

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

**REPORT ON ACTIVITIES  
FOR THE CALENDAR YEAR 2006**

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**Summary**

Labor Code sections 3201.5(i) and 3201.7(h) require the Administrative Director of the Division of Workers' Compensation (DWC) to submit this report to the Legislature on alternative dispute resolution (ADR)/carve-out program activity for 2006.

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

**An Overview of the ADR/Carve-out Program**

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

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

Over time, the legislature has strengthened the eligibility requirements (chapter 963 Statutes of 1994) and tightened the statute's language (Chapter 886, Statutes of 1995 and Chapter 866, Statutes of 2002), and with the passage of SB 228 (Chapter 639, Statutes of 2003), the legislature

expanded the ADR/carve-out system to allow non-construction industry employers and unions to negotiate and establish their ADR/carve-out programs under Labor Code Section 3201.7.

The creation of 3201.7 programs was quickly followed by the second fundamental change to the ADR/carve-out program since its inception, the passage of SB 899 (Chapter 34, Statutes of 2004). After SB 899, employers, groups of employers, and employee representatives are permitted to negotiate “any aspect of the delivery of medical benefits” as part of ADR/carve-out program. SB 899 also changed the manner in which ADR/carve-out programs provide workers’ compensation entitlements to their employees.

## **Reporting Requirements**

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

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

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

The carve-out data reporting requirements, initially adopted by DWC in 1996, can be found in Title 8 CCR, section 10203. CCR Section 10203 requires that every employer subject to either Labor Code Section 3201.5 or 3201.7 shall provide the DWC with the required information for the previous calendar year on or before March 31 of each year. For each claim with a date of injury on or after January 1, 2004, the information shall be updated annually for the following three calendar years, thereby allowing longer term claims trajectories and costs to be determined. In order to fulfill the reporting requirement, groups of employers, must on behalf of their members either submit data directly to the DWC, or “(a)(2)(B) Provide the Administrative Director with written authorization to collect the information from the appropriate claims administrator. [However], [i]f the Administrative Director is unable to obtain the information with the written authorization, the employer shall remain responsible for obtaining and

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

## **The 2006 Data**

### ***Data Collection:***

This report is based on aggregate data collected for calendar year 2006 claims. The data collection proceeded in two phases. The first phase, the traditional mail-in collection of GV-1 and GV-2 forms, ended as stated in Title 8 CCR section 10203 on March 31, 2007. Upon review of the data present in the mail-in forms, the DWC noted many inconsistencies between section 10203 requirements and what the carve-out programs reported. Chief among these were the lack of consistency between the data presented on an employer’s individual and aggregate reports, reports that contained indistinguishable multi-year data, and the failure by carve-outs to report all the required data.

In order to correct these errors, the DWC began a second phase of data collection. On July 3, 2007, the DWC sent out an electronic version of DWC Form GV-1 with a letter to all of the eligible Sections 3201.5 and 3201.7 programs requesting they correct the errors present in their original reports and resubmit their reports. As of the close of the data collection phase for this report, 19 separate programs covering 91 percent of the carve-out system had correctly resubmitted their data. Only two programs failed to report corrected data. The data presented and analyzed below are based on these electronic resubmissions. DWC is working with the programs to improve data collection next year so that the annual report may be submitted by its June 30 due date.

### ***Data Presentation:***

The data presented for this portion of the report does not include updated annual data for calendar year 2004 or 2005 claims, but it does represent all of the data requested in Sections 3201.5(i) and 3201.7(h) of the Labor Code. Since there are only two active and reporting Labor Code Section 3201.7 “non-construction” programs, this report combines the data collected from both the 3201.5 and 3201.7 programs in order to protect the confidentiality of data presented and analyzed.

## **Part 1: 2006 Aggregate Data Analysis**

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

Carve-out programs reported that for the 2006 calendar year they covered 55,569,530 work hours and \$1,377,706,764 in payroll.

### ***Number of claims filed.***

During 2006, there were a total of 2,664 claims filed, of which 1,418 (53.2%) claims were medical only claims, and 1,246 (46.8%) were indemnity claims.

***Actual, Incurred and Average cost per claim.***

Table 1A shows the average actual and incurred cost per claim, by cost components across all claims.

Table 1A: Average Actual and Incurred Cost per Claim, by Cost Component for all Claims

	<b>Actual Cost per Claim</b>	<b>Incurred Cost per Claim</b>
<b>All Claims</b>	<b>\$5,829</b>	<b>\$10,600</b>
Medical Cost	\$2,878	\$5,891
Temporary Disability	\$2,714	\$3,419
Permanent Disability	\$187	\$790
Death Benefit	\$6	\$224
Life Pension	\$0	\$0
Vocational Rehabilitation	\$2	\$137
Medical-legal	\$42	\$140

***Number of litigated claims.***

Table 1B: Total Number of Litigated Claims

<b>Total Number of Litigated Claims</b>	<b>60</b>
Claims submitted to mediation	5
Claims submitted to arbitration	53
Claims submitted to the Worker' Compensation Appeals Board (WCAB)	2
Claims submitted to the Court of Appeals	0

***Number of contested claims resolved prior to arbitration.***

There were 1,601 (85.5 percent) cases resolved prior to arbitration.

***Safety history.***

In 2006, 51 injuries and illnesses reports were filed with the U.S. Department of Labor using OSHA Form No. 300<sup>1</sup> for employees covered under the carve-out program.

***Projected incurred costs and actual costs of claims.***

The actual costs for claims filed in 2006 totaled \$15,529,300, while the total incurred costs were \$28,238,168.

***Number of workers participating in vocational rehabilitation programs.***

Seventy-one workers (2.7 percent of injured workers) participated in vocational rehabilitation programs.

***Number of workers participating in light-duty programs***

One hundred sixty-four (6.2 percent of injured workers) participated in a light-duty program.

***Worker Satisfaction***

Section 3201.7(h) of the Labor Code requires that DWC include information on worker satisfaction in its annual report to the legislature on non-construction ADR programs. However, for 2006 neither of the two employers operating a 3201.7 program reported on worker satisfaction.

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<sup>1</sup> OSHA requires employers to file an injury and or illness with form no. 300 if work-related injuries result in death, a loss of consciousness, days away from work, restricted work activity, and/or medical care beyond first aid.