

# Economic, Social and Cultural Influences Affecting Workers' Compensation

# Impact of the Economy

- Unemployment rate continues to decrease to 5% in April
- Job gains occurred in health care and social assistance and in financial activities. Manufacturing and mining lost jobs
- Health care and social assistance added 56,000 jobs in August of 2015
- Health care employment increased by 41,000 over the month, with job growth occurring in ambulatory health care services (+21,000) and hospitals (+16,000)
- Employment rose by 16,000 in social assistance, which includes child day care services and services for the elderly and disabled
- Over 2015, employment has risen by 457,000 in health care and by 107,000 in social assistance

# Impact of the Economy

- 83% of our workforce today is in the service industry which increased from 60% in 1947
- Individuals returning to the workforce learning new occupations
- The number of persons employed part time for economic reasons (sometimes referred to as involuntary part-time workers) is at 6.5 million
- Resulting pressure on frequency with severity on the rise
- Pressure on premiums as companies increase their workforce

# On Demand Economy

- Technology is at the core of the changing on-demand economy
- Companies like Uber, SpoonRocket and Air BnB are not only changing the way consumers buy products but they are also slowly changing the demographics of our workforce
- Most recently, Uber lost a lawsuit in Alaska for classifying workers as independent contractors
- Reclassification of workers has a direct impact in our system
- Uber, founded in San Francisco in 2009, now operates in 53 countries, had sales exceeding \$1 billion in 2014 and a valuation of \$40 billion

# Workforce Demographics

- According to a Forrester research study, about 34 million Americans now work from home and this number is expected to reach a staggering 63 million - or 43 % of the US workforce this year
- According to a recent PEW research study, millennials now account for 53.5% of the US workforce, surpassing the baby boomers which accounts for 44.6% of the US workforce

# Workforce Demographics

- US News outlined differences between baby boomers and millennials that could help shape the types of losses companies experience in the future
  - It's true that people get more conservative as they age
  - Millennials are more progressive on social issues
  - But they are not necessarily Democrats
  - Millennials are less affluent - This generation is the first in U.S. history to enter adulthood in [worse economic shape than their parents](#)
  - Millennials are reluctant to get married - But when they do, they are more likely to [marry someone](#) of a different race
  - But maybe they do want to buy a home - According to a study by the National Association of Realtors, fewer than 25 percent of 30 year olds [own their own home](#), compared to 80 percent for boomers
  - More millennials live at home than their parents did at the same age. - More than a fifth (22 percent) of households currently have two or more adult generations living under the same roof

# Advances in Technology

- Robotics, telematics, and wearable technologies will change how services are delivered in the system and puts pressure on jobs, most particularly in the healthcare sector
- The wearables market exceeded \$2 billion in 2015, will hit almost 3 billion this year and over 4 billion in 2017
- Just under 50 million wearable devices were shipped in in 2015 and over 125 million units are expected to ship in 2019
- Employees equipped with wearable technology reported a 8.5% increase in productivity and a 3.5% increase in job satisfaction
- Think [Google GOOGL +0.10%](#) Glass is old news? The company is predicting sales of 21 million units by 2018
- One in Six consumers currently utilizing a wearable device

# Advances in Technology

How can employers leverage wearables to

- Understand your employees health
- Better support wellness initiatives
- Identify bad ergonomic habits
- Secure better data as accidents occur and how they can be prevented

# Advances in Technology

- US robotics investments went up to \$172 million in 2013 compare to \$30 million in 2010 (PwC)
- Worldwide sales of telematics technology is expected to reach nearly \$140 billion by 2020 (IndustryARC)
- Wearable technology will expand by 67 million units in the worldwide market according to IHS
- According to the 2015 US World News Report, jobs in Software Development, Computer System Analyst, and Information Security Analyst ranked in the top best jobs in America

# Marijuana - Pre-hire drug screening

**What if an applicant tests positive? Can you refuse to hire?**

- ADA does not protect job applicants utilizing illegal drugs
- To date the courts have usually ruled in favor of the employer
- The Oregon Supreme Court held in *Emerald Steel Fabricators, Inc. v. Bureau of Labor and Industries* that an employer was not required to hire an employee who discloses that he would not pass a drug test because of his medical marijuana use
- In Connecticut, Illinois, Maine and Rhode Island, medical marijuana patients are given protected status and employers are prohibited from discriminating against an employee merely due to their status as a medical marijuana patient

# You tested positive, but are you high?

## **Toxicity versus intoxication**

- How can you tell whether or not an employee is high if they test positive for marijuana?
- There is no clear method to test for intoxication much like with alcohol
- This is becoming a real challenge for employers to maintain a drug free workplace

# You must show intoxication

**Several states have specifically noted the inability to discriminate based on the possession of a medical card**

- Arizona - specifically prohibits discrimination based solely on the individual holding a medical marijuana card, unless the patient used, possessed or was impaired by marijuana on the premises of the place of employment or during the hours of employment
- Rhode Island - also has outlawed any type of discrimination based on card holder status. However, the law does not permit any person to undertake any task under the influence of marijuana, when doing so would constitute negligence or professional malpractice or require an employer to accommodate the medical use of marijuana in any workplace

# How do I deal with positive post accident screens?

- Some states specifically allow for termination due to failing a post-accident drug screen. Examples include Michigan, Colorado & Illinois
- However, other states like Maine, Connecticut, Delaware and Arizona discuss the need to show the individual is under the influence
- Minnesota law specifically outlines that an employer generally cannot discriminate against a patient based on a failed drug test for marijuana
- In 2009, the Montana Supreme Court upheld the dismissal of an employee who tested positive for marijuana in Johnson v. Columbia Falls Aluminum

# Is a drug free workplace possible?

Several cases have established that employers are not required to accommodate marijuana utilization

- *Roe v. TeleTech Customer Care Mgmt. LLC*, 257 P.3d 586 (Wash. 2011)
- *Emerald Steel Fabricators, Inc. v. Bureau of Labor & Indus.*, 230 P.3d 518 (Or. 2010)
- *Johnson v. Columbia Falls Alum. Co.*, 213 P.3d 789 (Mont. 2009)
- *Ross v. RagingWire Telecomm., Inc.*, 174 P.3d 200 (Cal. 2008)
- *Casias v. Wal-Mart Stores, Inc.*, 695 F.3d 428 (6th Cir. 2012)

# How do we deal with schedule II?

- The Compassionate Access, Research Expansion and Respect States Act (CARERS) ([Senate Bill 683](#))
- FDA recent review of the effectiveness of Marijuana
- DEA consideration of reclassification

# ODG Says No!

The Official Disability Guidelines Classify THC as an “N” Drug

- All cannabinoids are “N” drugs
- Not recommended for pain
- Among the supporting studies cited
  - Cannabis users who start using the drug as adolescents show an irreparable decline in IQ, with more persistent use linked to a greater decline
  - Long-term marijuana use has been linked to standard brain changes similar to those observed in schizophrenia patients, and they correlate with poorer working memory

# The Big Green Apple

New York enacted a medical marijuana bill on July 5, 2014

- Physicians are required to register and certify state-disabled patients with defined allowable medical conditions
- Allowed conditions include: Cancer, AIDS, Parkinson's, MS and Epilepsy
- User must apply for an ID card with the department of health and allowed up to a 30 day supply
- State sets the price and taxes on marijuana
- Insurers do not have to pay
- Medical marijuana cannot be smoked

# You Can Blame New Mexico

Vialpando v. Ben's Auto Servs.

- The workers' compensation judge found that worker Gregory Vialpando was qualified to participate in the State of New Mexico Department of Health Medical Cannabis program authorized by the Compassionate Use Act
- Such treatment would be reasonable and necessary medical care
- The judge ordered the injured worker pay for the medical marijuana through the program and that the insurance carrier reimburse the worker

# You Can Still Blame New Mexico

## Maez v. Riley Industrial

- NM Court of Appeals in January 2015 confirmed that “medical” marijuana was reasonable and necessary
  - The patient tested positive for recreational use of marijuana while being prescribed a variety of other drugs (including opioids)
  - The physician decided to certify the marijuana use
  - The physician was deposed and said the patient “has failed traditional pain management and is a candidate for the cannabis program”
  - The Court decided that since the physician confirmed its use that it should be deemed “reasonable and necessary”
  - **The ultimate patient-directed care**

# It's Not Marijuana?

Louisiana, Creole Steele v. Ricky Stewart

- The workers' compensation judge found that the use of marinol to control the injured workers pain was a reasonable and necessary medical expense
- The Judge however did not order that the employee be reimbursed
- Upon appeal the third circuit court determined that the judge erred in finding the use reasonable, but not ordering the employee be reimbursed
- The court of appeal amended the original order requiring reimbursement of the cost associated with the marinol

# California, Not In My State!

## Cockrell v Farmer's Insurance

- Both the treating physician and agreed medical evaluator felt marijuana was a reasonable and necessary course of treatment
- In 2012 the local workers' compensation judge ruled that Cockrell was entitled to be reimbursed for marijuana at the same rate as other FDA approved THC derivatives, such as Marinol
- Upon appeal the WCAB ruled that Cockrell could not be reimbursed as nothing in CA's program requires a governmental, private or any other health insurance provider or health care service plan to be liable
- The judge asserted that a comp carrier is not a health care service plan
- The WCAB ruled twice that the request for reimbursement was not allowed under the Health and Safety Code

# Keep your hands off my stash!

## 2015 Federal budget provides protection

- US Congress included an amendment that prohibits Department of Justice from using funds to go after state-legal medical cannabis programs
- H.R. 83, “Section 538” (specifically lists the states)
  - President Obama signed it on 12/16/14
- None of the funds made available in this act to the Department of Justice may be used.....to prevent.....states.....from implementing their own state laws that authorize the use, distribution, possession, or cultivation of medical marijuana

# So what is an Employer to do?

How does an administrator respond to a request for reimbursement of medicinal marijuana?

- Marijuana is still a schedule 1 controlled substance and therefore illegal
- It was not prescribed by a physician and therefore self-procured
- It does not represent reasonable and necessary medical care
- The efficacy is not substantiated by any peer reviewed based guidelines such as those outlined in ODG and ACOEM
- The employer should not be held responsible for any side-effects, unintended consequences and adverse drug interactions

# Comorbidities

In general, comorbidity refers to when a person has one or more medical or psychiatric conditions or diseases that are present at the same time as the injury.

An example of this is someone who has chronic low back pain and diabetes.

# Common Co-morbidities

- Common Co-morbidities in Workers' Comp
  - Hypertension
  - Drug Abuse
  - Type 2 Diabetes
  - COPD
  - Obesity

# Impact on Workers' Compensation

- The impact can be profound
  - Medical costs double
  - Indemnity costs increase exponentially
  - Opioid Utilization
  - Migratory claims
  - Exorbitant MSA Allocations
  - Inability to resolve claim

# Mitigation Strategies

- Effective EAP strategies
- Early Identification
- Deploy aggressive defenses
- IME strategies
- Medical treatment coordination
- Resolution focus

# Employee Advocacy

The strongest tool an examiner has to demonstrate their commitment to the injured worker, the process and producing great outcomes.

After years of adjusting claims, we can become jaded and look to mitigate claims instead of providing needed benefits.

# What is Employee Advocacy

- Meaningful communication
- Identify needs
- Demonstrating empathy and urgency
- Quality healthcare
- Fulfill needs
- Provide education
- Outline remedies
- Empower
- Follow through and delivery
- Resolution

# Advocacy Outcomes

- Injured worker perception and experience
- Reduced loss time
- Decreased litigation rate
- Impact on opioid utilization
- Ability to resolve the claim
- Better overall outcomes for employers and carriers