

# COMPENDIUM

  
**PacificComp**<sup>®</sup>  
*California's Workers' Comp Specialist*  
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Broker news from Pacific Compensation Insurance Company

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## A Weighty Challenge for Workers' Comp

Obesity has become the most talked-about health issue in America today. The statistics are staggering and sobering. Obesity rates among adults have doubled from 15% to 30% just since 1980.<sup>1</sup> Among children, they have tripled, which has its own implications for future workforces.

The *Los Angeles Times* recently reported that two decades ago, not one state had an obesity rate above 15%.<sup>2</sup> Today not a single state has an obesity rate **under** 20%.<sup>3</sup> The rate in California based on 2010 data was 24%. There are no indications the course will reverse anytime soon.

### **OBESITY IN THE WORKPLACE: IT'S A PROBLEM FOR BUSINESSES.**

Obesity leads to a host of illnesses, impairments and injuries. Conditions associated with obesity often complicate and lengthen recovery from a workplace injury. This makes it an economic and productivity issue for businesses as they try to control both their healthcare and workers' comp costs.

"Having a body mass index (BMI) in the overweight or obese range increases the risk of traumatic workplace injury," confirmed researchers at the Johns Hopkins

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### **EXECUTIVE VIEWPOINT**



### **The price/value tradeoff in workers' comp coverage**

James E. Little

*Chairman, President & CEO*

Anyone in the P&C insurance industry – policyholders, brokers or carriers – can tell you there is never a time when everybody is happy. As the market waxes and wanes between hard and soft, whoever is at the top of the seesaw one day is thinking about when the market flips and they're down at the bottom.

The lengthy (some would say interminable) soft market has been a boon for California employers and a challenge for brokers. As we have all witnessed in California workers' comp, employers are typically lulled into inertia when they're enjoying the benefits of soft market pricing. In particular, they pay less attention to loss control, because being vigilant takes time, effort and focus that may seem better used spent to increase productivity. Predictable maybe, even understandable. But not necessarily smart.

When the market gets harder as it always does and rates climb, company executives sometimes convince themselves that all carriers are pretty much alike, so choosing the option with the lowest premium seems like a no-brainer, particularly in today's

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## EXECUTIVE VIEWPOINT

### The price/value tradeoff


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economy. Instead, when they start to feel the pain, the smart move is to look for the carrier with the service and expertise needed to combat their increasing Ex Mod and premium. As our brokers know, because you're the ones who usually first hear from your clients about a crisis or complaint, buying workers' comp on price alone is a short-sighted and potentially dangerous decision. They find that out quickly when they have a complicated, high-risk claim. As you guide your clients through an evaluation of the options, what can you do to help them make smart decisions amid rising premiums? Counsel them that these criteria should be mandatory and could end up saving them both money and angst:

1. Look at carriers that know California inside out. In workers' comp, California isn't just a single sunny state; it's the most turbulent and complicated workers' comp market in America. The legislative and regulatory climate here and its impact on California employers require a carrier who knows it cold and whose headquarters address is in the Golden State. PacificComp may not be the only carrier with strong California credentials and track record, but we've always taken a leadership role in making our staff consummate experts in how to navigate here on behalf of our brokers and policyholders. Dealing with a carrier thousands of miles distant, in another time zone, whose people

have never set foot in California other than maybe to vacation here, is risky and short-sighted, especially when the policyholder is facing trouble.

2. Look for carriers that always handle their claims in-house. No third parties. No contractors. No beginners feeling their way. Carriers who have made a commitment to staffing with claims professionals who are thoroughly trained, deeply experienced and highly motivated. Who will handle their claims aggressively, protect them, adjudicate appropriately and always keep an eye out for fraud.
3. As rates rise, employers typically show renewed respect for loss control, particularly if they've suffered a claim due to carelessness that never would have happened if someone had been paying attention. A carrier whose loss control department is in house, on staff, brings a level of commitment, accountability, personal attention and expertise that ultimately can result in fewer accidents and fewer claims. Even for the smallest accounts, PacificComp's on-line resources are regularly enhanced and updated to put loss control tools and tips in the right hands.

The bottom line: the investment your clients make today for coverage that comes with the added value of California focus plus in-house claims and loss control is likely to save them many times over in the future. 

## A WEIGHTY CHALLENGE

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Bloomberg School of Public Health.<sup>4</sup> The study followed 7,690 workers. 29% were injured at least once in a nearly three-year period. Approximately 85% of the injured workers were classified as overweight or obese: More than 28% of injuries occurred among the overweight. 30% of injuries were in the obese I and II categories, and almost 34% were in the obese III category.

A report by the National Institute for Occupational Safety and Health suggests that body weight and other variables related to physical characteristics may affect the utility of personal protective equipment, such as "the ease with which a worker may use a respirator and the fit of fall-protection devices."<sup>5</sup>

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**A WEIGHTY CHALLENGE**

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**WHERE SHOULD COMPANIES START?**

Advise your clients that one of the most important steps to minimize workplace injuries is to carefully match the employee's physical

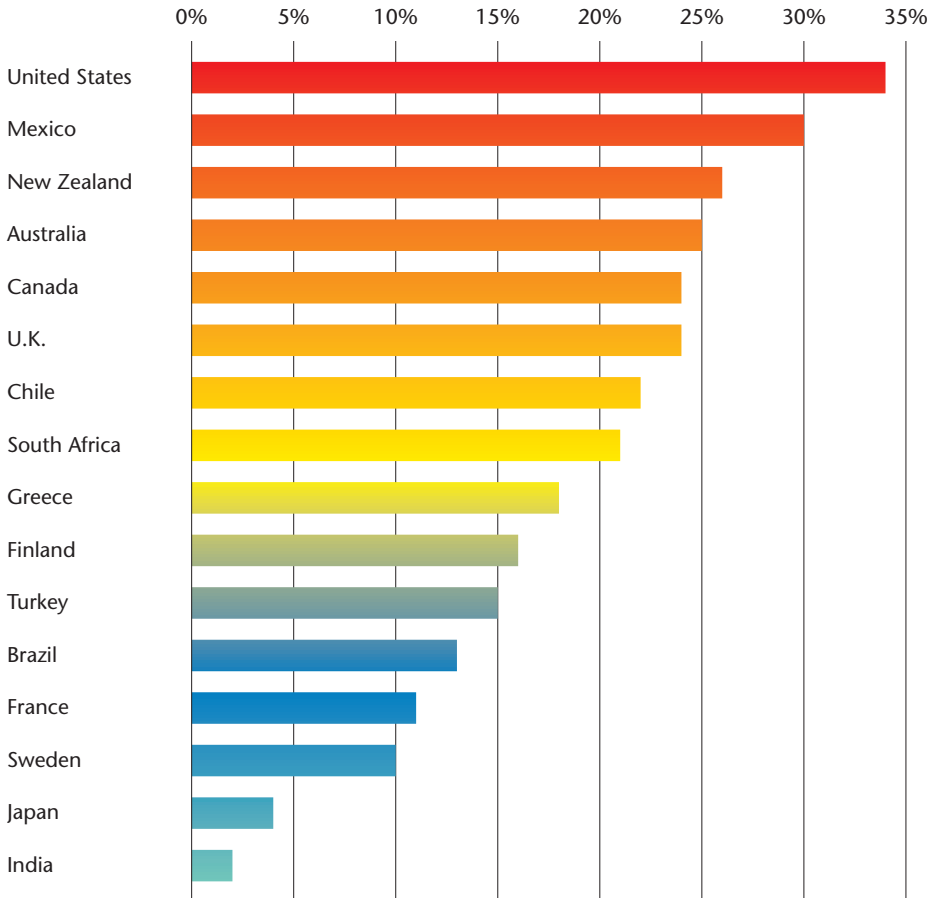
capabilities to the task. While that may address workers headed straight toward a workers' comp claim, the real challenge – with the potentially bigger payoff – is a quantum change in attitude within the workforce, particularly among employees most in need of tools for a healthier and more active lifestyle.

- 1 *Trust for America's Health, Centers for Disease Control and Prevention (CDC)*
- 2 *Los Angeles Times, America Just Keeps Getting Fatter, July 7, 2011*
- 3 *Center for Disease Control and Prevention (CDC) obesity statistics by state*
- 4 *Johns Hopkins Bloomberg School of Public Health's Center for Injury Research and Policy, Advance Access Study, published 5/7/07 by the American Journal of Epidemiology*
- 5 *National Institute for Occupational Safety and Health, Research Challenges in Work, Obesity and Health Examined by NIOSH Scientists, Colleague in Journal Paper; 4/7/2007*

Worksite wellness expert Toni Yancey, MD, MPH, professor in the Department of Health Services in the UCLA School of Public Health and member of Michelle Obama's Task Force on Childhood Obesity put this in perspective: "The biggest surprise to the sedentary and out-of-shape person

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**WORLDWIDE OBESITY RATES (2008).**



Source: Organisation for Economic Co-operation and Development (OECD) as reported in Economist.com

**INSIGHTS & UPDATES**



**Safe or sorry? Loss Control in good times and bad.**

Jon P. Siglar, ARM  
Vice President/Chief Sales & Field Services Officer

You're on the open road on a beautiful day. Feeling the need for speed, you push the pedal to the metal as the speedometer needle climbs, not a care in the world. Suddenly, the flashing red lights in the rearview mirror jolt you back to reality. Speeding ticket. Traffic school. Black mark on your driving record. And potentially higher auto premiums.

That event becomes a game changer. Now that the penalties have more significance, you become much more aware of the downside of carelessness and more anxious about the cost of a repeat offense. You reevaluate your risk tolerance: you restrain your speed, dutifully stop at yellow lights, and make complete stops at stop signs, at least for a month or two. A second offense could cost an arm and a leg.

You can draw the same conclusions about the attention companies pay to loss control when the market is soft and they're enjoying lower premiums. The workers' comp industry has long observed the direct correlation between the focus on loss control and the level of premiums at any given time. When premiums are low, typically there just isn't the same urgency for companies to be diligent about the steps necessary to stop accidents from happening. It's easy to backslide and go through the motions when workers' comp costs are

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## PERSPECTIVE: UNDERWRITING



### Underwriting: Black and white...or shades of gray?

Karen Sterner  
Vice President, Underwriting and Premium Audit

Every broker has a horror story or two about placing or attempting to place workers' compensation accounts. In a concerted effort to provide exceptional service to our brokers and avoid ever being the carrier responsible for your angst, we've taken an underwriting approach that combines sound business judgment with an open mind. While our underwriting guidelines outline some of the qualities we want to see in a submission—responsive management, low turnover, higher-paid workers—we know there are always accounts that fall outside the norm or are more attractive than they appear at first blush.

In this process, you will find that one of our bench strengths is our underwriting team. Each underwriter has between 15 and 25 years of underwriting experience. Because they are seasoned veterans and because it's our company philosophy not to underwrite on auto-pilot, they drill down into an account to see what may not at first glance be apparent: Why Ex Mods may be high, or whether it's apparent on closer examination that the owner has strengthened risk management strategies and improved Ex Mods. While many carriers won't consider accounts with Ex Mods higher than 125%, we look to uncover the reasons the mod is high. If there is some overriding factor, we may still write the account, because with


high Ex Mods business, we have extra rate to help us help the insured to lower that Ex Mod.

Here's a classic example: A broker recently submitted a retail store business with an experience modification of 219%. We examined their loss history and learned that of the five years of loss data they provided, *all but one year had an acceptable premium-to-loss ratio*. It turned out that the adverse year resulted from a single incident involving a fall from a ladder. The claim costs spiraled because the employee's recovery was adversely affected by his non-industrial medical condition. We also discovered that the fall occurred while the company was moving to a new building, not in the normal course of work. By taking an in-depth look, we were able to write the business.

Because we believe there are a lot of shades of gray in the business world, we will entertain risks other carriers decline to look at more closely. Our willingness to consider and evaluate higher-hazard risks also allows you to write more business. Although we normally write in about 75 percent of the 400 classes, we will entertain going outside the lines when there is evidence that showcases the account's risk management strategies, attentiveness and responsiveness to correcting problems and other positive indicators in their business model.

We also know, especially in this era of instant gratification, that our brokers can't afford to tap their toes waiting for a carrier to get back in touch. We take response time very seriously and know that for all of us, time lost is business lost. As part of our master plan to transform to a broker model, one of our priorities was expediting response time to our brokers. We moved away from a legacy system and invested in a new underwriting management system. The results speak for themselves. We are able to

get clearance to brokers within two to four days and quotes within 15 days prior to the effective date. Some brokers have told us that it's not uncommon for other carriers to take up to two weeks just for clearance. This turnaround and response time is key to our commitment to a partnership with you. So is the fact that when you have a question or an opportunity, there is someone here to talk to who is empowered to help you.

Our underwriting philosophy can be summed up like this: We are willing to dig a little deeper and bring your risk into focus. This means you can write more business. That is a win-win for everyone. 



## The best way to get employees back to work.

In today's difficult economy, returning an injured worker to productivity after a mishap is not always easy. A sound Return to Work (RTW) program is critical to minimize an employer's workers' compensation costs and reduce liability under various state and federal laws. These laws include the Americans with Disabilities Act (ADA), Family and Medical Leave Act (FMLA) and California's Fair Employment and Housing Act (FEHA). Under the ADA, employers are required to engage in an interactive process to reasonably accommodate an employee who has a disability, whether or not the disability is work related. If an employer fails in this duty, there are significant penalties as well as attorney's fees that the employer may be required to pay.

Misinterpreting any of these laws can create employment liability for employers and has even in some cases triggered class action lawsuits. A good RTW program has the potential to significantly reduce insurance costs. If an employer is unable to return an injured worker to temporary modified duty or identify alternative work after an accident, we pay the injured employee temporary total disability payments (TTD). These payments can be very costly and hurt the company's experience modification factor. In addition, such payments may

actually create a disincentive for the injured employee to come back to work at all. Several keynote studies show that the longer employees remain off work, the greater the likelihood they will never return.

The first step in a solid RTW program begins before the employee reports to work the first day: an accurate job description that lists the essential functions of the employee's position. Your clients should require that injured employees take their job description to the first doctor's visit when possible, because it documents the physical requirements of their positions to the treating physician rather than leaving it to the employee to describe them accurately. It is also important for the claims adjuster to have this information as soon as possible. Next, the employer should have alternative positions or modified duties prearranged so that the employee can return to work, in some capacity, as quickly as possible post injury. Finally, solid communication is critical to the success of any RTW program. Employees should understand the process and employers must ensure their employees furnish an up-to-date work status each time the employee returns from a physician visit.

It's a reality that not every employee can be reasonably accommodated immediately post injury. However, even



employers with mainly blue-collar positions can, with some creative thinking, accommodate employees in alternative positions. Some organizations may even assign employees to volunteer in community social service agencies if no modified duty or alternative work is available in house. We encourage you to think outside the box to help your clients create a proactive RTW program.

Our underwriting philosophy also stresses the importance of a sound RTW program. Just like a well thought-out Injury and Illness Prevention Program, a RTW program demonstrates that the employer is willing to proactively manage the risks associated with workplace injuries. This is critical, because a well-formulated RTW program reduces indemnity payments to employees and helps to prevent the problems associated with


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**“The first step in a solid RTW program: an accurate job description that lists the essential functions of the employee's position.”**

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In your trusted advisor role, you can help your clients assess their risks and help them better manage their operations. We have materials available for you and your clients that outline the scope of a solid RTW program and explain the processes employers should establish to manage RTW. This material will help you explain the many benefits of a well-managed RTW program.

lengthy periods of disability. A RTW program ultimately helps control Ex Mods and lower premiums.

Employers have a tremendous investment in their workforce. Maximizing the return on that investment not only positively affects the employer's bottom line, but also helps employees buy into a positive outcome when they do have a workplace injury. 


## INSIGHTS & UPDATES

### Safe or sorry?

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relatively low. Just as it would be easy to go back to your old driving habits if there were no long-armed penalties for tickets.

When you think about how workplace mishaps affect the productivity and efficiency of your clients' businesses **regardless** of the workers' comp premiums, you have to admit there aren't a lot of valid excuses for looking the other way. Accidents and claims aren't ever a good thing for a business. They disrupt workflow, can cause employee morale to sink (as co-workers are forced to take on the injured worker's responsibilities) and can be very expensive. And when the market hardens and suddenly there's more incentive to pay attention, how much time and money does it take for your clients to get back where they were, safety-wise, when they were more focused on loss control? PacificComp has in-house loss control staff and a wealth of tools available to you and your clients that demonstrate how small changes and simple precautions can make big differences.

As your clients' trusted advisor, you will be doing them a huge favor by encouraging them not to slack off or give loss control a lower priority when their workers' comp premiums are on the rise due to an adverse loss history and a climbing Ex Mod. Healthy habits for California businesses include working smart and working safe year in and year out. 

## SACRAMENTO REPORT



### State of the state

by Mark Webb  
*Vice President,  
Assistant General Counsel*

#### **OPERATING STABILITY, FISCAL UNCERTAINTY**

Last year, California voters approved Proposition 25, which allows the California Legislature to pass a budget on a majority vote. It still requires two-thirds vote of the Legislature to raise taxes, but as we have seen already this year, the days of late budgets – sometimes many months late – are now likely a thing of the past. That doesn't mean that California's fiscal woes are behind us; far from it. However, it does mean that state government will not be tarnished by the financial black eye that perennially occurred when the state had no effective spending plan in place at the close of the fiscal year and was issuing warrants to pay its bills.

Governor Brown and Democratic leadership in the Senate and Assembly continue to press for the need to extend a series of tax increases for the next five years adopted by the Legislature in 2009, the last of which expired July 1, 2011. While the serious cuts in education and services adopted in the 2011-12 budget have closed the budget divide somewhat, and have improved the view of rating agencies of California's creditworthiness, the current cuts and revenues are not



nearly enough to close the gap entirely.

Legislative Republicans have said they are not averse to placing an extension of these tax rates on the ballot, but only if the Legislature is also willing to tackle public pension and regulatory reforms. The GOP leadership believes these reforms are critical if we are to restore order to state and local government budgets and ease the regulatory burdens on business.

#### **WORKERS' COMP RELEGATED TO THE BACK BURNER**

Given these issues, it should come as no surprise that workers' compensation is not a high priority for the Legislature in 2011. Governor Brown has made it quite clear that the state's fiscal crisis is the overarching issue facing the Legislature and local governments and now is not the time to add to the costs of either the public or private sectors. The new administration has clearly identified its immediate priorities by increasing resources to OSHA enforcement and combating the various abuses in the underground economy. On July 18, Governor Brown appointed Rosa Moran, a workers' compensation judge from Oakland, to be the new Administrative Director of the Division of Workers' Compensation. However, key vacancies at the Workers' Compensation Appeals Board remain unfilled.

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## SACRAMENTO REPORT

### State of the state

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There are, nevertheless, a number of bills still working their way through the legislative process that are drawing considerable attention.

- Assembly Bill 228 by Assemblymember Felipe Fuentes (D-San Fernando) allows the State Compensation Insurance Fund (SCIF) to write out-of-state business through a fronting arrangement. There are a number of conditions attached, including that the business must have its principal place of business and a majority of its employees in California. It also mandates certain financial strength and admission requirements for the fronting carrier and requires the Department of Insurance to report back to the Legislature regarding the impact of this legislation. The bill has a four year sunset, meaning if it is signed into law, the Legislature will have to affirmatively reauthorize this grant of authority before December 31, 2016.
- Senate Bill 684 authored by Senate Judiciary Committee Chairperson Ellen Corbett (D-Fremont) and sponsored by Insurance Commissioner Dave Jones, requires up-front disclosures when an insurer seeks to include an arbitration agreement as part of a workers' compensation insurance policy. The objective is to allow insureds to be aware of and able to negotiate dispute resolution provisions that may involve a choice of law other than California and where proceedings may be held out of state. These provisions relate to disputes between the insurer and the insured arising out of the insurance policy and not how workers' compensation claims are adjudicated at the Appeals Board.

Two benefit-related bills sponsored by the California Applicant Attorneys Association (CAAA) are still alive and causing great concern within the business community:

- Assembly Bill 941 by Assembly Insurance Committee Chairman Jose Solorio (D-Anaheim) would more than double the time an injured worker could receive temporary disability (TD) payments. Opponents are concerned this will further delay the resolution of litigated cases and add significantly to the cost of indemnity claims.
- Assembly Bill 1155 by Assemblymember Luis Alejo (D-Salinas) amends the laws of apportionment in response to recent court cases. If enacted, expect more litigation on this issue.

Earlier this year, Pacific Compensation sponsored AJR 12 (Solorio), which passed the Legislature unanimously, a resolution memorializing the support of the California Legislature for reforms of the Medicare Secondary Payer Act (MSPA) and urging passage of the **Strengthening Medicare and Repaying Taxpayers (SMART) Act** – H.R. 1063. We are members of the MARC Coalition ([www.marccoalition.com](http://www.marccoalition.com)) a broad-based business and consumer coalition working to bring about sensible reforms to this process in Washington DC.

The Legislature reconvened on August 15 and is set to recess on September 9. 



## A WEIGHTY CHALLENGE

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who finally starts exercising even a little bit is how quickly it gets easier and how much better they feel. But they often don't believe it until they experience it."

## SMALL STEPS CAN LEAD TO LARGE STRIDES

Companies often complain that when they implement worksite wellness programs, the people who need them aren't the ones who use them. "We tried it once; it didn't work." But some wise guidelines adapted from the CDC's Lean Works! Program can lead companies to more creative solutions and a more positive outcome.

Employers need to:

- Integrate the program into their organization's missions and policies. Walk the walk, talk the talk.
- Secure commitment from and participation by management and key stakeholders.
- Involve employees from the beginning in planning and implementing activities. It's tough to avoid what you've had a hand in planning.
- Engage employees and spike participation by selecting and implementing activities that address employee needs and wants. Whether the solutions include walking programs, exercise breaks, gym privileges, contests, on-site weight loss programs or nutritional

counseling, make the activities fit your workforce. And make them non-threatening and fun.

- Provide adequate resources and funding.

## LOOK AT THE WORKPLACE WITH A FRESH EYE

It's hard for a company's corporate wellness program to be taken seriously by employees when vending machines are filled with junk food. Start there. Companies should negotiate with vendors to swap out chips and cookies for fruit, plain popcorn and healthier snacks.

Get creative about rewards and subsidies, no matter the company's budget. Think outside the box. Lower the price for tomato juice and iced tea, raise it for sugar-laden sodas. Challenge employees to take the stairs and keep

a log; reward those who change their sedentary habits with coupons for healthy fast food, a night of bowling or movie tickets. Consider team challenges with fit and fat both represented on each team to build camaraderie within the workforce. Then make the group prize a celebration.

California businesses are not going to solve this problem overnight; sustainable weight loss continues to be elusive at the highest levels of medical research. Doing nothing is guaranteed to be expensive. But doing something positive and proactive has the potential to reduce injury and claims, lower health and workers' comp premiums and result in a more productive, energetic and healthy workforce. That's the kind of reward every business can embrace. 