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IMPROVED WORKERS'
COMPENSATION MANAGEMENT
IN CONSTRUCTION

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Improved Workers' Compensation Management in Construction

**Prepared by
The Construction Industry Institute
Workers' Compensation Insurance Research Team**

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Executive Summary

Workers' compensation (W/C) is one of the most pressing problems in the construction industry today. Each of the 50 states has a workers' compensation law; however, each has wide differences in the costs, benefits, and administration of these laws. To compound the problem, many owners who require the services of a contractor or subcontractors are using the Experience Modification Rate (EMR) as the sole indicator to evaluate a contractor's safety performance.

The purpose of this research was:

- to study workers' compensation practices in the construction industry;
- to identify key elements of effective workers' compensation management; and
- to examine the validity of using the EMR as a sole indicator of contractor safety performance, while at the same time identifying additional evaluation criteria.

The CII Workers' Compensation Insurance Research Team, which conducted the studies, estimated the potential cost savings of implementing improved management practices for workers' compensation issues in construction. The projections show a potential of \$340 million annual savings to the industry.

In this publication, 13 possible courses of action are recommended to reduce the costs associated with workers' compensation claims. Obviously, the best course of action is to adopt a "zero accident" philosophy and improve safety on projects, thus minimizing the source of claims. Accidents do occur, however, so an efficient system for responding when injuries occur is needed. Besides the 13 courses of action, the team has recommended four additional measures for contractor selection criteria related to safety.

Introduction

The construction industry clearly needs to reduce the cost of workers' compensation (W/C) for contractors while delivering appropriate benefits to injured employees. Average workers' compensation manual premium rates per \$100 of payroll currently exceed 20 percent of direct labor costs in 18 states, while the rates for higher risk trades actually exceed 100 percent of direct labor in some states.

There is also a clear need for developing and instituting a more equitable method for evaluating the safety performance of contractors. To accomplish this goal, the Workers' Compensation Insurance Research Team identified best practices and formulated guidelines for improved W/C management and contractor evaluation. All participants in the construction industry stand to benefit from the improvements that are possible.

Methodology

The research team obtained data from many external organizations involved in W/C issues, such as the Workers' Compensation Research Institute, the National Council on Workers' Compensation Insurance, the Bureau of Labor Statistics, and the U.S. Chamber of Commerce. It also obtained excellent information from previous CII studies on zero accidents and insurance.

In addition, the research team conducted written and/or phone surveys of 43 contractors (including both CII and non-CII members), nine owners, 14 insurance professionals, and over 1,600 construction workers, representing 36 states and 21 trades.

Using the data collected, the research team developed guidelines for improved workers' compensation management in construction and made recommendations on additional measures of contractor safety performance.

What is Workers' Compensation Insurance?

The first workers' compensation law in the U.S. was enacted in Wisconsin in 1911. Prior to the enactment of this law, workers who became injured on the job had only one recourse for recovering medical costs and possibly some amount of lost wages: a lawsuit. In order to win such a lawsuit, however, they had to prove not only the extent and nature of the injury, but also that they were not responsible for the accident, that no fellow employee's negligence contributed to the accident, and that the cause of the accident was not a normal risk of the job they were hired to perform.

Enactment of workers' compensation legislation eliminated the issue of fault from workplace injuries and compelled employers to absorb the cost of medical expense and lost wages into their normal cost of doing business. In exchange for these undisputed benefits, employees were required to relinquish their right to sue their employer for common law negligence.

Although state funds originally administered the payment of all W/C benefits, private insurance companies currently perform this function in all but six states. Workers' compensation insurance currently pays, on behalf of the employer, the statutory benefits stipulated by the applicable state workers' compensation law to any employee who sustains bodily injury or death as a result of a work-related accident or occupational disease. Benefits typically include reimbursement of all medical expenses, payment of lost wages for temporary or permanent disability, and scheduled compensation for physical impairments, or death, as well as medical or vocational rehabilitation costs for the severely disabled.

Problems with Workers' Compensation Insurance

As originally envisioned, workers' compensation had all the ingredients of a win-win situation for all. However, the "no fault-sole remedy" aspect of this law has long since eroded, and today injured construction workers often file lawsuits against contractors, project owners, or other third parties, in addition to pursuing a workers' compensation claim. This typically occurs when an injured worker or their dependents become dissatisfied with the

benefits available under the workers' compensation system. This is only part of several problems with the workers' compensation system itself. These problems can be grouped into five categories:

- Contractor-carrier relationships
- Carrier-claimant interface
- Choice of health care providers
- Fraudulent claims
- Injury misclassifications

The following paragraphs discuss each problem in more detail.

Contractor-carrier relationships. The contractor who turns the entire matter over to an insurance carrier should be wary of the consequences. Comments such as "that's what I pay them for" and "that's their business—they are the insurance professionals," omit one key issue: the carrier's employee has not been injured. Nonetheless, many contractors rely upon their insurance carrier to handle all aspects of workers' compensation claims. As a result, they lose the ability to ensure that claims are properly handled and that the injured employee is returned to work as soon as is medically possible.

Carrier-claimant interface. This interface is a critical part of the claims handling process. Without direct involvement, contractors must demand action by the carrier consistent with the contractor's concern for the employee. It is not uncommon for an insurance claims adjuster to have several hundred claims pending. The consequences of little or no contact with the injured employee by the employer or insurance representative is predictable. Without consultation as to the procedures, benefits available, and options (such as modified work programs), the injured employee will seek other sources, such as attorneys.

Choice of health care providers. Another problem of the W/C system is the choice of health care providers. Many states still allow the injured employee to choose the treating physician. Where this occurs, the contractor often loses an opportunity to control W/C costs by selecting physicians who have positive views on rehabilitation programs, modified work, and return-to-work philosophy. In addition, where state laws allow the employer