

Claims



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WITH AGE COMES WISDOM AND... LARGER WORKERS' COMP CLAIMS

By Scott Berglund, Esq. and Jose Pagan, Esq.

As the U.S. work force continues to age, this will affect how workers' compensation claims are handled. The Bureau of Labor Statistics estimates that over the next five years, the percentage of people over the age of 45 in the U.S. workforce will increase to over 40% and the number of workers 55 or over will grow an estimated 25%.

In the near future, approximately two out of every five workers will be 45 or

older. Concomitantly, approximately one out of every four workers will be 55 or older in the coming years. As the workforce ages, we should anticipate the effect this will have on both the types of workers' compensation claims being reported, as well as how these claims are handled.

How age affects injuries

As people age, they see changes to their health, which may be completely unrelated to any workplace activity or injury.

Nevertheless, these changes can adversely affect the number of reported accidents and injuries within the older population, as well as the severity of those injuries. This affects how claims professionals will need to respond in order to improve results and help those injured workers return to productive employment.

Granted, older workers are more likely to have pre-existing physical conditions compared to their younger counterparts. This could include orthopedic problems

such as loss of muscle strength, decreased range of motion or flexibility, arthritis, and prior joint or spine surgeries.

Any one of these physical conditions could affect the typical lifting, carrying, pushing, pulling, bending, reaching or squatting motions associated with many workplace injuries. Similarly, older workers may also experience issues with other less noticeable medical conditions, which affect balance (such as Parkinson's and other movement disorders) and memory (such as dementia, Alzheimer's and other similar nervous disorders). Some of these conditions and their treatment can also affect a person's endurance and vision.

Pre-existing conditions come into play

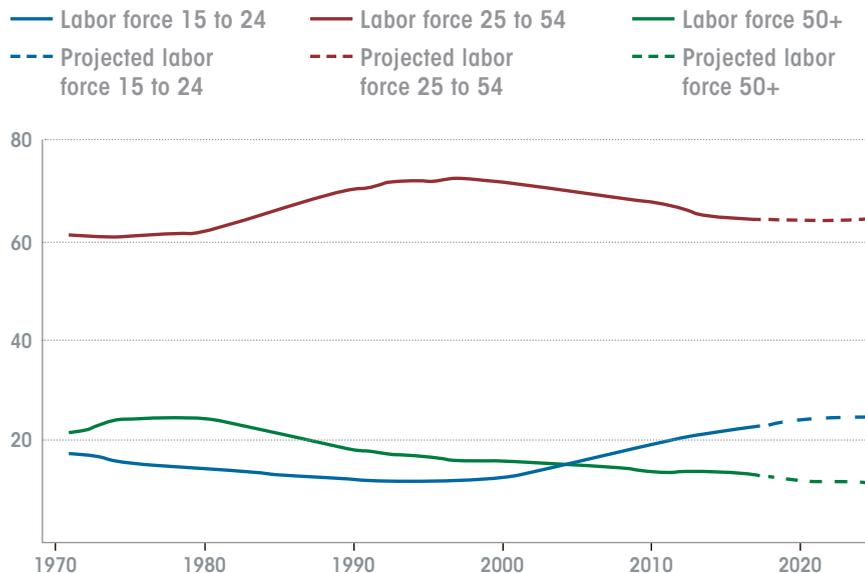
Treatment for an injured worker with any underlying condition of this nature could complicate the claims professional's management of the case. If a worker already manifests any of these physical or medical issues, dealing with a new injury could complicate the ability to resolve both the injury and the claim quickly.

Some factors affecting the claims process could include pre-existing treatment for conditions such as pain, diabetes, heart disease, hypertension, cholesterol, cancer and more. These may be aggravated or need to be treated and controlled to address the new injury.

A worker with these types of pre-existing conditions may already be prescribed multiple medications. How they affect or interact with treatment for a workplace injury can complicate or prolong the required treatment. Moreover, some of these pre-existing conditions, or the medications used to treat them, could potentially increase the likelihood of the occurrence of the work-related accident.

Medication affecting memory or balance can alter cognitive or physical functions, leading to falls. Some physical limitations and pain medication can cause strains, sprains and injuries triggered by physical exertion. If it can be proven, issues of apportionment should be considered.

U.S. LABOR FORCE SHARES BY AGE, 1970 TO 2014 AND PROJECTED 2014 (PERCENTAGE).



Source: U.S. Bureau of Labor Statistics.

In addition, some of these pre-existing conditions can be expected to not only increase the incidence of accidents and injuries with older workers, but are also likely to increase the severity of the injury resulting from a workplace accident.

Getting back to work

An injured older worker may take longer to heal than a younger employee, which could extend the payment of temporary total disability or temporary partial disability. Pre-existing conditions could limit a worker's ability to participate in traditional courses of medical treatment, such as physical therapy or surgery, or preclude the use of typical medications.

A patient's pre-existing conditions or interactions with previously prescribed medications may also require the use of alternative courses of treatment and more expensive medications.

These issues could also affect when Maximum Medical Improvement (MMI) is reached and the percentage of disability assigned to the injured worker. While every case is different, if an injured worker

is slower to heal, this could increase the permanent impairment assigned and affect settlement opportunities. It is possible that permanent total disability claims could increase due to the combination of pre-existing disabilities with any new restrictions associated with the work-related accident.

Examining other options

Some workers over age 62 who are eligible for Social Security may be less motivated to return to work after an injury if new physical restrictions are imposed. In those cases, if a return to work is less likely, there would be increased opportunities to settle.

The particular circumstances of the older workers' medical history could drive their decision to settle their claims. For instance, an injured worker with a more complicated medical history or with pre-existing, life-shortening illnesses could be more inclined to settle their workers' compensation claim.

Meanwhile, other workers with less extreme pre-existing conditions may be

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less likely to settle their claims for workplace injuries if they anticipate that their injury would require more lengthy palliative care. In either respect, the required Medicare Set-Aside associated with some of these older injured workers could pose an obstacle to reasonable settlements.

Due to these anticipated issues, it would be wise for the claims professional to explore the employee's pre-existing medical history early on in the claims process. This allows the authorization of appropriate medical care and specialties to accelerate the recovery and the return-

to-work process, and to obtain any necessary prior medical records.

With that early information, the claims professional can make an informed decision on compensability as well as any defenses regarding issues of major contributing cause and idiopathic cause. In addition, apportionment will also need to be calculated to ensure appropriate benefits are provided to the injured worker with non-work-related pre-existing conditions.

For difficult or complicated cases, consider assigning a nurse case manager. The nurse can help the claims professional with

the medical-based legal decisions of compensability and apportionment, as well as assist the injured worker by answering questions and providing coordination of care services. In the appropriate circumstances, the inclusion of a nurse case manager can expedite the appropriate handling and resolution of these claims.

Keeping some of these issues in mind will lead to a more productive 2018, for both claims professionals and injured workers. 📌

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