



Repetitive Motion Claims Strategy

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Brief Description: This paper presents strategies to reduce the cost, frequency and improve litigation outcomes associated with repetitive motion disorders in California and other jurisdictions where these cases are both costly and frequent. Key strategies will also be presented to assist organizations in expanding this strategy into other states.

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Introduction

The purpose of this white paper is to present a specific strategy to manage repetitive motion claims in California. According to the Bureau of Labor Statistics, California continues to lead the nation in the number of musculoskeletal injuries reported by private industry employers. With rising medical costs, court decisions that are often employee-favored regardless of the evidence, increased payments for injured workers rated more than 70 percent permanently disabled, rising rates of insurance, and a 47% increase in costs per claim in the four years after the reform³, the need for a definitive strategy for California claims is critical for cost containment in this jurisdiction.

Aon has worked with several clients and developed an effective model, which has proven to significantly reduce the frequency and costs related to cumulative trauma, strains or repetitive motion injuries in California. This paper will shed light on some of the strategies and best practices we have implemented with clients to help them better reduce and manage repetitive motion claims.

California Workers Compensation Laws and Costs

From 2002 through 2004, California signed into law policy reforms aimed at reducing medical costs associated with workers compensation claims. However, these policies had limited impact and by 2008 Workers' Compensation Insurance Rating Bureau (WCIRB) loss data on insured claims from accident year (AY) 2006 indicated that the post-reform reduction in medical costs was short-lived and medical losses were trending up¹. The WCIRB's subsequent quarterly summaries of California workers' compensation insurer experience, as well as CWCI studies published in 2009, 2010, and in April 2011, have all confirmed this post-reform reversal and the steady growth in workers' compensation medical payments over the past several years. For example, according to the California Workers Compensation Institute report for 2011, the average medical benefits payments on indemnity claims at 12 month's post injury rose 40.7% and three month post injury medical payments jumped 34.7%. Additionally, U.S. Department of Labor data illustrates California's State Average Weekly Wage (SAWW) rose more than 2.4% from \$979.90 to \$1003.55 in the 12 months ending March 31, 2011. Further, the California Workers'



Compensation Institute (CWC) reports will increase minimum and maximum temporary total disability (TTD) rates for 2012 work injury claims, as well as other workers' compensation benefits that are tied to changes in the SAWW ². Finally, a report by the WCIS database from 2011 revealed that denied claims in the state have remained relatively unchanged from 2007 to 2010 (Table 1) indicating that claims adjusters may be lacking the necessary tools to effectively validate causation of suspect claims.

TABLE 1: CALIFORNIA CLAIMS REPORTED COMPARED TO DENIED CLAIMS 2007 TO 2010

CA CLAIMS	2007	2008	2009	2010
Denied Claim	53,123	50,714	47,678	39,532
Total Reported Claims	700,827	643,824	553,633	531,704
Percentage	7.58%	7.88%	8.61%	7.43%

A NEW APPROACH

To have success in California, a new, multi-factorial approach is needed to ensure effective cost containment of the workers compensation spend. In reviewing the 2010 loss trends for private industry, strain and sprain were the leading injury type accounting for an average of 37.8% ⁴ with sectors such as Information, Trade and Education/Health Care posting strain/sprain injuries over 40%. Implementing a specific plan for these claims is crucial. As shown in Figure 1, there are five primary essential elements to reducing the overall impact of repetitive motion disorders. By implementing this approach – with each element connected and feeding the other – greater results can be achieved.



FIGURE 1: MULTIFACTORIAL STRATEGIES FOR REPETITIVE MOTION CLAIMS

PREVENTION STRATEGY

Preventing work-related musculoskeletal disorders from occurring in the first place is a critical first step in this process. Many organizations still rely on non-Board Certified Professional Ergonomists to support their ergonomic initiatives. This typically results in a program that addresses only micro-level issues at the expense of comprehensive risk reduction strategies that include or address production demand assessments, obesity, age and other population exposures, engineering layouts for efficient, ergonomically designed workstations, and incorporating ergonomics into the wellness initiatives.

Board Certified Ergonomists offer the depth of experience to provide macro-level direction to programs, beginning with a gap analysis to identify current and future states in order to establish a baseline for understanding the issues facing an organization from achieving optimal success in their ergonomics program. Organizations that dwell in the “micro-level”, and do not implement macro-ergonomic solutions and strategies to address WMSD’s, are often left with flat or poor performance, and ultimately increased claims. Programs myopically focused at the micro-ergonomic level often continue to struggle because they never coalesce the critical elements necessary to achieve a comprehensive and successful program.



Many companies have jobs with expanded cycle times, good ergonomic controls and job variation which reduce or eliminate an employee's exposure to work-related risk factors. In such cases, when an employee files a claim, oftentimes companies are left without a tool or process to validate causality. Adjusters are then dependent on medical information to deny or accept a case. This can result in the acceptance of claims that do not have ergonomic risk factors that rise to the level to cause a repetitive motion disorder.

VALIDATON STRATEGY

Repetitive Motion Disorders (RMDs) are a family of muscular conditions that result from repeated motions performed in the course of normal work or daily activities. RMDs include carpal tunnel syndrome, thoracic outlet syndrome, bursitis, tendonitis, epicondylitis, ganglion cyst, tenosynovitis, and trigger finger. RMDs are caused by continuous and uninterrupted repetitions of an activity or motion, unnatural or awkward motions such as twisting the arm or wrist, overexertion, incorrect posture, or muscle fatigue (Definition from National Institute of Neurological Disorders and Strokes).

Oftentimes the job the employee was performing at the time of the reported WMSD does not have significant risk factors which, in turn, raise the question on causality. Is this the result of a work-related cause or does it relate to non-work related factors such as obesity, diabetes, lifestyle (e.g. sedentary), or even exercise induced injury (e.g. cycling, weight lifting).

Aon's Musculoskeletal Claim Validation (MCV) service is the missing link, providing the depth and comprehensive expertise to help take the guess work out of establishing work-related causation. Using proven ergonomic and epidemiological scientific methodologies, Aon's board certified professionals conduct on-site analyses of employees performing actual jobs, and leverage industrial engineering methodologies to study the work being performed, then report back on the evidence or no evidence of a correlation between employee-reported injuries and the job performed. Adjusters typically struggle with determination as they only have competing medical opinions and no tangible, scientific evidence within which to make a compensability decision other than medical. MCV provides the evidence and is an essential tool for musculoskeletal claim determination.



CLAIM STRATEGY

Responsible employers strive to take good care of their employees, providing injured workers with quality medical care, professional claims service, and workplace accommodations, when possible. This does not mean that employers should cover non-compensable claims under their Workers' Compensation policies. Aon recommends maximizing your relationships with your medical providers, claims administrator, defense counsel and broker to better manage your total cost of risk. Key elements of the claims strategy include the following:

1. Partner with your claims team and broker to take control of your claims program by designing detailed service instructions, outcomes-based performance guarantees, and a collective understanding of your overall exposures and loss history
2. Investigate your claims to identify co-morbidity factors, pre-existing conditions and other claims
3. Get to know your doctors (take a tour of the clinic; meet the staff)
4. Encourage treating doctors to know your business and your goals (invite the doctors for a site tour, explain your wellness program, your worksite setup and any ability to accommodate work capabilities)
5. Develop detailed job descriptions/video and make sure the treating and Qualified Medical Examiners review them for compensability and work capacity
6. Become creative with your return-to-work program and gain endorsement from senior management, unions, HR and local management to make it succeed
7. Maximize use of pharmacy and medical case management
8. Analyze your data and make it actionable
9. Establish baseline outcome measurements for year over year data comparison
10. Know your cost drivers and structure your program to tackle them through early intervention by medical management, enhanced investigation, surveillance and background checks
11. Give your adjusters a tool to refute non-compensable RMD claims. Consider validation of questionable musculoskeletal disorders.
12. Strategize with your legal partners in strategic geographic regions to ensure you understand current case law and they understand your goals and philosophy.



Solid claims management strategies that include validation of questionable strain/sprain claims and strong oversight of the key cost drivers will improve workers compensation program performance.

LITIGATION DEFENSE

The defense of repetitive motion claims involves an aggressive approach to ensure that the claims are resolved for the benefit of the Employer. By partnering with the employer, broker, claims administrator, the litigation defense is key in evidence gathering and validating key time lines within the California workers compensation landscape. Key elements of a litigation defense strategy include the following:

1. From the onset of claim within the first ten (10) days, schedule the deposition to determine the nature and extent of the injuries, basis of and define the actual job duties that are being performed by Applicant.
2. At the deposition utilize the information contained in the Aon evaluation to rebut Applicant's allegations of repetitive work.
3. Provide a copy of the Aon evaluation to all doctors from the onset of the case.
4. Schedule and complete the cross-examination of doctors who evaluate Applicant, utilize the Aon evaluation to rebut repetitive duties.
5. Use the Aon evaluation at Trial to rebut the doctors' conclusions.
6. Utilize the Aon representative who performed the evaluation at the time of Trial as an expert to the medical report as to causation and permanent disability.



LITIGATION MANAGEMENT

Aon has spent a considerable amount of time studying litigation to understand what drives it and more importantly, strategies we can implement to mitigate both the cost as well as the outcome of the claim itself. Several important themes began to eliminate from our studies. First, repetitive motion and/or cumulative trauma injuries typically account for the highest frequency and largest costs out of all of the possible causes for most employers in California.

The chart at right provides a typical distribution of loss cause and the relative cost for each type of loss. As the chart indicates, Repetitive Motion/ Stress and Strain injuries represent over 35% of the total number of injuries but almost 44% of the total cost.

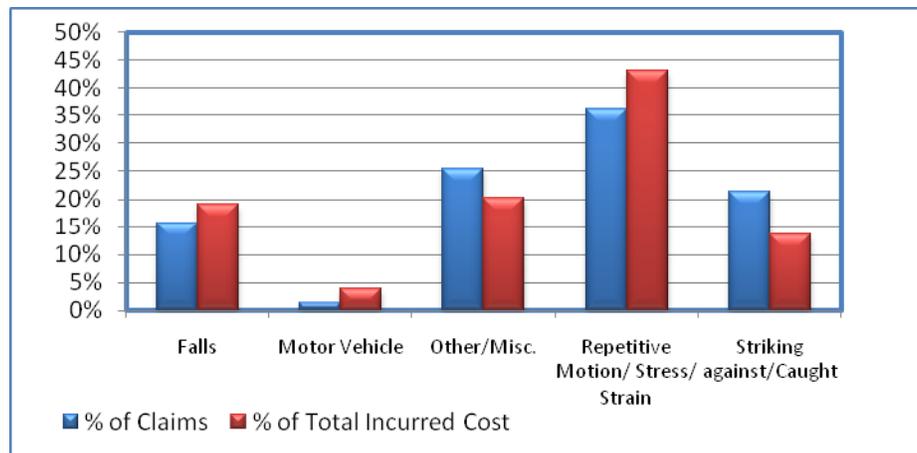


FIGURE 2 - TYPICAL DISTRIBUTION OF LOSSES BY CAUSE AND COST

Second, our studies suggest a strong correlation between loss cause and litigation, with repetitive motion/ stress/ strain injuries often demonstrating a five times (5 X) increase in probability of litigation than others causes. In a recent study, one client in Southern California experienced a litigation probability of 1 in 2 or 50% probability of litigation when the incident involved repetitive motion/ stress/ strain.

Third, our studies also suggest significant variances in outcomes produced by defense firms when *all other factors are isolated*. In other words, the defense firm you select will have a material impact on the outcome of the claim itself. This manifests itself in two important ways, 1) The cost of defense or legal fees and 2) The cost of the outcome of the claim itself (medical and indemnity



benefits). Poorer performing defense firms will, on average, cost \$1,000 more in legal fees and \$5,000 more in medical and indemnity benefits.

Because repetitive motion/ stress/ strain injuries cost more and are at significantly higher risk of litigation, understanding which defense firm(s) provide the best results provides a critical basis for constructing a holistic approach for effectively mitigating claim costs. Aon has developed an actuarial-based analytic model which analyzes claim cost-drivers and defense firms, to address the question “Which defense firms provide the best value from a claims outcome perspective?” Litigation Analysis, Mitigation and Benchmarking of Defense Attorneys (LAMBDA), Aon’s proprietary and award-winning actuarial-based analytic and predictive model delivers the information necessary to select the highest-performing defense firms and protect our clients’ balance sheets. Knowing which defense firms provide the greater value enables our clients to carefully and judiciously select those defense firms that produce *better* outcomes and *lower* overall costs, potentially saving the client millions as a result.

Studies completed to date have identified savings potential of up to \$6.5M over five years for a single state and jurisdiction. Savings projections were based upon simple changes in the clients’ legal panel and channeling legal representation to higher performing defense firms and reducing the use of poorer performing firms.

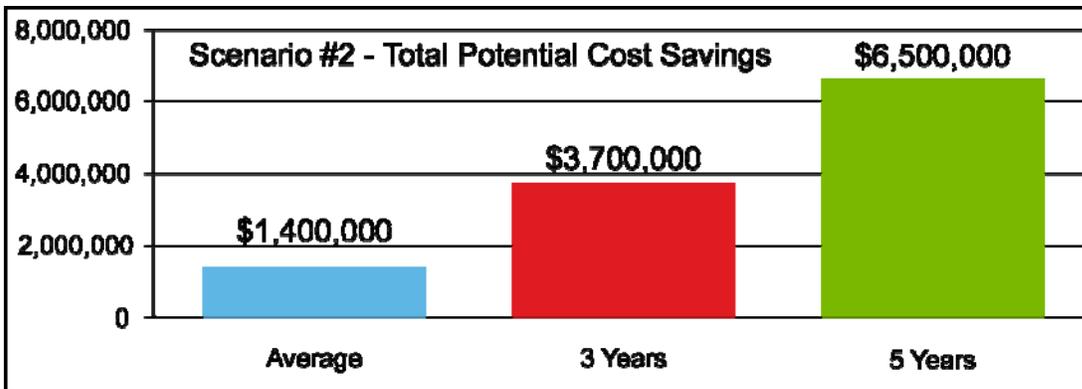


FIGURE 3: COST SAVINGS PROJECTIONS OVER 5 YEAR PERIOD FOR A SINGLE STATE USING LAMBDA



RESULTS

When each element of the approach is applied, the results can be significant. Below are two client case examples with operations across the United States. The California-specific locations were experiencing significant claim frequency and claim costs associated with WMSD's. Aon introduced the strategy implementation and achieved the following results.

1. Client A: Deployed this strategy on 46 claims. Of those California claims, 24 have been dismissed in the first 6 months and 10 others have been settled for under \$5,000.00.
2. Client B: Of the piloted claims that utilized MCV, the denial rate was 87.5% compared to an 8% denial rate of claims outside the pilot. The pilot claims average cost was \$12,106 compared to an average of \$70,235, representing an 82.76% reduction in the total incurred.

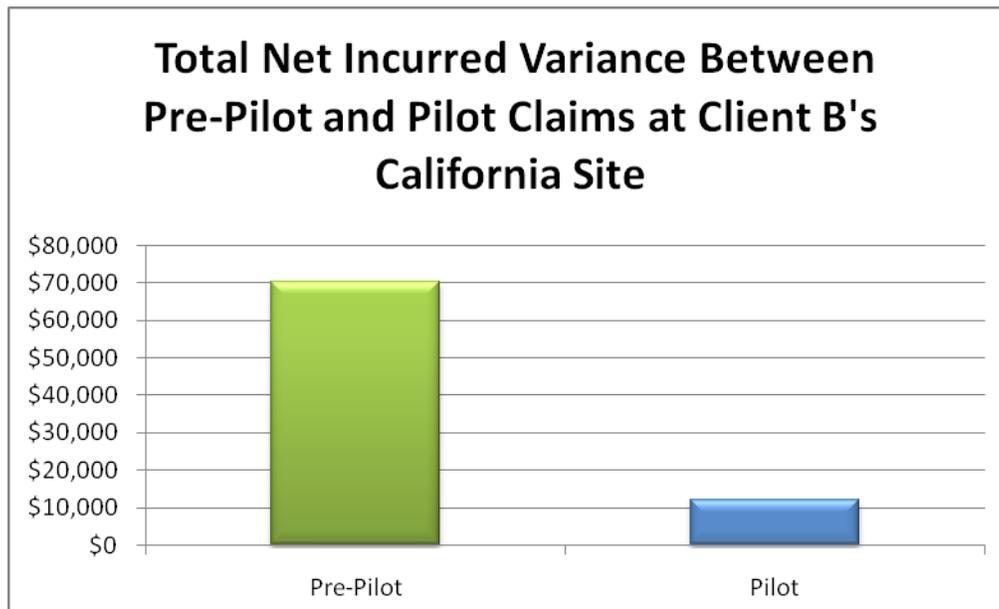


FIGURE 4: AVERAGE COST PER OVEREXERTION CLAIMS BEFORE AND AFTER PILOT



CONCLUSIONS

The approach outlined provides an effective way for employers to reduce the costs associated with repetitive motion disorders, including assisting companies with validating questionable causality, applying specific and timely litigation strategies, and ensuring claims management is effective and has the tools needed to determine compensability. In addition, the importance of prevention program that address macro-ergonomic strategies along with effective return-to-work initiative will help complete the approach and provide a successful, results-driven program for California locations.

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