

A Moving Target, But Some Certainties for Employers

This could be the most controversial rate recommendation in the 107-year history of the California workers' compensation system. Why? Because we are dealing with a virus we've never experienced before. The medical community is still learning about COVID-19 transmission, treatment and prevention every day. Plus, there's scant evidence to date on the long-term health effects of the virus.

The National Council on Compensation Insurance and the Insurance Information Institute have publicly said it's too early to know the impact of COVID-19 on workers' compensation,¹ while industry watchers Joe Paduda and Mark Priven believe a trend is definitely emerging, that overall claims are down which could benefit insurer loss ratios.²

One thing is certain: there are many factors at play. Senate Bill 1159, California's "presumption" law – which generally establishes that exposure to COVID-19 is a reasonably anticipated exposure and presumed to be work-related³ – could trigger a surge in claims, while unemployment and telecommuting could act as a counterbalance – i.e. fewer people on the job site creates fewer opportunities for infection. Further complicating this calculus is denial of COVID-19 claims, which appears to be trending downward.⁴

While WCIRB's June report on the impact of the economic downturn didn't take into consideration the impact of COVID-19 on claims volume, it concluded that "it is possible and perhaps likely that growth in [COVID and cumulative trauma] claims will more than offset the impact of the economic slowdown on claim frequency."⁵

The WCIRB's proposed 2.6% increase has been hailed as "ridiculous" by some, while less vocal critics have at least urged the Bureau of reconsider.⁶ But this is not the time to rush to judgment. WCIRB doesn't make these decisions capriciously or in a vacuum. It uses time-tested methodologies. It also attempts to make the increase fair, so employers in less-exposed industries see a smaller surcharge than businesses that have medium to high exposure to the virus.

¹ COVID-19 and Workers Compensation: Impact Will Become Clearer ... Eventually, Insurance Information Institute, <https://www.iii.org/insuranceindustryblog/impact-of-covid-19-on-workers-compensation/>

² Webinar Counters Insurer Warnings About COVID-19 Impact on Work Comp Profits, *Claims Journal*, <https://www.claimsjournal.com/news/national/2020/08/12/298706.htm>

³ COVID-19 and Cal/OSHA Recording Requirements, Poms & Associates, https://res.cloudinary.com/pomsassoc/image/upload/c_scale,w_640/v1586280698/CalOSHARecordingReq.pdf

⁴ California COVID-19 workers' comp claims soar, *Cal Matters*, <https://calmatters.org/health/2020/08/california-coronavirus-workers-comp-claims/>

⁵ Impact of Economic Downturn on California Workers' Compensation Claim Frequency, WCIRB, June 2020, https://www.wcirb.com/sites/default/files/documents/rb-impact_of_economic_downturn-audience-ready_0.pdf

⁶ Proposed COVID-19 Surcharge Boosts Rates As Much As 50%, *Workers' Comp Executive*, September 2, 2020



Subsequent to issuing its initial recommendation, WCIRB announced it would not change the average recommended premium of \$1.56 per \$100 of payroll.⁷ However, based on early claims experience and impact of SB 1159, the Bureau has adjusted some underlying recommendations, including the average premium cost per \$100 of payroll based on business classification. It added two classifications to the original four, which effectively widens the range to 0.01 per \$100 of payroll for the least exposed to 0.24 for the most exposed.

The number of workers' compensation claims filed for COVID-19 continued to soar throughout the summer, with estimated costs as high as \$2 billion for employers and their insurers.⁸ According to WCIRB, the cost of COVID-19 claims filed by workers subject to SB 1159 (presumption) could be in the range of \$0.6 billion to \$2 billion. The mid-range estimate of \$1.2 billion represents about 7% of the \$18.3 billion estimated annual cost of workers' compensation claims prior to the pandemic.⁹ This gives us a sense of the magnitude of COVID-19 on workers' compensation. Is it significant? Yes. Insurmountable? Not at all, because California has an excellent system in place and insurers are required to charge actuarially justified premiums and reserve appropriate to pay future claims.

A closer look at costs reveals a hospital stay running into the tens of thousands: around \$38,000 for a privately insured patient in network to \$73,000 for a patient with no insurance, with an estimated 15 to 20 percent of patients requiring hospitalization. Nationally, FAIR Health figures the total costs for all hospitalized COVID-19 patients will be in the range of \$362 billion in charges and \$139 billion in estimated allowed amounts to \$1.449 trillion in charges and \$558 billion in estimated allowed amounts. That's a wide range, and it of course depends on rates of infection in the US.¹⁰

A public hearing on California's rates was held on October 5, after which WCIRB will post approved advisory pure premium rates. While it's difficult to know with any certainty how this will play out, employers should know this: under California law, a covered worker who contracts COVID-19 contracted the virus at work and it is considered a work related illness. However, an employer may rebut this presumption. More information can be [found here](#).¹¹

At Poms, we work with clients to make sure they're not simply protected against liability, but sheltered from risk in the first place. We advise them to re-evaluate their health and safety protocols and implement guidelines and practices to mitigate infection.

⁷ <https://www.wcirb.com/news/wcirb-submits-amended-january-1-2021-pure-premium-rate-filing-cdi>

⁸ California COVID-19 workers' comp claims soar, *Cal Matters*, <https://calmatters.org/health/2020/08/california-coronavirus-workers-comp-claims/>

⁹ WCIRB Evaluates Governor's COVID-19 Executive Order Impact on Workers' Compensation Costs <https://www.wcirb.com/news/wcirb-evaluates-governor%E2%80%99s-covid-19-executive-order-impact-workers%E2%80%99-compensation-costs>

¹⁰ The Projected Economic Impact of the COVID-19 Pandemic on the US Healthcare System, FAIR Health, march 2020 (based on FAIR Health data regarding charges and allowed amounts for similar conditions, and published projections indicating that from 66 million to 198 million Americans may become infected with the novel coronavirus that causes COVID-19, and that from 4.9 million to 19.8 million of them may require inpatient stays)

¹¹ <https://www.dir.ca.gov/dwc/Covid-19/FAQ-SB-1159.html>



- ▶ Have a written plan of measures you are taking to prevent COVID-19 in the workplace
- ▶ Identify hazards in the workplace by unsafe or unhealthful practices, means, methods, or operations
- ▶ Provide training for employees and supervisors regarding preventing employee exposure
- ▶ Establish procedures for identifying and controlling access to hazards
- ▶ Supervise employees exposed or potentially exposed to hazards
- ▶ Communicate to employees about the employer's health and safety rules and programs
- ▶ Have a written letter prepared in case you do have a COVID-19 infection in the workplace

Also, keep pertinent documentation on hand:

- ▶ Document actions taken to eliminate employee exposure to hazards created by the violation as soon as the violation was discovered
- ▶ Document daily steps taken
- ▶ Document information given to the Workers' Compensation Claims Administrator
- ▶ Document all notices of outbreak or infection of workers that are issued to employees

We're living in unprecedented times and the pandemic has taken us out of our comfort zone. The California workers' compensation system is built to handle the unexpected, and employers would do well to respond to this momentary uncertainty with preparedness and patience.