

11/19/19  
City Council Meeting

Handouts received after  
agenda posted

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# The Alternative Dispute Resolution (ADR) for Worker's Compensation

# The Current Statutory System – What is at Risk?

Currently, the workers' compensation system is averaging almost one year from the time a claim is filed before the claim is resolved. Medical treatment disputes are no longer easily resolved and employers are faced with continued disability payments.

## Employer

- ▶ Overtime pay
- ▶ Backfill with other employees
- ▶ Cost of work comp claims
- ▶ Training of replacement employees
- ▶ Litigation expenses-
- ▶ Depleted workforce

## Employee

- ▶ Sick time used
- ▶ Vacation time used
- ▶ IDL/TTD Pay/4850
- ▶ Delays in medical treatment
- ▶ Decreased employee morale
- ▶ Not getting the medical attention needed

# Workers' Compensation Dynamics

## ▶ Track One: Accepted Cases

### ▶ **ADMITTED CASES**

- ▶ Injured officer is being paid 4850 pay and seeking medical treatment.
- ▶ Medical treatment subject to UR (Utilization Review).
  - ▶ 3<sup>rd</sup> party vendor that reviews-not examiners- the primary treating physician's (PTP) treatment recommendations-
  - ▶ UR process can take between 5-14 days. If UR denies or modifies the treatment, PTP may engage in peer-to peer to overturn denial. If UR decision remains denied, only remedy is IMR

### ▶ **IMR- Independent Medical Review**

- ▶ All treatment disputes must go through IMR. The parties cannot use a QME or AME.
  - ▶ WCAB review limited only if the UR decision/review was untimely. It does not matter that the IMR is untimely.
  - ▶ Trends showing 3 out of 4 treatment requests were denied by IMR.
  - ▶ Once IMR has issued a final decision on the medical treatment the injured officer has no remedy to overturn the decision.
  - ▶ The injured officer would be faced with no medical treatment while receiving benefits until the 104 week cap and retirement.

# Workers' Compensation Dynamics

- Track Two: Denied Cases

- **DELAY/DENIED CLAIMS** 14 days to notify claim is on delay & then 90 days to render decision on compensability.

After 90 days, parties need to obtain a medical legal evaluation

- PQME- Panel Qualified Medical Examiner
  - State DIR Medical Unit issues the panel of 3 QMEs after filing request forms
- AME- Agreed Medical Examiner
  - Parties agree on the specific medical evaluator

- **TIME LINES** exam schedule is 2 - 4 months out & 2 - 4 months for report receipt (up to 8 months).

- Depositions can take several more months to set

- **DENIED CLAIMS** take up to 9-12 months to resolve before triggering benefits.

# The City of Long Beach

- In 2007 the City of Long Beach entered into an ADR program with their police & fire unions. The ADR program was launched in January 2008.
- Issue identified was the protracted length of time it took to resolve medically-related disputes.
  - Return to Modified Duty
  - Release to Full Duty
  - Retirement Issues
  - MMI/P&S Status
  - Permanent Work Restrictions
  - Utilization Review Disputes (following IMR enactment)
- **Solution was to create a Independent Medical Evaluation Panel to address all medically related disputes.**
  - Applied to litigated & non-litigated files
  - Assignment of IME based on rotation



# The ADR Components

- ▶ Labor Code Section 3201.7 enumerates the specific areas a Labor-Management agreement may include. Those areas include arbitration, mediation, an agreed list of medical treatment providers, an agreed list of medical evaluators, a return to work program, a joint safety committee, and an agreed list of vocational rehabilitation vendors.
- ▶ In the Long Beach ADR program, the City and the Police and Fire Associations agreed to a list of medical evaluators, which was referred to as IME's.
- ▶ A Supplemental MOU was designed to deal with all disputes that arose in the work comp system. The disputed issue, such as whether an injury arose out of work, would be referred to an IME to resolve the dispute.



# Independent Medical Examiners (IME)

- ▶ Physicians chosen based on availability to be impartial, straight forward, and fair
- ▶ Physician list negotiated by City Management and labor associations' representatives
- ▶ Good report writing and understanding of issues
- ▶ Agreed to 30 day exams and 30 days after exam the medical reports would be served
- ▶ Physician list encompasses all medical specialties from acupuncture to psychiatry
- ▶ Physicians on the list rotates from top to bottom



# Measurements of Success

- ▶ **City of Long Beach**
  - ▶ The City retained Deloitte Consulting to study the previous five years of claims to determine an average time length of the claims. Deloitte found the average claim took nearly 230 days. The City agreed to negotiate an ADR system where the goal was to reduce the time to resolve the disputes.
  - ▶ 2008 report found the average lag time from delay date to binding medical report date = 59 days for police & 63 days for fire.
- ▶ Subsequently, ADR programs were launched in Huntington Beach, Kern County, Bakersfield, Rialto, Glendale, Madera, Porterville, LA County Fire, and Orange County Fire Authority

# Other Measurements of Success

- ▶ **County of Kern (2012 Memo to Board of Supervisors)**
  - ▶ Estimates introduction of program to save at a minimum of \$580,000 for the Sheriffs Department
  - ▶ Estimates a savings of a minimum of \$666,000 for the Fire Department
- ▶ **Orange County Fire Authority (August 2015 HR Committee Meeting)**
  - ▶ Reported savings in overtime/backfill costs of \$592,000
  - ▶ Total savings after ADR implemented \$1.5 million
- ▶ **City of Huntington Beach (2015 Program Summary)**
  - ▶ Experienced 30% reduction in newly reported claims
  - ▶ Claim compensability decisions made within 100 days
  - ▶ Claim settlement lag time reduced by 50%

# What an ADR System Can Do

- Provides employees with a fast track system to resolve workers' compensation disputes.
- Reduces overtime wages.
- Reduces sick leave for an injured worker.
- Reduces litigation expenses.
- Improves employee morale.
- Resolves claims in under 90 days vs. 180 days to over a year
- Efficiently gets the injured worker the help they need.



# Additional ADR Components

- ▶ **Mediation**

- ▶ Program will utilize retired Workers' Compensation Judges to assist the parties in mediating the disputes

- ▶ **Nurse Care Managers**

- ▶ Injured employees will have the ability to request a nurse to assist in facility the medical treatment process

- ▶ **1<sup>st</sup> Care Panel / Specialty Panel**

- ▶ The ADR program streamlines a list of authorized treating physicians & specialists

- ▶ **Independent Raters**

- ▶ List of authorized Independent raters for settlement purposes



# Next Steps

- ▶ Submit documents to State of California for final approval
  - ▶ Minimum of 30 days required for processing
- ▶ After final approval received, ADR program takes effect
  - ▶ Anticipate January 1, 2020 start date



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