January, 2015

2015 Q1 Update: Workers' Compensation Market Update and OSHA Posting

WORKERS' COMPENSATION MARKET UPDATE

California Leads Nation in Claim Frequency Increases - Cumulative Trauma Injuries Reach New High

California continues to be the epicenter of rising workers' compensation costs and negative trends. The most recent Workers' Compensation Insurance Rating Bureau (WCIRB) report titled the WCIRB Summary of September 30, 2014 Insurer Experience and a subsequent report titled *Analysis of Changes in Indemnity Claim Frequency—January 2015 Update Report* confirms many of the ongoing challenges being encountered by the industry that place pressure on the current marketplace.

What are we seeing and why? Despite the negative trends, renewals for California workers' compensation coverage have been competitive for many sectors going into the New Year. One of the key differentiators and common denominators when reviewing results has been individual employer loss history. Those employers who have successfully controlled their losses through effective safety (pre-loss) and return to work (post-loss) programs have been able to navigate with great success in reducing premiums and their total cost of risk. Certain industry sectors, such as Life Science and Technology, continue to consistently experience favorable underwriting results due to their excellent loss performance, resulting in competitive pricing between carriers who are looking for profitable business.

As to the "why" we're seeing these results, it remains clear that the industry continues to encounter significant challenges in California due to rising claim frequency and pure premium loss rates, a sixth straight year of underwriting losses, medical inflation, and increasing litigation. Below are a few of the key cost drivers we believe are contributing to the current environment and will remain areas to watch throughout 2015:

- The estimated average cost of an indemnity/lost-time claim is projected to reach $85,373, which represents a $30,000 increase (or more than 50% increase) since the full implementation of the reforms that took effect in 2005.
- When comparing California to the rest of the country using National Council on Compensation Insurance (NCCI) data, the average cost of a claim in California is 38% more than that of the NCCI tracked states (CA $69,536 vs. NCCI $50,300, excluding Allocated Loss Adjustment Expense (ALAE) and medical-only claims).Insurance company profitability is improving, but underwriting losses continue to vex the industry for its sixth consecutive year.
- The WCIRB is projecting total written premium for 2014 will be in excess of $16 billion, which is the highest premium total since 2006.
- California indemnity claim frequency continues to increase as WCIRB data currently indicates increases of 3.2%, 3.9% and 0.9% in 2012, 2013, and 2014, respectively.

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- In 2010 the increase in frequency was greatest in industries that were most impacted by the recession (e.g. construction and real estate). Since 2010, relativities for higher-frequency industries such as agriculture, construction, and entertainment have increased while those for the lower-frequency industries such as real estate, professional services, and finance have declined.

- Since 2010, the increase in frequencies has been concentrated in the Los Angeles area. Indemnity claim frequency increased an estimated 9% in the Los Angeles Basin region from 2010 to 2013 while, similar to the pattern shown in many other states, other California regions showed modest declines. By comparison, indemnity claim frequency in the Bay Area declined by 7% over the same period. The Los Angeles area also has experienced significantly higher numbers of cumulative injury claims and claims involving multiple body parts than other regions of California.

- The level of cumulative injury claims has continued to increase and now stands at a record high. Approximately 13.3% of the indemnity claims filed in 2013 are estimated to involve a cumulative injury compared to 11.4% in the 2012 period.

- The projected industry average charged rate (rates charged by insurers that reflect all rating plan adjustments except deductible credits, retrospective rating plan adjustments, terrorism charges, and policyholder dividends) per $100 of payroll for policies written between January 1, 2014 and September 30, 2014 is $2.93. This is approximately 2% above the average rate charged for the second six months of 2013 and 40% above the average rate charged for 2009.

And finally, the Terrorism Risk Insurance Program Reauthorization Act of 2015 is now law. Losses resulting from an act of terrorism could not be excluded from a workers' compensation policy. However, be aware that any future event that has been certified an act of terrorism by the U.S. Government that affects multiple insurance companies could have an adverse effect on availability and affordability of workers' compensation coverage in high risk areas (most large cities) and high risk targets (airports, national monuments, stadiums).

OSHA'S ANNUAL REQUIREMENTS FOR THE POSTING OF WORK-RELATED INJURIES LOG

As we do at the beginning of each year, we'd like to remind you of OSHA's annual requirement that you post your 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.

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- 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 recordablility appear on the log.

- 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 Account Executive. You may also consult the 2015 OSHA Fact Sheet: https://www.osha.gov/recordkeeping2014/OSHA3746.pdf

CALIFORNIA ASSEMBLY BILL 1897 EXPANDS LIABILITY TO EMPLOYERS USING TEMPORARY WORKERS

Effective January 1, 2015, Assembly Bill 1897 establishes shared liability between employers and labor contractors that supply employers with workers to perform labor within the employer's usual course of business. Under AB 1897, an employer may be held civilly liable for its labor contractor's failure to comply with California wage, safety and workers' compensation laws.

If you're an employer with 25 or more employees that uses temporary labor, you will want to be certain that the temporary agency you engage is fully compliant in paying the proper California wages, carries valid workers' compensation coverage and is compliant with OSHA regulations. An omission of any one of these can leave you civilly liable should a complaint be filed and pursued by an employee of the temporary agency.

Shared Liability: The law states that an employer may share in the liability of a labor contractor who fails to pay employee wages as required by law, secure valid or sufficient workers' compensation coverage, and comply with occupational health and safety regulations.

Definition of a labor contractor under AB 1897 can be individuals or entities that supply employers with workers to perform labor within the employer's usual course of business, with or without a contract.

What you should do:

- Make certain that your contracts with labor contractors include indemnification and hold harmless provisions requiring them to protect you for failure to comply with California wage, safety and workers' compensation laws.

- Require evidence of General Liability and Workers' Compensation insurance from labor contractors.

- Monitor compliance with the insurance requirements though certificates of insurance, and verification that labor contractors are compliant with safety, wage and hour laws.

For more information, you may consult the CalChamber Fact Sheet at: http://www.calchamber.com/governmentrelations/documents/ab-1897-fact-sheet.pdf

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The TOP 10 WAYS TO CONTROL YOUR WORKERS' COMPENSATION COSTS IN 2015

The most common New Year's Resolutions revolve around improving health, well-being and financial security. These issues are important to your risk and claim management program as well and as we step into 2015, now is a great opportunity to re-evaluate your internal claims handling protocols and approach to risk. Here are ten ways you can impact your overall cost of risk in your workers' compensation program:

1. Start the renewal process early. Understand insurance market conditions for your industry and geographic footprint in advance of the renewal date.

2. Take time to evaluate your organization's risk tolerance. Evaluate loss sensitive / risk financing options that offer an acceptable offset of premium for the increase of risk taken. Loss sensitive programs offer a higher degree of control and flexibility for organizations that have effective safety programs and actively manage claims and their outcomes.

3. Understand your experience modification and how it affects pricing. You should coordinate the timing of claim reviews to ensure that the impact of loss reserves on your premium is minimized.

4. Implement a safety and loss control program. Use the resources of your insurance carrier, if possible. Senior management support is critical to success as this will set the tone within the organization and become a part of your culture.

5. Report all claims in a detailed and timely manner, even questionable ones. Prompt reporting will allow the carrier to conduct a comprehensive investigation of the facts as well as ensure timely payment of benefits and medical care.

6. Make use of your insurance company's medical cost containment programs. In California, participate in the Medical Provider Network (MPN), the doctors who participate in the MPN's are subject to higher standards and strict fee arrangements, which saves money on medical treatment and helps ensure quality medical care.

7. Review the success of your designated occupational clinics to ensure effective coordination of medical treatment. If there is a problem, schedule a meeting with the clinic to address the problems or consider changing. Make sure the clinic has current job descriptions that outline the essential functions of your most common jobs for review and restriction accommodation. Offer modified or alternate work in order to save disability costs. The job need not be full-time or the normal occupation the employee worked before the injury. When dealing with a permanent restriction, make sure that you engage in and thoroughly document your efforts in the interactive return to work process.

8. Maintain contact with employees while they are off work. Studies show that communication with employees keeps them motivated and expedites the return to work process, which also greatly reduces the potential for litigation.

9. Request regular claim reviews with your insurance carrier. Communication with your insurance carrier lets them know how important claims are to your organization, builds accountability and facilitates claim resolution and closure.

10. Document important issues thoroughly in order to avoid unnecessary delays and costs. Verbal reports of injury and modified work offers often become convoluted, lost to interpretation or forgotten if not supported in writing.