

required to have a managed care organization (MCO) that provides medical management of workplace injuries and illnesses.

Ohio's HPP is an example of how this concept typically works. According to Clairmonte Cappelle,

When a workplace injury occurs or an illness manifests itself, the employee reports it to the employer and seeks initial medical treatment. At this early stage, the employer or health care provider informs the MCO, which files a first report of injury electronically with the state and begins medical management of the case. The MCO prefers that an injured worker stay within its health care provider network for care. However, injured workers may choose their own doctors and hospitals from the list of 100,000 BWC-certified providers. Except for emergency situations, workers who select non-BWC-certified health care providers will not have their workers' compensation medical costs covered by the state. Once a claim is filed, MCOs work with employers, injured workers, health care providers, third-party administrators and BWC. This includes authorizing certain medical procedures, processing providers' bills for payment by BWC, and driving the return-to-work process.¹⁷

The HPPs are effective because an MCO coordinates the paperwork generated by the injured employee, the employer, health-care providers, and the BWC. As the Ohio example illustrates, the results of this coordination are clear. The average time required to process an injury report before implementation of the HPP was more than 66 days. The HPP reduced this to approximately 33 days—effectively cutting reporting time in half. Whether managed medical care can continue this positive trend remains to be seen, but the states that have implemented HPPs have learned the following lessons:

- It is better to mandate HPPs than to make them optional.
- Cost containment is only part of the goal. Managed care programs must also include criteria such as lost wages, ability to return to work, and administrative costs to the employer.
- Employees want choice in selecting healthcare providers.
- Smart return-to-work programs are critical.

ADMINISTRATION AND CASE MANAGEMENT

Even though the Occupational Safety and Health Administration (OSHA) specifies what constitutes a recordable accident, it is not uncommon for minor injuries to go unreported. The employee may be given the rest of the day off or treated with first aid and returned to work. This is done to avoid time-consuming paperwork and to hold down the cost of workers' compensation insurance. However, if an accident results in a serious injury, several agencies must be notified. What constitutes a serious injury—like many workers' compensation issues—can differ from state to state. However, as a rule, an injury is serious if it requires more than 24 hours of active medical treatment (this does not include passive treatment, such as observation). Of course, a fatality, a major disfigurement, or the loss of a limb or digit is also considered serious and must be reported.

At a minimum, the company's insurer, the state agency, and the state's federal counterpart must be notified. Individual states may require that additional agencies be notified. All establish a time frame within which notification must be made. Once the notice of injury has been filed, there is typically a short period before the victim or dependents can begin to receive compensation unless inpatient hospital care is required. However, when payments do begin to flow, they are typically retroactive to the date of the injury.

State statutes also provide a maximum time period that can elapse before a compensation claim is filed. The notice of injury does not satisfy the requirement of filing a **claim notice**. The two are separate processes. The statute of limitations on claim notices varies from state to state. However, most limit the period to no more than a year except in cases of work-related diseases in which the exact date of onset cannot be determined.

All such activities—filing injury notices, filing claim notices, arriving at settlements, and handling disputes—fall under the collective heading of administration and case management. Most states have a designated agency that is responsible for administration and case management. In addition, some states have independent boards that conduct hearings or hear appeals when disputes arise.

Once a workers' compensation claim is filed, an appropriate settlement must be reached. Three approaches can be used to settle a claim:

1. Direct settlement
2. Agreement settlement
3. Public hearing

The first two are used in uncontested cases; the third in contested cases.

1. *Direct settlement.* The employer or its insurance company begins making what it thinks are the prescribed payments. The insurer also sets the period over which payments will be made. This is known as a **direct settlement**. Both factors are subject to review by the designated state agency. This approach is used in Arkansas, Michigan, Mississippi, New Hampshire, Wisconsin, and the District of Columbia.
2. *Agreement settlement.* The injured employee and the employer or its insurance company work out an agreement on how much compensation will be paid and for how long. Such an agreement must be reached before compensation payments begin. Typically, the agreement is reviewed by the designated state administrative agency. In cases in which the agency disapproves of the agreement, the worker continues to collect compensation at the agreed-on rate until a new agreement can be reached. If this is not possible, the case becomes a contested case. This is known as an **agreement settlement**.
3. *Public hearing.* If an injured worker feels he or she has been inadequately compensated or unfairly treated, a hearing can be requested. Such cases are known as *contested cases*. The hearing commission reviews the facts surrounding the case and renders a judgment concerning the amount and duration of compensation. This is known as a **public hearing**. Should an employee

disagree with the decision rendered, civil action through the courts is an option.

COST ALLOCATION

Workers' compensation is a costly concept. From the outset, one of the basic principles has been cost allocation. Cost allocation is the process of spreading the cost of workers' compensation across an industry so that no individual company is overly burdened. The cost of workers' compensation includes the cost of premiums, benefits, and administration. These costs have risen steadily over the years.

When workers' compensation costs by industry are examined, there are significant differences. For example, the cost of workers' compensation for a bank is less than 0.5 percent of gross payroll. For a construction company, the percentage might be as high as 3 or 4 percent.

Cost allocation is based on the **experience rating** of the industry. In addition to being the fairest method (theoretically) of allocating costs, this approach is also supposed to give employers an incentive to initiate safety programs. Opinions vary as to the fairness and effectiveness of this approach. Arguments against it include the following:

1. Small firms do not have a sufficient number of employees to produce a reliable and accurate picture of the experience rating.
2. Firms that are too small to produce an experience rating are rated by class of industry, thereby negating the incentive figure.
3. Premium rates are more directly sensitive to experience levels in larger firms, but are less so in smaller companies.
4. To hold down experience ratings, employers may put their efforts into fighting claims rather than preventing accidents.

Not much hard research has been conducted to determine the real effects of cost allocation. Such research is badly needed to determine if the theoretical construct of workers' compensation is, in reality, valid.

PROBLEMS WITH WORKERS' COMPENSATION

There are serious problems with workers' compensation in the United States. On the one hand, there is evidence of abuse of the system. On the other hand, many injured workers who are legitimately collecting benefits suffer a substantial loss of income. Complaints about workers' compensation are common from all parties involved with the system (employers, employees, and insurance companies).

Consider the actual example of the overweight deputy sheriff who applied for benefits because he was distraught over the breakup of his extramarital love affair: a poor performance evaluation caused him stress. This individual is just one of thousands who are claiming that job stress has disabled them to the point that workers' compensation is

justified. In 1980, there were so few **stress claims** that they were not even recorded as a separate category. Today, they represent a major and costly category.

Stress claims are more burdensome than physical claims because they are typically reviewed in an adversarial environment. This leads to the involvement of expert medical witnesses and attorneys. As a result, even though the benefits awarded for stress-related injuries are typically less than those awarded for physical injuries, the cost of stress claims is often higher because of litigation.

Although the cost of workers' compensation is increasing steadily, the amount of compensation going to injured workers is often disturbingly low. In a given year, if workers' compensation payments in the United States amount to around \$27 billion (which is typical), \$17 billion of this goes to benefits. Almost \$10 billion is taken up by medical costs.¹⁸ The amount of wages paid to injured workers in most states is 66 percent. This phenomenon is not new.

Almost one-half million families each year are faced with getting by on a drastically reduced income because of a disabling injury suffered by the principal income earner. On-the-job accidents are supposed to be covered by workers' compensation and all states have compensation systems. However, the injured worker rarely receives an income that comes close to what he or she was earning before the accident.¹⁹

The most fundamental problem with workers' compensation is that it is not fulfilling its objectives: Lost income is not being adequately replaced, the number of accidents has not decreased, and the effectiveness of cost allocation is questionable. Clearly, the final chapter on workers' compensation has not yet been written.

SPOTTING WORKERS' COMPENSATION FRAUD OR ABUSE

There is evidence of waste, fraud, and abuse of the system in all states that have passed workers' compensation laws. However, the public outcry against fraudulent claims is making states much less tolerant of and much more attentive to abuse. For example, the Ohio legislature passed a statute that allows criminal charges to be brought against employees, physicians, and lawyers who give false information in a workers' compensation case. This is a positive trend. However, even these measures will not completely eliminate abuse.

For this reason, companies must know how to spot employees who are trying to abuse the system by filing fraudulent workers' compensation claims. The following are some factors that should cause employers to view claims with suspicion. However, just because one or more of these factors is present does not mean that an employee is attempting to abuse the system. Rather, these are simply factors that should raise cautionary flags.²⁰

- The person filing the claim is never home or available by telephone or has an unlisted telephone number.
- The injury in question coincides with a layoff or termination.

- The person filing the claim is active in sports.
- The person filing the claim has another job.
- The person filing the claim is in line for early retirement.
- The rehabilitation report contains evidence that the person filing the claim is maintaining an active lifestyle.
- No organic basis exists for disability. The person filing the claim appears to have made a full recovery.
- The person filing the claim receives all mail at a post office box and will not divulge a home address.
- The person filing the claim is known to have skills, such as carpentry, plumbing, or electrical skills, that could be used to work on a cash basis while feigning a disability.
- There are no witnesses to the accident in question.
- The person filing the claim has relocated out of state or out of the country.
- Demands for compensation are excessive.
- The person filing the claim has a history of filing.
- Doctor's reports are contradictory in nature.
- A soft-tissue injury is claimed to have produced a long-term disability.
- The injury in question occurred during hunting season.

If one or more of these factors is present, employers should investigate the claim carefully before proceeding. These factors can help organizations spot employees who may be trying to abuse the workers' compensation system. Legitimate users of the system are hurt, as are their employers, by abusers of the system.

FUTURE OF WORKERS' COMPENSATION

The future of workers' compensation can be summarized in one word: **reform**. The key to reforming workers' compensation is finding a way to allocate more of the cost to benefits and medical treatment and less to administration and litigation. California, which is the trendsetting state for workers' compensation, is the leader in the reform movement with its Workers' Compensation Improvement Act. Key elements of the act included the following:

- Stabilizing workers' compensation costs over the long term
- Streamlining administration of the system
- Reducing the costs associated with the resolution of medical issues
- Limiting stress-related claims
- Limiting vocational rehabilitation benefits
- Increasing benefits paid for temporary and permanent disabilities
- Reducing the amount that insurers may charge for overhead
- Providing more public input into the setting of rates

At the time the act was proposed, California's workers' compensation costs had a history of increasing at a rate of more than 11 percent per year. California paid out more in claims every year than any other state, but ranked among the lowest nationwide in benefits paid to injured workers. California's problems with workers' compensation paint a picture in microcosm of the problems facing all states.

COST-REDUCTION STRATEGIES

Construction professionals are responsible for helping their companies hold down workers' compensation costs. Of course, the best way to accomplish this goal outside of the legislation process is to maintain a safe and healthy workplace, thereby preventing the injuries that drive the costs up. This section presents numerous other strategies that have proven effective in reducing workers' compensation costs after injuries have occurred.

General Strategies

Regardless of the type of organization, there are several rules of thumb that can help reduce workers' compensation claims. These general strategies are as follows:

1. *Stay in touch with the injured employee.* Let injured employees know that they have not been forgotten and that they are not isolated. Answer all of their questions, and try to maintain their loyalty to the organization.
2. *Have a return-to-work program and use it.* The sooner an injured employee returns to work, even with a reduced workload, the lower workers' compensation costs will be. Reduced costs can, in turn, lower the organization's insurance premium. When using the return-to-work strategy, be cautious. Communicate with the employee and his or her medical treatment team. Have a clear understanding of the tasks that can be done and those that should be avoided, such as how much weight the employee can safely lift.
3. *Determine the cause of the accident.* The key to preventing future accidents and incidents is determining the cause of the accident in question. And the key to holding down workers' compensation costs is preventing accidents. Eliminating the root cause of every accident is fundamental to any cost-containment effort.

Colledge and Johnson recommend using the SPICE model for improving the effectiveness of return-to-work programs.²¹ It consists of the following components:

- Simplicity
- Proximity
- Immediacy
- Centrality
- Expectancy

Simplicity means that the medical professionals who treat injured employees should work closely with employers to prevent system-induced complications. Such complications occur when employees become convinced their injuries are more serious than they really are because of ominous-sounding diagnostic terminology and complicated tests and treatments. Medical professionals and safety personnel should work together to keep the terminology simple and to explain tests and treatments in easily understood lay terms.

Proximity means keeping the injured employee as close to the job as possible. Employees who are physically separated from their place of employment and their fellow employees also become mentally separated. Within a short time, what used to be “us” can become “them.” Giving as much injury care as possible at the work site, providing light-duty assignments, and communicating regularly with employees whose injuries preclude onsite assignments or treatment keeps employees connected and maintains the advantages of proximity.

Immediacy means that the faster an employee’s injury claims can be handled, the less likely he or she is to develop psychosocial issues that can complicate the recovery process. The longer it takes to process a claim, conduct a diagnosis, and begin treatments, the more likely the employee is going to begin to worry about the injury and to become accustomed to being off from work. Immediate diagnosis, processing, and treatment can decrease the amount of time that elapses before the employee can begin a return-to-work program.

Centrality means getting the employee, his or her family, the medical professionals handling the case, insurance personnel, and the employer to agree on a common vision for successfully returning the injured party to work as soon as possible. Injured employees and their families must know that everyone involved has the same goal and is working in good faith to achieve that goal.

Expectancy means creating the expectation that getting the employee well and back to work is the goal of all parties involved. It is achieved by communicating this message clearly to all parties and reinforcing it by establishing short-term goals and timelines for actually being back on

the job. Achievement of each respective short-term goal should move the employee one step closer to recovery and return to work.

Specific Strategies

In addition to the general strategies just presented, there are numerous specific cost-containment strategies that have proven to be effective. These specific strategies are presented in this section.

1. *Cultivate job satisfaction.* According to Jon Gice, increasing job satisfaction is just as important as eliminating physical hazards in the workplace. High stress, aggression, alienation, and social maladjustment—all factors associated with and aggravated by a lack of job satisfaction—can make employees less attentive while working. An inattentive employee is an accident waiting to happen. Gice recommends the following strategies for improving job satisfaction:
 - Recognize and reward employees.
 - Communicate frequently and openly with employees about job-related problems.
 - Give employees as much control over their work as possible.
 - Encourage employees to talk freely among themselves.
 - Practice conflict management.
 - Provide adequate staffing and expense budgets.
 - Encourage employees to use employee assistance programs.²²
2. *Make safety part of the culture.* The following steps can be useful for making safety part of the organizational culture and reducing workers’ compensation costs:
 - Ensure the visible, active leadership; involvement; and commitment of senior management.
 - Involve employees at all levels in the safety program, and recognize them for their efforts.
 - Provide comprehensive medical care, part of which is a return-to-work program.

SAFETY FACTS & FINES

It pays to follow safety regulations at all times. You never know when someone might be watching. A construction company in Lithia, Florida, found this out the hard way when an OSHA inspector just happened to be driving by a job site and noticed a safety violation. The inspector stopped and looked things over. By the time he was done, the construction company had been cited for numerous violations that eventually led to a fine of \$229,250. The violations cited were as follows:

- Unstable scaffolding that lacked cross-bracing
- Using loose masonry blocks stacked up to reach scaffolding
- No guardrails on scaffolds
- Workers were exposed to impalement hazards
- No fall protection provided

- Ensure effective communication throughout the organization.
 - Coordinate all safety and health processes.
 - Provide orientation and training for all employees.
 - Have written safety practices and procedures, and distribute them to all employees.
 - Have a comprehensive written safety policy.
 - Keep comprehensive safety records, and analyze the data contained in those records.
3. *Have a systematic cost-reduction program.* To reduce costs, an organization should have a systematic program that can be applied continually and consistently. The following strategies are recommended:
- Insert safety notes and reminders in employee's paycheck envelopes.
 - Call injured employees at home to reassure them that they will have a job when they return.
 - Keep supervisors trained on all applicable safety and health issues, procedures, and rules.
 - Hold monthly meetings to review safety procedures, strategies, and techniques.
 - Reward employees who give suggestions for making the workplace safer.
 - Make safety part of every employee's job description and performance appraisal.
4. *Use integrated managed care.* Managed care is credited by many with reducing workers' compensation costs nationwide. Others claim that cost reduction has occurred because managed care dangerously restricts the types and amount of health care provided to injured employees.

OTHER KINDS OF CONSTRUCTION INSURANCE

Workers' compensation is critical for contractors and builders, but there are other kinds of insurance that also

Summary

Workers' compensation was developed to allow injured employees to be compensated without the need for litigation. It has four main objectives: income replacement, rehabilitation, accident prevention, and cost allocation.

Before the enactment of workers' compensation laws, the employee's only recourse when injured was through the courts, and the prevailing laws favored employers. Early workers' compensation laws were ruled unconstitutional. The constitutional debate continued until 1917, when the U.S. Supreme Court ruled that workers' compensation laws were acceptable.

All 50 states have workers' compensation laws, but they vary markedly. All laws are enacted to provide benefits, pay medical costs, provide for rehabilitation when necessary, decrease litigation, and encourage accident prevention. There

apply. These other kinds of construction-related insurance include the following:

- *Health insurance* for employees to cover all or a portion of their normal medical bills (should the employer opt to provide it)
- *Life insurance* for employees (should the builder opt to provide it)
- *Disability insurance* to cover the overhead costs of builders in the event they are unable to work
- *Crime insurance* to protect against the risk of theft, vandalism, and other crimes at the job site or to the builder's facilities and property
- *Stop loss insurance* to cover the costs of losses that exceed normal policy limits
- *Builder's risk insurance* to protect against the risks of physical loss or damage on the job site during construction

There are also several different types of policies that protect against the specific types of risk associated with building projects in foreign countries, including terrorist, kidnapping, and political risk insurance policies. Of these various kinds of insurance, the most pertinent to builders is builder's risk insurance.

Builder's Risk Insurance

Much can go wrong during a construction project. Fire, hurricanes, tornados, floods, theft, vandalism, lightning, and even sabotage are just a few of the possible threats faced by those who undertake building projects. Builder's risk insurance is purchased to mitigate the potential financial losses of such risks. It may be purchased by the owner of the building being constructed or the builder depending on the conditions set forth in the construction contract. For this reason, it is important for builders to ensure that there is builder's risk insurance on their projects and to know who is going to purchase it.

are three types of workers' compensation insurance: state funds, private insurers, and self-insurance. Six methods are used for determining insurance premium rates for employers: schedule rating, manual rating, experience rating, retrospective rating, premium discounting, and a combination of these.

Although an often-stated objective of workers' compensation is the reduction of costly litigation, many cases still go to court. This is particularly true of stress-related cases.

Workers' compensation applies when an injury can be categorized as arising out of employment (AOE) or occurring in the course of employment (COE).

The definition of an employee can vary from state to state. However, a key concept in distinguishing between an employee and an independent contractor is direction (supervision). Employees are provided direction by the employer; contractors are not.

Injuries that are compensable through workers' compensation fall into one of four categories: (1) temporary partial disability, (2) temporary total disability, (3) permanent partial disability, and (4) permanent total disability.

Three theoretical approaches to handling permanent partial disability cases are (1) the whole-person theory, (2) the wage-loss theory, and (3) the loss of wage-earning capacity theory.

Workers' compensation benefits accrue to families and dependents of workers who are fatally injured. Typically, the spouse receives benefits for life or until remarriage. Dependents typically receive benefits until they reach the legal age of maturity.

All workers' compensation laws provide for payment of medical expenses within specified time periods, but there are differences concerning how a physician may be selected. The options are (1) employee selects physician of choice; (2) employee selects physician from a list provided by the state agency; (3) employee selects physician from a list provided by the employer; (4) employer selects the physician; (5) employer selects the physician, but the selection may be changed by the state agency; or (6) employer selects the physician, but after a specified period of time the employee may choose another.

Workers' compensation claims can be settled in one of three ways. The first two are for uncontested claims; the third is for contested ones. The approaches are (1) direct settlement, (2) agreement settlement, or (3) public hearing.

The definition of a serious injury can vary from state to state. However, as a rule an injury is serious if it requires more than 24 hours of active medical treatment. This does not include passive treatment such as observation. The goals of medical management of workplace injuries are to (1) speed up the processing of claims, (2) reduce costs, (3) reduce fraud and abuse, and (4) improve medical treatment.

Cost allocation is the process of attempting to spread the cost of workers' compensation across an industry so that no individual company is overly burdened. The cost of workers' compensation includes the cost of premiums, benefits, and administration. Cost-reduction strategies include staying in touch with injured employees and determining the causes of accidents.

The problems being experienced with workers' compensation can be summarized as follows: Workers' compensation is not achieving its intended objectives. It has not succeeded in taking litigation out of the process. The cost of the system rises steadily, but the benefits to injured workers have decreased in real terms. There is substantial evidence of abuse. Therefore, the future of workers' compensation can be summarized in one word: reform.

Key Terms and Concepts

Accident prevention	Blackball
Agreement settlement	Claim notice
Arises out of employment (AOE)	Course of employment (COE)
Assumption of risk	Contributory negligence

Cost allocation	Premium discounting
Direct settlement	Private insurance
Employee	Public hearing
Experience rating	Reform
Extraterritorial employees	Rehabilitation
Fear factor	Retrospective rating
Income replacement	Schedule disabilities
Independent contractor	Schedule rating
Litigation	Self-insurance
Loss of wage-earning capacity theory	State funds
Malpractice	Stress claims
Manual rating	Temporary partial disability
Medical management of workplace injuries	Temporary total disability
Medical rehabilitation	Vocational rehabilitation
Monetary benefits	Wage-loss theory
Occupational disease	Whole-person theory
Permanent partial disability	Harmful environment
Permanent total disability	Workers' compensation
	Workplace accident

Review Questions

1. Explain the underlying rationale of workers' compensation as a concept.
2. List four objectives of workers' compensation.
3. List five types of employees who may not be covered by workers' compensation.
4. What is meant by the term *contributory negligence*?
5. What is meant by the term *assumption of risk*?
6. Explain the reasons for the unprecedented increases in medical costs in the United States.
7. What are the three types of workers' compensation insurance?
8. Insurance companies use one of six methods for determining the premium rates of employers. Select three and explain them.
9. How can one determine if an injury should be considered serious?
10. Explain the concepts of AOE and COE.
11. Distinguish between an employee and an independent contractor.
12. Define the following terms: *temporary disability* and *permanent disability*.
13. Explain the following theories of handling permanent partial disability cases: *whole-person*, *wage-loss*, and *loss of wage-earning capacity*.
14. Distinguish between medical and vocational rehabilitation.
15. What are the three approaches for settling workers' compensation claims?
16. Explain the concept of medical management of workplace injuries.
17. Explain the theory of cost allocation.