Overview of California Workers' Compensation
From Injury to Claim Resolution

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The California Workers' Compensation System-1

- Calif. Constitution; Article XIV; Section 4:
  - “The Legislature is hereby expressly vested with plenary power…to create, and enforce a complete system of workers' compensation…”
  - “…to that end that the administration of such legislation shall accomplish substantial justice in all cases expeditiously, inexpensively, and without encumbrance of any character…”
- The “Bargain”: Provides workers a trade off of no-fault liability and smaller, but more certain benefits, in exchange for giving up traditional tort remedies
The California
Workers' Compensation System-2

- Broad definition of “employee”-- LC 3351;
- Presumption of employment status for work performed - - LC 3357
- Requirement of WC insurance or state authorized self- insurance -- LC 3700
- Severe consequences for lack of insurance
  - LC 3706-09 [tort liability with no employee fault];
  - 10% penalty—LC 4554;
  - Uninsured Employers Benefits Trust Fund remedy against employer—LC 3716----all this plus regular WC benefits LC 3715

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Who is involved in Workers' Compensation Claims?

- Injured worker
- Employer
- Insurance carrier or self-insured employers and their TPA
- Excess Insurers and their pools
- Attorneys
- Medical treatment providers and evaluators
- Judicial officers
- State employees from Division of Workers’ Compensation
- Other (ie: UR / IMR / VR professionals)
## Workers' Comp vs. Civil Tort-1

<table>
<thead>
<tr>
<th>Workers' Comp</th>
<th>Civil</th>
</tr>
</thead>
<tbody>
<tr>
<td>✓ Court of special jurisdiction: workers' Compensation Appeals Board [WCAB]</td>
<td>✓ General Jurisdiction: Superior Court</td>
</tr>
<tr>
<td>✓ No-Fault system</td>
<td>✓ Fault based system</td>
</tr>
<tr>
<td>✓ No jury</td>
<td>✓ Jury</td>
</tr>
<tr>
<td>✓ Judge is civil servant who tests for job and is selected from eligible list</td>
<td>✓ Judge elected or appointed by Governor</td>
</tr>
</tbody>
</table>

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Workers' Comp vs. Civil Tort-2

**Workers' Comp**
- Largely document-based evidence
- No damages for pain and suffering
- Special legislatively enumerated benefits only
- Informal pleadings and procedures: LC 5708,5709

**Civil**
- Largely live evidence
- Special damages including past and future wage loss, past and future medical and general damages for pain and suffering may be awarded
- Formal pleadings and procedures
## Workers' Comp vs. Civil Tort-3

<table>
<thead>
<tr>
<th>Workers' Comp</th>
<th>Civil</th>
</tr>
</thead>
<tbody>
<tr>
<td>✓ Rules of evidence are relaxed</td>
<td>✓ Rules of evidence strictly applied</td>
</tr>
<tr>
<td>✓ Liberal construction of facts and law. LC 3202: “This division…shall be liberally construed by the courts with the purpose of extending their benefits for the protection of persons injured in the course of their employment”</td>
<td>✓ Approx. five days to accomplish same amount of evidence as in ½ day of WC trial</td>
</tr>
<tr>
<td>✓ Typical trial: ½ day</td>
<td>✓ With some exceptions (e.g. minors), no review of adequacy of settlements</td>
</tr>
</tbody>
</table>
Workers' Comp vs. Civil Tort

**Workers' Comp**
- Decision by mail within 90 days of submission case
- Award according to PDRS paid in installments and may include lifetime medical
- May include cost of living adjustment ("COLA") subject to SAWW.
- Life pension if disability 70% or greater, permanent total disability, death.
- Reconsideration to WCAB

**Civil**
- Immediate decision by jury [verdict] upon submission and after deliberation
- Lump sum award including value of past and future losses
- Motion for new trial to trial Judge

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<tbody>
<tr>
<td>✓ Court of Appeal: discretionary review pursuant to writ of review</td>
<td>✓ Court of Appeal: Appellate court must hear and issue opinion in any appealed case</td>
</tr>
<tr>
<td>✓ Most costs paid by employer/insurer (win or lose)</td>
<td>✓ Some costs for both sides may be paid by loser, but generally each side pays own expenses</td>
</tr>
<tr>
<td>✓ Attorney fees 12-18%; generally 15% of award.</td>
<td>✓ Attorney fees generally 33% to 40% of award</td>
</tr>
<tr>
<td>✓ Attorney fees approved by Judge</td>
<td>✓ Attorney fees by contract between attorney and client</td>
</tr>
</tbody>
</table>
What is an Injury: LC 3208

- Minor-First Aid: LC 5401
  - Medical only; no lost time
- Specific: LC 3208.1
  - Occurring as the result of one incident or exposure
- Cumulative: LC 3208.1
  - Occurring as repetitive mentally or physically traumatic activities extending over a period of time
- Death cases: LC 4700-4709
Reporting an Injury Claim

- Responsibilities for issuance and return of Claim Form
  - LC 5401

- Action requirements by employer/insurer: 14 day rule--admit/delay/deny: LC 4560; Reg. 9793(b)(3)

- 90 day rule for denial: LC 5402(b)

- Importance of acceptance of legitimate cases and prompt payment of benefits
Early Stages of Claim

- Claim may be denied for medical, legal or factual reasons
- Responsibilities for conducting and coordinating investigation
- Preservation of evidence
- Duty of claimant to cooperate with employer/insurer
- Duty of employer to cooperate with insurer
Medical Treatment-1

- All treatment “reasonably required to cure and relieve”
  - LC 4600

- Employer/Insurer Medical Provider Network [MPN]
  - LC 4616
    - Employer must provide notice
    - Employee makes choice of physician from network [see LC 4616.3(a)]
    - [http://www.dir.ca.gov/dwc/mpn/dwc_mpn_main.html](http://www.dir.ca.gov/dwc/mpn/dwc_mpn_main.html)

- No Employer MPN:
  - Employer controls for 1st 30 days [see LC 4600(c)]
Predesignation of treating physician: LC 4600(d)

Limitations of chiropractic and physical therapy to 24 visits. LC 4604.5 (for dates of injury on/after 1/1/13)

No limitation on acupuncture by statute, but may be limited by ACOEM

Compensable consequences: employer/insurer liable for such things as adverse drug reactions and injuries on the way to doctor’s office.

Permanent disability (not treatment) for these eliminated by LC4660.1 (sleep, psyche, sexual dysfunction).
Medical Treatment-3

- Delayed cases: $10,000 potential medical cost: LC 5402(c)
- Official Medical Fee Schedule: LC 5307.1
- Non-apportionability of medical and temporary disability benefits: See *Granado v. WCAB* (1968) 69 Cal. 2d 399
- Employer/insurer’s liability to treat non-industrial conditions as a prerequisite to treating industrial conditions: See *Braewood Convalescent Hospital v. WCAB (Bolton)* (1983) 34 Cal.3d 159
- Take employees as you find them; i.e. an employee who suffers from a pre-existing condition who has a subsequent industrial injury is entitled to treatment at the employer’s expense, even if a healthy person would not have been injured by the event. *Braewood.*
Utilization review and ACOEM Guidelines: LC 4610; 4600(b); 4604.5

Independent Medical Review process

- LC 4610.5 et seq.
- Exclusive jurisdiction over treatment disputes regarding medical necessity belongs to neutral third party (Maximus), NOT to judges, UNLESS utilization review untimely conducted.
- Current rules and developments may be found here: http://www.dir.ca.gov/dwc/SB863/SB863.htm
Med-Legal Evaluations

- Determine if injured worker is represented by an attorney or unrepresented
- Panel qualified medical evaluator (PQME) process
- Ratings; Importance of *AMA Guides* [American Medical Association] on:
  - Medical reports of treating doctor
  - Panel QMEs
  - Selected QMEs
  - Agreed medical evaluator (AME)
- Self-procured med-legal reports inadmissible
  - *Batten (2016)* 241 Cal.App.4th 1009 (2015), 194 Cal. Rptr. 3d 511
Temporary Disability

- Temporary total disability payment amount based on earnings at time of injury.
  - Weekly maximum and minimum rates: LC 4451; 4455; and 4653
    - 2017: The minimum TTD rate will increase from $169.26 to $175.88 and the maximum TTD rate will increase from $1,128.43 to $1,172.57 per week.
  - Limits on TD: 104 weeks LC 4656 [c] [some exceptions allowing for up to 240 weeks: LC 4656 (c)]
  - Salary continuation programs may count as “TTD”
- Modified/Alternative work, “constructive TD”
- Opportunities to end TTD
Permanent Disability

- Whole Person Impairment based on *AMA Guides* (5th Edition)

- PD rating schedule varies by date of injury
  - DOI on/after 1/1/13: DFEC replaced by 1.4 modifier

- Presumption of total disability in certain cases:
  - LC 4662
  - TTD for life
  - LC 4659(b)
Permanent Disability

- Apportionment:
  - LC 4663 – prior/subsequent disability and retroactive prophylactic restrictions.
  - LC 4664 – prior awards

- Life pension if PD 70% or higher: LC 4659(a)

- Cost of living allowance subject to SAWW: LC 4659(c)
Duty to advance reasonable amount per PDRS.

No duty to advance PD until Award if employee continues to work 85% wages at this ER or 100% wages at different ER.

Return to work incentives attached to PD benefits: 15% adjustment LC 4658(d)(3) → Eliminated for DOI on/after 1/1/13

Return to work fund - $5,000 to the injured worker who qualifies
Supplemental Job Displacement Benefit (Voucher)

- Rules vary by date of injury
  - DOI on/after 1/1/13: $6,000 – not negotiable in settlement

- Injuries occurring during retraining are not compensable; LC 4658.5(e) and 4658.7(i)

- ER must offer voucher within 60 days of receiving first report indicating permanent disability (should attach Physician’s Return to Work form) (LC 4658.7(b)(1))
  - [https://www.dir.ca.gov/dwc/DWCPropRegs/SJDB_Re gs/DWCForm10133.36.pdf](https://www.dir.ca.gov/dwc/DWCPropRegs/SJDBRegs/DWCForm10133.36.pdf)
Special Benefits for Public Safety Employees

- Full Salary “in lieu of” other benefits; LC 4850
- Presumptions; LC 3712 et seq.
  - I.e.: Heart, hernia, cancer, gunbelt (low back), etc.
- Special Disability Retirement under CalPERS or ’37 Act, etc.
Case Preparation

- Depositions: Labor Code 5710
- Medical records releases
- Subpoena of records and witnesses
- Medical evaluations including medical-legal evaluations
- Activity checks/surveillance
- Vocational evaluations
Application for Adjudication of Claim

Answer: Employer can raise defenses

- AOE/COE [whether injury “arose out of employment” and occurred in “course of employment”]; employment; insurance coverage; earnings; apportionment; Statute of Limitations; and miscellaneous others such as horseplay; self-inflicted injury; voluntary intoxication

4906(g) declaration - no special inducements to doctors for examinations and evaluations or to parties for benefits

Declaration of Readiness—judicial hearing process initiated by filing of a Declaration of Readiness

- Employer may have liability for attorneys fees for filing of DOR (LC4906)

EAMS-required cover sheets and separator sheets for all filings.
Required EAMS Documents

STATE OF CALIFORNIA
DWC DISTRICT OFFICE

DOCUMENT COVER SHEET

DOCUMENT SEPARATOR SHEET

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26
Pre-Trial Conferences;
Expedited Hearings:

- Mandatory Settlement Conference: LC 5502; case set for trial; evidence and witnesses disclosed; discovery closed
  - Ratings MSC - DEU - *(Blackledge* (2010) 75 Cal. Comp Cases 613); LC 4660.1
- Priority Conference: LC 5502; deals with questions of employment and/or injury arising from employment
- Status Conference: addresses various case management issues
- Expedited Hearing: LC 5502; deals with med-legal exams or medical treatment issues (except those now reserved to Independent Medical Review)
Alternative Dispute Resolution:

“Carve-outs”

- LC 3201.5
- Parallel workers' compensation system available in certain collective bargaining situations
  - Same benefits
  - Potentially speedier resolution
  - Simplified procedures, eg: no IMR, ability to self-select QME.
  - Often at lower cost to employers
- Resolution by Ombudsman / Arbitrator / Mediator instead of a Workers' Compensation Administrative Law Judge
- Appeal: Reconsideration of Arbitrator’s decision goes to the WCAB commissioners (similar to appeal from WCALJ decision)
Resolution of Case

- Direct negotiation between parties
- Mediation
  - Voluntary, facilitated settlement meeting
- Arbitration
  - Mandatory: LC 5275 (c) – Insurance Coverage; Contribution
  - Voluntary Arbitration: by agreement of parties, any issue
  - May appeal to Workers' Compensation Appeals Board
- Trial
  - Evidence presented—witnesses and documentary evidence; summary of evidence prepared by Judge, rating instructions, Findings & Award
- Appeal
  - Reconsideration by WCAB on petition from aggrieved party
  - Petition for Writ of Review to Court of Appeal
  - Request for review by Supreme Court
Settlement of Case: C&R

- Compromise and Release:
  - Ends case in whole or part
  - Annuity versus lump sum
  - Reviewed for adequacy by Judge
  - Must by approved by Judge

- Social Security / Medicare considerations
  - Medicare set-aside trust may be required
  - Self-administered versus set-aside trust fund
Settlement of Case: Stipulation

- **Stipulated Award:**
  - Agreement as to permanent disability, etc.
  - May or may not provide future medical or other benefits

- **Filing a Petition to Reopen:**
  - Case can be reopened within 5 years of injury date for new/further disability -- LC 5804
  - Medical treatment may be required for valid compensable consequences after stipulated award
Appeals

- Filing a Petition for Reconsideration
  - 20 days from Judge’s decision [plus 5 days if decision served by mail]; LC 5903
- Filing a Petition for Writ of Review (District Court of Appeal)
  - Must be filed within 45 days from decision of WCAB (on Reconsideration); LC 5950
  - Filing Petition for Review (California Supreme Court) - # days / Add cite
Penalties

- LC 5814 violation:
  - Up to 25% of specifically delayed compensation--up to $10,000: LC 5814(a)
    - Judicial discretion
  - Self-imposed penalties: LC 5814(b)

- Labor Code 4650(d): 10% penalty for indemnity payment delay

- Labor Code 5814.6: Penalty of up to $400,000 for pattern of practice for non-payment
Special Issues - 1

- Psychiatric cases: LC 3208.3
  - Six-month rule: employee must have worked at least six months in order to bring claim for psychiatric injury
    - “Sudden and extraordinary” exception
  - Actual events of employment must be predominant as to all causes combined
  - Non-discriminatory, good faith, personnel action defense
  - Psyche as a compensable consequence: permanent disability eliminated (LC4660.1), but treatment may still be allowed.
- Post-termination claims: LC 3600(a)(10)
- Third-party cases: special rules on subrogation: LC 3850- 3865
Special Issues - 2

- Liens
  - Filing and activation fees
  - Independent Bill Review process
- Subsequent Injuries Benefits Trust Fund: LC 4751-4755
- Payment between employers/carriers:
  - Separate/specific injuries: “Reimbursement”
  - Single cumulative trauma: “Contribution”
    - LC 5500.5; 5412; 4600
    - Mandatory arbitration
- LC 132a – discrimination claims
- Serious and willful misconduct claims: LC 4551-4553.1
Questions?