



Recent Trends in Workers' Compensation: An Overview

20th Annual Workers' Compensation Insurance
ExecuSummit

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The Panel

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Agenda

- PTSD and Mental Health for Workers' Compensation Injuries and Claim Professionals
- Workers' Compensation Regulatory and Legislative Updates Involving Cannabis
- Catastrophic Claim Rise
- Artificial Intelligence
- Medical Inflation Trends & Pharmacy Costs
- Workplace Violence & Exclusive Remedy
- Workforce Trend Challenges in Workers' Compensation



PTSD Developments

Post-traumatic stress disorder (PTSD) is “a psychiatric disorder that can occur in people who have experienced or witnessed a traumatic event such as a natural disaster, a serious accident, a terrorist act, war/combat, rape or other violent personal assault.”

PTSD and Workers' Compensation Claims

- ❖ Workers' compensation benefits eligibility requirements for PTSD vary between states. The pandemic accelerated the rate at which many state legislatures have considered establishing or expanding workers' comp benefits for work-related PTSD. However, since it can be difficult to objectively measure mental health conditions or prove they were caused by employment, obtaining workers' compensation benefits can be an uphill battle. Workers' compensation benefits are more likely to be rewarded if:
 - ❖ 1) The employee can prove the mental health condition was caused primarily by their workplace.
 - ❖ 2) The mental health condition stems from a work-related injury or unusual traumatic event. Jurisdictions may operate under one of three standards regarding psychological and mental injuries, each carrying its burden of proof.
 - ❖ 3) As healthcare workers and first responders continue to carry the heavy burden of the pandemic, states continue to pass legislation that protects their wellbeing under the mental/mental standard. Eligibility requirements for receiving PTSD-related workers' compensation benefits are continue to expand.



PTSD: Treatment

Trauma-focused psychotherapy:

- These have the best track record of success
- Cognitive behavioral therapy
- Exposure-based therapy
- Eye movement desensitization and reprocessing therapy

Pharmacotherapy:

- Not first line
- SSRI, SNRI

Mental Health Workers' Compensation Claims

WC for Workplace-Related Mental Health Injuries

- NCCI in 2023, monitored **86** bills addressing workers' compensation for workplace-related mental health injuries. This included **71** bills related to post-traumatic stress disorder (PTSD). While this has been a hot topic in workers' compensation for several years, NCCI identified more bills in 2023 addressing coverage for PTSD- primarily for first responders- than in previous years.

Defining “Mental Health Injury”

States have unique definitions.

- CT has expanded workers compensation coverage for post-traumatic stress disorder to **all employees**.
- NY has introduced a bill that addressed workers' compensation claims for mental health injuries premised upon extraordinary work-related stress.
- Looking at compensability with “mental” health injury allegations.

Mental Health Continuum



Mental Health

Impact on Workers' Compensation Claims



The majority of injured workers do not have a diagnosed psychiatric or major depressive disorder.



They may have psychosocial barriers to return to function and work. Psychosocial barriers **increase** the likelihood for delayed recovery after a work-related injury.



Psychosocial risk factor examples:

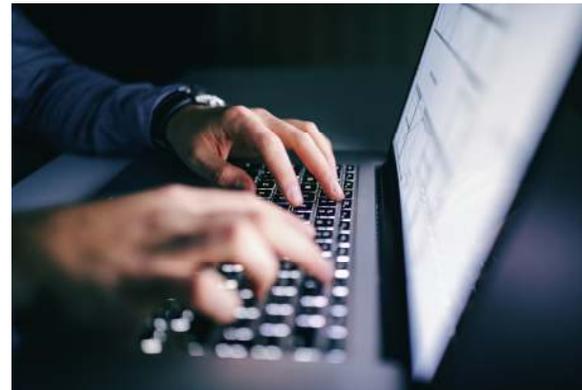
- Perceived injustice
- Fear avoidance
- Pain catastrophizing
- Recovery expectations
- Coping



Injured employees with at least one risk factor have roughly **50%** higher indemnity claim costs.

The Impact of the Mental Health of Claim Professionals

- Fatigue produces processors vs professionals
 - Isolation: remote work, remote shopping, remote banking equals lack of community interaction and relationships
 - Symptoms similar to spouse of catastrophically injured
 - Continuous exposure to extremes; injuries, emotions, lack of work/life balance
 - Lack of empathy with claimants, losing ability to have (meaningful) conversations (Ted Talk)
- **Fighting the Trend:**
Acknowledge and provide resources
 - **Increase Awareness:**
Increase interactions without screens – work BFF
Breathe
Year of the Conversation



Medical Marijuana and Workers' Compensation





Medical Marijuana & Workers' Compensation

- Marijuana is still considered a Schedule I controlled substance federally under the Controlled Substance Act (CSA). Federal cannabis reform continues to be discussed in congress but does not appear to be “growing” as fast as many states would like.
- However, many states continue to explore the idea of marijuana's medical applications as a pain management treatment and opioid alternative for injured workers.

Medical Marijuana & Workers' Compensation Trends

Intoxication defense?

In most jurisdictions— the employer must prove that intoxication or impairment was the ***sole cause of the injury*** in order to deny a workers' compensation claim.

Contributing factors —a wet floor, a falling object, or an equipment malfunction — ***could invalidate an intoxication defense***, whether for marijuana, alcohol, or other drug use.

An intoxication defense may also be complicated since marijuana can stay in a person's system for months making it extremely difficult to determine whether an employee was actually impaired at the time of a workplace injury.

Reimbursable form of medical treatment?

Varying case law by jurisdiction

- To reimburse New Hampshire, New Jersey, New York
- Not required to reimburse Massachusetts, Arkansas, Minnesota, Mississippi, Rhode Island, South Dakota

There are significant variations in the allowance of marijuana as a reimbursable form of medical treatment for WC as well as in the applicability of the intoxication defense as marijuana is legalized for different uses in the U.S.

Legalized Marijuana and Workers' Compensation

Reimbursable form of medical treatment?

Varying case law by jurisdiction

- 2023- PA Commonwealth Court Ruling- Insurers may reimburse workers for medical marijuana where the drug is being used to treat compensable work injuries. The Court reasoned that since the employer was not purchasing or prescribing marijuana, and simply reimbursing claimant for his lawful use thereof, the Employer would not violate the Federal Controlled Substance Act.
- 6 other states are on record as requiring WC insurers to reimburse medical marijuana- **CT, MN, NH, NJ, NM, and NY**
- The majority of these states allow medical marijuana reimbursement due to court orders (NJ, NH, NM and NY). MN allows marijuana reimbursement in WC due to a state general administrative rule and CT allows it because of a state WC administrative panel decision.

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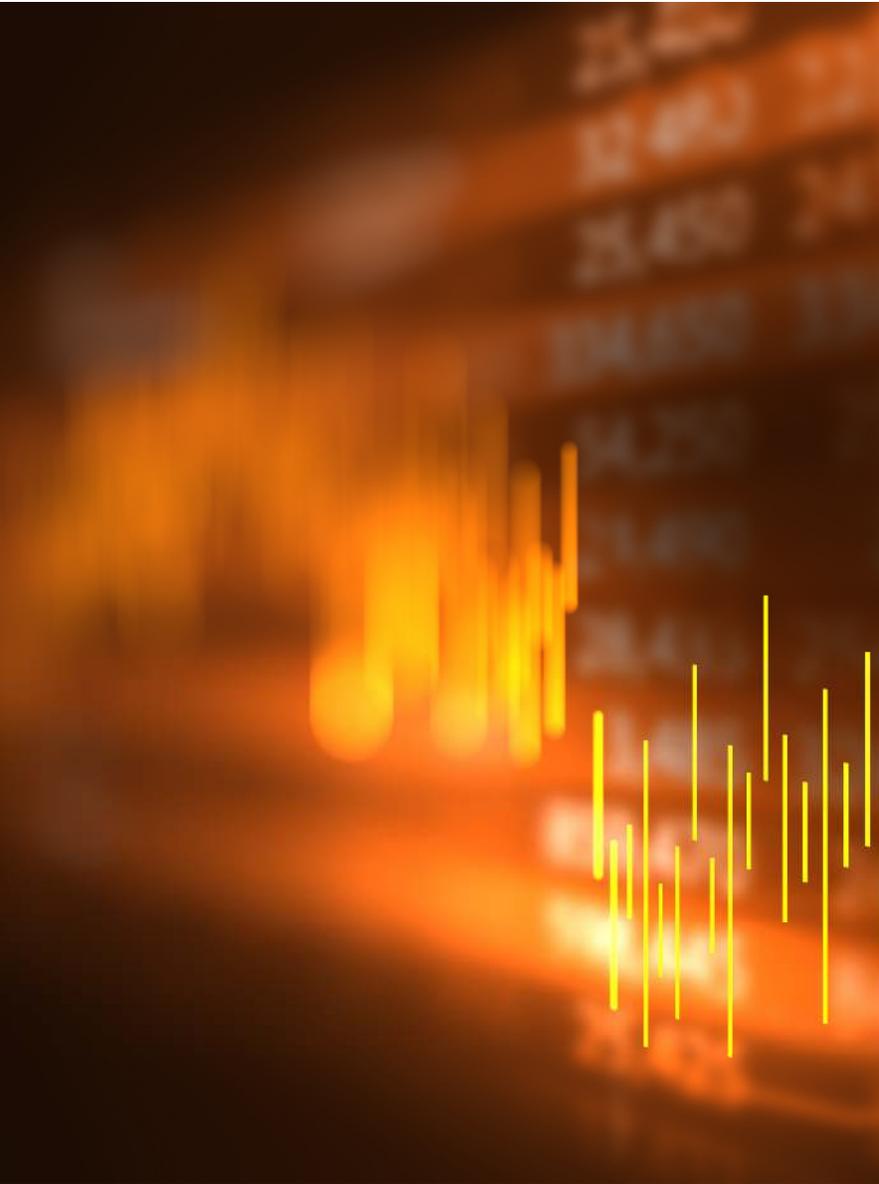
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Catastrophic Claim Rise





Severity

- According to the latest figures released by the Labor Departments Bureau of Labor Statistics there was a 5.7 percent increase in fatal occupational injuries for 2022.
- Though claims frequency is down, claims severity is up, which could eventually lead to reinsurance rate increases.
- “The cost of larger indemnity claims is increasing and we’re seeing many more six-figure claims than we used to.”

Mega WC Claims

- **What is driving these increases in large claims:**
 - Significant advances and utilization of medical care and technology are increasing accident survivability and prolonging life expectancies for severely injured workers.
 - These advances are also considerably increasing the quality of life and independence for injured workers.
 - Legislative expansion of benefits through various measures has also contributed to the increasing costs of severity on catastrophic claims.
 - For example, cancer presumption laws in the public entity market. These laws establish presumption that certain types of cancer contracted by first responders are the result of duty-related exposure and are compensable.
 - Large-cost drivers associated with catastrophic injury claims are often not covered by fee schedules.
 - Extended ICU hospitalizations, extensive durable medical equipment, advanced state-of-the-art care, and attendant care.
 - Costs of these services are increasing at rates far greater than normal medical inflation.

“Mega” Claims account for less than 1% of all Workers’ Compensation claims, but as much as 20% of total WC losses.

One large National WC carrier has seen a large increase in frequency of severity over the last 3 years.

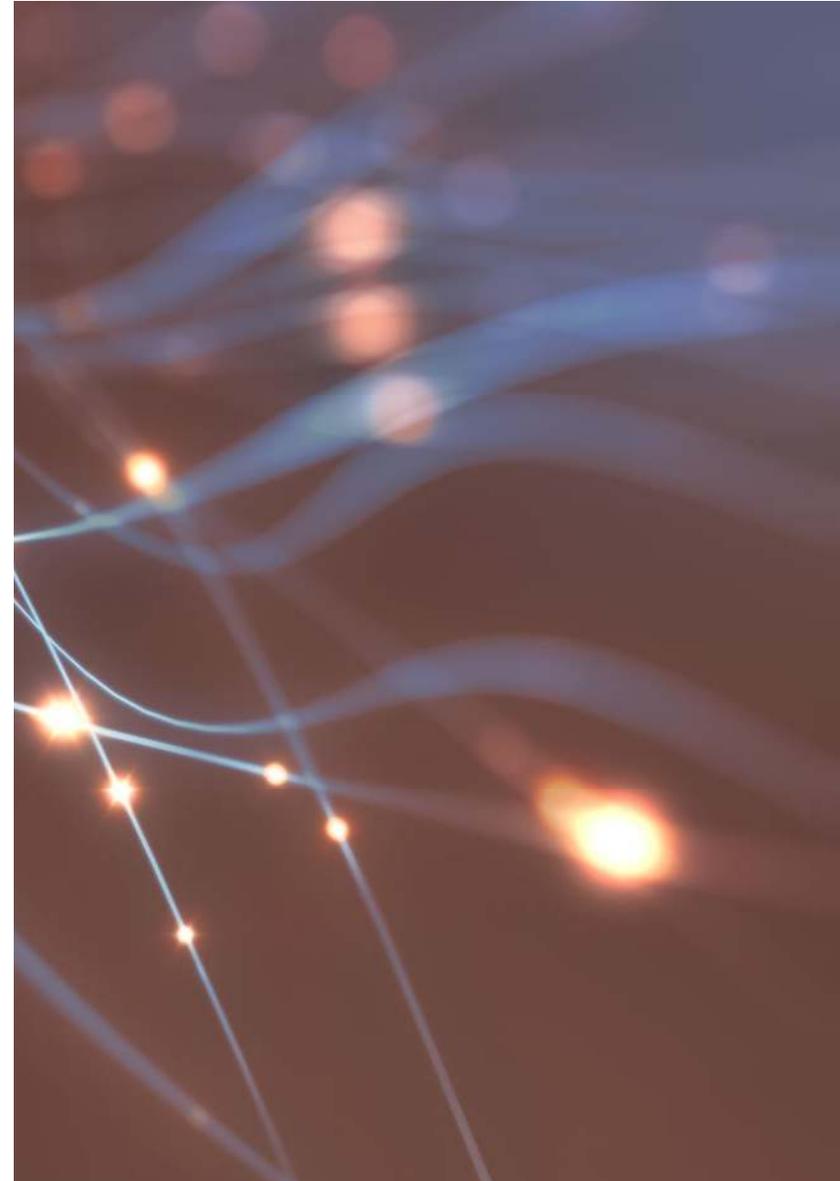
- *30% increase in claims with incurred over \$10M*
- *Also, a rise in claims with incurred of \$5M to \$10M*

Artificial Intelligence

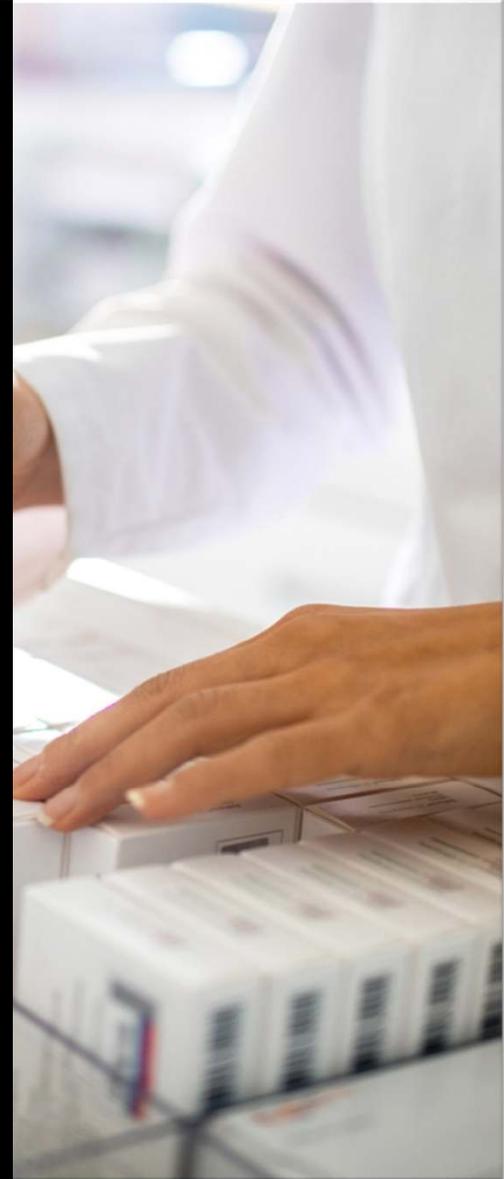


Fact or Fiction: Artificial Intelligence

- ❖ Skynet Fiction
 - ❖ Well-formed vs ill-formed questions
- ❖ Natural Language Processing Fact
- ❖ Optical Character Reader Fact
- ❖ Predictive Analytics Fact
- ❖ Data scrubbing Fact



Medical Inflation Trends and Pharmacy Costs



Medical Inflation and Workers' Compensation

Workers' Compensation Research Institute (WCRI) Study Findings

- While consumer inflation overall and for major consumption categories such as energy, food, and housing was substantial in 2021-2022, price increases in the medical sector were not a main driver.
- The major contributor to price increases in the general health care system was the growth in hospital payments.
 - Similar patterns were found in WC.
- Workers' compensation fee schedules are found to be effective tools to temper medical inflation to levels similar or below those in the general health care system.
- States that updated their fee schedule rates based on inflationary growth in the general economy rather than within the medical sector started to see faster price growth in 2022.



Overall, there was no evidence of faster growth in WC medical prices and payments in most states over the high inflation period of 2021-2022.



Economic Impact on WC Claims (WCRI Study)

- High rates of job turnover are contributing to a faster occurrence of work-related injuries during an employee's tenure.
 - Researchers found that 50.4% of all injuries occur within a worker's first two years on the job, with 35.8% occurring in the first year.
- Rising wages in the tight labor market have accounted for increases in the average indemnity payment for injured workers, to varying degrees.
 - An average weekly wage increase of \$100 accounted for a 5.4% increase in indemnity payments overall.

Pharmacy Costs in WC Claims



Costs Inching up?

- Utilization is up 2.6% per claim
- Cost per claim is up 3.7%
- Cost per script is up 1.1%



What is driving cost increases?

Largest utilization increase:

- Topical medications now represent a leader in spend and an expanded area of focus in the workers' compensation space, accounting for 7.2% of utilization, but 18.5% of costs



Opioids

- Scripts and costs dropped 1.3% and 2.5% respectively, and the percentage of injured employees using opioids in 2022 declined nearly 3 percentage points to 23.8% from 2021.
- While opioid use is continuing to drop in workers' comp, it is still No. 1 for utilization, accounting for 18.7% of prescriptions
- Opioids still remains a concern, especially with legacy claims where injured workers have been on opioids for some time.



Opioid Alternatives

Medications that target and impact different specific receptors and neurotransmitters in the pain pathway, including:

- Non-steroidal anti-inflammatory drugs (NSAIDs)
- Steroidal anti-inflammatory drugs
- Antidepressants or anticonvulsants used off-label to treat pain
- Topical analgesics



Specialty Medications

Medications have low utilization but have very high costs. Be sure that these are flagged by your PBM. Such medications are Hematological, HIV, Respiratory and Migraine.



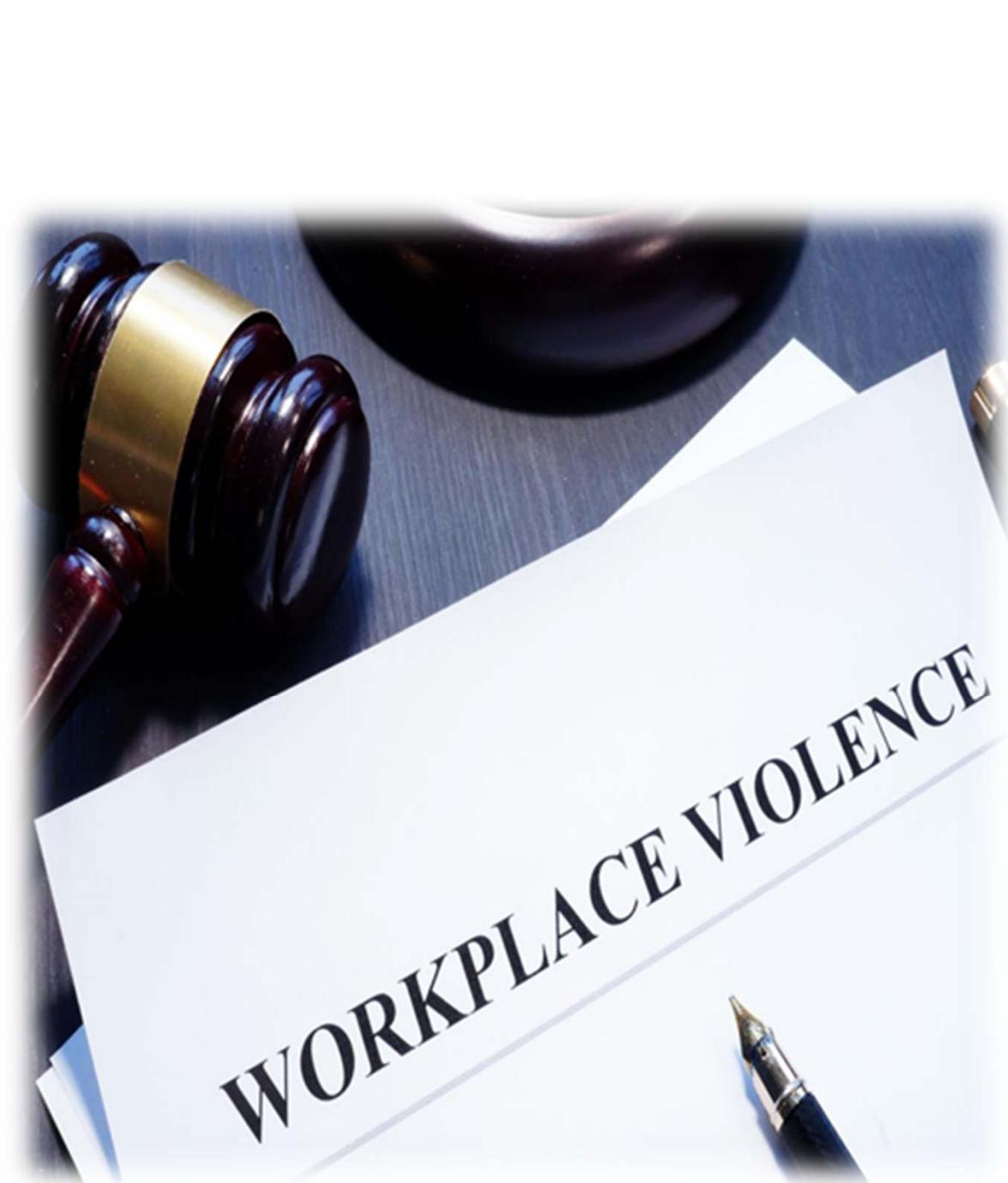
Biggest Concern

Physician Dispensing continues to be a major concern and cost driver within the industry.

Source: info.enlyte.com/enlytened-annual-trends-report-2024-download

Workplace Violence and Exclusive Remedy





WORKPLACE VIOLENCE

Workplace Violence

Homicide is the third leading cause of death on the job in 2022. "An estimated 1,400 people are murdered at work in the United States annually . . . (and) as many as 7,000 fatal work-related injuries occur each year as well," according to a National Traumatic Occupational Fatality Study.

Workplace Violence

20k+

\$121B

US Workers

- Experience physical trauma in the workplace each year according to the Bureau of Labor and Statistics.

Annual Cost

- Of these incidents to employers, according to the Department of Justice.
- We have seen some of these incidents result in Employer Liability claims.

What can you do?

Early prevention and preparedness are essential, and establishing a comprehensive strategy can help reduce risks. Proactive management includes training, enhanced physical security, and active assailant action plans that provide for preparing, reacting, and recovering.

Workplace Violence Legislative Trends

On September 30, 2023, Governor Gavin Newsom signed into law Senate Bill (SB) No. 553, which requires virtually every employer in California to adopt a comprehensive workplace violence prevention plan, starting on July 1, 2024.

Effective from January 1, 2024, the State of Illinois empowers survivors to sue their employers for negligence in handling gender-related violence. The legislation was passed unanimously in the Senate and with a significant majority in the House, before being signed into law by Governor J.B. Pritzker on July 2, 2023.

April 2023, Congress introduced the Workplace Violence Prevention for Health Care and Social Service Workers Act, The bill would mandate that the federal Occupational Safety and Health Administration (OSHA) create a federal standard requiring health care and social service employers to develop and implement comprehensive workplace violence prevention plans

Exclusive Remedy Judicial Trends

Zwerner vs. Newport News Public Schools. Newport News Circuit Division, CL2301446H-00, Decided: November 2, 2023.

Holding: - A teacher who was shot by her 6-year-old student in Virginia can press forward with her 40 Million lawsuit over claims of negligence over the School Districts claim that workers compensation should be the only remedy. Newport News Circuit Judge Mathew Hoffman agreed with the plaintiff that a first-grade teacher would never anticipate getting shot. Court stated that “it was not an actual risk of her job”. Trial scheduled for 2025.

McHenry v. The Goodyear Tire & Rubber Co. Pennsylvania Commonwealth Court No. 373 C.D. 2022, Decided: November 14, 2023

Holding: - If an employee’s occupational disease exceeds the compensable period defined by the Pennsylvania Occupational Disease Act, and the employee does not qualify for compensation under the Act, the exclusive remedy provision does not apply, permitting the pursuit of civil claims.

Barnes v. Athen Annuity & Life Assurance Company. Missouri Court of Appeals, Western District. Missouri Court of Appeals, Western District. WD 85464, Decided: October 10, 2023

Holding: Because the record did not conclusively establish that Athen had a valid workers' compensation insurance coverage in place **for enhanced mesothelioma benefits** on the date Barnes filed her workers' compensation claim the court concluded there was a genuine issue of material facts in dispute and that Athene Assurance Company had not sustained its burden to establish that the affirmative defense of exclusivity of remedy under the Workers' Compensation Law applies.

Workforce
Trend
Challenges in
Workers'
Compensation



Who is handling my claim?

Retirements – The insurance retirement cliff is here and will accelerate over the next 10 plus years.

Employment environment – Increased competition for talent will continue. Making hiring for replacement roles and pipeline for talent smaller.

Evolving Skillset – The relentless growth of technology components in the insurance industry is changing the required workforce skillset. The resulting knowledge gap is and will challenge the quality and capability of staff.

A group of people are shown from the chest up, sitting in a circle and clapping their hands. The background is softly blurred, focusing attention on the hands and the central text. The lighting is bright and even, creating a positive and celebratory atmosphere. The text 'Thank You!' is written in a large, bold, black, italicized font, centered horizontally and vertically over the image.

Thank You!