

# COVID-19's Impact on Workers' Compensation Market Is Minimal, But Challenges Persist



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Some six months after the World Health Organization (WHO) declared a pandemic, many of the most dire predictions about COVID-19's impact on workers' compensation systems have not been realized. Claims of COVID-19 exposure in the workplace have been outpaced by a decline in other types of reported occupational injuries, and the workers' compensation insurance market remains competitive.

Still, employers face sizable challenges, including how to manage payroll and properly classify employees and new laws that allow employees to more easily submit claims alleging workplace exposure to COVID-19. At the same time, new tools such as telemedicine and a more collaborative approach to claims management can present opportunities for employers to stay ahead of the curve.

## A Competitive Market

After years of focusing on growth — at the expense of robust underwriting — and favorable trends in workers' compensation, conditions for casualty insurers dramatically shifted in 2019. Casualty lines generally continued to firm in the first half of 2020, amid growing change and uncertainty as a result of the COVID-19 pandemic.

Strong market surplus, sustained low interest rates, greater frequency and severity of claims, reserve deficiencies, and deteriorating combined loss ratios in auto liability, general liability, and umbrella and excess lines are contributing to commercial liability pricing increases and a general contraction in umbrella and excess capacity. Insurers, meanwhile, remain concerned about a variety of other potential casualty exposures.

Industry observers have forecast that workers' compensation premium volume will drop by as much as 10% to 20% in 2020 and will likely not continue to grow in 2021 as the labor market remains challenging. Despite this negative premium growth and a number of changes to state regulations or directives regarding the compensability of COVID-19 claims, we anticipate the impact to insurer profitability to be less drastic and for the line to normalize fairly quickly.

The National Council on Compensation Insurance (NCCI), Workers' Compensation Insurance Rating Bureau of California (WCIRB), and other industry observers have published sizable initial ranges of estimated claims losses from COVID-19. But a large influx of COVID-19 claims have not yet materialized, with limited exceptions in health care. And initial analysis shows that the average severity of COVID-19 claims is lower than expected.

In presenting its [2020 State of the Line Report](#) in May, NCCI's chief actuary, Donna Glenn, said: "The workers compensation industry had another good year in 2019. Declining claim frequency for the year, a strong industry reserve position, and favorable metrics in the residual market characterize the health of this line of business. I believe the line is well positioned to weather the challenges ahead."

*Employers face sizable challenges and new laws that allow employees to more easily submit claims alleging workplace exposure to COVID-19.*



## MONITORING FRAUD

Effective April 1, medical providers began using a new emergency code under ICD-10 for reporting coronavirus cases introduced by the WHO. While this is a welcome development for workers' compensation system participants, employers and their advisors should be vigilant in identifying potentially fraudulent claims originating before April 1.

Any COVID-19 tests conducted before April 1 — which would likely be coded as “unlisted lab tests” — should be closely monitored. As always, employers and their advisors should also watch for common red flags — including employees who are uncooperative, are difficult to reach, or have a history of making subjective claims with no specific diagnosis — and ensure that every COVID-19 claim is thoroughly investigated.

Among casualty lines, workers' compensation remains the most competitive. In the first half of 2020, buyers generally renewed with rate changes of between -5% and +3%, according to Marsh data. Results varied, however, depending upon individual account characteristics, with some buyers seeing double-digit rate decreases or high single-digit rate increases. With the frequency of non-COVID-19 claims remaining lower than expected, the workers' compensation line is expected to be less affected by the pandemic.

## Underwriting Considerations

Despite an overall competitive environment, employers must still contend with a number of difficulties in managing insurance coverage and workplace safety programs. For example, several factors — including the calculation of employee payroll, classification of employees based on the risk inherent in their normal job functions, and employers' injury experience relative to their peers (known as experience rating modification, or experience mod) — can dictate how much workers' compensation insurance premium an individual employer must pay. The pandemic, however, has prompted employment decisions that may make quantifying these variables difficult.

Recognizing these challenges, NCCI has submitted to state insurance departments two proposed rule changes intended to help employers:

- In April, NCCI proposed the creation of a new class code — 0012 — for employees of businesses that have suspended operations but continue to pay employees who are not working. Under the proposal, payments to these employees need not be included in payroll information for purposes of calculating premium.
- In May, NCCI proposed excluding COVID-19 claims — with accident dates beginning on or after December 1, 2019, through an end date to be determined — from experience rating calculations. NCCI reasoned that “The presence or absence of a pandemic in a recent historical period is not believed to be a reliable good predictor of whether one will return in a given future year, after the current one runs its course.”

An additional challenge for employers is how to address employees who have been thrust into new roles or new working environments — for example, those who are now working from home but are accustomed to office, retail, or industrial workplaces. Restaurant wait staff, for instance, could transition to managing customer service remotely or delivering orders while dining rooms are fully or partially closed. Such employees could be temporarily reassigned to codes 8871 and 7380 — indicating they are clerical telecommuting employees and drivers, chauffeurs, messengers, and their helpers, respectively — which reflect the generally reduced workplace injury exposure for these job functions.

To facilitate and simplify reporting, employers should:

- Maintain separate records for payroll given to employees for time not worked related to pandemic (not rolled into paid time off and/or another earnings category).
- Maintain payroll records for employees that continue to work, but have taken on different duties and responsibilities in a manner that the payroll can be identified and split based on applicable workers' compensation class codes.
- Maintain separate overtime payroll records related to COVID-19 work.
- Record the start and end dates of any employee furloughs.



## Overall Claims Frequency Falling Amid Pandemic

Since the first COVID-19 claim was reported in the US, Marsh has monitored its impact on workers' compensation claims activity using Blue[i], our analytics engine. Claims frequency for Marsh clients has generally been far lower in 2020 than during the same period in 2019 (see Figure 1).

Claims trends have varied by industry. While claims frequency has been down significantly since March in many industries, health care employers are seeing more claims than in 2019. In addition, claims volume for retail employers has picked up after declining early in the pandemic.

Even as overall claims frequency has fallen, the mix of claims types has changed amid the pandemic. Prior to the pandemic, roughly 21% of all workers' compensation claims were indemnity claims; post-COVID-19, that share increased to between 24% and 35%, according to a [Marsh and Oliver Wyman study of claims trends through June 30, 2020](#).

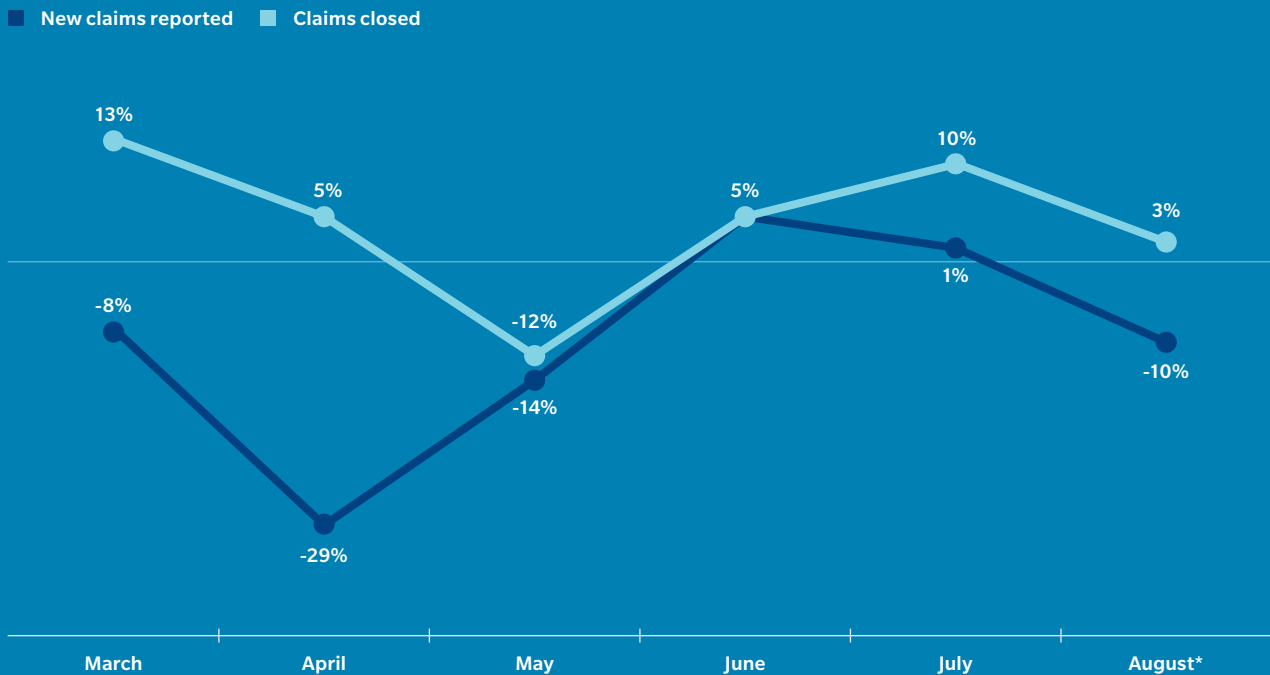
Ultimately, new injury claims could fall by 20% in 2020, according to a [survey of workers' compensation industry participants](#) published by consulting firm Health Strategy Associates. This is in part due to broader employment trends — including high unemployment, widespread furloughs, and a reluctance by some employees to file claims while their job prospects are uncertain — that have generally kept non-COVID-19 claims at bay. As the economy continues to reopen, however, these trends may gradually be reversed.

During recent periods when fewer new claims were reported, employers and claims administrators were generally able to focus efforts on existing claims, and were often able to close them at a higher rate than during the same periods in 2019. Claims closure rates, however, may fall as claims administrators face an increase in new claim volume in the future.

FIGURE 1

Claims volume has declined on a year-over-year basis in 2020, often enabling employers and their advisors to focus on resolving older filings.

SOURCE: MARSH BLUE[i]; AUGUST DATA IS PRELIMINARY AND SUBJECT TO CHANGE



## Future Workers' Compensation Costs Unclear

As of this writing, 19 states have introduced legislation, executive orders, or regulations affecting COVID-19 workers' compensation claims (see Figure 2). A number of these establish rebuttable presumptions that workers in some industries and settings — including health care — who contract COVID-19 have done so during the course and scope of employment.

The most recent such law to be enacted — and one of the most significant for employers — is in California, where Governor Gavin Newsom signed SB 1159 into law on September 17. The bill codifies an executive order that expired July 5, creating new rebuttable presumptions for police officers, firefighters, and health care workers. SB 1159 also extends rebuttable presumptions to workers in other jobs, provided that specific criteria are met.

Some of these laws and regulations have been challenged in court. In early October, for example, the Michigan Supreme Court ruled that several executive orders introduced by the state's governor — including one that established a rebuttable presumption — were unconstitutional. Despite the enactment of these new laws and regulations, many COVID-19 claims have ultimately not met compensability requirements. To date, approximately 20% to 30% of all claims filed have been accepted, according to industry estimates; the bulk of these claims have come from health care

employers. In contrast, about one-third of all claims have been denied for various reasons, including a lack of diagnosis and/or symptoms, refusal by claimants to be tested for COVID-19, and the fact that some claimants have largely been working from home.

So far, COVID-19 workers' compensation claims have generally proven inexpensive. One respondent to Health Strategy Associates' survey reported that 96% of its COVID-19 claims cost less than \$3,500 each. Indeed, many individuals who have acquired the coronavirus have recovered without the need for costly medical care or time off from work.

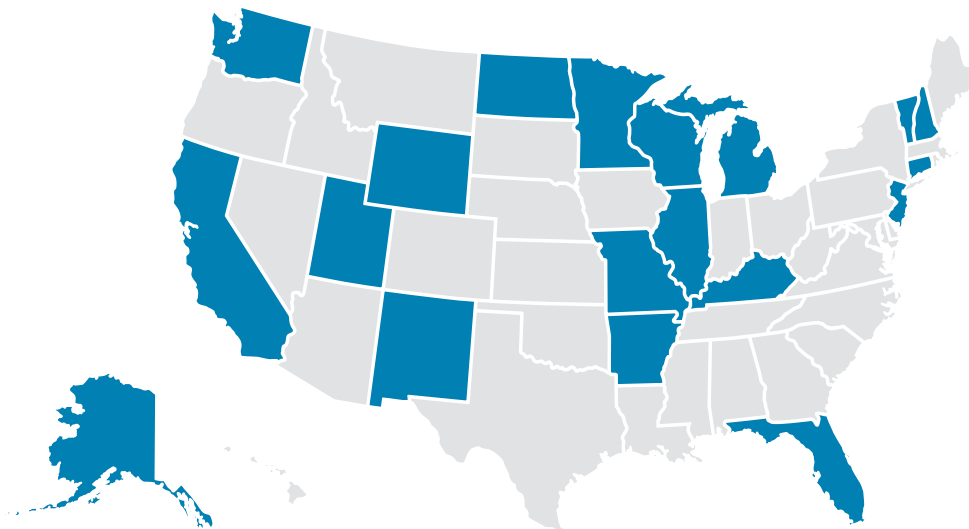
The remaining 4% of claims, however, can cost employers substantially more — into the hundreds of thousands of dollars. Some coronavirus patients — particularly those with preexisting medical conditions such as diabetes, hypertension, obesity, chronic lung disease, or heart disease — have required extended hospitalizations, including in intensive care units (ICUs).

Not only has the immediate delivery of this more intensive care cost more for employers, it could also lead to future adverse effects for claimants. While little is known thus far about the long-term health implications of patients who recover from serious COVID-19 infections, a 2013 study in the Netherlands found that

FIGURE  
2

Laws related to COVID-19 claims — including some that establish rebuttable presumptions of occupational exposure — have been introduced in nearly 20 states.

SOURCE: OLIVER WYMAN/MARSH ANALYSIS; AS OF SEPTEMBER 18, 2020



patients admitted to ICUs are at greater risk of developing new chronic conditions later. In the case of workers' compensation claimants, this could lead to long-term care and significantly higher costs for employers.

Evidence to date also points to specific complications for COVID-19 patients:

- One study of more than 50 critically ill COVID-19 patients treated in ICUs found that complications can include acute kidney injuries, with half of them needing longer-term kidney care.
- A review of 350 COVID-19 patients in the US found that less than 40% of those who had been hospitalized reported a return to baseline health within 14 to 21 days of their diagnosis.

More reported COVID-19 claims, however, could still be coming. In California, for example, just under 42,000 claims with injury dates between January and August 2020 were reported through September 21, according to the California Workers' Compensation Institute (CWCI). But owing to delayed reporting, CWCI projects

that claims for that time period will ultimately total more than 48,000 (see Figure 3). In addition to claims for occupational exposure to COVID-19, an influx of post-traumatic stress and mental health claims could also be on the way.

## Compassion, Care, and Injury Prevention Essential

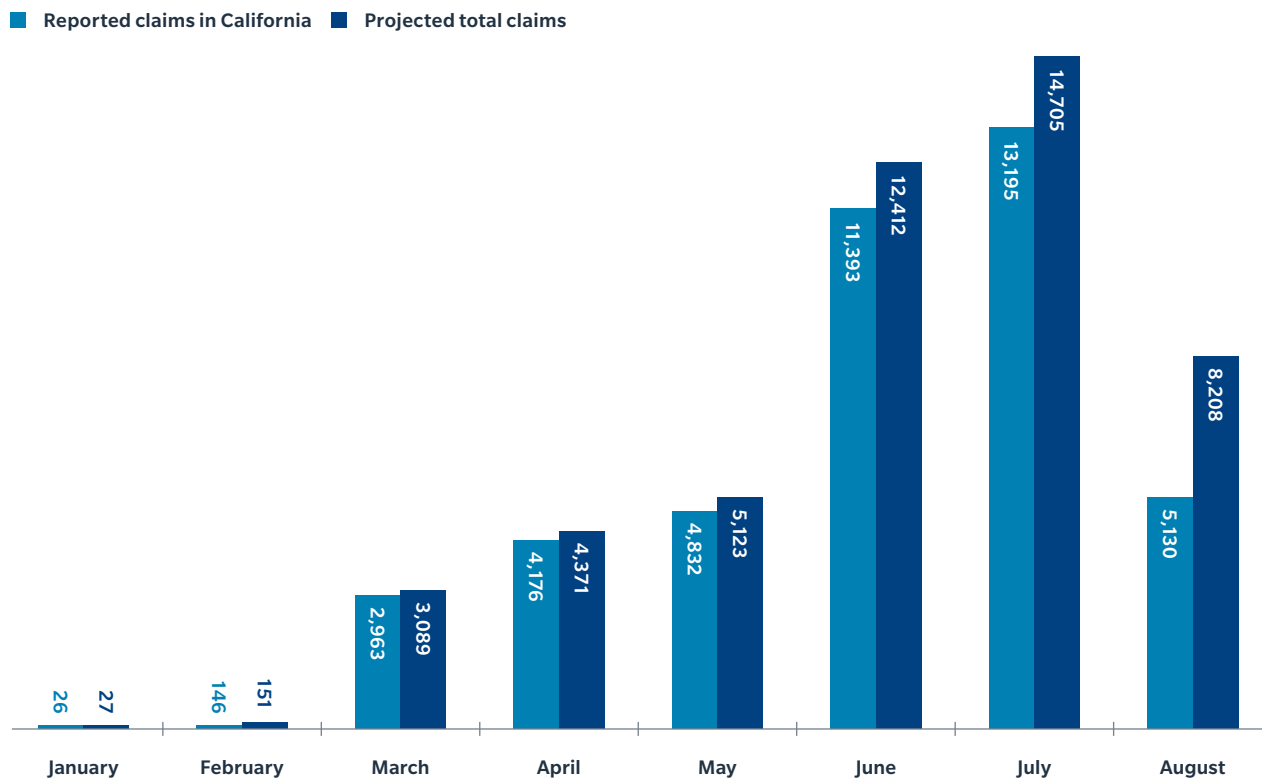
Even under the best of circumstances prior to COVID-19, injured employees have often had difficulty navigating the workers' compensation claims process. As we approach six months since COVID-19 was declared a pandemic — with no immediate end in sight — claimants may be especially anxious about their recovery and long-term job prospects.

It is imperative that employers consider adopting a claims advocacy approach to workers' compensation that focuses on communication, education, and transparency. A more collaborative approach — in which employers demonstrate that

FIGURE  
3

Total COVID-19 workers' compensation claims could ultimately far exceed the number reported to date.

SOURCE: CALIFORNIA WORKERS' COMPENSATION INSTITUTE; DATA AS OF SEPTEMBER 21, 2020





## TELEMEDICINE GROWING IN POPULARITY

Respondents to the Health Strategy Associates survey also made clear that telemedicine will play an increasingly important role in workers' compensation, potentially even after the pandemic subsides and workplaces largely transition to a new normal. Amid the pandemic, employers are reporting a variety of benefits and practical applications for telemedicine, including to facilitate triage and claim intake, initial injury assessments follow-up visits, and injury rehabilitation. Telemedicine can also be used to promote behavioral health.

Prior to the pandemic, employers had expressed interest in telemedicine but had not widely adopted its use in workers' compensation, in part because laws in some states limited its use. Since COVID-19 emerged as a threat, however, many states have eased restrictions and encouraged employers and claims administrators to use telemedicine, which can offer many benefits to employers and workers, including the ability to avoid crowded waiting rooms and lengthy commutes.

The explosion of telemedicine in workers' compensation during the pandemic also mirrors its greater use by primary care physicians and others in group health settings. As employees become more familiar with telemedicine's benefits during the pandemic, they may expect it to remain a readily available option post-COVID-19 — including as a means for receiving care following workplace injuries.

they care for employees — can yield less contentious relationships, fewer instances of injured workers hiring attorneys, and lower claims costs.

At the same time, employers should also:

- **Demonstrate compassion and care as they return employees to reopening workplaces.** Colleague health and safety should be paramount in decision-making related to reopening, with employers respecting employees' privacy and maintaining virtual work arrangements to the extent possible. Ultimately, flexibility and caution will be key to balancing employees' and organizations' needs, which can help to limit the spread of COVID-19 and prevent unnecessary workers' compensation claims.
- **Focus on injury prevention.** Employers should ensure they are familiar with CDC and other agency policies on steps they can take to prevent transmission of COVID-19 in the workplace, while also reinforcing safety training for employees who are returning to the workplace.
- **Be mindful of remote working risks.** Even as some workplaces reopen, many employers appear to be embracing telecommuting and expect to continue relying on remote work even after stay-at-home regulations are lifted. These employers should focus on education and communication and remind telecommuting employees of ergonomic best practices, including the need to use sturdy, properly adjusted chairs; keeping key objects close to avoid reaching; and reducing joint stress through breaks and alternating between sitting and standing.





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This report was prepared by Marsh's Workers' Compensation Center of Excellence. This report incorporates data from Blue[i], Marsh's analytics engine, which combines our extensive data, deep expertise, and rich analytics into easy to use dashboards that provide clients with actionable risk, safety, and claims insights.

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