

Manager/Supervisor Risk Management

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A twice weekly e-mail training for YCPARMIA members

TOPIC: WORKERS' COMPENSATION – WHY PAY?

If there was no workers' compensation law employees would have to make civil claims against their employers, and the employer would only have to pay when it negligently or intentionally caused the employee's injury. A quick survey of YCPARMIA WC claims received over the last quarter suggests that between 5% and 10% of these might have supported some sort of recovery by the employee. The other 90% plus were either caused by the employee themselves, or by some third party. So why does the employer have to pay for work related injuries?

Almost 100 years ago states started to pass laws that changed the relationship between the employer and their employees. Consistent with other states, California law, found primarily in the Labor Code, created a compulsory and exclusive scheme of employer liability without fault where rights, remedies and obligations rest on an employer-employee relationship rather than on either tort or contract principles. In simple terms the employer is required to pay "benefits" regardless of their fault, and the employee is unable to pursue "damages" against their employer (the employee takes less for a sure thing). The employee is limited to an "exclusive remedy," workers' compensation, for work related injuries that normally prevents the employee from recovering damages against the employer or co-employees. The employee can pursue a claim for damages against a third party that causes them a work related injury, but workers' compensation would have a lien against any recovery to the extent that workers' compensation benefits were paid.

There is an important distinction to understand: "benefits" are different than "damages." Benefits are defined, and limited, by the Labor Code. This will be discussed in greater detail in later topics, but for now it is enough to recognize that wage recovery is capped, medical treatment is subject to limitations, and permanent disability payments are measured by the impairment of the employee's future earning power or capacity. "Pain and suffering," the big ticket items in civil damages, and damages for family members are generally not payable under workers' compensation.

So how much are these benefits costing? Over the last five fiscal years YCPARMIA's average monthly benefit payments have been \$235,047. If member deductible costs were added in we are probably looking at a total of about \$270K per month – and these costs, subject to medical and benefit inflation, are trending up. Because these benefits are defined by statute, the only truly effective way of reducing the cost is to prevent the injuries that trigger the payments. Further, with the vast majority of injuries occurring when employees injure themselves, the interaction and involvement of their supervisors becomes essential in loss/injury prevention, and reducing costs.

Next topic: Workers' Compensation – Claim frequency