

## NCCI Report

### ***Workers' Comp Records Another Stellar Year***

Private carriers reported their 10th consecutive year of underwriting profitability with a Calendar Year 2023 combined ratio of 86. It is the 7th consecutive year with a combined ratio below 90 for the workers' compensation insurance market, according to the most-recent figures released by the National Council on Compensation Insurance.

Among the highlights:

- Workers' compensation premium increased 1% in 2023, reaching \$43 billion and up from \$42.5 billion in 2022. While the overall P&C market expanded in 2023, workers' compensation share has decreased over the past 20 years, from nearly 8% in 2003 to 5% in 2023.
- Workers' compensation's Accident Year 2023 combined ratio is 98% with prior years continuing to experience downward reserve development. Workers' comp reported the lowest combined ratio among all lines in property & casualty.
- The workers' compensation reserve redundancy has grown to \$18 billion.
- Lost-time claim frequency declined by 8% in the past year, which is more than two times the size of the long-term average decline.
- Severity changes were considered moderate for 2023 with increases of 2% for medical claim severity and 5% for indemnity claim severity.

"The overall numbers for workers' compensation show a financially healthy system," says Donna Glenn, chief actuary, NCCI, adding the workers' compensation industry has been recording steady declines in claims frequency for more than two decades. NCCI President and CEO Bill Donnell adds "the workers' compensation system has unique features that have differentiated us from other commercial lines in terms of overall performance during the past several years. However, there are key questions ahead related to issues such as frequency change and medical cost inflation."

NCCI says the moderate growth in inpatient cost per claim in workers' comp is a function of a decrease in utilization of 22% since 2012, driven by a steep drop in admissions and a shift of surgeries to an outpatient setting. Hospitals have responded by raising inpatient prices by more than 50%. According to the Peterson Center on Healthcare and the Kaiser Family Foundation, since 2000 the price of medical care, including for services provided as well as insurance, drugs, and medical equipment has increased by 121.3%, while prices for all consumer goods and services rose by 86.1%.

Among other details in the latest NCCI report: payroll increased by 6% between 2022 and 2023, driven by increases in both employment and wages. Also, all NCCI states continue to approve decreases in bureau premium level in their latest filings. NCCI adds the gains were widespread in the comp industry in 2023 as nearly 40% of workers' comp carriers achieved a net combined ratio below the industry's 86 mark. Additionally, two-thirds of workers' comp insurers enjoyed an underwriting gain for the year.

#### INSIDE THIS ISSUE

LEGAL COLUMN	TWO
COMMON ACCIDENTS	THREE
IC UPDATE	FOUR

## CASE LAW UPDATE

By: Matt Flammia



### Case Takeaways: Arising Out Of And Workplace Assaults

Generally, the North Carolina Industrial Commission has exclusive jurisdiction over all workplace injuries. However, the North Carolina Court of Appeals recently demonstrated that some workplace injuries may be filed outside of the North Carolina Industrial Commission when such injury does not arise out of and in the course of the employment.

When analyzing whether the Industrial Commission has jurisdiction over a filed workers' compensation claim, the North Carolina Courts will apply the "applicability test" which is an extremely fact specific test. Recently, the North Carolina Court of Appeals published an opinion on this topic, providing more insight into the applicability test, specifically whether the accident arose out of the employment. In *Aldrete v. Sunbelt Furniture Xpress, Inc.*, the Court of Appeals analyzed the applicability test when deciding whether the Industrial Commission had jurisdiction over a sexual assault that occurred on the employer's premises.

On December 8, 2019, Plaintiff was hired by the Defendant-Employer as a warehouse worker. The Defendant-Employer also employed prison inmates as a part of the North Carolina Department of Corrections prison work-release program. An inmate who was part of the program was assigned to train Plaintiff. Shortly after the Plaintiff started, Plaintiff alleged that the inmate lured him to an unoccupied loading bay and demanded that Plaintiff perform a sex act on the inmate. The inmate threatened the Plaintiff several times, physically restrained the Plaintiff, and forced the Plaintiff to perform a sex act on him. Following the alleged sexual assault, Plaintiff left work and reported the incident to the Hickory Police Department, filing charges against the inmate.

Thereafter, Plaintiff filed a complaint against Defendant-Employer alleging negligent supervision. The trial court denied Defendant-Employer's motions to dismiss, which they appealed, contending that the Industrial Commission had exclusive jurisdiction over the matter.

Defendants alleged that, "it is the intent, and has always been the intent, of the legislature that all workplace injuries be adjudicated through the North Carolina Industrial Commission and not in our civil courts." The Court of Appeals expressly disagreed with the notion that "all" workplace injuries are subject to the jurisdiction of the Industrial Commission. Specifically, the Court has held that, "[t]he Industrial Commission is not a court of general jurisdiction. Rather, it is a quasi-judicial administrative board created to administer the Workers' Compensation Act and has no authority beyond that conferred upon it by statute." Further, it was noted that the Act "specifically relates to the rights and liabilities of employee and employer by reason of injuries and disabilities arising out of and in the course of employment relation."

The Court then turned to the well-known applicability test regarding whether an action comes within the provisions of the Act: (1) the injury was caused by an accident; (2) the injury was sustained in the course of employment; and (3) the injury arose out of the employment. In this case, the cause of action was "negligent supervision," but the injury giving rise to the cause of action was sexual assault committed against the Plaintiff by another employee of Defendant-Employer.

Treating Plaintiff's allegations as true, the Court determined that the sexual assault constituted an accident for the purposes of the Act, because, from Plaintiff's perspective, the assault was unexpected. Next, the Court turned to the question of whether the injury arose out of and in the course of employment. It was uncontested that Plaintiff's injury was sustained in the course of employment, given that he left the workplace, went straight to the police station, and, sometime after Plaintiff left the facility prior to the end of his regularly scheduled shift, the police arrived at Defendant-Employer's facility.

The Court reiterated that intentional tortious acts are rarely considered to be within the scope of an employee's employment, unless the acts are related to the duties of the employment. When an intentional tortious act, such as an assault, occurs at the workplace, but the assault was not related to the duties of the employee, but was for some undisclosed, personal motive, it cannot, therefore, be deemed an act of the employer. The Court noted that the inmate's sexual assault of Plaintiff was not "in furtherance of Defendant-Employer's business and for the purpose of accomplishing the duties of employment," but instead, was the result of the inmate's departure from his employment duties. Consequently, the Court of Appeals concluded that the Industrial Commission did not have jurisdiction over the Plaintiff's claim. Plaintiff's injury was sustained in the *course of his employment*, but it did *not arise out of* his employment.

This decision gives us some important takeaways. First, the "applicability test" is fact specific and each prong of the test must be considered separately and distinctly when deciding whether the North Carolina Industrial Commission has jurisdiction and whether the workplace injury is compensable. Further, it reaffirms that if workplace fights, assaults and/or intentional tortious acts are completely unrelated to the duties of the employee, the act cannot be attributed to the employer and made subject to the Workers' Compensation Act.

*Matt Flammia is a partner in Teague Campbell's Raleigh office. He is a graduate of North Carolina State University and North Carolina Central University School of Law.*

## *Requiring Workers to Return Could Backfire*

A May 2024 research brief from the University of Chicago concludes return-to-office mandates drive employees away from firms, with senior employees leaving at the highest rates. The defections likely exact significant human capital costs in terms of output, productivity, innovation, and competitiveness for the companies implementing strict return-to-work policies.

The issue arises because one consequence of the COVID-19 pandemic is that many workers who formerly worked five days a week in an office now work from home all or some of the time. And this trend will likely continue. As of June 2023, an estimated 75% of tech and 28% of all companies in the United States were still “fully flexible”—either fully remote or with a voluntary in-office option.

Since employers and employees have different perspectives on remote work, the University of Chicago researchers asked themselves what would be the impact on the labor force if employers were to insist on strict return-to-office policies. If employees prefer hybrid or full work-from-home options, will they leave employers who institute such policies? If so, which type of employees are more likely to leave, and where will they land?

The researchers studied the effects of return-to-office mandates at three large tech companies—Microsoft, SpaceX, and Apple. Given the size and prominence of these companies, what happens there matters for the American economy and sets the precedent for the wider debate around the return to office. Among the findings:

- When required to return to office, long-tenured and senior employees are more likely to leave.
- Importantly, these senior employees are likely to join direct, large competitors, and not start-ups. The researchers conclude this means that return-to-office mandates not only add significant human capital costs from the hiring and training costs required to replace senior employees, but they also add the competitive costs of lost operational knowledge.
- Women are no more likely to leave than men, a somewhat surprising finding given that some surveys have suggested women have a stronger preference for working from home.

Workers who quit over the return-to-office mandates had little difficulty finding employment in similar roles and levels of seniority.

### Travelers Report

## *Common Accidents Account for the Costliest Claims*

Common workplace accidents make up for the majority of claim costs as well as accounting for most severe claims, according to The Travelers Companies’ 2024 Injury Impact Report. Travelers, the largest workers’ compensation insurer in the U.S., examined more than 1.2 million workers’ compensation claims from 2017 to 2021.

Findings were based solely on indemnity claims, where the injured employees could not immediately return to work and incurred medical costs.

Most frequent causes of injury:

- Overexertion (29% of claims analyzed).
- Slips, trips and falls (23%).
- Being struck by an object (12%).
- Motor vehicle accidents (5%).
- Caught-in or caught-between hazards (5%).

Top five drivers of severe claims (\$250,000 or more), beginning with the costliest:

- Slips, trips and falls.
- Overexertion.

- Being struck by an object.
- Motor vehicle accidents.
- Caught-in or caught-between hazards.

Travelers say factors such as inexperience, workforce shortages, and maintenance issues are contributing to these largely preventable accidents. As in earlier years, the 2024 report found employees in their first year on the job continue to be the most vulnerable to workplace injuries, accounting for 35% of all workers’ compensation claims. This year’s analysis also uncovered increases in missed workdays due to injuries:

- On average, injured employees missed 72 workdays, up one day from last year’s report.
- The construction industry continued to have the highest average number of lost workdays per injury (103 workdays, up from 99), followed by transportation (83 workdays, up from 77).
- Injured small-business employees missed an average of 82 workdays, up from 79.

# coming up

Wednesday, March 26- Friday, March 28, 2025

NCASI Annual Conference 2025

Holiday Inn Resort Lumina on Wrightsville Beach

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## NC Industrial Commission Update

By Tracey L. Jones

There has not been a lot of news coming out of the North Carolina Industrial Commission since our last quarterly update. The updates are as follows:

John A. Tomei was appointed to serve as a Deputy Commissioner beginning June 24, 2024 in the Raleigh Office. Tomei brings a wealth of workers' compensation and courtroom experience to the Commission, having litigated hundreds of workers' compensation cases for nearly 35 years at Teague Campbell. Tomei earned his undergraduate degree from the University of North Carolina at Chapel Hill and his J.D. from the University of North Carolina School of Law.

Matthew E. Buckner was appointed to serve as a Deputy Commissioner beginning March 4, 2024 in the Raleigh Office. Buckner is a North Carolina State Bar Board Certified Specialist in workers' compensation law who brings significant workers' compensation experience to the Industrial Commission. Since 2017, he served in the Workers' Compensation Section of the North Carolina Department of Justice, first as an Assistant Attorney General and then as a Special Deputy Attorney General.

While at the Department of Justice, Buckner represented the North Carolina Department of Public Instruction and other State agencies in all stages of workers' compensation litigation and at the State appellate court level. Prior to joining the Department of Justice, Buckner litigated workers' compensation cases in the private sector at Diener Law, where he represented injured workers. Buckner earned his undergraduate degree from East Carolina University and his J.D. from North Carolina Central University School of Law.

The Industrial Commission is also looking for feedback about your experience with its new case management system and your suggestions for improvement. Please email [feedback@ic.nc.gov](mailto:feedback@ic.nc.gov) to share your thoughts and ideas about the new system! Please note, however, that all requests for technical assistance with the new system should be emailed to [support@ic.nc.gov](mailto:support@ic.nc.gov). The [feedback@ic.nc.gov](mailto:feedback@ic.nc.gov) email address should be used only for non-urgent feedback about the new system.

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