request of the Legislature)*

Status: Completed

For further information...



'CHSWC Report on the Division of Workers' Compensation Audit Function' (1998)

### **Medical-Legal Study**

*Status:* Ongoing

*For further information...*



See the project synopsis in this section of this Annual Report.



CHSWC Report: 'Evaluating the Reforms of the Medical Legal Process'

### **Workers' Compensation Reforms (continued)**

#### **Vocational Rehabilitation Study**

*Status:* In process

*For further information...*



See the project synopsis in this section of this Annual Report.



CHSWC Report: 'Vocational Rehabilitation Reform Evaluation' (2000)



CHSWC Report: 'Vocational Rehabilitation Benefit: An Analysis of Costs, Characteristics, and the Impact of the 1993 Reforms' (1997)

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

*Status:* Completed

*For further information...*



CHSWC Report: 'Carve-Outs' in Workers' Compensation: An Analysis of Experience in the California Construction Industry (1999)

#### **Evaluation of Treating Physician Reports and Presumption**

*Status:* Completed

*For further information...*



CHSWC Report: 'Report on the Quality of the Treating Physician Reports and the Cost-Benefit of Presumption in Favor of the Treating Physician' (1999)

#### **Update of Treating Physician Reports and Presumption Study**

*Status:* In process

*For further information...*



See the project synopsis in this section of this Annual Report.



CHSWC Report: 'Report on the Quality of the Treating Physician Reports and the Cost-Benefit of Presumption in Favor of the Treating Physician' (1999)

#### **Evaluation of Labor Code Section 5814 Penalty Provisions**

*Status:* Completed

*For further information...*



CHSWC Report: 'Issue Paper on Labor Code Section 5814' (2000)



CHSWC Report: 'Background Paper on Labor Code Section 5814' (1999)

### **'Baseball Arbitration' Provisions of Labor Code Section 4065**

*Status:* Completed

*For further information...*



CHSWC Report: 'Preliminary Evidence on the Implementation of Baseball Arbitration' (1999)

## **Occupational Health and Safety**

### **Project: California Occupational Research Agenda**

*Status:* In process

*For further information...*



See the project synopsis in this section of this Annual Report.

### **California Study Group on Young Worker Health and Safety**

*Status:* Ongoing

*For further information...*



See the project synopsis in this section of this Annual Report.



CHSWC Report: Protecting and Educating Young Workers: Report of the California Study Group on Young Worker Health and Safety (1999)

### **Evaluation of Targeting Methods – High Hazard and Loss Control**

*Status:* In process

*For further information...*



See the project synopsis in this section of this Annual Report.

### **California Forum for Workplace Health and Safety - February 2001**

*Status:* In process

*For further information...*



See the project synopsis in this section of this Annual Report.

## **Workers' Compensation Administration**

### **DWC Judicial Function Study**

## PROJECTS AND STUDIES

*Status:* In process

*For further information...*



See the project synopsis in this section of this Annual Report.

### **Local Forms and Procedures – Labor Code Section 5500.3**

*Status:* Completed

*For further information...*



CHSWC 1998-99 Annual Report: Projects and Studies Section

## **Workers' Compensation Administration (continued)**

### **Profile of DWC District Office Operations**

*Status:* Completed

*For further information...*



CHSWC 1997-98 Annual Report: Program Oversight Section

### **CHSWC Roundtable on DWC Lien Workload**

*Status:* Completed

*For further information...*



CHSWC 1998-99 Annual Report: Projects and Studies Section

## **Information Needs**

### **Injured Worker Experience**

*Status:* Completed

*For further information...*



CHSWC Report: 'Navigating the California Workers' Compensation System: The Injured Workers' Experience' (1996)

### **Prototype Informational Materials**

*Status:* Completed

*For further information...*



Workers' Compensation Factsheets and a video entitled "Introduction to Workers' Compensation" are available at [www.dir.ca.gov/CHSWC/chswc.html](http://www.dir.ca.gov/CHSWC/chswc.html).

### **Benefit Notice Simplification Project**

*Status:* In process

*For further information...*



See the project synopsis in this section of this Annual Report.



CHSWC Report: 'Recommendations: Information for Injured Workers' (2000)

## **Community Concerns**

### **Workers' Compensation and the California Economy**

Status: Completed

For further information...



CHSWC Report: Workers' Compensation and the California Economy (2000)

### **Evaluation of Workers' Compensation Cost and Benefit Changes since the Beginning of the Reforms (Special Study at the Request of the Legislature)**

Status: Completed

For further information...



CHSWC Report: WC Cost and Benefit Changes since beginning of Reform (1999)



CHSWC 1998-99 Annual Report incorporates this report.

### **Workers' Compensation Pharmaceutical Costs Study**

Status: **Completed**

For further information...



See the project synopsis in this section of this Annual Report.



CHSWC Report: Study of the Cost of Pharmaceuticals in Workers' Compensation

### **Workers' Compensation Anti-Fraud Activities**

Status: Completed

For further information...



CHSWC Report: Workers' Compensation Anti-Fraud Activities-Report on the CHSWC Public Fact-Finding Hearing (1997)



CHSWC Report: 'Employers Illegally Uninsured for Workers' Compensation – CHSWC Recommendations to Identify Them and Bring them Into Compliance' (1998)



CHSWC Report: 'Report on the Campaign Against Workers' Compensation Fraud' (2000)

### **Illegally Uninsured Employers Study**

Status: Completed

For further information...



CHSWC Report: 'Employers Illegally Uninsured for Workers' Compensation – CHSWC Recommendations to Identify Them and Bring them Into Compliance' (1998)

**Survey: Workers' Compensation for Public Safety Employees**

*Status:* **In process**

*For further information...*

 See the project synopsis in this section of this Annual Report.

**SYNOPSIS OF CURRENT CHSWC PROJECTS AND STUDIES**

This section starts with a discussion of the Commission’s comprehensive evaluation of permanent disability and continues with descriptions of CHSWC’s other ongoing studies.

**Permanent Disability**

**Background**

The most extensive and potentially far-reaching efforts undertaken by the Commission is the ongoing study of workers’ compensation permanent disability in California. Incorporating public fact-finding hearings and discussions with studies by RAND and other independent research organizations, the CHSWC project is dealing with major policy issues regarding the way that California workers are compensated for permanent disability incurred on the job.

The Commission realizes that the rating of permanent disability is one of the most difficult tasks of the workers’ compensation system, often leading to disputes and litigation.

The manner in which California rates and compensates injured workers for total and partial permanent disability has enormous impact on the adequacy of their benefits, their ability to return to gainful employment, the smooth operation of DWC’s adjudication system and the cost of the workers’ compensation system to employers.

RAND’s initial report, “Compensating Permanent Workplace Injuries: A Study of the California System”, indicated that there was significant uncompensated wage loss for workers of insured employers who suffer permanent disability.

**Policy Advisory Committee**

A CHSWC Permanent Disability Policy Advisory Committee was established to review the RAND report and the community’s responses, and recommend further action. The committee began meeting in November 1997 and continues to date.

*CHSWC Blue-Ribbon Permanent Disability Policy Advisory Committee*

**Co-Chairs:**

Tom Rankin, CHSWC and  
*California Labor Federation*

John C. Wilson, CHSWC and  
*Schools Excess Liability Fund*

**Members:**

Dominic Dimare  
*California Chamber of Commerce*

Richard W. Gannon  
*Division of Workers’ Compensation*

Brian Hatch  
*California Professional Firefighters*

D. Allan MacKenzie, MD  
*DIR Industrial Medical Council*

Suzanne Marria  
*DIR Directorate*

Theresa Muir  
*Southern California Edison*

Dianne Oki  
*State Compensation Insurance Fund*

Merle Rabine  
*Workers’ Compensation Appeals Board*

Larry Silver, Esq.  
*California Applicants’ Attorneys Association*

The CHSWC Policy Advisory Committee raised additional questions about the wage loss study and other areas of the RAND report.

The workers' compensation community wanted additional information regarding how other factors such as demographics and local economic conditions affected the outcomes of the wage loss study. Observations were also made about the initial study parameters – the study lacked data about the employees of self-insured employers and data beyond the 1991-1993 period.

**Goals Established by the  
CHSWC Permanent Disability  
Policy Advisory Committee**

- \ Efficiently decrease uncompensated wage loss for disabled workers in California.
- \ Increase the number of injured workers promptly returning to sustained work.
- \ Reduce transaction and friction costs, including "costs" to injured workers.

The PD Policy Advisory Committee urged the Commission to study those issues further. The Commission voted to continue the comprehensive evaluation of workers' compensation permanent disability.

Continuation of the evaluation of permanent disability includes the following projects:

**CHSWC PD Project  
Self-Insured Advisory Subcommittee**

Jill Dulich  
*Marriott International*

Luisa Gomes  
*California Assn. of Service Organizations*

Theresa Muir  
*Southern California Edison*

John Robeson  
*State Compensation Insurance Fund*

**CHSWC PD Project  
Self-Insured Project Team**

Christine Baker  
*CHSWC*

Frank Neuhauser  
*SRC, UC Berkeley*

Robert T. Revilla

**Enhancement of the Wage Loss Study to include Self-Insureds**

When the initial study findings were released, there were some concerns from the community about generalizing those results to permanently disabled workers of self-insured firms. The original wage loss study has been expanded to include analyses of wage loss sustained by permanently disabled employees of self-insured employers and analyses of the impact of local economic conditions on wage loss and return to work.

The study found that there were significant and sustained earnings losses at self-insured firms. However, proportional earnings losses were higher for disabled workers at insured firms compared to those at self-insured employers. The insured firms had more problems with returning injured workers to work and retaining

them on the job after they came back to work. Also, the lowest wage replacement rates were for the claims with the lowest PD rating, at both insured and self-insured firms.

A report is expected in the summer of 2000.

### **Impact of Local Economic Conditions on Wage Loss**

The original wage loss study has also been expanded to include analyses of the impact of local economic conditions on wage loss and return to work.

A report is expected in the summer of 2000.

### **Analysis of wage loss and RTW in other states**

This project will compare the wage loss experience of other states to the results for California. Estimation of the wage loss experience of other states can improve the ability to understand the causes of wage loss. Differences in wage losses across states can be analyzed so that reforms can be identified that will be effective. A focus of this analysis will be on differences across states in return-to work. In addition, the effectiveness of the policies of other states can be evaluated and the impact of other differences in the workers' compensation system can be examined.

### **Permanent Disability Rating Tool**

This project will consist of a detailed evaluation of the disability rating schedule in order to provide empirical findings that can guide a revision that will be consistent with the economic losses experienced by permanently disabled workers. As part of its research, the study will empirically identify the components of the schedule that contribute to inconsistency and make recommendations to reduce it. It will also analyze the usefulness of increased reliance on objective medical findings in disability ratings, including the extent to which such an approach can improve consistency and whether it can also improve the targeting of benefits.

#### ***CHSWC Permanent Disability Project Team***

Christine Baker  
*CHSWC*

Robert T. Reville, PhD  
*RAND*

Lauren Sager  
*RAND*

Ellen Charles  
*RAND*

Sue Polich  
*RAND*

David Studdert  
*RAND*

Leslie I. Boden, PhD  
*Boston University – Public Health*

Edward M. Welch  
*Michigan State University – Labor  
and Industrial Relations*

Frank Neuhauser  
*SRC, UC Berkeley*

PROJECTS AND STUDIES

**Return to Work**

**Alternative or Modified Work in Construction Industry**

***Background***

The Commission's studies and research have identified that return to work or modified or alternative work is an important factor of a worker's long term economic well-being.

***Description***

Many permanently disabled workers, after losing their jobs, cannot find work that pays as much as they were paid previously or cannot find any work at all. Often, injured workers in the construction industry are released by the doctor for modified work, but they cannot go back to the construction site. The Commission is convening a special task force of those who have been dealing with this for awhile to brainstorm and make recommendations for improvements.

***Status***

Project is underway.

***Construction Industry  
Advisory Committee***

Christine Baker  
*CHSWC*

Ron Barrows

Otis Byrd  
*Division of Workers' Compensation*

Jim Crotty  
*Council of Carpenters*

Dr. Allan MacKenzie  
*Industrial Medical Council*

Michael Monagan

Larry Nibbi  
*NIBBI Brothers Construction*

Tom Rankin  
*California Labor Federation, AFL-CIO*

Lisa Roberts  
*NIBBI Brothers Construction*

Frank Russo  
*California Applicants' Attorneys Assn.*

Peggy Sugarman  
*Division of Workers' Compensation*

Bob Wong  
*Division of Workers' Compensation*

Darrel "Shorty" Thacker

**Return to Work**

**Policies and Strategies to Help Injured Workers Return to Sustained Employment**

**Background**

It is commonly believed that significant numbers of injured workers in California do not return to work as early as possible, or they return to work without appropriate work restrictions. These workers experience unnecessary and often permanent losses in their functional capacity and their ability to work.

***RTW Policies and Strategies  
Advisory Committee***

- Tom Abrams
- Judith Bals  
*HIH*
- Amber Baur  
*Liberty Mutual Insurance Group*
- Nadia Bledsoe  
*AFSCME Council 57*
- Carolyn Bradford  
*Applied Risk Management*
- Otis Byrd  
*DWC*
- Oscar Chavez  
*Golden Eagle Insurance*
- Cathy Clark  
*PWI*
- Dominic Dimare  
*California Chamber of Commerce*
- Julia Faucett  
*UC San Francisco*
- Richard Gannon  
*DWC*
- Allyssa Garni  
*East San Jose Comm. Law Center*
- Phil Garry  
*SCIF*
- Marielena Hincapie  
*Employment Law Center*
- D. Allan MacKenzie, MD  
*Industrial Medical Council*

**Description**

This project will assist in developing practical strategies to promote injured workers' prompt return-to-work in sustained employment. The project will analyze legal and policy issues, evaluating perspectives, assess needs in the workers' compensation community, and uncover the practical implications of the research conducted to date.

This new project will assist in the Commission's ongoing efforts to reduce uncompensated wage loss incurred by injured workers. It will also enhance the upcoming California Forum on Workplace Health and Safety scheduled for February 2001.

**Goals and Objectives**

- Experiences in California
- To systematically collect in-depth information about the experiences of injured workers, employers, unions, claims administrators, and healthcare providers with medical practices, employer policies, and workers' compensation programs that maximize positive return-to-work outcomes. (A positive outcome occurs when a worker who has been off work with a job injury return, as soon as is medically feasible, to a job or progression of jobs that contributes to the worker's recovery, and that the worker feels is fair and satisfactory.)

- Legal and Policy Issues:

To analyze how existing state laws and regulations governing vocational rehabilitation affect return-to-work outcomes.

- Future Educational Activities:

To formulate practical messages that will be included in educational materials to promote positive return-to-work outcomes.

- Research for the Commission:

To identify practical implications of research conducted for the Commission in the areas of return-to-work and vocational rehabilitation, and to identify possible gaps and further types of research needed to attain the Commission's policy goals.

**Status**

Advisory group meetings are underway.

***RTW Policies and Strategies  
Advisory Committee  
(continued)***

Billie Miester  
*State Farm*

Robin Nagle, MS, CRC  
*Catholic Healthcare West*

Mary Novak  
*East San Jose Comm. Law Center*

Valerie Perez  
*SCIF*

Ann Pudoff  
*Sutter Health*

Linda Rudolph, MD  
*DWC*

Frank Russo  
*CAAA*

Arturo Souza  
*Calco Medical Management*

Peggy Sugarman  
*DWC*

Juliann Sum  
*LOHP, UC Berkeley*

Mary Ann Weathers  
*Safeway, Inc.*

**Return to Work**

**Primary Treating Physician Effectiveness in RTW After Low Back Injuries**

***Background***

A goal of the PD Policy Advisory Committee is to increase the numbers of workers promptly returning to sustained work.

***RTW after Low Back Injury  
Project Team***

Niklas Krause, MD, PhD  
*School of Public Health*

Robert T. Reville

The Commission wants to facilitate injured workers' recovery and subsequent return to the workplace as soon as it is consistent with recovery from their injuries.

***Description***

Low back pain is the leading cause of disability for people under the age of 45 and the second leading cause of industrial absenteeism.

There appears to be a wide variation in the time workers stay on disability benefits and remain off work even if they had suffered similar injuries.

***Goals and Objectives***

The primary objective of this project is to identify characteristics of the primary treating physician which help to facilitate a safe and timely return to work after low back injury.

***Status***

The study is in process.

**Return to Work**

**'Best Practices' Encouraging Return to Work**

***Background***

Many firms in California have adopted practices to improve return to work of injured employees. Policymakers may wish to encourage increased emphasis on return to work as a means to reduce uncompensated wage loss.

***RTW Best Practices  
Project Team***

Christine Baker  
CHSWC

Robert T. Reville, PhD

***Description***

This project will collect data on the return-to-work practices of California firms and examine their effectiveness.

***Goals and Objectives***

The goal of this project is to provide information on the most effective return-to-work practices of California employers. This information is intended to assist employers and employees to determine which return to work practices may be applicable to their needs.

***Status***

The project is underway.

**Workers' Compensation Reforms**

**Medical-Legal Study**

**Background**

Reform legislation changes to medical-legal evaluations were intended to reduce both the cost and the frequency of litigation, which drive up the price of workers' compensation insurance to employers and lead to long delays in case resolution and the delivery of benefits to injured workers.

In 1995, the Commission initiated a project to determine the impact of the workers' compensation reform legislation on the workers' compensation medical-legal evaluations. CHSWC contracted with the Survey Research Center at UC Berkeley to carry out this study.

**Medical-Legal Project  
Advisory Committee**

David Bellusci  
*Workers' Compensation Insurance Rating Bureau*

Larry Law  
*Workers' Compensation Insurance Rating Bureau*

William P. Molmen  
*Integrated Benefits Institute*

Karen Yifru  
*Workers' Compensation Insurance Rating Bureau*

**Medical-Legal Project Team**

Frank Neuhauser

**Description**

The study analyses are based upon the Permanent Disability Claim Survey, a set of data created each year by the Workers' Compensation Insurance Rating Bureau (WCIRB) at the request of the Legislature to evaluate the 1989 reforms. The WCIRB data summarizes accident claim activity, including such measures as degree of impairment, the type and cost of specialty exams, whether the case was settled and, if so, the method of settlement employed.

**Status**

The Medical-Legal study was initiated in 1995 and is ongoing.

**Findings**

The study has determined that

- the cost of medical-legal exams has declined dramatically since its peak in the 1991 accident-year.
- The number of partial permanent disability claims decreased significantly.
- The average cost of medical-legal exams has declined.

*For further information...*



CHSWC Report: 'Evaluating the Reforms of the Medical Legal Process'



**Workers' Compensation Reforms**

**Vocational Rehabilitation Study**

***Background***

In 1995, the Commission initiated a project to determine the impact of the workers' compensation reform legislation on the workers' compensation vocational rehabilitation program.

***Description***

The primary objective was to measure the impact of the reform changes on the vocational rehabilitation program.

A model was developed to get baseline information that will provide comparative data in future years regarding the number of workers undergoing vocational rehabilitation, the duration and costs of rehabilitation programs and services and the results produced by those programs and services.

Questions being addressed include:

- Did the reforms reduce the costs of the VR benefit for employers?
- How have changes affected outcomes for injured workers?

***Status***

The Vocational Rehabilitation project was initiated in 1995 and is ongoing.

***Findings***

Preliminary findings indicate that the cost of the vocational rehabilitation benefit declined by \$274 million (49%) between 1993 and 1994.

The decline in average cost per VR claim appears to be equally dramatic, dropping 40% from about \$14,200 in 1993 to \$8,600 in 1994.

This downward trend appears to be continuing with 1995 costs declining an additional 10%.

Recent results indicate that the reform efforts apparently achieved one major goal, to encourage more employers to offer modified or alternate (M/A) work and to pay these

***Vocational Rehabilitation Project  
Advisory Committee***

Tom Abrams

Otis Byrd  
*DWC, Rehabilitation Unit*

Dominic Dimare  
*California Chamber of Commerce*

Thomas Linder  
*Vocational Rehabilitation Counselor*

Marc Marcus  
*California Applicants' Attorneys Association*

Michael McClain  
*California Workers' Compensation Institute*

Mark Miller  
*California Workers' Compensation Institute*

Peggy Sugarman  
*Division of Workers' Compensation*

Marie Wardell  
*Marie Wardell & Associates*

Willie Washington  
*California Manufacturers Association*

Edward C. Woodward  
*California Workers' Compensation Institute*

Tom Yankowski  
*Center for Career Evaluations*

***Vocational Rehabilitation  
Project Team***

Frank Neuhauser

workers at or near their pre-injury wage. Offers of M/A work increased by 50% to include nearly one third of qualified injured workers. At the same time, nearly 80% of these workers received wages that were at least 85% of the pre-injury level and nearly 60% received wages equal to or greater than the pre-injury level.

The costs of the rehabilitation benefit declined dramatically as a result of reform. At the same time, outcomes for qualified injured workers, as measured by work status and several income measures are virtually identical despite this decrease in overall benefit costs.

### ***Next Steps***

A final report is expected this year.

*For further information...*



CHSWC Report: 'Vocational Rehabilitation Reform Evaluation' (2000)



CHSWC Report: 'Vocational Rehabilitation Benefit: An Analysis of Costs, Characteristics, and the Impact of the 1993 Reforms' (1997)

## **Workers' Compensation Reforms**

### **Update of Treating Physician Presumption Study**

#### ***Background***

Before 1993, whenever a medical issue arose in a workers' compensation case, many medical reports were involved in the resolution. In addition to the reports of the treating physician, the applicant and the defendant were each entitled to procure a medical-legal evaluation and report, in each appropriate medical specialty.

The 1993 legislative reforms of the workers' compensation system made a number of significant changes to the medical-legal reporting process. The primary treating physician is required to render opinions on all medical issues to determine the injured worker's eligibility for compensation. When additional medical reports are obtained on a worker's industrial injury, the findings of the treating physician are presumed to be correct. The Commission undertook a project to evaluate the quality of treating physician reports and the cost-benefit of the presumption of correctness of treating physician reports.

Preliminary results of this study indicate changes to the status of the treating physician made during the 1993 reforms have resulted in medical-legal decisions based on poorer quality reports without apparent cost savings. In addition, there seems to be consensus within the WCAB that the presumption has increased litigation and curtailed the discretion of the Workers' Compensation Judges to craft reasonable decisions within the range of evidence.

#### ***Description***

At the request of Senator Patrick Johnston's office, the Commission is updating the information regarding the impact of the presumption of correctness of the treating physician.

In order to accomplish this study in a timely and cost effective manner, the Commission will contract with the University of California at Berkeley and utilize the California Workers' Compensation Institute's (CWCI's) ICIS data for this evaluation.

#### ***Status***

The study is in process.

*For further information...*



CHSWC Report: 'Report on the Quality of the Treating Physician Reports and the Cost-Benefit of Presumption in Favor of the Treating Physician' (1999)

PROJECTS AND STUDIES

**Occupational Health and Safety**

**California Occupational Research Agenda**

***Background***

The California workplace is changing rapidly: the economy is shifting from manufacturing to services; new materials, processes, and equipment are introduced every day; work weeks are longer; job security and temporary work patterns have changed. The California workforce is also changing, becoming older and more diverse. These changes present new challenges to protecting worker safety and health and reducing the impact of work injuries on workers, their families, and society.

<p><i>CORA Project Advisory Committee</i></p> <p>Christine Baker <i>CHSWC</i></p> <p>Jim Cone <i>California Department of Health Services</i></p> <p>John Howard <i>Division of Occupational Safety &amp; Health</i></p> <p>Suzanne Marria <i>DIR Directorate</i></p> <p>Irina Nemirovsky <i>CHSWC</i></p> <p>Maria Robbins <i>Division of Labor Statistics &amp; Research</i></p> <p>Linda Rudolph <i>Division of Workers' Compensation</i></p> <p>Len Welch</p>
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The current toll of occupational injury and illness for California workers, their families, and our society in general is too high. We are faced with new challenges in protecting worker safety and health, as the workplace and the workforce are rapidly changing. Considerable progress has been made in improving workplace health and safety since the initiation of OSHA in 1970. This progress has largely been based on the science and knowledge generated by occupational safety and health research. However, resources for occupational safety and health research are extremely limited.

There is thus a great need to focus and coordinate existing resources more systematically, and to seek expanded resources for occupational health research.

***Description***

The Commission, the Occupational Health Branch of the Department of Health Services, the Division of Workers' Compensation, Cal-OSHA, and the Division of Labor Statistics and Research are initiating a process to develop a California Occupational Research Agenda (CORA). This project is patterned after the development of a National Occupational Research Agenda by the National Institute for Occupational Safety and Health.

This project will, through a collaborative effort between California's government agencies, researchers, and affected public constituencies, develop a framework to guide occupational safety and health research in California for the next decade. This will be accomplished through a systematic process involving a diverse group of organizations.

***Status***

A survey of current research is underway.

**Occupational Health and Safety**

**California Study Group on Young Workers' Health and Safety**

***Background***

Every year about 70 adolescents die from work injuries in the United States and approximately 70,000 are injured severely enough to require treatment in hospital emergency rooms. Most of these injuries are preventable.

***Description***

The Commission funded the Labor Occupational Health Program (LOHP) at UC Berkeley to convene the California Study Group composed of groups and individuals dealing with youth employment and education issues, as well as others who can play a role in educating and protecting your workers. LOHP successfully recruited members representing educators, parents, employers, youth training programs, governmental agencies and others.

The purpose of the Study Group is to identify potential strategies to:

- Reduce work-related injuries and illnesses among youth in the California workforce;
- Foster awareness and skills in safety and health that will remain with youths throughout their working lives, and allow them to take an active role in shaping safe work environments;
- Promote positive, healthy employment for youth.

This unique California effort has put our state on the cutting edge of an issue that is gaining national prominence.

***Status***

During the past year, the Study Group has continued to meet quarterly to develop and begin working on implementation plans in four key areas, selected from the recommendations in the report released by the Study Group in 1998.

***California Study Group on Young Workers' Health and Safety***

- Michael Alvarez  
*Cal/OSHA*
- Rob Atterbury  
*San Diego USD School-to-Career*
- Neil Brosnan  
*Employment Development Department*
- Julianne Broyles  
*California Chamber of Commerce*
- Earl Brown  
*Youth Opportunity Limited*
- Margaret Brown  
*California Teachers Association*
- Sharon Brunson  
*US Department of Labor*
- William Callahan  
*DOE, Office of Regional Occupational Center*
- Celeste Carter  
*DOL, Wage and Hour Division*
- John Cottingham  
*Industry Education Council of California*
- Jerre Dahlen  
*UCLA-Labor Occupational Safety & Health*
- Linda Delp  
*California PTA*
- Walter Graze  
*Cal/OSHA*
- Paul Gussman  
*California Dept. of Education*
- Robert Harrison  
*California Dept. of Health Services*

The group has accomplished the following:

**California Study Group on  
Young Workers' Health and Safety  
(continued)**

Paul Meyers  
*Department of Education*

George Moton  
*California Apprenticeship Council*

Henry Nunn  
*DIR DAS*

Roger Rivera  
*UFCW Local 428*

Kelly Robinson  
*UCLA-LOSH*

Cindy Sato  
*Marriott - UC Davis*

C. Diane Silva  
*U. S. Dept. of Labor*

Rita Tsuda  
*DIR, Div. of Apprenticeship Standards*

Linda Tubach  
*California Federation of Teachers*

Dennis Turner  
*Department of Education*

Jan Vach  
*California Association of Work  
Experience Educators/Career  
Awareness Center*

**Young Workers' Health & Safety  
Project Team**

Christine Baker  
*CHSWC*

Robin Baker  
*LOHP, UC Berkeley*

Diane Bush

- Developed a resource list of task force members, listing all activities related to educating and/or protecting young workers.
- Identified ways for agencies to work together in order to more effectively educate and/or protect young workers.
- Produced and released a report and recommendations of new strategies for protecting young workers in California.
- Tested several of the strategies recommended in the report, including successful "Safe Jobs for Youth Months," which entailed a governor's proclamation in 1999 and 2000 and a broad array of public awareness and education activities.
- Researched models for establishing a statewide resource center on young workers' health and safety to get resources and technical support to educators, job trainers, employers, parents and youth throughout the state.
- Interviewed agency leaders in the Department of Education, Department of Industrial Relations, Department of Health Services and others to explore options for an inter-agency task force to protect young workers and made plans for an initial formal briefing of agency heads.
- Developed proposals for strengthening the current work permit system.
- Made presentations at several prominent national meetings highlighting the cutting edge approaches to protecting Young Workers being taken in California.

For further information...



CHSWC Report: 'Protecting and Educating California's Young Workers – Report of the California Study Group on Young Worker Health and Safety' (1999)

**Occupational Health and Safety**

**Evaluation of Targeting Methods—High Hazard and Loss Control**

***Background***

The High Hazard and Loss Control programs in the California Division of Occupational Safety and Health were established by the 1993 workers' compensation reform legislation. In response to concerns about their effectiveness, the Commission decided to engage in an evaluation of statutorily required safety efforts in California and a survey of such programs in other states. In addition, this would form the basis for developing methodologies to evaluate such programs nationwide.

***Description***

The project is being conducted in three phases:

***Evaluation of Targeting Methods-  
High Hazard and Loss Control  
Project Team***

Frank Neuhauser  
*SRC, UC Berkeley*

Marie W. Wardell  
*Consultant*

***Phase 1***

The first phase is a survey of the targeted safety efforts in the fifty US states and the Canadian provinces, in cooperation with the International Association of Industrial Accident Boards and Commissions (IAIABC). The focus of the survey will be the implementation of the OSHA mandate for implementation of targeting and intervention directed at the most hazardous employers. The results of the survey will be assembled into a report identifying the various types of targeting and intervention undertaken by each state and province. A typology of approaches will be described and the estimated success, as evaluated by the states and provinces, will be identified, where possible, for each type of approach. Finally, states and provinces with approaches and data that allow reliable evaluation will be identified for possible inclusion in the third phase.

***Phase 2***

The second phase is an evaluation of the California program's impact on safety and health. The proposed methodology would compare the pre and post intervention experience of employers identified through the high hazard targeting or insurers regulated loss control efforts with similar employers who had nearly as poor safety records but were not targeted. This methodology is designed to assess both the efficiency of the targeting and the effectiveness of the intervention.

***Phase 3***

The third phase applies the methodology used in the second phase to evaluate programs in other states and provinces. The first phase survey will have identified each state's or province's program characteristics which may prove more or less efficient at identifying

## PROJECTS AND STUDIES

the most hazardous employers and intervening to improve their safety experience. The survey will also have identified which of these states/provinces have the data available to meet the requirements of the methodology in the second phase. Through the IAIABC and the Occupational Safety and Health State Plan Association (OSHSPA), states will be recruited to participate in a comparative evaluation of various approaches.

### ***Status***

This project is in process. A report is expected in 2000.

**Occupational Health and Safety**

**California Forum for Workplace Health and Safety**

***Background***

California continues to be on the forefront of developing recommendations for improving workplace health and safety, maintaining a robust economy, and reducing uncompensated wage loss due to industrial injury.

***Description***

The Commission on Health and Safety and Workers' Compensation and the Department of Industrial Relations are planning a public educational program devoted to workplace injury prevention, safety and return-to-work.

This 'California Forum on Workplace Health and Safety', tentatively scheduled for February 2001, is intended to bring workers, employers, the community and the public together to participate in presentations, discussions and various workshops to:

- Discuss and share ideas for workplace injury prevention.
- Develop ideas for a California workplace health and safety agenda for the new millenium.
- Provide information regarding successful techniques in facilitating return to work after workplace injury.
- Present the latest research in workplace safety, health and return-to-work.
- Examine the role of the physician in return-to-work.
- Identify what employers and employees can do 'before' and 'after' to minimize the impact of work injury or illness.
- Consider areas where improvements need to be made.
- Review models of "best practices" facilitating recovery and return-to-work.

**California Forum for Workplace Health and Safety Advisory Committee**

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*AFL-CIO*

Representative  
*DMEC*

Linda Rudolph, MD  
*DIR - DWC*

Willie Washington  
*California Manufacturers Association*

I en Welsh

**Status**

This project is in process.

The Commission is receiving endorsement and/or funding from the following organizations in support of this effort.

- American Society of Safety Engineers
- California Association of Joint Powers Authorities
- California Chamber of Commerce
- California Correctional Peace Officers Association
- California Labor Federation, AFL-CIO
- California Manufacturers and Technology Association
- California Wellness Foundation
- California Workers' Compensation Institute
- Coalition on Workers' Compensation
- Industrial Medical Council
- International Association of Industrial Accidents Boards and Commissions
- International Workers' Compensation Foundation, Inc.
- Schools Excess Liability Fund
- State Compensation Insurance Fund

**Workers' Compensation Administration**

**Study of DWC Judicial Function**

***Background***

The Division of Workers' Compensation / Workers' Compensation Appeals Board (DWC/WCAB) judicial function has been the focus of criticism by all parties in the system. Lack of uniform policies and an inadequate infrastructure have led to serious system problems.

Some of the 1993 reform changes sought to reduce judicial discretion and increase the consistency of case outcomes. However, some changes may have had unintended consequences which have made the system increasingly complicated to administer.

In 1999, the legislative debate continued over the operation of the judicial process, which prompted a legislative proposal to make major changes to the organizational structure of the workers' compensation trial courts in Senate Bill 320 (1999). This proposal contemplated that a "Chief Judge", appointed by the Governor with the powers of the head of a department, would be responsible for the supervision of the judges, support staff, and the rules of court.

During the 1999 legislative debates over SB 320, the Department of Industrial Relations entered into discussions with the California workers' compensation community about the possibility of proceeding with a study. Clearly, there seemed to be consensus that significant change was necessary, yet no one knew whether the SB 320 "court administrator" proposal for the Division of Workers' Compensation would effectively address the concerns.

DIR, DWC and the Commission believe that an independent study and evaluation of the DWC judicial process would be very helpful in addressing problems.

***Description***

At the urging of the Division of Workers' Compensation and others in the workers' compensation community, the Commission voted to engage in a major study and evaluation of the DWC judicial function.

The study, when funded, will identify possible statutory changes to make the system work more efficiently and look at rules and practices that other judicial jurisdictions follow

***DWC Judicial Function Study  
Project Advisory Committee***

(To Be Identified)

***DWC Judicial Function Study  
Project Team***

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## PROJECTS AND STUDIES

that have addressed problems such as calendaring, casefile movement, and staffing. The study will look at practices, case management systems, administration systems and rules used in other relevant judicial systems, as well as studying what is occurring in the DWC district office adjudication system at this time. The final report from the study will include analysis of the causes for any impediments to DWC's ability to accomplish "substantial justice in all cases expeditiously, inexpensively, and without encumbrance", as directed in the state constitution. In addition, it will identify possible administrative and statutory changes to make the system work more efficiently.

The goal of this effort is to assist DIR and DWC in meeting the Constitutional mandate to "accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character..."

### ***Status***

A Request for Proposals (RFP) for this study is underway.



**Information Needs**

**Benefit Notice Simplification**

***Background***

When an employee files a claim for worker's compensation, the employer or insurer is responsible for communicating the status of the claim to the employee by means of a series of benefit notices. The benefit notice program is intended to be a key communication tool between the claims administrator and the injured worker, keeping the worker informed about important changes in the status of his or her workers' compensation claim.

The workers' compensation community has long criticized the benefit notice system as confusing and ineffective. Through its various studies and analyses, the Commission has confirmed that:

- The Benefit Notice system is complex, cumbersome, and not currently designed to provide meaningful information to injured workers regarding benefit levels or to collect appropriate data to monitor prompt delivery of proper benefits.
- Current benefit notices are not readily comprehensible and result in confusion to injured workers and all parties.

***Description***

The Commission has contracted with the Labor Occupational Health Program to assess the needs and explore methods for improving benefit notices to injured workers. The project team will review and make recommendations on streamlining the Benefit Notice process, clarifying requirements, and ensuring that notices accurately and effectively communicate with injured workers in a format and language that is comprehensible.

To improve the pertinent laws and regulations, the project is also further identifying the statutory

***Benefit Notice Simplification Project Advisory Committee***

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- Debra Blakely  
*State Farm Insurance Companies*
- Nadia Bledsoe  
*AFSCME Council 57*
- Carolyn Bradford  
*Applied Risk Management*
- Charles Bruscano  
*Association of Injured Workers*
- Otis Byrd  
*DWC, Rehabilitation Unit*
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*California Chamber of Commerce*
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*Californians for Compensation Reform*
- Elaine Konstan  
*Liberty Mutual Insurance*

and regulatory requirements that cause the greatest problems with notices from the injured worker's perspective, and proposing practical changes in laws and regulations to improve basic information for noninsured and newly injured workers and to improve information in benefit notices for injured workers.

**Benefit Notice Simplification Project  
Advisory Committee  
(continued)**

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*California Manufacturers Association*
- Kim Wirshing  
*HERE Local 2*
- Bruce Wolfe  
*East Bay RSI Group*
- Bob Wong  
*DWC, Information & Assistance*
- Ed Woodward  
*California Workers' Compensation Institute*
- Harry Ysselstein  
*Calico Medical Management Corp.*
- Bob Young  
*California Workers' Compensation Institute*

**Benefit Notice Project Team**

Juliann Sum

**Status**

The project is underway.

Recommendations for legislative language specifying information to be provided have been developed. The primary purpose of the proposed legislative changes is to make uniform the Labor Code provisions regarding notices to injured workers. The intent of the recommendations are to improve the information given to employees by employers prior to and soon after injury, information available at state Information and Assistance offices, information from claims administrators, the content and clarity of benefit notices, and the timing of some of the most problematic benefit notices.

*For further information...*



See the Executive Summary and Recommendations section in this Annual Report:

Recommendation L4:

Establish requirements for the provision of information to injured workers.

Recommendation C4 –

Improve Benefit Notice Program



CHSWC Report: 'Recommendations: Information for Injured Workers' (2000)

**Community Concerns**

**Pharmaceutical Costs Study**

***Background***

The Commission requested a study of the potential savings from modifications to California's current approach to regulating workers' compensation pharmaceutical costs under the Official Medical Fee Schedule.

Preliminary research indicates that California's workers' compensation system for paying pharmaceutical bills results in higher costs than retail, non-occupational, and federal and other workers' compensation programs.

***Description***

CHSWC conducted a study to assess workers' compensation pharmaceutical costs and identify potential savings.

Under the current California Official Medical Fee Schedule (OMFS) pharmacies are allowed to charge the lower of their customary charge or the maximum under the OMFS. The OMFS maximums are significantly higher than limits imposed by other states' workers' compensation systems, other regulatory systems (Medicare, Federal Workers' Compensation) and private negotiated contracts (HMOs, non-occupational insurance).

***Findings***

The study found that workers' compensation systems have high reimbursement rates relative to other systems such as Medicaid and the employer health benefits. Within workers' compensation, California's pharmaceutical reimbursement rates are near the highest among the various states reviewed.

Based on the research team's projections, pharmaceutical costs in workers' compensation will be \$212 million in 2000, rising to \$374 million in the year 2005. Because pharmaceutical costs are rising more rapidly than overall medical costs, the percentage of medical costs represented by prescription drugs is also increasing. In 1996, pharmacy costs accounted for 3.8% of

***Pharmaceutical Costs Study  
Advisory Committee***

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*Industrial Medical Council*

medical costs. In 2000, pharmaceuticals are estimated to represent 5.8% of medical costs and by 2005 pharmacy costs will comprise 7.3% of the medical benefit expenditures.

If the fee schedule were reconstructed to achieve approximately the average of the reimbursement rates accepted by pharmacists in four other systems reviewed, employers would pay approximately 70% of the current cost. This translates into \$64 million in savings on pharmaceuticals in the current year, which will rise to an estimated \$112 million savings in the year 2005. Of these excess costs, 17% is a result of premiums paid for incentives to dispense generics, which were approximately \$12 million in 2000 and \$21 million in 2005. The rest is due to the choice of the Average Wholesale Price (AWP), which is the most generous baseline, and because California pays a multiple of the AWP where other systems pay a fraction of the AWP.

California pays pharmacists a substantial premium to steer workers to generic substitutes. Assuming that the difference in the multiple of AWP (1.4 vs. 1.1) paid for generics over brands and the difference in dispensing fees (\$7.50 vs. \$4.00) represents the generic incentive to pharmacists, employers are paying approximately a 37% premium on each generic prescription to pharmacists when the fee schedule was the controlling factor on paid amounts.

Consideration should be given to resetting the fee schedule. In considering reducing the fee schedule reimbursements, thought should be given to improving the efficiency of the process. This could be accomplished by increasing employers' ability to negotiate network agreements with pharmacies. In addition, insurers and employers should consider guaranteeing payment for at least the initial prescription when the doctor indicates that the

injury arose out of work, even if the claim has not been processed or accepted.

For further information...



See the Executive Summary and Recommendations section in this Annual Report:  
 Recommendation L7: Revise the workers' compensation pharmaceutical cost structure for potential savings.



CHSWC Report: Study of the Cost of Pharmaceuticals in Workers' Compensation (2000)

**Pharmaceutical Costs Study  
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 (continued)**

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Laura Gardner, MD, PhD  
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**Community Concerns**

**Survey: Workers' Compensation for Public Safety Employees**

***Background***

Few workers face more inherent job risk than public safety employees do. In California, the workers' compensation benefits for public safety employees are relatively more generous than benefits provided to other employees. On one hand, the higher benefits increase the chances that injured public safety employees can recover to full health, and reassures them that they will be taken care of when taking significant risks for the public good. On the other hand, compensation for public safety employees constitutes a large portion of the public employers (primarily counties) in California, and budget-conscious officials have sometimes argued that the policy encourages too much time off of work.

***Workers' Compensation for  
Public Safety Employees  
Project Team***

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Seth A. Seabury  
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***Description***

This study will review current legislation in the United States regarding the treatment of injured public safety employees. Given the myriad of workers' compensation laws across the country, we expect significant variations across states in the treatment of these workers. A broad range of topics will be explored, but the focus is on identifying differences in maximum benefits, replacement rates, retirement policies, and the treatment of surviving dependents. We will also explore which occupations are included under the category of public safety. The project will provide a report that describes the various approaches to compensating injured public safety officials nationally.

***Status***

This project is in process. A report is expected in 2000.

PROJECTS AND STUDIES

## **C H S W C & T H E C O M M U N I T Y**

### **Acknowledgements**

The Commission on Health and Safety and Workers' Compensation is pleased to acknowledge and thank the following individuals and organizations from the California workers' compensation community.

Their willingness to share their insight and knowledge derived from years of experience has assisted the Commission immeasurably in its mission to oversee and recommend improvements in the workers' compensation and health and safety programs in California.

#### **Tom Abrams**

#### **AFL-CIO Department of Occupational Safety & Health**

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**Marin Association of Public Employees SEIU Union 949**

Josie Jenkins

**Marriott International**

Jill A. Dulich

**Tom McCauley**

**Members of the Public**

Members of the public who share their views with the Commission  
Participants in CHSWC meetings, fact-finding hearings and public forums  
Participants in CHSWC project advisory committees

**NIBBI Brothers**

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**Pacific Gas & Electric**

Linda Lasagna

**Pacific Telesis Group**

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**Public Health Institute**

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**Schools Excess Liability Fund**

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**Southern California Edison**

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**State Building & Construction Trades Council of California**

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**State Compensation Insurance Fund (SCIF)**

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Valerie Perez

John Robeson, Unit Manager, Claims Rehabilitation

Jose Ruiz

**State Farm Insurance**

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**United Auto Workers Local 2244**

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**Finally, the Commission would like to acknowledge and thank its staff**

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Irina Nemirovsky, Research Analyst

**Community Activities**

CHSWC is pleased to report that its members and staff have had the privilege of participating in several activities of the health and safety and workers' compensation community.

**California Department of Industrial Relations**

Division of Workers' Compensation - 7<sup>th</sup> Annual Educational Conference  
Executive Officer presentation

**California Department of Insurance**

Fraud Advisory Committee

**California Self-Insured Employers Association**

Executive Officer presentation

**California State Bar Association**

Executive Officer presentation

**California Workers' Compensation Institute**

Executive Officer presentation to the Claims Committee  
Executive Officer presentation to the Research Committee  
Annual Conference

**Coalition on Workers' Compensation**

Executive Officer presentation

**Council of Carpenters**

Executive Officer presentation

**International Association of Industrial Accident Boards and Commissions**

85<sup>th</sup> Annual Convention  
All Committee Conference  
Executive Officer presentation

**Klein, Testan and Brundo - "Town Meeting on Workers' Compensation"**

Executive Officer presentation

**National Association of Insurance Commissioners**

Executive Officer participation

**Workers' Compensation Research Group**

24th Annual National Symposium on Workers' Compensation

**Workers' Compensation Research Institute**

Compscope Multistate Advisory Group

