



RECIPE TO AVOID SABOTAGING YOUR CLAIMS

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SEPTEMBER 12-15,
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Disclaimer

The following information is intended to provide a guide on the issues discussed herein. It is not intended as legal advice for handling any specific situation, and we strongly recommend you consult an attorney when dealing with any specific situation.



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Top 10 Common Mistakes That Can Sabotage Your Claims

1. Not providing a claim form.
2. Not performing a robust employer-level investigation.
3. Not engaging in a relationship with the industrial clinic.
4. Not having the injured worker evaluated by a physician under your control at the outset of the claim.
5. Not keeping in contact with your injured employees.
6. If a medical-legal opinion is required, not getting the process underway as soon as is practicable.
7. If you have a factual dispute, not requesting a hearing to determine compensability as soon as is practicable.
8. Not returning the injured worker to temporary modified work.
9. Not taking advantage of opportunities for early settlement.
10. Not accepting the realities of the evidence.



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Recipe to Avoid Sabotaging Your Claims



INGREDIENTS

- 1 Alleged Injury with Mechanism of Injury
- 1 cup Skepticism/Caution Blend
- 1/2 cup Diligence
- 2 heaping tbsp Perseverance
- 1/3 cup Foresight
- 1 tsp Acceptance



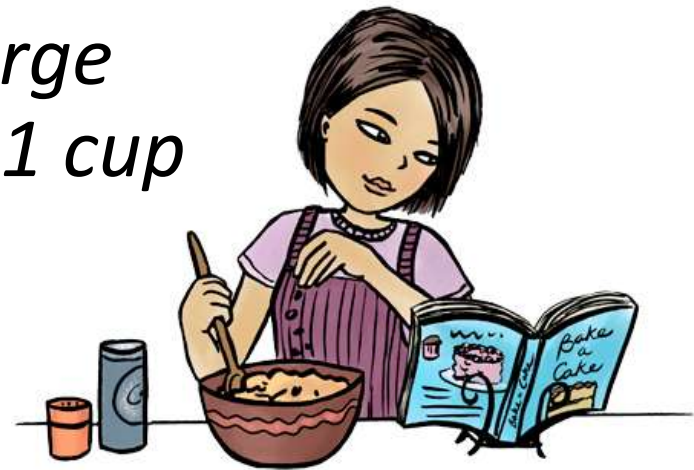
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STEP ONE

Put the Alleged Injury and the Mechanism of Injury in a large mixing bowl. While adding 1 cup Skepticism/Caution blend, consider the following.



Do I have notice of an injury?

Does it meet the definition of an “injury”?

Have I conducted an appropriate investigation?



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Notice of Injury

- “Knowledge of an injury, obtained from any source, on the part of an employer, his or her managing agent, superintendent, foreman, or other person in authority, or knowledge of the assertion of a claim of injury sufficient to afford opportunity to the employer to make an investigation into the facts, is equivalent to service under Section 5400.” (Labor Code §5402 (a).)
 - For anything more than first aid, you must provide a claim form within 24 hours. (We’ll define first aid later.)
 - The Statute of Limitations clock does not start ticking until the claim form is given to the injured worker.
 - Provide the claim form right away!



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Notice of Injury

- DOCUMENT the providing of the claim form.
 - Send it with a Proof of Service.
 - Send it certified mail.
 - Have the employee sign for it.
 - Have the employee fill it out in your presence.
 - DWC-1 line 6 (see next slide).
 - Describe injury and part of body affected.
 - Have the injured worker describe HOW the injury occurred.
 - Make sure you understand their description of how the injury occurred.
 - Have the injured worker list the body parts claimed.



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Any person who makes or causes to be made any knowingly false or fraudulent material statement or material representation for the purpose of obtaining or denying workers' compensation benefits or payments is guilty of a felony.

Toda aquella persona que a propósito haga o cause que se produzca cualquier declaración o representación material falsa o fraudulenta con el fin de obtener o negar beneficios o pagos de compensación a trabajadores lesionados es culpable de un crimen mayor "felonia".

Employee—complete this section and see note above

Empleado—complete esta sección y note la notación arriba.

1. Name. *Nombre.* _____ Today's Date. *Fecha de Hoy.* _____
2. Home Address. *Dirección Residencial.* _____
3. City. *Ciudad.* _____ State. *Estado.* _____ Zip. *Código Postal.* _____
4. Date of Injury. *Fecha de la lesión (accidente).* _____ Time of Injury. *Hora en que ocurrió.* _____ a.m. _____ p.m.
5. Address and description of where injury happened. *Dirección/lugar dónde ocurrió el accidente.* _____
6. Describe injury and part of body affected. *Describe la lesión y parte del cuerpo afectada.* _____
7. Social Security Number. *Número de Seguro Social del Empleado.* _____
8. ☐ Check if you agree to receive notices about your claim by email only. ☐ *Marque si usted acepta recibir notificaciones sobre su reclamo solo por correo electrónico.* Employee's e-mail. _____ *Correo electrónico del empleado.* _____
You will receive benefit notices by regular mail if you do not choose, or your claims administrator does not offer, an electronic service option. *Usted recibirá notificaciones de beneficios por correo ordinario si usted no escoge, o su administrador de reclamos no le ofrece, una opción de servicio electrónico.*
9. Signature of employee. *Firma del empleado.* _____

Employer—complete this section and see note below. Empleador—complete esta sección y note la notación abajo.

10. Name of employer. *Nombre del empleador.* _____
11. Address. *Dirección.* _____
12. Date employer first knew of injury. *Fecha en que el empleador supo por primera vez de la lesión o accidente.* _____
13. Date claim form was provided to employee. *Fecha en que se le entregó al empleado la petición.* _____
14. Date employer received claim form. *Fecha en que el empleado devolvió la petición al empleador.* _____
15. Name and address of insurance carrier or adjusting agency. *Nombre y dirección de la compañía de seguros o agencia administradora de seguros.* _____
16. Insurance Policy Number. *El número de la póliza de Seguro.* _____
17. Signature of employer representative. *Firma del representante del empleador.* _____
18. Title. *Título.* _____ 19. Telephone. *Teléfono.* _____



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Notice of Injury

- TRAIN your supervisors.
 - What if the employee only reports symptoms and not an injury?
 - If an employee reports a headache, does that mean they hit their head at work?
 - Have the supervisor ask, “Are you reporting to me that you think you had an injury at work or as a result of work?”
 - Even if the employee says no, the supervisor needs to document the complaints and any other comments the employee makes via email to the Risk Manager.
 - Supervisors come and go, therefore documentation is key!



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Notice of Injury

- Labor Code §5402(b) states that if liability is not rejected within 90 days after the date the claim form is filed under Section 5401, the injury shall be presumed compensable. The presumption of this subdivision is rebuttable only by evidence discovered subsequent to the 90-day period.
 - DO NOT hold onto the claim form while you investigate.
 - The return of the claim form from the injured worker starts the 90 days, NOT when you give the claim form to your TPA.
 - Denial for failure to return the medical releases should NOT be the only reason for denying the claim.
 - This denial is a conditional denial only
 - If you get the medical releases returned, the denial is no longer valid.
 - How many times has the employee been asked for the releases?



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Define Injury: First Aid

- First Aid is any one-time treatment, and any follow-up visit for the purpose of observation of minor scratches, cuts, burns, splinters, or other minor industrial injury, which do not ordinarily require medical care. This one-time treatment, and follow-up visit for the purpose of observation, is considered first aid even though provided by a physician or registered professional personnel. (Labor Code §5401(a).)



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Define Injury: First Aid



Per OSHA there are 14 items that are First Aid.

1. Non-prescription medications at non-prescription strength
* For medications available in both prescription and non-prescription form, a recommendation by a physician or other licensed health care professional to use a non-prescription medication at prescription strength IS medical treatment.



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Define Injury: First Aid

2. Tetanus immunizations
 - * Other immunizations (e.g., hepatitis B) are medical treatment.
3. Cleaning, flushing or soaking wounds on the surface of the skin.
4. Bandages/Band-Aids™
 - * Other wound closing devices such as sutures and staples are considered medical treatment.
5. Hot or cold therapy
6. Any non-rigid means of support, such as elastic bandages, wraps, and non-rigid back belts
 - * Devices with rigid stays are medical treatment.
7. Finger guards
8. Temporary immobilization devices used while transporting an accident victim



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Define Injury: First Aid

9. Drilling of a fingernail or toenail to relieve pressure, or draining fluid from a blister
10. Removing foreign bodies from the eye using only irrigation or a cotton swab
11. Eye patches
12. Removing splinters or foreign material from areas other than the eye by irrigation, tweezers, cotton swabs, or other simple means
13. Massages
 - * Physical therapy or chiropractic treatment are considered medical treatment
14. Drinking fluids for relief of heat stress



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Define Injury: Medical Only

- Medical Only (different than first aid)
 - For workers' compensation purposes, Title 8, California Code of Regulations §10100.2(ff) defines a Medical- Only Claim as follows: A work injury claim in which no indemnity benefits have been paid or would reasonably be anticipated or expected to be paid.



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New Reporting Requirements for WCIRB

As of 01/01/2017, insurers **must report the cost of all claims for which any medical care is provided and medical costs are incurred**, including those involving first aid treatment, even if the insurer did not make the payment. (WCIRB Bulletin No. 2016-25, November 10, 2016)



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Define Injury: Psychiatric

- Psychiatric Injury (Labor Code 3208.3(b).)
 - (1) In order to establish that a psychiatric injury is compensable, an employee shall demonstrate by a preponderance of the evidence that actual events of employment were predominant as to all causes combined of the psychiatric injury. (51%)
 - (2) Notwithstanding paragraph (1), in the case of employees whose injuries resulted from being a victim of a violent act or from direct exposure to a significant violent act, the employee shall be required to demonstrate by a preponderance of the evidence that actual events of employment were a substantial cause of the injury.
 - (3) For the purposes of this section, “substantial cause” means at least 35 to 40 percent of the causation from all sources combined.



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Define Injury: Aggravation vs. Exacerbation

- Aggravation vs. Exacerbation
 - Exacerbation: A temporary flare-up, or increase in the symptoms, of a pre-existing medical condition with a return to baseline (its prior level) within a reasonable period of time, with or without treatment.
 - An exacerbation of a pre-existing condition does not mean that you are not responsible for treating the underlying condition.
 - Treatment must be given to return the injured worker to the pre-existing level of disability.
 - Aggravation: A worsening of a pre-existing condition.
 - This does not mean the work injury changed the diagnosis or location of the injury; it just made it worse somehow.
 - Is a claim form required?
 - An exacerbation is still an injury.
 - Even with an exacerbation, you are still responsible for medical treatment.



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Investigation

- You as the employer are the first line of defense.
- Preservation of evidence is key
 - Memories fade
- Supervisor/Coworker statements
 - Informal vs. Formal statements
 - Risk manager can conduct the initial informal investigation.
 - Conversations are only discoverable through testimony.
 - Risk manager can then direct the investigator to take formal statements from key people.
 - Psych claims
 - The employer-level investigation is crucial.
 - Obtain informal statements.
 - Have witnesses write their version of events (signed and dated).



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Investigation

- Personnel File
- Security footage of injury
- Employer/Supervisor Report of Injury
- Employee Report of Injury
 - Body Parts
 - Mechanism of Injury
 - How could the injury have been prevented?
- Other employee knowledge of injured workers' hobbies, activities, etc.
- Social Media



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Investigation



- Red Flags
 - Reporting the injury on Monday
 - Pending personnel actions
 - Unexplained delay in reporting
 - Injury was not witnessed
 - Claim is made post-termination
 - Injury occurred at odd hours



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STEP TWO

*Add 1/2 cup Diligence.
While adding the Diligence,
consider the following.*



**Am I acting with the required
diligence during the delay period?**

**Am I maintaining an appropriate
level of contact with the employee?**

Am I working with my TPA and attorney effectively?



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Delay Period

- “[W]ithin one working day after an employee files a claim form [DWC-1], the employer shall authorize the provision of all treatment ... for the alleged injury and shall continue to provide the treatment until the date that liability for the claim is accepted or rejected. Until the date the claim is accepted or rejected, liability for medical treatment shall be limited to ten thousand dollars (\$10,000).” (Labor Code §5402(c).)
 - Treatment provided under this subdivision does not give rise to a presumption of liability on the part of the employer.
 - This first treatment is one of the first and best opportunities to “investigate” the alleged injury.



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Delay Period

- Foster a relationship with your industrial clinic(s) and the medical professionals at the clinic
 - Impress upon the industrial clinic that you want the doctor to call it like they see it, but that you need them to get enough information to make a fair assessment.
 - Have the injured worker fill out #17 on the Doctor's First Report of Occupational Injury or Illness.



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Delay Period

- Request that the doctor take a detailed history from the injured worker.
 - Ask if they have ever seen any other doctor for the condition or symptoms. (#23)
 - Document the injured worker's description of the mechanism of injury. (#17)
 - Get enough information about the injury to determine AOE/COE.
 - Are the findings and diagnosis consistent with the injured worker's account of injury or onset of illness. (#21)
 - Document any prior claims/injuries. (#22)
 - Make the doctor understand that you have an aggressive return to work program and that you need functional limitations for consideration for accommodation.
 - Impress upon the doctor to NOT blindly order temporary disability.
 - Have the doctor clearly mark if something is "First Aid." (#24)



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Patient please complete this portion, if able to do so. Otherwise, doctor please complete immediately, inability or failure of a patient to complete this portion shall not affect his/her rights to workers' compensation under the California Labor Code.

17. DESCRIBE HOW THE ACCIDENT OR EXPOSURE HAPPENED. (Give specific object, machinery or chemical. Use reverse side if more space is required.)

18. SUBJECTIVE COMPLAINTS (Describe fully. Use reverse side if more space is required.)

19. OBJECTIVE FINDINGS (Use reverse side if more space is required.)

A. Physical examination

B. X-ray and laboratory results (State if non or pending.)

20. DIAGNOSIS (if occupational illness specify etiologic agent and duration of exposure.) Chemical or toxic compounds involved? ☐ Yes ☐ No
ICD-9 Code _____ - _____

21. Are your findings and diagnosis consistent with patient's account of injury or onset of illness? ☐ Yes ☐ No If "no", please explain.

22. Is there any other current condition that will impede or delay patient's recovery? ☐ Yes ☐ No If "yes", please explain.

23. TREATMENT RENDERED (Use reverse side if more space is required.)

24. If further treatment required, specify treatment plan/estimated duration.

25. If hospitalized as inpatient, give hospital name and location Date admitted Mo. Day Yr. Estimated stay

26. WORK STATUS -- Is patient able to perform usual work? ☐ Yes ☐ No
If "no", date when patient can return to: Regular work ____/____/____
Modified work ____/____/____ Specify restrictions _____

Doctor's Signature _____ CA License Number _____

Doctor Name and Degree (please type) _____ IRS Number _____

Address _____ Telephone Number (____) _____

FORM 5021 (Rev. 4)
1992



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Delay Period

- When the employee has not pre-designated a physician
 - Direct the employee to get medical treatment in the MPN (if you have one).
 - Get the injured worker evaluated by a physician that you trust to take a detailed history, detailed description of mechanism of injury, detailed description of the body parts being alleged, and HOPEFULLY a determination of AOE/COE.
 - If no MPN, you have medical control for the first 30 days. (LC §4600.)
 - Use the first 30 days to your advantage!
 - Get the injured worker evaluated by a physician that you trust to take a detailed history, detailed description of mechanism of injury, detailed description of the body parts being alleged, and HOPEFULLY a determination of AOE/COE.
 - After the first 30 days, the employee gets to select a physician of his or her own choice within a reasonable geographic area.



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Contact

- Throughout the claim, employer contact with the employee is necessary and should be ongoing.
 - According to the American Bar Association, parties to a legal matter have the right to communicate directly with each other. (ABA Formal Opinion 11-461, August 4, 2011.)
 - A lawyer may not communicate with a person the lawyer knows is represented by counsel, unless that person's counsel has consented to the communication or the communication is authorized by law or court order. (ABA Model Rule 4.2)
 - A lawyer may not “script” or “mastermind” a client's communication with a represented person (ABA Model Rule 8.4(a)); however, the lawyer may give advice to the client regarding the communication.
 - Avoid discussing the merits of the claim.
 - Can facilitate return to work or provision of benefits

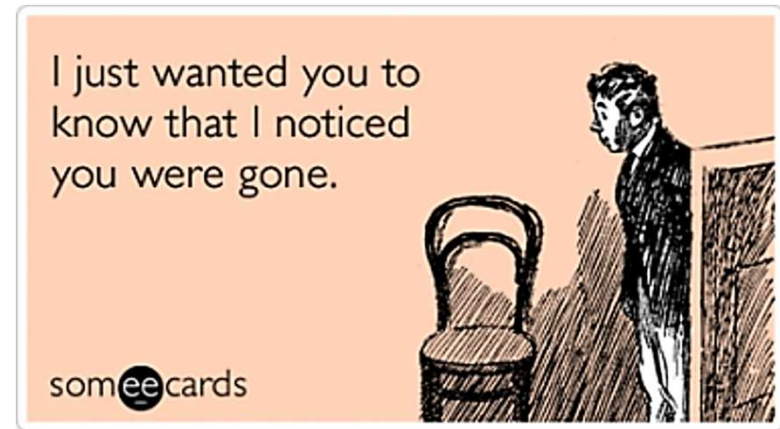


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Contact

- Employees often litigate because they feel abandoned by their employer.
- Later in the claim, even after an employee has litigated, they often feel abandoned by their attorney and the system.



- The turning over of a claim to a TPA or your attorney does not stop your obligation to document, investigate, and report.



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Teamwork

- Get your attorney/TPA any requested information in a timely manner.
 - Wage Statement
 - Employee's schedule
 - 12-month employees/seasonal employees
 - Full-time vs. part-time
 - Hours worked per day
 - Normal shift hours
 - Job Description/Job Function Analysis



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Teamwork

- Witness Statements
 - Supervisor's statement
 - Employee's statement
 - Written description of injury
- Personnel File
- Employer's investigation
 - Even if informal
- 5020 – Employer's First Report of Injury
- Past injury history
 - If you know this employee has prior injuries with you, share those with your TPA and attorney.



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STEP THREE



*Add 1/2 cup Diligence.
While adding the Diligence,
consider the following.*

What causes claim delays?

**Why do claims take 2 years
or longer to settle?**



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Timeframes: 90-Day Delay Period

- You have 90 days to accept or deny a claim
- It may take the full 90 days
 - Investigate
 - Medical Treatment
 - This is possibly your only opportunity to obtain a conservative medical opinion.

September						
S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

October						
S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

November						
S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

December						
S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						



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Timeframes: 90-Day Delay Period

- You may want to get attorney involvement EARLY.
 - All documentation prior to the assignment of an attorney is not protected from discovery.
 - Documentation that is discoverable:
 - Emails
 - Employer forms
 - Claim notes
 - Supervisor report
 - Employee report of injury
 - Surveillance
 - Witness statements
 - 5020 is NOT discoverable
 - If you get an attorney involved during the 90 days, you have a great opportunity to get surveillance and formal witness statements that are protected by the attorney-client or work product privileges.



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Timeframes: Medical-Legal Procedure

October						
S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

November						
S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

December						
S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

- Unrepresented (Labor Code §4062.1)
 - Once begun, the process of having an unrepresented employee evaluated by a Panel Qualified Medical Evaluator and getting a report will likely take more than 80 days.
 - Therefore, it is unrealistic to think you can get a medical-legal opinion within the first 90 days.
- Represented (Labor Code §4062.2)
 - Can take even longer once attorneys are involved.



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Timeframes: Medical-Legal Procedure

- Delays can happen at many steps along the way.
 - Parties can dispute the specialty of the panel.
 - A Request for New Panel must be mailed to the Medical Director
 - The panel is stayed (nothing happens) while the dispute is decided.
 - Parties can dispute what can be sent to the PQME.
 - A Declaration of Readiness to Proceed must be filed.
 - The appointment is usually rescheduled pending the judge's decision.
 - Represented parties can agree to an Agreed Medical Evaluator at any time in the process.
 - Many times the parties cannot agree to an Agreed Medical Evaluator, until the panel is received. If neither side likes the panel, they sometimes ultimately decide to use an AME.
 - AME evaluations are not subject to the same time limitations for scheduling the examination or preparation of the report and can take longer than a QME report.



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Timeframes: Pitfalls Causing More Delays

- Employee gets an attorney.
 - If an employee is in the middle of the process with the employer or TPA and then gets an attorney, the employee is entitled to a new QME panel, as long as no appointment has taken place.
 - Additional, new claims filed (e.g., adding a claim for cumulative trauma to a specific injury claim for the same body parts).
- More body parts are added.
 - Additional medical evaluations (PQME or AME)
 - Additional investigation



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Return to Work Programs

- Consider a Return to Work program.
 - Employees who are out of work for six months have less than a 50% chance of returning to gainful employment.
 - If lost time reaches one year, the chances of successfully returning to work drop to 10%.
 - Not bringing an injured employee back to work can add thousands of dollars to the cost of the claim and contribute painful points to the experience modification—which translates into higher premiums.



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Return to Work Programs

- Many benefits of a Return to Work program include:
 - Increasing employer/employee relations and communication
 - Making employees feel valued
 - Reducing claim litigation and fraud rates
 - Keeping employees active
 - Reducing the need for medical treatment
 - Avoid deconditioning
 - Maintaining an experienced workforce
 - Reducing turnover
 - Improving employee morale
 - Decreasing temporary disability



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Return to Work Programs

- A Return to Work (RTW) program allows workers unable to perform their usual and customary job duties due to an injury or illness to return to work in a temporary, limited, or light-duty capacity while they recover.
 - Disabled employees can be brought back to work in their current position with modifications or placed in an alternate position until they are able to return to full capacity.
 - RTW programs can provide full- or part-time work at full or partial wages.
 - Provide a job description, or even better, a job analysis to the treating physician.
 - For injuries on or after 01/01/2013, physicians are required to fill out Physician's Return-to-Work & Voucher Report once the employee is found permanent and stationary.
 - Supply the form to the clinic doctor, PQME, and/or AME.



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Physician's Return-to-Work & Voucher Report

For injuries occurring on or after January 1, 2013

☐ The Employee is P&S from all conditions and the injury has caused permanent partial disability

Employee Last Name _____ Employee First Name _____ MI _____ Date of Injury _____

Claims Administrator: _____ Claims Representative _____

Employer name: _____ Employer Street Address: _____

Employer City: _____ State _____ Zip Code _____ Claim No. _____

☐ The Employee can return to regular work

☐ The Employee can work with restrictions: 1-2 hours 2-4 hours 4-6 hours 6-8 hours None

Stand	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Walk	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sit	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bend	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Squat	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Climb	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Twist	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Reach	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Crawl	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Drive	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Reach	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

R/L/Bilat Hand(s) (circle): Grasp ☐ Push/Pull ☐

Lift/Carry Restrictions: May not lift/carry at a height of _____ more than _____ lbs. for more than _____ hours per day.

Other Restrictions:

If a Job Description has been provided, please complete: Job Description provided of: ☐ Regular ☐ Modified ☐ Alternative Work

Job Title: _____ Work Location: _____

Are the Work Duties compatible with the activity restrictions set forth in the provided job description? ☐ Yes ☐ No, explain below

Physician's Name _____ Role of Doctor (PTP, QME, AME) _____

Physician's Signature _____ Date _____

DWC AD Form 10133.36 (Effective 1/13)



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Return to Work Programs

- In a study done by Zurich in 2015, it was found that accident frequency and lost work days began to decline in number as injured employees returned to work on transitional work assignments and later returned to their regular jobs assignments when able. Claims costs also decreased as the amount of time away from work was reduced.



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STEP FOUR



*Add 1/3 cup Foresight.
While adding the Foresight,
consider the following.*

**Should we be looking at
offering an early settlement?**



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Early Settlement Considerations

- From DAY 1, the focus needs to be on closing the claim.
 - Getting the injured worker the appropriate medical treatment and return to work.
 - Disputing the claim and either administratively closing it or settling it.
- Requires constant evaluation of settlement value.
 - Look for opportunities for settlement when the facts merit.
 - Changes of employment status
 - Retirement
 - Inability to accommodate
 - Look at realistic exposure if the case does not resolve quickly.
 - Additional body parts as the case goes on
 - Disability – Temporary and Permanent



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Early Settlement Considerations

- Think to yourself, “What is this case going to look like in 2 years?”
 - Other body part additions
 - Increased cost of medical treatment
 - As cases go on and conservative treatment gets exhausted, all that is left is surgery or pain management.
 - Failed surgeries
 - Substance abuse



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Early Settlement Considerations

- Compensable consequences
 - Orthopedic add-ons
 - Psychiatric
 - Although there is no permanent disability add-on for psych, sleep, or sexual dysfunction, defendants may still be responsible for medical treatment. (Labor Code §4660.1(c)(1) and (2).)
 - Applicant's attorneys are trying to chip away at what constitutes a "violent act or exposure to a significant violent act" and a "catastrophic injury," allowing for a psych injury to survive the prohibition against additional PD.



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Early Settlement Considerations

Torres vs. Greenbrae Management (2017) Cal.Wrk.Comp. P.D. LEXIS 230.

Tree trimmer (applicant) fell approximately 20 feet from tree and struck tree trunk with his head and body while working as tree trimmer. WCJ said no add on of permanent disability for psych because psychiatric disability did not result from a “violent act.” WCAB reversed and found that applicant's mechanism of injury did constitute “violent act” as defined in § 3208.3(b) and described in prior panel decisions as “an act that is characterized by either strong physical force, extreme or intense force, or an act that is vehemently or passionately threatening,” and, therefore, all of applicant's psychiatric impairment was compensable regardless of whether it was directly caused by falling or whether it was caused as compensable consequence of applicant's physical injuries.

* Decision changed PD from 57% to 78% with life pension.



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Early Settlement Considerations

Madson v. Michael J. Cavaletto Ranches (2017) Cal.Wrk.Comp. P.D. LEXIS ---

Applicant, truck driver, was involved in a severe accident, which fractured his neck and for which he was trapped in an overturned tractor trailer for 35-40 minutes, and was saved with the jaws of life. Applicant's injury can be characterized as resulting from extreme or intense force and was vehemently threatening. Therefore, the applicant's psychiatric permanent disability is compensable.



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Early Settlement Considerations

- Sleep
- Sexual Dysfunction

- This exception is also being “chipped away.”

City of Los Angeles vs. WCAB (Montenegro) (2016) 81 CCC 611 (writ denied)

Sexual dysfunction was not precluded by Labor Code § 4660.1(c)(1) from receiving increased impairment rating for sexual dysfunction caused by removal of his prostate to treat his prostate cancer, when WCAB found that applicant’s sexual dysfunction resulted directly from physical injury to his reproductive organs (prostate removal) and was not simply derivative effect of another physical injury and, as such, was separately ratable impairment under AMA Guides.



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Early Settlement Considerations

- Thinking outside the box
 - Compromise and Release agreements for ongoing employees
 - Consider on a case-by-case basis.
 - Even with repeat offenders it sometimes makes sense.
 - Stipulate to permanent disability now to save money later.
 - Long-term employees
 - Safety officers and retirement claims



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Early Settlement Considerations

- Authorize things outside of Utilization Review
 - Have a list of preset instructions for your claims examiners to authorize certain services without UR involvement if conditions are met.
 - Initial physical therapy
 - MRI
 - EMG/NCV
 - Specialist referral
- Social Media Check – performed by your investigator
- Medical Sweep – performed by your investigator



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STEP FIVE

Add 1 tsp Acceptance. While adding the Acceptance, learn to be okay with the following.

Sometimes, it is what it is.



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Acceptance

- There are going to be claims for which you will not have a defense.
- The sooner you accept when you cannot prove something, the sooner you can focus on getting the claim closed.
- If you cannot prove the injury did not happen or that it happened somewhere other than work, accept your fate.
 - Stop spending good money after bad.
 - Accept the claim.
 - Settle the case quickly.



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Acceptance

- In workers' compensation, the defendant has the more difficult position.
 - “Liberal construction” (Labor Code §3202): [The laws of workers' compensation] 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.
 - “Preponderance of the evidence” (Labor Code §3203): All parties and lien claimants shall meet the evidentiary burden of proof on all issues by a preponderance of the evidence.
 - Means evidence that, when weighed with that opposed to it, has more convincing force and the greater probability of truth.
 - We're talking about 1%!!!



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Acceptance

- You have a reputation to protect.
 - You want a reputation of a being fair employer.
 - Looks at each claim on a case-by-case basis.
 - You do not want a reputation for you, or your attorney, of taking everything to trial or being unreasonable.
 - Judges will be skeptical of your cases, or your attorney, from the outset.
 - Taking every case to trial ends up making BAD law for defendants/employers.
 - Take cases with a SOLID defense to trial.
 - It's okay to take a case to trial on principle, just not every case.
 - If you do not have a solid defense ask yourself,
 - “How cheaply and quickly can I get out of this claim?”
 - “How can I stop the bleeding of money on this claim?”



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*And if all else fails, use this
“Recipe for Success.”*



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QUESTIONS???



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