



**Metro**

Los Angeles County  
Metropolitan Transportation Authority

One Gateway Plaza  
Los Angeles, CA 90012-2952

213.922.2000 Tel  
metro.net

**FEBRUARY 20, 2014**

**TO: BOARD OF DIRECTORS**

**THROUGH: ARTHUR T. LEAHY**  
**CHIEF EXECUTIVE OFFICER**

**FROM: DEBRA A. JOHNSON**  
**INTERIM CHIEF OPERATIONS OFFICER**

**GREGORY G. KILDARE**  
**EXECUTIVE DIRECTOR OF ENTERPRISE RISK AND SAFETY**  
**MANAGEMENT**

**SUBJECT: FACTORS AFFECTING THE GROWTH OF THE WORKERS**  
**COMPENSATION CLAIMS RATE SINCE 2009**

### **ISSUE**

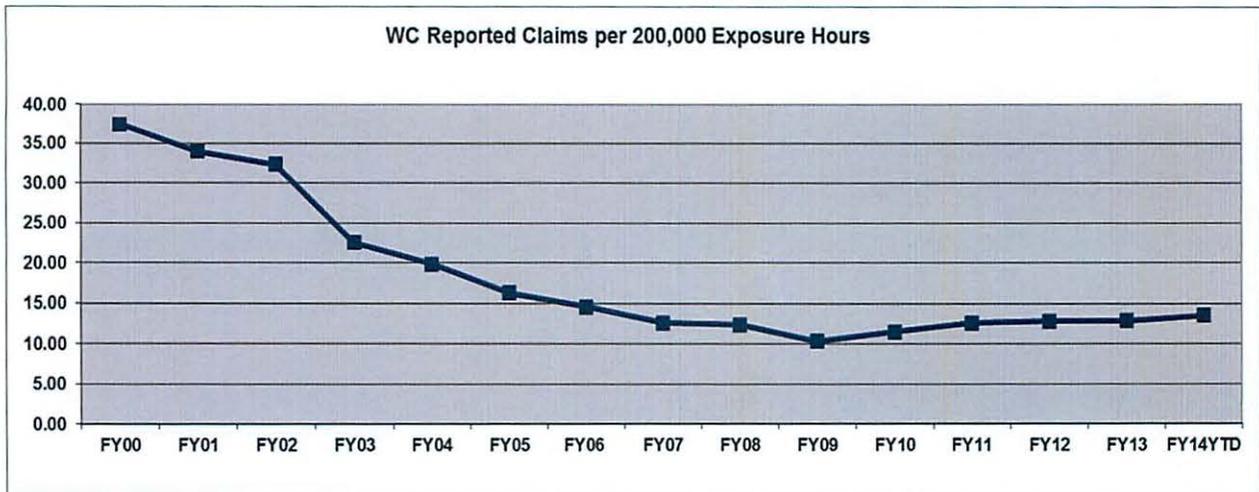
At the November 2013 System Safety and Operations Committee meeting, Director Fasana requested a report on workers' compensation claims performance since FY2000. Specifically, he requested staff to evaluate whether the claim reductions made by Metro since then, with the assistance of DuPont Safety Resources (DSR), have been maintained and what explains the increase in workers' compensation reported claims rate since FY2009.

### **DISCUSSION**

The rate at which employees report claims for industrial injuries depends on the interaction of multiple causal factors. Research into industrial injuries finds that these factors include pre-existing health conditions, employee age, the work environment, home life, external psychological stressors, the statutory workers' compensation framework, business processes and others.

The reported workers' compensation claims rate, year-to-date through December 2013, shows a continuing modest upward trend since Fiscal Year (FY) 2009. FY2009 represents the lowest industrial injury claim rate in Metro history. The FY2014 claim

rate, while up since historic lows, is well below the Metro claim rate that existed in FY2000.



### Workforce Aging and Obesity

Metro's workforce median age has increased since 2009 from roughly 47.5 years to just over 48 years. Industry research indicates that employee age does not seem to be an important factor in explaining claim frequency, overall, although some types of injuries are affected by age. Therefore, the modest increase in age is likely not an important determinant of our increase in claim frequency, but may be moderately affecting our rising cost per claim.

Obesity continues to be a major public health concern with obesity rates increasing by nearly 50 percent over the last 10 years and rates of morbid obesity (body mass index >50) more than doubling over the period (International Journal of Obesity, June 2013). Most notably published in 2013, the Gallup-Healthways Well-Being Index of June – September 2012 reported that transportation workers had the highest obesity rates out of more than a dozen industry groups surveyed, most likely due to the sedentary nature of the work. Although we have no independent means of analyzing obesity rates of our own employee population, we have no reason to believe we are different from national and industry trends. That is, obesity rates are increasing, with rates of morbid obesity increasing the fastest.

The National Council on Compensation Insurance research has consistently found that obesity is a major causal factor of industrial injuries and also affects the severity of injuries that occur. Specifically, even the moderately obese have 50% higher injury rates, nearly triple the cost of medical care and are off work five times longer for their industrial injuries. The morbidly obese statistics are much worse. As obesity rates have worsened and are expected to continue, upward pressure both on the rates of industrial injury and associated costs have and will continue to rise.

## **Changes in Employee Risk Profile and Operating Environment**

The underlying industrial injury hazards associated with different Metro occupations are not the same. Non-occupational factors affecting industrial injury rates such as smoking rates and obesity rates are also likely correlated to some occupation classes.

Consequently, different occupational classes have vastly different rates of industrial injury. For example, a full-time bus or rail operator has more than 15 times the rate of industrial injuries than a non-represented employee. Other labor groups fall somewhere in-between. Therefore, changes in the labor mix can affect the workers' compensation claim rate substantially. Although our labor force mix has not changed much over the period, the major planned service expansion in the near term may.

## **Retirements and Employee Discipline**

In California, subjective complaints such as pain or fatigue, even absent objective findings are compensable by statute. Pre-existing, non-occupational illnesses and injuries are also compensable if an occupational cause aggravates the pre-existing condition. Unlike some other states, in California, compensable claims can also be filed for cumulative work exposure. The relative ease of filing compensable claims allows for the abuse of the workers' compensation system.

While incorrect, some employees believe that reporting a workers' compensation claim protects them from the discipline itself. Filing a compensable claim may, however, protect some portion of employee's income stream in the event of a termination which is a significant incentive. Some employees may file claims in retaliation for prior discipline. Filing a workers' compensation claim prior to retirement may result in an employee collecting up to two years of temporary total disability benefits while retired and free medical care for the affected body parts for life, also a significant incentive.

Since FY2009, the low point in our workers' compensation claims rate, both employee retirements and employee discipline have risen markedly. Since 2005, when major workers' compensation reform legislation was implemented, strong positive correlations exist between the number of retirements occurring and the number disciplinary proceedings with our workers compensation claims rate.

## **Changes in Statutory Workers' Compensation Benefits**

In 2004, SB 899 dramatically reformed the State workers' compensation system by reducing permanent disability benefits, reducing the length of time employees could receive temporary disability benefits, adopting presumptive medical treatment guidelines as well as other changes. These reform measures effectively reduced the financial incentives to employees, as well as applicant attorneys, to file claims for

industrial injuries. Metro experienced declines through FY2009 resulting, in part, from these reduced incentives to file compensable claims.

After 2009, some legal rulings and statutory changes (e.g. SB 863 which was effective January 1, 2013) have eroded some of the cost reduction effects of SB 899. For example, changes to the Labor Code since 2009 have expanded the time employees have to use their temporary total disability benefit, indexed temporary total disability benefits to the Consumer Price Index (CPI) and increased permanent disability benefits by more than 30 percent.

Not only do these changes increase the marginal financial benefit to employees to file claims, the permanent disability increase has dramatically increased incentives for applicant attorneys to “manufacture” claims, particularly with employees they have represented on prior claims. These changes also likely influenced the modest rise in our workers’ compensation claims rate since 2009.

### **Extraordinary Events**

This year we have seen approximately 20 new reported claims resulting from pesticide exposure. These claims have arisen largely from one applicant attorney firm filing new injury claims for employees the firm is already representing on other claims. A multiple injury exposure claim, a fire, or other extraordinary event can trigger a large number of employee injuries, but they are very rare.

### **Safety Management Practices**

As a result of the DuPont Safety Resources contract, Metro implemented a variety of measures including: regular safety audits, safety management reporting, expanded discipline for safety violations, improved investigation of vehicle collisions and workplace injuries including the implementation of transitional duty assignments for injured employees and others.

In addition, several new practices have occurred that continue to improve our industrial injury performance since 2009. The first of which and most notable is the implementation and successfully defended legal challenge, related to the screening of bus operator candidates for the physical capacity to perform the essential functions of the position. All operator candidates must now complete this assessment successfully before matriculating into a permanent position. The failure rate is roughly eight percent. Prior to implementing this test, most of the applicants who are now being screened out would have been hired, with a greater risk of physical injury to themselves and perhaps passengers and third-parties. In January 2014, we also implemented a major update of our transitional duty procedures, starting the many steps in the interactive process for addressing occupational disabilities much sooner.

## **NEXT STEPS**

While some of the causal factors affecting the incidence of workers' compensation claims that we have identified above may be difficult or impossible to control, Risk Management, Transit Operations and Corporate Safety are pursuing several avenues specifically to improve employee injury rates. Following are several initiatives under consideration:

- The Director of the Center of Social Epidemiology and associated with the University of California Irvine (UCI), approached Metro with the support of the United Transportation Union, to research specific causes of injury and illnesses to Metro's operator population. Transit Operations management has approved the idea in concept with the specific research aimed to identify interventions that would reduce occupational and non-occupational illnesses and injuries in the operator population. UCI practitioners are still in the early stages of the research proposal for this long-term project.
- In March 2014, an extensive retraining of all Transit Operations management staff will be implemented, focusing on accident and injury investigation procedures, a review of workers' compensation statutes and disability management guidelines and laws. This retraining will be accompanied by a requirement for weekly safety audits by division management. In addition, a revision of Division Management Desk Procedures, including extensive accident and incident requirements will be distributed, with appropriate training, by fiscal year end.
- We have retained outside counsel to assess and review options for expanded physical standards for a variety of Metro occupations. We are also conducting an assessment of expanded wellness facilities at all operating divisions.