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DEPARTMENT OF
PERSONNEL

CITY OF SACRAMENTO
CALIFORNIA

WORKERS' COMPENSATION UNIT

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SACRAMENTO, CA
95814-2713

916-264-5741

DONNA L. GILES
DIRECTOR OF
PERSONNEL

September 7, 1993

Personnel and Public Employees Committee
Sacramento, California

Honorable Members in Session:

SUBJECT: STATUS REPORT OF CITY OF SACRAMENTO
WORKERS' COMPENSATION PROGRAM

LOCATION AND COUNCIL DISTRICT:

City.

RECOMMENDATION:

It is recommended that the Personnel and Public Employees Committee recommend that the City Council approve the Workers' Compensation Status Report and that the staffing requirements identified in the report be considered in the context of the 1993-94 Budget Adjustment hearings scheduled for September 1993.

CONTACT PERSON:

Margaret Ann Allen, Risk Manager, 264-5823

FOR COMMITTEE MEETING OF:

September 14, 1993

SUMMARY:

This report discusses and analyzes the City of Sacramento Workers' Compensation Program, the impact of the Workers' Compensation Reform Act of 1989 and clean-up legislation of 1991, 1992, and 1993, rising program costs, and staffing needs of the Workers' Compensation Unit (WCU).

Personnel and Public Employees Committee
 Status Report of City of Sacramento Workers' Compensation Program
 September 7, 1993

COMMITTEE/COMMISSION ACTION:

Approve the Workers' Compensation Program Status Report and recommended program enhancements.

TABLE OF CONTENTS:

SUBJECT	. . . . .	.1
LOCATION AND COUNCIL DISTRICT	. . . . .	.1
RECOMMENDATION	. . . . .	.1
CONTACT PERSON	. . . . .	.1
SUMMARY	. . . . .	.1
COMMITTEE/COMMISSION ACTION	. . . . .	.2
BACKGROUND INFORMATION	. . . . .	.3
Nationwide Crisis	. . . . .	.3
California Program	. . . . .	.3
City of Sacramento Program	. . . . .	.4
Reasons for Rising Costs	. . . . .	.6
Increased Claims Activity	. . . . .	.6
Rise in Litigation and Defense Costs	. . . . .	.7
Increased Medical Costs	. . . . .	.9
Workers' Compensation Reform Act of 1989 and Subsequent Legislation	. . . . .	.11
Workers' Compensation Fraud	. . . . .	.12
Vocational Rehabilitation	. . . . .	.13
Workers' Compensation Unit Cost Savings and Prevention Measures	. . . . .	.13
Medical Cost Containment Programs	. . . . .	.13
Modified Work/Alternative Duty Programs	. . . . .	.14
Safety Programs	. . . . .	.14
Workers' Compensation 1993 Reform Package	. . . . .	.16
Workers' Compensation Unit Staffing Needs	. . . . .	.17
FINANCIAL CONSIDERATIONS	. . . . .	.18
POLICY CONSIDERATIONS	. . . . .	.19
MBE/WBE	. . . . .	.19
ATTACHMENT A	. . . . .	.20
ATTACHMENT B1 - B4	. . . . .	.21
ATTACHMENT C1 - C2	. . . . .	.25
ATTACHMENT D	. . . . .	.27
ATTACHMENT E	. . . . .	.28
ATTACHMENT F	. . . . .	.43

Personnel and Public Employees Committee
Status Report of City of Sacramento Workers' Compensation Program
September 7, 1993

BACKGROUND INFORMATION:

Nationwide Crisis.

City, county and state governments, along with private industry are facing runaway workers' compensation costs. The nationwide cost of 1990 workers' compensation injuries was estimated to be \$60 billion, up from \$26 billion in 1980. By 1992 the cost rose another \$10 billion or 16 2/3 % to \$70 billion. Towers Perrin estimates that by the year 2000, the bill will exceed \$150 billion. These figures do not address the hidden costs. Studies indicate that for every dollar an employer spends in direct workers' compensation costs, it pays another two dollars in indirect costs such as overtime and lost productivity.

Our City faces unique problems that make the workers' compensation crisis even more devastating. This program requires \$11 million in direct claims costs and salary continuation which makes a significant impact on the overall City budget. While we endure the spiraling increase in costs, we are realizing a financial crisis brought about by the lower tax basis caused by the recession. Even though we remain at the mercy of the State Legislature for major system changes, there are measures we can and are taking to control and contain our expenditures while still providing benefits to injured employees.

California Program.

California law guarantees three kinds of workers' compensation benefits to employees injured in the course and scope of their employment.

1. Medical care to cure or relieve the employee from the effects of the injury is totally covered by the employer or insurance company. This includes doctor bills, physical therapy, medicines, hospital costs, fees for lab tests, diagnostic procedures, medical appliances, mileage, and so forth.
2. Indemnity payments are paid to replace lost wages. Temporary disability payments are paid at the rate of two-thirds of the average weekly wage up to statutory maximums between \$336 and \$490 per week while the employee is off work due to the injury. Permanent disability payments are made when the injury results in

Personnel and Public Employees Committee
Status Report of City of Sacramento Workers' Compensation Program
September 7, 1993

a loss of work capacity. The amount of permanent disability paid is based on a schedule, set by the state, that takes into consideration factors such as age, occupation and the nature of the permanent handicap as defined by medical experts. Death benefits are provided to survivors, the amount of which is due depends on several factors including the number of dependents.

3. Rehabilitation services necessary to return to work are available to employees who are unable to return to their usual and customary job as a result of a work injury. These benefits include temporary disability while the employee is involved in the program, services of a vocational rehabilitation counselor, vocational training, additional living expenses necessitated by the program, and job placement assistance.

City of Sacramento Program.

The WCU today, is responsible for the administration of the City's comprehensive workers' compensation program. We are self-insured and self-administered as the most cost effective way of providing benefits while controlling costs. The WCU is comprised of the following fifteen staff members: Workers' Compensation Administrator, eight Workers' Compensation Claims Representatives, four Claims Assistants, and two Typist Clerks (Attachment A). The Claims Representatives must operate within the framework of the State Labor Code, City Charter, labor agreements and City policies to insure that the City's workers' compensation claims are handled in a fair, cost effective and expeditious manner.

The WCU requires systematic and comprehensive investigation of each and every reported injury. Departmental personnel and supervisors have been trained to assist in the identification of the circumstances surrounding an injury. In cases when more in depth investigation is necessary, we employ the services of private investigators to take statements from witnesses, coworkers or other involved parties. When it appears that a particular injury could have been prevented, the Safety Officer becomes involved to take measures to prevent recurrence.

The injured employee is provided with immediate benefits. The employee is notified of his or her rights to benefits and is treated in a manner that reflects concern rather than suspicion. Once a claim is filed and received by the WCU, it is reviewed and a determination of benefits is made. The claim is either accepted, denied or placed on a delay status.

Personnel and Public Employees Committee
Status Report of City of Sacramento Workers' Compensation Program
September 7, 1993

Financial reserves are established and maintained on every work injury and must reflect the full potential cost of the claim. The cost of medical treatment required to cure or relieve the employee from the effects of the injury, compensation for wage loss and permanent disability all must be taken into consideration when setting the reserves.

Every effort is made to find the most competent medical care possible. Proper selection of medical providers prevents poor treatment outcome, and minimizes the extent and duration of disability. The treating physician is provided a job analysis so that he or she is familiar with the work requirements of the patient.

The WCU exercises its right to refer employees, who have elected to be treated by their personal physician, to doctors of our choosing for evaluation in order to maintain medical control of the claim. Medical care, the employee's condition and his or her working status are continually reviewed to determine the appropriateness of the treatment being rendered as well as the feasibility to continue working without further injury. To this end, medical evaluations are scheduled with specialists to ensure the best possible care for the employee and care that is cost effective for the City.

Every effort is made to resolve claims requiring action by the Workers' Compensation Appeals Board (WCAB), without the involvement of defense attorneys. However, when this is not possible the claims representative works directly with defense counsel in order to effect an early resolution to all issues.

Departmental personnel are required to become involved in the defense of contested claims. They are included in meetings with the defense attorney and may be required to attend depositions and hearings.

The WCU staff promotes the attitude that the majority of injuries are legitimate, disability is real and each and every employee is entitled to treatment characterized by concern, efficiency, and respect. When an alleged injury does not appear to be industrial or when evidence clearly indicates intentional deception on the part of an employee, the WCU staff is forced to play an adversarial role in managing the claim.

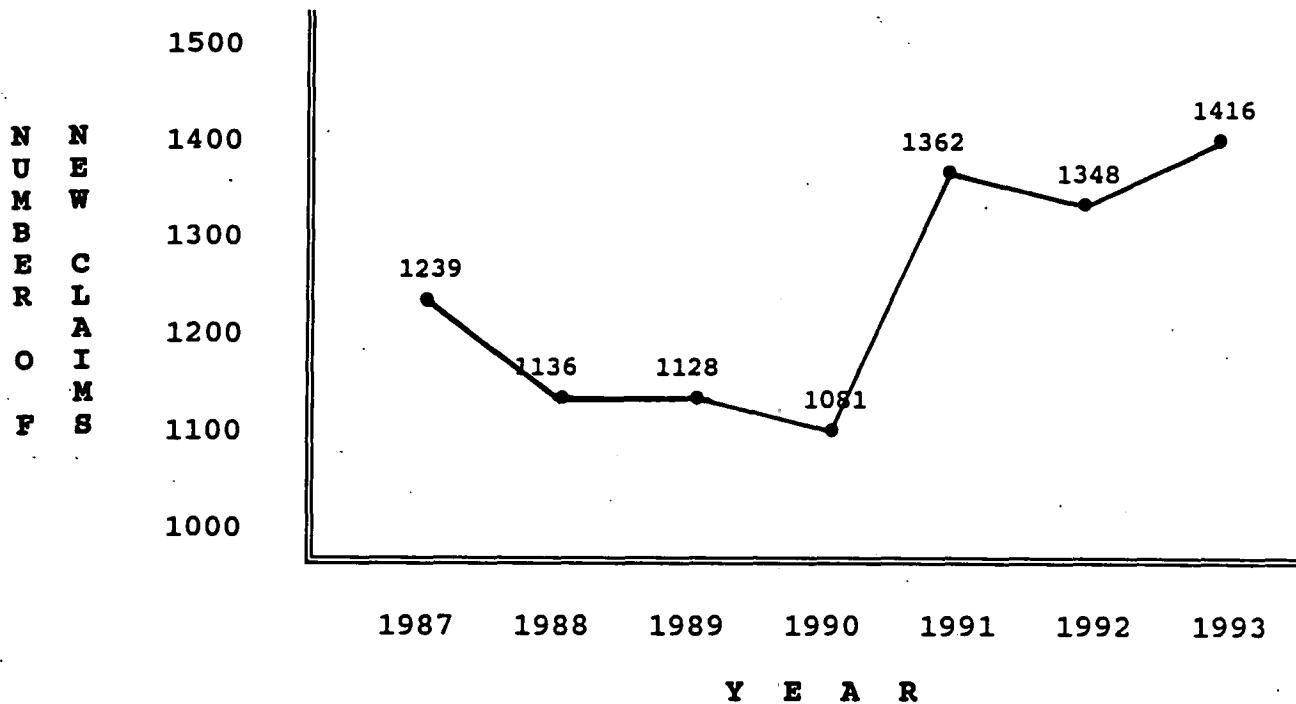
Personnel and Public Employees Committee
Status Report of City of Sacramento Workers' Compensation Program
September 7, 1993

Reasons for Rising Costs.

1. Increased Claims Activity.

The number of reported injuries and illnesses by City employees is on the rise. Part of this increase is due to the requirements the Reform Act has mandated in defining "injury", as a separate claim must be established for each and every reported injury. It is not unusual to have five separate claim files for an employee with an injury to a particular body part due to subsequent aggravations or incidents of re-injury. The following graph illustrates the rise in reported injuries over the past seven years.

INCREASED CLAIMS ACTIVITY



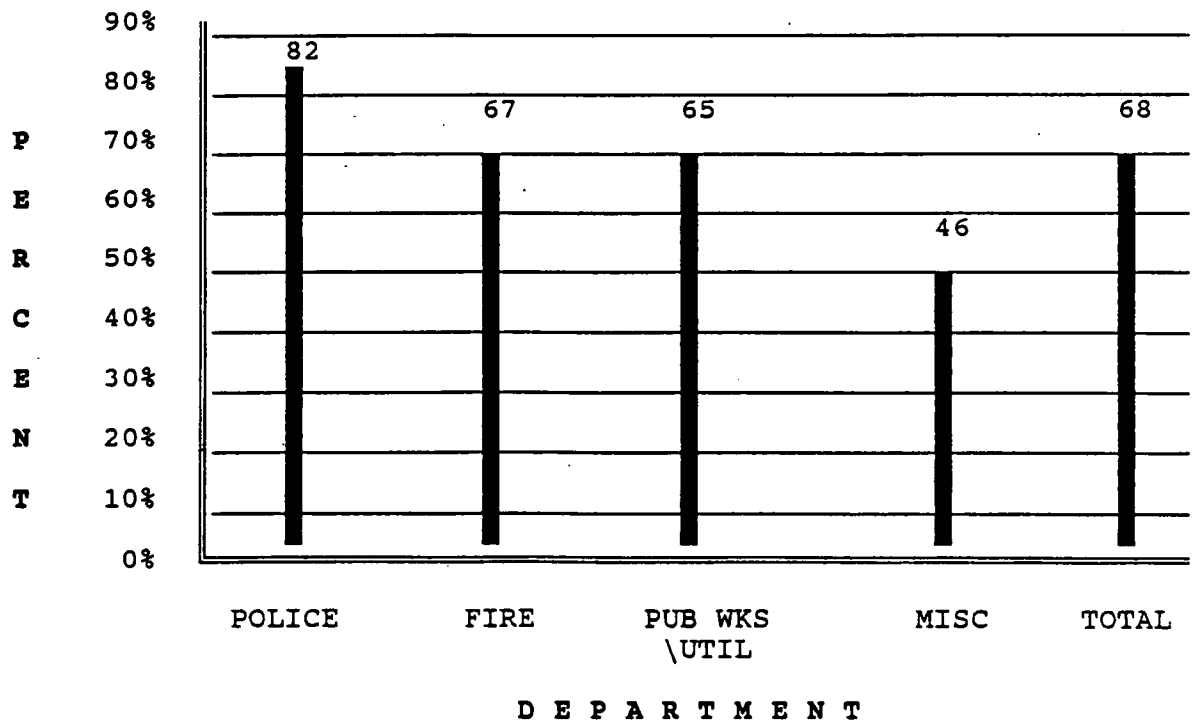
Personnel and Public Employees Committee
Status Report of City of Sacramento Workers' Compensation Program
September 7, 1993

2. Rise in Litigation and Defense Costs.

The City of Sacramento has a relatively high litigation rate. This is primarily due to the close involvement of the various bargaining unit representatives with their members. Whenever possible, the WCU Claims Representatives handle the legal aspects of their claims without the assistance of defense attorneys. Medical records are ordered, medical-legal evaluations are set, negotiations are made with applicant attorneys, and appearances are made at the WCAB. We are most fortunate to have such experienced and qualified staff in the WCU, as ten of the eleven professional staff have passed the Self-Insured Administrator's examination given by the State Self-Insurance Plans.

The following graph illustrates our litigation rate for open files by major department groupings.

LITIGATED CLAIMS BY DEPARTMENT



Personnel and Public Employees Committee
Status Report of City of Sacramento Workers' Compensation Program
September 7, 1993

The vast majority of our claims are for **accepted injuries**, in which there is no question regarding the injury taking place on the job. The cases that become litigated that are "accepted" are frequently more complicated than cases that are denied. There are a multitude of reasons why we need representation before the WCAB on accepted claims. We often need to take depositions of doctors and employees which require an attorney. The most common issue is nature and extent of injury, which occurs when we have a wide range between the disability opined by the defense and applicant medical evaluators. Other common issues include period of temporary disability, level of permanent disability, rehabilitation, apportionment, self procured medical, future medical, fraud, serious and willful misconduct, as alleged by the employee against the employer and the employer against the employee, discrimination, liens (medical and EDD), statute of limitations, contribution, petition to reopen for new and further disability, and subrogation.

Most of the claims that are not accepted by the WCU do not become litigated. Employees experiencing claim denial usually accept the reason given as to why their alleged injury is not considered to have arisen out of the course of their employment.

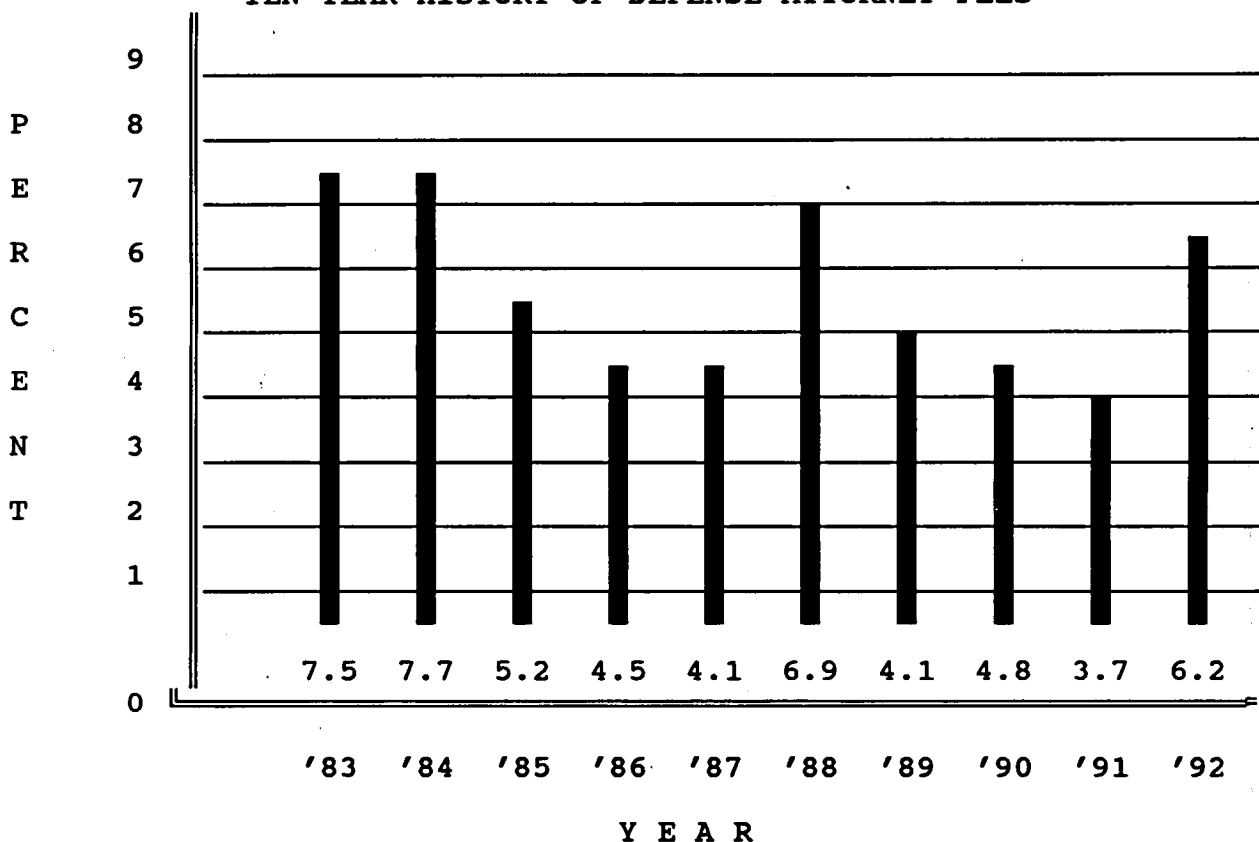
The primary factor considered in hiring outside counsel by WCU staff is the expertise and experience of those attorneys in dealing with the workers' compensation system. Most of the defense firms utilized have attorneys who are State Bar of California Certified Specialists in Workers' Compensation. State Certification requires a minimum of fifty (50) trials, along with requisite numbers of cross-examinations of permanent disability rating specialists appeals handled, as well as a passage of a practical applications test.

The cost to the City of defending a claim can be very expensive. Our relative cost of defense attorney fees compared to the total claims program cost for the past ten years has averaged five and one-half percent. During the past three years, since the Reform Act of 1989, these costs have increased significantly. This is due to increased number of claims each adjustor must handle. We are now forced to depend more on outside attorneys, as there is not enough time to devote to routine claims processing.

Personnel and Public Employees Committee
 Status Report of City of Sacramento Workers' Compensation Program
 September 7, 1993

The following graph depicts defense attorney costs as compared to the total annual workers' compensation program cost. In 1983 and 1984 all litigated claims were handled by attorneys as we did not have experienced staff capable of performing this activity. In 1988 the WCU was significantly understaffed due to a high turnover rate and it was necessary to send the majority of the litigated claims out to defense counsel.

TEN YEAR HISTORY OF DEFENSE ATTORNEY FEES



3. Increased Medical Costs.

The medical cost component of the workers' compensation system is rising faster than any single other factor. In the early 1980's it represented approximately one-third of total annual claims costs, compared with nearly 50% in 1993. In addition to these costs, there are some unique aspects of increased medical costs to the reformed workers' compensation system.

Personnel and Public Employees Committee
Status Report of City of Sacramento Workers' Compensation Program
September 7, 1993

The Reform Act, contemplated a ten percent decrease in medical/legal costs, instead the costs were reduced only three percent the first year and then increased from nine percent for orthopedic evaluations to eighteen percent for all other medical specialties in July of 1992.

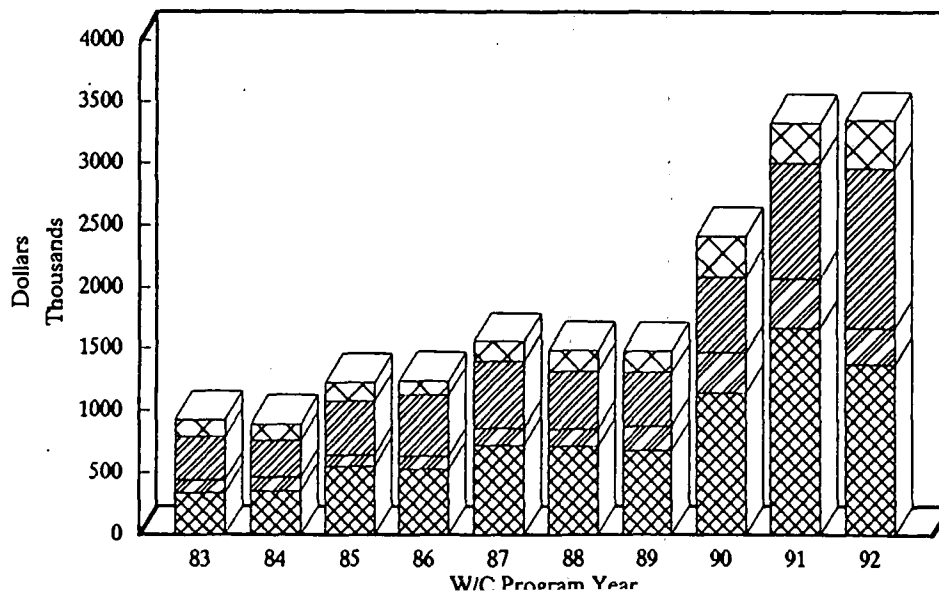
Another factor in the medical costs issue involves the Qualified Medical Evaluation (QME) procedure, particularly for cases where the employee does not have legal representation. The law mandates that a case may not be resolved without a formal medical evaluation, QME, even in instances where the permanent disability factors and future medical care needs are clearly defined by the treating doctor and there is no dispute between the employee and employer. The cost for this report alone averages \$1,126.20 before any ancillary costs are included or if the evaluation is deemed comprehensive by the doctor, which is not uncommon.

Further, the methods to address medical issues are more costly due to the current laws, which still allow for an employer consultation or second opinion of the treating doctor. However when a case does have legal representation, it is also necessary to incur either an Agreed Medical Evaluation (AME) or a QME to be able to act on an issue that is contrary to what the treating doctor has indicated before a matter can be submitted to a judge for decision.

The following graph depicts the medical costs of the workers' compensation program to the City for the past ten years.

CITY OF SACRAMENTO

Medical Costs (10 Year History)



Personnel and Public Employees Committee
Status Report of City of Sacramento Workers' Compensation Program
September 7, 1993

4. Workers' Compensation Reform Act of 1989 and Subsequent Legislation.

The Reform Act of 1989 was proposed to simplify the workers' compensation process, to reduce litigation, to lower costs, and to provide a more timely benefit to the injured worker. It has had the opposite effect and has created a nightmare of turmoil for the industry in California. Attachment B illustrates the rising costs and claims for the City of Sacramento and five other cities of similar size. Several insurance companies have discontinued writing policies for workers' compensation insurance in the state and many employers are leaving the state due to rising workers' compensation rates.

This Act added numerous new penalties that are assessed if certain deadlines are not adhered to in the processing of claims. A claim form must be given to the injured employee within twenty-four hours of the report of injury. At the time that the first disability check is sent to the injured employee, the employer must also advise on what exact day of the week all subsequent checks will be sent. One of eighteen benefit notices must be sent out during various points in the course of the claim. Within fourteen days of notice of the injury,, the employer must advise the employee that the claim has been accepted, delayed or denied. if the claim is not denied within ninety days, it is presumed to be compensable. Within five days of the employee becoming permanent and stationary, the employer must serve notice of the procedures for evaluating permanent disability and the need for future medical care.

The employer has thirty days after receipt of a permanent disability rating from the Office of Benefit Determination to request reconsideration of the findings. In those cases where the employee is represented, parties must agree to an Agreed Medical Examiner (AME) within ten days. When an AME is used, each party must serve the other with documentation at least twenty days before it is sent to the AME. The opposing party has ten days to object to the submission of the documents.

Within ten days of receiving a doctor's report indicating that an employee is medically eligible for vocational rehabilitation, the employer must notify the employee of his eligibility for such services. Within ninety days of

Personnel and Public Employees Committee
Status Report of City of Sacramento Workers' Compensation Program
September 7, 1993

determination of vocational rehabilitation feasibility, the employer must submit a plan or request the Office of Benefits Determination resolve any dispute that may exist. If the Office of Benefits Determination notifies the employer of the need for vocational rehabilitation service, that employer has twenty days to provide it. If the employee has not requested vocational rehabilitation within ninety days but is eligible, the employer must send a reminder notice at forty-five days and seventy days after the employee is given his first notice of eligibility.

These are just a few of the deadlines now imposed by law. Failure to comply with these deadlines will result in automatic penalties. For a listing of some of the penalties see Attachment C.

Since the Reform Act of 1989, the state legislature has enacted several major "clean up" workers' compensation packages. This has resulted in even more confusion for individuals working in this industry. There are now four different tracks, or bodies of law that we must follow depending on the date of injury, i.e., pre-1990, post 1990, post 1991, and post 1993.

5. Workers' Compensation Fraud.

In the past, prosecution of a workers' compensation insurance fraud case was rare. In 1991 the Workers' Compensation Insurance Fraud Reporting Act came into law. This act mandates that employers or insurance companies notify both the district attorney's office and the Bureau of Fraudulent Claims when there is suspected workers' compensation insurance fraud. The scope of such fraud is not just limited to injured workers but includes employers, medical providers and attorneys. The enactment of this law has resulted in increased investigative costs for the WCU in order to address a potential fraud aspect of a claim. In addition to the increased number of cases investigated, the necessity for a more complete investigation entailing documentary evidence and expert witnesses is important to ultimately prove the case in a court of law.

This month the City of Sacramento began to utilize the services of the California Workers Compensation Fraud Hotline. This is a service that provides employees,

citizens, and employers an opportunity to report incidences of workers' compensation fraud in a confidential manner. We hope that this will serve as a deterrent to employees and others who consider abusing the system and thereby help reduce our workers' compensation costs.

6. Vocational Rehabilitation.

When an employee suffers an on-the-job injury that results in a preclusion from returning to his or her usual and customary occupation, it is mandatory that the employer offer the injured worker rehabilitation services. This is the fastest growing benefit in the California job-injury program, growing twenty times faster than other types of claims. Costs, originally estimated at 2.7 percent of losses, now account for twelve cents out of every claim dollar.

In order to contain costs we have an in house Vocational Rehabilitation Coordinator who carefully monitors all rehabilitation activity and provides City employees with pre-rehabilitation services without incurring the cost of outside vendors. Our average annual cost for rehabilitation programs, excluding maintenance allowance, has remained about 2% of the total annual workers' compensation program cost of \$9 million.

Workers' Compensation Unit Cost Savings and Prevention Measures .

1. Medical Cost Containment Programs.

A. The City has a contract with the MedClinic of Sacramento to provide nonindustrial medical services such as pre-placement medicals, DMV physicals, medical monitoring programs and return-to-work examinations. The MedClinic is also the authorized "City Physician" for the treatment of industrial injuries for employees who have not designated their personal physician to treat them in case of a work-related injury. The MedClinic also bills the City at or below the state authorized fees for industrial services. The dollars saved in this area nearly pay for the nonindustrial medical program. This also saves clerical staff time by not reviewing and cutting their bills.

Personnel and Public Employees Committee
Status Report of City of Sacramento Workers' Compensation Program
September 7, 1993

- B. The City has an agreement with Interplan, a bill reduction service which contracts with most of the hospitals in our area. Through this service we realized a savings of 36% or \$225,747 out of which we paid Interplan 19% or \$43,054, for the 1992 calendar year. For hospitals that are not under contract with Interplan, we use Retrospect, a similar service. They provide medical bill audits within the hospital setting.
- C. For prescription drugs for claimants that will need medications for six months or longer and for durable medical equipment, we utilize the services of Pharmacy Management Services, Inc. (PMSI). An auditor from PMSI spends from seven to ten days every six months reviewing claim files in the WCU to identify potential savings.

2. Modified Work/Alternative Duty Programs.

WCU staff make every effort to return injured employees to work as soon as possible. Studies have shown that the earlier an injured worker returns to the work force, the quicker the recovery. Requests are made to the treating physician to outline specific limitations or work restrictions rather than just place the patient "off work" so that departmental personnel may attempt to accommodate the employee in a modified work position.

The Police and Fire Departments have excellent Light Duty programs and are able to place injured employees with a wide range of restrictions in temporary positions. We are currently in the process of developing a citywide modified work/alternative duty policy for the miscellaneous departments.

3. Safety Programs.

The Safety Unit in the Risk Management Division provides many proactive programs geared at reducing the workers' compensation injury rate. Attachment D lists the safety programs provided to City employees by the staff of the Safety Unit.

Personnel and Public Employees Committee
Status Report of City of Sacramento Workers' Compensation Program
September 7, 1993

During the past five years the City has provided the following major programs to large groups of employees:

Cholesterol Education and Treatment. By law all public safety employees are entitled to a presumption of heart disease under the Labor Code. Elevated cholesterol is one of five coronary heart disease risk factors that can be easily controlled by proper nutrition. City public safety employees learned how to select and prepare wholesome foods low in cholesterol. Positive feedback was provided by monitoring blood cholesterol levels for a one year period.

Hearing Conservation. Hundreds of City workers are exposed to harmful noise levels while operating heavy equipment. This program evaluates the noise levels of all City equipment and monitors noise reduction modifications. Employees are provided hearing protectors with noise reduction ratings appropriate to their exposures. Annual audiograms and training are provided to those employees required to wear hearing protectors.

Hepatitis. Hepatitis B is a bloodborne pathogen transmitted by specific contact with body fluids. Using the Centers of Disease Control guidelines we have identified approximately 1400 employees who may have exposures to hepatitis B during the course and scope of their employment. These employees have been provided training in control measures including personal protective equipment, decontamination, and reporting. As a preventative measure, at risk employees are being provided hepatitis B vaccine purchased on a consolidated federal contract to control cost and infection.

Back Injury. The City has an aggressive back injury reduction effort including training of supervisory personnel in the recognition of tasks that create risk of back injury. Employees are provided back support belts to assist in controlling the proper lifting posture. For safety employees, back support belts are often inappropriate and prohibitive due to the nature of work in both Police and Fire. Therefore the City has established an agreement with the Los Rios Community College District to provide coaching supervision of workouts to tone employees for strength, flexibility and endurance thus reducing the number and severity of back injury claims for this group.

Personnel and Public Employees Committee
Status Report of City of Sacramento Workers' Compensation Program
September 7, 1993

Video Display Terminals. Personal computers continue to improve the productivity of City employees. These computers are used by staff in every department of the City. Our incidence of repetitive motion injuries is on the increase so there is an ongoing need to conduct ergonomic workstation evaluations and employee training to control the proper setup and use of computers.

Medical Surveillance Monitoring. Employees are provided medical monitoring to determine the effectiveness of personal protective equipment when working around known hazardous materials including carcinogens, pesticides, herbicides and laser equipment.

Environmental Workplace Monitoring. Air sampling is performed in areas where employees are using chemical products to determine if air quality is within the permissive exposure limits established by Cal/OSHA.

Workers' Compensation 1993 Reform Package.

This is a very complex package and a number of the items do not affect the City, however it appears that the City will benefit from this year's workers' compensation reform in some areas. Attachment E summarizes all of the changes contained in the 1993 legislation. The package places a \$16,000 cap on vocational rehabilitation services. Our average rehabilitation plan now exceeds \$25,000. It also prohibits out of state plans, eliminates the need to meet with every injured worker who is disabled ninety days, provides for termination of plan under conditions of alternative employment, restricts employees to one plan, places a \$4,500 cap on rehabilitation counselor fees, and provides that plans agreed upon between an employer and a represented employee do not need rehabilitation unit approval.

Stress claims have been restricted, as currently employees have to prove that only ten percent of the stress in their lives comes from work. Under the new regulations, employees must prove that job stress predominantly caused their illness. Post termination stress claims are also severely restricted.

Medical evaluations are now limited to one each by a physician chosen separately by the employer and the employee. Treating physicians are now allowed to rate impairment. This should significantly reduce our medical costs on each claim.

Personnel and Public Employees Committee
Status Report of City of Sacramento Workers' Compensation Program
September 7, 1993

Maximum temporary disability rates are increased from \$336 per week to \$406 per week on July 1, 1994, \$448 on July 1, 1995 and \$490 on July 1, 1996. Since the City pays salary continuation to all career employees in lieu of temporary disability, we anticipate only a minor impact for our limited term employees. Permanent disability and death benefits also received significant increases over the next three years which will result in a rise of our indemnity costs.

Workers' Compensation Unit Staffing Needs.

During the 1990 claim year the number of new claims rose by 281 or 26%. New incurrals have continued at the same high rate for the 1991 and 1992 claim years. This increase is the result of the new Claim Form, the training required in introducing the Claim Form to all employees, and the complicated and confusing procedures required by the new "system". The WCU now averages 1850 open claims, or 230 claims per Claims Representative.

According to Mark Ashcraft, Manager of Self-Insurance Plans and other regulators in the field of workers' compensation, a caseload of 125 to 150 open indemnity claims is the maximum number possible for a Claims Representative to handle and be able to comply with the deadlines mandated by the new law. This number has become the industry standard. The work of the claims person has increased drastically from that of handling cases prior to the 1989 Reform Act. This is due to the tremendous changes in the timeliness of the work that must be completed, the constant awareness of each and every task is subject to monetary penalties, and the conflicting law that has yet to be defined through the appeal process in our court system.

In July of 1992 we solicited a study from Tillinghast to determine the workload adequacy of the WCU. This study validated our concerns that the WCU is significantly understaffed. In order to adequately meet the requirements of the law, avoid monetary penalties, and provide mandatory benefits to our employees we need additional professional and clerical staff. The industry guidelines above assume no field investigation by the representative, no involvement with related benefits issues such as retirement or payroll, no involvement with employee relations issues, no fraud investigations, no in-house defense legal activity, and a high level of automation. Our claims representatives devote a significant amount of time to all of the above in addition to normal claims adjusting duties.

Personnel and Public Employees Committee
 Status Report of City of Sacramento Workers' Compensation Program
 September 7, 1993

The consultant from Tillinghast stated "for optimum results for a self-administered situation such as the City, we recommend a case load of 80-100 files for the representatives handling indemnity claims...". Because of the high level of competency of the WCU staff who have an average of eight years of experience in handling claims, we believe that a case load of 150 claims would be manageable. In order to achieve this goal a staffing augmentation of one Workers' Compensation Administrator, two Workers' Compensation Claims Representative Trainees, and two Typist Clerk II's (Confidential) is required.

FINANCIAL CONSIDERATIONS:

The proposed staff additions will require an increase in the employee services, equipment, and supplies costs for the 1993-94 Risk Management operating budget. The estimates outlined below are based on the staff being hired effective October 1, 1993.

The WCU currently has office space to accommodate the requested additional staff, with the relocation of the Risk Manager, Vocational Rehabilitation Coordinator, and Rehabilitation Assistant to the fourth floor of the Plaza Building. Attachment F is the proposed new organization chart for the WCU.

ADDITIONAL STAFF COSTS

<u>POSITION</u>	<u>SALARY/ BENEFITS</u>	<u>FURNITURE/ EQUIPMENT/ SUPPLIES</u>	<u>TOTAL</u>
Workers' Compensation Administrator	\$34,750 12,857	\$2,000 2,500 500	\$ 52,607
Workers' Compensation Claims Representative Trainee (2)	42,588 11,925	2,500 5,000 1,000	63,013
Typist Clerk II Confidential (2)	32,688 9,153	1,000 5,000 1,000	48,841
GRAND TOTAL			\$164,461

Personnel and Public Employees Committee
Status Report of City of Sacramento Workers' Compensation Program
September 7, 1993

This total represents an increase of 17.3% in the WCU's operating budget for the fiscal year 1993-94. The ongoing annualized cost of this increase is \$197,000.

POLICY CONSIDERATIONS:

1. The current policy is to self-fund and self-administer the workers compensation program for the City of Sacramento as a cost savings measure.
2. We are committed to provide timely care to injured workers and follow the state laws to ensure timely payments.
3. Our policy needs to be to adhere to the industry standard on staffing in order to be able to provide the mandated level of service to our employees.

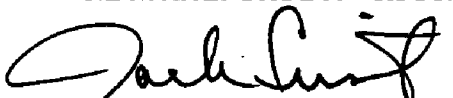
MBE/WBE EFFORTS:

In the area of litigation we are utilizing the only women owned workers' compensation defense firm locally and are anticipating soon referring cases to the only minority owned workers' compensation firm practicing in this area. The WCU utilizes MBE/WBE vendors whenever possible.


Respectfully submitted,


MARGARET ANN ALLEN
Risk Manager

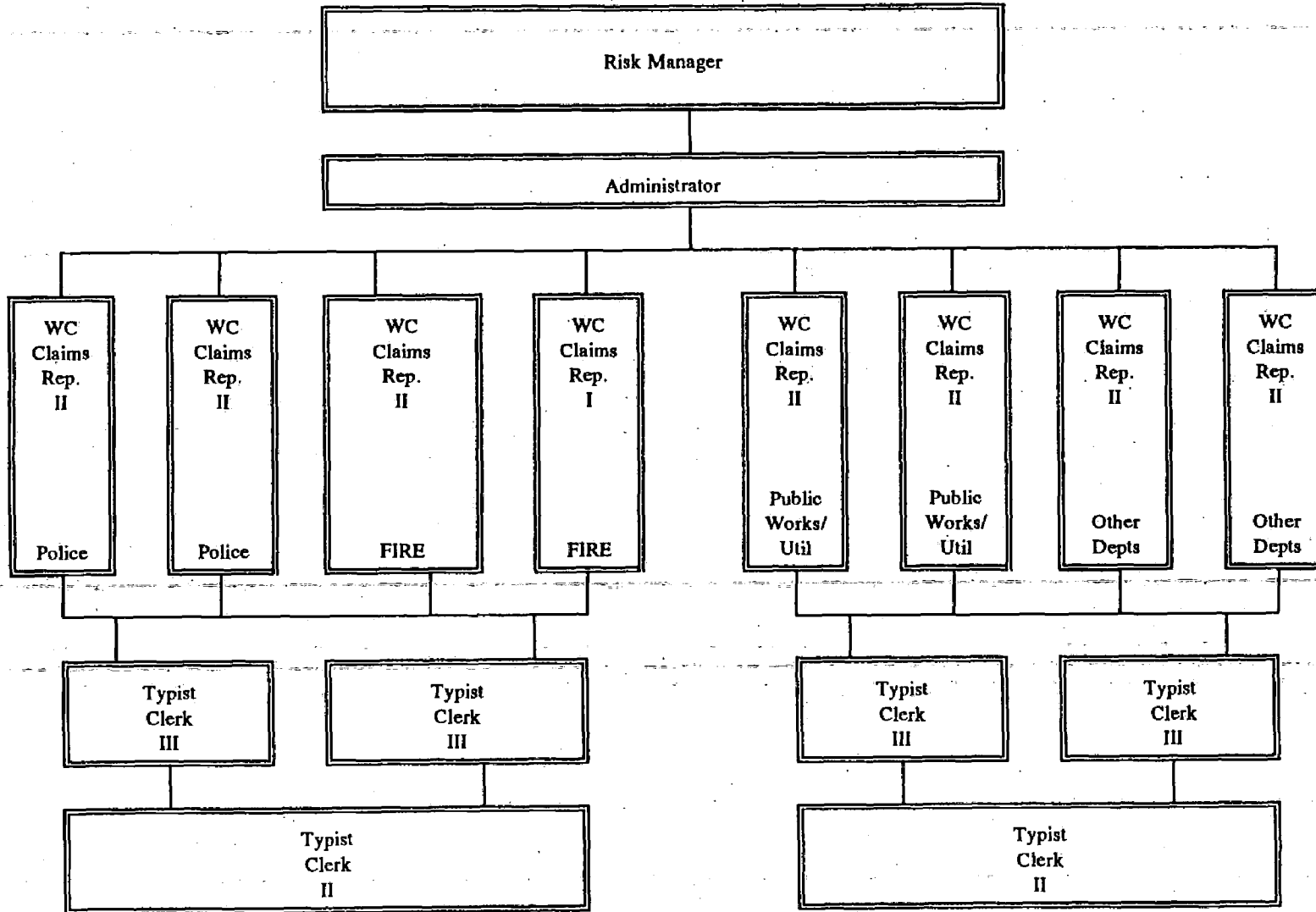
RECOMMENDATION APPROVED:


JACK R. CRIST
Deputy City Manager

APPROVED:

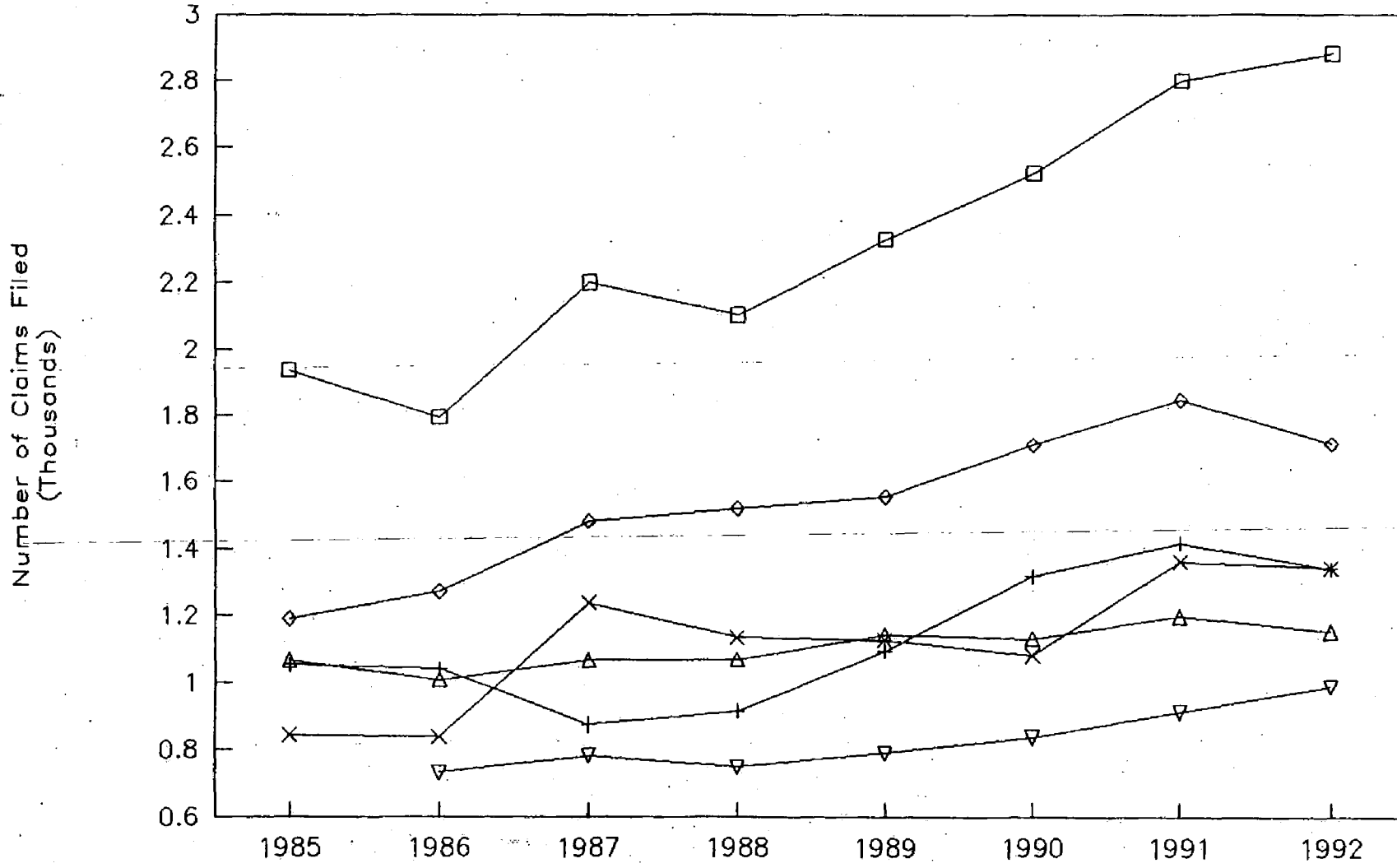

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Director of Personnel

CURRENT WORKERS' COMPENSATION UNIT STAFFING



WORKERS' COMPENSATION COMPARISON

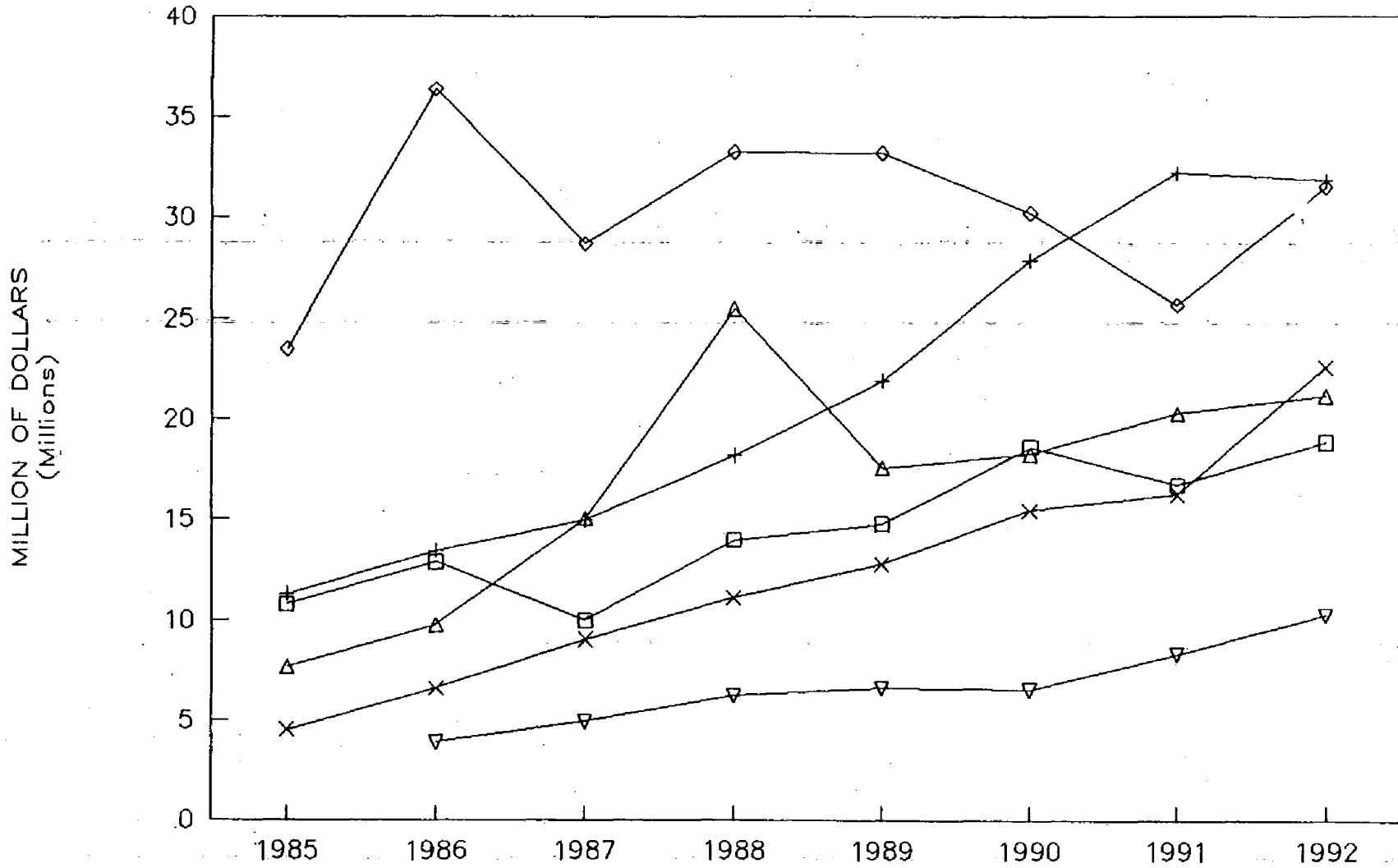
NUMBER OF CLAIMS FILED



SAN DIEGO
 LONG BEACH
 SAN JOSE
 OAKLAND
 SACRAMENTO
 FRESNO

WORKERS' COMPENSATION COMPARISON

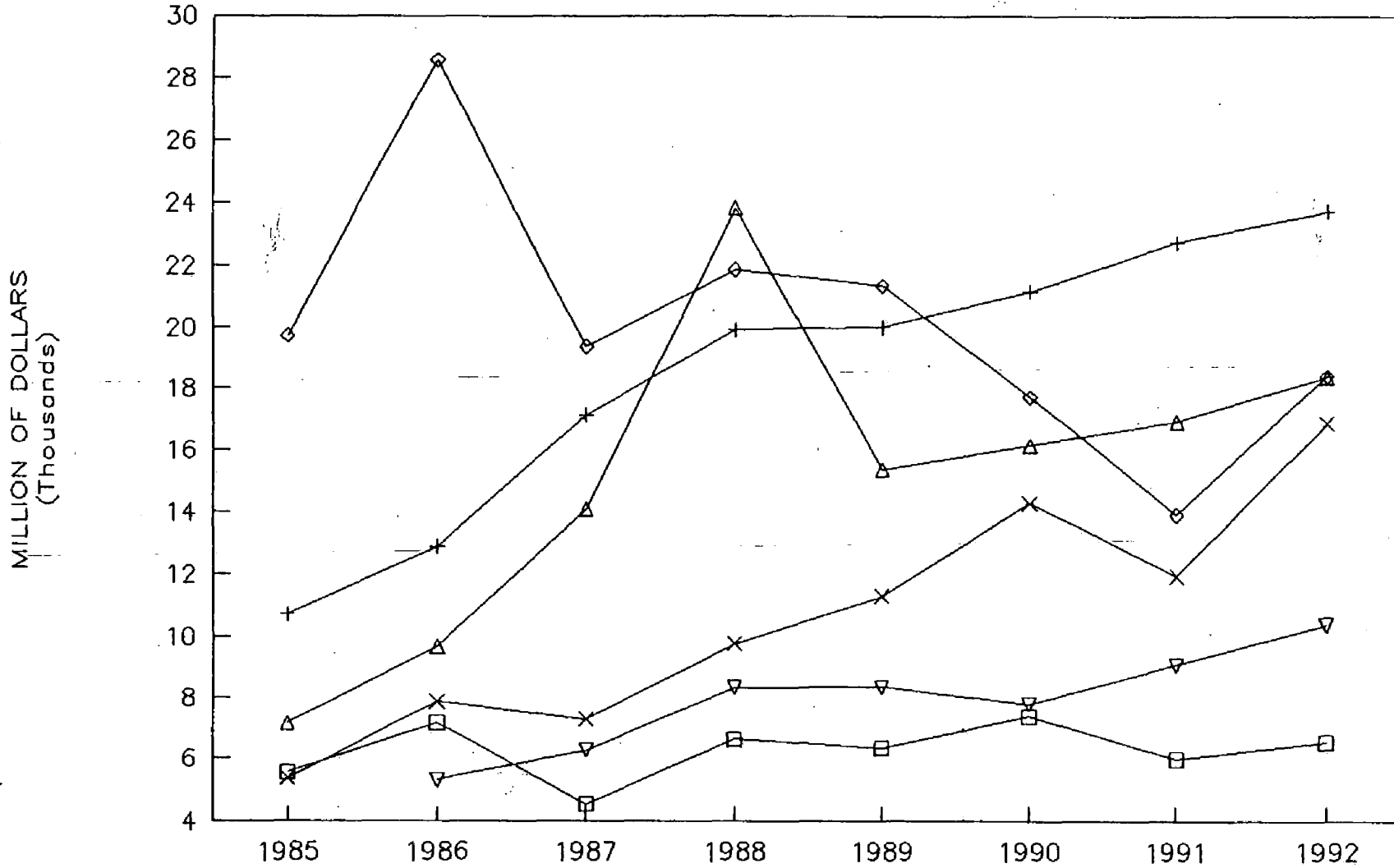
TOTAL INCURRED - CUMMULATIVE



SAN DIEGO
 LONG BEACH
 SAN JOSE
 OAKLAND
 SACRAMENTO
 FRESNO

WORKERS' COMPENSATION COMPARISON

INCURRED COST PER OPEN CLAIM FILE

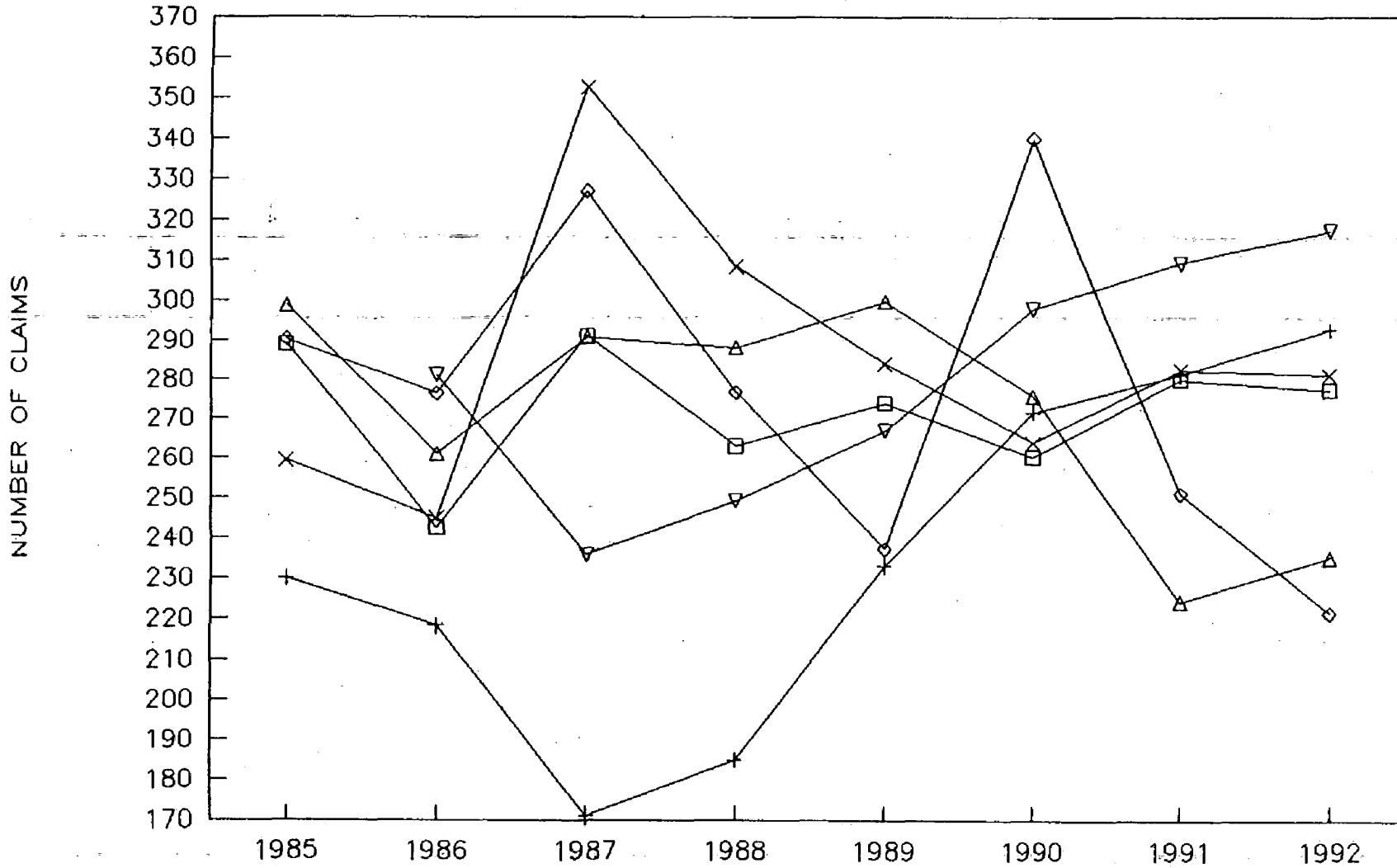


SAN DIEGO
 LONG BEACH
 SAN JOSE
 OAKLAND
 SACRAMENTO
 FRESNO

WORKERS' COMPENSATION COMPARISON

OPEN CLAIMS PER THOUSAND EMPLOYEES

ATTACHMENT B-4



□ SAN DIEGO + LONG BEACH ◇ SAN JOSE △ OAKLAND × SACRAMENTO
▽ FRESNO

SCHEDULE OF ADMINISTRATIVE PENALTIES

1. A mandatory penalty of up to \$100 for each work-injury violation shall be assessed when there is:
 - a. Failure to make full payment of 10% automatic penalty within 90 days of due date when temporary disability or permanent disability is overdue.
 - b. Failure to provide permanent disability payments when due and/or within 14 days after temporary disability is terminated.
 - c. No date received or written stamp on claim form in the claim file.
 - d. Failure to respond to a request for medical care of injured worker within 30 days of the request.
 - e. Failure to provide, upon request, any transportation costs when due to injured worker for medical care.
 - f. Failure to pay maximum temporary disability without documentation for the payment of a lesser amount.
 - g. Failure to make temporary disability payments when due.
 - h. Failure to follow the Rules and Regulations established by the Administrative Director for the purpose of carrying out the workers compensation provisions of the Labor Code.
 - i. Failure to pay or object to all Medical-Legal expenses within 60 days of receipt of billing.
 - j. Failure to pay within ten days for any indemnity due.
2. A mandatory penalty of up to \$500 for each violation shall be assessed when there is:
 - a. Failure to maintain and provide a written claim log. The claim log shall contain all claims received, whether liability has been accepted, and distinguish between Indemnity and Medical-only claims.
 - b. Failure to comply with the Labor Code sections pertaining to Vocational Rehabilitation.

3. A mandatory penalty of up to \$1000 for each violation shall be assessed when there is:
 - a. Failure to pay or appeal penalties provided for in the Notice of Assessment within 15 days of the issue date.
 - b. Failure to comply or appeal with any final order of the Workers' Compensation Appeals Board within 30 days of the issue date.

4. A mandatory penalty of up to \$5000 for each violation shall be assessed when there is:
 - a. Failure to produce on a second request a hard copy of open claim files within 72 hours of written notice by Administrative Director or his representatives.
 - b. Denial of liability for a claim without supporting documentation of service on the injured worker or his/her agent.
 - c. Failure to comply or appeal any lawful written request of the Administrative Director regarding a claim filed within 30 days.
 - d. Failure by an insurer, a self-insurer or administrative agency to provide a claim form within 24 hours upon request of an injured worker or his/her agent.

TRAINING REQUIRED
BY CALIFORNIA CODE OF REGULATIONS

TITLE 8

Accident Prevention Program
Emergency Action Plan
Fire Prevention Plan
Cleaning Repairing Servicing and Adjusting Prime Movers, Machinery
and Equipment
Servicing Single, Split and Multi Piece Rims or Wheels
Medical Service and First Aid
Tree-work Maintenance and Removal
Respiratory Protective Equipment (reference to 5244)
Accident Prevention and First Aid
Qualification of Machinery Operation
Elevating Work Platform
Aerial Devices (Towering)
Elevating Employees with Lift Trucks
Operating Rules (Industrial Trucks)
Power Press Operation
Operating Rules for Compaction Equipment
Training of Operators, Gas Systems and for Welding and Cutting
Crane, Hoists, Derrick Operators Qualifications
Control of Noise Exposure
Respiratory Protective Equipment
Open Surface Tank Operations
Confined Spaces
Changing and Charging Storage Batteries
Hazard Communication, Employee Information and Training
Abestos
Carcinogens
Acrylonitrile (AN)
Lead
Benzene
Ethylene oxide (EtO)
Protection (Labels)
Service Stations (Portable Fire Extinguishers)
Diving Operations (Dive Team Training)

**A COMPARISON OF
THE NEW 1993 WORKERS' COMPENSATION LAW
WITH
CURRENT LAW
AND
THE VETOED 1992 LEGISLATION**

FRAUD

Section 1

Issue	Current Law	Notes	New Law Effective 1-1-94
Post-termination claims.	No special restrictions.	Labor Code 3208.3(e)	Non-stress claims filed after notice of termination are not compensable unless employer had notice of injury before notice of termination or there are pre-notice of termination medical records proving injury, or employee demonstrates by preponderance of evidence that the date of injury is subsequent to date of notice of termination.
Civil action.	Use of runners, cappers or steerers to procure clients or patients is prohibited.	Ins. Code 1871.7	Imposes a civil penalty for violation of this prohibition and permits Attorney General, a district attorney, or an interested person to bring a civil action for violation.
Restitution.	Various false or fraudulent practices are prohibited.		Restitution may be ordered after conviction, including for medical evaluation or treatment.
Integrity declaration.	Various activities such as rebating are prohibited.	Labor Code 4906.(g)	Requires that all parties sign a statement under penalty of perjury that they have not violated various anti-fraud provisions.
Evaluating doctor's reports.	Medical-legal reports must disclose certain designated details, must be signed under penalty of perjury, and must be accompanied by a billing providing specified information.	Labor Code 4628	Requires evaluating doctor to attach a CV and list of professional affiliations to evaluation report, and to include statement of percentage of total practice time spent on treatment.

MEDICAL TREATMENT

Issue	Current Law	Notes	New Law Effective 1-1-94
Physician self-referral.	No prohibition against referring workers to owned or controlled facilities for treatment or testing.	Labor Code 139.3	Bans self-referral for laboratory, physical therapy, diagnostic imaging and other specified services. Limits ban where doctor is outside metropolitan area or where certain other specific circumstances apply. Services performed in a doctor's office, unless using equipment costing over \$400,000, are exempted. Knox-Keene licensees and group practices are totally exempted from this ban.
Fees billed.	Regulates fees through fee schedule.	Labor Code 4614	Restricts medical providers' (outside MCOs) billings to the average fee charged by the 5 largest health benefit programs in the geographical region..
Utilization protocols.	IMC is required to develop guidelines for <i>medical-legal</i> evaluations.		Mandates that administrative director adopt a model utilization protocol, and requires that insurers use protocols by 7-1-95.

INSURANCE REGULATION

Issue	Current Law	Notes	New Law Effective 1-1-94
Minimum rate law.	Bans use of any lower rates.		SB 30 (not yet signed) establishes new <i>unregulated</i> competitive rate system effective 1-1-95.
Rates.	Requires commissioner to set adequate minimum rates.	Ins. Code 11732.01	Requires 7% reduction in minimum rates; allows commissioner to approve lower <i>but not higher</i> rates.
Surcharges.	Allows the unregulated use of rate surcharges.	Ins. Code 1137.5	Requires that surcharge plan or methodology be reported to commissioner and not be unfairly discriminatory.
Dividend regulation.	Prohibits use of unfairly discriminatory dividend plan, and requires reporting of dividend information to rating bureau.	Ins. Code 11738.5	Changes reporting of dividend information to commissioner, makes this data subject to public disclosure, prohibits making dividend conditional on renewal, and requires annual report on dividends by commissioner. Repeals these changes 1-1-95.
Data reports.	No report is required.	Labor Code 138.6	Mandates establishment of new data system. Requires each rating bureau to give to Governor and Legislature an annual report on losses and expenses of all member insurers.

32

INSURANCE REGULATION

Issue	Current Law	Notes	New Law Effective 1-1-94
Employer rights.	None in current law.	Labor Code 3761	Requires insurer to notify employer of acceptance of any claim disputed by employer and that the employer must be given 15 days notice of a hearing to approve a C&R on any employer-disputed claim; requires insurer to reimburse employer for additional costs if employer-disputed claim is a take-nothing; requires insurer to provide employer with written justification of reserves. Also allows employer to obtain copies of non-confidential information in insurer's claim file.
Self insurance.	Individual employers may apply for permission to self-insure if they meet specific financial criteria.	Labor Code 3700	Allows groups of employers to secure certificate of self-insurance.

33

BENEFITS

Section 4

Issue	Current Law	Notes	New Law Effective 1-1-94
Temporary disability.	Maximum weekly indemnity is \$336 per week.	Labor Code 4453(2)	Increases maximum TD weekly indemnity over three year period as follows: 7-1-94: \$406 7-1-95: \$448 7-1-96: \$490
Permanent disability.	Maximum weekly indemnity for ratings under 25% is \$140. Maximum for ratings above 25% is \$148.	Labor Code 4453(6)	Increases maximum weekly indemnity over three year period for ratings over 15% as follows: 7-1-94: \$148 (15% to 24.75%) \$158 (25% to 69.75%) \$168 (over 70%) 7-1-95: \$154 (15% to 24.75%) \$164 (25% to 69.75%) \$198 (over 70%) 7-1-96: \$160 (15% to 24.75%) \$170 (25% to 69.75%) \$230 (over 70%)
Life pension.	Maximum weekly earnings for purposes of determining life pension benefits are \$107.69.	Labor Code 4453	Increases maximum average weekly wages for purposes of computing life pension over three year period, as follows: 7-1-94: - \$140.97 (from \$107.69) 7-1-95: \$185.67 7-1-96: \$230.37.

BENEFITS

Issue	Current Law	Notes	New Law Effective 1-1-94
Death benefits	Maximum benefits are \$95,000 (one dependent)/ \$115,000 (two or more total dependents).	Labor Code 4702	Increases maximum benefits over three year period as follows: 7-1-94: \$115,000 (one dependent)/ \$135,000 (two dependents)/ \$150,000 (three or more dependents). 7-1-96: \$125,000/ \$145,000/ \$160,000.

MENTAL-MENTAL STRESS CLAIMS

Issue	Current Law	Notes	New Law Effective 1-1-94
Causation standard.	Employee must demonstrate by preponderance of evidence that actual events of employment were responsible for at least 10% of total causation.	Labor Code 3208.3	Amends causation standard to predominant as to all causes combined, except where injury resulted from being a victim of or direct exposure to a violent act, in which case standard is substantial cause (defined as 35-40%).
Personnel actions.	Prohibits claims <i>within first six months employment</i> due to stress caused by regular and routine employment event, including lawful, good faith, non-discriminatory personnel action.	Labor Code 3208.3(h)	No compensation is payable if injury substantially caused by lawful, non-discriminatory, good faith personnel action at any time during employment; burden of proof is with the party asserting the issue.
Termination.	Claims submitted after termination subject to same compensability standards.	Labor Code 3208.3(e)	Post-notice/termination claims are banned unless employee demonstrates by preponderance of evidence that employment was predominant cause of injury, and that 1) there was a sudden and extraordinary event, 2) employer had notice or medical records showed injury pre-notice/termination, 3) there was sexual or racial harassment, or 4) where date of injury is subsequent to date of notice/termination but prior to effective date of layoff.

VOCATIONAL REHABILITATION AND ADA

Section 6

Issue	Current Law	Notes	New Law Effective 1-1-94
Monetary limit.	No dollar limit to services provided.	Labor Code 139.5(a)(5)	Establishes \$16,000 cap for all rehabilitation services, with plans to be completed within 18 months after approval of plan.
Integration with ADA.	Alternative or modified work plans are the preferred vocational rehabilitation program, and employer is given a premium rebate when used.	Labor Code 4644	Provides that employers' liability for VR services terminates when employer provides or employee refuses modified or alternative work meeting certain conditions, including lasting for a period of at least 12 months at a salary of at least 85% of pre-injury wages.
Maintenance allowance.	Allowed when worker determined QIW and chooses to enroll in program, paid during full course of program.	Labor Code 139.5(c)	Will be paid only when employee chooses to <i>participate</i> in program, paid for maximum of 52 weeks. Where employer/insurer delays and full VRMA is paid, this does not count against the \$16,000 cap.
QRR.	When total disability exceeds 90 days, employer must assign QRR to meet with injured worker. If treating doctor not able to determine status at 90 days, QRR to monitor recovery.	Labor Code 4636	Eliminates 90 day meeting but requires employer to give information on VR and ADA to the injured worker at 90 days. Employer to monitor recovery.

37

VOCATIONAL REHABILITATION AND ADA

Issue	Current Law	Notes	New Law Effective 1-1-94
Fees.	Administrative director promulgates fee schedule for rehabilitation services.	Labor Code 139.5 (5)	AD to set maximum fees by 7-1-94 such that total counseling fees may not exceed \$4,500.
Use of second plan.	Permitted when there is change in worker's medical condition, when new facts discovered, when circumstances beyond control of employer or employee make plan inappropriate, or when employer fails to provide timely services.	Labor Code 4644 (a) (7)	Allows additional plan (within original cap) only when 1st plan is no longer viable due to change in worker's disability, when 1st plan is disrupted by circumstances beyond control of employee, or when employer does not provide timely service. Second plan (with new cap) permitted only where rating is over 25% and 1st plan cannot be completed due to circumstances beyond control of employee and rehab unit approves as necessary.
Self-referral.	No restrictions.	Labor Code 139.5 (h)	Prohibits self-referral by QRR or rehabilitation counselor.
Arbitration	Disputed matters are to be submitted to OBD.	Labor Code 4645 (a) (2)	Provides that disputed matters for represented workers shall be submitted to arbitration except where otherwise provided.
Plan location.	Out of state plans may be approved.	Labor Code 4644 (g)	Prohibits out of state plans unless employer agrees or unless DWC determines these services are more cost effective.

MEDICAL-LEGAL

Section 7

Issue	Current Law	Notes	New Law Effective 1-1-94
Number of evaluations permitted.	One for each appropriate medical specialty or subspecialty.	Labor Code 4062(2) Labor Code 4061(1) Labor Code 4062.9	One "comprehensive medical-legal evaluation" on all issues to be performed by the treating physician and one additional by an AME or QME. Employee may self-procure comprehensive evaluations which are admissible. Where only one party obtains a QME report, the treating physician's report is presumed correct.
Evaluation timing.	No restrictions.	Labor Code 4060	Employer not liable for evaluations performed by other than the treating physician prior to filing of claim form <u>and</u> prior to time claim denied or presumed compensable.
Employer determination.	Employer must notify employee of right to obtain evaluation to determine PD rating.	Labor Code 4061(2)(1)	Allows employer to determine PD rating without evaluation. Employee may request an evaluation after the employer notifies the employee of the amount of PD indemnity payable.
Monetary limit on evaluation costs.	No restrictions.		No restrictions.

MEDICAL LEGAL

Issue	Current Law	Notes	New Law Effective 1-1-94
<p>Determination of disputed ratings.</p>	<p>No restrictions on judge's determination.</p>	<p>Labor Code 4065</p>	<p>Judge or appeals board is limited to choosing between either party's proposed rating. Loser pays cost of prevailing comprehensive medical-legal evaluation.</p>
<p>Industrial Medical Council.</p>	<p>Consists of 14 prescribed medical representatives who must maintain an active practice with at least 20% patient treatment.</p>	<p>Labor Code 139</p>	<p>Adds a physical therapist and a medical economist to the IMC; requires IMC members to devote 1/3 of practice time to treatment; requires the IMC to promulgate a form for treating physicians' use to report on medical issues; and mandates that guidelines for treatment of common industrial injuries be adopted by the IMC no later than 7-1-94. Requires the AD to adopt utilization protocols by 7-1-94, and all insurers to comply with them by 7-1-95.</p>
<p>Qualifications of evaluating doctors.</p>	<p>Standards for appointment as QME include devoting at least 20% of practice time to treatment and completing 8 hours of continuing education in past 24 months.</p>	<p>Labor Code 139.2</p>	<p>Requires devoting 33% of practice time to treatment and completing 24 hrs CE in 48 months. Revises qualifications to require QMEs to pass a written examination prior to appointment or reappointment; applies to all applicants after 7-1-94. For reappointment as QME cannot have more than 5 evaluations rejected by judge. A QME can be terminated for violating "any non-ministerial statutory or administrative duty."</p>

LITIGATION

Section 8

Issue	Current Law	Notes	New Law Effective 1-1-94
WCAB procedures.	Requires filing of information request form and answer.	Labor Code 5401.5 & 5401.6 (Repealed)	Repeals information request form and answer.
Claim dismissal.	Filing of a claim form constitutes commencement of proceedings and establishes jurisdiction of appeal board.	Labor Code 5401. (c) Labor Code 5404.5	Deletes provision that filing claim form constitutes commencement of proceedings with appeals board, and instead provides that claim form tolls time limitations until the claim is denied or injury becomes presumptively compensable. Allows appeals board to dismiss any claim within its jurisdiction if there has been no activity on the claim for the previous 180 days.
Filing criteria.	Allows filing an application any time there is a <i>bona fide</i> dispute after service of the claim form.	Labor Code 5500	Deletes requirement that a <i>bona fide</i> dispute exist before filing an application for adjudication.
Bad faith.	No provisions.	Labor Code 5813	Permits the appeals board to order a party, the party's attorney, or both to pay reasonable expenses and apply sanctions up to \$2,500 for bad faith actions and frivolous or dilatory tactics.

Issue	Current Law	Notes	New Law Effective 1-1-94
Safety	Health and safety commission of six members approves applications for safety grants.	Labor Code 6314.1	Expands health and safety commission to eight members and modifies duties to include continual examination and study of comp system. Establishes programs targeting employers in high-hazard industries and identifying categories of occupational safety and health hazards. Requires the DIR to establish model prevention programs to prevent repetitive motion injuries.
First aid (which does not require claim form).	Defined as minor treatment by provider other than physician.		Amends definition of first aid to allow minor treatment by a physician to be included in the definition.
Workers' comp judges	Specifies the term "referee" means workers compensation judge.	Labor Code 27	Changes "workers' compensation judge" to "referee."
Alternative systems.	No provision.	Labor Code 3201.5	Permits employers and employees in specified industries to establish by collective bargaining an alternate system, provided existing benefits are not diminished by such agreements.
User funding.	Repeals sunset on user funding.		Repeals sunset on user funding until January 1, 1999.

PROPOSED WORKERS' COMPENSATION UNIT STAFFING

