



2023 Workers' Compensation Seminar

September 27-29, 2023

Workers' Compensation Hot Topics

Artificial Intelligence, Remote Work, and Mental Health

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Artificial Intelligence and Its Role in Workers' Compensation

Artificial intelligence (AI) is not a futuristic vision, but rather something that is here today and being integrated with and deployed into a wide range of sectors. This includes fields such as hospitality, health care, transportation, and couriers & local delivery services, to name a few. There are numerous examples where AI already is making an impact on the world and replacing human capabilities in significant ways.

One of the reasons for the growing role of AI is the tremendous opportunities for economic development that it presents. A project undertaken by PriceWaterhouseCoopers estimated that artificial intelligence technologies could increase global GDP by \$15.7 trillion, a full 14%, by 2030. That includes advances of \$3.7 trillion in North America alone.

However, AI could replace the equivalent of 300 million full-time jobs, a report by investment bank Goldman Sachs says. AI is already replacing jobs, responsible for nearly 4,000 cuts made in May 2023, according to data from Challenger, Gray & Christmas Inc. OpenAI – the company that created ChatGPT – estimated 80% of the U.S. workforce would have at least 10% of their jobs affected by large language models (LLMs).

Jobs Which May Be Affected By Large-Scale AI Implementation

- *Administrative*

Generative AI tools can perform tasks such as basic email correspondence, identifying data trends, finding mutually available meeting times across time zones and other summary/synthesis exercises.

- *Coding*

Programs such as ChatGPT can write fluent, syntactically correct code faster than most humans, so coders who are primarily valued for producing high volumes of low-quality code quickly might be concerned.

- *Customer Service*

The customer service sector offers many opportunities for AI implementation. AI-powered chatbots can provide speedy, personalized responses to customer questions, reducing the need for human workers. It's likely customer service departments will continue to integrate the newest AI technologies.

- *Legal*

There is significant evidence indicating AI will affect legal jobs. AI will eventually perform many of the tasks paralegals and legal assistants typically handle, according to one study by authors from Princeton University, New York University and the University of Pennsylvania. A March 2023 study from Goldman Sachs said AI could perform 44% of the tasks that U.S. and European legal assistants typically handle.

AI could help automate routine legal tasks such as the following:

- Document review;
- Contract analysis; and
- Legal research.

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- *Teachers*

Teachers could be affected by AI in several ways and conversations have already begun as to whether AI will one day replace teachers entirely. AI is beginning to be implemented in schools for use as productivity tools, to draft lesson plans, and generate quiz questions and mock tests.

- *Human Resources*

AI-powered recruiting tools could be used to do the following:

- Source qualified candidates;
- Review resumes; and
- Automate recruiter tasks.

How AI's Increasing Prevalence May Affect Workers' Compensation

- Less workers means less work-related injury claims. As a result, carrier premiums may decrease and/or WC insurance may become less necessary for businesses;
- The range of workers' compensation claims may be narrowed to only professions with little or no impact from the development of AI;
- Companies/Insureds/Self-Insurers may become less willing to help fund state workers' compensation systems;
- Insurers' application of AI to workers' compensation claims can produce benefits such as, gaining a better understanding of the source of claims, easier selection of a best-in-class medical providers for claims, quicker identification of potentially catastrophic claims for early intervention, and automate and streamline the claims management process;
- New jobs currently not in existence may usher in a new era of workers' compensation claims.

The Impact of the Societal Shift to Remote Work in Workers' Compensation

As the COVID-19 pandemic influenced employers to implement remote work for employees, employers often lost control of the ergonomics of those employees' workplaces, setting the stage for potentially novel workers' compensation questions:

- When/where/how does an employee shift to/from their status as an employee within their own home?
- Are injuries caused by ordinary household items compensable?
- How do claims handlers determine compensability when more claims are unwitnessed?
- Are alleged psych issues resulting from increased professional isolation compensable?

Considerations for Mental Health in Workers' Compensation

According to NAMI (National Alliance on Mental Illness), Depression is the greatest source of disability worldwide and impacts absence from work and loss of productivity. Depression and anxiety cost the global economy \$1 Trillion annually. An estimated 48 million people in the U.S. had an anxiety disorder.

Mental/Behavioral Health Coverage

- Most states limit compensability in some way such as that it must be related to physical diagnoses or that only certain employee groups, such as first responders, are covered.
- Most group short term disability programs accept mental health claims.
- The Hartford conducted a four-year study from 2015 to 2018 and found a consistent pattern in the age of claimants with behavioral health claims under both STD and California WC. They found that the prevalence of these claims decreased with age. In both instances, one-third or more Claimants were adults under 35 years old, and one fourth or more claimants were 35-40 years old. The pattern continued.

Mental Health as a Comorbidity

- The same Hartford study demonstrated that 43% of MSD WC claims are reported by employees under 35 years of age, presumably because they are doing the grunt work.
- The intersection is that nearly half of MSDs are reported by claimants who also have a one in three chance of having a behavioral health comorbidity. The other half of MSDs are reported by Claimants who have a 20% or greater chance of having a behavioral health co-morbidity.
- Many Employers have seen this when they review the employee's medical reports and see that they are taking medicine like Wellbutrin, Lexapro, Sertaline, etc.

The Impact of Mental Health on Claim Duration and Claim Costs

- In the Hartford study, researchers reviewed the claims where the employee was prescribed psychoactive medications or used words to reference behavioral health issues, such as depressed, anxious, stressed, etc.
- The result identified 16.2% of CA MSD claims had a behavioral health factor, whether diagnosed or not. That study confirmed that adding behavioral health condition significantly increased the treatment duration more than adding a second physical condition.

In fact, when behavioral health conditions constitute secondary or comorbid conditions to workers' compensation claims based on primary musculoskeletal diagnoses, their impact was found to be

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much greater than other comorbidities: about two to three times the impact of a secondary musculoskeletal diagnosis.

- As an active claim's duration extends, the cost of administering that claim and the costs associated with that claim will continue to rise.
- Pain and permanent disability become a bigger factor with a longer claim duration and rising claim costs.

Recommendations for Handling Mental Health Claims

A good offense is the best defense in mental health cases. Employers should promote health and wellness, as it will increase engagement/satisfaction, reduce turnover, and could reduce accidents.

Partner with your Benefits Team:

- Insurance program;
- EAP;
- Gym memberships;
- Nutrition;
- PTO/Wellness days/work-life-balance; and
- Leadership training (include employment counsel)

React promptly to injuries/accidents/events:

- EAP; and
- Early intervention.