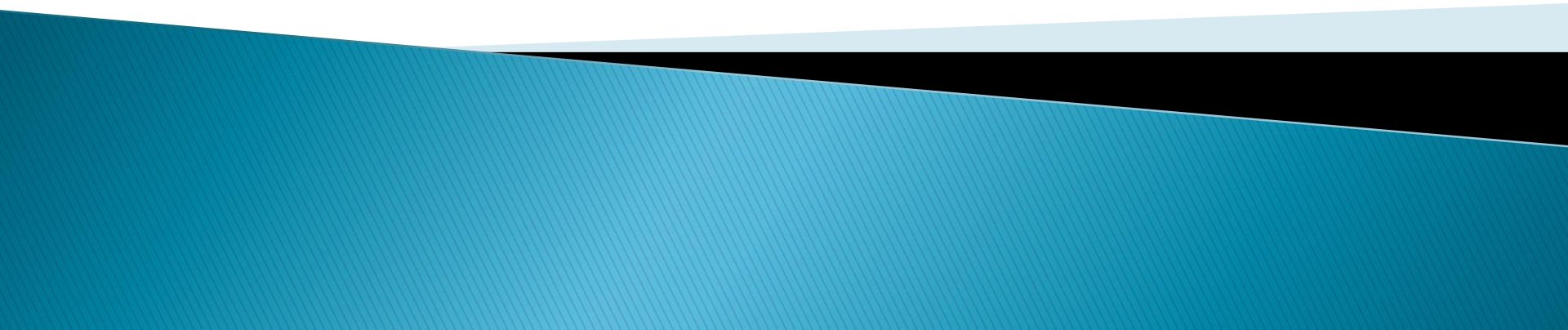


Safety and Workers' Compensation

Valley Coastal American Society of Safety Professionals
May 22, 2024
Tom Logan, ARM CSP
forrisk2@gmail.com



Workers' Compensation History

Common Law Defenses

- Assumption of Risk
- Contributory Negligence
- Fellow Servant Doctrine



Workers' Compensation History

Present

- Regulatory
- Mandatory
- Paid by Employer
- **Exclusive Remedy**
- **NO Fault**



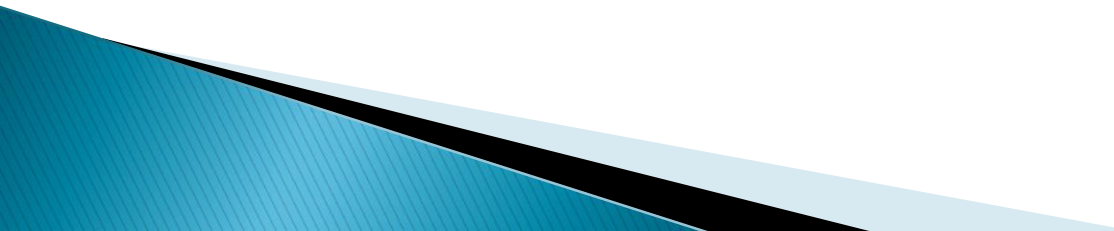
WC Coverage – How Do You Pay

- ▶ Traditional Insurance
 - Full Coverage
 - Cost Sharing
 - Deductible
 - Retro
- ▶ Self Insurance



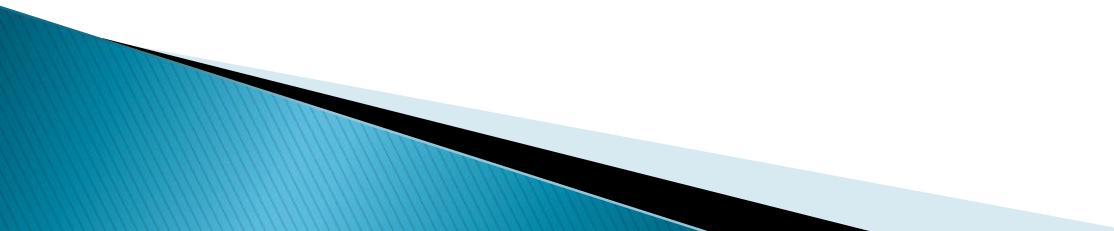
Workers' Compensation Coverage

▶ Exclusive Remedy “Exceptions”

- Intentional Assault
 - Dual Capacity
 - Power Press Exemption
 - Failure to Warn
- 

Workers' Compensation Coverage

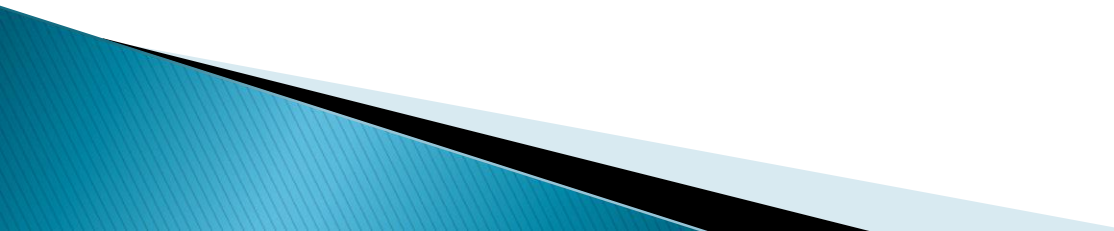
Non-Compensable

- ▶ Intoxication
 - ▶ Self-Inflicted
 - ▶ Initial Physical Aggressor
 - ▶ Felony
 - ▶ “Voluntary” Activities
 - ▶ Post Termination Claims
- 

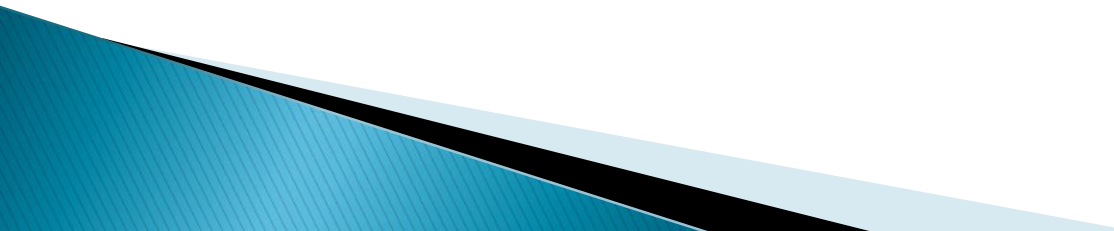
Workers' Compensation Coverage

- ▶ Employee / Employer Relationship
 - AOE Arises Out of Employment
 - COE In the Course of Employment

Workers' Compensation Benefits

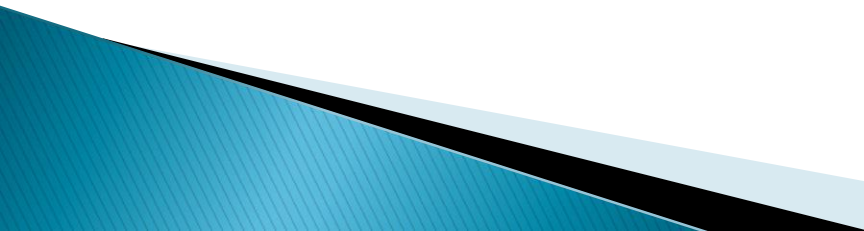
- ▶ Medical Payments
 - ▶ Indemnity Payments
 - ▶ Disability Payments
 - ▶ Supplemental Job Displacement Benefits
 - ▶ Death Benefits
- 

Workers' Compensation Benefits

- ▶ Injury
 - Specific
 - Chronic / Cumulative
 - ▶ Illness
 - Occupational Disease
 - ▶ Pre-Existing Condition
 - ▶ Psychiatric
- 

Workers' Compensation Benefits

Indemnity Payments

- ▶ Tax Free
 - ▶ 2/3's of pay to Max
 - ▶ 3 Day Waiting Period
 - Includes weekend days
 - 14 days off pays back to first day of the claim
- 

Workers' Compensation

Employer Responsibilities

- Posting Notices
- Employer Handouts
- Medical Treatment
- Mandatory Claims

Reporting



CLAIMS PROCESS

▶ Reporting

- DWC-1 – Cal Only
 - 24 Hours
- Employers Report
 - 5 Days

▶ Investigation

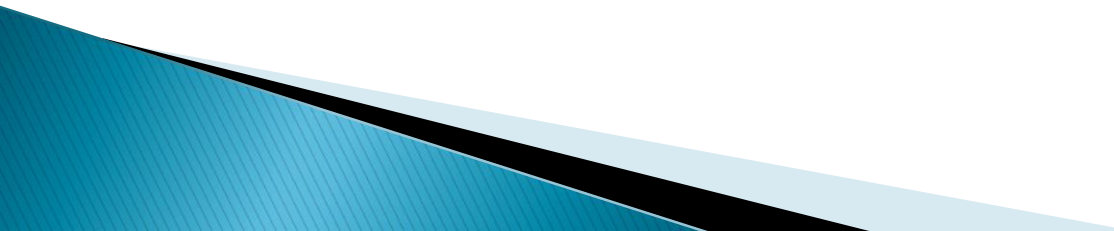
- Accept/Deny/Delay
 - 14 Days
- Med Coverage to \$10,000
- 90 Day Max Time Delay

CLAIMS PROCESS

▶ Accepted Claim

- Medical Control – MPN – Life of the Claim
- Pre-designated Physician
- Modified Work
- Claims Closure
 - Full Release
 - MMI
- Disability Rating
 - Stipulated
 - Compromise and Release

Additional & Potential Liabilities

- ▶ Serious and Willful Misconduct
 - ▶ Wrongful Termination
 - ▶ Americans with Disabilities
- 

Fraud

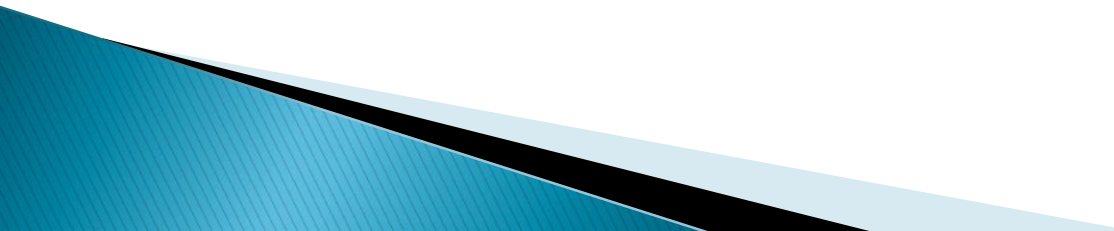
The majority of Workers' Compensation claimants are honest and do not attempt to falsify their claim or abuse benefits

It's important to recognize potential fraud at the beginning of a claim



Workers' Compensation Regulations

Workers' Compensation Insurance Rating Bureau, WCRIB

- Classification Rules
 - Unit Statistical Reports
 - Advisory Rates
 - Experience Modification
- 

Workers Compensation Premium

- Payroll
- Manual Rate
- Experience Modification

Premium Formula:

$$\frac{\text{Payroll}}{\$100} \times \text{Manual Rate} \times \text{E Mod} = \text{Premium}$$

Total (Payroll Units x Manual Rate) x E-Mod = WCIP

Example: *ABC Company*

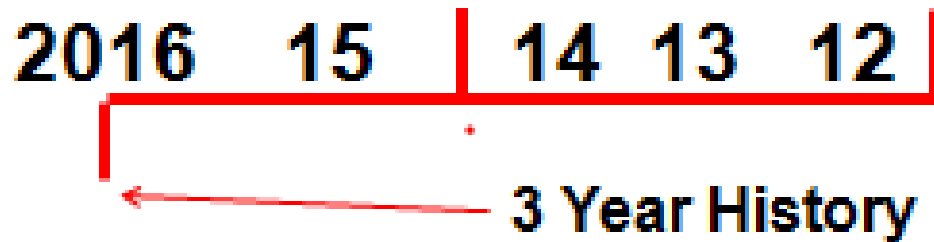
Code	Classification	Est Annual Payroll	Manual Rate / \$100 of Payroll	Est Annual Premium
4511	Analytic Labs	\$4,000,000	\$6.00	\$240,000

Total Manual Premium = \$ \$240,000
E-Mod Factor = x 1.53
Premium = \$367,200

Experience Modification X Mod

Adjusts Premium

- Reflects Class Relationship
- Reflects Loss History
- Rating Period
- Generally, First 3 years of Last 4



Experience Modification



Workers' Compensation Experience Rating Form

Bureau Number [REDACTED] Page 1 of 3
 Effective Date **03/24/2023**
 Issue Date 11/25/2022
 Experience Modification **179%**
 Insurer
 Insurer Group
 Policy Number
 Issuing Office
 Experience Period

Summary of Payroll and Expected Losses

Class Code	Payroll	Expected Loss Rate per \$100 payroll	Expected Losses	D-Ratio	Expected Primary Losses	Expected Excess Losses
------------	---------	--------------------------------------	-----------------	---------	-------------------------	------------------------

Insurer: 698 Policy Period : 03/24/2021 to 03/24/2022

8810	1,677,160	0.09	1,509	0.630	951	558
9069	13,364,491	1.66	221,851	0.617	136,882	84,969

Summary of Claims and Actual Losses

Primary Threshold: 40,000

Claim Number	Injury Type	Open / Closed	Actual Losses	Actual Primary Losses
GB032625	05	Open	49,443	39,750
GB032626	05	Closed	9,925	9,675
GB033656	05	Open	15,707	15,457
GB034338	05	Open	21,057	20,807
GB034665	05	Open	18,350	16,100
GB036254	06	Closed	624	374
GB037961	05	Open	13,201	12,951
GB038098	05	Open	15,850	15,600
GB039845	05	Open	12,050	11,800
GB040165	06	Closed	565	315
GB040362	05	Open	2,305	2,055
GB040421	06	Closed	2,272	2,022
GB041830	05	Open	57,261	39,750

Experience Period Totals

	Expected Losses	Expected Primary Losses	Expected Excess Losses
^C	621,370	383,433	^B 237,937

Number of Claims
71

Actual Losses	Actual Primary Losses
1,058,460	^A 873,634

Experience Modification

Actual Primary Losses	Expected Excess Losses	Expected Losses		
[^A 873,634]	+ [^B 237,937]	/ [^C 621,370]	=	[179%] Experience Modification

Loss-Free Rating: 38%

* Not Physically Inspected; # If Any; F = Federal

(S) Subrogation; (J) Joint Claim; (P) Partially Fraudulent, if any

CN#RS738084

Workers' Compensation Insurance Rating Bureau of California®

11/24/2022

The 2019 X Mod Formula

Summary of Claims and Actual Losses			Primary Threshold: 43,000		
Claim Number	Injury Type / # of Claims	Open / Closed	Actual Losses	Actual Primary Losses	Actual Excess Losses
44016964	05	Closed	11,698	11,698	0
44018477	04	Open	76,398	43,000	33,398
44019276	05	Open	60,793	(J) 36,412	24,381
44019570	04	Open	12,847	12,847	0
UNDER \$2,001	4		3,490	3,490	
Totals	8		165,226	107,447	57,779
12170931	04	Closed	7,714	7,714	0
14105961	05	Closed	24,659	24,659	0
16740541	05	Closed	9,248	9,248	0
19682141	05	Open	17,500	17,500	0
UNDER \$2,001	3		2,952	2,952	
Totals	7		62,073	62,073	0
33034940	05	Closed	63,309	43,000	20,309
33035159	06	Closed	992	(\$) 992	0
33037770	05	Closed	5,264	5,264	0
33038565	03	Open	162,389	(\$) 39,901	122,488
UNDER \$2,001	2		173	173	
Totals	6		232,127	89,330	142,797

Actual Losses	Actual Primary Losses
56,690	40,750
34,821	34,571
4,851	4,601
6,630	6,380
552	302
722	472
930	680
650	400
606	356
438	188
255	5
216	0
440	190
2,588	2,338
13,657	13,407

2019 w \$250 Reduction

What Can an Employer Do?

▶ Internal Controls

- Employee Notification
- Reporting Procedures
 - 1st aid
 - WC Reporting
- Accident Investigation
 - Fraud?
- Claims follow up
- Return to Work

What Can an Employer Do?

▶ External Activities

- Open Communications with Claims Rep / Agent
- Select Medical Provider, MPN Network
- Set up Routine Claims Review Meetings
- Employee Education
 - Fraud
 - Claims Reporting
- Prompt Reporting all Claims



What Can an Employer Do?

- ▶ Proper Hiring
 - Job Descriptions
 - Verify Work History
 - Reference Checks
 - Safety Performance Criteria

What Can an Employer Do?

- ▶ **Ensure candidates are capable of performing job duties**
- Job Description with Key Essential Functions of the Job and has specific Physical Demands
- Find a clinic that will perform the evaluation
 - Post -Offer/Pre-Placement
 - Physical Agility
 - Drug/Alcohol
 - Background Criminal Check
 - Job Specific – Non Discriminatory
 - All warehouse, All dockworkers, All drivers

What Can an Employer Do?

- ▶ Return to Work Program
 - Benefits
 - Reduces Time off
 - Reduces associated Costs
 - Retraining
 - Replacement
 - Reduce Litigation
 - Increases Morale
 - Formal
 - Job Descriptions and Physical Requirements

What Can an Employer Do?

- ▶ Return to Work
 - Transitional Work
 - Follow Restrictions
 - Update After Each Dr. Visit
- ▶ Out Placement Services
 - Will find volunteer organization with tasks within limitations,

What Can an Employer Do?

- **Support Workplace Safety Programs**
 - Injury Prevention
 - Safety Training
 - Self Inspection and follow up
 - Accident Investigation
 - Review for inter-department issues
 - Adhering to policies and procedures
 - Coaching
 - Progressive Discipline

Workers' Comp Who Can Help

- ▶ Insurance Carrier
 - Loss Control
- ▶ Broker/ Agent
 - Risk Mgt Services
- ▶ Associations
 - Risk Mgt Services
- ▶ Self Insured
 - Contract Hours



Risk Management Review

- ▶ Workers' Comp Basics
- ▶ Financial Impact of Losses
- ▶ Loss Prevention
 - Safety Programs
 - Human Resource Mgt.
- ▶ Loss Reduction
 - Claim Reporting
 - Communication
 - Accident Investigation
 - Return to Work

Questions

