

# Commercial Insurance Update

Topics Affecting Buyers of Commercial Insurance

MSP C 12/2001 – “Workers Compensation Benefits— A Primer”

December, 2001

## Workers Compensation Insurance A Primer

Workers compensation insurance is mandatory in California (and all other states, for that matter) for nearly all employers. Although each state has adopted its own workers compensation laws, most of them came into being in the early 20<sup>th</sup> century.

Workers compensation is a no-fault system. This means that the injured employee does not have to sue his employer to recover benefits for an on-the-job injury. As a matter of fact, workers compensation was designed to eliminate the then-prevalent litigation over whether or not employers were negligent in causing workers' injuries.

Under the workers compensation system, the employee gives up the right to sue the employer in exchange for a set of limited statutory workers compensation benefits. These benefits are the exclusive remedy for injured employees against their employers, even if the employers were negligent in causing their injuries.

### Types of Benefits

There are basically four types of workers compensation benefits available, depending on the nature and severity of the worker's injury.

#### 1. Medical Care

An injured worker is entitled to all the medical care necessary to cure a work-related injury or illness. There are no deductibles, no coinsurance, and no caps on amounts paid.

Generally, the employer has the right to control the medical treatment for the first 30 days after the injury is reported. The employee is then free to select any treating physician or facility. However, if the employee has notified the employer prior to the injury that he or she has a “personal physician” (a physician or surgeon who has previously treated the employee), then the employee may be treated by that physician from the date of injury.

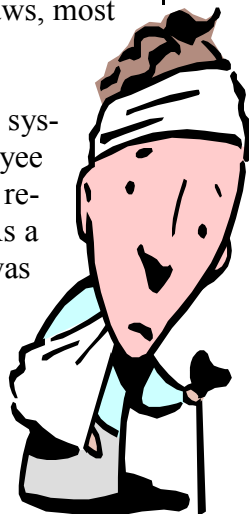
#### 2. Disability Benefits

There are two basic types of disability benefits.

##### a. Temporary Disability Benefits

Those workers unable to return to work within three days are entitled to temporary disability benefits to partially replace wages lost as a result of the

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Published by

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injury. The benefits are generally designed to replace two-thirds of the lost wages to a maximum of \$490 per week (as of 2001).

Temporary disability benefits are payable every two weeks until the employee is able to return to work, or until the employee's condition becomes permanent and stationary.

### **b. Permanent Disability Benefits**

Injured workers who are permanently disabled (those who have a permanent labor market handicap) are entitled to receive permanent disability benefits. A worker who is determined to have a permanent total disability receives the temporary disability benefit (up to \$490 per week) for life. A worker determined to have a permanent *partial* disability receives weekly benefits for a period that increases with the percentage of disability, from four weeks for a 1% permanent disability up to 694.25 weeks for a 99.75% disability.

Permanent partial disability benefits are also payable at two-thirds of the injured worker's average weekly wages, but are subject to a much lower maximum. Those with a permanent partial disability of 70% or more also receive a small life pension (a maximum of \$153.65 per week) following the final payment of permanent partial disability benefits.

The percentage of permanent disability is determined by using the permanent disability rating

schedule as well as an assessment of the injured worker's permanent impairment and limitations. The permanent disability rating schedule specifies standard percentage ratings for permanent impairments and limitations, and provides for the modification of these standard ratings based on the injured worker's age and occupation.

The assessment of the injured worker's permanent impairment and limitations is made by either the treating physician or a "qualified medical examiner" (QME).

## **3. Vocational Rehabilitation Services**

Other benefits are available when injury results in a permanent impairment that prevents the employee from performing her/his usual occupation. If the employer is unable to modify the pre-injury job to accommodate the employee's disability, or offer suitable alternative work, the employee is entitled to vocational rehabilitation services to enhance employability.

Sometimes the service may be as simple as counseling and assistance in finding another job. In other circumstances, the rehabilitation plan may call for on-the-job training in a new occupation, technical or academic education, or even self-employment in some instances.

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Whatever the range of services, all vocational rehabilitation costs are paid by the employer. Total costs for rehabilitation are limited to \$16,000.

## 4. Death Benefits

If an injury results in death, payments will be made to surviving dependents. Unlike disability indemnity, death benefits are unrelated to the employee's earnings. Instead, the benefit is a flat amount specified by statute that varies with the number of dependents, but paid in installments at the employee's temporary total disability rate.

For injuries on and after July 1, 1996, the maximum death benefits are \$125,000 for one surviving dependent, \$145,000 if there are two dependents, and \$160,000 for three or more dependents. The employer is also liable for the reasonable expenses of burial up to \$5,000.

## The Benefit Delivery System

Workers compensation benefits are administered primarily in one of three ways:

- Private Insurance Companies
- State-Run Insurance Companies
- Self-Insurance Programs

Workers compensation is overseen by state-run agencies.

When an employer becomes aware of an on-the-job injury, the employer is expected to begin the process of providing the injured worker with the benefits to which he/she is entitled under the law. These benefits are usually provided by the employer's insurance company.

The state's role in benefit delivery is to oversee the provision of workers compensation benefits, provide information and assistance to employees, employers, and others involved in the system, and to resolve disputes that arise in the process.

The majority of workers compensation claims are handled expeditiously and are administered without dispute or litigation. These are, for the

most part, the smaller claims that result in medical care only, or in which the injured worker is disabled for just a few days. The smaller claims account for more than 75% of all the workers compensation claims.

The balance of the claims – those in which there are significant periods of disability or permanent disability – account for the majority of costs and litigations. In these more serious cases, litigation is common.

Most workers compensation claims are litigated initially before workers compensation referees employed by the Division of Workers Compensation (DWC). Rehabilitation disputes are first heard by a consultant in the DWC Rehabilitation Unit, and that decision can be appealed to a workers compensation referee. The decisions of workers compensation referees are subject to reconsideration by the seven-member Workers Compensation Appeals Board (WCAB). A WCAB decision is renewable only by the appellate courts.

Most disputed or litigated cases are settled without a decision being rendered by a workers compensation referee. Most case dispositions are compromise and release settlements, settlements in which all future liability is released in return for a stipulated amount.

Applicant's attorneys fees must be approved by a workers compensation referee, but they are generally in the 9% to 15% range of the settlement amount.

## Conclusion

Workers compensation is required by law, and can be one of an employer's biggest expenses. In the last year, workers compensation rates have gone up approximately 20% to 30%, and it is anticipated that they will go up again in 2002.

It is imperative that as an employer, you understand how the workers compensation system works, the benefits it provides, and your rights as an employer. It is also important that you understand how to manage and control your workers compensation costs. Cavnac & Associates has a number of tools to help you accomplish this goal.\*

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***Disclaimer:** This article is written from an insurance perspective and is meant to be used for informational purposes only. It is not the intent of this article to provide legal advice, or advice for any specific fact, situation or circumstance. Contact legal counsel for specific advice.*

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# Cavignac & Associates’ Privacy Policy

In compliance with the Gramm-Leach-Bliley Act, and based on the 2000 National Association of Insurance Commissioners model regulation, Cavignac & Associates, as of July 1, 2001, published notice of our privacy policy.

Our position on privacy has not changed; Cavignac & Associates treats all client information as confidential. Our privacy principles are as follows:

- We do not sell client information.
- We do not provide client information to persons or organizations outside our agency

(other than insurance companies who may provide coverage or quotations for our clients and prospective clients).

- We require any person or organization providing products or services to clients on our behalf to protect the confidentiality of Cavignac & Associates client information.
- We afford prospective and former clients the same protections as existing clients with respect to the use of personal information.

Our privacy policy (shown below) is also available on our web site at <http://www.cavignac.com>.

## “Our Privacy Policy”

We value you as a customer and take your company’s privacy as well as your personal privacy seriously. We hereby make public our policies for collecting, using, securing, and sharing non-public personal “customer information.”

### Our Privacy Principles —Information We May Collect

We collect and use information we believe is necessary to administer our business, to advise you about our products and services, and to provide you with customer service. We may collect and maintain several types of customer information needed for these purposes.

The three bullets below show the types of information we may collect and how we gather it:

- You provide information on applications for our insurance products or on other forms, through telephone or in-person interviews.
- Your transactions with us provide information, such as payment history, underwriting and claim documents.
- Some information comes from outside sources, such as driving records or claims history.

### How We Use Information About You

We use the information to obtain insurance policies from companies, to process your claims, ensure proper billing, service your accounts, and offer you other insurance products that we believe may suit your needs.

### Information Disclosure

We share information about your transactions (such as payment of premium) and your experiences with us (such as your claims) within our office and with the companies with whom we’ve placed your coverages in order to better serve you and assist in meeting your needs. We share customer information as necessary to handle your claims and protect you against fraud and unauthorized transactions.\*

# Our Commitment to San Diego's Non-Profit Organizations

One of the objectives that underlies Cavnac & Associates' Mission Statement is to be *"an effective corporate citizen, contributing our time and money to local non-profit and civic organizations we believe in."*

We take this commitment seriously. With this in mind, we contributed over \$25,000 to local charitable and non-profit organizations through direct donations and sponsorship of fundraising events in 2001.

Among those groups we supported are the Child Abuse Prevention Foundation, the San Diego

Downtown Partnership, Senior Community Centers, the YMCA, The American Institute of Architects, the San Diego Junior Theatre, the San Diego Humane Society, and Survivors of the September 11th tragedy.

We have also set up the Cavnac & Associates' Charitable Fund. Every employee donates a few dollars out of each paycheck. The proceeds of the fund are donated to a worthy cause at the end of each year.\*



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