
Christine Sullivan, CSP, ARM
Lockton Companies LLC
Denver, CO

Mike Heembrock, MS, CSP
Chubb Group Ins. Co.
Whitehouse Station, NJ

Introduction

Safety professionals are generally aware of and engaged with both OSHA regulations and their company policies regarding employee safety and health. However, awareness and engagement with the workers’ compensation programs may not be as common. Safety professionals can favorably influence not only the safety and health of the employees within their company, but also can have a major impact on the success of their workers’ compensation program by being integrated with their workers’ compensation team. Knowledge of the company workers’ compensation program by safety professionals also enhances their ability to manage employee safety and health by providing additional insight into the risks that are creating losses within their organization. This paper not only offers insight into the design and function of workers’ compensation programs, but also offers some compelling reasons for safety professionals to consider regarding the potential impact that they can have on the performance of their organizations workers’ compensation program.

As safety professionals know more about workers’ compensation claims and the factors that lead to these claims, the more they can contribute to the successful control of employee safety and health hazards and the risk of occupational injury and illness. In 2013, the National Institute for Occupational Safety and Health (NIOSH) created the NIOSH Center for Workers’ Compensation Studies (CWCS). NIOSH was created to go along with the Occupational Safety and Health Act of 1970. This integrated approach is the same approach safety professionals need to take. The NIOSH Center for Workers’ Compensation Studies was established to help us better predict and manage risk, to save money for companies. The findings of this initiative have demonstrated the need for occupational safety and health professionals to expand their base of knowledge and increase their informational resources in order to increase the impact of their professional efforts.

The authors of this paper are safety professionals who have worked in the insurance and risk management profession for many years. Their experience in workers’ compensation
insurance, loss control, claims, and risk management has been extensive. During their time in the profession they have had the opportunity to work with organizations in all types of business sectors. They have had first-hand experiences with the integration of occupational safety and health and workers’ compensation programs to generate positive safety and business results. Based on these experiences, they have developed this paper to provide a historical view on workers’ compensation and ways to integrate these two integral business processes together.

Workers’ Compensation—The First 100 Years

The following is a summary of workers’ compensation historical highlights. It is important to understand the origins and concepts of the workers’ compensation system in order to understand the basis for the information that is generated by the system.

Workers’ compensation has its roots in the era of industrialization, first in Europe, then in North America. Germany is noted as enacting the first workers’ compensation law in 1884. England followed with their version of a workers’ compensation system in 1897.

The first workers’ compensation law in the United States was the Federal Employers’ Compensation Act of 1908, which provided federal workers’ compensation for work related injuries. New York passed the first state workers’ compensation law in 1910 but it was deemed unconstitutional, and later corrected. In the meantime, Wisconsin passed its law in 1911, thus claiming the oldest constitutional workers’ compensation law in the United States.

Ontario passed the first Canadian Workmen’s Compensation Act in 1914. The Mexican Constitution of 1917 obligated employers to pay employees for the injuries and illnesses. Such benefits are administered by the Mexican Social Security Institute.

Prior to the passage of workers’ compensation in Europe and North America, the industrialization of these countries was producing a staggering number of injured and disabled workers. These workers had limited ability to take legal action to prove negligence by their employer and get some monetary award to compensate for their lost wages, medical bills, and future disability. The growing burden of disabled workers became a social issue that prompted the funding of a worker’s compensation system by employers in exchange for protection from legal action by injured workers.

Although commonly referred to as workers’ compensation, each country included features in their system to serve their social, economic and political needs. The same is true regarding how each state has established rules and regulations that serve the needs of their state, economy, and labor. Each state administers the workers’ compensation rates, benefits, and services that apply to the employers and employees operating in the state.

Regardless of the state or country administering the system, the basic tenets of workers’ compensation are generally consistent.

- Regardless of fault, provide prompt and reasonable benefits for medical and income due to work related injuries to employees and their dependents
- Reduce the burden on the courts and legal system by creating a sole remedy for work injuries
- Relieve the burden on public and private charities or health services for uncompensated occupational injuries
• Divert personal and corporate finances from legal fees and witnesses
• Encourage an interest in safety and returning injured employees to productive lives through a rating system that was based on performance
• Enable the objective analysis of accidental injuries and their causes thereby prompting employers to prevent future accidents

Workers’ compensation laws also created a more stable method to fund for the injuries that qualified for compensation and benefits. The cost of providing workers with benefits was incurred by employers based on the collective cost of injuries for specific occupations within each state. An independent and impartial governing board administers the system to maintain a balance of the cost and benefits and ensure the viability of the system over time. This paper will refer to workers’ compensation from a United States perspective with the understanding that the principals apply to systems in other countries.

Summary of Features and Benefits

As noted above, each state administers their workers’ compensation laws and regulations independently. Although each state system is based on the same principals, differences exist in the rates paid by employers, the level of benefits or payments paid to injured workers, the injuries and illnesses included or excluded for compensation, which is covered by the system and other similar details.

Generally, all employers are required to acquire workers’ compensation coverage for their employees in each state in which they operate. Some states allow small employers (fewer than 5 or 3 employees) to operate without workers’ compensation. Employers obtain workers’ compensation coverage for their employees by purchasing an insurance policy from insurance companies or a state fund such as in Ohio, North Dakota, Washington or Wyoming. The workers’ compensation insurance policy follows same form in all states. This alleviates conflict for interstate employers and offers evidence to the state and others that the employer can fund their obligation.

Most states also allow employers to self-insure their workers’ compensation program as long as they meet the financial and administrative requirements established by the state. Both private and public employers are required to provide workers’ compensation. A few classes of employees may be excluded such as domestic workers, casual workers, farm laborers, sole proprietors, or other workers as specified by the state laws.

Injuries or illness arising out of and in the course of employment generally qualify for workers’ compensation benefits. These benefits can include:

• medical benefits including medical rehabilitation
• vocational rehabilitation services
• compensation for disabilities based on their scope and duration
• death benefits for spouses and dependents

The inclusion of occupational diseases as a compensable illness is addressed in each state’s laws.

Workers’ compensation is usually the sole remedy for employees to receive the above benefits for their injuries or illnesses that arise out of and in the course of employment. Should
an employee’s injuries fall outside of the workers’ compensation provisions or result from wanton neglect of the employer, the injured employee or employees may choose to take legal action against the employer rather than accept the statutory workers’ compensation benefits. In such cases, the standard workers’ compensation policy includes employer liability coverage.

As mentioned earlier, workers’ compensation was designed to incent employers to analyze their losses and reduce or eliminate injuries and illnesses. This incentive is provided by a modifier that is applied to the workers’ compensation premium. The experience modifier is based on a three year period of time in which the number and severity of workers’ compensation claims is considered and compared with the claim experience of similar operations to determine if the employer is better or worse than the average employer in their industry. If the claim experience is worse, the modifier will increase the premium. If the experience is better, the modifier reduces the premium.

In addition to the experience modifier, many states have given workers’ compensation insurers the ability to apply credits or debits to the premium based on such factors as safety programs, engineering controls (guards, ventilation, enclosures), or accident response and treatment. Employers that have safety management systems and well controlled hazards can reduce their workers’ compensation premiums as long as their insurer is aware. This provision of credits and debits is known as scheduled rating.

Additionally, some states have established credits for specific safety programs of employers. New York has established credits for employers with safety and health programs, Return to Work programs, and Drug / Alcohol awareness programs. Pennsylvania has a credit for employers with safety committees. These are some examples of state initiated credits that incent employers in their states by reducing the cost of their workers’ compensation premium based on practices that contribute to fewer injuries and their costs.

**Governance and Administration**

Workers’ compensation insurance can be obtained from insurance companies, state funds, or through a self-administered insurance program known as “self-insurance.” The terms and conditions of these programs follow a standard agreement and terms using a form established by the National Council of Compensation Insurers (NCCI). This form is used in all states and the District of Columbia and helps create consistency of coverage for employers with employees in different states and ensures that employees are provided consistent benefits regardless of the issuing insurer, fund, or employer.

Most states require that employers who have purchased or funded a workers’ compensation program for their employees post a notice that advises their employees of the program and how employees can file a claim for benefits. This notice should be posted in a visible and accessible area of the company and included in communications by employers to their employees.

Each state has accepted the language of the standard NCCI workers’ compensation policy and they administer the rules and regulations that are referred to in that policy. Each insurer must follow the workers’ compensation rules and regulations that are administered by the various state workers’ compensation authorities usually associated with the department of insurance or labor in each state.
States also establish the benefits to be applied to injuries and illnesses incurred by employees covered by its workers’ compensation program. The benefits are designed to provide economic support for the injured workers during the period of time they are disabled. In the case of permanent disability, the benefits attempt to compensate the workers for the extent of the disability over the period of time in which future earnings will be affected. The level and extent of these benefits are based on socio economic factors in each state and therefore are different from state to state. For example, the maximum weekly income compensation can be $500 in one state and over $1,000 in another state. The rates that employers pay for workers’ compensation insurance is generally lower in states with lower benefits than those states with higher benefits. Each state balances the rate and benefit ratio based primarily on statewide economic factors.

Workers’ compensation is a rather complex system when you consider the differences from state to state. If you desire a better understanding of these differences at a summary level, the U.S. Chamber of Commerce publishes an annual analysis of Workers’ Compensation Laws. Recently, NIOSH released a report entitled, “Workers Compensation Insurance: A Primer for Public Health.” The report provides a summary of the coverage of workers’ compensation laws, benefits and system administration.

Interaction of Occupational Safety and Health and Workers’ Compensation

As a safety professional you need to be looking at and engaged with your company’s workers’ compensation program. How many workers’ compensation claims do you have? What are these on a rate basis? Is the frequency of workers’ compensation claims going up or down? What percentage of those workers’ compensation claims are medical only claims vs. indemnity claims?

It is important to understand that just because an incident is on a workers’ compensation loss run does not mean it is OSHA recordable and vice versa. For example, an employee is cut and gets a tetanus shot. This will be on the workers’ compensation loss run when the bill for the tetanus shot is paid under workers’ compensation. However, this is not an OSHA recordable incident if the tetanus shot is the only treatment provided.

There is a considerable amount of data available in workers’ compensation loss runs that can be used to help direct your safety programs. This data, while lagging, will still allow you to have a good indication of where your safety efforts should focus and will provide the safety professional with greater awareness and understanding of historical loss sources and trends. This data also provides a good summary of the direct costs associated with the company’s occupational injuries and illnesses.

As a safety professional it is important to recognize that most of the value in your workers’ compensation loss run will come from looking at frequency, nature of injury, injured employee, date of injury, location of injury and other key indicators. Severity of claims is not as good a measure of success as the loss runs do not take into account the development of loss costs of open claims included on the report.

When analyzing data included in a loss run one of the main data points is the cause of loss. This will allow you to see what types of incidents are occurring. Using your loss data you can calculate your rate of claims against things such as payroll, number of employees, hours worked or any other measure that is meaningful to you and your company. As a safety
professional putting these numbers into metrics that are the language that is spoken in the C-suite will make you more effective in your communication with your senior management team.

This loss data can be very useful in developing benchmark data that can be better understood by senior management. Understanding what is important to your senior management team is key in developing this benchmark. Most senior managers do not relate to OSHA incident or case rates. In addition more informed managers understand that the OSHA numbers may not give a complete accounting of safety performance and that it is easy to misinterpret these numbers. With the increase in awareness and news items on inaccurate OSHA reporting strong senior leaders are looking for other measures of success.

If at all possible, determine how to benchmark your loss costs against commonly used and universally understood Key Performance Indicators (KPI) used by your company or industry. As a safety professional you may have to research the applicable key performance indicators and be creative in linking data from workers’ compensation claims to develop a meaningful metric. Creating a benchmark against an existing KPI used by your company has immediate validity and relevancy. This translates your data into an operational metric that is easy to understand.

It is important to remember that loss runs provide data from the past. The key is to take the time to turn the data into useful information for injury prevention. Numbers of claims or loss costs alone are immaterial unless weighted against an exposure base. This could be number of employees, miles driven, hours worked, units produce or payroll. Interpreting data and telling people that claims are increasing without recognizing that the exposure basis is also increasing will destroy any message the safety professional is attempting to make. Secondly, a loss run in a report format can indicate the need to look deeper, it generally does not tell you what the cause is or how to control it. For example suggesting the company needs to focus on safe lifting because of a high number of strains will be ineffective unless the root cause of the strains is identified. The strains could be caused by floor conditions, aging workforce, piece rate, or unrealistic expectations by a supervisor.

Another measure in the loss run includes reporting lag time. The loss run will allow you to analyze how long it is taking for claims to be reported, and if the data is available will allow you to identify if the delay is occurring with the employee notifying the supervisor or from the supervisor getting the claim reported to the carrier or TPA. Lag time is a controllable factor the adversely impacts claims severity. The longer it takes for a claim to be reported, the more expensive the claim becomes due to delay in medical treatments or the utilization of preferred medical providers.

The loss run will allow you as a safety professional to look at claims from an indemnity and medical standpoint. Claims can incur medical payments and or indemnity payments. Indemnity payments cover the cost of lost time/wages and loss of future earnings by the employee. On average, workers’ compensation programs experience approximately 80% of the claims being of the medical only variety while 20% are medical and indemnity. Companies that experience average to above average lost time claims indicate a need for a more formal return to work program. As a safety professional you are a key component in working with HR to develop and implement an effective return to work program.

Other key measures in the loss run data are employee age, tenure, occupation, and location. Data is also available to look at day of week or month that claims occur. Many of these factors can be combined with employee benefit data to give further insight regarding injury trends.
By fully analyzing work comp data as a safety professional you will be better able to align your strategies to business goals and objectives and prioritize which strategies will have the greatest quantifiable impact.

Your insurance carrier and broker are both an excellent resource for employer safety program assistance. Being aware of the loss control services available through these partners allows you to access cost-efficient resources to address safety needs and augment your programs.

The primary goal for many of the carrier and broker loss control consultants is to work with the clients to lower their total cost of risk. Many carriers build loss control service hours into their insurance programs. In addition, many states require carriers to provide service if a company has a claim frequency issue or a high experience modifier. It is important as a safety professional to work with your risk management team to understand what resources these partners can provide.

As a safety professional you should utilize these resources to develop a plan to focus on the areas identified in your data analysis. These resources should work together with the employer’s safety program and collaborate to reduce the cost of risk. Services available are typically of a broad range and many carriers employ CSP’s, CIH’s, Certified Fire Protection Specialists (CFPS) and PE’s that can focus on the critical risk factors associated with your operations. They can be used to conduct research, develop training, conduct job safety analysis, risk assessments, or conduct program benchmarks. Many carriers and brokers also have online resources that can provide training and materials to enhance your program.

While safety programs are geared toward the prevention of claims, loss control resources of the carrier and broker can enhance the total impact of a safety program with an emphasis on post event cost control. It is possible to have significant impact on loss costs and collateral requirements with effective injury management. While safety programs are effective in controlling the frequency of injury incidents claims, loss control professionals may also aid in reducing the severity of claims and their associated costs.

Claims professionals can help with medical management, early return to work programs, claim closure and litigation management. As a safety professional you should engage your claims team to work on these projects. Such professionals may be associated with your workers’ compensation insurer, broker or third party administrator (TPA).

A return to work (RTW) or transitional duty program is a key component of the injury management process. As mentioned earlier if your organization is struggling with return to work this is an area of opportunity. Effective RTW should be in place before an incident occurs. When an incident takes place and an employee has restrictions from the doctor, the safety professional along with HR, the supervisor and the claims professional can work to find a position in the organization that accommodates the restrictions. This program can effectively eliminate or minimize lost work time and keep the employee at work during their recovery from their injury.

Safety Professional’s Influence on Workers’ Compensation
Every organization has a total cost of risk, which includes the cost they pay for insurance and then the costs of their losses and how these losses impact the bottom line. From a cost standpoint, the fixed costs (cost of insurance etc.) can only decrease to a certain level. At some point the reductions in this area will be minimal. This is where the safety professional can play a key role.
As a safety professional you can impact the variable costs (claim costs, indirect costs etc.) by implementing a comprehensive and effective safety program.

Safety professionals should look to their experience modifier as an indicator of their program’s success. While this is an important number, particularly in the construction industry when bidding for work, it is however slow to respond to positive program changes and successes. The emod looks at claims for the three prior policy years, excluding the current year which means it can take up to four years to begin to see an impact of your success in your company’s experience modifier. In addition with the changes NCCI has made to the experience modifier formula many companies are seeing an increased effect on their mods as the changes are rolled in.

The safety professional can also be called upon to positively influence the insurance carrier and underwriter. When an insurance company is looking at new business they want to understand the hazards, exposures and the controls in place. An underwriter generally bases the premium on their knowledge of the industry, job classifications, and jurisdiction of the risk and not necessarily the attributes of your company. The more effective you can be in communicating and demonstrating the positive safety and loss control performance of your company to the insurance carrier the more you can positively influence the cost of risk from a workers’ compensation premium standpoint.

Companies with effective safety and health programs may also qualify for credits or premium reduction programs administered by their state workers’ compensation administrator. This can add value to the benefits of the safety program and the contribution of the safety professional to the bottom line.

As your company considers or utilizes new technologies and materials, new hazards may be encountered that present additional risk to the operations and employees. Workers’ compensation insurers are increasingly mindful of emerging risks associated with such issues as nano materials, fatigue, remote workers, and workplace violence. Safety professionals engaged in these issues for their companies can influence the risk associated with these and similar emerging hazards and prevent or minimize their contribution to the workers’ compensation program.

**Conclusion**

Safety professionals are urged to become more knowledgeable about the workers’ compensation program of their company and contribute to the prevention and control of workers’ compensation claims as well as ensuring compliance with safety regulations. The identification and control of work related hazards and the risk of injury is an important role for safety professionals.

Take a cue from the National Institute for Occupational Safety and Health Center for Workers’ Compensation Studies (CWCS). Workers’ compensation data and information can enhance the insight of safety professionals regarding the impact of current prevention programs as well as opportunities to influence future injuries and illnesses.

**Bibliography**