

Litigation
and
Cumulative Trauma Claims

Repetitive work

- Example- stacking boxes
- Bending, stooping, lifting, pushing, pulling, twisting, climbing

Cumulative Trauma

- A cumulative trauma (CT) is an injury that develops gradually over time due to repetitive use/motion.
- Because it is not a single incident, an employee may not know he or she has a **cumulative trauma** injury until he or she is told by a doctor.
- This means that it could be years after an employee stops working before he or she realizes that there is an injury caused by work.
- An employee has one year from learning the cumulative trauma injury was caused by work to file a workers' compensation claim.

Statutes

- **Is there a statute of limitations for a cumulative trauma work injury?**
 - If an injured worker does not make a claim for benefits from a work injury within a certain period of time, also known as the “Statute of limitations,” he or she can be prevented from receiving any benefits.
- The **statute of limitations** in California for a workers’ compensation claim is **one year** from the date of injury.
- The statute of limitations protects the insurance company from having to defend a claim long after the evidence to defend it is gone. However, an injured worker is not responsible for notifying anyone until he or she knows that the injury was caused by work.
- Since it can be hard for an injured worker to know if he or she has a cumulative trauma, the date of injury and statute of limitations needs to be adjusted for cumulative trauma cases beyond the period of exposure.

How do you determine the date of a cumulative trauma injury

- The date of injury of a cumulative trauma is when:
 - There is disability and the employee:
 - Knew the injury was caused by work; or
 - Should have known the injury was caused by work
- Many people, even attorneys, confuse the time period of cumulative trauma exposure with the date of injury of cumulative trauma.
- The purpose of moving the date of injury for the statute of limitations is to ensure that no employee is barred from getting workers' compensation benefits before he or she is aware they have an injury.
- The one-year statute of limitations for filing a workers' compensation claim for a cumulative trauma does not start until the injured worker knows the injury is from work.

Is a work injury specific or a CT?

- A determination of whether an injury is specific or cumulative is decided by the court.
- The term “trauma” can mean injuries of force, including blows, falls, cuts, twists, or strains that cause physical damage. Any injury could potentially be a cumulative trauma.
- Why does it matter if an injured worker has a cumulative trauma or specific injury?
- If an injury is a cumulative trauma it may come from more than one employer.

Why are CT claims litigated?

- Start as single incidents
- Older employees
- Applicant Attorneys want to grow the “pot”
- COVID and the WCAB

What percentage of a settlement does and applicant attorney get?

- 10%
- 15%
- 20%
- 30% or more

Litigated claim

- Claims costs are 5 to 7 higher on litigated claims.
- Claims will stay open longer.
- Most cumulative trauma cases are filed by applicant attorneys.
- Timely reporting helps to reduce litigation.

Average cost of litigated claim

- The average litigated claims cost in California for 2018 was:
\$89,000
- The average duration of a litigated claim in California is:
1,139 days
- The average non-litigated claims cost for 2018 was:
\$16,000
- The average duration of a non-litigated claim in California for 2018 was:
322 days

Source- WCIRB

Ways to mitigate costs

- Contribution- is someone else responsible for part of the CT period?
- Apportionment- are there other factors that can be considered in the disability rating?