

California Commission on Health and Safety and Workers' Compensation



CHSWC 2023 Annual Report DRAFT

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Labor and Workforce Development Agency
Department of Industrial Relations
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**California Commission on Health and Safety
and Workers' Compensation**

2023 Annual Report

DRAFT

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ABOUT CHSWC

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

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

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

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

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

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

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

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

CHSWC

Serving all Californians

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

ABOUT CHSWC

CHSWC Members Representing Employers



Martin Brady

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

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

Appointed by: Governor



Sean McNally

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

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

Appointed by: Governor

ABOUT CHSWC

CHSWC Members Representing Employers

Nicholas Roxborough

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

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

Appointed by: Speaker of the Assembly



Sidharth Voorakkara

Sid Voorakkara is the Senior Vice President for San Diego at Strategies 360, a full-service research, government, public affairs, and communications firm. His client portfolio includes non-profit, academia and business entities identifying advocacy strategies at state and regional levels of government.

Throughout his career, Mr. Voorakkara has worked collaboratively with communities, businesses, non-profits, foundations, workforce investment boards, trade associations and various stakeholders to promote investment in local businesses and to build pathways into high-wage, high-growth jobs for Californians. He was appointed by then-Governor Jerry Brown to serve as the Deputy Director of External Affairs at the California Governor's Office of Business and Economic Development, is past chair of the San Diego City Ethics Commission and a Board member at Business for Good. Mr. Voorakkara received a Bachelor of Arts degree from New York University where he studied Government and American Institutions and Ideals.

Appointed by: Senate Rules Committee



ABOUT CHSWC

CHSWC Members Representing Labor



Doug Bloch

Doug Bloch has been the political director at Teamsters Joint Council 7 since 2010. In this capacity, he works with over 100,000 Teamsters in Northern California, the Central Valley, and Northern Nevada in a variety of industries. He was the Port of Oakland campaign director for Change to Win from 2006 to 2010 and a senior research analyst at Service Employees International Union (SEIU) Local 1877 from 2004 to 2006.

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

Appointed by: Governor



Shelley Kessler

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

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

Appointed by: Speaker of the Assembly

ABOUT CHSWC

CHSWC Members Representing Labor

Evan Mitch Steiger

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

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

Appointed by: Senate Rules Committee



Meagan Subers

Meagan Subers is a legislative advocate and owner of Capitol Connection, a small lobbying firm in Sacramento. Since 2010, Meagan has represented a number of labor organizations and consumer groups including the California Professional Firefighters, which represents over 30,000 rank and file firefighters in the State of California. Meagan has also been engaged and advocated for a number of health and safety protection measures, including updating the personal protective equipment standards for firefighters and ensuring access to the workers' compensation system for injured workers.

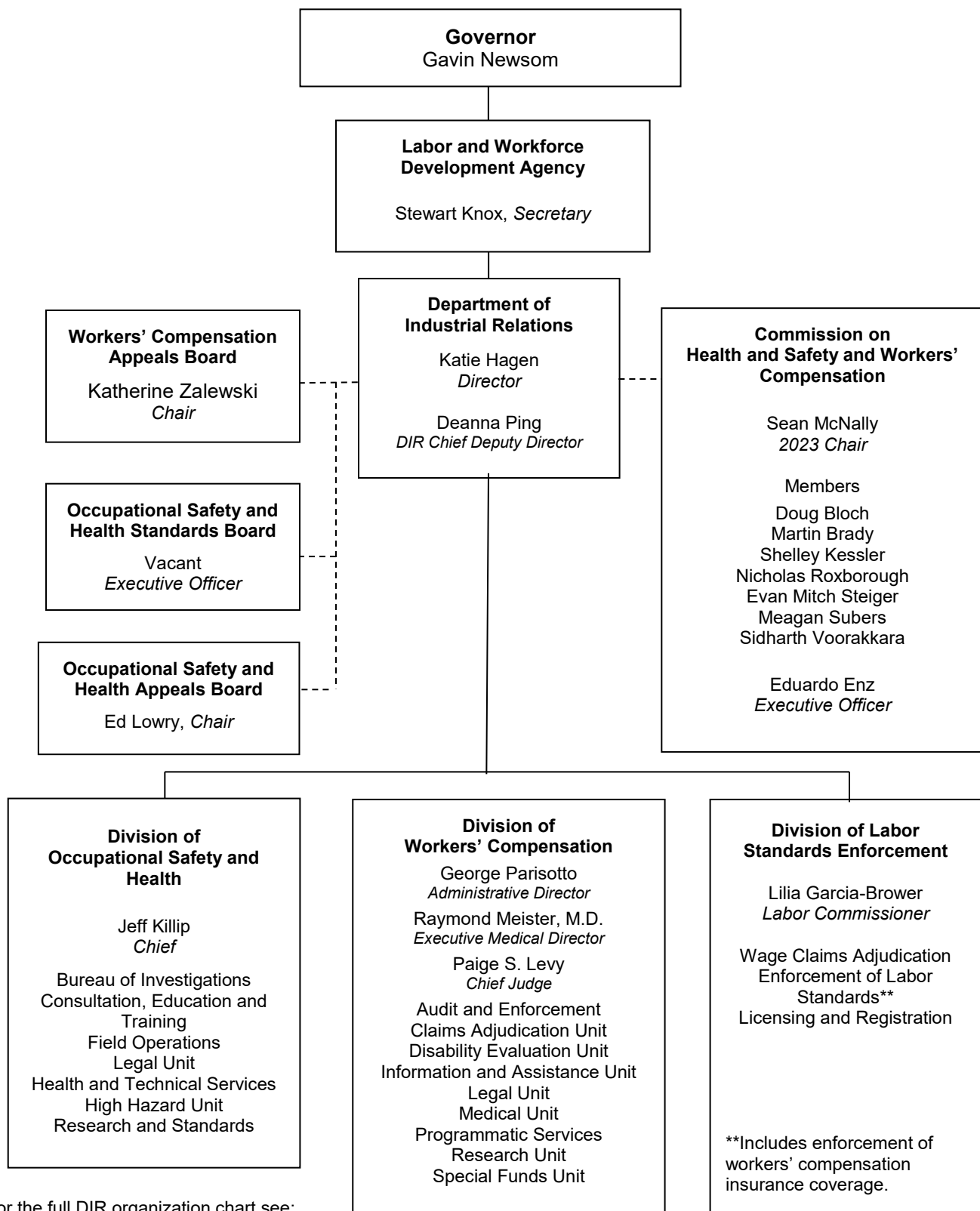
Previously, Subers was a communications specialist with Swanson Communications from 2008 to 2010. Subers is a member of the Institute of Governmental Advocates.

Appointed by: Governor



ABOUT CHSWC

State of California Health and Safety and Workers' Compensation Functions in 2023



For the full DIR organization chart see:
http://www.dir.ca.gov/org_chart/org_chart.pdf.

CHSWC RECOMMENDATIONS

After three years of tremendous and unprecedented efforts to combat the COVID-19 pandemic as a public health emergency, California's COVID-19 State of Emergency was declared ended on February 28, 2023¹, followed by the declared end of COVID-19 as a national and global public health emergency in May 2023². Although the administration of over 89 million vaccines³ has prevented numerous illnesses and deaths from COVID-19 infections, hospitalizations and deaths from the virus and its variants continue to occur, and some people who have had COVID-19 are experiencing long-term effects from the virus. The Commission on Health and Safety and Workers' Compensation (CHSWC) recommends continuing to monitor impacts from the COVID-19 pandemic, including Long-COVID, and supporting efforts to ensure that workers and employers are protected from this particularly contagious, airborne (aerosol transmissible) virus and its variants, as well as any other future unexpected hazards.

In addition, CHSWC recommends:

- Continuing implementation of proven, effective methods and procedures to prevent workplace injuries and illnesses
- Ensuring appropriate and timely delivery of indemnity and medical benefits for injured workers
- Improving methods to avoid delays in the WC claims process
- Streamlining and simplifying the WC process
- Renewing commitments to incentivize uninterrupted and undiminished payment of wages when a workplace injury or illness threatens to impact earnings.

CHSWC will continue to examine the following areas:

- Return-to-work incentives and disincentives
 - Return-to-Work Supplement
 - Supplemental Job Displacement Benefit (SJDB)
 - Information for Injured Workers and Employers on the benefits of returning to work
- Wage loss after occupational injury and illness
 - Permanent Disability (PD) Benefits
 - Presumptions
- Access to and the appropriateness and timeliness of medical care
 - Medical Provider Networks (MPNs)
 - Carve outs
 - Utilization Review (UR)
 - Independent Medical Review (IMR)
 - Medical treatment guidelines
 - Telehealth
 - Qualified Medical Evaluator (QME) Process
 - Friction, administrative delays, and backlogs

¹ <https://www.gov.ca.gov/wp-content/uploads/2023/02/COVID-SOE-Termination-Proclamation-2.28.23.pdf?emrc=1db54f>.

² <https://www.cdc.gov/coronavirus/2019-ncov/your-health/end-of-phe.html>; <https://www.who.int/news-room/speeches/item/who-director-general-s-opening-remarks-at-the-media-briefing---5-may-2023>.

³ <https://covid19.ca.gov/vaccination-progress-data/>. Data as of October 1, 2023.

CHSWC RECOMMENDATIONS

- Pharmaceuticals
 - Drug formulary
- Fraud detection
 - Medical provider suspensions and criminally charged providers (doctors)
 - Insurance company special investigation units (SIUs) and reporting suspicious claims to regulators
 - Data science and emerging artificial intelligence (AI) applications
 - Legal loopholes, profit centers, commission-driven sales, conflicts of interest, and other potential areas for abuse in a regulated industry
- Stakeholder interaction in the claims process
 - Regional differences in claimant injuries and claims handling, including applicant attorney and defense attorney involvement
- Mechanism of injury, risk factors, and cumulative effects, including age
 - High hazard occupations and injuries
 - Repetitive motion and cumulative trauma (CT) injuries
- Health and Safety
 - Employee and employer training, retraining, and communication, Injury and Illness Prevention Program (IIPP) plans, Personal Protective Equipment (PPE), recordkeeping and reporting to authorities
 - Apprenticeship training, workplace safety culture, and roles of unions and employers in supporting health and safety

RETURN TO WORK

Return-to-Work Supplement

Labor Code §139.48 requires the Department of Industrial Relations (DIR) [Return-to-Work Supplemental Program](#) (RTWSP) to administer a \$120 million dollar fund, that makes supplemental payments to workers whose permanent disability benefits are disproportionately low in comparison to their earnings losses.⁴ A CHSWC study by RAND that evaluated the return-to-work fund, found a low rate of receipt of the RTWSP among eligible workers. More recently, the take-up rate of this benefit has increased and has proven to be important in shoring up benefit adequacy for injured workers⁵.

Recommendations

- Monitor the ongoing use of this benefit
- Consider the recommendations of the CHSWC study by RAND “[Evaluation of the Return-to-Work Fund in the California’s Workers’ Compensation System](#),”⁶ which include:
 - Automating the RTWSP payment after SJDB vouchers are issued to improve participation in the program.
 - Increasing outreach and notification to help increase participation in the RTWSP by eligible workers, such as making the RTWSP website available in multiple languages.
 - Improving the monitoring and data collection of SJDB vouchers issued to track emerging changes in the RTWSP-eligible population.
- Continue to explore all methods of increasing RTWSP application rates for unrepresented injured

⁴ <https://www.dir.ca.gov/rtwsp/rtwsp.html>.

⁵ https://www.dir.ca.gov/chswc/Reports/2021/CHSWC_AnnualReport2021.pdf.
https://www.rand.org/pubs/research_reports/RR964-1.html.

⁶ https://www.rand.org/content/dam/rand/pubs/research_reports/RR2500/RR2548/RAND_RR2548.pdf.

CHSWC RECOMMENDATIONS

workers, including involvement from claims adjudicators, employers, and labor advocates.

- Continue to include benefit expenditure trend data and the number of RTWSP disbursements in the CHSWC Annual Report.

Information for Injured Workers and Employers

Injured workers, employers, and the public need easily-accessible information about the workers' compensation system

- Support DWC's continued efforts to make the workers' compensation system process easier to navigate
- Support DWC's efforts to simplify forms whenever possible, and continue to transition to a paperless, digital system consistent with healthcare and insurance industry best practices
- Continue to provide outreach and training on the basics of the workers' compensation system and its benefits

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

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

WAGE LOSS AFTER OCCUPATIONAL INJURY AND ILLNESS

Permanent Disability Benefits

Research on labor market outcomes showed that wage losses from injury and illness through 2017 remained larger than they were before the 2008-2009 Great Recession, but began to recover slightly starting in 2013. At least part of this recovery is related to increasing labor force participation among injured workers, who have become less likely to exit the workforce as the economy has improved. However, injured workers remain less likely to have sustained return to work at the same employer as before the injury. Additional research on the impact of the 2012 WC reforms on earnings losses suggests that despite some increases in payments after SB 863 reforms took effect, wage replacement rates have not improved as much as expected. While benefits did increase over time, the majority of the increase did not come from the growth of PD benefits, but from settlements. The research also found that wage replacement rates would have been even lower without payments from special funds administered by DIR, including RTWSP authorized by SB 863 and the Subsequent Injuries Benefit Trust Fund (SIBTF).

CHSWC RECOMMENDATIONS

Recommendations

- Consider the recommendations in DIR wage loss monitoring studies by RAND⁷, which include continuing the following:
 - Monitoring earnings losses and the adequacy of permanent partial disability (PPD) benefits.
 - Researching and understanding how and why the Great Recession had such lasting effects on post-injury outcomes in order to better understand the present and future economic shocks, as well as past ones.
 - Focusing efforts on improving sustained return to work for injured workers to enhance benefit adequacy and worker well-being and reduce post-injury earnings losses.

Presumptions

The COVID-19 pandemic has had a tremendous impact on the WC and health and safety systems in California and on its economy. Although California's COVID-19 state of emergency has ended, as of October 13, 2023, there have been over 104,000 COVID-19 deaths since the start of the pandemic, and over 326,000 COVID-19 claims filed in the WC system. Several states, including California, implemented presumptions of compensability for employees' occupationally causal illnesses related to COVID-19.

Senate Bill (SB) 1159, enacted on September 17, 2020, codified the COVID-19 presumption created by Governor Newsom's executive order in May 2020, and provided two new rebuttable presumptions that an employee's illness related to COVID-19 is an occupational injury and therefore eligible for WC benefits if specified criteria are met.⁸ Assembly Bill (AB) 1751, signed by Governor Newsom on September 29, 2022, extended the protections of the SB 1159 presumption statutes to January 1, 2024.⁹

In addition to a presumption related to COVID-19, several states have expanded their presumption statutes for other conditions for public safety employees. In California, the passage of SB 542 created a rebuttable presumption that, until January 1, 2025, for certain state and local firefighting personnel and peace officers, the term "injury" also includes post-traumatic stress disorder (PTSD) that developed or manifested while the injured person was in the service of the department or unit. Recent research has indicated that workers' compensation claims filed by firefighters and peace officers are more likely to involve PTSD than claims filed by the average worker in California, and mental health stigma and fear of adverse professional consequences were identified as a major barrier to care-seeking for first responders.¹⁰ SB 623, signed into law by Governor Newsom on October 8, 2023, extended this presumption until January 1, 2029 and requires CHSWC to analyze its effectiveness.¹¹

Recommendations:

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

⁷ https://www.rand.org/pubs/research_reports/RR4964-1.html;
https://www.rand.org/content/dam/rand/pubs/research_reports/RR4200/RR4209/RAND_RR4209.pdf;
https://www.rand.org/pubs/research_reports/RR2807.html; https://www.rand.org/pubs/research_reports/RR2572.html.

⁸ <https://www.dir.ca.gov/dwc/Covid-19/FAQ-SB-1159.html>.

⁹ https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB1751.

¹⁰ CHSWC Study by RAND "Posttraumatic Stress in California's Workers' Compensation System-A Study of Mental Health Presumptions for Firefighters and Peace Officers Under Senate Bill 542. 2021.
https://www.rand.org/pubs/research_reports/RR4391-1.html.

¹¹ https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240SB623.

CHSWC RECOMMENDATIONS

- Consider the findings of the CHSWC study by RAND, “Posttraumatic Stress in California’s Workers’ Compensation System-A Study of Mental Health Presumptions for Firefighters and Peace Officers Under Senate Bill 542”, which in part supports the rationale for a PTSD presumption, but also raises concerns about costs to state and local government.
- Consider the findings from the CHSWC Study by RAND, “COVID-19 in the California Workers’ Compensation System- A Study of Covid-19 Claims and Presumptions Under Senate Bill 1159”, including that the frontline presumption appears to have contributed to broad coverage of workers and health conditions, specifically coverage of COVID-19 for some of the most exposed public safety and health care workers.¹²
- Consider the feasibility of designing feedback loops in presumption laws which would inform whether there is any effectiveness in streamlining the dispute and litigation process for presumption claims, including the use of codes in claims and adjudication data systems to create and follow presumption trendline statistics.
- Examine the existing public health and disease monitoring systems for data collection, data accuracy, and data analysis purposes.

MEDICAL CARE IN WORKERS’ COMPENSATION

Monitoring Medical Care and Costs

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

Significant changes in the medical care process for injured workers have resulted from the reform legislation enacted in 2012. One change is that medical necessity disputes are now resolved using Independent Medical Review (IMR). In addition, the 2012 reforms replaced the Official Medical Fee Schedule (OMFS) for physician services with a fee schedule based on Medicare’s resource-based relative value scale (RBRVS), which was phased in over four years beginning in 2014. Senate Bill 537¹³, signed in October 2019, requires that the Administrative Director of DWC, with input from CHSWC, issue to the Legislature, on or before January 1, 2023, a research report comparing possible payment alternatives for WC medical care providers to the Official Medical Fee Schedule (OMFS).

Additional reform legislation relating to medical care, [Senate Bill 1160](#),¹⁴ was enacted in September 2016. The bill aims to expedite medical treatment for injured workers within the first 30 days after their injury by exempting conservative treatment from UR, standardizing UR procedures, modernizing data collection in the system to improve transparency, and implement antifraud measures in the filing and collection of medical treatment liens. SB 1160 also [requires DIR](#) to develop a system for the mandatory electronic reporting of UR decisions and the Doctor’s First Report of Injury form.¹⁵

In October 2016, the California Legislature requested that CHSWC update a study of the QME process first done for the Commission by UC Berkeley in 2010. That study raised several issues about the QME process and made several recommendations for improving the efficiency and equity of evaluations. Subsequently, DWC worked with all stakeholders in the WC community to revise the medical-legal fee schedule with new

¹² <https://www.dir.ca.gov/chswc/Reports/2022/RAND-COVID-claims-presumptions.pdf>.

¹³ Text of SB537, https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB537.

¹⁴ Text of SB 1160, https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB1160.

¹⁵ DWC website, SB 1160 page, <https://www.dir.ca.gov/dwc/SB1160-AB1244/SB1160.htm>.

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reimbursement rates to providers for various medical evaluations required in the schedule.

DWC held a public hearing on the revised, proposed medical-legal fee schedule regulations on December 14, 2020, and adopted a new Medical-Legal Fee Schedule (MLFS) with an effective date of April 1, 2021.¹⁶

In response to the COVID-19 pandemic, DWC made several changes to its Official Medical Fee Schedule including adopting changes to its Physician Services/Non-Physician Practitioner Services Fee Schedule to encourage greater use of telehealth services.¹⁷

Recommendations

- Monitor the implementation of the recommendations from the SB 537 study¹⁸, including the pay-for-performance pilot program.
- Monitor and study the use of telehealth and other medical care changes in WC given the COVID-19 pandemic and the technologies adopted going forward.
- Evaluate and monitor the implementation of SB 1160 provisions, including the rulemaking process for UR.
- Support DWC's efforts to simplify the process for medical providers, through measures such as adoption of electronic treatment authorization forms, in order to encourage doctors to enter the workers' compensation system.
- Continue to study and monitor the frequency, severity, and economic consequences of musculoskeletal injuries across occupations and demographics.
- Provide system monitoring data on UR decisions and the Doctor's First Report, after data become available, in the CHSWC Annual Report.
- Monitor the effectiveness of UR and IMR in the California WC system, and identify and explain instances in which guidelines and the use of hierarchical tiers of evidence are not followed, are abused, or are otherwise generating unnecessary friction and delay.
- Continue to monitor the impact of the Medical-Legal Fee Schedule that became effective in April 2021.
- Promote and support the recommendations in the [RAND Medical-Legal white paper](#).¹⁹
- Incentivize the use of Medical Provider Networks (MPNs) in post-employment claims as discussed in the RAND report "[Provider Fraud in Workers' Compensation](#)."²⁰

Pharmaceuticals

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

Recommendations

- Monitor and evaluate the impact of the evidence-based drug formulary. This should include an assessment of how the drug formulary affects pharmaceutical use, expenses, IMR use, and access to medically appropriate care for injured workers.

¹⁶ <https://www.dir.ca.gov/dwc/DWCPropRegs/2020/Medical-Legal-Fee-Schedule/Med-Legal-Fee-Schedule.htm>.

¹⁷ <https://www.dir.ca.gov/DIRNews/2020/2020-41.html>.

¹⁸ file:///C:/Users/Irina%20Nemirovsky/Downloads/RAND_RRA2481-1.pdf.

¹⁹ California Workers' Compensation Medical-Legal Fee Schedule, Analysis and Recommendations, RAND, 2018, https://www.rand.org/pubs/working_papers/WR1279.html.

²⁰ Provider Fraud in California Workers' Compensation, RAND, 2017, https://www.dir.ca.gov/Fraud_Prevention/Reports/Provider-Fraud-In-CA-Workers-Compensation.pdf.

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- Monitor the consultation by the Pharmacy and Therapeutics (P&T) Committee in advising on updates to the MTUS formulary based on evidence of the relative safety, efficacy, effectiveness, type of packaging, and variable cost of drugs in a class of drugs.

ANTIFRAUD EFFORTS

Underground Economy

The underground economy consists of businesses that do not comply with health, safety, WC and other tax and reporting laws in California. These businesses might not have all their employees on the official company payroll and might not report wages paid to employees that reflect their real job duties. Operators in the underground economy create an unfair advantage over their law-abiding competitors and cost the state an estimated \$8.5 billion to \$10 billion in uncollected tax revenues every year.²¹

Recommendations

- Continue to research how to identify the underground economy and ensure compliance with WC and health and safety laws.
- Support outreach and education efforts, including publicizing the DIR booklet "[All Workers Have Rights](#)."²²
- Encourage reporting of alleged noncompliant business practices to protect workers and employers and promote transparency in the workplace.
- Continue to report on the number of DLSE enforcement citations for a lack of WC insurance, and related industry and geographic information for those violations.
- Support the Labor Enforcement Task Force (LETF) in its efforts to combat the underground economy.²³

Workers' Compensation Medical Provider Fraud

In recent years, criminal indictments and prosecutions have highlighted the extent of medical provider fraud in the WC system. Estimates of the cost of this fraud to participants in the WC system are as high as \$1 billion per year.²⁴

[Assembly Bill 1244](#)²⁵ and [SB 1160](#),²⁶ which were signed into law in September 2016, added Labor Code § 139.21 and 4615 and provide a mechanism for suspending perpetrators of fraud from the WC system, staying liens of criminally charged providers, and limiting financial recovery related to fraudulent activity.

Recommendations

- Monitor and evaluate the outcomes of Labor Code § 139.21 and 4615 and the efforts of the Anti-Fraud Unit concerning these and other provisions related to anti-fraud reforms.

²¹ https://edd.ca.gov/siteassets/files/payroll_taxes/pdf/jesfreport2020.pdf.

²² DIR, LETF "All Workers Have Rights" booklet, 2020, https://www.dir.ca.gov/letf/What_are_your_rights_as_a_worker.pdf.

²³ "Labor Enforcement Task Force Report to the Legislature," DIR, LETF, May 2023 at <https://www.dir.ca.gov/letf/LETF-Legislative-Report-2023.pdf>.

²⁴ [Senate Labor and Industrial Relations Bill Analysis of SB 1160, August 31, 2016](#), https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201520160SB1160.

²⁵ Text of AB 1244, https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB1244.

²⁶ Text of SB 1160, https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB1160.

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- Monitor the extent of medical provider fraud in areas such as kickbacks, overbilling, and upcoding and new efforts to deter and eliminate fraudulent practices.
- Monitor the impact of medical provider suspensions in the WC system.
- Monitor progress in the filing of medical provider financial interest disclosures with DIR and support the investigation of medical provider ownership interests that may conflict with the rules.
- Promote the voluntary use of the Department of Insurance Workers' Compensation Insurance SIU Guidelines and Protocols,²⁷ which were last updated in 2011.
- Consider recommendations in the RAND report ["Provider Fraud in California Workers' Compensation"](#)²⁸ related to provider fraud, including:
 - Keeping post-employment claims treatment under an employer's control to prevent the uncontrolled increase in medical provider liens.
 - Considering new forms of fraud detection through the use of the Workers' Compensation Information System (WCIS) database and other claims databases and exploring how advanced analytics, business intelligence, machine learning, and other data science techniques can be best employed.

Workers' Compensation Payroll Reporting by Employers

The cost of employers' WC insurance premiums is based on their total payroll. By misreporting payroll costs, some employers avoid the higher premiums that they would incur with accurate payroll reporting. Employers can also misreport the total payroll or the number of workers in specific high-risk, high-premium occupation classifications by reporting them in lower-risk, lower-premium occupations. A [CHSWC study](#) found that between \$15 billion and \$68 billion in payroll is underreported annually.²⁹ This type of underreporting also has tax consequences that both state and federal jurisdictions may regard and prosecute as criminal. A related study on split class codes found that 25 to 30 percent of low-wage payroll is underreported or misreported.³⁰

Recommendations

- Consider implementing recommendations in the ["Report on Anti-Fraud Efforts in the California Workers' Compensation System"](#) to address premium fraud.³¹
- Consider updating the 2009 study of payroll underreporting to understand the extent of this practice in more recent years, including underreporting by employers and professional employer organizations (or PEOs).
- Examine claiming at Uninsured Employers Benefits Trust Fund (UEBTF) to better understand the industries, occupations, and other business characteristics of employers who risk not carrying any WC insurance.
- Support collaboration among labor enforcement agencies to bring employers into compliance with

²⁷ CDI, Workers' Compensation Insurance Special Investigative Unit Guidelines and Protocols, 2011, <https://www.insurance.ca.gov/0300-fraud/0100-fraud-division-overview/0300-fraud-claims-and-forms/upload/WC-SIU-Guidelines-and-Protocols.pdf>.

²⁸ Provider Fraud in California Workers' Compensation, RAND, 2017, https://www.dir.ca.gov/Fraud_Prevention/Reports/Provider-Fraud-In-CA-Workers-Compensation.pdf.

²⁹ "Fraud in Workers' Compensation Payroll Reporting: How Much Employer Fraud Exists? How are Honest Employers Affected?" UC-Berkeley, January 2009, https://www.dir.ca.gov/chswc/Reports/2011/Final_Report_FAC_Premium_Avoidance.pdf.

³⁰ https://www.dir.ca.gov/chswc/reports/split_class_codes_13aug2007.pdf.

³¹ DIR, DWC, CHSWC, and CDI, Report on Anti-Fraud Efforts in the California Workers' Compensation System, January 2017, https://www.dir.ca.gov/Fraud_prevention/FRAUD-white-paper.pdf.

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labor laws and overlapping tax laws.

- Monitor trends listed by the Department of Insurance Workers' Compensation Fraud Convictions on its website.³²

Artificial Intelligence Technology

Artificial intelligence (AI) has gained widespread attention, particularly since March 2023, when ChatGPT 4 was released.³³ Such changes in technology raise a question of how the AI, especially its generative branch, could shape the future of WC. Taking into account the long-discussed potential benefits and risks of Generative AI (GenAI) tools, such as ChatGPT³⁴, people involved in the WC system need an educated and careful approach to using AI in the administration of WC activities. Using AI that is not based on ongoing research and design is likely to be costly and involve unintentional negative results when integrating AI. In September 2023, Governor Newsom signed an Executive Order that included directing the Government Operations Agency (GovOps), the California Department of General Services, the California Department of Technology, and the California Cybersecurity Integration Center to issue general guidelines for public sector procurement, uses, and required training for use of GenAI. The order also directed The Governor's Office of Business and Economic Development, in consultation with the GovOps, to pursue a formal partnership with the University of California, Berkeley, College of Computing, Data Science, and Society, and the Stanford University Institute for Human-Centered Artificial Intelligence to consider and evaluate the impacts of GenAI on California and what efforts the state should undertake to advance its leadership in this industry.³⁵

CHSWC recommends:

- Support efforts to study new developments in AI, including its potential uses and risks
- Monitor and support the development of policies and guidelines for appropriate use of AI
- Monitor national and state legislation that may affect the use of AI in the workplace
- Support efforts to educate and train DIR employees on the use of AI products and about the limitations of AI, including ChatGPT

PUBLIC SELF-INSURED

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

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

SB 863 added Labor Code § 3702.4, which required CHSWC to examine the public-sector self-insured WC programs and to make recommendations for improving program administration and performance. CHSWC contracted with Bickmore for a study to assist in fulfilling this requirement in 2014.³⁶

³² CDI, Workers' Compensation Fraud Convictions page, <https://www.insurance.ca.gov/0300-fraud/0100-fraud-division-overview/25-wc-conv/index.cfm>.

³³ <https://openai.com/research/gpt-4>.

³⁴ <https://hai.stanford.edu/generative-ai-perspectives-stanford-hai>.

³⁵ <https://www.gov.ca.gov/wp-content/uploads/2023/09/AI-EO-No.12--GGN-Signed.pdf>.

³⁶ "Examination of the California Public Sector Self-Insured Workers' Compensation Program," Bickmore, October 22, 2014.

CHSWC RECOMMENDATIONS

In 2016, Bickmore prepared another study for DIR to identify various data reporting elements that, after having been collected by DIR's Office of Self-Insurance Plans, followed the intent of Labor Code § 3702.2. Specifically, the goal was to establish a database of WC information for use by public policymakers, regulators, public entities, and the service industry that supports public entity self-insurance in California.

The 2014 and 2016 studies were used to inform DIR's Office of Self-Insurance Plans rulemaking related to the annual reporting of public-self-insured employers. Rulemaking took place and reporting forms were created. The information from the forms required by the regulations effective July 1, 2020³⁷ will now be used to determine the solvency of the WC programs and may be used for additional benchmarking purposes.

Recommendations

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

HEALTH AND SAFETY

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

Recommendations

- Continue to monitor the COVID-19 pandemic and continue to support efforts to help keep workers and employers safe. California is issuing regular [updates on how to stay safe and help prevent the spread of COVID-19](#),³⁸ including [Coronavirus resources for California employers and workers](#)³⁹ compiled by the Labor & Workforce Development Agency.
- Continue to develop and support the development of materials and resources for both workers and employers that include the most up-to-date information on guidelines related to the COVID-19 pandemic.⁴⁰
- Continue and encourage support by employers and the health and safety and WC community for the CHSWC statewide Worker Occupational Safety and Health Training and Education Program (WOSHTEP), one of CHSWC's most proactive efforts. WOSHTEP trains and educates workers, including young workers, in a wide range of workplaces and in agriculture on proven injury and illness prevention measures.
- Collaborate with DIR Communications unit and WOSHTEP's three regional UC resource centers to promote and extend WOSHTEP's reach to ensure effective outreach and to promote WOSHTEP messages and services.

³⁷ https://www.dir.ca.gov/OSIP/rulemaking/Rulemaking_Approved_May_2020.html.

³⁸ <https://covid19.ca.gov/safely-reopening/> and <https://covid19.ca.gov/>.

³⁹ <https://saferatwork.covid19.ca.gov/>.

⁴⁰For example, CHSWC supports educational materials and guides, such as "The California Workplace Guide to Aerosol Transmissible Diseases," Cal/OSHA, June 2023, at https://www.dir.ca.gov/dosh/dosh_publications/ATD-Guide.pdf.

CHSWC RECOMMENDATIONS

- Support ongoing partnerships and continued development and outreach of educational materials for underserved groups of workers, such as those who do not speak English as their first language, workers with limited literacy, and young workers.
- Support ongoing partnerships and continued development of in-person and online training and outreach materials designed to teach the importance of implementing the required written Injury and Illness Prevention Plan and ensuring all employees are familiar with its contents.
- Collaborate with the safety and health and WC community to extend the reach of CHSWC's School Action for Safety and Health (SASH) Program, a model program to help schools statewide improve their injury and illness prevention practices for K–12 school employees, including teachers.
- Collaborate with the safety and health and WC community to develop and facilitate outreach with materials and training to address particular hazards or issues faced by school employees, particularly those caused by the impact of the COVID-19 pandemic. In particular, messages and training that help school districts balance work and family and development of individual resilience and relaxation skills should be prioritized.
- Collaborate with the safety and health and WC community to develop occupation-specific training tailored to the health and safety needs of high-risk school employees.
- Support efforts to develop and create a California Occupational Research Agenda specific to the needs of California's employers and workforce to prevent workplace injuries and illnesses, while integrating the contribution made by the National Occupational Research Agenda (NORA) at the National Institute for Occupational Safety and Health (NIOSH).
- Invite injured workers and employers to CHSWC meetings on a regular basis to share their stories of what they face in the WC and health and safety systems.
- Support efforts, including total worker health, to develop training and safety strategies—including adaptive technologies—that help to prevent musculoskeletal disorders.
- Facilitate the outreach of a model training curriculum for occupational safety and health training for child-care workers and employers.
- Collaborate with the Office of the Director and the Labor Occupational Health Program to promote the [training program](#)⁴¹ for janitorial services industry employees and employers to promote safe workplaces free from sexual harassment and sexual assault-related workplace injuries and illnesses.
- Collaborate with the Division of Occupational Safety and Health (DOSH) to promote resources on heat illness prevention and wildfire safety.
- Monitor the implementation of AB 1978, which requires every janitorial business in California to register annually with DLSE, and report on the number of registered janitorial providers in DLSE's License Registration database and the number of penalties for unregistered janitorial providers for the CHSWC Annual Report.
- Facilitate the development and outreach of materials related to protecting workers from hazardous air quality during wildfires and other airborne toxic or viral events.

⁴¹ DIR, Sexual Harassment Prevention Training for Janitorial Services Employers, <https://www.dir.ca.gov/dlse/Janitorial-Training.html>.

SPECIAL REPORT: 2023 LEGISLATION AND REGULATIONS ON HEALTH AND SAFETY AND WORKERS' COMPENSATION

HEALTH and SAFETY AND WORKERS' COMPENSATION LEGISLATION

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

Copies of the legislation referenced in this digest, along with information, such as legislative committee analyses, are available on the Legislative Counsel of California website at www.leginfo.ca.gov. The chaptered bills take effect January 1, 2024, unless they contain an urgency clause, in which case they took effect immediately upon the Governor's signature. Alternatively, some measures specify their effective date.⁴²

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

HIGHLIGHTS OF 2023 LEGISLATION SPECIFIC TO THE COMMISSION

SB 623 (2023)

This bill would require the Commission on Health and Safety and Workers' Compensation to study and report on the effectiveness of the Post-traumatic Stress Disorder (PTSD) presumption as well as on claims data for the currently covered classes of active firefighters, peace officers and fire and rescue coordinators of the OES, and, additionally, of public safety dispatchers, public safety telecommunicators, and emergency response communication employees, as defined, and their supervisors. The report analyzing claims data is to be provided to the Senate Committee on Labor, Public Employment and Retirement and the Assembly Committee on Insurance no later than January 1, 2025. The report on the effectiveness of the presumption is to be provided no later than January 1, 2027.

It is also noteworthy that CHSWC research based on the usage of a prepaid card for indemnity payments (noted in last year's annual report) was impacted by AB 2148 (2022)⁴³ and the extension of the pilot program timeframe to January 1, 2024. AB 489 of this year extends the pilot an additional year to January 1, 2025, and by necessity will extend the timeframe for a report.

HEALTH AND SAFETY

Health and Safety Legislation

AB 521, Assemblyperson Bauer-Kahan.

Occupational safety and health standards: construction jobsites: toilet facilities.

Amends Section 118600 of the Health and Safety Code, and adds Section 6722 to the Labor Code, relating to occupational safety and health.

Status: Enrolled on September 20, 2023 and chaptered on October 8, 2023.

https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=202320240AB521

⁴² The information on enrollment and chaptered dates for the bills in this section is found after researching a bill at: <https://leginfo.ca.gov/faces/billSearchClient.xhtml> and then selecting the History tab.

⁴³ https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB2148.

SPECIAL REPORT: 2023 LEGISLATION AND REGULATIONS ON HEALTH AND SAFETY AND WORKERS' COMPENSATION

Existing law grants the Division of Occupational Safety and Health, which is within the Department of Industrial Relations, jurisdiction over all employment and places of employment, and the power necessary to enforce and administer all occupational health and safety laws and standards. The Occupational Safety and Health Standards Board, an independent entity within the department, has the exclusive authority to adopt occupational safety and health standards within the state. Existing law, the California Occupational Safety and Health Act of 1973 (OSHA), requires employers to comply with certain safety and health standards, as specified, and charges the division with enforcement of the act.

This bill would require the standards board, before December 1, 2025, to draft a rulemaking proposal to consider revising a regulation on construction jobsite toilet facilities to require at least one single-user toilet facility on all construction jobsites, designated for employees who self-identify as female or nonbinary. The bill would require the standards board to consider adopting revised standards for the standards described above on or before December 31, 2025.

Existing law further requires all single-user toilet facilities in a business establishment, place of public accommodation, or state or local government agency to be identified as all-gender toilet facilities by specified signage and designated for use by no more than one occupant at a time or for family or assisted use.

This bill would provide that this provision does not apply to construction jobsites, as described above. The bill would include related legislative findings.

AB 1007, Assemblyperson Ortega.

Occupational safety and health standards: plume.

Adds Section 144.9 to the Labor Code, relating to occupational safety and health.

Status: Enrolled on September 21, 2023 and chaptered on October 7, 2023.

https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=202320240AB1007

Under existing law, the Occupational Safety and Health Standards Board within the Department of Industrial Relations promulgates occupational safety and health standards for the state, including standards dealing with toxic materials and harmful physical agents. Under existing law, the Division of Occupational Safety and Health is required to enforce all occupational safety and health standards, as specified. A violation of these standards and regulations under specific circumstances is a crime.

This bill would, by December 1, 2026, require the division to submit to the board a proposed regulation requiring a health facility to evacuate or remove plume to the extent technologically feasible through the use of a plume scavenging system in all settings that employ techniques that involve the creation of plume. The bill would require the division, when developing regulations, to consider, among other things, recommendations on the evacuation of plume from the federal Occupational Safety and Health Administration and National Institute for Occupational Safety and Health. The bill would require the board to consider for adoption a proposed regulation by June 1, 2027.

This bill would provide that compliance with general room ventilation standards or the use of surgical masks does not satisfy the requirements for protection from surgical plumes under these provisions. The bill would provide that the use of respirators does not satisfy the requirements for protection from surgical plumes under these provisions, except as specified. The bill would require the manufacturer of a plume scavenging system to provide evidence that the system meets specified minimum requirements when installed, operated, and maintained in accordance with the manufacturer's instructions.

This bill would specify that these provisions do not limit the authority of the division to develop, or limit the authority of the board to adopt, a regulation with a broader scope or broader application than required by these provisions.

By expanding the definition of an existing crime, this bill would impose a state-mandated local program.

SPECIAL REPORT: 2023 LEGISLATION AND REGULATIONS ON HEALTH AND SAFETY AND WORKERS' COMPENSATION

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement. This bill would provide that no reimbursement is required by this act for a specified reason.

AB 1228, Assemblyperson Holden.

Fast food restaurant industry: Fast Food Council: health, safety, employment, and minimum wage. Adds Part 4.5.5 (commencing with Section 1474) to, and repeals Part 4.5.5 (commencing with Section 1470) of, Division 2 of the Labor Code, relating to employment.

Status: Enrolled on September 21, 2023 and chaptered on September 28, 2023.

https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=202320240AB1228

Existing law, which is suspended pursuant to a referendum petition, establishes, until January 1, 2029, the Fast Food Council (council) within the Department of Industrial Relations and prescribes its powers. Existing law, among other things, prescribes the purposes, duties, and limitations of the council, including a requirement that the council promulgate minimum fast food restaurant employment standards. Existing law sets standards for any minimum wage the council establishes.

This bill would repeal those existing provisions on January 1, 2024, if a specified referendum is withdrawn by its proponents by that date.

If the referendum is withdrawn, in addition to that repeal, this bill would, until January 1, 2029, or as otherwise provided, establish the Fast Food Council and prescribe the council's purposes, duties, and limitations, as described, establish an hourly minimum wage for fast food restaurant employees, as described, authorize the council to increase the hourly minimum wage pursuant to specified parameters, and set forth requirements, limitations, and procedures for adopting and reviewing fast food restaurant health, safety, and employment standards. The bill would require all standards, rules, and regulations developed by the council to be issued, amended, or repealed, as applicable, in the manner prescribed in the Administrative Procedure Act, but as modified, and would require the council to petition the Occupational Safety and Health Standards Board and the Civil Rights Council if any minimum standards fall within their jurisdiction.

Existing law prohibits, among other things, an employer or any person acting on behalf of the employer from making, adopting, or enforcing any rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency, among other individuals and entities, if the employee has reasonable cause to believe that the information discloses specified violations of law, regardless of whether disclosing the information is part of the employee's job duties. Existing law imposes, in addition to other penalties, a civil penalty on certain employers for each violation of this provision, except as specified.

This bill would also deem the council a governmental agency for purposes of the above-described prohibition. The bill would additionally prohibit a fast food restaurant operator from discharging or in any manner discriminating or retaliating against any employee due to the employee's participation in or testimony to any proceeding convened by the council.

This bill would prohibit any city, county, or city and county from enacting or enforcing any ordinance or regulation applicable to fast food restaurant employees that sets the amount of wages or salaries for fast food restaurant employees, except as provided. By imposing additional requirements on local agencies, the bill would impose a state-mandated local program.

Existing law establishes in the Department of Industrial Relations the Division of Labor Standards Enforcement under the direction of the Labor Commissioner. Existing law authorizes the Labor Commissioner to investigate employee complaints and to provide for a hearing in any action to recover wages, penalties, and other demands for compensation.

SPECIAL REPORT: 2023 LEGISLATION AND REGULATIONS ON HEALTH AND SAFETY AND WORKERS' COMPENSATION

This bill would require the Labor Commissioner to enforce compliance with the minimum fast food restaurant employment standards and any other standards promulgated pursuant to the bill's provisions and would set forth procedures for enforcing the standards. By expanding the application of crimes associated with those enforcement procedures, the bill would impose a state-mandated local program. This bill would make legislative findings and declarations as to the necessity of a special statute for fast food restaurant workers.

The bill would include findings that changes proposed by this bill address a matter of statewide concern rather than a municipal affair and, therefore, apply to all cities, including charter cities.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement. This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

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

AB 1776, Committee on Labor and Employment.

Division of Occupational Safety and Health: regulations.

Amends Section 3351 of, and to add Section 7358 to, the Labor Code, and to amend Sections 10200, 10204, and 10205 of the Unemployment Insurance Code, relating to employment.

Status: Enrolled on July 25, 2023 and chaptered on July 27, 2023.

https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202320240AB1766

(1) Existing law grants the Division of Occupational Safety and Health, which is within the Department of Industrial Relations, jurisdiction over all employment and places of employment, with the power necessary to enforce and administer all occupational health and safety laws and standards, including standards for the operation of passenger tramways. Under existing law, the Occupational Safety and Health Standards Board, an independent entity within the department, has the exclusive authority to adopt occupational safety and health standards within the state.

This bill would require the division to formulate and propose rules and regulations for adoption by the Occupational Safety and Health Standards Board for the safe design, manufacture, installation, repair, maintenance, use, operation, and inspection of all passenger tramways as necessary to protect the public. The bill would require the division to adopt all other rules and regulations necessary for the administration and enforcement of these provisions on passenger tramways.

(2) Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, that generally requires employers to secure the payment of workers' compensation for injuries incurred by their employees that arise out of, or in the course of, employment. Existing law defines "employee" for those purposes.

This bill would correct an obsolete cross-reference within the provision that defines "employee."

(3) Existing federal law, the Workforce Innovation and Opportunity Act of 2014, repeals and supersedes the federal Workforce Investment Act of 1998 and provides for the establishment of a state workforce development board to develop strategies to support the use of career pathways for the purpose of providing individuals with workforce investment activities, education, and support services necessary for them to enter the workforce or retain employment. Existing law contains various programs for job training and employment investment.

Conforming to the federal act, existing state law, the California Workforce Innovation and Opportunity Act, renames the California Workforce Investment Board the California Workforce Development Board and

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renames local workforce investment boards as local workforce development boards. Existing law establishes the Employment Training Panel within the Employment Development Department and prescribes the functions and duties of the panel with respect to certain employment training programs. Existing law relating to the panel references the superseded federal act and refers to the state and local boards by their former names. Existing law declares the intent of the Legislature that programs developed pursuant to these provisions not replace, parallel, supplant, compete with, or duplicate in any way already existing approved apprenticeship programs.

This bill would delete the above-described intent provision. The bill would update statutory references in provisions relating to the panel to refer to the federal Workforce Innovation and Opportunity Act of 2014, the California Workforce Development Board, and local workforce development boards.

SB 234, Senators Portantino, et. al.

Opioid antagonists: stadiums, concert venues, and amusement parks.

Adds Chapter 16 (commencing with Section 11870) to Part 2 of Division 10.5 of the Health and Safety Code, relating to opioids.

Status: Enrolled September 18, 2023 and chaptered on October 8, 2023.

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240SB234

Existing law requires the State Department of Public Health, subject to an appropriation in the Budget Act of 2016, to award funding to local health departments, local governmental agencies, or on a competitive basis to other organizations, as specified, to support or establish programs that provide naloxone or another opioid antagonist to first responders and at-risk opioid users through programs that serve at-risk drug users. Existing law exempts from civil liability a person who, in good faith and not for compensation, renders emergency medical or nonmedical care or assistance at the scene of an emergency other than an act or omission constituting gross negligence or willful or wanton misconduct, as provided.

This bill would require each stadium, concert venue, and amusement park to maintain unexpired doses of naloxone hydrochloride or any other opioid antagonist on its premises at all times, and to ensure that at least 2 employees are aware of the location of the naloxone hydrochloride or other opioid antagonist. The bill would exempt from civil or criminal liability a person who, in good faith, administers naloxone hydrochloride or another opioid antagonist by nasal spray or auto-injector on the premises of a stadium, concert venue, or amusement park, other than an act or omission constituting gross negligence or willful or wanton misconduct, except as specified. The bill would exempt from civil or criminal liability a stadium, concert venue, or amusement park, or its employees, or an entity that owns, occupies, or operates a stadium, concert venue, or amusement park, or its employees, for the administration of naloxone hydrochloride or another opioid antagonist, or the failure to administer naloxone hydrochloride or another opioid antagonist, on the premises of the stadium, concert venue, or amusement park, as provided.

SB 306, Senator Caballero.

Climate change: Equitable Building Decarbonization Program: Extreme Heat Action Plan.

Adds Section 71361 to, and adds and repeals Section 25665.7 of, the Public Resources Code, relating to climate change.

Status: Enrolled on September 20, 2023 and chaptered on October 7, 2023.

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240SB306

Existing law requires the State Energy Resources Conservation and Development Commission to establish the Equitable Building Decarbonization Program, which includes establishing a statewide incentive program for low-carbon building technologies and the direct install program to fund certain projects, including installation of energy efficient electric appliances, energy efficiency measures, demand flexibility measures, wiring and panel upgrades, building infrastructure upgrades, efficient air-conditioning systems, ceiling fans, and other measures to protect against extreme heat, where appropriate, and remediation and safety measures to facilitate the installation of new technologies. Existing law authorizes the commission to administer the direct install program through regional direct install third-party implementers, as specified.

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Existing law requires that the direct install program give preference to projects in buildings that meet specified criteria. The Budget Act of 2022 appropriated \$112,000,000 from the General Fund for purposes of the Equitable Building Decarbonization Program.

This bill would require the commission, on or before September 1, 2024, and annually thereafter until the moneys described above have been expended, to submit a report to the relevant policy committees of the Legislature that includes information about the progress of the direct install program, including the selected administrators and implementers and implementation progress, as specified.

Existing law establishes the Office of Planning and Research in state government in the Governor's office. Existing law establishes the Integrated Climate Adaptation and Resiliency Program (ICARP) to be administered by the office to coordinate regional and local efforts with state climate adaptation strategies to adapt to the impacts of climate change, as prescribed. The Budget Act of 2022 appropriated \$50,000,000 for state operations or local assistance for the ICARP Extreme Heat and Community Resilience Grant Program.

This bill would require the office and the Natural Resources Agency, on or before July 1, 2026, and every 3 years thereafter, in consultation with relevant state agencies, to update the Extreme Heat Action Plan, as defined, to promote comprehensive, coordinated, and effective state and local government action on extreme heat, as provided. The bill would require the Extreme Heat Action Plan and subsequent updates to be posted on the office's and agency's internet websites and provided to the relevant fiscal and policy committees of the Legislature.

SB 553, Senator Cortese.

Occupational safety: workplace violence: restraining orders and workplace violence prevention plan.

Amends, repeals, and adds Section 527.8 of the Code of Civil Procedure, and to amend Section 6401.7 of, and adds Section 6401.9 to, the Labor Code, relating to occupational safety.

Status: Enrolled on September 20, 2023 and chaptered on September 30, 2023.

https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202320240SB553

Existing law authorizes any employer, whose employee has suffered unlawful violence or a credible threat of violence from any individual that can reasonably be construed to be carried out or to have been carried out at the workplace, to seek a temporary restraining order and an order after hearing on behalf of the employee and other employees at the workplace, as described.

This bill, commencing January 1, 2025, would also authorize a collective bargaining representative of an employee, as described, to seek a temporary restraining order and an order after hearing on behalf of the employee and other employees at the workplace, as described. The bill would require an employer or collective bargaining representative of an employee, before filing such a petition, to provide the employee who has suffered unlawful violence or a credible threat of violence from any individual an opportunity to decline to be named in the temporary restraining order. Under the bill, an employee's request to not be named in the temporary restraining order would not prohibit an employer or collective bargaining representative from seeking a temporary restraining order on behalf of other employees at the workplace, and, if appropriate, other employees at other workplaces of the employer. The bill would make various conforming changes.

Existing law, the California Occupational Safety and Health Act of 1973, imposes safety responsibilities on employers and employees, including the requirement that an employer establish, implement, and maintain an effective injury prevention program, and makes specified violations of these provisions a crime. The act is enforced by the Division of Occupational Safety and Health (division) within the Department of Industrial Relations, including the enforcement of standards adopted by the Occupational Safety and Health Standards board (standards board).

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This bill would require an employer, as specified, to also establish, implement, and maintain, at all times in all work areas, an effective workplace violence prevention plan containing specified information. The bill would require the employer to record information in a violent incident log for every workplace violence incident, as specified. The bill would require the employer to provide effective training to employees on the workplace violence prevention plan, among other things, and provide additional training when a new or previously unrecognized workplace violence hazard has been identified and when changes are made to the plan. The bill would require records of workplace violence hazard identification, evaluation, and correction and training records to be created and maintained, and violent incident logs and workplace incident investigation records to be maintained, as specified. The bill would require certain records to be made available to the division, employees, and employee representatives, as specified. The bill would make these requirements operative on and after July 1, 2024.

Existing law requires the division to issue, with reasonable promptness, a citation to an employer if, upon inspection or investigation, the division believes the employer has violated any standard, rule, order, or regulation established pursuant to specified provisions of law. Existing law specifies procedures for issuance of the citation and provides there is a rebuttable presumption that a violation is enterprise-wide if an employer has multiple worksites and the division has evidence of a pattern or practice of the same violation or violations committed by the employer involving more than one of their worksites, or if the employer has a written policy or procedure that violates specified provisions of law, except as provided. Existing law also authorizes the division to impose certain civil penalties pursuant to specified law, including when any employer violates any occupational safety or health standard, order, or special order, depending on whether the violation is serious.

This bill would require the division to enforce the workplace violence prevention plan and related requirements by issuance of a citation and a notice of civil penalty, as specified. The bill would authorize the appeal of a citation and penalty, as specified. The bill would require the division to propose, no later than December 1, 2025, and the standards board to adopt, no later than December 31, 2026, standards regarding the plan required by the bill, as specified.

This bill would also require every employer to include the workplace violence prevention plan as part of their effective injury prevention program, a violation of which is a misdemeanor in specified circumstances. By expanding the scope of a crime, the bill would impose a state-mandated local program.

This bill would incorporate additional changes to Section 527.8 of the Code of Civil Procedure added by SB 428 to be operative only if this bill and SB 428 are enacted and this bill is enacted last. The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

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

SB 626, Senator Rubio.

Smoking tobacco in the workplace: transient lodging establishments.

Amends Section 6404.5 of the Labor Code, relating to workplace safety.

Status: Enrolled on August 30, 2023 and chaptered on September 8, 2023.

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240SB626

Existing law, the California Occupational Safety and Health Act of 1973, prohibits smoking of tobacco products inside an enclosed space, as defined, at a place of employment. The violation of the prohibition against smoking in enclosed spaces of places of employment is an infraction punishable by a specified fine. Existing law establishes specified exemptions from “place of employment” that allow smoking in certain work environments, including an exemption for up to 20% of the guestroom accommodations in a hotel, motel, or similar transient lodging establishment.

This bill would eliminate the exemption for up to 20% of guestroom accommodations in transient lodging establishments.

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By expanding the scope of an infraction, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement. This bill would provide that no reimbursement is required by this act for a specified reason.

SB X1-2 (SB 2) Senator Skinner.

Energy: transportation fuels: supply and pricing: maximum gross gasoline refining margin.

Amends Sections 25354, 25355, 25362, and 25364, adds Sections 25354.2, 25355.5, 25355.7, and 25367 to, and adds Chapter 4.6 (commencing with Section 25370) to Division 15 of, the Public Resources Code, relating to energy. (excerpted for DOSH related-only)

Status: Enrolled March 27, 2023 and chaptered March 28, 2023.

https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=202320241SB2&search_keywords=refinery

Background: This bill requires the California Energy Commission to consider rulemaking on ways to manage the timing of oil refinery turnarounds and maintenance. The CEC will also have to prepare a triennial report (first one due 12/31/23) on this issue. The CEC is to consult with LWDA (meaning DOSH PSM) about ensuring worker and community safety were the CEC to mandate or regulate maintenance schedules at refineries.

Rulemaking: DOSH does not have to do any rulemaking, and neither does OSHSB for this bill.

Health and Safety Regulations

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

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

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

Proposed OSHSB standards and rulemaking updates are at:

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

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

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

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

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

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

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

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

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

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

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WORKERS' COMPENSATION

Workers' Compensation Legislation

Four (4) workers' compensation bills were signed into law in 2023. The following is a summary.

AB 489, Assemblyperson Calderon.

Workers' compensation: disability payments.

Amends Section 4651 of the Labor Code, relating to workers' compensation.

Status: Enrolled on July 11, 2023 and chaptered on July 13, 2023

https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202320240AB489

Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, to compensate an employee for injuries sustained in the course of the employee's employment. Existing law governs temporary and permanent disability indemnity payments. Existing law, until January 1, 2024, allows an employer to commence a program under which disability indemnity payments are deposited in a prepaid card account for employees.

This bill would extend the authorization to deposit indemnity payments in a prepaid card account until January 1, 2025.

AB 621, Assemblyperson Irwin.

Workers' compensation: special death benefit.

Amends Section 4707 of the Labor Code, relating to workers' compensation.

Status: Enrolled on September 20, 2023 and chaptered on October 8, 2023.

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240AB621

Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, to compensate an employee for injuries sustained in the course of employment, which, in the case of the death of an employee, includes a death benefit. Existing law provides, however, that no benefits, except reasonable expenses of burial not exceeding \$1,000, shall be awarded under the workers' compensation laws on account of the death of an employee who is an active member of the Public Employees' Retirement System, unless the death benefits available under the Public Employees' Retirement Law are less than the workers' compensation death benefits. In that case, the surviving spouse and children of the employee are also entitled to the difference between the 2 death benefit amounts. Existing law exempts local safety members and patrol members, as defined, from this limitation.

This bill would expand that exemption to include state safety members, peace officers, and firefighters for the Department of Forestry and Fire Protection who are members of Bargaining Unit 8 and would apply the exemption for these employees retroactively to January 1, 2019, for injuries not previously claimed or resolved.

AB 752, Assemblyperson Blanca Rubio.

State highways: worker safety.

Amends Section 92.1 of the Streets and Highways Code, relating to transportation.

Enrolled on September 19, 2023 and chaptered October 13, 2023

https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202320240AB752

- (1) Existing law establishes the Department of Transportation and provides that the department has full possession and control of all state highways and property and rights in property acquired for state highway purposes. Existing law authorizes the department to construct, improve, and maintain state highways.

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Existing law requires the department to update guidance by July 1, 2021, to specify the appropriate use of positive protection measures with the goal of isolating workers or work zones from traffic. Existing law requires the department to provide compensation for the use of a safety device where the updated guidance allows, but does not require, the optional safety device when requested by a contractor on a public works project. Existing law requires the department to submit a report to the Legislature by January 1, 2024, that includes findings and recommendations on the use of positive protection measures used pursuant to these provisions. Existing law repeals these provisions on January 1, 2025.

This bill would eliminate the January 1, 2025, repeal date, thereby extending these provisions indefinitely. The bill would specify that the department is only required to compensate for an optional safety device requested for use on a public works project of the department. After the submittal of the report due on January 1, 2024, the bill would require the department to prescribe standards and specifications to require the appropriate use of positive protection on all covered activities on the state highway system, as specified. The bill would authorize the department to adopt regulations as necessary or appropriate to carry out the purposes of these provisions, and would exempt those regulations from the Administrative Procedures Act.

(2) Existing law grants the Division of Occupational Safety and Health, which is within the Department of Industrial Relations, jurisdiction over all employment and places of employment, with the power necessary to enforce and administer all occupational health and safety laws and standards.

This bill would require a contractor that has requested and received compensation from the department for an optional safety device to use the optional safety device in conformance with the department's guidance. The bill would authorize the division to adopt regulations as necessary or appropriate to enforce this requirement.

SB 623, Senator Laird.

Workers' compensation: post-traumatic stress disorder.

Amends Section 3212.15 of the Labor Code, relating to workers' compensation.

Status: Enrolled on September 20, 2023 and chaptered on October 8, 2023.

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240SB623

Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, to compensate an employee for injuries sustained in the course of employment. Existing law provides, until January 1, 2025, that, for certain state and local firefighting personnel and peace officers, the term "injury" includes post-traumatic stress that develops or manifests during a period in which the injured person is in the service of the department or unit and creates a disputable presumption that the injury arises out of and comes in the course of employment. Existing law requires the compensation awarded pursuant to this provision to include full hospital, surgical, medical treatment, disability indemnity, and death benefits.

This bill would instead repeal that provision on January 1, 2029, and would require the Commission on Health and Safety and Workers' Compensation to submit reports to the Legislature analyzing the effectiveness of the presumption and a review of claims filed by specified types of employees, not included in the presumption, such as public safety dispatchers, as defined.

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Workers' Compensation Regulations

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

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

Information on preliminary rulemaking activities is available at:

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

The latest formal rulemaking updates are available at:

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

DWC Approved Regulations 2022 are available at:

<https://www.dir.ca.gov/dwc/rulemaking/DWCRulemaking2022.html>

DWC Approved Regulations 2023 are available at:

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

DWC Proposed Regulations 2023 are available at:

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

Information on WCAB preliminary rulemaking activities:

<https://www.dir.ca.gov/wcab/wcabforums.htm>

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

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

Administration of Self-Insurance Plans Regulations

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

Proposed OSIP regulations, if any, are at:

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

Approved OSIP regulations, if any, are at:

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

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

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

SYSTEM COSTS AND BENEFITS

This section contains estimated California Workers' Compensation (WC) costs for 2022. Most of the information reflected in this report is through December 31, 2022, and, as a result, it covers a year preceded by an unpredictably evolving workplace health and economic crisis caused by the COVID-19 pandemic since the end of 2019. In 2022, COVID-19 illness was less severe and less deadly compared to 2020 and 2021, and no new variant has emerged in 2022 with the capacity to create a surge in claims. 2022 was the last and third year of the State of Emergency caused by COVID-19 and introduced on March 4, 2020. Governor Gavin Newsom declared the end of the State of Emergency effective February 28, 2023.⁴⁴ However, COVID-19 remains an established and ongoing health issue that can result in additional and prolonged medical treatment required in long COVID-19 (Long-COVID) cases. According to the Centers for Disease Control and Prevention (CDC) the new COVID-19 variants that can infect or reinfect people who have been vaccinated or have previously had COVID-19 will continue to occur.⁴⁵ The unpredictability of the new variants' potential for transmission, infection, severity, hospitalizations, and deaths will continue to pose risks to economic activity, employment, and administration of WC system. Different health and research organizations estimate that from 6 percent to 31 percent of workers who filed claims for COVID-19 suffer Long-COVID, meaning they seek additional medical treatment more than a month after the initial infection.⁴⁶

The California state laws and regulations initially adopted in response to the COVID-19 pandemic, including the stay-at-home executive order and the rebuttable presumptions of WC compensability laws, were renewed, extended, as well as modified, thereby affecting the analysis, assumptions, and estimates essential for administration of WC programs. The pandemic's ultimate impact on the WC industry and its future trends may not be known for years and can only be comprehensively evaluated using several years of data in the "new normal" environment in which COVID-19 is a constant factor requiring a transition from the emergency measures to long-term management in both occupational and non-occupational healthcare context.

Whereas the impact of COVID-19 on administrative and health and safety activities will be included in designated sections with related details, the effect of one-time aberrations like COVID-19 on WC cost methodology, based on a specific rate for every \$100 of employers' payroll, will be neutralized. According to the Department of Insurance's Special Regulatory Filing Decision, the occurrence or non-occurrence of COVID-19 WC claims incurred by an employer are unlikely to be a strong predictor of that employer's future WC claim costs and therefore inclusion of such claims in experience modification calculations would not meet the intended goal of experience rating.⁴⁷ Similarly, the California Insurance Commissioner also approved rule changes to exclude from reported payroll any payments made to employees not performing duties of any kind in the service of the employer during the stay-at-home orders.⁴⁸ Excluding this payroll recognizes the extraordinary circumstances resulting from the stay-at-home order and the fact that employees not engaged in work activities have no work-related exposure.

⁴⁴ <https://www.gov.ca.gov/wp-content/uploads/2023/02/COVID-SOE-Termination-Proclamation-2.28.23.pdf?emrc=1db54f>.

⁴⁵ CDC, Variants of the Virus, <https://www.cdc.gov/coronavirus/2019-ncov/variants/index.html>.

⁴⁶ Long COVID in the Workers' Compensation System in 2020 and 2021. Bogdan Savych. <https://www.wcrinet.org/reports/long-covid-in-the-workers-compensation-system-in-2020-and-2021>.

⁴⁷ Department of Insurance: Special Regulatory Filing Decision, [July 1, 2020 Regulatory Filing Decision \(wcirb.com\)](https://www.wcirb.com/July-1-2020-Regulatory-Filing-Decision).

⁴⁸ Ibid.

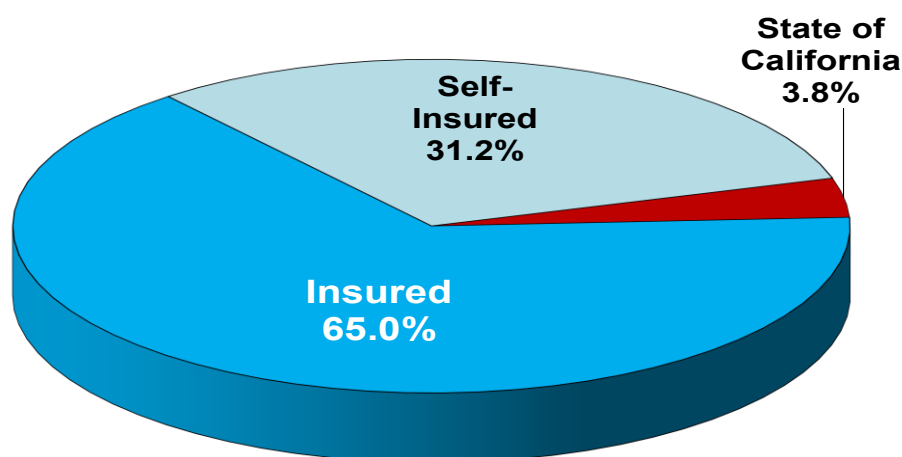
SYSTEM COSTS AND BENEFITS

The California WC system covers an estimated 16,119,000 employees⁴⁹ working for over 1,109,305 employers⁵⁰ in the state. These employees and employers generated a gross domestic product of \$3.64 trillion in 2022.⁵¹ A total of 748,982 occupational injuries and illnesses were reported for 2022,⁵² ranging from minor medical treatment cases to catastrophic injuries and deaths. The total paid cost to employers for WC in 2022 was an estimated \$22.3 billion. (see Tables 4 and 5 in the box “Systemwide Cost: Paid Dollars for 2022 Calendar Year” on page 33.)

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

According to Figure 1, based on the claim counts reported to the Workers’ Compensation Information System (WCIS), 65.0 percent of injuries occur to employees of insured employers, 31.2 percent of injuries occur to employees of self-insured employers, and 3.8 percent of injuries occur to employees of the State of California.⁵³ (For calculations based on claim counts and paid loss data, see Tables 1-3 in the box “Methods of Estimating the Workers’ Compensation System Size” on pages 31-32.)

Figure 1: Market Shares Based on Claim Counts Reported to WCIS (2020-2022 average)



Data Source: DWC - WCIS

⁴⁹ NASI Report: Workers’ Compensation: Benefits, Costs, and Coverage, 2020, November 2022.

<https://www.nasi.org/wp-content/uploads/2022/11/2022-Workers-Compensation-Report-2020-Data.pdf>.

⁵⁰ CHSWC estimates are based on an Employment Development Department report, as above, showing 1,755,291 businesses in 2022. Of these, 1,291,973 were businesses with 0 to 4 employees. For this estimate, half of those businesses are assumed to have no employees subject to workers’ compensation. $1,755,291 - (1,291,973 / 2) = 1,109,305$.

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

⁵¹ US Bureau of Economic Analysis, <https://apps.bea.gov/itable/iTable.cfm?ReqID=70&step=1&acrdn=1>.

⁵² The latest year for which WCIS reports are reasonably complete. Data are from the DWC report from the WCIS database, FROI and SROI Data Summary, by Year of Injury,” data as of June 16, 2023. Due to delayed reporting, the number of claims reported to WCIS for a given year may grow by more than 5 percent between the second and the fourth years after the end of the accident year. Boden, Leslie I. and Al Ozonoff, “Reporting Workers’ Compensation Injuries in California: How Many are Missed?” (2008), CHSWC Report.

⁵³ WCIS, Table 4, “Workers’ Compensation Claims by Market Share,” data run as of June 16, 2023, https://www.dir.ca.gov/dwc/wcis/WCIS_tables/Table-4/WCIS_Reports-Table-4.html.

SYSTEM COSTS AND BENEFITS

Methods of Estimating the Workers' Compensation System Size

The overall system size for 2022 is estimated at 1.54 times the insured sector size. This multiplier is based on claims counts in the Workers' Compensation Information System (WCIS).¹ CHSWC is using a three-year moving average of WCIS claim counts because it blunts the effect of one-time aberrations. (See the market shares for 2022 in Table 1). The annually revised estimate of the multiplier is based on updated claims data provided by WCIS as well as updated paid loss amounts from the Workers' Compensation Insurance Rating Bureau (WCIRB), the Office of Self-Insurance Plans (OSIP), and the California Department of Human Resources (CDHR) in order to examine and substantiate its accuracy.

Claim Counts-Based Method

The number of claims for all sectors increased by 19.4 percent from 627,067 claims in 2013 to 748,982 claims in 2022. The market share of the insured sector ranged from a three-year moving average of 65.0 in 2020-2022 to 68.0 percent in 2018-2020. The market share of the self-insured sector was between an average of 29.4 percent in 2018-2020 to 31.5 percent in 2013-2015. The three-year moving average share of the State of California in the same period from 2013 to 2022, ranged from its minimum of 2.7 percent in 2017-2019 to the average of 4.3 percent in 2020-2022. In 2022, the three-year average market shares based on claims counts were 65.0 percent insured, 31.2 percent self-insured, and 4.3 percent state. Using these values, a multiplier for extending the insured sector information to the overall system can be calculated as $100\%/65.0\% = 1.538$ or 1.54, a .04 percentage points higher than it was in 2021.

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

Year	Insured		Self-Insured		State of California	
	Number	Market Share	Number	Market Share	Number	Market Share
2020	445.3	66.5%	200.5	29.9%	23.8	3.6%
2021	445.2	65.1%	213.5	31.2%	24.7	3.6%
2022	473.5	63.2%	243.6	32.5%	31.8	4.3%
Average for 3 years		65.0%		31.2%		3.8%

Source: WCIS.

¹ WCIS Database as of June 16, 2023, https://www.dir.ca.gov/dwc/wcis/WCIS_tables/Table-4/WCIS_Reports-Table-4.html.

(continued on the next page)

SYSTEM COSTS AND BENEFITS

(continued)

Methods of Estimating the Workers' Compensation System Size (TO BE UPDATED)

Based on the convergence of market share measurements from two independent methods, the data demonstrate that the insured market share is 66-68 percent of the WC system in the normal economic cycle without the effect of one-time aberrations and disruptions like COVID-19, causing sharp downturns in the economy as the result of stay-at-home orders and closures or acute worker shortages during the pandemic and outbreaks. Similarly, depending on the method of measurement, the self-insured sector is 29-31 percent and the state sector is 3 or 4 percent.

Paid Loss Method

Paid loss data indicate that 63 percent of the market in 2021 was insured, 32 percent was self-insured, and 5 percent was the state. This was the second consecutive year since 2010 when the market share of insured sector was 2-3 percentage points below the average range of 66-68 percent of WC market for the sector, as shown in Tables 2 and 3. While statewide unemployment soared during the pandemic, workers of many large, private self-insured employers were less impacted than the insured work force by furloughs, layoffs, and remote work. In a normal economic cycle, these percentages would be similar when using 2021 data for the insured and private self-insured sectors and either 2020-2021 or 2021-2022 data for the State and public self-insured sector. The multiplier for extending insured sector information to the overall system can be calculated as $100\%/63.0\% = 1.587$ (is 0.088 higher than estimated 1.499 based on a three-year (2019-2021) moving average of claim counts in order to blunt the effect of one-time aberrations (see Table 1).

Table 2: Percent Distribution of Workers' Compensation Paid Costs by Sectors (excluding Administrative Expenses) using public self-insured and state data for FY 2022-2023

	Indemnity	Medical	Subtotal	% in Total
a. Private Self-Insured ¹ (2022)	\$721,637,985	\$732,184,837		
b. Public Self-Insured ² (2022/2023)	\$1,590,759,235	\$1,154,710,130		
SELF-INSURANCE PLAN (a + b)	\$2,267,157,157	\$1,864,409,113	\$4,131,566,270	32%
INSURED (2022)³	\$3,975,135,000	\$4,412,681,000	\$8,387,816,000	63%
STATE (2022/2023)⁴	\$261,302,911	\$332,703,297	\$594,006,208	5%
Total			\$12,897,192,478	

Table 3: Percent Distribution of Workers' Compensation Paid Costs by Sectors (excluding Administrative Expenses) using public self-insured and state data for FY 2021-2022

	Indemnity	Medical	Subtotal	% in Total
a. Private Self-Insured ¹ (2021)	\$676,397,922	\$709,698,983		
b. Public Self-Insured ² (2021/2022)	\$1,590,759,235	\$1,154,710,130		
SELF-INSURANCE PLAN (a + b)	\$2,267,157,157	\$1,864,409,113	\$4,131,566,270	32%
INSURED (2021)³	\$3,814,889,000	\$4,356,731,000	\$8,171,620,000	63%
STATE (2021/2022)⁴	\$261,302,911	\$332,703,297	\$594,006,208	5%
Total			\$12,897,192,478	

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

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

³ WCIRB, 2022 Losses and Expenses Report, Exhibit 12.1, released June 27, 2023.

https://www.wcirb.com/sites/default/files/documents/2022_ca_wc_losses_and_expenses_report_0.pdf.

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

SYSTEM COSTS AND BENEFITS

Workers' compensation is generally a no-fault system that provides statutory benefits for occupational injuries or illnesses. Benefits consist of medical treatment, temporary disability (TD) payments, permanent disability (PD) payments, return-to-work assistance, and death benefits. The overall amounts paid in each of these categories systemwide are shown in Tables 4 and 5. These figures are based on insurer-paid amounts multiplied by 1.54 to include estimated amounts paid by self-insured employers and the State.

Systemwide Cost: Paid Dollars for 2022 Calendar Year

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

	Insured	Self-Insured and the State	All Employers
Indemnity*	\$3,975**	\$2,147	\$6,122
Medical*	\$4,413***	\$2,383	\$6,796
Changes to Total Reserves	\$825	\$446	\$1,271
Insurer Pre-Tax Underwriting Profit/Loss and Insurer Policyholder Dividends	\$200	N/A	\$200
Expenses (see Table 5 below: Breakdown of Expenses)	\$5,900	\$1,972	\$7,872
TOTAL for 2022*	\$15,313	\$6,947	\$22,260

* Include CIGA payments totaling \$73 million in 2022.

** Include \$70 million in indemnity payments made in 2022 for COVID-19 claims.

*** Include \$39.5 million in medical payments made in 2022 for COVID-19 claims.

Note: The totals may not add up due to rounding.

Source for Insured figures in Tables 4 and 5 is WCIRB Losses and Expenses report released on June 27, 2023. Self-insured and state expenses are calculated by CHSWC using 0.54 multiplier for equivalent cost components. The equivalent expense components are estimated as in Table 5.

Table 5: Breakdown of Expenses (Million \$)

	Insured	Self-Insured and State	All Employers
<i>Loss Adjustment Expense</i>	\$2,655	\$1,434	\$4,089
<i>Commissions and Brokerage</i>	\$1,370	N/A	\$1,370
<i>Other Acquisition Expenses</i>	\$547	N/A	\$547
<i>General Expenses</i>	\$997	\$538	\$1,535
<i>Premium and Other Taxes</i>	\$331	N/A	\$331
Total	\$5,900	\$1,972	\$7,872

Estimate of Workers' Compensation System Size Based on Written Premium

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

Written premium for insured employers = \$15.7 billion in calendar year 2022.⁵⁴

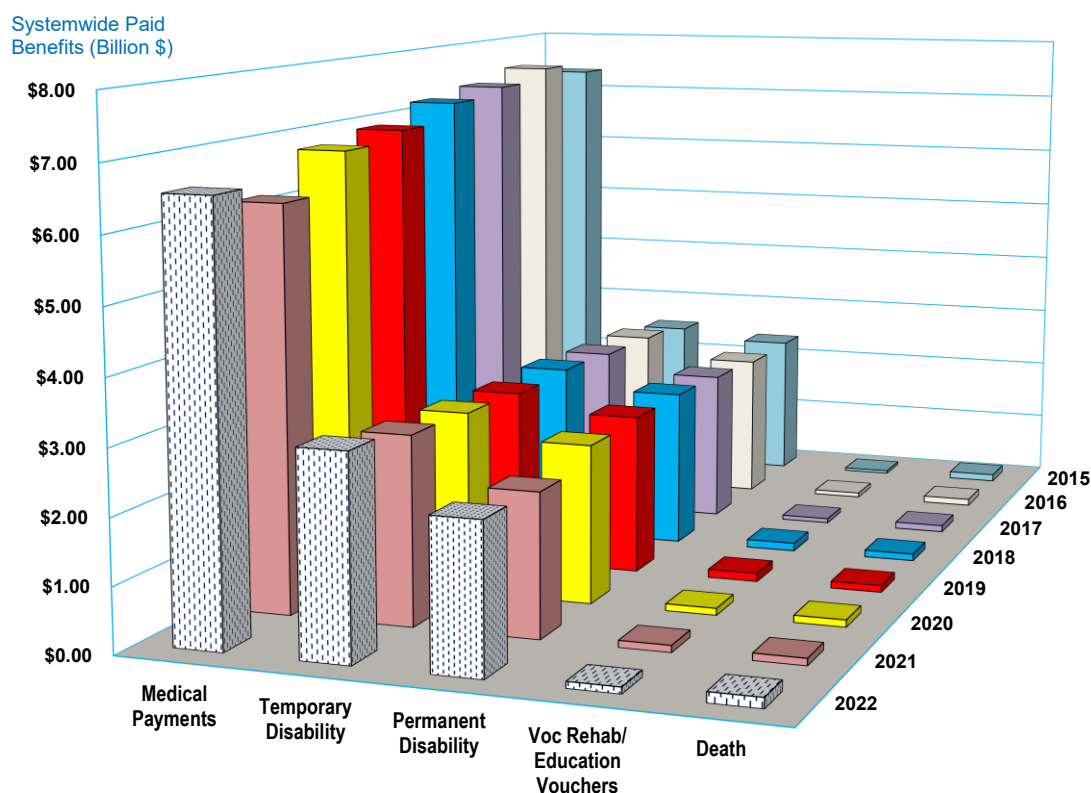
$\$15.7 \text{ billion} \times 1.54 = \$24.2 \text{ billion systemwide costs for employers.}$

⁵⁴ WCIRB Quarterly Experience Report as of December 31, 2022, Chart 1.

https://www.wcirb.com/sites/default/files/documents/quarterlyexperiencereport-2022q4_-_final_0.pdf.

SYSTEM COSTS AND BENEFITS

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



* Systemwide amounts for CY 2022 estimated at 1.54 times the amounts reported by insurers

Data Source: WCIRB

The Rebuttable Presumption of Compensability for California COVID-19 Workers' Compensation Claims

The COVID-19 pandemic and the subsequently adopted stay-at-home order have significantly affected California's economic, health-care, and WC systems. In order to alleviate the adverse impact of COVID-19 illnesses sustained in the course of employment by designated types of employees, SB 1159 (Hill) was enacted on September 17, 2020.⁵⁵ Its statutes took effect immediately and were extended until January 1, 2024 by AB 1751.⁵⁶ SB 1159 codified the COVID-19 compensability presumption created by Executive Order N-62-20⁵⁷ that Governor Newsom signed on May 6, 2020, and provided two new rebuttable presumptions that an employee's illness related to COVID-19 was an occupational injury and therefore eligible for WC benefits if specified criteria were met.

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

Find the details of the policy implications in "Special Report: A Study of COVID-19 Claims and Presumptions under Senate Bill 1159" from 2021 included in this document on page 234.⁵⁸

⁵⁵ SB 1159, COVID-19 Critical Workers, https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201920200SB1159.

⁵⁶ SB 1751, COVID-19 Critical Workers, https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB1751.

⁵⁷ <https://www.gov.ca.gov/wp-content/uploads/2020/05/5.6.20-EO-N-62-20-text.pdf>.

⁵⁸ <https://www.dir.ca.gov/chswc/Reports/2022/RAND-COVID-claims-presumptions.pdf>.

SYSTEM COSTS AND BENEFITS

Cal/OSHA's COVID-19 Prevention Emergency and Non-Emergency Regulations

California approved Occupational Safety and Health Standards Board (Cal/OSHA) emergency temporary standards (ETS) on COVID-19 infection prevention starting in November 2020.⁵⁹ These temporary standards applied to most workers in California not covered by Cal/OSHA's Aerosol Transmissible Diseases standard.⁶⁰

On December 15, 2022, Cal/OSHA voted to adopt non-emergency COVID-19 prevention regulations, effective February 3, 2023, that will remain in effect for two years after the effective date, except for the recordkeeping subsections that will remain in effect for three years.⁶¹ Important changes to the COVID-19 Prevention regulations include declaration that employers are no longer required to maintain a standalone COVID-19 Prevention Plan. Instead, employers must now address COVID-19 as a workplace hazard under the requirements found in section 3203 (Injury and Illness Prevention Program, IIPP), and include their COVID-19 procedures to prevent this health hazard in written IIPP or in a separate document.⁶²

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

In an effort to expand the access of workers with COVID-19 to medical care and to incentivize medical providers to accept WC insurance, DWC introduced changes in many sections of the Official Medical Fee Schedule (OMFS).⁶³ The OMFS changes included the Physician Services/Non-Physician Practitioner Services Fee Schedule, Durable Medical Equipment, Prosthetics, and Orthotics and Supplies (DMEPOS) to support essential services during the COVID-19 pandemic, Inpatient Hospital Section (increase in DRG weights for COVID-19 related discharges); Pathology and Clinical Laboratory section to adopt new COVID-19 testing codes and fees. The increases in medical fees were both temporary as with three CPT procedural codes⁶⁴ that improved access to medical care through telehealth during the public health emergency and more long-term when the Labor Code § 5307.1⁶⁵ required adjustments in the OMFS to conform to Medicare fee schedule changes. Depending on the effective dates, these adjustments were made retroactively to the Medicare effective dates and required that WC claims administrators set up a process to reevaluate claims ex post facto when applicable, adding to the complexity of the cost evaluation process.

In order to identify, capture, and track COVID-19 injuries, DWC updated certain filing and application forms, introduced new medical and claims-related codes and data elements in WCIS and Electronic Adjudication Management System (EAMS), and adjusted the means of data and information collection through electronic filing, JET filing, paper filing by U.S. mail, and e-mail when approved. In 2021, the Workers Compensation Insurance Organizations (WCIO) has updated the Injury Description Tables with a new Nature of Injury Code 38 (Adverse reaction to a vaccination or inoculation) to reflect specific coding for adverse reactions to vaccinations.

WCIRB's Projected COVID-19 Claim Costs in the Insured Sector

Projections of future COVID-19 costs involve a high level of uncertainty. It is unclear what variants might emerge and how infectious or severe they might be. Changes in safety measures, such as reduced mask wearing or more employees working at the same premises, may increase exposure to COVID-19. In addition, the medical effects of "long COVID" are being examined as cases present themselves in people but are still largely unknown.

The disruptive impact of COVID-19 on California's WC system described in the recommendations section of this report (see pages 10-11) includes unpredictable changes in the 2020 and 2021 environments where the

⁵⁹ <https://www.dir.ca.gov/dosh/coronavirus/ETS.html>

⁶⁰ <https://www.dir.ca.gov/title8/5199.html>

⁶¹ https://www.dir.ca.gov/dosh/coronavirus/Non_Emergency_Regulations/

⁶² <https://www.dir.ca.gov/dosh/coronavirus/Non-Emergency-regs-summary.pdf>

⁶³ DWC emergency regulations filed with the state's Office of Administrative Law (OAL), https://www.dir.ca.gov/dwc/rulemaking/dwc_rulemaking_proposed.html and https://www.dir.ca.gov/dirnews/link_page.html.

⁶⁴ <https://www.dir.ca.gov/dwc/WCISenews/WCISen148.htm>.

⁶⁵ Labor Code § 5307.1, http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=5307.1.&lawCode=LAB

SYSTEM COSTS AND BENEFITS

main components of the 2020 and 2021 WC costs emerged. WCIRB's January 1, 2021 Pure Premium Rate Filing showed that the rate of COVID-19 claims differed significantly by industry and classification, particularly during the initial pandemic period.

In its September 1, 2022, regulatory filing submitted in February 2022, the WCIRB recommended incorporation of a provision to include COVID-19 claims in employers' experience ratings for new claims with the accident dates after September 1, 2022 (while claims with accident dates from December 1, 2019 to August 31, 2022 would still be excluded).⁶⁶ The Insurance Commissioner (IC) rejected the proposal.⁶⁷ As a result, COVID-19 claims remained excluded from the calculation of experience modifications.

In consideration of the COVID-19 pandemic impact, WCIRB in its September 1, 2022 Pure Premium Filing,⁶⁸ (a) largely excluded 2020 experience as the basis for projecting future cost levels (b) relied upon-pre-pandemic experience as well as 2021 experience in the projection, and (c) separately projected the cost of COVID-19 claims to be incurred on September 1, 2022 through August 31, 2023 insurance policies.

Given that COVID-19 claim costs from policies incepting in 2019 and 2020 represent earlier and different periods of the pandemic, the WCIRB did not believe the relative differences in COVID-19 claim costs by classification from this experience were appropriate to project in classification relativities for policies incepting September 1, 2023 and later.⁶⁹ Due to the declining proportion of indemnity claims caused by COVID-19 and the relatively low severity of COVID-19 indemnity claims relative to all indemnity claims observed in accident year 2022, the WCIRB does not recommend a separate provision for the projected cost of COVID-19 claims to be incurred on policies incepting from September 1, 2023 to August 31, 2024. As in the last three pure premium rate filings, the WCIRB separately analyzed the potential cost of future COVID-19 WC claims.

In Accident Year (AY) 2022, the COVID-19 claim costs were 0.6 percent of total losses and loss adjustment expenses (see Figure 3). The result was close to WCIRB's predicted financial impact of COVID-19 claim costs of about 0.5 percent of losses and loss adjustment expenses on policies incepting between September 1, 2022, and August 31, 2023, based on published COVID-19 infection forecasts and related cost trends.⁷⁰

In 2020, the first year of the pandemic, COVID-19 claim costs in the insured employer system were a relatively significant proportion (5.1 percent) of non-COVID-19 costs. In 2021, COVID-19 claim costs decreased to 1.4 percent of losses as was anticipated in the WCIRB's September 1, 2021, Pure Premium Rate Filing, even with some increase in dominant Delta strain cases and the emergence of an Omicron variant.⁷¹

⁶⁶ WCIRB Regulatory Filing September 1, 2022,

https://www.wcirb.com/sites/default/files/documents/sept_1_2022_regulatory_filing-complete.pdf.

⁶⁷ Department of Insurance: Regulatory Filing Decision, June 28, 2022 [Regulatory Filing Decision](#) (wcirb.com)

⁶⁸ WCIRB Pure Premium Rate Filing September 1, 2022.

https://www.wcirb.com/sites/default/files/documents/20220901_ppr_filing-complete.pdf.

⁶⁹ WCIRB September 1, 2023 Regulatory Filing,

https://www.wcirb.com/sites/default/files/documents/20230901_wcirb_regulatory_filing-complete.pdf

⁷⁰ WCIRB Sep 1, 2022 Regulatory and PPR Filings, Section B, Appendix D, Exhibit 3

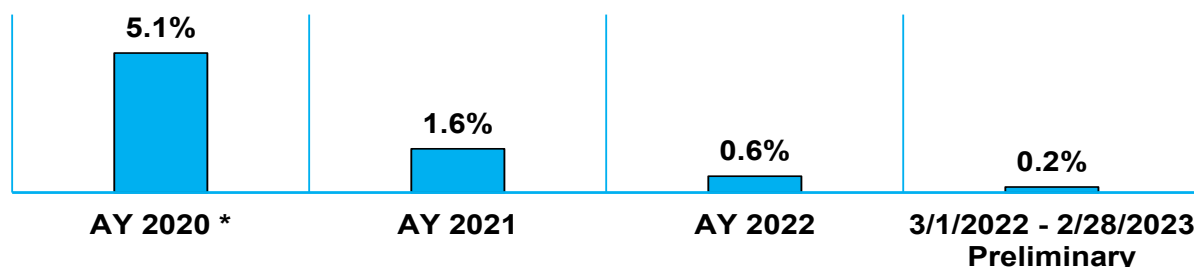
https://www.wcirb.com/sites/default/files/documents/20220901_ppr_filing-complete.pdf

⁷¹ WCIRB's State of the System 2022 Report. Chart 8,

<https://www.wcirb.com/sites/default/files/documents/wcirb2022stateofthesystem1663968583761.pdf>.

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Figure 3: Estimated Cost of COVID-19 Claims as Percent of Total Ultimate Incurred Losses and Loss Adjustment Expenses⁷² (Accident Year)



* Percent of indemnity claims for AY 2020 only reflects the April through December time period.

Note: WCIRB September 1, 2023 PPR filing does not include a provision for COVID-19 Costs.

Source: WCIRB

Incurred losses⁷³ for COVID-19 claims in 2022 comprised 1.0 percent or \$94 million of total \$9.1 billion insurer incurred losses, excluding payments made by CIGA.⁷⁴ In 2022, \$39.5 million of total \$4.4 billion in medical payments and \$70.0 million of total \$4.0 billion indemnity payments were made for COVID-19 claims resulting in 1.3 percent of both medical and indemnity COVID-19 claims in total paid losses.

In 2022, with higher population vaccination and prior infection rates, as well as greater use of emerging COVID-19 therapeutics, both the frequency and severity of COVID-19 claims - the main determinants of a COVID-19 claim cost - decreased compared to 2021 and early 2022.

Since the rollout of the vaccines in early 2021, the ratio of COVID-19 indemnity claims to all indemnity claims has been relatively low.⁷⁵ The COVID-19 share of indemnity claims peaked during the winter surges of 2020-2021 and 2021-2022. From February 2022 to April 2023, the COVID-19 share of indemnity claims has represented, on average, about 3 percent of reported indemnity claims.

⁷² WCIRB September 31, 2023 Pure Premium Rate Filing. Chart 22.

https://www.wcirb.com/sites/default/files/documents/20230607_cdi_hearing_executive_summary.pdf

⁷³ Incurred Losses are defined by WCIRB as the total of the paid indemnity and medical losses (claim amounts already paid) plus the future reserves (claim amounts expected to be paid in the future).

⁷⁴ WCIRB Losses and Expenses Report,

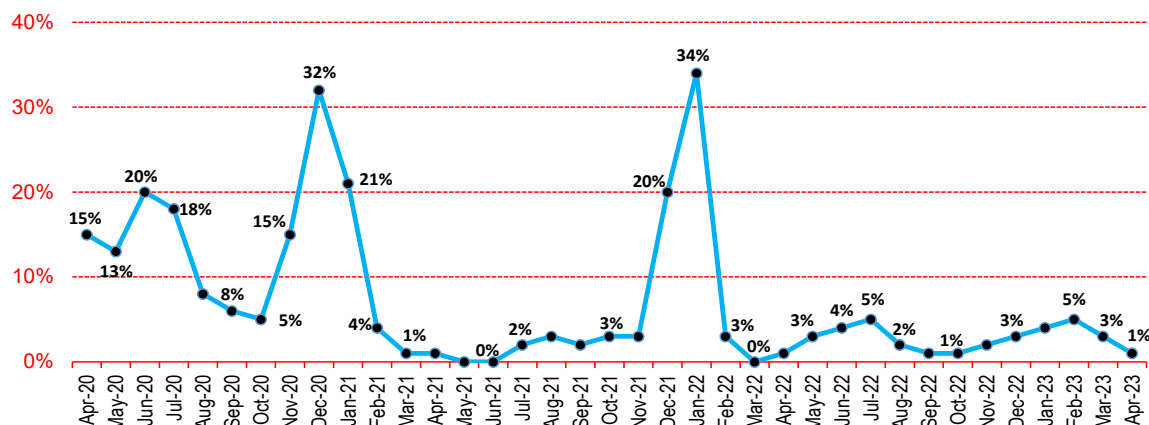
https://www.wcirb.com/sites/default/files/documents/2022_ca_wc_losses_and_expenses_report_0.pdf.

⁷⁵ WCIRB.COVID-19 in California Workers' Compensation System Report. October 2021 Update.

https://www.wcirb.com/sites/default/files/documents/wcirb_report-covid-19caworkerscomp_0.pdf,

SYSTEM COSTS AND BENEFITS

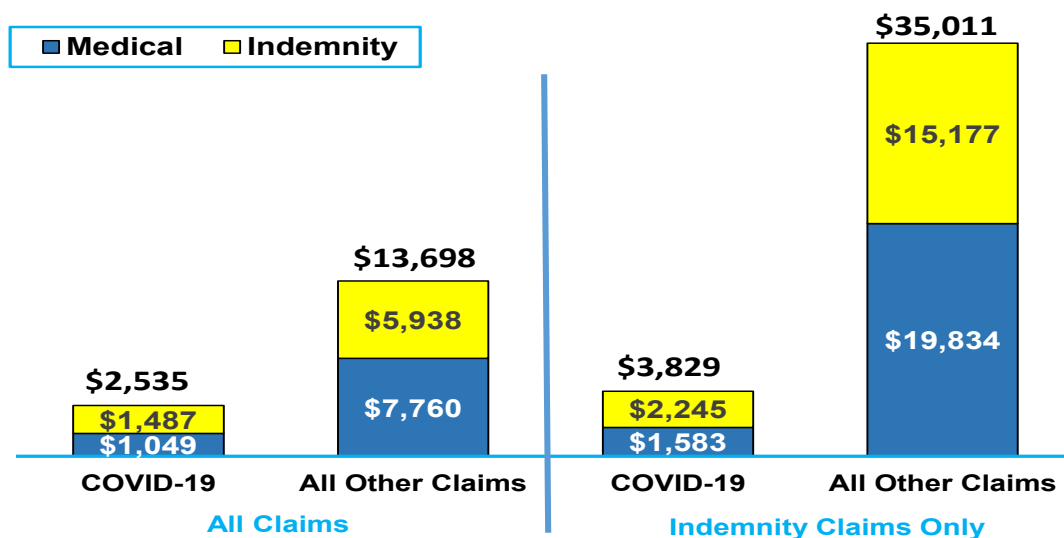
Figure 4: Share of COVID-19 Indemnity Claims⁷⁶



Source: WCIRB

As Figure 5 shows, in Accident Year (AY) 2022, the average incurred medical cost for a COVID-19 claim was more than 90 percent lower compared to the average incurred medical cost of a non-COVID-19 WC claim. Similarly, the average incurred cost for a COVID-19 indemnity claim was approximately 90 percent less than that of a non-COVID-19 indemnity claim. This difference was primarily due to a higher prevalence of small indemnity-only COVID-19 claims. According to WCIRB, the average incurred cost of a COVID-19 indemnity claim at 18 months in AY 2022 decreased by about 80 percent from the average cost of the claim from AY 2020 at the same maturity. The change in cost is attributed to a greater percentage of indemnity-only claims reported in AY 2022.

Figure 5: Average Incurred Cost of a COVID-19 Claim, AY 2022⁷⁷



Source: WCIRB

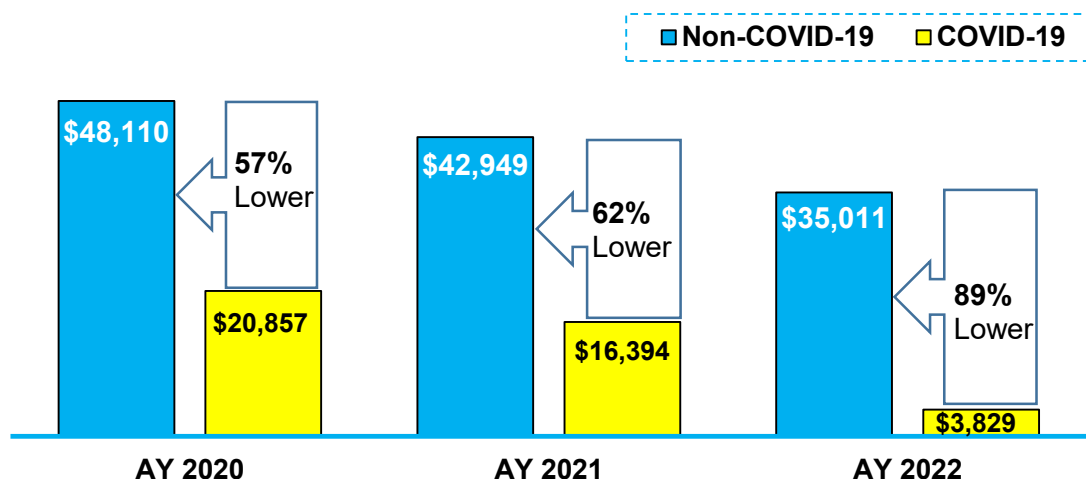
⁷⁶ WCIRB 2023 State of the System Report, https://www.wcirb.com/sites/default/files/documents/wcirb_2023_state_of_the_system.pdf

⁷⁷ WCIRB's COVID-19 in California Workers' Compensation report, Chart 8, https://www.wcirb.com/sites/default/files/documents/september_2023_covid_update_brief-ho.pdf.

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As the general trend of decrease in the relative cost of a COVID-19 indemnity claim to a non-COVID-19 WC indemnity claim accelerated, the average incurred cost of a COVID-19 indemnity claim of insured employers in 2022 was about 89 percent less than the average non-COVID-19 WC indemnity claim (see Figure 6). As mentioned above, a significant share of all COVID-19 claims with incurred benefits involve only indemnity benefits, most of which are small and quickly closed.

Figure 6: Decrease in Average Cost of a COVID-19 Incurred Indemnity Claim⁷⁸



Source: WCIRB aggregate financial calls.

Potential cost-related COVID-19 risks

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

Endemic diseases often settle into more predictable and stable patterns, but researchers cannot predict with certainty how damaging an endemic level of COVID-19 could become. The ongoing rapid antigenic evolution of COVID-19, or its continuous adaptation to the immune response, is likely to produce new variants that are more severe. Since the beginning of the pandemic, Alpha, Beta, Delta, Omicron, and their subvariants have emerged capable of avoiding vaccine immunity or immunity naturally acquired after developing COVID-19. There is a potential for higher costs if a new variant is more aggressive, highly transmissible, vaccine-resistant, or able to cause more severe disease. In contrast to other vaccines against viral infections and similar to seasonal flu shots, COVID-19 vaccines have to be constantly redeveloped and updated due to COVID-19 mutations.

The potential losses are associated with “Long COVID-19” (Long-COVID), causing an aggravation of preexisting conditions and the possibility that a claimant continues to suffer the effects of COVID-19 long after a typical recovery course. From 6 percent, as estimated by WCRI, to 31 percent – by the New York State Insurance Fund, and other estimates in between - of workers who filed claims for COVID-19 suffered Long-COVID requiring an additional medical treatment more than a month after the initial infection.⁷⁹ Claims with Long-COVID treatment are far more expensive than the claims without Long-COVID. According to a WCRI

⁷⁸ WCIRB’s COVID-19 in California Workers’ Compensation report, Charts 6-8, https://www.wcirb.com/sites/default/files/documents/september_2023_covid_update_brief-ho.pdf.

⁷⁹ Long COVID in the Workers’ Compensation System in 2020 and 2021. Bogdan Savych. <https://www.wcrinet.org/reports/long-covid-in-the-workers-compensation-system-in-2020-and-2021> and <https://www.claimsjournal.com/app/uploads/2023/02/NYSIFLongCOVIDStudy2023-1.pdf>.

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study, the average medical payment per claim of a Long-COVID claim was \$29,341, approximately ten times more expensive than the medical payment per claim for a COVID-19 claim without Long-COVID. Management of procedures and treatments related to Long-COVID cases are considered serious medical cost drivers. The federal National Institutes of Health continues to study the causes, means of prevention, and treatment of long COVID-19 cases.⁸⁰

In addition, increased costs from the COVID-19 pandemic were associated with treatment delays in the WC system⁸¹ along with more frequent ergonomic injuries for remote workers resulting from the mass transition to hastily established telework programs.⁸² The ongoing discussions and literature related to remote work injuries consider requiring employers to pay “all necessary expenditures or losses” that workers incur while doing their job and required by California Labor Code to include employees working from home.⁸³

Although the WC system generally precludes litigation protecting the employer from big losses, some significant future awards are possible. Litigations have already been filed in some states with 9,126 cases from January 2020 to September 2023, including 47 cases in California,⁸⁴ with employers facing allegations of negligence resulting in illness and/or death due to COVID-19 transmission in the workplace.

WCIS COVID-19 claim counts and characteristics⁸⁵ (TO BE UPDATED)

Whereas the WCIRB’s COVID-19 claims data, as described in the previous subsection, are collected from the WC-insured sector exclusively, DWC’s WC Information System (WCIS) collects the data from the private WC-insured employers, the State of California, and private and public self-insured employers.⁸⁶

Prior to Executive Order N-62-20, the California WC program did not cover routine community-spread illnesses such as colds or the flu because they could not be directly identified as Arising out of Employment (AOE)/Course of Employment (COE) and were treated as mild and easily alleviated conditions. As COVID-19 proved to be deadly in some cases, several bills were signed into law to expand access to WC coverage in the face of the pandemic.

SB 1159 extends COVID-19 eligibility under WC and makes it easier for first responders, healthcare workers, and people who test positive due to an outbreak at work to get necessary medical care and wage replacement benefits. At the same time, the intent of AB 685 (Reyes) was to enhance Cal/OSHA’s enforcement of COVID-19 infection prevention requirements, including timely notification to employees and local and state public health officials of COVID-19 cases at workplaces.⁸⁷ According to Governor Newsom, these laws help California workers stay safe at work and get the support they need if they are exposed to COVID-19.

Figure 7 shows the total number of accepted (compensable) and denied COVID-19 claims in 2020, 2021, and January-October 2022. On average, one-third or 34 percent of all COVID-19 claims filed from January 2020 to October 2022 were denied. The share of denied COVID-19 claims decreased to 30 percent in January-October 2022.

⁸⁰ National Institutes of Health, Long COVID, <https://covid19.nih.gov/covid-19-topics/long-covid>.

⁸¹ Cost Impacts of Medical Care Delays in the California Workers’ Compensation System, <https://www.wcirb.com/news/wcirb-studies-cost-impacts-delayed-medical-care-due-covid-19>.

⁸² California Labor Laws for Remote Workers, <https://herlawyer.com/california-laws-remote-workers/>.

⁸³ LC 2800-2810.8, Obligations of Employer, https://leginfo.ca.gov/faces/codes_displaySection.xhtml?sectionNum=2802.&lawCode=LAB

⁸⁴ COVID-19 Related Workplace Litigation Tracker, <https://www.fisherphillips.com/en/innovations-center/covid-19-employment-litigation-tracker-and-insights/index.html>.

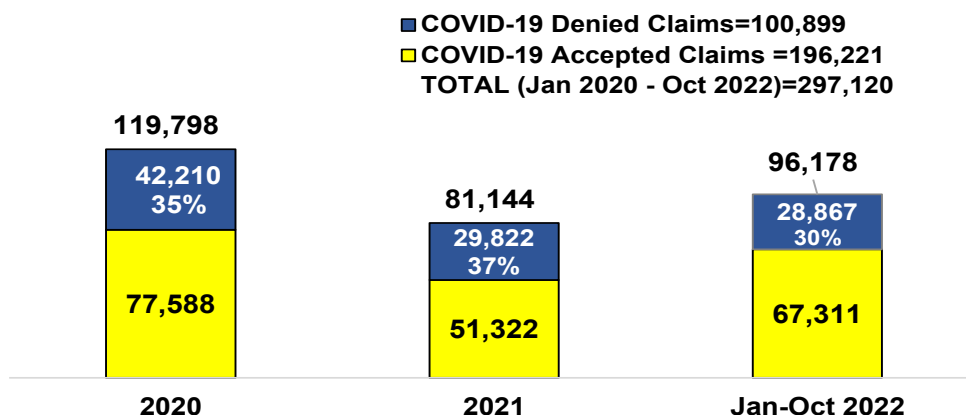
⁸⁵ The data on WCIS COVID-19 claims was provided by DWC WCIS based on reports run on October 20, 2022. The figures cover 34 months from January 2020 to October 2022.

⁸⁶ WCIS definitions of WC market sectors, https://www.dir.ca.gov/dwc/wcis/WCIS_tables/Table-4/WCIS_Reports-Table-4.html.

⁸⁷ Office of Governor Gavin Newsom, <https://www.gov.ca.gov/2020/09/17/governor-newsom-signs-legislation-to-protect-californias-workforce-amid-the-covid-19-pandemic/>.

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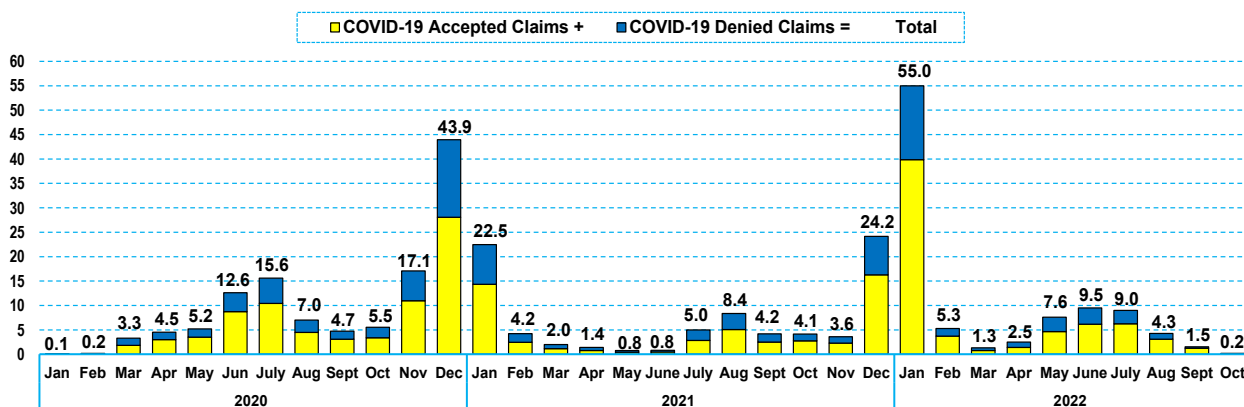
Figure 7: Total Number of Compensable and Denied COVID-19 Claims



Data Source: DWC - WCIS FROI

Figure 8 shows the number of COVID-19 WC claims filed monthly, including accepted or denied claims from January 2020 to October 2022. At the peaks of pandemic, the COVID-19 claims filed during the 3-month period between November 2020 and January 2021 accounted for 28 percent and those filed in December 2021-January 2022 accounted for 27 percent of COVID-19 claims filed during the entire 34-month period.

Figure 8: Monthly Numbers of Compensable and Denied COVID-19 Claims (Thousand)

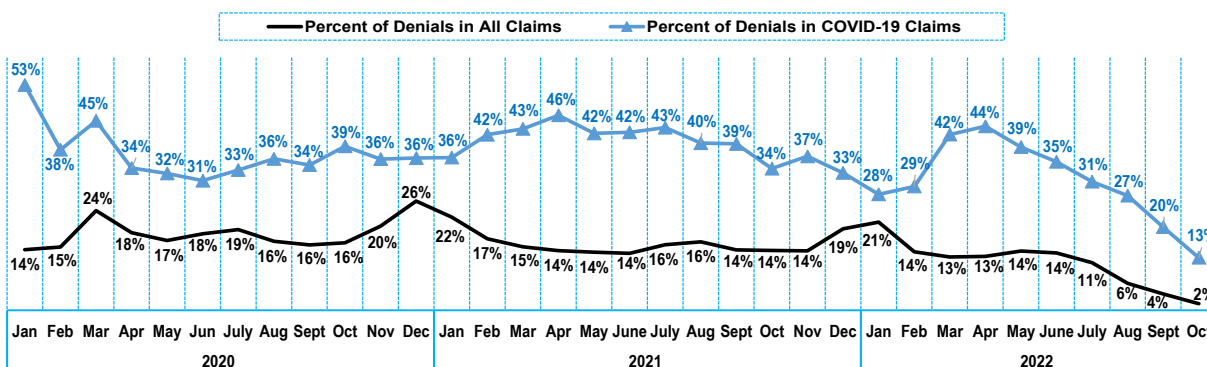


Source: DWC - WCIS FROI

The COVID-19 pandemic presents unique conditions, in which many jobs that had not been typically considered hazardous suddenly became dangerous, and the mandatory rules of claim denials were changed by the State of California. Workers at a high risk of exposure to the virus while at work received WC insurance coverage due to efforts by Governor Newsom and his administration that started as Executive Order N-62-20 and culminated in SB 1159 on September 17, 2020. Figure 9 compares the monthly denial rates of COVID-19 cases to denials in all WC claims filed from January 2020 to October 2022.

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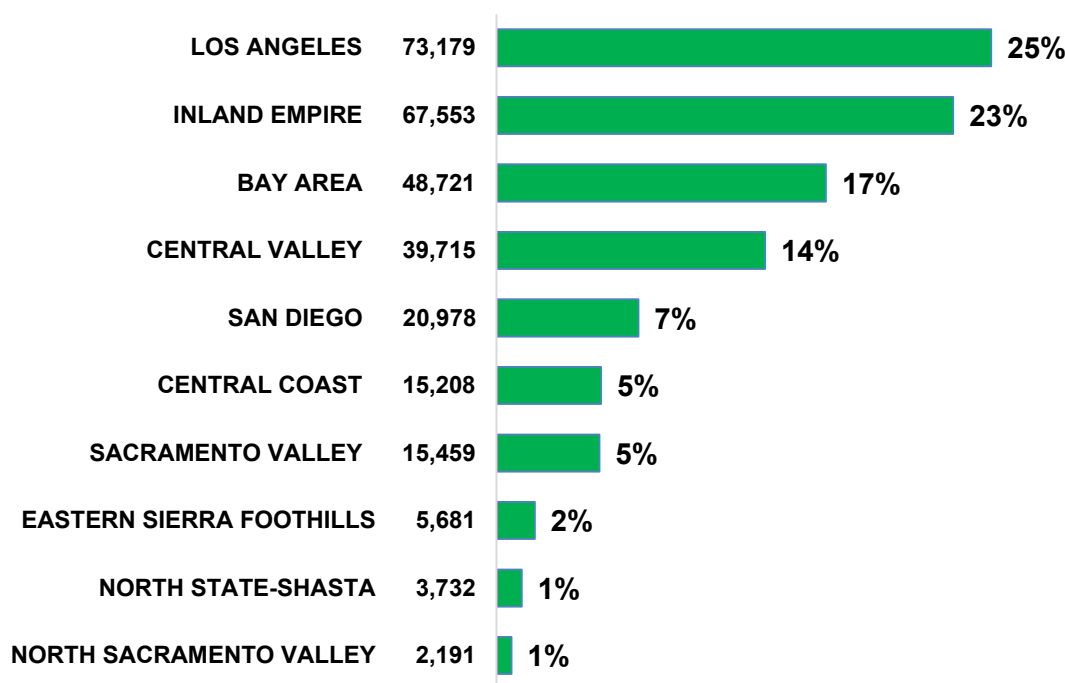
Figure 9: Percent of Denials in All and COVID-19 Workers' Compensation Claims



Data Source: DWC - WCIS FROI

Figure 10 shows that from January 2020 to October 2022, Los Angeles (25 percent) and the Inland Empire (23 percent) regions together accounted for 48 percent of California's COVID-19 WC claims, followed by the Bay Area (17 percent), the Central Valley (14 percent), San Diego (7 percent), and the more rural Central Coast (5 percent) and the Sacramento Valley (5 percent). The Eastern Sierra Foothills, North State-Shasta, and the North Sacramento Valley regions, comprised of several counties with a small number of claims, together accounted for 4 percent of the COVID-19 WC claims filed during the same period.

Figure 10: Number and Distribution of COVID-19 Claims Filed by California Regions from January 2020 to October 2022



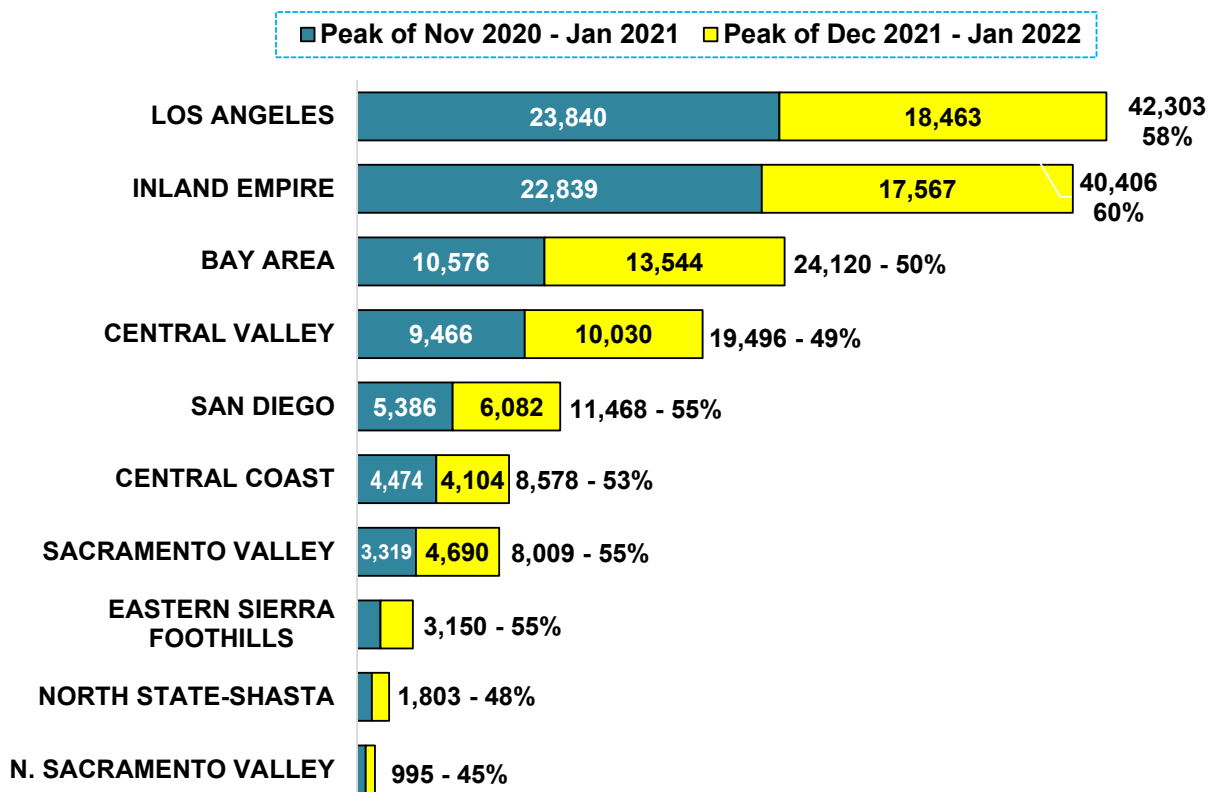
Data Source: DWC - WCIS FROI

Figure 11 shows the regional numbers of COVID-19 WC claims filed during the two peaks of the pandemic in November 2020-January 2021 and December 2021-January 2022. The biggest filers of COVID-19 claims like Los Angeles and Inland Empire filed about 60 percent of all COVID-19 claims registered to each region in 34 months from January 2020 to October 2022. Excluding the two smallest filers, during the peaks of the

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pandemic, the Bay Area, Central Valley, San Diego, Central Coast, Sacramento Valley, and Eastern Sierra Foothills filed about 50-55 percent of their COVID-19 claims registered in 34 months from January 2020 to October 2022.

Figure 11: Number of COVID-19 Claims by California Regions During the Peaks of November 2020 – January 2021 and December 2021 – January 2022

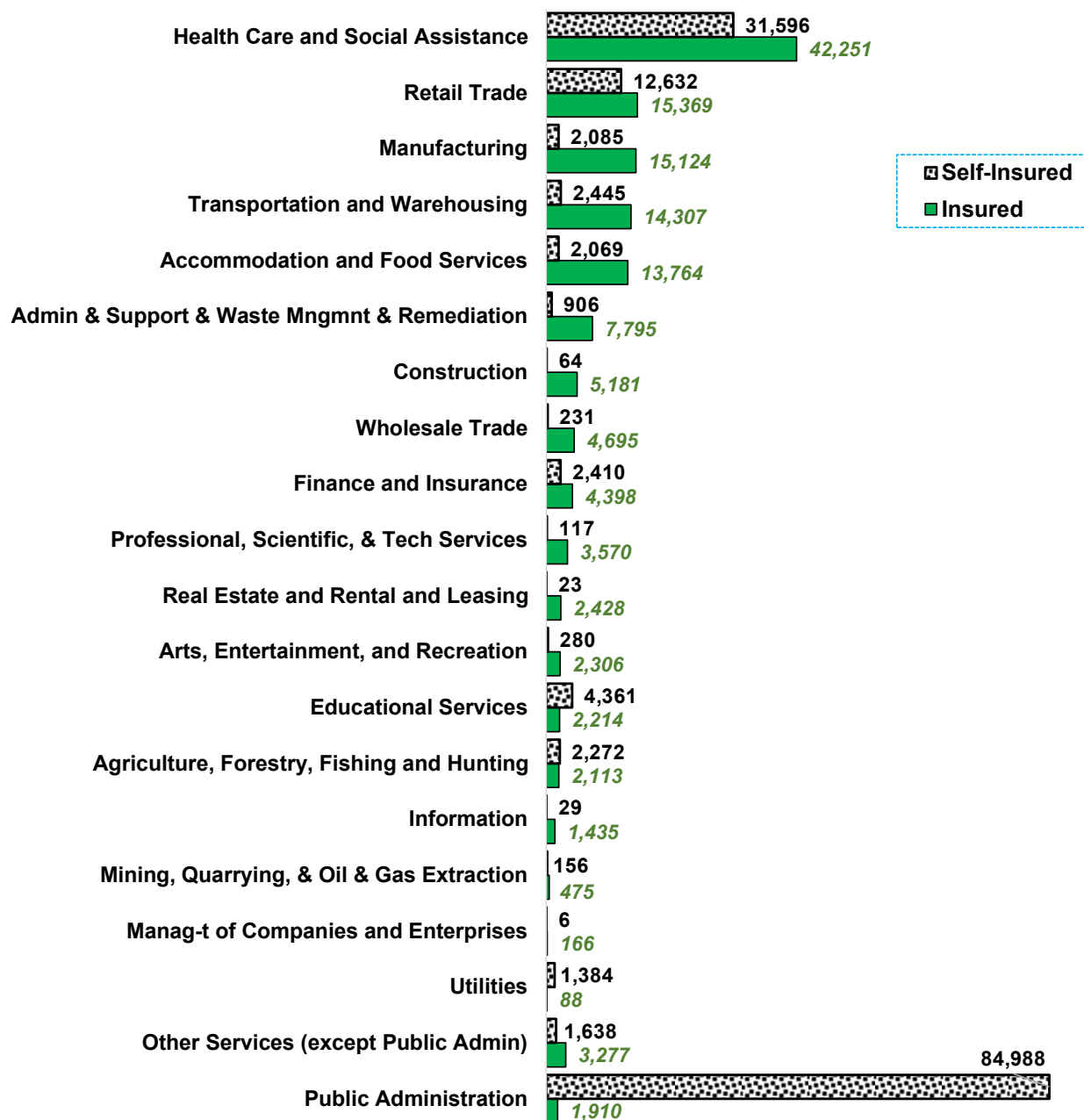


Data Source: DWC - WCIS FROI

Figure 12 shows the total number of COVID-19 claims filed by insured and self-insured employers by industry from January 2020 to October 2022. The five insured industries that filed the most COVID-19 claims were health care and social assistance, retail trade, manufacturing, transportation and warehousing, and accommodation and food services. The five self-insured industries accounting for the most COVID-19 claims were public administration, health care and social assistance, retail trade, transportation and warehousing, and educational services. The public administration sector accounted for 57 percent of COVID-19 claims filed in self-insured sector and 29 percent of all COVID-19 claims filed in a 34-month period. In general, the state and local government establishments in the public administration sector oversee governmental programs and activities that are not performed by private establishments. These agencies provide public safety, adjudicate civil and criminal legal cases, set policy, and create laws.

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Figure 12: Total Number of COVID-19 Claims in Insured and Self-Insured Sectors by Industry (January 2020 – October 2022)



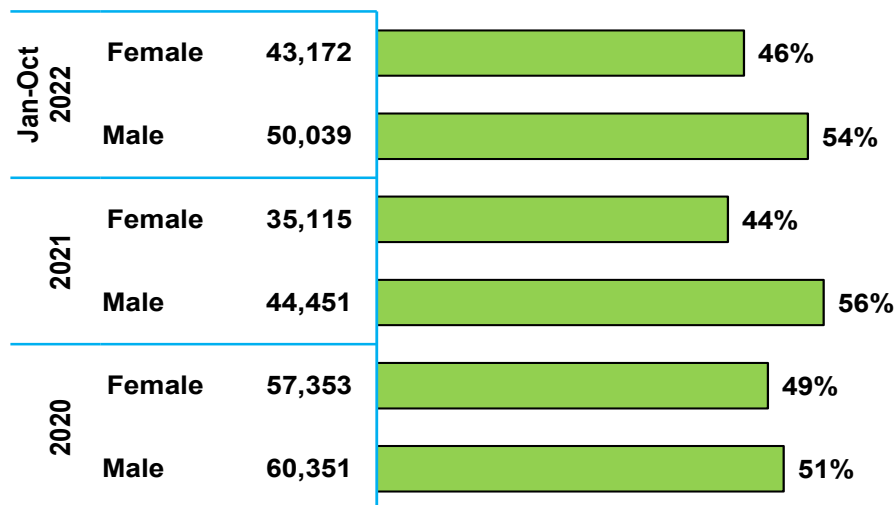
Source: DWC - WCIS

Figure 13 shows the gender of the COVID-19 WC claimants from January 2020 to October 2022. Almost half (49 percent) of all COVID-19 claims in the first year of the pandemic in 2020 were filed by women. This share was 10 percentage points higher than the average share (39-40 percent) of women in claims for all non-fatal work injuries in California (see Figure 133). Women make up a large share of the labor force on the front lines of the pandemic and in industries and occupations that have taken particularly large hits during the COVID-19 crisis. In 2021, 44 percent of COVID-19 WC claims were filed by women and 56 percent by men. During the peaks of pandemic in November 2020-January 2021, 47 percent of COVID-19

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claims were filed by women and 53 percent by men and in December 2021-January 2022, 46 percent of COVID-19 claims were filed by women and 54 percent by men.

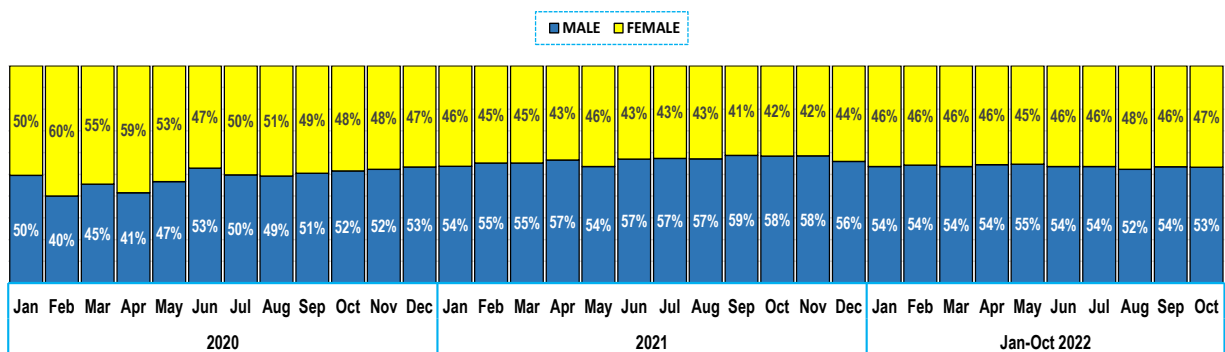
Figure 13: Number and Distribution of COVID-19 Claims by Gender



Data Source: DWC - WCIS FROI

Figure 14 demonstrates the monthly distribution of COVID-19 claims between male and female workers. The share of women in COVID-19 WC claims started with a high of 55 percent to 60 percent in February-April of 2020, when the pandemic hit the industries hard that employ big numbers of female workers like healthcare, hotels, food, and retail industries, and then gradually went down to 47-48 percent by the end of 2020. In 2021, the share of women gradually decreased from 46 percent in January to a monthly average of 42 percent from August to November of 2021, before the second peak of the pandemic in December 2021-January 2022. During the peak of the Omicron pandemic in January 2022, the share of women in COVID-19 claims increased again to 46 percent and, on average, stayed at that level until October 2022.

Figure 14: Monthly Distribution of COVID-19 Claims by Gender, January 2020 - October 2022

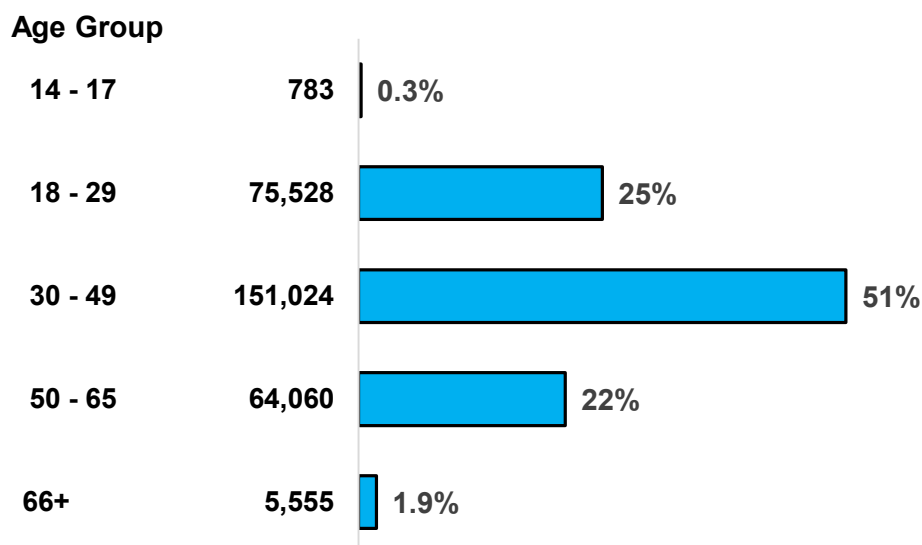


Data Source: DWC-WCIS FROI

Figure 15 shows the total number and distribution of COVID-19 claims by age group from January 2020 to October 2022. The highest number of COVID-19 WC claims were filed by workers in the 30-to-49 age group, followed by the 18-to-29 and the 50-to-65 age groups.

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Figure 15: Total Number and Distribution of COVID-19 Claims by Age Groups (January 2020-October 2022)



Data Source: DWC - WCIS FROI

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

Since 2012, California made several significant reforms in the WC system that have been estimated to have saved \$3 billion annually.⁸⁸ The major reform bills are summarized as follows.⁸⁹

2012 Workers' Compensation Reforms: Senate Bill 863

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

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

The WCIRB's estimates in its retrospective evaluation update of SB 863 indicate total annual statewide savings of \$2.3 billion per year, an increase of \$2.1 billion over the previous projected prospective estimates of \$200 million.⁹⁰ SB 863 medical reforms have resulted in over \$2 billion in annual savings.

⁸⁸ https://www.wcirb.com/sites/default/files/documents/2019_state_of_the_system_report.pdf.

⁸⁹ Information on other legislation related to WC is in CHSWC legislative reports at:

<https://www.dir.ca.gov/chswc/AnnualReportpage1.html>.

⁹⁰ Senate Bill No. 863 WCIRB Cost Monitoring Report—2016 Retrospective Evaluation

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

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Table 6 reproduced from WCIRB's SB 863 Cost Monitoring Update⁹¹, summarizes WCIRB's estimates using various cost categories.

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

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

Source: WCIRB

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

AB 1124 required DWC's Administrative Director to establish an evidence-based drug formulary and to update the formulary on at least a quarterly basis to allow for the provision of all appropriate medications, including those that are new to the market. The MTUS Drug Formulary has three essential parts: the ACOEM Treatment Guidelines which are the backbone of the formulary, the MTUS Drug List, which guides prospective review requirements, and the Ancillary Formulary Rules. The MTUS Drug List is not a standalone document and must be used in conjunction with the adopted American College of Occupational and Environmental Medicine (ACOEM) guidelines.⁹² The formulary regulations went into effect January 1, 2018, and the actual impacts of implementing the drug formulary will be monitored. According to the WCIRB, the formulary is estimated over time to save about \$100 million per year.⁹³

⁹¹ https://www.wcirb.com/sites/default/files/documents/research_brief_october_2019_sb_863_cost_monitoring_update.pdf.

⁹² <https://www.dir.ca.gov/dwc/MTUS/MTUS-Webinar-Transcript-Nov2017.pdf>.

⁹³ https://www.wcirb.com/sites/default/files/documents/2018_state_of_the_system_report_0.pdf.

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

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

After a delay because of court challenges to a related section of the law, the workers' compensation community, in particular, district attorneys' offices throughout California, especially in San Diego and Los Angeles, realized that suspicious medical bills were still being filed and paid as liens by providers who had ongoing adverse involvement with the criminal justice system and their practice. In 2016, AB 1244 (Gray)⁹⁴ passed into law and required the Administrative Director of DWC to suspend any medical provider, physician, or practitioner from participating in the workers' compensation system in any capacity if the individual or entity meets specific criteria related to fraud. Those criteria include being convicted of a felony or misdemeanor: (1) involving fraud or abuse of the Medi-Cal, Medicare, or workers' compensation systems; (2) relating to patient care; (3) involving fraud or abuse of any patient; or (4) otherwise substantially related to the qualifications and duties of the provider. The medical provider could also be suspended if their license, certificate, or approval to provide health care has been surrendered or revoked, or that individual or entity is suspended from participation in the Medicare or Medicaid programs because of fraud or abuse. The bill enabled the barring of a medical provider from submitting or pursuing claims for payment for services or supplies provided, if that provider had been suspended from participation in the workers' compensation system. AB 1244 also made changes in Labor Code section 4906 related to the Attorney Fee Disclosure Statement, including requirements to ensure that the injured worker is informed of the specific district office location at which the injured worker's case will be filed.⁹⁵

Until the passage of SB 1160, fraudulent medical providers could claim no knowledge of billing fraud, citing errors by their office staff as the reason for the fraud. In 2016, SB 1160 (Mendoza)⁹⁶ required the medical provider to sign a declaration under penalty of perjury stating that the lien is not subject to independent medical review or independent billing review, and that the lien claimant is submitting a legitimate bill for services rendered. SB 1160 also added section 4615 to the Labor Code, which automatically stays any lien filed by or on behalf of a medical treatment provider who has been criminally charged with an offense involving fraud against the workers' compensation system, medical billing fraud, insurance fraud or fraud against the Medicare or Medi-Cal programs. SB 1160 also required all lien claimants to file an original bill with their lien. These lien reforms and SB 863 have contributed to savings of \$1.4 billion per year.⁹⁷

Leading up to these reforms, CHSWC helped to convene and co-chaired a series of working group roundtable meetings addressing fraud in the workers' compensation system with multiple stakeholders. Many of the recommendations for statutory improvements from these sessions were incorporated into the SB 1160 and AB 1244 anti-fraud reforms signed into law in September 2016.⁹⁸ According to the WCIRB, the anti-fraud reforms in addition to SB 863 provisions related to lien filings have been key contributing factors in the decrease in medical severity over the past several years.⁹⁹

⁹⁴ http://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB1244.

⁹⁵ <https://www.dir.ca.gov/dwc/SB1160-AB1244/AB1244.htm>.

⁹⁶ http://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB1160.

⁹⁷ https://www.wcirb.com/sites/default/files/documents/2019_state_of_the_system_report.pdf.

⁹⁸ https://www.dir.ca.gov/fraud_prevention/fraud-white-paper.pdf.

⁹⁹ WCIRB 2018 report on California's WC System

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

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2016 Workers' Compensation Reforms: Utilization Review (SB 1160)¹⁰⁰

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

¹⁰⁰ <https://www.dir.ca.gov/dwc/SB1160-AB1244/SB1160.htm>;
https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB1160.

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Costs of Workers' Compensation in California

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

Costs Paid by Insured Employers

In 2022 WC insurers' earned premium paid by California employers totaled \$15.7 billion.¹⁰¹

In the past nineteen years, the cost of WC insurance in California has undergone dramatic changes for several reasons.

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

Workers' Compensation Average Premium Rate

Figure 16 shows the average advisory rate per \$100 of payroll approved by the Insurance Commissioner (IC), the insurers' average charged premium rate per \$100 of payroll, and the average industry-filed manual rate. The WCIRB submits advisory pure premium rates to the California Department of Insurance (CDI) for approval. Insurer rates are usually derived from the advisory pure premium rates developed by the WCIRB and approved by the IC. Advisory pure premium rates expressed as a rate per \$100 of payroll, are based upon loss and payroll data submitted to the WCIRB by all insurance companies. These rates reflect the amount of losses an insurer can expect to pay in benefits due to workplace injuries as well as the cost of adjusting and settling WC claims. Pure premium rates do not account for administrative and other overhead costs that an insurer will incur and, consequently, an insurer's charged rates are typically higher than the pure premium rates. Average insurer manual rates are significantly above the rates charged to employers, indicating that insurers are, on average, applying significant pricing discounts to their filed rates as shown in Figure 16.

From 2015 to 2022, the charged rate was on average 19 percent higher than the approved advisory rate. The average charged rate is based on collected premiums and reflect all insurer expenses whereas the advisory rate approved by the IC reflects only loss and loss adjustment expenses. Both the approved advisory and charged rates have steadily declined since 2015.

The IC has approved 12 consecutive advisory pure premium rate decreases since 2015, that have totaled more than 50 percent.¹⁰² The pure premium rates approved by the IC are only advisory. Under California law, insurers are permitted to make their own determinations regarding the pure premium rates they will use, as long as the ultimate rates charged do not threaten the insurer's financial solvency, are not unfairly discriminatory, and do not create a monopoly in the marketplace. The charged rate decreased by 45 percent from the first period of 2015 to the September 2022 policy period. According to the WCIRB, the decrease from 2016 to pre-pandemic 2019 was largely due to the significant savings from SB 863.¹⁰³ Beginning in

¹⁰¹ WCIRB Quarterly Experience Report as of December 31, 2022, Chart 1. Note that the earned premium is not identical to the written premium. The two measurements are related, and the choice of which measurement should be used depends on the purpose. https://www.wcirb.com/sites/default/files/documents/quarterlyexperiencereport-2022q4_-_final_0.pdf.

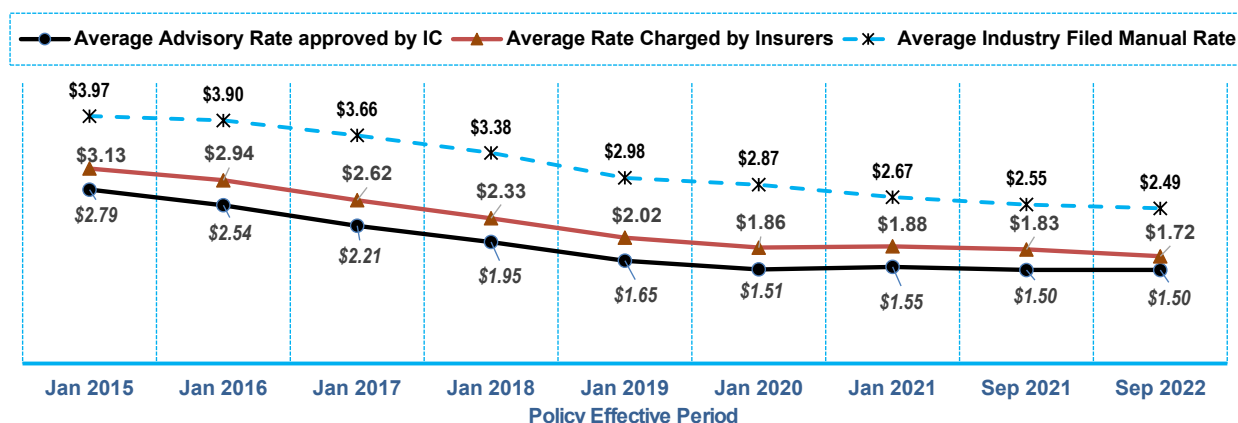
¹⁰² Advisory Workers' Compensation Pure Premium Rates, A History since the 2013 Reform Legislation, pp. 229-234 of this report.

¹⁰³ WCIRB 2020 report on California's Workers' Compensation System, Chart 4. https://www.wcirb.com/sites/default/files/documents/2020_state_of_the_system_report-ar.pdf.

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early 2020, the COVID-19 pandemic sharply impacted the WC system in California. A total of almost 169,000 accepted claims arising out of a diagnosis of COVID-19 have been filed for accident years 2020 through February 2022 (see Figure 7). The economic aftershocks of the pandemic have sharply impacted WC exposures, premiums and losses. The accident year 2020 premium and loss experience have been distorted by the impacts of the statewide stay-at-home order, reduced availability of in-person non-urgent non-COVID medical care, elimination of in-person WC Appeals Board activities, and the sharp and sudden rise in unemployment.¹⁰⁴ The economic recovery and payroll growth in 2021 were offset by continued insurer rate decreases, resulting in a 2021 premium level generally consistent with 2020. Declines in average charged rates, including the charged rates for September 1, 2022, filing period, have followed the IC's approved decreases in advisory pure premium rates.

Figure 16: Average Advisory Rate per \$100 of Payroll approved by Insurance Commissioner (IC) and Average Charged by Insurers Rate per \$100 of Payroll¹⁰⁵



Source: WCIRB

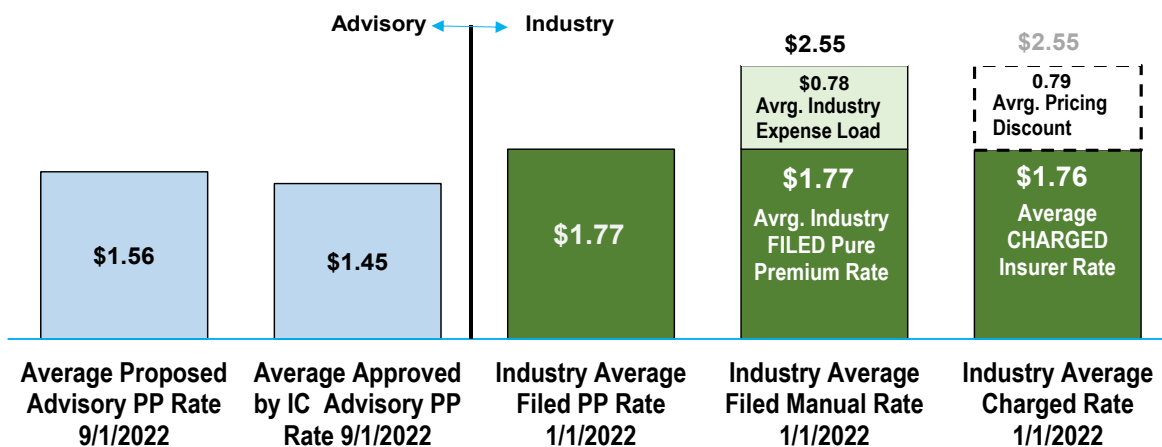
Figure 17 shows the industry average charged rate as a result of application of most insurer rating plan adjustments, except for application of deductible credits, retrospective rating plan adjustments and terrorism charges. Whereas the level of the WC pure premium rates depends on the experience modification rate (EMR) metric that insurers use to calculate premiums, these rates are not predictive of an individual employer's insurance premium which may fluctuate greatly from these figures. The EMR takes into account the number of injuries a company experienced over certain period, their corresponding costs, and payroll and compares these individual experiences to the statistical average losses that a business of a similar size in the same industry is expected to incur. In other words, an employer's specific mix of employees and operations and its actual claims experience can result in charged rates that significantly differ from the average pure premium rates.

¹⁰⁴ WCIRB 2022 report on State of the System Report, Chart 1, <https://www.wcirb.com/sites/default/files/documents/wcirb2022stateofthesystem1663968583761.pdf>.

¹⁰⁵ WCIRB 2023 State of the System Report, Chart 5 and https://www.wcirb.com/sites/default/files/documents/wcirb_2023_state_of_the_system.pdf and Advisory Workers' Compensation Pure Premium Rates, A History since the 2013 Reform Legislation, pp. 229-234 of this report.

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Figure 17: Development of Pure Premium Rates – Advisory Pure Premium Rates and Industry Average Rates per \$100 of Payroll in 2022



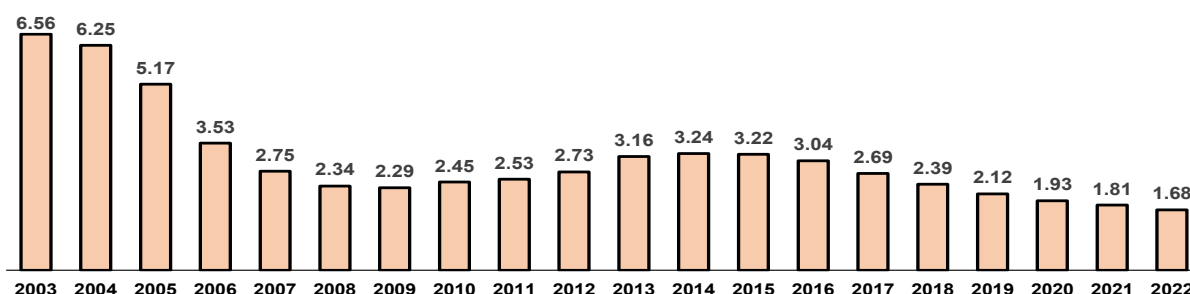
Note: All rates include adjustment for classification payroll limitations adopted effective January 1, 2020 and September 1, 2022.

Data Source: WCIRB PPR Filings, Insurer Filings Submitted to CDI, Insurer to WCIRB data

Industry Average Charged Pure Premium Rate

Largely because of the SB 863 reforms, which took effect in 2013 and saved about \$1.3 billion annually¹⁰⁶, the cost of insurance began to fall again in 2015. In particular, as shown in Figure 18 by policy year, despite the COVID-19 pandemic, the cost of \$1.68 per \$100 of payroll in 2022 was about 74 percent below the 2003 peak of \$6.56 per \$100 of payroll, 48 percent below the second peak in 2014, and 7 percent below the 2021 rate.¹⁰⁷ According to WCIRB, current charged rates are at the lowest level in more than 50 years, as over the long term, declining claim frequency and increasing wage levels have offset rising medical costs and increases in indemnity benefits.¹⁰⁸

Figure 18: Industry Average Charged Pure Premium Rate per \$100 of Payroll, 2003–2022



Source: WCIRB

¹⁰⁶ Senate Bill No. 863 WCIRB Cost Monitoring Report—2016 Retrospective Evaluation

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

¹⁰⁷ WCIRB Quarterly Experience Report as of December 31, 2022, Chart 2

https://www.wcirb.com/sites/default/files/documents/quarterlyexperience-report-2022q4-final_0.pdf

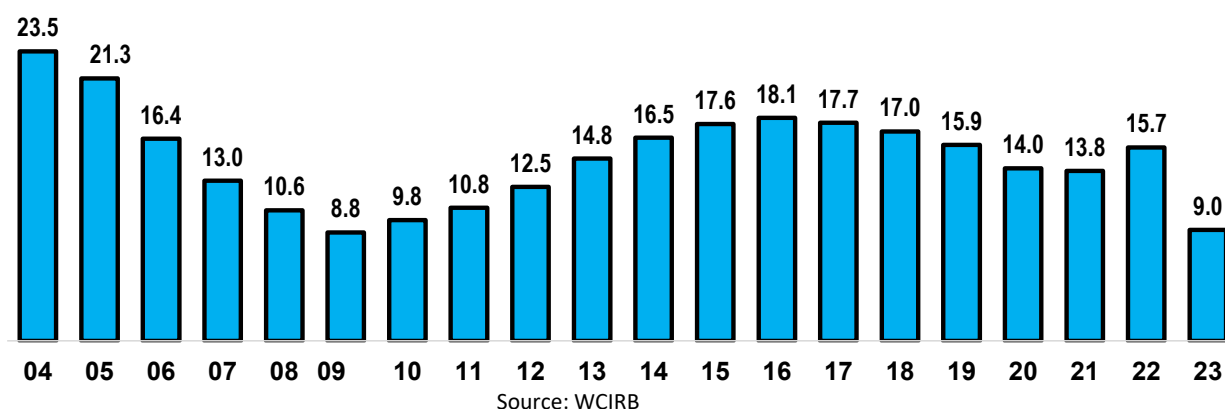
¹⁰⁸ 2022 State of the System: Report on California's WC System, Chart 16, <https://www.wcirb.com/content/report-state-workers-compensation-insurance-system>

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Workers' Compensation Written Premium

WCIRB defines written premiums as those that an insurer expects to earn over the policy period. According to Figure 19, written premium increased by 22 percent from 2013 to 2016, and then declined 24 percent from its peak in 2016 to 2021, including a 1.5 percent decline from 2020 to 2021.¹⁰⁹ The decreases from 2017 to pre-pandemic 2019, following seven consecutive years of increases from 2009, were driven primarily by decreases in rates charged by insurers (see Figures 16 and 18), more than by offsetting increases in employer payroll as a result of economic growth continued through 2019. The premium decline accelerated sharply in 2020 and remained low in 2021 as charged rates continued to drop and statewide employment levels also sharply declined due to the COVID-19 pandemic. According to WCIRB, the 12 percent, or almost \$2 billion, decline in statewide written premium in 2020 was the largest drop in many years. Written premium in 2021 was slightly lower than in 2020 as the impact of modest employment growth and significant average wage level growth was offset by continued declines in charged rates. Despite continued declines in insurer rates, written premium in 2022 was 14 percent higher than in 2021 and at approximately the pre-pandemic level. The increase in written premium is being driven by higher employee wage levels and the economic recovery.¹¹⁰ Written premium through the second quarter of 2023 of \$8.5 billion is 4.1 percent higher than the same period in 2022.¹¹¹

**Figure 19: Workers' Compensation Written Premium, Gross of Deductible Credits
as of June 30, 2023 (\$ in billions)**



Workers Covered by Workers' Compensation Insurance

The estimated number of California workers covered by workers' compensation insurance grew by 15 percent from 15.1 million in 2013 to 17.4 million in 2019 and then decreased by 7 percent from 2019 to 2020.¹¹² (see Figure 20).

¹⁰⁹ WCIRB Quarterly Experience Report as of December 31, 2021, Insurer Experience, Chart 1.
<https://www.wcirb.com/sites/default/files/documents/quarterlyexperiencereport-2021-4q-ar.pdf>.

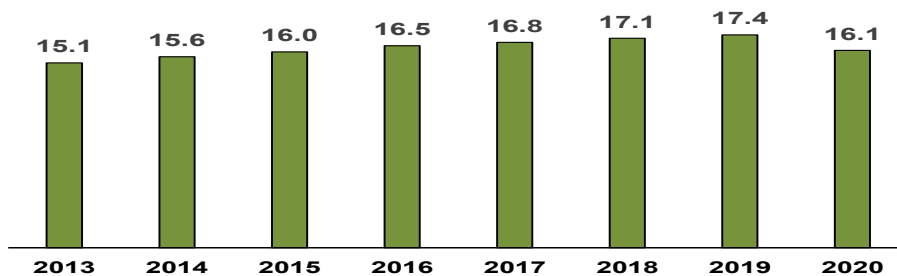
¹¹⁰ WCIRB Quarterly Experience Report as of December 31, 2022, Chart 1.
https://www.wcirb.com/sites/default/files/documents/quarterlyexperiencereport-2022q4-final_0.pdf.

¹¹¹ WCIRB Quarterly Experience Report as of June 30, 2023, Insurer Experience.
<https://www.wcirb.com/sites/default/files/documents/quarterlyexperiencereport-2023q2-ar.pdf>.

¹¹² Latest available data in 2022 from NASI Report: Workers' Compensation Benefits, Coverage, and Costs, 2020, November 2022, <https://www.nasi.org/wp-content/uploads/2022/11/2022-Workers-Compensation-Report-2020-Data.pdf>.

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Figure 20: Estimated Number of Workers Covered by Workers' Compensation Insurance in California (millions)



Source: National Academy of Social Insurance (NASI)

Total Earned Premium

WCIRB defines the earned premium as the portion of a premium earned by the insurer for policy coverage already provided. As shown in Figure 21, earned premium increased by 24.6 percent from 2013 to 2016 and then decreased by 24 percent from 2016 to 2021.

Figure 21: Workers' Compensation Earned Premium (\$ in billions)

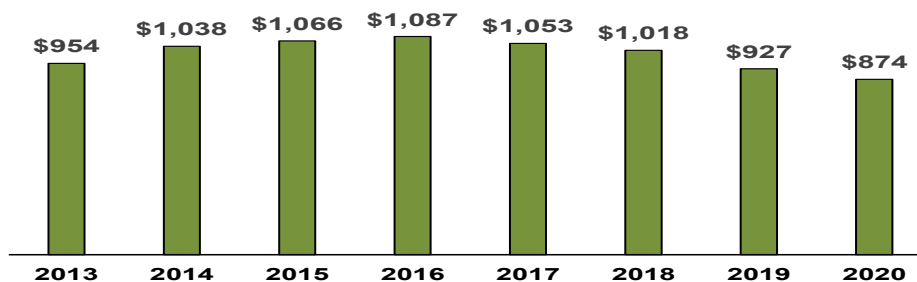


Source: WCIRB

Average Earned Premium per Covered Worker

As shown in Figure 22, the average earned premium per covered worker increased by 14 percent from 2013 to 2016 and then decreased by 20 percent from 2016 to 2020 as the workers' compensation earned premium decreased by 22 percent in the same period.

Figure 22: Average Earned Premium per Covered Worker



Source: WCIRB and NASI

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Office of Self-Insurance Plans: Administration and Costs Paid by Self-Insured Employers¹¹³

State-wide administration of an alternative WC insurance program ¹¹⁴

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

The Office of Self-Insurance Plans (OSIP) is a program within the DIR Director's Office responsible for the oversight, regulation, and administration of the workers' compensation self-insurance marketplace in California. The self-insurance marketplace consists of more than 9,849 employers, employing more than 4 million workers, with a total payroll exceeding \$218 billion. One out of every four California workers is covered by self-insured workers' compensation¹¹⁵.

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

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

OSIP was able to achieve these and many other significant accomplishments during 2015 while conserving expenditures, saving 40 percent in its FY 2015-2016 budget.

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

The focus in 2016 and 2017 was on two major projects. Enhancements to E-filing were rolled out in mid-2017, and OSIP has received numerous compliments on the changes made. The regulations changed the requirements for being self-insured from a net worth requirement to a credit-based requirement. This modern approach allows mid-size companies to become self-insured.

In 2017 and 2018, the two-phased audit process was improved. In previous years, the audit supervisors conducted the first phase, which included a general review of the profile, liabilities, and previous audit performance of employers subject to the three-year routine audit. Employers who failed to meet specific criteria were identified for the second-phase field audit. In 2017 and 2018, the responsibilities for the first-phase audit were moved from the audit supervisor to office staff, with a designated office analyst who coordinates the results from the Phase I audit with the audit supervisor who, in turn, makes the decisions on which employers will be subject to the Phase II field audit. The change enabled the audit supervisor and

¹¹³ The information was provided by OSIP in October 2022.

¹¹⁴ Data on private self-insured employers are from DIR's Office of Self-Insurance Plans correspondence received by CHSWC in July 2023.

¹¹⁵ <https://www.dir.ca.gov/osip/StatewideTotals.html>.

SYSTEM COSTS AND BENEFITS

the senior compliance officer to have more time to focus on more complicated audits and any issues that surface.

The benefits of changes made in previous years were realized in 2018. The credit-based requirement is starting to attract more employers to be self-insured. As employers become more familiar with their main contact person, they are more comfortable asking questions and interacting with OSIP. In 2017 and 2018, OSIP focused on drafting regulations to understand the solvency, performance, and costs of public self-insurers' workers' compensation programs.

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

The public entity regulations were approved on May 14, 2020 and became effective July 1, 2020.¹¹⁶ Public entities are now required to submit at least two of three forms – J-1, P-1, and AR-2 addendum – in addition to the existing annual report requirements due October 1 of each year and covering the previous fiscal year. Information received from the forms will be used to determine solvency of the WC programs. In addition, information may be used for benchmarking purposes and for public entities to compare with similar entities.

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

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

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

In the FY 2021-2022, OSIP filled all but one vacancy in the Unit and focused on cross-training between the office and audit teams. OSIP is projected to double the number of field audits performed in 2022, compared to 2021, due to filling the positions.

There were no defaults in FY 2021-2022. In fact, many self-insured employers' financial status has been upgraded. The combination of lowering the assessments for the Alternatives Security Program by approximately 8 percent and providing a fair-share credit for employers who contributed to the program resulted in further lowering the cost of being self-insured in California. With the cost of workers' compensation insurance projected to increase in the coming years, self-insurance is set to be an attractive alternative to insurance and has led to an increase in applications and inquiries on how to be self-insured in California.

In FY 2022-2023, OSIP filled the last auditor position. As predicted, the number of completed field audits increased to 57 audits in 2022 compared to 38 in 2021.

There were no defaults in FY 2022-2023. This, in addition to claims closure, resulted in lowering the budgeted administrative costs, for which the private self-insured employers are assessed. The assessments were lowered by approximately 15 percent. In addition, employers were provided a fair-share credit for their contribution into the Alternative Security Program, totaling \$12 million, many times resulting in employers' assessments being lowered to zero (\$0).

¹¹⁶ https://www.dir.ca.gov/osip/rulemaking/osip_rulemaking_approved.html.

SYSTEM COSTS AND BENEFITS

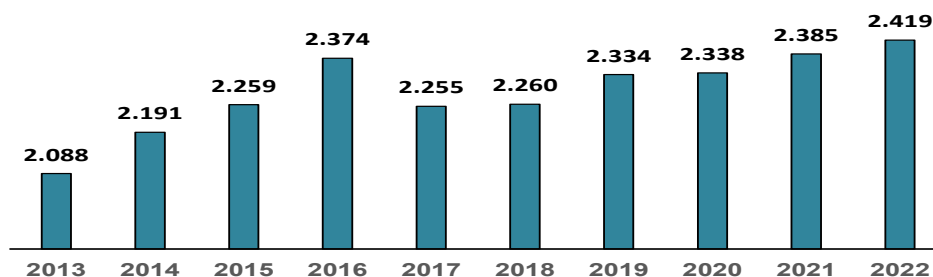
For further information...

www.dir.ca.gov/osip

Costs Paid by Private Self-Insured Employers¹¹⁷

Number of Employees. Figure 23 shows the number of employees working for private self-insured employers between 2013 and 2022. A number of factors affect the year-to-year changes. One striking comparison is the average cost of insurance per \$100 of payroll for insured employers, described earlier. When insurance is inexpensive, fewer employers are attracted to self-insurance, but when insurance becomes more expensive, more employers move to self-insurance. As the cost of insurance per \$100 of payroll for insured employers increased from \$2.73 in 2012 to \$3.22 in 2015 (see Figure 18), more employers chose self-insurance from 2013 to 2016. Because the insurer pure premium rates per \$100 of payroll began to decline in 2015, more employers obtained WC insurance, thereby decreasing the number of employees covered by self-insurance plans by 5 percent from 2016 to 2018. The number of employees covered by self-insurance plans increased by 7 percent in six years from 2017 through 2022.

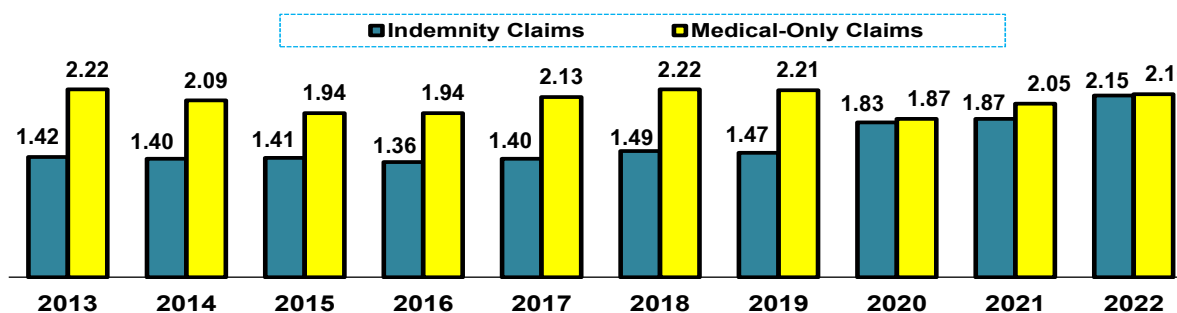
Figure 23: Number of Employees of Private Self-Insured Employers (Millions)



Source: DIR Self-Insurance Plan

Indemnity or Medical-Only Claims. Figure 24 depicts the rate of indemnity or medical-only claims per 100 employees of private self-insured employers. The rate of indemnity claims per 100 employees of private self-insured employers decreased by 4 percent from 2013 to 2016, increased overall by 8 percent from 2016 to 2019, and then after a sharp increase of 24.5 percent from 2019 to 2020, continued to increase by 17.5 percent from 2020 to 2022. The rate of medical-only claims decreased by 13 percent from 2.22 per 100 employees in 2013 to 1.94 per 100 employees in 2016 and then increased by 14 percent from 2016 to 2018. A 16 percent decrease in the rate of medical-only claims per 100 employees from 2018 to 2020, followed by a 15.5 percent increase from 2020 to 2022.

Figure 24: Number of Indemnity or Medical-Only Claims per 100 Employees of Private Self-Insured Employers



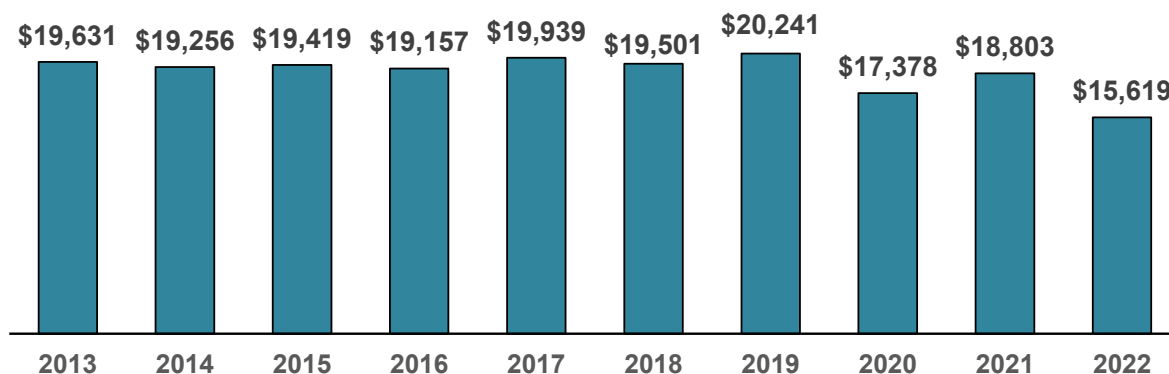
Source: DIR Self-Insurance Plan

¹¹⁷ Data on private self-insured employers are from DIR's Office of Self-Insurance Plans correspondence received by CHSWC in July 2023.

SYSTEM COSTS AND BENEFITS

Incurred Cost per Indemnity Claim. Figure 25 shows the incurred cost per indemnity claim for private self-insured employers. The average incurred cost per indemnity claim fluctuated by less than 6 percent between \$19,150 and \$20,240 from 2013 to 2019. From 2019 to 2020, the incurred cost per indemnity claim fluctuated between \$15,600 and \$18,800 from 2020 to 2022. There was a 23 percent decrease in incurred cost per indemnity claim for private self-insured employers from 2019 to 2022.

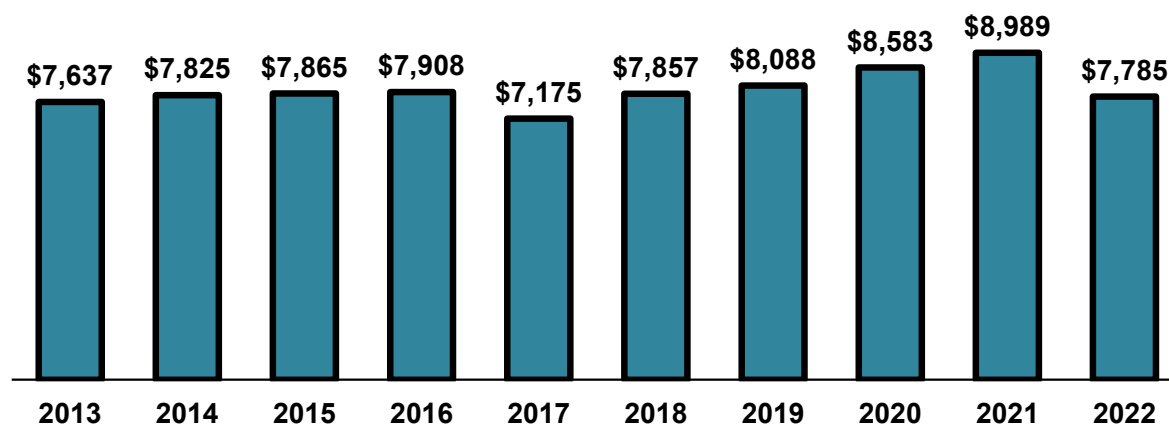
Figure 25: Incurred Cost Per Indemnity Claim of Private Self-Insured Employers



Source: DIR Self-Insurance Plan

Incurred Cost per Indemnity and Medical Claim. The average cost of all claims, including both indemnity and medical-only claims, is naturally lower than the average cost of indemnity claims. The data showed a steady overall increase of 6 percent in eight years from 2013 to 2019, with a one time 9 percent decrease from 2016 to 2017. From 2019 to 2021, the average cost of all claims, including both indemnity and medical-only claims, increased again by 11 percent, before its 13 percent drop from 2021 to 2022. See Figure 26.

Figure 26: Incurred Cost per Claim, Indemnity and Medical of Private Self-Insured Employers



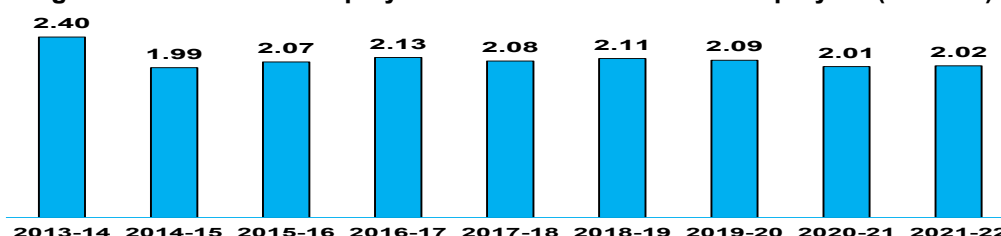
Source: DIR Self-Insurance Plan

SYSTEM COSTS AND BENEFITS

Costs Paid by Public Self-Insured Employers¹¹⁸ (TO BE UPDATED)

Number of Employees. Figure 27 shows the number of employees of public self-insured employers between fiscal years 2013-2014 and 2021-2022. The number of employees of public self-insured employers decreased by 17 percent from 2013-2014 to 2014-2015, increased by 7 percent from 2014-2015 to 2016-2017, and then fluctuated between 2.08 and 2.13 million employees from 2016-2017 to 2019-2020. From 2019-2020 to 2020-2021, there was a 4 percent decrease in the number of employees of public self-insured employers and that number left at almost the same level in 2021-2022.

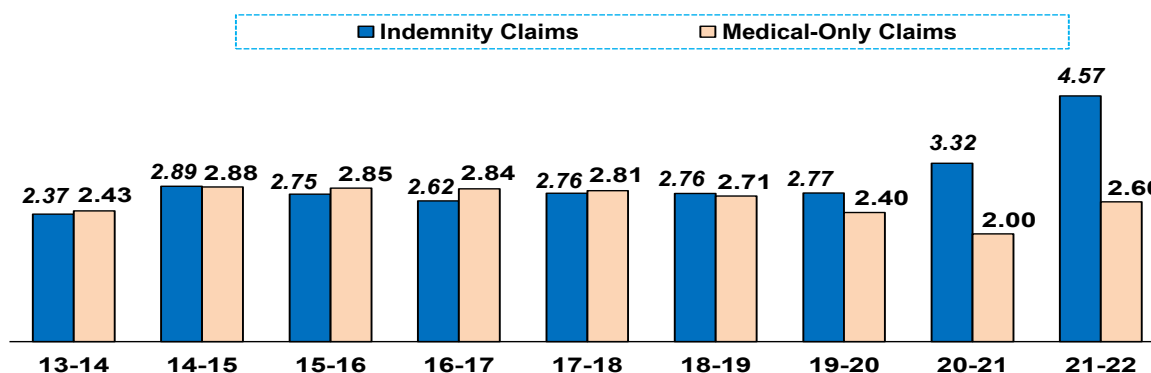
Figure 27: Number of Employees of Public Self-Insured Employers (Millions)



Source: DIR Self-Insurance Plan

Indemnity or Medical-Only Claims. The rate of indemnity claims per 100 employees working for public self-insured employers increased by 22 percent from 2013-2014 to 2014-2015, and then decreased by 9 percent from 2014-2015 to 2016-2017. The rate increased by 5.5 percent from 2016-2017 to 2017-2018, did not change in 2018-2019, and then increased slightly in 2019-2020 from the 2017-2018 rate. From 2013-2014 to 2019-2020, the number of indemnity claims, that are more costly compared to relatively inexpensive medical-only claims, did not exceed its 2018-2019 maximum of 58,287, but in 2020-2021 it reached 66,787, an increase of 15.5 percent and 92,220 in 2021-2022 (an increase of 58 percent), that explains an almost 65 percent increase in the rate of indemnity claims per employees working for public self-insured employers from 2019-2020 to 2021-2022. After a one-time 18 percent increase from 2013-2014 to 2014-2015, the rate of medical-only claims decreased by 17 percent from 2.88 per 100 employees in 2014-2015 to 2.40 per 100 employees in 2019-2020, and then decreased again by 16 percent from 2019-2020 to 2020-2021. This decrease could be explained by a 19.7 percent decrease in medical-only claims from its minimum of 50,250 since 2013-2014 to 40,374 claims in 2020-2021. From 2020-2021 to 2021-2022, the rate of medical-only claims per 100 employees working for public self-insured employers increased by 30 percent. See Figure 28.

Figure 28: Number of Indemnity or Medical-Only Claims per 100 Employees of Public Self-Insured Employers



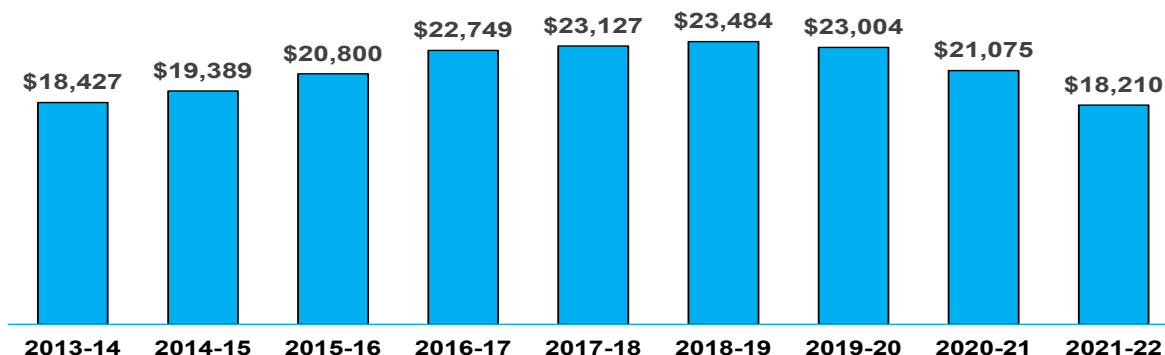
Source: DIR Self-Insurance Plan

¹¹⁸ Data on public self-insured employers are from DIR's Office of Self-Insurance Plans correspondence received by CHSWC in December 2021.

SYSTEM COSTS AND BENEFITS

Incurred Cost per Claim. Figure 29 shows the incurred cost per indemnity claim for public self-insured employers between 2013-2014 and 2021-2022. From 2013-2014 to 2018-2019 the incurred cost per indemnity claim increased steadily by 27 percent from \$18,427 to \$23,484, and then decreased by 2 percent from 2018-2019 to 2019-2020. From 2019-2020 to 2021-2022, the incurred cost per indemnity claim for public self-insured employers decreased by 21 percent

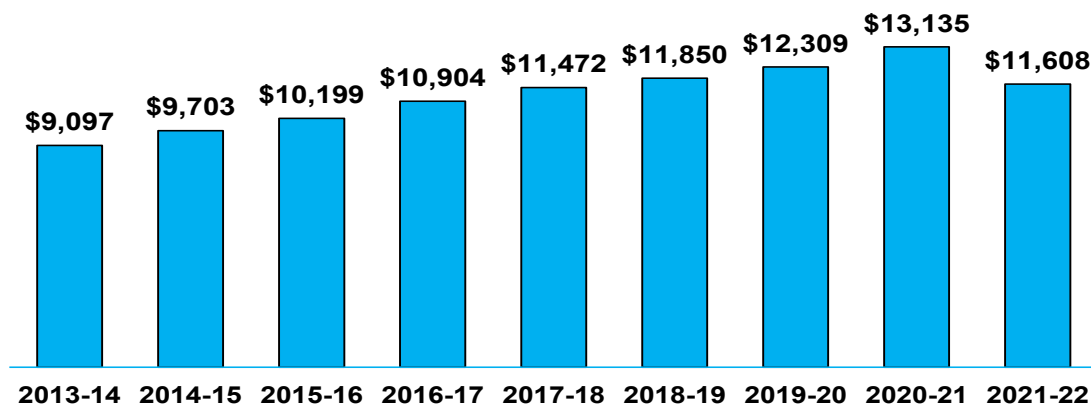
Figure 29: Incurred Cost per Indemnity Claim of Public Self-Insured Employers



Source: DIR Self-Insurance Plan

Incurred Cost per Indemnity and Medical Claim. Figure 30 shows the incurred cost per indemnity and medical claim for public self-insured employers between 2013-2014 and 2021-2022. The incurred cost per indemnity and medical claim increased steadily by 44 percent from 2013-2014 to 2020-2021 and then decreased by 12 percent from 2020-2021 to 2021-2022.

Figure 30: Incurred Cost per Claim—Indemnity and Medical—Public Self-Insured Employers



Source: DIR Self-Insurance Plan

SYSTEM COSTS AND BENEFITS

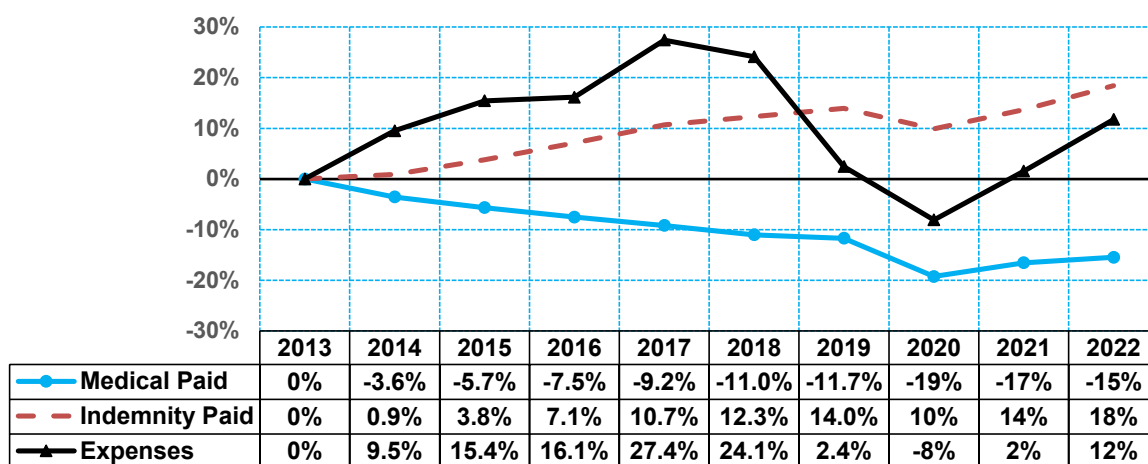
Estimated Workers' Compensation Systemwide Expenditures: Indemnity and Medical Benefits

Overall Costs

Methodology for Estimating. The estimated percentages of total systemwide costs are based on insured employer costs provided annually by the WCIRB. The assumption is that these data can also be applied to those who are self-insured. Because self-insured employers and the state are estimated to account for 35 percent of total California WC claims in 2022, the total systemwide costs in that year are calculated by increasing WCIRB data for insured employers by a multiple of 1.54 to reflect that proportion. (For calculations based on claim counts see Table 1 in the box "Methods of Estimating the Workers' Compensation System Size" on page 31.)

Growth of Workers' Compensation Costs

Figure 31: Workers' Compensation Costs: Annual Change Compared with 2013



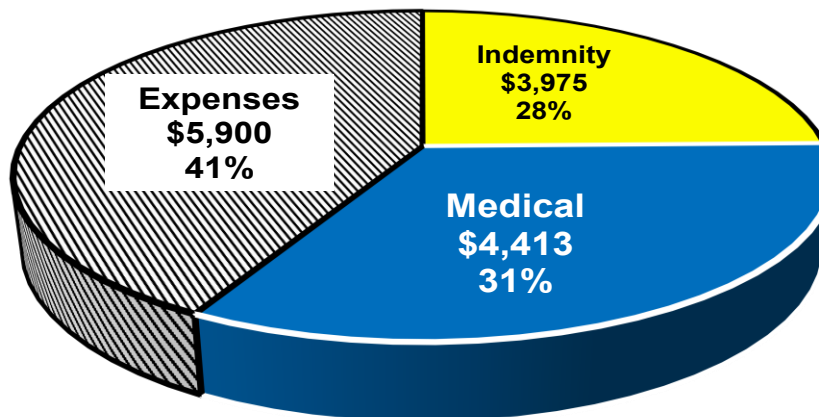
Source: WCIRB

SYSTEM COSTS AND BENEFITS

Distribution of Workers' Compensation Costs by Type.

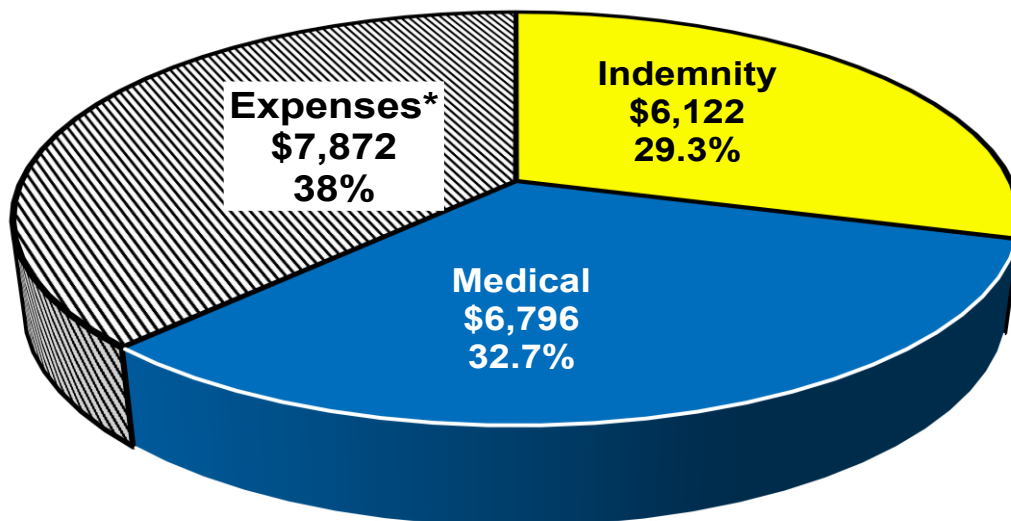
Figures 32 and 33 show the distribution of workers' compensation paid costs for insured employers and systemwide.

Figure 32: Estimated Distribution of Insured Employers' Workers' Compensation Paid Costs, 2022
(\$ in millions)



Data Source: WCIRB

Figure 33: Estimated Distribution of Systemwide Workers' Compensation Paid Costs, 2022
(\$ in millions)



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

Data Source: WCIRB with calculations by CHSWC

SYSTEM COSTS AND BENEFITS

Indemnity Benefits

The WCIRB provided data for the cost of indemnity benefits paid by insured employers. Assuming that insured employers comprise approximately 65.0 percent of total California workers' compensation claims, estimated indemnity benefits are shown in Table 7 for the total system, insured employers, self-insured employers, and the State of California.

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

INDEMNITY BENEFIT COMPONENTS BY SECTORS	2021	2022	Change
Systemwide, paid by all sectors			
Temporary Disability	\$3,070,379	\$3,445,790	\$375,412
Permanent Total Disability	\$246,290	\$178,811	-\$67,479
Permanent Partial Disability	\$2,011,805	\$2,081,875	\$70,071
Death	\$158,810	\$161,943	\$3,134
Funeral Expenses	\$5,265	\$7,916	\$2,651
Life Pensions	\$129,171	\$134,587	\$5,416
Vocational Rehab/Nontransferable Education Voucher	\$100,617	\$110,788	\$10,171
Total	\$5,722,334	\$6,121,709	\$399,376
Paid by Insured Employers			
Temporary Disability *	\$2,046,919	\$2,237,526	\$190,607
Permanent Total Disability *	\$164,193	\$116,111	-\$48,082
Permanent Partial Disability *	\$1,341,203	\$1,351,867	\$10,664
Death *	\$105,873	\$105,158	-\$715
Funeral Expenses	\$3,510	\$5,140	\$1,630
Life Pensions	\$86,114	\$87,394	\$1,280
Vocational Rehab/Nontransferable Education Voucher *	\$67,078	\$71,940	\$4,862
Total	\$3,814,889	\$3,975,136	\$160,247
Paid by Self-Insured Employers and the State**			
Temporary Disability	\$1,023,459	\$1,208,264	\$184,805
Permanent Total Disability	\$82,097	\$62,700	-\$19,397
Permanent Partial Disability	\$670,602	\$730,008	\$59,407
Death	\$52,937	\$56,785	\$3,849
Funeral Expenses	\$1,755	\$2,776	\$1,021
Life Pensions	\$43,057	\$47,193	\$4,136
Vocational Rehab/Nontransferable Education Voucher	\$33,539	\$38,848	\$5,309
Total	\$1,907,445	\$2,146,573	\$239,129

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

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

** Figures estimated based on insured employers' costs. Self-insured employers and the State of California are estimated to comprise 35 percent of all California workers' compensation claims that translates into a 0.54 multiplier applied to indemnity benefits paid by insured employers.

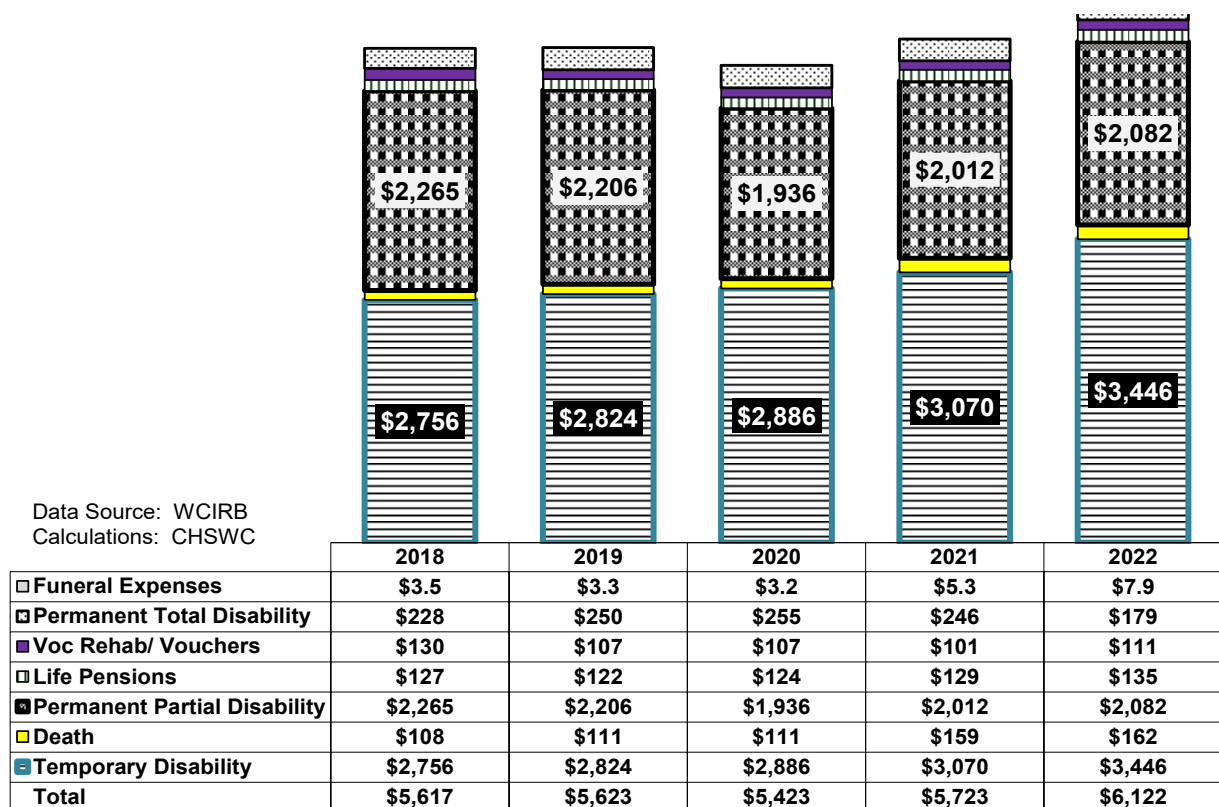
SYSTEM COSTS AND BENEFITS

Trends in Paid Indemnity Benefits.

The estimated systemwide paid indemnity benefits for 2018-2022 are displayed in Figure 34. Total paid indemnity benefits decreased overall by 3 percent from 2018 to 2020 as the result of SB 863 reforms and then increased by 13 percent from 2020 to 2022. Total costs in 2022 were impacted by the economic recovery during 2021 and 2022 after a sharp and sudden pandemic-caused slowdown in 2020, that led to reductions in premiums and a sharp decrease in the frequency of non-COVID-19 indemnity claims.¹¹⁹ After a rebound in frequency of non-COVID-19 indemnity claims in 2021, from 2021 to 2024, WCIRB forecasts an average 0 percent change in claim frequency, with increases during the economic recovery when newer, less experienced workers may be entering the workforce offsetting the long-term typical frequency decline.¹²⁰

Temporary disability and permanent partial disability benefits comprise approximately 90 percent of indemnity benefits. Payments for permanent partial disability decreased by 15 percent from 2018 to 2020 and then increased by 8 percent from 2020 to 2022. According to WCIRB, the share of permanent partial disability in total indemnity benefits decreased in 2017-2020 since, unlike most other types of indemnity benefits, there are no annual cost-of-living adjustments. The temporary disability benefits increased steadily by 25 percent from 2018 to 2022. Payments for funerals more than doubled from 2018 to 2022, increasing its share in medical expenses from 0.06 percent in 2018 to 0.13 percent in 2022. The death benefits increased by 50 percent from 2018 to 2022, increasing its share in total medical expenses from 1.9 percent in 2018 to 2.6 percent in 2022.

Figure 34: Workers' Compensation Paid Indemnity Benefit by Type, Systemwide Estimated Costs (\$ in millions)



¹¹⁹ WCIRB 2021 State of the System Report, Chart 52, https://www.wcirb.com/sites/default/files/documents/wcirb-report-2021_state_of_the_system-ho.pdf.

¹²⁰ WCIRB 2022 State of the System Report, Chart 22, <https://www.wcirb.com/content/report-state-workers-compensation-insurance-system>.

SYSTEM COSTS AND BENEFITS

Supplemental Job Displacement Benefits Costs

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

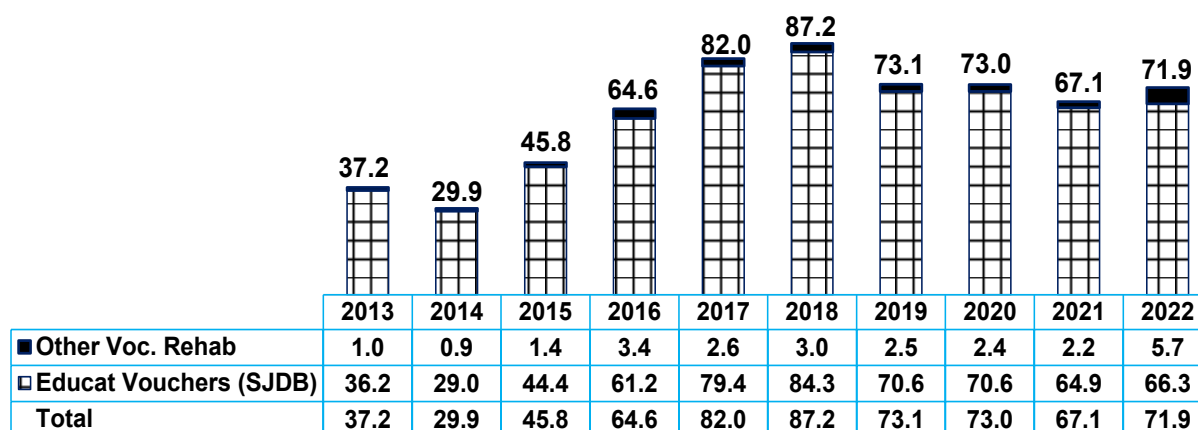
Supplemental Job Displacement Benefit Vouchers

Assembly Bill 227 created a system of nontransferable educational vouchers effective for injuries that occurred on or after January 1, 2004, resulted in a permanent partial disability and termination without an offer of return to work by at-injury employer unless the employer offers and the employee rejects or fails to accept modified work. The WCIRB's estimate of the cost of education vouchers is based on information compiled from its most current Aggregate Indemnity and Medical Costs Call, Call for Calendar Year Experience and Permanent Disability Claim Survey.

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

Figure 35 shows that the amounts paid for SJDB vouchers by insured employers in 2018 increased 2.3-fold compared to 2013 and almost 3-fold compared to 2014. The amounts paid for SJDB vouchers decreased by 23 percent from 2018 to 2021, and then increased by 7 percent from 2021 to 2022. The proportion of amounts paid for SJDB vouchers in total Vocational Rehabilitation was 97 percent from 2013 to 2022, with a slight decrease to 95 percent in 2016 and to 92 percent in 2022.

Figure 35: Amounts Paid for Supplemental Job Displacement Benefit (SJDB) Vouchers by Insured Employers (\$ in millions)



Data Source: WCIRB

SYSTEM COSTS AND BENEFITS

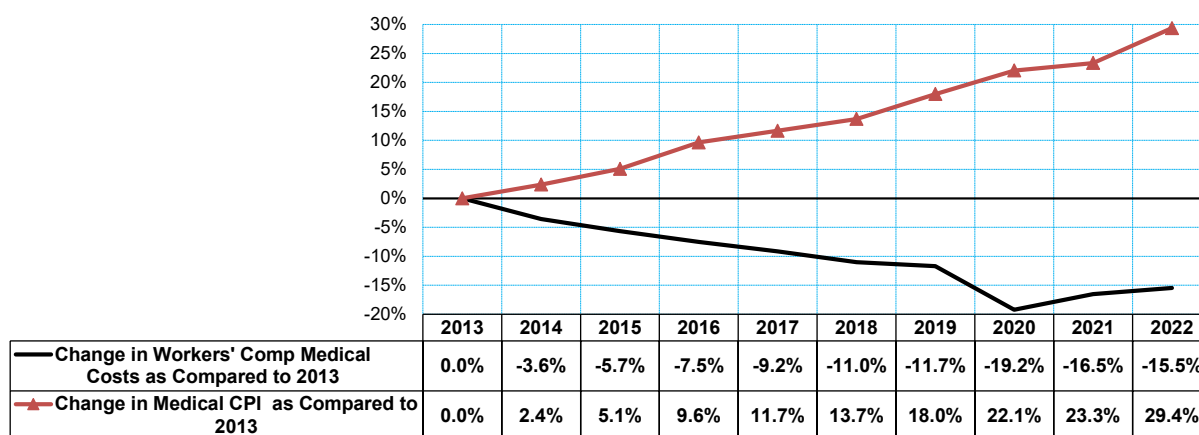
Medical Benefits

Workers' Compensation Medical Costs vs. Medical Inflation

Figure 36 compares the change in California's workers' compensation medical costs paid by insurers and self-insured employers in each consecutive year from 2013 with the change in the medical component of the Consumer Price Index (CPI) in each consecutive year over the same base year. The medical component of the CPI is also known as the "Medical CPI," an economic term used to describe price increases in health care services.

Since 2013 the WC medical costs have decreased at a cumulative rate of 19.2 percent in 2020 and an average annual 3.0 percent rate in the same period from 2013 to 2020. There was a lesser cumulative 15.5 percent decrease in WC medical costs from 2013 to 2022 as a result of a 5 percent increase in medical costs from 2020 to 2022. At the same time, the medical CPI has steadily increased since 2013. The cumulative growth in medical CPI from 2013 to 2022 was 29.4 percent, with an average annual 3 percent increase in the same period. Figure 36 compares the WC medical costs paid by employers and regulated through the California State WC program with Medicare and group health plan payments reflected in the medical CPI. The State program regulates the WC medical costs through the Official Medical Fee Schedule (OMFS), which also covers pharmaceutical costs, Medical Treatment Utilization Schedule (MTUS), and regulatory activities. Because consumers, as defined by the CPI concept, do not share the cost of WC claims, payments for medical services covered by WC programs are not directly reflected in measuring the medical CPI.

Figure 36: Growth in Workers' Compensation Medical Costs Compared with Growth in Medical Inflation (2013 as a base year)



Source: WCIRB; Bureau of Labor Statistics (BLS)

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

The WCIRB provided data on the cost of medical benefits paid by insured employers. Assuming that insured employers comprise approximately 65.0 percent of California workers' compensation claims, estimated medical benefits are shown in Table 8 for the total system, insured employers, self-insured employers, and the State of California.

SYSTEM COSTS AND BENEFITS

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

MEDICAL BENEFIT COMPONENTS BY SECTORS	2021	2022	Change
Systemwide, paid by all sectors			
Physicians	\$1,766,345	\$1,812,791	\$46,446
Hospital (Inpatient and Outpatient)	\$842,046	\$780,917	-\$61,129
Medical Supplies and Equipment	\$319,803	\$353,521	\$33,718
Pharmacy	\$104,222	\$93,817	-\$10,405
Medical-Legal Evaluation	\$499,536	\$566,312	\$66,776
Payments Made Directly to Patients*	\$2,022,977	\$2,184,230	\$161,253
Medical Cost-Containment Programs**	\$181,718	\$188,960	\$7,242
Medicare Set-aside and Reimbursements	\$446,987	\$463,712	\$16,726
Capitated Medical	\$38,499	\$43,594	\$5,095
Other (Med Liens, Dental, Interpreter***, & Copy Services***)	\$312,966	\$307,675	-\$5,291
Total	\$6,535,097	\$6,795,529	\$260,432
Paid by Insured Employers			
Physicians	\$1,177,563	\$1,177,137	-\$426
Hospital (Inpatient and Outpatient)	\$561,364	\$507,089	-\$54,275
Medical Supplies and Equipment	\$213,202	\$229,559	\$16,357
Pharmacy	\$69,481	\$60,920	-\$8,561
Medical-Legal Evaluation	\$333,024	\$367,735	\$34,711
Payments Made Directly to Patient*	\$1,348,651	\$1,418,331	\$69,680
Medical Cost-Containment Programs**	\$121,145	\$122,701	\$1,556
Medicare Set-aside and Reimbursements	\$297,991	\$301,112	\$3,121
Capitated Medical	\$25,666	\$28,308	\$2,642
Other (Med Liens, Dental, Interpreter***, & Copy Services***)	\$208,644	\$199,789	-\$8,855
Total	\$4,356,731	\$4,412,681	\$55,950
Paid by Self-Insured Employers and the State****			
Physicians	\$588,782	\$635,654	\$46,872
Hospital (Inpatient and Outpatient)	\$280,682	\$273,828	-\$6,854
Medical Supplies and Equipment	\$106,601	\$123,962	\$17,361
Pharmacy	\$34,741	\$32,897	-\$1,844
Medical-Legal Evaluation	\$166,512	\$198,577	\$32,065
Payments Made Directly to Patient*	\$674,326	\$765,899	\$91,573
Medical Cost-Containment Programs**	\$60,573	\$66,259	\$5,686
Medicare Set-aside and Reimbursements	\$148,996	\$162,600	\$13,605
Capitated Medical	\$12,833	\$15,286	\$2,453
Other (Med Liens, Dental, Interpreter***, & Copy Services***)	\$104,322	\$107,886	\$3,564
Total	\$2,178,366	\$2,382,848	\$204,482

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

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

** Medical cost-containment programs (MCCP) costs on claims covered by incepting July 1, 2010 and beyond are considered Allocated Loss Adjustment Expenses (ALAE). The amount of MCCP costs reported as ALAE for 2022 is \$291 million.

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

**** Figures estimated are based on insured employers' costs. Self-insured employers and the State of California are estimated to comprise 35.0 percent of all California workers' compensation claims that translates into a 0.54 multiplier applied to indemnity benefits paid by insured employers.

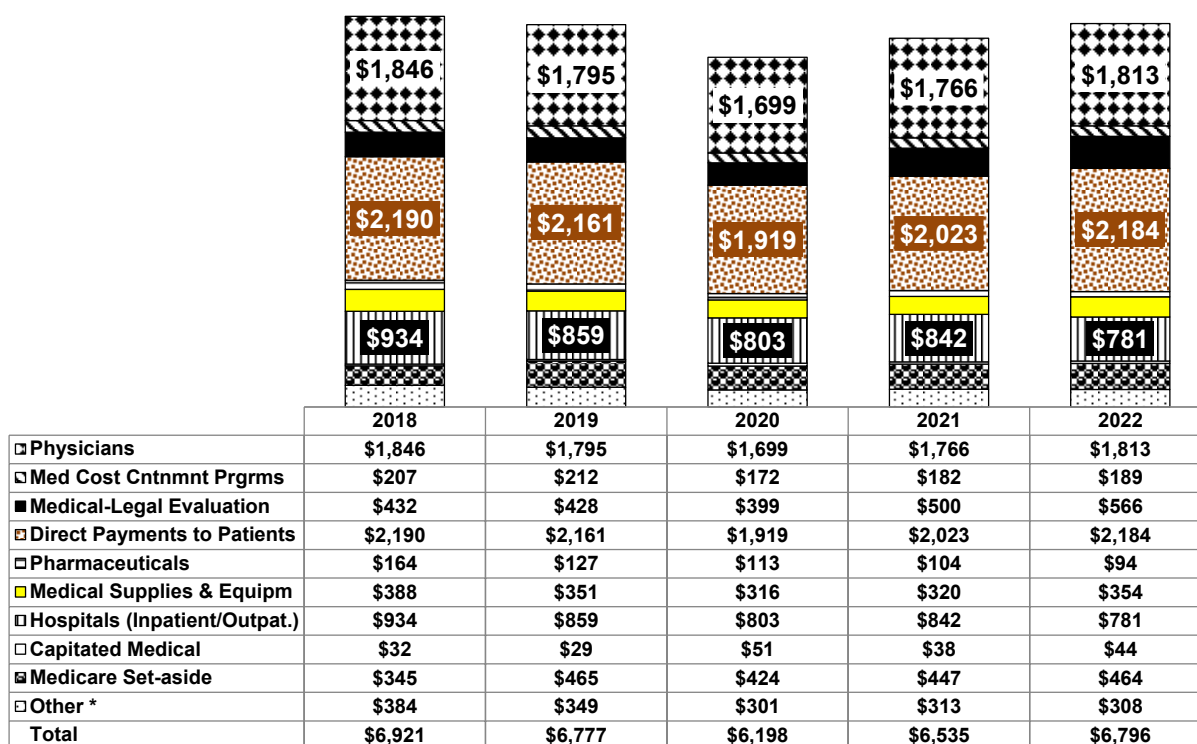
SYSTEM COSTS AND BENEFITS

Trends in Paid Medical Benefits

The estimated systemwide paid medical costs for the past five years are shown in Figure 37. The following trends may result from the impact of SB 863 reforms and from 2020-2021 contractions –the impact of the COVID-19 pandemic economic slowdown which in turn led to decreased premiums and a reduction of claims activity in that year.

The cost of the total medical benefit decreased by 10 percent from 2018 to 2020 and then increased by 10 percent from 2020 to 2022. Payments to physicians decreased by 8 percent from 2018 to 2020 and then increased by 7 percent from 2020 to 2022. Hospital costs decreased overall by 16 percent from 2018 to 2022, with one time increase of 5 percent from 2020 to 2021. Medical supplies and equipment decreased by 19 percent from 2018 to 2020 and then increased by 12 percent from 2020 to 2022. Medical-legal evaluation costs decreased by 8 percent from 2018 to 2020 and then increased by 42 percent from 2020 to 2022, mostly due to the introduction of a new MLFS effective April 1, 2021. Pharmacy costs decreased by 43 percent from 2018 to 2022 due to key factors such as IMR, reduced spinal surgeries, national trends toward reduced opioid use, changes in federal pricing guidelines for generics, and the new drug formulary. Direct payments to patients averaged \$2,095,000 from 2018 to 2022. Expenditures on medical cost-containment programs fluctuated between \$172,000 and \$212,000 from 2018 to 2020, and then increased by 10 percent from 2020 to 2022 .¹²¹

Figure 37: Workers' Compensation Paid Medical Benefits by Type, Systemwide Estimated Costs (\$ in millions)



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

Source: WCIRB's MDC (Calculations by CHSWC)

¹²¹ Medical cost-containment program costs on claims covered by policies incepting prior to July 1, 2010, are considered medical loss, and those covered by policies incepting July 1, 2010, and beyond are considered allocated loss adjustment expenses.

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Average Ultimate Total Loss

Figure 38 shows changes in indemnity and medical components of the projected ultimate total loss per WC indemnity claim.

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

The WCIRB projected the average cost or “severity” of 2022 claims, excluding COVID-19 claims, to be \$71,643, consistent with changes in total claim severity in the last two years.¹²² After 5 years of relatively flat severities, from 2013 to 2017, the projected average indemnity cost started increasing and showed a 14 percent increase from 2017 to 2022, including a modest 3 percent increase from 2021 to 2022. The 2022 average severity is the highest in more than a decade since before the SB 863 reforms. Recent growth in indemnity claim severities has been in part driven by higher-than-typical average wage inflation over the last four years.

Following a steady 8 percent decrease in medical severities from 2013 to 2017, driven by medical cost savings arising from SB 863, there was a 13 percent increase from 2017 to 2020 followed by a slight 4 percent decrease from 2020 to 2022. The relatively flat medical severities from 2015 to 2018 were driven by recent reforms, reduced pharmaceutical costs and efforts to fight fraud. From 2018 to 2020, the projected medical severity increased overall by 7 percent. According to WCIRB, some of the recent growth in medical severities may be attributable to claims staying open longer since the start of the pandemic and increases to medical fee schedule reimbursements effective in early 2021. The slightly declining medical severities in 2021 and 2022 are driven by reduced utilization of medical services partially offset by regular inflationary updates to medical fee schedules.

The projected average ALAE cost, excluding MCCP, has been flat from 2013 to 2022, with an average of \$9,335 per year in that period.¹²³ According to the WCIRB, generally, the average ALAE costs tend to rise shortly after the implementation of reforms, even during periods when the medical costs have declined. Another factor is improving claim settlement rates that may moderate ALAE costs as well. It should be noted that, despite the flat average of projected ALAE cost per claim, California's ratio of ALAE to losses is 70% higher than the countrywide median. According to WCIRB this is due to California's high proportion of permanent disability claims and cumulative trauma claims, high rates of legal representation on claims, longer duration of claims, and higher costs in Southern California regions.¹²⁴

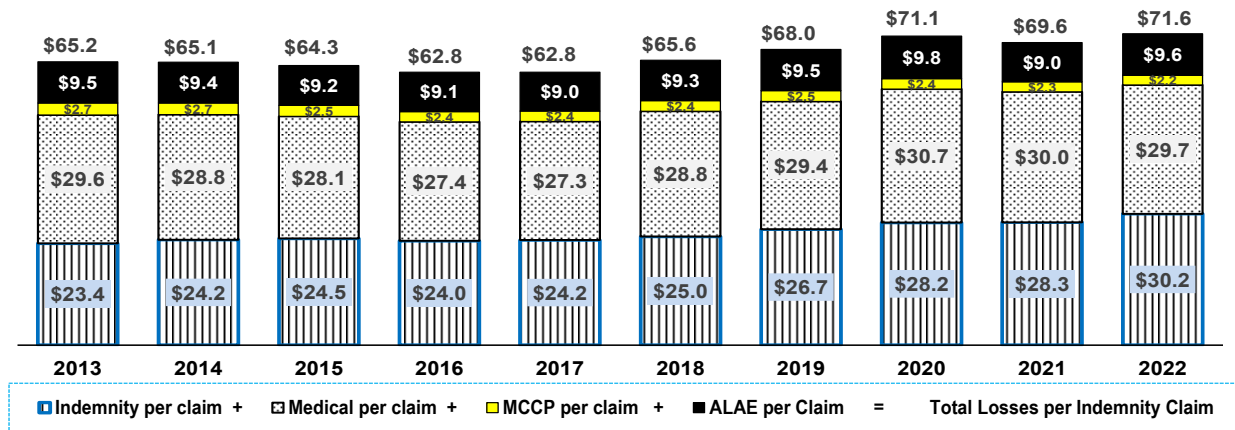
¹²² WCIRB Quarterly Experience Report as of December 31, 2022, Charts 8–12, https://www.wcirb.com/sites/default/files/documents/quarterlyexperience-report-2022q4_-_final_0.pdf.

¹²³ *Ibid.*, Chart 11.

¹²⁴ WCIRB 2023 State of the System Report https://www.wcirb.com/sites/default/files/documents/wcirb_2023_state_of_the_system.pdf.

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Figure 38: Projected Ultimate Total Loss and ALAE per Indemnity Claim as of December 31, 2022 (Thousand \$)



Source: WCIRB

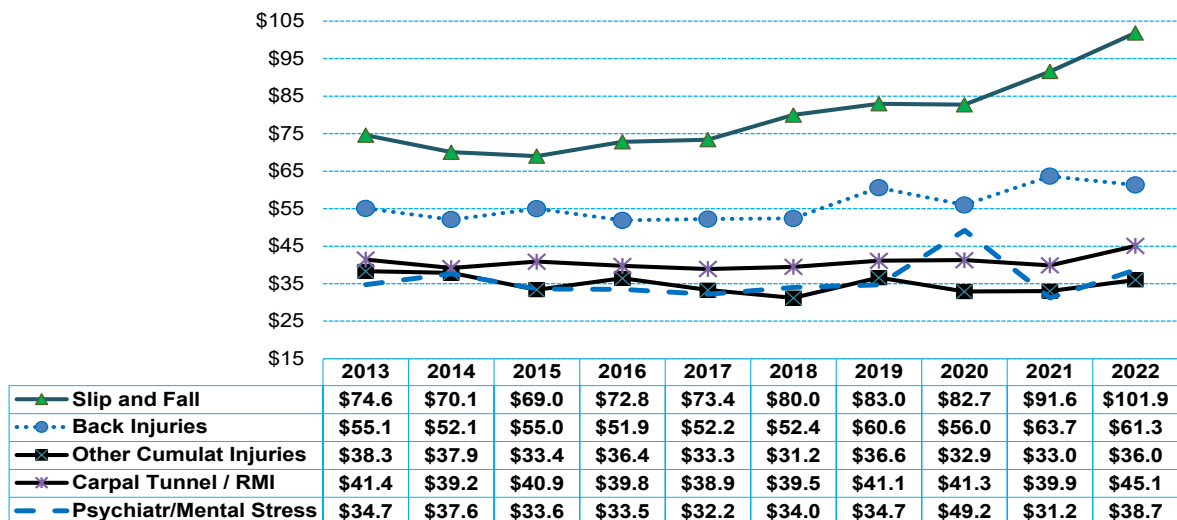
Please note that the WCIRB's estimates of average indemnity claim costs have not been indexed to take into account wage increases and medical inflation.

Average Cost per Claim by Type of Injury

Figure 39 shows the average medical and indemnity costs of permanent disability claims.

The average cost of the most expensive type of injury, the slip and fall decreased by 7.5 percent from 2013 to 2015 and then increased overall by 48 percent from 2015 to 2022. The average cost of back injuries fluctuated between \$52,000 and \$55,000 from 2013 to 2016, stayed relatively flat from 2016 to 2018, increased by 16 percent from 2018 to 2019, and then fluctuated again between 2019 and 2022. The average cost of carpal tunnel (RMI) stabilized at around \$40,000 per year from 2013 and 2021 and then increased by 13 percent from 2021 to 2022. The average cost of psychiatric and mental stress claims was mostly around \$34,000 from 2013 to 2021, with an exception of 2020 when it increased by 45 percent to \$49,200 and another 14 percent increase in 2022. The average cost of other cumulative injuries went up and down between \$31,000 and \$38,000 from 2013 to 2022.

Figure 39: Average Cost per PD Claim by Type of Injury, 2013 - 2022 (Thousand \$)



Source: WCIRB

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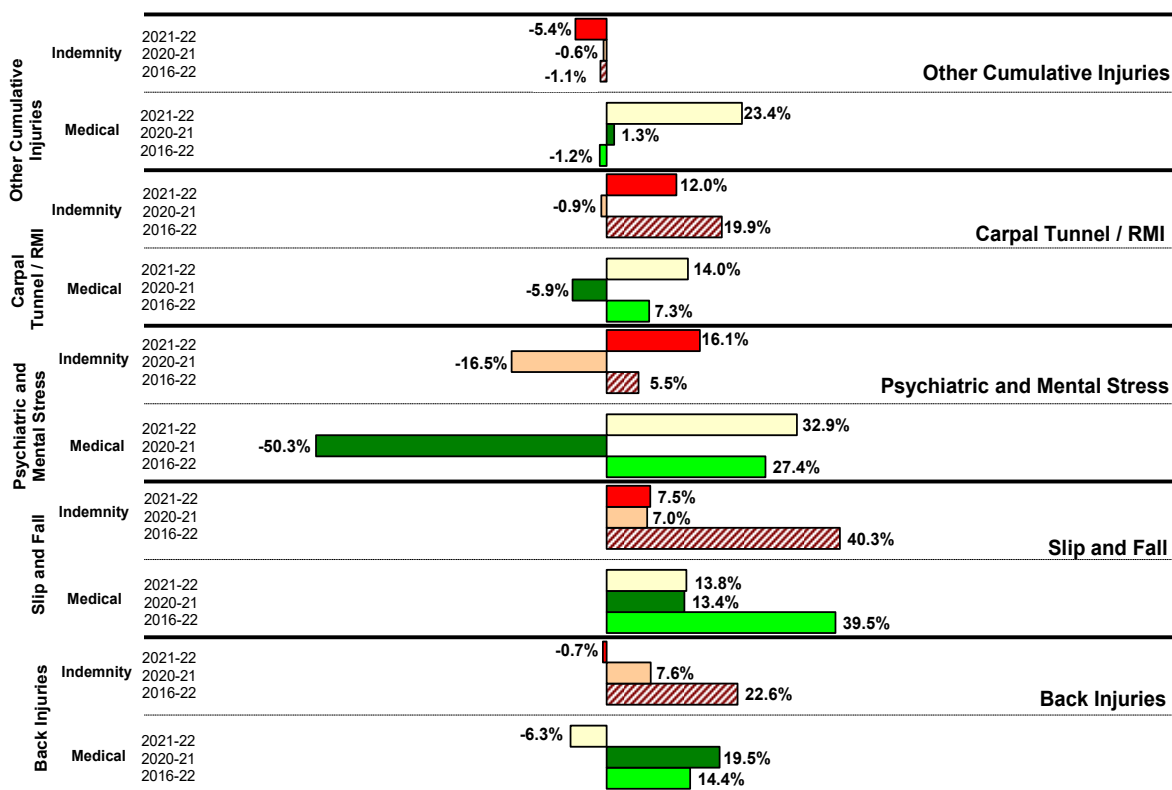
Changes in Average Medical and Indemnity Costs per Claim by Type of Injury

Figure 40 illustrates the impact of the reforms on selected types of injury. The six-year trend from 2016 to 2022 shows increases in medical costs for slip and fall injuries (39.5 percent), psychiatric and mental stress illnesses (27.4 percent), back injuries (14.4 percent), and carpal tunnel/RMI (7.3 percent), while other cumulative injuries showed a 1.2 percent decrease during the same period. Slip and fall injuries showed the highest six-year increase in average medical costs. The same six-year trend for indemnity costs showed increases in indemnity costs for all types of injury except for other cumulative injuries (-1.1 percent), with the highest increase of 40.3 percent for slip and fall injuries.

From 2020 to 2021, medical costs increased for back injuries (19.5 percent), slip and fall injuries (13.4 percent), and other cumulative injuries (1.3 percent), while psychiatric and mental stress illnesses (-50.3 percent) and carpal tunnel/RMI (-5.9 percent) experienced decreases during the same period. The indemnity costs in the same period, increased for back injuries (7.6 percent) and slip and falls (7.0 percent), while psychiatric and mental stress illnesses (-16.5 percent), carpal tunnel/RMI (-0.9 percent), and other cumulative injuries (-0.6 percent) experienced decreases during the same period.

From 2021 to 2022, medical costs increased by 32.9 percent for psychiatric and mental stress illnesses, by 23.4 percent for other cumulative injuries, by 14 percent for carpal tunnel/RMI, and by 13.8 percent for slip and fall injuries. In the same period, the medical costs decreased by 6.3 percent for back injuries. In the same year, the indemnity costs increased by 16.1 percent for psychiatric and mental stress illnesses, by 12 percent for carpal tunnel/RMI, and by 7.5 percent for slip and fall injuries, while there was a 5.4 percent decrease in the average indemnity cost of claim for other cumulative injuries and 0.7 percent decrease for back injuries.

Figure 40: Percent Change in Average Medical and Indemnity Costs per Claim by Type of Injury
(From 2016 through 2022, from 2020 to 2021, and from 2021 to 2022)



Data Source: WCIRB

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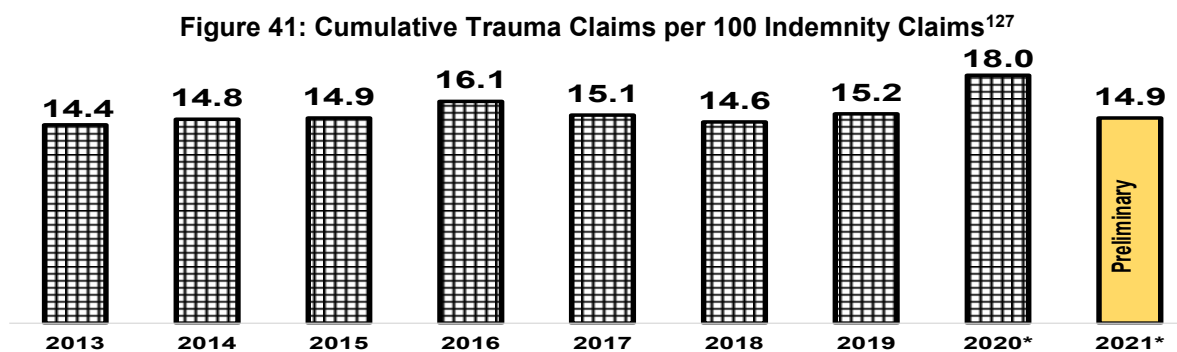
Cumulative Trauma Claims

According to Labor Code Section 3208.1, an injury may be either specific or cumulative. A specific injury is one that takes place as the result of a single incident or exposure. A cumulative injury results from repetitive trauma (mental or physical) over a period of time.¹²⁵ The data below describe select trends in cumulative injuries. Additional information on cumulative trauma (CT) claims can be found in a 2018 WCIRB report, which includes the following findings (as of today there were no cost updates):¹²⁶

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

Cumulative Trauma Claim Counts

Figure 41 shows that CT claim rates remained relatively steady up until the pandemic. The sharp increase in the CT claim rate in 2020 is likely related to the economic slowdown resulting from the pandemic and the reduction in the number of smaller non-CT claims filed in 2020. In 2021, the CT claim rate returned to approximately the pre-pandemic level.



* Exclude COVID-19 claims.

Source: WCIRB

¹²⁵ Labor Code Section 3208.1, p. 9, <https://www.dir.ca.gov/dwc/medicalunit/toc.pdf>

¹²⁶ WCIRB's The World of Cumulative Trauma Claims Report, October 2018.

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

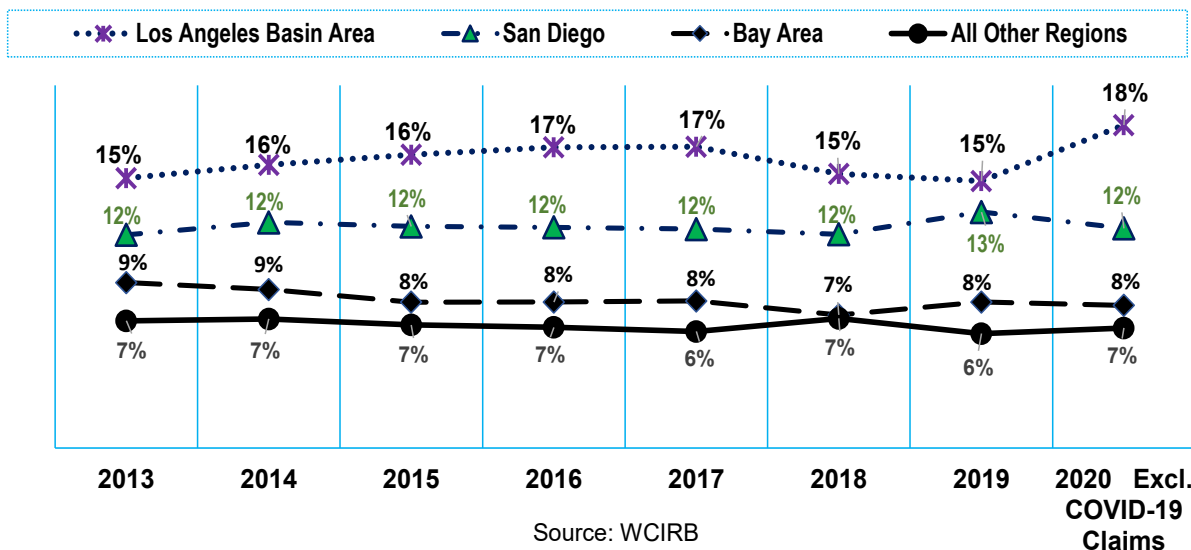
¹²⁷ WCIRB Insurer Experience Report as of December 31, 2021, Chart 8

<https://www.wcirb.com/sites/default/files/documents/quarterlyexperience-report-2021-4q-ar.pdf>

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As seen in Figure 42, most of the recent growth in CT claims through 2019 has been in the Los Angeles and San Diego regions. In 2020, the percentage of CT claims increased significantly in the LA Basin. However, this is expected to come down in 2021 as the overall percentage of CT claims in 2021 is closer to the pre-pandemic level (see Figure 41).

Figure 42: Percent of Cumulative Trauma Indemnity Claims by Region¹²⁸



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

According to the WCIRB, since 2012, about 25 post-termination claims, most of which were CT claims, have been filed for every 1,000 jobs lost. If only 50 percent of the rate of post-termination claims were applied to 4.3 million Californians who have lost jobs due to the COVID-19 pandemic, about 54,000 post-termination claims could be filed over 2020, increasing statewide indemnity claim frequency by approximately 25 percent.¹²⁹ Over the long term (1961-2017), the average annual decline in claim frequency was 0.9 percent during periods of expansion and 1.8 percent during times of economic downturn. CT claims, unlike other claims, also often increase during economic downturns in California and can partially offset declines in other claims and, consequently, in decreased costs. During the Great Recession (2007-2009), the average annual increase in CT claim frequency was 7.5 percent compared with 0.1 percent during the preceding economic expansion. Similarly, during periods of economic downturn, claims with injuries often involving less objective medical evidence, such as soft tissue and carpal tunnel injuries, tended to decrease at a slower rate, compared to claims involving more objective medical evidence, such as fracture and crushing injuries.

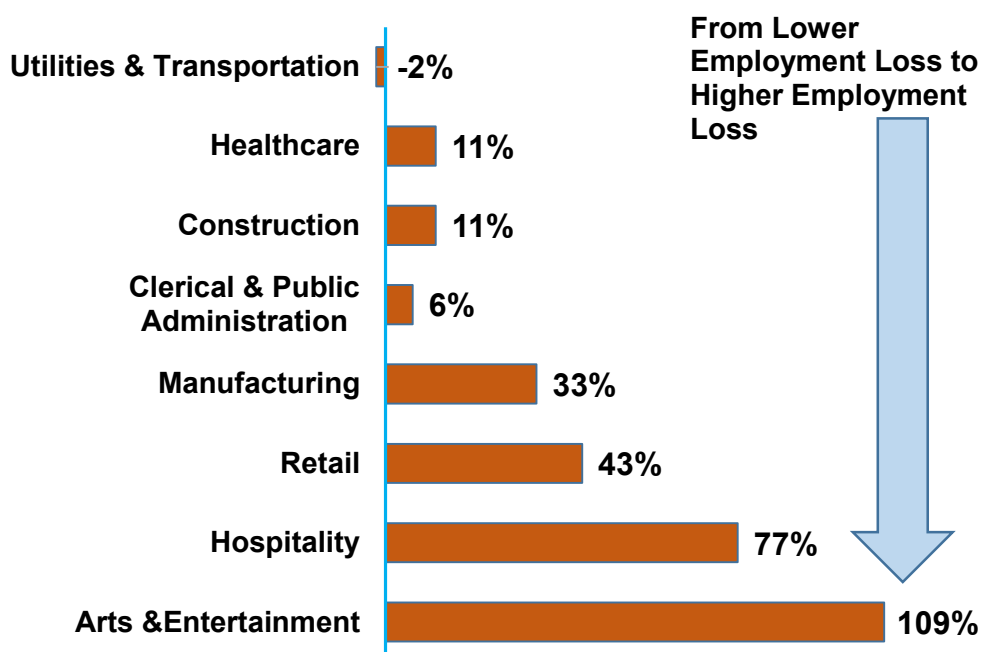
Figure 43 shows that while CT claims rose in most industries in 2020, the increases were generally greatest in industries with the largest job losses. According to WCIRB data, in recent pre-pandemic years, about 40 percent of all CT claims were filed following the job termination.

¹²⁸ WCIRB 2023 State of the System Report, Chart 15, <https://www.wcirb.com/content/report-state-workers-compensation-insurance-system>.

¹²⁹ WCIRB Impact of Economic Downturn on California Workers' Compensation Claim Frequency, https://www.wcirb.com/sites/default/files/documents/rb-impact_of_economic_downturn-audienceready_0.pdf.

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Figure 43: Change in CT Claims by Industry from 2019 to 2020 (Excludes COVID-19 Claims)¹³⁰



Source: WCIRB

Cumulative Trauma Claim Costs

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

Figures 44 and 45 illustrate the indemnity and medical costs of CT claims at 1.5, 5.5, and 10.5 years of maturity. In 2017, the ten and a half year mature claims originated in the 2007 accident year as the two figures demonstrate a cost development of aging CT claims.

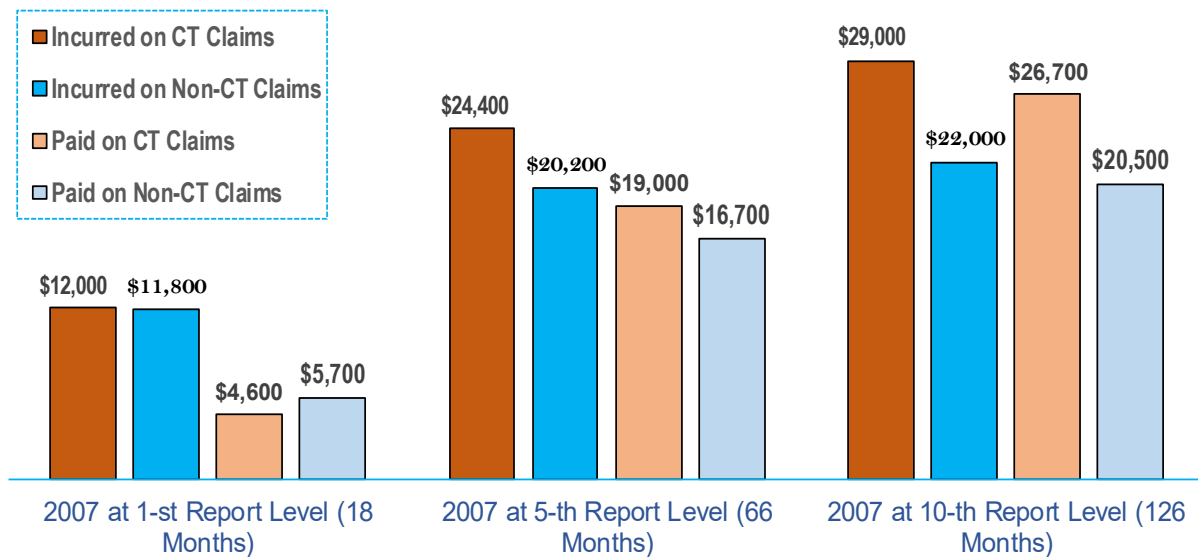
It takes over seven years for CT claims to be 98 percent reported or 3 times as long as for specific injury claims. In order to demonstrate better characteristics and attributes of CT claims the data have to be tracked from earlier accident years as in Figures 42 and 43.

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

¹³⁰ WCIRB 2022 Report on the State of the California WC Insurance System, Chart 27, <https://www.wcirb.com/sites/default/files/documents/wcirb2022stateofthesystem1663968583761.pdf>.

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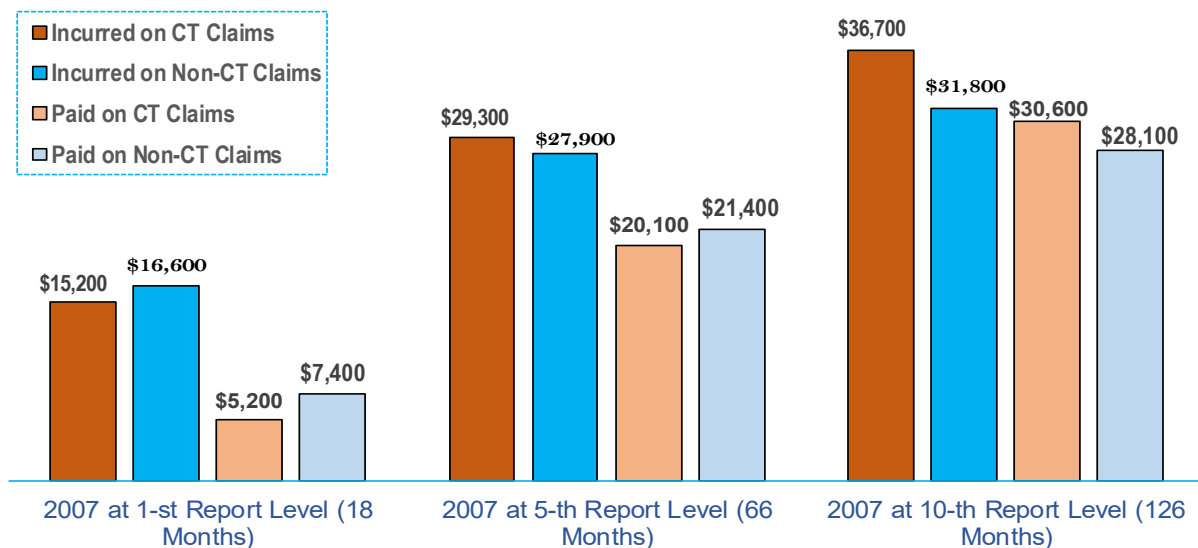
Figure 44: Development of Average Indemnity (Incurred or Paid) Costs per Cumulative Trauma Claims



Source: WCIRB

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

Figure 45: Development of Average Medical (Incurred or Paid) Costs per Cumulative Trauma Claims

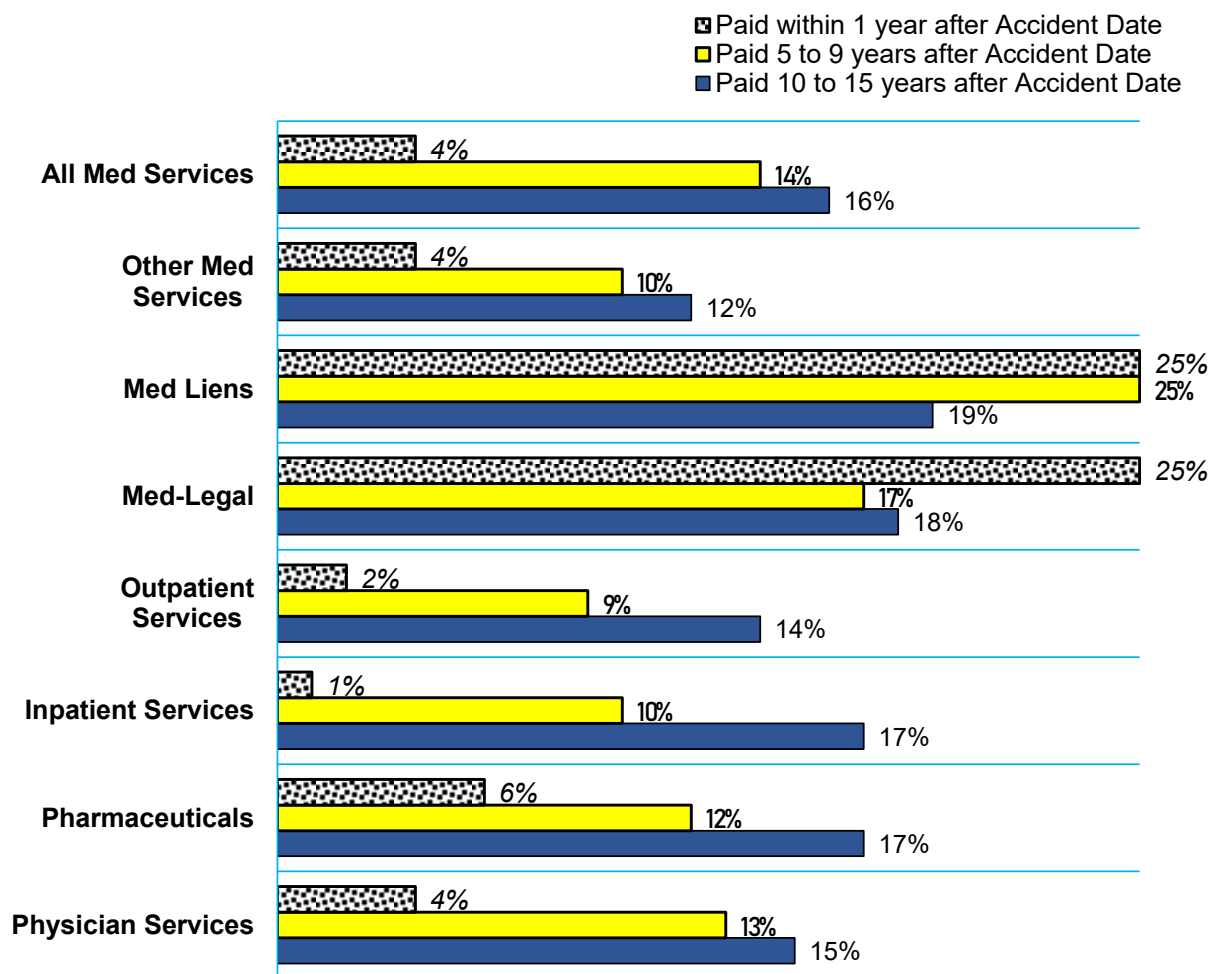


Source: WCIRB

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Figure 46 shows the share of the medical payments by type of services on CT claims in total medical payments. CT claims represent only 4 percent of all medical paid in the first year of claims, but 25 percent of medical-legal and lien payments. In later periods, CT claims account for 16 percent of all medical paid amounts with somewhat higher shares of medical-legal and lien payments.

Figure 46: Percentage of Medical Payments by Service Type on CT Claims in Total Medical Paid¹³¹



Source: WCIRB

¹³¹ WCIRB report "The World of Cumulative Trauma Claims", October 17, 2018, <https://static1.squarespace.com/static/5589b2a1e4b075cc91205d5c/t/5c93d9e6b208fc2cf3f70d66/1553193456632/WCIRB+CT+Report.pdf>.

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Medical-Legal Expenses

This section contains estimated California WC medical-legal costs for 2022, which is the first year with complete annual data under the new 2021 Official Medical-Legal Fee Schedule (MLFS). For 2021, the information regarding the medical-legal costs reflects only three quarters (April 1 to December 31) of the latest changes in the MLFS that became effective for services rendered on or after April 1, 2021. Due to this change, the historical medical-legal data for services prior to April 1, 2021 are not directly comparable to the data emerging under the new fee schedule. As mentioned earlier, the ultimate impact of the COVID-19 pandemic on WC medical and medical-legal costs may not be known for years and can only be comprehensively evaluated using post-COVID-19 data.

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

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

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

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

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

The new Medical-Legal Fee Schedule (MLFS) adopted by the Administrative Director in 2021 is effective for medical-legal payments for dates of service on or after April 1, 2021. Although the standard measurements related to medical-legal costs based on 2006 MLFS and 2021 MLFS are presented on the same figures those data are not directly comparable as was mentioned above. As the 2021 MLFS-based data replace the 2006 MLFS-based estimates, the historical medical-legal analysis ending in 2020 can be found in the 2020 CHSWC Annual Report:

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

DWC's Permanently Adopted COVID-19 Medical-Legal Emergency Measures¹³²

DWC adopted emergency regulations for medical-legal evaluations that took effect May 14, 2020 and were set to expire on October 12, 2021, as outlined in Executive Order N-40-20. These emergency regulations (36.7 and 46.2) have been extended until January 11, 2022 with two possible 90 day extensions in accordance with Government Code section 11346.1(h). These emergency regulations helped injured workers and employers continue to move their WC claims towards a resolution and avoid additional and undue delay. The issue of whether a medical-legal report is admissible or constitutes substantial medical

¹³² DWC Medical-Legal Emergency Regulations, https://www.dir.ca.gov/dwc/DWCPropRegs/2020/QME-Regulations/QME_Regs.htm.

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evidence is determined in accordance with applicable laws and is not altered by these emergency measures.

Regulation 36.7 provided a mechanism for electronic service of medical-legal reports and all documents required by section 36. To make the regulation permanent, DWC has adopted Title 8, California Code of Regulations section 36.7, Electronic Service of Medical-Legal Reports by Medical Evaluators effective April 12, 2022. DWC extended its emergency regulation Section 46.2, that allowed for medical-legal evaluations utilizing telehealth and office location flexibility resulting from various state and local public health safety measures related to COVID-19 had been extended until January 18, 2023. This was DWC's second and final re-adoption in accordance with Government Code section 11346.1(h).

DWC has permanently adopted these emergency regulations that include allowing telehealth evaluations by QMEs effective February 2, 2023.¹³³

The adoption and amendments of these regulations include but are not limited to the following:

- Extends the time frame to schedule a medical-legal evaluation by an additional 30 days
- Clarifies that the time frame for scheduling an evaluation is for both initial and subsequent evaluations
- Provides flexibility if the parties agree so that an initial evaluation can occur at any office listed with the DWC Medical Director
- Provides for a QME or Agreed Medical Evaluator (AME) to reschedule an evaluation within 60 days of the date of the cancellation unless the parties agree beyond the 60 days
- Provides a mechanism for remote health Medical-Legal evaluations if specific criteria are met
- Provides a definition of remote health evaluations and identification of office location when a remote health evaluation is conducted.

Telehealth options include remote visits via videoconferencing, videocalling or similar technology that allows a video connection.

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

1. The injured worker is able to participate in a telehealth evaluation without violating the stay-at-home order.
2. The medical issue in dispute is determined to be essential to an injured worker's benefits and must involve the following:
 - a. An evaluation is determining whether the injury is AOE/COE
 - b. Termination of an injured worker's indemnity benefit payments, or
 - c. Work restrictions
3. There is a written agreement between injured worker, carrier, or employer, and the QME.
4. The telehealth evaluation is consistent with appropriate medical practices and ethical considerations.
5. The QME attests that the evaluation of the injured worker can be performed effectively and safely with a telehealth evaluation and does not require an in-person physical examination that can better contribute to the examiner's ability to make an accurate diagnosis or to foresee the outcome of a treatment already provided.
6. When the medical-legal evaluations do not require the injured worker or others to travel and interact with anyone outside their immediate household.

¹³³ <https://www.dir.ca.gov/DIRNews/2023/2023-13.html>.

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Status of DWC's Implementation of the Medical-Legal Fee Schedule (MLFS)¹³⁴

On April 1, 2021, DWC implemented a new MLFS. The goal of the implementation of the new MLFS was to grant a cost-of-living increase in fees for Qualified Medical Evaluators (QME) and to possibly attract more physicians into the ranks of QME. The last time the MLFS was updated was in 2006.

Conservative estimates of the effect of the new MLFS by some medical management companies predicted at least a 20 percent increase in income for providers. This prediction was in line with the stated goal of the DWC to increase provider compensation by 25 percent, normalize the predictability of billing and minimize underpayments and/or overpayments that were perceived elements of the former MLFS. According to WCIRB, the retrospective evaluation of the MLFS changes done earlier in 2023, showed that the medical-legal costs have increased by 50 percent since the implementation of the new fee schedule, which was higher than earlier estimates.¹³⁵ This updated estimate of the impact of the 2021 MLFS changes results in an approximate 3.2 percent increase in total medical WC costs.

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

The fee schedule has been in effect for more than a year with mixed reviews as to its effectiveness in reaching its stated goals. One preliminary study found that payments for face-to-face evaluations increased 52.9 percent over the same period for 2019. The study further found that after the implementation of the new MLFS the ranks of QME's increased by 3 percent over 2020 levels.

A separate preliminary study seemed to show a slight decrease in payments for medical-legal reports overall when comparing the second and third quarters of 2021 to the first quarter of 2021 under the former MLFS.

At this point, there is insufficient data to determine whether the new MLFS is accomplishing the goals envisioned by the DWC at its implementation. Further studies assessing the effects of the new MLFS will undoubtedly be forthcoming from various sources in the WC community.

DWC is in the process of commissioning a comprehensive study of the Qualified Medical Legal Evaluation program in its entirety. Among the topics for the study is the effectiveness of the MLFS. Any quantitative analysis of the new fee schedule will be revealed with the results of that study.

Impact of SB 863 on Medical-Legal Process

The most recent reform, SB 863, which took effect January 1, 2013, did not directly address the medical-legal process, but its several provisions introduced a significant change to medical-legal evaluations in how medical treatment disputes are resolved. The reform did not change the reimbursement procedures or parameters for reimbursement of medical-legal reports. It was expected that the number of medical-legal reports would be reduced by the IMR, lien, medical provider network (MPN), and independent bill review (IBR) provisions of SB 863. As of January 1, 2013, for injuries occurring on or after that date, and as of July 1, 2013, for all dates of injury, disagreements about a specific course of medical treatment recommended by the treating physician are resolved only through a process called independent medical review (IMR). In this environment, medical-legal evaluations by QME and AME are limited to disagreements about whether a claim is covered by workers' compensation (compensability) and disability threshold issues. In addition, another SB 863 legislative change that indirectly could have had an impact on medical-legal evaluations were the California Labor Code Sections 4660.1(c)(1) and (2). These sections limited the ability of injured workers to receive a PD compensation for sleep disorders, sexual disorders and

¹³⁴ Information on the Status of DWC's Implementation of the MLFS was provided by DWC.

¹³⁵ WCIRB Sep 1, 2023 PPR Filings, p.142,

https://www.wcirb.com/sites/default/files/documents/sept_1_2023_pp_rate_filing-complete.pdf.

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psychological/psychiatric disorders that develop as a “compensable consequence” of physical injuries. For cases after December 31, 2012, sleep disorder and sexual dysfunctions caused by a physical injury and psychiatric disorders cannot cause an increase in PD rating, unless the psychiatric disorder is due to violent acts, direct exposure to a significant violent act, or caused by catastrophic injury, including but not limited to loss of a limb, paralysis, severe burn, or severe head injury. As a result of these changes, the total paid medical-legal cost (by calendar year) declined by 20 percent from 2016 to 2020 (see Figure 50).

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

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

Medical-Legal Fee Schedule

Medical-Legal Fee Schedule Regulations Effective April 1, 2021

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

The Medical-Legal Fee schedule adopted by the Administrative Director in 2006 determined the cost per medical-legal evaluation for dates of services on or after July 1, 2006. Table 9 shows the costs and description from 2006 MLFS. (The estimated medical-legal costs in this 2023 report are based on the 2006 MLFS for data provided up to the first quarter of 2021 and on the new MLFS 2021 - for the last three quarters of 2021 and the full-year data for 2022.)

Table 9: Medical-Legal Evaluation Costs for Dates of Service on or After July 1, 2006

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

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

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

SYSTEM COSTS AND BENEFITS

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

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

The payments for services described by procedure codes ML 201–ML 203 may be modified using four old and three new modifiers, that can further increase the cost of evaluations. The modifiers are not applicable to the per-page charges. Table 11 describes seven modifiers available in 2021 MLFS.

Table 11: Modifiers adopted from 2006 MLFS and newly introduced by 2021 MLFS

MODIFIERS
-92 (Adopted from 2006 MLFS): Performed by PTP. For identification purposes only and does not change the value of the service.
-93 (Adopted from 2006 MLFS): Interpreter needed at a time of examination or other circumstances needed to conduct the exam. Requires a description of the circumstance and the increased time required for the exam. The procedure fee is modified by multiplying the normal value by 1.1. Applicable only to ML 201 and ML 202.
-94 (Adopted from 2006 MLFS): Evaluation performed by an AME. The fee for the service is modified by multiplying the fee by 1.35. If modifier -93 is also applicable for ML 201 or MO 202, then the value of the procedure is modified multiplying by 1.45.
-95 (Adopted from 2006 MLFS): Evaluation performed by a QME. For identification purposes only and does not change the procedure fee.
-96 (New modifier). For evaluation performed by psychiatrist or psychologist when psychiatric or psychological evaluation is the primary focus of the med-legal evaluation. The procedure fee is modified by multiplying by 2. If modifier -93 is also applicable for ML 201 or ML 202, the fee is modified by 2.10. If modifier -94 is also applicable to ML 201 or ML 202, the fee is multiplied by 2.45.

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MODIFIERS
<p>-97 (New modifier). For evaluation performed by a physician board certified in Toxicology, a QME in the specialty of Internal Medicine or a physician board certified in Internal Medicine when a Toxicology evaluation is the primary focus of the evaluation. The procedure fee is multiplied by 1.50. If -93 is also applicable for ML 201 or ML 202, the fee is multiplied by 1.60. If modifier -94 is also applicable for ML 201 or ML 202, the fee is modified by 1.85. If modifier -93 and -94 are applicable for an ML 201 or ML 202, the fee is modified by 1.95.</p>
<p>-98 (New modifier). For evaluation performed by a physician who is board certified in Medical Oncology, a QME in the specialty of Internal Medicine or a physician who is board certified in Internal Medicine, when Oncology is the primary focus of the evaluation. The procedure fee is multiplied by 1.50. If modifier -93 is also applicable for ML 201 or ML 202, the fee is modified by 1.60. If modifier -94 is applicable for ML 201 or ML 202, the fee is multiplied by 1.85. If -93 and -94 are also applicable for an ML 201 or ML 202, the fee is multiplied by 1.95.</p>

The reimbursement for 2021 MLFS base codes ML200, ML201, ML202, and ML203 include payment for a reasonable amount of medical record review up to certain page limits after which an MLPRR code applies as shown in Table 12. The purpose of the MLPRR billing code is to provide physicians a way to receive reimbursement for review of records beyond the number of pages included in base Medical-Legal numerical billing codes ML200, ML201, ML202, and ML203. Starting with the excess page the physician may bill for every page that exceeds the 200-page or 50-page limits. Each additional page represents one billable unit of MLPRR at \$3 per unit or page.

Table 12: Medical-Legal Per-Page Record Review (MLPRR)

MLFS Evaluation Code	Page Limits for Record Review Reimbursement Included in MLFS Evaluation Code
ML-200 - Missed Appointment	200 Pages
ML-201 - Comprehensive Medical-Legal Evaluation	200 Pages
ML-202 - Follow-up Medical-Legal Evaluation	200 Pages
ML-203 - Supplemental Medical-Legal Evaluation	50 Pages

To facilitate comparison of 2006 MLFS and 2021 MLFS data, CWCI developed a crosswalk between the related procedure codes as shown in Table 13.

Table 13: Crosswalk Between Procedure Codes in 2006 MLFS and 2021 MLFS

2006 MLFS	2021 MLFS
Missed Appointment	
ML-100 - does not imply compensation is necessarily owed	ML-200 Flat Fee \$503.75
Comprehensive Medical-Legal Evaluation (involves face-to-face examination)	
ML-102 Basic: Flat Fee \$625	ML-201 Flat Fee \$2,015 plus \$3.00 per page for records exceeding 200 pages
ML-103 Complex: Flat Fee \$937.50	
ML-104 Extraordinary: \$62.50/15 minutes (\$250/hour)	
Follow-Up Medical-Legal Evaluations (involves face-to-face examination)	
ML-101 \$62.50/15 minutes	ML-202 Flat Fee \$1,316.25 plus \$3.00 per page for records exceeding 200 pages
Supplemental Medical-Legal Evaluation Report (no face-to-face examination)	

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2006 MLFS	2021 MLFS
ML-106 \$62.50/15 minutes	ML-203 Flat Fee \$650 plus \$3.00 per page for records exceeding 50 pages
Medical-Legal Testimony	
ML-105 \$62.50/15 minutes (\$250/hour)	ML-204 - \$455/hour
Review of Sub Rosa Recording	
Not Separately Paid	ML-205 - \$325/hour
Per Page Record Review	
Not Separately Paid	MLPRR - \$3.00/page

Source: CWC

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

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

According to DWC, although the 2006 MLFS paid both flat and hourly fees to review medical records, write medical-legal reports, and testify in trials, there was a substantial increase in incidence of hourly billing in recent years that was not matched by an increase in complexity of matters reviewed by physicians.¹³⁶ A flat-fee-based MLFS will eliminate the need to interpret regulations to determine the appropriate fees for medical-legal evaluations. The empirical data evidenced in the cited studies¹³⁷ by DWC indicated that some current interpretations of the fee schedule regulations were done in a manner that completely circumvented the original intent of the fee schedule. The implementation of a new fee schedule is expected to result in objective and standardized outcomes and reduce frictional costs.

The increase in reimbursements for medical-legal evaluations provided by the new MLFS is expected to improve the quality of medical-legal reports and attract new physicians to the QME program. According to the latest available DWC data, 211 new physicians joined the pool of certified QMEs in 2021, while only 18 became inactive, resulting in 2,554 active evaluators, a 2.6 percent increase from 2020 and a 0.7 percent decrease from 2019.

¹³⁶ WC-Medical-Legal Fee Schedule, Initial Statement of Reasons, <https://www.dir.ca.gov/dwc/DWCPPropRegs/2020/Medical-Legal-Fee-Schedule/Med-Legal-Fee-Schedule.htm>

¹³⁷ Ibid.

SYSTEM COSTS AND BENEFITS

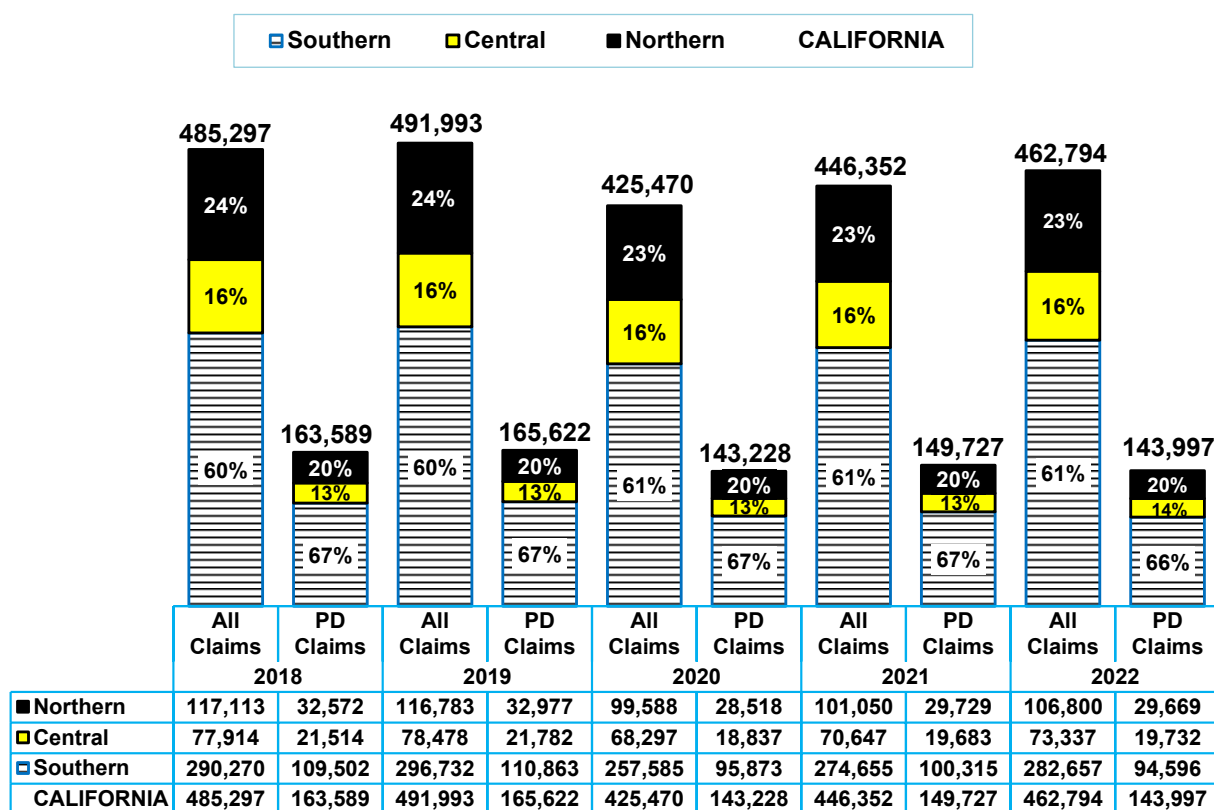
Workers' Compensation Claims with Medical-Legal Expenses

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

Figure 47 shows the number of permanent disability (PD) and all claims originating in three California regions in Service Years (SY) 2018 to 2022. About 31-34 percent of claims statewide involved a permanent disability from 2018 to 2022, including the last three quarters of 2021 and full SY 2022 under the new MLFS.

From 2020 to 2022, the first year that complete and more consistent medical-legal data became available, the number of all claims increased by 9 percent and the number of PD claims increased by 1 percent. Since the claims reported to MDC include claims with any medical transaction it is hard to say if introducing the new MLFS was a factor in these significant increases in the number of claims. Around 61 percent of all claims and 67 percent of PD claims originated in Southern California and 23 percent of all claims and 20 percent of PD claims originated in Northern California. Different regions in California have different patterns of medical-legal reporting. Regions with a higher share of WC claims in the system have a bigger impact on both the average number of medical-legal evaluations per claim and the average cost of medical-legal evaluations statewide.

Figure 47: Workers' Compensation Claims, All and with Permanent Disability, by California Regions, SY 2018-SY 2022



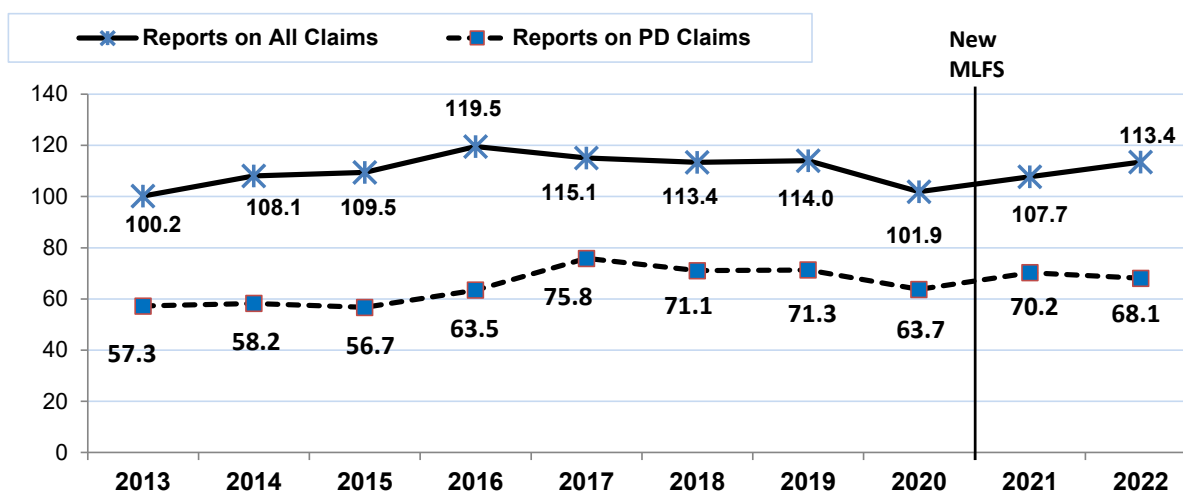
Source: WCIRB

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Figure 48 shows the number of medical-legal reports conducted on PD and all claims in California for SY 2013 to SY 2022. In SY 2022, a total of 113,400 medical-legal reports on all claims were issued, of which 60 percent or 68,100 were on PD claims.

In the period between 2013 and 2020, when the old 2006 MLFS was in effect, the number of medical-legal reports on all claims increased steadily by 19 percent from SY 2013 to SY 2016 and then decreased overall by 5 percent from 2016 to 2019. The number of medical-legal reports on all claims decreased by 11 percent from 2019 to 2020 due mostly to the COVID-19 pandemic. The number of medical-legal reports on PD claims was an average of 57,400 medical-legal reports per year from 2013 to 2015, increased by 34 percent from 2015 to 2017, and then decreased by 6 percent from 2017 to 2019. The number of medical-legal reports on PD claims decreased at the same rate (11 percent) as the number of non-PD medical-legal reports from 2019 to 2020. The share of all medical-legal reports in California conducted on PD claims decreased from 57 percent in 2013 to 52-53 percent in 2015 and 2016. There was a 13 percentage points increase in the share of all medical-legal reports conducted on PD claims from 2016 to 2017, which stabilized at about 63 percent from 2017 through 2020. In 2022, as the new MLFS was in its second year, the share of all medical-legal reports conducted on PD claims decreased to 60 percent.

Figure 48: Number of Medical-Legal Evaluations on PD and All Claims (Thousands)



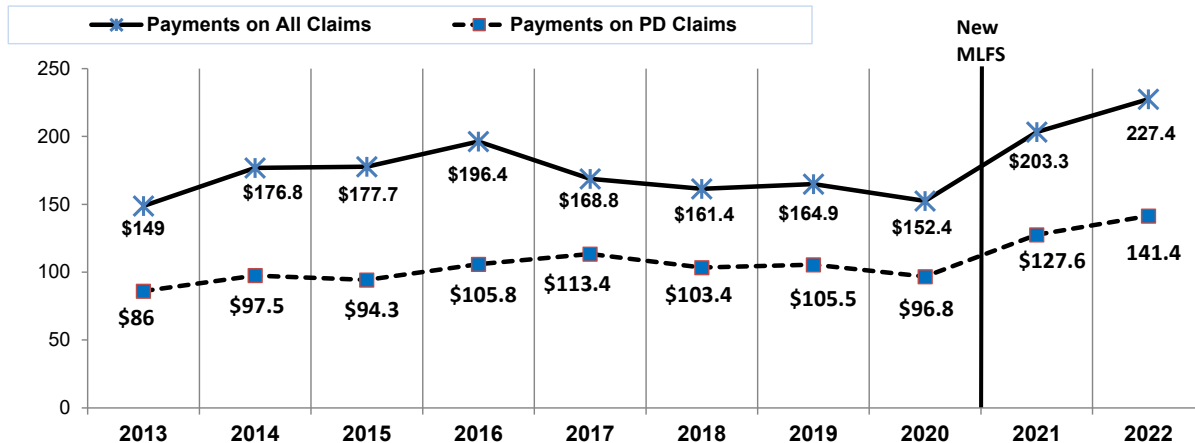
Note: Due to the implementation of the new MLFS effective April 1, 2021, the historical medical-legal data for services prior to April 1, 2021 are not directly comparable to the data emerging under the new fee schedule.

Source: WCIRB

Figure 49 shows statewide medical-legal payments on PD and all claims in California for SY 2013 to SY 2022. The medical-legal payments on all claims increased by 32 percent from SY 2013 to SY 2016, based in part on an overall 23 percent increase in medical-legal payments on PD claims during the same time period. The medical-legal payments on all claims experienced an overall decrease by 22 percent from SY 2016 to SY 2020, followed by a 49 percent increase from 2020 to 2022 due to the introduction of new 2021 MLFS. The share of medical-legal payments for PD claims decreased from 58 percent in 2013 to an average of 54 percent of all yearly medical-legal payments in SY 2014 through SY 2016. That share increased by 13 percentage points to 67 percent from SY 2016 to SY 2017, and then stabilized at about 63-64 percent from 2018 to 2021. The medical-legal payments on PD claims increased by 46 percent from 2020 to 2022, and comprised 62 percent of total medical-legal payments in SY 2022. According to WCIRB, the increase in medical-legal costs was primarily driven by a significantly higher-than-initially-projected increase in the costs for record review and an increased utilization of medical-legal services per claim.

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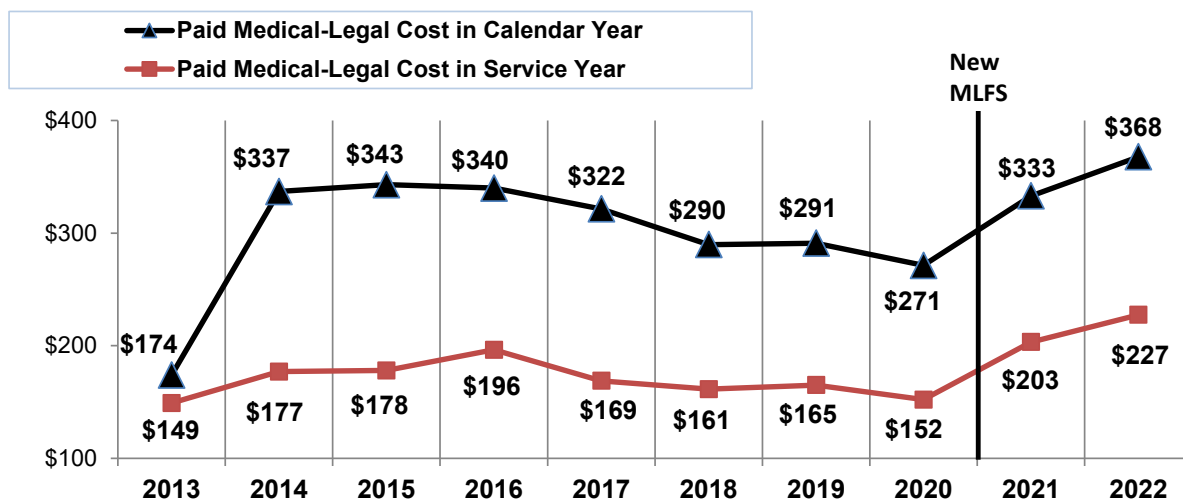
Figure 49: Medical-Legal Payments on PD and All Claims (Million \$)



Source: WCIRB

The total medical-legal cost is reported by the WCIRB as a component of the total medical cost. The WCIRB's widely used and referenced Losses and Expenses Report¹³⁸ has estimates of the "paid medical-legal amount" or amounts paid in a certain calendar year (CY). The WCIRB's MDC, on which the total amounts in Figure 50 are based, covers medical-legal evaluations only for a certain service year. Payments reported for a calendar year are for medical-legal services with service dates in different years and therefore cover more services, while payments discussed in this report are limited to services during the same calendar year. Figure 50 shows paid medical-legal amounts in CY 2013 to CY 2022 from the Losses and Expenses Report against the paid medical-legal amounts in SY 2013 to SY 2022 from the current CHSWC report.

Figure 50: WCIRB's Medical-Legal Costs Reported in Calendar vs. Service Years (Million \$)



Source: WCIRB

The total medical-legal expenses could be of different amounts for different organizations and even within the same organization, depending on how the data are collected, the type of reporting year applied

¹³⁸ WCIRB, 2021 Losses and Expenses Report, Exhibit 1.1, June 29, 2022.

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(calendar, accident, service, policy, or fiscal), methods of estimation, and on inclusion or exclusion of insured, self-insured, and legally uninsured employers.

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

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

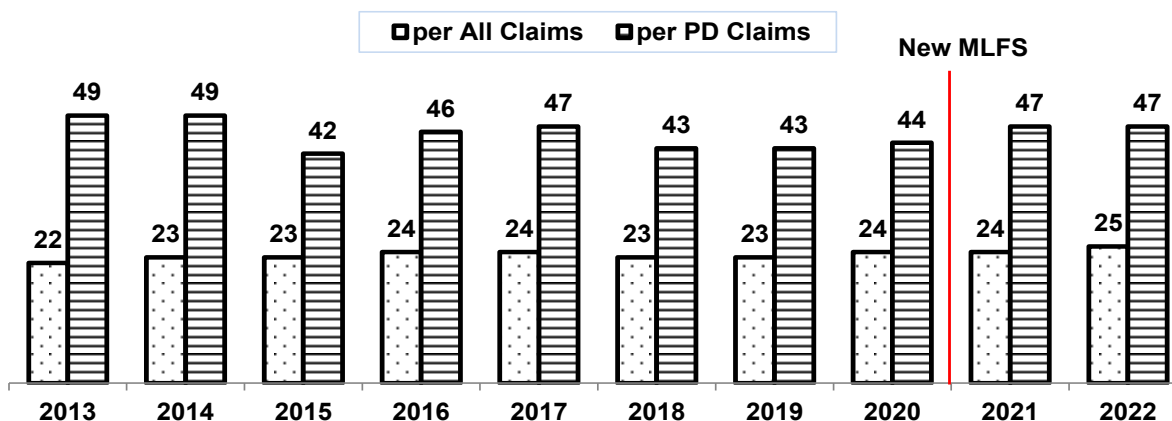
Also, the methods for calculating medical expenses could differ by the inclusion or exclusion of different categories of medical expenses, such as medical cost containment program (MCCP) expenses, thereby increasing or decreasing the total.

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

Medical-Legal Evaluations per Claim

Figure 51 shows the frequency of medical-legal reports for all claims and PD claims statewide from SY 2013 to SY 2022. SY 2021 includes the last three quarters of 2021 covered by new MLFS. The average number of medical-legal evaluations per 100 PD claims is about double the rate for all claims. While the average number of medical-legal evaluations per 100 all claims stabilized at 23 between the SY 2013 and SY 2020, the same rate for PD claims decreased overall by 10 percent from 49 reports per 100 PD claims in SY 2013 and SY 2014 to 43-44 reports per 100 PD claims in the last three years from 2018 to 2020. It will require several years of new data under the updated MLFS for the results of this change to be analyzed.

Figure 51: Number of Medical-Legal Evaluations per 100 Workers' Compensation Claims (PD and All) in California



Note: For 2021 estimates, the number of medical-legal evaluations exclude MLPRR transactions.

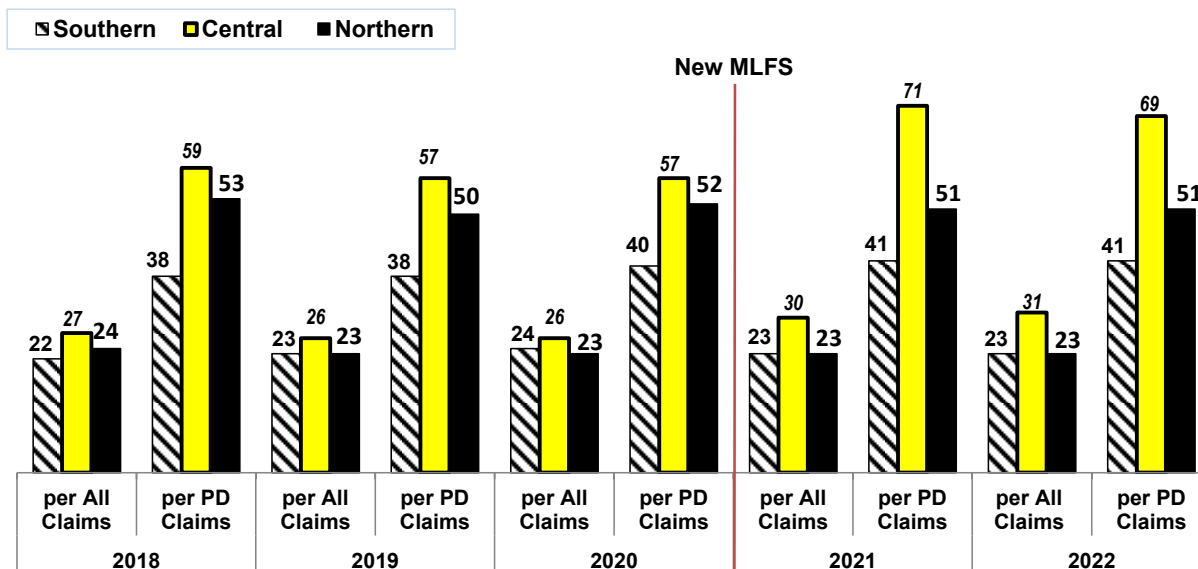
Source: WCIRB

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Medical-Legal Reporting by the California Regions

Before the introduction of 2021 MLFS, the different regions in California were thought to have different patterns of medical-legal reporting. Figure 52 shows the frequency of medical-legal reports for all claims and PD claims in three California regions in the last five years from SY 2018 to SY 2022, which is the first year with complete data under the new 2021 MLFS. It will require several years under the new MLFS before reliable patterns emerge in the frequency of medical-legal reports for the three California regions. During the pre-MLFS 2021 period, all three California regions showed a similar trend in changes of the average number of medical-legal evaluations per 100 PD claims.

Figure 52: Average Number of Medical-Legal Evaluations per 100 Claims (PD and All), by Region



Source: WCIRB

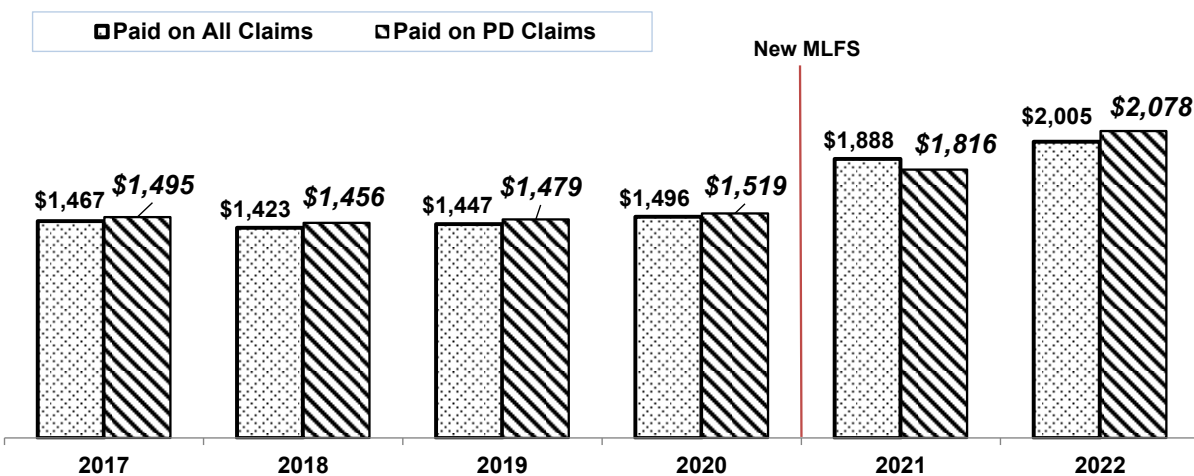
Average Cost per Medical-Legal Evaluation

Figure 53 shows both the average cost of a medical-legal evaluation on PD claims and the average cost of a medical-legal evaluation on all claims. Under the old MLFS, both types of average costs stabilized from SY 2017 to SY 2020. As similarly stated above, it will require several years of data under the new MLFS before the scale and patterns in average medical-legal cost developments are observed.

Starting in April 2021 when the new MLFS became effective, the average paid for medical-legal services per claim has increased significantly, mostly driven by an increase in the average payments per service as the new fee schedule increases the reimbursement allowance for most medical-legal services. In particular, the costs of additional pages (MLPRR) for record review appear to be a driver for the higher average medical-legal payments in 2022.

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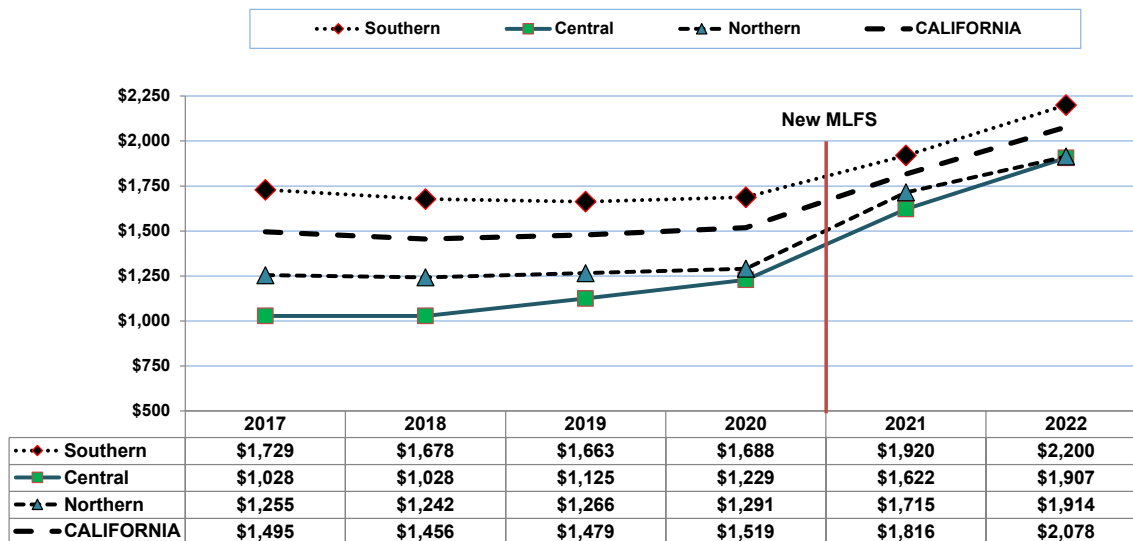
Figure 53: Average Cost of a Medical-Legal Evaluation on All and PD Claims, California



Source: WCIRB

Figure 54 shows the average cost of a medical-legal evaluation on PD claims from 2017 to 2022 in three California regions.¹³⁹ SY 2022 is the first year with the complete data under the new 2021 MLFS. It will require several years of data under the new MLFS before the scale and patterns for average medical-legal cost of evaluations on PD claims are observed.

Figure 54: Average Cost of a Medical-Legal Evaluation on PD Claim, by Region



Source: WCIRB

Trends in both the average number of medical-legal evaluations per claim and the average cost of an evaluation in California are being driven by medical-legal evaluations in Southern California, as seen in Figure 54 and Tables 14 and 15. About 58-60 percent of medical-legal evaluations originated in Southern California in SY 2013 to SY 2022, reflecting the similar share of Southern California in WC claims (see

¹³⁹ A separation of data on medical-legal evaluations on PD claims for Q1 and Q2-Q4 produced unreliable data and for that reason year 2021 in Figure 54 includes the data for Q1 that was still under the old 2006 MLFS.

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Figure 47). Similarly, a 60 percent share of Southern California in total medical-legal payments under the new MLFS in 2022 position this region as the main cost driver in California in the coming years.

Table 14: Distribution of Medical-Legal Reports on PD Claims by California Regions

	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Southern	58%	60%	60%	60%	59%	58%	60%	60%	59%	58%
Central	16%	16%	15%	17%	17%	18%	17%	17%	20%	20%
Northern	26%	24%	25%	23%	24%	24%	23%	23%	21%	22%

Source: WCIRB

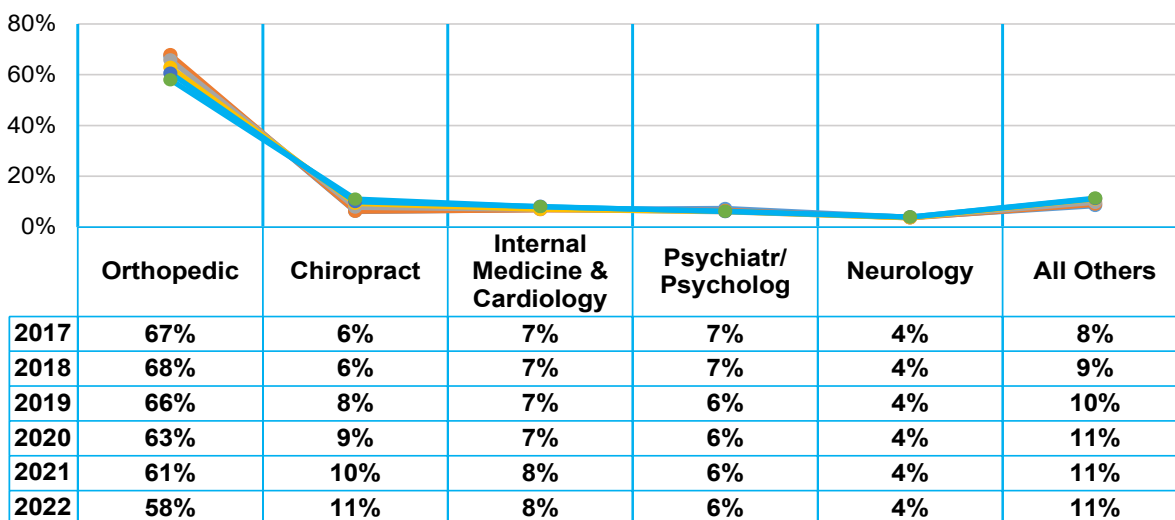
Table 15: Regional characteristics of medical-legal activities, 2022

	Share of region in Total ML Payments	Share of region in Total ML Evaluations/Transactions	Share of ML Evaluations on PD Claims	Share of MLPRR (Per Page Record Review) payments	Share of ML-201 (Comprehensive Report) payments	Avg Cost of ML-201 Comprehensive Report
Southern	61%	58%	59%	28%	50%	\$2,327
Central	19%	20%	60%	23%	54%	\$2,184
Northern	20%	22%	62%	24%	48%	\$2,348

Potential Medical-Legal Cost Drivers

Physicians specializing in orthopedic specialty provided 58 percent of the medical-legal services during 2022, while chiropractors, internal medicine, and psychiatrists/psychologists were providing 6 to 11 percent of services each in 2022.

Figure 52: Distribution of Medical-Legal Evaluations by Type of Providers, 2017-2022

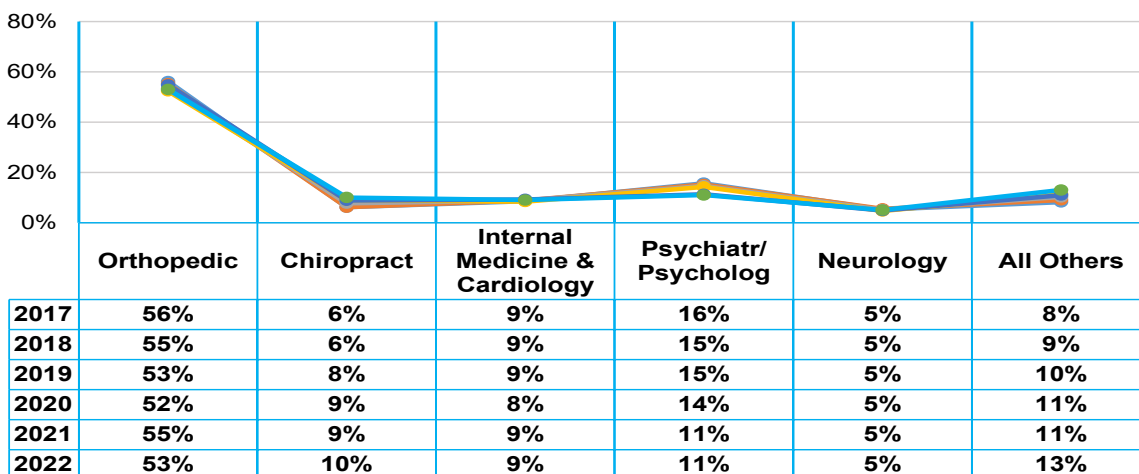


Data Source: WCIRB

SYSTEM COSTS AND BENEFITS

Figure 53 shows that while 6 percent of all medical-legal evaluations were performed by psychiatric/psychological providers in 2022, those evaluations comprised 11 percent of total medical-legal paid amounts.

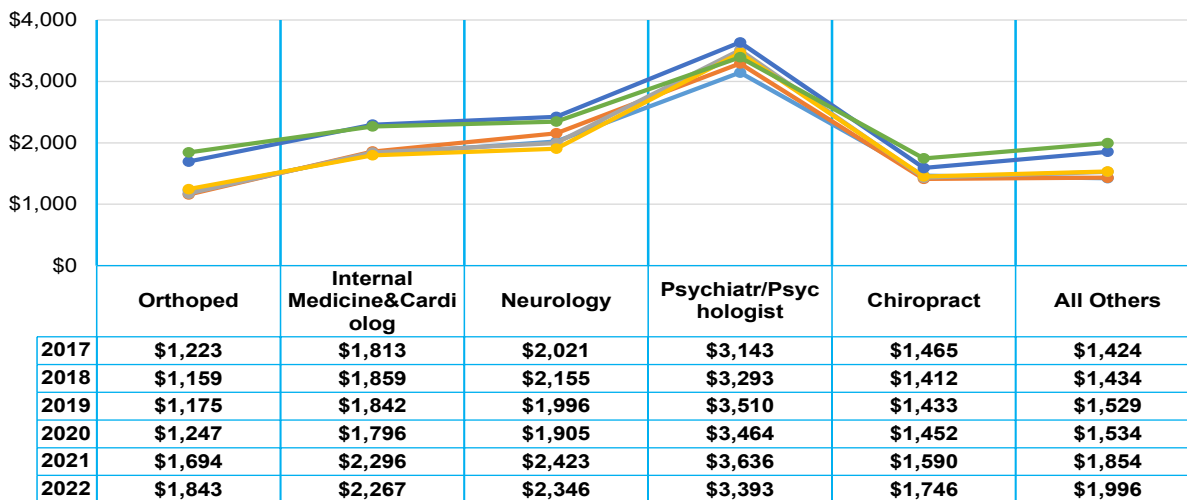
Figure 53: Distribution of Medical-Legal Payments by Type of Providers, 2017-2022



Data Source: WCIRB

Figure 54 shows the average cost of a medical-legal evaluation by types of providers. The historical data showed that the differing trends in the average cost per evaluation and the increase in frequency of medical-legal evaluations in California could be explained by both the frequency and the cost of psychiatric and psychological/behavioral evaluations per claim. Increasing payments for psychiatric evaluations is one of the main goals of the new MLFS 2021.

Figure 54: Average Cost of a Medical-Legal Evaluation by Type of Providers, SY 2017- SY 2022



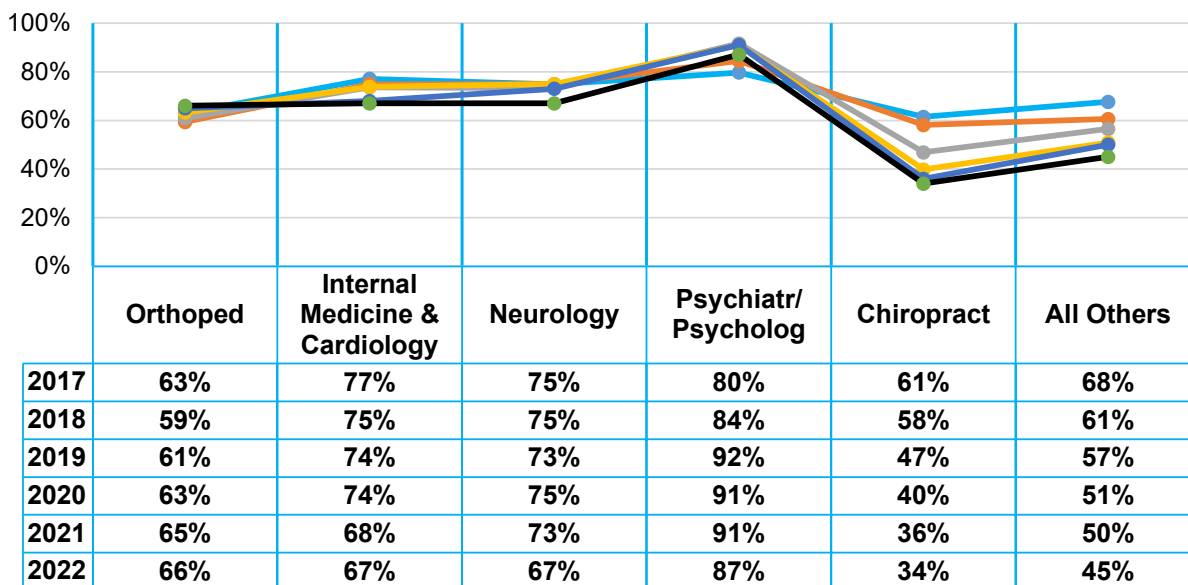
Note: From 2021, the Medical-Legal Per-Page Record Review (MLPRR) Payments are included in the estimates of the average cost.

Data Source: WCIRB

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As Figure 47 showed, about 60-63 percent of all medical-legal evaluations were conducted for reports on PD claims that are more expensive and take longer time to close. Figure 55 shows that the share of medical-legal evaluations on PD claims performed by psychiatrists/psychologists, internal medicine and cardiology, and neurologists are higher compared to the average share of reports for PD claims. About 87 percent of reports performed by psychiatrists/psychologists in 2022 were performed for PD claims.

Figure 55: Share of Medical-Legal Evaluations on PD Claims in Total Medical-Legal Evaluations by Provider Type, 2017-2022



Data Source: WCIRB

Table 16 shows that comprehensive, follow-up and supplemental reports constitute 66 percent of all medical-legal reports of which those involving the per-page record reviews (PRR) add an average \$1,546 each. When included in the count of reports in order to estimate the impact of MLPRR on the total cost of medical-legal evaluations, the reports with MLPRR account for 25 percent of the total count and 26 percent of the total medical-legal cost. In 2022, MLPRR accounted for almost 59.0 million out of \$227.4 million billed for all 2022 MLFS procedure codes. According to the WC bill review specialists, when both the defense and applicant attorneys provide multiple-page documents, often with duplicative and irrelevant pages, the average Medical-Legal bill on which MLPRR was reported includes about 1,100 pages of records reviewed. Therefore, QMEs and AMEs receive many more pages of medical records to review than the pages allowed by the 2021 MLFS evaluation codes.

In cases with hundreds or even thousands of pages of records, it is important to carefully consider what records are sent for review. The best scenario would be when the defendants and applicant attorneys agree on what records to submit, submit only those records relevant to specific medical-legal issues, and avoid submitting duplicate records. Following these requirements would decrease costs for the defendants.

According to WCIRB's data presented in this report, the \$59.0 million billed for MLPRR in 2022 represent about 20 million pages of additional medical records above 200 pages reviewed.

When extrapolated to the statewide cost, including the self-insured and state of California sectors, the number attests to a conclusion that the multiple-page records are driving the higher costs of medical-legal evaluations.

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Table 16: Characteristics of Medical-Legal Evaluations by New 2021 MLFS Procedure Codes, 2022

Billing Code: Name/Description and MLFS Flat Fee or Unit- Based Payment	Avg cost of a Med- Leg Report	Distribution of Med-Leg Reps/ Transactions (including ML-PRR transactions)	Distributi on of Med-Leg Payments	Share of Med-Leg Reports on PD claims
ML-200 Missed Appointment \$503.75	\$504	7%	2%	48%
ML-201 Comprehensive \$ 2,015	\$2,301	33%	50%	49%
ML-202 Follow- Up \$1,316.25	\$1,470	10%	10%	78%
ML-203 Supplemental \$650	\$688	23%	11%	70%
ML-204 Testimony \$455.00 per hour	\$740	0.8%	0.4%	74%
ML-205 Sub Rosa Recordings \$325.00 per hour	\$451	0.6%	0.2%	83%
ML-PRR Per-Page Record Review* \$3.00/page	\$1,546**	25%***	26%	65%****

* MLPRR activity doesn't create a distinctive separate report for the reason of MLPRR being paid on existing comprehensive, follow-up, and supplemental reports that involve a review of extra/excess pages.

** Average Cost of MLPRR in excess of the cost of ML-200, ML-201, ML-202 and ML-203 evaluations involving a review of extra/excess pages.

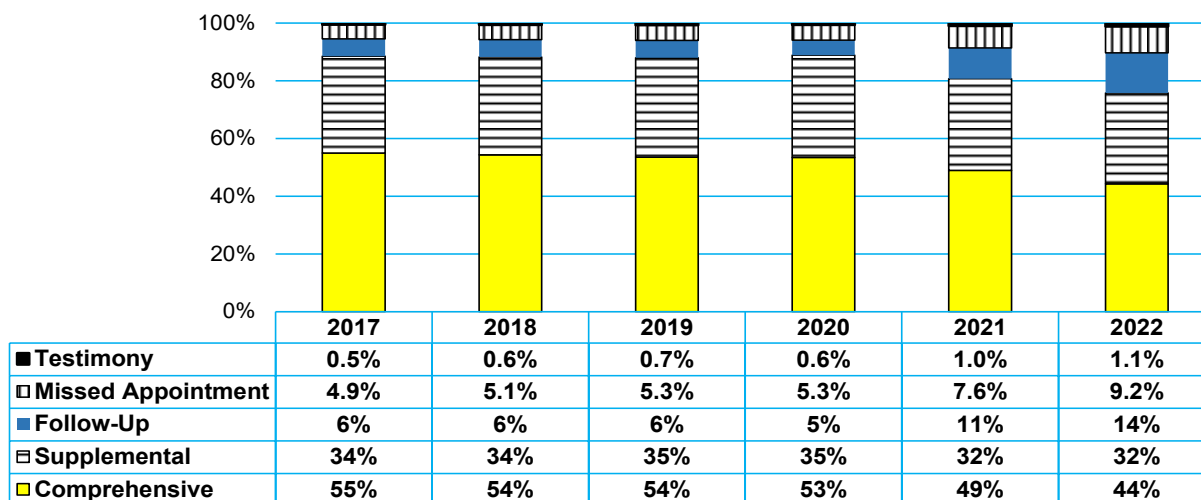
***Represents MLPRR transactions that are in excess of the page limits on document review for ML-200, ML-201, ML-202 and ML-203 reports.

**** Percent of reports with MLPRR that are performed on PD Claims.

As Table 13 shows, the new MLFS replaced three levels of service in the old MLFS, such as M-102 basic, ML-103 complex and ML-104 extraordinary evaluations with a single comprehensive evaluation coded ML-201, for which QMEs and AMEs are paid a single \$2,015 flat fee, plus \$3 per page, for record reviews exceeding 200 pages (MLPRR), and time-based payments for sub-rosa video reviews (ML-205). Using this crosswalk between the old and new procedure codes for comparability with previous years, Figure 56 shows the distribution of medical-legal evaluations and Figure 57 – the distribution of medical-legal payments by type of MLFS procedures. Figure 56 shows that while the share of comprehensive reports declined by 11 percentage points from 2017 to 2022 and the share of supplemental reports declined by 2 percentage points in the same period, the shares of follow-up reports and missed appointments increased from 2017 to 2022.

SYSTEM COSTS AND BENEFITS

Figure 56: Distribution of Medical-Legal Evaluations by MLFS Procedure Type

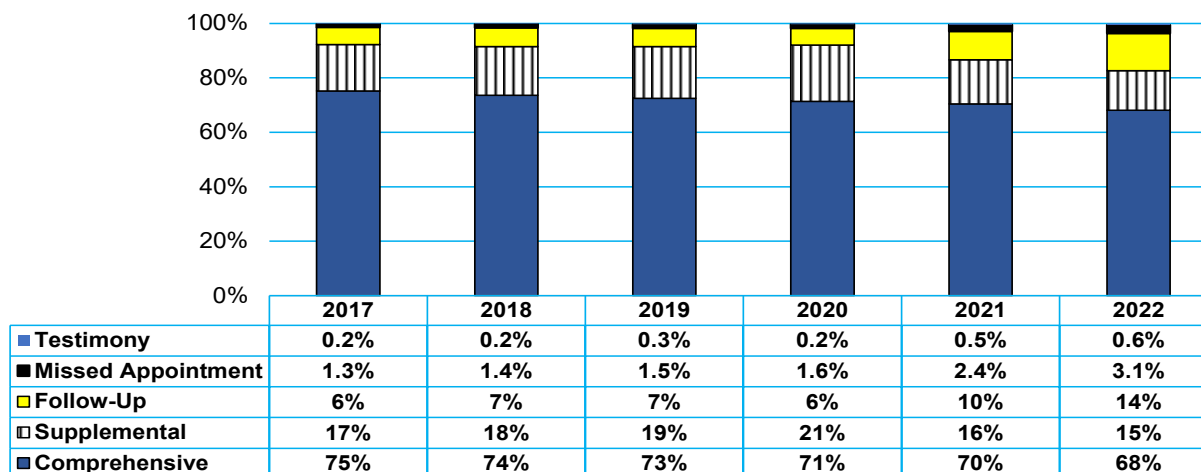


Note: For comparability purposes, the Comprehensive Evaluation adopted in new 2021 MLFS maps to the old 2006 MLFS procedure codes ML-102 Basic, ML-103 Complex and ML 104 Extraordinary.

Data Source: WCIRB

Figure 57 shows that in 2022, 96 percent of all medical-legal payments were done for preparation of the main medical-legal reports, such as comprehensive (68 percent), follow-up (14 percent), and supplemental (15 percent), with testimonies and missed appointments comprising a mere 4 percent of all payments.

Figure 57: Distribution of Medical-Legal Payments by MLFS Procedure Type



Note: For comparability between the old and new MLFS data the Medical-Legal Per-Page Record Review (MLPRR) and Sub Rosa Payments are excluded from the estimates.

Data Source: WCIRB

WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

INTRODUCTION

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

In this section, CHSWC provides performance measures to assist in evaluating the system's impact on everyone participating in the WC system, particularly workers and employers. As the organizational chart on page 6 shows the main administrative body monitoring the WC system, the Division of Workers' Compensation (DWC), is housed within the California Department of Industrial Relations (DIR). DIR administers and enforces laws governing wages, hours and breaks, overtime, retaliation, workplace safety and health, apprenticeship training programs, and medical care and other benefits for injured workers.¹⁴⁰ DWC monitors the administration of WC claims and provides administrative and judicial services to assist in resolving disputes that arise in connection with claims for WC benefits.¹⁴¹

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

Workers' Compensation Appeals Board (WCAB) Workload

- DWC Opening Documents
- DWC Hearings
- DWC Decisions
- DWC Lien Filings and Decisions

DWC Audit and Enforcement Program

DWC Medical Unit (MU)

DWC Disability Evaluation Unit

DWC Medical Provider Networks and Health Care Organizations

DWC Information and Assistance Unit

DWC Information Service Center

DWC Return-to-Work Supplement Program (RTWSP)

DWC Uninsured Employers Benefits Trust Fund

DWC Subsequent Injuries Benefits Trust Fund

DWC Adjudication Simplification Efforts

- DWC Information System (WCIS)
- DWC Electronic Adjudication Management System (EAMS)
- Carve-outs: Alternative Workers' Compensation Systems

Division of Labor Standards Enforcement (DLSE)

- DLSE Bureau of Field Enforcement
- DLSE Registration Services-Janitorial Services

Anti-Fraud Efforts

¹⁴⁰ DIR homepage, <https://www.dir.ca.gov/aboutdir.html>.

¹⁴¹ DWC homepage, https://www.dir.ca.gov/dwc/dwc_home_page.htm.

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Impact of COVID-19 on Division of Workers' Compensation Operations in 2022¹⁴² (TO BE UPDATED)

Since the beginning of the COVID-19 pandemic, the DWC has been able to maintain most of its operations without any significant delay or backlog. As in 2020, DWC was fully operational in 2021 and 2022 and provided all DWC services in some form. All DWC operations, including those performed by the Audit Unit, Medical Unit, the Subsequent Injuries Benefit Trust Fund, and the Uninsured Employers Benefit Trust Fund, remained open and functioning with no significant backlogs. Throughout 2021 and 2022, DWC maintained and improved its operations while most staff worked from home. More recently, in 2022, staff have returned to the offices in all units at least two days per week.

The DWC Adjudication Unit, which administers the litigation of workers' compensation claims throughout the state, returned to partial in-person operations at the end of 2021. Significantly, DWC resumed in-person trials at its district offices. However, in late 2021 and early 2022, in-person operations were temporarily halted with the emergence of COVID-19's Omicron variant, and all hearings returned to remote operations. All DWC employees, both at headquarters and at the district offices, returned to full-time telework at that time. However, DWC public counters remained open and available for in-person operations. The Information and Assistance Unit also remained available for in-person consultations when requested.

In March of 2022, in line with the Governor's plan, DWC returned to additional in-person operations. Employees within the Adjudication Unit are now required to be in-office three days a week to assist litigants and injured workers with their workers' compensation cases. DWC employees in other units returned to the office for two days a week, maintaining all necessary safety protocols.

As a result of the lessons learned during the COVID-19 pandemic, DWC decided to create a permanent hybrid system for court litigants. This system enables all conferences and mandatory settlement conferences (MSCs) to be heard telephonically. In 2020 every judge was issued a conference line, which is published on the DWC website. Further, those numbers are now added to the hearing notices and litigants are advised to call in on those hearings at the date and time indicated on the notice. However, all trials are now set in person at the DWC district offices. Parties may still request a remote trial, however, and if the assigned workers' compensation judge agrees to it, the trial is held by video on the Lifesize platform. Parties are still requesting a significant number of trials to be held remotely. This hybrid model allows greater flexibility for litigants and injured workers and allows DWC to take advantage of teleworking options for staff.

In September of 2022, DWC returned its walk-through calendar to in-person. DWC had been holding its walk-throughs on the virtual platform but returned walk-throughs to in-person to support litigants. This also expanded the number of documents that could be handled by walk-through. Virtually, DWC was only able to handle settlement documents but in person, DWC has returned to all required documents being available for the walk-through calendar.

Further, in 2022 the WCAB's regulations¹⁴³ on virtual hearings were implemented. These regulations, which had been proposed in 2021 and went into effect on January 1, 2022, govern how parties obtain a virtual hearing, utilize virtual testimony, and address the ability to electronically service documents. These new regulations assist DWC more fully in handling remote hearings and electronic service. For this year, as has been for the last 2 years, DWC's statewide judge's training was done virtually. DWC will continue to assess if this will be made permanent or possibly be done at times in person and at times virtually.

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

All units within DWC have been able to maintain operations without any significant backlog.

¹⁴² Information on the impact of COVID-19 shutdowns/interruptions was provided by DWC.

¹⁴³ <https://www.dir.ca.gov/WCAB/WCABProposedRegulations/2021/WCAB-Rulemaking/Index.htm>.

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WCAB DISTRICT OFFICES WORKLOAD

At DWC's 22 district offices and satellites located throughout California, employers, injured workers, and others receive judicial services that assist in the resolution of disputes from WC claims. The local district offices are a major part of the WC court system, where judges make decisions about cases. These offices are called WCABs as their activities are regulated by a Workers' Compensation Appeals Board (WCAB), a seven-member, judicial body appointed by the Governor and confirmed by the Senate.¹⁴⁴ In this context, the WCAB workload does not include a WCAB review of formal appeals of decisions made by district WCAB judges, and it does not include case law decisions by the seven-member WCAB.

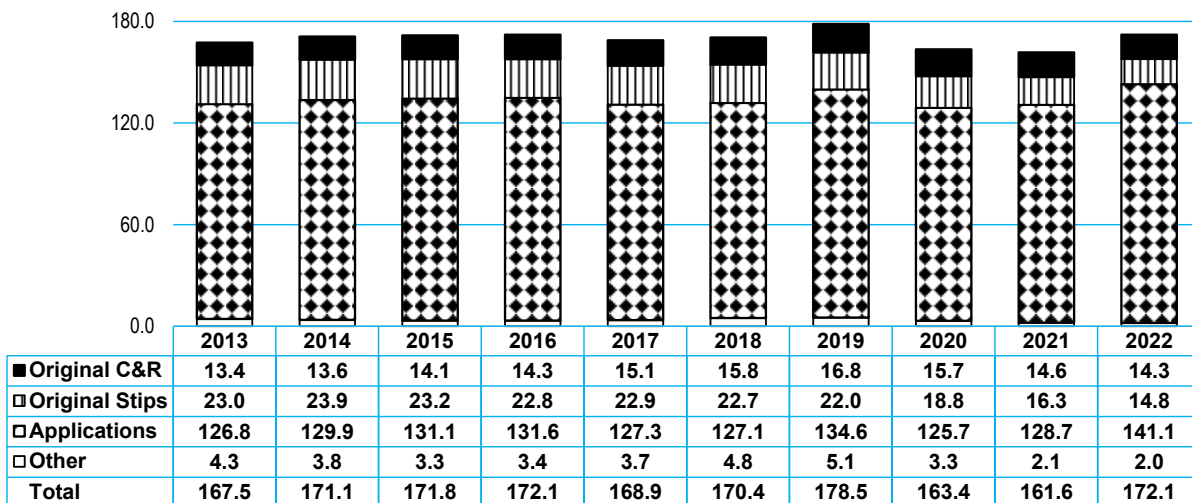
Division of Workers' Compensation Opening Documents

Three types of documents open a WCAB District Office case. Figure 58 shows the number of Applications for Adjudication of Claim (applications), Original Compromise and Releases (C&Rs), and Original Stipulations (stips) received by DWC.

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

As Figure 58 shows, the total number of Opening Documents stabilized at an average of 170,300 from 2013 to 2018, increased by 5 percent from 2018 to 2019, decreased by 9.5 percent from 2019 to 2021, and then increased by 6.5 percent from 2021 to 2022. The number of applications, the largest component of opening documents and therefore a trendsetting factor, increased by 4 percent from 2013 to 2016, declined to its 2013 level in 2017 and then increased by 6 percent from 2017 to 2019. The number of applications decreased by 7 percent from 2019 to 2020 during the COVID-19 pandemic before increasing by 12 percent from 2020 to 2022, while three other components of the Opening Documents decreased from 2020 to 2022. The Compromise and Releases increased by 25 percent from 2013 to 2019 and decreased by 15 percent from 2019 to 2022. The Original Stipulations have increased slightly from 2013 to 2014, and have decreased since 2014 with an overall decline of 38 percent from 2014 to 2022.

Figure 58: DWC Opening Documents (as of July 3, 2023)
(Thousand)



Source: DWC

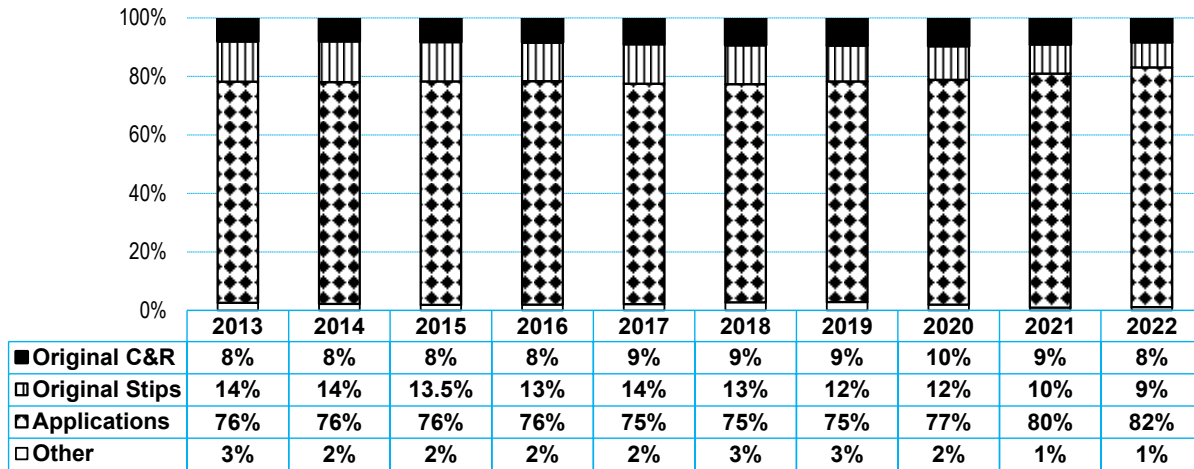
¹⁴⁴ <https://www.dir.ca.gov/wcab/wcab.htm> and <https://www.dir.ca.gov/dwc/dir2.htm>.

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Mix of DWC Opening Documents

As Figure 59 shows, the applications for adjudication comprised on average 75-77 percent of the opening documents yearly from 2013 to 2020, but increased by 5 percentage points to 82 percent from 2020 to 2022. The proportion of original (case-opening) slips leveled off at 12-14 percent per year from 2013 to 2020 and then decreased to 9 percent from 2020 to 2022. In the same period, the proportion of original C&Rs also stabilized at 8-9 percent through 2022, with a one-time increase to 10 percent during the COVID-19 pandemic.

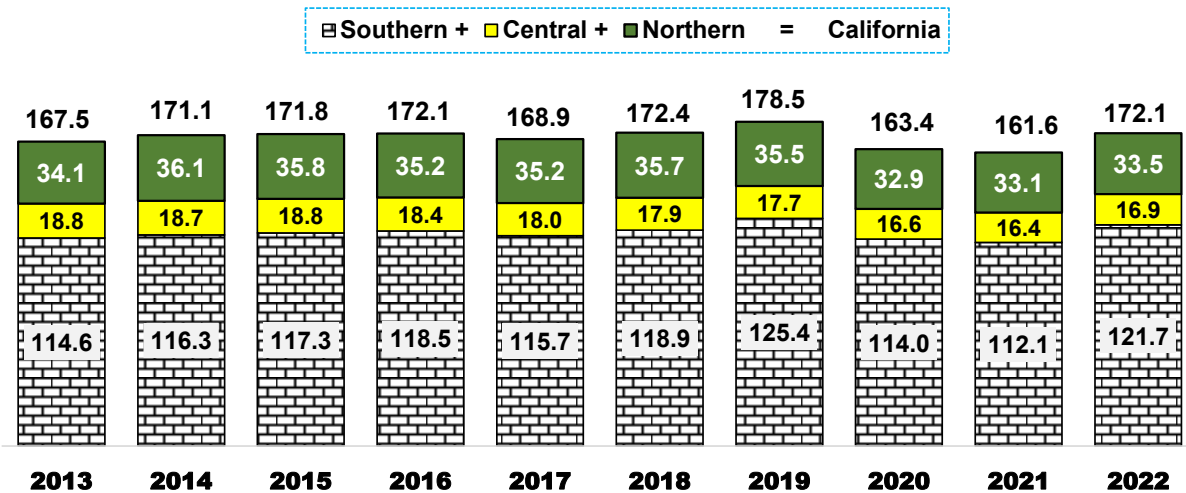
Figure 59: Percent Distribution by Type of Opening Documents (as of July 3, 2023)



Source: DWC

According to Figure 60, about 70 percent of yearly DWC opening documents originated in Southern California between 2013 and 2022. Northern and Central California comprised about 20 and 10 percent of opening documents respectively in the same period.

**Figure 60: DWC Opening Documents by California Regions (as of July 3, 2023)
(Thousand)**

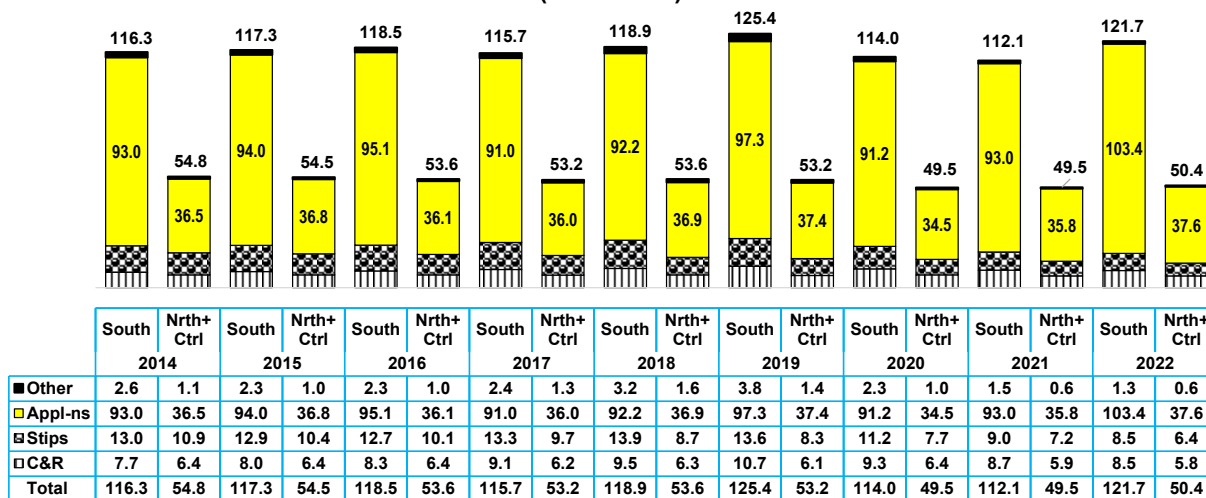


Source: DWC

WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

Figure 61 demonstrates the geographic origin of DWC opening documents. Although the types of opening documents, such as Compromise & Release and Stipulations with Request for Award, originate in the Southern region more than in the Northern and Central regions combined, the number of Applications for Adjudication in the Southern region exceeded those of the Northern and Central regions combined Applications by more than 2.5 times in each year from 2013 to 2022. On average, 72 percent of the yearly Applications for Adjudication in California come from the Southern region, affecting the level of WC litigation in the state.

Figure 61: Types of DWC Opening Documents by California Regions (as of July 3, 2023)
(Thousand)



Source: DWC

Division of Workers' Compensation Hearings

Numbers of Hearings

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

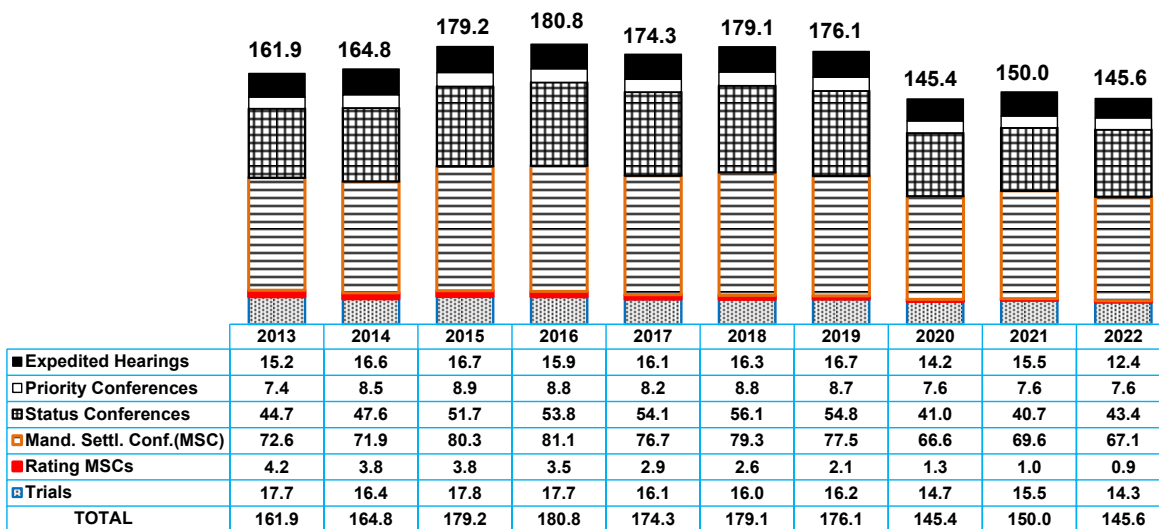
- A. Expedited Hearing and Decision. Labor Code Section 5502(b) directs the Court Administrator to establish a priority calendar for issues requiring an expedited hearing and decision. These cases must be heard and decided within 30 days following the filing of a DOR.
- B. Priority Conferences. Labor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

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

Figure 62 indicates the number of different types of LC 5502 hearings held in DWC from 2013 through 2022. The total number of hearings held increased by 12 percent from 2013 to 2016, fluctuated from 2016 to 2019 at around 2 percent yearly, decreased by 17.4 percent from 2019 to 2020, and then fluctuated between 145,500 and 150,000 hearings from 2020 to 2022. The number of mandatory settlement conferences (MSCs), the most numerous hearings, increased by 12 percent from 2013 to 2016, fluctuated from 2016 to 2019, decreased by 14 percent from 2019 to 2020, and then fluctuated at a lower level from 2020 to 2022. Ratings MCSs in 2022 experienced a decrease of more than four times its 2013 volume. The number of expedited hearings averaged about 16,100 a year from 2013 to 2021, excluding a 15 percent decrease from 2019 to 2020 and a 20 percent decrease from 2021 to 2022. The number of status conferences increased steadily by a total of 25 percent from 2013 to 2018, decreased by 27 percent from 2018 to 2021, including a 25 percent decline from 2019 to 2020, and then increased by 6.5 percent from 2021 to 2022. The priority conferences increased by 20 percent from 2013 to 2015, stabilized at 8,700 conferences per year from 2015 to 2019, and then decreased by 13 percent to 7,600 conferences per year from 2020 to 2022. The number of trials ranged between 16,000 and 17,800 per year from 2013 to 2019, decreased by 9 percent from 2019 to 2020 during the pandemic, and then fluctuated at that lower level from 2020 to 2022.

Figure 62: DWC Labor Code 5502 Hearings Held (Thousand)



Source: DWC

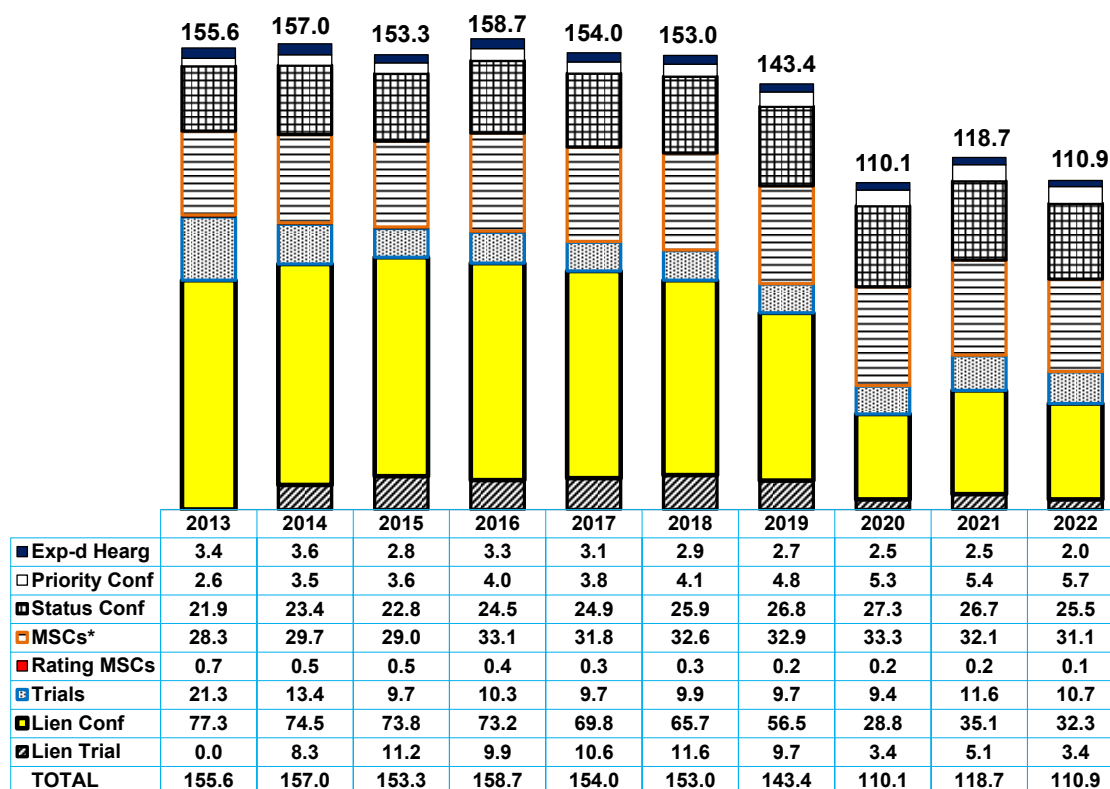
The non-Section 5502 hearings are continuances or additional hearings after the first hearing. Figure 63 shows non-Section 5502 hearings held from 2013 to 2022.

The number of MCSs fluctuated between 28,300 and 33,000 conferences between 2013 to 2021, with a 1 percent increase from 2019 to 2020, when it reached its peak of 33,264 settlements. From 2020 to 2022, the number of MCSs decreased by 6 percent. The Ratings MCSs in 2022 experienced a decrease of seven times its 2013 volume. The number of status conferences increased overall by 25 percent from 2013 to 2020 and then decreased by 7 percent from 2020 to 2022. The number of priority conferences more than doubled from 2013 through 2022. The number of expedited hearings fluctuated between 2,750 and 3,600 hearings between 2013 and 2016, and then decreased by 38.5 percent from 2016 to 2022. The number of trials fell by half from 2013 to 2015. There were an average of 9,770 trials per year from 2015 to 2020, and then an increase to an average of 11,150 trials in 2021 and 2022. The number of lien conferences decreased steadily by 27 percent from 2013 to 2019, fell by half from 2019 to 2020, and then

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increased to an average of 33,700 lien conferences in 2021 and 2022. Lien trial data available from 2014 shows an overall 40 percent increase from 2014 to 2018, more than a 3-fold decline from 2018 to 2020, mostly due to a sharp decrease from 2019 to 2020, and then a fluctuation between 3,400 and 5,000 lien trials from 2020 to 2022. From 2019 to 2022, there were decreases in lien trials (-65 percent), lien conferences (-43 percent), expedited hearings (-25 percent), rating MSCs (-23 percent), MSCs (-5 percent), and status conferences (-5 percent). At the same time, non-Section 5502 hearings, such as priority conferences (+17 percent) and trials (+10 percent) experienced an increase from 2019 to 2022.

Figure 63: DWC Non-5502 Hearings Held (Thousand)



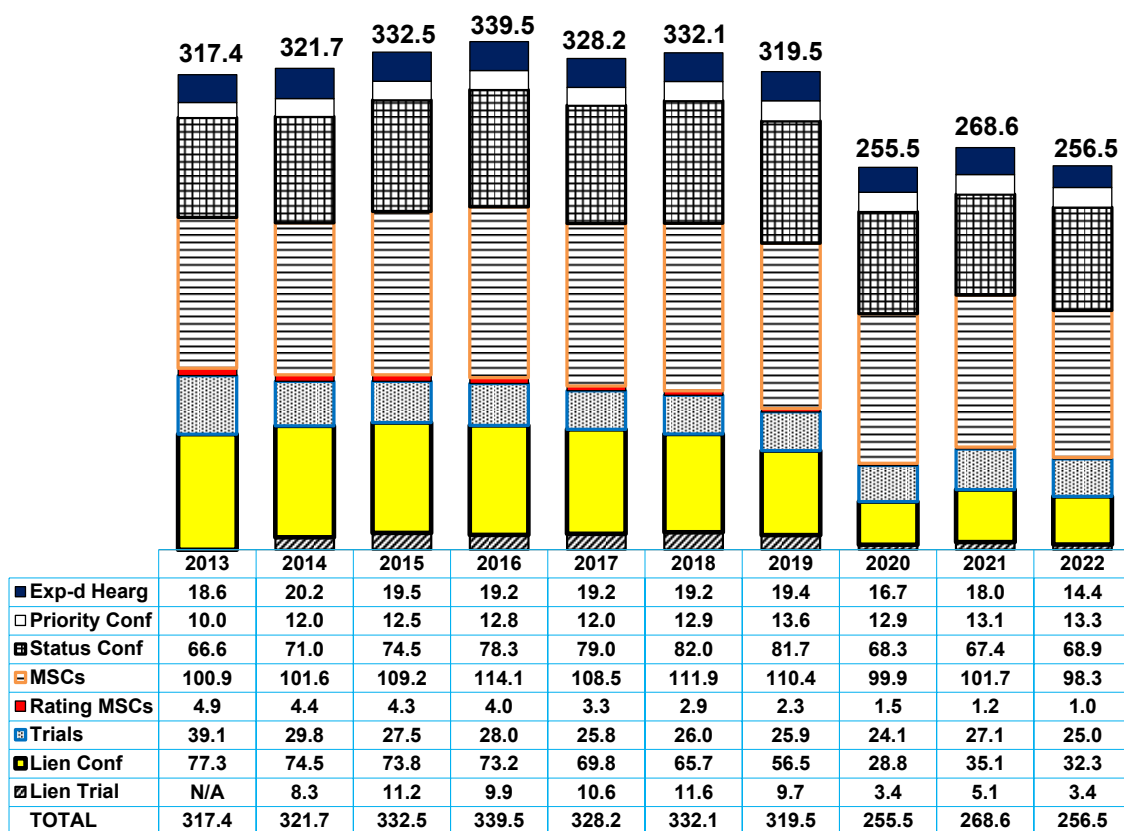
* MSCs -Mandatory Settlement Conferences

Data Source: DWC

Figure 64 shows the total hearings held from 2013 to 2022 including Labor Code Section 5502 hearings, non-Section 5502 hearings, and lien conferences.

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**Figure 64: DWC Total Number of Hearings Held (LC 5502 and non-5502)
(Thousand)**



Data Source: DWC

Timeliness of Hearings

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

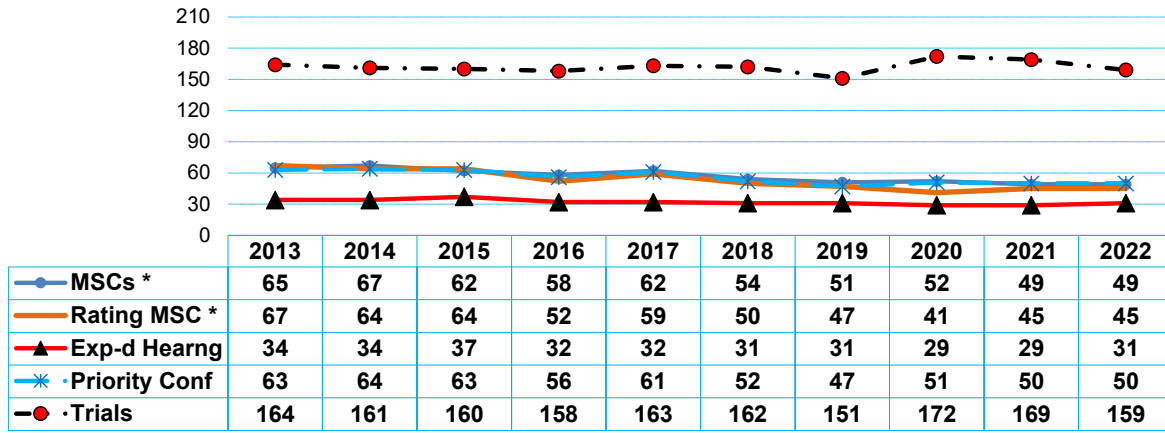
- An expedited hearing must be held within 30 days of the receipt of a DOR.
- The conference shall be conducted within 30 days after the filing of a DOR.
- MSCs, rating MSCs, and priority conferences are required to be held within 30 days of the receipt of a request in the form of a DOR.
- A trial must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

Figure 65 shows the average elapsed time from a request to a DWC hearing in the fourth quarter of each year, from 2013 to 2022. All types of DWC hearings showed an overall decrease in average elapsed time from a request to hearing from 2012 to 2016 followed by a one-time increase from 2016 to 2017, excluding the expedited hearings, and then again—by decrease for all types of DWC hearings from 2017 to 2019. For expedited hearings, the average elapsed time from a request to hearing showed an almost uninterrupted and steady 9 percent decrease, from 34 days in 2013 to 29 days in 2020 and 2021, increasing back to 31 days in 2022. The average elapsed time for MSCs decreased by 9 percent from 2013 to 2016, increased by 7 percent from 2016 to 2017, and then declined overall by 21 percent from 2017 to 2022. The average elapsed time from a request to hearing for priority conferences decreased overall by 25 percent from 2013 to 2019, increased by 6.4 percent from 2019 to 2020, and then decreased slightly to 50 days in

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2021 and 2022. The average elapsed time from a request to a DWC trial decreased overall from 164 to 151 days from 2013 to 2019, increased 14 percent from 151 days to 172 days from 2019 to 2020, and then decreased by 7.5 percent to 159 days from 2020 to 2022.

Figure 65: Elapsed Time in Days from Request to DWC Hearing (4th Quarter)



* Mandatory Settlement Conferences

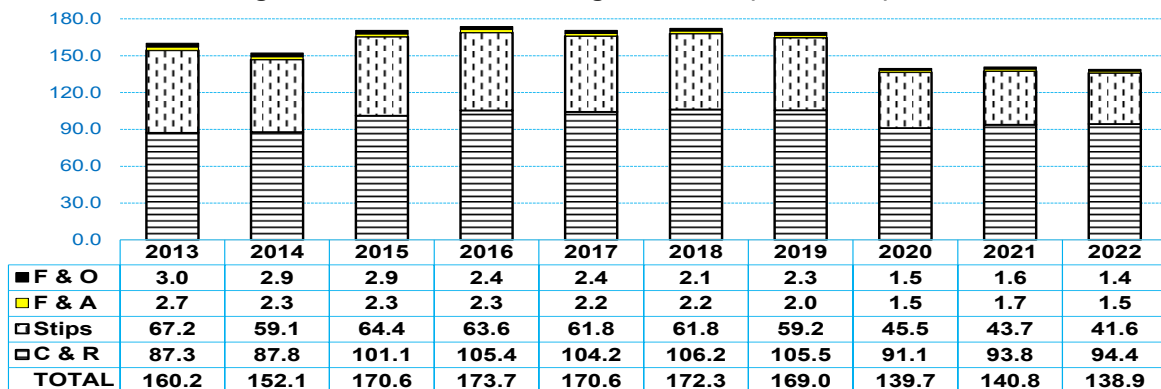
Source: DWC

Division of Workers' Compensation Decisions

DWC Case-Closing Decisions

Figure 66 shows that the total number of case-closing decisions decreased by 5 percent from 2013 to 2014. This decrease in the number of case-closing decisions was due to decreases in Findings & Award (F&A), in Findings & Order (F&O), and in Stipulations from 2013 to 2014. From 2014 to 2016, the total number of case-closing decisions increased by 14 percent as a result of a steady 20 percent increase in Compromise and Releases (C&Rs) from 2014 to 2016 and a 7.5 percent increase in Stipulations from 2014 to 2016. From 2016 to 2019, the total number of case-closing decisions fluctuated between 169,000 and 173,700 decisions per year. A seventeen (17) percent decline in the total number of case-closing decisions from 2019 to 2020 was due to decreases in all four types of hearings, including a 14 percent decrease in Compromise and Releases (C&Rs) and a 23 percent decrease in Stipulations. There was a slight (less than 1 percent) increase in the total number of case-closing decisions from 2020 to 2021 as a result of a 3 percent increase in C&Rs and a 4 percent decrease in Stipulations in the same period. The total number of case-closing decisions decreased by 20 percent from its peak in 2016 to its lowest level in 2022.

Figure 66: DWC Case-Closing Decisions (Thousand)



Source: DWC

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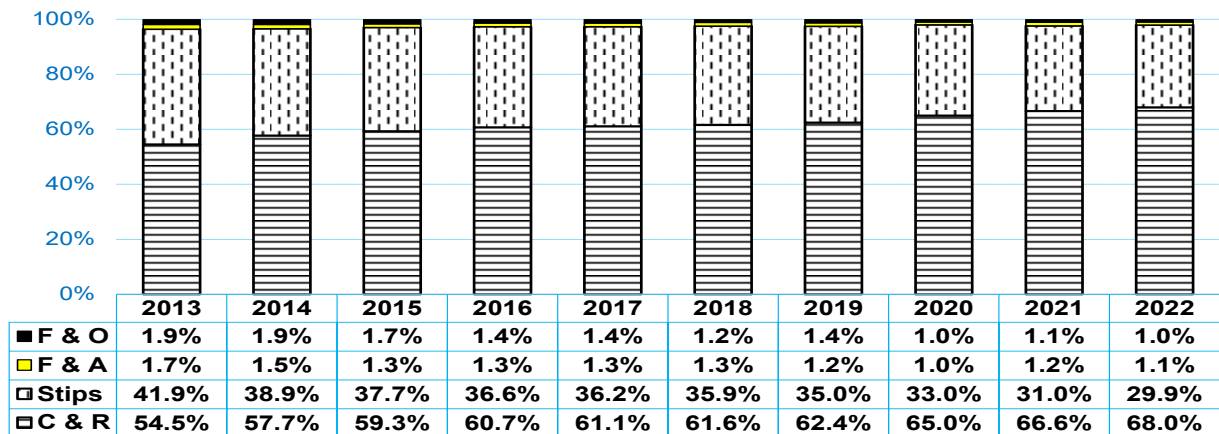
Mix of DWC Decisions

As shown in the previous figures and in Figure 67, again, the vast majority of the case-closing decisions were in the form of a WCAB judge's approval of Stips and C&Rs, which were originally formulated by the case parties.

From 2013 to 2022, the proportion of Stips decreased from 41.9 to 29.9 percent and the proportion of C&Rs increased from 54.5 to 68.0 percent.

Figure 67 shows that a small percentage of case-closing decisions evolved from a Findings & Award (F&A) or Finding & Order (F&O) issued by a WCAB judge after a hearing. That pattern continued with an overall decrease for both types of decisions from 2013 to 2022.

Figure 67: Percent Distribution by Type of DWC Case-Closing Decisions



Source: DWC

Division of Workers' Compensation Lien Filings and Decisions

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

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

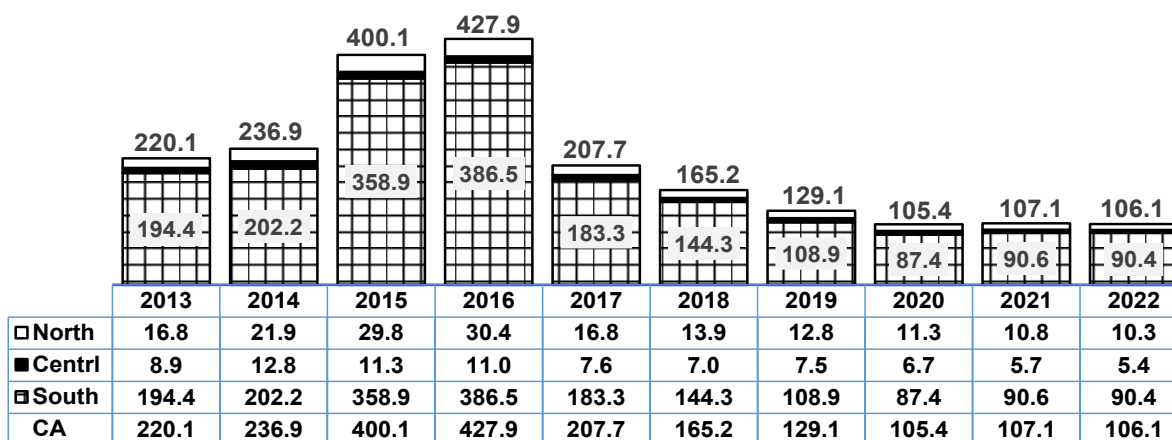
- Labor Code section 4615 places an automatic stay on liens filed by or on behalf of physicians and providers who are criminally charged with certain types of fraud. The automatic stay prevents those liens from being litigated or paid while the prosecution is pending.
- Provider suspension activities undertaken pursuant to Labor Code section 139.21 include consolidation and dismissal of all pending lien claims in a special lien proceeding for providers suspended due to conviction of a covered crime. A Special Adjudication Unit (SAU) was created in DWC to conduct lien consolidation proceedings.

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- Labor Code section 4903.05(c), as amended by SB 1160, introduced the lien dismissals by operation of law. This provision requires lien claimants to file a declaration verifying the legitimacy of liens for medical treatment or medical-legal expenses. Claimants who had filed liens between January 1, 2013, and December 31, 2016, were required to file the declarations by July 1, 2017, to avoid having those liens dismissed.

As Figure 68 shows, the total number of liens filed in 2013 and 2014 stabilized at an average of 228,500 liens per year following the introduction of lien filing fees and other lien provisions in SB 863. The number of liens filed increased by 69 percent from 2014 to 2015, increased further in 2016 to reach its peak, and then in 2022 decreased to one-fourth of 2016 numbers due to the SB 1160 and AB 1244 reforms enacted in 2016. About 85-90 percent of the filed liens originated in Southern California in 2013 through 2022. The share of the Southern region in liens filed averaged 88 percent from 2013 to 2017 and then decreased to 84-85 percent from 2019 to 2022. Northern California increased its share of the liens filed from an average of 8 percent from 2013 to 2018 to 10-11 percent from 2019 to 2022. Central California also increased its share of the liens filed from an average of 4 percent in 2013 through 2018 to 6 percent from 2019 to 2022.

Figure 68: Number of Liens Filed by California Regions, 2013-2022



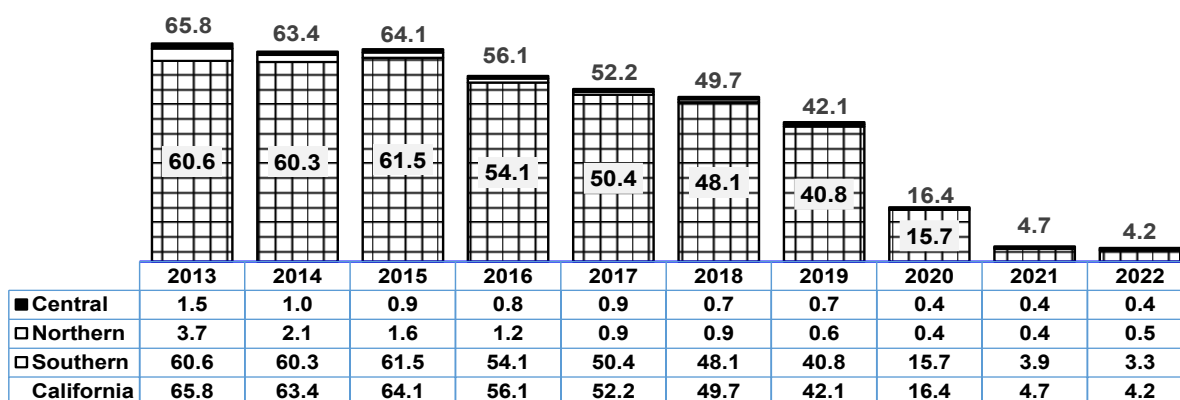
Data Source: DWC

Figure 69 shows that the number of decisions regarding liens filed on WCAB cases reached its peak in 2013, thereby increasing concomitant expenditure of DWC staff resources for the resolution of those liens. The number of lien decisions decreased overall by 36 percent between 2013 and 2019 and then in 2022 it fell to one-tenth of the 2019 number, including a 61 percent decrease from 2019 to 2020. Because of the addition of Labor Code § 4615, many liens are stayed and cannot be decided until the criminal case is resolved.¹⁴⁵ When the number of liens filed in 2015 and 2016 significantly increased, only 16 and 13 percent of liens, respectively, were resolved. When the number of liens filed ranged between 129,000 and 237,000 from 2013 to 2014 and then from 2017 to 2019, about 30 percent of liens were resolved. The lien decisions in Southern California comprised 92 percent of lien decisions in 2013. That share gradually increased to 97 percent in 2017 and stayed at that level from 2017 to 2019, before declining to 95 percent in 2020 and to 84 percent in 2021 and 2022. The Northern region comprised 6 percent of lien decisions in California in 2013. That share decreased to between 2 and 3 percent in 2014 through 2020 before increasing to 8 percent in 2021 and 2022. According to these data, liens cease to be a popular method for recovering payments for services rendered by providers in Southern California.

¹⁴⁵ <https://www.dir.ca.gov/dwc/SB1160-AB1244/Special-Adjudication-Unit-Calendar.htm>

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Figure 69: Number of DWC Lien Decisions, by California Regions in 2013-2022 (Thousand)



Data Source: DWC

See “Report on Liens” (CHSWC, 2011) for a complete description.

DIVISION OF WORKERS' COMPENSATION AUDIT AND ENFORCEMENT PROGRAM

Background

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

The purpose of the audit and enforcement function is to provide incentives for the prompt and accurate delivery of WC benefits to industrially injured workers and to identify and bring into compliance those insurers, third-party administrators, and self-insured employers who do not deliver benefits in a timely and accurate manner.¹⁴⁶

Assembly Bill 749 Changes to the Audit Program

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

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

¹⁴⁶ In addition, LC 129 (f) requires an audit of the Uninsured Employers Benefits Trust Fund (UEBTF) by the claims and collections unit of DWC.

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

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

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

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

Overview of Audit Methodology

Selection of Audit Subjects

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

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

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

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

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

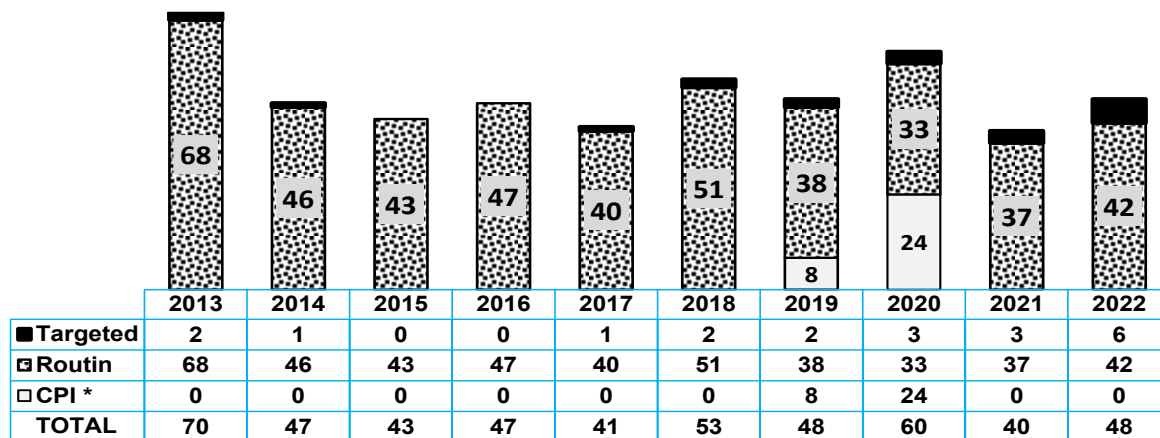
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Audit and Enforcement Unit Data

Routine and Targeted Audits

Figures 70 to 76 depict workload data from 2013 through 2022. Figure 70 shows the number of routine and targeted audits, and the total number of audits conducted each year. In 2022, the Audit Unit completed 48 audits, of which 42 were routinely selected for PAR, 6 targeted audits were based on the failure of a prior audit, and no audits were based on credible referrals and/or complaints filed with the Unit. Civil Penalty Audits and Investigations are based on CCR, Title 8, section 10106.1(b) and include targeted claim files based on credible complaints and referrals received by DWC.

Figure 70: Routine and Targeted Audits and Civil Penalties Assessed



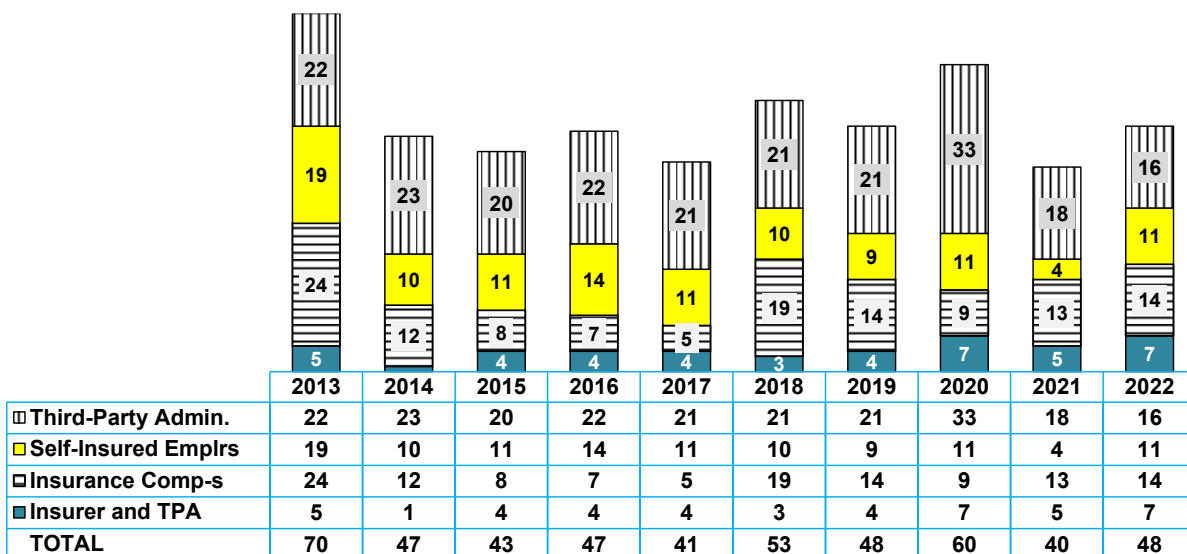
* Civil Penalty Issues

Source: DWC Audit and Enforcement Unit

Audits by Type of Audit Subject

Figure 71 depicts the total number of audit subjects each year, broken down by whether the subject is an insurance company (insurer), a self-insured employer, or a third-party administrator.

Figure 71: DWC Audits by Type of Audit Subject



Source: DWC Audit and Enforcement Unit

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Selection of Files to Be Audited

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

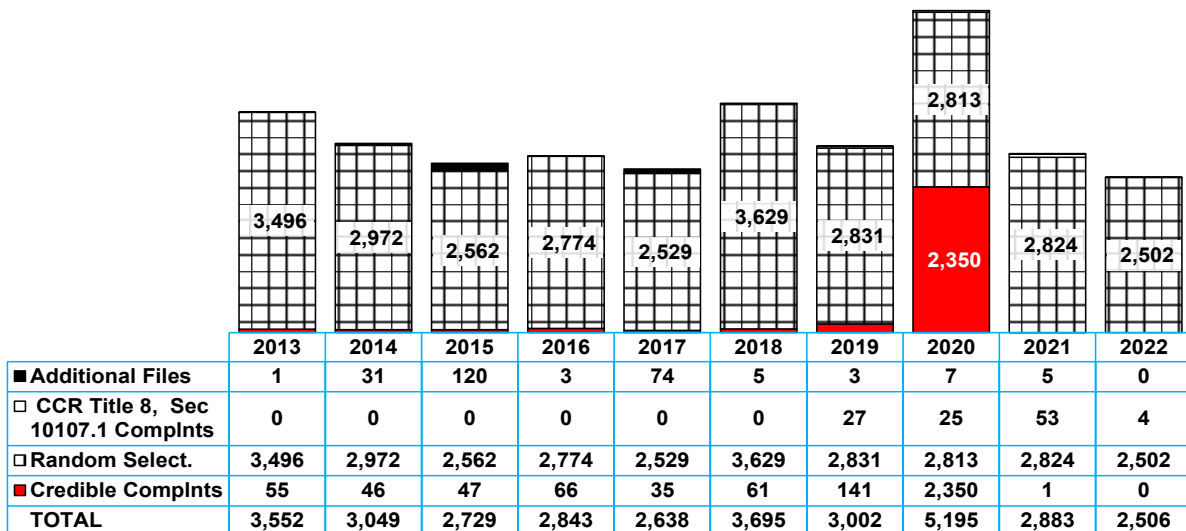
- Some valid complaint files may be selected to undergo targeted audits, and penalties may be issued.
- Additional files include claims chosen based on criteria relevant to a targeted audit but for which no specific complaints had been received.
- The number of claims audited is based upon the total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

Figure 72 shows the total number of claim files audited each year broken down by the method used to select them. In 2022, within the PAR/FCA audits, compliance officers audited 2,506 claim files, of which 2,502 were randomly selected claims¹⁴⁷ in which some form of indemnity benefits was paid. Four (4) claim files were audited based on CCR, Title 8, Section 10107.1 complaints received by the DWC. Targeted claims audited did not include files based on valid complaints received by DWC and there were no audited claims designated as "additional" files.

"Additional" files include the following:

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

Figure 72: Files Audited by Method of Selection



Source: DWC Audit and Enforcement Unit

¹⁴⁷ Some claim files may be substituted for another file if the randomly selected file does not meet the PAR audit criteria or if the files selected were incorrectly designated on the log. These files would still be counted in the original random sample number and not listed as additional files.

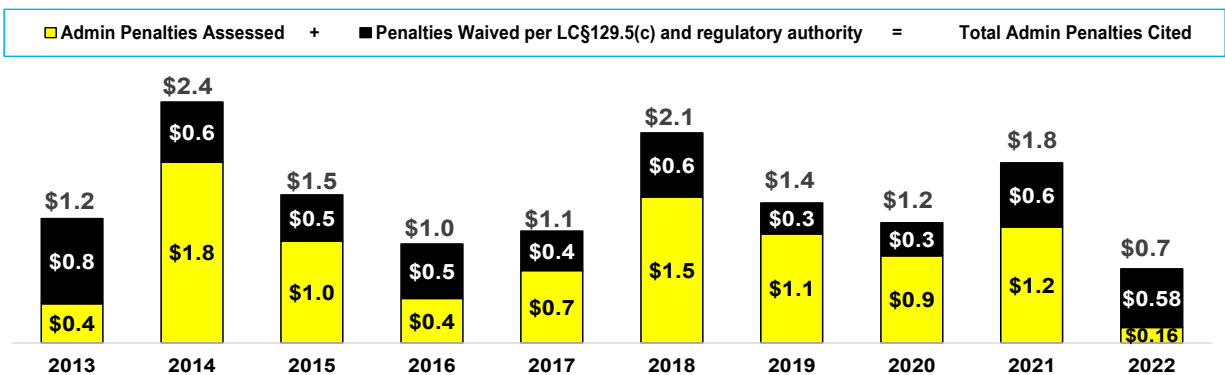
WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

Administrative Penalties

Figure 73 shows the administrative penalties cited from 2013 to 2022. As a result of PAR/FCA audits conducted during the calendar year 2022, the Audit & Enforcement Unit found and cited 3,053 violations against claims administrators, with initial administrative penalties cited totaling almost \$0.7 million (\$739,519). Not all administrative penalties are subject to collection. Under the Labor Code, no penalties are assessed on those "cited" violations unless the audit subject fails the audit at a specific level.¹⁴⁸

In accordance with Labor Code section 129.5(c) and regulatory authority, the Audit & Enforcement Unit did not assess or waived \$583,860 of the potential administrative penalties of the cited violations. The violations which, by law, were not assessed occurred within 46 of the audits that met or exceeded the PAR 2022 performance standard. All violations cited in the audit that failed the FCA performance standard were assessed. The assessed penalties subject to collection from claims administrators for FCA audits came to a total of \$155,659.

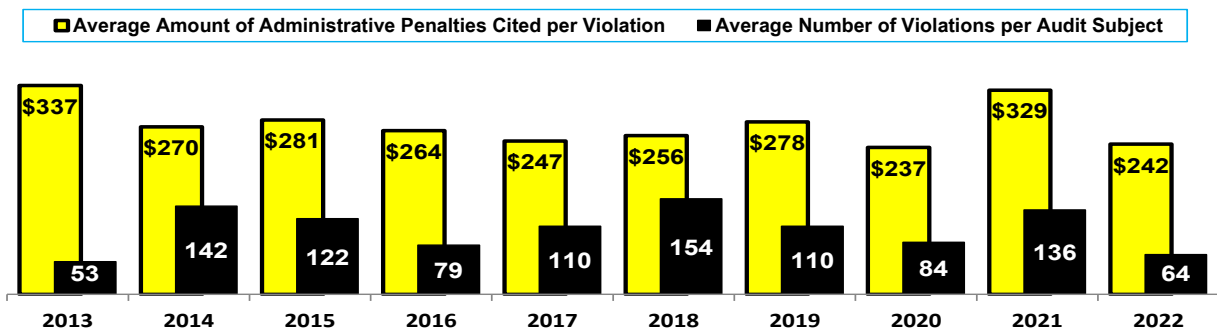
Figure 73: DWC Audit Unit—Administrative Penalties Cited (Million \$)



Source: DWC Audit and Enforcement Unit

Figure 74 shows the average number of violations per audit subjects each year and the average dollar amount of administrative penalties cited per violation. In 2022, the average number of violations per 48 completed profile audits was 64 and the average penalty cited per 3,053 violations was about \$242, including penalties waived.

Figure 74: Average Amount of Administrative Penalties Cited per Violation and Average Number of Violations per Audit Subject



Data Source: Audit and Enforcement Unit

¹⁴⁸ DWC Annual Audit Report, page 5, <https://www.dir.ca.gov/dwc/AuditUnit/Audit-Annual-Report2020.pdf>.

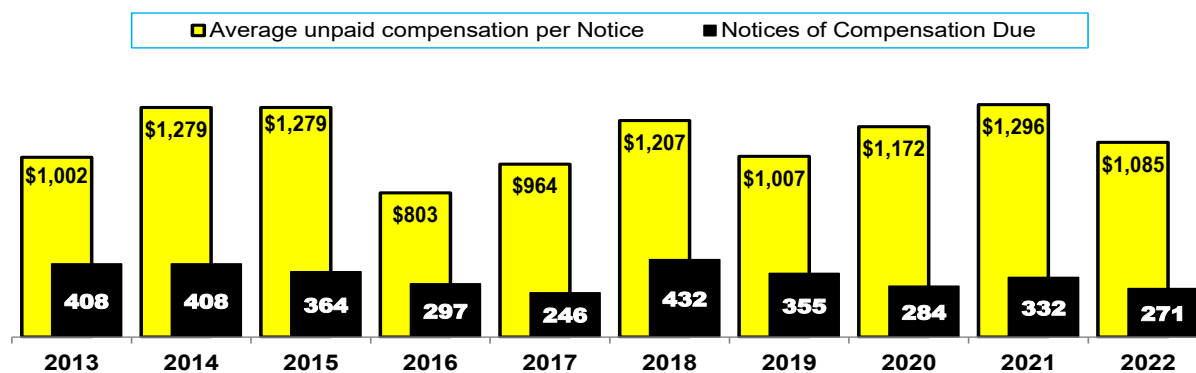
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Unpaid Compensation Due to Claimants

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

Figure 75 depicts the number of notices of compensation due on claims where unpaid indemnity compensation was found and the average dollar amount of compensation cited for mandatory payments per notice of compensation due from 2013 to 2022.

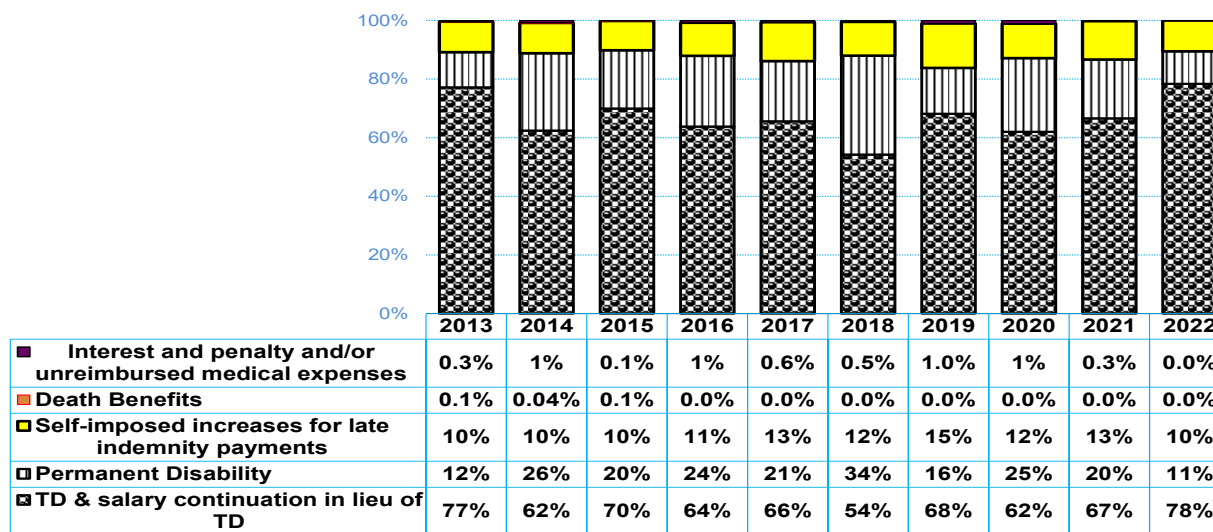
Figure 75: Average Amount of Unpaid Compensation per Claim and Number of Notices of Compensation



Data Source: Audit and Enforcement Unit

Figure 76 shows yearly distribution of unpaid compensation by specific type.

Figure 76: Distribution of Unpaid Compensation by Type



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

Data Source: DWC Audit and Enforcement Unit

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For further information ...

DWC Annual Audit Reports are available at
<https://www.dir.ca.gov/dwc/AuditUnit/Audit-Annual-Report2021.pdf>.

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

DIVISION OF WORKERS' COMPENSATION DISABILITY EVALUATION UNIT

DWC's Disability Evaluation Unit (DEU) determines permanent disability ratings by assessing physical and mental impairments presented in medical reports. Physical impairments for injuries after 2005 are described in accordance with the *AMA Guide*, 5th ed., and disability is determined in accordance with the 2005 Permanent Disability Rating Schedule (PDRS). Adjustments with the PDRS are made for effect on future earning capacity, occupation and age at the time of injury. For injuries prior to 2005 and after April 1, 1997, the 1997 PDRS or an earlier edition is utilized, depending on the date of injury. For injuries that occur on or after January 1, 2013, the FEC modifier has been replaced with a 1.4 modifier in accordance with changes to Labor Code Section 4660.1 as a result of SB 863.

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

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

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

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

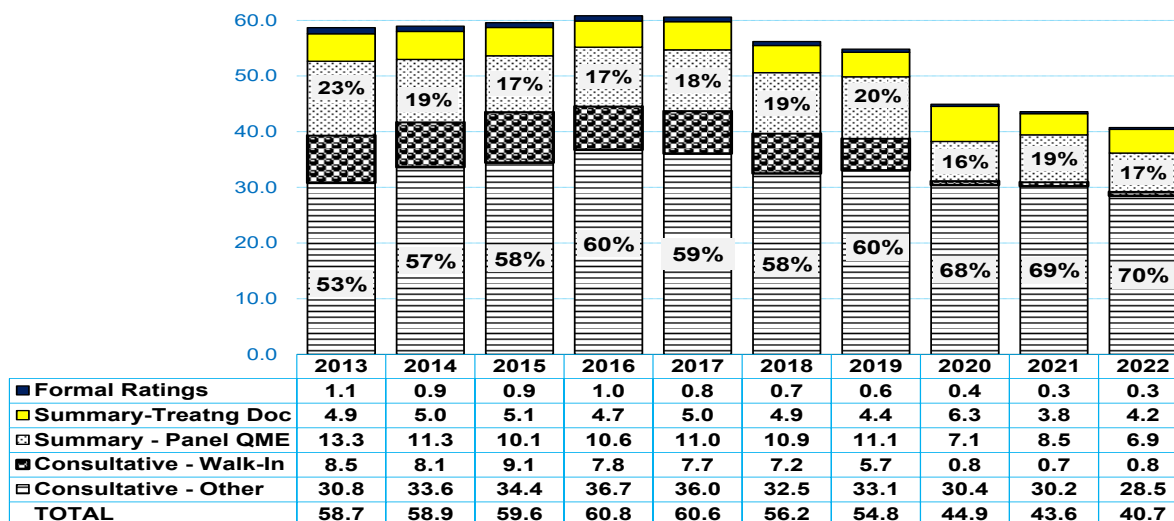
Figure 77 illustrates DEU's workload from 2013 to 2022 and shows the total ratings and ratings by type.

The total number of DEU written ratings increased by 4 percent from 2013 to 2016, declined by 33 percent between 2016 and 2022, including a 26 percent decrease from 2019 to 2022. The combined share of consultative ratings in total ratings increased from 67 percent in 2013 to 72 percent in 2022 as the share of non-walk-in consultative ratings increased overall from 53 percent in 2013 to 70 percent in 2022. The share of non-walk-in consultative ratings increased, although its yearly numbers decreased by 22.5 percent in the last seven years as the total DEU written ratings have decreased since 2016. The combined share of summary ratings by panel QMEs and treating doctors in all ratings decreased from 31 percent in 2013 to 25 percent in 2016 and then increased to 27 percent from 2016 to 2022. The number of summary ratings by panel QMEs declined by 15 percent from 2013 to 2014, stabilized at an average of 11,000 ratings between 2014 and 2019, and then decreased overall by 37 percent from 2019 to 2022. The number of summary ratings by treating doctors fluctuated between 4,200 and 5,100 ratings between 2013 to 2022, with the exclusion of 43 percent increase from 2019 to 6,300 ratings in 2020, and then a sharp 40 percent

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decrease from 2020 to 3,800 ratings in 2021. From 2013 to 2022, the number of formal ratings, the smallest component of DEU written ratings, fell by more than three-fold.

Figure 77: DEU Written Ratings, 2013-2022 (Thousand)

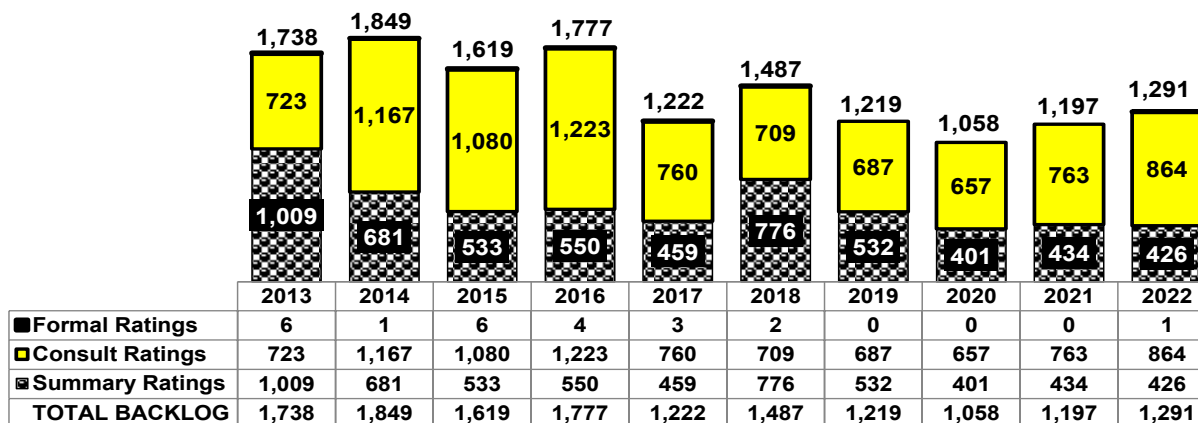


Data Source: DWC Disability Evaluation Unit

DEU Rating Backlog

A rating backlog represents rating requests of medical reports that have been received but not yet rated. Formal ratings and cases set for hearing are given priority. According to Figure 78, from 2013 to 2016, the rating backlog fluctuated between 1,600 and 1,850 backlogs per year. The DEU decreased the ratings backlog by 31 percent from 2016 to 2017. From 2017 to 2018, the rating backlog increased by 22 percent, mostly due to an increase of 69 percent in summary ratings and then declined again by 18 percent when backlogs of both consultative and summary rating fell from 2018 to 2019. The total backlog from 2019 to 2021 stabilized at an average of 1,160 yearly backlogs. The reduction in the backlog provides quicker delivery of benefits to injured workers and resolution of WC cases. Due to pandemic disruptions and a decrease in exposure to workplace injuries, the total backlog decreased by 13 percent from 2019 to 2020 and was the smallest since 2013. From 2020 to 2022, the total backlog increased by 22 percent.

Figure 78: Number of DEU Backlogs by Type



Data Source: DWC Disability Evaluation Unit

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Commutation Calculations

DEU also performs commutations of future indemnity payments involving present-value calculations. These commutation calculations assist parties in the resolution of claims involving lump-sum settlements, including calculation of attorney fees on litigated cases.

For injuries that occurred on or after January 1, 2003, life pension and total PD payments are increased according to the annual increase of the state average weekly wage (SAWW) starting January 1 after the payment commences and each January thereafter. The increase in benefits based upon annual SAWW increases the complexity of commutation calculations. DEU performed 1,379 commutations, averaging 114.9 commutation calculations per month in 2022.

Table 17: Number of DEU Commutations, 2015-2022

	2015	2016	2017	2018	2019	2020	2021	2022
Commutations	1,431	1,473	1,463	1,621	1,460	1,314	1,385	1,379

Staffing

Current DEU staffing levels are 39 Disability Evaluators (35 WCC and 4 WCA positions), with 3 vacancies in the hiring process, 2 supervisors with 1 vacancy in the hiring process, and 1 unit manager. DEU is supported clerically by staff assigned to the Adjudication Unit.

Impact of COVID-19 Pandemic

In March 2020 WCAB offices suspended hearings, with offices eventually opening to teleconferences. Claims administrators also incurred similar disruption with office closures and staff teleworking. The vast majority of DEU Staff teleworked throughout 2021. The general economy continued to be slower as a result of COVID-19. Backlogs and ratings issued remained fairly constant between 2020 and 2021, although ratings issued in 2021 were down 20.5 percent compared to 2019. WCAB reopened public counters July 20, 2021 and returned to in person hearings October 1, 2021 for trials and expedited hearings. DWC continued to hear telephonically and to utilize the Lifesize video platform for all conferences through the end of 2021.

DIVISION OF WORKERS' COMPENSATION MEDICAL UNIT

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

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

Qualified Medical Evaluator Panels

DWC composes panels of three qualified medical evaluators (QMEs) from which the party that holds the legal right to request the panel can select an evaluator with a requested specialty to resolve a medical dispute. Panel lists are obtained in both unrepresented and represented cases. The panels are randomly selected based on the applicant's residence zip code. One QME physician is selected from the list to

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evaluate the injured worker and write a medical-legal report addressing the disputed medical issues in the WC case. The medical-legal report is used in the adjudication of the claim to determine entitlement to benefits. Before April 19, 2004, only an injured worker unrepresented by an attorney could request a panel. SB 899, which went into effect April 19, 2004, allowed the claims administrator to request a panel in an unrepresented case if the injured worker failed to do so within 10 days from the date of the notice. Likewise, in the case of a represented worker, both the applicant's attorney and the defense could request a panel if they could not agree on an AME in cases involving a date of injury on or after January 1, 2005. Although both sides attempt to request the panel in the medical specialty of their choice, the first valid request is processed and subsequent requests are returned as a duplicate.

The assignment of panels began in 1991, and over time, changes in the law revised the process for obtaining a QME panel. Effective January 1, 2013, SB 863 no longer requires the parties to confer on using an AME before requesting a panel. Additionally, this reform created a new framework for resolving current medical treatment disputes through an independent medical review (IMR) process. QMEs are also now limited to 10 offices and can no longer be certified for an unlimited number of locations.¹⁴⁹

An increase in the number of panel requests over the years was a result of various legislative reforms like SB 899, effective April 19, 2004 and SB 863, effective January 1, 2013, WCAB decisions, and changes in reporting requirements. WCAB decisions such as the Romero decision (2007), the Messele decision (2011), and the Navarro decision (2014) shaped the application and approval process for obtaining the QME panels. These changes have contributed to the increase in the number of QME panels in pre-pandemic period. An online system was implemented on October 1, 2015 to expedite the assignment of initial panels in represented cases.

The request for a panel in unrepresented cases must be submitted by mail for processing and be submitted online in a represented case. The total number of QME Panel Requests includes represented initial requests submitted online that became effective on October 1, 2015, and initial, additional, replacement panel requests, judge orders, and change of specialty panels received as mailed paper submissions. The initial panels are requested using either Form 105 for unrepresented or Form 106 for represented cases. The online system applies to represented cases with dates of injury on or after January 1, 2005. Mailed paper submissions are processed in-house and include initial unrepresented panel requests from either the injured worker or the claims examiner, initial represented panel requests either involving a pre-2005 date of injury or an uninsured employer, and additional specialty panels and replacement panels for both the unrepresented and represented cases. An additional panel is requested when a specialty different from the one obtained in the initial panel is needed.¹⁵⁰ In a represented case, the parties mail Form 31.7¹⁵¹ by jointly agreeing on the additional specialty assignment or obtain an order from a WCALJ. In the case of an unrepresented applicant, the parties confer with an I&A officer to authorize the additional specialty panel application. A replacement panel is requested when one or more QMEs on the initial panel, additional panel, or replacement panel cannot be utilized for a qualifying reason listed under the replacement panel regulation section 31.5.¹⁵² Form 31.5¹⁵³ must be mailed to the medical unit for processing, whether the case is represented or unrepresented.

QME Panel Requests

Figure 79 shows the total number of QME Panel Requests, including both the online submission and the panel requests mailed to the Medical Unit for processing. With Panel Request counts rising in 2014, their volume increased by about 17 percent from 2013 to 2014. The number of QME Panel Requests increased steadily by 22 percent from 2014 to 2019, decreased by 12 percent from 2019 to 2021, and then increased back to the 2017 level in 2022.

¹⁴⁹ This was part of the SB 863 reforms intended to prevent a small number of QMEs from being assigned a disproportionate number of panels by listing a large number of locations for exams.

https://www.dir.ca.gov/chswc/reports/2017/QME_2017_Trends.pdf.

¹⁵⁰ Obtaining Additional QME Panel in a Different Specialty, https://www.dir.ca.gov/t8/31_7.html.

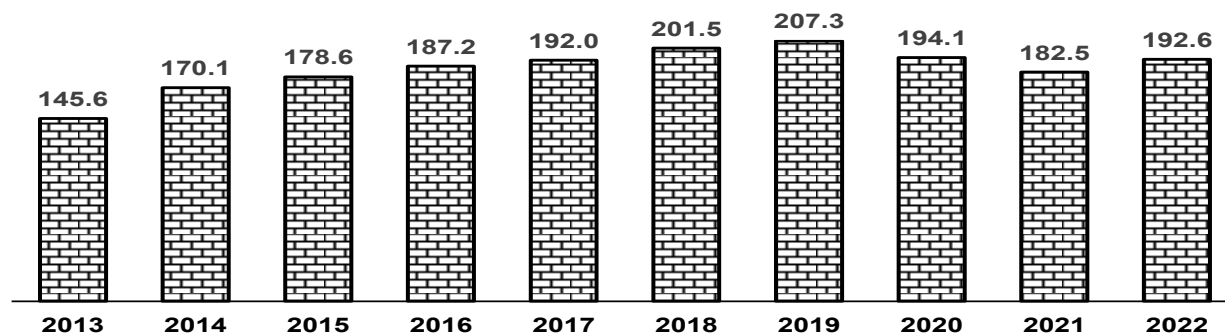
¹⁵¹ QME Panel Request Form 31.7, https://www.dir.ca.gov/dwc/FORMS/QMEForms/QMEForm31_7.pdf.

¹⁵² QME Replacement Request, https://www.dir.ca.gov/t8/31_5.html.

¹⁵³ Replacement QME Panel Request Form 31.5, https://www.dir.ca.gov/dwc/FORMS/QMEForms/QMEForm31_5.pdf.

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Figure 79: Number of Qualified Medical Evaluator (QME) Panel Requests Received, Online and by Mail (Thousand)



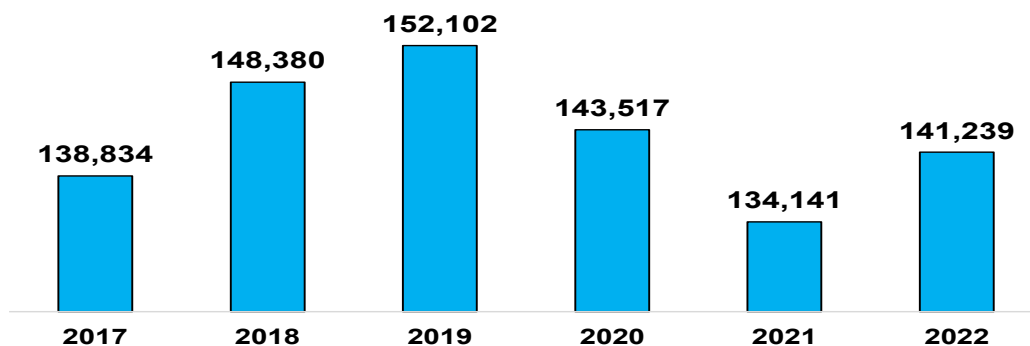
Note: Data for 2013 were incomplete and are missing a full count of all requests received.

Source: DWC

QME Panels Assigned¹⁵⁴

According to Figure 80, the total number of QME panels assigned increased by 9.6 percent from 2017 to 2019, decreased by 12 percent from 2019 to 2021, and increased by 5 percent from 2021 to 2022.

Figure 80: Total Number of QME Panels Assigned for 31 Specialties, 2017-2022



Data Source: DWC - Medical Unit

Figure 81 shows the yearly distribution of QME panels assigned by specialty from 2017 to 2022. The top 10 specialties out of a total of 31 QME specialties, demonstrated in Figure 81, account for close to 90 percent of all QME panels. The top six specialties in 2022, including orthopedic surgery, chiropractors, pain medicine, psychiatric, and spine specialties account for almost two-thirds, or a 66.6 percent of all QME panels in 2022.

¹⁵⁴ The data on QME panels was provided by DWC Medical Unit as based on reports run on September 27, 2022.

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Figure 81: Distribution of QME Panels Assigned by top 10 QME Specialties, 2017-2022

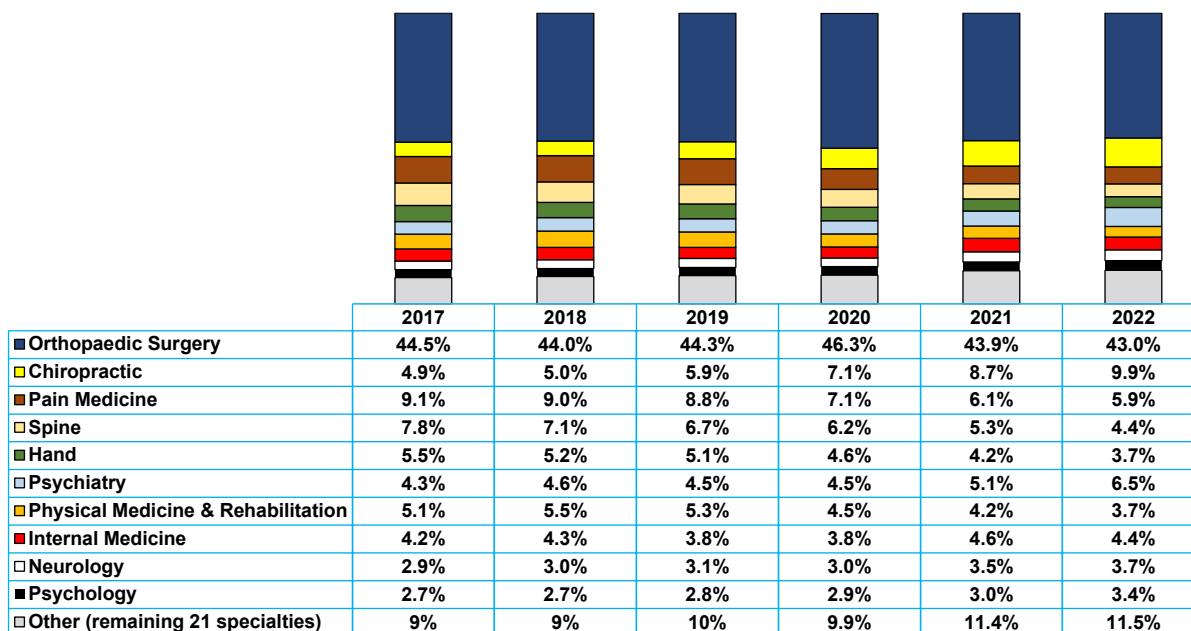
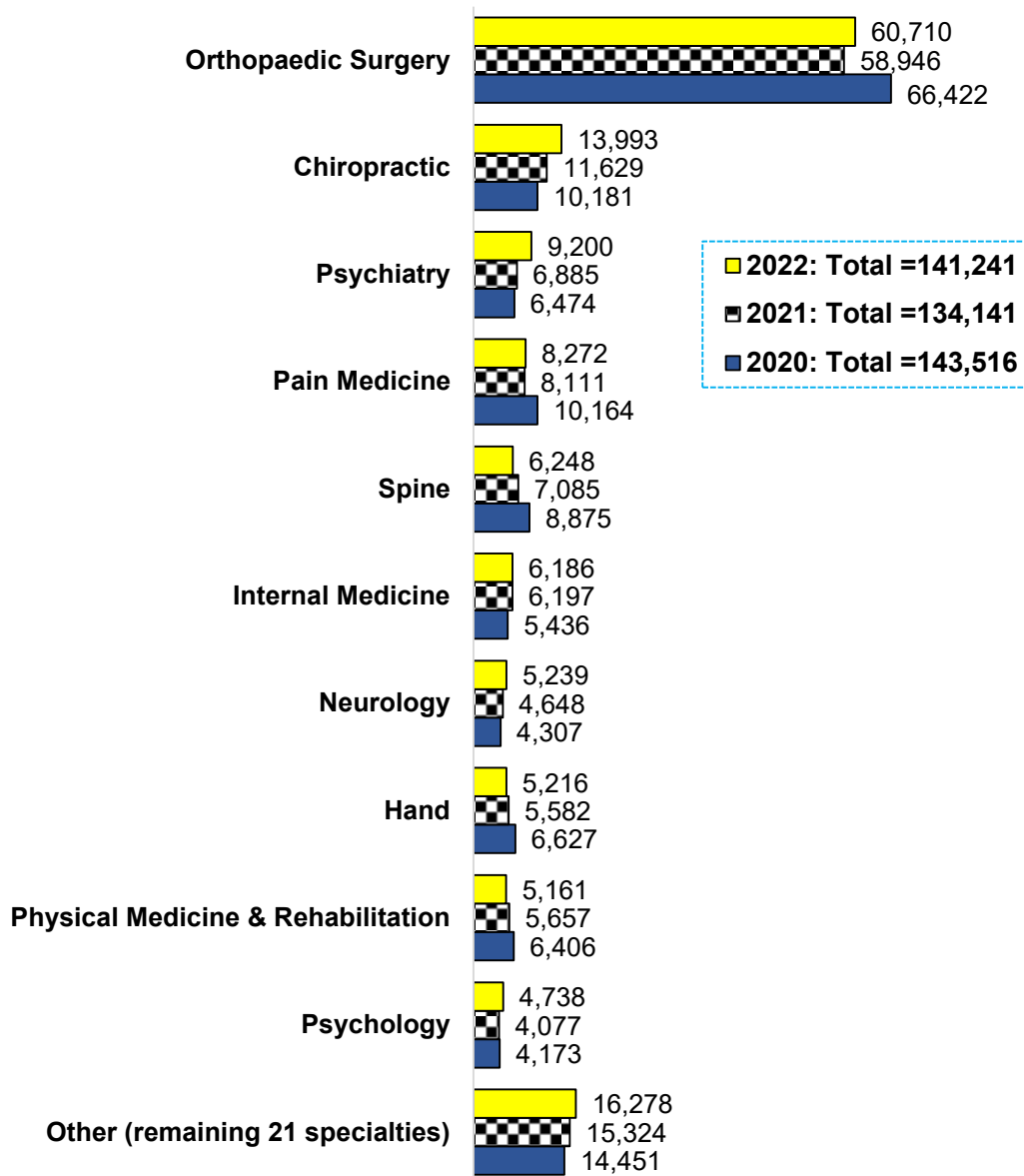


Figure 82 shows the total number of QME panels assigned by specialty in 2020, 2021, and 2022. The prevailing majority of the QME panels in 2020-2022 were assigned for orthopedic surgeries followed by chiropractic, pain medicine, and psychiatric specialties. A decrease in QME panels assigned from 2020 through 2022 was experienced in spine (-30 percent), hand (-21 percent), physical medicine and rehabilitation (-19 percent), pain medicine (-19 percent), and orthopedic surgery (-9 percent) specialties. Psychiatric (42 percent), chiropractic (37 percent), neurology (22 percent), internal medicine (14 percent), and other specialties (13 percent) experienced a steady increase in the number of QME panels assigned from 2020 to 2022, with psychology experiencing an overall 14 percent increase from 2020 to 2022 with some decline from 2020 to 2021.

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Figure 82: Number of QME Panels Assigned by Top 10 QME Specialties, 2020, 2021, and 2022



Data Source: DWC-Medical Unit

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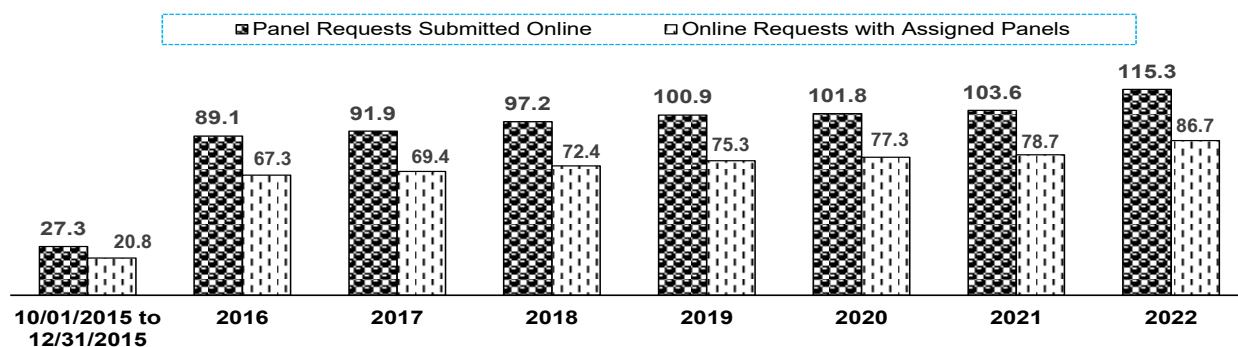
Online and Mailed QME Panel Requests and QME Panels Assigned

QME Panel Requests Submitted Online

Effective October 1, 2015, DWC implemented an online system to enable electronic completion and submission of panel requests on Form 106 and immediate provision of panels. This system applies only to initial panel requests for represented cases, involving a date of injury after December 31, 2004. This online system can be accessed 24/7 and enforces a waiting time of 15 days for mailing from the date of the dispute letter, before applying for the panel. For out-of-state cases, the waiting time is 20 days, including 10 days for mailing. The request for an online panel will result in either a panel list for eligible requests or a rejection letter for ineligible requests. Rejection letters are generated in the following instances: if a request for a panel is made within the 15/20 day wait time the request is rejected for being premature; a notice of insufficient QMEs in a specialty is issued if a specialty requested has fewer than 5 QME physicians in the specialty; if a panel list has already been assigned in the case then a duplicate letter will issue.

Figure 83 shows the number of represented initial requests submitted online, as defined above, and the requests with assigned panels. From 2015, when the online system was implemented, to 2022, about 75 percent of the online panel applications were assigned panels, and 25 percent were rejected as ineligible by the online system. Represented panel requests reached 89,101 in 2016 and since then have comprised a big share of incoming panel requests. The number of represented panel requests increased by 13 percent from 2016 to 2019, with an average 4 percent yearly increase in these panel submissions from 2016 to 2019. From 2019 to 2022, the number of represented panel requests increased by 14 percent.

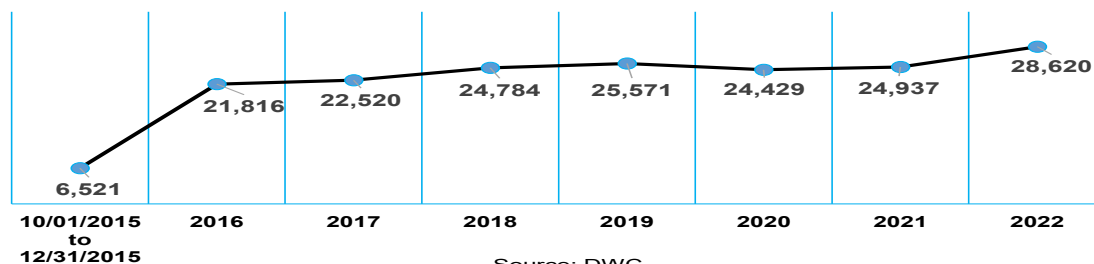
Figure 83: Online QME Panel Requests Submitted and Requests Assigned Panels (Thousand)



Source: DWC

Figure 84 shows the number of rejected on-line panels that comprise about 25 percent yearly as it was described in relation to Figure 83. After reaching 21,800 in 2016 the number of rejected on-line panels increased by 14 percent from 2016 to 2018 and then averaged about 25,000 from 2018 to 2021. From 2021 to 2022, the number of rejected on-line panels increased by 15 percent.

Figure 84: On-Line QME Panel Requests Rejected at Submission

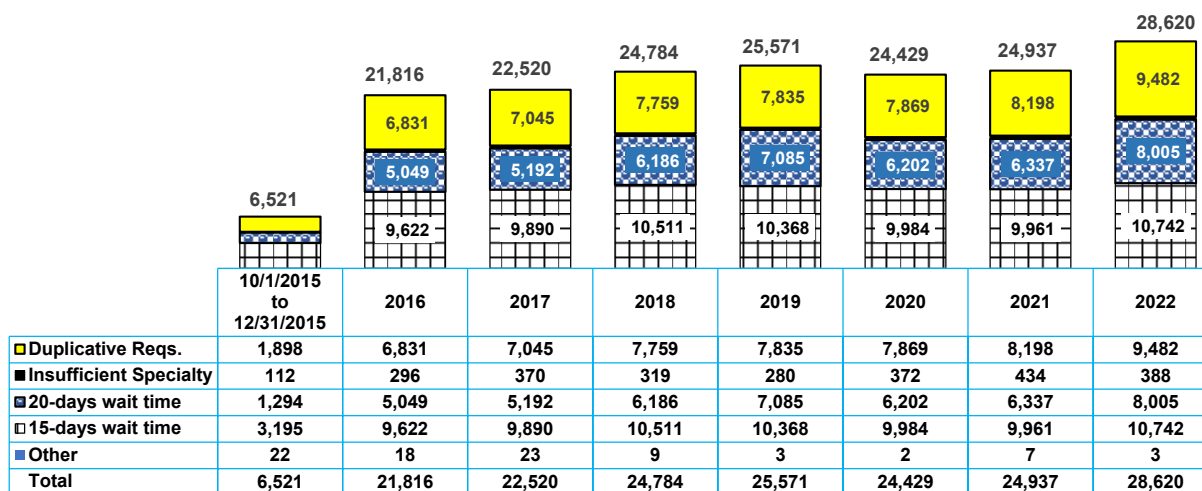


Source: DWC

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Figure 85 demonstrates the number of rejected online panels by reasons of rejection. The bigger components of the rejected online QME requests such as noncompliance with 15- or 20-day waiting times or premature requests (67 percent), and duplicative requests (31 percent) increased from 2016 to 2019 as the total number of online QME requests increased during that period. From 2019 to 2021, there were 4 percent and 11 percent decreases in rejection of online requests based on noncompliance with 15- or 20-day waiting times respectively, resulted in a 2 percent decrease in the total number of rejected online QME panel requests. Rejections of online duplicative requests increased by 5 percent from 2020 to 2021. From 2021 to 2022, there were increases in all three main types of rejections.

Figure 85: Number of Rejected On-Line QME Panel Requests by Rejection Reasons



Source: DWC

All panel types other than the initial represented panels submitted online are mailed to the MU for processing. Requests for panels mailed to the MU are reviewed for compliance by MU staff. Entry of the assigned panel and rejection letter are done by staff at the MU and the panel list or rejection letter is mailed to the parties in the case.

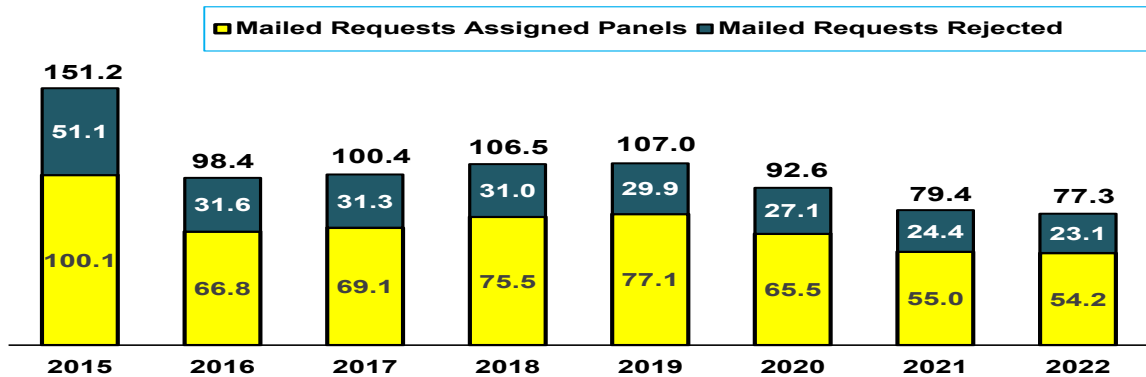
The various types of panel requests mailed include: unrepresented initial panel requests submitted on Form 105; request on Form 106 in a represented case involving a date of injury before January 1, 2005; requests for a panel in a case involving an uninsured employer; requests for an additional specialty panel under certain specific conditions under Title 8 CCR section 31.7; requests for replacement of one or more QMEs on the panel list that meets the provision in Title 8 CCR section 31.5; requests for a panel ordered by a WC Administrative Law Judge.

QME Panel Requests Received by Mail

Figure 86 shows the count of mailed QME requests received by the MU that are processed and issued panels or rejected from 2015 to 2022. The total number of QME panel requests received by the MU by mail decreased by 35 percent from 2015 to 2016, increased by about 9 percent from 2016 to 2019, and then decreased by 28 percent from 2019 to 2022. On average, 70 percent of all processed requests are assigned panels yearly. The MU has 30 calendar days to issue a panel in represented cases.

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Figure 86: QME Panel Requests Received by Mail and Assigned Panel Lists or Rejected (Thousand)



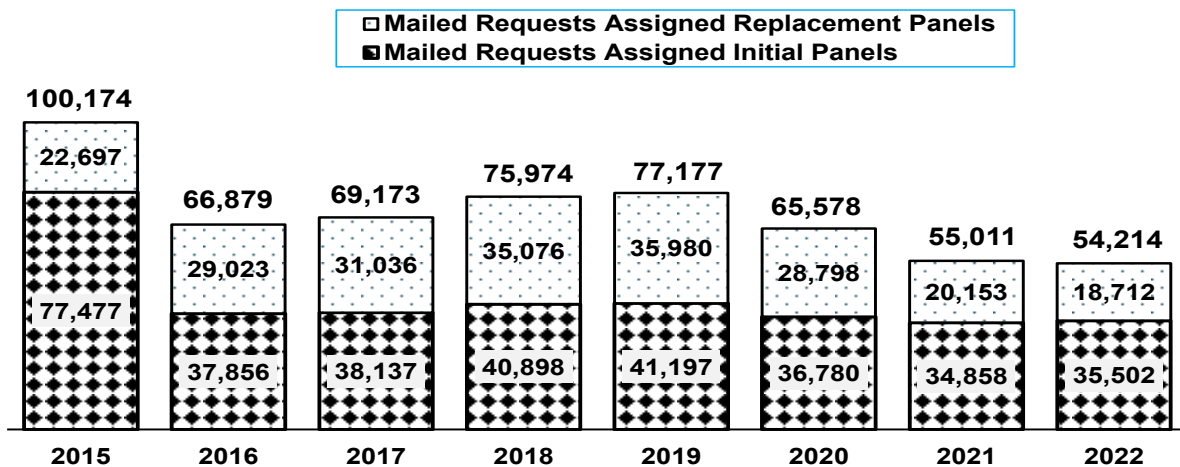
Source: DWC

Figure 87 shows that the total number of QME requests assigned panels by MU decreased by 37 percent from 2015 to 2016, with the implementation of the online panel submissions from October 1, 2015, and then increased steadily by 16 percent from 2016 to 2019. There was a 30 percent decrease in assigned panels from 2019 to 2022.

On average, about 55 percent of mailed QME requests were assigned the initial panels from 2016 to 2020, which increased to 63 percent in 2021 and 65 percent in 2022.

The number of replacement panels increased by 54.5 percent from 2015 to 2018, averaged 35,366 in 2018 and 2019 (in pre-pandemic period), and then decreased sharply in the next three years, reaching 18,712 in 2022. In 2020 and 2021, the MU adopted an emergency regulation 46.2 that was in effect from May 14, 2020 to January 12, 2021.¹⁵⁵ According to DWC, the purpose of the regulation was to help injured workers and employers continue to move their WC claims towards resolution by addressing the issue of how the medical-legal evaluations could proceed during the emergency period resulting from various state and local public health safety measures related to COVID-19.

Figure 87: Mailed QME Requests Assigned Initial or Replacement Panels



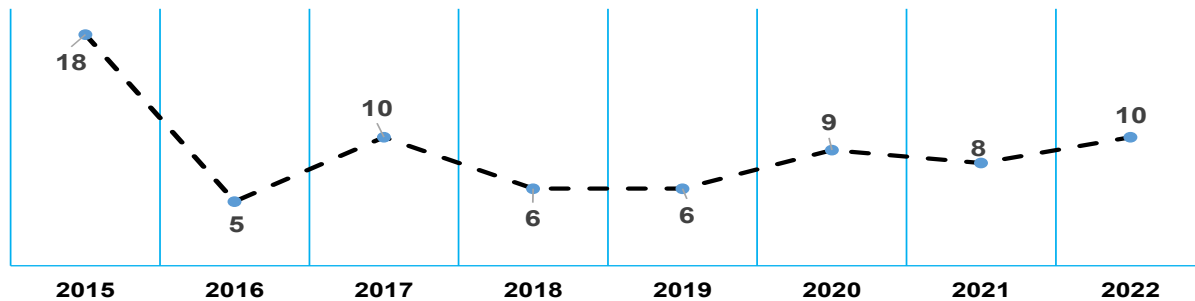
Source: DWC

¹⁵⁵ <https://www.dir.ca.gov/DIRNews/2020/2020-43.html>.

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Figure 88 shows the number of days it takes the Medical Unit to assign an initial panel to QME requests filed by unrepresented injured workers after receipt. The MU is required to issue a panel within 20 working days from the date of receipt pursuant to Labor Code section 139.2(h)(1). After reaching 18 days in 2015, the number of days required to process the panels from date of receipt to assigned date averaged 8 days from 2016 to 2022, stabilizing at 6 days in two consecutive years of 2018 and 2019, and fluctuating between 5 days to 10 days in the rest of the years shown in Figure 88.

**Figure 88: Number of Days Required to Assign Initial Panel in Unrepresented Cases
(From the Date of Receipt)**



Source: DWC

Utilization Review

Utilization review (UR) is the process available to employers or claims administrators to ensure treatment recommendations for injured workers are medically necessary. UR may apply to prospective, retrospective, or concurrent requests for authorization of treatment and may result in an approval, modification, or denial of the request. The utilization review process begins when a completed DWC Form RFA, or a request for authorization (RFA) accepted as complete under Chapter 8 of the California Code of Regulations, section 9792.9.1(c)(2), is first received by the claims administrator; or in the case of prior authorization, when the treating physician satisfies the conditions described in the utilization review plan for prior authorization. (See § 9792.6.1(y).)

Each employer, either directly or through its insurer or an entity with which an employer or insurer contracts for utilization review services, is required to establish a utilization review process via written policies and procedures to ensure that utilization review decisions are consistent with the Medical Treatment Utilization Schedule (MTUS). The MTUS is adopted by the Administrative Director and incorporates evidence-based, peer-reviewed, nationally recognized standards of care. (See Labor Code § 4610(c) & 5307.27(a).) Within the MTUS is also a drug formulary (effective January 1, 2018) which DWC adopted to implement Assembly Bill 1124. The regulations (found at 8 CCR sections 9792.27.1 – 9792.27.23) established an evidence-based drug formulary, consistent with MTUS standards.

Effective July 1, 2018, under Senate Bill 1160, entities engaging in modifying or denying requests for authorization of medical treatment via UR were required to obtain and maintain accreditation by an independent, nonprofit organization. Until and unless the Administrative Director named another accreditation organization, the California Legislature named URAC as the accrediting organization. The accreditation requirement certifies that the entities meet specified criteria in accordance with industry best practices. These entities are also required to submit a description of its UR policies and procedures to the DWC for approval.

UR regulations are enforced via recurring investigations on all UR organizations (UROs) that have a UR plan filed with the DWC. (See 8 CCR sections 9792.11 – 9792.15.) Investigations to enforce UR requirements have been ongoing every 5 years as required by law.

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Investigations can be either routine or target. Routine investigations are done by randomly selecting files from all requests for treatment received by the URO within a three month period. The period selected is generally the previous three full months from the start of the investigation. DWC notifies the URO by sending a Notice of Utilization Review Investigation, which identifies the investigation as a routine investigation, unless it is a target investigation. Once DWC has the requested information, including a list of all RFAs for the three month period, files are randomly selected to be reviewed and a list of those files is sent to the URO with the Notice of Investigation Commencement (NIC). The URO has 14 days from receipt of a NIC to provide copies of each selected file. When the correct number of UR files is obtained, they are reviewed to determine the following:

1. Were responses to the RFAs issued on time?
2. Were UR decisions made by appropriate personnel and by applying the required criteria and did the decision include a rationale?
3. Was the decision communicated on time and to the appropriate parties?
4. Did each denial or modification decision include a properly filled-in IMR application and was it submitted to the appropriate parties?
5. Were other pertinent UR regulatory requirements followed?

Files found to have violations are assessed a set penalty. The investigation subject is assigned a score based on the number and type of violations cited. The passing score is 85 percent or higher. The URO is notified of its score by transmission of a Preliminary Report, including all exhibits, which verifies how the score was calculated, and any next steps to be taken. The URO may request a post-investigation conference and submit additional documentation to contest the penalty and demonstrate that it actually performed the utilization review correctly.

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

After any conference, review of additional documentation, abatement, and mitigation, DWC completes the investigation by issuing a Final Investigation Report. Where the investigation subject has a failing score or has been assessed any mandatory violation (see 8 CCR sections 9792.12(a)(1-17) and (c)(1-4)), DWC also sends, along with the Final Investigation Report, an Order to Show Cause (OSC) and a Stipulation and Order.

According to Table 18, \$45,225 was assessed in penalties after completing 10 UR investigations in 2022 and \$94,450 in penalties after 10 investigations were completed in 2021. According to the Medical Unit, because UR investigations are done through random selection of UROs and files, penalty assessment results can vary significantly from year to year.¹⁵⁶

Table 18: Status of UR Investigations

	Completed	Pending	Failed	Penalty Assessed
2015	27	0	2	\$39,000
2016	11	0	0	\$8,000
2017	4	0	0	\$30,500
2018	6	0	0	\$2,000
2019	7	0	0	\$15,500

¹⁵⁶ The information was provided by the Medical Unit in September 2022.

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	Completed	Pending	Failed	Penalty Assessed
2020	17	0	0	\$175,700
2021	10	0	2	\$94,450
2022	10	0	0	\$45,225

Source: DWC

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

Utilization Review

SB 1160 was signed into law in September 2016. Among other provisions, it revises and recasts provisions relating to UR with regard to injuries occurring on or after January 1, 2018. The bill sets forth the medical treatment services that would be subject to prospective UR. It authorizes retrospective UR for treatment provided under limited circumstances. The bill also establishes procedures for conducting prospective and retrospective UR. On and after January 1, 2018, the bill establishes new procedures for reviewing determinations regarding the medical necessity of medication prescribed pursuant to the drug formulary adopted by the Administrative Director. Formal rulemaking on proposed UR regulations should be initiated prior to the end of 2023.

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

Doctor's First Report of Injury

Every physician who treats an injured worker must file a complete Doctor's First Report of Injury (DFR) on form 5021 with the employer's claims administrator within five days of the initial examination. Currently, the claims administrator is required to send a paper copy of the DFR (Form 5021) by mail to DIR. Recent changes require that physicians electronically file the DFR with DWC. The DWC currently has an electronic DFR available that allows for standardized data to be submitted directly to DWC. Plans are underway to develop an improved version of the current electronic DFR.

Text of the SB 1160 bill is at:

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

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

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

Information on Electronic Reporting System for Doctor's First Report of Injury at:

<https://www.dir.ca.gov/dwc/Electronic-Reporting-System-for-DFR/Index.htm>.

Independent Medical Review

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

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The IMR program is now in its tenth year. The volume of IMR application filings had previously held steady year to year for several years. In 2022, the Independent Medical Review Organization (IMRO) received a total of 170,855 applications, 4.5 percent fewer than the previous year (178,931). As in previous years, just over one in five applications (17.5 percent) duplicated an application previously received. After duplicate applications were subtracted, the number of “unique” applications received totaled 140,386 for the year.

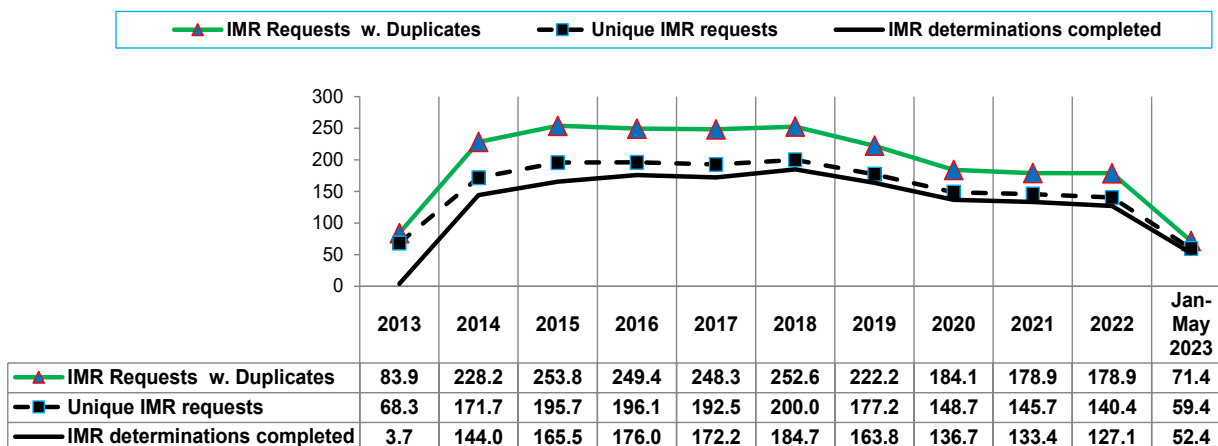
In the first five months of 2023 (January through May), the IMRO received 71,358 applications for IMR, consistent with the 14,200 average monthly application filings in 2022. Figure 89 shows the annual numbers of IMR applications with duplicates, the number of unique medical review requests, and IMR determinations between CY 2013 and the first 5 months of 2023.

Over 2 million applications for IMR were filed (2,143,639) in the first 10 years and 5 months of the program (January 2013 through May 2023). By the end of 2013, the first year of the program, 83,921 IMR applications were received. From 2014 to 2019, the number of IMR applications received ranged from 222,200 to 253,800 each calendar year. Filings decreased 12 percent from 2018 to 2019, 17 percent from 2019 to 2020, 3 percent from 2020 to 2021, and went down 4.5 percent from 2022 to 2023. Based on the number of filings in the first 5 months of the current year (71,358), the total number of applications received in CY 2023 is projected to be consistent with the total for CY 2022.

The number of unique IMR requests received from January 2013 through May 2023 totaled 1,695,696. The number of IMR determinations completed from January 2013 through May 2023 totaled 1,459,550.

The total number of IMR decisions issued per year increased each of the first four years of the program. Since 2016, when the total number reached 176,000, the number of issued decisions has fluctuated. In 2022, 127,110 decisions were issued, a 4.5 percent decrease from 2021, when the IMRO issued 133,404 decisions.

Figure 89: Number of Independent Medical Review Requests Received and Determinations Completed, 2013 –2023 (January-May)
(Thousand)

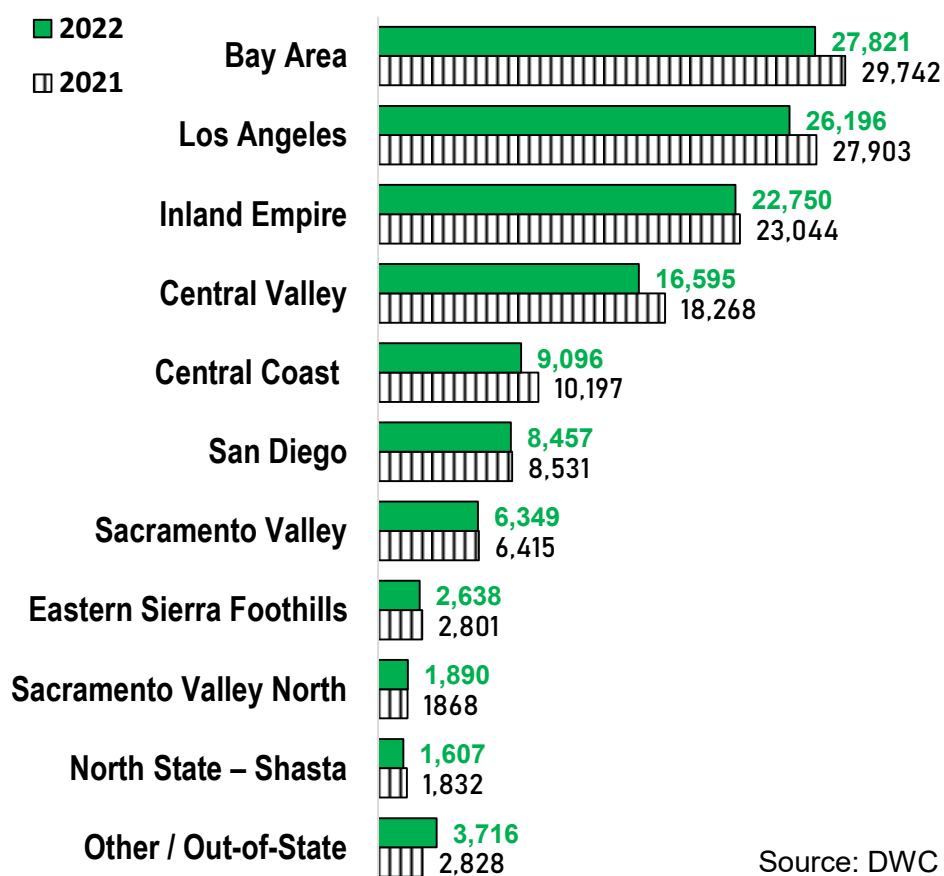


Data Source: DWC

WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

Figure 90 shows the number of IMR case decisions issued in 10 regions of California in 2021 and 2022. Southern California accounted for 45 percent of all IMR decisions in both 2021 and 2022.

Figure 90: IMR Case Decisions Issued by Region in 2021 and 2022
(Total in 2021=133,429 and 2022=127,115)



For further information ...

DWC, "2022 Independent Medical Review (IMR) Report: Analysis of 2021 Data" (2022).

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

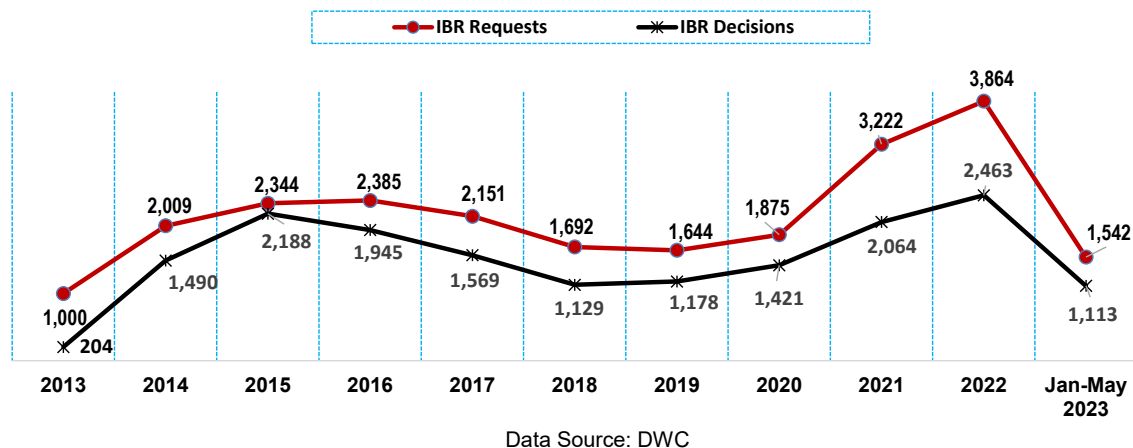
Independent Bill Review

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

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Figure 91 shows the yearly numbers of IBR requests received and IBR decisions completed between 2013 and the first 5 months of 2022. In 2013, when IBR became effective, 1,000 applications were received and 204 IBR decisions were completed. The number of IBR requests received more than doubled from 2013 to 2,385 in 2016 and then decreased by 31 percent from 2016 to 2019. The total number of IBR requests increased by 14 percent from 2019 to 2020 and more than doubled from 2020 to 2021, reaching its peak in the whole period included in the report. As of May 2023, the number of IBR requests received for the whole period from 2013, totaled 23,728, and the number of decisions completed totaled 16,764, or about 71 percent of all requests had been resolved.

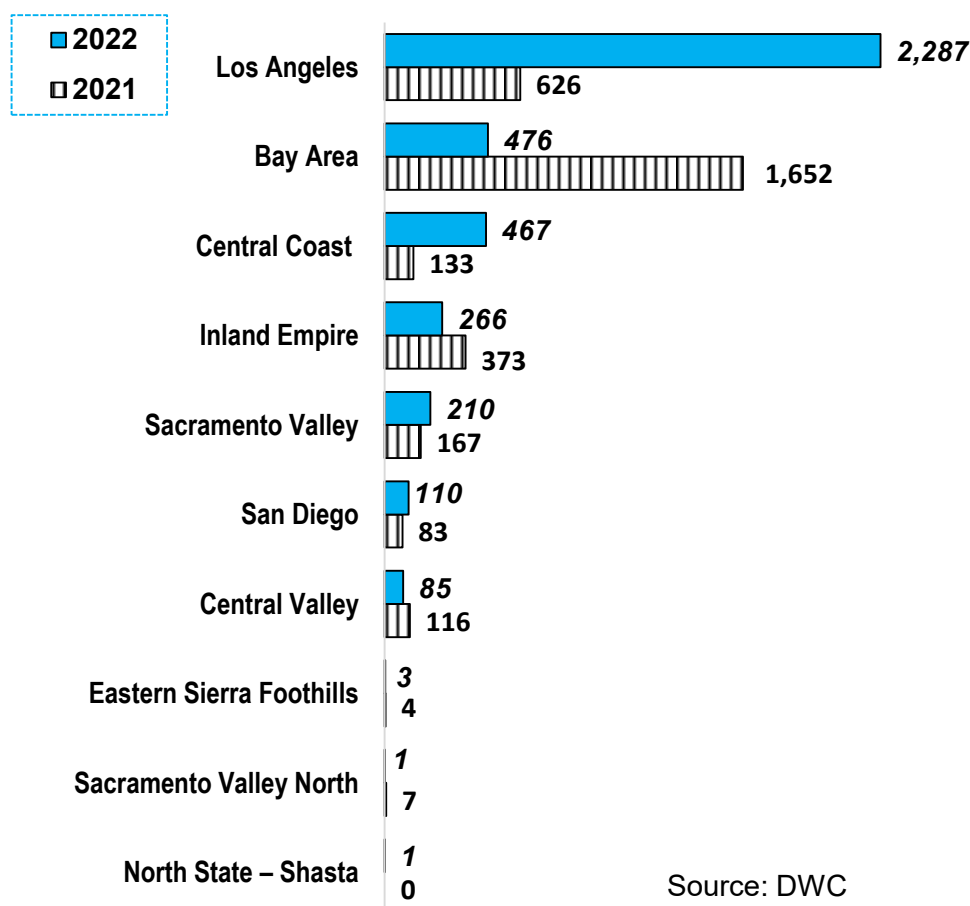
Figure 91: Number of Independent Bill Review Requests and Decisions, 2013–2023



WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

Figure 92 shows the number of IBR applications filed in 10 regions of California in 2021 and 2022. The Northern regions comprised about 18 percent and all Southern regions – 68 percent of total IBR applications filed in 2022.

Figure 92: Number of IBR Applications Filed, by Regions in 2021 and 2022
(Total for 2021=3,161 and 2022=3,906)



Medical Provider Networks and Health Care Organizations¹⁵⁷

Medical Provider Networks

Background

Between 1997 and 2003, the California WC system had significant increases in medical costs. During that period, WC medical treatment expenses in California increased by an estimated 138 percent,¹⁵⁸ outpacing the cost of equivalent medical treatment in non-industrial settings. To slow this unregulated rise in costs, major reforms were enacted in 2003 and 2004. One such effort was the passage of Senate Bill (SB) 899 in April 2004. A major component of SB 899 was the option to establish a medical provider network (MPN), as promulgated in Labor Code Section 4616 et seq. MPNs were implemented beginning January 1, 2005.

¹⁵⁷ The information in this section was provided by DWC Medical Unit, with minor edits by CHSWC staff.

¹⁵⁸ Based on the WCIRB annual report *California Workers' Compensation Losses and Expenses Report*, prepared pursuant to the California Insurance Code, Section 11759.1.

WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

On September 18, 2012, another round of major WC reforms was signed into law in SB 863. SB 863 incorporates significant changes to MPNs, including but not limited to: expanding who can qualify to become an MPN applicant; limiting the MPN approval period to four years and requiring MPN plans to be reapproved; providing the right to petition for MPN suspension or revocation; and authorizing the adoption of administrative penalties to ensure that MPN applicants comply with regulations. Most of these changes took effect on January 1, 2014.

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

On October 8, 2019, SB 537 was signed into law and included the requirement that every MPN post on its internet website a roster of all participating providers. However, this provision did not take effect until July 1, 2021. The bill amended Labor Code section 4616 to require that the roster of all participating providers list all the physicians and ancillary service providers in the MPN and include the name of each individual provider, their office address and office telephone number. It further specified that, if the ancillary service is provided by an entity rather than an individual, then that entity's name, address, and telephone number shall be listed.¹⁵⁹

On September 27, 2022 SB 1002 was signed into law and added licensed clinical social workers (LCSWs) to the medical treatment services lists of Labor Code section 3209.5, and the medical treatments list of Labor Code sections 4600, and 4600.3. In addition, the bill added Labor Code section 3209.11, declaring that an employer, workers' compensation insurer, self-insured employer, or their agents may provide an employee with access to the services of a LCSW. Finally, SB 1002 states medical provider networks (MPNs) may add LCSWs, an ancillary service provider, to their physician providers listings, but expressly clarifies injured workers may only see a LCSW upon referral from a physician as defined in Labor Code section 3209.3.¹⁶⁰

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

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

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

DWC provides all the data on MPNs in this section.

¹⁵⁹ https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201920200SB537.

¹⁶⁰ https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB1002.

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Application Review Process

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

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

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

Material modification filings go through a review process similar to the one for an initial application.

Applications Received and Approved

Table 19 summarizes the number of MPN activities from their inception in November 1, 2004, to December 31, 2022. During this time, the MPN program received 2,693 MPN applications. Of these, 53 were ineligible, as they were erroneously submitted by employers, insurers, or other entities that, under the MPN regulations, are not eligible to set up an MPN. As of December 31, 2022, 2,486 applications were approved. DWC revoked 32 approved applications. The reason for revocation was the applicants' erroneous reporting of their status as self-insured when in fact they were insured entities or an insurer no longer eligible to transact WC in California. Four hundred and twelve (412) applications were withdrawn after approval. The reasons for the withdrawals were either that the applicant decided not to pursue an MPN or that a duplicate application was submitted. One thousand seven hundred and ninety seven (1,797) applications were terminated after approval. The reason for the termination was the applicant's decision to stop using the MPN. In 2022, DWC reached out to expired MPNs that were past their four-year approval period. In response, DWC received confirmation that over 30 MPNs were no longer being used and were terminated because the majority of networks were consolidated into MPNs established by an entity that provides physician network services.

Table 19: MPN Program Activities from November 1, 2004, to December 31, 2022

MPN Application Status	Number
Received	2,693
Approved	2,486
Material Modifications	4,882
Withdrawn	412
Revoked	32
Ineligible	53
Terminated	1,797

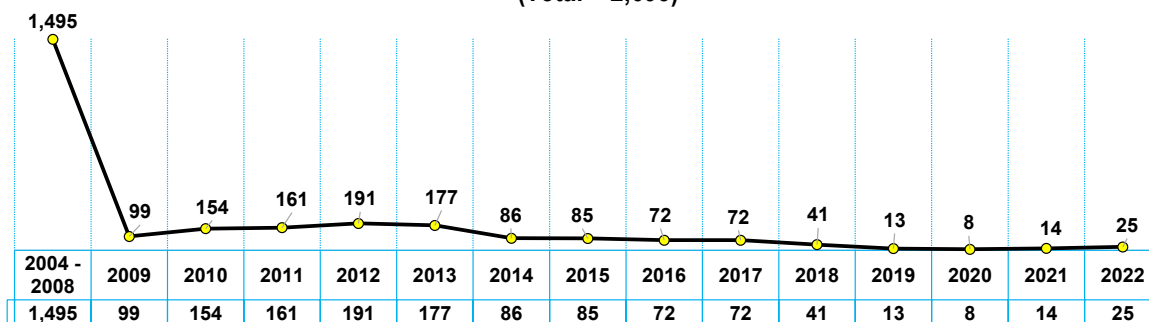
Source: DWC

Figure 93 shows the receipt of MPN applications from 2004 to 2022. The bulk of applications, 28 percent, were received in 2005 (751). The number of applications decreased almost 8 times from 751 in 2005 to 99

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in 2008, and then averaged 171 applications per year from 2009 to 2013. From 2014 to 2017, the number of MPN applications received by DWC averaged 78 applications per year, before its steady fall to 8 applications in 2020. From 2020 to 2022 the number of MPN applications started increasing to two-digit numbers.

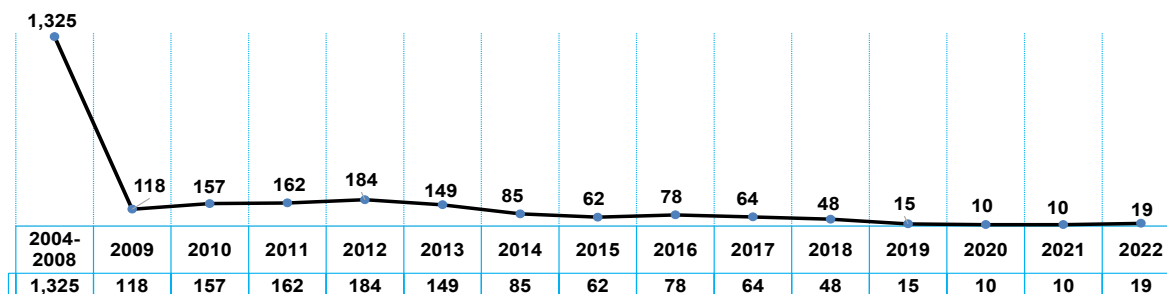
Figure 93: Number of MPN Applications Received, 2004-2022
(Total = 2,693)



Source DWC

Figure 94 shows the MPN applications approved from 2004 to 2022. To recap, about 41 percent (994) of MPN applications were approved in 2005. As the number of MPN applications decreased 10-fold from 2005 to 2007, the number of approved applications decreased accordingly. From 2009 to 2013, the number of approved MPN applications averaged 154 per year, decreased by 43 percent from 2013 to 85 approvals in 2014 and then steadily decreased to 10 approvals per year in 2020 and 2021. The number of MPN applications approved increased to 19 in 2022.

Figure 94: Number of MPN Applications Approved, 2004-2022
(Total = 2,486)



Source: DWC

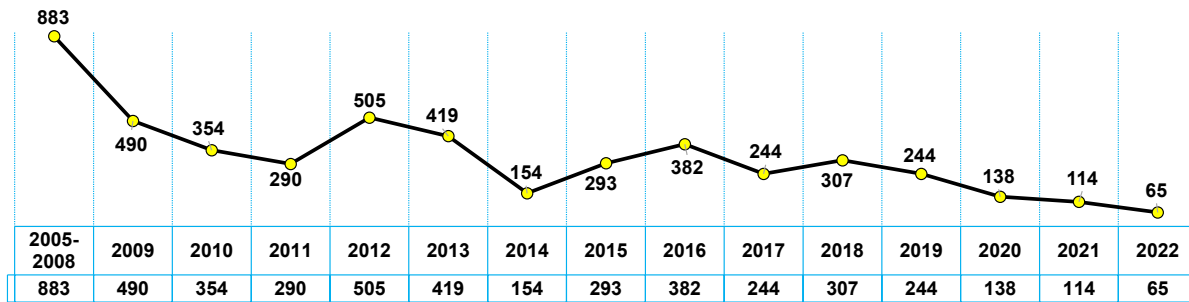
Material Modifications

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

Figure 95 shows the number of material modification filings received by DWC from 2005 to 2022. The number of material modifications received increased from 65 to 357 from 2005 to 2007 (the time range is not detailed by yearly data on Figure 95) and then fluctuated between 280 and 500 from 2008 to 2013. After the SB 863 changes took effect in 2014, the number of material modification filings decreased by 63 percent from 2013 to 154 in 2014, fluctuating between 240 and 380 per year from 2015 to 2019 and then decreased 4-times in 2022 compared to 2019.

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Figure 95: Number of MPN Material Modifications Received, 2005-2022
(Total = 4,882)



Source: DWC

Plan for Reapproval Process

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

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

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

Table 20 shows the number of MPN approved plans that will require a filing for a plan for reapproval through 2026. These numbers are expected to decrease as approved MPNs are terminated because of consolidation into new approved MPNs created by entities that provide physician network services. In addition, these numbers may change because MPN applicants will proactively ensure that the MPN is reapproved more than six months before the plan's expiration.

Table 20: Expiring MPN Application Plans by Quarter and Year
Through December 31, 2026

Quarter	2021	2022	2023	2024	2025	2026
Q1	0	1	12	16	34	13
Q2	0	5	16	69	36	14
Q3	0	0	21	17	20	18
Q4	10	8	9	17	12	22
TOTAL	10	14	58	119	102	67

Source: DWC

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Table 21 shows the number of MPN applications for reapprovals received and approved at DWC from 2014 through 2022.

**Table 21: MPN Application Plans for Reapproval Received and Approved by Month
Through December 31, 2022**

		Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sep	Oct	Nov	Dec	Total
2014	Received	0	0	0	0	0	0	0	0	0	15	17	42	74
	Approved	0	0	0	0	0	0	0	0	0	0	0	30	30
2015	Received	25	14	3	30	2	6	1	0	4	4	29	23	141
	Approved	6	3	1	27	3	1	4	0	2	5	37	22	111
2016	Received	12	13	10	8	5	10	11	8	9	1	4	0	91
	Approved	0	2	4	0	8	1	4	11	9	1	1	1	42
2017	Received	6	4	3	4	10	3	2	4	8	3	5	1	53
	Approved	1	8	5	2	4	4	7	9	2	2	8	7	59
2018	Received	1	4	1	1	4	12	0	4	8	0	1	3	39
	Approved	2	0	0	1	0	2	2	1	1	5	2	1	17
2019	Received	3	9	6	3	2	2	3	12	6	11	8	29	94
	Approved	1	6	7	2	3	4	7	3	8	2	2	3	48
2020	Received	8	15	3	9	3	2	2	15	6	5	3	3	74
	Approved	5	3	6	10	31	20	6	8	2	1	9	6	107
2021	Received	19	1	5	19	9	8	9	2	5	3	0	3	83
	Approved	6	15	8	7	16	12	8	4	5	3	1	2	87
2022	Received	6	3	2	10	3	6	3	2	5	5	7	3	55
	Approved	2	6	1	0	4	4	8	2	4	1	5	6	43

Source: DWC

MPN Applicants

MPN applicants are allowed to administer more than one MPN. As a result, MPN applicants with more than one approved MPN account for 75 percent of all MPNs, including 691 approved applicants with 21 to 77 MPNs (see Figure 96). The names of MPN applicants with 10 or more approved MPNs are shown in Table 22. ACE American Insurance Company leads with 77 MPNs, followed by OCM Coastal Acquisition Co., LLC with 51 MPNs, and Zurich American Insurance Company with 46 MPNs.

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**Figure 96: Distribution of Approved MPNs by Number of MPNs per Applicant, 2022
(Total=2,457)**

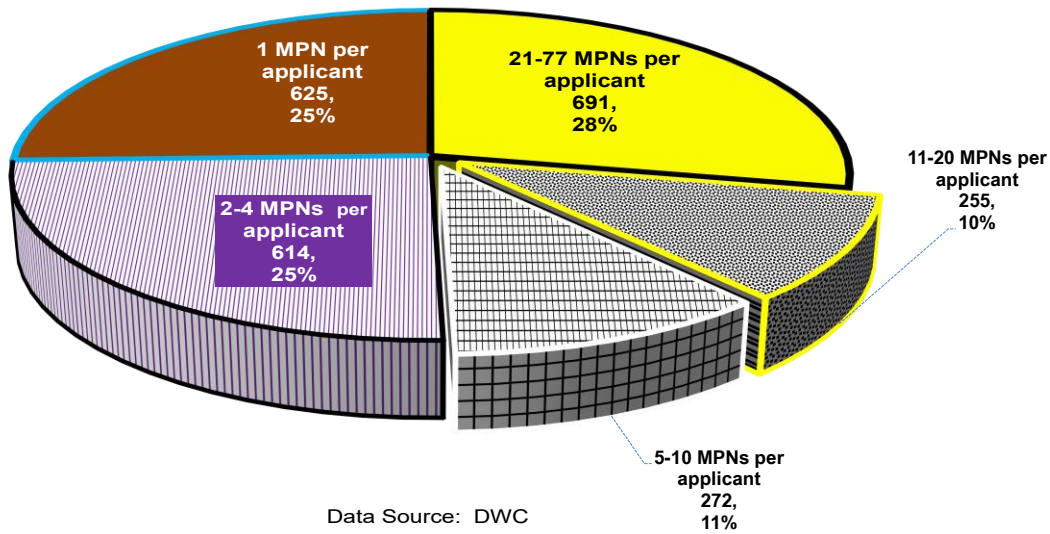


Table 22: Names of MPN Applicants with 10 or More Approved MPNs

Name of applicant	No. of MPNs
ACE American Insurance Company	77
OCM Coastal Acquisition Co., LLC	51
Zurich American Insurance Company	46
National Union Fire Insurance Company Of Pittsburgh, PA	43
American Home Assurance Company	41
Safety National Casualty Corporation	37
Federal Insurance Company	35
The Insurance Company Of The State Of Pennsylvania	35
Medex Healthcare	32
Fidelity And Guaranty Insurance Company	32
Old Republic Insurance Company	32
New Hampshire Insurance Company	31
Arch Insurance Company	29
Hartford Accident And Indemnity Company	27
Discover Property & Casualty Insurance Company	27
United States Fidelity And Guaranty Company	26
XL Specialty Insurance Company	26
Fidelity And Guaranty Insurance Underwriters, Inc.	25
American Zurich Insurance Company	25
Hartford Insurance Company Of The Midwest	21

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Name of applicant	No. of MPNs
Commerce And Industry Insurance Company	19
AIG Property Casualty Company	18
Travelers Property Casualty Company Of America	18
Hartford Fire Insurance Company	16
American Guarantee And Liability Insurance Company	16
Twin City Fire Insurance Company	16
Hartford Underwriters Insurance Company	15
Continental Casualty Company	15
Granite State Insurance Company	15
Praetorian Insurance Company	14
Greenwich Insurance Company	13
United States Fire Insurance Company	13
Landmark Insurance Company	12
XL Insurance America, Inc.	11
Zurich American Insurance Company Of Illinois	11
The North River Insurance Company	11
Sentinel Insurance Company, Ltd.	11
American Casualty Company Of Reading, Pennsylvania	11
Indemnity Insurance Company Of North America	11
SPARTA American Insurance Company	10
Sparta Insurance Company	10
AIU Insurance Company	10
St. Paul Fire and Marine Insurance Company	10
Hartford Casualty Insurance Company	10
Tokio Marine & Nichido Fire Insurance Co., LTD	10

Source: DWC

Table 23 shows the number of MPN applicants by type of applicant. From 2004 to 2013, the majority (on an average of 65 percent per year) of MPN applications were filed by insurers, followed by self-insured employers (29 percent). SB 863 added the option for the MPN applicant to change the type of applicant to an entity that provides physician network services, which is reflected in the numbers reported in this table. The share of MPN applications filed by insurers fell to 45 percent in a transitional year of 2014 and then decreased to an average of 29 percent from 2014 to 2022 (see Figure 97). At the same time, the number of MPN applicants filed by entities that provide physician network services increased from 15 in 2014 to an average of 35 per year from 2015 to 2018 and then decreased to an average of 8 per year from 2019 to 2022.

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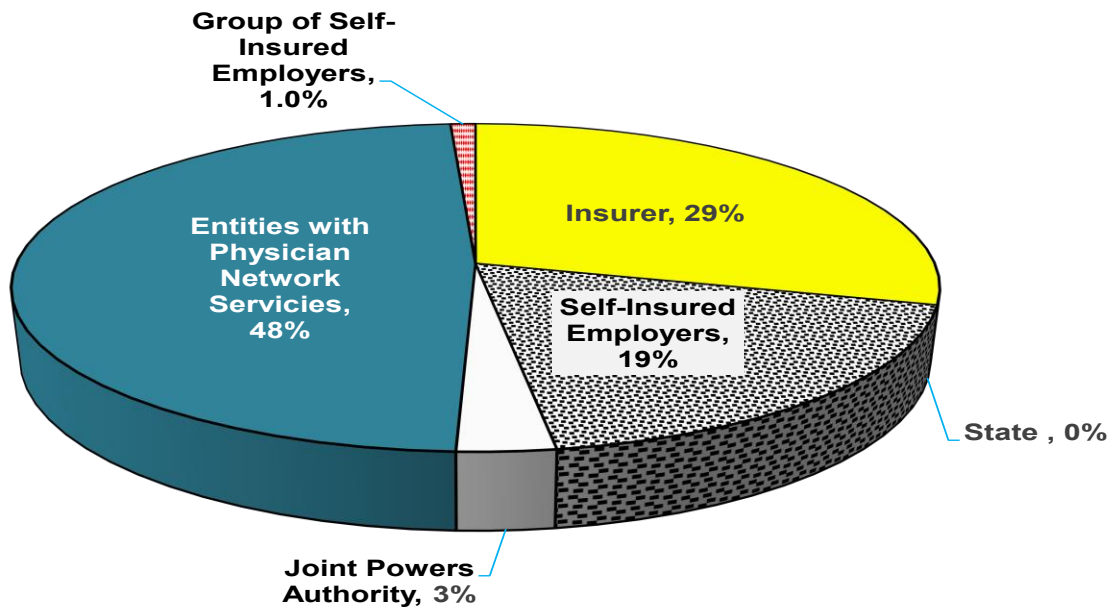
Table 23: Number of Approved MPN Applications by Type of Applicant, 2004–2022

	Insurer	Self-Insured Employers	Entities with Physician Network Services	Joint Powers Authority	Group of Self-Insured Employers	State	Total
2004-2013	1,372	612	11	56	40	4	2,095
2014	38	29	15	3	0	0	85
2015	17	9	32	3	1	0	62
2016	24	4	46	4	0	0	78
2017	17	12	35	0	0	0	64
2018	7	12	28	1	0	0	48
2019	5	0	10	0	0	0	15
2020	2	0	8	0	0	0	10
2021	1	3	6	0	0	0	10
2022	3	5	8	0	3	0	19
TOTAL	1,486	686	202	67	43	4	2,486

Source: DWC

Figure 97 shows the distribution of MPN applications approved from 2014 through 2022 by the type of applicant when the entities providing physician network services prevailed. On average, 48 percent of approved MPN applications were submitted by entities providing physician network services, followed by 29 percent of insured employers and 19 percent of self-insured employers.

Figure 97: Distribution of All Approved MPN Applications by Type of Applicant, 2014 - 2022



Source: DWC

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MPN Plans Using HCO Networks

Health Care Organizations (HCOs) networks are used by 84 (3.4 percent) of the approved MPNs. This number of MPNs using HCOs excludes MPNs that were revoked, terminated, or withdrawn after approval. The distribution of MPNs by HCOs is shown in Table 24. CorVel HCO has an MPN market share of 2.3 percent, followed by MedEx, which has a share of 0.7 percent.

Table 24: Number of MPN Applicants Using HCO Networks

Name of HCO	Approved MPN Plans Using HCONetwork	Percentage of Applications Received	Percentage of Applications Approved
CorVel	61	2.3%	2.5%
CompAmerica (First Health)	1	0.0%	0.0%
MedEx	20	0.7%	0.8%
Promesa	2	0.07%	0.08%
Total Using HCO	84	3.1%	3.4%

Source: DWC

Status of the MPN Program

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

To implement the important changes brought about by the passage of SB 863, the MPN regulations were amended, and these amendments took effect August 27, 2014. The changes in the MPN regulations include a more efficient streamlined application process that allows electronic submission of MPN applications, modifications, and reapprovals. The regulatory amendments also include the requirements for an MPN to qualify as an entity that provides physician network services. Allowing these entities to qualify as an MPN applicant better aligns legal with operational responsibility. Additional changes in the MPN regulations include the assignment of unique MPN identification numbers to each MPN in order to easily identify a specific MPN. The amended MPN regulations establish the standards MPNs must meet with the MPN Medical Access Assistants to properly assist injured workers to find and schedule medical appointments with MPN physicians. The amended regulations clarify access standards and now require an MPN to have at least 3 available physicians from which an injured worker can choose, and if the time and location standards are not met, MPNs shall have a written policy permitting out-of-network treatment. Moreover, the amended MPN regulations set forth the physician acknowledgment requirements to ensure physicians in the MPN have affirmatively elected to be a member of the network and a streamlined process for obtaining acknowledgments from medical groups. To promote greater accuracy and ensure statutory and regulatory compliance, MPNs are approved for a period of four years and must file a reapproval before the expiration of this four-year period. Finally, DWC's oversight of MPNs is strengthened with the formal complaint process, the Petition for Suspension or Revocation of MPNs, the ability to conduct random reviews of MPNs and the authority to assess administrative penalties against MPNs to ensure regulatory compliance.

Health Care Organization Program

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

HCOs are managed care organizations established to provide occupational-related health care to employees injured at work. A health care service plan (sometimes referred to as a Health Maintenance Organization

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or HMO), disability insurer, WC insurer, or a WC third-party administrator (sometimes referred to as a WC Health Care Provider Organization or WCHPO) can be certified as an HCO.

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

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

Currently, the HCO program has four certified HCOs. The list of certified HCOs and their most recent date of certification/recertification are provided in Table 25. Even though there are four certified HCOs, only three have enrollees; the remaining retain their certification and use their HCO provider network as a deemed entity network for an MPN program.

Table 25: Currently Certified HCOs by Date of Certification/Recertification, 2022

Name of HCO	Date of Certification/Recertification
CorVel Corporation	12/30/2020
MedEx	03/16/2022
MedEx 2	10/10/2021
Promesa Health, Inc.	04/16/2022

Source: DWC

HCO Enrollment

At its maximum in mid-2004, HCO enrollment reached approximately half a million enrolled employees. However, with the enactment of MPNs, enrollment of employees under the large HCOs has declined considerably. The total enrollment of employees under HCOs fell by 69 percent from 481,337 in 2004 to 149,723 in December 2022. The table below shows the number of enrollees as of December 31 of each year from 2004 through 2022.

Table 26: HCOs by Number of Enrolled Employees for 2004 through 2022

	MedEx / MedEx2	Kaiser Perma nente On the Job	Comp Partner s	Prome sa	CorVel	Intra corp	Net Work	First Health Comp America Primary/ Select	Pruden t Buyer (Blue Cross)	Sier ra	Total
2004	62,154	30,086	60,935	-	100,080	6,329	1,204	218,919	1,390	240	481,337
2005	66,304	67,147	61,403	-	20,403	3,186	0	2,403	0	0	220,846
2006	46,085	66,138	53,279	-	3,719	2,976	0	0	0	0	172,197
2007	69,410	69,602	13,210	-	3,050	2,870	0	0	0	0	158,142
2008	69,783	77,567	1,765	21,197	3,384	0	0	0	0	0	173,696
2009	34,378	72,469	1,729	16,467	1,983	0	0	0	0	0	127,026
2010	46,838	74,223	2,884	17,602	435	0	0	0	0	0	141,982
2011	61,442	76,263	4,200	19,041	467	0	0	0	0	0	161,413

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	MedEx / MedEx2	Kaiser Permanente On the Job	Comp Partners	Promesa	CorVel	Intra corp	Net Work	First Health Comp America Primary/ Select	Prudent Buyer (Blue Cross)	Sierra	Total
2012	67,606	75,253	11,561	23,772	405	-	0	0	-	-	178,597
2013	75,183	74,122	554	28,222	0	-	0	0	-	-	178,081
2014	86,550	73,939	396	30,701	0	-	0	0	-	-	191,586
2015	145,352	77,521	422	29,448	0	-	0	0	-	-	252,743
2016	182,034	84,637	486	26,397	0	-	-	0	-	-	293,554
2017	175,387	88,260	729	23,859	0	-	-	0	-	-	288,235
2018	173,175	94,519	500	17,659	0	-	-	0	-	-	285,853
2019	170,123	92,752	-	14,095	0	-	-	0	-	-	276,970
2020	153,013	97,620	-	10,671	0	-	-	0	-	-	261,304
2021	152,432	-	-	9,185	0	-	-	0	-	-	161,617
2022	140,375	-	-	9,348	0	-	-	-	-	-	149,723

Source: DWC

Health Care Organization Program Status

HCO enrollment has decreased by about 8 percent between 2021 and 2022. Currently, 3 HCOs continue to operate for the purpose of functioning as a vehicle for the provision of health care to injured workers while the remaining 1 HCO exists as a deemed network entity for MPN programs.

For further information ...

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

Medical Treatment Utilization Schedule Updates

MTUS and Formulary Update

Since a significant overhaul in late 2017, the MTUS treatment guidelines have been regularly updated to include the latest treatment guidance from the American College of Occupational and Environmental Medicine (ACOEM). Since its January 2018 release, the MTUS Drug List portion of the MTUS Formulary has been updated regularly to remain current with the latest medication recommendations from ACOEM.

MTUS and Treatment Guidelines:

<https://www.dir.ca.gov/dwc/MTUS/MTUS.html>

MTUS Drug Formulary:

<https://www.dir.ca.gov/dwc/MTUS/MTUS-Formulary.html>,

MTUS Drug List:

<https://www.dir.ca.gov/dwc/MTUS/MTUS-Formulary-Orders.html>

ACOEM Initial Approaches to Treatment Guide

Formally adopted into the MTUS in March 2022.

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ACOEM Coronavirus (COVID-19) Guide

The American College of Occupational and Environmental Medicine (ACOEM) and MDGuidelines® have released a [Coronavirus \(COVID-19\) Clinical Practice Guideline](#).

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

Other Guides were adopted in 2021, in addition to the COVID-19 Guide.

ACOEM Anxiety Disorders Guide

Formally adopted into the MTUS in July 2021.

ACOEM Low Back Disorders Guide

Formally adopted into the MTUS in November 2021.

Pharmacy and Therapeutics Committee

The Administrative Director appointed an independent Pharmacy and Therapeutics Committee (P&T Committee) to review and consult with the Administrative Director on available evidence of the relative safety, efficacy, and effectiveness of drugs within a class of drugs, for purposes of updating the MTUS Drug List. The P&T Committee meets publicly on a quarterly basis and Agendas, Minutes, and Meeting Materials are available at:

<https://www.dir.ca.gov/dwc/mtus/MTUS-Pharmacy-and-Therapeutics-Committee.html>.

Physician Training

MTUS Training Modules

Physicians treating in the California workers' compensation system are required to follow the evidence-based recommendations in DWC's medical treatment utilization schedule (MTUS). In 2016, DWC introduced a free online Continuing Medical Education (CME) course for treating physicians, qualified medical examiners, physician reviewers and other health care providers, as well as anyone else interested in learning how to use the MTUS. The online course below provides an excellent introduction to the MTUS with helpful instructions on its use. In 2019, DWC released a revised and expanded online MTUS course to include the Formulary and information on obtaining free MTUS-ACOEM guidelines access.

Topics covered include:

- What the MTUS is and how to use it
- How to navigate the MTUS/ACOEM treatment guidelines and apply recommendations via case scenarios
- Free provider access to the MTUS/ACOEM treatment guidelines
- When to consider recommendations outside of the MTUS guidelines for the care of your patient
- How to use the MTUS Formulary and Drug List

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- The role of utilization review (UR) and independent medical review (IMR) physicians

The online course can be found at the following website:

<https://www.dir.ca.gov/dwc/OnlineEducationalModules/MTUS.htm>.

Qualified Medical Evaluator (QME) Training Module

Qualified Medical Evaluators (QMEs) play a critical role in resolving disputes within the WC system and DWC has a free online Continuing Medical Education (CME) course on this topic. This course was developed for current QMEs, those who are interested in becoming a QME, or anyone interested in the QME process. In October 2021, the DWC released an updated QME course covering an expanded list of topics as noted below.

Topics covered include:

- How to prepare for a QME evaluation
- The components of a complete report and potential pitfalls
- The concept of apportionment, and how it applies in the California WC system
- How to differentiate between causation of permanent disability and causation of injury, and a description of the types of allowable factors in determining causation of permanent disability
- The legal requirements for substantial medical evidence, and how to apply these standards to a medical-legal determination on apportionment
- How the law requires impartiality and prohibits discrimination against injured workers based on protected characteristics including sexual orientation, race, gender, age, national origin, and religion
- Applicable Administrative Rules including how to schedule QME appointments, how to add or close a QME office, and how to place your QME status as unavailable or inactive
- The importance of issuing timely reports and the consequences of late reporting

Additional DWC Online Educational Resources:

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

The online courses can be found at the following website:

<https://www.dir.ca.gov/dwc/CaliforniaDWCCME.htm>

Learn about Apportionment and relevant case law:

<https://www.dir.ca.gov/dwc/Apportionment-Webinar.htm>

DIVISION OF WORKERS' COMPENSATION INFORMATION & ASSISTANCE UNIT

DWC's Information & Assistance (I&A) Unit provides information and assistance to employees, employers, labor unions, insurance carriers, physicians, attorneys and other interested parties concerning rights, benefits and obligations under California's WC laws. The I&A Unit, often the first DWC contact for injured workers, plays a major role in reducing litigation before the WCAB. The Unit received approximately 1,422 calls a week on its toll-free line, 800-736-7401, or a total of 73,925 calls in 2022. These callers get

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prerecorded messages in English and Spanish about the WC system and can request forms, fact sheets, or guides.

Table 27: Information & Assistance Unit Workload

	Calls from public handled	Outgoing calls placed	Settlements reviewed and assisted	Face-to-face meetings with walk-ins	Injured Worker Workshop (IWW) presentations	Number of IW that attended IWW presentations	Correspondence written	Conference with WC Judge	Audit Unit referrals	RTWSP
2013	300,515	33,965	13,055	24,588	243	3,013	13,005	NA	NA	
2014	308,221	33,015	14,129	25,105	239	2,615	12,996	9,125	70	
2015	307,242	34,017	14,535	26,858	245	2,377	11,557	9,334	58	
2016	311,473	31,985	13,988	25,715	229	2,714	13,511	9,313	NA	
2017	299,674	29,922	10,841	20,987	238	1,593	14,805	7,314	46	
2018	201,050	27,578	9,332	18,900	185	1,053	14,700	7,700	25	
2019	190,647	26,772	8,509	16,666	183	899	14,765	7,329	2	
2020	157,294	25,773	7,346	5,497	50	548	42,869	5,563	0	
2021	126,344	35,434	7,411	1,881	0*	0*	55,310	5,244	0	1,148
2022	73,925	32,969	7,754	7,163	6	252	62,530	6,043	0	1,959

* Workshops for injured workers were virtual since October 2022. For additional information see:

https://www.dir.ca.gov/dwc/workshop/workshop_english.htm

Source: DWC

Spanish Outreach Attendance data by the type of outreach was available only since 2017 (see Table 28). In 2021, all 24 DWC district offices were closed to the public. Small numbers of injured workers continue visiting the district offices and getting assistance from the I&A Officers.

Table 28: Spanish Outreach Attendance

		Mexican consulates	Radio	Workshops*	Farmworker-related fairs/events
No. of Events	2017	27	1	3	27
	2018	40	1	6	29
	2019	40	1	3	10
	2020	5	0	1	3
	2021	0	0	0	0
Avg No. of Attendees per Event	2017	60	NA	50-75	200-300
	2018	50	NA	25-50	200-300
	2019	45	NA	25-50	200-300
	2020	45	NA	10	200-300
	2021	0	NA	22	NA

* Workshops for injured workers are virtual since October 2022. For additional information see:

https://www.dir.ca.gov/dwc/workshop/workshop_spanish.htm

Source: DWC

The annual DWC Educational Conference is the largest WC training in the state and allows claims administrators, attorneys, medical providers, return-to-work specialists, employers, human resources, and others to learn firsthand about the most recent developments in the system, including any new laws or

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requirements. Speakers from DWC and the private sector address topics pertinent to claims administrators, medical providers, attorneys, rehabilitation counselors, and others involved in WC. Due to the COVID-19 pandemic, the March 24-March 26, 2021 and March 23-March 25, 2022, DWC Educational Conferences took place on a virtual platform without activities reported by specific locations. In 2023, DWC will go back to holding the educational conference in-person. The conference will take place in Oakland on March 9-March 10, 2023 and in Los-Angeles on March 23-March 24, 2023.

Table 29: DWC Educational Conferences Attendance, 2013–2022*

		Attendees	Exhibitors
Los Angeles	2013	1,091	87
	2014	1,058	85
	2015	1,162	89
	2016	1,191	95
	2017	1,190	91
	2018	1,039	74
	2019	1,045	74
	2020	Cancelled due to COVID-19	
Oakland	2013	762	53
	2014	740	53
	2015	836	61
	2016	878	59
	2017	803	66
	2018	733	54
	2019	800	50
	2020	559	41

*2021: 7 conference sponsors, 1,125 attendees and 15 exhibitors.

*2022: 6 conference sponsors, 864 attendees and 12 exhibitors.

Source: DWC

DIVISION OF WORKERS' COMPENSATION INFORMATION SERVICE CENTER

(TO BE UPDATED)

DWC's Information Service Center (ISC) is located in San Bernardino. The main function of the ISC is to screen all incoming calls for all 24 DWC District offices. Any combination of a district office's main number and I&A Unit, Disability Evaluation Unit, and Rehabilitation Unit lines are directed through ISC, which answers questions and provides information in both English and Spanish on WC and EAMS issues for the general public. In addition, all EAMS help desk emails and Notice of Representation (NOR) questions go through ISC. ISC staff members monitor and resolve questions sent via email to EAMS Help Desk, process NOR updates received through the e-File system, and answer Virtual EAMS Support Team (VEST Issue Tracker) questions sent by both internal and external users. In September 2014, some members of DWC ISC's staff started participating in the new DIR Cloud call center several days a week. No statistics are available yet on DIR Cloud call center's workload.

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Table 30: DWC's Information Service Center Workload

Activities	2013 to 2015	2016	2017	2018	2019	2020	2021
Incoming calls	486,170	198,232	184,463	177,281	163,119	155,072	136,354
Outgoing calls*	12,957	184	312	264	133	149	195
Calls in Spanish	36,962	13,465	12,609	11,798	11,766	9,985	10,115
Calls in Spanish for Return to Work Unit**	na	na	na	na	1,256	1,132	1,055
Calls transferred to district offices	91,714	47,271	45,851	39,514	39,102	23,969	9,646
EAMS Help Desk emails	53,147	16,208	20,025	22,594	18,724	16,009	18,326
Correspondence mailed out	15,655	5,492	4,697	4,477	3,490	3,736	4,044
NOR-related questions processed	126,195	30,243	29,547	25,045	27,381	16,730	9,648
VEST/Issue tracker of EAMS related problems	434	18	47	30	13	10	0

* Decrease in manual outgoing calls due to new phone system.

** Spanish calls for Return-to-Work Supplement Program (RTWSP) became available in June 2019.

Source: DWC

RETURN-TO-WORK SUPPLEMENT PROGRAM

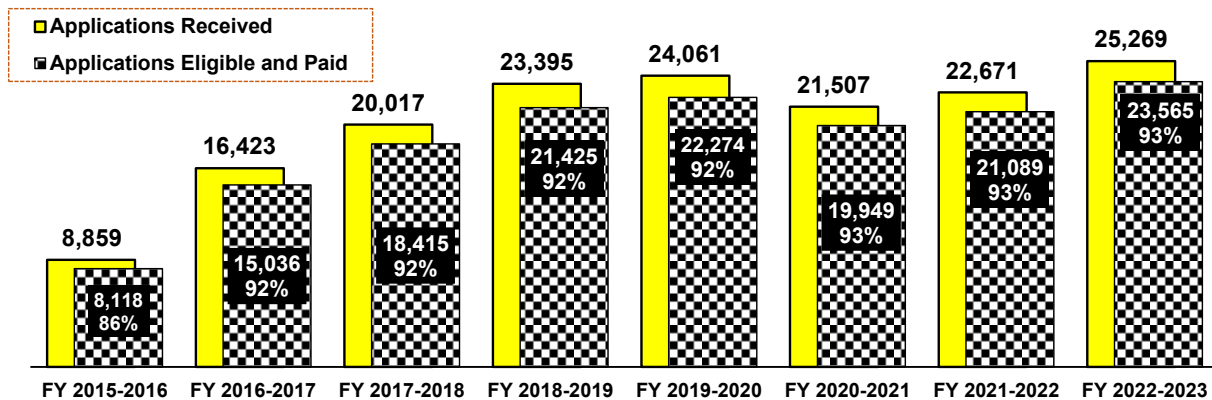
The Return-to-Work (RTW) Fund was created under Labor Code Section 139.48 as one of the components of SB 863 enacted in September 2012. This section requires that DIR's Return-to-Work Supplement Program (RTWSP) administer a \$120 million fund for the purpose of making supplemental payments to workers whose permanent disability benefits are disproportionately low in comparison to their earnings losses. Injured workers may be eligible for a one-time \$5,000 Return-to-Work supplement if they have a date of injury on or after January 1, 2013, and have received a Supplemental Job Displacement Voucher (SJDB) because of that injury. The benefit is administered by DIR's RTWSP in accordance with the regulations implemented on April 13, 2015, and amendment effective March 20, 2017¹⁶¹. The RTWSP application is only available online. For those with no access to a computer, every DWC district office has a kiosk equipped with a computer, scanner, and printer enabling them to apply.

As shown in Figure 98, the number of applications received almost tripled from FY 2015-2016 to FY 2019-2020. When excluding FY 2015-2016, on average 92-93 percent of the RTWSP applications received were eligible for payment. Similarly, the number of eligible RTWSP nearly tripled from FY 2015-2016 to FY 2019-2020. According to the RTWSP staff, the increase in applications could be explained by the collaborative efforts between RTWSP staff, vocational schools, Vocational Return to Work counselors (VRTW), claims administrators, applicant attorneys, and the injured workers. From FY 2019-2020 to FY 2020-2021, mainly due to the COVID-19 pandemic, the number of applications received decreased by 11 percent and the number of eligible RTWSP applications decreased by 10 percent. As the economy began reopening in 2021, the number of applications received increased by 17.5 percent from FY 2020-2021 to FY 2022-2023 and the number of eligible RTWSP applications increased by 18 percent in the same period.

¹⁶¹ <http://www.dir.ca.gov/ODRegulations/ReturnToWorkRegulations/ReturnToWork.html>;
<http://www.dir.ca.gov/ODRegulations/ReturnToWork/ReturnToWork.html>.

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Figure 98: Total RTWSP Applications Received and the Share of Applications Eligible and Paid



Source: DWC

According to Figure 98, 7-8 percent of the applications received from FY 2016-2017 to FY 2022-2023 were ineligible according to the RTWSP rules and standards. The reasons for ineligibility from FY 2016-2017 to FY 2022-2023 are detailed in Table 31 and included those falling under 8 CCR Sections: 17302(a), 17302(b), 17304, and 17306.

Table 31: Reasons for ineligibility of RTWSP Applications

8 CCR Sections	Reasons
§17302 (a)	Date of Injury before 1/1/2013
§17302 (b)	Same person applying more than once (System Processed or Reviewer Processed)
§17304	Timeliness (application submitted past the deadline)
§17306	Incomplete voucher, SJDB proof of service missing, wrong voucher

Source: DWC

As the volume of RTWSP eligible applications expanded from FY 2015-2016 to FY 2019-2020, thus increasing the time and resources needed for processing the applications and issuing RTWSP checks, the average days of benefit issuance from application received date increased as well. See Table 32. During the COVID-19 pandemic, DWC office closures slowed down the application processing time, increasing the Average Days of Benefit Issuance from Application Received Date from 44 days in FY 2019-2020 to 59 days in FY 2020-2021 and FY 2021-2022. In 2022-2023, the Average Days of Benefit Issuance from Application Received Date continued to increase up to 61 days.

Table 32: Duration of RTWSP Benefit Issuance

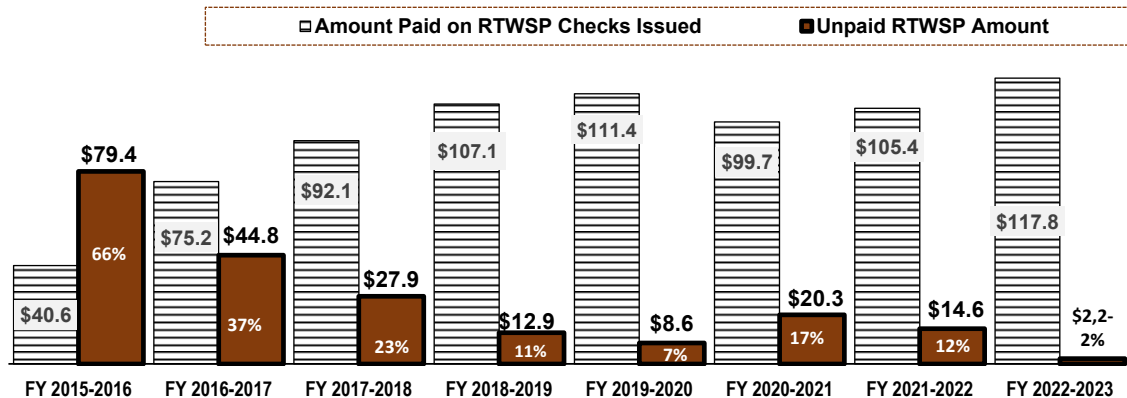
	FY 2015-2016	FY 2016-2017	FY 2017-2018	FY 2018-2019	FY 2019-2020	FY 2020-2021	FY 2021-2022	FY 2022-2023
Average Days of Benefit Issuance from Application Received Date (days)	11	13	20	33	44	59	59	61
Average Days of Benefit Issuance from Decision of Eligibility (days)	5	5	5	5	5	5	5	5

Source: DWC

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The total yearly amount to be distributed by the RTW Supplement Program is \$120 million for a total of 24,000 eligible applications, and each applicant is issued a \$5,000 check. Figure 99 shows that in FY 2015-2016, only 34 percent of the \$120 million annual fund, or \$40.6 million, was disbursed to eligible injured workers. The amount disbursed in FY 2015-2016 increased almost 3 times to \$111.4 million from FY 2015-2016 to FY 2019-2020. The share of the RTWSP that was not distributed decreased from 66 percent in FY 2015-2016 to 7 percent in FY 2019-2020.¹⁶² During the pandemic, the amount disbursed in FY 2020-2021 decreased by 10 percent compared to FY 2019-2020, with the share of the unpaid benefit increasing from 7 to 17 percent in that period. From FY 2020-2021 to FY 2022-2023, the amount disbursed increased by 18 percent, decreasing the share of the unpaid benefit to 2 percent in the same period.

Figure 99: Amount Paid on Eligible RTWSP Applications and the Share of Unpaid Balance



Source: DWC

DIVISION OF WORKERS' COMPENSATION UNINSURED EMPLOYERS BENEFITS TRUST FUND

Introduction

All California employers except the State are required to provide WC coverage for their employees through the purchase of WC insurance or by being certified by the State as permissibly self-insured. However, not all employers comply with the law to obtain WC coverage for their employees, and inspection and investigation by DLSE, Cal/OSHA, or LETF might reveal that they lack this coverage.

The Uninsured Employers Benefits Trust Fund (UEBTF) was established to provide payment of WC benefits to injured employees of illegally uninsured employers. Labor Code Sections 3710-3732 describe the operation of the Fund, and Labor Code Section 62.5 describes the funding mechanism for UEBTF.

The director of the DIR administers the UEBTF. Claims are adjusted for DIR's director by the Special Funds Unit in DWC. UEBTF pursues reimbursement of expenditures from the responsible employers through all available avenues, including filing liens against their property. Litigation for UEBTF is conducted in the name of the director of DIR represented by the Office of the Director Legal Unit.

The analyses of UEBTF activities in the CHSWC Annual Report are based on DWC/DIR Electronic Adjudication Management System (EAMS). EAMS provides UEBTF business analytics and maintains document processing workflows supporting the judicial review process, and expands document processing for UEBTF. EAMS' yearly extracts of UEBTF data reflect changes in numbers and amounts for all years depicted in this report. These UEBTF claims-based data demonstrated in this report for all years, including the last fiscal year, are final and not subject to further adjustments. Please note that the values of the UEBTF expenditures and revenue for the last fiscal year demonstrated in this report are estimates done

¹⁶² See the RAND discussions on RTWSP take-up rate in https://www.rand.org/content/dam/rand/pubs/research_reports/RR2500/RR2548/RAND_RR2548.pdf.

WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

while the fiscal year is open. Therefore, the values of the UEBTF expenditures and revenue are subject to final adjustments after DIR accounting books are closed. The accounting data for UEBTF expenditures and revenue is the official information reported to the Governor.

Funding Liabilities and Collections

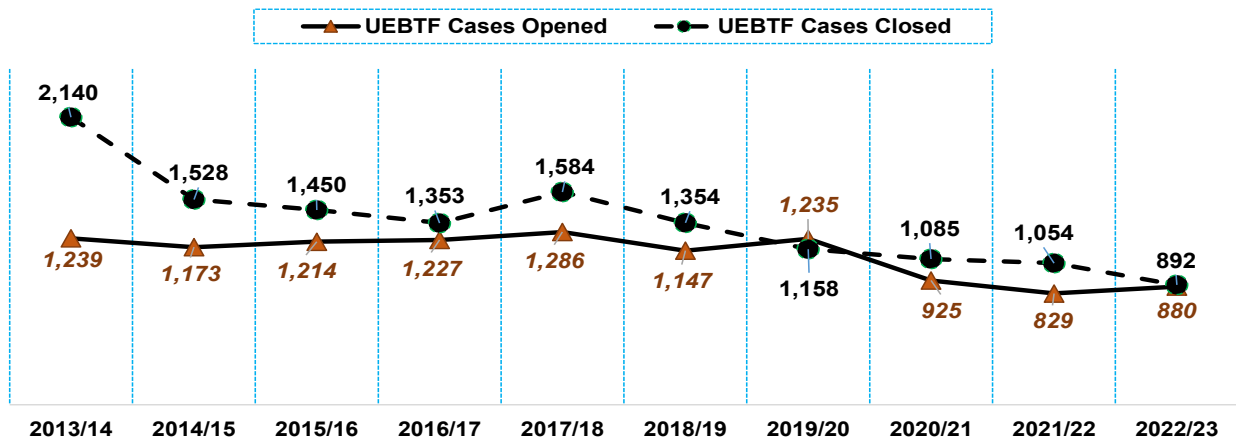
UEBTF Funding Mechanisms

UEBTF funding comes from:

- Annual assessments on all insured and self-insured employers, required by Labor Code Section 62.5(e). According to Labor Code Section 62.5(e), the “total amount of the assessment is allocated between the employers in proportion to the payroll paid in the most recent year for which payroll information is available.”¹⁶³ The assessment for insured employers is based on a percentage of the premium, while the percentage for self-insured employers is based on a percentage of indemnity paid during the most recent year. The total assessment collected pursuant to Labor Code Section 62.5 was \$22.0 million for FY 2017-2018 and \$21.2 million for FY 2018-2019.
- Fines and penalties collected by DIR. These include Division of Labor Standards Enforcement (DLSE) penalties and Labor Code Section 3701.7 penalties on self-insured employers.
- Recoveries from illegally uninsured employers per Labor Code Section 3717.

The number of new and closed UEBTF cases is shown in Figure 100. Over the period FY 2013-2014 to FY 2022-2023, excluding FY 2019-2020, more UEBTF cases were closed than opened. In FY 2013-2014, on average, 2 cases were closed for each case opened, and from FY 2014-2015 to FY 2021-2022, excluding FY 2019-2020, this rate decreased to an average of 1.2 yearly closed cases for each UEBTF case opened. In 2022-2023, 1 case was closed for each UEBTF case opened.

Figure 100: UEBTF Cases Opened and Closed, FY 2013-2014 to FY 2022-2023



Source: DWC

Cost of the Uninsured Employers Benefits Trust Fund

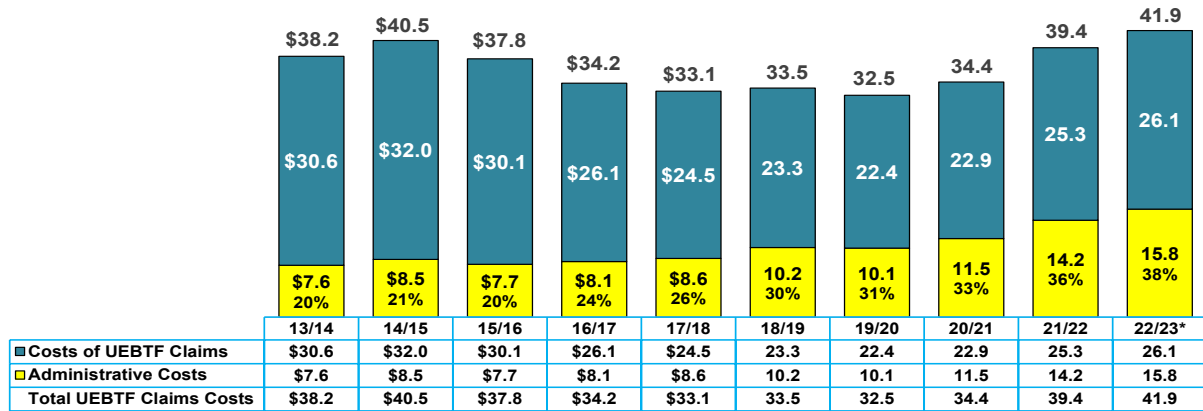
Figure 101 shows that the total amount paid on UEBTF claims decreased overall by 15 percent from FY 2013-2014 to FY 2019-2020 and then increased by 29 percent from FY 2019-2020 to FY 2022-2023. Administrative costs associated with claim payment activities fluctuated between \$7.6 million and \$8.5

¹⁶³ Prior to the workers' compensation reforms of 2004, the funding for UEBTF came from the General Fund.

WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

million from FY 2013-2014 to FY 2016-2017, increased overall by 24 percent from FY 2016-2017 to FY 2019-2020, and then continued to increase by 56 percent from FY 2019-2020 to FY 2022-2023 during the COVID-19 pandemic. The share of UEBTF administrative costs increased from 20 percent of total costs in FY 2013-2014 to 38 percent in FY 2022-2023.

Figure 101: Payments and Administrative Costs on UEBTF Claims, FY 2013-2014 to FY 2022-2023 (\$ million)

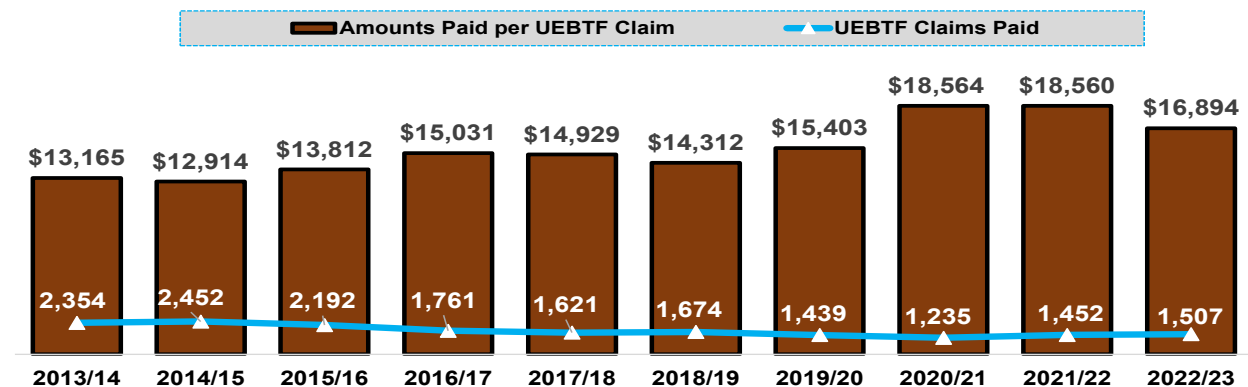


* Amounts for FY 2022-2023 are subject to change.

Data Source: DWC

As shown in Figure 102, the average amount paid per UEBTF claim increased overall by 14 percent from FY 2013-2014 to FY 2016-2017, averaged \$15,000 from FY 2016-2017 to FY 2019-2020, and then increased by 20 percent from FY 2019-2020 to FY 2020-2021, without changing in FY 2021-2022. As the the number of unpaid claims decreased by 38 percent from FY 2013-2014 to FY 2021-2022, the average amount paid per UEBTF claim increased overall by 41 percent in the same period. From FY 2021-2022 to FY 2022-2023, the number of unpaid claims increased by 4 percent and the average amount paid per UEBTF claim decreased by 9 percent.

Figure 102: Average Amount Paid per UEBTF Claim and the Number of UEBTF Claims Paid, FY 2013-2014 to FY 2022-2023



Source: DWC

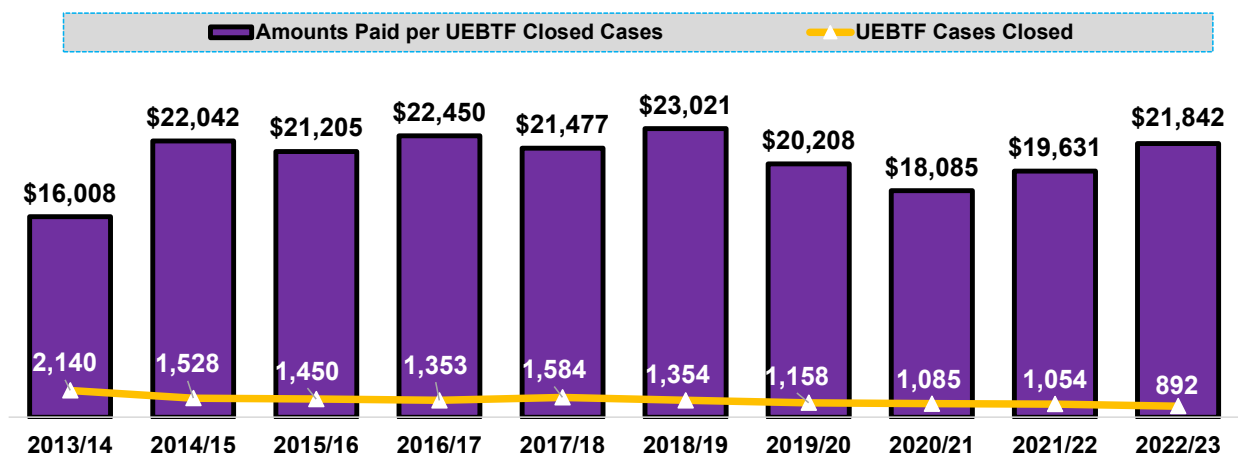
Figure 103 shows the number and the average amount paid on UEBTF closed cases. UEBTF closes a case after it has either been paid off or settled or it has not settled but has been inactive for one year.¹⁶⁴ Between FY 2013-2014 and FY 2022-2023, the number of UEBTF cases closed decreased overall by 58

¹⁶⁴ UEBTF normally closes a case on the grounds of inactivity for one year at the discretion of the adjuster. However, the case could be reopened if the applicant reappears for reasons such as medical treatment or case settlement.

WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

percent, excluding a one-time increase by 17 percent from FY 2016-2017 to FY 2017-2018. The average amount paid per closed case increased by 38 percent, from FY 2013-2014 to FY 2014-2015, and then averaged \$22,000 per closed case from FY 2014-2015 to FY 2018-2019. From FY 2018-2019 to FY 2020-2021, both the number of cases closed, and the amount paid per closed case declined by about 20 percent before the average paid per closed case recovered by 21 percent from FY 2020-2021 to FY 2022-2023 with the number of closed cases decreasing by 18 percent.

Figure 103: Average Amount Paid per UEBTF Closed Case and the Number of UEBTF Cases Closed, FY 2013-2014 to FY 2022-2023

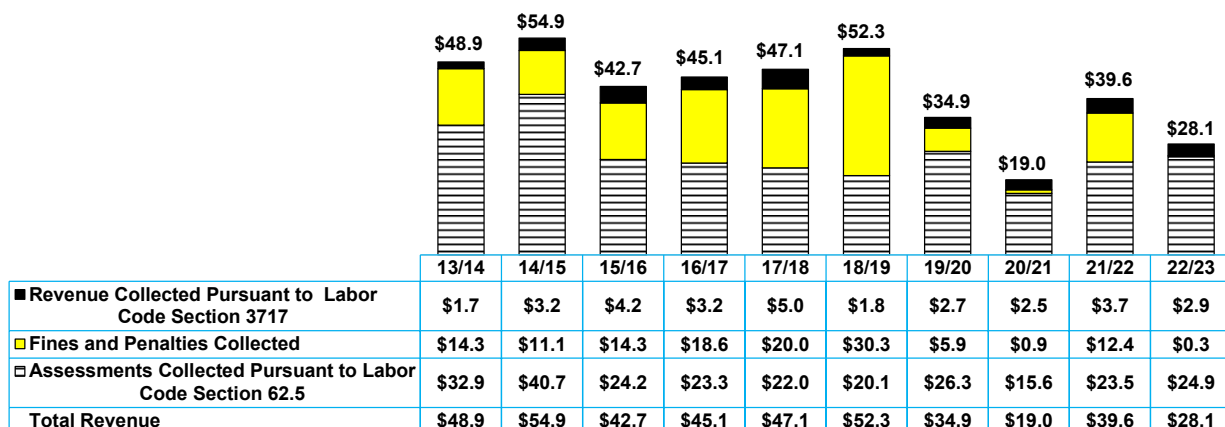


Source: DWC

Figure 104 shows the monies collected by the source of the revenue. Values for the two components of UEBTF revenue such as revenue collected pursuant to Labor Code § 3717 and fines and penalties for the last fiscal year are estimates based on previous fiscal year results and are subject to final adjustments after DIR accounting books are closed. The value of assessments collected pursuant to Labor Code § 62.5 include assessments collected by OSIP and DWC and are final as reported in Figure 104. The total UEBTF revenue collected was in the range of \$43.0 million to \$55.0 million per year from FY 2013-2014 to FY 2018-2019, followed by a 33 percent decline from FY 2018-2019 to FY 2019-2020, and an additional sharp decrease by 45 percent from FY 2019-2020 to FY 2020-2021. The decrease in total UEBTF revenue collected from FY 2018-2019 to FY 2019-2020 was mostly due to a 5-fold decline in fines and penalties collected, and the reduction from FY 2019-2020 to FY 2020-2021 was a result of a sharp decline in both its largest component, as the assessments collected pursuant to Labor Code § 62.5, and fines and penalties collected. The total UEBTF revenue collected experienced more than a 2-fold increase from FY 2020-2021 to FY 2021-2022, with fines and penalties increasing more than 12-times in the same period. The preliminary data for FY 2022-2023 are subject to change.

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Figure 104: UEBTF Revenues, FY 2013-2014 to FY 2022-2023 (in \$ million)



* Amounts for FY 2022-2023 are subject to change

Data Source: DWC

DIVISION OF WORKERS' COMPENSATION SUBSEQUENT INJURIES BENEFITS TRUST FUND

The Subsequent Injuries Benefits Trust Fund (SIBTF) is a fund established and administered by the California DWC in the DIR and governed by Labor Code Section 4751. The legislative intent behind Labor Code Section 4751 is:¹⁶⁵

- to encourage employers to offer employment to workers with pre-existing disabilities without taking economic responsibility for that condition if the worker incurs a work-related injury that causes the pre-existing disabilities to worsen
- to encourage workers with pre-existing disabilities to seek employment and have mechanisms in place to assist them in case their disabilities increase after a workplace injury

SIBTF accomplishes these two goals by providing benefits to qualified injured workers. The subsequent injury must be an industrial injury whereas the pre-existing disability can be either industrial or non-industrial but must be "labor disabling," meaning it limits them in the open competitive labor market. To qualify for SIBTF benefits, the following conditions must be met.¹⁶⁶

1. The employee must have a prior permanent partial disability and a subsequent compensable injury
2. The degree of disability caused by the combination of both disabilities must be greater than that which would have resulted from the subsequent injury alone
3. The combined effect of the pre-existing disability and subsequent injury must be equal to or more than 70 percent.
4. The employee's condition must be one of the following:
 - The previous disability or impairment affected a hand, an arm, a foot, a leg or an eye; and the permanent disability resulting from the subsequent injury affects the opposite and corresponding member; and the disability from the subsequent injury, when considered alone and without regard to or adjustment for the occupation or age of the employee, is equal to 5 percent or more of the total.

¹⁶⁵ <https://www.dir.ca.gov/dwc/claims.html>.

¹⁶⁶ https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=LAB§ionNum=4751.

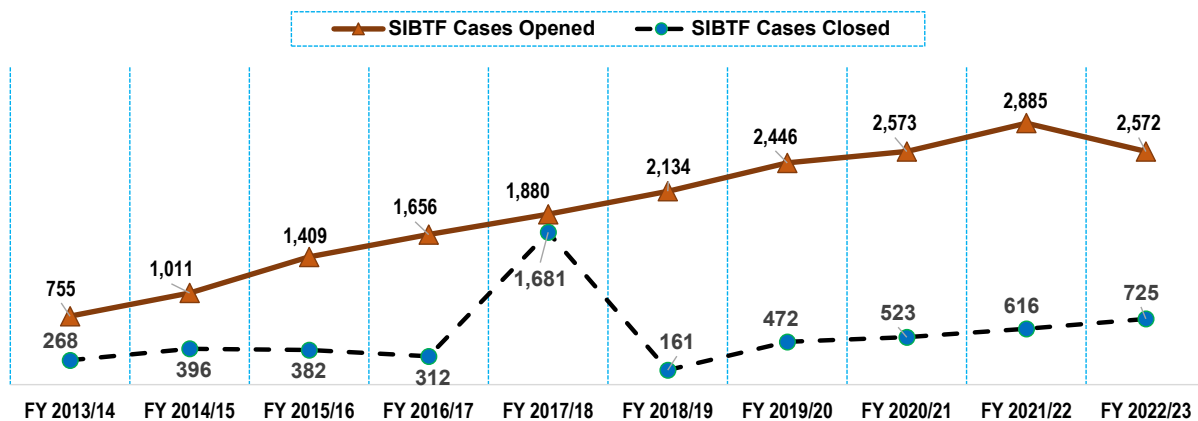
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- The permanent disability resulting from the subsequent injury, when considered alone and without regard to or adjustment for the occupation or the age of the employee, is equal to 35 percent or more of the total.

The analyses of SIBTF activities in the CHSWC Annual Report are based on the DWC/DIR Electronic Adjudication Management System (EAMS). EAMS provides SIBTF business analytics and maintains document processing workflows supporting the judicial review process, updates classifications for case participants to match the current needs, and expands document processing for SIBTF.¹⁶⁷

The number of WC cases involving SIBTF have been steadily increasing during almost the entire period since FY 2013-2014, totaling 19,321 SIBTF cases opened in 10 years. Figure 105 shows that, from FY 2013-2014 to FY 2021-2022, the number of SIBTF cases opened almost quadrupled before decreasing by 11 percent from FY 2021-2022 to FY 2022-2023. Over the same period, 5,536 cases or 29 percent were closed, with a spike of 1,681 cases closed in FY 2017-2018 because of the identification of abandoned cases.¹⁶⁸

Figure 105: Number of SIBTF Cases, Opened and Closed



Source: DWC

From FY 2013-2014 to FY 2021-2022, not only did the number of SIBTF opened cases almost quadruple, but as shown in Figure 106, the SIBTF costs increased by 7 times. The number of SIBTF cases and the value of claims increased in part because of changes in apportionment rules according to WC legislation such as SB 899 and Labor Code Sections 4663 and 4664.¹⁶⁹ As a result, applications for SIBTF benefits and benefit payouts increased from \$8 million in FY 2003-2004, the last fiscal year before 2004 reforms (not included in the period examined in this report and in the figures), to \$123.3 million in FY 2020-2021.¹⁷⁰ The preliminary data shows that a 31 percent increase in SIBTF costs is expected from FY 2021-2022 to FY 2022-2023, while the number of SIBTF opened cases decreased by 11 percent in the same period (see Figure 105).

¹⁶⁷ See DWC Electronic Adjudication Management System (EAMS) section in this chapter for a more detailed description of EAMS activities.

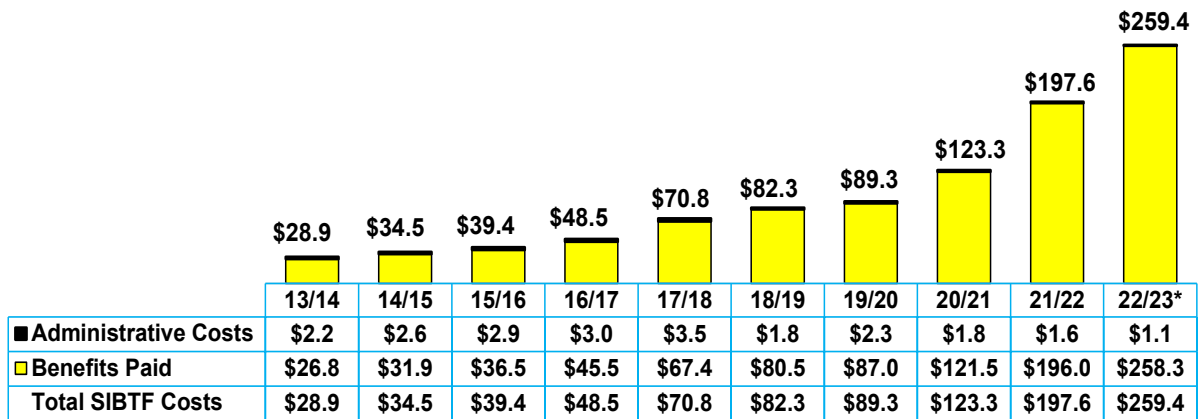
¹⁶⁸ In FY 2017-2018, the number of cases closed was high because a special examination was conducted (via overtime by a staff person in another unit) of all open cases in order to identify abandoned cases (i.e. the applicant passed away prior to finalizing case against SIBTF); https://esd.dof.ca.gov/Documents/bcp/1920/FY1920_ORG7350_BCP2832.pdf.

¹⁶⁹ According to these amended provisions of Labor Code § 4663 and 4664, the apportionment of permanent disability was based on the causation of disability. This means that workers were not entitled to compensation for the worsening of a pre-existing condition.

¹⁷⁰ https://esd.dof.ca.gov/Documents/bcp/1920/FY1920_ORG7350_BCP2832.pdf

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Figure 106: SIBTF Total Costs (in \$ million)

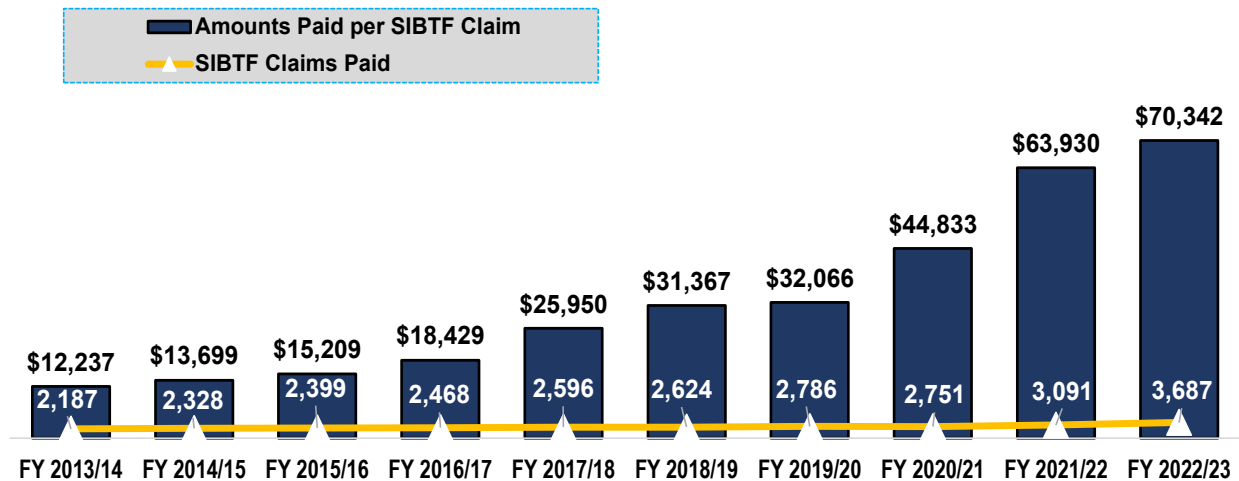


* Amounts for FY 2022-2023 are subject to change.

Data Source: DWC

According to Figure 107, while from FY 2013-2014 to FY 2021-2022 the number of SIBTF claims paid increased 1.7 times, the average paid amount per SIBTF claim increased almost 6 times, from an average of \$12,237 in FY 2013-2014 to \$70,342 in FY 2022-2023.

Figure 107: Number of SIBTF Claims Paid and Average Amount Paid per SIBTF Claim

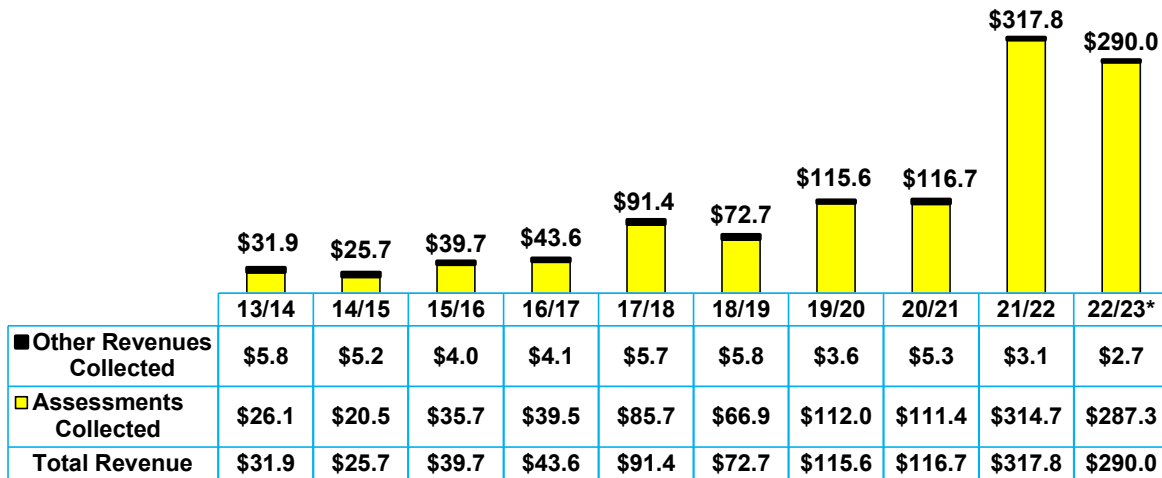


Source: DWC

SIBTF funding comes mainly from annual assessments collected from insured and self-insured employers with the share of other revenues collected in total revenue falling from about 20 percent in FY 2013-2014 and FY 2014-2015 to 5 percent in FY 2020-2021 and 1 percent in FY 2021-2022 and FY 2022-2023. As Figure 108 shows, total SIBTF revenue from FY 2013-2014 to FY 2020-2021 almost quadrupled overall after some fluctuation and spikes, and then tripled from FY 2020-2021 to FY 2021-2022. Among the reasons for this significant increase in revenue assessments could be increases in both the number of paid claims and the amount paid per claim, changes in the timing of permanent disability (PD) payments in which DIR must start paying SIBTF benefits to qualifying workers at the same time that the employer starts paying PD benefits, SIBTF benefits paid in addition to PD payments from the employer, instead of upon a declaration of permanent and stationary status, and overall increases in PD benefits, which make it more feasible for injured workers to pursue payments from the SIBTF fund. According to preliminary data for FY 2022-2023, the total SIBTF revenue will decrease by about 9 percent from FY 2021-2022.

WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

Figure 108: SIBTF Total Revenues Recovered (in \$ million)



* Amounts for FY 2022-2023 are subject to change.

Data Source: DWC

SIBTF Study

According to DIR's presentation at the CHSWC's March 4, 2021 meeting, DIR noted several concerns about the SIBTF program including a sharp increase in the numbers of new claims filed and total liabilities (amounts paid out), as also depicted in the above charts, for the program in recent years.¹⁷¹ DIR subsequently issued an RFP in early 2022 to take a deep dive into the numbers and trends and practices of SIBTF and the contract for the SIBTF study was awarded to Rand Corporation. The study was launched in late November 2023 and a final report will be issued in May of 2024.¹⁷²

ADJUDICATION SIMPLIFICATION EFFORTS

Division of Workers' Compensation Information System

WCIS receives an average of 700,000 First Reports of Injury and Subsequent Reports of Injury (FROI/SROI) claims per year and 11 million medical bills with 32 million bill lines per year from WC claims administrators. Covid-19 has brought down the total number of FROI claims from 723,000 in 2019 to 678,000 in 2020. In 2021 the number of FROI claims bounced back to 708,000, and the number of claims in 2022 (759,000 claims) exceeded the pre-pandemic level, reaching the highest number of claims in the last 15 years. WCIS data is being used more than ever to help monitor and improve the WC system in California. The quality of the data has enabled rigorous empirical research, providing a real, data-informed foundation for policy. WCIS staff provides research, regulatory and educational outreach support through one-on-one training and consultation with reporting entities to improve the FROI/SROI and medical billing data set.

To be able to increase the quality of the FROI/SROI data WCIS collects in order to support more regulatory analysis and meet the mandates, in 2022 the WCIS team has started the ground work to adopt the IAIABC FROI/SROI Release 3.1.

- Evaluating the efficiency and adequacy of benefit delivery

¹⁷¹ CHSWC Minutes of March 4, 2021 meeting. https://www.dir.ca.gov/chswc/Meetings/2021/Minutes_03-04-21.pdf.

¹⁷² Email correspondence from Kim Card, DIR's Office of Director, Legal Unit.

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- Monitoring Covid-19 exposures in workplace and identifying high Covid-19 exposure risk occupation and industry groups
- Assisting the department and CalOSHA in the safety and health rulemaking process
- Supporting the department in its evaluation of health and safety hazards
- Analyzing the impact of assembly and senate bills
- External inquiries and research requests coming from universities, research organizations, state holders, trading partners and the media.

Since April 6 of 2016, 90.6 million medical bills with 258.8 million bill lines were collected in WCIS Medical Version 2.0. Pre pandemic medical bills averaged 11 million per year. During the pandemic medical bill count increased to 11.5 million in 2020, 12.1 million in 2021 and went back down to 11.3 million by 2022.

The medical billing data is used by DIR, other CA state entities, bona fide researchers and the public at large. State agencies such as the California Department of Public Health continues to use the WCIS data in their health surveillance efforts including Coronavirus disease. While most data is provided via an MOU between DWC and data requestors, the WCIS team also makes aggregated data available through the DWC website.

WCIS medical data continues to provide supportive evidence for California's:

- Combat against medical fraud and abuse
- COVID-19 legislative analysis
- Occupational disease analysis
- MTUS drug formulary
- Measuring the timeliness and utilization of treatment for injured workers.

Division of Workers' Compensation Electronic Adjudication Management System

Senate Bill (SB) 863 requires electronic lien filing as well as electronic payment of filing or activation fees on some liens. The DWC/DIR Electronic Adjudication Management System (EAMS) team successfully deployed the lien filing and activation fee processes to e-Forms, JET, and Public Search on January 1, 2013.

Upgrades to the new payment processes, including a shopping cart function and increased capacity, were rolled out in March, April, and June 2013. Improvements to these processes are continuing.

The electronic Notice and Request for Allowance of Lien and the Declaration of Readiness forms have been revised, and a new form, the Request for Factual Correction of an Unrepresented Panel Qualified Medical Examiner (QME) Report, was created.

EAMS regulations for e-Form filing, JET filing, and lien fees were approved. Due to a preliminary injunction ordered by a federal district judge in *Angelotti Chiropractic, Inc., et al. v. Baker, et al.*, effective November 19, 2013, DWC/DIR EAMS team suspended the collection of activation fees for liens filed before January 1, 2013. Resolution of the appeal of the injunction are discussed below. Through EAMS, DWC continues to collect the filing fee for liens filed after January 1, 2013.

Check processing for the Uninsured Employers Benefit Trust Fund (UEBTF) shifted from DIR Accounting to the State Controller's Office.

Check processing for the Subsequent Injuries Benefit Trust Fund (SIBTF) shifted from DIR Accounting to the State Controller's Office.

WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

To better track Senate Bill (SB) 863 changes, modifications were made to Expedited Hearings, Liens, and reasons for filing Liens.

Tools were created to reschedule multiple court hearings at the same time and change Uniform Assigned Name addresses on multiple cases. The improved Notice of Hearing data mailer shows all cases set for hearing when companion cases are scheduled.

New software tools enable EAMS staff to systematically add or change law firms and claims administrators on multiple cases.

EAMS venue adjustments allow case assignment and hearing scheduling at the Santa Barbara satellite district office.

The upgraded EAMS Case Participants list shows internal and external users the complete addresses of all case parties on a single page.

EAMS staff is working to better incorporate other portions of SB 863, including Independent Medical Review (IMR) and Independent Bill Review (IBR). Many requests for changes to improve EAMS have been implemented.

In 2015 and 2016, DIR created a more robust and secure network for EAMS by refreshing servers, adding security features, and updating infrastructure software and Cognos reporting software.

Activities in 2015:

- DIR enriched workflows for document processing for judge review, lien processing (to systematically add the lien claimant and lien claimant representative as case participants), and expanded workflows for the Uninsured Employers Benefits Trust Fund (UEBTF). Document processing was improved by adding document titles and updating classifications for case participants to our current needs. The ability to match a new case to a previously injured worker was improved by adding a portion of the worker's first name in the matching criteria.
- In November, DIR made changes in the Declaration of Readiness and resumed the collection of lien activation fees in compliance with a ruling issued by Judge George Wu of the US District Court for the Central District of California in *Angelotti Chiropractic, Inc., et al. v. Baker, et al.*
- In December, DIR implemented changes to halt the collection of lien activation fees, in compliance with the ruling issued in *Angelotti Chiropractic, Inc., et al. v. Baker, et al.*

Activities in 2016:

- DIR enlarged the comment fields in EAMS, created additional case participant roles, and enhanced the Public Information Search Tool. DIR streamlined the workflow for settlement notification to the judges. JET filing internal processes were improved. DIR enhanced document processing by updating zip code lists, adding more document titles and enforcing the lien claimant UAN (Uniform Assigned Name) on all lien submissions.
- DIR streamlined the process for setting hearings before judges and developed new UEBTF and SIBTF processes for those hearings. The department improved UEBTF document processing, data reliability, and communication templates.

In 2017, DIR began implementation of Assembly Bill 1244 and Senate Bill 1160.

Activities in 2017:

- EAMS support for the Special Adjudication Unit (SAU) was designed and implemented to conduct lien consolidation proceedings.

WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

- Processes were created in EAMS to identify liens of medical providers that have been criminally indicted or suspended in EAMS. Those changes are displayed in EAMS and in the Lien Search results of the Public Information Search Tool.
- DIR revised the electronically filed Notice and Request for Allowance of Lien form to include medical provider information, created the Supplemental Lien Form and Section 4903.05(c) Declaration and updated DWC Document Cover and Separator Sheets to allow submission of SAU case documents into EAMS.
- In August, DIR processed liens that were dismissed by operation of law that did not meet the statutory requirements of Labor Code Section 4903.05.
- DIR improved SIBTF and UEBTF business analytics.

In 2018, DIR completed implementation of Assembly Bill 1244 and Senate Bill 1160 and updated EAMS software and hardware, FileNet storage and scanning software.

2018 DIR activities:

- Expanded workflows in document processing for SAU judge review. It improved scheduling of hearings and created communication templates for SAU and gave e-filers access to SAU screens.
- Reduced redundancy and increased efficiency in EAMS software by updating Curam case management software according to current industry standards.

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

2019 DIR activities:

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

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

2020 DIR activities:

- Expanded the number of forms and documents to be submitted through JET filing and updated the internal processing of erred case opening documents.
- Completed the process of updating E-forms to remove watermark comments and populate information entered into previously blocked fields.
- Completed upfront UAN validations for structured E-form submissions and improved processing of the Answer to Application for Adjudication of Claim by automatically adding new defendants.

WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

- Continued to enrich workflows for document processing for judges' review, added document titles for better classification, and created an internal template for use when rejecting medical reports pursuant to Labor Code § 139.2(d)(2).
- Upgraded EAMS reporting software and document repository and viewing software to current industry standards.
- Improved the ease of viewing scheduled hearings.
- Collected data on employment disputes to conform to AB 5.
- Added and updated Orders, work queues, related workflows and Communications templates.
- Updated security roles for SAU and UEBTF.
- Improved the processing of unstructured documents.
- Added access to DEU forms by Claims Administrators.
- Created the ability to view, add and modify the Judge Conference Lines in EAMS to integrate ADJ and SAU virtual conferences.
- Modified hearing notices to provide notice of virtual conferences.
- Updated processing of ADJ, UEBTF and SIBTF forms.

2021 DIR activities:

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

2022 DIR activities:

- Provided alternative Internet Explorer settings for use in the Microsoft Edge browser due to Microsoft no longer supporting Internet Explorer.
- Continued migrating from physical servers to virtual servers.
- Began preparing for upgrade to Curam version 7.0.9.
- DIR completed the FileNet database migration.
- Started upgrading eForms to be more accessible and user friendly.
- Enhanced system outage tracking tools.
- DIR updated JET File to allow filers to submit unstructured forms using additional document formats.
- DIR completed the 15-character database passwords update

WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

2023 DIR activities:

- DIR continued to focus on technical infrastructure improvements, such as migrating from physical servers to virtual servers, database updates, and operating system upgrades.
- DIR began participating in EAMS Modernization outreach meetings with internal and external stakeholders.
- DIR continued the on-going upgrade of eForms and included this as part of the EAMS Modernization project plan.
- DIR added online self-guided training tools for prospective and current e-filers to the EAMS eForms webpage.
- DIR updated and increased access to resources related to filing in EAMS.
- DIR continued to update JET File and FileNet to increase access and usability for internal and external stakeholders.

Carve-Outs: Alternative Workers' Compensation Systems

The Legislature has enacted reforms to California's statutory WC system by authorizing employers and unions to review, negotiate and settle the WC claims of union-represented workers through an approved alternative dispute resolution program (ADR)¹⁷³ that has been approved by DIR/DWC.

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

CHSWC is monitoring the carve-out program (Labor Code Section 77), which is administered by DWC. DIR/DWC administers the ADR program, ensuring that individual participants meet the requirements for participation set out in statute and regulation (Labor Code § 54, 111, 133, and 3201). DWC has promulgated regulations pursuant to Labor Code sections 3201.5 and 3201.7; those regulations are codified at Title 8, section 10200 et seq. of the California Code of Regulations (CCR).¹⁷⁴

CHSWC Study of Carve-Outs

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

The study team found indications that: the most optimistic predictions about the effects of carve-outs on increased safety, lower dispute rates, far lower dispute costs, and significantly more rapid return to work (RTW) have not occurred, but that the most pessimistic predictions about the effect of carve-outs on reduced benefits and access to representation have not realized either.

¹⁷³ These programs are sometimes colloquially referred to as "carve outs" because they are an approved exception to the WC claims system created and governed by the Labor Code and corresponding regulations. See also:

<https://www.dir.ca.gov/dwc/carveout.html>

¹⁷⁴ Collective Bargaining Agreements Under Labor Code Sections 3201.5 and 3201.7:

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

WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

For further information ...

How to Create a Workers' Compensation Carve-out in California: Practical Advice for Unions and Employers, CHSWC (2006). <http://www.dir.ca.gov/CHSWC/carve-out1.pdf>

Impact of Senate Bill 228 (2003)

Senate Bill 228 (2003) added Labor Code Section 3201.7, establishing the creation of a new carve-out program for any unionized industry that meets the requirements. This was in addition to the existing carve-out program in the construction industry (already covered under Labor Code Section 3201.5).

Only the union may initiate the carve-out process by petitioning the Administrative Director (AD). The AD will review the petition according to the statutory requirements and issue a letter allowing each employer and labor representative a one-year window for negotiations. The parties may jointly request a one-year extension to negotiate the labor-management agreement.

In order to be considered, the carve-out must meet several requirements including:

- The union has petitioned the AD as the first step in the process.
- A labor-management agreement has been negotiated separate and apart from any collective bargaining agreement covering affected employees.
- The labor-management agreement has been negotiated in accordance with the authorization of the AD between an employer or groups of employers and a union that is recognized or certified as the exclusive bargaining representative that establishes any of the following:
 - An ADR system governing disputes between employees and employers or their insurers that supplements or replaces all or part of those dispute resolution processes contained in this division, including, but not limited to, mediation and arbitration. Any system of arbitration shall provide that the decision of the arbiter or board of arbitration is subject to review by the Appeals Board in the same manner as provided for reconsideration of a final order, decision, or award made and filed by a workers' compensation administrative law judge.
 - The use of an agreed list of providers of medical treatment that may be the exclusive source of all medical treatment provided under this division.
 - The use of an agreed, limited list of Qualified Medical Evaluators (QMEs) and Agreed Medical Evaluators (AMEs) that may be the exclusive source of QMEs and AMEs under this division.
 - A joint labor-management safety committee.
 - A light-duty, modified job or return-to-work program.
 - A vocational rehabilitation or retraining program utilizing an agreed list of providers of rehabilitation services that may be the exclusive source of providers of rehabilitation services under this division.
- The minimum annual employer premium for the carve-out program for employers with 50 employees or more is \$50,000, and the minimum group premium is \$500,000.
- Any agreement must include right of counsel throughout the ADR process.

Impact of Senate Bill 899 (2004)

In 2004, construction industry carve-outs were amended per Labor Code Section 3201.5 and carve-outs in other industries were amended per Labor Code Section 3201.7 to permit the parties to negotiate "any aspect of the delivery of medical benefits and the delivery of disability compensation to employees of the employer or group of employers who are eligible for group health benefits and non-occupational disability

WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

benefits through their employer.”¹⁷⁵ As of the date of this annual report, no subsequent legislation has amended the substantive rights or obligations of parties to an authorized ADR program.

Recognizing that many cities and counties, as well as private industries, were interested in knowing more about carve-outs and about health and safety training and education within a carve-out, CHSWC hosted a conference devoted to carve-outs/alternative dispute resolution on August 2, 2007, in Emeryville, California. The conference was for all stakeholders in the WC system including: those in existing carve-outs; those considering establishing a carve-out; unions and employers; risk managers; government agencies; third-party administrators; insurers; policymakers; attorneys; and health care providers.

The conference provided an opportunity for the health and safety and WC communities and the public to share ideas for establishing carve-outs which have the potential to: improve safety programs and reduce injury and illness claims; achieve cost savings for employers; provide effective medical delivery and improved quality of medical care; improve collaboration between unions and employers; and increase the satisfaction of all parties.

SB 863 Carve-out Expansion (2012)

SB 863 amended Labor Code § 3201.7 to permit the State of California to enter into a carve-out. As of 2019, no state agency has pursued this option.

Requirements of ADR program reports to DWC under 8 CCR Section 10203

Employer participants in authorized ADR programs are obligated to make regular reports to DWC. Section 10203 of title 8 of the California Code of Regulations details those obligations. Section 10203 requires that every employer participating in an authorized ADR program provide DWC with specified information about WC claims for the previous calendar year on or before March 31 of each year. For each claim with a date of injury on or after January 1, 2004, the information is to be updated annually for the previous four calendar years, thereby allowing longer-term claims trajectories and costs to be determined. In order to fulfill the reporting requirement, groups of employers must, on behalf of their employer-members, either submit data directly to DWC, or “provide the Administrative Director with written authorization to collect the information from the appropriate claims administrator. However, if the Administrative Director is unable to obtain the information with the written authorization, the employer shall remain responsible for obtaining and submitting the information.” (Cal. Code Regs., tit. 8, § 10203, subd. (a)(2).)

Person hours and payroll covered by agreements filed

As Table 33 shows, for calendar year 2022, 71 reporting programs reported payroll and person-hours. Carve-out programs reported that for the 2022 calendar year, they covered 149 million work hours and \$5.4 billion in payroll. The reported average wage per carve-out person-hours worked was \$36 per hour.

Table 33: Estimated Person-Hours Worked and Payroll, 2008–2022

Calendar Year (Reporting Year)	Reporting Programs	Employers	Payroll (Million\$)	Person-Hours Worked (Millions)	FTE (estimated)	Average Hourly Wage
2008	19	1,274	\$2,782	93	46,500	\$30
2009	21	876	\$3,393	100	50,000	\$34
2010	19	1,177	\$1,976	67	33,500	\$29
2011	22	1,586	\$2,418	78	39,000	\$31
2012	25	1,508	\$1,849	69	34,500	\$27

¹⁷⁵ Sen. Bill No. 899 (2003 – 2004 Reg. Sess.) §6 & §7 [Stats. 2004, ch. 34, §6]

WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

Calendar Year (Reporting Year)	Reporting Programs	Employers	Payroll (Million\$)	Person-Hours Worked (Millions)	FTE (estimated)	Average Hourly Wage
2013	22	1,815	\$1,226	51	25,600	\$24
2014	27	1,901	\$3,255	122	60,900	\$27
2015	23	1,552	\$2,553	89	44,600	\$29
2016	34	NA	\$3,203	159	79,400	\$20
2017	28	NA	\$3,000	94	47,000	\$32
2018	19	187	\$3,597	101	50,500	\$36
2019	59	360	\$4,210	126	63,000	\$33
2020	64	150	\$3,406	126	62,800	\$27
2021	68	144	\$6,457	164	81,914	\$39
2022	71	394	\$5,416	149	74,742	\$36

Data Source: DWC

Status of Carve-out Agreements

The following websites are updated regularly and show the current status of carve-out agreements pursuant to Labor Code Sections 3201.5 and 3201.7, as reported by DWC.

Construction Industry Carve-out Participants Labor Code Section 3201.5

<http://www.dir.ca.gov/dwc/Carveout/ConstructionCarveOut.htm>.

Non-Construction Industry Carve-out Participants Labor Code Section 3201.7

<http://www.dir.ca.gov/dwc/Carveout/NonConstructionCarveOut.htm>.

For further information ...

The latest information on carve-outs may be obtained at:

<http://www.dir.ca.gov/dwc/carveout.html>.

Labor Code Section 3201.5.

https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=3201.5.&lawCode=LAB.

Labor Code Section 3201.7.

https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=3201.7.&nodeTreePath=5.1.1&lawCode=LAB.

How to Create a Workers' Compensation Carve-out in California: Practical Advice for Unions and Employers. CHSWC (2006). <http://www.dir.ca.gov/CHSWC/carve-out1.pdf>.

Carve-outs: A Guidebook for Unions and Employers in Workers' Compensation. CHSWC (2004).

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

DIVISION OF LABOR STANDARDS ENFORCEMENT BUREAU OF FIELD ENFORCEMENT (TO BE UPDATED)

The Bureau of Field Enforcement (BOFE) in the Division of Labor Standards Enforcement (DLSE) is responsible for investigation and enforcement of statutes covering WC insurance coverage, child labor, cash pay, unlicensed contractors, and Industrial Welfare Commission orders, as well as group claims involving minimum wage and overtime claims. BOFE also handles criminal investigations involving these group claims.

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Table 34 lists the violations and related penalties from FY 2020–2021 enforcement actions.¹⁷⁶ It illustrates the Bureau's performance inclusive of all special programs, such as non-public works field enforcement and prevailing wage enforcement through the Public Works Unit.

Table 34: BOFE (including Public Works) Violations and Penalties by Category, FY 2020–2021

Citation Category	Number of Violations	Penalties Assessed	Wages Assessed
Workers' Compensation	139	\$1,907,383.67	NA
Itemized Statement (L.C. 226)	95	\$5,159,380.00	\$5,044,787.00
Overtime	63	\$437,400.00	\$ 5,533,479.56
Rest and Meal Period	56	\$500,650.00	\$3,281,563.32
Minimum Wage	65	\$643,750.00	\$7,803,412.55
Child Labor	33	\$63,500.00	NA
Split Shift	18	\$82,600.00	\$116,687.84
Liquidated Damages	NA	NA	\$9,927,221.12
Garment Registration	8	\$69,200.00	NA
Garment	6	\$6,000.00	NA
Janitorial Registration	3	\$23,900.00	NA
Car Wash Registration	9	\$79,600.00	NA
Unlicensed Farm Labor Contractor	4	\$30,500.00	NA
Unlicensed Construction Contractor	3	\$9,200.00	NA
Paid Sick Leave (LC 246)	NA	NA	\$137,158.71
Paid Sick Leave (LC 248.1)	NA	NA	\$2,250.00
Paid Sick Leave Poster Requirements	64	\$6,400.00	NA
Violation of Payment of Wages Provision (L.C. 204)	15	\$2,530,248.14	NA
Misclassification	7	\$650,000.00	NA
Reimbursable Business Expenses	NA	NA	\$1,180.00
Violation of Reporting Time	1	\$4,200.00	\$18,063.72
Contract Wages Above Minimum Wage	NA	NA	\$2,173,548.76
Waiting Time Penalties	NA	NA	\$11,930,392.17
Total	589	\$12,203,911.81	\$45,969,744.75
Public Work Totals	516 ^a	\$12,598,321.60 ^b	\$10,979,508.51
GRAND TOTAL	1,105	\$24,802,233.41	\$56,949,253.26

^a The Public Works Unit does not conduct inspections but, rather, measures performance based on cases opened for audit purposes. The data in this table should be understood as 1,964 audits conducted, with 516 civil wage and penalty assessments (CWPA's) issued (rather than the number of citations/violations). These measurements are included here to provide a full picture of the Division's performance.

^b Includes Labor Code Sections 1775, 1777.7, 1813, and 1776 penalty collections.

Source: DLSE

For further information ...

<https://www.dir.ca.gov/dlse/DLSEReports.htm>

¹⁷⁶ Bureau of Field Enforcement (BOFE) Report, <https://www.dir.ca.gov/dlse/DLSEReports.htm>.

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DLSE REGISTRATION SERVICES–JANITORIAL SERVICES

Labor Code Sections 1420-1434, the Property Services Workers Protection Act, establish registration requirements for janitorial employers and protection for property service workers in the form of sexual harassment prevention training.

Effective July 1, 2018, all janitorial service provider employers were required to register with DLSE by mail or online by October 1, 2018. The registration fee is \$500 annually and pursuant to L.C. section 1423, failure to register is subject to a fine of \$100 per day, up to \$10,000. DLSE is required to maintain a public database of registered employers, available at <https://cadir.my.salesforce-sites.com/RegistrationSearch>. Fines are also levied for hiring unregistered janitorial service providers, and the registration database can be used to confirm which registered service providers are in compliance.¹⁷⁷

Beginning in January 1, 2019, after janitorial service provider employers are registered, they were also required to provide employees with DLSE-developed in-person sexual harassment prevention training at least once every two years. DIR and CHSWC contracted with the Labor Occupational Health Program at UC Berkeley to develop this training.

Employers must provide the training as required by the adopted [regulations](#) effective July 15, 2020, by using complimentary materials developed by the Labor Occupational Health Program at UC Berkeley for DIR and CHSWC. These materials, available below in [English](#) and [Spanish](#), will be updated as needed to help employers meet Fair Employment and Housing Act requirements for sexual harassment and abusive conduct training as well.¹⁷⁸

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

The data in the Table 35 represent the first five full years of the registration requirement:

Table 35: Janitorial Service Providers: Registration and Labor Code Sections 1423 and 1432(b) Penalties

	Number of new janitorial service providers and contractors registered.	Number of newly registered janitorial service providers who incurred a penalty.	Total Labor Code § 1423 penalties incurred by janitorial service providers and contractors for failure to register by required date.	Total Labor Code § 1432(b) penalties incurred by persons or entities contracting with unregistered janitorial services	Number of janitorial service providers and contractors who renewed their registration in one year.
FY 2018-2019	1,669	5	3 employers were assessed a civil penalty of a total of \$30,000	NA	NA
FY 2019-2020	1,283	2	8 companies were assessed a civil penalty of a total of \$62,600 and \$2,600 had been received.	2 companies were assessed a civil penalty of a total of \$12,000.	0

¹⁷⁷ https://www.dir.ca.gov/DLSE/Janitorial_Registration_FAQs.html.

¹⁷⁸ <https://www.dir.ca.gov/dlse/Janitorial-Training.html>

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	Number of new janitorial service providers and contractors registered.	Number of newly registered janitorial service providers who incurred a penalty.	Total Labor Code § 1423 penalties incurred by janitorial service providers and contractors for failure to register by required date.	Total Labor Code § 1432(b) penalties incurred by persons or entities contracting with unregistered janitorial services	Number of janitorial service providers and contractors who renewed their registration in one year.
FY 2020-2021	1,006	2	2 companies were assessed a civil penalty of a total of \$23,900	\$0.00	1,001
FY 2021-2022	994	2	3 companies were assessed a civil penalty of a total of \$30,000	6 companies were assessed a civil penalty of a total of \$12,000.	834
FY 2022-2023	698	2	1 company was assessed a civil penalty of a total of \$10,000	\$0.00	1,321

Source: DLSE

- Number of new janitorial service providers and contractors registered in FY 2022-2023: 698
- Number of new janitorial service providers and contractors who registered in FY 2022-2023 and incurred a penalty: 2
- Total Labor Code § 1423 penalties incurred by janitorial service providers and contractors in FY 2022-2023 for failure to register by required date: 1
- Total penalties assessed related to Paid Sick Leave written notices in FY 2022-2023: \$0

For further information ...

https://www.dir.ca.gov/dlse/Janitorial_Providers_Contractors.html

ANTI-FRAUD ACTIVITIES

Background

During the past years, there has been a dedicated and rapidly growing campaign in California against WC fraud. This report on the nature and results of that campaign is based primarily on information obtained from the California Department of Insurance (CDI) Fraud Division, as well as applicable Insurance Code and Labor Code sections, and data published in periodic Bulletin[s] of the California Workers' Compensation Institute (CWCI).

The former Insurance Commissioner Steve Poizner convened an Advisory Task Force on Insurance Fraud in May 2007 to address major issues relating to insurance fraud. Christine Baker, a former executive officer of CHSWC and now the retired director of DIR, chaired the Task Force's Workers' Compensation Expert Working Group. The Task Force completed a comprehensive review of the anti-fraud insurance programs and identified 18 recommendations to consider in reducing insurance fraud in California.

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The recommendations are consolidated into the following five categories identified by the Task Force:

- Organization and Efficiency of the CDI Fraud Division Enforcement Branch.
- Industry Role in Fighting Fraud.
- Public Role in Fighting Fraud.
- Fraud Statutes and Regulations.
- Technologies.

The Fraud Division is currently implementing the following recommendations:

- Placing personnel in existing fusion centers in the State so that law enforcement can share information more efficiently and quickly identify emerging trends and crime patterns.
- Developing and providing better training for the Special Investigation Units (SIU) on the recognition, documentation and reporting of suspected insurance fraud claims.
- Recognizing insurance companies that go beyond compliance for their greater commitment to fighting fraud.
- Increasing the CDI's outreach efforts about the consequences of fraud and how the public can recognize and report it.

Suspected Fraudulent Claims

Suspected Fraudulent Claims (SFCs) are reports of suspected fraudulent activities received by CDI from various sources, including insurance carriers, informants, witnesses, law enforcement agencies, fraud investigators, and the public. The number of SFCs represents only a small portion reported by the insurers and does not necessarily reflect the whole picture of fraud since many fraudulent activities have not been identified or investigated.

According to CDI Fraud Division data, the quality of SFCs continues to improve each fiscal year. Several reasons for this trend include:¹⁷⁹

- The extensive efforts to provide training to the insurance claim adjusters and SIU personnel by the Fraud Division and District Attorneys.
- Changing submission of SFCs by filling out the FD-1 Form electronically on the Internet.
- Promulgating new regulations to help insurance carriers step up their anti-fraud efforts and become more effective in identifying, investigating and reporting workers' compensation fraud. A work plan to increase the number of audits performed by the Fraud Division SIU Compliance Unit was established and continues with an aggressive outreach plan to educate the public on anti-fraud efforts and how to identify and report fraud. This has ensured a more consistent approach to the oversight and monitoring of the SIU functions with the primary insurers as well as the subsidiary companies.
- CDI is strengthening its working relationship with the Workers' Compensation Insurance Rating Bureau (WCIRB) to support the Department's anti-fraud efforts.

The total number of SFCs reported in fiscal year 2021-2022 is 2,936.

¹⁷⁹ 2014 Annual Report of the Insurance Commissioner, August 1, 2015.

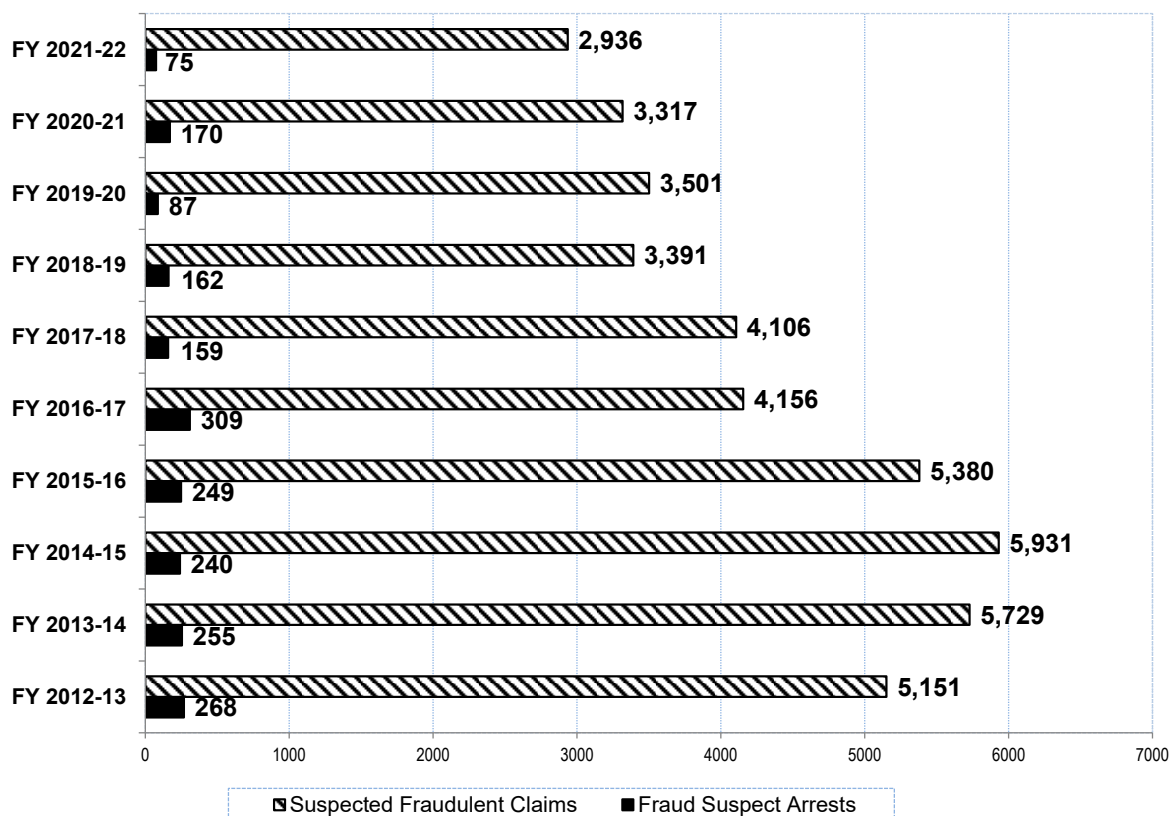
<http://www.insurance.ca.gov/0400-news/0200-studies-reports/0700-commissioner-report/>.

WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

Workers' Compensation Fraud Suspect Arrests

After a fraud referral, an investigation must take place before any warrants are issued or arrests are made. The time for investigation ranges from a few months to a few years depending on the complexity of the caseload. For this reason, the number of arrests does not necessarily correspond to the number of referrals in a particular year (see Figure 109). From FY 2012-2013 to FY 2015-2016, the Fraud Division identified and reported from 5,100 to 5,900 SFCs per fiscal year, with 250 arrests per fiscal year on average. In FY 2016-2017 and FY 2017-2018, the number of identified and reported SFCs fell to about 4,100 cases per fiscal year, with 309 arrests (7 percent of SFCs) in FY 2016-2017 and 159 arrests (4 percent of SFCs) in FY 2017-2018. There was a 50 percent decline in SFCs from the peak in FY 2014-2015 to FY 2021-2022. From FY 2020-2021 to FY 2021-2022, the number of identified and reported SFCs decreased by 11 percent as the number of arrests more than halved in that period.

Figure 109: Suspected Workers' Compensation Fraudulent Claims and Suspect Arrests



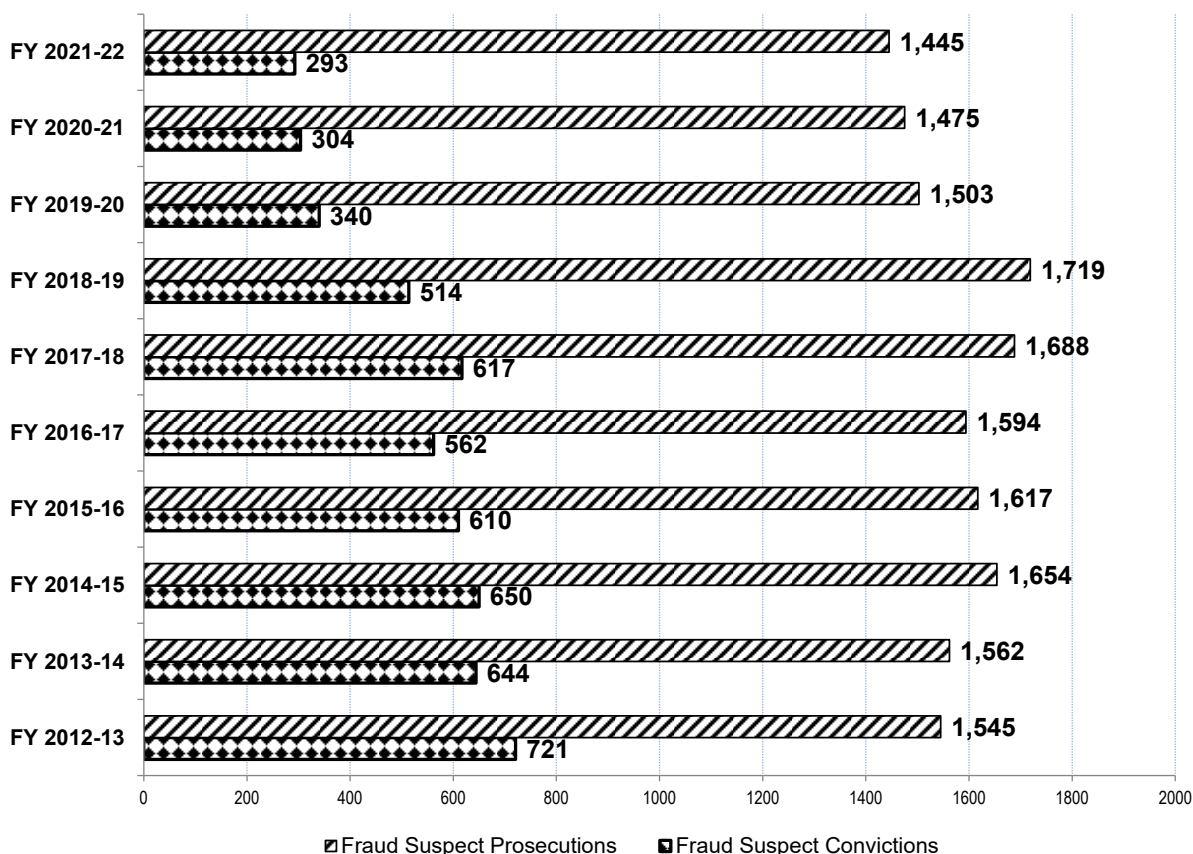
Data Source: CDI - Fraud Division and CWCI

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Workers' Compensation Fraud Suspect Convictions

Based on information from the Fraud Division and CWCI Bulletin(s), the number of WC fraud suspects convicted annually while many cases are still pending in court is reported in Figure 110. From FY 2012-2013 to FY 2018-2019, district attorneys prosecuted about 1,550 to 1,720 suspects per fiscal year, with an overall increase of 11 percent, and convictions decreasing by 29 percent from 721 in FY 2012-2013 to 514 in FY 2018-2019.¹⁸⁰ In FY 2019-2020, both prosecutions and convictions decreased by 13 and 34 percent, respectively, compared to FY 2018-2019. From FY 2019-2020 to FY 2021-2022, the number of prosecutions decreased slightly by 4 percent and number of convictions decreased by 14 percent.

Figure 110: Workers' Compensation Fraud Suspect Prosecutions and Convictions



Data Source: CDI - Fraud Division and CWCI

Workers' Compensation Fraud Investigations

Types of Workers' Compensation Fraud Investigations

Figures 111 and 112 indicate the number and type of investigations opened and carried from fiscal years FY 2012-2013 to FY 2021-2022 reported by district attorneys. Claimant, also named applicant, fraud appears to be the area generating the most cases followed by premium fraud and uninsured employer fraud.

¹⁸⁰ For case-by-case information regarding specific workers' compensation fraud convictions, see <http://www.insurance.ca.gov/0300-fraud/0100-fraud-division-overview/25-wc-conv/>

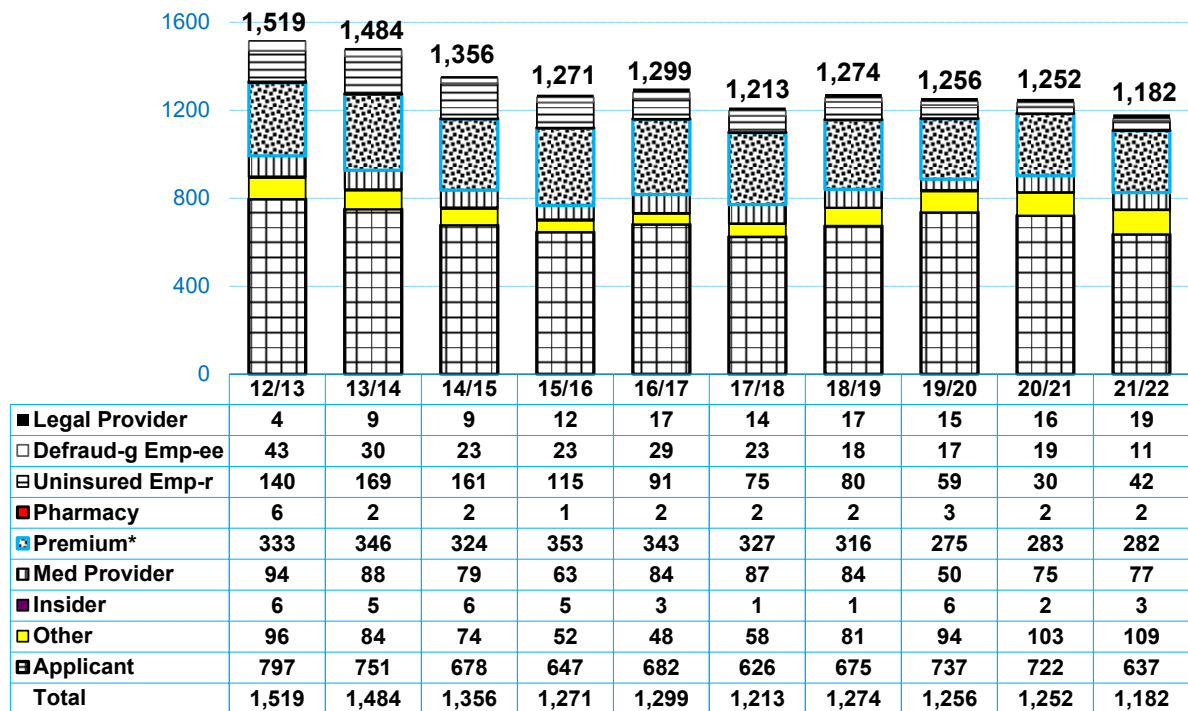
WORKERS' COMPENSATION ADMINISTRATIVE PERFORMANCE

Some of the categories for fraud-related investigations were changed in FY 2005-2006, FY 2006-2007, and FY 2007-2008. In FY 2008-2009, two new categories, Legal Provider and Pharmacy, were introduced as separate categories.

Trends in Workers' Compensation Fraud Investigations

Figure 111 shows that the number of WC fraud investigations decreased by 20 percent from FY 2012-2013 to FY 2017-2018 and then slightly increased by 2 percent from FY 2017-2018 to an average of 1,240 investigations from FY 2018-2019 and FY 2021-2022. The decrease from FY 2012-2013 to FY 2017-2018 was mostly due to a 21.5 percent decrease in claimant fraud (also called applicant fraud) and an almost two-fold decline in uninsured employer investigations. A slight decrease in the number of WC fraud investigations beginning from FY 2018-2019 was due to decreases in premium, medical providers, and uninsured employer frauds and a 13.5 percent decrease in claimant/applicant fraud from FY 2019-2020 to FY 2021-2022.

Figure 111: Caseload by Type of Fraud Investigations, FY 2012-2013–FY 2021-2022



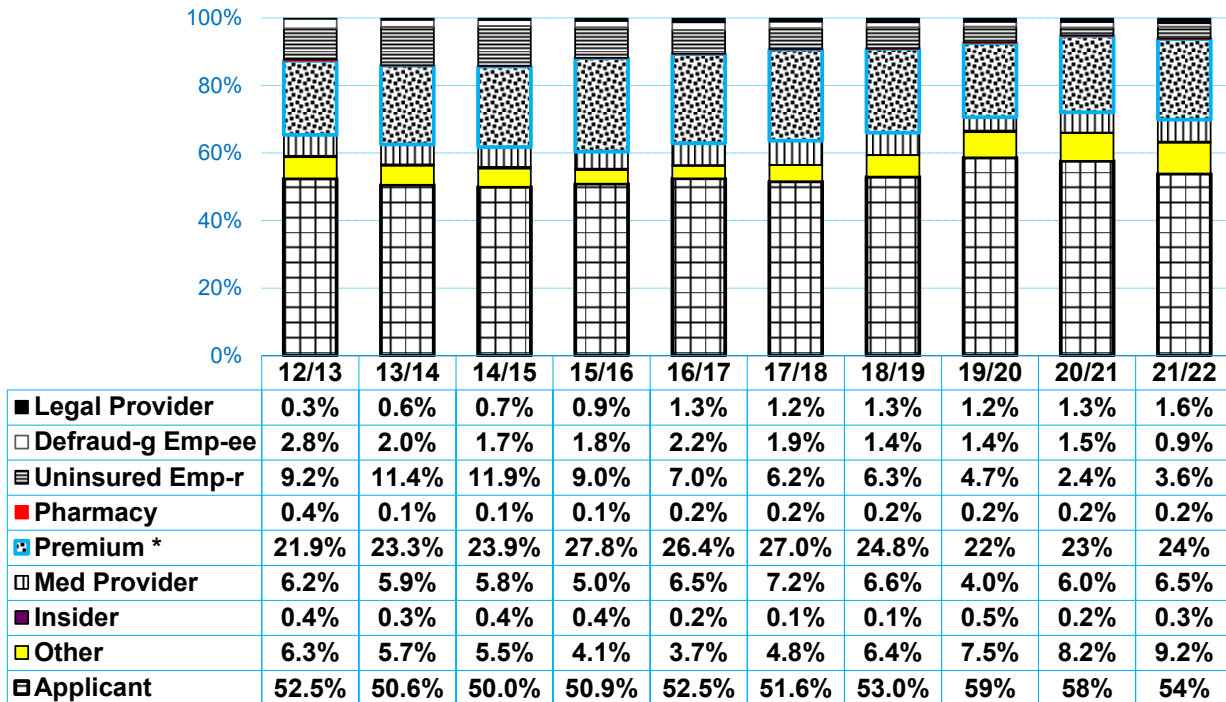
* Includes Misclassification, Underreported Wages, and X-Mod Evasion

Data Source: California Department of Insurance, Fraud Division

As seen in Figure 112, the focus of the investigations experienced some changes during the observed period. Claimant/applicant fraud investigations averaged at 52.0 percent yearly from FY 2012-2013 to FY 2018-2019 and then increased by 6 percentage points from FY 2018-2019 to FY 2019-2020, with a 4 percentage points decrease from FY 2020-2021 to FY 2021-2022. The percentage of investigations of premium fraud increased overall from 22 percent in FY 2012-2013 to 27 percent in FY 2017-2018, and then decreased again to an average of 23 percent from FY 2019-2020 to FY 2021-2022. From FY 2012-2013 to FY 2021-2022, investigations of uninsured employer fraud decreased from about 10 percent to 3.6 percent respectively and decreased for defrauding employees from 2.8 percent to 0.9 percent in the same period.

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Figure 112: Distribution by Type of Fraud Investigations, FY 2012-2013–FY 2021-2022



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

Data Source: California Department of Insurance, Fraud Division

In addition, the [2022 Annual Report of the Insurance Commissioner](#)¹⁸¹ notes that the majority of suspected fraudulent claims in calendar year 2022 came from Los Angeles County (1,026, or 36 percent of total cases) followed by Orange County (312, or 11 percent), San Bernardino (206, or 7 percent), and San Diego (192, or 7 percent).

Underground Economy

Although most California businesses comply with health, safety, and WC regulations, some do not and operate in the “underground economy.” Such businesses may not have all their employees on the official company payroll or may not report wages paid to employees that reflect their real job duties. Businesses in the underground economy are therefore competing unfairly with those that comply with the laws. The underground economy costs the California state economy an estimated \$8.5 billion to \$10 billion in tax revenues every year.¹⁸²

Potential Areas for Improvement in Workers' Compensation Anti-Fraud Efforts

CHSWC has conducted many studies that focus on improving WC anti-fraud efforts and co-chaired stakeholder meetings on fraudulent activity in the WC system. In September 2016, Governor Brown signed Assembly Bill 1244 and Senate Bill SB 1160 that provide a mechanism for suspending perpetrators of fraud from the WC system and for limiting financial recovery related to fraudulent activity. More information on DIR efforts related to AB 1244 and SB 1160 can be found at http://www.dir.ca.gov/fraud_prevention/.

¹⁸¹ <http://www.insurance.ca.gov/0400-news/0200-studies-reports/0700-commissioner-report/index.cfm>.

¹⁸² https://www.edd.ca.gov/payroll_taxes/underground_economy_cost.htm.

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The Administrative Director of DWC is now required to suspend any medical provider, physician, or practitioner from participating in the WC system in any capacity when the individual or entity meets specific criteria as related to fraud. Those criteria include conviction of a felony or misdemeanor: (1) involving fraud or abuse of the Medi-Cal, Medicare, or WC systems; (2) relating to patient care; (3) involving fraud or abuse of any patient; or (4) otherwise substantially related to the qualifications and duties of the provider. The medical provider is also to be suspended when his or her license, certificate, or approval to provide health care has been surrendered or revoked, or when that individual or entity has been suspended from participation in the Medicare or Medicaid programs due to fraud or abuse. A medical provider is now barred from submitting or pursuing claims for payment for services or supplies provided, if that provider has been suspended from participation in the WC system.

In the period 2019-2020, 166 remaining criminally charged individuals had their liens stayed under Labor Code § 4615, representing 633,094 remaining liens stayed. There were 28 lien consolidation orders issued pursuant to LC 139.21(f), among which 17 are still in process and 11 were resolved. Nineteen providers have had 50,144 liens dismissed. The Anti-Fraud Unit (AFU) does not reveal the dollar amounts related to liens and does not break down by year the number of suspensions or criminally charged individuals with liens stayed under Labor Code § 4615. Four hundred and sixty seven providers have been suspended, and 8 providers have been sent a suspension notice with no Order of Suspension issued under Labor Code § 139.21.¹⁸³

In the period 2020-2021, 86 remaining criminally charged individuals had their liens stayed under Labor Code § 4615, representing 516,795 remaining liens stayed. There were 45 lien consolidation orders issued pursuant to LC 139.21(f), among which 32 are still in process and 13 were resolved. There have been 60,165 liens dismissed pursuant to LC § 139.21 amounting to \$669,718,116.56 payment. Five hundred and eighty six providers have been suspended under Labor Code § 139.21.

In the period 2021-2022, 74 remaining criminally charged individuals¹⁸⁴ had their liens stayed under Labor Code § 4615, representing 534,000 remaining liens stayed with an estimated value of \$4.5 billion. There were 40 lien consolidation orders issued pursuant to LC 139.21(f), among which 19 are still in process and 21 were resolved. There have been 68,000 liens dismissed pursuant to LC § 139.21 amounting to \$773 million payment.¹⁸⁵ One thousand and thirty-one providers (1,031)¹⁸⁶ have been suspended under Labor Code § 139.21.

More information on DIR efforts related to AB 1244 and SB 1160 can be found at:
http://www.dir.ca.gov/fraud_prevention/.

¹⁸³ Data for 2021-2022 were provided by DIR, Office of the Director Anti-Fraud Unit.

¹⁸⁴ https://www.dir.ca.gov/Fraud_Prevention/List-of-Criminally-Charged-Providers.pdf.

¹⁸⁵ <https://www.dir.ca.gov/dwc/SB1160-AB1244/Calendar.htm>

¹⁸⁶ https://www.dir.ca.gov/Fraud_Prevention/Suspension-List.htm.

WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

OCCUPATIONAL INJURY AND ILLNESS PREVENTION EFFORTS (TO BE UPDATED: pages 171-205)

Workplace health and safety are of primary importance and the shared goal of all Californians. Ongoing cooperative efforts among workers, employers, employer and labor organizations, government agencies, health and safety professionals, independent researchers, and the public have resulted in significant reductions in workplace injuries, illnesses and deaths.

This section discusses the number and incidence rate of occupational injuries and illnesses, injuries and illnesses by occupation and other factors, and the efforts to prevent occupational injuries and illnesses. Also included is an overview of the requirements and methods to record and report occupational injuries and illnesses in the United States and California.

Where data are available, comparisons among private industry and state and local government are also included.

Occupational Injuries, Illnesses, and Fatalities

The number of occupational injuries, illnesses, and fatalities in the private sector (private industry) and the public sector (state and local government) for the past several years are listed and discussed in this subsection.

There was an important change in how the case and demographic data are estimated and released by the Bureau of Labor Statistics (BLS) beginning with 2021 non-fatal injury and illness cases. There was no release of case and demographic data for reference year 2021 in the fall of 2022. Instead, BLS will publish biennial (2-year) estimates of the worker demographics for cases involving days-away-from-work, job transfer, or restriction starting in 2023 (for reference years 2021 and 2022).¹⁸⁷ According to BLS, the Survey of Occupational Injuries and Illnesses (SOII) with the biennial estimates for combined data from reference years 2021 and 2022 is scheduled for release on November 8, 2023.¹⁸⁸ As a result of these changes, this 2022 report has the latest case and demographic characteristics and related figures for 2020 non-fatal cases in contrast with demographic characteristics for fatal cases in 2021, which are being released annually.

Please note that “lost-work-time” occupational injury and illness cases involve days away from work, job transfer, or days of restricted work activity, and that days-away-from-work cases involve days away from work, regardless of whether there is also job transfer or restricted work activity.

It should also be noted that the fatality counts do not reflect any COVID-19 work-related illness deaths. The BLS fatality surveillance system does not include the tracking of illness deaths.¹⁸⁹

The National Academy of Social Insurance (NASI) estimated that in 2020¹⁹⁰ 135.6 million workers were covered by workers’ compensation in the U.S., including 16.1 million in California.

¹⁸⁷ <https://www.bls.gov/iif/notices/2022/data-collection.htm> and <https://www.bls.gov/iif/nonfatal-injuries-and-illnesses-tables.htm#djtr>.

¹⁸⁸ https://www.bls.gov/schedule/2023/11_sched.htm.

¹⁸⁹ BLS’s Census of Fatal Occupational Injuries (CFOI) includes deaths from heat illness, fatal overdoses and deaths by suicide and violence in the fatality counts.

¹⁹⁰ 2020 is the latest available year for which these data were available from NASI.

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Claim Counts and Incidence Rates during the COVID-19 pandemic in 2019 and 2020

Figure 113 shows that the number of all recordable cases of non-fatal occupational injuries and illnesses in California's private industry and state and local government decreased by 7 percent from 2019 to 2020, while the number of days-away-from-work cases increased sharply by 32 percent from 2019 to 2020, altering the general pattern of changes in all recordable cases, lost-work-time, and days-away-from-work cases. According to the BLS, which has a capability to separate injuries from illnesses, this decline in the total number of injury and illness cases was due to a drop in injury cases. Private industry employers in the U.S. reported 2.7 million nonfatal workplace injuries and illnesses in 2020, down from 2.8 million in 2019, a decrease of 5.7 percent. The rate of injury cases in the U.S. also decreased in 2020, with private industry employers reporting a rate of 2.2 cases per 100 full-time equivalent (FTE) employees compared to 2.6 cases in 2019. At the same time, the total reported illness cases in the U.S. more than quadrupled to 544,600 cases, up from 127,200 cases in 2019. This increase was driven by a nearly 4,000 percent increase in employer reported respiratory illness cases in 2020 at 428,700, up from 10,800 in 2019. As for the days-away-from-work cases versus all recordable cases, there were 1,176,340 nonfatal injuries and illnesses that caused a private industry worker to miss at least one day of work in 2020, 32.4 percent higher than in 2019. Of these cases, 33.2 percent (390,020 cases) were categorized as other diseases due to viruses not elsewhere classified, which includes reported COVID-19-pandemic related illnesses.¹⁹¹ The same explanation is applicable to the 2019-2020 patterns of all recordable cases and days-away-from-work cases for non-fatal injuries and illnesses in California shown in Figures 113, 115, and 119 for claim counts and Figures 121, 122, and 123 for incidence rates.

Comparison of the Public and Private Sectors

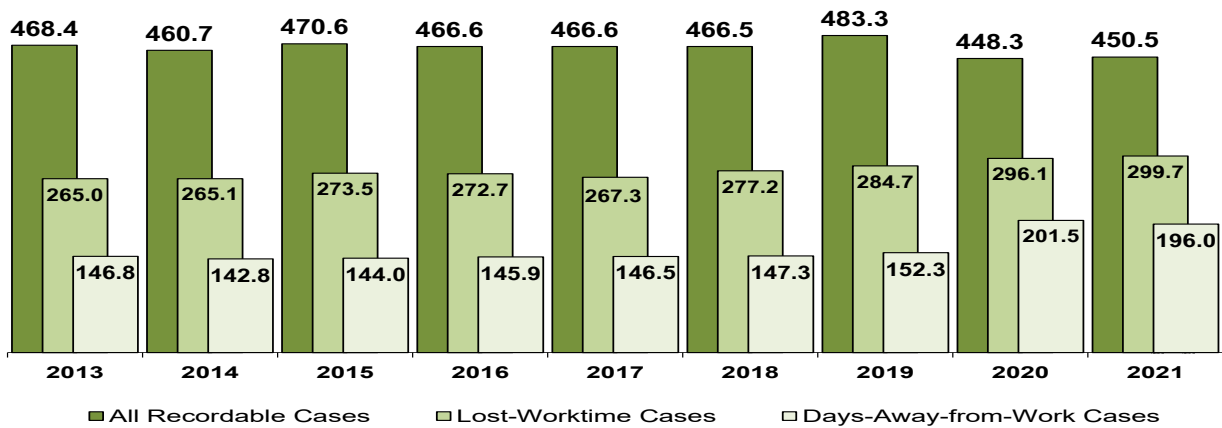
Non-Fatal Occupational Injuries and Illnesses

Figure 113 shows the number of occupational injuries and illnesses in California's private industry and state and local government. The number of all recordable cases for occupational injury and illness in California fluctuated between 460,700 and 470,600 cases from 2013 to 2016, stabilized at around 466,600 cases from 2016 to 2018, and then increased by 4 percent from 2018 to 2019. From 2019 to 2020, the number of all recordable cases decreased by 7 percent, before increasing slightly by 0.5 percent from 2020 to 2021. The number of lost-work-time cases increased by 3 percent from 2013 to 2015, decreased by 2 percent from 2015 to 2017, and then increased by 12 percent from 2017 to 2021, including a 5 percent increase from 2019 to 2021. The days-away-from-work cases decreased by 3 percent from 2013 to 2014, increased by 7 percent from 2014 to 2019, and then increased sharply by 32 percent from 2019 to 2020. From 2020 to 2021, the days-away-from-work cases decreased by 3 percent.

¹⁹¹ Bureau of Labor Statistics (BLS), "Employer-Reported Workplace Injuries and Illnesses – 2020", https://www.bls.gov/news.release/archives/osh_11032021.pdf.

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Figure 113: California Non-Fatal Occupational Injuries and Illnesses: Private Industry and State and Local Governments (Thousands)

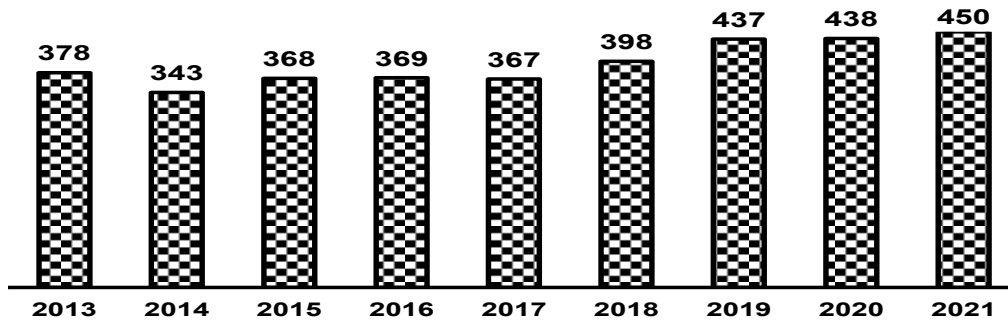


Source: DIR, Office of the Director-Research

Fatal Occupational Injuries

Fatal occupational injuries in California are shown in Figure 114. The number of fatal occupational injuries in California, excluding the federal government, decreased by 9 percent from 2013 to 2014, and then after increasing again by 7 percent from 2014 to 2015, it stabilized at an average of 368 fatal injuries per year from 2015 to 2017. From 2017 to 2021, the number of fatal occupational injuries in California increased by 23 percent.

Figure 114: California Fatal Occupational Injuries—Private Industry and State and Local Governments



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

Private Sector

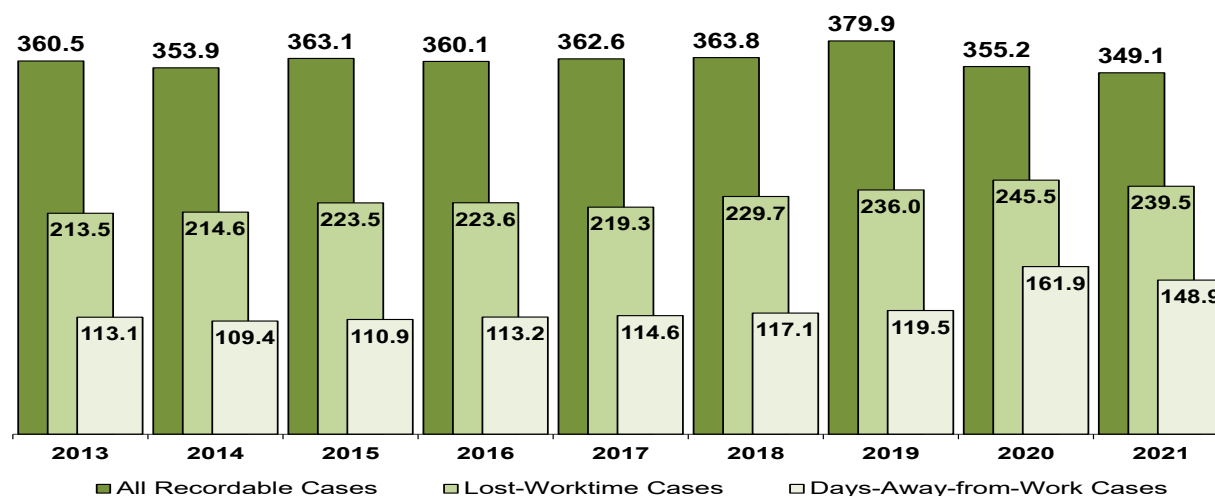
Non-Fatal Occupational Injuries and Illnesses

The total number of recordable injury and illness cases fluctuated between 353,900 and 363,100 cases between 2013 and 2016 and then increased by 5.5 percent from 2016 to 2019. From 2019 to 2021, the number of all recordable cases decreased by 8 percent, including a 6.5 percent decline from 2019 to 2020 and a 1.7 percent decrease from 2020 to 2021. The number of lost-work-time cases increased overall by 15 percent from 2013 to 2020, including a 4 percent increase from 2019 to 2020. From 2020 to 2021, the number of lost-work-time cases decreased by 2.4 percent. The number of days-away-from-work cases decreased by 3 percent from 2013 to 2014, increased by 9 percent from 2014 to 2019, and then increased sharply by 35.5 percent from 2019 to 2020. From 2020 to 2021, the number of days-away-from-work cases

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decreased by 8 percent.

Figure 115: California Non-Fatal Occupational Injuries and Illnesses: Private Industry (Thousands)

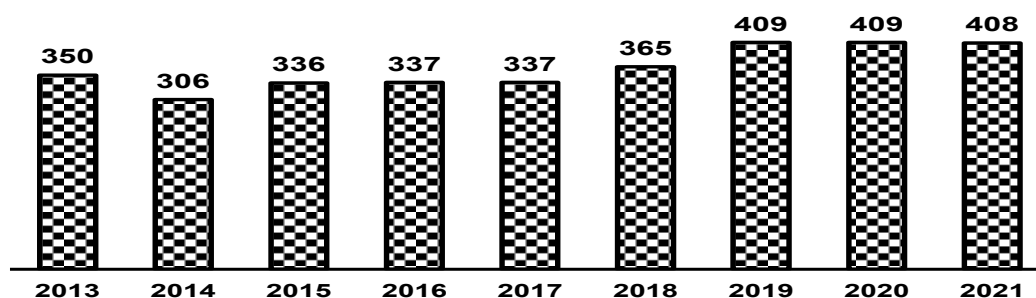


Source: DIR, Office of the Director-Research

Fatal Occupational Injuries

Fatal occupational injuries in California private industry decreased by 13 percent from 2013 to 2014, and then after a 10 percent increase in the number of fatal injuries from 2014 to 2015, it stabilized at an average of 337 fatalities per year from 2015 to 2017. From 2017 to 2019, the number of fatal occupational injuries in private sector increased by 21 percent and stabilized at 408-409 fatalities from 2019 and 2021.

Figure 116: California Fatal Occupational Injuries—Private Industry



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

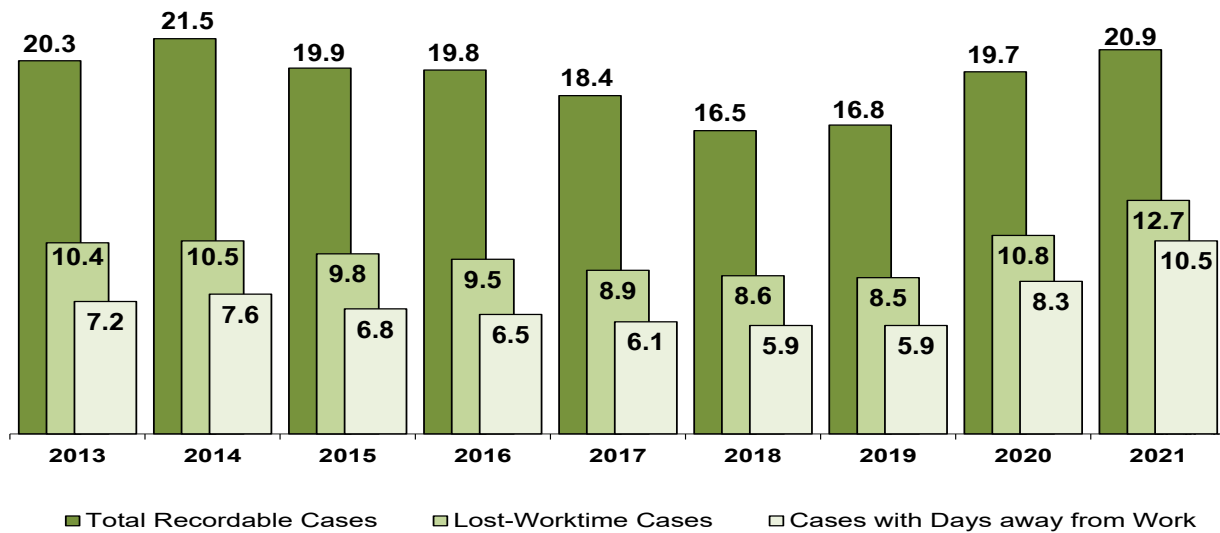
Public Sector: State Government

Non-Fatal Occupational Injuries and Illnesses

The number of all recordable injury and illness cases in California state government increased by 4 percent from 2013 to 2014, decreased by 23 percent from 2014 to 2018, and increased slightly from 2018 to 2019. From 2019 to 2021, the number of all recordable cases increased sharply by more than 24 percent, including a 17 percent increase from 2019 to 2020. It should be noted that many state and local government occupations are high risk, such as law enforcement, firefighting, rescue, and other public safety operations. After 5 years of a steady decline in both the lost-work-time and days-away-from-work cases in the state government, the lost-work-time cases increased by 49 percent from 2019 to 2021, including a growth by 27 percent from 2019 to 2020 and days-away-from-work cases increased by 78 percent from 2019 to 2021, including an increase of 41 percent from 2019 to 2020.

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Figure 117: California Non-Fatal Occupational Injuries and Illnesses: State Government (Thousands)

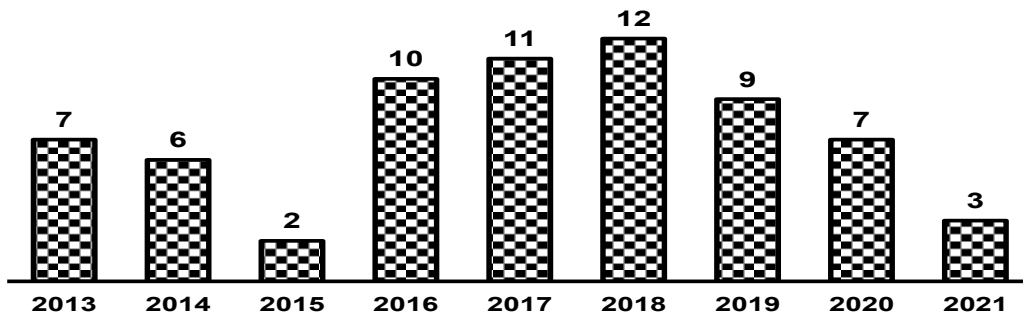


Source: DIR, Office of the Director-Research

Fatal Occupational Injuries

Fatal occupational injuries in California state government decreased from 7 in 2013 to a minimum of 2 fatalities in 2015, increased to an average of 11 fatalities annually from 2016 to 2018, and then decreased from 12 fatalities in 2018 to 3 fatalities in 2021.

Figure 118: California Fatal Occupational Injuries—State Government



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

Public Sector: Local Government

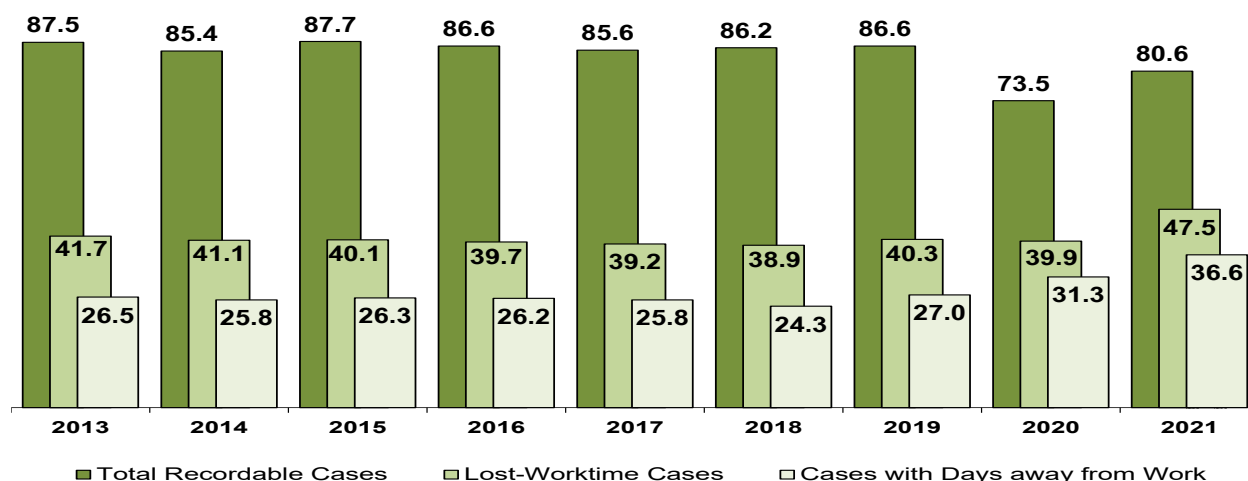
Non-Fatal Occupational Injuries and Illnesses

The total number of non-fatal occupational injuries and illnesses in local government fluctuated between 85,400 and 87,700 cases between 2013 and 2016 and then averaged 86,300 cases per year from 2016 to 2019. The number of all recordable cases decreased by 15 percent from 2019 to 2020 and then increased by 10 percent from 2020 to 2021. The number of lost-worktime cases in local government decreased steadily by 5 percent from 2013 to 2018, before increasing by 4 percent from 2018 to 2019. From 2019 to 2020, the number of lost-worktime cases decreased slightly by 1 percent and then increased sharply by 19 percent from 2020 to 2021. The number of cases with days away from work decreased overall by 8 percent from 2013 to 2018, increased by 11 percent from 2018 and 2019, and then continued increasing by 16

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percent from 2019 to 2020 and by 17 percent from 2020 to 2021.

Figure 119: California Non-Fatal Occupational Injuries and Illnesses: Local Government (Thousands)

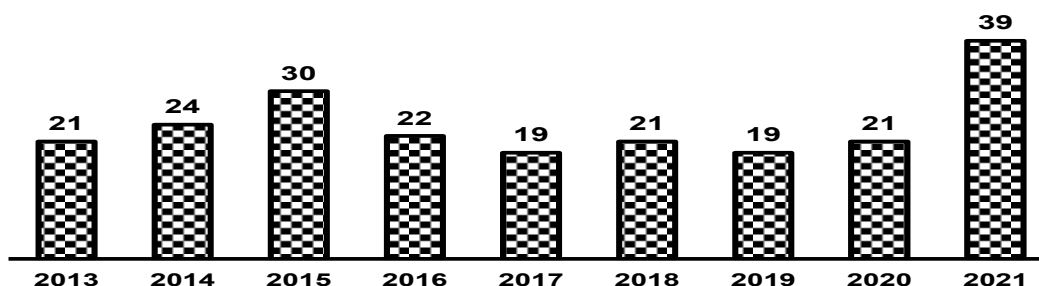


Source: DIR, Office of the Director-Research

Fatal Occupational Injuries

The number of fatal occupational injuries in California's local governments increased by 43 percent between 2013 and 2015, decreased by 27 percent from 2015 to 2016, and then stabilized at an average of 20 fatalities per year from 2016 to 2020. The number of fatalities in the local government almost doubled from 2020 to 2021.

Figure 120: California Fatal Occupational Injuries—Local Government



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

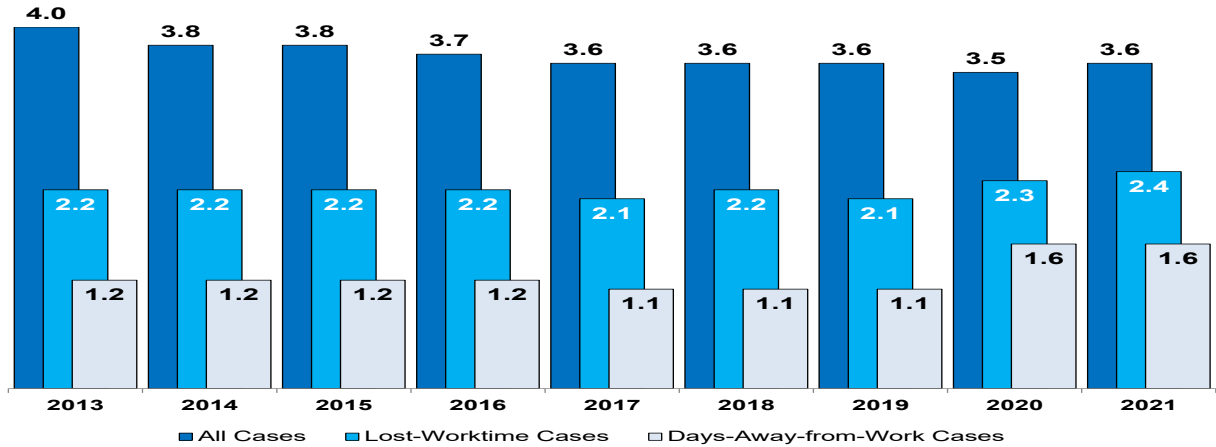
Occupational Injury and Illness Incidence Rates

Comparison of Public and Private Sectors

The incidence rates for all cases in California declined from 2013 to 2017 and stabilized at 2017 level in 2018 and 2019. There was a 3 percent decrease in the incidence rates for all cases from 2019 to 2020 before going back to 2017-2019 level. The incidence rates for lost-work-time cases remained prevailing at 2.2 cases per 100 FTE from 2013 to 2018, decreasing to a rate of 2.1 in 2017 and 2019. The incidence rates for lost-work-time cases increased by 9.5 percent from 2019 to 2020 and by 4 percent from 2020 to 2021. The incidence rate for days-away-from-work cases stabilized at 1.2 per 100 FTE from 2013 to 2016, decreased to 1.1 from 2016 to 2017, and remained at that level from 2017 to 2019. From 2019 to 2020, the incidence rate for days-away-from-work cases increased by 45 percent from 1.1 per 100 FTE in 2019 to 1.6 per 100 FTE in 2020, and did not change in 2021.

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

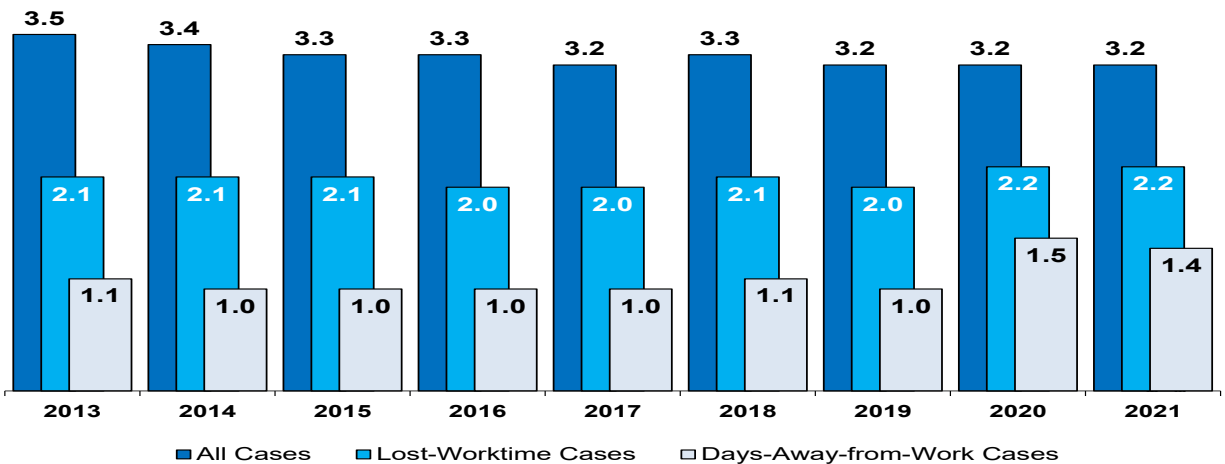


Data Source: DIR, Office of the Director-Research

Private Sector

According to Figure 119, the incidence rate for all cases declined from 2013 to 2017, increased from 2017 to 2018, and then returned to the 2017 level from 2019 to 2021. After stabilizing at 2.0 or 2.1 cases per 100 FTE from 2013 to 2019, the incidence rate for lost-work-time cases increased to 2.2 cases per 100 FTE in 2020 and 2021. After stabilizing at 1.0 cases per 100 FTE from 2013 to 2019, the incidence rates for days-away-from-work cases increased by 50 percent to 1.5 cases per 100 FTE from 2019 to 2020 and then decreased slightly to 1.4 cases per 100 FTE in 2021.

Figure 122: California Occupational Injury and Illness Incidence Rates: Private Industry (Cases per 100 Full-Time Employees)



Data Source: DIR, Office of the Director-Research

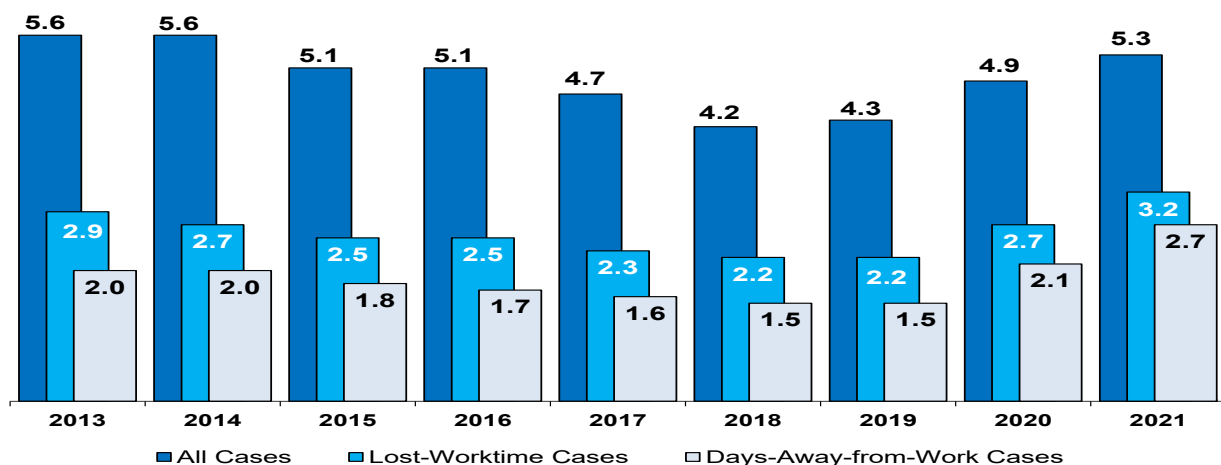
Public Sector: State Government

California state government occupational injury and illness incidence rates for all cases decreased by 25 percent from 2013 to 2018, increased by 2 percent from 2018 to 2019, and then continued increasing by 14 percent from 2019 to 2020 and by 8 percent from 2020 to 2021. The incidence rate for lost-time cases decreased by 24 percent between 2013 and 2019 and then increased by 23 percent from 2019 to 2020

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and by 18.5 percent from 2020 to 2021. The incidence rate for days-away-from-work cases decreased by 25 percent from 2013 to 2019 and then increased by 40 percent from 2019 to 2020 and by 29 percent from 2020 to 2021.

**Figure 123: California Occupational Injury and Illness Incidence Rates: State Government
(Cases per 100 Full-Time Employees)**

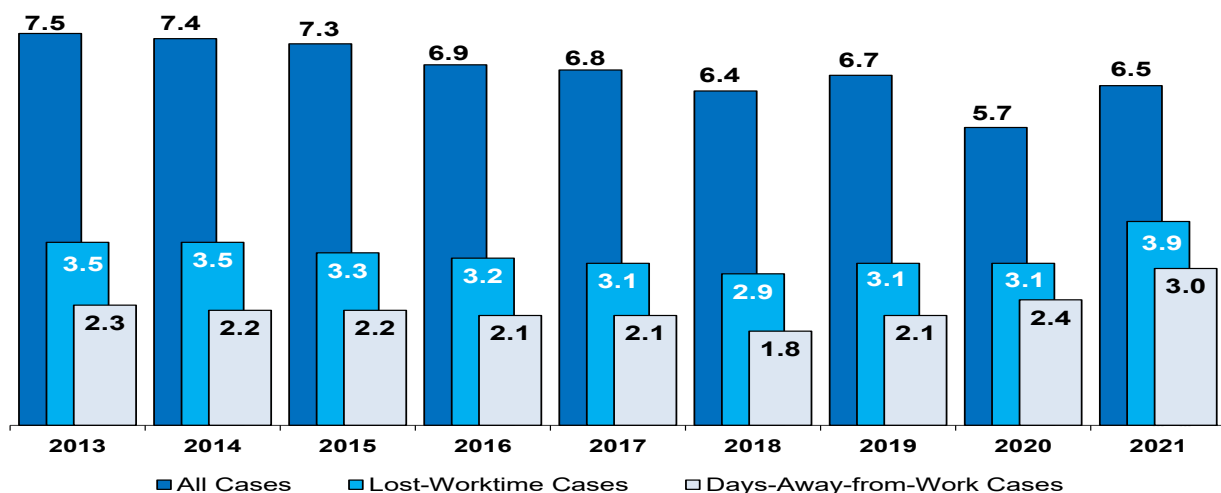


Source: DIR, Office of the Director-Research

Public Sector: Local Government

Local government occupational injury and illness incidence rates for all cases averaged at 7.4 cases per 100 FTE from 2013 to 2015, decreased by 12 percent from 2015 to 2018, and then increased by 5 percent from 2018 to 2019. From 2019 to 2020, the incidence rates for all cases decreased by 15 percent before going back to pre-pandemic level. The incidence rate for lost-time cases decreased from 3.5 to 2.9 cases per 100 full-time employees from 2013 to 2018, went up to 3.1 in 2019 and 2020 and then increased sharply by 26 percent from 2020 to 2021. The incidence rate for days-away-from-work cases decreased by 22 percent from 2013 to 2018 and then increased by 17 percent from 2018 to 2019. The incidence rate for days-away-from-work cases increased by 14 percent from 2019 to 2020 and then again by 25 percent from 2020 to 2021.

**Figure 124: California Occupational Injury and Illness Incidence Rates: Local Government
(Cases per 100 Full-Time Employees)**



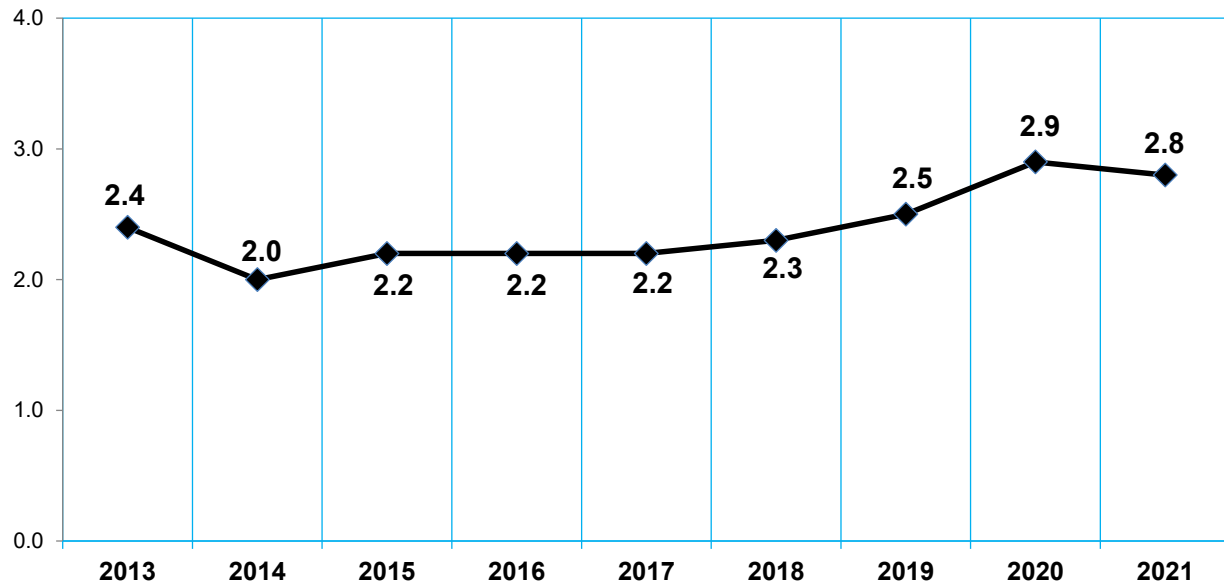
Source: DIR, Office of the Director-Research

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California Fatality Incidence Rates

Fatality per employment rates can be used to compare the risk of incurring injury among worker groups with varying employment levels. The fatality rates in California decreased from 2.4 per 100,000 FTE workers in 2013 to a minimum of 2.0 fatalities in 2014. The rate did not change in three consecutive years after increasing to 2.2 fatalities per 100,000 FTE workers in 2015. The fatality rates in California increased by 32 percent from 2.2 in 2017 to 2.9 fatalities per 100,000 FTE workers in 2020, including a 16 percent increase from 2019 to 2020. There was a slight decrease to 2.8 fatalities per 100,000 FTE workers from 2020 to 2021.

Figure 125: California Fatal Occupational Injuries*—Incidence Rate (per 100,000 employed)**



* California Fatal Occupational Injuries: 1) don't include the illness deaths except for deaths from heat illness, fatal overdoses and deaths by suicide and violence; 2) exclude military personnel and workers under age 16 and include all self-employed, family business, and wage and salary workers.

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

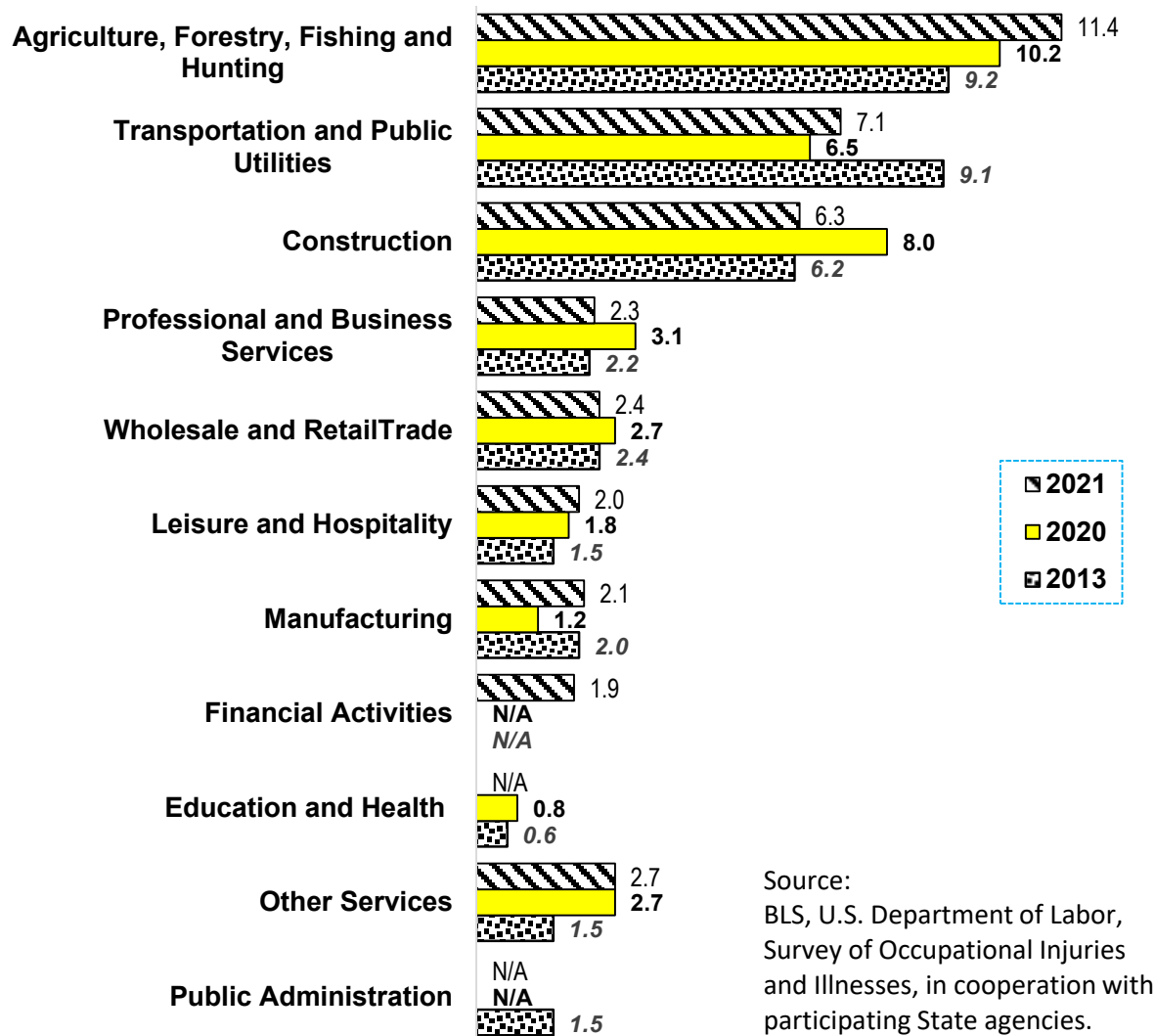
Data Source: U.S. Department of Labor, BLS, in cooperation with State and Federal agencies, Census of Fatal Occupational Injuries.

Figure 126 shows the fatality incidence rates by major industries in 2013, 2020, and 2021. For the three years depicted in the figure, agriculture, forestry, fishing, and hunting, construction, and transportation and public utilities were the top three industries with highest fatality rates in California. While not completely comparable because of differences in industrial mix, despite the fact that these three industries had the highest fatality rates in California, they had lower rates in comparison to their national levels. For example in 2021, agriculture, forestry, fishing, and hunting, construction, and transportation and public utilities had California and national fatality incidence rates of 11.4 and 19.5, 6.3 and 9.4, and 7.1 and 14.5 respectively.¹⁹² The industries with the greatest increase in fatality rates between 2020 and 2021 were manufacturing (75 percent), agriculture, forestry, fishing, and hunting (12 percent), and leisure and hospitality (11 percent).

¹⁹² <https://www.bls.gov/charts/census-of-fatal-occupational-injuries/number-and-rate-of-fatal-work-injuries-by-industry.htm>.

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Figure 126: California Fatality Rates by Industries (per 100,000 employed), 2013, 2020, and 2021*



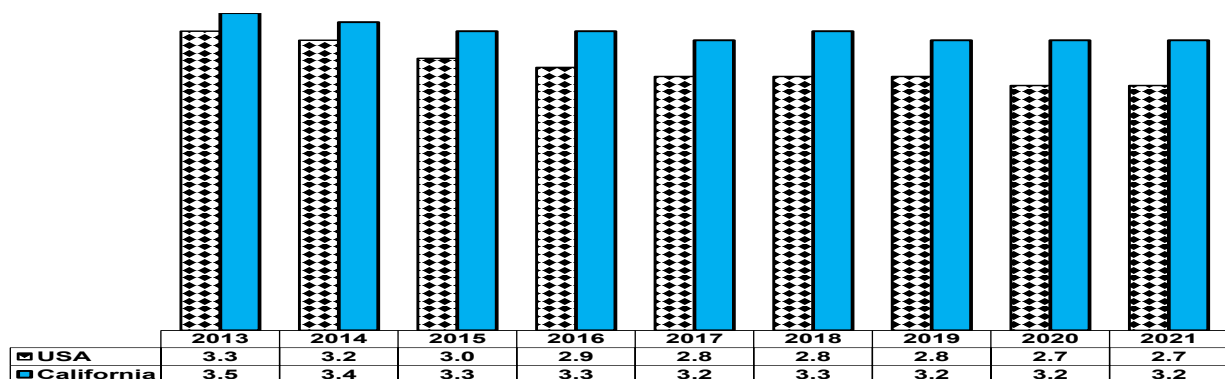
* Note: The source is released annually and doesn't have separate or specific incidence rates for healthcare-related industries.

Comparison of Incidence Rates in the United States and California

Both the U.S. and California experienced a decrease in occupational injury and illness incidence rates from 2013 through 2017. From 2017 to 2019, the U.S. incidence rate did not change, but the incidence rate in California increased slightly in 2018 before going back to the 2017 level. The U.S. incidence rates dropped by about 18 percent from 2013 to 2017, remained at 2017 level until 2019, and then decreased slightly to 2.7 cases per 100 full-time workers from 2019 to 2020, with no changes from 2020 to 2021. The California incidence rates decreased by about 9 percent from 2013 to 2017, increased by 3 percent from 2017 to 2018, and then decreased again by 3 percent from 2018 to 2019, remaining at 2019 level in 2020 and 2021. Since 2013, the incidence rate in California has been slightly above the national average with slower decreasing trend during the whole period.

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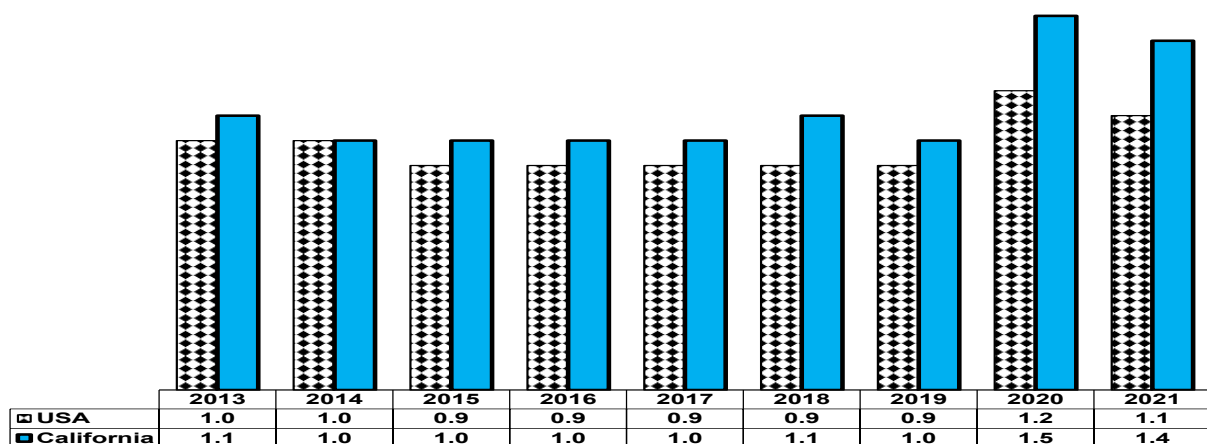
Figure 127: Injury and Illness Incidence Rate per 100 Full-Time Workers: Private Industry, Total Recordable Cases. U.S. and California



Source: US Department of Labor, Bureau of Labor Statistics

The incidence rate of occupational injury and illness days-away-from-work cases declined in the U.S. from 2013 to 2015, stabilized at 0.9 cases per 100 full-time workers from 2015 to 2019, and then increased to 1.2 cases per 100 full-time workers from 2019 to 2020. From 2020 to 2021, the incidence rate of days-away-from-work cases declined slightly to 1.1 cases per 100 full-time workers in the U.S. In California, after a decrease from 1.1 in 2013 to 1.0 from 2014 to 2019, with an exception of 1.1 cases per 100 full-time workers in 2018, the incidence rate increased from 1.0 in 2019 to 1.5 in 2020, the surge explained by growth of illnesses during the COVID-19 pandemic rather than workplace injuries. From 2020 to 2021, the incidence rate of days-away-from-work cases declined slightly from 1.5 to 1.4 cases per 100 full-time workers respectively in California.

Figure 128: Injury and Illness Incidence Rate per 100 Full-Time Workers: Private Industry Cases with Days Away from Work. U.S. and California



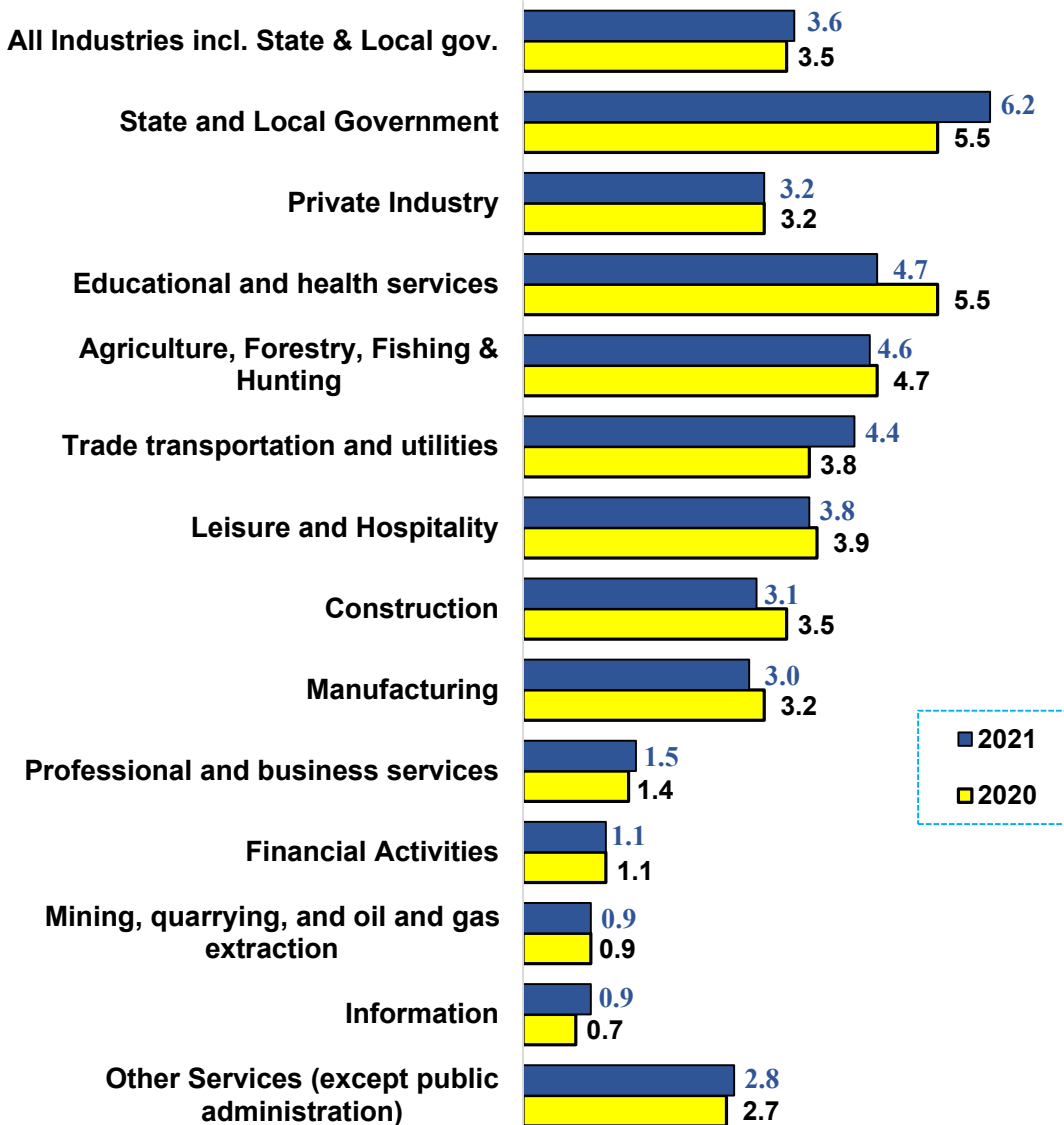
Source: US Department of Labor, Bureau of Labor Statistics

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Characteristics of California Occupational Injuries and Illnesses

Figure 129 compares incidence rates for total recordable cases in 2020 and 2021 by major industries, private sector and state and local governments. From 2020 to 2021, the incidence rates in 6 out of 14 major industries increased, in 5 industries decreased, and in 3 industries experienced no change. The overall California occupational injury and illness incidence rates for all industries, including state and local government increased by 3 percent from 2020 to 2021. During this period, the biggest increase in incidence rates was in information (29 percent) followed by trade transportation and utilities (16 percent), state and local government (13 percent), professional and business services (7 percent), and other services (except public administration) (4 percent). From 2020 to 2021, the biggest decrease in incidence rates (-15 percent) was in educational and health services followed by construction (-11 percent), manufacturing (-6 percent), leisure and hospitality (-3 percent), and agriculture, forestry, fishing and hunting (-2 percent).

Figure 129: Incidence rates of nonfatal occupational injuries and illnesses per 100 FTE workers by major industries, Private Sector and State and Local Government, 2020 and 2021 (Total Recordable Cases)

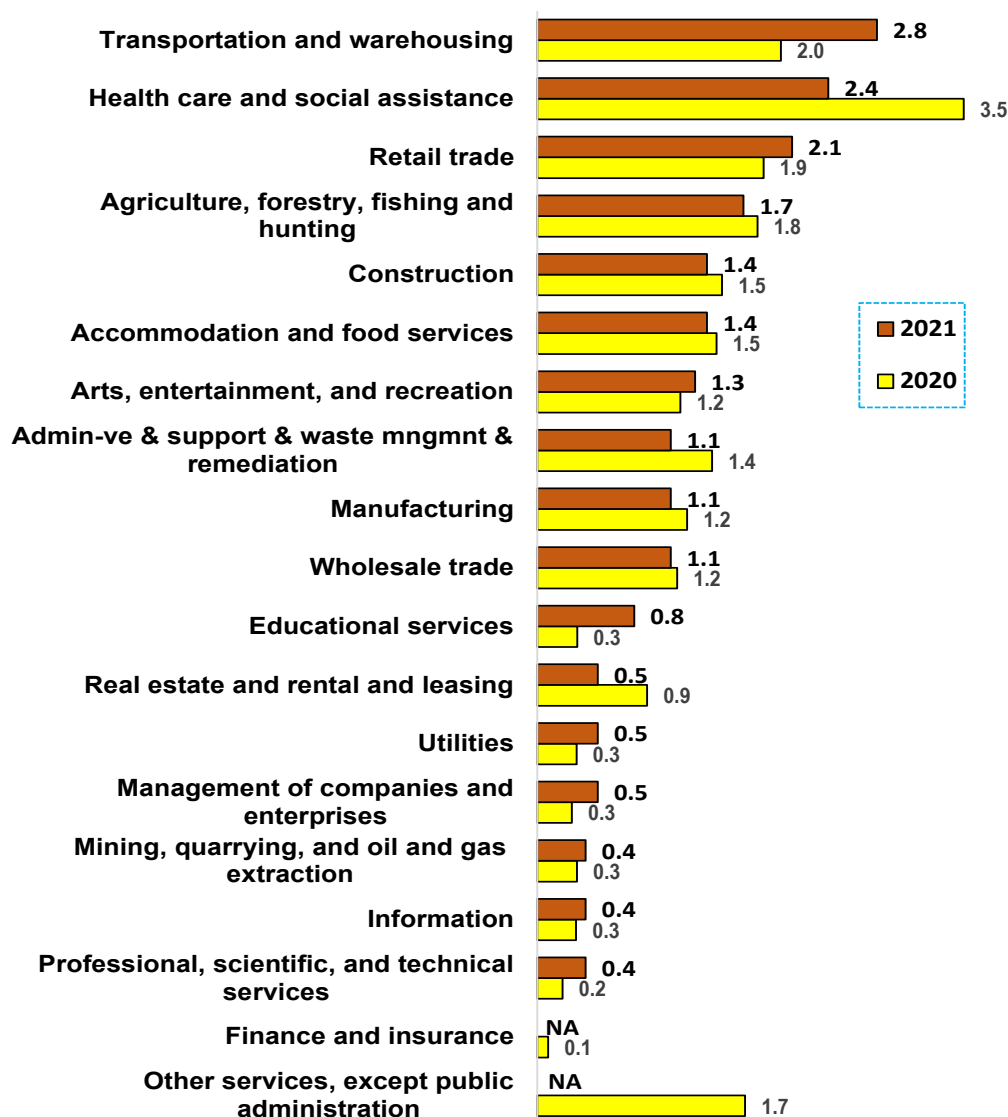


Data Source: DIR, Office of the Director- Research

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Figure 130 compares non-fatal occupational incidence rates for days away from work (DAFW) cases in 2020 and 2021 in private sector. In 2020, the top three industries by incidence rates were health care and social assistance, transportation and warehousing, and retail trade. The top three industries by incidence rates in 2021 were transportation and warehousing, health care and social assistance, and retail trade. The biggest increases in incidence rates for DAFW cases from 2020 to 2021 were in educational services (142 percent), professional, scientific, and technical services (90 percent) followed by management of companies and enterprises (75 percent), utilities (54 percent), transportation and warehousing (39 percent), and information (25 percent). The biggest decreases in incidence rates for DAFW cases from 2020 to 2021 were in real estate and rental and leasing (-45 percent), health care and social assistance (-32 percent), followed by administrative and support and waste management and remediation services (-24 percent), manufacturing (-11 percent), construction (-8 percent), and agriculture, forestry, fishing and hunting (-6 percent).

Figure 130: Incidence rates of nonfatal occupational injuries and illnesses per 100 FTE workers by selected industries, Private Sector (Cases with days away from work), 2020 and 2021

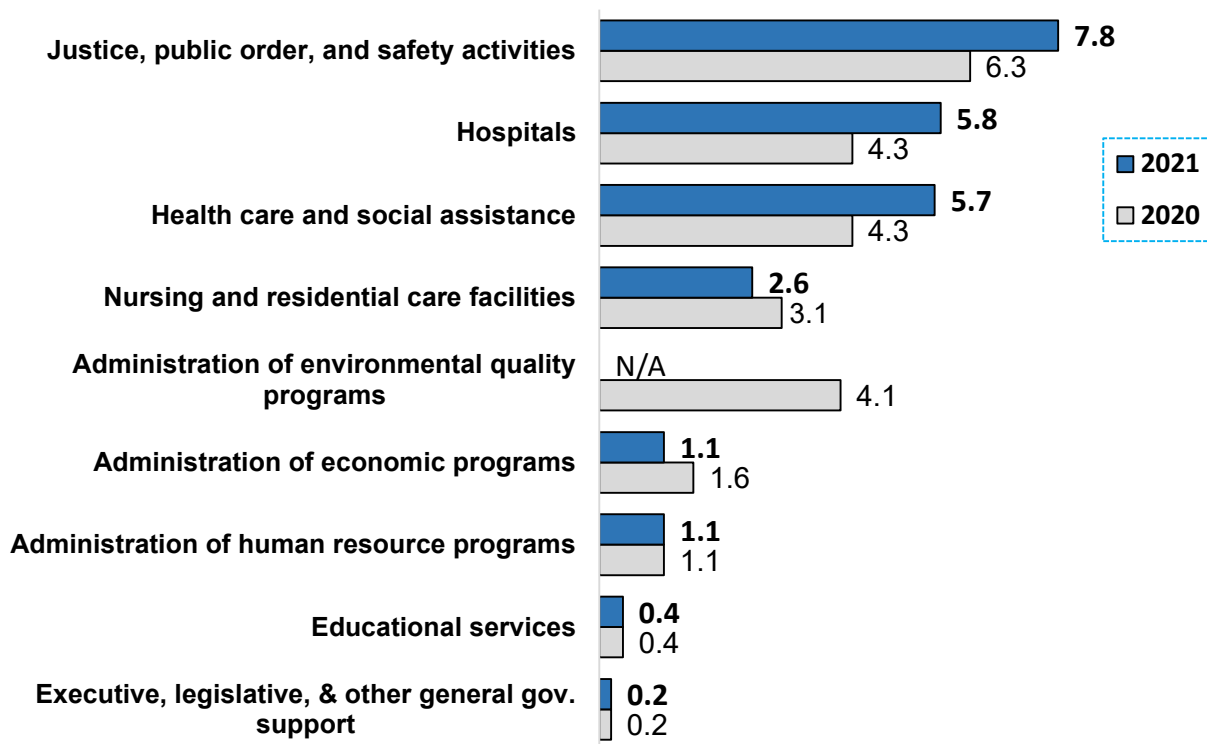


Data Source: DIR, Office of the Director-Research

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Figure 131 compares non-fatal occupational incidence rates for days away from work cases in 2020 and 2021 in the state government. The industries with the greatest increase in incidence rates for DAFW cases from 2020 to 2021 were hospitals (35 percent), health care and social assistance (33 percent), justice, public order, and safety activities (24 percent). The industries with the largest decrease in incidence rates for DAFW cases from 2020 to 2021 were administration of economic programs (-31 percent) and nursing and residential care facilities (-16 percent). Executive, legislative, and other general government support, educational services, and administration of human resource programs experienced no changes from 2020 to 2021.

Figure 131: Incidence rates of nonfatal occupational injuries and illnesses per 100 FTE workers by selected industries, State Government (Cases with days away from work), 2020 and 2021

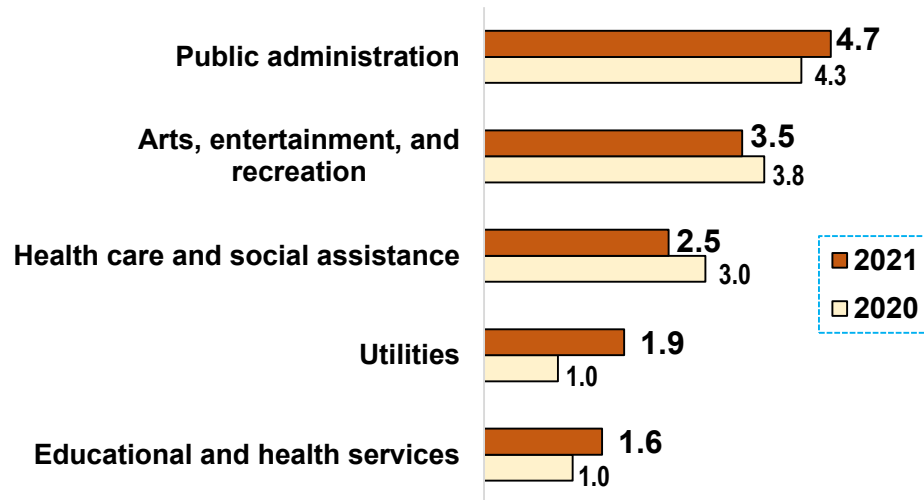


Data Source: DIR, Office of the Director-Research

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Figure 132 compares non-fatal occupational incidence rates for days away from work cases in 2020 and 2021 in the local government. From 2020 to 2021, the utilities experienced the biggest increase (90 percent) in non-fatal occupational incidence rates for days away from work cases followed by educational and health services (33 percent), and public administration (9 percent).

Figure 132: Incidence rates of nonfatal occupational injuries and illnesses per 100 FTE workers by selected industries, Local Government (Cases with days away from work), 2020 and 2021



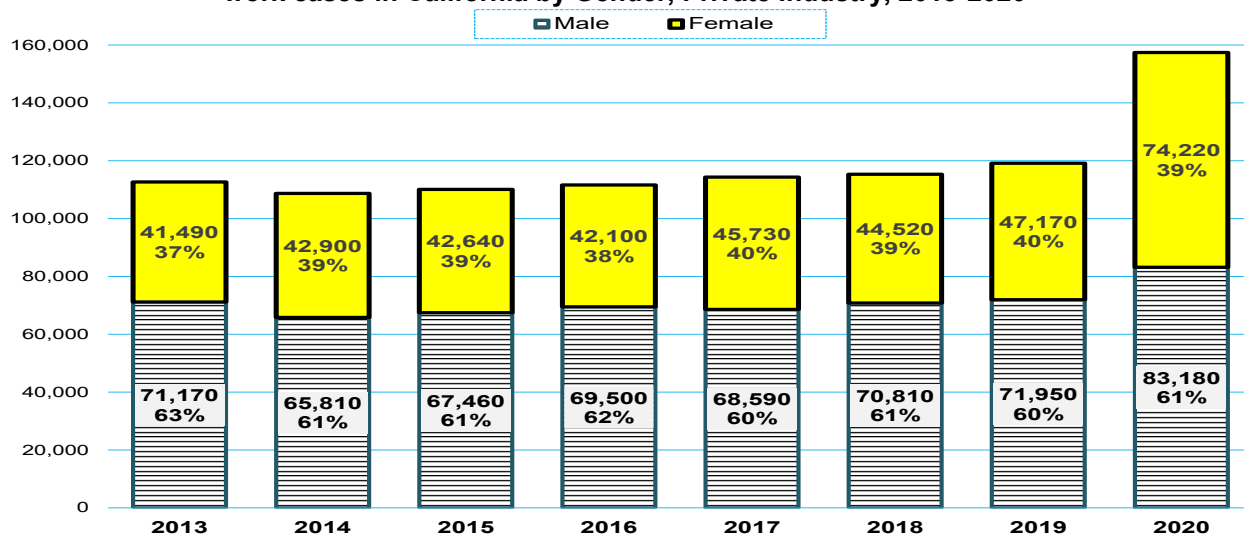
Data Source: DIR, Office of the Director-Research

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Characteristics of California Non-Fatal Occupational Injuries and Illnesses¹⁹³

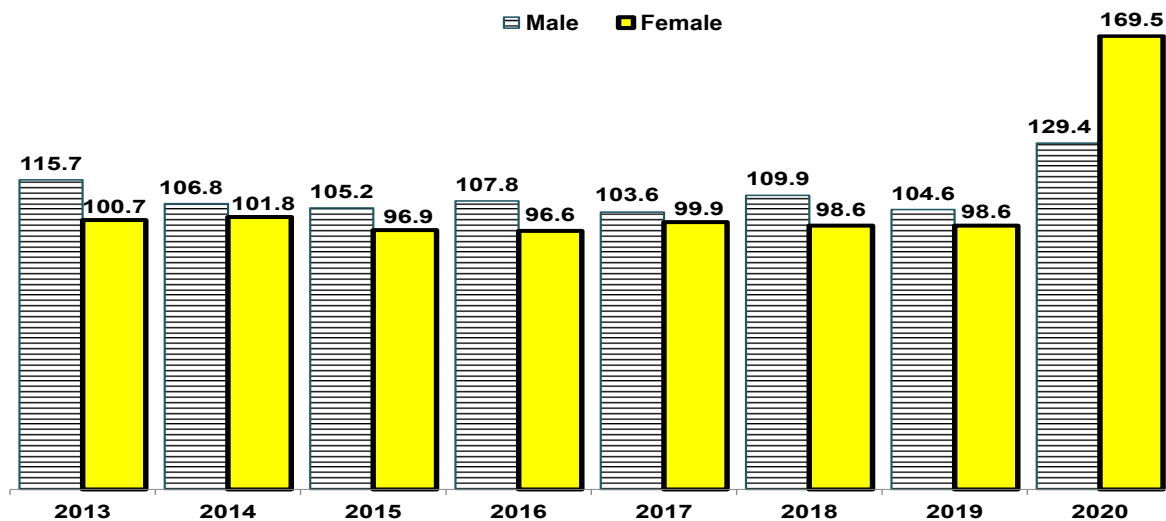
Figures 133-138 illustrate various demographic characteristics of non-fatal occupational injuries and illnesses in private industry in California. According to Figure 133, the largest increase for females (57 percent) and males (16 percent) in the number of non-fatal occupational injuries and illnesses over the past eight years was between 2019 and 2020.

Figure 133: Number of Non-Fatal Occupational Injuries and Illnesses involving days away from work cases in California by Gender, Private Industry, 2013-2020



Source: DIR, Office of the Director-Research

Figure 134: California Non-Fatal Occupational Injuries and Illnesses Incidence Rates by Gender, Private Industry, 2013-2020 (Days Away from Work Cases per 10,000 full-time employees)



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

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

¹⁹³ Please note that the latest demographical characteristics and related figures for non-fatal cases in this section are only available for 2020 as indicated on page 171.

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Figure 135: Number of Non-Fatal Occupational Injuries and Illnesses in California by Age, Private Industry, 2020

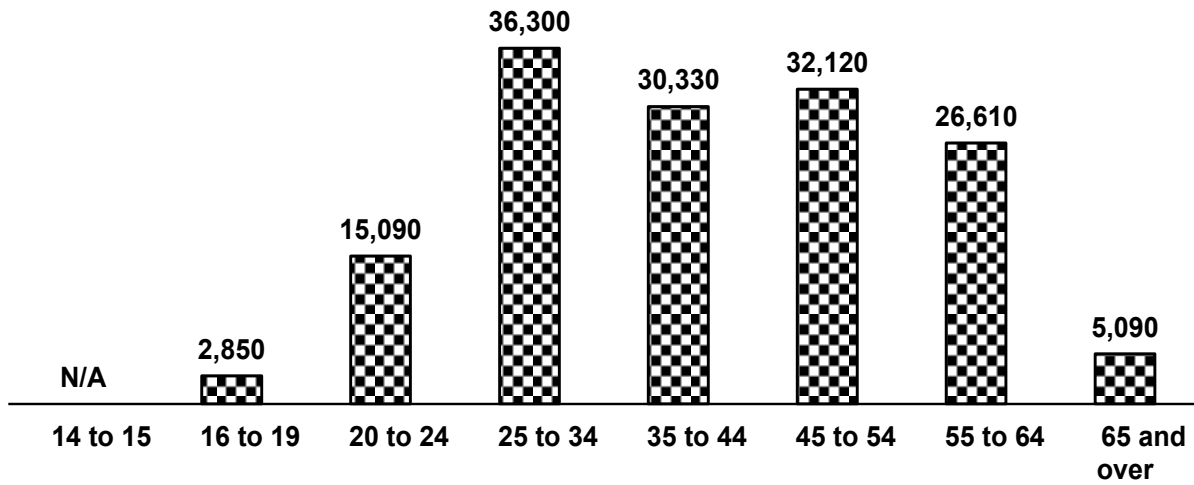
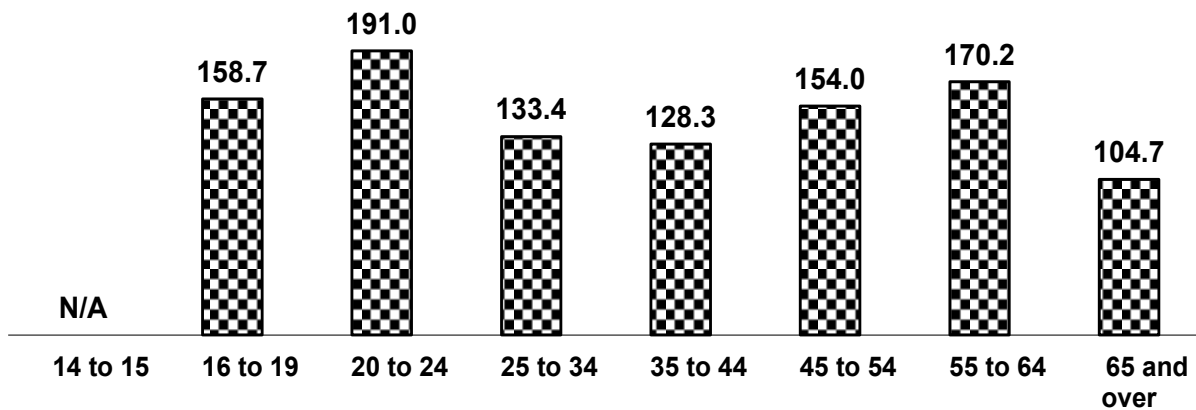
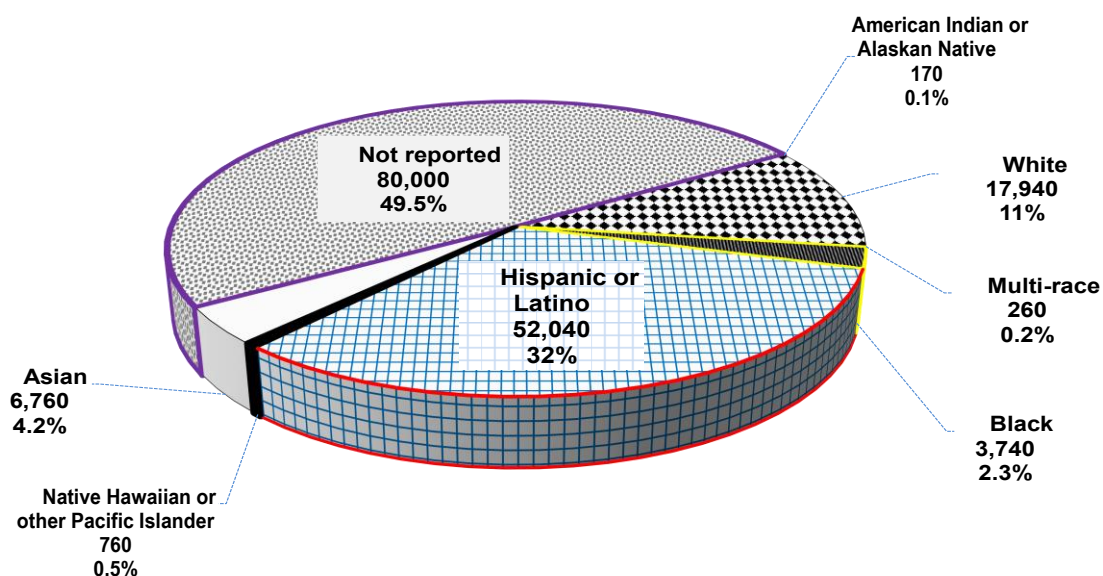


Figure 136: California Occupational Injury and Illness Incidence Rates by Age, Private Industry 2020 (Days Away from Work Cases per 10,000 Full-Time Workers)



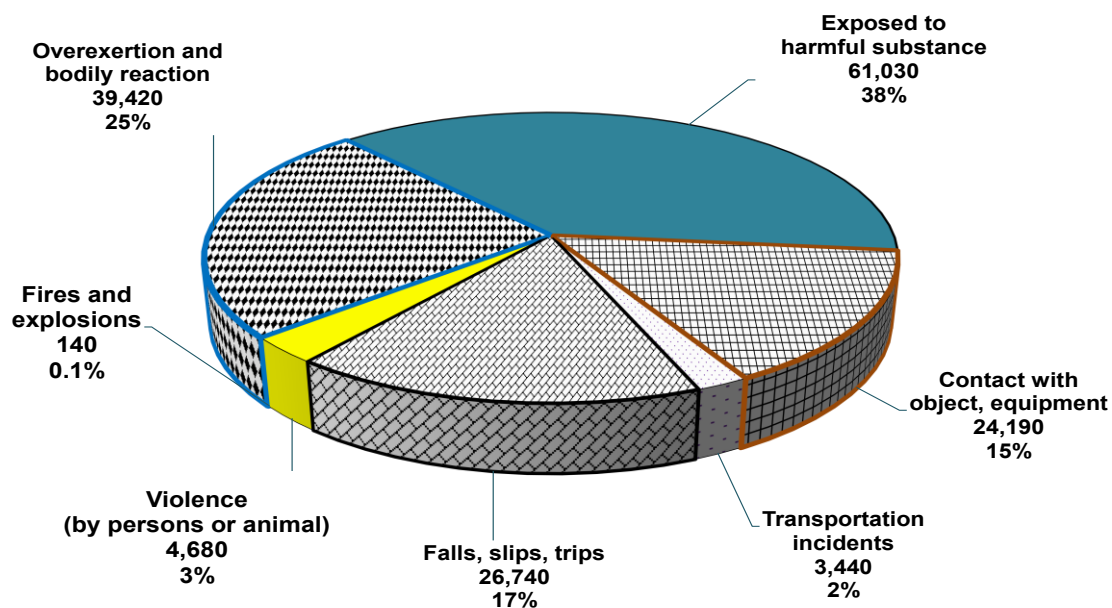
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Figure 137: California Non-Fatal Occupational Injuries and Illnesses by Race or Ethnic Origin, Private Industry, 2020



Data Source: DIR, Office of the Director-Research

Figure 138: California Non-Fatal Occupational Injuries and Illnesses by Event and Exposure, Private Industry, 2020

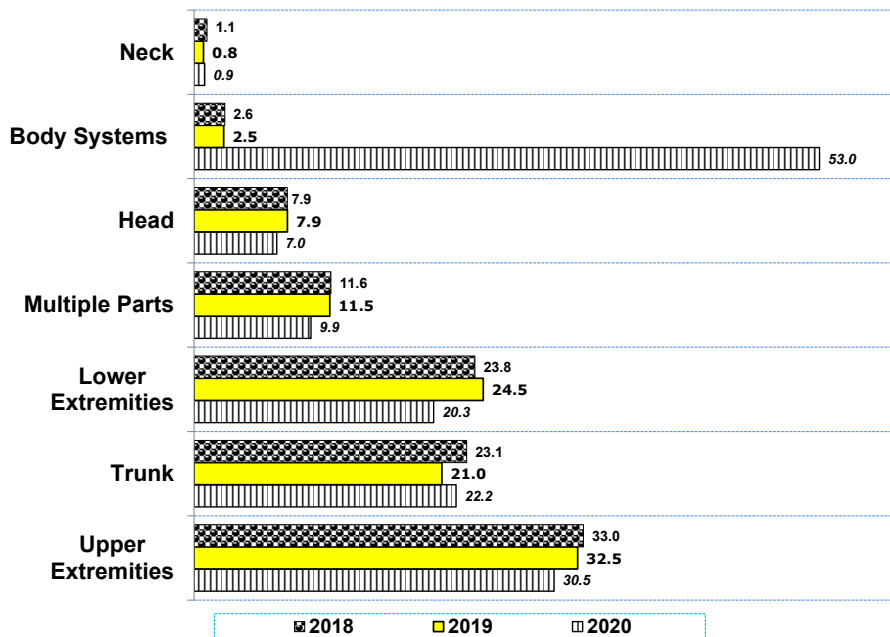


Data Source: DIR, Office of the Director-Research

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Figure 139 shows that the upper extremities, lower extremities, and trunk were the major body parts with the highest incidence rates in 2018, 2019, and 2020. DWC and WCAB forms¹⁹⁴ were changed to identify injuries related to COVID-19 by using body part code “900”¹⁹⁵, and likely where this choice was not included in a form, body systems was used instead to report the illness.

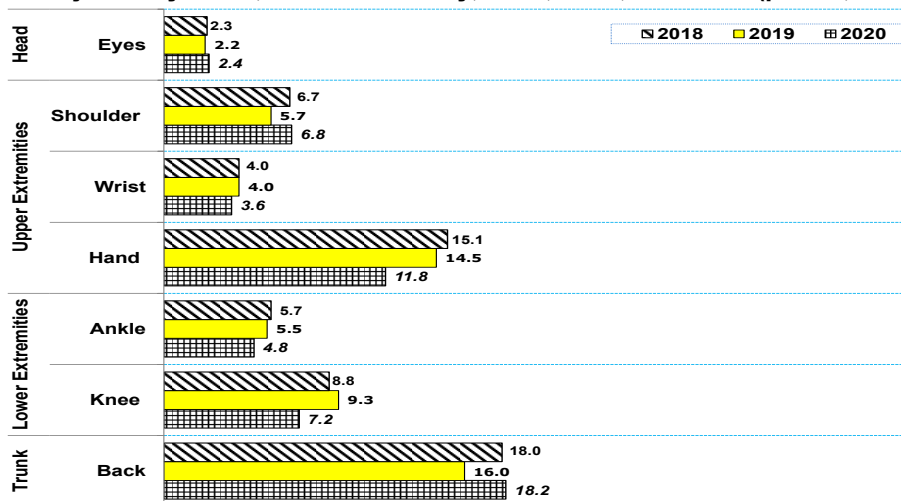
Figure 139: Incidence Rates for Non-Fatal Occupational Injuries and Illnesses by Major Body Parts, Private Industry, 2018, 2019, and 2020 (per 10,000 Full-Time Workers)



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

Figure 140 shows that the back was the body part with the highest incidence rate in 2018, 2019, and 2020.

Figure 140: Incidence Rates for Non-Fatal Occupational Injuries and Illnesses by Selected Elements of Major Body Parts, Private Industry, 2018, 2019, and 2020 (per 10,000 FTE Workers)



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

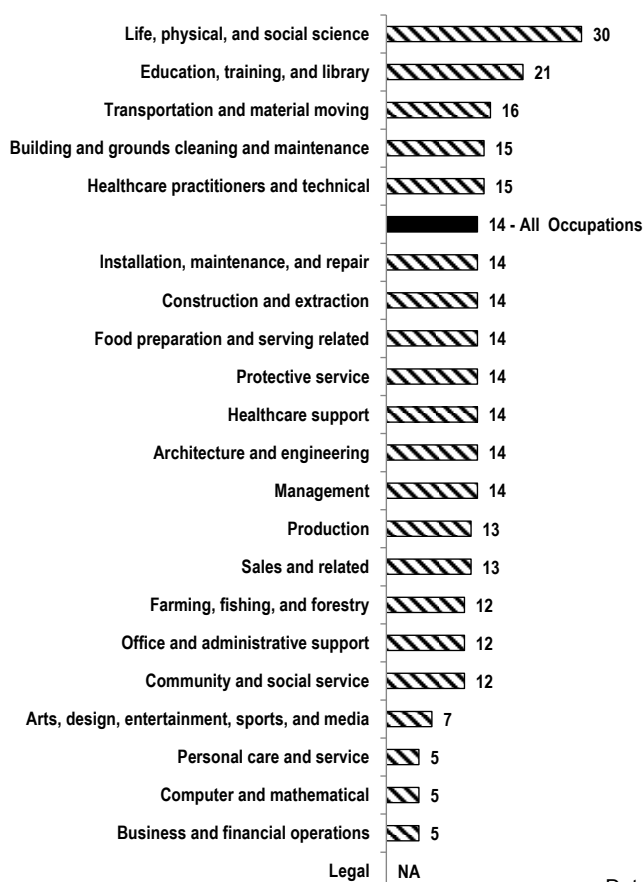
¹⁹⁴ DWC, WCAB Update Forms to Identify Injuries Related to COVID-19, <https://www.dir.ca.gov/DIRNews/2020/2020-44.html>.

¹⁹⁵ EAMS Body Part Codes List, https://www.dir.ca.gov/dwc/EAMS/EAMS_BodyPartsCodeList.pdf.

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Figures 141 to 143 compare the median days away from work for private industry and state and local government occupations. Life, physical, and social science, education, training, and library, and transportation and material moving, had the greatest median days away from work in 2020.

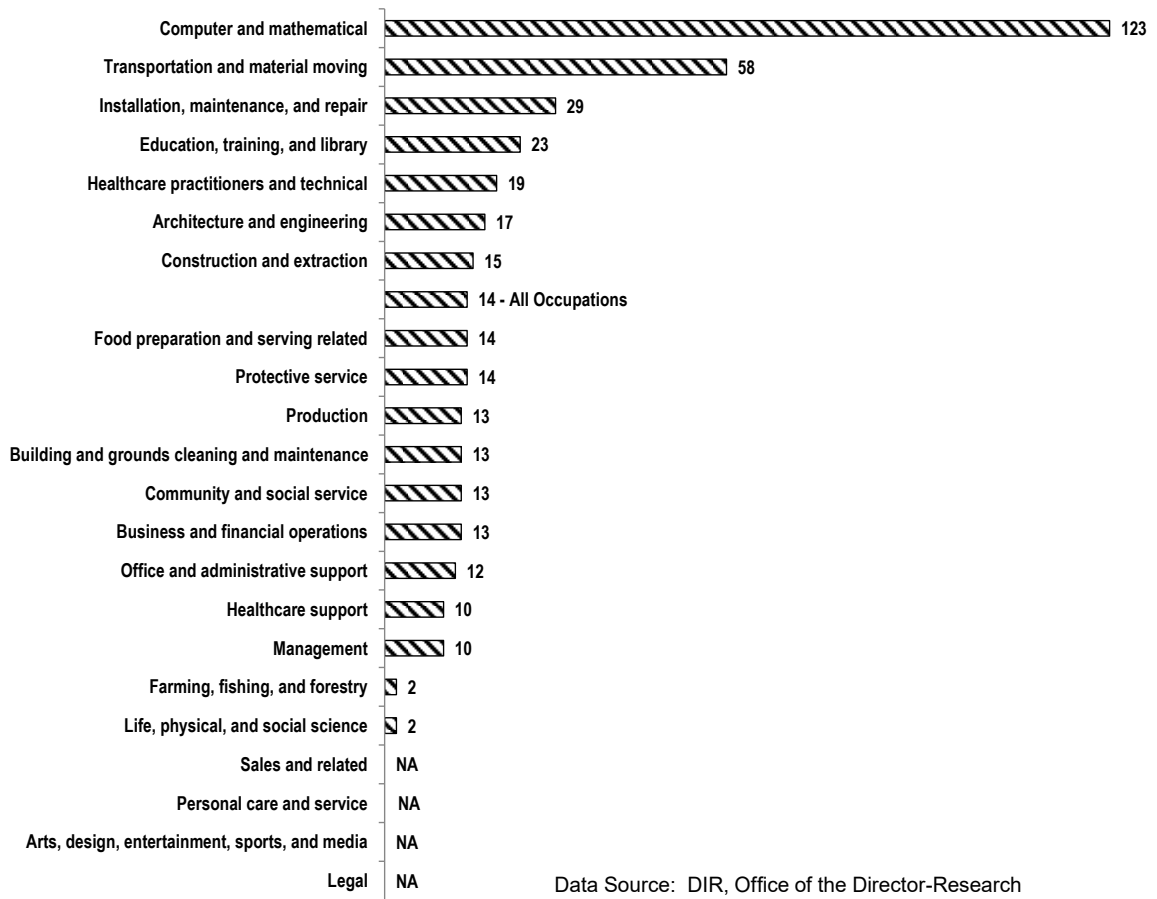
Figure 141: Non-Fatal Injuries and Illnesses by Major Occupational Group: Median Days Away from Work, Private Industry, 2020



Data Source: DIR, Office of the Director-Research

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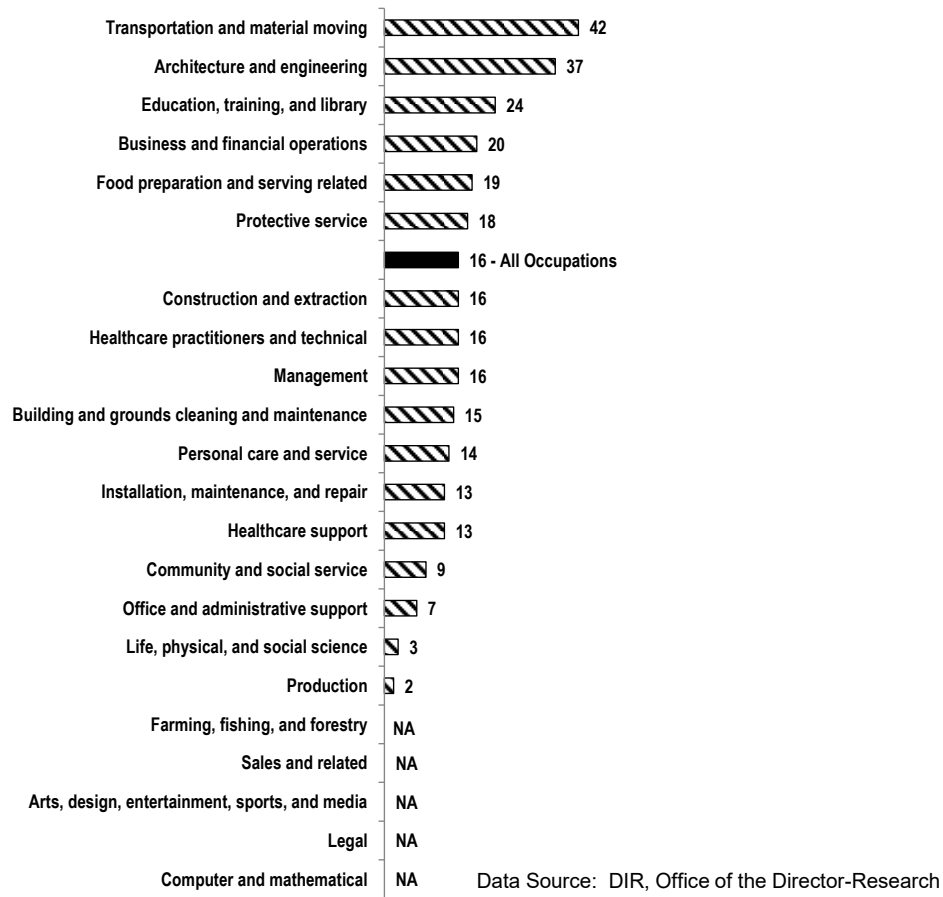
Figure 142: Non-Fatal Injuries and Illnesses by Major Occupational Group: Median Days Away from Work, State Government, 2020



Data Source: DIR, Office of the Director-Research

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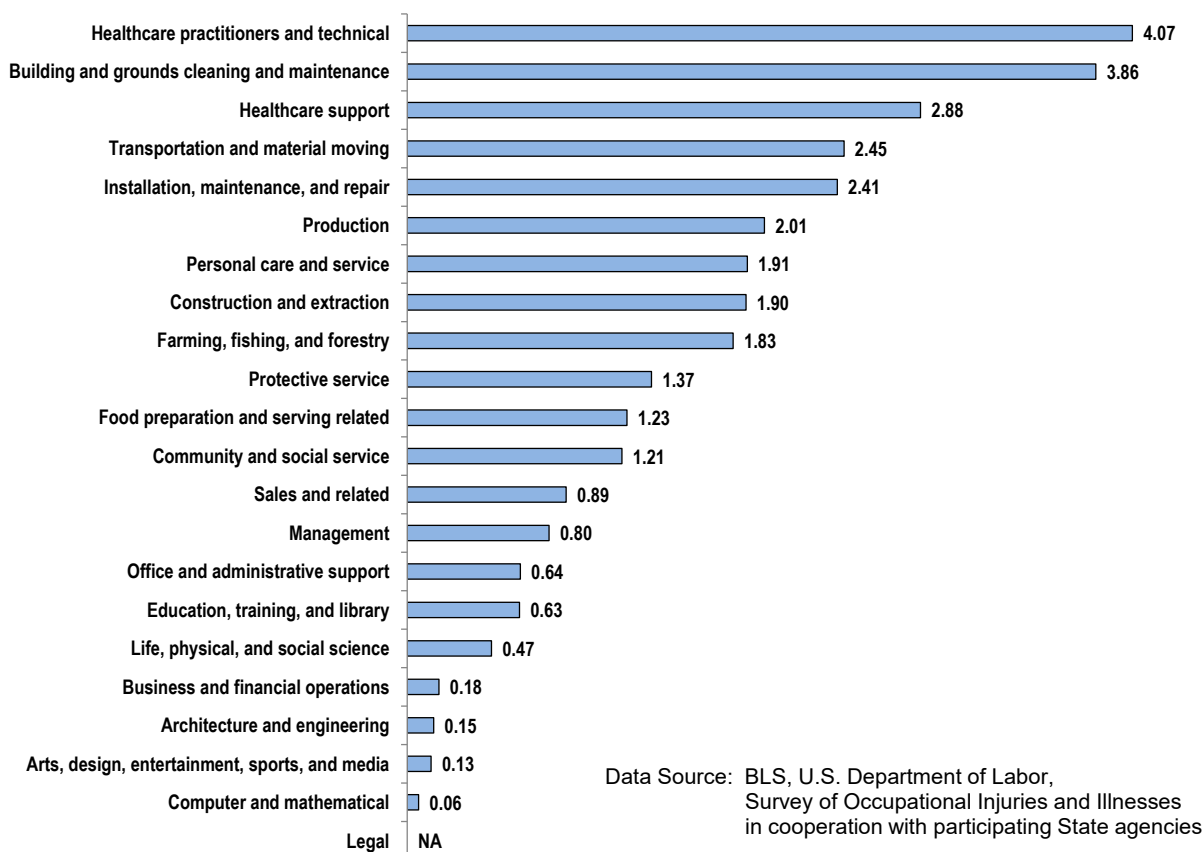
Figure 143: Non-Fatal Injuries and Illnesses by Major Occupational Group: Median Days Away from Work, Local Government, 2020



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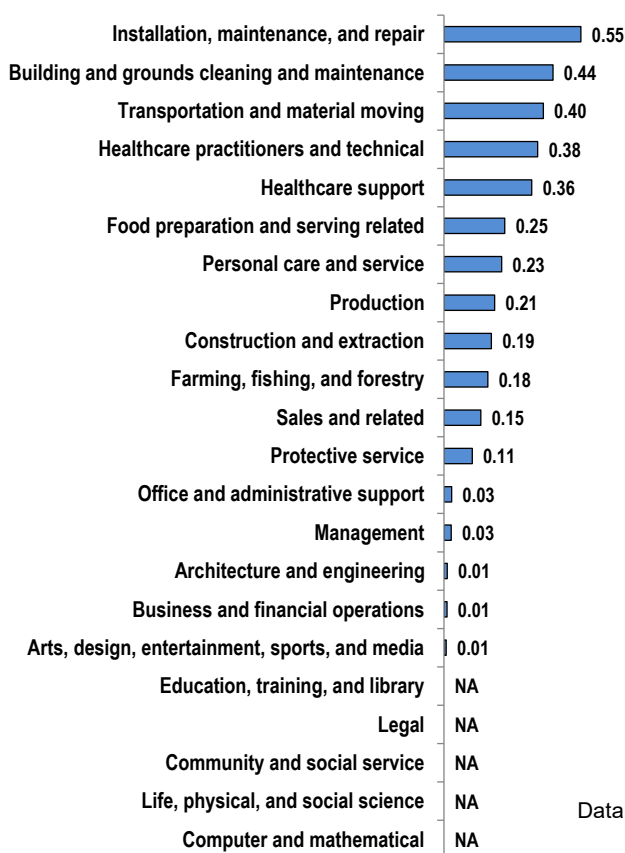
Figures 144 and 145 compare the injury and illness incidence rates, including back injury, for various occupations. The healthcare practitioners and technical occupations had the highest incidence rate in 2020, followed by building and grounds cleaning and maintenance occupations and healthcare support.

**Figure 144: Incidence Rates by Private Sector Occupational Group (per 100 Full-Time Workers)
Non-Fatal Occupational Injuries and Illnesses with Days Away from Work, 2020**



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Figure 145: Back Injury Incidence Rates by Private Sector Occupational Group (per 100 Full-Time Workers) Non-Fatal Occupational Injuries and Illnesses with Days Away from Work, 2020



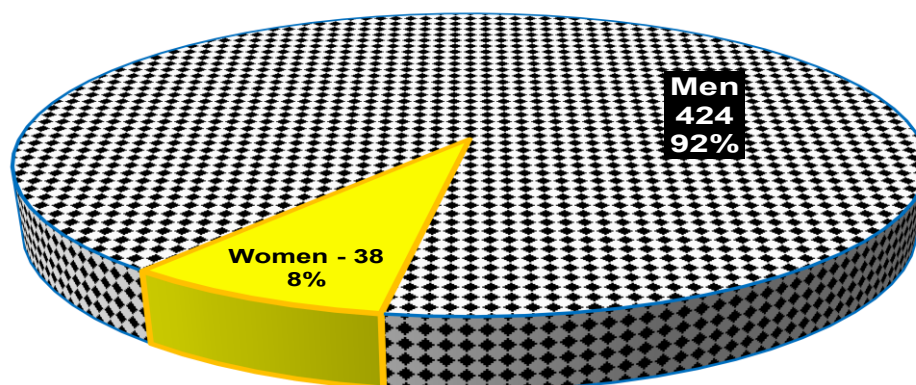
Data Source: BLS, U.S. Department of Labor,
Survey of Occupational Injuries and Illnesses
in cooperation with participating State agencies

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Characteristics of California Fatal Occupational Injuries

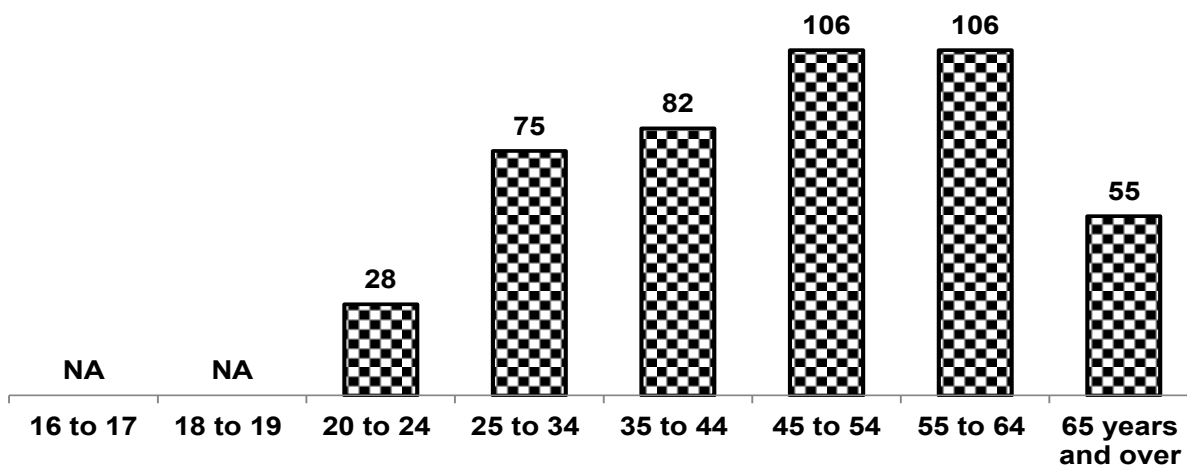
Figures 146-150 illustrate various characteristics of fatal occupational injuries in private industry and federal, state, and local governments in California.

Figure 146: California Fatal Occupational Injuries by Gender, 2021



Data Source: BLS

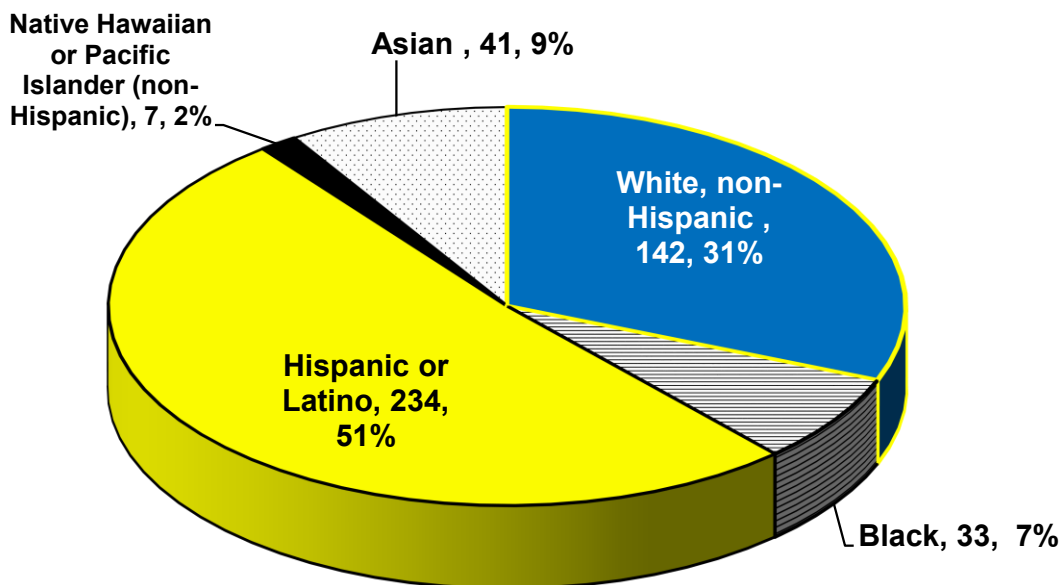
Figure 147: California Fatal Occupational Injuries by Age of Worker, 2021



Source: BLS

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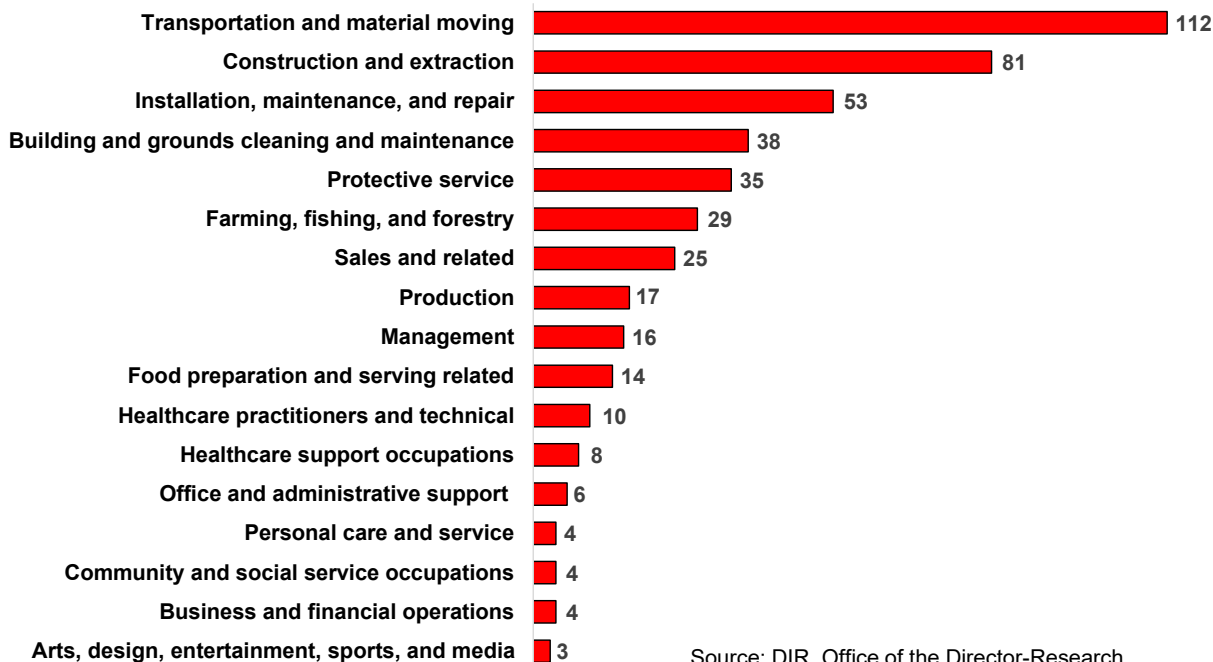
Figure 148: California Fatal Occupational Injuries by Race and Ethnic Origin, 2021



Source: BLS

Figure 149 compares the number of fatalities for various occupations. The transportation and material moving occupations had the highest number of fatalities in 2021, followed by the construction and extraction occupations.

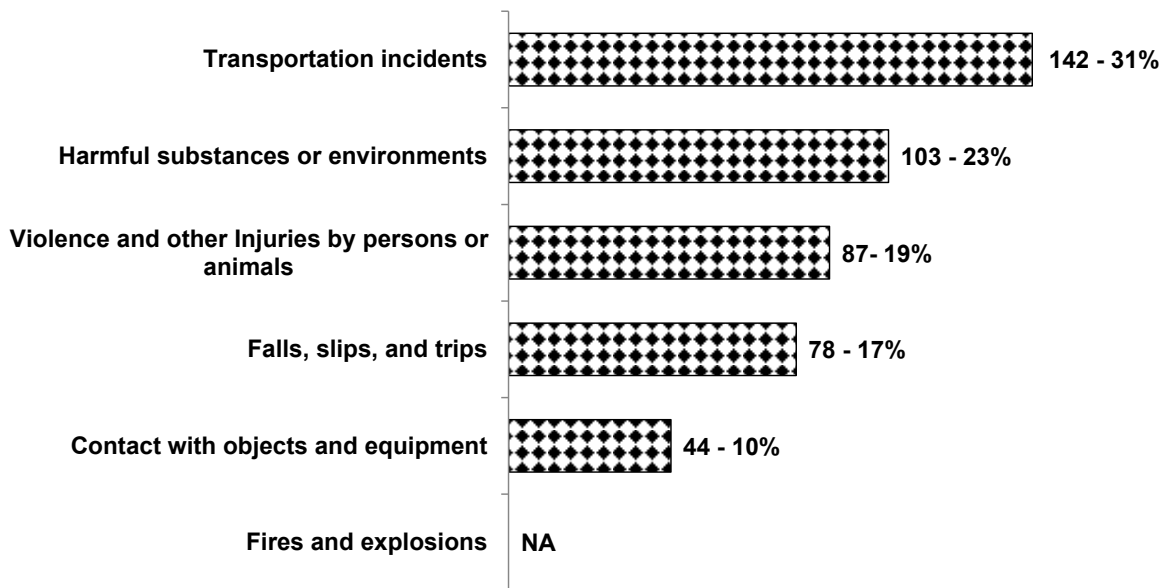
Figure 149: Fatal Occupational Injuries by Selected Occupations, All Ownerships, 2021



Source: DIR, Office of the Director-Research

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Figure 150: California Fatal Occupational Injuries by Event and Exposure, 2021



Note: The data exclude the Federal government.

Source: BLS

Fatal Injuries among Contracted and Independent Workers¹⁹⁶

In the Census of Fatal Occupational Injuries (CFOI), a contracted worker is defined as someone employed by one firm but working for another firm that is responsible for operations at the site where a worker is killed. CFOI first collected data on contracted workers in 2011, and the latest data available for U.S. contractor fatalities are for 2015. CFOI collects two types of industry data for contracted workers. The contracting industry is the industry of the firm that contracts the worker. The employer industry is the industry of the firm that directly employs the worker.¹⁹⁷ Unlike contractors, as defined in this section, independent workers are temporarily employed and paid directly by the employer. According to the BLS, independent workers generally have short-term jobs that involve a discrete task, have no guarantee of future work based on their current contract, have no guarantee that work will be available when they are able to work, and have the ability to decide which work they undertake.

According to BLS, data available for the U.S. as of May 2017, workers with alternative arrangements—that is, not permanent jobs—comprised 10.1 percent of total employment. Independent contractors make up the largest of four alternative arrangements, responsible for 6.9 percent of total employment in May 2017. The second-largest category was on-call workers, at 1.7 percent. Temporary help agency workers accounted for 0.9 percent of total employment, and workers provided by contract firms made up 0.6 percent of total employment.¹⁹⁸

Figure 151 shows that from 2011 to 2015, the number of fatal occupational injuries among contracted workers in the U.S. increased by 53 percent.

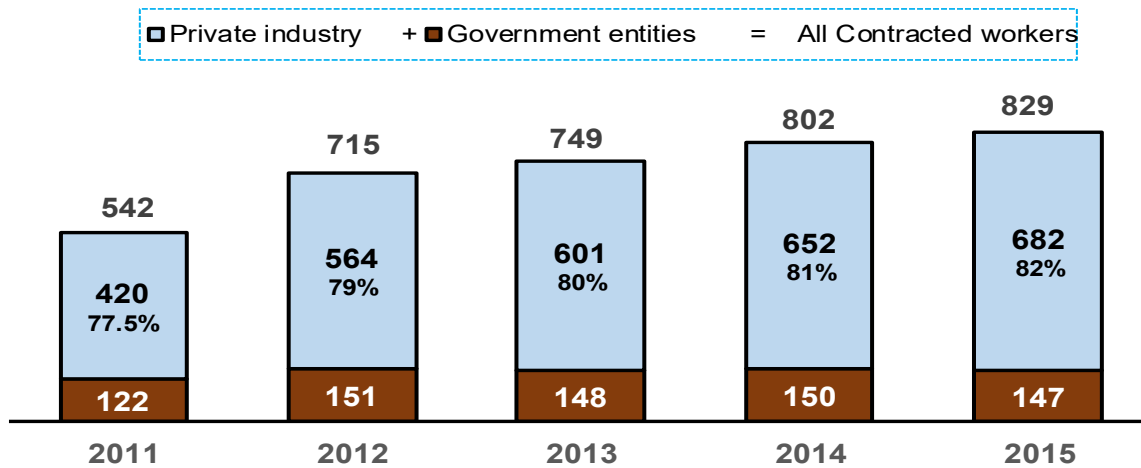
¹⁹⁶ Data in this section were created on an ad hoc basis by the Bureau of Labor Statistics (BLS) and not updated in 2021.

¹⁹⁷ <https://www.bls.gov/iif/oshwc/cfoi/contractor.htm>.

¹⁹⁸ <https://www.bls.gov/opub/ted/2018/independent-contractors-made-up-6-point-9-percent-of-employment-in-may-2017.htm?view=full>.

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Figure 151: Number of Fatal Occupational Injuries by Contracted Workers in the U.S., 2011—2015



Source: BLS

Table 36 depicts the number of fatal injuries among independent workers nationally and in California from 2016 to 2018.

Table 36: Number of Fatal Occupational Injuries by Independent Workers in the U.S. and California, 2016—2018

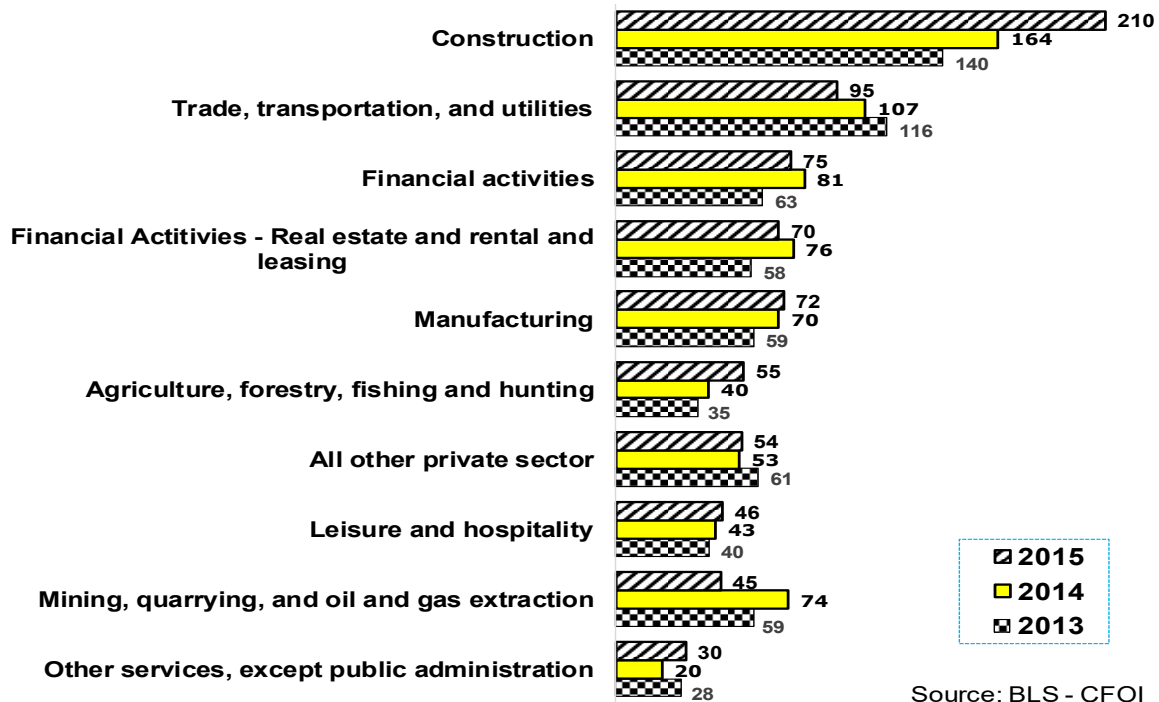
	2016	2017	2018
U.S.	662	613	621
California	52	75	60

Source: BLS

As Figure 152 shows, the largest contracting industries in the U.S for fatally injured contracted workers in private industry were construction, trade, transportation, utilities, and financial activities.

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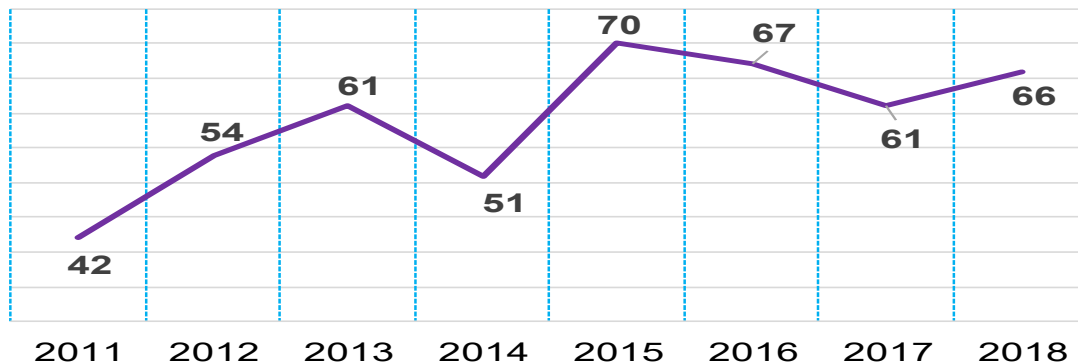
Figure 152: Number of Fatal Occupational Injuries by Contracted Workers in the U.S., by Contracting Industry, 2013–2015



Similar to the pattern nationally, the contractor-based economy has been increasing in California since the Great Recession. The distinction between those who qualify as independent contractors and those who are considered permanent employees is extremely significant. Contractors are excluded from protections for permanent employees in many laws, including coverage by workers' compensation statutes, workplace discrimination laws, eligibility for overtime pay, collection of post-termination unemployment, eligibility for health insurance, and other employee benefits.

Figure 153 shows that the number of fatal occupational injuries for contracted workers in California fluctuated from 42 to 70 fatalities between 2011 and 2015, decreased by 13 percent between 2015 and 2017, and increased by 8 percent from 2017 to 2018.

Figure 153: Number of Fatal Occupational Injuries Incurred by Contracted Workers in California



Source: BLS—CFOI

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Profile of Occupational Injury and Illness Statistics: California and the Nation

Data for the following analyses, except where noted, came from the Department of Industrial Relations (DIR), Office of the Director-Research (OD-Research) and the U.S. Department of Labor (DOL) Bureau of Labor Statistics (BLS).

Incidence Rates

- California's work injury and illness statistics for 2021 indicate a non-fatal injury and illness incidence rate of 3.2 cases per 100 full-time employees in the private sector. This is an about 9 percent decline from the 2013 level of 3.5 and the same as the previous 2020 year's rate.
- The trend in California mirrored a national trend from 2013 to 2021. DOL figures for private employers show that from 2013 to 2017, the work injury and illness rate across the U.S. fell from 3.3 to 2.8 cases per 100 employees in the private sector and then remained flat from 2017 to 2021 with a slight decreases from 2.8 in 2019 to 2.7 in 2020 and 2021. The reduced incidence rate of job injuries from 2013 to 2017 was likely due to factors including a greater emphasis on job safety and the continuing shift from manufacturing to service jobs in the U.S.
- In contrast to the private sector rates, California's public sector incidence rates are significantly higher than in the private sector. California's state and local government rate for 2021 is 6.2 cases per 100 full-time employees. While this is a 13 percent decline from the 2013 rate of 7.1, in 2021, the state and local government rate of 6.2 in California is 27 percent higher than the national rate of 4.5 for state and local government.
- The national fatality rate increased by 9 percent between 2013 and 2021, from 3.3 to 3.6 cases per 100,000 employed, and California's fatality rate increased by about 17 percent from 2.4 per 100,000 employed in 2013 to 2.8 cases in 2021.¹⁹⁹
- Among the Western region states (Alaska, Arizona, California, Hawaii, Nevada, Oregon, and Washington), Arizona's (2.8), California's (3.2), and three states' of Alaska, Hawaii and Nevada (3.3) private industry rates in 2021 for non-fatal occupational injuries and illnesses were the lowest.²⁰⁰ The 2021 fatality rates among these states were the lowest for Washington and Arizona (2.1), Hawaii (2.2), and California (2.8).²⁰¹

Duration

- Days-away-from-work cases in the private sector, including those that result in days away from work with or without a job transfer or restriction, increased by 36 percent from 1.1 case per 100 full-time employees in 2013 to 1.5 cases per 100 full-time employees in 2020, with a slight decrease to 1.4 cases per 100 full-time employees in 2021. The national rate of the days-away-from-work cases per 100 full-time employees in the private sector increased from 1.0 in 2013 to 1.2 cases per 100 full-time employees in 2020, with a slight decrease to 1.1 cases per 100 full-time employees in 2021.
- Nationally, the overall days-away-from-work rate increased from 5-year-flat of 0.9 (2015 to 2019) to 1.2 cases per 100 full-time employees in 2020, that stayed at a higher than pre-COVID-19 pandemic level of 1.1 cases per 100 full-time employees in 2021. California's days-away-from-work rate increased from prevailing 1.0 or 1.1 in 2013 through 2019 to 1.5 cases per 100 full-time employees in 2020 and stayed at a higher than pre-COVID-19 pandemic level of 1.4 cases per 100 full-time employees in 2021.

Industry Data

- In 2021, injury and illness incidence rates varied greatly among private industries ranging from 0.9 injury/illness per 100 full-time workers in the mining, quarrying, and oil and gas extraction and

¹⁹⁹ Beginning in 2007, the Census of Fatal Occupational Injuries (CFOI) adopted hours worked estimates to measure fatal injury risk per standardized length of exposure, which is generally considered more accurate than previously used employment-based rates.

²⁰⁰ The comparisons of industry rates have not been adjusted for industry mix in each state.

²⁰¹ <https://www.bls.gov/iif/oshwc/cfoi/staterate2019.htm>.

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information industries to 5.9 in transportation and warehousing. California's private industry rates for total cases were higher than the national rates in every major industry division, except for mining, quarrying, and oil and gas extraction (0.9 and 1.3), manufacturing (3.0 and 3.3), real estate and rental and leasing (1.7 and 2.0), and educational services (1.5 and 1.7).

- The California private industry total case rate for non-fatal injuries experienced no change from 3.2 cases per 100 full-time workers in both 2020 to 2021, and the rate for the public sector (state and local government) increased by 13 percent from 5.5 in 2020 to 6.2 in 2021.
- According to the OD-Research, and the Office of Legislative Affairs, the largest decrease in injury and illness by major industry category from 2020 to 2021, was in the real estate and rental and leasing (35 percent), from 2.6 to 1.7, in health care and social assistance (16 percent), from 6.1 to 5.1 per 100 full-time worker injuries, followed by a decrease in construction (11 percent) from 3.5 to 3.1 per 100 full-time worker injuries in 2020 and 2021, and by a decrease in administrative and support and waste management and remediation (10 percent), from 3.0 to 2.7 per 100 full-time worker injuries in 2020 and 2021. Manufacturing (6 percent), accommodation and food services (5 percent), and agriculture, forestry, fishing and hunting (2 percent) also experienced a decrease in injury cases per 100 full-time workers from 2020 to 2021.²⁰²
- According to the OD-Research, the largest increase in injury and illness by industry sectors was in educational services (67 percent), from 0.9 to 1.5 per 100 full-time worker injuries in 2020 and 2021 respectively, followed by professional, scientific, and technical services (43 percent), with an increase from 0.7 to 1.0, transportation and warehousing, with a 34 percent increase from 4.4 to 5.9 per 100 full-time worker injuries in 2020 and 2021, and both the information and arts, entertainment, and recreation (29 percent), from 0.7 to 0.9 and 3.5 to 4.5 respectively between 2020 and 2021.²⁰³
- From 2013 to 2021, the number of fatal injuries increased by almost 19 percent, from 378 to 450.²⁰⁴ From 2020 to 2021, there was a 3 percent increase in the number of fatal injuries from 438 to 450 respectively. In 2021, the highest number of fatal injuries in the private sector was in construction (79), followed by transportation and warehousing (58) and administrative and support and waste management and remediation services (47).
- In private industry, the top ten occupations²⁰⁵ with the most non-fatal injuries and illnesses in 2020 were: registered nurses; laborers and freight, stock and material movers, hand; nursing assistants; stockers and order fillers; personal care aids; heavy and tractor-trailer truck drivers; retail salespersons; farmworkers and laborers, crop, nursery, and greenhouse; maids and housekeeping cleaners; janitors and cleaners, except maids and housekeeping cleaners.
- In California's state government, the top ten occupations with the most non-fatal injuries and illnesses in 2020 were: correctional officers and jailers; police and sheriff's patrol officers; registered nurses; firefighters; highway maintenance workers; psychiatric technicians; first-line supervisors of correctional officers; janitors and cleaners, except maids and housekeeping cleaners; first-line supervisors of firefighting and prevention workers; health information technologists, medical registrars, surgical assistants, and healthcare practitioners and technical workers, all other.
- In local government, the top ten occupations with the most non-fatal injuries and illnesses in 2020 were: police and sheriff's patrol officers; correctional officers and jailers; firefighters; janitors and cleaners, except maids and housekeeping cleaners; first-line supervisors of police and detectives; first-line supervisors of firefighting and prevention workers; landscaping and groundskeeping workers; registered nurses; maintenance and repair workers, general; nursing assistants.

²⁰² DIR, Office of the Director-Research, Table 1: Incidence rates of non-fatal occupational injuries and illnesses by selected industries and case types, 2020, 2021.

²⁰³ Ibid.

²⁰⁴ The number of fatalities excludes those for the Federal government.

²⁰⁵ Please note that the latest case characteristics by occupations for non-fatal cases are only available for 2020 (three consecutive bullets) as indicated on page 171.

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- Transportation and material moving (112), construction and extraction (81), and building and grounds cleaning and maintenance (38) occupations accounted for 52 percent of the fatal injuries in 2021. Installation, maintenance, and repair (53), protective services (35), farming, fishing, and forestry (29), sales and related (25), production (17), and management (16) were the other occupations with the most number of fatal injuries in 2021. Transportation and material-moving occupations were the top cause of fatal injuries accounting for 25 percent of fatal injuries in 2021.
- Transportation incidents (including the federal government) accounted for almost 31 percent of fatal injuries in 2021 and were a major cause of fatalities among: transportation and material moving (66); farming, fishing, and forestry (16), and protective service (12) occupations.

Establishment Size and Type

- The lowest rate for the total recordable non-fatal cases in 2021 was experienced by the private employers having fewer than 50 employees. Smallest employers with 1 to 10 and 11 to 49 employees had incidence rates of 1.1 and 2.8 cases, respectively, per 100 full-time employees. Establishments with 1 to 10 and 50 to 249 employees experienced 21 percent and 2 percent decreases respectively in incidence rates from 2020 to 2021. There were no changes in injury cases per 100 full-time employees for establishments with 1,000 or more employees from 2020 to 2021.
- Establishments with 50 to 249 employees reported the highest rate of 4.1 per 100 full-time employees, followed by 3.8 and 3.3 cases per 100 full-time employees respectively for establishments with 250 to 999 and 1,000 or more employees in 2021. Employers with 11 to 49 and 250 to 999 employees experienced 8 percent and 3 percent increases respectively from 2020 to 2021.

Types of Injuries²⁰⁶

- Eight out of eleven types of work illnesses and injuries decreased from 2013 to 2020 in the private sector. The number of sprains, strains, and tears decreased by 8 percent from 2013 to 2020; these injuries remain by far the most common type of work injury accounting for 40 percent of days-away-from-work cases in the private sector in 2020. The biggest decrease of 64 percent from 470 cases in 2013 to 170 in 2020 was in tendonitis, followed by carpal tunnel syndrome (-15 percent), multiple traumatic injuries (-11 percent), and equally decreased heat (thermal) burns (-10 percent) and cuts, lacerations, punctures (-10 percent). The biggest increase (39 percent) from 180 cases in 2013 to 250 cases in 2020 was in chemical burns and corrosions. Soreness and pain increased 35 percent and fractures increased 9 percent between 2013 and 2020.
- In the private sector, exposure to harmful substances or environment were the leading causes of days-away-from-work injuries, cited in 38 percent of cases in 2020. Overexertion and bodily reaction was the second-most common cause of injury, accounting for 24 percent of injuries.
- In California state government, the two main causes of injury were exposure to harmful substances or environment and overexertion and bodily reaction, accounting for 44 and 19 percent of days-away-from-work cases, respectively, in 2020.
- In local government, the main causes of injury were overexertion and bodily reaction and exposure to harmful substances or environment, accounting for 32.4 and 32.2 percent of days-away-from-work cases, respectively, in 2020.
- The most frequently injured body part was the body systems, accounting for 45 percent of the cases in state government and 30 percent of the cases in local government in 2020. In the private sector, the body systems account for 37 percent of the non-fatal cases.

²⁰⁶ Please note that the latest case and demographical characteristics for non-fatal cases are only available for 2020 as indicated on page 171.

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Demographics²⁰⁷

- Over the period from 2013 to 2020 in the California private sector, the number of days-away-from-work cases for women increased by 21 percent. Days-away-from-work cases for men increased by 20 percent. Some of the increase (28 percent and 16 percent for women and men respectively) from 2013 to 2019 can be attributed to an increase in employment and total hours worked. From 2019 to 2020, there was a 3 percent increase in the number of fatalities for men and 3 percent decrease for women.
- Between 2013 and 2020, in private industry, all the age groups experienced increase in the number of cases with days away from work. The biggest increase (78 percent and 60 percent) occurred among workers 65 and over and 55-64 age group respectively. The 16–19 age group increased 50 percent and the 20-24 age group grew 49 percent from 2013 to 2020. The 25-34 age group increased 37 percent, 45-54 age groups increased 31 percent, and 35-44 age group increased 26 percent from 2013 to 2020.
- In 2021, out of 462 fatalities (including the federal government), 92 percent were male and 8 percent were female. Compared to 2013, the only decrease in the number of fatalities (11 percent) was in the 35–44 age group (from 92 to 82 cases). The age groups that experienced the biggest increase in the number of fatalities was the 65 and over age group (57 percent increase) from 35 to 55 cases, followed by a 41 percent increase from 75 to 106 in the 55 to 64 age group, a 33 percent increase from 21 to 28 in the age group of those 20 to 24, a 9 percent increase from 69 to 75 in the 25 to 34 age group, and 8 percent increase from 98 to 106 in the 45 to 54 age group.
- The highest number of fatalities by race or ethnic origin categories in 2021 was experienced by “Hispanic or Latino” (234) and “White, non-Hispanic” (142) groups, accounting for 51 percent and 31 percent of the fatalities respectively. From 2013 to 2021, the only decrease in the number of fatalities (13 percent) was in the “White, non-Hispanic” group (from 163 to 142 cases). The highest increase in fatal injuries from 2013 to 2021, 106 percent, was in the “Black, non-Hispanic” group (from 16 to 33 cases), followed by 105 percent increase from 20 to 41 cases in the “Asian” group. The “Hispanic or Latino” ethnic group experienced a 21 percent increase in fatal injuries, from 194 cases in 2013 to 234 cases in 2021.

Occupational Injury and Illness Reporting

Occupational injury and illness information is the responsibility of BLS in the U.S. and DOL and the OD-Research in the California DIR. Occupational injuries and illnesses are recorded and reported by California employers through several national surveys administered by DOL with DIR assistance.

OSHA Reporting and Recording Requirements

The U.S. Occupational Safety and Health Act (OSH Act) of 1970 requires covered employers to prepare and maintain records of occupational injuries and illnesses. It provides specific recording and reporting requirements that comprise the framework for the nationwide occupational safety and health recording system. The Occupational Safety and Health Administration (OSHA) in DOL administers the OSH Act recordkeeping system.

Although some employers are exempt from keeping Cal/OSHA injury and illness records, all California employers must report injuries to the OD-Research. Every employer must also report any serious occupational injuries, illnesses or deaths to California OSHA (Cal/OSHA) in DIR.

The data assist employers, employees, and compliance officers in analyzing the safety and health environment at the employer's establishment and are the source of information for the BLS *Annual Survey of Occupational Injuries and Illnesses* and the OSHA *Occupational Injury and Illness Survey*.

²⁰⁷ Ibid.

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BLS Annual Survey of Occupational Injuries and Illnesses

To estimate the number of occupational injuries and illnesses in the U.S., BLS established a nationwide annual survey of employers' occupational injuries and illnesses. The state-level statistics on non-fatal and fatal occupational injuries and illnesses come from this survey. In California, the OD-Research conducts the survey for BLS.

Non-fatal Injuries and Illnesses

The BLS *Annual Survey* develops frequency counts and incidence rates by industry and also profiles worker and case characteristics of non-fatal workplace injuries and illnesses that result in lost work time. Each year, BLS collects employer reports from about 173,800 randomly selected private industry establishments.

Fatal Injuries

The estimates of fatal injuries are compiled through the Census of Fatal Occupational Injuries (CFOI), which is part of the BLS occupational safety and health statistics program. CFOI uses diverse state and federal data sources to identify, verify, and profile fatal work injuries. Fatalities from COVID-19 or other illnesses, other than acute heat illness are not included. Fatal overdoses and deaths by suicide and violence are included 1) if the incident occurred on the employer's premises, and the person was there to work; or 2) if the incident occurred off the employer's premises, and either the person was there to work, or the incident was related to the person's work or status as an employee.

OSHA Occupational Injury and Illness Survey

Federal OSHA administers the annual *Occupational Injury and Illness Survey*. OSHA utilizes this collection of employer-specific injury and illness data to improve its ability to identify and target agency interventions to employers that have serious workplace problems. For this survey, OSHA collects data from 80,000 non-construction establishments and from up to 15,000 construction establishments.

Occupational Injury and Illness Prevention Efforts

Efforts to prevent occupational injury and illness in California take many forms, but all are derived from cooperative efforts between the public and private sectors. This section describes consultation and compliance programs, health and safety standards, and education and outreach designed to prevent injuries and illnesses in order to improve worker health and safety.

Cal/OSHA Program

Cal/OSHA's program is responsible for enforcing California's laws and regulations pertaining to workplace health and safety and for providing assistance to employers and workers about workplace safety and health issues.

[Cal/OSHA's Enforcement Unit](#) conducts investigations of workplaces in California primarily based on worker complaints, accident reports, and planned inspections in high hazard industries. Twenty-eight [Cal/OSHA district](#) offices are located throughout California including enforcement, [Mining and Tunneling](#) and [Process Safety Management](#). Specialized enforcement units, such as the High Hazard Unit and the [Labor Enforcement Task Force](#), focus on protecting California's workers from workplace hazards in high hazard industries.

Other specialized units, such as the [Crane Certifier Accreditation Unit](#), the [Asbestos Contractors' Registration Unit](#), the [Asbestos Consultant and Site Surveillance Technician Unit](#), and the [Asbestos Trainers Approval Unit](#), are responsible for enforcing regulations on crane safety and the prevention of exposure to asbestos. The [Cal/OSHA Process Safety Management \(PSM\) Unit](#) is responsible for enforcement at refineries and chemical plants that handle large quantities of toxic and flammable materials.

[Cal/OSHA's Consultation Services](#) Branch provides assistance to employers and workers about workplace

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safety and health issues through on-site assistance, telephone inquiries, high hazard consultation, and other programs with a particular emphasis. Consultation Services also develops educational materials on workplace safety and health topics.

Information on COVID-19 illnesses reported, complaints received, and inspections and investigations conducted by Cal/OSHA could be found on California's Open Data Portal, in regularly-updated posting of citations for COVID-19 related violations, and in *COVID-19 Complaints, Fatalities, and Illnesses (Update)*²⁰⁸ presentation.

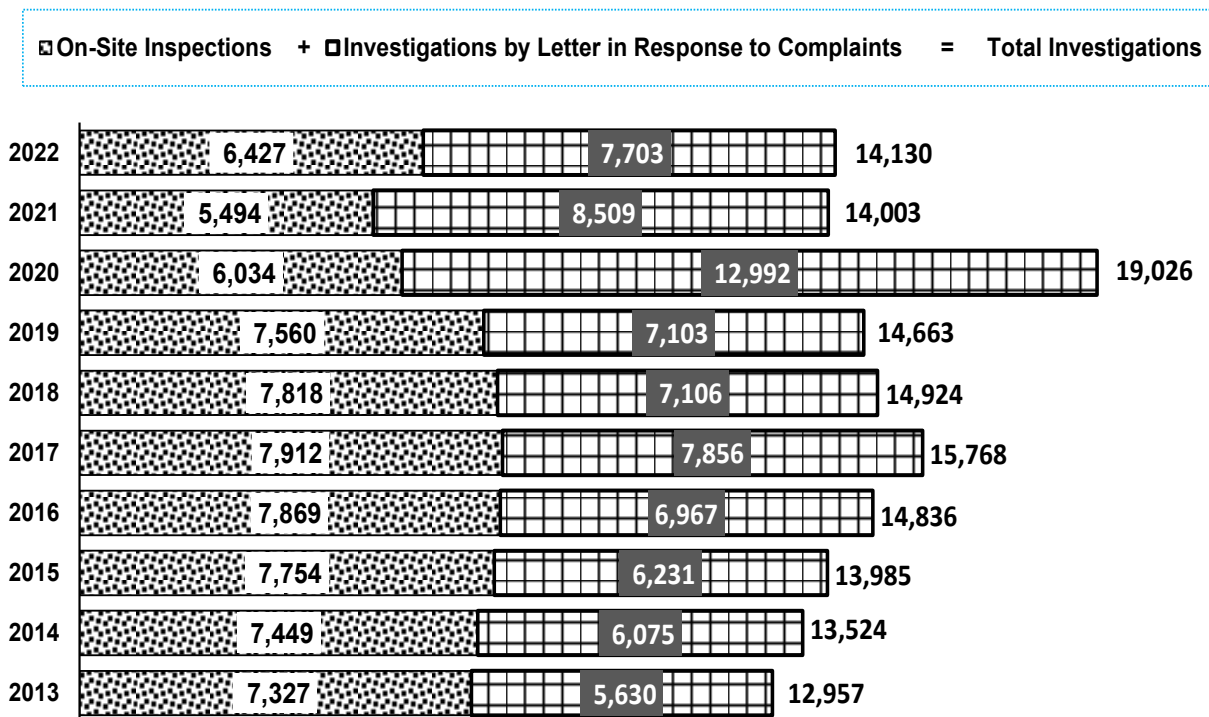
²⁰⁸ <https://data.ca.gov/dataset/dosh-covid-19/resource/465980a9-fdd2-4328-9924-6c2a565f41e1>, <https://www.dir.ca.gov/DOSH/covid19citations.asp>, and <https://www.dir.ca.gov/chswc/Meetings/2020/CalOSHA-Presentation-12-03-2020.pdf>.

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Profile of Division of Occupational Safety and Health (DOSH) Investigations and Violations Cited

Figure 154 shows the number of on-site inspections and investigations by letter²⁰⁹ in response to complaints for the period from calendar year (CY) 2013 to CY 2021.²¹⁰ The on-site inspections increased by 8 percent from 2013 to 2017, decreased by 30.5 percent from 2017 to 2021, and then grew by 17 percent from 2021 to 2022. Investigations by letter in response to complaints increased by 40 percent from 2013 to 2017, decreased by 10 percent from 2017 to 2019, and increased by 83 percent from 2019 to 2020. Sending a letter instead of an on-site inspection, as shown in Figure 154, allowed Cal/OSHA to respond to hazards at more workplaces than it could have inspected in person during the height of COVID-19 pandemic. From 2020 to 2022, investigations by letter in response to complaints decreased by 41 percent. Accordingly, reflecting DOSH enforcement activities, the total number of investigations increased by 22 percent from 2013 through 2017, decreased by 7 percent from 2017 to 2019, and increased by 30 percent from 2019 to 2020. From 2020 to 2022, the total number of investigations decreased overall by 26 percent. Sending a letter instead of an on-site inspection, according to Figure 154, was a way to respond to the exigencies of the COVID-19 pandemic in 2020.

Figure 154: DOSH Enforcement Activities, 2013–2022



Source: DOSH

Figure 155 shows the distribution of DOSH on-site inspections with and without violations from 2013 to 2022.

Unprogrammed inspections triggered by accidents increased from 26 percent of all programmed and unprogrammed inspections in 2013 to 33 percent in 2015 and stabilized at 32-33 percent from 2015 to 2019. From 2019 to 2021, the share of inspections triggered by accidents increased by 14 percentage points to 47 percent, before decreasing to 38 percent in 2022.

²⁰⁹ Investigations by letter may be conducted in response to non-formal complaint that does not allege an imminent hazard. <https://www.dir.ca.gov/dosh/caloshacomplaintflowchart.html>; items 3D and 3E

²¹⁰ The number of investigations, on-site inspections, and violations for calendar years could differ from those in fiscal years below in this section.

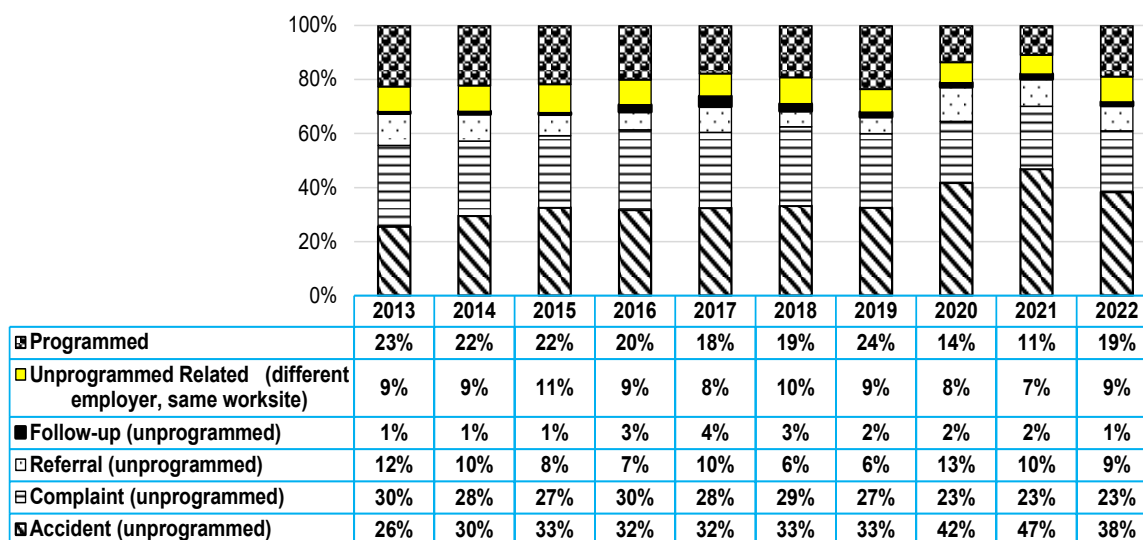
WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

Unprogrammed inspections triggered by complaints fluctuated slightly around an average of 28 percent from 2013 to 2019, and then decreased and stabilized at 23 percent from 2019 to 2022.

Programmed inspections decreased from an average of 22 percent per year from 2013 through 2016, to 18 percent in 2017 and then increased to 24 percent in 2019. From 2019 to 2021, the share of programmed inspections decreased by 13 percentage points to 11 percent before growing back to 2017 and 2018 levels in 2022.

From 2013 to 2022, accidents and complaints were consistently the predominant types of inspections.

Figure 155: Distribution of DOSH on-Site Inspections by Type (All, with and without Violations), 2013–2022

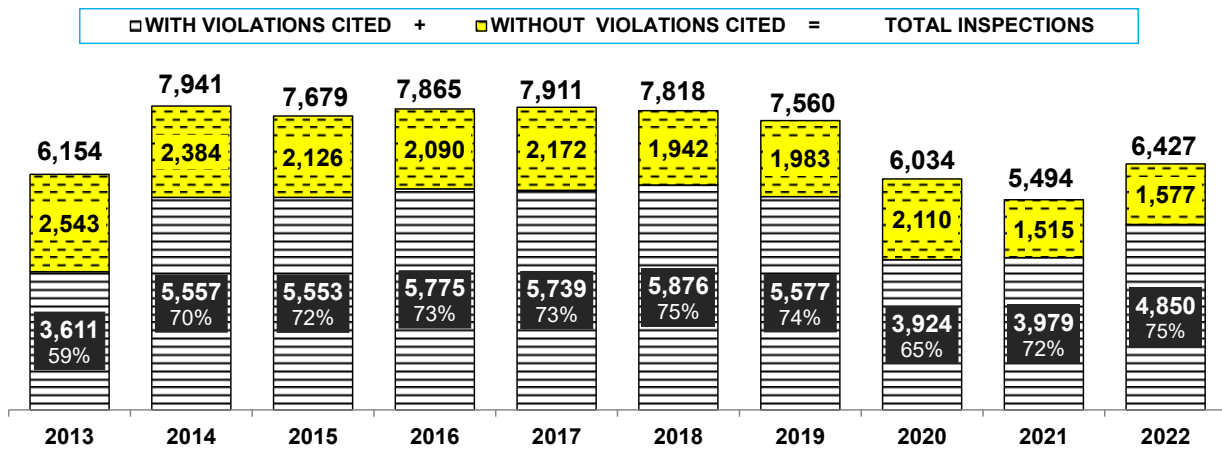


Source: DOSH

According to Figure 156, the number of inspections without violations decreased by 16 percent from 2013 to 2015, stabilized at an average of 2,070 from 2015 to 2020, and then dropped by 25 percent to an average of 1,546 in 2021 and 2022. The number of inspections with violations increased by 54 percent from 2013 to 2014, stabilized at an average of 5,680 from 2014 to 2019, and then fell by 28 percent to an average of 3,950 in 2020 and 2021, before increasing by 22 percent from 2021 to 2022. The share of DOSH inspections that resulted in violations cited increased from 59 percent of the inspections in 2013 to 70 percent in 2014, and then increased to an average of 74 percent from 2017 to 2019. From 2019 to 2020, the share of DOSH inspections that resulted in violations cited decreased by almost 10 percentage points to 65 percent of all inspections in 2020, but returned to its pre-pandemic level of 75 percent in 2022.

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Figure 156: DOSH Inspections (with and without Violations Cited), 2013–2022



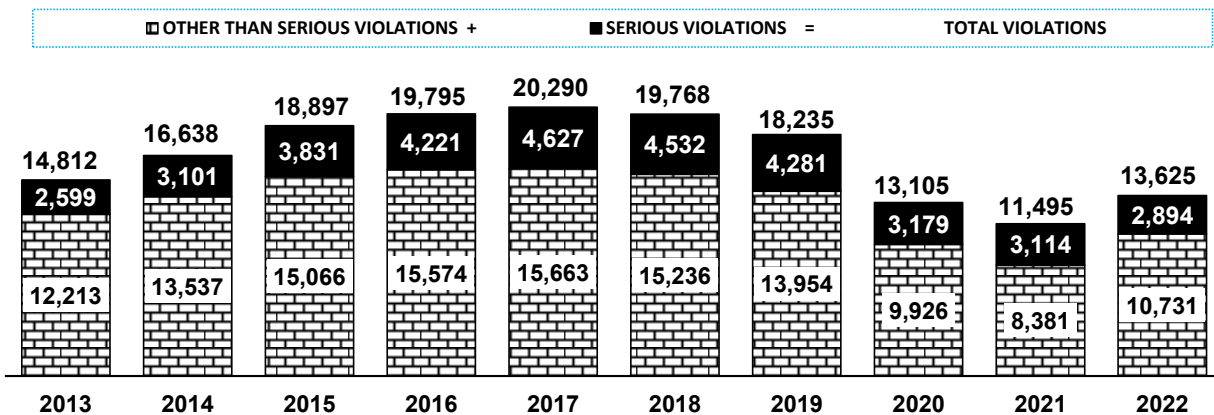
Data Source: DOSH

The number of violations exceeds that of inspections because most inspections of places where violations occur yield more than one violation. Violations are further broken down into serious and other-than-serious.

The number of DOSH violations and their breakdown by type from 2013 to 2022 are shown in Figure 157.

According to Figure 157, the number of all violations increased by 37 percent from 2013 to 2017, decreased by 10 percent from 2017 to 2019, and then, during the COVID-19 pandemic, fell by an additional 37 percent from 2019 to 2021. From 2021 to 2022, the total number of violations increased by 19 percent. The number of serious violations increased by 78 percent from 2013 to 2017, decreased by 7.5 percent from 2017 to 2019, and then declined by 32 percent from 2019 to 2022. (See Figures 170 and 171 for OSHAB statistics on the number of appeals of DOSH violations that were filed and resolved.)

Figure 157: DOSH Violations (Serious and Other Than Serious), 2013–2022



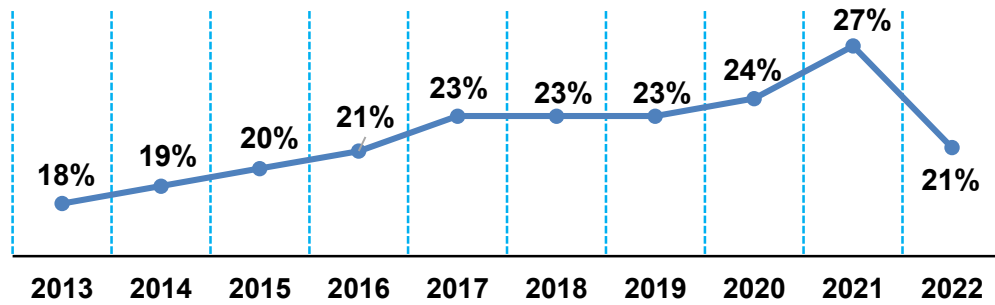
Source: DOSH

Note: “Serious” includes Serious, Willful, and Repeat violations. “Other than serious” includes General and Regulatory violations.

Figure 158 shows the trend in serious DOSH violations as a share of all violations from 2013 to 2022. The share of serious DOSH violations gradually increased from 18 percent in 2013 to 23 percent yearly from 2017 to 2019, and increased to 27 percent in 2021, before decreasing by 6 percentage points from 2021 to 2022.

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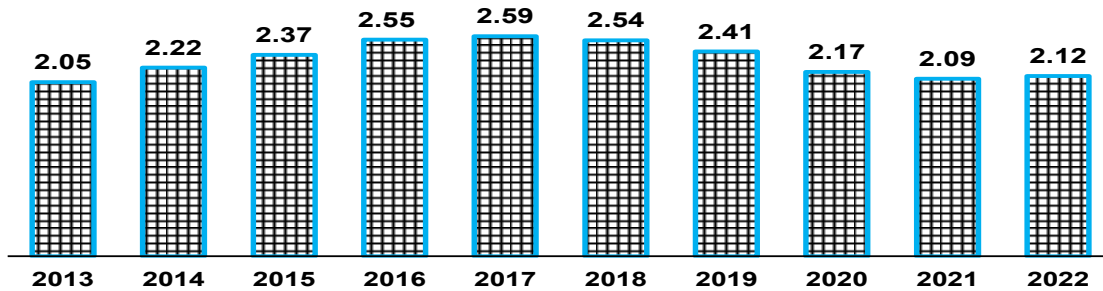
Figure 158: Serious Violations as a Share of Total DOSH Violations, 2013-2022



Source: DOSH

The average number of DOSH violations per inspection increased by 24 percent from 2013 to 2016, averaged 2.55 from 2016 to 2018, and after a slight decrease from 2018 to 2019, it declined by 13 percent to 2.09 DOSH violations per inspection in 2021. The average number of DOSH violations per inspection increased from 2.09 in 2021 to 2.12 in 2022.

Figure 159: Average Number of DOSH Violations per Inspection, 2013–2022



Source: DOSH

Table 37 lists the top twenty-five most frequently cited CCR Title 8 standards in 2022.

Table 37: Twenty-Five Most Frequently Cited CCR Title 8 Standards, 2022

Standard	Description	Total Violations	Serious Violations	Percent Serious
3203	Injury and Illness Prevention Program	1,962	131	6.7%
3395	Heat Illness Prevention	1,232	155	12.6%
1509	Construction Injury and Illness Prevention Program	764	29	3.8%
3205	COVID-19 Prevention	670	81	12.1%
342	Reporting Work-Connected Fatalities and Serious Injuries	570	8	1.4%
3314	Control of Hazardous Energy, Including Lockout/Tagout	487	210	43.1%
6151	Portable Fire Extinguishers	312	0	0.0%
5194	Hazard Communication	292	10	3.4%
3276	Portable Ladders	265	73	27.5%
5162	Emergency Eyewash and Shower Equipment	247	112	45.3%

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Standard	Description	Total Violations	Serious Violations	Percent Serious
5144	Respiratory Protection	246	30	12.2%
1512	Construction: Emergency Medical Services	220	5	2.3%
2340.16	Work Space About Electric Equipment	217	2	0.9%
3650	Industrial Trucks: General Requirements	216	78	36.1%
461	Permits to Operate Air Tanks	174	0	0.0%
3328	Safe Practices, Personal Protection: Machinery and Equipment	163	71	43.6%
3668	Powered Industrial Truck Operator Training	142	21	14.8%
5199	Aerosol Transmissible Diseases	138	38	27.5%
1670	Personal Fall Arrest Systems, Personal Fall Restraint Systems and Positioning Devices	136	67	49.3%
1712	Requirements for Impalement Protection	122	78	63.9%
2500.8	Flexible Electrical Cords and Cables: Uses Not Permitted	109	0	0.0%
3380	Personal Protective Devices	102	18	17.6%
341	Permit Requirements: Excavations, Trenches, Construction and Demolition and the Underground Use of Diesel Engines in Work in Mines and Tunnels	101	10	9.9%
5185	Control of Hazardous Substances: Changing and Charging Storage Batteries	92	78	84.8%
14300.29	Employer Records of Occupational Injury or Illness: Forms	88	0	0.0%

Note: SWR stands for Serious, Willful, and Repeat Violations, where Repeat violations are not serious.

Source: DOSH Budget and Program Office.

Figure 160 demonstrates the trends in penalties and collections. Total penalties assessed were \$36.7 million in 2020, a decrease of 30 percent from its 2019 pre-pandemic level and a 39 percent decrease from its peak of about \$60 million in 2017. The total penalties assessed increased by 17 percent as economic activities started recovering from 2020 to 2021. Many employers appeal those “recommended” penalties with Cal/OSHA’s Appeals Board, and they may be ordered to pay in full, pay a reduced amount, or have penalties eliminated due to procedural issues. Because of the appeals process, penalties collectible and collected are almost always less than the initial recommended penalties assessed. Total penalties collectible after appeals and collections were about \$28 million and \$11 million, respectively, in 2020. From 2020 to 2021, penalties collectible increased by 29 percent while penalties collected decreased by 19 percent. From 2021 to 2022, the total penalties assessed, and penalties collectible decreased again, but penalties collected increased and returned to 2018 and 2020 levels.

Although Figure 160 demonstrates the trends in penalties and collections, it cannot be viewed entirely as an indicator of progress in health and safety at places of employment, due to related impacts on the data from DOSH staffing changes and resource changes from year to year, as well as activities at the Appeals Board. The number of original assessments that remain collectible change if penalties are reduced by settlement or decision. Likewise, assessed penalties become due when appealed matters are resolved, so the total amount collected rises with time. Nevertheless, the data give a sense of the general magnitude and accounting of penalties and collections, as well as provide a starting point for further analysis.

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**Figure 160: Total DOSH Penalties Assessed and Collected, 2013–2022
(Million \$)**

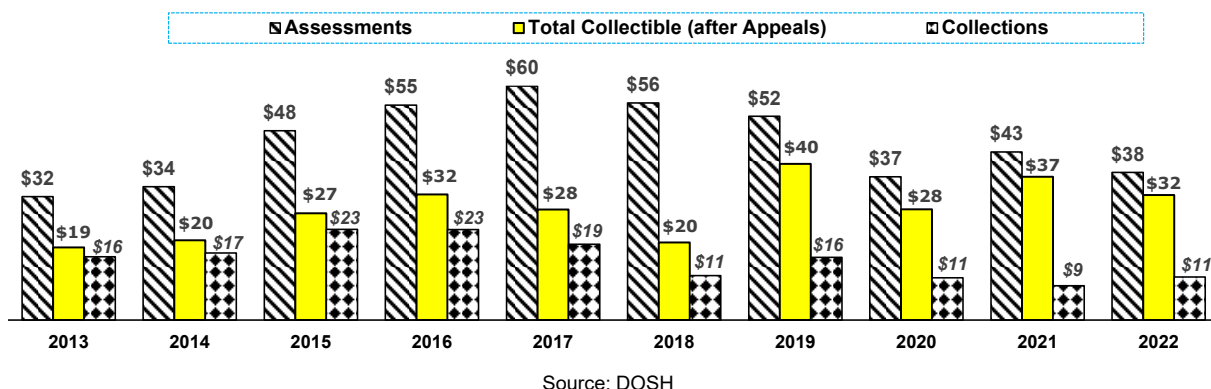
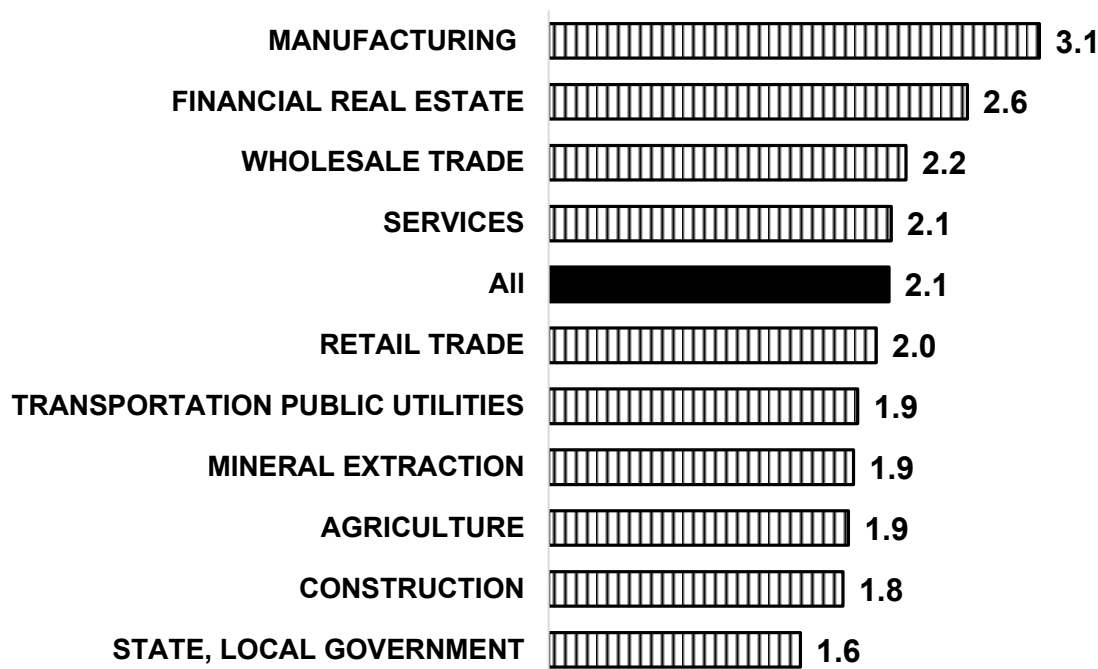


Figure 161 shows the rate of DOSH violations per on-site inspection for each major industry group in 2022. Except for the higher-than-average rate in manufacturing and lower-than-average rate in industries with a small proportion of both inspections and violations such as state and local government, the industry groups with a bigger share of inspections and violations have a close to average rate of DOSH violations per on-site inspection, which explains the similar industry group proportions in on-site inspections and DOSH violations. (See Figures 162 and 163).

Figure 161: Rate of DOSH Violations per on-Site Inspection, by Major Industry Groups, 2022

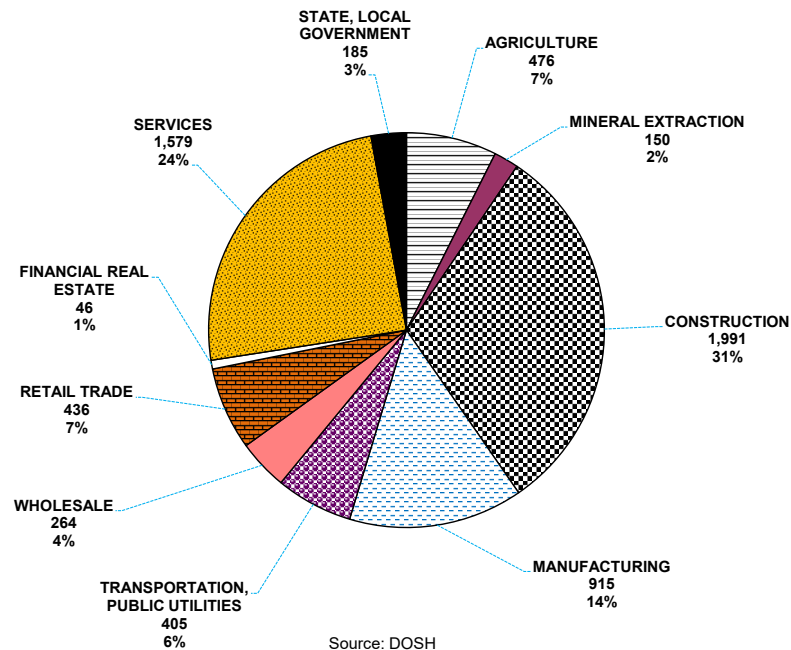


Source: DOSH

Figure 162 illustrates the proportion of on-site inspections in major industrial groups. Of the 6,427 workplace health and safety inspections conducted in 2022, 1,991 (31 percent) were in construction and 4,436 (69 percent) were in non-construction.

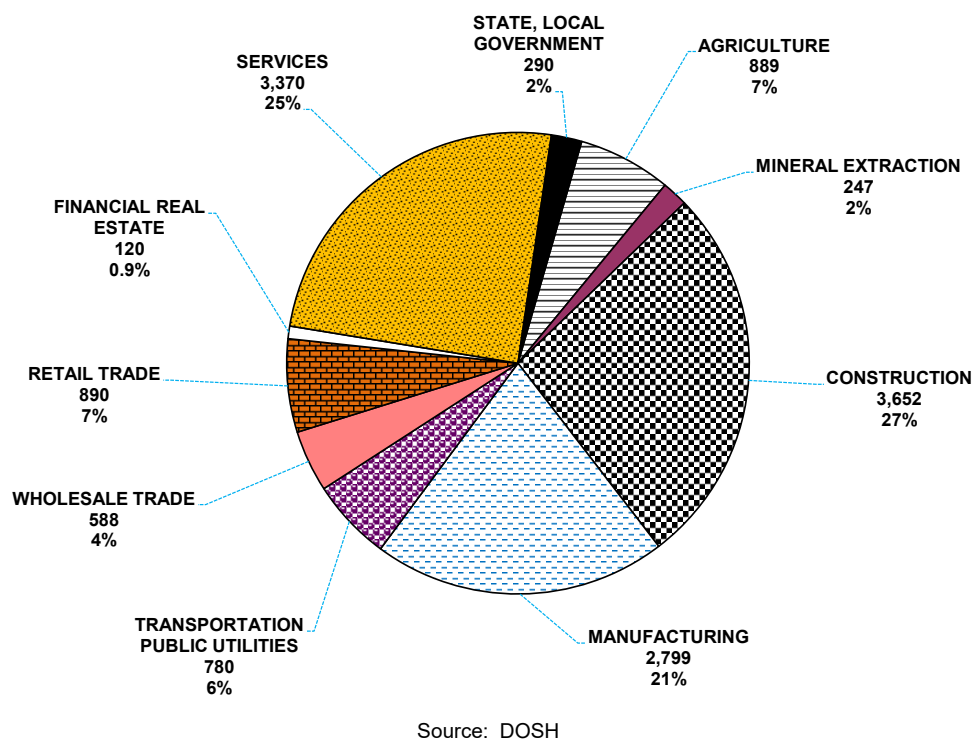
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Figure 162: Distribution of on-Site Inspections by Major Industry, 2022
(Total Inspections = 6,427)



As shown in Figure 163, the highest percentage of violations was in construction (27 percent) and services (25 percent), followed by manufacturing (21 percent).

Figure 163: Distribution of Violations by Major Industry, 2022
(Total Violations = 13,625)



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COVID-19-related DOSH Investigations and Inspections²¹¹ (TO BE UPDATED)

As a result of the COVID-19 pandemic, there was a significant increase in the demand for DOSH enforcement. DOSH enforcement activities related to identification and prevention of COVID-19 hazards are reflected in Figures 164-166. The data covers 23 months of DOSH COVID-19-related activities starting from February 2020 to December 31, 2021, based on reports run on August 2022. These data come with the caveat that the numbers of COVID-19 non-fatal illnesses and fatalities reported to DOSH do not reflect the total number of occupational COVID-19 illnesses. Not all occupational COVID-19 illnesses are reportable under the law, and for those illnesses that must be reported, not all employers actually do so. Additionally, please note that some related complaints in 2020 and 2021 may not have been correctly identified as COVID-19 related and that some of the complaints below may have been invalid. The complaints and reports of non-fatal illnesses and fatalities may include both the confirmed and unconfirmed cases in terms of work-relatedness.²¹² According to DOSH, despite the caveats, the general data trends reflected in the figures below are correct.

Figure 164 shows the numbers of COVID-19 non-fatal illnesses and fatalities reported to DOSH in 2020 and 2021. Over the 23 months, 4,477 non-fatal illnesses and 1,072 fatalities were reported to DOSH, with 39 percent of all non-fatal cases reported in November and December of 2020 and January of 2021 with a one month lag for fatalities, when 47 percent of all fatalities were reported in December of 2020 and January and February of 2021.

Figure 164: Numbers of COVID-19 Non-Fatal Illnesses and Fatalities Reported to DOSH

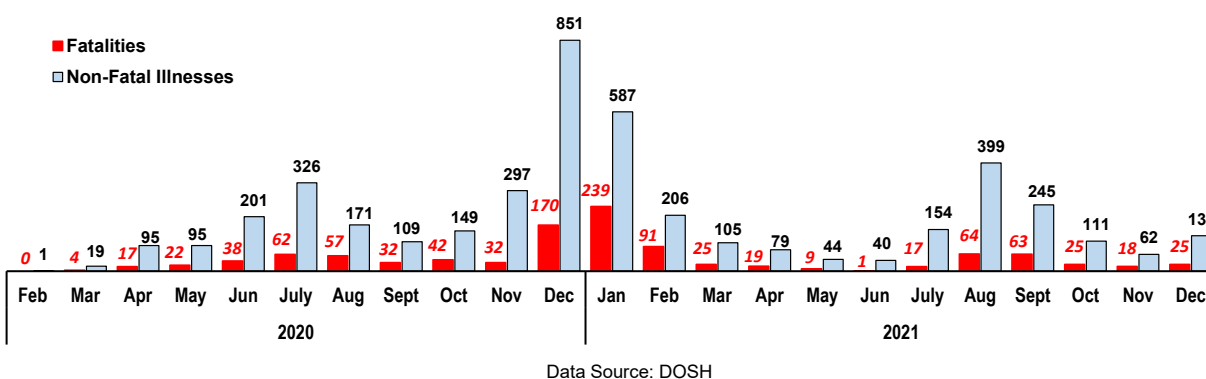


Figure 165 shows the numbers of COVID-19-related complaints received and DOSH investigations by letter conducted in 2020 and 2021. In the first months of the pandemic, DOSH developed and implemented a revised complaint response procedure for COVID-19 cases to ensure that the hazards reported were addressed. The procedure consists of an investigation by letter of most complaints that require the employer to conduct an investigation and correct any hazards discovered. The investigation by letter is supplemented by an offer to the employer to provide assistance in correcting the hazards. Investigations by letter are conducted in response to non-formal complaints, but in response to pandemic conditions, many formal complaints were also investigated in this manner. Over the 23 months, 13,439 letters have been sent in response to 16,156 complaints with 76 percent of all the letters sent from March 1, 2020 to February 1, 2021. Multiple complaints or illnesses may lead to a single inspection, for instance when more than 1 person calls in similar complaints for the same employer, or when a reported illness results in an additional report when the illness leads to a fatality. Nonetheless, the monthly numbers of COVID-19-related complaints

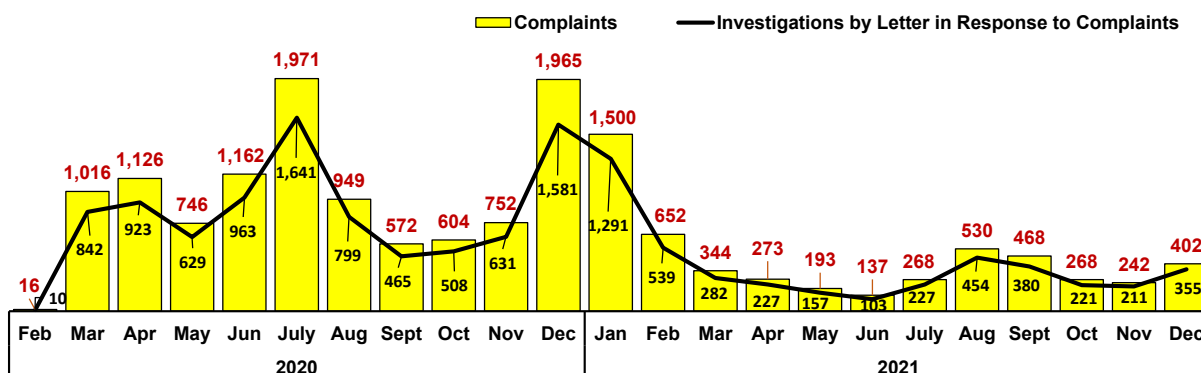
²¹¹ The data on COVID-19-related DOSH Investigations and Inspections was provided by DOSH based on reports run on August 1, 2022.

²¹² Reporting is required if the fatality or serious injury/illness occurs "in a place of employment or in connection with any employment." (8 CCR 342)

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received and DOSH investigations by letter in Figure 165 mirror the patterns of non-fatal reported illnesses and fatalities.

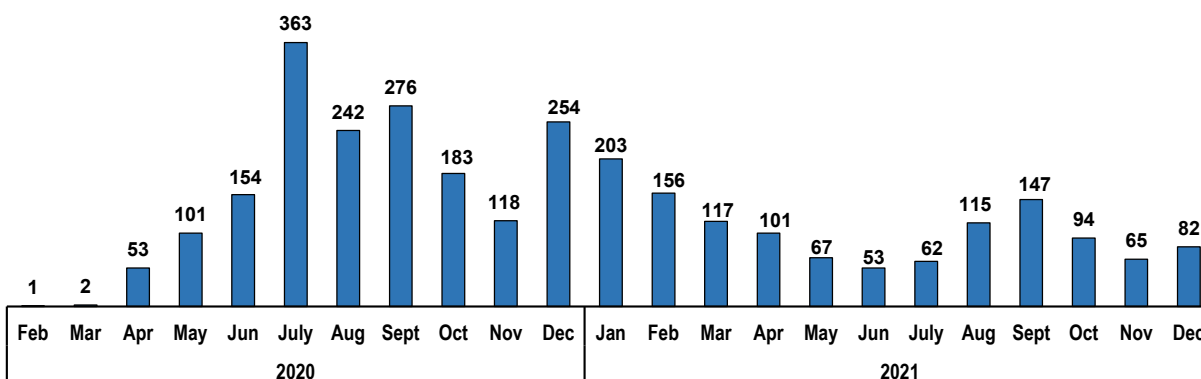
Figure 165: Number of COVID-19-Related Complaints and DOSH Investigations by Letter



Data Source: DOSH

Figure 166 shows the number of COVID-19 on-site inspections in 2020 and 2021. DOSH on-site COVID-19 inspections take place for some of the following reasons: in response to reported illnesses and deaths, complaints and referrals, as part of un-programmed and programmed inspections, and follow-up inspections. Onsite inspections resulting from complaints are prioritized by the most serious hazards, including complaints alleging COVID-19 outbreaks and complaints of potentially serious hazards in higher risk industries, as well as instances where employers do not cooperate with DOSH or address workplace hazards. In 2020 and 2021, a total of 3,009 DOSH COVID-19 on-site inspections have been conducted, with 65 percent of inspections taking place in nine months from June 1, 2020 to March 1, 2021.

Figure 166: Number of COVID-19 DOSH On-Site Inspections



Data Source: DOSH

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High Hazard Identification, Consultation, and Compliance Programs

The 1993 reforms of the California workers' compensation system required Cal/OSHA to focus its consultative and compliance resources on "employers in high hazardous industries with the highest incidence of preventable occupational injuries and illnesses and workers' compensation losses."

High Hazard Employer Program

The High Hazard Employer Program (HHEP) is designed to:

- Identify employers in hazardous industries with the highest incidence of preventable occupational injuries and illnesses and workers' compensation losses.
- Offer and provide consultative assistance to those employers to eliminate preventable injuries and illnesses and workers' compensation losses.
- Inspect those employers on a random basis to verify that they have made appropriate changes in their health and safety programs.
- Develop appropriate educational materials and model programs to aid employers in maintaining a safe and healthful workplace.

In 1999, the passage of Assembly Bill (AB) 1655 gave DIR the statutory authority to levy and collect assessments from employers to support the targeted inspection and consultation programs on an ongoing annual basis. The collection of the Targeted Inspection Consultation Fund ceased with the passage of Assembly Bill (AB) 1389 in 2008.

In 2008, the passage of Assembly Bill (AB) 1389 gave DIR the statutory authority to levy and collect assessments from employers to fund DOSH's operations.

High Hazard Consultation Program

Using workers' compensation data, Cal/OSHA's Consultation Services Branch identifies employers in hazardous industries with the highest incidence of preventable occupational injuries and illnesses and WC losses. "Hazardous industries" are identified using published annual workers' compensation pure premium rates. Individual employers are identified using WC experience modification (ExMod) rate data.

Cal/OSHA's Consultation Services Branch reports that in 2022, it provided on-site high hazard consultative assistance to 483 employers. During consultation with these employers, 4,959 Title 8 violations were observed and corrected as a result of the provision of consultative assistance (see Figure 167).

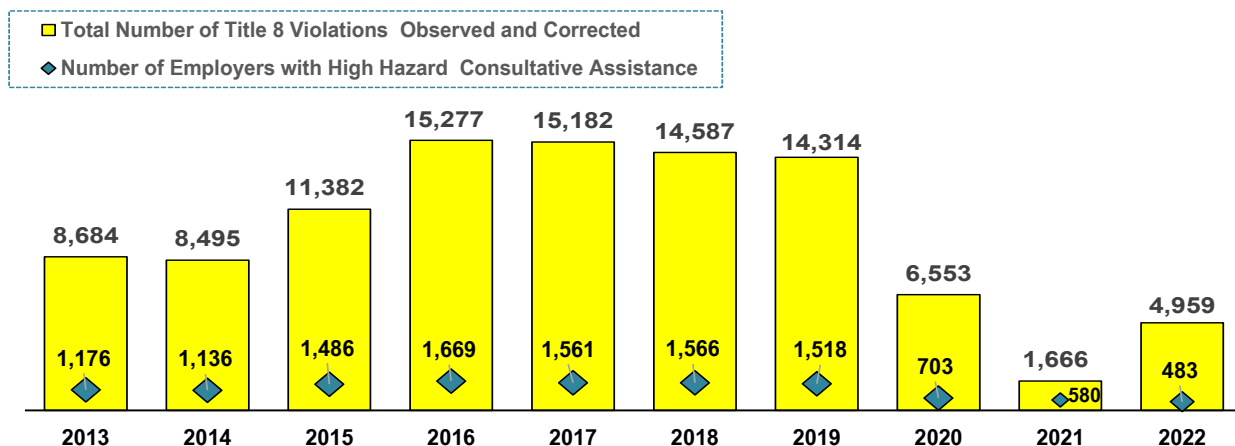
From 1994, 30,269 employers have been provided direct on-site consultative assistance, and 206,361 Title 8 violations have been observed and corrected. Of these violations, 34.6 percent were classified as "serious." It should be noted that for 2002 and 2003, all Consultative Safety and Health Inspection Projects (SHIPs) were included in the High Hazard Consultation Program figures. Effective 2004, only employers with ExMod rates of 125 percent and above are included in the High Hazard Consultation Program figures.

Figure 167 shows that the number of Title 8 violations observed and corrected averaged 8,590 per year with an average of 1,156 employers receiving high hazard consultative assistance in 2013 and 2014, increased by 80 percent from 2014 to 2016 with a 47 percent increase in assisted employers during that period, and then gradually decreased by 6 percent from 2016 to 2019 before falling almost 9 times from its 2019 level. The number of employers who received high hazard consultative assistance decreased overall by 9 percent from 2016 to 2019, and in 2020 accounted for about one-third of the number of employers that received high hazard consultative assistance in 2019. There were two major reasons for a sharp decrease in both the number of Title 8 violations and number of employers who received high hazard consultative assistance: 1) due to the pandemic, consultation staff, who were previously performing high hazard consultative assistance, were shifted from their usual tasks to assist with COVID-19 matters, and 2)

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Consultation Services experienced an increase in retirements during the pandemic, which reduced staffing levels. According to DOSH representatives, DOSH is currently focused on hiring within all units to address the reduced staffing levels. Although the number of employers who received high hazard consultative assistance continued to decrease from 2021 to 2022, the number of Title 8 violations observed and corrected almost tripled compared to its lowest level in 2021.

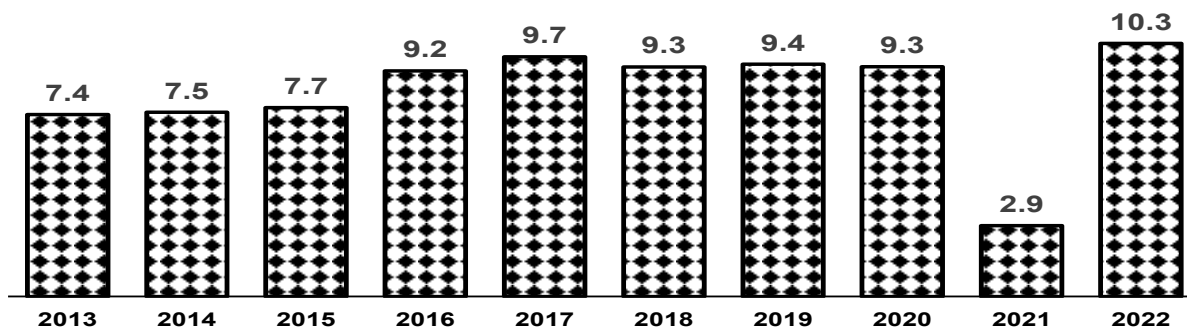
Figure 167: High Hazard Consultation Program, 2013-2022



Source: DOSH

In 2022, the rate of the Title 8 violations observed and corrected to employers who received high hazard consultative assistance reached its peak of 10.3 (see Figure 168).

Figure 168: Average Number of Title 8 Violations per Employer with High Hazard Consultative Assistance, 2013-2022



Source: DOSH

High Hazard Enforcement Program

It is the policy of DOSH to protect California's workers from serious injury and illness and to establish and implement a program for inspecting high hazard businesses operating in California. The High Hazard Unit, which consists of two offices (Northern and Southern) and a regional office, is dedicated to conducting targeted programmed inspections in "High Hazard Industries" throughout California.

In 2022, the High Hazard Unit opened 328 inspections and Regions 1-4 opened 38 inspections. Most of inspections, a total of 347 (95 percent), were targeted programmed-planned. Other types of inspections opened by the High Hazard Unit were programmed-related, follow-up, accidents, complaints, unprogrammed related, and referrals. A total of 1,559 violations were identified and cited during inspections.

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Violations were identified in 91 percent of the inspections conducted. The violation per inspection ratio for targeted programmed-planned inspections in 2022 was 4.4.

The high hazard enforcement program activity measures are shown in Tables 38-40 and Figure 169. During the pandemic, DOSH had at times shifted employees from High Hazard enforcement and Process Safety Management (PSM) to assist district offices with COVID-19 response, especially during surges.

The distributions of high hazard targeted inspections by North American Industrial Classification System (NAICS) from 2019 to 2022 are shown in Table 38.

Table 38: Number and Percent of High Hazard Inspections by NAICS Code, 2019- 2022

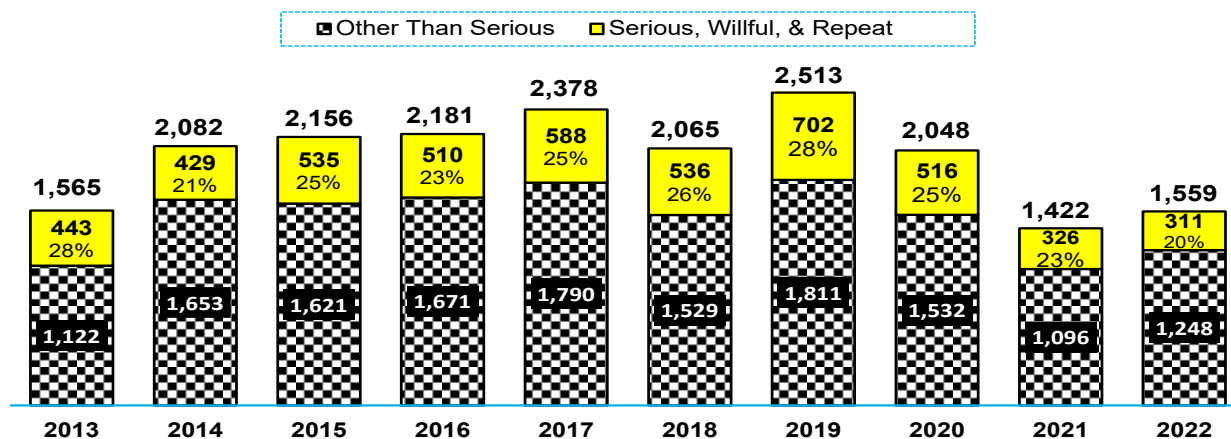
NAICS code	Description	2019		2020		2021		2022	
		Number	%	Number	%	Number	%	Number	%
11	Agriculture, Forestry, Fishing and Hunting	59	12%	26	7%	24	9%	28	8%
21	Mining, Quarrying, and Oil and Gas Ext.	0	0%	0	0%	0	0%	0	0%
22	Utilities	0	0%	0	0%	0	0%	0	0%
23	Construction	1	0%	0	0%	9	3%	11	3%
31-33	Manufacturing	230	48%	219	58%	109	41%	76	21%
42	Wholesale Trade	3	1%	3	1%	6	2%	19	5%
44-45	Retail Trade	4	1%	20	5%	49	18%	100	27%
48-49	Transportation and Warehousing	58	12%	37	10%	25	9%	34	9%
51	Information	0	0%	0	0%	0	0%	0	0%
52	Finance and Insurance	0	0%	0	0%	0	0%	0	0%
53	Real Estate and Rental/Leasing	1	0%	1	0%	0	0%	1	0%
54	Professional, Scientific, and Technical Services	0	0%	0	0%	1	0%	1	0%
56	Admin and Support and Waste Management and Remediation	41	9%	54	14%	15	6%	27	7%
61	Educational Services	0	0%	0	0%	0	0%	0	0%
62	Health Care and Social Assistance	48	10%	2	1%	14	5%	29	8%
71	Arts, Entertainment, and Recreation	3	1%	0	0%	0	0%	0	0%
72	Accommodation and Food Services	2	0%	10	3%	1	0%	19	5%
81	Other Services	25	5%	4	1%	12	5%	20	5%
92	Public Administration	0	0%	0	0%	0	0%	1	0%
	Total	475		376		265		366	

Source: DOSH

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Violations observed²¹³ during high hazard targeted inspections are divided into two categories: “serious, willful, and repeat (SWR)” and “other than serious” violations. According to Figure 169, the total number of violations observed increased overall by 60.5 percent from 2013 to 2019 and decreased by 43 percent from 2019 to 2021. From 2021 to 2022, the total number of violations observed increased by 10 percent. The share of SWRs decreased from 28 percent of all High Hazard inspection violations in 2013 to 21 percent in 2014. From 2014 to 2019, the share of SWRs in High Hazard inspection violations increased steadily from 21 to 28 percent. From 2019 to 2022, the share of SWRs in High Hazard inspection violations decreased to 20 percent or to its lowest level in 10 years.

Figure 169: Violations Observed during High Hazard Inspections, 2013-2022



Source: DOSH

Table 39 shows the number of enforcement actions taken during high hazard inspections by type from 2012 to 2022.

Table 39: Types of Enforcement Actions during High Hazard Targeted Inspections, 2012-2022

Types of enforcement actions	2012-2014	2015	2016	2017	2018	2019	2020	2021	2022
Warrants	0	0	0	0	0	0	1	0	1
Order Prohibiting Use (Stop Order)	95	8	12	5	1	1	0	0	0
Information Memorandums	143	71	25	14	40	19	8	4	5
Violations	5,420	2,156	2,181	2,378	2,065	2,513	2,048	1,422	1,559

Source: DOSH

Table 40 shows the most frequently observed violations during high hazard inspections in 2022.

²¹³ Classification of Violations and Definitions, <https://www.dir.ca.gov/title8/334.html> and DOSH Policy and Procedures Manual, <https://www.dir.ca.gov/DOSHPol/P&PC-2.htm>.

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Table 40: Most Frequently Cited Violations during High Hazard Targeted Inspections, 2022

Title 8 Section	Description
6151	Portable Fire Extinguishers
5162	Emergency Eyewash and Shower Equipment
2340.16	Work Space about Electric Equipment
3203	Injury and Illness Prevention Program
5185	Changing and Charging Storage Batteries
2500.8	Flexible Cords and Cables (Uses Not Permitted)
461	Permits to Operate Air Tanks
2473.1	Conductors Entering Boxes, Cabinets, or Fittings
5194	Hazard Communication
3578	Permissible Wheel Exposure for Periphery Grinding
3241	General Physical Conditions and Structures: Special Design Requirements, Live Loads
2340.2	Requirements for Electrical Installations: Examination, Installation, and Use of Equipment
3668	Powered Industrial Truck Operator Training
3314	Control of Hazardous Energy, Including Lockout/Tagout
3205	COVID-19 Prevention

Source: DOSH

Safety Inspections

DOSH has three major public safety programs devoted to conducting inspections to protect the public from safety hazards:

- The Amusement Ride and Tramway Unit conducts public safety inspections of amusement rides, both portable and permanent, and aerial passenger tramways (ski lifts).
- The Elevator Unit conducts public safety inspections of different conveyances, including power-cable driven passenger and freight elevators, manlifts, and escalators.²¹⁴
- The Pressure Vessel Unit conducts public safety inspections of boilers and pressure vessels to ensure their safe operation in places of employment.

Cal/OSHA's Highest Hazard Industries List

Pursuant to Labor Code 6401.7(e)(3)(A), Cal/OSHA issues the Highest Hazard Industry List annually. The methodology for Cal/OSHA's High Hazard Industry threshold is based on >200 percent of the annual private sector average DART (Days Away, Restricted, and Transferred) rate. The DART rate in 2019, serving as a basis for the FY 2021-2022 High Hazard Industry threshold, was 2.0. Accordingly, the high hazard industry threshold for that fiscal year is 4.0.

For further information ...

Cal/OSHA's Highest Hazard Industry List for FY 2022-2023,
<https://www.dir.ca.gov/dosh/documents/hhu-list-2022-2023.pdf>
<https://www.dir.ca.gov/dosh/high-hazard-unit.html>

²¹⁴ For a list of conveyances, see <http://www.dir.ca.gov/Title8/sub6.html>.

WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

Safety and Health Standards

The Occupational Safety and Health Standards Board (OSHSB), a seven-member body appointed by the Governor, is the standards-setting agency within Cal/OSHA's program. The mission of OSHSB is to promote, adopt, and maintain reasonable and enforceable standards that will ensure a safe and healthy workplace for California workers.

To meet DIR's goal to ensure that California workplaces are lawful and safe, the Board shall pursue the following goals:

- Adopt and maintain effective occupational safety and health standards.
- Evaluate petitions to determine the need for new or revised occupational safety and health standards.
- Evaluate permanent variance applications from occupational safety and health standards to determine if equivalent safety will be provided.

OSHSB also has the responsibility to grant or deny applications for variances from adopted standards and respond to petitions for new or revised standards. The OSHSB safety and health standards provide the basis for Cal/OSHA enforcement.

For further information ...

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

Occupational Safety and Health Appeals Board (OSHAB)

The Occupational Safety and Health Appeals Board (OSHAB) consists of three members appointed by the governor for four-year terms. By statute, the members are selected from among management, labor, and the general public. The chairman is selected by the governor.

The mission of OSHAB is to resolve appeals and to provide clear, consistent guidance to the public, thereby promoting workplace health and safety fairly, efficiently, and in a timely manner. OSHAB handles appeals from private and public sector employers regarding citations issued by DOSH for alleged violations of workplace health and safety laws and regulations.

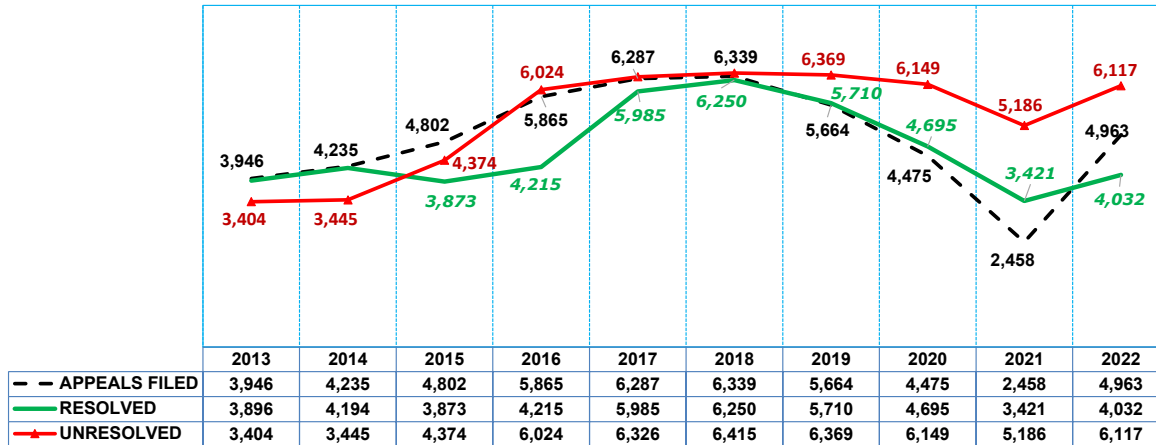
Figure 170 shows the OSHAB workload: appeals filed, appeals resolved, and unresolved that are defined as "all appeals unresolved at a year's end" and include balances accumulated from previous years. The number of appeals filed yearly increased by 61 percent from 3,946 in 2013 to 6,339 in 2018, decreased by 11 percent from 2018 to 2019, and then continued decreasing sharply by 57 percent from 2019 to 2021, including a decline by 21 percent from 2019 to 2020, and a drop by 45 percent from 2020 to 2021. As the economy started recovering in 2022, the number of appeals filed doubled from 2021 to 2022.

In 2013 and 2014, almost 100 percent of filed appeals were resolved each year; therefore, the average number of unresolved appeals per year reached its minimum of 3,400 cases on average in 2013 and 2014. In 2015 and 2016, the number of resolved appeals slowed down to 81 and then to 72 percent of filed appeals respectively. The number of unresolved cases increased from 2015 to 2017. Resolved appeals as a share of yearly filed appeals increased to 95 percent in 2017 and to 99 percent in 2018, as the number of unresolved cases leveled out. In 2019, almost 100 percent of the filed appeals were resolved, but the number of unresolved cases, accumulated from previous years, reached almost 6,400. As the activities of the OSHAB contracted due to the COVID-19 pandemic and fewer appeals were filed in 2020 and 2021. In 2020, about 105 percent of appeals had been resolved with the number of unresolved appeals decreasing only by 3.5 percent. As the number of appeals filed dropped by 45 percent and 139 percent of those appeals were resolved, the number of unresolved appeals in 2021 decreased by 16 percent from 2020 to 2021.

WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

In 2022 compared to 2021, the number of appeals filed doubled, the number of cases resolved increased only by 18 percent. As a result, the number of unresolved cases increased by 18 percent.

Figure 170: Occupational Safety and Health Appeals Board (OSHAB) Workload, 2013-2022

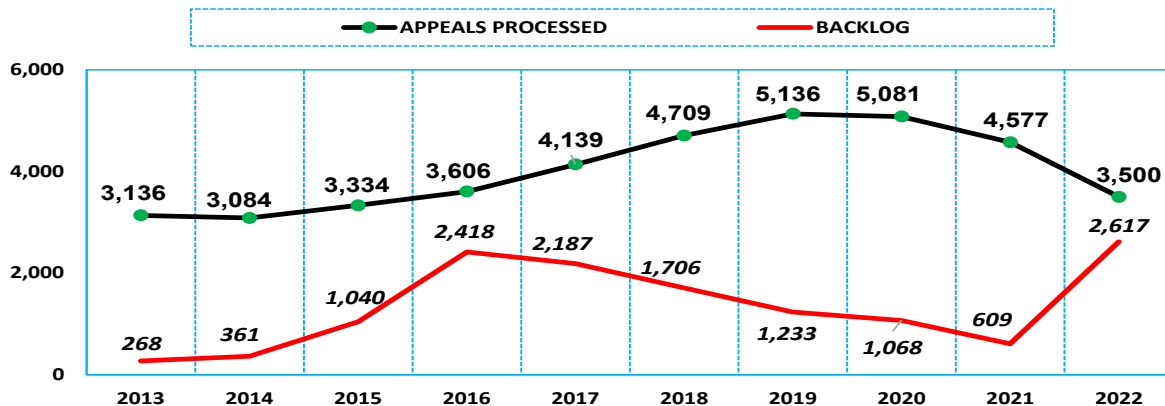


Data Source: OSHAB

The trend and level of backlogged citation appeals reflect changes in unresolved cases as they accumulate from previous years and a methodology of estimating backlogs based on a cumulative three-year moving average of processing the citations appealed (appeals filed). The formula for estimating yearly backlogs considers 10 months of incoming averaged appeals as the target process time for estimating the number of processed appeals against the unresolved cases.

Figure 171 shows that the number of backlogged appeals increased from 268 in 2013 to 2,418 cases in 2016. This growth in the backlog was the result of an increase in filing appeals and the accumulation of unresolved cases in 2015 and 2016 (see Figure 170). The number of filed appeals and unresolved cases leveled out from 2016 to 2018 and then the number of appeals filed decreased by 29 percent from 2018 to 2020. While the number of appeals processed increased by 42 percent from 2016 to 2019, the backlog decreased by 49 percent from 2016 to 2019. Due to a decrease in appeals filed and a levelling off in the number of appeals processed from 2019 to 2020, the backlog fell by 13 percent from 2019 to 2020. There was a 56 percent overall decrease in the number of backlogged appeals from 2016 to 2020. From 2020 to 2021, the number of backlogged appeals almost halved to 609 due to the decrease in unresolved cases and a 10 percent decrease in the appeals processed in that time frame. With the number of appeals filed doubling from 2021 to 2022 (see Figure 170), and the appeals processed decreasing by 24 percent in the same period, the number of backlogged cases in 2022 more than quadrupled from its 2021 level.

Figure 171: Occupational Safety and Health Appeals Board Backlogs, 2013-2022



Data Source: OSHAB

WORKPLACE HEALTH AND SAFETY PERFORMANCE MEASURES

Educational and Outreach Programs

In conjunction and in cooperation with the health and safety and workers' compensation community, CHSWC administers and participates in several major efforts to improve occupational health and safety through education and outreach programs.

Worker Occupational Safety and Health Training and Education Program

The Commission on Health and Safety and Workers' Compensation (CHSWC) is mandated by Labor Code Section 6354.7 to maintain the Worker Occupational Safety and Health Training and Education Program (WOSHTEP). The purpose of WOSHTEP is to promote injury and illness prevention programs. For further information about WOSHTEP and its activities, see the "Special Report: CHSWC's Health and Safety Programs."

School Action for Safety and Health

Per the mandate set forth in the Labor Code 6434, CHSWC is to assist school districts and other local education agencies (LEAs) in implementing effective occupational injury and illness prevention programs (IIPPs). CHSWC has established a model program, California's School Action for Safety and Health (SASH) program, to help schools statewide improve their injury and illness prevention programs. For further information about SASH and its activities, see the "Special Report: CHSWC's Health and Safety Programs."

The California Partnership for Young Worker Health and Safety

CHSWC has convened the California Partnership for Young Worker Health and Safety. The Partnership is a statewide task force that brings together government agencies and statewide organizations representing educators, employers, parents, job trainers, and others. The Partnership develops and promotes strategies to protect youth at work and provides training, educational materials, technical assistance, and information and referrals to help educate young workers. For further information about the Partnership see the "Special Report: CHSWC's Health and Safety Programs."

In addition, DIR oversees these educational and outreach programs through Cal/OSHA:

Cal/OSHA Consultation

Consultative assistance is provided to small employers through on-site visits, telephone support, publications and educational outreach. All services provided by Cal/OSHA Consultation are provided free of charge to California employers.

Partnership Programs

California has developed several programs that rely on industry, labor, and government to work as partners in encouraging and recognizing workplace health and safety programs that effectively prevent and control worker injuries and illnesses. These partnership programs include the Voluntary Protection Program (VPP), Golden State, SHARP, Golden Gate, and special alliances formed among industry, labor, and OSHA.

UPDATE: THE 2022-2023 CALIFORNIA WORKERS' COMPENSATION INSURANCE INDUSTRY

Background

In California, approximately two-thirds of the total State payroll is covered for workers' compensation (WC) through insurance policies, while the remainder is through self-insurance.²¹⁵ There are more than 200 private for-profit insurers and one public nonprofit insurer, the State Compensation Insurance Fund (SCIF).

The California Department of Insurance (CDI) oversees these insurers, as well as providers of all other non-federal lines of insurance within the jurisdiction of California. To accomplish its principal objective to protect insurance policyholders in the state, the CDI examines and regulates insurance companies to ensure that operations are consistent and comply with Insurance Code requirements.

Minimum Rate Law and Open Rating

In 1993, WC reform legislation repealed California's 80-year-old minimum rate law and in 1995 replaced it with an open-competition system of rate regulation, in which insurers set their own rates based on "pure premium advisory rates" developed by the Workers' Compensation Insurance Rating Bureau (WCIRB). These rates, approved by the Insurance Commissioner (IC) and subject to annual adjustment, are based on historical loss data for more than 500 job classification categories.

Under this "open rating" system, these recommended, non-mandatory pure premium rates are intended to cover the average costs of benefits and loss-adjustment expenses for all employers in an occupational class and thus provide insurers with benchmarks for pricing their policies. Insurers typically file rates intended to cover other costs and expenses, including unallocated loss-adjustment expenses, as well as an operating profit.

Workers' Compensation Advisory Premium Rates

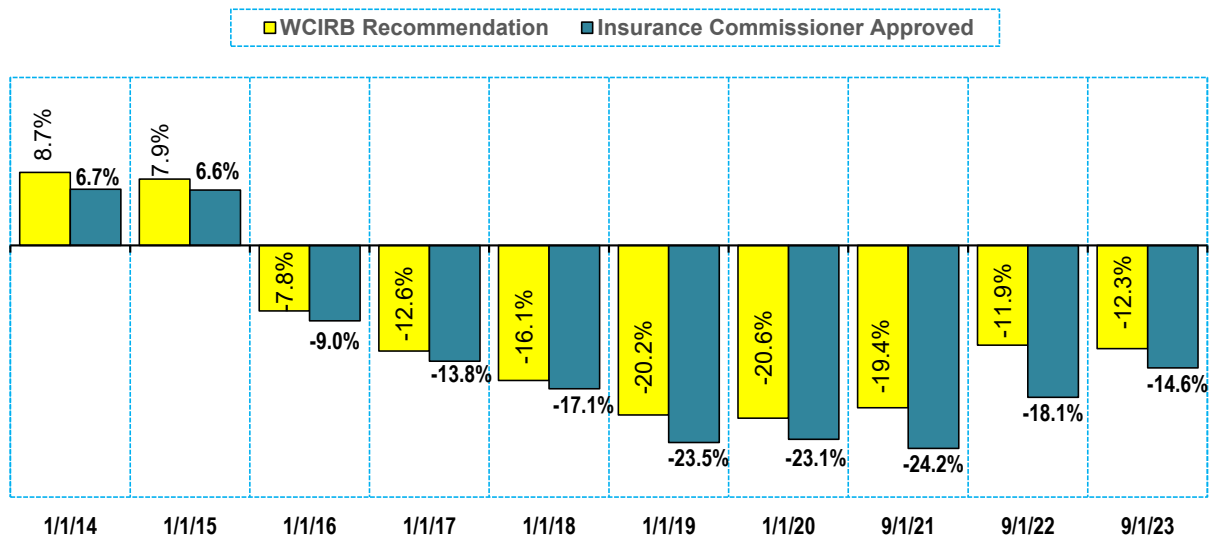
As a result of the 2003 legislative reforms, WCIRB recommended changes and the Insurance Commissioner (IC) either approved them or declared no changes in the pure premium advisory rates. The pure premium rates, which reflect loss costs, including loss adjustment expenses per unit of exposure, are only advisory in that an insurer is not required to use either the proposed or the approved pure premium rates in establishing the rates that it will charge.

The WCIRB did not submit its July 1, 2014, July 1, 2019, and July 1, 2020 pure premium rate filings, and the IC did not issue the interim advisory rates for these periods. Recognizing that mid-year filings and adjustments to advisory pure premium rates can be disruptive to employers, agents, and brokers as well as insurers, the Committee established a guideline in 2011 stating that midyear filings would generally not be made by the WCIRB unless there was highly unusual volatility in experience or major legislative, regulatory, or judicial action.

Figure 172 shows the percentage changes in WC's Advisory Premium Rates, including both the WCIRB's recommendations and the IC's decisions, compared to the industry-filed average pure premium rate in the previous filing period of each year from 2014 to 2023. This comparison, according to the WCIRB, provides an appropriate basis for assessing both the industry's ability to adapt to the proposed pure premium rate level and the size of the potential market impact of such an adjustment. According to Figure 172, when the decisions were issued, the IC approved increases for two periods of January 1, 2014, and January 1, 2015, filings. The IC approved decreases in the pure premium advisory rates in eight consecutive years beginning from January 1, 2016, through September 1, 2023.

²¹⁵ Please note that the state of California is legally uninsured.

Figure 172: Percentage Changes in Workers' Compensation Advisory Premium Rates: WCIRB Recommendation and Insurance Commissioner's Decision Compared to Corresponding Industry Average Filed Pure Premium Rate



Source: WCIRB

The proposed September 1, 2023 advisory pure premium rates are based on (1) insurer losses incurred during accident year 2022 and prior accident years valued as of December 31, 2022, (2) insurer allocated loss adjustment expenses for 2022 and prior years, (3) insurer unallocated loss adjustment expenses for 2021 and prior years, (4) classification payroll and loss experience reported for policies incepting in 2020 and prior years and (5) the September 1, 2023, experience rating off-balance correction factor proposed in the WCIRB's September 1, 2023, Regulatory Filing.²¹⁶ The proposed WCIRB's September 1, 2023, advisory pure premium rates averaged \$1.50 per \$100 of payroll, which was 3.4 percent higher than the average of the approved September 1, 2022, advisory pure premium rates of \$1.45, and 12.3 percent less than the industry average filed pure premium rate of \$1.71 as of January 1, 2023. The IC approved September 1, 2023, pure premium rate averaged \$1.46 which was 14.6 percent less than the industry average filed pure premium rate of \$1.71 as of January 1, 2023.²¹⁷

While COVID-19 WC claims continue to be filed in California, the proportion of COVID-19 claim-counts and the average severity of COVID-19 indemnity claims has declined significantly over the last year. As a result, the WCIRB has not included a separate provision for the anticipated cost of COVID-19 claims to be incurred on insurance policies incepting between September 1, 2023, and August 31, 2024.²¹⁸

Both for January 1, 2021 and September 1, 2021 Pure Premium Rate Filings, the WCIRB analyzed the potential cost of future COVID-19 WC claims. The January 1, 2021 Pure Premium Rate Filing included an average provision of \$0.06 per \$100 of payroll to reflect the projected cost of COVID-19 claims to be incurred on 2021 policies. These amounts (\$0.06 per \$100 of payroll) ranged from \$0.01 per \$100 of payroll in the information industry sector to \$0.24 per \$100 of payroll for segments of the healthcare and social assistance industry sector.²¹⁹ In the September 1, 2021 Pure Premium Filing, in light of the relatively low COVID-19 claim rates at the time when the filing was made (April 2021), the initial success of the COVID-

²¹⁶ September 1, 2023 Pure Premium Rate Filing,

https://www.wcirb.com/sites/default/files/documents/sept_1_2023_pp_rate_filing-complete.pdf.

²¹⁷ <https://www.insurance.ca.gov/0400-news/0100-press-releases/2023/release040-2023.cfm#:~:text=The%20Commissioner's%20action%20lowers%20the,effect%20on%20September%201%2C%202023.>

²¹⁸ September 1, 2023 Pure Premium Rate Filing,

https://www.wcirb.com/sites/default/files/documents/sept_1_2023_pp_rate_filing-complete.pdf

²¹⁹ WCIRB Submits Amended January 1, 2021 Pure Premium Rate Filing to CDI, <https://www.wcirb.com/news/wcirb-submits-amended-january-1-2021-pure-premium-rate-filing-cdi>.

19 vaccines, and that external models and published research at the time were indicating that the U.S. population would potentially be nearing herd immunity by the summer of 2021 and COVID-19 fatalities would plateau, the WCIRB did not recommend that a provision be included to reflect the estimated costs of COVID-19 claims to be incurred on September 1, 2021 and later policies. However, subsequent to the time the September 1, 2021 Pure Premium Rate Filing was made, with the emergence of the Delta and Omicron variants, more than 100,000 workers' compensation COVID-19 claims have been filed in the state.²²⁰ In addition, most experts expected COVID-19 to transition to an endemic state and continue to infect individuals for the foreseeable future.

In its September 1, 2022, regulatory filing submitted in February 2022, the WCIRB recommended incorporation of a provision to include COVID-19 claims in employers' experience ratings for new claims with the accident dates after September 1, 2022 (while claims with accident dates from December 1, 2019 to August 31, 2022 would still be excluded).²²¹ Based largely on several model projections of future COVID-19 fatality rates, the advisory pure premium rates proposed in September 1, 2022 Regulatory Filing, which averaged \$1.56 per \$100 of payroll, included a provision for the projected cost of COVID-19 claims to be incurred on policies incepting between September 1, 2022 and August 31, 2023 of \$0.008 per \$100 of payroll.²²² The Insurance Commissioner (IC) rejected the proposal.²²³ As a result, COVID-19 claims remained excluded from the calculation of experience modifications.

(A history of pure premium rates since 2013 appears later in this section.)

Workers' Compensation Written Premium

After elimination of the minimum rate law in 1993, the total written premium declined from a high of \$8.9 billion in 1993 to a low of \$5.7 billion (\$5.1 billion net of deductible) in 1995. The written premium grew slightly from 1996 to 1999 due to growth of insured payroll, an increase in economic growth, movement from self-insurance to insurance, and other factors, rather than due to increased rates. However, even with well over a million new workers covered by the system, the total premium paid by employers remained below the level seen at the beginning of the 1990s.

At the end of 1999, the IC approved an 18.4 percent pure premium rate increase for 2000, and the market began to harden after five years of open rating, though rates remained less than two-thirds of the 1993 level. Since then, the market has continued to firm, with the IC approving a 10.1 percent increase in the advisory rates for 2001 and a 10.2 percent increase for 2002. The total written premium increased by 37 percent to \$21.4 billion from 2002 to 2003 and increased by about 10 percent to a peak of \$23.5 billion from 2003 to 2004. The written premium declined by almost 63 percent from \$23.5 billion to \$8.8 billion between 2004 and 2009 due to rate decreases. From 2009 to 2016, the written premium more than doubled.

Figure 173 shows the California WC written premium gross of deductible credits between 2004 and 2022. Note that these amounts also exclude dividends. Written premium declined sharply beginning in the second quarter of 2020 due to the economic downturn resulting from the COVID-19 pandemic combined with insurer rate decreases and reduced employer payroll. The written premium reached a six-year low and was 24 percent below its 2016 peak of \$18.1 billion in 2021. A slight decrease in written premium from 2020 to 2021 was driven by continued insurer rate decreases offsetting growth in employer payroll, followed by a 14 percent increase from 2021 to 2022 driven by higher employee wage levels and economic recovery.²²⁴

²²⁰ Based on Division of Workers' Compensation information as of April 21, 2022. Includes insured and self-insured claims and denied claims.

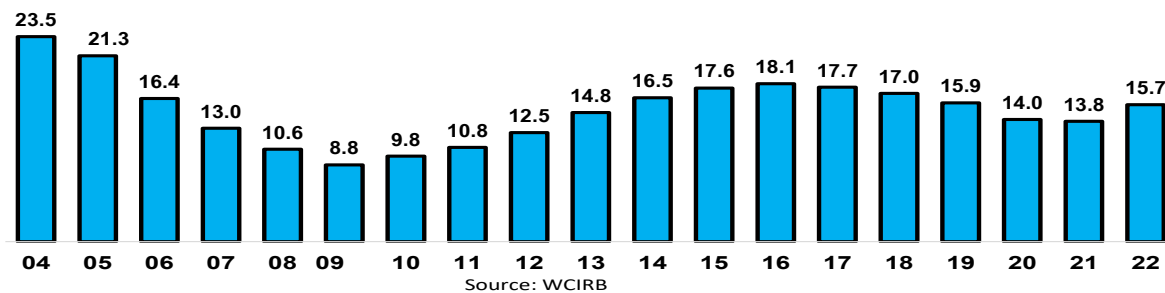
²²¹ WCIRB Regulatory Filing September 1, 2022, https://www.wcirb.com/sites/default/files/documents/sept_1_2022_regulatory_filing-complete.pdf.

²²² September 1, 2022 Pure Premium Rate Filing, https://www.wcirb.com/sites/default/files/documents/20220901_ppr_filing-complete.pdf

²²³ Department of Insurance: Regulatory Filing Decision, June 28, 2022 [Regulatory Filing Decision](https://www.wcirb.com/sites/default/files/documents/20220628_regulatory_filing_decision.pdf) (wcirb.com)

²²⁴ WCIRB Quarterly Experience Report as of December 31, 2022, https://www.wcirb.com/sites/default/files/documents/quarterlyexperiencereport-2022q4_-_final_0.pdf.

Figure 173: Workers' Compensation Written Premium (Billion \$)

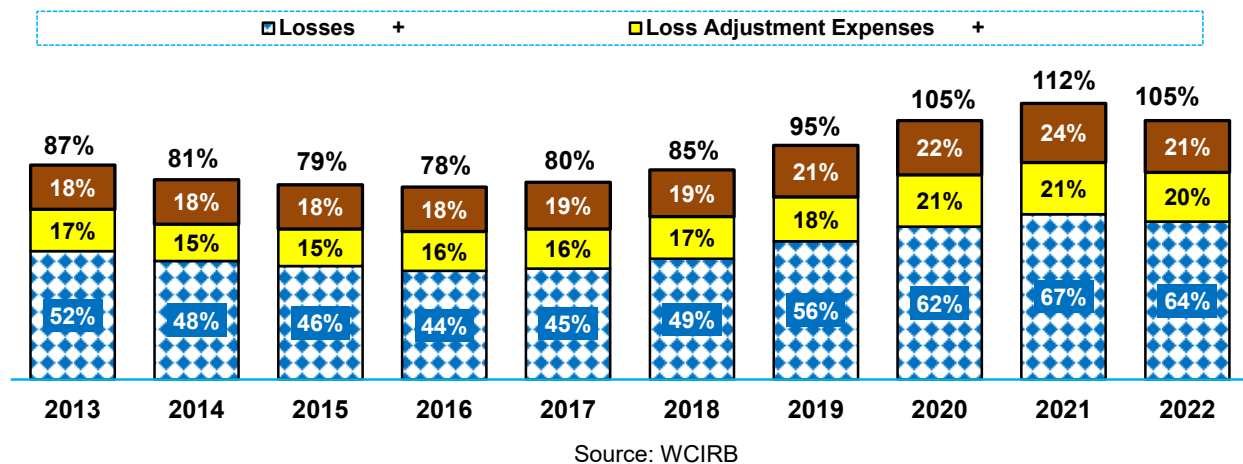


Combined Loss and Expense Ratio

The accident year combined loss and expense ratio measures WC claims payments and administrative expenses against the earned premium.

According to Figure 174, in accident year 2022, insurers' claim projected costs and expenses amounted to \$1.05 for every dollar of premium collected. Although the combined ratios in California have historically been volatile, the industry ratio was fairly stable between 2013 and 2019, and 2019 was the seventh consecutive year with a combined ratio below 100 percent. Combined ratios since 2016 have been increasing primarily due to lower premium levels driven by lower insurer rates and higher expense ratios. The combined ratios for 2020 through 2022 are the first above 100 percent since 2012, driven in part by COVID-19 claims, lower insurer rates and higher claim frequency in 2021 and 2022.²²⁵

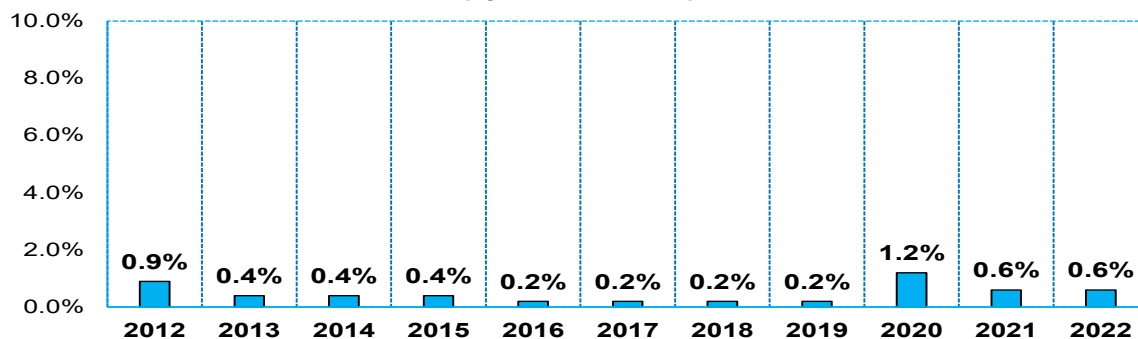
Figure 174: California Workers' Compensation Combined Loss and Expense Ratios



Policy Holder Dividends

Dividends to policyholders were not paid in 2004 and were then reinstated from 2005 through 2011 at a very low rate. Dividends paid to policyholders increased up to 0.9 percent in 2012 and then decreased to 0.4 percent in 2013. From 2013 to 2019, dividends paid to policyholders decreased steadily, from 0.4 to 0.2 percent of the earned premium. These estimated insurer policyholder dividends totaled \$32 million incurred in 2019, or 0.2 percent of earned premium, as shown in Figure 175. Based on insurer statutory Annual Statement information, the WCIRB estimates policyholder dividends incurred in 2020 to be 1.2 percent of 2020 earned premium and those incurred in 2022 to be 0.6 percent of 2022 earned premium, resulting in an underwriting profit of \$0.2 billion, or 1.3 percent of 2022 earned premium.

²²⁵ WCIRB's State of the System 2023 Report, https://www.wcirb.com/sites/default/files/documents/wcirb_2023_state_of_the_system.pdf.

**Figure 175: Insurer Policy Holder Dividends as a Percentage of Earned Premium
(by Calendar Year)**

Source: WCIRB

Projected Ultimate Total Loss

Figure 176 shows changes in the projected average indemnity, medical, and allocated loss adjustment expense (ALAE) cost components of the projected ultimate total loss or projected average cost (“severity”) per WC indemnity claim.

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

The WCIRB projected the average cost or “severity” of a 2022 claim, excluding COVID-19 claims, to be \$71,643, which is consistent with the total claim severity in the last two years, but it is 14 percent higher than its 2017 level.²²⁶ The projected average indemnity cost flattened between 2013 and 2017 and then had been increasing overall from 2017 to 2022, excluding a 2 percent decrease from 2020 to 2021. The 2022 average severity is the highest in the last decade since the SB 863 reforms.

Following several years of modest changes, indemnity severity has increased steadily since 2017. In 2022, the indemnity severity was 7 percent higher than in 2021 and 25 percent higher than in 2017. Recent growth in indemnity claim severities was in part driven by higher than typical average wage inflation during the pandemic.

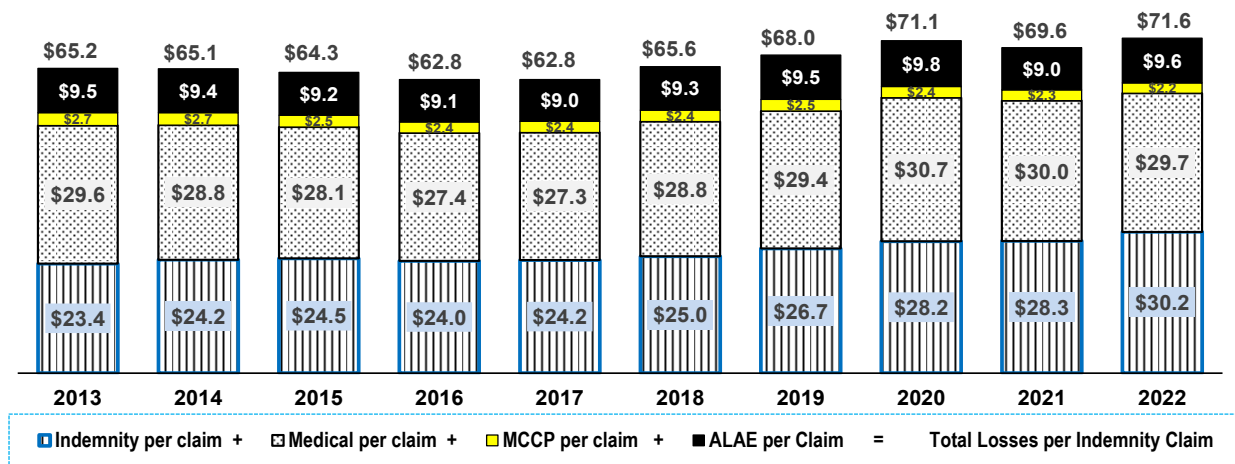
The projected medical severity for 2022 was 1 percent lower than 2021 and 9 percent higher than 2017. Some of the recent growth in medical severities may be attributable to claims staying open longer since the start of the pandemic and increases in medical fee schedule reimbursements effective in early 2021. The slightly declining medical severities in 2021 and 2022 were driven by reduced utilization of medical services partially offset by regular inflationary updates to medical fee schedules.

The ALAE severity was generally flat from 2013 through 2022, averaging \$9,335 per year due to reduced frictional costs following the SB 863 and SB 1160 reforms, offset by increasing shares of cumulative trauma claims, which tend to have higher frictional costs. It should be noted that despite the flat average of projected ALAE severity, California’s ratio of ALAE to losses is 70 percent higher than the countrywide median. According to WCIRB this is due to California’s high proportion of permanent disability claims and cumulative trauma claims, high rates of legal representation on claim, longer duration of claims, and higher costs in Southern California regions.²²⁷

²²⁶ WCIRB Quarterly Experience Report as of December 31, 2022, Charts 8–12, https://www.wcirb.com/sites/default/files/documents/quarterlyexperience-report-2022q4_-_final_0.pdf.

²²⁷ WCIRB 2023 State of the System Report. https://www.wcirb.com/sites/default/files/documents/wcirb_2023_state_of_the_system.pdf.

Figure 176: Projected Ultimate Total Loss and ALAE per Indemnity Claim, as of December 31, 2022 (Thousand \$)

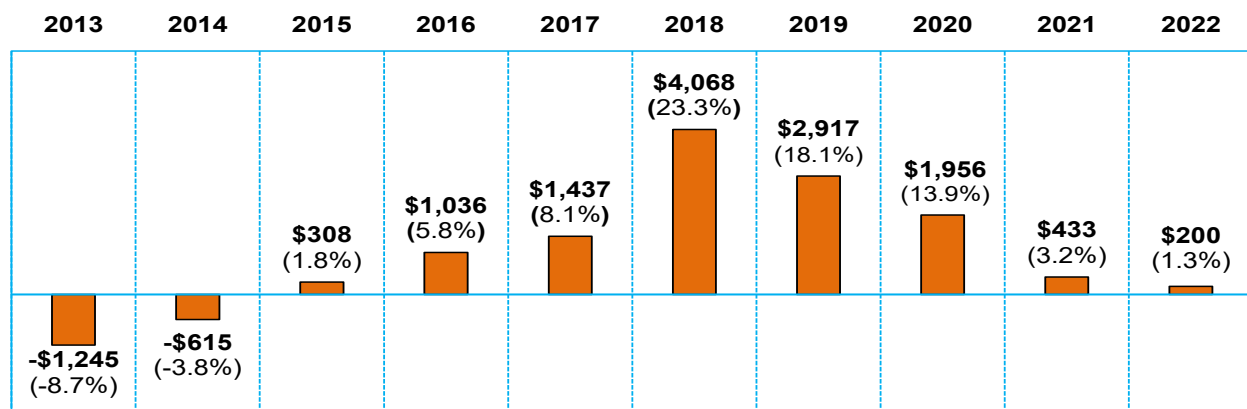


Source: WCIRB

Insurer Profit/Loss

WC insurers experienced large fluctuations in profits and losses during the past decade, as measured by actual dollars and percentage of earned premium. From the implementation of the reforms of 2004 until 2008, insurer underwriting profits were uncharacteristically high. Investment income typically was the main source of insurer profits, but underwriting profits from policies was a new development. In 2008, WC insurers experienced losses for the first time since 2004. The pre-tax underwriting losses increased to 17 percent in both 2009 and 2010, and then according to Figure 177, were 8.7 percent of earned premium in 2013, declining again from 2013 to 2014. In 2015, insurers experienced the underwriting profits of 1.8 percent after 7 years of losses. In 2022, the underwriting profits were 1.3 percent or \$200 million.²²⁸

Figure 177: Insurer Pre-Tax Underwriting Profit/Loss²²⁹, 2013-2022 (Million \$ and as a Percentage of the Earned Premium)



Source: WCIRB

²²⁸ Data reflects underwriting results only and not overall profitability as figures shown do not contemplate any measure of investment income or federal income taxes. See the National Association of Insurance Commissioners' Report on *Profitability By Line By State*, which is published annually at <https://content.naic.org/>, for an estimate of the overall profitability of California WC.

²²⁹ Underwriting profits or losses in this report represent only insured policies prior to reinsurance assumed or ceded and before the application of deductible credits or advisory retrospective rating plan adjustments. Also these numbers reflect underwriting results only, not overall profitability, taking into account measures of investment income or federal income taxes.

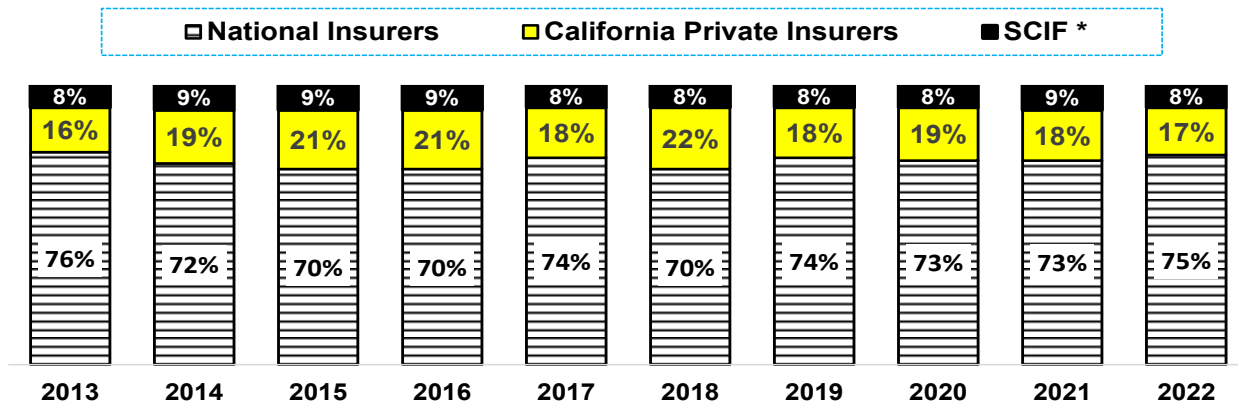
Current State of the Insurance Industry

Market Share

A number of California insurers left the market or reduced their underwritings as a result of the decrease in profitability, contributing to a major redistribution of market share among insurers since 1993. Figure 178 shows changes in the workers' compensation insurance market share from 2013 to 2022.

According to WCIRB, from 2013 to 2022, SCIF attained between 8 to 9 percent of the California WC insurance market. The share of private insurers that focus most of their WC business in California has been relatively consistent since 2013. The market share of these domestic insurers, excluding SCIF, increased overall, from 16 percent in 2013 to 22 percent in 2018, and then declined to an average of about 17-18 percent per year from 2019 to 2022.

**Figure 178: Workers' Compensation Insurance Market Share in California by Type of Insurer
Based on Written Premium Prior to Deductible Credits, 2013 - 2022**



* State Compensation Insurance Fund

Note: California Insurers are defined as private insurers who write at least 80 percent of their workers' compensation business in California.

Data Source: WCIRB

Impact of September 11, 2001, on Insurance Industry

The problems in the reinsurance market caused by the tragic events of September 11, 2001 significantly affected the cost and availability of catastrophe reinsurance and, correspondingly, had a significant effect on the cost of workers' compensation insurance. This effect extended to more than acts of terrorism and is a critical component of any evaluation of the California workers' compensation insurance marketplace. The insurance industry remained concerned about the renewal of the Terrorism Risk Insurance Act, often known as TRIA, which was reauthorized in 2007 and extended to December 2014. Now known as TRIPRA, the Terrorism Risk Insurance Program Reauthorization Act of 2015 amended the expiration date of the Terrorism Risk Insurance Program (TRIP) to December 31, 2020. On December 20, 2019, the President signed into law the Terrorism Risk Insurance Program Reauthorization Act of 2019 (Pub. L. 116-94, 133 Stat. 2534) which extended TRIP through December 31, 2027.²³⁰

²³⁰ <https://home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/federal-insurance-office/terrorism-risk-insurance-program>

**Advisory Workers' Compensation Pure Premium Rates
A History since the 2013 Reform Legislation**

January 1, 2013

WCIRB recommendations:

On October 1, 2012, the WCIRB submitted its January 1, 2013, pure premium rate filing to the California Insurance Commissioner. The WCIRB did not recommend a January 1, 2013, increase in the advisory pure premium rate level. Instead, the WCIRB proposed January 1, 2013, pure premium rates that average \$2.38 per \$100 of payroll, which is the industry average filed pure premium rate as of July 1, 2012. The amended January 1, 2013, Pure Premium Rate Filing incorporated new proposed advisory pure premium rates as well as proposed changes to the reporting requirements of the *California Workers' Compensation Uniform Statistical Reporting Plan—1995* and to the eligibility threshold of the *California Workers' Compensation Experience Rating Plan—1995*.

Insurance Commissioner action:

On November 30, 2012, the Commissioner issued a decision approving new advisory pure premium rates effective January 1, 2013, that average \$2.56 per \$100 of payroll which is 2.8 percent higher than the industry average filed pure premium rate of \$2.49 per \$100 of payroll as of November 9, 2012.

July 1, 2013

WCIRB recommendations:

On April 3, 2013, after some discussion, the WCIRB Governing Committee unanimously agreed not to submit a July 1, 2013, Pure Premium Rate Filing. Instead, the Actuarial Committee agreed to continue reviewing insurer experience in preparation for the regular January 1, 2014, Pure Premium Rate Filing to be submitted in August.

Insurance Commissioner action:

The Insurance Commissioner did not issue an interim advisory rate for this period.

January 1, 2014

WCIRB recommendations:

On October 23, 2013, the WCIRB and public members voted unanimously to amend the WCIRB's January 1, 2014, Pure Premium Rate Filing to propose an additional 1.8 percent increase in pure premium rates to reflect the increased costs of the new physician fee schedule recently adopted by the Division of Workers' Compensation (DWC). With this amendment, the WCIRB proposed January 1, 2014, advisory pure premium rates that average \$2.75 per \$100 of payroll which is 8.7 percent greater than the industry average pure premium rate of \$2.53 as of July 1, 2013. (The original Filing submitted on September 13, 2013, proposed an industry average pure premium rate of \$2.70, which is 6.9 percent higher than the July 1, 2013, industry average pure premium rate.)

Insurance Commissioner action:

On November 22, 2013, the California Department of Insurance (CDI) issued a decision regarding the WCIRB's January 1, 2014, Pure Premium Rate Filing approving advisory pure premium rates effective January 1, 2014, that average \$2.70 per \$100 of payroll, which is 6.7 percent higher than the average filed pure premium rate as of July 1, 2013.

July 1, 2014

WCIRB recommendations:

On April 3, 2014, after some discussion, the WCIRB Governing Committee unanimously agreed not to submit a July 1, 2014, Pure Premium Rate Filing.

Insurance Commissioner action:

The Insurance Commissioner did not issue a decision with respect to the pure premium rate for this period.

January 1, 2015

WCIRB recommendations:

On September 4, 2014, the WCIRB voted to amend the WCIRB's January 1, 2015, Pure Premium Rate Filing to propose advisory pure premium rates that average \$2.77 per \$100 payroll in lieu of the advisory pure premium rates averaging \$2.86 per \$100 of payroll that were proposed in the WCIRB's initial August 19, 2014, Filing. The new proposed average pure premium rate of \$2.77 is 7.9 percent higher than the corresponding industry average filed pure premium rate of \$2.57 as of July 1, 2014.

Insurance Commissioner action:

On November 14, 2014, the Insurance Commissioner issued a decision regarding the WCIRB's January 1, 2015, Pure Premium Rate Filing approving advisory pure premium rates effective January 1, 2015, that average \$2.74 per \$100 of payroll, which is 6.6 percent higher than the average filed pure premium rate as of July 1, 2014, of \$2.57 per \$100 of payroll and 2.2 percent above the average approved January 1, 2014, pure premium rate of \$2.68 per \$100 of payroll.

July 1, 2015

WCIRB recommendations:

On April 6, 2015, the WCIRB submitted a July 1, 2015, Pure Premium Rate Filing to the California Department of Insurance (CDI) proposing advisory pure premium rates effective July 1, 2015, that average \$2.46 per \$100 of payroll. The average proposed advisory pure premium rate is 5.0 percent lower than the corresponding industry average filed pure premium rate of \$2.59 as of January 1, 2015, and 10.2 percent less than the approved average January 1, 2015, advisory pure premium rate of \$2.74.

Insurance Commissioner action:

On May 7, 2015, the Commissioner approved the WCIRB's proposed advisory pure premium rates that average \$2.46 per \$100 of payroll. The approved pure premium rates are, on average, 5.0 percent less than the industry average filed pure premium rate as of January 1, 2015, of \$2.59 and 10.2 percent less than the average of the approved January 1, 2015, advisory pure premium rates of \$2.74. The approved advisory pure premium rates are effective July 1, 2015, for new and renewal policies.

January 1, 2016

WCIRB recommendations:

On August 19, 2015, the WCIRB submitted its January 1, 2016, Pure Premium Rate Filing to the California Insurance Commissioner. The pure premium rates for the 491 standard classifications proposed to be effective January 1, 2016, average \$2.45 per \$100 of payroll, which is \$0.21, or 7.8 percent, less than the corresponding industry average filed pure premium rate of \$2.66 as of July 1, 2015, and \$0.02 or 0.8 percent less than the average approved July 1, 2015, advisory pure premium rate of \$2.47.

Insurance Commissioner action:

On October 20, 2015, the Insurance Commissioner issued a decision regarding the WCIRB's January 1, 2016, Pure Premium Rate Filing, approving advisory pure premium rates that averaged \$2.42 per \$100 of payroll. The approved pure premium rates were, on average, 9.0 percent less than the industry average filed pure premium rate as of July 1, 2015, of \$2.66 and 2.0 percent less than the average of the approved July 1, 2015, advisory pure premium rates of \$2.47.

July 1, 2016

WCIRB recommendations:

On April 11, 2016, the WCIRB submitted its July 1, 2016, Pure Premium Rate Filing to the California Insurance Commissioner. The pure premium rates proposed to be effective July 1, 2016, average \$2.30 per \$100 of payroll, which is 10.4 percent lower than the corresponding industry average filed pure premium rate of \$2.57 as of January 1, 2016, and 5.0 percent less than the average approved January 1, 2016, advisory pure premium rate of \$2.42.

Insurance Commissioner action:

On May 31, 2016, the Insurance Commissioner issued a decision regarding the WCIRB's July 1, 2016, Pure Premium Rate Filing, approving advisory pure premium rates that averaged \$2.30 per \$100 of payroll. The approved pure premium rates were, on average, 10.4 percent less than the industry average filed pure premium rate as of January 1, 2016, of \$2.57 and 5.0 percent less than the average of the approved January 1, 2016, advisory pure premium rates of \$2.42.

January 1, 2017

WCIRB recommendations:

On August 19, 2016, the WCIRB submitted its January 1, 2017, Pure Premium Rate Filing to the California Insurance Commissioner. The pure premium rates proposed to be effective January 1, 2017, averaged \$2.26 per \$100 of payroll. On October 3, 2016, after completing evaluations of June 30, 2016 experience, the WCIRB submitted an amended advisory pure premium rate averaging \$2.22 per \$100 of payroll. The proposed rate is 12.6 percent less than the corresponding industry average filed pure premium rate of \$2.54 as of July 1, 2016 and 4.3 percent less than the average approved July 1, 2016 advisory pure premium rate of \$2.32.

Insurance Commissioner action:

On October 27, 2016, the Insurance Commissioner issued a decision regarding the WCIRB's January 1, 2017, Pure Premium Rate Filing, approving advisory pure premium rates that averaged \$2.19 per \$100 of payroll. The approved pure premium rates were, on average, 13.8 percent less than the industry average filed pure premium rate as of July 1, 2016, of \$2.54 and 5.6 percent less than the average of the approved July 1, 2016, advisory pure premium rates of \$2.32 per \$100 of payroll.

July 1, 2017

WCIRB recommendations:

On April 11, 2017, the WCIRB submitted its July 1, 2017, Pure Premium Rate Filing to the California Insurance Commissioner. The pure premium rates proposed to be effective July 1, 2017, averaged \$2.02 per \$100 of payroll. The average proposed rate is 16.5 percent less than the corresponding industry average filed pure premium rate of \$2.42 as of January 1, 2017 and 7.8 percent less than the average approved January 1, 2017 advisory pure premium rate of \$2.19.

Insurance Commissioner action:

On May 22, 2017, the Insurance Commissioner issued a decision regarding the WCIRB's July 1, 2017, Pure Premium Rate Filing, approving advisory pure premium rates that averaged \$2.02 per \$100 of payroll. The approved advisory pure premium rates were, on average, 16.5 percent less than the corresponding industry average filed pure premium rate as of January 1, 2017, of \$2.42 and 7.8 percent less than the average of the approved January 1, 2017, advisory pure premium rates of \$2.19 per \$100 of payroll.

January 1, 2018

WCIRB recommendations:

On August 18, 2017, the WCIRB submitted its January 1, 2018, Pure Premium Rate Filing to the California Insurance Commissioner. The pure premium rates proposed to be effective January 1, 2018, averaged \$2.01 per \$100 of payroll. On September 8, 2017, the WCIRB submitted an amended January 1, 2018 Pure Premium Rate Filing. The proposed amended rate average \$1.96 and is 16.1 percent less than the corresponding industry average filed pure premium rate of \$2.00 as of July 1, 2017 and 2 percent less than the average approved July 1, 2017 advisory pure premium rate of \$2.00.

Insurance Commissioner action:

On October 26, 2017, the Insurance Commissioner issued a decision regarding the WCIRB's January 1, 2018, Pure Premium Rate Filing, approving advisory pure premium rates that averaged \$1.94 per \$100 of payroll. The approved pure premium rate was, on average, 17.1 percent less than the industry average filed pure premium rate as of July 1, 2017, of \$2.34 and 3 percent less than the average of the approved July 1, 2017, advisory pure premium rates of \$2.00 per \$100 of payroll.

July 1, 2018

WCIRB recommendations:

On April 9, 2018, the WCIRB submitted its July 1, 2018, Pure Premium Rate Filing to the California Insurance Commissioner. The pure premium rates proposed to be effective July 1, 2018, averaged \$1.80 per \$100 of payroll. The proposed advisory pure premium rate was 7.2 percent less than the average approved January 1, 2018 advisory pure premium rates.

Insurance Commissioner action:

On May 29, 2018, the Insurance Commissioner issued a decision regarding the WCIRB's July 1, 2018, Pure Premium Rate Filing, approving advisory pure premium rates that averaged \$1.74 per \$100 of payroll. The approved pure premium rate was, on average, 21.6 percent less than the industry average filed pure premium rate as of January 1, 2018, of \$2.22 and 10.3 percent less than the average of the approved January 1, 2018, advisory pure premium rates of \$1.94 per \$100 of payroll.

January 1, 2019

WCIRB recommendations:

On August 20, 2018, the WCIRB submitted its January 1, 2019, Pure Premium Rate Filing to the California Insurance Commissioner. The pure premium rates proposed to be effective January 1, 2019, averaged \$1.70 per \$100 of payroll. The proposed advisory pure premium rate was 4.5 percent less than the average approved July 1, 2018 advisory pure premium rates.

Insurance Commissioner action:

On November 7, 2018, the Insurance Commissioner issued a decision regarding the WCIRB's January 1, 2019, Pure Premium Rate Filing, approving advisory pure premium rates that averaged \$1.63 per \$100 of payroll. The approved pure premium rate was, on average, 23.5 percent less than the industry average filed pure premium rate as of July 1, 2018, of \$2.13 and 8.4 percent less than the average of the approved July 1, 2018, advisory pure premium rates of \$1.78 per \$100 of payroll.

July 1, 2019

WCIRB recommendations:

On April 3, 2019, the WCIRB Governing Committee agreed not to submit a July 1, 2019, Pure Premium Rate Filing. Recognizing that midyear filings and adjustments in advisory pure premium rates can be disruptive for employers, agents, and brokers as well as insurers, the Committee established a guideline in 2011 stating that midyear filings would generally not be made by the WCIRB unless there was highly unusual volatility in experience or major legislative, regulatory, or judicial action. Based on the December 31, 2018, experience and analysis, the Committee determined that the overall improvement in experience since the January 1, 2019, approved pure premium rates was more moderate, approximately \$0.06 per \$100 of payroll or less than 4 percent than in recent years.

Insurance Commissioner action:

The Insurance Commissioner did not issue a decision with respect to the pure premium rate for this period.

January 1, 2020

WCIRB recommendations:

On August 20, 2019, the WCIRB submitted its January 1, 2020, Pure Premium Rate Filing to the California Insurance Commissioner. The pure premium rates proposed to be effective January 1, 2020, averaged \$1.58 per \$100 of payroll. The proposed advisory pure premium rate is 5.4 percent less than the average current January 1, 2019, advisory pure premium rates.

Insurance Commissioner action:

On November 13, 2019, the Insurance Commissioner issued a decision regarding the WCIRB's January 1, 2020, Pure Premium Rate Filing, approving advisory pure premium rates that averaged \$1.52 per \$100 of payroll. The average approved pure premium rate is about 23.6 percent lower than the industry filed average pure premium rate of \$1.99 as of July 1, 2019 and 9.0 percent lower than the average approved January 1, 2019 advisory pure premium rate of \$1.67 per \$100 of payroll.

January 1, 2021

WCIRB recommendations:

On September 15, 2020, the WCIRB amended its January 1, 2021, Pure Premium Rate Filing submitted to the California Insurance Commissioner on August 26, 2020. The overall average pure premium rate proposed to take effect January 1, 2021, was not amended and averaged \$1.56 per \$100 of payroll, reflecting the average provision of \$0.06 per \$100 of payroll COVID-19 adjustment, based on the relative frequency of COVID-19 claims by industry sector. Projected average PPR prior to the impact of COVID-19 claims is \$1.50 per \$100 of payroll. The WCIRB amended individual proposed advisory pure premium rates by classification to reflect updated information on the frequency of COVID-19 claims by industry sector. The proposed advisory pure premium rate is 2.6 percent above the average approved January 1, 2020, advisory pure premium rates. The regulatory filing for January 1, 2021, PPR includes a new classification for Clerical Telecommuter Employees approved by the IC on June 25, 2020, which applies to Clerical Office Employees who work more than 50 percent of their time at home or any office space other than the location of their employer.

Insurance Commissioner action:

On November 24, 2020, the Insurance Commissioner issued a decision regarding the WCIRB's January 1, 2021, pure premium rate filing, approving advisory pure premium rates that averaged \$1.45 per \$100 of payroll. The average approved 2021 advisory pure premium rate, which does not reflect a provision for projected COVID-19 claim costs, is 4.6 percent below the average approved January 1, 2020 advisory pure premium rate. While the approved advisory pure premium rates do not reflect a provision for projected COVID-19 claim costs on 2021 policies, the IC's decision directed insurers to clearly identify any filed rate or rating plan component that includes an adjustment for COVID-19 in rate filings submitted to the CDI and directed the WCIRB to collect data on the aggregate premium charged for any rate or rating plan component that includes an adjustment for COVID-19.

September 1, 2021

WCIRB recommendations:

On April 29, 2021, the WCIRB submitted its September 1, 2021 Pure Premium Rate Filing to the California Department of Insurance proposing advisory pure premium rates that are, on average, 2.7 percent above the average approved January 1, 2021 advisory pure premium rates. The average of the proposed September 1, 2021 advisory pure premium rates is \$1.50 per \$100 of payroll.

Insurance Commissioner action:

On July 21, 2021, the Insurance Commissioner issued a decision regarding the WCIRB's September 1, 2021 pure premium rate filing, approving advisory pure premium rates that averaged \$1.41 per \$100 of payroll. The average approved September 1, 2021 advisory pure premium rate is 3.4 percent below the average approved January 1, 2021 advisory pure premium rate. The difference between the WCIRB proposed and CDI approved advisory pure premium rates is due to somewhat different assumptions regarding medical loss development, future indemnity claim frequency and future claim severity trends.

September 1, 2022

WCIRB recommendations:

On April 29, 2022, the WCIRB submitted its September 1, 2022 Pure Premium Rate Filing to the California Department of Insurance proposing advisory pure premium rates that are, on average, 7.6 percent above the average approved September 1, 2021 advisory pure premium rates of \$1.45 per \$100 of payroll and 11.9 percent less than the industry average filed pure premium rate of \$1.77 per \$100 of payroll as of January 1, 2022. The average of the proposed September 1, 2022 advisory pure premium rates was \$1.56 per \$100 of payroll which included a provision of \$0.008 per \$100 of payroll for the estimated cost of COVID-19 claims that will incur during the September 1, 2022 policy period.

Insurance Commissioner action:

On July 15, 2022, the Insurance Commissioner issued a decision regarding the WCIRB's September 1, 2022 pure premium rate filing that indicated the approved advisory pure premium rate averaging \$1.45 per \$100 of payroll should remain unchanged from approved September 1, 2021 PPR.

September 1, 2023

WCIRB recommendations:

On April 28, 2023, the WCIRB submitted its September 1, 2023, Pure Premium Rate Filing to the California Department of Insurance proposing advisory pure premium rates that are, on average, 0.3 percent above the average approved September 1, 2022, advisory pure premium rates of \$1.45 per \$100 of payroll and 12.2 percent less than the industry average filed pure premium rate of \$1.71 per \$100 of payroll as of January 1, 2023. The average of the proposed September 1, 2023, advisory pure premium rates was \$1.50 per \$100 of payroll.

Insurance Commissioner action:

On July 11, 2023, the Insurance Commissioner issued a decision regarding the WCIRB's September 1, 2023, pure premium rate filing that indicated the approved advisory pure premium rate averaging \$1.46 per \$100 of payroll, which is 2.6 percent below the average of the approved September 1, 2022, PPR of \$1.50 per \$100 of payroll. The difference between the WCIRB proposed and CDI approved advisory pure premium rates is due to different assumptions regarding loss development, claim frequency and claim severity trends.

Source: WCIRB

SPECIAL REPORT: A STUDY OF COVID-19 CLAIMS AND PRESUMPTIONS UNDER SENATE BILL 1159

Introduction

On September 17, 2020, Governor Gavin Newsom signed into law Senate Bill (SB) 1159²³¹, which took effect immediately as an urgency statute. SB 1159 codified the Governor's previous Executive Order N-62-20²³² assigning COVID-19 a presumption and created two new presumptions dependent on testing positive, as defined, for COVID-19. The first covers public safety workers²³³ as well as health-care providers. The second covers all other workers, during an "outbreak,"²³⁴ as defined. They cover all new claims from July 6, 2020, to January 1, 2023, for both public and private sector employees.

SB 1159 also required CHSWC to conduct a study of the impacts of COVID-19 claims on California's workers' compensation system, including an assessment of differences in the impacts across differing occupational groups and of the presumption statutes. In May 2021 CHSWC contracted with RAND to conduct this study.

Objectives

The objectives of the study include:

- Evaluate the overall impacts of COVID-19 claims on California's workers' compensation system.
- Evaluate the overall impacts of COVID-19 claims on California's workers' compensation indemnity benefits, medical benefits, and death benefits, including differences in the impacts across differing occupational groups.
- Assess the overall and cost impacts of the specific presumptions created by SB 1159 on California workers' compensation system.
- Present a framework for evaluation of SB 1159, including information on outbreaks, timeframes and costs for care.

Project Team

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²³¹ Text of SB 1159 at https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201920200SB1159.

²³² Text of order at <https://www.gov.ca.gov/wp-content/uploads/2020/05/5.6.20-EO-N-62-20-text.pdf>.

²³³ See Labor Code Section 3212.87 (a) of SB 1159 at https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201920200SB1159/.

²³⁴ A condition of 4 percent of employees testing positive for Covid-19 or otherwise closed by public health officials for risk of Covid-19 infection.

SPECIAL REPORT: A STUDY OF COVID-19 CLAIMS AND PRESUMPTIONS UNDER SENATE BILL 1159

Methods

To address the above study objectives, RAND conducted a literature review of COVID-19 issues. The researchers used a mixed-methods approach, including rigorous quantitative analysis, using data from the Workers' Compensation Information System (WCIS), and 32 qualitative interviews with workers, employers, and public health officials²³⁵ to capture diverse perspectives on COVID-19 claims and SB 1159.

A Technical Advisory Group (TAG) meeting was held on July 1, 2021, to solicit key stakeholders' feedback on both qualitative and quantitative aspects of this study. A second TAG meeting was held on October 26, 2021.

Key Findings:

- From the start of 2020, 142,033 COVID-19 infection WC claims were filed over 18 months, accounting for 15 percent of all WC claims. COVID-19 claim volume fluctuated drastically month to month, with peak periods creating administrative challenges for claims administrators and employers.
- Initial denial rates on COVID-19 claims fell after presumptions were adopted, but COVID-19 claims remained more likely to be denied than other WC claims, potentially due to the requirement that a worker show a positive COVID-19 test.
- Access to state and federal pandemic benefits for medical care and lost wages strongly influenced workers' decisions to file workers' compensation claims for COVID-19. Interview findings indicated that workers who contracted COVID-19 relied first on COVID-19 sick leave mandated by the federal and state governments (as required by SB 1159) before filing a workers' compensation claim.
- Dramatically expanded coverage of COVID-19 medical care by public and private health insurers likely contributed to unusually high proportions of COVID-19 workers' compensation claims with no paid medical care.
- Employers and claims administrators reported that responding to COVID-19 workers' compensation claims added complexity and administrative burden. They identified the primary burdens as having to adapt information systems to track outbreaks and report cases, deal with shortened claims investigation timelines, and collect information about COVID-19 exposures related to some claims.

Policy Implications

- If one goal of the SB 1159 presumptions was to encourage WC claiming and facilitate access to benefits for workers at high risk of COVID-19, the policy appears to have succeeded. The presumptions helped workers obtain benefits for work-related illness from the WC system, promoting broad coverage of workers and health conditions.
- SB 1159 shortened claims investigation time frames for employers from the normal 90 days to 30 to 45 days for claims covered by its presumptions. Shortened timelines and quicker initial decisions did not appear to meaningfully assist workers per the WC system's normal goals. This is likely because workers were able to get paid leave and access medical care through other policies.
- Other federal and state policies that were in effect during the study period likely did more than SB 1159 to support the WC system's goals of protecting workers from medical spending and the risk

²³⁵ Additional information on the types of stakeholders interviewed can be found on pages 28-29 of the report available at: <https://www.dir.ca.gov/chswc/Reports/2022/RAND-COVID-claims-presumptions.pdf>

SPECIAL REPORT: A STUDY OF COVID-19 CLAIMS AND PRESUMPTIONS UNDER SENATE BILL 1159

of lost income. Many of these policies and actions have ended, however, suggesting that WC may be more important to workers in the future. Although paid sick leave was viewed as more important in the majority of cases, the findings of the study do not rule out the possibility that WC benefits for permanent disability or death could be very important to workers who experience the worst outcomes from COVID-19.

Recommendations for Further Research

- Estimation of long-term medical costs, temporary and permanent disability costs, and litigation costs related to both SB 1159 presumptions.
- Analysis of how COVID-19 claims outcomes (i.e., acceptance, denial, reversal, conditional denial, and litigation and settled outcomes) changed over the course of a given claim, as well as how COVID-19 claims outcomes and processes varied during the different surges of COVID-19 over time.
- Investigation into what workers—across California and by industry and occupation—who contracted COVID-19 did to maintain their income, stay safe, and seek medical care when needed

Status: Completed

A final study report to the Legislature and the Governor was provided in April 2022.

For further information..

Denise D. Quigley, Michael S. Dworsky, Nabeel Qureshi, Shannon Prier, and Courtney Gidengil, COVID-19 in the California Workers' Compensation System-A Study of COVID-19 Claims and Presumptions Under Senate Bill 1159, RAND 2021.

<https://www.dir.ca.gov/chswc/Reports/2022/RAND-COVID-claims-presumptions.pdf>

Denise D. Quigley, Michael S. Dworsky, Nabeel Qureshi, Shannon Prier, and Courtney Gidengil COVID-19's Impacts on California's Workers' Compensation System - Evaluating the Effects of Senate Bill 1159, RAND Research Brief, 2022.

https://www.dir.ca.gov/chswc/Meetings/2022/ResearchBrief_CovidClaims_SB1159.pdf

Denise D. Quigley, Michael S. Dworsky, Nabeel Qureshi, Shannon Prier, and Courtney Gidengil, COVID-19 in the California Workers' Compensation System-A Study of COVID-19 Claims and Presumptions Under Senate Bill 1159, RAND, Pre-Publication, January 2022.

https://www.dir.ca.gov/chswc/Reports/2022/RAND_RRA1430-1.pdf

Denise D. Quigley, Nabeel Qureshi, Grace Gahlon, and Courtney A. Gidengil, Worker and Employer Experience with COVID-19 and the California's Workers' Compensation System: A Review of the Literature. American Journal of Industrial Medicine, January 29, 2022.

<https://onlinelibrary.wiley.com/doi/10.1002/ajim.23326>

SPECIAL REPORT: EVALUATION OF INCIDENCE OF MENTAL HEALTH CONDITIONS OR ILLNESSES AMONG FIREFIGHTERS AND PEACE OFFICERS

Introduction

On October 1, 2019, Governor Gavin Newsom signed into law Senate Bill (SB) 542, which created a rebuttable presumption that posttraumatic stress disorder (PTSD) in firefighters and peace officers is a work-related injury and thus compensable under workers' compensation.²³⁶ Department chiefs noted the significant impacts of suicide being a primary motivator to improving mental health supports for firefighters and peace officers. On the other hand, having a healthy workforce was noted as being among the biggest cost-savers that would result from the presumption. The rebuttable presumption, according to Labor Code § 3212.15 added by SB 542, is in effect for specified injuries occurring between January 1, 2020, and January 1, 2025.

Assemblymember Tom Daly requested that the Commission on Health and Safety and Workers' Compensation (CHSWC) undertake a study evaluating a wide range of topics from differences in mental health and suicide risk across occupations to cost impact of SB 542, all condensed in 12 research questions posed in his letter.²³⁷ CHSWC has contracted with RAND to conduct this study that would guide future policymaking.

Research Questions

The study addresses the main research questions with its final report providing a designated appendix of question-by-question answers in addition to detailed analysis of each question in designated sections. The answers to the 12 research questions listed below are generalized in the summary of findings section of this special report:

1. Do firefighters and peace officers have a higher incidence of traumatic stress injuries than people in non-public employment that poses similar exposure to traumatic stress, such as emergency room personnel, security guards, and private ambulance service employees?
2. Do firefighters and peace officers experience a significantly higher incidence of suicide, attempted suicide, or other serious mental health conditions than other employees in general?
3. Are claims by firefighters and peace officers for mental health conditions denied when the condition appears to be job related but the employee had difficulty in proving that fact, and was the rate of denial statistically different from denial of other claims by firefighters (or peace officers) that are subject to presumptions of compensability?
4. Do firefighters and peace officers file claims for mental health conditions at a rate statistically different from that of other employees?

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²³⁶ <https://www.gov.ca.gov/2019/10/01/governor-newsom-signs-bills-to-support-firefighters-and-first-responders/>.

²³⁷ https://www.dir.ca.gov/chswc/Meetings/2019/Assembly-Letter-Tom-Daly_091119.pdf.

SPECIAL REPORT: EVALUATION OF INCIDENCE OF MENTAL HEALTH CONDITIONS OR ILLNESSES AMONG FIREFIGHTERS AND PEACE OFFICERS

5. Are claims by firefighters and peace officers for mental health conditions denied when the condition appears to be job related but the employee has difficulty in proving that fact, and is the rate of denial statistically different from that for other claims and from other types of employees?
6. In addition to quantifying the data for #4, consult with the professional mental health community to determine the feasibility of proving or disproving whether these mental health conditions are job related.
7. To the extent that claims for mental health conditions filed by firefighters (or peace officers) are denied by employers, does this occur after prior treatment that was covered by employer-sponsored or other health-care coverage, when the treating provider(s) concluded the condition was job related or when there was no prior treatment or diagnosis?
8. Of the claims that involve mental health conditions, what was the percentage of these claims primarily for mental health issues, and what was the percentage of these claims that involved a mental health claim as a compensable consequence of a claim for physical injuries?
9. To what extent are mental health claims filed by public safety officers' post-separation/termination claims, as opposed to claims for which the employer had notice during the term of employment?
10. In the case of denied WC claims by firefighters and peace officers for mental health conditions, is there evidence that the claimant later sought and obtained care through employer-sponsored or other health-care coverage?
11. What is the estimated cost to state and local governments for each of the next five years, under SB 542 as enacted?
12. What is the estimated cost to state and local governments of applying SB 542 retroactively?

Methods

To address the research questions posed by CHSWC, RAND used a mixed-methods approach that included rigorous quantitative analysis of data from the Workers' Compensation Information System (WCIS) for 2008–2019 accident years and the California Health Interview Survey (CHIS) from the 2013–2019 period, projection of the costs to state and local government that may result from SB 542, and 51 qualitative interviews with first responders (13), department chiefs (8), mental health professionals (8), applicants' attorneys (9), and claims administrators (8). Additional 5 interviews were conducted with chiefs (3) and mental health providers (2) who worked for departments that had arranged means other than WC to support mental health treatment for first responders.²³⁸

A Technical Advisory Group (TAG) containing various stakeholders and experts was convened to gather input on study design and research questions in an October 13, 2020, meeting and then to gain stakeholder community's feedback on preliminary qualitative and quantitative findings towards the end of the project on May 11, 2021.

The quantitative analyses in this study reflect the pre-SB 542 status quo and not the events since SB 542 took effect on January 1, 2020, although some qualitative research findings on stakeholders' experiences since SB 542 took effect are discussed in this study.

The estimates in the study do not directly address the question of how PTSD prevalence varies across occupations, since the PTSD was not measured as the mental distress was. The study includes requests to interpret most findings with caution and to take into account the limitations of the preliminary information and data.

²³⁸ https://www.dir.ca.gov/chswc/Meetings/2021/RAND_mentalhealth_report.pdf, pp. 10-13.

SPECIAL REPORT: EVALUATION OF INCIDENCE OF MENTAL HEALTH CONDITIONS OR ILLNESSES AMONG FIREFIGHTERS AND PEACE OFFICERS

Summary of Key Findings

- Mental distress and suicidality are not more prevalent among California's first responders than among workers in other occupations who are exposed to trauma on the job.
- Claims filed by firefighters and peace officers are more likely to involve PTSD than are claims by the average worker in California but are also denied more often.
- First responders' PTSD claims are denied more often than claims for other conditions (e.g., cancer or heart trouble) with a presumption of being work-related.
- Although it is often feasible to prove that a mental health condition is job-related, there are barriers that contribute to potentially avoidable claim denials.
- Firefighters and peace officers also face barriers to care-seeking — primarily, mental health stigma, fear of professional consequences, and lack of access to culturally competent mental health providers who understand the realities and exceptional demands of their work.
- Nearly all workers interviewed filed workers' compensation claims for mental health conditions, but almost none received PTSD care paid for by workers' compensation; rather, nearly all paid for care out-of-pocket, sometimes causing severe financial strain.
- Without SB 542, first responders' workers' compensation claims involving PTSD would cost state and local governments an average of \$20 million per year in benefit costs. Under SB 542, costs for claims involving PTSD may increase substantially. Costs under SB 542 are highly uncertain, however, and could range from \$48 million to \$347 million per year.
- A retroactive presumption covering PTSD with 2017–2019 injury dates might cost \$79 million, although these costs are also highly uncertain.

Summary of Key Recommendations for Future Research:

- Revisit the questions discussed in this report closer to the expiration of the SB 542 presumption, perhaps in 2023. A retrospective evaluation could provide clearer evidence on care-seeking patterns, claims denial rates, and claims costs with the presumption in place.
- Conduct a qualitative investigation to examine whether SB 542 succeeded in reducing mental health stigma or promoting other changes in department culture.
- Scope an *ex post* evaluation to measure the effects of first responder turnover, training, and early retirement and to quantify their implications for the net costs of SB 542.
- Gather more information about what details and evidence are requested by claims administrators and examine claim denials resulting from disconnects in mental health provider documentation.
- Further examine the availability of culturally competent mental health providers and explore ways to provide first responders with a wider choice of providers, care, and treatment.
- Start building an evidence base for better-integrated systems that help to deliver and finance mental health care for first responders with work-related trauma exposure.
- Instead of making piecemeal improvements to employee assistance programs, employer-sponsored insurance, or workers' compensation programs, investigate the costs and benefits of alternative models used in some police departments for delivering mental health care through direct care provision.
- Consult policymakers, departments, labor unions, and providers to find avenues for improving and accelerating first responder access to mental health treatment.
- Consider the mental health effects of occupational trauma exposures and working conditions across a much wider set of occupations and industries.

SPECIAL REPORT: EVALUATION OF INCIDENCE OF MENTAL HEALTH CONDITIONS OR ILLNESSES AMONG FIREFIGHTERS AND PEACE OFFICERS

Status: Complete.

For Further Information...

"Posttraumatic Stress in California's Workers' Compensation System: A Study of Mental Health Presumptions for Firefighters and Peace Officers Under Senate Bill 542", RAND, 2021.

https://www.dir.ca.gov/chswc/Meetings/2021/RAND_mentalhealth_report.pdf

"First Responder Claims for PTSD in Workers' Compensation: Assessing the Effects of Senate Bill 542 in California", Research Brief, RAND, September 20, 2021.

https://www.dir.ca.gov/chswc/Meetings/2021/RAND_mentalhealth_brief.pdf

<https://www.dir.ca.gov/chswc/Meetings/2021/Rand-PTSD-Study-Comments-Commissioners-Kessler-Bouma-Roxborough.pdf>

SPECIAL REPORT: JANITORIAL TIME MOTION STUDY

Background

On December 11, 2020, Assemblymember Miguel Santiago submitted a request for CHSWC to work with the University of California to study the role of janitors in the safe re-opening of California during the Covid-19 epidemic.

In the submitted request, Assemblymember Santiago noted that California's public health guidelines recommend all high touch surfaces be disinfected at least daily and those with high traffic be disinfected more often. However, he also cites the 2017 CHSWC study, "Excessive Workload in the Janitorial Industry"²³⁹, which states that janitors are already stretched thin because they are required to clean tens of thousands of square feet nightly. In the request, other limitations on janitors' performance were mentioned. The letter underlines the need for development of clear science-based standards for janitorial services. Assemblymember Santiago requested that CHSWC partner with a research team led by the following UC Departments: the UC San Francisco Department of Medicine's Division of Occupational and Environmental Medicine; the UC Ergonomics Research and Graduate Training Program; the UC Berkeley School of Public Health's Division of Environmental Health Sciences; and the UC Berkeley School of Public Health's Labor and Occupational Health Program.²⁴⁰

Project Team

CHSWC Staff

Eduardo Enz
CHSWC Executive Officer
CHSWC Staff

UCSF Staff

Carisa Harris-Adamson, *Ph.D.*
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Laura Stock
Suzanne Teran

At the March 2021 CHSWC virtual meeting, the University of California principal research staff and advisors presented a proposal for discussion to the assembled Commissioners.²⁴¹ The presentation showed that in the U.S. the occupation of janitors and cleaners ranked third in the number of nonfatal injuries and illnesses with days away from work, with 35,260 cases reported in 2018²⁴², and that janitors and cleaners are exposed to high physical demands that increase the risk of musculoskeletal and cardiovascular conditions. Ergonomic workload, measured by task frequencies, posture risk assessment tools and perceived exertion scores, have also been described as positively associated with injury occurrence. CHSWC subsequently contracted with the University of California to more methodically examine the cleaning productivity standards in the janitorial services industry, as well as the working conditions and productivity expectations of janitorial employees both during and beyond the Covid-19 pandemic.²⁴³

Project Purpose and Approach

The overall purpose of this project is to determine safe and effective workloads for California janitors that are specific to square footage, cleaning tasks and venue. A statewide survey will assess current working conditions (prevention measures, productivity requirements, etc.) and workers' knowledge of Centers for Disease Control and Prevention (CDC) recommendations for cleaning and disinfecting during the COVID-19 pandemic. Focus groups and key informant interviews will solicit feedback on productivity guidelines and adjustments to contracts. A detailed time motion study and ergonomic analysis will provide physical exposure measurements and time on-task information while assessing for risk of musculoskeletal disorders.

²³⁹ https://www.dir.ca.gov/chswc/Reports/2017/Janitor_Report_LOHP_3-10-17.pdf.

²⁴⁰ <https://www.dir.ca.gov/chswc/Meetings/2021/SantiagoLetter.pdf>.

²⁴¹ <https://www.dir.ca.gov/chswc/Meetings/2021/JanitorTimeMotionPropPrezo.pdf>.

²⁴² <https://www.dir.ca.gov/chswc/Meetings/2021/JanitorTimeMotion.pdf>.

²⁴³ Ibid. <https://www.dir.ca.gov/chswc/Meetings/2021/JanitorTimeMotion.pdf>.

SPECIAL REPORT: JANITORIAL TIME MOTION STUDY

Project Goals

The primary project aims/goals of the study are to:

- 1) Assess the knowledge and implementation of worksite CDC Cleaning & Disinfection Recommendations among janitors.
- 2) Determine the types of COVID-19 prevention measures implemented at janitorial workplaces, including: engineering controls (i.e., ventilation), administrative controls (e.g., symptom screening, six foot separation markings), and personal protective equipment (e.g., provision and use of masks/gloves/hand sanitizer).
- 3) Describe the relationship between janitor workload, work climate, prevention measures, organizational policies and health (mental and physical) while working during the COVID-19 pandemic.
- 4) Describe janitor's experiences with the COVID-19 modified tasks, work culture and impact on physical and mental health; solicit feedback on productivity guidelines based on findings from the online survey.
- 5) Describe the experience of contractors and building owners/managers in adjusting contracts to ensure adequate staffing and providing janitors with the time, training and tools needed to fulfill the cleaning standards requirements.
- 6) Quantify biomechanical exposures and risk of injury while performing various tasks at different venues.
- 7) Quantify the time required to clean and disinfect different types of spaces, according to CDC recommendations, to develop safe production rates for janitorial work by venue type; determine reasonable production rates based on tasks per square foot (density) and task duration (rate) by venue.

Methods

This project utilizes a mixed methods approach that incorporates qualitative and quantitative data from janitors in the Northern California region.

1) Online Survey

An online survey was sent to over 30,000 janitors statewide to assess workers' experiences with COVID-19 prevention measures at their worksites. This survey was distributed by the SEIU United Service Workers West (SEIU-USWW) to their members, by the Maintenance Cooperation Trust Fund to non-union workers, and by Building Skills Partnership and others who are interested and able to promote this effort with janitors. The researchers expect approximately 2,000 responses.

- Questions include inquiries into the impact of COVID-19, exposures, and physical and mental health aspects, such as:
 - The knowledge of worksite CDC Cleaning & Disinfection Recommendations among janitors.
 - The types of COVID-19 prevention measures implemented at janitorial workplaces.
 - The relationship between janitor workload, work climate, prevention measures, organizational policies and health (mental and physical) while working during the COVID-19 pandemic.

2) Qualitative Study

Methods will include one focus group and six key informant interviews with workers (estimated eight to ten workers in the focus group plus six interviews = 16 worker participants) and four to five interviews with employer representatives.

SPECIAL REPORT: JANITORIAL TIME MOTION STUDY

- Questions will focus on work changes since COVID-19, changes in productivity requirements and how productivity requirements are being handled, and management challenges. Topics include:
 - Time, training, and support needed to accomplish tasks
 - Impact of the new protocols on the physical and mental health of janitors
 - Staffing or scheduling impact
 - COVID-19 prevention measures
 - Challenges workers have faced in implementing protocols or prevention strategies (including interactions with building occupants or others)

3) Quantitative Job Analysis & Time Motion Study

A quantitative time and motion study will determine the task durations and frequency, magnitudes of physical exposures and the physiological workload for cleaning and disinfecting over typical eight-hour shifts. This psychophysical study will involve observations of workers carrying out their tasks at a pace that they can sustain for the duration of their shifts. Workers will be videotaped while wearing biomechanical and physiological measurement tools. Production rates will be compared and contrasted.

- Questions include:
 - What are the tasks, durations, and rates per venue, location, and area?
 - What are the durations, frequency and magnitudes of biomechanical exposures and risk for musculoskeletal disorders (MSDs)?
 - What is the physiological workload and risk for cardiovascular strain?
 - How does the actual work rate compare to the ISSE production rates and COVID-19 production rates?

Updated Status Timeline

While the study is in progress, the number of respondents participating in the survey continues to increase. Recruitment for survey participants continued. In addition, some venues for observation and interviews of janitors have presented access challenges for various reasons and are being reconsidered. CHSWC Commissioners are regularly briefed on the progress of the study at CHSWC public meetings before submitting to CHSWC a report in a final status or advanced draft report status. Researchers expect to submit a final report to CHSWC by June 2024.

Status: In process.

For further information...

Status update presentation, "The California Janitor Workload Study: The impact of precarious work and psychosocial stress on physical and mental health of California janitors," July 2023. https://www.dir.ca.gov/chswc/Meetings/2023/CAJanitorWorkloadStudy_CHSWC-230714.pdf

Status update presentation, "Cleaning and disinfection during the COVID-19 pandemic: Determining safe and effective workloads for California Janitors," UCSF, October 2022. https://www.dir.ca.gov/chswc/Meetings/2022/COVID19JanitorTimeMotionStudy_Update_October2022.pdf

Initial proposal: "Safe cleaning and disinfection during the COVID-19 pandemic: The role of Janitors in the safe re-opening of California," undated, University of California letterhead, posted in March 2021. https://www.dir.ca.gov/chswc/Meetings/meeting_index.html and <https://www.dir.ca.gov/chswc/Meetings/2021/JanitorTimeMotion.pdf>

Presentation of Time & Motion Study with Human Factors Framework – Janitors, March 4, 2021. <https://www.dir.ca.gov/chswc/Meetings/2021/JanitorTimeMotionPropPrezo.pdf>

SPECIAL REPORT: JANITORIAL TIME MOTION STUDY

Presentation of Time & Motion Study “Cleaning and disinfection during the COVID-19 pandemic: Determining safe and effective workloads for California Janitors” December 9, 2021.

<https://www.dir.ca.gov/chswc/Meetings/2021/COVID19-Janitor-Time-Motion-Study-Update12-2021.pdf>

See also minutes of March 4, 2021 meeting starting on page 5 at https://www.dir.ca.gov/chswc/Meetings/2021/Minutes_03-04-21.pdf and

Minutes of December 9, 2021 meeting starting on page 13 at <https://www.dir.ca.gov/chswc/Meetings/2021/Minutes-12-09-21.pdf>

SPECIAL REPORT: ASSESSMENT OF RISK OF EXPOSURE TO CARCINOGENS AND INCIDENTS OF OCCUPATIONAL CANCER AMONG MECHANICS AND CLEANERS OF FIREFIGHTING VEHICLES

Background

Assembly Bill 1400, sponsored by California Assembly Member Sydney Kamlager-Dove, requires the Commission on Health and Safety and Workers' Compensation, in partnership with the County of Los Angeles and relevant labor organizations, to submit a study to the Legislature, the Occupational Safety and Health Standards Board, and the Los Angeles County Board of Supervisors on or before January 1, 2021. The subject of the study is an examination of the risk of exposure to carcinogenic materials and the incidence of occupational cancer among mechanics who repair and clean firefighting vehicles. In May 2020, CHSWC contracted with ToxStrategies, a multidisciplinary scientific consulting firm, to conduct this study. However, the study was not accepted by CHSWC and a new Request for Proposal (RFP) will be issued to conduct another study.

Project Team

CHSWC Staff

Eduardo Enz
*CHSWC Executive
Officer*

Objectives

The objectives of this study should include at a minimum the following:

- Site visits to a representative sample of facilities, including, but not limited to, facilities in the County of Los Angeles, where firefighting equipment is cleaned and repaired.
- Interviews and surveys with current and former mechanics of firefighting equipment in a sample of facilities regarding the frequency of exposure to potential carcinogens, the use and availability of safety equipment, and experience or knowledge of cancer incidence among current or former mechanics who cleaned or repaired firefighting equipment.
- Measurement of the current levels of exposure to carcinogenic material by mechanics who repair and clean firefighting vehicles in the County of Los Angeles as well as other designated facilities noted in this study, to develop a baseline exposure to carcinogenic materials.

Status: In Progress

SPECIAL REPORT: THE USE OF PREPAID CARDS FOR WORKERS' COMPENSATION INDEMNITY BENEFITS AND SENATE BILL (SB) 880 ENABLING LEGISLATION

In 2018, SB 880²⁴⁴ was introduced to provide for the transfer of workers' compensation indemnity benefits with prepaid cards in the cases of injured workers and worker households that are "unbanked" and have no access to direct deposit of paychecks. Unbanked workers, who lack access to financial institutions, often incur significant fees when cashing checks. According to Senate and Assembly analyses²⁴⁵, although some entities (employers and insurers) already use prepaid cards, most other employers and insurers assumed these cards were not allowed since they were not expressly authorized in statute. SB 880 expressly authorized the use of prepaid cards, making it cheaper and easier for all people – not just the unbanked – to receive their benefits via prepaid cards.

According to the legislature's analysis of the bill, authorization for use of the prepaid cards is considered a pilot program that expires on January 1, 2023. This pilot program is modeled on the existing Unemployment Insurance (UI) prepaid benefit card program, that provides unemployed workers with UI benefits on a prepaid card. That program, in turn, was modeled on an existing electronic benefit transfer (EBT) program for individuals to receive CalFresh, CalWORKs, and other food and cash aid benefits. The legislative analysis further explains that SB 880 requires that an injured worker provide written consent prior to receiving his or her benefits on a prepaid card. Since the bill was silent on what constitutes written consent, it may require clarification through regulations from the Department of Workers' Compensation. The program would have sunseted on January 1, 2023 if it had not been extended or made permanent by a new law.

SB 880 can reduce financial burdens by barring nearly all vendor fees incurred by injured workers. As part of this enabling legislation, the legislature requested a study on the deposit of disability indemnity payments for employees in a prepaid card account with reasonable access to in-network automatic teller machines. To facilitate an impact study, SB 880 amended Labor Code Section 4651 and requires employers that use prepaid card programs to provide all necessary aggregated data requested by CHSWC.

This study will examine the prepaid account program created by SB 880 in 2018. In particular, the study will examine the adoption of a prepaid card account system by employers and insurers, using available data provided and required by law. However, CHSWC research based on the usage of a prepaid card for indemnity payments (noted in last year's annual report) was impacted by AB 2148 (2022)²⁴⁶ and the extension of the pilot program timeframe to January 1, 2024. AB 489²⁴⁷ of this year extended the pilot for an additional year to January 1, 2025, and by necessity will extend the timeframe for a report.

Status: In process.

²⁴⁴ See copy of original bill at https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB880.

²⁴⁵ See California government legislature's website for SB 880 in 2018 at https://leginfo.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201720180SB880.

²⁴⁶ https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB2148.

²⁴⁷ https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=202320240AB489.

SPECIAL REPORT: LABOR ENFORCEMENT TASK FORCE²⁴⁸

Introduction

The mission of the Labor Enforcement Task Force (LETF) is to combat the underground economy in order to ensure safe working conditions and proper payment of wages for workers, create an environment in which legitimate businesses can thrive, and support the collection of all California taxes, fees, and penalties due from employers. Task force members include the following:

- Labor & Workforce Development Agency (LWDA)
- DIR, including the Division of Labor Standards Enforcement (DLSE) and the Division of Occupational Safety and Health (Cal/OSHA)
- Employment Development Department (EDD)
- Contractors State License Board (CSLB)
- California Department of Insurance (CDI)
- California Department of Tax and Fee Administration (CDTFA)
- Bureau of Automotive Repair (BAR)
- Alcoholic Beverage Control (ABC)
- State Attorney General and district attorneys throughout California

Established in January 2012, LETF is administered by DIR. DIR developed executive and strategic operations teams to operate, evaluate, and monitor the program. This report covers activities since LETF's inception.

Targeting Methods: Value Added by LETF

LETF is tasked with ensuring efficacy, resource maximization, and the avoidance of overlap in agency enforcement. Targeted inspections are the most effective approach for meeting these central objectives. To accurately target noncompliant businesses, DIR continually refines its methods, which are both data driven (proactive) and complaint driven (responsive).

LETF teams comprise staff from the member agencies listed above, customized for inspections in each industry. On its own, each agency does not have access to the full range of data and other information that the LETF teams can access collectively.

- DLSE uses wage claim data, Bureau of Field Enforcement (BOFE) data, and has contacts with local district attorneys and community-based organizations.
- Cal/OSHA uses their own inspection and permit data, as well as using contacts with the local Agricultural Commissioner's office, the local US Department of Agriculture's office, and community-based organizations.
- EDD uses complaint data and their Automated Collection Enhancement System (ACES) that includes multiple databases, including tax and DMV records. Their data on taxpayers are protected by federal privacy laws.
- CSLB uses complaint data, licensing data, and contacts with industry partners.

²⁴⁸ Labor Enforcement Task Force (LETF) Report to Legislature, May 2023.

SPECIAL REPORT: LABOR ENFORCEMENT TASK FORCE

In addition, LETF receives complaints and tips submitted directly by the public to identify potential targets. DIR has issued news releases and targeted email notifications in order to proactively solicit complaints and tips. This news release²⁴⁹ is an example of a proactive outreach effort to solicit public engagement and submission of complaints for public works projects. The public may report through the LETF hotline, the LETF online form, or the LETF email address, as provided online at <http://www.dir.ca.gov/letf/>.

LETF targeting protocol involves a multiphase process that all inspectors follow. Teams identify potential targets and conduct research to develop a business profile. Lists of potential targets are sent to EDD for screening to learn if the employer is registered with EDD and to determine how many employees the employer has reported. The target lists are screened through the Workers' Compensation Insurance Rating Bureau (WCIRB) to determine if the employer is adequately insured. In addition, LETF screens business names using other agency databases to match on a variety of fields that may indicate areas of noncompliance. The results are added to the business profile and used to prioritize and prepare inspectors for joint enforcement action.

Joint Enforcement Activity: Value Added by the LETF

Working together with combined authority, LETF teams have access to a fuller range of enforcement tools than does each agency on its own:

- DLSE has the authority under Labor Code section 90 to access all places of employment. Other LETF partners do not have this full authority. DLSE may also issue stop orders requiring employers to cease illegal operations immediately.
- Cal/OSHA has the authority to issue citations for serious, willful, and repeat (SWR) violations. Cal/OSHA may also issue an order prohibiting use where a condition or practice exists that creates an imminent hazard to the safety and health of employees.
- EDD has authority under Section 1092 of the California Unemployment Insurance Code to require employers to provide records for inspection at any time during the employing unit's business hours.
- CSLB is able to suspend contractors' licenses until penalties issued by DLSE and state payroll taxes, penalties, and interest due to EDD are paid or formal arrangements have been made to pay off the liability due in installments. Penalties are far more likely to be paid promptly when the license is suspended until payment is made.

Joint enforcement has two key comparative advantages for the business community. First, because LETF inspection teams comprise members from multiple agencies, one LETF inspection has less impact on business operations than multiple separate inspections by the individual agencies. Second, when several agencies, working together, find egregious employer misconduct, the ensuing publicity has a deterrent effect that is much more powerful than that of a single agency's enforcement. This news release²⁵⁰ has details of the Labor Commissioner citing a construction company more than \$7.2 Million for wage theft violations as a result of an LETF inspection. Tables 41-46 show enforcement results by year for participating agencies.

²⁴⁹ <https://www.dir.ca.gov/DIRNews/2022/2022-12.html>.

²⁵⁰ Ibid.

SPECIAL REPORT: LABOR ENFORCEMENT TASK FORCE

Table 41: Cal/OSHA Results

	2012-2020	2021	Non-LETF 2021**	2022*	Non-LETF 2022 **	Total
Businesses Inspected	6,758	57	137	478	5	7,435
% Businesses Out of Compliance	87%	91%	66%	57%	60%	77%
Order Prohibiting Use (OPU)	182	1	0	0	0	183
Total Number of Violations	24,912	22	436	1,148	20	26,538
% of Total Violations That Were Serious	15%	0%	80%	17%	40%	37%
% of Programmed Inspections w/SWR Violations	44%	0%	22%	17%	40%	30%
Initial Assessment Amounts	\$24,042,133	\$4,705	\$1,394,167	\$853,192	\$29,780	\$26,323,977

*Totals for 2022 do not reflect information for 163 and 2 Non-LETF inspections that are still pending citation issuance. ** Starting in March 2020 LETF Cal/OSHA staff were redirected to perform Non-LETF inspections. These were mostly COVID-19 related inspections.

Table 42: DLSE Results

	2012-2020	2021	2022	Total
Businesses Inspected	6,858	33	154	7,045
Businesses Out of Compliance	3,572	22	69	3,663
% Businesses Out of Compliance	52%	67%	45%	51%
Number of Workers' Compensation Insurance Violations	2,704	14	28	2,746
Number of Child Labor Violations	107	0	8	115
Number of Deduction Statement Violations	2,066	12	10	2,088
Number of Minimum Wage Violations	266	3	2	271
Number of Overtime Violations	270	3	1	274
Number of Garment Violations	307	0	5	312
Number of Contractor's License (1021/1021.5) Violations	237	0	0	237
Number of Car Wash Registration Violations	160	2	28	190
Number of Rest Period Violations	30	0	0	30
Number of Meal Period	30	1	0	31

SPECIAL REPORT: LABOR ENFORCEMENT TASK FORCE

	2012-2020	2021	2022	Total
Violations				
Number of Split Shift Violations	36	0	0	36
Number of Misclassification Violations	3	0	0	3
Number of Unlicensed Farm Labor Contractor (1683) Violations	1	0	0	1
Total Number of Violations	6,217	68	120	6,405
Assessment Amounts	\$61,249,410	\$7,471,446	\$1,516,542	\$70,237,398

Table 43: EDD Results

	2012-2020	2021	2022	Total
Businesses Inspected	7,355	167	837	8,359
% of Audit Referrals*	61%	60%	35%	52%
Estimated Unreported Wages**	\$1,049,719,702	\$38,876,226	\$65,861,849	\$1,154,457,777
Estimated Unreported Employees	20,831	448	879	22,158
Completed Audits	3,063	228	243	3,534
Audit Liability Change	\$100,444,051	\$17,190,876	\$9,910,135	\$127,545,062

*Based on closed LETF cases. **Closed LETF leads.

Table 44: CSLB Results

	2012-2020*	2021	2022	Total
Businesses Inspected	3,310	87	250	3,647
% Businesses Out of Compliance**	38%	41%	42%	39%
Civil Penalties Assessed	\$1,763,400	\$26,250	\$119,000	\$1,908,650

*Totals for 2012 followed different methodology than totals for the other years, which both reflect joint inspection results when CSLB partnered with at least one other LETF enforcement partner.

**Includes violations for contracting without a license, contracting with an expired or suspended license, illegal advertising, and other violations.

Table 45: BAR Results

	2012-2020	2021	2022	Total
Businesses Inspected	833	27	120	980
# Businesses Out of Compliance	219	5	21	245
% Businesses Out of Compliance	26%	19%	18%	25%

*Includes both unlicensed businesses and businesses with delinquent licenses.

Table 46: Table 6. CDTFA Results

	2012-2020	2021	2022	Total
Businesses Inspected	1,817	38	332	2,187

SPECIAL REPORT: LABOR ENFORCEMENT TASK FORCE

	2012-2020	2021	2022	Total
% Businesses Out of Compliance*	32%	18%	17%	29%

*Includes businesses operating without a seller's permit and leads generated by CDTFA.

Effects of COVID-19 Emergency

In March of 2020, LETF inspections were postponed indefinitely due to the COVID-19 emergency and the statewide stay-at-home order issued by the State Public Health Officer on March 19, 2020. Therefore, LETF did not conduct joint inspections from April to December 2020, and conducted few inspections in March. However, during this period, DIR staff in DLSE and Cal/OSHA participated in the COVID-19 task force created by the Governor to provide education and enforcement efforts related to employers' COVID-19 requirements. In addition to these efforts, LETF staff in Cal/OSHA assisted Cal/OSHA district offices in performing heat illness and COVID-19 inspections. LETF staff in DLSE assisted with phone operations and remote audits. In August 2021 LETF resumed joint inspections on a limited scale, and gradually expanded operations on a monthly basis.

Education and Outreach

LETF uses multiple education and outreach methods to ensure that employers know their responsibilities and workers know their rights. LETF has designed and produced effective educational materials for workers and employers in coordination with other agencies. LETF produced the widely referenced employee handbook "All Workers Have Rights in California", which is available in English, Spanish, Chinese, Korean, and Vietnamese, and covers topics such as minimum wages and overtime, rest and meal breaks, workplace safety and health, and benefits for those injured or unemployed. LETF has also produced fact sheets to help employers understand and follow labor, licensing, and payroll tax laws. The fact sheets have been designed for employers in specific industries, including agriculture, automotive, construction, garment, landscaping, and restaurants. Printable and mobile versions of these materials for workers and employers have been recently updated to reflect the minimum wage increases in 2023 and other important labor law updates. The mobile versions are readable on smartphones and other mobile devices. All the LETF educational materials are available on the LETF website under [Information for Workers and Employers](#).

The [LETF website](#) is available in English and Spanish. DIR publicizes LETF's efforts and notable cases via speaking engagements, press releases, website features, and email alerts. The public can subscribe to get LETF email alerts at [Get Email Notices](#).

LETF representatives participate regularly in the Labor Commissioner's Office Prevailing Wage Seminars. These educational seminars provide an overview of prevailing wage and apprenticeship standards compliance. LETF representatives provide updates of joint enforcement efforts focused on public works projects. This [webpage](#) shows details of upcoming seminars.

Recommended Changes to Statutes

Though LETF does not currently have any active plans for legislation, task force partners are continuously looking for ways to improve effectiveness and interagency collaboration.

Strategic Enforcement of Public Works Projects

SPECIAL REPORT: LABOR ENFORCEMENT TASK FORCE

Pursuant to Assembly Bill 175 (Chapter 255, 2021), the sum of \$30,000,000 was appropriated from the Labor and Workforce Development Fund for support of DIR for strategic enforcement focused on construction, alteration, and repair projects, subject to the provisions of Section 1785 of the Labor Code. The \$30 million provides enhanced strategic enforcement to target employers in the construction industry working on public works projects who are noncompliant with various labor laws. LETF is leading strategic enforcement efforts for this project. LETF has provided focused leadership to develop a pro-active and reactive joint enforcement focus incorporating various strategies, including: interagency and cross divisional data sharing, on-site surveillance and reviewing of complaints submitted by stakeholders. One of the main focuses of this strategic enforcement effort is Homekey, a statewide effort to sustain and rapidly expand housing for persons experiencing homelessness or at risk of homelessness, and who are, thereby, inherently impacted by COVID-19 and other communicable diseases. LETF is currently implementing a strategic enforcement plan focused on Homekey Round 2 projects and other publicly funded residential housing projects. These efforts will promote a level playing field for contractors to bid and operate fairly on these publicly funded projects and will furthermore enhance the enforcement of labor laws to protect the health & safety and economic wellbeing of employees working on-site at the projects.

A portion of this funding has been allocated for a new Information Technology (IT) project to upgrade various DIR data systems and create a technical capability for data analytics. DIR has identified eight standalone databases that will be modernized and upgraded onto a single platform, these include Public Works, Apprenticeship, and Prevailing Wage databases. After these databases have been upgraded and unified, LETF will implement data analytics methods to use data more efficiently and for proactive strategic enforcement efforts.

Objectives for 2023

Objectives for 2023 include the following:

1. **Focus on strategic enforcement of public works projects.** As mentioned above, LETF is leading a strategic enforcement initiative focused on public works projects. LETF will oversee collaborative efforts with enforcement partners and other stakeholders to expand strategic enforcement of publicly funded residential housing projects. LETF will refine joint operational protocols, and combine resources in order to streamline interagency collaboration, focus on operators in the underground economy, and avoid duplication of efforts. Additionally, LETF will launch the initiative to automate and unify multiple DIR databases with the goal of using data more efficiently and enhancing strategic enforcement efforts.
2. **Strengthen and increase engagement with community partners.** Working with a wide range of community partners is essential for LETF to understand and combat the multifaceted nature of the underground economy. LETF aims to strengthen existing partnerships and develop new ones with community partners, such as worker advocates, employer groups, and union representatives.
3. **Promote focused outreach and education for workers and employers.** LETF will continue to work with partners to educate vulnerable workers about their rights and increase awareness about the widespread harmful effects of the underground economy. Additionally, LETF seeks to promote compliance by partnering with employer groups and educating employers in multiple industries on their responsibilities and on how to remain in compliance with labor laws.

SPECIAL REPORT: EVALUATION OF SB 863 MEDICAL CARE REFORMS

Introduction

California's workers' compensation (WC) program provides medical care and wage-replacement benefits to workers who suffer on-the-job injuries and illnesses. Injured workers are entitled to receive all medical care reasonably required to cure or relieve the effects of their injury with no deductibles or copayments. Over the years, WC medical care expenses have fluctuated. Total medical expenses increased by 24 percent from 2007 to 2011, with particularly significant increases in medical cost containment expenses and medical-legal costs. The latest WC medical care reforms were enacted by Senate Bill 863 in 2012.

The intention of SB 863 provisions was to constrain the rate of increase in medical expenses through a combination of measures designed to improve the quality, efficiency, and timeliness of medical care given to injured workers through improvements in the fee schedules and dispute resolution processes and increased accountability and oversight

Key SB 863 provisions include:

- **Fee Schedule Changes.** Changes in the Official Medical Fee Schedule (OMFS) were designed to promote the efficient delivery of medical care. These changes include modifications to the inpatient hospital and ambulatory surgery facility fee schedules effective January 1, 2013, replacement of the existing OMFS for physician services with a Resource-Based Relative Value System (RBRVS) fee schedule effective January 1, 2014, and development of new fee schedules for home health care, copying services, and interpreter fees.
- **Medical Provider Networks (MPN).** SB 863 aimed to improve the operation and oversight of medical provider networks (MPNs). Since January 1, 2004, injured workers of employers with MPNs have been required to use network providers throughout the course of the treatment. The SB 863 provisions, including medical access assistants for injured workers, written contracts between MPNs and providers including language that providers will follow Medical Treatment Utilization Schedule (MTUS) guidelines, and additional oversight by the Division of Workers' Compensation (DWC) over MPN lists of providers, took effect January 1, 2014.
- **Medical-Legal Evaluations.** Improving the process of medical-legal evaluation included addressing deficiencies in the composition of qualified medical evaluator (QME) panels, streamlining the process and timelines for evaluations by agreed medical evaluators (AME) and QMEs, and increasing DWC oversight of the evaluators and their decisions; these regulatory changes took effect September 16, 2013. With respect to medical necessity disputes, the Independent Medical Review (IMR) process replaced the AME/QME process. Effective July 1, 2013, an evaluator no longer provides an opinion on any disputed medical treatment issue; evaluators continue to be needed to provide an opinion about whether the injured worker will require future medical care to mitigate the effects of an industrial injury.
- **Independent Medical Review (IMR).** Replacing the existing dispute resolution process with IMR was intended to improve the quality and timeliness of the process for resolving medical necessity determinations. The IMR process took effect January 1, 2013, for injuries that occurred in 2013 and on July 1, 2013, for any adverse utilization review (UR) decisions communicated on or after that date, regardless of the year in which the injury took place.

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SPECIAL REPORT: EVALUATION OF SB 863 MEDICAL CARE REFORMS

- *Independent Bill Review (IBR)*. SB 863 provisions established requirements for bill submissions and processing to improve the timeliness of payment for medical treatment and implemented the IBR process to resolve payment disputes. The IBR process was effective for services furnished on or after January 1, 2013.

Study Objectives

The report presents results from two types of analyses. The first type includes analyses of specific SB 863 provisions, for example, specific fee schedule changes, with the goal of describing how the provision in question is related to changes in WC-paid medical care use and spending. The second type is an analysis evaluating SB 863 as a whole. This “consolidated” analysis relies on pre-post comparisons with control groups to identify changes in medical care use and spending.

Research Questions

The report addresses the following main research questions:

1. How has medical care utilization and spending changed over the SB 863 implementation period in terms of both overall levels (i.e., utilization and spending per injury) and the mix of services?
2. How have utilization and spending changed for specific medical care services affected by the implementation of RBRVS? What are the overall impacts of the transition to RBRVS?
3. Did other specific fee schedule changes introduced in SB 863—including changes to inpatient hospital and ambulatory surgery center services and the medical-legal fee schedule—change utilization and spending on these and related services?
4. How did changes in the IMR process affect IMR and UR frequency and other outcomes?
5. Was SB 863 associated with changes in medical care utilization and spending for injured workers, after controlling for unrelated trends through comparison to control patients?

Data Source

The primary data source for the study comes from the Workers' Compensation Information System (WCIS) database maintained by DWC for services provided from 2007 to 2015.

Summary of Findings

Medical care use and spending. There were significant changes in the use of and spending on medical services affected by SB 863, including marked increases in spending on evaluation and management (E&M) services for which RBRVS fee schedule changes raised payment rates and declines in laboratory and pathology service use and payments (reflecting RBRVS changes). Researchers found some changes that were not anticipated, for example, increases in spending within 12 months of injury on physical medicine services. In 2014, spending on E&M increased to nearly 30 percent of total payments in the year of injury and to approximately 35 percent in 2015. They found that two-thirds of this growth can be attributed to RBRVS changes and the rest to an increase in E&M service utilization. However, most of the increase in utilization appears to have been due to consultation visits that were billed as office visits in 2014 because consultation visits were no longer paid under RBRVS.

RBRVS implementation and transition. When the RBRVS was fully implemented in 2017, payments under RBRVS were set at 120 percent of Medicare payment rates in July 1, 2012, before application of an inflation factor and a relative value scale adjustment factor.

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The transition to RBRVS increased payments for E&M services, which are commonly delivered by general practitioners, and lowered payments for specialists. From the perspective of an individual provider, the net impact of the transition to RBRVS depends on the provider's mix of services before the transition and the change in rates for these services. The transition to RBRVS from 2013 to 2014 shifted the distribution of payments and volume of WC services in California. E&M visits accounted for a larger share of total payments and spending in 2013 and 2014.

The change in volume and payment for medical services varied significantly from 2013 to 2014 across different types of services. Payments for E&M services accounted for a larger share of total payments in 2014 than in 2013 (36.2 percent versus 29.5 percent). The volume for E&M services increased much more modestly (by less than 1 percentage point), which suggests that the increase in payment was driven by higher prices under RBRVS.

Other Specific Fee Schedule Changes

Inpatient hospital schedule. RAND found a reduction in inpatient hospital stays per claim from 2012 to 2014. Across all inpatient stays in acute care hospitals subject to the OMFS for inpatient hospital services, from 2012 to 2014 total discharges decreased 12.6 percent, whereas the average allowance per discharge decreased 8.7 percent.

Ambulatory Surgery Center (ASC) schedule. The fee schedule comparison also highlights the generosity of the OMFS ASC facility allowances relative to other Medicare-based fee schedules. In addition to the overall finding that estimated payments are 138 percent of the Medicare ASC allowances, the differences across types of procedures are of concern. SB 863 reduced the aggregate allowance for ASC facility services to 80 percent of Medicare's hospital outpatient prospective payment system (OPPS) rate.

The Medicare ASC fee schedule is designed to create neutral incentives regarding where services are rendered. In contrast, the current OMFS provides incentives that are inconsistent with the efficient delivery of medically appropriate services in the least costly setting. These incentives drive device-intensive procedures to take place in the hospital and shift services commonly performed in an office setting to ASCs. Both incentives potentially increase WC expenditures for ambulatory surgery.

RAND analyzed the potential alternatives to current policies on OMFS facility fees for ASC surgical services. It considered the following options for refining the OMFS:

- Continue to pay using the OPPS framework, including the Comprehensive Ambulatory Payment Classifications (C-APC) bundling policies. This represents no change in OMFS policies for ASC facility fees.
- Continue to pay using the OPPS framework but determine allowances for procedures without the C-APC bundling policies. This would continue to use the current OMFS policies to determine the other factors that affect the allowances and represents the smallest change from pre-C-APC policies.
- Determine the allowances for ASC services based on 120 percent of the Medicare fee schedule for ASC facility services. This would conform the OMFS allowances for ASC facility services to the Medicare ASC fee schedule.

Medical-Legal Fee Schedule. The medical-legal (ML) fee schedule has not been updated since 2007, whereas estimated payments for E&M services were projected to increase when the RBRVS was fully implemented, before further adjustments for inflation. Instead, RAND found that the cost of \$250 per hour used to determine the ML allowances is significantly higher than the fully transitioned 2017 allowances for E&M services, which consist of similar activities. Despite these increases, the number of subsequent follow-up evaluations has also increased significantly. Together, the trends suggest that the allowances for extraordinarily complex evaluations should be restructured.

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RAND discusses several considerations that might motivate the efficient completion of high-quality evaluations, including flat rates for complex ML 104 evaluations, limitation of supplemental reports, performing all diagnostic testing before an evaluation, and orderly control over medical documentation.

Medical Necessity Dispute Resolution Process and IMR and UR frequency. The medical necessity dispute resolution process begins with UR of medical care provided to an injured worker. Only a physician can issue an adverse UR decision to modify or deny the requested treatment. SB 863 streamlined the medical necessity dispute resolution process and shifted responsibility for resolving the disputes from WC administrative law judges to medical experts. DWC contracted with Maximus to perform the independent medical review organization functions.

The issues that occurred when the IMR process was implemented have largely been addressed. Maximus has eliminated the initial backlog of IMR reviews and is issuing IMR decisions in a timely fashion after the supporting documentation is submitted by the claims administrator. Effective January 1, 2018, SB 1160 revised the Labor Code to require that the employer electronically submit the required medical documentation within 10 days of being notified that a request for IMR has been approved and has been assigned to the independent medical review organization, with copies to the employee and the requesting physician. The penalties for not complying with the IMR notice and reporting requirements were also strengthened.

Most claims administrators are processing UR requests in a timely way, but some are not doing so or issuing UR decisions for a significant percentage of their UR requests, and the same is true for some UROs. Claims administrator practices vary widely in terms of the proportion of requests for authorization approved at the claims adjuster level, and prior authorization policies are fairly limited. Both policies have implications for administrative costs and medical cost containment expenses.

The SB 1160 provision requiring the electronic submission of UR documents to DWC offers an opportunity to introduce more performance accountability to the system and more transparency about how the UR process actually functions.

Recommendations

The report's recommendations include

- For ambulatory surgery facility services, consideration should be given to replacing the OPPS-based fee schedule with an ASC-based fee schedule.
- For medical-legal services, consideration should be given to converting the allowance for an extraordinarily complex evaluation into a flat rate based on the complexity of the issues that need to be addressed by the evaluator.
- For medical-legal services, consideration should be given to establishing policies that provide incentives for completing high-quality reports that address the issues outlined in the cover letter(s) from the parties requesting the evaluation. For example, timely completion of reports and comprehensive reporting could be incentivized by establishing a higher payment for timely submissions and by not paying for an initial evaluation unless the issues have been addressed respectively.
- Continue to monitor trends in utilization and spending for different medical service categories.
- Continue to monitor trends in work-related outcomes for injured workers.
- Pursue additional analyses comparing changes in outcomes for California injured workers to comparison groups, including possibly injured workers in other states or patients in California with injuries that are not work related.

SPECIAL REPORT: EVALUATION OF SB 863 MEDICAL CARE REFORMS

For further information...

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https://www.rand.org/pubs/research_reports/RR2045.html.

"California Workers' Compensation Medical-Legal Fee Schedule, Analysis and Recommendations," RAND, October 2018.

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SPECIAL REPORT: WAGE LOSS MONITORING FOR INJURED WORKERS IN CALIFORNIA'S WORKERS' COMPENSATION SYSTEM

Introduction

Occupational injury and illness poses a major risk to the health and financial well-being of workers. Each year in California, 600,000 to 700,000 workers file workers' compensation claims as a result of on-the-job injuries. In California and other states, the workers' compensation system bears primary responsibility for providing injured workers with needed medical treatment and compensation for lost earnings. Workers' compensation systems also promote favorable labor market outcomes for injured workers because employment and earnings of disabled workers have been shown to reflect successful recovery, rehabilitation, or adaptation and, thus, are potential indicators of worker well-being after injury.

Poor labor market outcomes, which often lead to more substantial earnings losses, also make it more difficult and costly for the workers' compensation system to meet its objective of providing adequate disability benefits to workers. To provide policymakers and system stakeholders with an understanding of how workplace injuries affect workers' labor market outcomes and economic security, the California Department of Industrial Relations (DIR) contracted with RAND to develop a program of ongoing wage loss monitoring for injured workers in California between 2013 and 2017.

Background

This Wage Loss Monitoring project was initiated in 2017 and produced three interim reports that described historical trends in labor market outcomes for workers injured between 2013 and 2017, including comparisons to labor market outcomes for workers injured in earlier years (2005-2012). Those reports showed that labor market outcomes—earnings, employment, and return to work at the employer where the injury took place—for workers with lost-time injuries improved slowly for cohorts injured between 2013 and 2017, but these outcomes have not fully returned to the levels observed before the 2008-2009 Great Recession (using a similarly-situated control group method). The project's final policy report provides a deeper exploration of key findings and trends identified in the interim reports. In particular, it answers four key research questions (identified below) that may inform future policy changes.

Research Questions

The topics and research questions addressed in the final policy report include:

1. How did earnings losses experienced by injured workers evolve over time for workers injured between 2005 and 2017?
2. What explains earnings loss trends and the slow recovery after the Great Recession?
3. What factors drive the regional differences in earnings losses after cumulative trauma injuries?
4. How do benefits paid to injured workers compare to their earnings losses, and how has the adequacy of benefits changed over time for workers injured between 2005 and 2017?

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SPECIAL REPORT: WAGE LOSS MONITORING FOR INJURED WORKERS IN CALIFORNIA'S WORKERS' COMPENSATION SYSTEM

Key Findings

- Wage losses from injury and illness through 2017 remain larger than they were before the Great Recession, but have started to recover slightly starting in 2013. At least part of this recovery is related to increasing labor force participation among injured workers, who have become less likely to exit the workforce as the economy has improved. However, injured workers remain less likely to have sustained return to work at the same employer as prior to injury.
- RAND explored the role of several factors in explaining the overall trends that were observed, including changes in the case mix or composition of injured workers across cohorts, the role of local labor market conditions, and changes in the rates of sustained return to work.
 - While much of the initial drop in relative earnings was associated with the business cycle around the onset of the Great Recession, the recovery for injured workers has been incomplete, even as unemployment rates in the general population have fallen. Some of this incomplete recovery can be explained by the fact that the characteristics of workers in more recent cohorts are different, particularly those with permanent disability (PD). RAND speculated that the incomplete recovery may also reflect broader and more permanent demographic and economic changes, including an aging workforce and a decline in demand for lower-skilled workers that is unlikely to be reversed in the future.
- The report highlights that outcomes for some groups of workers are especially poor, particularly those with multiple injuries and workers with cumulative trauma.
 - Outcomes for workers with cumulative trauma were particularly poor for workers in Southern California in the early years of the economic recovery, but have improved in the later cohorts in our analyses (2016-2017).
 - The timing of improvements for workers with cumulative trauma in Southern California coincides with new anti-fraud activities. This improvement in outcomes for workers with cumulative trauma in Southern California is a bright spot in the workers' compensation policy landscape, and future study should seek to verify if removing fraudulent providers directly contributed to improved economic outcomes for these workers.
- RAND found that benefit adequacy declined during the Great Recession, particularly for workers with permanent disability (PD). Despite some increases in payments after SB 863 reforms took effect, wage replacement rates have not improved as much as expected given these statutory increases in benefit generosity. While benefits did increase over time, the majority of the increase did not come from growth of PD benefits.
 - Much of the increase in benefits came from settlements, and medical settlements in particular. RAND found that wage replacement rates would have been even lower without payments from special funds administered by DIR, including the Return-to-Work Supplement Program (RTWSP) and Subsequent Injuries Benefit Trust Fund (SIBTF).
- A comparison of replacement rates across body part of injury and type of injury suggested that California's long-standing challenges with horizontal equity also have not been resolved by SB 863 reforms. In many ways, the findings in the report highlight the importance of continued monitoring for outcomes of injured workers.
- After the Great Recession, RAND's monitoring effort revealed that outcomes for injured workers were improving more slowly than the overall economy. For many subgroups, relative earnings and employment have not yet returned to pre-recession levels.
- The California workers' compensation system (WC) is becoming increasingly complex, meaning that there are additional components to incorporate into a comprehensive monitoring effort. According to the RAND study, the ideal monitoring environment would have one comprehensive data source with all WC benefits including special funds, disability ratings, medical care, disputes and earnings information all in one place, or the correct identifiers in place across all of these data sources in order to easily link them.

SPECIAL REPORT: WAGE LOSS MONITORING FOR INJURED WORKERS IN CALIFORNIA'S WORKERS' COMPENSATION SYSTEM

Status: Completed.

For further information ...

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Michael Dworsky, Stephanie Rennane, and Nicholas Broten, Wage Loss Monitoring in California's Workers' Compensation System, RAND September 26, 2019,

https://www.dir.ca.gov/chswc/Meetings/2019/RAND-Wage-Loss-prezo_91919.pdf

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https://www.rand.org/pubs/research_reports/RR2807.html

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https://www.rand.org/content/dam/rand/pubs/research_reports/RR2500/RR2572/RAND_RR2572.pdf

SPECIAL REPORT: THE FREQUENCY AND ECONOMIC IMPACT OF MUSCULOSKELETAL DISORDERS FOR CALIFORNIA FIREFIGHTERS

Introduction

Firefighters play a vital role in protecting the public, often placing their own lives at risk in order to protect the health and safety of others. Firefighting is one of the most dangerous occupations in the United States in terms of workplace injury risk. The Bureau of Labor Statistics reports approximately 508 nonfatal injuries per 10,000 full-time equivalent (FTE) firefighters in 2017. This is more than 5 times the rate of injury per 10,000 FTE that workers face, on average, in the private sector (89.4).²⁵¹ In California, the risks of firefighting have become even more salient in the past few years, with the record wildfires and resulting deaths.

Discussion

The health risks facing firefighters go beyond burns, automobile crashes, and other acute trauma. Firefighters are widely believed to face an elevated risk of cancer due to smoke inhalation and exposure to other hazardous materials. Additionally, the strenuous nature of the work and its rigorous physical demands can take a physical toll, including wear and tear that increases the risk of back injury, joint pain, or other forms of musculoskeletal disorders (MSDs), particularly for older workers.

As in most occupations, in firefighting the most common type of occupational injury or illness is MSDs, which creates concern that the strenuous physical demands of firefighting could put workers at greater risk of work loss and disability. Moreover, rigorous job requirements often dictate that even a relatively minor work restriction prevents firefighters from performing the full range of activities required of them to remain on active duty. Thus, the risk of an MSD injury can make it more difficult or costly to maintain fully staffed fire departments capable of protecting the public at an optimal level. This has led to considerable interest among policy makers and stakeholders about how to best monitor, prevent, and treat MSDs among firefighters.

A 2010 study by the RAND Corporation compared the frequency and economic consequences of work-related MSDs among firefighters to those for other workers in the public and private sectors.²⁵² This study found that firefighters experienced MSDs at a significantly higher rate than other workers, even those in other high-risk jobs, such as police or corrections work. Moreover, firefighters were more likely than other workers to experience lost time because of an MSD, when they are older. However, the study also found that the economic impact of MSDs—back injuries, in particular—was more moderate on average for firefighters than for other employees.

In this 2020 study, RAND updated the analyses from its 2010 study and considered the impacts of the SB 863 workers' compensation reforms and the economic shocks of the late 2000s on outcomes for firefighters with MSDs compared to other injured workers. Following the approach used in the prior report, RAND analyzed administrative data from the California Workers' Compensation Information System (WCIS) linked to data on earnings for injured workers, tailoring the results to the reforms and taking advantage of

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²⁵¹ Bureau of Labor Statistics, Survey of Occupational Illnesses and Injuries, <https://data.bls.gov/gqt/InitialPage/> (accessed October 15, 2020).

²⁵² Seabury, Seth A., and Christopher F. McLaren. 2010. "The Frequency, Severity, and Economic Consequences of Musculoskeletal Injuries to Firefighters in California." Santa Monica, CA: RAND Corporation. <https://www.rand.org/pubs/monographs/MG1018.html>.

SPECIAL REPORT: THE FREQUENCY AND ECONOMIC IMPACT OF MUSCULOSKELETAL DISORDERS FOR CALIFORNIA FIREFIGHTERS

previously unavailable data. Where necessary, or to provide context, RAND also examined data in the published literature or national data.

Findings:

- Firefighters continue to face high risk of work-related MSDs, especially injuries to the lower extremities and trunk.
- Earnings losses for firefighters worsened after the Great Recession of 2008-2009, yet firefighters face fewer economic consequences from MSDs than other workers in similar occupations.
- After the implementation of 863, Disability Evaluation Unit ratings and statutory permanent disability benefits for firefighters rose.
- Firefighters with MSDs rarely receive treatment or permanent disability benefits for post-traumatic stress disorder or other psychiatric conditions.
- No evidence was found that treatment caps on chiropractors, occupational therapy, and physical medicine had a substantial impact on most workers, including firefighters.

Status: Completed

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SPECIAL REPORT: JANITORIAL TRAINING PROJECT

Introduction

On September 15, 2016, California Governor Jerry Brown signed into law AB 1978, a bill that established protection against harassment and sexual violence in the workplace for custodial staff. The law focuses on addressing sexual assault and harassment of workers, mainly undocumented female janitors, at night in empty buildings who often do not report the incidents out of fear of deportation or losing their job. AB 1978 protects janitorial workers by requiring employers to register annually with the Labor Commissioner to ensure employer compliance with this bill, starting July 1, 2018, and mandating that the Division of Labor Standards Enforcement (DLSE) establish a biennial in-person sexual violence and harassment prevention training program requirement for employees and employers.

DIR, in collaboration with the Commission on Health and Safety and Workers' Compensation (CHSWC), contracted with the Labor Occupational Health Program (LOHP) at UC Berkeley to develop the janitorial training program for janitors and supervisors on sexual harassment. To develop the training programs, LOHP used written materials developed by DIR, which include a factsheet for workers and a factsheet for supervisors on sexual harassment and AB 1978 requirements. LOHP provided suggestions on the content of the written materials developed by DIR, based on its work with janitors on this issue.

The training program uses interactive methods and is aimed at helping workers play an active role in preventing and addressing workplace issues. The training format and delivery methods are designed with an eye toward feasibility and practicality.

Project Objectives

The main objectives of this project are to:

- Develop a training program and short video for janitors on sexual harassment and assault, based on the requirements of the new regulations in AB 1978, and provide four "Training-of-Trainers" (TOT) sessions for worker leaders, worker representatives, and others so that they are prepared to train workers.
- Develop two training activities that can be included in the supervisor training program.
- Develop a lesson plan for a supervisor training program on sexual harassment.

Status: Completed

For further information...

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

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

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB1978.

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SPECIAL REPORT: CHSWC'S HEALTH AND SAFETY PROGRAMS

In conjunction and in cooperation with the health and safety and workers' compensation community, CHSWC administers and participates in several major efforts to improve occupational health and safety through its various training and education programs.

Worker Occupational Safety and Health Training and Education Program

Description

Labor Code Section 6354.7 establishes a Workers' Occupational Safety and Health Education Fund (WOSHEF) for the purpose of establishing and maintaining a statewide worker-training program. CHSWC developed the [Worker Occupational Safety and Health Training and Education Program \(WOSHTEP\)](#) to raise awareness and promote injury and illness prevention through training and dissemination of materials by a statewide network of providers. This program is designed to prepare workers in California to take a leadership role in health and safety programs at work.

CHSWC steps in implementing WOSHTEP include:

- *Created a labor-management Advisory Board that meets annually to oversee program activities and identify emergent issues.*
 - The WOSHTEP Advisory Board consists of employers and workers or their union representatives who assist in guiding development of curricula and broadening partnerships.
- *Conducted needs assessments with stakeholders.*
 - The needs assessments proceed on an ongoing basis, as emerging issues dictate.
- *Designed a core curriculum and supplemental training materials based on the results of the needs assessment.*
 - The standardized 24-hour curriculum for a Worker Occupational Safety and Health (WOSH) Specialist course is aimed at training workers to take a leadership role in injury and illness prevention in their workplaces.
 - The training consists of six core modules and three to four supplemental modules (selected from a total of eight that are available). Participants who attend the full training receive a certificate of completion.
 - Training is currently conducted statewide in English and Spanish. Materials are available in English and Spanish as well as in Chinese.
 - The WOSH Specialist training program is a unique worker training program and serves as a local, state, and national model.
 - The curriculum is updated on an ongoing basis as needed.
- *Identified and continue to deepen relationships with three regional Centers of Excellence:*
 - *The Labor Occupational Health Program (LOHP) at the University of California, Berkeley*

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SPECIAL REPORT: CHSWC'S HEALTH AND SAFETY PROGRAMS

- *The Labor Occupational Safety and Health (LOSH) Program at the University of California, Los Angeles, and*
- *The Western Center for Agricultural Health and Safety (WCAHS) at the University of California, Davis, consisting of trainers, curriculum developers, and resource specialists in occupational safety and health.*
- These three Northern, Southern, and Central California Resource Centers offer libraries and distribution systems of occupational health and safety training materials to provide information and technical assistance to the workers' compensation community, to support trained WOSH Specialists and WOSHTEP trainers, and ensure consistent and coordinated coverage for the entire state.
- *Established, and continue to support a statewide network of trainers to offer the WOSH Specialist curriculum.*
 - WOSH training is taught primarily by LOHP, LOSH, and WCAHS trainers, and training-of-trainer courses have been offered to WOSH Specialist trainers to broaden the reach of the program. These trainers receive ongoing mentoring from experienced trainers from LOHP and LOSH. Due to the changes brought about by the COVID-19 pandemic, an online interactive version of the in-person training was developed in 2020.
- *Established, and support a network of community educators to help WOSHTEP trainers deliver short awareness classes to vulnerable working populations.*
 - Training of trainer (TOT) courses are conducted to prepare WOSH Specialists and community educators/promotoras to teach awareness classes on such topics as chemical hazards, hazard communication, heat illness prevention, and the best practices for reaching and educating low-wage immigrant workers.
- *Created and continue to update a [small business health and safety training resources](#) program across a range of industries, with materials adapted for use nationwide by employers and other health and safety advocates.*
 - WOSHTEP developed industry-specific training for restaurant owners and managers on identifying and controlling hazards in their workplace in partnership with the State Compensation Insurance Fund (SCIF) and the California Restaurant Association (CRA). WOSHTEP also created materials and provided training for employees in the janitorial, restaurant, and dairy industries.
- *Developed, disseminated, and continue to update [materials on creating and implementing an Injury and Illness Prevention Program \(IIPP\)](#) for both small and large businesses in general industry to assist with compliance and effectiveness.*
 - The materials are available in multiple languages.
 - The training has also been adapted for staffing agencies to include guidance on protecting workers in dual-employer situations, as well as for the agricultural industry.
 - In addition, an online version of the training was developed in 2020 to offer the training remotely in order to extend the reach of the program and to adapt to the changed circumstances created by the COVID-19 pandemic.
- *Developed a [Multilingual Health and Safety Resource Guide](#) to address the need for easily accessible multilingual materials.*
 - This guide is updated regularly. It includes worker training materials in over 20 languages, including factsheets, checklists, and other educational resources that are available online in the WOSHTEP section of CHSWC's website.

SPECIAL REPORT: CHSWC'S HEALTH AND SAFETY PROGRAMS

- Developed a [Construction Case Study Training Guide](#) for the construction industry for apprenticeship and pre-apprenticeship programs.
 - WOSHTEP also developed additional materials on health and safety topics, such as indoor and outdoor heat illness, motor vehicle safety, and emergency preparedness.
- Created and continue to host and deliver a successful Young Worker Leadership Academy (YWLA) for youth statewide to develop leadership skills and provide training on health and safety issues and their rights and responsibilities in the workplace.
 - The three-day Academy is conducted once a year with participants from throughout the state. Academy youth learn how to take a leadership role in promoting workplace health and safety in their communities during Safe Jobs for Youth Month in May. WOSHTEP staff also developed a guide for use by other states to implement similar Young Worker Leadership Academies and to encourage further collaboration and sharing.
- Developed a [guide](#) for integrating occupational health and safety with workplace wellness programs.
- Developed a day-laborer handout to serve as a concise guide to basic laws and best practices for health and safety.
 - The handout is for day-labor centers to give to employers hiring day laborers. Day laborers also benefit by learning about their rights. The handout is available in [English](#) and [Spanish](#).
- Developed two Wildfire Factsheets to accompany outreach and education activities to protect workers from hazardous air quality during wildfires and to protect workers engaged in debris cleanup operations.
 - The factsheet “Worker Protection from Wildfire Smoke” is available in [English](#) and [Spanish](#).
 - The factsheet “Worker Protection During Cleaning and Rebuilding After a Wildfire” is also available in [English](#) and [Spanish](#).

Next Steps

Every year, CHSWC assesses fees to California workers' compensation insurance carriers pursuant to Labor Code § 6354.7 in order to fund the Workers' Occupational Safety and Health Education Fund (WOSHEF) for the next fiscal year and thereby fund WOSHTEP and its programs.

The next steps for WOSHTEP include:

- Continuing and expanding training, both in-person and online, in a variety of industries for participants in diverse occupations and work settings
- Developing, maintaining, and expanding a statewide network of trainers, and ongoing development and dissemination of materials on health and safety topics
- Continuing and expanding training for small businesses and young workers
- Broadening outreach for all aspects of the program
- Ongoing evaluation.

Status: Ongoing.

For further information ...

The WOSHTEP materials are available at <http://www.dir.ca.gov/chswc/woshtep.html>

The WOSHTEP Advisory Board Annual Reports are available at <http://www.dir.ca.gov/chswc/WOSHTEP.html#1>

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The IIPP resources and materials are available at <https://www.dir.ca.gov/chswc/WOSHTEP/iipp/>

Notice of upcoming WOSH Specialist and IIPP Trainings are available at https://www.dir.ca.gov/chswc/WOSHTEP/WOSHTEP_workshops.htm

School Action for Safety and Health Program

Per the mandate set forth in Labor Code section 6434, CHSWC is to assist school districts and other Local Education Agencies (LEAs) in establishing effective occupational injury and illness prevention programs (IIPPs), with a priority on high-risk schools or districts.

CHSWC established a model program for LEAs called the California School Action for Safety and Health (SASH) program, to help schools statewide improve their injury and illness prevention practices to protect school employees. The program is administered by CHSWC through an interagency agreement with the Labor Occupational Health Program at UC Berkeley and with the collaboration of the Labor Occupational Safety and Health (LOSH) Program at UCLA.

The program includes training and resources to enable schools or school districts to develop or improve their IIPPs and to make other health and safety improvements that will help protect school or school district employees from workplace injuries and illnesses. The target audience is K–12 schools and school districts at high risk of occupational injury and illness. The SASH program is also helpful as Cal/OSHA enforcement can and does cite violations of health and safety standards at schools, primarily arising from complaints, and expects remediation of hazardous conditions and other deficiencies.

Program Components

The SASH Program offers:

- A free training program to help build the capacity of district-level health and safety coordinators to act as resources to other employees and develop an IIPP to identify, prevent, and eliminate hazards.
- Written materials that support injury and illness prevention activities.
- Ongoing problem-solving assistance provided by a statewide SASH Resource Center, including a network of trained safety staff in schools.

The free one-day SASH training program is designed for school district staff responsible for employee safety and health. These employees are typically from County Offices of Education (just under 60 offices), School Districts (of which there are almost 1,000) and individual schools' human resources/administration and/or the maintenance and operations departments. Training is provided by University of California trainers.

Participants learn valuable skills in how to identify and solve safety problems, prepare, update, and improve written IIPPs, record training activities, and involve other employees in carrying out prevention activities. After participants complete the training, they become "SASH coordinators" in their district and receive a certificate from CHSWC and the University of California. SASH materials are free and designed to help school employees identify and address health and safety issues in the school environment. Materials include:

- An online template for writing an IIPP, with an accompanying guidebook.

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- Factsheets on hazards commonly found in schools.
- Checklists and other tools to help identify problems, investigate, and learn from accidents, and keep track of safety activities.
- Tip sheets for employees on hazards and solutions for their particular occupation, including:
 - Teachers and teaching aides
 - Maintenance staff
 - Groundskeepers
 - Food service employees
 - Custodians
 - Administrative and office staff
 - Bus drivers
- A poster for school employees promoting their involvement in safety activities.
- An online Resource Guide that provides additional school-related materials on particular hazards/issues and a list of agencies and organizations.

The SASH Resource Center is located at LOHP. In collaboration with UCLA's LOSH Program, the Resource Center is available to help school districts find additional information and obtain assistance after the training.

Accomplishments

CHSWC has expanded the reach of the program over the years by increasing the number of training sessions and webinars offered, and by updating the SASH curriculum and materials, as needed, to include information about new health and safety issues identified by the SASH Advisory Committee and course participants, including any new Cal/OSHA standards that apply to schools.

In addition to the materials described above, training classes have been offered and will continue to be offered statewide. To date, 111 SASH training classes have been conducted for 2,231 attendees from school districts in at least 39 counties with school district and county office of education staff, including two pilot training sessions. Post-training surveys indicate that the content has been well received. In 2021, an online version of the SASH IIPP training was developed to offer remote training during the pandemic. These online classes were a half-day in length and maintained the interactivity of the in-person classes. The activities kept the participants engaged and provided the opportunity to practice key skills. Notice of upcoming SASH training is at <https://lohp.berkeley.edu/trainings/>.

Follow-up activities after attending a SASH class include sending attendees a class roster so that they can stay in touch and use one another as resources and sending out a newsletter. Two-page SASH newsletters for SASH coordinators (SASH training attendees) have been distributed by email. The newsletters include the answers to common questions asked during training sessions as well as other relevant information.

A number of new factsheets have been developed over the past few years for school employees:

- How to Be Protected from COVID-19 at Work
- Worker Protection from Wildfire Smoke
- Protecting School Employees from Stress at Work

In addition, the program has also developed factsheets for special education paraeducators on how to handle harmful behavior by students in distress, and what to do in the event of an active shooter on school grounds.

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These factsheets can be found at: <https://www.dir.ca.gov/chswc/> and <https://www.dir.ca.gov/chswc/SASH/index.htm>

A number of webinars were conducted over the past years for school employees. These included the following:

- Managing Stress and Building Resilience Among School Employees
- Improving Indoor Air Quality in Classrooms
- School Is Out, but the Hazards Are Still In

The notices of upcoming webinars and recording of past webinars can be found at: <https://lohp.berkeley.edu/webinar-directory/>.

Next Steps:

The SASH IIPP training curriculum and materials will continue to be updated to incorporate information about school-related health and safety issues and recommended solutions including Cal/OSHA's guidance of employee protections related to COVID-19.

LOHP will develop workshops to reach teachers and paraeducators - an occupation identified as being at high risk of injury on the job - on managing risks presented by behaviors of students in distress.

Status: Ongoing.

For further information ...

- The SASH materials, SASH IIPP trainings dates, and webinars are available at <https://www.dir.ca.gov/chswc/SASH/index.htm>

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California Partnership for Young Worker Health and Safety

Description

The Commission on Health and Safety and Workers' Compensation (CHSWC) continues to put California in the forefront as a nationwide leader in protecting and educating teen workers. For more than 20 years, CHSWC has sponsored and convened the California Partnership for Young Worker Health and Safety, formalized by Assembly Bill (AB) 1599 in September 2000. The Partnership is coordinated by the Labor Occupational Health Program (LOHP) at the University of California (UC), Berkeley, with key support from the Labor Occupational Safety and Health Program (LOSH) at the University of California, Los Angeles (UCLA), and other members of the partnership. In addition to serving California, these efforts have inspired similar activity throughout the United States and internationally.

The California Partnership for Young Worker Health and Safety is composed of agencies and organizations dealing with youth employment and education issues, as well as others that can play a role in educating and protecting young workers. Members represent educators, parents, employers, youth training programs, government agencies, and others.

The purpose of the partnership is to identify potential strategies to reduce work-related injuries and illnesses among youth in the California workforce, foster awareness and skills in health and safety that youth will retain throughout their working lives and allow them to take an active role in shaping safe work environments, and promote positive, healthy employment for youth.

During the past year, the partnership implemented the following activities:

- *Promoted the annual California Safe Jobs for Youth Month public awareness campaign in May*, established in 1999 by the then-Governor Gray Davis. This year's public awareness and education activities included a teen poster contest (posters were distributed to 1,700 schools and hundreds of other organizations that serve youth), a social media campaign for youth and youth-serving organizations, development and promotion of materials for teachers to support the teaching about health and safety and the child labor crisis, and distribution of the current Safe Jobs for Youth Month Resource Kit to educators and community groups (via the website), plus resource kit materials from past years (available on the website).
- *Held the annual Young Worker Leadership Academy*. A statewide Young Worker Leadership Academy (YWLA) was held on February 9-11, 2023. The event was held completely in-person this year for the first time since the COVID-19 pandemic began. The Academy is a part of the CHSWC Worker Occupational Safety and Health Training and Education Program (WOSHTEP). The Leadership Academy was coordinated by LOHP and supported by the active participation of other partnership members, including UCLA-LOSH, Cal/OSHA, the Labor Commissioner's Office, the California Department of Public Health's Occupational Health Branch, State Compensation Insurance Fund, The United Food and Commercial Workers' Union, WorkSafe, and the Equal Employment Opportunity Commission (EEOC). Young people from four different organizations around the state attended, along with four YWLA alumni who served as youth mentors. This year, YWLA teams created an award-winning short video, a podcast, and a comic highlighting health and safety, and held in-person events to share OSH information with their peers.

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SPECIAL REPORT: CHSWC'S HEALTH AND SAFETY PROGRAMS

- The goals of the Academy are to teach youth about workplace health and safety and their rights on the job, to help youth start thinking about how to help ensure that young people do not get hurt on the job, and to provide a forum for these youth to plan specific actions that they can take in their own communities to promote safety among young workers. Academy alumni youth-led many of the activities at the Academy.
- *Promoted the institutionalization of health and safety education for California students.* Partnership members guided LOHP efforts to promote health and safety education in a variety of programs, including work experience, career technical education, WorkAbility, and Linked Learning and Career Pathway Programs. LOHP has continued to partner with the California Industrial Hygiene Council (CIHC), as a keynote presenter at their annual conference and working with regional CIHC leads to promote outreach on young workers, as well as with the national AIHA Teen Workplace Task Force. In addition, LOHP, in partnership with the California Department of Education, traveled around the state to deliver Talking Safety Youth @ Work train the trainer workshops to 500 work-based learning teachers around the state. LOHP also presented at the Educating for Careers Conference in Sacramento, sharing the Talking Safety Youth @ Work curriculum with teachers from counties around Northern California.

Partnership accomplishments include:

- Provided more than 320 teachers and youth with direct training or presentations through Zoom or online conference workshops to date.
- Distributed factsheets with information on young worker health safety to thousands of teachers, employers, and youths through our own or partnership member outreach platforms, including social media, listserv postings, email announcements and newsletters, radio and video public service announcements, and distribution of the posters. For example, the annual [Work Permit Quiz](#) has been taken over 6,683 times to date.
- About 20 teachers, employers, and youth received direct technical assistance via phone or email.
- Published at least three articles in newsletters, newspapers, and on the Internet.
- The www.youngworkers.org website: during 2022-2023 (12 months of tracking), the website had 19,383 page views, comprising a broad range of webpages.
 - The most frequently visited pages are the Home page (3,403 views), "Work Permits" page (2,901 views), the "Hazards Activity Page" (1,803 views), the "Teen Workers" page (1,624 views), and the "Materials for teachers" page (1,132 views).
- Continued to integrate health and safety information into ongoing statewide activities by many of the partners, including regular in-service training for work experience educators, widespread use of health and safety curricula in job training and work experience programs, and organizational links to the website <http://www.youngworkers.org>. The WorkAbility program, which places youth with learning and cognitive disabilities in the workplace, requires that all its staff receive training on how to teach participants in the program about health and safety.

Status: Ongoing.

For further information ...

Young Worker Websites for information for teens, teen workers in agriculture, employers, parents, and educators:

<https://www.dir.ca.gov/YoungWorker/YoungWorkersMain.html>
<http://www.youngworkers.org>
<https://youngworkers.org/ywla/>

LIST OF PROJECTS AND STUDIES

CHSWC Projects and Studies are numerous and often build on work initiated in prior years. As CHSWC refines its approach to the study of the workers' compensation and health and safety systems, the projects incorporate that knowledge to develop more sophisticated lines of inquiry and research. This Annual Report lists CHSWC projects and studies for 2021, 2022 and 2023. The lists of CHSWC projects and studies for prior years are in earlier reports, with a historical list last printed in the 2017 Annual Report.²⁵³

CHSWC divides projects and studies on workers' compensation topics into eleven categories:

- I Permanent Disability and Temporary Disability Studies
- II Return to Work
- III Workers' Compensation Reforms
- IV Occupational Safety and Health
- V Workers' Compensation Administration
- VI Information for Workers and Employers
- VII Medical Care
- VIII Community Concerns
- IX Disaster Preparedness and Terrorism
- X CHSWC Issue Papers
- XI Other

The following projects and studies were produced or were in process in 2021, 2022, and 2023:

Study of the impacts of COVID-19 claims and the 2020 SB (Senate Bill) 1159 presumptions of compensability on the California workers compensation system (Category III)

Initiated by a legal request written into SB 1159 in 2020.

Status: Completed

“COVID-19 in the California Workers' Compensation System. A Study of COVID-19 Claims and Presumptions Under Senate Bill 1159,” RAND, January 2022.

<https://www.dir.ca.gov/chswc/Reports/2022/RAND-COVID-claims-presumptions.pdf>

https://www.rand.org/pubs/research_reports/RRA1430-1.html (RAND pre-publication) or https://www.dir.ca.gov/chswc/Reports/2022/RAND_RRA1430-1.pdf (pre-publication for CHSWC website)

https://www.dir.ca.gov/chswc/Meetings/2022/ResearchBrief_CovidClaims_SB1159.pdf (Research Brief)

Related literature review article from RAND:

Worker and employer experiences with COVID-19 and the California Workers' Compensation System: a review of the literature. Quigley, DD, Qureshi, N, Gahlon, G, Gidengil, C. Am J Ind Med. 2022; 1- 11. doi:10.1002/ajim.23326

https://www.rand.org/pubs/external_publications/EP68841.html

²⁵³ CHSWC projects and studies for recent years are listed in their proper section for each year at <https://www.dir.ca.gov/chswc/AnnualReportpage1.html>; and all previous CHSWC projects and studies up to and including 2017 (inventory) are listed in the 2017 Annual Report: https://www.dir.ca.gov/chswc/Reports/2017/CHSWC_AnnualReport2017.pdf, 174. (Please note that where there are also URL links, many have been disabled on the internet and the reports have been archived.)

LIST OF PROJECTS AND STUDIES

Evaluation of Incidence of Mental Health Conditions or Illnesses Among Firefighters and Peace Officers Study, RAND (Category IV)

Initiated by a legal request written into Senate Bill (SB) 542 in 2019.

Status: Completed

"Posttraumatic Stress in California's Workers' Compensation System: A Study of Mental Health Presumptions for Firefighters and Peace Officers Under Senate Bill 542," RAND, September 2021. https://www.rand.org/pubs/research_reports/RRA1391-1.html or https://www.dir.ca.gov/chswc/Meetings/2021/RAND_mentalhealth_report.pdf with shorter research brief at https://www.dir.ca.gov/chswc/Meetings/2021/RAND_mentalhealth_brief.pdf.

Public comments on First Responder Mental Health Presumption study from CHSWC Commissioners Kessler, Bouma, and Roxborough, submitted October 5, 2021 <https://www.dir.ca.gov/chswc/Meetings/2021/Rand-PTSD-Study-Comments-Commissioners-Kessler-Bouma-Roxborough.pdf>

RAND Response to Commissioner Comments https://www.dir.ca.gov/chswc/Meetings/2021/RAND_Response-to-Comments.pdf

Health and Safety Training for Childcare Workers (in English and Spanish) (Category IV)

Training curriculum requested by Assemblyperson Monique Limón

Status: Completed

"Occupational Health and Safety Training: Center-Based Early Care & Education Workers Peer Educator Training Guide," LOHP, UC Berkeley, 2021. <https://www.dir.ca.gov/chswc/Reports/2021/Childcare-OSH-Curriculum.pdf> <https://www.dir.ca.gov/chswc/Reports/2021/Childcare-OSH-Curriculum-SP.pdf>

Assessment of Risk of Carcinogens Exposure and Incidents of Occupational Cancer among Mechanics and Cleaners of Firefighting Vehicles, ToxStrategies (Category IV)

Initiated by a legal request written into Assembly Bill (AB) 1400 in 2019.

Status: Draft report available, but not approved by the Commission. RFP for a new study to meet AB 1400 mandate will be undertaken. ²⁵⁴

"AB 1400 Draft Study Report," ToxStrategies, February 2021. https://www.dir.ca.gov/chswc/Meetings/2021/FireMechanicsCancer_draft.pdf

Janitorial Time Motion Study with Emphasis on Janitorial Workloads During Covid-19 Prevention and Precautions (Category IV)

Study requested by Assemblymember Miguel Santiago on December 11, 2020. (see <https://www.dir.ca.gov/chswc/Meetings/2021/SantiagoLetter.pdf>)

Status: In Process

²⁵⁴ Additional discussion of issues by Cal/OSHA in final minutes of 9/30/2021 CHSWC public meeting minutes posted at https://www.dir.ca.gov/chswc/Meetings/2021/Minutes_09-30-21.pdf.

LIST OF PROJECTS AND STUDIES

Study on Skin Cancer Prevalence in our Wildlife Officers and Park Rangers (Category IV)

Study requested by Assemblymember Mullin on February 20, 2020.

Status: In Process

Study on the deposit of disability indemnity payments for employees in a prepaid card account with reasonable access to in-network automatic teller machines.

Report request initiated by SB 880, effective 2019 as Labor code 4651.

Status: In process and subject to AB 489 (2023) which extends the period to January 1, 2025 for disability indemnity payments to be deposited in a prepaid card account for employees.

CHSWC AND THE COMMUNITY

For Information about the Commission on Health and Safety and Workers' Compensation (CHSWC) and its activities:

Write:

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510-622-3959

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510-286-0499

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chswc@dir.ca.gov

Internet:

In 2012, most government departments and agencies were asked by the office of Governor Brown to redesign their public website so that information can be located more efficiently. CHSWC participated in the redesign process and, according to its mandate, continues to post useful information for the public and related stakeholders.

Check out www.dir.ca.gov/chswc for:

What's New

- Research Studies and Reports by Topic and by Year
- Information Bulletins
- Commission Members
- Meeting Schedules and Minutes
- DIR/CHSWC Young Workers' Program
- Information for Workers and Employers
- Worker Occupational Safety and Health Training and Education Program (WOSHTEP)
- Past Conferences
- Public Comments and Feedback
- Injury and Illness Prevention Program (IIPP) Resources
- School Action for Safety and Health (SASH) Program
- Other Resources

CHSWC Publications

In addition to the many reports listed in the CHSWC List of Projects and Studies section of this report, CHSWC has published:

CHSWC Annual Reports, 1994–2022
CHSWC Strategic Plan, 2002
Worker Occupational Safety and Health Training and Education Program (WOSHTEP) Advisory Board Annual Reports, 2004–2022

CHSWC AND THE COMMUNITY

Acknowledgments

CHSWC is pleased to acknowledge and thank the following individuals and organizations from the California health, safety and workers' compensation communities.

Their willingness to share the insights and knowledge derived from their years of experience has assisted CHSWC immeasurably in its mission to examine and recommend improvements in the health and safety and workers' compensation systems in California.

Albertsons Companies

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CHSWC AND THE COMMUNITY

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CHSWC AND THE COMMUNITY

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CHSWC AND THE COMMUNITY

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Akbar Sharip, M.D., President Elect
WOEMA staff

Members of the Public

Participants in CHSWC meetings, fact-finding hearings, and public forums
Participants in CHSWC project advisory committees

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