

# The Wright & Kimbrough Report



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## WORKERS' COMP

### What's Behind Rate Hike Trend, and What's Next

**A**LTHOUGH SOME encouraging news came out in late February that at least one part of the workers' comp reforms has succeeded in reducing some costs, overall the trend continues to be one of increasing rates for the foreseeable future.

Despite benchmark rates climbing about 7.6% for Jan. 1 from a year earlier, rate increases are averaging closer to 10% for many employers. There are a number of reasons for the increases: continually increasing costs in the system, and fewer insurers in the marketplace as some players have pulled back their horns or left the market altogether.

Also, many insurers are severely limiting the scheduled credits on policies, and many have implemented territorial rating, where geography affects the rates employers pay (see box on right).

The average rate that insurers charge has increased 33% since workers' comp premiums hit a trough in 2009, when the average rate was \$2.10 per \$100 of payroll. During the last measure (the nine months ended Sept. 30, 2013), the average rate had hit \$2.81.

But rates overall are still relatively

low, compared to 2003, when they hit a high of \$6.29 per \$100 of payroll (120% more than today's rates).

This has all taken place against a backdrop of increasing claims costs as well as injured workers filing claims with increasing frequency.

Increasing claims frequency (defined as the number of claims filed per 1,000 workers) has been most pronounced in the Los Angeles area.

In 2010, claims frequency in the L.A. area shot up 8.3% from the year prior, compared to 4% in the San Francisco Bay Area and 6.1% for all other regions of the state. In 2011, frequency leveled off, followed by another year when frequency shot up nearly 8% in the L.A. area while dropping in the rest of the state, according to preliminary data.

Based on figures from the Rating Bureau, the claims costs and the cost of administering claims shot up dramatically in 2007 and continued into unprofitable levels for insurers from 2009-2011. In 2012, cost increases started subsiding, and it remains to be seen if recent workers' comp reform laws will have any effect in further reducing claims costs.

### Territorial Rating 101



Many insurers are crediting and debiting based on territory in this manner:

- L.A. area: +15%
- Bay Area: -6% to -10%
- Rest of state: -3% to -10%

#### What's ahead

The next shoe to drop is the possibility that reforms that took effect in 2013 start showing some results. There are some early indications that reforms limiting the maximum fees that can be paid to ambulatory surgery centers have started cutting into some claim costs. For right now, though, the jury is still out on the full effects of the law.

And based on recent insurer rate filings, rates are likely to continue increasing through this year. We will monitor the rate environment and keep you up to date in this newsletter. ❖

### Why Claims Frequency Is Increasing



- 1) Increases in cumulative injury claims (where one injury from a prior workplace incident aggravates or is aggravated by a new workplace injury).
- 2) Increases in smaller noncumulative injury claims that may have been reported as medical-only in the past.
- 3) Increases in the percentage of claims that include indemnity benefit payments to injured workers.
- 4) More claims being reported late.

### CONTACT US

**Wright & Kimbrough**  
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If you have any question regarding any of these articles or have a coverage question, please call us at:

**Wright & Kimbrough Insurance**  
2150 Douglas Blvd #210  
Roseville, CA 95661  
Phone: (800) 822-3694  
Fax: (916) 751-7690  
info@wkins.com

License No: 0670151

# OSHA Urges Employers to Curb Distracted Driving

*“It is well recognized that texting while driving dramatically increases the risk of a motor vehicle injury or fatality. We are asking employers to send a clear message to workers and supervisors that your company neither requires nor condones texting while driving.” – David Michaels, Assistant Secretary, Occupational Safety and Health Administration*

**F**EDERAL OSHA has issued a downloadable pamphlet on the dangers of texting while driving that employers can hand out to their staff. The safety brochure is designed to bring awareness to a workplace danger that is putting millions of Americans who drive on the job at risk every day.

And as texting becomes more widespread, that risk continues to grow despite an increase in the number of states banning the practice.

You should know that as a business owner or manager it is your legal responsibility under the Occupational Safety and Health Act to try to provide the safest working environment for your workers, including those who drive.

That means not only laying down safety rules but also enforcing them in your company’s injury and illness prevention plan.

This holds true whether they drive full-time or only occasionally to carry out their work, and whether they drive a company vehicle or their own. When your workers are behind the wheel doing your company’s work, their safety is your business.

It’s key that you establish workplace rules regarding texting while driving. If OSHA receives a credible complaint that an employer requires texting while driving or organizes work so that texting is a practical necessity, it has promised to investigate and will issue citations and penalties where necessary to end this practice.

The dangers of distracted driving are many:

- Distracted driving crashes killed more than 3,000 people and injured 416,000 in 2010.
- Reaction time is delayed for a driver talking on a cell phone as much as it is for a driver who is legally drunk.
- With each additional one million text messages, fatalities from distracted driving rose more than 75%.
- Studies show that drivers who send or receive text messages focus their attention away from the road for an average of 4.6 seconds. At 55 mph, this is like driving the length of a football field blindfolded.

### OSHA can help

OSHA has created a distracted driving web page ([www.osha.gov/distracted-driving/index.html](http://www.osha.gov/distracted-driving/index.html)), which includes a number of resources for employers, including:

- A model policy
- Information about how employers are combating this hazard
- Educational materials

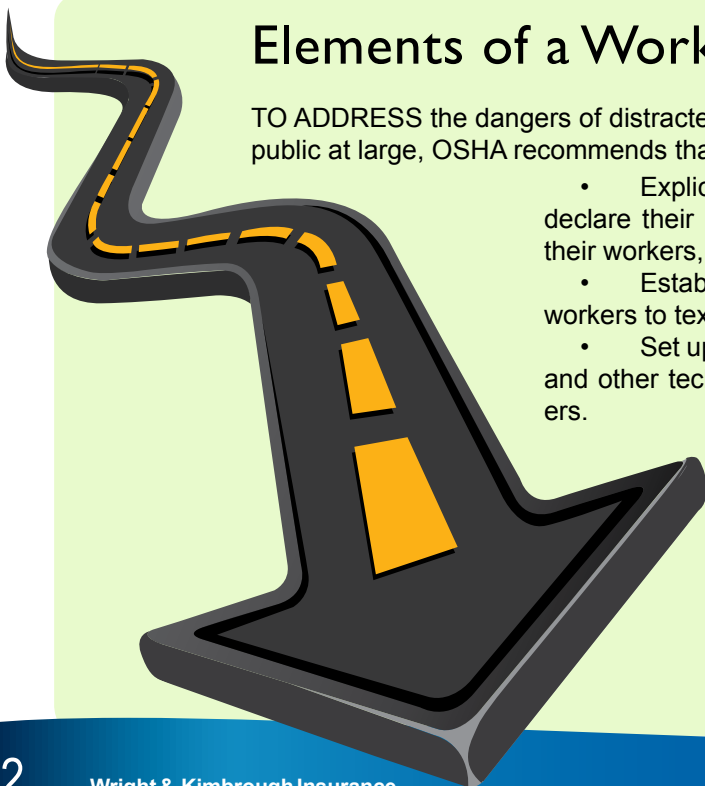
OSHA also has a consultation program with free and confidential advice, on-site consultation and assistance with identifying workplace hazards and advice on compliance with OSHA standards. ❖



## Elements of a Workplace Distracted Driving Policy

TO ADDRESS the dangers of distracted driving, which puts at stake the lives of your employees and the public at large, OSHA recommends that you:

- Explicitly prohibit texting while driving. OSHA encourages employers to declare their vehicles “text-free zones” and to emphasize that commitment to their workers, customers and communities.
- Establish work procedures and rules that do not make it necessary for workers to text while driving in order to carry out their duties.
- Set up clear procedures, times and places for drivers’ safe use of texting and other technologies for communicating with managers, customers and others.
- Incorporate safe communications practices into worker orientation and training.
- Eliminate financial and other incentive systems that encourage workers to text while driving.
- Prohibit your employees from also eating while driving on the job.
- Install or let your staff borrow a GPS if they are driving to locations they are unfamiliar with.



# Be Prepared for the Inevitable: a DOL Audit

**T**HE DEPARTMENT of Labor has said it wants to audit all employee benefit plans in the country by the end of 2015. While it may be hard-pressed to meet that goal, the DOL will be out in full force to audit employers' health plans to ensure they comply with the Affordable Care Act.

All employers that provide employee benefits to their workers need to be prepared when the DOL comes knocking.

During an audit, the DOL will review health and welfare plan documents and other plan materials. These are essentially compliance audits.

They want to see if you have all of the correct documents and that you are administering those documents in a way that is consistent with federal laws and regulations.

The DOL will levy fines for non-compliance. According to audits that were reported to the trade news website *Employee Benefits Advisor*, DOL agents will be asking for:

- Plan documents for each plan, along with any amendments. (Content in all plan documents must comply with ERISA regulations.)
- Current summary plan descriptions.
- Form 5500 and accompanying schedules for the most recent plan year and previous three years. This form is used to file an employee benefit plan's annual information return with the DOL. It should include not only health plan information but also 401(k), IRAs, money purchase plans and stock bonus plans.
- A listing of all current service providers, and those from the past three years.
- All current contracts with administrative service providers on the plan, and most current fee schedules.
- All insurance contracts between plan and service providers.
- Name, address and phone number of the plan administrator.

- Sample HIPAA certificate of creditable coverage, and proof of compliance with on-time issuance of COBRA notices.

- Notice of special enrollment rights, and a record of dates when the notice was distributed to employees.

- Written eligibility criteria for plan enrollment.

- Documentation on all mandatory employee notices, i.e., ERISA Statement of Rights, Women's Health and Cancer Rights Act notice, etc.

- Copy of most recent monthly bill for premiums (if any) from insurance carrier(s).

- Copy of check, wire transfer or other methods of payment for insurance premium (if any).

- Enrollment form(s) for the plan.

- Employee handbook (if any).

- Documentation of claim adjudication and payment processes.



### Fines

The fines involved can add up quickly. And while the DOL does not publish a schedule of its fines, it was documented by *Employee Benefits Advisor* that breaches of ERISA reporting and disclosure requirements are penalised at \$110 a day, per person.

And it notes that most fines for non-compliance under the ACA are not tax-deductible, either. ❖

## California's 60-Day Rule Full of Pitfalls for Employers

UNDER THE regulations promulgated by the Affordable Care Act, employers that offer group health coverage to new hires must do so within 90 days of them being taken on.

But starting this year, under California law, as employers' annual anniversaries occur, the maximum waiting period for group health plan participation is only 60 days. That means if your business is like most companies, you're going to have to change your internal policies to comply with the law.

The main challenge will be reconciling with the law your probationary period policy for new employees, which for most firms is 90 days. While you can still have a 90-day probation during which you evaluate a new employee's performance, you will have to extend health care benefits after no more than 60 days of hiring.



### Strategies

You may want to prepare for the administrative procedures that will be required if you extend health care benefits at one date, and hold off on accruing paid vacation or paid holidays until after a 90-day probationary period.

Just to be on the safe side, many employers in the Golden State have begun commencing benefits on the first day of the month following 30 days of employment.

Another option is to reduce your probationary period to 60 days to maintain synchronization of the two.

### The takeaway

Make hiring decisions carefully, and if you feel someone is not working out, document the problems and move them out of the job as soon as possible.

If you keep them past 60 days, it's going to create a paperwork nightmare as you'll have to offer, pay for and then cancel coverage.

Whatever option you choose, put into place procedures for evaluating new hires more quickly, preferably within the first 30 days, rather than waiting a full 90 days. ❖



# Wellness Programs Can Cut Workers' Comp Costs

**W**HILE THE benefits of a corporate wellness program on employee health are widely known, there is growing evidence that such programs reduce the duration of workers' comp claims, and potentially prevent injuries from occurring in the first place.

Multiple studies illustrate that personal health risk factors can have a significant influence on workers' compensation claims.

According to one report, employers like Harley Davidson, Northwestern Mutual Life Insurance Company, Schneider National, Kohler Company, Kimberly Clark and Trek Bicycle have found that investment in on-site training facilities pays off for their employees in terms of lower worker's compensation claims and health insurance claims.

Companies interviewed noted that such training facilities reduced the number of on-the-job injuries, partly from attention given to fitness and preventative health care.

A project conducted by the University of Michigan Health Management Research Center found that employees with high health risks tended to have the highest workers' compensation costs.

The university focused on Xerox Corporation., one of the earliest adopters of corporate wellness initiatives, and found that over four years workers' compensation costs increased for those employees whose health risks were increasing or high already (e.g., smoking, physical inactivity, hypertension, high cholesterol, and life/job dissatisfaction).

There is also something to the notion of treating your employees like professional athletes, and that means going through their main routines during the workday to ensure they perform them without injury.

## Office Workers Prone to Injury

*Exercise is important to workers who sit all day as it improves strength, flexibility and circulation.*



## Obese Claimants Miss More Work

*Injured workers who are obese incur more medical costs and are away from work recovering 13 times longer than non-obese workers.*



*Source: National Council on Compensation Insurance*

For example, they should learn proper lifting techniques, proper sitting posture – and even how to safely get in and out of a vehicle.

And lest you think that your office workers who sit almost all day are not subject to injury, think again – that sedentary work can also lead to injuries.

Exercise is especially important to workers who sit all day long. It helps to improve strength, flexibility and circulation.

In the same vein, employees need to learn proper nutrition and many wellness programs include this dietary counseling.

Hydration and nutrition are equally important to workers as for athletes. Athletes drink throughout their practice.

Likewise, employees should drink throughout the day. It also will make them get up frequently to take bathroom breaks, which means they get their blood flowing.

### So what can you do?

Proactively engage your human resources and employee benefits personnel to better understand the scope and breadth of existing corporate wellness initiatives, as well as how the organization is tracking the effectiveness of those programs.

Determine how your insurer and/or third-party administrator is capturing data on comorbid factors in workers' compensation claim files, and how that information can be incorporated into effective analytics.

Collaborate with internal safety, health and environment professionals (if possible) to discover how best to integrate employee wellness with workplace safety.

And consult with us on how best to capitalize on synergies between employee wellness and workers' compensation.

### The takeaway

Effective corporate wellness initiatives have shown to be successful in not only reducing the duration of lost-time workers' compensation claims, but also in promoting healthy behaviors that potentially inhibit unsafe or inattentive workplace behavior.

If you have not done so, you should consider offering your staff an employee wellness program, as it helps them improve their health outlook. ❖

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