

Workers' Compensation Update: 2017 in review and what's on the horizon?

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Debra Parker, COSS

**Risk and Safety Consultant
Director of Marketing
Aspen Risk Management
Group**

Kent Ball, Esq.

**Attorney At Law
Laughlin, Falbo, Levy &
Moresi LLP -Oakland**



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Agenda & Objectives

- **Workers' Compensation – Updates**
 - “Legalized” drugs in the workplace
 - OSHA updates
 - Returning injured workers to employment
- **Workers' Compensation Fraud:**
 - Types of Fraud
 - Fraud Red Flags
 - What can you do to deter and prevent fraud?
 - What's new on the horizon



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Polling Question

Did you attend our past Workers' Comp update webinars?

- Yes
- No



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Polling Question

- In the past year, how many workers' compensation cases have you helped manage?
 - 0-3
 - 4-10
 - 10 or more



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Polling Question

- What type of business are you in?
 - Hospitality
 - Construction
 - Manufacturing
 - Wholesale/Retail
 - Other



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Trends and Updates

- Current state of the WC System (brief)
- Drugs in the workplace (isn't marijuana now "legal"?)
- OSHA/CalOSHA – Hotel Industry (housekeeper MSD's)
- **Return to work programs
(our main focus for today)**



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Premiums paid for WC

Private Carriers

Line of Business	2015 (\$B)	2016p (\$B)	% Change From 2015
Personal Auto	192.8	207.3	7.5
Homeowners	79.4	80.6	1.5
Other Liability (Incl Prod Liab)	49.3	47.9	-2.8
Workers Compensation	39.7	40.1	1.0
Commercial Multiple Peril	34.7	33.8	-2.6
Fire & Allied Lines (Incl EQ)	26.2	26.3	0.4
Commercial Auto	27.6	28.2	2.2
All Other Lines	64.7	63.7	-1.5
Total P/C Industry	514.3	527.8	2.6

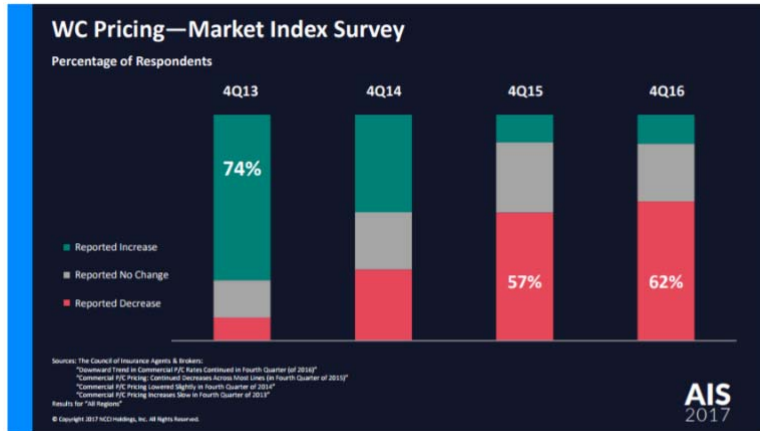
p Preliminary
Source: National Association of Insurance Commissioners' (NAIC) Annual Statement data for individual carriers prior to consolidation of affiliated carriers; includes carrier data available as of 4/7/2017
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AIS
2017



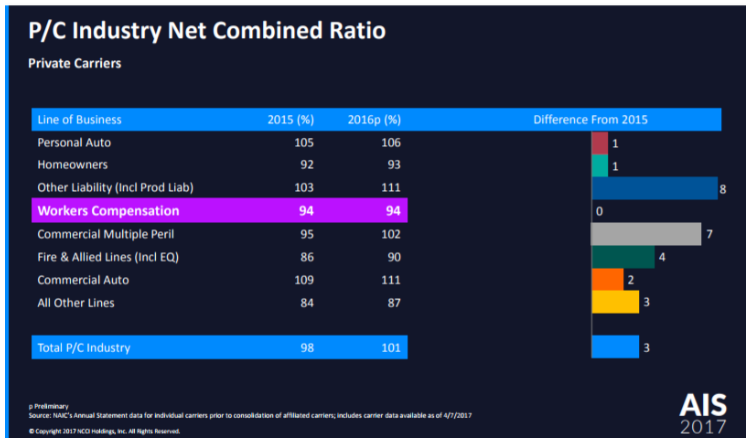
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Have your premiums gone up or down?



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Profitability



2010	2011	2012	2013	2014	2015	2016p
102	108	103	96	97	98	101



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Polling Question

- Do you have a written drug and alcohol free workplace policy at your company?
- (yes/no/don't know)



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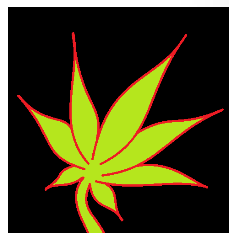
Drugs in the Workplace

New Laws – State vs. Fed

OSHA –injury reporting and drug testing

Sobering Facts:

- We are abusing drugs at a younger age
- In 2011 drugs were the leading cause of accidental death with 150 people dying daily
- Prescription Drug use has increased 500% in the last five years
- People from all walks of life are affected



Resource:

<https://www.dir.ca.gov/dwc/educonf24/Medical-Marijuana/Medical-Marijuana.pdf>



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Since presence <> impairment, how
should employers handle medical
use in hiring, firing, RTW, drug-free
worksites and other workplace
restrictions?



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Medical use ok?

PROHIBIT USE IN OUR WORKPLACE?



Yes!

Marijuana is illegal on a federal level.

State laws do not require employers
to accommodate the medical use of
marijuana in the workplace.



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Implications – Work Comp Payers

California Health and Safety Code §11362.785(d):

(d) Nothing in this article shall require a governmental, private, or any other health insurance provider or health care service plan to be liable for any claim for reimbursement for the medical use of marijuana.



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Implications – Drug Testing

- **Pre-employment testing?**

- Workplace safety implications?
- Empty seats?
- Liability?

George W. Goodman, Esq.
9/22/16 NWCDN
conference in Chicago IL

- **Post-accident testing?**

- Per OSHA effective December 1, blanket post-accident drug and alcohol testing is prohibited (deters proper reporting of injuries)
- Employer options:
 - Abolish for cause drug testing.
 - OR-
 - Test when there is reasonable concern that impairment may have contributed to an incident.
 - Test for all violations of workplace safety rules.
 - Test pursuant to any state or federal law, or internal zero tolerance policy, which mandates testing.
 - Test pursuant to any state workers' compensation law which would be "affected" by OSHA's interpretation



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THE DECISION-MAKING PROCESS

Decide if the employee may have caused or contributed to the accident



The accident included at least one of the following

01

A fatality of any party

02

Bodily injury of any party requiring medical care away from the scene

03

Any damage to company property . . . or vehicle in excess of \$\$\$



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SIX PROGRAM OBJECTIVES



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Polling Question

Do you have a return to work program in your company?

- (yes/no/I don't know)



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Polling Question

What do you think the most frequent type of injury in the work place is?

- Arms, Hands and Shoulders ("upper extremities")
- Feet, Legs and Pelvis ("lower extremities")
- Back and Neck



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TOP 3 MOST COMMON



40%
arms, hands
and shoulders²



27%
feet, legs and
pelvis³



20%
neck/back

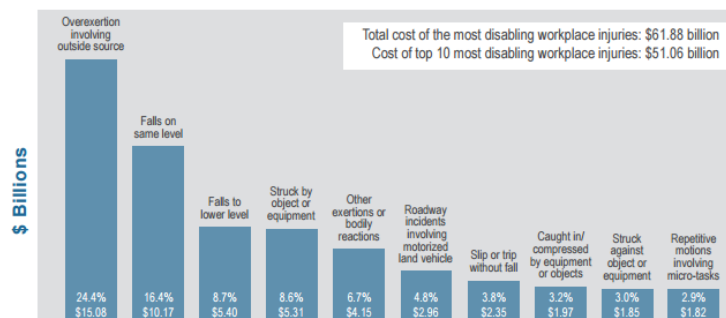


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Causes

Workplace

Top 10 Causes and Direct Costs of the Most Disabling U.S. Workplace Injuries^{1,2}



2016 Liberty Mutual Workplace Safety Index (based on 2013 injury data)



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Hotel Housekeepers and OSHA

- More likely to suffer a muscular/skeletal injury (“MSD”)
- Repetitive motions
- Aging population



New standard (CalOSHA) approved 1-18-18:

- **§3345. Hotel Housekeeping Musculoskeletal Injury Prevention**
 - Requires employers to develop a **written** MSD prevention plan:
 - Train workers on MSD's and prevention of injury
 - Perform Hazard Evaluations
 - Provide effective tools to help minimize injuries
 - Seek employee input on solutions to injury prevention
 - Recordkeeping



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THE BEST
DEFENSE
IS A GOOD
OFFENSE.



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What to do?

- Conduct regular self-inspection safety audits to identify and eliminate hazardous conditions.
- Good housekeeping-keep the floor clear of any materials that could cause a worker to trip.
- Provide employees with adequate personal protective equipment – and enforce it's use!
- Properly train all employees and train often; newer employees are the most vulnerable to an accident, and seasoned employees can always use a refresher course.
- Recycle, Rinse, Repeat!



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When someone gets injured despite your preventive measures



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Managing the injury

- Reporting (employee, supervisor, medical facility and insurance company)
- Seeking Medical Care - Use of MPN's
- Post injury communication
 - What about returning to work?
 - How soon?
 - Willing or not willing?
 - Same job, same pay?



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Returning the injured worker

Research supports that returning employees to work through transitional duty not only provides cost containment, but it can also help reduce the incidence of depression, improve worker morale, and promote physical well-being.



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Who, what when and where?

- Who manages the program?
- What is the program?
- When and how do you apply it?
- Where do the injured employees go for assistance?



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Polling Question

- How many of you are actively engaged in the return to work management of injured employees?
 - That is a large part of my job – I’m an “expert” at it
 - I occasionally must do this
 - It has been delegated to me but I’m unsure of what to do
 - I never have to coordinate this function



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6 Best Practice Steps

1. Contact the injured employee and start the interactive process (describe essential vs. non essential functions and get employee feedback on actual activities, frequencies, hours)
2. Describe essential functions and usual duties of jobs and communicate in writing to physician
3. Obtain work capacities and restrictions from physician (in writing)
4. Research and evaluate possible accommodations (include the employee in the decision)
5. Select a reasonable accommodation and make an offer for work to employee
6. Implement and monitor the accommodation



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Return to work

1. Same job/same employer
2. Similar job/same employer;
3. Different job/same employer;
4. Same job/different employer
5. Similar job/different employer; and
6. Different job/different employer.



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Essential Functions

“Essential functions” are the fundamental purposes of a job. An employer is not required to remove an essential function of a job to accommodate an employee with a disability. A function may be considered essential because of one or more of the following factors:

- The job exists to perform that function, and removing the function would fundamentally change the job.
- There are a limited number of employees among whom the function can be distributed.
- The function is highly specialized, and the person in that job is hired for his or her expertise or ability to perform it.



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Examples of reasonable accommodations:

- Limiting tasks to those that are safe for the employee (“job restructuring”)
- Making changes in the way duties are performed
- Physically adjusting the work station based on an ergonomic evaluation
- Providing new equipment and training on how to use it
- Establishing a part-time work schedule
- Allowing time off for medical appointments or medically necessary time off for a longer period while recovering



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Examples of inappropriate policies:

- Always terminating an employee if he or she is unable to return to full duty after a specific, fixed period
- Never considering modified or alternative work outside an employee's area, unit, or program
- Requiring that injured employees be released to full duty without restrictions or be healed 100 percent before returning
- Not considering time off except under fixed, pre-determined circumstances
- Delaying discussion of job accommodations until the employee's condition is permanent and stationary
- Refusing to purchase new equipment to accommodate the employee unless approved by the workers' compensation insurer



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Select a reasonable accommodation and make an offer of work

You must consider accommodating the employee in the following order, unless you and the employee agree otherwise:

- Provide accommodations that would enable the employee to stay in his or her original job.
- Reassign the employee to an equivalent vacant position in a job the employee is qualified to perform, and provide reasonable accommodations as needed
- Reassign the employee to a lower-graded vacant position in a job the employee is qualified to perform, and provide reasonable accommodations as needed.
- Temporarily assign tasks that the employee is able to perform while recovering



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Should you have a Return to Work Program?

It offers employers several direct benefits:

- Return to Work programs can significantly reduce temporary disability (TD) payments.
- By bringing people back to work, Return to Work programs increase productivity.
- Return to Work programs can greatly reduce claims costs.
- Return to Work programs return a large measure of control to the employer.
- Return to Work programs promote better morale and retention of valuable trained employees.
- Injured employees experience faster recoveries when back at work.
- Return to Work programs discourage fraudulent claims.



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RESOURCES:

CWCI Study on “legalized marijuana” and workers comp

<http://www.cwci.org/document.php?file=3090.pdf>

Workers comp and disability rights law guidance (CA):

https://www.dir.ca.gov/chswc/Reports/2010/HandbookRTW_2010.pdf

Job Essential functions (select occupations):

www.online.onetcenter.org

How to Develop a Return to Work Program (State Fund):

<https://content.statefundca.com/pdf/e13490.pdf>

Work placement service – temporary placement jobs with non-profits “Transition2Work”:

<https://www.reemployability.com/>



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Workers' Compensation Fraud



Kent H. Ball, Attorney At Law
Laughlin, Falbo, Levy & Moresi LLP



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Polling Question

I can recognize workers' compensation fraud:

- a. Always, its easy
- b. Sometimes, if I wanted to
- c. Hardly ever, it's confusing to me
- d. What's the question again?



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Polling Question

Have you ever contacted your workers' compensation claims office about suspected fraud?

- a. I have, but nothing came of it
- b. I have and the claim was closed
- c. No, because no one ever contacted me
- d. No need, hey we run a clean operation here



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Polling Question

Have any of your employees been arrested for criminal workers' compensation fraud?

- a. Yes, but he/she got off on a technicality
- b. Yes, and still doing hard time in the big house
- c. Not that I'm aware of



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Workers' Compensation Fraud Defined

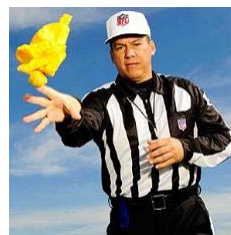
- Knowingly make a false or fraudulent claim
- Knowingly make a material false statement to obtain or deny workers' compensation benefits
- Knowingly aiding or abetting conspiracy to commit fraud



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Workers' Compensation Fraud Penalties

- Misdemeanor or felony
- Potential incarceration
- Monetary fines
- Restitution



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Workers' Compensation Fraud Enticing to the Criminal Element



- No-fault system
No need to prove negligence
- Provides medical treatment for otherwise uninsured
- Provides partial wage replacement during recovery
- Provides cash award for permanent impairment
- Exaggeration or fabrication of injury easy



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Workers' Compensation Fraud White Collar Crime

- Doctors and lawyers entice, pay and conspire
 - Create false or exaggerated claims
 - Over treatment
 - Over prescribing dangerous, addictive drugs



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Workers' Compensation Fraud

What is being done?

1991 legislation to combat fraud

- Carriers mandated to report suspected fraud
- Special Investigation Unit (SIU)
- Assessment fund to investigate and prosecute fraud
\$49 mil fiscal year 2012-2014



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SB 1160 Mendoza

Workers' Compensation



New Labor Code 4615

(a) Any Lien filed by or on behalf of a physician or provider of medical treatment services under Section 4600 or medical-legal services under Section 4621, and any accrual of interest related to the lien, *shall be automatically stayed upon the filing of criminal charges against that physician or provider for an offense involving fraud* against the workers compensation system, medical billing fraud, insurance fraud, or fraud against the Medicare or Medi-Cal programs. The stay shall be in effect from the time of the filing of the charges until the disposition of the criminal proceedings. The administrative Director may promulgate rules for the implementation of this section.

(b) The administrative director shall promptly post on the divisions Internet Web site, the names of any physician or provider of medical treatment services whose liens were stayed pursuant to this section.



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Workers' Compensation Fraud Red Flags

- **Monday morning injuries**
- **Employment change**
 - Anticipated termination
 - Voluntary or involuntary
 - Work assignment soon to end
 - Seasonal work
 - Farm laborers
 - Holiday workers



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Workers' Compensation Fraud Red Flags

Medical providers

Attorneys

Advertisements
Out of area attorney

Same vendors for multiple claimants
with same employer



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Workers' Compensation Fraud Red Flags



Unwitnessed accident

Inconsistent mechanics of injury

Claimant's statement vs. what medical providers indicate
Different versions

Repeat offenders

Claimants with multiple litigated claims
Same or prior employers
Apportionment



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Workers' Compensation Fraud Red Flags



Refusal of treatment or diagnostic study

Not injection therapy, rather \$ therapy

Late reporting of injury

Claimant difficult to reach

Unavailable by phone
Missed appointments for investigative statement or medical



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Workers' Compensation Fraud Premium Fraud

- **Underreporting payroll**
 - Independent Contractors
 - Sub-Contractors
 - Off-the-books
- **Misclassification of employees**
 - Construction workers as clerical
 - Work above certain heights
 - Work outside including travel
- **Experience modification evasion**
 - Business closes and reopens



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Workers' Compensation Fraud Prevention

- **Fraud cost employer's money**
 - Affects profits
 - Affects wages
 - Affects jobs
- **Workers must report suspected fraud**
 - Show employees how to anonymously report fraud



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Workers' Compensation Fraud Prevention



- Teamwork around worker safety
- Employer to create zero tolerance for fraud
- Thoroughly perform background checks of job applicants
- Report suspected fraud to insurance carrier



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Discussion and Questions

Thank You!

Debra Parker, COSS
Risk and Safety Consultant
Director of Marketing
Aspen Risk Management Group

dparker@aspenrmg.com
www.aspenrmg.com
www.ergohealthy.com

Kent H. Ball
Attorney At Law
Laughlin, Falbo, Levy &
Moresi LLP – Oakland
(510) 628-0496

kball@lflm.com
www.lflm.com



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