

A WS&Co. Update

February 2015

2015 Construction Workers' Compensation and OSHA Update

In this challenging construction environment the Woodruff-Sawyer Construction Practice strives to keep our clients and partners current in the area of Risk Management. The following is our annual Workers' Compensation market summary and an update on CalOSHA developments.

- Cam Dickinson, Senior Vice President, Construction Group

WORKERS' COMPENSATION MARKET UPDATE

As summarized in prior editions, pressure continues for carriers to increase base rates across many classifications. In November, The Department of Insurance Commissioner approved increases to "pure premium" rates on average of \$2.74 per \$100 of payroll. This is a 6.6% increase above the average rate as of July 1, 2014.

On January 14, 2015 Workers' Compensation Insurance Rating Bureau (WCIRB) reported on insurer experience. The report highlighted these key trends (note these figures are based on all California industries):

- Unlike in most other states over the last several years, California indemnity claim frequency has continued to increase as WCIRB data currently indicates increases of 3.2%, 3.9% and 0.9% in 2012, 2013, and 2014, respectively.
- The level of cumulative injury claims has continued to increase. Approximately 13% of indemnity claims are estimated to involve a cumulative injury in 2013 compared to approximately 8% in the 2005 to 2007 period. Additionally, the growth in cumulative injury claims beginning in 2009 has been concentrated in claims involving more serious injuries and multiple injured body parts. **Both the proportion of cumulative injury claims involving indemnity benefits and the proportion involving injuries to multiple body parts have increased significantly since 2010.**
- The recent economic recovery in higher hazard industries such as construction and manufacturing has had the opposite impact. In 2013, rather than dampening claim frequency, shifting industrial mix is increasing claim frequency by approximately 1%.
- As the economy recovers, newer workers enter the system and are often more likely to be injured on the job than more experienced workers. The proportion of injured workers with less than 2 years of experience at their current job has grown by 8% from 2010 to 2014, **suggesting the economic recovery is a significant driver of recent claim frequency increases.**

Since your experience modifier directly impacts your workers' compensation insurance cost and your ability to meet prequalification requirements, this is a great time to perform a thorough review of your "Injury and Illness Prevention Program", "New Hire Orientation" and "Pre-task Planning" programs to ensure that they are effective in preventing workplace injuries. Our safety consultants can provide your safety team with valuable assistance with this review.

Woodruff-Sawyer utilizes the safety consulting services of Bob Downey and Alan Larson. In addition, "On-Site Health & Safety" at www.onsitehealthandsafety.com offers 24 hour mobile health and injury services.

Woodruff-Sawyer also has a one page **Top 10 Ways to Control Your Workers' Compensation Costs** review. Please feel free to contact one of our representatives for a copy.

2015 Notable Changes to the California Workers' Compensation Uniform Statistical Rating Plan

1. Dual Wage Construction Classifications: For 2015 there are no changes to the dual wage classification thresholds as in prior years.
2. California Executive Officer & Partner Payroll Limitations:

The WCIRB approved the following Executive Officer and Partner limitations for 2015:

Minimum Payroll: \$44,200

Maximum Payroll: \$111,800

2015 Payroll Recordkeeping & Audit Requirements :

Classification 5606, Contractors - executive level supervisors

Some good news! The WCIRB has amended its approval requirement. In March, 2014, the WCIRB released its study of the 5606. Classification, *Contractors – executive level supervisors*. Since 1950, this classification has contained a unique requirement that its use must be confirmed by specific written approval from the WCIRB. In many cases, this requirement necessitated a special classification inspection. The study had three recommendations one of which included the removal of the written approval requirement (which was adopted). All other requirements and restrictions regarding the assignment of 5606 remain unchanged. We remain hopeful that the WCIRB will continue to review and adapt additional changes. (A complete copy of the 12 page study is available upon request).

Policy Audits

As reported last year, the WCIRB auditors will closely scrutinize strict compliance of the *Executive Supervisor (5606)* and *Outside Sales (8742)* classifications. Those employees not meeting the "Standard Exceptions" of the CA Uniform Statistical Reporting Plan will be subject to reclassification to the "governing classification".

Insurers must strictly enforce these rules. Final audits are subject to substantial additional premiums as a result of the employer not keeping the necessary documentation or miss-classifying employees. Incidents are arising where employers have been required to reclassify their payrolls thereby incurring an additional premium charge. We strongly suggest consulting with your Woodruff-Sawyer Account Executive for any clarification.

OSHA Update

Reporting of Serious Injuries - OSHA & AB 326 (Morrell)

Effective January 1, 2015 OSHA announced revisions to its reporting requirements of serious injuries. In addition AB326 (Morrell) amended Section 6409.1(b) of the California Labor Code under which the employer is obligated to report

a serious injury to CalOSHA (DOSH). Under Code (6409.1) Sections a & b the employer is required to report a) to its insurer (which in turn reports to the DIR) within 5 days after obtaining knowledge of a lost time injury or illness and b) **immediately** notify DOSH of a serious injury or illness, or death by **phone or email**. Failure to meet these obligations can result in a fine of not less than \$5,000.

Cal/DOSH reporting offices can be located at: <http://www.dir.ca.gov/dosh/DistrictOffices.htm>.

SB1360 (Padilla) Compensation/rest or recovery periods

This amends Labor Code Section 226.7 requiring that workers receive payment for time spent during “recovery periods”. “Recovery period” is defined as the cool down period to prevent heat illness. Under the current Heat Illness regulations, contractors are required to provide 10-minute rest periods. The potential abuse arises when an employee has the need for additional or extended “recovery periods”. Review of your *Heat & Illness Prevention “best practices”* along with training of Supervisors and Project Managers in the area of “*monitoring & escaping the heat*”, is recommended.

Annual Requirements for the Posting of Your Work-Related Injuries 2014 Log

As a reminder, it's time for OSHA's annual requirement that you post the Summary of Work-Related Injuries and Illnesses for the calendar year 2014. Some of the key items related to these requirements are highlighted below:

- **The required posting period is three months (February 1 through April 30).**
- In addition to the 300A, you must also maintain the OSHA 300 and 301, as well as a Privacy Cases Log.
- A company executive must certify the accuracy of the data reported on the log.

To assist you in this process, we suggest the following:

- Thoroughly review your log, as well as the instructions on the back of the log, to ensure that it is complete and accurate. Also review your:
 - Workers' compensation claim files
 - First aid case log (be sure to add recordable incidents to the OSHA 300 and 300A)
 - Any other incident records that your firm may keep
- Make sure the top of the summary is completed and the bottom is signed and dated by an executive certifying the accuracy of the information it contains.
- Copy the log and post it in a conspicuous place. OSHA recommends that the log be posted on the bulletin board at each office and at each work site in a location where employees normally gather. Even if your firm had no recordable cases, you must still post a log.
- Review the classification of the cases on your log carefully. Be sure that only cases that fit OSHA's definition of recordability appear on the log. Accurate classification also establishes your firm's incidence rates which can be of use in your pre-qualification process. Not all cases involving trips to a doctor are recordable. **Refer to OSHA's definition of “first aid” which we've provided in this newsletter.** If you have logged a case that you have now determined is not recordable, simply draw a line through the entry, and initial and date it beside the line. Do not white-out or black-out incorrect entries.
- For cases involving lost time and restricted work activity, determine an accurate count of lost days and restricted activity. This information may be obtained from the treating doctor's status/treatment report or from your workers' compensation claims administrator. OSHA requires that if an injury results in both days away from work and days of restricted work activity, the employer is to enter the total of the days for each. The lost time maximum per case to be indicated on the log is the total of either or the combination of both when the maximum reaches 180 days.

- If the status of a case has changed, including its severity, from the time you originally entered it on the log, you must also change the log entry. Be sure to include the date of change and your initials.
- You must retain the original log with your safety records for a minimum of five years.

If you need any assistance in complying with these recordkeeping requirements, please contact your Woodruff-Sawyer representative.

RESOURCES

You may obtain information on the State Bills, and OSHA regulations and forms from:

- www.dir.ca.gov/DOSH/
- <https://www.osha.gov/recordkeeping2014/index.html>
- <http://leginfo.legislature.ca.gov/faces/billSearchClient.xhtml>

FEDERAL OSHA'S 2014 TOP TEN

Here are OSHA's most frequently cited standards following an incident inspection:

1. Fall Protection – 6,143 violations
2. Hazard Communication - 5,161
3. Scaffolding - 4,029
4. Respiratory Protection - 3,223
5. Lockout/Tagout – 2,704
6. Powered Industrial Trucks – 2,662
7. Electrical – Wiring Methods -2,490
8. Ladders - 2,448
9. Machine Guarding – 2,200
10. Electrical – General Requirements – 2,056

SAFETY AND TRAINING RESOURCES

Did you know that Woodruff-Sawyer offers an exclusive **SAFETY TOOLBOX**, an online safety resource, to our clients? In addition, exclusively for Woodruff-Sawyer clients we provide access to “Succeed” – our “Risk Management Center” platform which includes safety management resources, training and tracking aides. For more information on “Succeed” click on the following link: <http://succeedms.com>.

Our value-added safety services contain valuable resource material for management, field supervisors, and field staff. From tailgate meeting sheets in both English and Spanish, to model safety programs, resources and links to other resources. Chances are that you'll find information that will help you with your company's safety efforts.

WHAT IS “FIRST AID”?

For the purposes of Article 2, OSHA defines “first aid” as the following:

1. Using a non-prescription medication at non-prescription strength (for medications available in both prescription and non-prescription form, a recommendation by a physician or other licensed health care professional to use a non-prescription medication at prescription strength is considered medical treatment for record keeping purposes);
2. Administering tetanus immunizations (other immunizations, such as Hepatitis B vaccine or rabies vaccine, are considered medical treatment);
3. Cleaning, flushing or soaking wounds on the surface of the skin;
4. Using wound coverings such as bandages, Band-Aids™, gauze pads, etc.; or using butterfly bandages or Steri-Strips™ (other wound-closing devices such as sutures, staples, etc. are considered medical treatment);
5. Using hot or cold therapy;
6. Using any non-rigid means of support, such as elastic bandages, wraps, back belts, etc. (devices with rigid stays or other systems designed to immobilize parts of the body are considered medical treatment for record keeping purposes);
7. Using temporary immobilization devices while transporting an accident victim (e.g., splints, slings, neck collars, backboards, etc.);
8. Drilling of a fingernail or toenail to relieve pressure, or draining fluid from a blister;
9. Using eye patches;
10. Removing foreign bodies from the eye using only irrigation or a cotton swab;
11. Removing splinters or foreign material from areas other than the eye by irrigation, tweezers, cotton swabs or other simple means;
12. Using finger guards;
13. Using massages (physical therapy or chiropractic treatment are considered medical treatment for record keeping purposes); or
14. Drinking fluids for relief of heat stress.

CONTACT US

For further information on any of the topics addressed in this newsletter, please contact Woodruff-Sawyer's Construction & Real Estate Practice at 415.391.2141.

or contact our key staff at:

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