



## Is there “Gender Bias” in California’s Workers’ Compensation System?

California’s workers’ compensation system is designed to serve all injured workers, regardless of gender, age or race. In recent years, applicants’ attorneys have claimed that California’s female workers face gender-bias discrimination in accessing workers’ compensation benefits. These claims, however, are not supported by any research, published case law or evidence of such practices. Here are the facts:

### Women are injured on the job less frequently than men.

- The rate of occupational injuries among female California workers in 2013 was 15% less than that of male workers. The rate among women is 100.7 compared to 115.7 for men (per 10,000 private sector employees).<sup>1</sup>
- Female workers accounted for 45% of California’s labor force in 2013, but 37% of workplace injuries.<sup>2</sup>
- Eight of the 10 occupations with the highest injury rates employ predominantly male workers.<sup>3</sup>

### Claims that women face a higher injury risk when working in the same occupation as men (for the same hours) are not based on “adequate research studies.”

- The claim that women who work in the same occupations (and same hours) as their male peers face a 20-50% higher risk of injury is based on a secondary finding of a 2011 study<sup>4</sup> conducted to evaluate the impacts of the aging workforce on future workers’ compensation costs.
- The study called for more research into “the types of injuries and illnesses experienced by women and men in the same occupations.”
- The co-chair of the California Applicants Attorneys Women’s Caucus said of these findings: “We can only speculate on why this is as adequate research studies have not been done.”<sup>5</sup>

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<sup>1</sup> California Commission on Health and Safety and Workers’ Compensation, 2014 Annual Report, page 157

<sup>2</sup> California Commission on Health and Safety and Workers’ Compensation, 2014 Annual Report, page 157; California Employment Development Department, Labor Market Review, December 2014

<sup>3</sup> Correctional officers, psychiatric technicians, firefighters, police officers, registered nurses, janitors, construction operators, foresters, licensed practical and vocational nurses, and first-line supervisors for firefighting and prevention. California Commission on Health and Safety and Workers’ Compensation, 2014 Annual Report, page 167; California Employment Development Department, Detailed Census Occupation by Sex, and Race/Ethnicity for Residence Geography: Civilian labor force 16 years and over (5-year ACS data)

<sup>4</sup> “Working Safer or Just Working Longer? The Impact of an Aging Workforce on Occupational Injury and Illness Costs,” Frank Neuhauser, Executive Director, Center for the Study of Social Insurance, UC Berkeley for the California Commission on Health and Safety and Workers’ Compensation, 2011

<sup>5</sup> Christel Schoenfelder, California Applicants Attorneys Association Women’s Caucus Co-Chair, from “Women’s Work Injuries Demand Attention,” Workcompcentral.com, February 18, 2014

**There is no correlation between workplace injury rates and access to workers' compensation benefits.**

- The rate at which a subgroup of workers may need to access the workers' compensation system provides no information about their experience within the system.
- Workplace safety initiatives, wellness programs and other tools can be employed to reduce the risk of workplace injuries for all workers or worker subgroups – this is not the role of workers' compensation.

**There is no evidence that female workers' compensation claimants face challenges in accessing workers' compensation medical benefits.**

- A 2008 survey of 508 California injured workers commissioned for the Department of Industrial Relations found that women were 1) no more likely to report challenges to accessing medical care than men, 2) were somewhat more satisfied with their medical care than men, and 3) were just as likely to rank their medical care as good or excellent.<sup>6</sup>

**There is no evidence that women receive lower permanent disability ratings because of their gender.**

- Under California law, permanent disability ratings are based on objective rating guidelines published by the American Medical Association. Ratings under the AMA guides (used by 40 other states) are based on objective, measurable factors of permanent impairment.
- Under California law, doctors must apportion medical disability (by percentage) between industrial and non-industrial factors for all workers. Apportionment must be made to medical conditions that contribute to disability and cannot be based on gender, race, age or any other characteristic.
- There is no research or data showing that women face more frequent or severe apportionment for their permanent disability than men; nor is there evidence that apportionment occurs more frequently for medical conditions that disproportionately impact women.
- In one known case, a 73-year old, female claimant accused a physician of apportioning a percentage of her permanent disability to osteoporosis based on her age (not gender). In a 2007 unpublished opinion, the Third District Court of Appeal remanded this case back to the Workers' Compensation Appeals Board to develop the record on the apportionment, stating that apportionment to osteoporosis was appropriate but "any apportionment to age, per se, runs afoul of state antidiscrimination law."<sup>7</sup> Despite the court's ruling, the California Applicants Attorney Association continues to cite this case seven years later as an example of how apportionment "disproportionately impacts women."<sup>8</sup>

***Based on available studies, case law and information, there is no evidence to support claims that women face gender-bias discrimination in California's workers' compensation system or in accessing benefits.***

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<sup>6</sup>"Access, Quality, and Outcomes of Health Care in the California's Workers' Compensation System", 2008, University of Washington, School of Public Health

<sup>7</sup> *Vaira v. WCAB (California Travel and Tourism Commission)*,

<sup>8</sup> *Caa.org, "Women in the workforce, How Workers' Compensation Insurance Affects Working Women," accessed February 26, 2015*