



**IAIABC**

*Find Information. Connect People.*

# Perspectives

## Regulators Reimagine

*Explore influence, impact, and innovation in today's workers' compensation agencies.*

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**November 2016**

## About the IAIABC

*Advancing the efficiency and effectiveness of workers' compensation systems around the world.*

IAIABC is the largest trade association of workers' compensation jurisdictional agencies in North America. Along with these government entities, various private organizations involved in the delivery of workers' compensation coverage and benefits participate in the IAIABC.

Since it was founded in 1914, the International Association of Industrial Accident Boards and Commissions, or IAIABC, has been providing information and education on workers' compensation policy, regulation, and administration.

## Perspectives

The goal of this new publication is to provide various perspectives on contemporary workers' compensation topics and to promote discussion and sharing of ideas. The IAIABC's new *Perspectives* digital magazine will be published quarterly.

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# Editor's Note

**Lorra O'Banion is an Assistant Attorney General (AAG) with the Nebraska Office of the Attorney General. As an AAG, she has been assigned to exclusively represent the Nebraska Workers' Compensation Court for the past 11 years. O'Banion is a member of the IAIABC and currently sits on the Board of Editors for Perspectives.**



Workers' Compensation Court and on a national scale, I look to someone we are all familiar with; someone whose life's work made a significant impact in the industry and who has forged efforts to improve, encourage and to educate a younger generation to get involved in workers' compensation. I am, of course, referring to innovator David DePaolo.

David DePaolo was an industry leader, blogger, and founder and CEO of WorkCompCentral. Sadly, David DePaolo died in a motorcycle accident on July 17, 2016. To quote from Robert Wilson's farewell article, paying tribute to David DePaolo, Wilson writes: "David felt strongly that the workers' compensation industry needs to highlight the good things we accomplish, and fight the persistent negative image cast upon us by external forces and bad players within the industry." DePaolo also instituted the "Comp Laude™ Awards" launched on WorkCompCentral. To quote from the WorkCompCentral Comp Laude™ Awards webpage, "The Comp Laude™ event started five years ago with a very simple premise: Workers' compensation does a lot of good things for people experiencing the misfortune of a workplace injury or illness." David DePaolo will be remembered for all of his contributions and insights.

On a more personal note, Glenn Morton, former Administrator of the Nebraska Workers' Compensation Court, retired this September leaving behind a legacy of 28 years of service with the Court as well as serving many years as a committee member and former President of the IAIABC. Glenn had been instrumental in keeping the tenets of the IAIABC together. Glenn has been a teacher, a workers' compensation resource and inspiration for me and for many at the Nebraska Workers' Compensation Court as well as for many within the IAIABC organization. I wish him the best retirement has to offer. With that said, I firmly believe we have not heard the last from Glenn Morton in the workers' compensation world.

The IAIABC has also instituted its own program to recognize outstanding individuals in the workers' compensation industry called the "Innovator's Awards". Such recognition is awarded to individuals who have tackled difficult issues in workers' compensation and have made significant changes to continue the work of workers' compensation. As you will read, this issue of *Perspectives* speaks to the jurisdictional landscape of workers' compensation today and honoring those innovators of our industry.

Lastly, I want to give an honorable mention to Kids' Chance of Nebraska, a local chapter of Kids Chance established by two workers' compensation Nebraska attorneys, Dallas Jones and Rod Rehm, who litigate workers' compensation claims on opposite sides of the bar. Kids Chance of Nebraska was officially organized in 2013 and whose purpose is to raise money and award post-secondary educational scholarships to children with a parent who was either killed or suffered a permanent disability in a work accident. Currently there are five (5) Nebraska recipients attending college with a goal to have 12 recipients per year by the year 2020. Major fundraisers of this organization include the

2016 Nebraska Symposium of which the proceeds will be donated to Kids Chance of Nebraska. Just another example of innovators working for a positive outcome in workers' compensation.

These are only a few examples of the good things that happen when workers' compensation works in the way it was meant to work. Kudos to all the hardworking individuals and groups in the industry who strive to make workers' compensation work.

<sup>1</sup> <http://www.workerscompensation.com/compnewsnetwork/from-bobs-cluttered-desk/24273-godspeed-david-depaolo-you-were-what-was-right-in-workers-comp-and-your-voice-will-be-missed.html>

<sup>2</sup> <https://www.workcompcentral.com/events/awards>

<sup>3</sup> IAIABC Accidentally Podcast June 18, 2016 with Jennifer Wolf Horejsh, Executive Director of the IAIABC interviews Glenn Morton.

<sup>4</sup> Kids Chance of Nebraska local chapter <http://www.kidsofnebraska.org/>

<sup>5</sup> Kids Chance was originally founded by Robert Clyatt (workers' compensation attorney in Valdosta, Georgia) in 1988. To find out more about Kids Chance, please see <http://www.kidsofnebraska.org/>.

***"Heroes are made by the paths they choose, not the powers they are graced with."***

*Brodi Ashton, Everneath*

In my experience, the path to a career in workers' compensation for many of us in the industry is usually one we've stumbled upon, at least that is how I got my start. It is rarely a path specifically chosen. Given that many of us have stumbled onto this path, I wonder, "How are heroes made in this industry?" As I look around my own world of work, I need not look far to find many inspiring individuals in workers' compensation, such as Glenn Morton of the Nebraska

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# On the Minds of Regulators



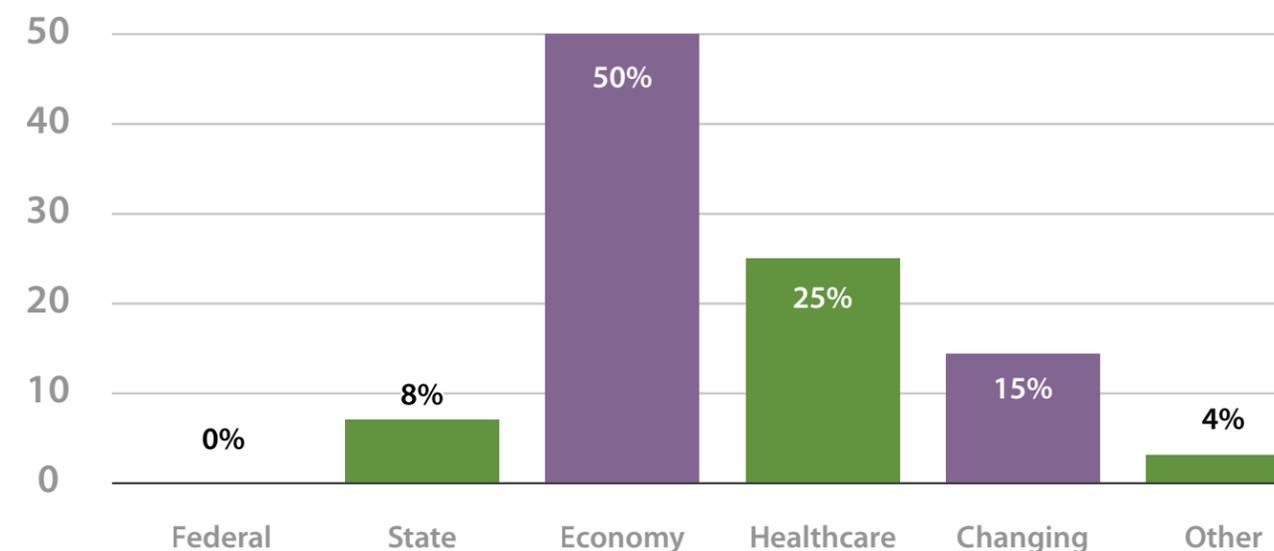
**In her role as the Executive Director of the IAIABC, Jennifer Wolf Horejsh works with the IAIABC community to advance the efficiency and effectiveness of workers' compensation systems throughout the world. You can hear her perspective on the industry during the IAIABC's monthly podcast, "[Accidentally](#)."**

Jurisdictional representatives participated in real-time polling to identify the external and internal issues likely to influence workers' compensation. The first question asked what external factors would most impact workers' compensation in the next 12 months fifty percent of responses indicated the Economy, and 25% indicated Healthcare; perhaps more surprising were the choices with no or very few responses – Federal Legislature/Policy, State Legislature/Policy, and Changing Employment Relationships.

Ever wonder what's on the mind of regulators? The IAIABC Commissioners and Associate Members' Forum on September 27 during the IAIABC 102nd Convention was an opportunity to find out. Held each year, the Forum brings together jurisdictional representatives from around the globe to give updates on policy issues impacting them now and in the near future. Thirty jurisdictions partook, giving insight into the issues and challenges the industry will address in the coming year.

**...currently 0.6% of the US GDP is the result of crowd-working and that number is doubling every six months...**

## What EXTERNAL factors will most impact WC in the next 12 months?



In most years, the US federal government would likely have no influence on state systems; however, much can change in a week. A week after the Commissioners and Associate Members' Forum, the US Department of Labor issued the report, *Does the Workers' Compensation System Fulfill Its Obligations to Injured Workers?*, with the general conclusion that "working people are at great risk of falling into poverty as a result of workplace injuries and the failure of state workers' compensation systems to provide them with adequate benefits." The report offers several suggestions on opportunities for the US federal government to address perceived failings; whether this transpires will develop in the coming months.

Relatively few responses for State Legislature/Policy could mean significant reform efforts are unlikely, or regulators are unsure how this year's elections might influence the priorities of state legislatures in the upcoming session. It seems changing employment relationships, particularly the rise of sharing platforms and alternative work arrangements, have not had a widespread impact on state workers' compensation systems. A statistic shared during the discussion portion of the event that currently 0.6% of the US

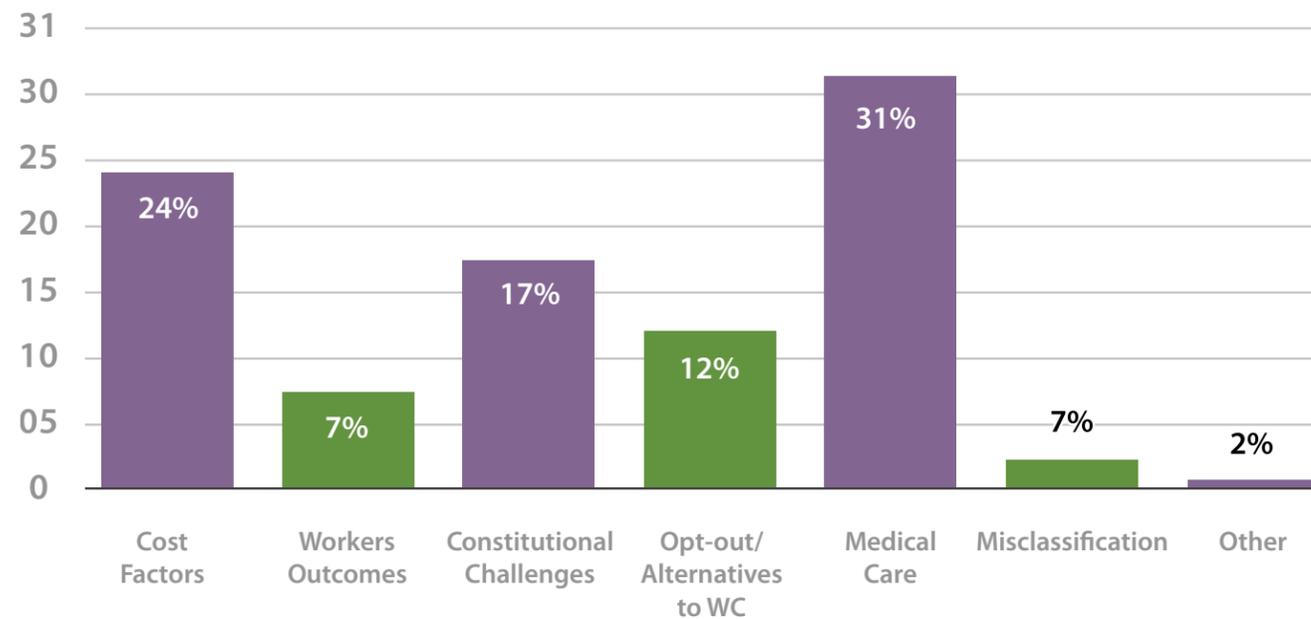
GDP is the result of crowd-working and that number is doubling every six months, may spur regulators to think about how to proactively respond to this growing change in the economy.

The second question asked what industry factors would most impact workers' compensation in the next 12 months. Responses for this question were more varied, with no response getting a majority.

**31%** noted medical care. This was reinforced as multiple jurisdictions noted updates to their medical fee schedules, implementation of treatment guidelines and a formulary, and efforts to address inappropriate use of opioids. For US jurisdictions, medical care and cost is influenced by many factors – notably the Affordable Care Act, Medicare payment methods and new outcome-based fee models, consolidation of providers and hospitals, and greater emphasis on evidence-based medicine.



### What INDUSTRY factors will most impact WC in the next 12 months?



**24%** of the responses noted Cost Factors, which could be concern for medical, wage replacement, or administrative cost. Perhaps this is in anticipation of the publication of the Oregon Premium Rate Ranking Survey in October?

**17%** of the responses indicated Constitutional Challenges, a hot-button issue in several states this year. Florida, New Mexico, Oklahoma, and Utah faced significant Supreme Court rulings that will shape their systems in the years to come. In Florida, the Supreme Court issued rulings that declared the 102 week limit for temporary total disability (TTD) and the attorney fee schedule unconstitutional. These rulings recently resulted in a 14.5% premium rate increase effective December 1, 2016.

The Oklahoma Supreme Court found in Vasquez vs. Dillard's the provision allowing an employer designed employee benefit plan unconstitutional, noting it "creates impermissible, unequal, disparate treatment of a select group of injured workers." Constitutional challenges have arisen from

some who believe the workers' compensation pendulum has swung too far to the employer-side. Balancing the interests of labor and management is a challenge that has shaped the system since its beginnings over a century ago.

The final question asked if in 10 years, workers' compensation would exist as we know it today. Mark your calendars for the 2026 Convention (Time and Location TBD) to see who was correct!

After polling, each jurisdiction gave a two and half minute update of legislative, regulatory, or administrative issues. As anticipated, responses were as diverse as the kinds of cars on the road. However, here are some highlights:

**Misclassification:** There is a perception that a worker making a false workers' compensation claims is the most common form of fraud in workers' compensation. However, employer fraud, specifically misclassification of employees as independent contractors, is much more prevalent. Developing

strategies, implementing tools, and deploying resources to identify employees (i.e. should be covered by a workers' compensation policy) was noted by many jurisdictions.

**Uninsured Worker Funds:** Several jurisdictions noted efforts to develop or properly fund an uninsured employer fund. Only 21 jurisdictions have an uninsured employer fund, which pays medical and wage replacement benefits for employers who have failed to secure workers' compensation coverage. They are funded through a variety of mechanisms, most commonly employer assessments and penalties/fines.

**Medical Care:** As noted in the polling responses, medical management is an area of considerable regulatory focus. Jurisdictions noted fee schedules, evidence-based medicine, formularies, PDMPs, and marijuana as areas of work in the coming year. This is hardly surprising, as medical treatment represents as much as 70% of the claim cost in some jurisdictions.

2016 has brought surprises from unexpected sources. It will be interesting to see how these surprises and new ones will influence the regulatory environment in 2017. One thing will remain constant, the IAIABC! The IAIABC looks forward to sharing news and information, hosting discussions sessions among peers, and developing resources to help its members thoughtfully respond.

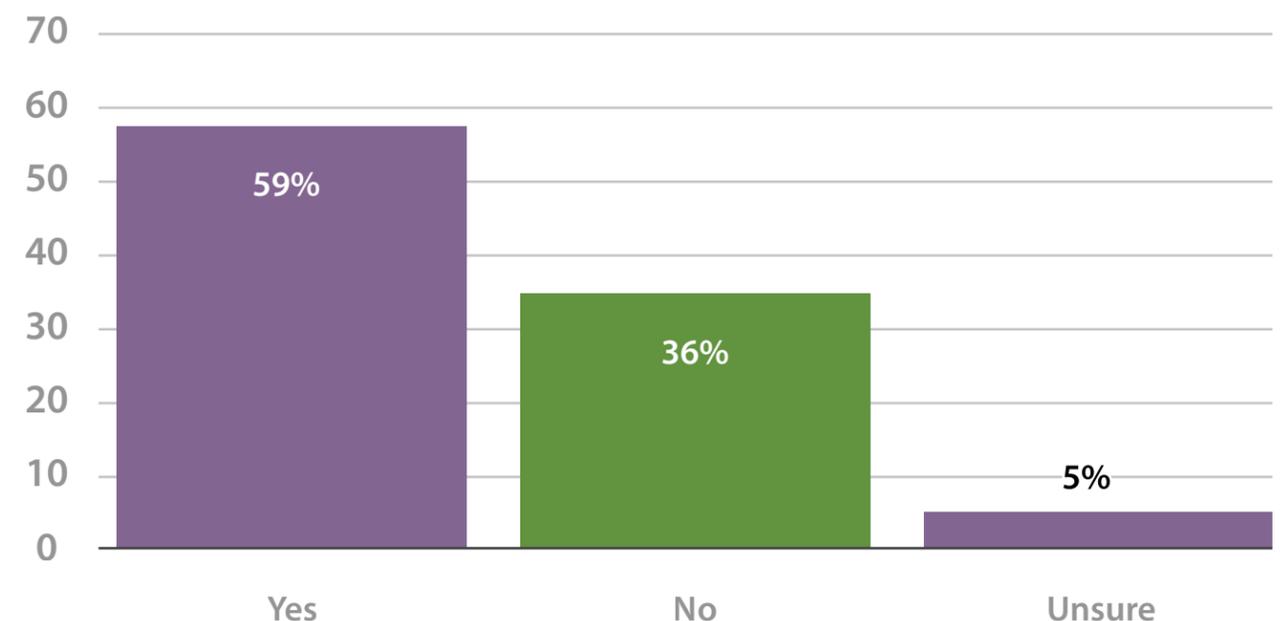
<sup>1</sup> The announcement of the US Department of Labor event was distributed electronically on September 16, 2016. The report was not released until the day of the event.

<sup>2</sup> US Department of Labor, Does the Workers' Compensation System Fulfill Its Obligations to Injured Workers, October 5, 2016. Download the complete report at: <https://www.dol.gov/asp/WorkersCompensationSystem/WorkersCompensationSystemReport.pdf>

<sup>3</sup> Westphal vs. the City of St. Petersburg, Supreme Court of Florida, June 9, 2016 <http://www.floridasupremecourt.org/decisions/2016/sc13-1930.pdf> and Castellanos vs. Next Door Company, Supreme Court of Florida, April 28, 2016 <https://www.scribd.com/document/310781790/Florida-Supreme-Court-Castellanos-v-Next-Door>

<sup>4</sup> Vasquez vs. Diliards, Supreme Court of the State of Oklahoma, September 13, 2016

### Will WC exist as we know it today in 10 years?



# Metrics To Monitor State Workers' Compensation Systems



Dr. Richard Victor is a Senior Fellow at the Sedgwick Institute. Previously, he founded and led the Workers Compensation Research Institute for three decades. Dr. Victor has authored many books and articles on workers compensation issues, and advised public officials and diverse stakeholders on legislation and regulation.



Ms. Ramona P. Tanabe is Executive Vice President and Counsel of WCRI. She is currently leading the Institute's flagship line of core benchmarking studies, and her responsibilities have included conducting studies on health policy, managing the WCRI data collection efforts, providing legal counsel, advising public officials on medical privacy issues, and managing various internal and external functions at WCRI.

Imagine watching the driver of an 18-wheeler traveling down the interstate on a fine summer day. Usually exhilarating at 70+ mph. Unfortunately, the instrument panel has shorted out. No speedometer, and no oil pressure, coolant, tire pressure, or engine heat gauges. Still, there is a delivery schedule to keep. Unbeknownst to the driver, the coolant level is low. As the day progresses, the pressure on the hoses rises until eventually one ruptures with a hissing sound and a plume of steam. The driver pulls over, curses, and calls a tow truck. The rig is towed to the repair shop, the hose repaired, and radiator refilled. The next day, off goes the driver unhappy with the delay. As the day progresses, the driver hears the sound of metal grinding against metal. Low oil levels are damaging the engine. Again, he pulls over, curses loudly and calls the tow truck.

The truck is a metaphor for a WC system. It performs smoothly, until it doesn't. Policymakers can wait until the symptoms of distress are impossible to ignore; or they can make sure that the instrument panel that describes the performance of the system is appropriate and functioning effectively.

What metrics to put on the instrument panel? A very large number of metrics are possible. Wining the list to a manageable number can be a challenge. This article lists the highest value metrics for monitoring system performance. The selection is based on five decades of the authors' experience

doing research and assisting public officials and lobbyists for diverse interest groups to focus on the most impactful problems to solve.

## SCOPE

The scope of this article and the listed metrics is necessarily limited. The metrics discussed herein focus on the benefit delivery system – what happens once a worker reports a claim. It does not address metrics for monitoring the performance of insurance markets and prices or for injury prevention.

The Primary Metrics measure a short list of key outcomes achieved by workers and their employers – the principal parties at interest in WC systems. We present a select list of Secondary Metrics which measure the performance of system processes that are central to achieving these worker and employer outcomes.

These metrics are commonly used in either internal or external benchmarking. Internal benchmarking looks at trends within a state system. In external benchmarking, an individual state system is compared to other state systems. Meaningful external benchmarking is more difficult and much more complex to do because of interstate differences in nomenclature, claims and dispute processes, variable definitions, industrial mix, wage levels, etc.

The metrics listed below are appropriate for internal benchmarking. With appropriate adjustments, they may also be relevant for external benchmarking.

## EVOLUTION AND USES OF METRICS

Twenty-five years ago, the truck story described the WC reform processes in many states: cycles of crisis-reform-crisis again. Metrics were scarce and reforms often “fixed” the problem, leading the advocates for reform to proclaim victory and go home to attend to pressing non-WC issues. There was little systematic collecting and monitoring of metrics of system performance. Today, many states have abandoned that approach – relying less on anecdotes (the failed instrument panel in the truck) and more on credible data to understand causes of a problem, to repair the causes, and to conduct periodic or ongoing monitoring whether the reform had the intended effects. Some states actively monitor the performance of their system. They use performance metrics to provide an early warning for mid-course corrections (topping off the coolant). A few use metrics to set improvement goals and monitor progress toward their achievement.

*The truck is a metaphor for a workers' compensation system. It performs smoothly, until it doesn't.*

There have been 3 stages in the evolution of metrics to monitor WC systems. Each state is evolving at its own pace.

**1. PRE-METRICS ERA:** This period was characterized by cycles of “crisis, reform, and crisis again” – policymaking generally relied heavily on anecdotes and political clout. In some states, periodic ad hoc studies were commissioned, but few metrics of the performance of the benefit delivery system were collected and routinely monitored.

**2. TRANSITIONAL MODERN ERA:** This marks the beginnings of ongoing monitoring in a handful of places. The focus was often metric-based monitoring as a result of or in anticipation of reform needs. Examples include the NCCI Detailed Claim Information (1992), WCRI CompScope™ Benchmarks (1999), Texas Research and Oversight Council post-reform monitoring (1995), California Commission on Health Safety and Workers Compensation (1993), California Workers Compensation Institute IRIS database (1999), Minnesota Department of Labor and Industry Annual System Report (2001). The launch of the IAIABC EDI effort was a key part of building infrastructure for metrics-reporting in many states.

**3. MODERN METRICS ERA:** An expanded list of metrics has been developed and published annually in many states. Most importantly, reform debates are conducted with an expectation that metrics will be available and will be used to ground the discussion of the nature of problems and the likely consequences of proposed reforms. The metrics have migrated into the fabric of the policy debate in those states. For many states, the source of the metrics are organizations like CWCI, NCCI, independent rating bureaus, and WCRI. For some states, the WC agency has successfully built significant staff data analysis capabilities – examples include CA, MN, OR, TX, and others.

**WHAT TO MEASURE**

Given the large number of metrics possible and limited resources, an important question is what to measure. We divide the candidates onto 3 groups of metrics based on their purposes.

1. Core Metrics for Performance Monitoring – These are applicable to all or almost all systems. Ongoing annual monitoring is valuable.
2. Supplemental Metrics to Monitor Reforms – These are produced for a limited time while the consequences of reforms are developing. These also include a pre-reform baseline.
3. Unique State Metrics – These supplement the Core Metrics. They are used to monitor performance of certain aspects of a state system that are relatively unique to the state. They may also be used to inform policy debates that arise from time to time but are not covered by the Core Metrics.

This article focuses on the Core Metrics for Performance Monitoring.

**PRIMARY METRICS: OUTCOMES FOR WORKERS AND EMPLOYERS**

The most useful metrics are those that address the big goals of the system. We call them the “Big Six Outcomes.” They focus primarily on the big outcomes for workers and employers.

**A. Workers**

- a. Adequate and predictable income benefits. To what extent do injured workers receive adequate and predictable income replacement benefits?
- b. Recovery of health. To what extent do injured workers recover their health and function after injury?



- c. Recovery of earning power. To what extent do injured workers recover their economic earning power after the injury?

**B. Employers**

- a. Affordable claims costs. How large are the costs paid for claims (benefits plus admin and compliance/friction costs)?
- b. Return to work. How quickly and sustainably are valuable employees returned to productive work?
- c. Predictable costs. How predictable are the claim costs paid by employers?

The table below offers a short list of outcome metrics. These metrics are feasible to produce. To illustrate, the table provides citations to real world examples of each.

**SECONDARY METRICS: SYSTEM PROCESSES**

Secondary metrics monitor the key processes by which the Big Six Outcomes are produced in order to highlight system strengths, diagnose shortcomings, and identify material changes in the performance of these processes. These processes are:

1. Access to the WC system
2. Appropriate, timely use of medical care
3. Regulating medical prices
4. Timely first indemnity payment
5. Timely, efficient, and fair resolution of disputes

**WORKER OUTCOMES**

Adequate and Predictable Income Benefits	For TD Claims: % Workers Affected by Weekly Max % After Tax-Losses Replaced During Period of TD Size of Variation of Income Benefits per Claims
Recovery of Health	Recovery (as computed by worker self-report) Post-Injury Health Status (as computed by worker self-report)
Recovery of Earnings Power	Earnings Recovery (as computed by worker self-report)

**EMPLOYER OUTCOMES**

Affordable and Predictable Claims Costs	Average Cost Per Claim Size of Year-to-Year Variation in Cost Per Claim
Return to Work	Time from Injury to Initial RTW % Reporting Initial RTW Earlier than 6 Months After Injury % Reporting Sustained RTW Speed of RTW Duration of TD Payments % RTW At Pre-Injury Employer % Accommodation Offered % Employer First Response Employee-Focuses

The table below offers a short list of process metrics. Most, but not all, of these are routinely produced at the moment in some states. Some are not produced

because they require certain expensive-to-collect data elements.



**ACCESS TO WC SYSTEM**

Compensability Gateway	% Denied & Later Paid % Denied & Never Paid Length of "Pay without Prejudice Period"
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**MEDICAL CARE**

Access to Care	% Reporting Big Problems Getting Desired Care
Appropriateness of Care	% with pain meds receiving opioids % Nonsurgical cases who receive opioids longer term & with non-formulary drugs % with surgery % with back surgery % with durable medical equipment % RX dispensed by physicians
Satisfaction with Care	% Overall Satisfied % Receiving Same or Better Care than Usual Non-WC care
Timeliness of Care	% with Problems Getting Timely Appointment # of Days from Injury to 1st Non-emergency Treatment



**TIMELY FIRST PAYMENT**

Timely Receipt of First Indemnity Payment	% Timely First Action # Days from Injury to First Payment # Days from Injury to Notice to Payer # Days from Injury Notice to First Payment
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**MEDICAL COST**

Managing Medical Prices	Average Price Paid for Professional Services Average Price Paid for Hospital Outpatient Services Average Price Paid for Ambulatory Surgery Centers % Medical Payments in Network
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**DISPUTES**

Use of Attorneys by Workers	% Workers Represented by Attorney
Use of Dispute Resolution	% Claims with Dispute (Informal or Formal) % Claims Entering Dispute (CED) Process that Resolve Before 1st Informal Event % of CED Resolved at First Informal Event % CED Resolved between First Informal Event and First Formal Event % CED Resolved at Formal Event
Sources of Disputes	% Disputes by Type of Issue
Speed of Resolution	# Days from CED TO Final Resolution
Satisfaction with Fairness of Process	% Assessing Informal or Formal Dispute Resolution on a Fairness Scale

**CONCLUSIONS**

- Many states have embraced metrics-based monitoring of system performance. This helps to improve system stability by enabling more timely mid-course corrections where needed. It also helps to avoid reforms that address "problems" that are not material to system outcomes. Prior to regular use of metrics, systems more often experienced cycles of crisis-reform-crisis again.
- Feasibility is no longer an issue. A number of states routinely create many metrics listed in Tables A and B, and monitor performance.
- However, data collection and analysis often requires a significant resource commitment. Some states have successfully built such capacities.

Examples are cited above. Other states leverage the resource commitments made by payers in organizations like CWCI, NCCI, WCRI, and independent rating bureaus. These organizations have decades of experience on (1) what is feasible and valuable to collect, (2) what might be a waste of resources to try to collect (either because the data element may not be widely available or because the reliability of the data element may be limited), and (3) how to analyze the data. Leveraging existing organizations is much less costly, but cost may be only one of several considerations.

- Metrics are commonly used for internal benchmarking – monitoring trends within a state. They are also used for external benchmarking – monitoring how State X performs relative to other

states. Both are useful in different ways. A single state can do internal benchmarking itself. However, external benchmarking requires special methods to make meaningful interstate comparisons. Hence, external benchmarking is much more challenging for a single state to accomplish.

- The most effective approach is to monitor a limited set of core outcomes achieved by both injured workers and their employers. For workers, the core outcomes focus on benefit adequacy, recovery of health and recovery of earnings power. For employers, the core outcomes involve costs and returning valuable workers to productive employment.
- It is tempting to monitor a large number of metrics. That would be a mistake – better to use a limited number of metrics to focus on the Big Six outcomes.

• It is also beneficial to monitor a limited set of system processes that are critical to achieving the core outcomes for workers and their employers. Understanding the performance of these processes can help understand the drivers of superior or less than superior core outcomes.

• In larger states, it may be useful to separately monitor different regions within a state because there may be large differences in performance. Many published metrics depict means (average value) of a metric. An important limitation is that changes in the mean value could be due changes values in many cases or changes in a small number of extreme cases. A more valuable approach with many metrics is to monitor the median (50th percentile – the “typical case”), 75th percentile (“larger case”), and 90th percentile (“extreme cases”).

## Accidentally

Listen to the IAIABC’s “Accidentally” podcast to hear Jennifer Wolf Horejsh ask thought provoking questions, raise awareness of emerging issues, and offer insights on workers’ compensation.

You can find “Accidentally” at [www.iaiacb.org/podcast](http://www.iaiacb.org/podcast)



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With conferences, webinars, training modules, and podcasts offered throughout the year, the IAIABC is an excellent source for the latest education on workers’ compensation. Learn more at [www.iaiacb.org/educationhq](http://www.iaiacb.org/educationhq).

# IAIABC Innovation Awards

The IAIABC introduced its first-ever Innovation Awards in 2016, recognizing two jurisdictions for their use of innovation to better serve injured workers and employers by utilizing technology and deploying resources in new ways. Eight jurisdictions submitted fourteen different proposals for the Innovation Awards, and in the end, the winning projects were Washington State’s “Return to Work Partnerships Program” and Virginia’s “Innovation and Automation in ADR.” Here, Washington State and Virginia share insights into the projects that won them each an inaugural IAIABC Innovation Award.

## Washington’s Return to Work Partnerships Program, Improving Injured Worker Outcomes



Ryan Guppy and Victoria Kennedy of the Washington State Department of Labor and Industries

Washington’s Department of Labor & Industries (L&I) is committed to innovative ways to help injured workers heal and return to work. Early return-to-work assistance and vocational services identify and address return-to-work barriers, ensure injured workers get timely support that prevents long-term disability, restores their quality of life, and saves money.

L&I’s leadership committed to an enterprise goal to “help injured workers heal and return to work”. To change the culture of its system – including workers, employers, providers, and staff – L&I instituted

two initiatives to identify injured workers at risk of long-term disability and get the right services to them at the right time (very early in the claim). These initiatives employ predictive analytics along with using existing partnerships with the private vocational rehabilitation community in new ways. The results clearly demonstrate that more injured workers are returning to work and retaining their pre-injury skills. For employers, claim duration and costs are going down. For staff, caseloads are becoming easier to manage.

Like most workers’ compensation systems, Washington’s long-term disability claims comprise 9% of cases, but account for nearly 86% of costs. Additionally, opportunities for vocational assistance were identified late in the claim, a median of 250 days after initial time-loss payment, which made return to work and mitigating or preventing disability even more challenging – the battle was already lost in most cases. Furthermore, the focus of vocational assistance referrals was on producing a report that determined employability to help close a claim, rather than promoting recovery and return-to-work.

In addition, L&I’s regional return-to-work professionals whose role was to provide early services received referrals through a batch process that did not use the robust data available to them. Most of the staff’s time was focused on case-specific requests from employers or claim managers.

Washington data shows that in the first quarter following injury, the probability of an injured worker returning to work is 92%; by the end of 12 months, the probability drops to 32%. For the average vocational referral, only about 8% resulted in a return to work. How could L&I change these outcomes and prevent long-term disability? They knew that initiating appropriate interventions sooner could improve care coordination and engage injured workers while they still have a connection to the workforce.

Innovations were initially implemented as pilots. The first effort addressed timing of vocational referrals. L&I’s most common vocational intervention is an ability-to-work assessment, or AWA, which had been primarily to determine injured workers’ employability or eligibility for retraining. AWAs are performed by private vocational rehabilitation counselors (VRCs) at L&I’s request for those workers unlikely to return to the job of injury—historically, about 25% of time-

loss claims. Their new focus was to initiate vocational interventions much more quickly.

In the past, referrals were at claim manager discretion, often when medical treatment was near completion. L&I’s experiment was to refer workers to a VRC after 60-70 days of time-loss, without regard to the status of treatment. The mantra became: “When in doubt, refer it out!” as they worked to change the culture and attitude of staff and parties involved in claims. They wanted medical providers to view vocational assistance as a service for their patient (rather than as a step toward ending benefits) and for employers to see this as return-to-work support for their injured employees. Overall, L&I’s approach was to make better use of resources already in their arsenal. L&I leaders were able to show claims staff that making referrals within 90 days of time-loss benefits led to more return-to-work outcomes. Staff began receiving a weekly list of claims with 60-90 days of time-loss, with instructions to make an AWA if the worker had not yet returned to work. This process was reinforced through bi-monthly “Gemba” walks (going to the place where the work occurs), where staff would discuss open referrals, and where supervisors and others could reinforce early referrals. As the data began to validate their process, they shared and celebrated results.



In 2013, before the pilot, L&I's median days of time-loss at the first referral stood at 250. By July 2016, the median dropped to 89 days. The shift to earlier referrals is saving an average of about 160 days of time-loss, even if outcomes are the same. However, the emphasis on earlier AWAs is generating great results in more injured workers returning to work.

The shift in philosophy for Washington has led to savings of hundreds of time-loss days, as well as increasing the percentage of workers returning to work – the most positive outcome for injured workers, employers, and the system at large.

Outcome data, particularly for referrals made in less than 90 days, shows both improved return-to-work outcomes and an increase in the percentage of workers found able to work at their job of injury. This means that, even when a return-to-work outcome isn't achieved, a greater proportion of workers have retained their pre-injury skills, making them good candidates for employment. Finally, workers who are able to work with transferable skills, the most

contentious outcome in a workers' compensation system, have significantly dropped. As shown on the charts below, the data for combined return-to-work and able-to-work outcomes and the transferable skills outcomes are reaching never-before-seen results.

At roughly the same time as the early AWA launch, L&I's researchers completed data analysis that helps predict early in claims which workers are likely to be long-term disabled.

Using thousands of historic claims, researchers found that, at about 40 days after claim receipt, those that will resolve quickly have done so. If a time-loss payment occurs at 40 days, the chance of a worker being off work at one year is much higher if certain factors exist: the worker received opioids, has a back injury, a small construction employer, to name a few. Using this data, claims are given a "RTW Score". Scores over a certain level are referred to regional return-to-work staff for interventions with the employer and worker intended to get workers re-employed in appropriate light-duty positions.

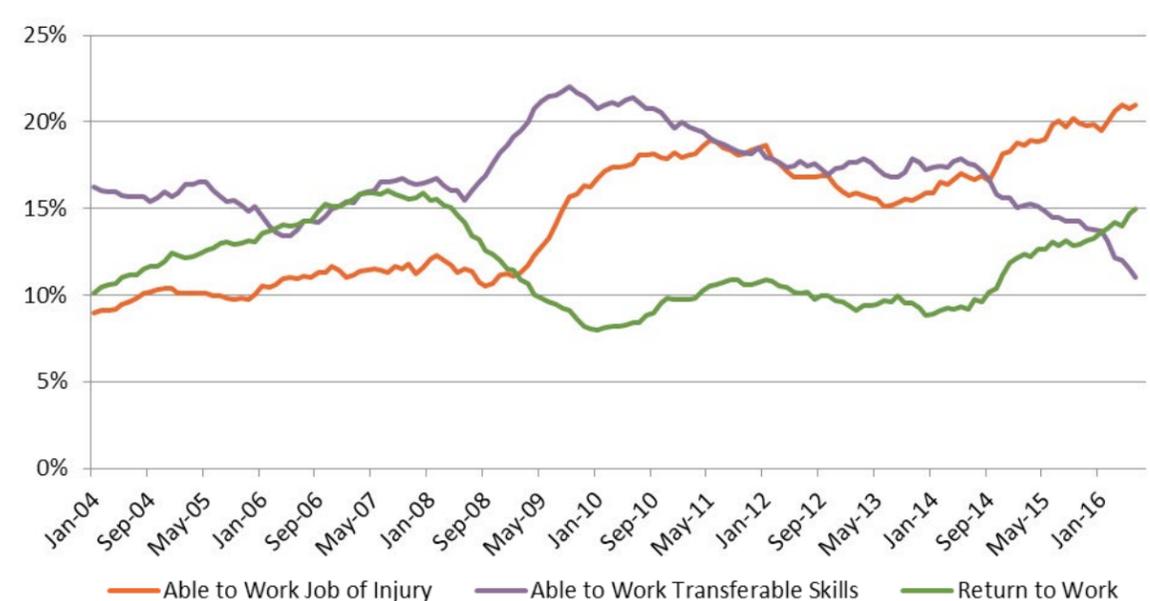
The regional return-to-work staff had different implementation challenges. By dividing this relatively small staff (about 25) into teams, they continue to work through development of best practices for initial, robust intake with the injured

worker, hand-offs to their VRC counterparts when a return-to-work with the employer of injury can't be achieved, exit conferences with the parties, and other interventions.

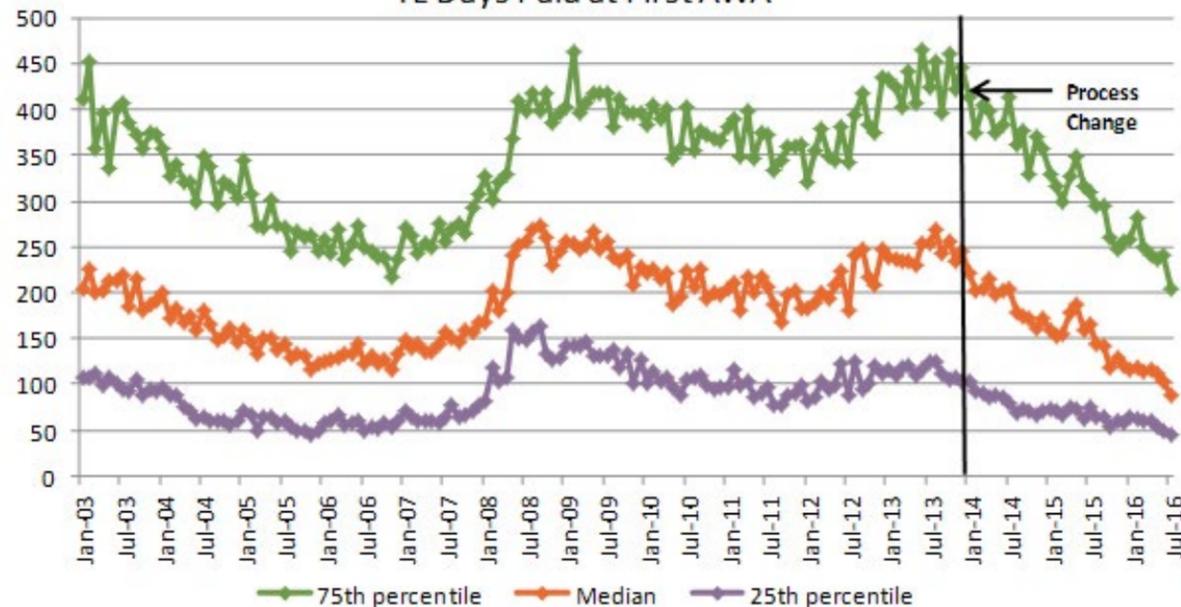
Outcome distribution when first AWA referral made with **less** than 90 days of time-loss (12 month moving average)



Outcome distribution when first AWA referral made with **more** than 90 days of time-loss (12 month moving average)



TL Days Paid at First AWA



# Innovation and Automation of Alternative Dispute Resolution in Virginia Workers' Compensation Commission

The vision of the Virginia Workers' Compensation Commission (VWC) is to "lead the nation as the most effective and innovative state agency." From 2012 to 2016, the VWC embraced alternative dispute resolution (ADR) to improve efficiency and claim resolution times. The dominant feature was implementation of an ADR electronic claims management system (ADR Tab). In a short 18-month window, VWC internal staff assessed business processes, developed technology, wrote and tested code, and implemented the system.

## BACKGROUND, IDENTIFYING CHALLENGES, AND EXPERIMENTATION

In 2012, the VWC identified a business problem with regard to the length of time required for case

adjudication. The average time from claim filing to resolution was 297 days. Management hypothesized that enhanced ADR might assist parties in resolving cases sooner.

VWC launched the ADR Pilot Project in November 2012. Cases with discrete, defined issues were referred for possible ADR. Issue facilitation and mediation were offered by telephone to make ADR convenient and affordable. Given the success of the ADR Pilot Project, the Commission endorsed expansion of ADR in February 2013.

Beginning with the ADR Pilot Project, the VWC demonstrated the willingness to experiment with change at the system level. Three subsequent pilot

projects expanded and altered business processes to best meet the needs of the public. VWC Staff then embarked on the process of developing and implementing the ADR Tab.

## THE CRITICAL ROLE OF TRIAGE

Virginia does not have mandatory mediation. In the pilot projects, staff quickly identified a need for case triage, or front-end neutral evaluation. VWC's ADR Tab assigns tasks which follow a logic-based progression of assessment, issue identification, scheduling, and resolution.

Cases are screened to match the process to the problem, enhancing efficiency. Issues may be appropriate for in-person mediation, mediation or facilitation by telephone/videoconference, an evidentiary hearing, or an on-the-record hearing. Personnel are matched to processes to ensure staffing is appropriate for the nature of the dispute. Deputy Commissioners (trial judges) conduct settlement mediations; staff attorneys mediate individual issues; trained ADR staff members facilitate issue resolution by telephone.



James Szablewicz, Charles Steepleton, Deborah Blevins, Paul Baitinger, Wesley Marshall, and Evelyn McGill of the Virginia Workers' Compensation Commission

**Task Activity Console**

**Task Details**

Task Name (Task ID): ADR Create Dispute (878073)  
 JCN: Z140520062927  
 Work Event: [Request For Hearing](#)

**Instructions**

**Standard Task Actions**

**ADR Create Dispute: Step 2 of 4**

ADR Event Type:  
 Please Select  
 Please Select  
 Facilitation  
 Mediation  
 Orientation  
 Full And Final

**Documents: Select ADR Dispute Referring Documents**

Work Event(s)	I/O	Sealed	Description	Service Date	Date Filed	Bundle
<input checked="" type="checkbox"/> <a href="#">Request For Hearing</a>	In	No	Request for Hearing	05/20/2014	05/20/2014	

Page 1 of 1 | Displaying Documents 1 - 1 of 1

Close | Continue

## FLUIDITY

VWC Staff recognized that the system had to allow seamless transitions between claims administration, litigation, and ADR. The principal logic involved non-linear parallel tracking. Claims may move back and forth between the claims system, ADR, and the judicial system, or co exist in all three simultaneously.

For example, a claim for permanent partial disability might be held in claims processing while medical records are obtained. At the same time, a judicial hearing may be scheduled on medical authorization and mediation for settlement is pending.

The system was designed to enable VWC staff to respond to the multiple and varied needs of the parties in a particular case. While protocols were built into the system to meet Virginia’s legal requirements, fluidity was a core value in development. The automated system enables our work; it does not define it.

**CONFIDENTIALITY**

Under Virginia law, confidentiality is required in mediation. No lawyers will candidly assess case strengths and weaknesses in mediation if a judge who will hear the case can access the information they present. The ADR Tab incorporates multiple layers of confidentiality, and only staff with ADR privileges have access to it.

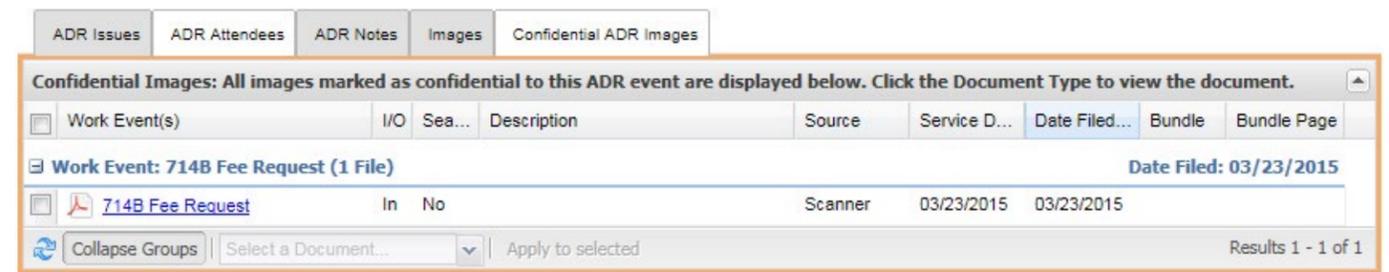
**Webfile:** Attorneys have the option of uploading ADR Confidential Documents so that they may be

accessed only by the mediator assigned to a case and that attorney. Confidentiality is insured externally to preclude disclosure to opposing parties.

**ADR Staff:** ADR staff members have access to the first level of the “orange screens,” where general information regarding scheduling of mediations and facilitation information is maintained.

Automatic call-ups pre-populate pages to ensure that ADR staff process required “tasks” and call-ups in a timely manner.

**Mediators:** Mediators are required to be certified by the Supreme Court of Virginia, and must adhere to ethical and confidentiality requirements. Mediators have access to a second level of “orange screens” in the cases to which they are assigned. Confidential mediation documents, mediator notes, and other protected information are housed at this level.



**CHANGING THE CULTURE**

Because Virginia does not have mandatory mediation, the success of expanded ADR required a paradigm shift. Internal and external parties needed to learn the “language of ADR,” and to accept it as a valid alternative to litigation.

Multi-faceted communication was a hallmark of the project, as the VWC continuously sought input from all stakeholders. Internally, this included long-term strategic planning sessions with an outside facilitator; conversations and training sessions with all VWC departments; a systems analyst to translate the business processes for the program developers; and monthly meetings for the ADR team.

Externally, this included presentations to state and local bar associations; public service segments on television stations; publication of articles in national and state-wide trade newsletters and magazines; and presentations at VWC attorney, adjuster, and educational conferences.

**A SUCCESS STORY**

When the VWC implemented its first ADR Pilot Project in 2012, the average length of time for claim filing to adjudication was 297 days. By June 2016, it had fallen to 209 days, a 31% decrease.

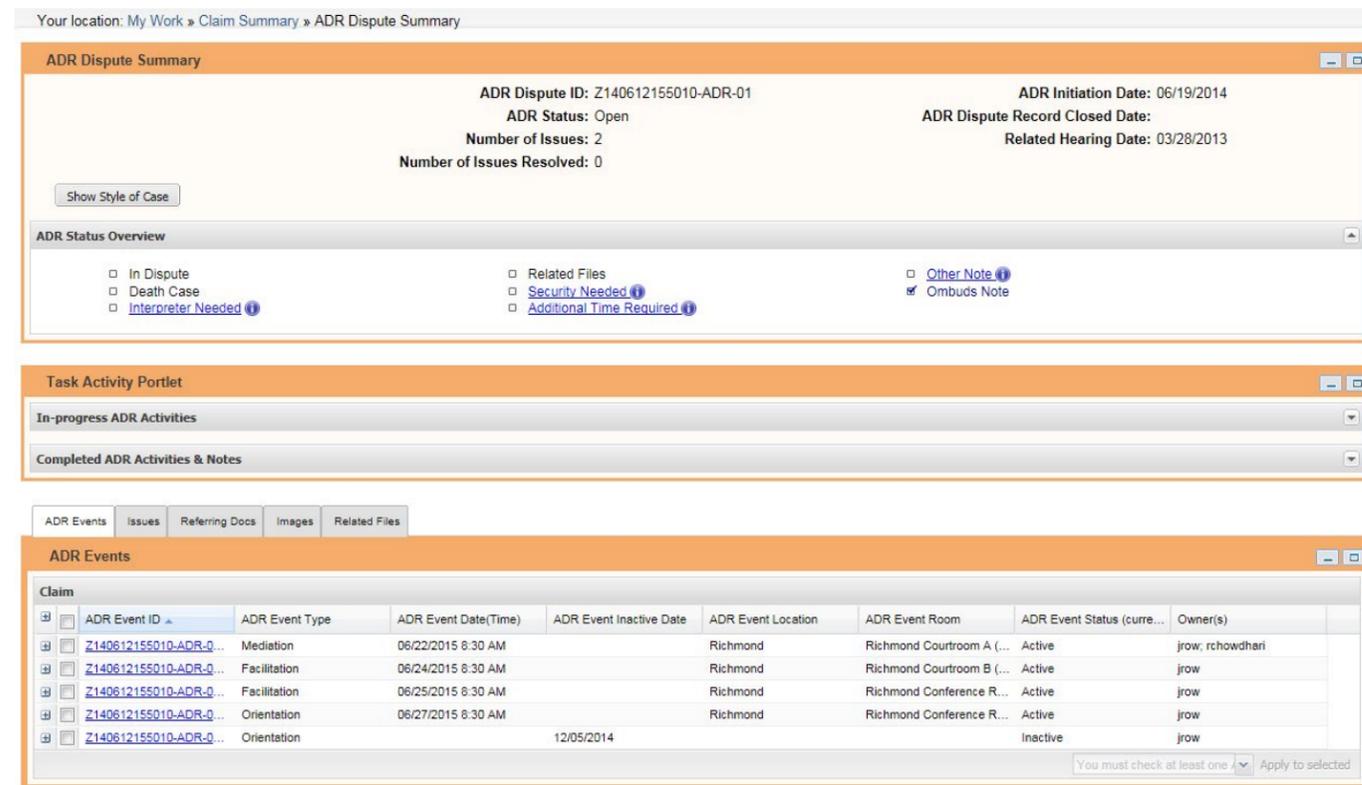
In 2012, VWC conducted 213 mediations. By 2015, there were 1,417 ADR mediations or facilitations. The growth of over 500% in 3 years is evidence that

innovation is resolving the business problem of meeting the demand for mediation services.

In a short time, the ADR Tab has created significant efficiencies at the VWC. It eliminated layers of manual recordkeeping and reporting. Notices and correspondence are automatically generated by the system. Outlook calendar data is pulled for attorneys and staff to automatically prevent scheduling conflicts. The conflict check system also automatically ensures that judges do not sit on a case they previously mediated.



These business processes and automation can be adopted elsewhere. The system prompts users to the next step, but allows for variation at any point in the process to accommodate the unique problems in a particular case. In an increasingly impersonal world, automation helps VWC keep the person in the process.



# Moonlighters Wanted

**Terrance J. Bogyo is a self-described “student” of workers’ compensation systems who specializes in their performance and comparative analysis. He speaks widely on workers’ compensation and occupational safety and health issues.**



## INTRODUCTION

Sarah rushes home from her day job to change for her shift at the local hotel lounge. Childcare worker by day, bartender by night—a tough grind but with student loans and a mortgage, options for making ends meet are slim.

Most of us know someone like Sarah. More than one in twenty workers in Canada, the US, and Australia are engaged in “concurrent” employment. Among younger workers—particularly women—the prevalence is much higher. In certain occupations, multiple job holding is a fact of life for as many as a third of workers.

The risk of injury is inherent in every work place. A disabling work injury in one job may result in a disabling condition preventing work in concurrent employment. Workers and employers may expect workers’ compensation coverage to extend to income losses from all employment; the reality may leave many workers’ and their families with gaping holes in their finances following a work injury.

To help define the range of rules, I invited IAIABC member jurisdictions to participate in a survey on how concurrent employment in their state or province. The results to date reveal a significant variance in policy and coverage. This variance has implications for workers, employers, and policy makers.

## RATE OF MULTIPLE JOBHOLDING

Whether you call it-- moonlighting or multiple-job holding, concurrent employment-- many people hold two or more jobs. The US Bureau of Labor Statistics (BLS) reports the national rate of multiple job holding was 4.9% of the employed labor force. Regional differences are significant with the New England rate at 6.2% for 2014. State rates of multiple jobholding range from a low of just 3.3% in Florida to 8.7% in South Dakota. (See BLS, “Multiple Jobholding in states in 2014”, Monthly Labor Review, August 2015)

According to the latest Current Population Survey data (BLS, [Table 36](#)) for 2015, multiple job holding is highest in younger individuals (Age 20-24 years”) at 5.7% of the employed population in that age group, “widowed, divorced or separated” at 5.2% and “single” at 5.1%. Women age 20-24 have the highest rate of multiple jobholding at 6.9%.

Certain occupations have rates of multiple jobholding that are more than double the national rate. A 2010 BLS report summarized the occupations for men and women with the highest rates of concurrent employment:

Sex and occupation	Multiple Jobholding Rate (percent)
<b>Men</b>	
Firefighters .....	28.6
Emergency medical technicians and paramedic .....	20.1
Secondary school teachers .....	14.0
Social workers .....	13.5
Elementary and middle school teachers.....	11.5
<b>Women</b>	
Dental hygienists .....	12.9
Psychologists.....	12.5
Postsecondary teachers.....	11.9
Physical therapists.....	11.7
Therapists, all other .....	11.5

Source: Hipple, Stephen F, “Multiple jobholding during the 2000s”, Monthly Labor Review, July 2010.

Canadian data shows a similar pattern with a 5.3% prevalence of multiple jobholding overall. The service sector has a higher incidence of multiple jobholding at nearly 6% (based on Statistics Canada, [CANSIM 2015 data Table 282-031](#)). Multiple jobholding among women and younger workers is higher than the overall average.

## WORKERS’ COMPENSATION APPROACHES TO CONCURRENT EMPLOYMENT

A work injury can result in temporary total disability from both the accident employment and any other employment. For the purposes of this analysis, only the policies regarding temporary total disability from all employment for multiple jobholders are considered.

There are two main approaches to work-injury compensation for temporary total disability for workers with concurrent employment.

1. The first approach considers losses from the accident employer perspective: the employer purchases insurance and pays a premium based on the worker income from that employment; in the event of an injury, the workers’ compensation insurance indemnifies the worker’s wages (subject to the compensation rate and any legislated restrictions such as waiting periods and maximum benefit limitations) and covers the medical expenses.
2. The second approach is from the workers’ perspective: workers’ compensation is an



inclusion of some earning losses beyond those associated with the accident employment.

**CONCURRENT EMPLOYMENT SURVEY**

To better understand how workers' compensation views concurrent employment, I initiated a survey of North American workers' compensation jurisdictions. The survey contained the following preamble:

*Between 5-10% of the employed persons are multiple jobholders, that is, persons employed in two or more separate jobs at the same time. Terms that cover this situation may include, Concurrent Employment, Multiple Employers, Second Job and Moonlighting.*

*In many cases, a work injury in one job will cause the worker to be disabled from all employment. Some workers' compensation jurisdictions cover the losses from these second or other jobs including self-employment regardless of whether or not this other employment was within the scope of workers' compensation coverage; some limit coverage to earnings from other employment that would be within the scope of the workers' compensation coverage. Others require the accident employer be aware of the secondary employment; still others will consider coverage only if the earnings have been*

exclusive remedy that prohibits the right to sue for damages—damages that would include losses beyond the wages of the accident employment; as a substitute for individual justice, workers' compensation considers the impact of work-injury on all employment earnings, paying income loss (subject to the compensation rate and any legislated restrictions) and medical expenses. From this perspective, the losses the worker incurs from the accident employment and other wage loss from other employment may be taken into account (again, subject to statutory rate, waiting periods and maximum benefit limitations).

Between these two approaches are a variety of legislative and policy provisions that allow for the

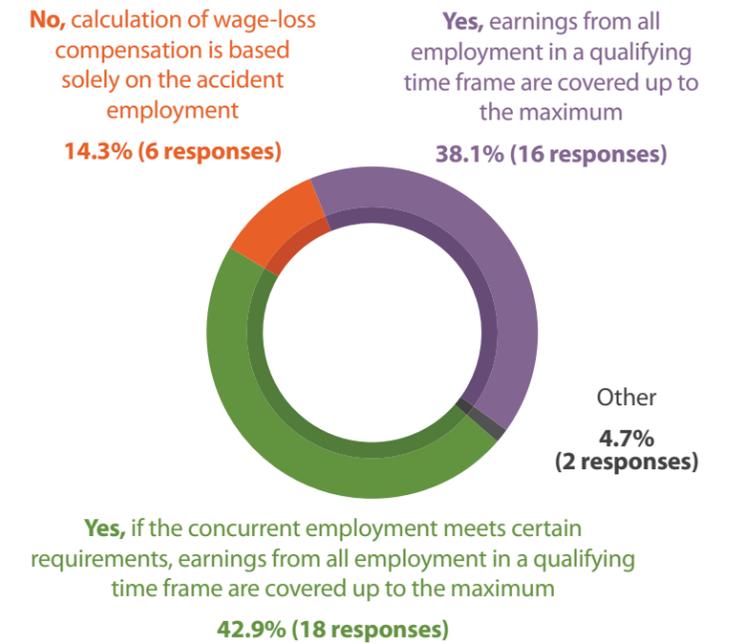
*reported to the tax authority (IRS in the US, CRA in Canada). In a few jurisdictions, coverage will only be extended if the secondary employment is "similar"; for example, if a worker is employed as a File Clerk in one firm and a Retail Clerk in another, the jurisdiction may consider this employment similar and allow the earnings from both employers to be considered in the calculation of compensation for temporary total disability from both. The survey itself was administered via SurveyMonkey.com by invitation made to individuals familiar with the law and policy in each jurisdiction. Duplicate responses were checked for consistency with each other and follow-up questions to respondents or the workers' compensation authority in the jurisdiction for clarification. Responses between July 16, 2015 and June 23, 2016 were considered in this analysis.*

*The focus of the analysis at this stage was to confirm the common policy and legislative approaches currently in place. This is a necessary interim step to generating a comprehensive, current table of individual state/provincial rules regarding concurrent employment for temporary total disability.*

**SURVEY RESULTS**

The survey consists of a primary question regarding how earnings from concurrent employment are considered. Subsequent questions are focused on those jurisdictions that identified legislative or policy restrictions on earnings from concurrent employment. To date, 45 jurisdictions in Canada and the US have responded to the survey. Two of the responses repeated data on two jurisdictions and one response was incomplete; these three responses were ignored in this analysis. The 42 (65.6%) of a potential 64 jurisdictions (50 states, D.C., and 13 Canadian Provinces/Territories) or were analyzed for this report.

The primary question "Does your jurisdiction include income from concurrent employment in the calculation of temporary disability compensation (wage-loss)?" the survey collected the following results:



For those who indicated that earnings from concurrent employment meeting certain requirements could be considered, the most commonly noted requirements were as follows:

Covered by Workers' Compensation	41.67%
Reported to the Tax Authority	29.17%
Exclude earnings from Self-Employment	16.67%
Similar Occupation	12.50%
Known to the Accident Employer	8.33%
In Same Jurisdiction	4.17%

Note that respondents were able to select all, one or none of these alternatives. Respondents to the survey were also invited to note any other restrictions.

**WORKERS' COMPENSATION FOR CONCURRENT EMPLOYMENT**  
- POLICY CONTINUUM.

Wages from all employment ← → Wages from accident employment only

**Wages from concurrent employment allowed in some cases if the following apply:**

- Wages are from self-employment
- Reported to taxation authority
- Accident Employer is aware of the concurrent employment
- Concurrent employment is "similar"
- Concurrent employment is workers' compensation insured (same jurisdiction)
- Earnings from concurrent employment meet other requirements

The narrative responses included the following paraphrased responses:

- It is the employee’s obligation to provide insurer with proof of wages from 2nd job.
- It is the employer against whom the claim is being made that has the responsibility to secure wage information from the concurrent employer.
- Concurrent employment means employment in which the employee was actually employed at the time of the injury and would have continued to be employed without a break in the term of employment if not for the injury.
- The injury must impair the injured worker’s ability to earn wages in the concurrent employment.
- A “dual employment” fund reimburses the employer/carrier paying increased benefits due to other employment under specified situations
- A 13 week period of time prior to an injury is used to calculate the TTD rate where concurrent similar employment is allowed.
- Working at the non-accident job during a period of temporary partial disability may reduce or eliminate a temporary disability benefit even though the partial disability prevents the employee from working the accident job.
- The employer on whose job the employee was injured pays the concurrent wage and can request reimbursement from the Second Injury Fund.
- If the non-injury employer’s wages make up more than 20% of the total AWW, the Second Injury Fund Reimburses the carrier for non-injury employer wage loss.

**DISCUSSION**

Workers’ compensation has a wide range of legislative and policy responses to wage loss from concurrent employment. The range includes policy applications where the earnings from concurrent employment

are fully covered, partially covered, conditionally covered, conditionally excluded or totally excluded. Where earnings from concurrent employment may be considered, there may be an onus on the worker or the employer to substantiate earnings.

In some cases, the inclusion of concurrent action relies on prior action by the worker. That action may include notifying employers of concurrent employment. Such notification carries with it potential barriers for the worker. It is not clear if all employers would look favorably on certain types of concurrent employment. Disclosure prior to hire could influence the hiring decision. In states with the added restriction of coverage having to be in similar work (or other condition), there may be limited opportunity to confirm such coverage a priori.

The inclusion or exclusion of concurrent employment earnings from coverage changes the value proposition of workers’ compensation. For employers, it is not clear that the exclusion of concurrent employment coverage results in lower premiums. The exclusion may create a gap in the benefit coverage packages offered by an employer. For workers, the lack of clarity and possible additional disclosure burden can result in gaps in the workers’ insurance profiles. A normally prudent individual may have insufficient information to properly assess his or her exposure to loss in the event of work injury.

From an inter-jurisdictional perspective, the lack of consistency across jurisdictions introduces important variables in the comparison of benefits, costs, and premiums. Jurisdictions most inclusive of concurrent earnings and higher rates of multiple jobholding may reasonably be expected to experience higher costs than comparators who highly restrict or exclude coverage for concurrent employment.

**CONCLUSION**

Concurrent employment is a fact of life for many workers, particularly younger workers, women and those in certain occupations. Workers’ compensation systems vary widely in their approaches to considering earnings from concurrent employment, as evidenced by the results of this survey. At present, there is no one source of information regarding the coverage of earnings for temporary total disability in all jurisdictions in Canada or the US. Workers and employers need this information to properly evaluate the financial risk and coverage profiles they face.

**LIMITATIONS**

These results reflect responses provided voluntarily by participating jurisdictions and may not fully

reflect the range or extent of the policy approaches to temporary total disability by all workers’ compensation systems. The survey was limited to consideration of cases of temporary disability and do not necessarily reflect policy or legislation regarding permanent disability. Similarly, the study does not consider the policies that may exist regarding temporary partial disability.

**FURTHER RESEARCH**

The purpose of this article was to raise the issue of concurrent employment and assess the range of policy options among respondents to an initial survey among workers’ compensation jurisdictions in North America. The ultimate goal is to produce a resource that accurately reflects the current legislation and policy position of each workers’ compensation system with respect to temporary total disability. To that end, the current survey remains open and results will continue to be collected over the coming months. Jurisdictions interested in participating in the survey are welcome to contact the IAIABC.



**LIST OF JURISDICTIONS WITH COMPLETED SURVEY RESPONSES**

# Conversations with Christine Baker, Director, California Department of Industrial Relations



Christine Baker is the Director of the California Department of Industrial Relations, and the first woman to serve in that capacity. She has extensive experience working with labor and management in her roles at the California Division of Labor Statistics and Research; the California Division of Workers' Compensation; and California Commission on Health and Safety and Workers' Compensation.

*Perspectives Magazine:* How would you describe workers' compensation in California today?

**Christine Baker:** In 2012, a major reform of workers' compensation was negotiated by labor and management and signed by the Governor. This legislation increased permanent disability benefits by 30% and improved the delivery of care by introducing independent medical review to resolve medical disputes. Medical provider networks and access to quality evidence-based care were both improved as well.

As a result of the reforms, the state of California has reduced workers' compensation insurance rates, and the estimated savings for employers are approximately \$800 million a year after the 30% benefit increases are taken into account. Efforts continue to ensure that the system is more transparent to stakeholders and that fraud reduction/elimination is a major focus.

So, overall, the workers' compensation system in California has improved significantly under Governor Brown's administration.

*PM:* What is workers' compensation doing right?

**CB:** California is using evidence-based medicine and data analytics to measure improvements, timeliness of delivery, outcomes, and costs, and to detect fraud. Research is ongoing to evaluate the benefit levels and the replacement rates.

Almost any large implementation project in California uses empirical data and research. The drug formulary project is based on a study conducted for the department by RAND that looked at formularies in other parts of the country and in other systems. We are taking the best of that research and moving forward with a plan. I believe that California does extremely well with research-based policy and implementation.

*PM:* What do you see as the biggest challenges for workers' compensation in the coming decade?

**CB:** Labor and management struck the initial bargain that underpins workers' compensation, and it is important that they remain the key stakeholders. One issue of rising concern is the "gig economy," which came about because of the advancement and proliferation of web-based technology that facilitates offering and performing labor and services through websites and web-based mobile

**Labor and management struck the initial bargain that underpins workers' compensation, and it is important that they remain the key stakeholders.**



applications. Companies in this sector offer work that may be off site, temporary, or part time and provide workers with substantially greater flexibility in terms of schedules and work location. But some of those companies classify those workers in ways that have an adverse impact, such as calling them contractors instead of employees. In exchange for flexibility, those workers are left without the benefits of workers' compensation, health-care coverage, or unemployment insurance. The system in place may not be able to handle such issues.

*PM:* What are the opportunities for workers' compensation systems in the coming decade?

**CB:** The workers' compensation system has many opportunities for improvement and change.

First, we need to integrate the delivery of benefits. Why is medical care covered by a workers' compensation policy, yet health care is covered by another policy? The two different programs should work in tandem to treat the worker more holistically.

Second, the retraining of injured workers could be incorporated into our apprenticeship programs and models.

And third, we need to look beyond the litigation model for the majority of delivery of benefits. It is

neither efficient nor effective in getting workers back to work after an injury.

**PM:** How can the system ensure workers understand how to navigate the system if they suffer a work injury or illness?

**CB:** The most important way is ensuring that workers are well informed. In California, benefit notices are required to be sent to workers, the Department of Workers' Compensation (DWC) website has a handbook on navigating the workers' compensation system, and each division office has an information and assistance officer to answer questions and help injured workers through a variety of contact methods. In addition, California has a "carve out," which allows labor and management to create their own alternate dispute resolution program. A key component of this program is an ombudsman to assist workers and answer their questions.

Workers filing a claim need continuous communication with their medical providers and others involved with resolution of issues. When problems arise, most of the time it is due to a breakdown in communication.

**Independent research is key to identifying the problems and finding solutions based on empirical evidence and not just driven by anecdote.**

**PM:** How can the system ensure employers understand their obligations when an employee suffers a work injury or illness?

**CB:** The state and other partners, such as the insurance industry and self-insurance community, can help distribute information about rules and obligations. As our business owners become more linguistically diverse, we need to keep this information available in the appropriate languages. Much of our information is already available in multiple languages: Spanish, Chinese, Korean, Tagalog, and Vietnamese.

**PM:** What lessons have you learned from beyond California that has helped improve the California workers' compensation system?

**CB:** California has invested a great deal in research- and data-driven policy. For example, fee schedules are pegged at the appropriate levels to ensure access and yet be cost efficient. I was at a National Academy of Social Insurance (NASI) meeting 20 years ago, at which participants discussed how the Medicare fee schedule is developed. That information was so informative that it helped California move to a Medicare fee schedule with a multiplier. We can and should look at other successful systems. Fraud detection in Medicare and medical dispute resolution from group health are a few methods that can be reviewed for use in workers' compensation. Most of our studies involve looking at other states and getting feedback from other programs. Each state differs in industry mix, employment and unemployment, benefits, and replacement wages. Each state needs to prioritize its needs based on benefit improvements for workers and costs for employers.

The workers' compensation system is for injured workers. A balanced system where there is labor and management support for any change to the system is important. Once labor and management agree, others such as doctors, insurers, attorneys can weigh in on the need for change.

Independent research is key to identifying the problems and finding solutions based on empirical evidence and not just driven by anecdote.

Evaluation of reforms is also critical for determining whether the changes are occurring as intended. Outcomes can be predictable, but it is also useful to find out whether something is working better than intended or that something needs fine tuning. California has achieved a change this year through the legislature with the utilization review program. California conducted a study of medical delivery, in which it was found that we could suppress utilization review during the first 30 days of treatment, while a worker is under the employer's control. We also found that we needed to lift the bar for the utilization review organizations and require certification and track the utilization review decisions.

**PM:** You have been involved in workers' compensation public policy for many years. What are you proud of?

**CB:** I am proud of the labor management coalition that has accomplished so much together. We not only increased benefits for workers by 30%, but also reduced costs for employers. I am also proud of the empirically based policy that has been created. Most of all, I am proud of my team, which works tirelessly to support the workers' compensation program in California. I also want to commend the good players in the system, who make every effort to support injured workers in their recovery and return to work.

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**IAIABC**  
 Find Information. Connect People.

**PM:** You have been to many places around the world; can you share a favorite place or travel memory?

**CB:** I am fortunate in having been able to travel to many countries. Each country gives me a unique insight into lifestyle, culture, and priorities. I love the order in Switzerland and Japan and social systems in Germany, Norway, and Slovenia. I love the passion for life and art in Italy, Argentina, Chile, Mexico, and Uruguay. I was moved by the archeology and antiquities of Greece, Egypt, Pakistan, Iran, and Afghanistan. I enjoy exploring diverse cultures, foods, and places all around the world.