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## **DENIAL: 30 DAYS OR 90 DAYS? LOWER COSTS WITH 30 DAYS?**

**BY: SCOTT A. O'MARA**

The Workers' Compensation Insurance Rating Bureau (WCIRB) is a non-profit association composed of companies which provide Workers' Compensation insurance throughout California. The WCIRB, which has approximately 400 members, is not connected to the State of California, but its membership -- consisting of insurance companies and third-party administrators -- provides funding for the WCIRB.

The WCIRB maintains a review of costs and areas of coverage for job-related injuries. Recently, it issued a study of COVID-19 cases. The study showed that the number of COVID-19 cases which have been filed has changed over a period of time.

In the first four months of the current pandemic, more than 25,500 cases were filed statewide. In July 2020, the number was up statewide and the infection rate was 10%. In November 2020, the infection rate had changed to 5%. A more recent finding in March 2021 indicated the infection rate had dropped further to 2% --- a substantial drop from the first finding of 10%.

Also of significance is that COVID-related death claims have decreased. However, the WCIRB believes the death rate may increase for the rest of the year because of the tendency for death cases to be reported later. The information they are sharing would indicate that the average cost of a COVID-19 case is about 48% less than the cost of non-COVID cases.

The report indicates that many of the COVID-19 cases filed were only for medical care; they were not seeking indemnification for time lost. However, the WCIRB acknowledges

that the denial rate for COVID-19 cases is three times greater than denial rates for other types of injuries.

The information provided by the WCIRB appears to be very liquid, but the changes in COVID-19 cases is factual, and the WCIRB study does not give consideration for the “Long COVID” disease process and the actuality of that occurring at a later stage.

The findings of the WCIRB hopefully are reflective of changes in work conditions made by employers so that workers are less exposed to the coronavirus. These safer work environments are a product of employers being more educated as to what they can do to minimize COVID-19 exposures in the workplace for greater protection of their workers

The WCIRB acknowledges that the presumption legislated by Senate Bill 1159 in September 2020 is for the protection of firefighters, deputy sheriffs, Highway Patrol officers, police officers, probation officers and other health workers. The standard denial time for other injuries requires employers to respond within 90 days or the injury is presumed to be job-related. However, the COVID protection for safety officers requires employers to respond within 30 days. Without that denial, the COVID condition is presumed to be job-related. (This presumption still can be rebutted by certain factual patterns and information.)

The 30-day COVID rule for safety officers allows COVID-infected workers to obtain medical care at a faster rate than the 90-day rule does for non-COVID cases. This appears to be a factor which lowers costs for COVID cases as compared with non-COVID cases. The 30-day standard should be examined for other medical conditions as well as a possible opportunity to lessen costs for those cases.



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**NOTICE:** *Making a false or fraudulent Workers’ Compensation claim is a felony subject to up to 5 years in prison or a fine of up to \$50,000 or double the value of the fraud, whichever is greater, or by both imprisonment and fine.*

