



**WORKERS' COMP
TRAINING CENTER**

WC Foundations

Introduction:

- Welcome to WC Newcomers: Nuts & Bolts
 - WC Industry is a tremendous place to be
- Introduce 3 Major Sections
 - Lay of the Land
 - Foundational Concepts
 - Foundational Techniques

1.1 What is Workers' Comp?

- What is Workers' Comp
 - The Grand Bargain - A Compromise
 - Employee Side
 - Early 1900s, railroads, mining
 - Only way to get compensated was to prove employer negligence & bring lawsuit
 - Expensive and difficult
 - A lot of lawsuits brought, not winning many, felt unfair
 - Employer Side
 - Awards were unpredictable, could put employer out of business
 - Attorney fees and court costs to defend
 - System wasn't working, needed a solution
 - Compromise to Win-Win arrangement
 - Employee side
 - Gave up ability to sue for negligence, "exclusive remedy"
 - Received Indemnity, Medical, and other Benefits
 - No Fault system
 - Employer side
 - Received exclusive remedy
 - Ability to budget for work comp expenses



- Other Work Comp Benefits
 - Vocational Rehab
 - Job training for those that can't return to regular job
 - Laws vary by state
 - Permanency Rating
 - Cash award for loss of permanent use of a body part, limb or organ
 - Amounts vary by state
 - Death benefit
 - Award to spouse of family

1.2: 50 States and 50 State Laws

- **Very Brief History**
 - 1908 President Taft Created US Federal Employers Liability Act
 - Designed to protect railroad workers interstate commerce
 - 1911 Wisconsin
 - 1920 42 States
 - 1948 Mississippi
 - First social insurance, political conversation
 - Driver of conversation was 'value of human capital'
 - 1972 Commission; 2016 National Conversation
- **50 Different States**
 - 45 – “Standard”
 - 4 – Monopolistic
 - Ohio, Wyoming, Washington, North Dakota
 - 1 – Texas
 - Opt-In State
- **Key Laws To Know In Your State**
 - US Chamber of Commerce - Analysis of Workers Comp Laws
 - 3 Laws to Know:
 - Employer or Employee Directed
 - Calculating the Income Benefit
 - % of wages
 - Exp 66 2/3
 - Maximum



- Exp. \$1000
- Minimum
 - Exp. \$200
- Waiting Period
 - Waiting Period
 - Exp. 3-7 days
 - Retro period
 - Exp. 14 days

1.3 The Parties Involved

- Primary Players
 - Employer:
 - “The Insured”
 - “The Risk”
 - Employee:
 - **Person, Not A Claim Number**
 - Insurance Carrier
 - “The Insurer”
 - “Carrier”
 - “Underwriter”
 - TPA:
 - Third Party Administrator
- Carrying the Risk & the Claims Handling Function
 - Grand bargain – ability to budget and transfer risk
 - Transfer risk to insurance carrier, pay premium
 - Claims Handling Function
 - TPA
 - Not insured or insurer, just administer the claims
 - Carrier In House



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- **Brokers**
 - Place the risk
 - Insurance contracts, policies, terms, coverage, etc.
 - Additional services
 - Risk management
 - Loss control
- **Medical Providers**
 - Doctors, Nurses
 - Clinics, hospitals, Ambulatory Service Center
 - Medical networks, etc.
- **Attorneys**
 - Defense attorney
 - Plaintiff attorney
- **Vendors**
 - Settlement
 - Structured settlement
 - MSA
 - Professional Administrators
 - Transportation
 - Investigation
 - Case Management
 - Specialty Networks
 - Triage Providers
 - Functional Capacity Testing
- **State Board & Legislators**
 - Create and administer WC laws in each state
- **Party With Most Control Over WC Costs**
 - Employer
 - Look in the mirror



1.4 Who, What, Where, and How

- **Who pays for workers compensation insurance?**
 - Employer
 - Not a state-run program
 - All vendors, medical providers, etc, are paid by employer
 - Claims handlers, carriers, in business to make a profit
 - Varies by structure
 - Self-Insured
 - High Deductible
 - Guaranteed Cost
- **What is covered by workers compensation insurance?**
 - Employee Injuries Are Covered
 - Physical
 - Carpal tunnel
 - Tendinitis
 - Repetitive
 - Carpal tunnel
 - Tendinitis
 - Occupational
 - Asbestosis
 - Hearing Loss
 - Asthma
 - Mental Injuries
 - Strictly mental generally not compensable
 - Emerging area in work comp
 - In Course & Scope (will cover more detail shortly)
 - Covered as they are hired
 - If come in as a Ford, leave as a Ford, not a Ferrari
 - Big point of opportunity for employers



- **What is not covered by workers' comp insurance?**
 - Just because injury happens at work, does not mean it's work related
 - Items to consider: Horseplay, intoxication, refusing safety (states vary)
 - The extent and seriousness of the deviation;
 - The completeness of the deviation, i.e., whether it was commingled with the performance of a duty or involved an abandonment of duty;
 - The extent to which the practice of horseplay had become an accepted part of the employment; and
 - The extent to which the nature of the employment may be expected to include some horseplay.
- **Is workers' compensation taxable?**
 - No, indemnity payments are tax free
 - Settlements are tax free
 - Interest and dividends are taxed on lump-sum
 - Structured settlement periodic payments are tax free
- **Types of Indemnity Payments**
 - Temporary
 - Total Disability (TTD)
 - Most common
 - Partial Disability (TPD)
 - Part time or a reduced rate of pay, make up the difference
 - Permanent
 - Total Disability (PTD)
 - Paid set number of weeks or life
 - Partial Disability (PPD)
 - Paid to compensate for loss of future earning capacity
- **How Losses are Categorized**
 - Incident Report
 - Medical Only
 - Enhanced Medical
 - \$1500+
 - Lost Time
 - Other than Medical Only



- Including lost time
- Claims requiring investigation
- Occupational disease
- Catastrophic
- **How many cases are fraudulent?**
 - 1-2% pure fraud
 - Up to 39% malingering
 - extend time out of work exaggerating injury

2.1 How Premiums Are Calculated

- Payroll x Rate x Exp Mod x Adjustments = Premium
 - Adjustments: schedule credits/debits, premium discounts, other credits drug-free, etc.; or deductible discount
 - Expectation of losses
- Actual vs Expected based on loss history
- Injury management focuses on Losses, Adjustments, & Impact on Exp Mod

2.2 Compensability

- Compensability
 - Knowing what is and is not a claim is very important
 - An Injury or an Illness, must arise out of and be in the course and scope of employment
- Two Elements:
 - Arise Out Of
 - **Benefit to Employer.** Causal relationship between the benefit to the employer's business and the injury
 - **Increased Risk.** Typically the act of employment increases the risk of injury to the employee.
 - Example:
 - Grazed by a stray bullet



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- Auto mechanic vs Gun Range worker
 - Does mechanic working outside have an increased risk to be hit by stray bullet
 - Course and Scope
 - Timing and Location of the injury
 - When and Where did injury occur
 - Example:
 - Send Employee to Staples to get toner & gets in car accident
 - Vs. Employee runs to Staples during lunch hour for daughters school project
 - Tests:
 - Outside of normal work activities
 - Did it benefit the employer?
 - Increased risk of injury?
- Early investigation is key:
 - Document facts of the case immediately
 - Documents don't forget, people's stories often change
- Coming and Going Rule & Traveling Employees
 - Coming and Going Rule:
 - Typically not compensable commuting to and from work
 - Commuting between job sites is compensable
 - Once enter parking lot consider on company grounds
 - Travelling employees rule
 - Portal to Portal coverage
 - Injury on commute home from airport would likely be compensable
- Investigation and documentation of facts are KEY!



2.3 Investigation – Making Good Decisions From Good Information

- Pay 100% of claims you should and 0% of Claims shouldn't
 - Good decisions made with good information
 - Need system to consistently & appropriately document correct information
 - It is hard to overstate the importance
 - difference between getting a claim right and missing it
 - difference between a high integrity program and just guessing on a claim
 - lower workers' comp costs AND better injured worker outcomes
 - how you would want your spouse, or your best friend to be treated in a workers' compensation claim.
 - Save thousands, if not hundreds of thousands of dollars
 - Be a good person, act with integrity
- Preserve/Document the scene
 - Video
 - Photos
 - Surveillance footage
- Forms
 - Employee
 - Employer
 - Witnesses
 - Open-ended questions or check boxes
 - First Report of Injury (jump to computer)
- Required to Get Back to Baseline
 - Establish baseline prior to hire
 - Physical testing to establish
- Aggravation vs. Exacerbation
 - Worsening of a medical condition
 - Know when to ask for help from medical professional or claims handling team
 - Know where to find
 - AP & ET
 - Permanent and Temporary
 - Both are new claims, but where does the treatment stop?



- Medical records search

3.1 Read a Loss Run – 2:40 pm

- Reading a Loss Run
 - Want to be able to quickly get a feel for how WC is Going
- How to Get A Copy
 - Broker can request copy from carrier / TPA
 - Employer can request directly
 - Length depends on number of claims
- Loss run components:
 - Claim number
 - Claimant name
 - Loss Date
 - Carrier Report Date
 - Indemnity
 - Medical
 - Expense
 - Reserve
 - Paid
 - Recovery
 - Injury
 - Status
 - Body Part
 - Description
- Steps to Reading:
 - Compare your Loss Date to Carrier Report Date.
 - All claims should be reported within 24 hours.
 - Verify claims look accurate:
 - If you see a listing for a claim that doesn't look familiar, verify that it is your claim. Every loss run is based on data input into the computer and mistakes do happen.
 - Review your open claims for any that should be closed.



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- By having the claims office close claims that should already be closed, you eliminate unpaid reserves and reduce the total cost used in your experience modification factor.
- Ask yourself for each file, “is the reserve accurate?”
 - Surgery may have turned out better than expected, and the reserves should reflect this improvement. A word of caution, however. Badgering your adjuster on every file is not productive.
- Subrogation is often overlooked.
 - Anytime a third party is responsible for the injury; the adjuster should pursue recovery. Make sure you are getting credit for the subrogation recoveries.

3.2 Impact of Late Claims Reporting

- Lag time is the enemy of workers' compensation
 - The quicker a claim is reported, the better chance of success
- Hartford Financial Services Study, Year 2000; 53,000 claims
 - Cost compared to reporting in Week 1
 - Week 2: 18% higher
 - Week 3: 29% higher
 - Week 4: 31% higher
 - Week 5: 45% higher
- Kemper Insurance
 - Litigation Rate
 - 0-10: 22%
 - 11-20: 29%
 - 21-30: 34%
 - 31+: 47%



3.3 Mistakes, Obstacles, & Predictors of Outcomes

- **Impact of Communication on outcomes and return-to-work.**
 - Liberty Mutual Research Institute for Safety - 2012
 - Results: - Immediate reporting w/ triage; Positive vs. Negative Response
 - Average claim costs \$6,619 to \$3,913 – 40%
 - Average duration 33.5 days to 14.1 days – 58%
 - Key negative responses that drive outcomes:
 - Not supportive
 - Blame
 - Anger
 - Question
 - Encourage not file

- **WCRI: Avoiding Litigation; What Can Employers, Insurers, & State Agencies Do?**
 - Fear of Being Fired:
 - 2-3x more likely to hire attorney
 - Question Legitimacy of Claim;
 - 8-18% more likely
 - Thought Claim Was Denied;
 - 2-3x more likely

 - Employer not taking control/Lack of Management Commitment/Reactive approach
 - Employer not taking control
 - “No work until seen by this office”
 - Lack of Management Commitment
 - Financial
 - Emotional
 - Reactive approach
 - Want clear goal and structure/plan to achieve

 - Direct vs Indirect Costs
 - Direct: Indemnity, Medical, & Expenses
 - Indirect: OSHA – 2-10x direct costs;



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- Lost productivity
- Replacement labor
- Equipment damage
- Reduce moral, increased paperwork
- OSHA penalties
- OSHA Safety Pays Calculator
 - 0-3k: 4.5x
 - 3k – 5k: 1.6x
 - 5k-9k: 1.2x
 - 10k+: 1.1x
- Staffing
 - 500 claims, \$10m in WC Costs
 - 1 person in charge
 - 16-20 people staffed in mailroom
- Policy Disincentives
 - Airline
 - 96% OOW 7+ days
 - Optional and full salary
 - Mandatory
 - 4% OOW 7+ days
- Attorney involvement
 - Goldilocks: not too few, not too many
- Confrontational Environment/Lack of Trust/Poor Culture
 - Encouraging not to file
 - Punishing employees who file claims
 - Negative environment for injured employees
- Poor or Zero Communication
 - Don't hear from anyone
- Poor Hiring & Placement
 - New employees and RTW
 - Physical testing
- Choosing provider solely on price
 - TPA has overworked adjusters



- Case counts are high, not enough staff
- Lowest price provider often the most expensive
- Cost of doing business
 - Line of insurance that can have the most impact of any line of insurance