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100 Years of Workers Compensation

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This presentation examines the circumstances that stimulated the creation of the Workers Compensation system over 100 years ago, and what the states hoped to accomplish through enactment of their various statutes and regulations. We also look at how the recently enacted Patient Protection and Affordable Care Act will interact with the Workers Compensation system. Attendees will receive a reference handout on key differences in each state's plan to aid their efforts in controlling the cost-of-risk.

Outline

Workers Compensation insurance was created in response to tragic incidents similar to those which led to the founding of the American Society of Safety Engineers in 1911. The Triangle Shirtwaist Fire generated landmark criminal and civil court cases resulting in the development of new employee rights and recoveries. State workers compensation laws were developed to respond to these newfound rights to protect the business owner. With each state developing individual statutes, variations and differences developed that still exist today. Theses differences are interesting and meaningful to the safety professional in managing injuries and minimizing the cost of risk.

The workers compensation system has a language of its own that can be confusing. "So, what happens to my TTD when I reach MMI?" The presentation will cover key conditions and terms that are common to all state programs to help safety professionals work with their partners in Human Resources. Additionally, states with unique workers compensation insurance nuances will be discussed.

Wellness and workers compensation both deal with employee health – and the vaporous nebula of federal healthcare reform will certainly add more cloudiness to the relationship between employee benefit plans and workers compensation insurance. Industry expert commentary will be provided in the presentation on the current thoughts regarding healthcare reform and workers compensation. These components will need to go 'hand-in-hand' moving forward.

A limited number of the current State Workers compensation Law's reference books will be available for attendees of this session.

Workers Compensation has been in existence for 100 years – safety professionals must be knowledgeable of the workers compensation system, key parts of all state acts, unique state differences, and be willing to partner with their organizations wellness and benefits professionals to be most successful in their jobs and reinforce their value proposition to their employer.

What Workers Compensations “Is” and “Is Not”

State Programs

Most Workers Compensation insurance is under a state specific program. Individual state legislatures vote and pass their state’s workers compensation program – rules, benefits, and administration. All 50 states and territories have individual state acts. Moreover, with every legislature, changes are made to state acts. This is often referred to as Workers Compensation reform. Workers Compensation is administered by state Workers Compensation Commissions – who interpret and apply the state laws. Commissioners are typically appointed by the legislature.

Besides frequent legislative changes to workers compensation, an additional impact is court decisions. The appointed Administrative Law Judges serving on Workers compensation Commission Boards typically makes workers compensation legal interpretations. These case-specific decisions will become part of the legal texture of the state program and can influence future cases if similar in circumstance. You may sometimes hear of a case where a workers compensation claim is settled to prevent “making bad law” where the adjuster and employer decide to close a case versus taking a chance before the Commission that could affect future cases.

If you represent a multi-state operation, you must be prepared for a multitude of variances in managing workers compensation. For example, while many states require workers compensation insurance if you have from one to five or more employees, Texas, South Dakota and New Jersey do not require insurance. Employers who chose to not participate in workers compensation coverage in states that do not require it, are not awarded the benefits of workers compensation “sole remedy” status that protects them from most employer liability actions.

Three states and one territory operate their own workers compensation insurance programs – North Dakota, Ohio, Washington, and The Virgin Islands. Since these states require insurance and operate their own sole-source insurance entity, an interesting precedent to national healthcare is presented.

But wait, there’s more!

Federal WC Programs

Because some employees’ work environments change frequently or are not clearly covered in state acts; railroads and dockworkers for example, we have Federal workers compensation programs. Railroad employees and many federal government employees are covered under the Federal Employee Compensation Act (FECA). Employees working on commercial and recreational vessels over a certain size, on navigable waters including any adjoining pier, wharf, dry dock, terminal, building-way, marine railway or other adjoining area customarily used by an employer in loading, unloading, repairing, dismantling or building a vessel are covered by the United States Longshoreman’s and Harbor Worker’s Act (USL&H). Both these workers compensation programs are different from state programs in coverages and benefits.

In addition, responding to specific health issues of certain occupations, Federal programs have been initiated – Miners Black Lung, specifically.

The largest Federal social welfare program is Social Security. Initiated in the 1930's to provide protection for those who suffer from non-occupational illness and injury, the act was the stimulus for the American Medical Association to first develop the "Guides to the Evaluation of Permanent Impairment", now a benchmark for workers compensation.[1]

The last Federal program of significant impact to workers compensation is Medicare. Medicare is the federal program responsible for medical care for American citizens who are over 65 years of age or who otherwise fit certain criteria. Since the potential for workers compensation to pay only for present treatment and any future amounts awarded to injured employees could be spent elsewhere, thus leaving Medicare responsible for paying medical treatment arising out a workers compensation injury, extensive recordkeeping and reporting requirements were introduced in 2009 for workers compensation carriers. The carriers are required to reimbursement Medicare for any medical payments made by Medicare for a workers compensation claim.

Less dramatic in impact has been the American's With Disabilities Act. The act's requirement that 'reasonable accommodation' be made for employment of persons with disabilities was dreaded when first introduced – especially in Return-To-Work situations. However, the overall impact has been minimal thanks to aggressive efforts of employers.

Medical and Indemnity

Workers compensation insurance is a no-fault method to address injuries and illness caused by the workplace. It provides a sole remedy for the injured employee to receive treatment while protecting the employer. While each state's laws carry different definitions, triggers, and benefits, all are somewhat similar – with some frustrating differences. In fact, studies have suggested the myriad of state programs, with resultant variances in coverage triggers and benefits, are detrimental to interstate business and should be standardized.

Workers compensation does not include damages – typically punitive damages awarded for negligence of the employer or co-workers. This is perhaps the biggest reason for development of workers compensation in America.

Workers compensation is designed to pay for two broad categories – Medical and Indemnity costs.

Medical costs relate to treatment of the injury. Emergency medical services, doctors, hospitals, medications, physical therapy for example. Typically, medical costs are unlimited until the employee fully recovers and is able to return to work. Historically and until recently, medical costs accounted for 40% of workers compensation loss costs. However, and to be discussed later, this is changing for many reasons.

Indemnity costs are those associated with compensating the employee for wages while unable to work and any residual effect of the injury. State laws differ in when compensation for lost wages start, ranging from three to seven calendar days after the injury or manifestation of symptoms of disease. However, if an employee is unable to work for typically greater than 30 days, workers compensation will reach back and pick up the first days. Lost wage compensation is typically 2/3's of the employee's average weekly wage in a period before the injury. The benefits are not taxable. The employer provides a wage statement to the claims adjuster for compensation to be determined.

Again – many rules apply for the maximum compensation on a state-by-state basis. Consider a corporate CEO earning $40 million who strains his back lifting his wallet at work? Or a store clerk making minimum wage who tears a rotator cuff stocking shelves? Clearly these two

employees' 2/3 average weekly wage are vastly different. States cap the highest weekly compensation and typically adjust the figure annually. Currently the state national average is $782.43. Iowa has the highest at $12,413.[2]

Meanwhile, the current maximum weekly wage compensation for FECA and USL&H, mentioned earlier, are $1,868.03 and $1,200.62 respectively.

Workers compensation also responds under indemnity with compensation for disabilities as a result of an injury at work. This may be temporary, permanent, partial, or total. Temporary injuries are such as a back strain expected to heal. Serious injuries as in a permanent loss of sight, or a physical impairment that limits the post-accident abilities of a worker. Disfigurement is also anticipated in many state workers compensation acts.

Many states have 'schedules' for compensation which are based on permanent injury. For example, loss of an eye in Mississippi will result in compensation of $41,429 – the same injury in Illinois is $215,039.[3]

Most of the remaining states determine compensation based on 'Percentage of Impairment' and part of the body. The figure could be, for example, 25% impairment of the entire body for loss of an eye, or 15% impairment of one arm as a result of rotator cuff surgical repair. The percentages are applied to guidelines by state within their regulations.

The key, consistent across many states, is the treating physician develops the determination of the 'Percentage of Impairment'. Many states require the physicians who determine the percentage of impairment to have specific certifications in order evaluate impairments in the states they practice. The treating physician's determination can be challenged certainly, but only under definitive rules and time lines within each state's regulations.

The last provision under workers compensation is death benefits. Medical costs are of course covered, but death benefits beyond burial expenses are only available if dependants are present – persons who rely on the deceased employee's wages. Again, the disparity between the state plans is evident with Mississippi benefit for a spouse-only of $186,430.50 and Maryland $60,000.00. Burial benefits are also paid with Mississippi at $2,000 and Maryland $5,000.

Types of Workers Compensation Policies

Premium Development

Payroll, Rate, and Experience Modifier determine the basic cost of workers compensation coverage.

Employees are grouped into classes according to their occupation. The occupational classes have rates reflective of the historical loss costs for that type work – a lumberjack clearly has greater potential for injury than a clerical worker, thereby a higher rate. At one time, the workers compensation rate for a Logger in Virginia was $50.00 – meaning if you paid a logger $1,000 in wages, you paid a premium of $500. At the same time, the rate for clerical was $0.13.

Payroll for the classification is divided by 100 and multiplied by the Rate – giving a raw premium.

Experience Modifier

The raw premium is then tempered by the employer's Experience Modification Factor – Experience Modifier, ExMod, EMF, and other names. An average company will have an Experience Modifier of 1.0, unity, which makes no change in their raw premium. Companies

who have adverse workers compensation claims histories will have a debit modifier – above unity, and will drive the premium higher. Similarly, favorable past claim history will result in a credit modifier, reducing the cost of workers compensation insurance.

An employer's Experience Modifier is perhaps their most valuable business asset. It will directly affect not only their cost of insurance, but can affect their ability to secure certain business. Some companies are asking for Experience Modifiers in Requests for Proposals and quote proposals. An Experience Modifier above a certain level can disqualify otherwise well-qualified contractors from jobs.

Who develops and what drives my Experience Modifier? The actual formula is complex – but it boils down to a comparison of the company's actual loss costs against expected for the classification. Better gets a credit, worse gets a debit. It is weighted heavily for frequency, and <u>any</u> indemnity costs have a major impact on the modifier.

For 39 states, the National Council for Compensation Insurance (NCCI) develops your modifier from data provided by your carrier. This data is dumped approximately 90 days before your renewal date – that is important and we will touch it later. The remaining states have their own state experience bureaus developing the data.

Your Experience Modifier is actual to expected claims costs over a three-year period, not including the current year and prior year. So, you already know one bad year will stay in your experience for three years. But what exactly is a "bad year"?

About seven years ago, a change was made to the NCCI formula. Because many companies were not reporting medical-only claims, paying out of pocket to protect their experience modifier, medical costs are lowered by 70% in the new formula. This was done to encourage reporting of claims to protect the validity of claims data nationwide.

Contrary to what we seem to hear, one bad claim will not drive your modifier to the sky. Sure, some impact will be felt, maybe a 10 to 25% impact, but a modifier will not go from 1.0 to 2.5 because of one claim. Why? Single claims indemnity costs are capped from $50,000 to $100,000, depending on the state.

This means the $1.5 million permanent total disability claim will only go into the formula as a $50,000 or $100,000 claim. Rating bureaus recognize the infrequent but large claim as reflective of the fortuitous nature of injuries. A slip can result in spilled coffee and ruined shirt, or a fall and ruptured disc – but it started with a slip.

But, you must maintain awareness that the modifier is impacted by frequency – the number of claims, and <u>any</u> indemnity costs. Frequency of injuries increases the probability of a large claim – the greater potential for the fortuitous claim.

The formula also includes calculations for Primary and Excess costs. Primary claims are weighted less if under $5,000. So, as soon as a claim exceeds $5,000, a greater impact on the modifier results.

Allocated Loss Adjustment Expenses – specific claim administration, investigation, legal costs, etc, are NOT included in the experience modifier. This prevents affecting the modifier by claims defense efforts.

Workers compensation claims can become stale with reserves being held to ensure adequate money is set aside to pay the claim to estimated ultimate loss costs. This reserving is an estimate by the claims professional based on known information. The better information known by the adjuster the more accurate the reserving. Communication with your claims professional

can ensure reserves are accurate and protect your Experience Modifier.

Carriers report your claims experience to the rating bureaus approximately 90 days before your coverage term expires for development of your next Experience Modifier. Prudent companies will review open claim reserves with their claims professionals prior to this reporting to ensure reserves are appropriate. This review can protect your Experience Modifier by validating reserves and possibly closing claims before experience is reported.

Understanding what drives your Experience Modified can help you control it.

Risk Financing

The most common and popular risk financing mechanism for workers compensation for smaller and mid-size employers is Guaranteed Cost.

Payroll/100 * Rate = Raw Premium

Raw Premium * Experience Modified = Premium

The only two variables in this mechanism are, of course, payrolls and modifier. The impact of loss costs for the particular coverage term are fixed – or guaranteed for that period regardless of claims costs during the coverage term.

If a company has a higher risk-tolerance level and adequate premium size, other risk financing mechanisms are available. These alternative risk financing mechanisms share loss costs with the employer and carrier -- and as a result are lower in fixed costs.

Deductible Programs

Similar to automobile deductibles, if a company is willing to self-fund the cost of minor injuries, and have workers compensation respond only to larger claims, the cost of risk will be reduced. Deductibles are available as low as $1,000 and as high as hundreds of thousands. Claims are handled by the carrier and the deductible is typically billed back to the company.

Retrospective Rating Programs

These can be either paid- or incurred-loss retros. Retrospective Rating means the rate is determined based on actual loss costs during the coverage term. Paid means actual disbursements. Incurred is based on estimated ultimate claims costs. A base raw premium is discounted by a retro factor, which reflects minimum and maximum premiums. Expected claims costs are multiplied by the loss adjustment factor (cost of claims administration) and added to the raw premium. The company pays the retro premium for coverage. The retro is recalculated shortly after the policy expires and an adjustment is made based on actual claims cost. A second recalculation will take place later at which time the retro will be closed out if all claims are closed, or other arrangements made, such as converting the policy to guaranteed cost for the remaining open claims.

Self Insurance

This is a complex mechanism subject to strict regulation and oversight, and is typically only undertaken by large corporations who have the resources to manage and capital to set aside for claims reserves. The company basically operates as an insurance company but may outsource claims management to a Third Party Administrator. The TPA is paid either as a percentage of claims costs (Loss Adjustment Factor) or capitivated on a per claim basis – medical and indemnity. Captives are a form of self insurance where a carrier entity is established solely for

the employer, or a group of employers.

Self Insurance Funds are also prevalent for groups of similar companies and public entities such as municipalities. The companies join the Fund as fully assessable members – benefiting from potential cost savings in administration and profit retention while being subject to assessment in event the Fund requires additional funding to maintain reserves.

Even Self Insurance and Self Insurance Funds will typically purchase an insurance product to protect against catastrophes. These Excess or Stop-Loss policies respond to a specific claim or total claims costs above a certain amount – called 'specific' and 'aggregate' attachment points.

Alternative Risk Financing mechanisms for workers compensation are based on the risk tolerance level and capitalization of the employer. If a company believes their cost of risk is less than what a guaranteed cost program charges, they can control loss costs better than typical for their industry, and they have sufficient capital to set aside for reserves, alternative risk financing can show benefits in lowering workers compensation cost of risk.

History of Workers Compensation

In the industrial revolution of the late 1800's, American society demographics moved from agrarian to manufacturing. With mechanical equipment, land could be farmed with fewer workers. Meanwhile, manufactured goods such as textiles and machinery required factories and factory workers. Immigrants fleeing famine and oppression tended to congregate in cities and neighborhoods that shared their history and interests – and needed work to support themselves and their families. All of these factors supported the growth of large manufacturing centers with hundreds and occasionally thousands of employees in one location.

Factory workers in the late 1800's were exposed to serious workplace hazards. Power transfer was by belts to wheels turning on shafts running the length of the building. Machine guarding was a new and developing science. Work hours were ten and twelve hour days six days a week. No minimum ages to work were present. Personal protective equipment was either not available or not invented yet.

The hazards were present, and injuries and deaths were frequent. But, if someone got hurt, someone else was ready to do the work. Employment was purely at the pleasure of the supervisor – working condition complaints were taken at the other side of the plant gates.

All these factors were clearly illustrated in the Triangle Shirtwaist Factory fire of 1911. As this was the genus of the start of what became the American Society of Safety Engineers and the subject of our Opening Session of this conference, we will not repeat the multitude of contributory factors that lead to the death of hundreds.

However, it does bear mention the initial society was created by and made up of insurance inspectors. While we have grown beyond calling ourselves inspectors today, the Risk Management/Insurance Practice Specialty of ASSE is one of the largest practice specialties and primarily made up of insurance broker and carrier loss control consultants.

Prior to workers compensation, in event of a worker injury, the employer could be held legally responsible for the injury, but only if employer negligence could be proven. Based on English common-law regarding the relationship between the landed gentry and the commoner laborers who worked the land, the employer had these defenses against negligence:

Contributory Negligence – the employee was at least partially culpable in the injury

through act or omission.

Fellow Servant – the injury was caused by a co-worker's negligence

Assumption of Risk – the employee knew of the hazards of the job and willingly worked in the environment.

Recovery against the employer was through the civil courts. This was a long process pitting the resources of the injured employee against the resources of the company. The employer's defenses, although limited, were extremely broad. Additionally, they had time on their side where the injured employee did not – out of a job and unable to work provided little resources for legal representation. Filing suit against a current employer would have an immediate and predictable impact -- employers of that time would share information on 'troublesome' employees – making it difficult to find another job if fired at one. Basically, the cards were stacked in the employer's favor – and stacked high.

It became evident the system was not working, and injured employees were seldom able to recover against their employer in a timely manner.

But, when cases were held, jury awards were unpredictable and frequently very costly. Legal costs were also being borne by the companies, as cases were civil. More than one factory was shuttered as a result of a worker injury case. Employers began looking for a way to control the costs of worker injuries, or at least make them predictable.

Even in the early 20th century, media was having an impact. Newspaper reports of tragic industrial injuries – sometimes involving several fatalities from one incident--were bringing public attention to the issue.

States were responding to the outcry with various employers' liability laws intended to modify the common law defenses and hold employer's more accountable for worker injuries.

Compounding the issue was the efforts of the Federal government to pass employer liability laws in 1906 and 1908 with the same intent. Federal efforts were limited as the consensus was worker protection was a states-right issue. However, the aspect of federal employer's liability legislation stimulated various state legislatures to develop more comprehensive alternatives – workers compensation laws.

Wisconsin passed the first workers compensation Law in 1911. This regulation was unique as it was an exclusive remedy mechanism. In exchange for a known level of responsibility and cost, the employer was defended against negligence. Although the employee could no longer sue the employer for damages, medical and disability costs were immediately available versus at the end of an extended and costly court case.

Many states followed passing similar legislation. Nine other states passed similar legislation in 1911. The last state to pass a workers compensation law was Mississippi in 1948.[4]

The common thread of all state workers compensation acts is "No Fault - Sole Remedy." If the employer has workers compensation coverage in place, through either the state, a private insurance company, or self insurance, they are protected from liability in civil court cases. Even if their negligence had an impact on the injury, they cannot be held responsible in civil proceedings.

In return, the employer gave up their common law defenses against liability – contributory negligence, fellow servant, and assumption of risk. With exception but generally, if the injury arises out of and in the course of employment, it is covered under workers compensation.

Recall workers compensation programs are state level and legislated. Each of the 50 states and two territories workers compensation program has specific and important nuances. These nuances make considerable differences in the benefits available, and cost of workers compensation insurance.

For example, burial allowances range from $1,000 (American Samoa) to $16,000 (Oregon).

The waiting period for starting income benefits range from three days (23 states) to seven days (22 states).

The retroactive period for picking up the unpaid initial waiting period range from one week to six weeks.

Twenty six states do not permit the employer to restrict what doctor an employee may seek treatment for a workplace injury. Most other states permit employees to select a treating physician from an established panel.

There are also major differences in determination of compensability among the states.

Some states are "Accident" states. For an injury to be compensable in these states, an unusual event or unanticipated occurrence must have been the proximate cause of the injury. A slip, trip, loss of balance, container weighing more than expected, or other unusual occurrence must be the cause of the injury to be compensable. Without this incidence, the injury is not compensable.

Other states are "Out of and in the Course of Employment" states. In these states, an injury that occurs at work within the normal course of work events is compensable regardless of the proximate cause.

Occupational Disease, such as noise and Repetitive Motion Injuries, are covered specifically in state workers compensation laws to control confusion over compensation where the injury does not have a specific initiation. In these cases, the 'manifestation of symptoms' is the trigger – all state specific.

Stressors of the Current Workers Compensation Programs

The pricing of all lines of insurance coverage since 2005 has been aggressive and steadily decreasing. We are currently in a soft insurance market and compression of workers compensation premiums continues. In addition, corporate downsizing has resulted in significant changes in exposure basis for premium calculations. For this paper, 2005 numbers were selected as a more valid benchmark of the true cost of risk. Many companies are finding that even though their insurance premiums are going down, the cost of claims is rising. As safety professionals we should be engaged and helping to focus on reduction of these costs by supporting and engaging/strengthening our relationships with other employees in our organization to help control these costs.

The Total Workers Compensation Cost of Risk in the United States varies from $3.74 to $4.60 per $1,000 revenue from 2002 to 2005. Workers compensation average costs per employee were $687 in 2005 with associated cost as a percentage of payrolls of 2.44%.

A typical company with $5 million gross sales paid $67,050 in workers compensation premiums and administrative costs for risk financing and management efforts in 2005. Workers Compensation costs accounted for 30% of the total insurance costs. Professional, liability, property, management, and administrative cost of risk for 2005 were estimated to cost $13.41 per

$1,000 gross sales – the other 70%.

In the recent past, the expected percentage of claims costs was estimated to be 60% for medical expenses and 40% for indemnity expenses. Comparatively, in recent years the mix has changed. While indemnity costs have not seen dramatic reduction, the mix is now near 50-50 driven by an increase in medical expenses. This is an indicator that an increase in efforts to control the medical cost portion of every claim is critical to total cost reduction. This increase in the cost of the medical portion/component of workers compensation claims appears to be consistent with overall medical cost inflation due to diagnostics, medication, and care costs. Some studies estimate these costs to be as high as 15-20% of medical costs.

In addition, with the new Medicare MSA requirements, many companies are turning in bills to Medicare and the general expectation in the insurance industry is that Medicare is going to come back to the workers compensation system to collect this money. This is going to result in workers compensation files reopening and claim costs increasing.

Risk managers need to be more diligent about when to settle a claim. From a risk management perspective, all options need to be evaluated before settling or closing a claim. This dynamic may result in longer 'tails' for loss sensitive claims and could impact both projected exposures and required collateral which could potentially increase the amounts employers pay for coverage.

In addition to the compression in the market and the MSA issues that will drive workers compensation costs, many states are undergoing workers compensation reform. The main push of many of the state reform bills is a reduction in premium rates to make a state more competitive for a company to do business. In addition, reform has focused on limiting benefits for injured employees, capping the amount of time they can receive workers compensation payments. This reform is pushing many people to file Social Security, SSDI, claims and again is affecting the Medicare requirements that ultimately could drive up costs for employers.

How will the Patient Protection and Affordable Care Act Impact Workers Compensation?

The potential of the actual execution of the Healthcare Reform Act (HRA) is dependant on administrative rulemaking from the Health and Human Service Department at the Federal level. Several states have or are planning to make cases against the implementation of the HRA in their states for various reasons. These state actions could have unpredictable impact on how the HRA and our current state specific workers compensation laws interact. These pending state objections and filings make offering substantive comments regarding the HRA's impact on workers compensation laws challenging at this time. However, the presentation will contain current information, and should be consulted.

How Do We Prepare for the Challenges of Workers Compensation?

Beyond the basics of adequate training and supervision, prompt reporting and effective accident investigation, the future of the integration between Safety & Health and Wellness & Health efforts is essential to reduce workers' compensation insurance costs, reduce health care insurance costs, reduce absenteeism and presenteeism, increase productivity and profits and to be within various state compliance complexities as they continue to evolve.

Organizations should consider this forward thinking partnership between traditional Human Resources, Benefits, and Safety Professionals to continue to reduce losses both in the workplace, in employee homes and to stay current on ever changing landscapes within regulatory compliance. State and Federal specific compliance will require the combined efforts of each component.

Employees who are suffering from mental health stress due to typical issues such as the loss of a loved one, financial concerns or marital disputes tend to loose focus on eating well, sleeping well and exercising. These factors can contribute to employee distractions at work and can increase the potential for workplace accidents. An important component of this integrated effort should include consideration of increased awareness of Employee Assistant Programs, Chaplin Programs, and stress reduction counseling opportunities to ensure that employees understand state laws, comply with company policy and know that they have qualified resources to ask regulatory questions of outside of the organization.

Employers should consider combining safety, wellness, mental stress, and regulatory compliance communications in their employee training and education efforts. This sends a positive message that we care about you and your family both in the workplace, at your home, throughout your life and want you to understand the complexities that affect your medical care. We want you to be healthy and safe while understanding to growing complexity of state and federal regulations.

Combining safety-related information from the workplace, mental health stress reduction information, Employee Wellness information and state and federal specific information while providing management level support to demonstrate the initiatives importance will result in a healthier workforce and will aid in returning employees to work in a shorter time frame.

It has been said employers have two choices in employee workers compensation education – they can do it, or it can be done by a plaintiff's attorney. Integrating safety and wellness communications will allow employers to educate their workforce to reduce litigation due to a sense of unawareness and confusion. In many instances, employees seek legal representation as an advocate because of the complexities of workers compensation. With a communication strategy, this can be controlled.

Workers compensation claims costs are higher when a plaintiff attorney is involved. While there may be actual differences in benefits received, some empirical observations of claims professionals see final settlements increased to cover the injured employee's legal costs, typically a contingency basis for a percentage of the settlement, to cover legal expenses. Altruistically, this is a means to ensure the injured employee receives the proper benefits – effectively transferring legal costs to the carrier and eventually the employer.

Conclusion

The evolvement of workers compensation and healthcare through initiatives like the Healthcare Reform Act will continue. The demarcation between workplace injuries/disease and lifestyle/aging medical care needs will become gray and create issues in who is the responsible payor.

Progressive employers will recognize these developments and institute programs with shared emphasis in workplace and at home safety and wellness.

State-specific workers compensation rules and benefits will continue to see attention, with the business community wanting to see standardization to ease the cost of doing business in

the various states. As we have seen, states with higher costs of workers compensation insurance will continue to see employers make strategic decisions on plant locations, such as the exodus from California in the 1980's, and including off-shoring of manufacturing to control costs.

Workers compensation costs are controllable. With a typical manufacturer paying 30% of their total cost of risk for workers compensation, and developing friction with social welfare cost allocation at the Federal level, safety professionals are in the spotlight in protecting their employer's workforce from injury and disease, and protecting the employer's owners and stockholders investments and future viability in a constantly changing regulatory environment.

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[1] The Iowa Orthopedic Journal, A Brief History of Workers' Compensation, Gregory P. Guyton, Department of Orthopedics, University of North Carolina, Chapel Hill, NC 1999

[2] 2010 Analysis of Workers compensation Laws, US Chamber of Commerce, Washington, D.C.

[3] Same

[4] The Iowa Orthopedic Journal, A Brief History of Workers' Compensation, Gregory P. Guyton, Department of Orthopedics, University of North Carolina, Chapel Hill, NC 1999