



IMPACT ANALYSIS REPORT

**Underlying Issues and Outcomes in
Reducing the Compensability Determination
Timeline**

Sara Widener-Brightwell
Alex Swedlow
California Workers' Compensation Institute

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EXECUTIVE SUMMARY

The California Legislature is again considering reducing the amount of time allowed for workers' compensation claims administrators to investigate the compensability of occupational injury or illness claims. Currently, Senate Bill 1127 would reduce the investigation period for presumption claims to 75 days, while the investigation period for all other claims would not change. The following report examines the underlying issues associated with proposed reductions in the claim investigation time frames and analyzes data from a large sample of non-COVID-19 and COVID-19 claims to evaluate the potential impact of the proposed changes. Key findings include:

- Accepted claims without litigation are the most frequent, least complex claims in the system. In 98.0 percent of these claims a compensability decision is made within 90 days, while in 96.7 and 93.2 percent of these claims the decision is made within 60 and 30 days respectively. When non-litigated and litigated non-COVID-19 claims are combined, more than 90 percent have a decision within 75 days. Decreasing the investigation period for such claims would have a limited impact in terms of expediting the compensability decision process.
- Investigation periods are longer for litigated and denied claims and require significantly more time to gather reports and documentation from outside sources. For example, at 75 days, only 49.2 percent of litigated claims that are eventually denied have a compensability decision, strongly suggesting that under the current rules, 75 days is an insufficient amount of time for claims administrators to obtain the medical and factual evidence required to make a compensability determination.
- Under current law employers are liable for up to \$10,000 of medical treatment for the claimed injury during the investigation period, regardless of the ultimate compensability decision, so reducing that time frame would also reduce the amount of time that workers whose claims are eventually denied could receive that \$10,000 worth of medical care.
- Determining compensability is particularly challenging and time consuming for COVID-19 claims, especially when those claims are litigated. At the 45-day mark, 91.4 percent of accepted, non-litigated COVID-19 claims have a compensability decision, compared with 68.9 percent of the accepted COVID-19 claims with litigation, a 22.5 percentage point difference. At 30 days, determinations have been reached on 85.5 percent of accepted, non-litigated COVID-19 claims, compared to 61.1 percent of the litigated COVID-19 claims that are accepted, a 24.4 percentage point differential.
- Efforts to reduce the investigation timelines as proposed in prior and current legislation would create compensability determination thresholds that are unnecessary for accepted claims and unrealistic for litigated and denied claims.

INTRODUCTION

In each of the last two years, the California Legislature has debated the need to reduce the amount of time allowed for workers' compensation claims administrators to investigate the compensability of occupational injury or illness claims. Existing law establishes the time frames within which an occupational injury or illness must be reported to an employer, as well as the time frames within which a claims administrator must accept or deny liability for the claim. This year the Legislature, through Senate Bill 1127, initially sought to reduce the time frame that workers' compensation claims administrators have to investigate the compensability of most reported occupational injury or illness claims from 90 days to 60 days. In addition, as initially proposed, SB 1127 would have reduced the investigation time for presumptive injury or illness claims by peace officers or first responders from 90 to 30 days. In June, SB 1127 was amended, so the current version would reduce the investigation period for presumption claims to 75 days, while the investigation period for all other claims would not change. However, another bill (Assembly Bill 1751) currently moving through the Legislature would extend the COVID-19 presumptions which were enacted via SB 1159 in September 2020 and are set to expire in January 2023, for an additional two years. If, as expected, AB 1751 is enacted, then the investigation period for COVID-19 claims in Labor Code sections 3212.87 (30 days) and 3212.88 (45 days) would be in direct conflict with the amended language in Labor Code section 5402(b)(2) (75 days) currently included in SB 1127.

Claims investigation is a complex process requiring information from multiple sources. To estimate the potential impact of reducing claim investigation time frames, the authors compiled a large dataset of pre-COVID-19 claims with dates of injury between January 2015 and December 2019 with transactional data through June 2020 and another COVID-19 related dataset with reported claims from March 2020 through December 2021.

The study found that 98.0 percent of non-litigated claims that are ultimately accepted (the least complex claims in the system) have compensability decisions within 90 days, while 97.5 percent of these claims are decided within 75 days. Litigated claims, which make up one in four claims and account for 84.0 percent of all paid benefits in the system, are significantly more complicated and challenging to investigate. Among litigated claims that are accepted, 85.7 percent are decided within 75 days, a determination rate that is 11.8 percentage points below the rate for non-litigated claims. Among claims that are ultimately denied, 49.2 percent of those that are litigated have a compensability determination at 75 days, compared to 67.6 percent of those that are non-litigated, an 18.4 percentage point difference.

COVID-19 claims have lower litigation rates and higher claim denial rates than non-COVID-19 claims. Claims administrators spend more time investigating COVID-19 claims that are denied than those that are accepted due to the challenges in identifying the source of the infection and in obtaining virus test results. In 91.4 percent of non-litigated COVID-19 claims that are accepted the compensability decision is reached within 45 days, while among litigated COVID-19 claims the compensability determination rate at 45 days is 68.9 percent. At 30 days, 85.5 percent of accepted non-litigated COVID-19 claims have a compensability decision, versus only 57.5 percent of denied non-litigated COVID-19 claims.

Regardless of the compensability decision, employers are liable for up to \$10,000 of medical treatment for the claimed injury during the investigation period, so any reduction in the

investigation period would also reduce the period that workers whose claims are ultimately denied would be eligible to have up to \$10,000 of their initial treatment covered.

A timeline analysis of the claims administrative process shows that shortening the compensability investigation period, particularly in litigated claims, is problematic. Litigated claims are associated with more complex injuries that often require the involvement of a qualified medical evaluator (QME), a medical specialist certified by the California Division of Workers' Compensation (DWC) to address medical compensability issues. This report's analysis shows that it is unrealistic to expect that claims administrators can unilaterally expedite the investigation process without the unintended consequences of additional provisional denials and increased litigation expenses.

BACKGROUND

For the second time in two years, the California Legislature has attempted to reduce the amount of time allowed for workers' compensation claims administrators to investigate the compensability of work-related injury or illness claims. The statutory time frames within which an injured worker or their representative must report work injuries or illnesses to their employer, and for workers' compensation claims administrators to accept or deny claims, are set forth in the California Labor Code.^{1,2} The Labor Code also mandates that within one day of the filing of a claim form, the employer shall authorize medical treatment for the alleged injury,³ and requires that until such time as liability for the claim is accepted or rejected, the employer shall be liable for up to \$10,000 of medical treatment for the claimed injury. In addition to the time frames for determining liability and the medical treatment limits during the investigation period, existing law also sets forth penalties for unreasonable delays or refusals to pay compensation.⁴ Created as urgency legislation in 2004,⁵ current law limits such penalties to 25 percent of the amount of payment delayed, with a cap of \$10,000.⁶

In 2021, SB 335 sought to shorten the deadline for accepting or denying occupational injury and illness claims from 90 days to 45 days for most claims, with a shorter timeline of 30 days for claims involving a covered presumption. The bill also attempted to increase employers' liability for medical treatment during the investigation period from \$10,000 to \$17,000 and contained provisions to impose a penalty of 10 percent of the full amount of the order, decision, or award for a subset of presumptive illnesses reported by specified members of law enforcement or specified first responders,⁷ applicable to the entire specie of benefit for which payment was unreasonably delayed (*e.g.*, all Temporary Disability, or Permanent Disability, or all medical treatment) without limitation. SB 335 failed to clear the Assembly. This year, Senators Atkins, Cortese, and Hertzberg introduced a revamped version of the bill (SB 1127), which following amendments made in June, seeks to reduce the investigation period for presumptive injury claims from 90 days to 75 days. SB 1127 would also create a new penalty when claims administrators unreasonably reject liability for claims involving conditions that are subject to the presumptions defined in Labor Code sections 3212 to 3212.85 inclusive, and 3212.87 to 3213.2, inclusive. The penalty would be five times the amount of benefits unreasonably delayed due to the rejection of liability, up to \$50,000. The question of whether a rejection is reasonable would be decided by the Workers' Compensation Appeals Board.

Claim Investigation

CWCI research from 2021 found that approximately 90 percent of all reported claims in the California workers' compensation system are accepted and benefits commence within the current 90-day decision period.⁸ However, state regulations require that when claims involve issues for which the employer is

¹ Labor Code §5400.

² Labor Code §5402(b).

³ Labor Code §5402(c).

⁴ Labor Code §§5814(a), (b).

⁵ The current version of §5814 was part of the SB 899 reform legislation.

⁶ Labor Code §5814. The section also includes a two-year limitations period, and a "safe harbor" provision for delays discovered and rectified prior to a claim of penalty.

⁷ New Labor Code §5814.3 would apply to injuries or illnesses covered under §§3212 to 3213.2.

⁸ CWCI March 2021 Annual Meeting Research Presentation; see Exhibit 2 of this report.

entitled to statutory defenses⁹ the claims administrator must “conduct a reasonable and timely investigation.”¹⁰ Moreover, the claims administrator may not “restrict its investigation to preparing objections or defenses to a claim, but must fully and fairly gather all pertinent information, whether that information requires or excuses benefit payment.”¹¹

The investigation must be undertaken in good faith¹² and include the gathering of all information necessary to make an informed decision as to the compensability of the claim. An employer or claims administrator that fails to conduct such an investigation or that makes hasty, unsubstantiated denials of claims, is subject to substantial penalties.¹³

This analysis expands on the Institute’s 2021 study to provide a better understanding of the practical implications of the proposed changes, especially within the context of the statutory and regulatory timelines for the various steps that must be undertaken to investigate a claim and reach a compensability decision.

Data and Analysis

To estimate the potential impact of reducing the investigation period, the authors compiled a dataset of 459,195 non-COVID-19 claims¹⁴ with dates of injury between January 2015 and December 2019 and transactional detail through June 2020.¹⁵ The authors also compiled a separate dataset of 17,315 COVID-19 claims with dates of injury from March 2020 through December 2021 to determine the average investigation period for COVID-19 claims.

The analysis focused on three dimensions that impact the investigation process, including:

1. Litigation
2. Time to the Compensability Decision
3. How Litigation Affects the Compensability Timeline

Litigation

The California workers’ compensation system’s litigation rate is the third highest in the nation.¹⁶ To determine compensability for claims with attorney involvement, claims administrators rely on depositions, subpoenaed medical records, and medical reporting from treating physicians and QMEs.

⁹ Labor Code §3600.

¹⁰ 8 CCR §10109(a).

¹¹ 8 CCR §10109(b).

¹² 8 CCR §10109(e).

¹³ Penalties can be assessed by the DWC Audit and Enforcement Unit (8 CCR §10111.2, et al.), civil penalties (Labor Code §129.5(e)), and Department of Insurance violations (Ins. Code §790.03).

¹⁴ Claims data was compiled from CWCI’s Industry Research Information System (IRIS v2020Q2) database. The sample contained both insured and self-insured employers.

¹⁵ The authors limited the analysis to claims with dates of injury prior to 2020 to avoid including claims during the COVID-19 pandemic.

¹⁶ Dolinschi, R., Monnin-Browder, W., Radeva, E., Rothkin, K., Savych, B., Telles, C. A., and Yang, R. *WCRI CompScope™ Benchmarks, 21st Edition*. April 2021.

Exhibit 1 shows the distribution of claims and paid benefits for non-COVID-19 claims with and without litigation.

Exhibit 1. Percentage of Non-COVID-19 Claims and Paid Benefits, Non-Litigated vs. Litigated Claims

| | Claims | Benefits |
|---------------|--------|----------|
| No Litigation | 75.0% | 16.0% |
| Litigation | 25.0% | 84.0% |
| Total | 100% | 100% |

While there are three times as many claims without litigation, litigated claims account for more than four out of every five benefit dollars paid in the California workers’ compensation system. Litigated claims are among the most complex claims in workers’ compensation and are associated with higher benefit costs and administrative expenses, including attorney fees and medical-legal costs for reporting from treating physicians and QMEs.

Prior research has shown that accepted and denied claims require different amounts of investigation time to compile the information needed to determine compensability.¹⁷ Exhibit 2 compares the percentage of claim volume, litigation rates, and paid benefits for accepted and denied non-COVID-19 claims.

Exhibit 2. Percentage of Non-COVID-19 Claims, Litigation Rates, and Total Paid Benefits: Accepted vs. Denied Claims

| | Percent Claims | Litigation Rate | Total Benefits |
|----------|----------------|-----------------|----------------|
| Accepted | 86.3% | 20.9% | 86.9% |
| Denied | 13.7% | 50.8% | 13.1% |
| Total | 100% | 25.0% | 100% |

Claims that are denied have a 50.8 percent litigation rate and account for more than \$1 out of every \$8 in paid benefits. The litigation rate for accepted claims varies by claim type. Prior CWCI studies and online applications have shown the litigation rate for Medical-Only claims is approximately 8.9 percent, the litigation rate for Temporary Disability claims is 18.4 percent, and the litigation rate for Permanent Disability claims is 90.6 percent.¹⁸

Time to Decision

Based on the different reductions to the number of days allowed to decide compensability included in recent legislative proposals, the authors modeled two scenarios:¹⁹ the first for non-COVID-19 claims and the second for COVID-19 claims. In each scenario, the amount of time to the compensability

¹⁷ California Workers’ Compensation Institute. “The Impact of SB 335: A Preliminary Analysis.” Impact Analysis Report, May 2021.

¹⁸ Medical-Only claims are injuries that have no lost time from work. Temporary Disability claims include those with three or more days of lost time from work but no permanent impairment; Permanent Disability claims are those with permanent impairment as assessed by the American Medical Association Guide to Permanent Disability, 5th Edition. Litigation rates were derived from a large sample of open and closed claims from the CWCI Industry Research Information System with dates of injury between 2009 and 2021.

¹⁹ Data limitations limited the authors’ ability to model presumption injuries for a third category found in SB 1127, first responders (police and firefighters), with adequate precision.

decision (accepted or denied) was further subdivided by litigation status (no litigation or litigation). The following exhibits display the percentage of claims that are accepted or denied between 0 to 90 days of the employer’s notice of injury.

Exhibit 3A. Cumulative Percentage of Accepted & Denied Non-COVID-19 Claims by Days from Employer Notice to Decision: Litigated vs. Non-Litigated Claims

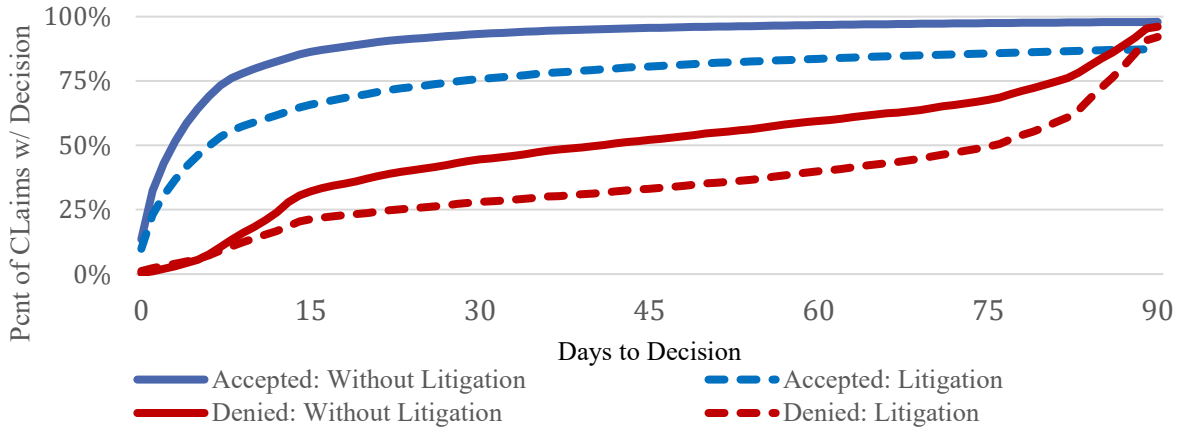


Exhibit 3B shows the percentage of litigated and non-litigated non-COVID-19 claims that are accepted or denied within the five different compensability determination time frames referenced in SB 335 and SB 1127.

Exhibit 3B. Percentage of Accepted & Denied Non-COVID-19 Claims at 30, 45, 60, 75, and 90 Days from Employer Notice: Litigated vs. Non-Litigated Claims

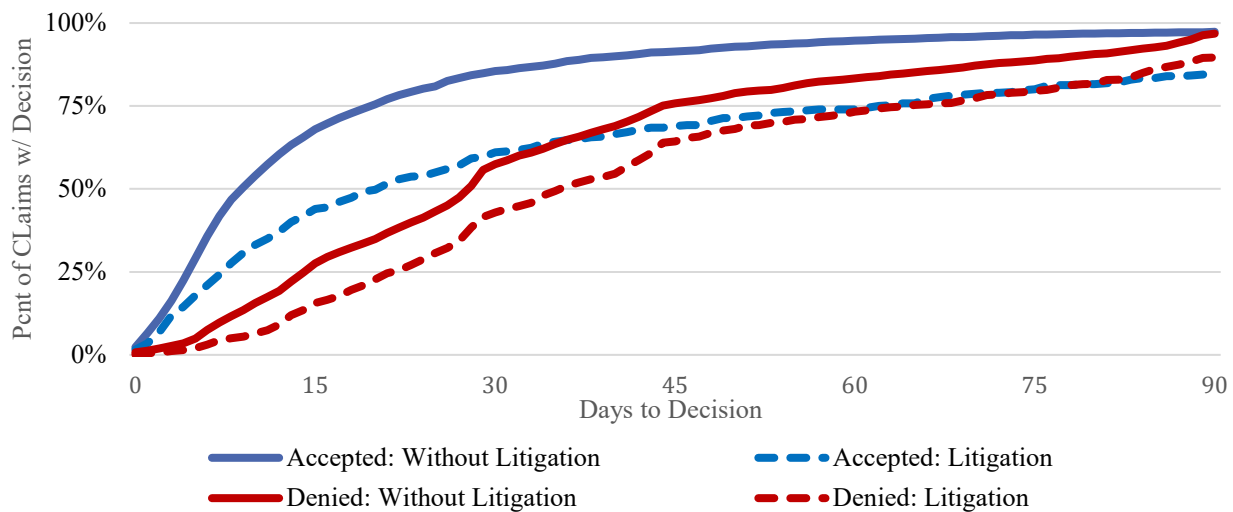
| Days to Decision | Accepted Claims (86.3%) | | | Denied Claims (13.7%) | | |
|------------------|-------------------------|--------------------|------------------|-----------------------|-------------------|------------------|
| | No Litigation (68.3%) | Litigation (18.0%) | Point Difference | No Litigation (6.7%) | Litigation (6.9%) | Point Difference |
| <= 30 Days | 93.2% | 75.7% | -17.5% | 44.4% | 27.8% | -16.6% |
| <= 45 Days | 95.6% | 80.7% | -14.9% | 52.1% | 32.9% | -19.2% |
| <= 60 Days | 96.7% | 83.6% | -13.1% | 59.4% | 39.7% | -19.7% |
| <= 75 Days | 97.5% | 85.7% | -11.8% | 67.6% | 49.2% | -18.4% |
| <= 90 Days | 98.0% | 87.4% | -10.6% | 96.0% | 91.9% | -4.1% |

Accepted claims without litigation are the most frequent, least complex claims in the system. In 98.0 percent of these claims a compensability decision is made within 90 days, while in 96.7 and 93.2 percent of these claims the decision is made within 60 and 30 days respectively. When both non-litigated and

litigated non-COVID-19 accepted claims are combined, more than 90 percent have a decision within 75 days. Thus, decreasing the investigation period for such claims would have a limited impact on expediting the compensability decision process. A much smaller percentage of the litigated claims or those that are eventually denied require more extensive investigations and have compensability decisions within 90 days. The model shows that reducing the investigation period would have the greatest impact on denied claims, especially those that are litigated, as only 49.2 percent of these claims have a compensability determination within 75 days, compared to 91.9 percent in which a decision is reached within 90 days.

COVID-19 claims have much lower litigation rates and higher claim denial rates than non-COVID-19 claims and comparing the latest results to findings from prior studies shows the litigation and denial rates for COVID-19 claims have been consistent over time.²⁰ Prior CWCI research also detailed the underlying reasons for the relatively higher denial rates among COVID-19 claims, which included negative COVID-19 tests, infections obtained outside of the workplace, reporting errors, and withdrawn claims.²¹

Exhibit 4A. Percentage of Accepted or Denied COVID-19 Claims by Days from Employer Notice to Decision: Litigated vs. Non-Litigated Claims



²⁰ CWCI has published numerous update reports on the progress of COVID-19’s claim and fatality rate since the beginning of the pandemic in March 2020. In addition, a public domain application provides timely and comprehensive information on the impact of COVID-19 within the California workers’ compensation system.

²¹ Swedlow, A., David, R., Webb, M. Integrating COVID-19 Presumptions into the California Workers’ Compensation System; A Report to the Industry. CWCI. May 2020; CWCI Bulletin 20-06, May 21, 2020.

Exhibit 4B. Percentage of Accepted & Denied COVID-19 Claims at 30, 45, 60, 75, and 90 Days from Employer Notice: Litigated vs. Non-Litigated Claims

| Days to Decision | Accepted Claims (64.4%) | | | Denied Claims (35.6%) | | |
|------------------|-------------------------|-------------------|------------------|-----------------------|-------------------|------------------|
| | No Litigation (60.1%) | Litigation (4.3%) | Point Difference | No Litigation (29.6%) | Litigation (6.0%) | Point Difference |
| <= 30 Days | 85.5% | 61.1% | -24.4% | 57.5% | 42.9% | -14.6% |
| <= 45 Days | 91.4% | 68.9% | -22.5% | 75.8% | 64.3% | -11.5% |
| <= 60 Days | 94.7% | 73.9% | -20.8% | 83.4% | 73.2% | -10.2% |
| <= 75 Days | 96.5% | 80.0% | -16.5% | 88.7% | 79.6% | -9.1% |
| <= 90 Days | 97.4% | 84.5% | -12.9% | 96.8% | 89.6% | -7.2% |

Claims administrators accepted 64.4 percent of all reported COVID-19 claims in the study sample and denied 35.6 percent. At the 45-day mark, 91.4 percent of accepted, non-litigated COVID-19 claims had a compensability decision, compared with 68.9 percent of the accepted claims with litigation, a 22.5 percentage point difference. At 30 days, determinations had been reached on 85.5 percent of accepted, non-litigated COVID-19 claims, compared to 61.1 percent of the litigated COVID-19 claims that were accepted, a 24.4 percentage point differential.

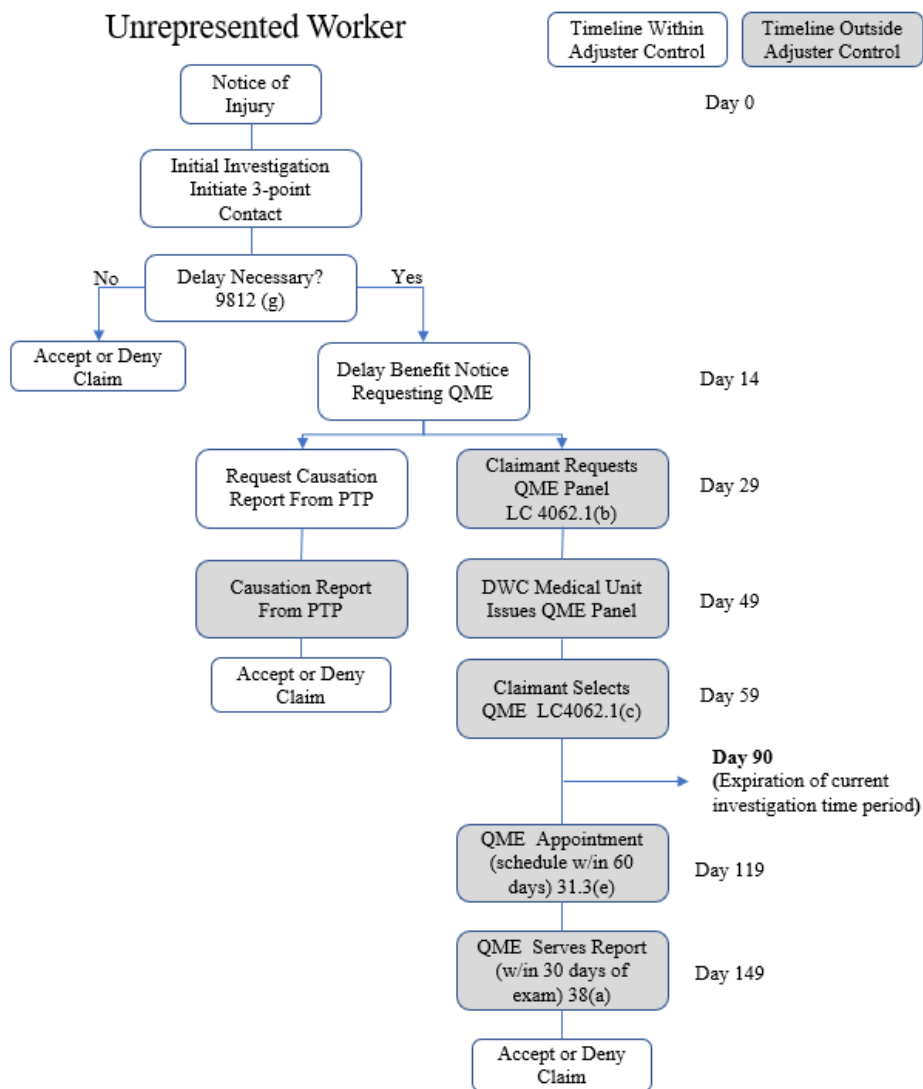
The results also show that claims administrators spend more time investigating COVID-19 claims that are ultimately denied. As noted in Exhibit 4B, 75.8 percent of the denied COVID-19 claims without litigation have a compensability decision within 45 days, but at 30 days, only 57.5 percent of the denied claims have a determination. Conversely, 42.5 percent are still being investigated beyond 30 days, so the employee continues to be eligible to receive up to \$10,000 in medical treatment benefits. Among the denied COVID-19 claims with litigation, 64.3 percent have compensability decisions within 45 days compared to only 42.9 percent that have a decision at the 30-day deadline initially proposed by SB 1127.

How Litigation Affects the Compensability Timeline

The amount of time needed to investigate compensability depends not only on the complexity and severity of the injury, but also on the details of how the injury allegedly occurred. Statutory and regulatory requirements compel the claims administrator to efficiently collect all necessary information to determine how and where the injury occurred and to render a decision to accept or deny the claim or to delay the decision until all necessary information is compiled. That information must be collected from multiple sources, including the employer, witnesses, and in cases where medical causation is in question, from medical providers and medical-legal evaluators. Statutes and regulations define the amount of time allowed for claims administrators and other sources to complete their work. Both SB 335 and the initial draft of SB 1127 would have compressed the time frame for claims administrators to complete their investigation, and the amended version of SB 1127 continues to do so for a limited number of claims. In addition, both bills called for a new penalty if the Appeals Board determines the claim was unreasonably denied. In June 2022, SB 1127 was amended to reduce that potential maximum

penalty from \$100,000 to \$50,000. There is, however, no provision in SB 1127 that would reduce the time frames for others involved in the compensability decision process.

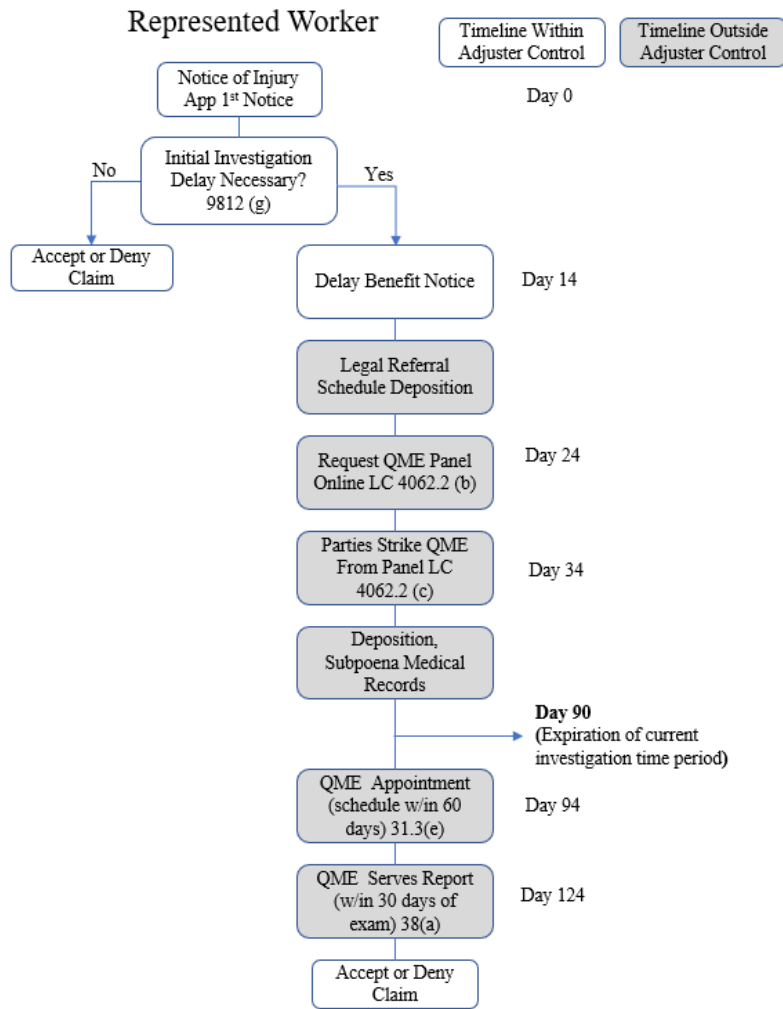
The following flow charts show how the compensability determination process unfolds in represented cases (where the worker is represented by an attorney) and in unrepresented cases, highlighting the various steps that must be undertaken within the investigation process, the different decision points, and the time requirements for claims administrators and other stakeholders. The timelines reflect the full allowable time frame for each step in the QME process. Each element within the timeline has been color coded to distinguish those activities where the claims administrator can control the timeline from the activities and statutory and regulatory requirements that are outside of the claims administrator’s control.²²



²² The references in this flowchart are to the California Labor Code and Title 8, California Code of Regulations.

Most compensability determinations for uncomplicated, unrepresented claims are made within the initial 14 days following the employer's notice of injury. During that time the claims administrator is allowed to accept, delay, or deny a claim. When a delay is necessary, the time required to complete a liability investigation depends on multiple factors, including whether the claimed injury is related to a specific incident or a cumulative trauma, whether the specific incident was witnessed, the cooperation of the worker in providing a statement and a medical release, and the responsiveness of the treating physician when questioned regarding industrial causation.

When medical causation is at issue a medical report from a treating physician and/or a QME is required. The liability investigation can exceed the current 90-day determination period if the treating physician does not timely respond to a request for a compensability report. When a QME is required in an unrepresented claim the statutory and regulatory time frames for the QME process extend far beyond 90 days. The unrepresented worker has 10 days to request a panel before the claims administrator may do so. Once a panel is issued, the worker has 10 days to select a QME and schedule the appointment. The claims administrator cannot direct the QME process until those time frames expire. The regulations require that the QME schedule an appointment within 60 days. Regulatory requirements further impact the timing of a QME appointment as the claims administrator is required to provide the worker with the QME cover letter, medical index, medical records, and any other records before providing the records to the QME. Once the exam takes place the QME has 30 days to serve their report.



It is more difficult to make compensability determinations within the initial 14 days in represented claims than in unrepresented claims, particularly if the employer’s first notice of an alleged injury is the receipt of an Application for Adjudication from an attorney (also known as an application first notice claim). A deposition is usually required to obtain information regarding the claimed injury, current medical treatment, and past medical history. The parties may request a QME panel on-line on the first working day 10 days after the mailing of the delay notice. Each of the parties can strike a QME from the panel within 10 days of the panel being assigned. As in unrepresented claims, the QME must be able to schedule an appointment within 60 days. SB 1127 does not consider the statutory requirement that a QME be allowed up to 30 days to serve their report.²³

In summary, for both represented and unrepresented cases, when a comprehensive medical opinion is needed to address medical causation, the claims administrator’s ability to meet current liability determination timelines is fundamentally compromised.

²³ Labor Code §139.2(j)(1)(A).

DISCUSSION

Few would argue against the goal of making compensability decisions in the shortest possible time. However, expediency should not come at the expense of required due diligence. The ability to complete a thorough investigation is dependent upon statutory and regulatory time periods that are often outside the claims administrator's control. The language of prior (SB 335) and current (SB 1127) proposed legislation would compel claims administrators to make compensability determinations before investigations can be completed and SB 1127 would still create a new class of penalties if the denial of a presumptive injury claim is deemed to be unreasonable.

Compressing the Investigation Window

In both 2021 and 2022, California lawmakers introduced legislative proposals to reduce the time frames for workers' compensation claims administrators to determine the compensability of work-related injuries and illnesses. While seemingly intended to expedite the claim process for injured workers, these proposals have failed to adequately recognize the claims administrators' responsibility to fully investigate work injury claims, or the existing time frames for completing various steps within the investigation process that are contained in statute and regulation, and over which claims administrators have little or no control.

Most work-related injuries are straightforward and uncomplicated. This analysis showed that more than 97 percent of accepted, non-litigated, non-COVID-19 claims have a compensability decision by the 75th day. On the other hand, litigated claims often involve more complex injuries, cumulative trauma, time off work, and more time-consuming discovery, including depositions and medical-legal evaluations. Consequently, the investigation process expands significantly in litigated claims, with 85.7 percent of the litigated claims that are ultimately accepted receiving a compensability decision within 75 days – a determination rate that is 11.8 percentage points below that of non-litigated claims that are accepted. When non-litigated and litigated non-COVID-19 claims are combined, more than 90 percent of all accepted non-COVID-19 claims, regardless of litigation status, have a decision within 75 days. Thus, decreasing the investigation period for such claims would have very little impact in terms of expediting the compensability decision process.

Investigation periods are even longer for litigated claims that are eventually denied. For example, at 75 days, only 49.2 percent of these claims have a compensability decision, strongly suggesting that under the current rules, 75 days is an insufficient amount of time for claims administrators to obtain the medical and factual evidence required to make a compensability determination. While some may argue that shortening claim investigation times will allow injured workers to receive treatment more quickly, under current law employers are already liable for up to \$10,000 of medical treatment for the claimed injury during the investigation period, regardless of the ultimate compensability decision, so reducing that time frame would also reduce the amount of time that workers whose claims are eventually denied could receive that \$10,000 worth of medical care.

The timeline flow charts in this report show that delayed claims, whether they are accepted or denied, litigated or non-litigated, have statutory and regulatory timelines that extend beyond SB 1127's current goal to compress the investigation period from 90 days to 75 days for claims with presumptions. While compensability can be determined in most claims without the need for a delay, as noted above, claims that are delayed for further investigation require specific steps, and the time frames for those steps are

often outside the claims administrator's control. The QME process has its own well-documented access and delay issues that are being reviewed by the Division of Workers' Compensation.²⁴ It is highly unlikely that claims administrators would be able to unilaterally compress a thorough investigation in 75 days as currently proposed in SB 1127, or in 30 days as was initially proposed in the bill. If the claims administrators cannot obtain necessary medical-legal reports and other medical and factual information, they will have few options other than to issue a provisional denial. Provisional denials due to the inability to obtain necessary medical records, complete the medical-legal process, and other issues, including lack of cooperation with the investigation, will trigger more litigation, as well as significant increases in allocated and unallocated loss adjustment expenses related to the investigation process.

Penalties

The proposed penalty provisions considered previously in SB 335 and currently in SB 1127 would significantly expand current statutory penalty provisions for the affected claims, many of which would affect the budgets of state and local entities. Labor Code sections 5814 and 4650 currently provide for penalties for late payment of indemnity and medical benefits. Whether or not a payment is late can be objectively determined by comparing the statutorily required payment date and the date the payment was issued. As proposed, SB 1127 would provide that when liability has been unreasonably rejected for presumptive claims of injury or illness as defined in Labor Code sections 3212 to 3212.85 inclusive and 3212.87 to 3213.2, inclusive, a penalty of five times the amount of benefits unreasonably delayed up to \$50,000 may be ordered by the Appeals Board.

This report could not provide a cost estimate on the impact of the new penalty provision with sufficient precision as SB 335 and SB 1127 lack a clear definition of what constitutes an unreasonable rejection. This new penalty would apply to all dates of injury, both prospectively and retrospectively. Although presumptive injury claims generally apply to law enforcement or other specified first responders, if AB 1751 is passed, and the sunset provision of Labor Code sections 3212.87 and 3212.88 is extended, this penalty provision would also apply to presumptive COVID-19 claims. Furthermore, if SB 213, this year's legislative proposal to grant presumptions to workers who provide direct patient care in acute care hospitals, had been enacted, the penalty provision and the reduced liability determination period would have applied to those employees as well.

Conclusion

The California workers' compensation system is a unique, complex jurisdiction that is a high frequency, high cost, high litigation, and high expense system.²⁵ Efforts to reduce the investigation timelines as proposed in both SB 335 in 2021 and SB 1127 in 2022 would not expedite compensability determinations for claims that are ultimately accepted and would create determination thresholds that are unrealistic for litigated claims and claims that are ultimately denied. Claims administrators would therefore be faced with the option of issuing provisional denials when discovery cannot be completed, and the potential for incurring significant penalties. Recent improvements in the overall health of the California workers' compensation system, including faster claim resolution, declining litigation, moderate medical inflation, and reduced expenses, could be jeopardized.

²⁴ In 2019, at the request of the Joint Legislative Audit Committee, the State Auditor published a review of the medical-legal system which recommended that the DWC develop plans to ensure there are enough QMEs to satisfy the demand for medical-legal evaluations and reports, and a plan to review report quality. To reduce delays that result from requesting replacement panels when a QME is unable to perform a timely evaluation, she recommended lawmakers expand the size of QME panels in represented cases from three providers to five. DWC's efforts in response to that report were initially delayed by the pandemic but are continuing.

²⁵ NCCI Annual Statistical Bulletin, 2021.

About the Authors

Sara Widener-Brightwell is General Counsel of CWCI.

Alex Swedlow is President of CWCI.

California Workers' Compensation Institute

The California Workers' Compensation Institute (CWCI), incorporated in 1964, is a private, nonprofit membership organization of insurers and self-insured employers. CWCI conducts and communicates research and analyses to improve California's workers' compensation system. CWCI members include insurers that collectively write 80 percent of California's workers' compensation direct written premium, as well as many of the largest public and private self-insured employers in the state. Additional information about CWCI research and activities is available on the Institute's website, www.cwci.org.

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1333 Broadway, Suite 510, Oakland, CA 94612 | 510-251-9470 | www.cwci.org
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