

Chapter Four: Communications

INTRODUCTION

This part of the report addresses four communication related areas identified in the JLARC research agenda for analysis. It is presented in five sections:

1. [Timeliness](#) of communications
2. Use of “[plain talk](#)” standards
3. [Responsiveness](#) and accuracy of communications
4. Opportunity for [face to face](#) or personal interaction with L&I
5. [Online communications and the clarity of materials](#).

Timely and purposeful two-way communications are the essence of effective claim management. Good communication not only brings claims to a speedy and beneficial conclusion, it also has indirect benefits. It reduces the number of disputes that consume resources. To the extent communication can avoid misunderstandings that lead to suspicion and negative attitudes the number of protests, appeals, and attorney involvement is reduced.¹ Handling disputes consumes time from state employees and other parties to a claim. Finally, better communication builds confidence in the fairness of the workers’ compensation system among stakeholders.

L&I makes efforts to communicate well with parties to a claim, using several channels for this facilitate the flow of information.

Letters. L&I sends thousands of letters each work day to the parties involved in claims. Employers and workers are alerted to new claims received by the department. Workers and employers are notified as to the next steps in the claim process. Both groups are copied on all orders, acknowledgements of protests, and many other steps in the claim process. Treating medical providers receive a large volume of correspondence requesting information pertinent to the claim.

Letters, by a wide margin, are the tool of choice for L&I to initiate and maintaining contact with parties to a claim. Confirming significant steps in the life of a claim in writing is conventional and useful. Without this official record, parties could maintain that they were never informed about decisions or their rights. Dated letters supply defensible starting points for measuring elapsed time for the recipient to respond or exercise legal rights. While letters are helpful to some, they contain language and concepts that are difficult for the general public to understand. The simple phrase “arising out of employment” has been the subject of much policy debate and litigation.

¹ As the L&I Manager for Customer Communication put it: “State officials report that short, simple customer messages tend to result in fewer mistakes, fewer hotline calls and customers who are less frustrated with their government.” See: <http://www.plainlanguage.gov/examples/government/WArules.cfm>. According to a major report by WCRI on attorney involvement in workers’ compensation disputes, workers were more likely to seek attorneys when they felt “threatened.” The report discusses constructive and counterproductive examples of attorney involvement. See Workers Compensation Research Institute, *Avoiding Litigation: What Can Employers, Insurers, and State Workers’ Compensation Agencies Do?* WC-10-18. July 2010.

On line. There are many ways L&I uses online tools to provide or collect information and data from stakeholders, e.g., “Find a Doctor,” FileFast report of injury, e-Correspondence, Download Forms, and file Quarterly Report of hours for insurance purposes.

Educational Venues. L&I engages various stakeholder groups through face-to-face training and educational events. For example, L&I makes frequent presentations to employer associations to promote ways for them to minimize their insurance costs, make workplaces safer, and gain by using the Stay at Work Program.

Advisory Bodies. Advisory bodies meet regularly to hear from L&I and to provide feedback the agency’s policies and performance (Workers Compensation Advisory Committee, Retro Advisory Committee, Industrial Insurance Medical Advisory Committee, Advisory Committee on Healthcare Innovation and Evaluation and at least a dozen other advisory bodies).

Phone calls. A topic emphasized in this report is the placement of direct phone contacts by L&I with parties to a claim. Establishing contact is very often needed to reassure the worker, encourage early return to work with the worker and employer, and clarify the next steps in the process.

1 TIMELINESS

Timely communication with the parties to the claim is a key subject of claims adjusters' training. Private insurance companies commonly hold adjusters responsible for personally contacting the worker, the employer, and treating provider (called “3-point contact”), usually within a day or two of claim receipt. Why so quickly? Experience across the industry has demonstrated the benefits of swift contact: more accurate perceptions of the nature of the injury, clearer understanding of the attitudes of employer and worker about the injury, and—most importantly--identifying what needs to be done to get the worker back to work as soon as medically possible.

Unfortunately, this conversation with the parties to the claim is sometimes delayed because of delays in reporting claims to L&I. In the majority of claims the “First Report of Injury” comes from the provider that first treats the injured worker. There can be a delay of days or even weeks before L&I gets the first report. This could be caused by: 1) a lengthy delay between injury and when the worker obtains treatment for the injury, 2) failure of the worker and/or provider to recognize the occupational connection to the injury or illness, and 3) the lack of priority given by some providers’ offices in sending in paper reports or doing an electronic report.² These lags are likely most pronounced when a patient is initially treated by a provider unfamiliar with workers’ compensation. Providers and their office staff that are accustomed to workers’ compensation cases are increasingly using FileFast to send the initial claim report to L&I. The superiority of occupational medicine oriented clinics is seen by the fact that COHE providers have as a performance goal filing complete first reports of injury within two days of patient encounter.³

² Elsewhere we recommend that employers be able to file first reports of injury, as they do in almost all states. This change in reporting was previously tried and failed to pass into law.

³Advisory Committee on Healthcare Innovations and Evaluations, COHE Metrics &Oversight, April 24, 2014.

Employer reporting is the norm in most states, and was recommended in the 1998 JLARC Performance Audit. While employer reporting in Washington is only permissive, not mandated, L&I reports that the proportion of claims where the employer files an accident report is slightly less than 50% of all claims.⁴

The initial response from L&I depends on whether the claim appears to be a Medical Only or a Time Loss claim. This classification is based on a “check box” on the provider's Report of Accident (ROA) indicating whether he/she thinks the worker will be away from work more than three days, from certain diagnosis codes, or when the worker's portion of the ROA indicates no return to work. A Medical Only claim will usually get no personal contact and be handled as much as possible by correspondence and a great proportion are handled through auto-adjudication.

Lost-time claims trigger several communication flows. First, Account Services contacts, by phone, any employer that is in jeopardy of losing their "claim free" premium discount and advises them of options to avoid recording a lost time claim against their record. Second, claim notices are mailed to the employer and injured worker. Simple notices stating that a claim for compensation had been filed on a certain date are automatically generated and mailed to the employer and worker within a day or so of the claim being released to the CM.

After this initial, typically quick communication, things can slow down. A host of form letters and forms are mailed out at various times to the worker, employer, and treating provider. The timeliness of these letters often depends on the skill of the particular claims manager handling the claim.

An important performance measure of communications is the speed with which allowance (claim acceptance) decisions are made on claims. For the period 2010-2013, initial allowance decisions in State Fund claims have gone out an average of 5.9 days (5 days at the median) after receipt of the claim. There is no set standard in the industry for making allowance decisions. Rather it is assumed that if the immediate claim investigation suggests that it is a valid claim, the adjuster should proceed in the normal processing of benefits, unless counter-indicated by new information. In our survey of experienced adjusters, the most typical opinion was that seven days from receipt of the claim was enough time to be reasonably certain that a claim was allowable.

A final piece of information on the timeliness of the claims process comes from our survey question on timely resolution of protests. Two-thirds of workers (66.2%) surveyed with a protest felt that it was resolved "Slowly" or "Very slowly," with "Very slowly" dominating these two answers. (Note that the survey was directed at workers with claims with more than \$5,000 in medical payments.) L&I data from 2010-2013 show that the average protest is resolved in 55 days (see Chapter 3). From a sample of internal L&I reports for January 2015, about 38% of all open protests were open for more than 90 days, some more than 180 days. So what appears to be happening is that many protests are quickly resolved (well under 55 days) while a smaller fraction takes a much longer timeframe. This could be the root cause of the negative survey opinions regarding timeliness, which is discussed in Chapters 2 and 3.

2 PLAIN TALK

Executive Order 05-03 by Governor Chris Gregoire requires Washington agencies to follow “plain talk” guidelines when writing to customers. L&I has been a leading agency in the adoption of these guidelines

⁴ In Washington the employer accident report is used to help complete the information in the file; the accident report that is used to initiate a claim is filed by the medical provider.

for forms and correspondence. Our file review found only a few recurring lapses from the guidelines. Some examples are shown in Exhibit 4-1, below.

Exhibit 4-1: Summary of Plain Talk Issues Detected

Guideline	Examples of Breaches
Use Words that Your Customers Use	Words and phrases like “permanent impairment,” “order and notice,” “prognosis,” and “traumatic event” not in most customers’ vocabulary.
Use Active Voice	Sentences frequently use the passive voice.
Use Personal Pronouns	“We” should be used instead of “The Department” and “I will deny” instead of “requests will be denied.”

Source: WorkComp Strategies File Review, Sample of claims 2010-13 with medical costs > \$5,000

In addition to the above examples, we found many letters with customized language inserted by the CM that had grammatical mistakes, albeit usually very minor ones. There is a wide list of readability formulae in common use today (e.g., SMOG, [Flesch–Kincaid](#), and Dale–Chall) and it might be a good practice to test L&I documents intended for injured workers against one or more of these formulae. These formulae are not perfect measures of readability for the intended audience. Best practice would be testing reactions of the actual audience.

In spite of the above difficulties, the greatest problem is not that L&I sends poorly worded letters or forms. Most are written with care and are comprehensible to literate recipients. Rather, it is an inherent difficulty in explaining workers’ compensation. No matter how well worded, letters will often be a poor method for communicating many claims processes and important decision points to most persons unfamiliar with the workers’ compensation system. While parsimony is a virtue in most writing, there are no good, short statements about some concepts in workers’ compensation. A prime example is the causation standard: Denial letters often quote the Washington statutes at length as the explanation for why the claim is denied. These excerpts from RCW 51.08.100 and 51.08.140 highlight the legalistic nature of such quotes:

"Injury" means a sudden and tangible happening, of a traumatic nature, producing an immediate or prompt result, and occurring from without, and such physical conditions as result therefrom. (RCW 51.08.100)

"Occupational disease" means such disease or infection as arises naturally and proximately out of employment under the mandatory or elective adoption provisions of this title. (RCW 51.08.140)

This dense legalese is very difficult to understand, even for many college-educated readers. This was borne out by our worker survey in which 32% of the respondents whose claims were denied said the reasons given were “very unclear.” Another 23% said the reasoning was “unclear.” Not surprisingly, a high fraction of survey respondents who had their claim denied hired an attorney. Note that our survey or workers involved claims with relatively serious injuries.

The tone of letters to employers, workers, and medical providers often comes across as cold and uncaring. While most letters do use the minimum courtesy of “please” and “thank you,” there are some additional opportunities to express appreciation to the recipient for their cooperation. In certain

situations it would be beneficial to give the injured worker modest encouragement for a successful healing process and return to work.

Compounding the problem with letters is the strong possibility that the recipient is illiterate, or functionally so. A large share of U.S. workers have limited education and regardless of schooling struggle with understanding written documents.⁵ The problem is particularly acute for immigrants that may be illiterate in English as well as their native language, and those with an especially low educational attainment.

3 RESPONSIVENESS TO USERS AND ACCURACY OF MESSAGE

L&I reaches out to its constituents with a variety of publications and rich website information. Our review of these outreach methods showed that they were uniformly written in an accurate and professional way. Naturally, some of the documents are written for specialists and use terminology suitable to this audience. For example, the documents and web content directed at providers and vocational service providers is fairly technical, but not unsuitable for this audience. We saw no example of forms or publications that had grammar or substantive errors.

Responsiveness must inevitably match resource limits. Stakeholders would ideally want to have their questions answered by a conversation with an expert that speaks their language in ways they can understand. But very few companies or government agencies can afford the costs of personal reception at the main phone line, or department phone lines. Also, individually customized instructions on forms and letters would be impossibly expensive. L&I seems to be paying attention to the types of queries it gets and the specific information being sought. They use this insight to produce answers to frequent questions, as least to those with minimal competency in English.

L&I's survey data shows that the satisfaction of workers and employers with L&I and the claims process is related to the level and type of contact. At the start, some claims need extensive communication to clarify the facts of the case, determine causation and the level of wage payments. The process for resolving issues and determining payment needs to be explained intelligibly to the worker. Personal contact is best for difficult communication issues. Letters are a poor substitute.

In our survey of workers, we detected an anomalous lack of recollection of L&I communication by a significant fraction of the respondents. About 21% of the worker respondents reported that they were unaware of a protest that was filed on their claim. It seems implausible that that such a high fraction of workers did not receive written notice of a protest.⁶ Other potential causes for this high failure to recall

⁵ The US Government's National Assessment of Adult Literacy done in 2003 found: 14% of U.S. adults are "below basic" in "prose literacy," or only able to perform "no more than the most simple and concrete literacy skills." 12% of adults are below basic in the "document literacy" category and 22% are below basic in the "quantitative literacy" category." <http://nces.ed.gov/pubs2009/2009481.pdf> The "document literacy" category is defined as the "knowledge and skills needed to perform document tasks, (i.e., to search, comprehend, and use non-continuous texts in various formats). Examples include job applications, payroll forms, transportation schedules, maps, tables, and drug or food labels." The estimate for Washington was 10% of the population lacked "basic prose literary skills." See: <http://nces.ed.gov/naal/estimates/StateEstimates.aspx>. More specifically related to employed individuals, the National Center for Education Statistics, in *Adult Literacy in America, 2002*, states: "... some 30 percent of the individuals in Level 1 and nearly 45 percent of those in Level 2 had full-time employment..." See: <https://nces.ed.gov/pubs93/93275.pdf>

⁶ We confirmed that L&I sends both employer and worker copies of all protests received on the claim to which they are parties.

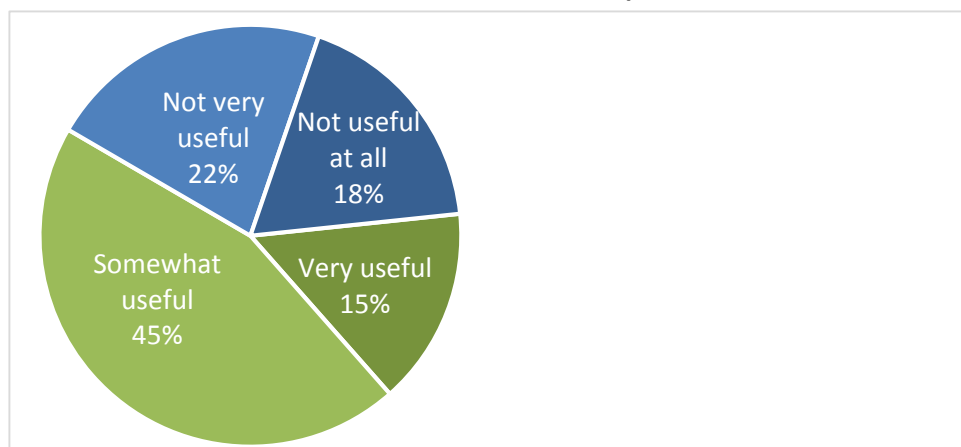
the protest notification could include: 1) the workers received so many letters that particular ones lost emphasis; and 2) workers did not recall or understand the term “protest” or did not recall getting the letter. This lack of recollection supports the value of confirming many of the actions in a claim via letter, even though some of these letters will be poorly understood. Evidence of the letter being sent may refresh the memory of the worker, and defend the department in a dispute before BIIA.

The communications regarding the protest process seems to have shortcomings, especially for injured worker. We asked workers that were party to a protest, "How well did L&I explain your options when you disagreed with a decision on your claim." More than half (53.2%) reported that L&I's explanation was "Unclear" or "Very unclear." This is puzzling because the notice describing the opportunity to protest appears at the bottom of all letters containing orders and appears reasonably worded. However, there is room for improvement in how important legal notices are phrased and how they are formatted. For example, the text box with the protest information at the bottom of the letter could be more clearly set off and captioned **“IMPORTANT LEGAL NOTICE.”**

Another survey question asked about the clarity of L&I written communications during protests. 43% of workers with protests said the explanation was “unclear” or “very unclear.” In both these examples, the implication is that the L&I communications are unclear to at least a substantial fraction of workers. This may point to the helpfulness of a personal contact at certain points in the claim that are more critical, such as denied claim decisions and decisions about protests. A direct contact in such situations may help prevent disputes.

We also asked workers about the “usefulness” of the written materials provided in the dispute process. The written materials supplied by L&I to workers filing a protest appear to have been more useful than the overall clarity of the process as described just above. As shown in Exhibit 4-2, 60% of workers found the written materials "Somewhat" or "Very useful." Only a small portion (18%) did not find them useful at all.

Exhibit 4-2: Usefulness of Written Materials on Dispute Process



Source: WorkComp Survey of Workers, 2014 (sample of claims > \$5,000 in medical costs)

In our survey, we did not have detailed coding on the type of issue or issues in dispute. It is possible that certain types of disputes are more difficult for workers to understand and manage. It could be useful to model the nature of the issues in dispute and track this in the electronic data, because if certain issues were especially problematic, special emphasis could be placed on redesigning materials or extra attention and time focused on these workers in their interactions with L&I.

4 PERSONAL “FACE TO FACE” COMMUNICATION

In our survey of workers, respondents fell into three nearly equally groups, those who 1) needed no direct contact with L&I, 2) needed contact other than face-to-face, and 3) needed face-to-face contact.

The JLARC research agenda asked: **Does L&I offer sufficient opportunity for face-to-face communication?** We put this question in our worker survey. The answer seems to be no. 84% of workers that said they needed face-to-face contact and felt they were given insufficient opportunity for this option. Should L&I try to satisfy this need?

We know of no private or public workers’ compensation insurer in any other state that invites face-to-face contact in the process of adjudicating claims. Most have centralized claims units covering a whole state or multiple states, much like L&I. There are compelling reasons for this:

1. There is ample evidence that the essential requirements of claim processing can be handled online, by printed correspondence and/or by phone contact;
2. Face-to-face meetings are resource intensive, requiring scheduling, travel, and meeting room;
3. Scheduling face-to-face meetings might slow down the flow of some information necessary to resolve a claim; and
4. Security would be needed to protect the agency personal from aggressive behavior that has been known to occur in insurance and legal settings.

Neither the Self-Insurance Ombuds program nor Project HELP invites interested parties to arrange for a face-to-face meeting, relying instead on phone, letter or electronic communication.

How do injured workers feel about the quality of phone contacts? In our worker survey, 79% of the respondents said they were “usually” or “always” treated with respect when they had occasion to contact L&I. That 7% said they were “never” treated with respect is worrisome, but it might be the result of irreconcilable disagreement over aspects of their claim.⁷ Another take on this issue is from L&I surveys of injured workers and employers. In their September 2013 surveys, 61% of both employers and workers rated their overall experience working with L&I as “good” or “very good.” That same survey wave found that 74% of workers who got a direct call from their CM rated their overall experience with L&I as “good” or “very good.” This compares to 53% for those that did not have direct contact.

But as the survey drilled down into the types of communication with the CM, one finds some specific weakness on the part of some CMs. The September 2013 L&I survey⁸ identified three types of information exchange that received much lower satisfaction scores:

⁷ The only other survey we could find that had a similar question was done by the North Dakota workers’ compensation agency. Question: “Did WSI staff understand your needs and provide polite assistance with your Claim?” 92% of respondent said that agency staff was polite with them (percentage is similar to previous surveys).

⁸ L&I staff member Ron Langley’s presentation to Workers’ Compensation Advisory Council, December 2013.

- Asking about concerns about RTW
- Letting the worker know what would happen next
- Actively involving the worker in discussion about next steps.

The percentage of respondents that rated the above three CM attributes as “poor” was between 2 and 3 times higher than the percentage of “poor” ratings on “friendliness” and “answering questions.” What this says is that CMs are maintaining a friendly helpful demeanor with workers, but being perceived by workers as failing to fulfill important needs. L&I already recognizes that CMs need to be properly trained in using effective techniques to communicate with injured workers, for example, asking the worker if they have any suggestions. These efforts should continue to improve the effectiveness of CMs in the limited amount of time they can spend with any one worker.

Another very important target for personal communication should be the treating provider. In our file reviews we saw that by far the dominant form of communication between the CM and treating provider was form letters (see Chapter 2 for discussion of reporting procedures). For workers’ compensation savvy providers, letter reminders and requests might be effective. But for a provider who treats only an occasional work injury, L&I’s requirements may be unclear and the response incomplete or ambiguous.⁹ This slows down important decisions and leads to incomplete understanding of what is needed by the CM. Examples of practices that potentially contribute to claim delays:

1. The first Activity Prescription Form (APF), which defines the worker’s capacity to work, is sent by the treating provider, but despite months of follow up treatments no further APFs are sent.
2. The provider is unclear as to when the functional restrictions might be modified, the need for future treatment, or the ultimate prognosis.
3. The provider answers the CMs question about whether MMI had been attained, but does not answer the CM’s question about the possibility of a permanent impairment.

Each of the above situations can require a lengthy letter exchange.

Granted, it would be difficult for CMs to make personal contact with busy providers (see discussion in Chapter 2). As a second best route, CMs could explain the reporting problems with the provider’s staff. For many providers, secure, electronic messaging would provide a faster, more direct, and interactive communication than letters or phone messages. As will be discussed next, better utilization of online communications would help alleviate these issues. Communication with some providers could be affected by the efficiency of a clinic in taking advantage of electronic communication tools. Small, independent providers’ offices, in particular, may not be set up to facilitate physicians in using electronic messaging.

5 OTHER COMMUNICATION ISSUES

As noted above, L&I offers a wide array of tools to workers and employers so that they can find information online and communicate by email or web-based forms. L&I is following a clear trend in other workers’ compensation systems. The department has made good use of online claim filing and has developed a solid and growing base of support among providers in filing injury reports through FileFast. The Claim & Account Center (CAC) is a web-based tool that allows registered workers, employers, and

⁹ L&I reports that a 2011 project, named “SmartDoc,” was designed to modify letter templates to make them simpler for medical providers to understand and respond to.

their respective representatives to access the details of a claim. These are excellent tools for those who are online savvy, but of no use those who are adverse to, or unable to, use online tools.

5.1 ONLINE COMMUNICATION

An important sign of the success of L&I's efforts to advance online communication is the increase in use by workers of the Claim and Account Center (CAC) to track their claims. The percentage of workers using of the CAC nearly doubled from 18% (Gilmore survey in 2009) to 33% in the 2014 survey. Over half (57%) of employers in the 2014 survey that handle their own claims used the Online Account system. This compares with 29% of employers indicating they used the Online Account system when surveyed by Gilmore in 2009. In the recent survey, 61.1% of workers and 76.5% of employers who used the CAC system found it "easy" or "very easy" to use.

Secure, electronic correspondence is a service that could be particularly helpful on one of the weakest links in the communication chain—between CMs and treating providers. Filling out routine insurance forms is one of the most objectionable duties of a provider. Simplifying ways of providing essential information would be welcome. Paper reports add days, coming and going, to the communication lag. Simple questions about the meaning or intent of a message could be easily resolved. In our file reviews we did not detect a great deal of CM/Provider electronic communication.

The CAC seems to provide a gain for the busy clinician and for the CM. "My Secure L&I" (the online portal providing registered users with access to the CAC) provides a good vehicle for providers to accomplish a number of claim related tasks, including filing accident reports, transferring care to another provider, and billing for services. Through My Secure L&I, the provider can see all the messages to him/her regarding claims before L&I, and can respond electronically to questions and requests for more information or documents. The medical provider can create a customized dashboard highlighting all the most relevant services.

Considering the importance of clear, accurate, and timely medical information, perhaps a more robust set of tools could resolve the above difficulties in the communication flow between providers and L&I. At a minimum, a provider should be able to: 1) fill out a First Report of Injury, 2) fill out an Activity Prescription Form, 3) see any position descriptions or job analysis available for the worker, and 4) respond in a secure, electronic manner to questions from the CM or vocational service provider. For example, it would have an amazing result on the speed of claim closure if the treating provider could easily send a secure electronic message to the CM confirming that no further treatment is needed, or that another provider should be scheduled to provide a permanency rating. Unfortunately, the same set of providers who are likely to send in deficient or late reports probably greatly overlaps with those providers who are resistant to electronic communication tools. Perhaps, over several years, improved selection of providers for the treatment panel based on performance metrics will alleviate this problem.

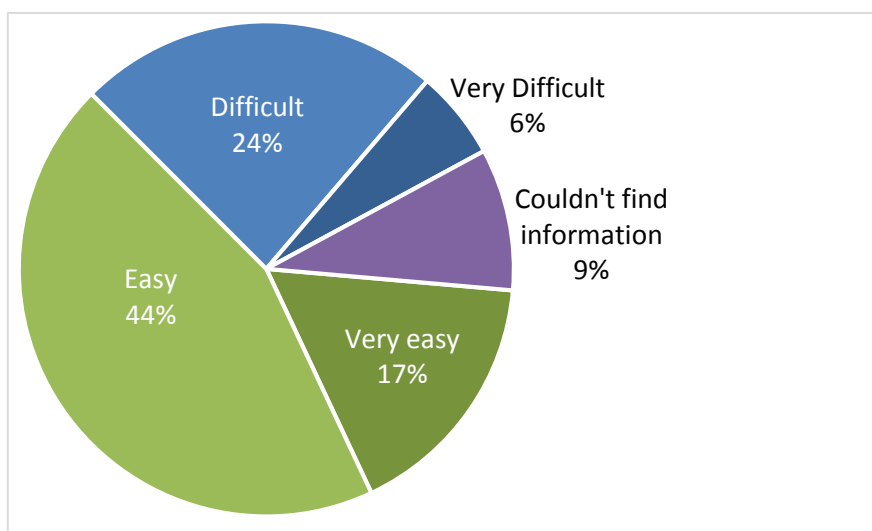
Online tools are growing in popularity. As of July 2014 there were 280,675 registered uses for CAC, 2.7 million Internet information requests, and 54,266 unique users in the month of July. Medical and vocational service providers made 30% of the contacts on claims, followed by claimants that made 16% of the claims related contacts.

Online services are for the most part positively received, as confirmed in L&I surveys and our own worker survey. Yet, 30% of those responding in our worker survey who said they used online tools thought they were complex or difficult. Our testing of online tools suggests that they are not materially more complex or difficult than Amazon.com, Walmart.com, USPS.com or other highly used commercial

and government websites. My Secure L&I, for example, offers a great deal of functionality to the user, but this comes at the cost to the user of learning the range of functions and discriminating between service choices. There may be no practical remedy for making online encounters more user-friendly to the 20-30% or so of L&I stakeholders that are uncomfortable with this technology.¹⁰

In our survey, one-third of workers indicated that they used the CAC to track their claim. Both employers and workers had a positive perception of how well the system worked. Exhibit 4-3 shows that 60% of workers reported the system “very easy” or “easy” to use. While a substantial fraction of workers still find it difficult to use, the difference between the focus group (older claims) and the survey (relatively more recent claims) suggests that L&I is making substantial progress on improving the interface of the on-line system.

Exhibit 4-3: How Easy is the On-line Account System to use?

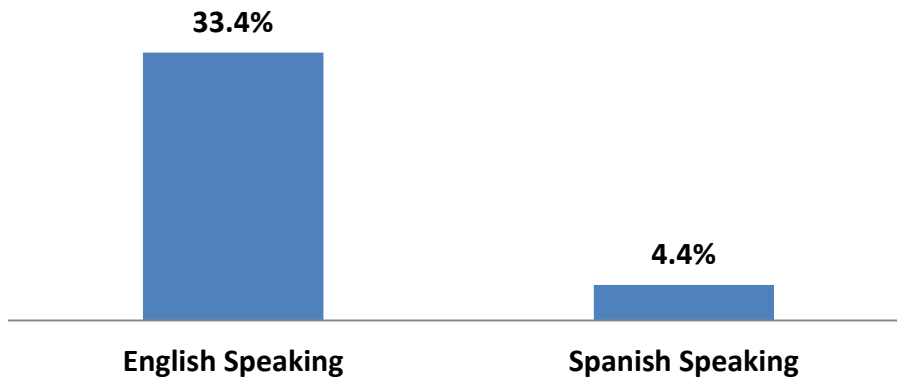


Source: WorkComp Strategy Worker Survey, 2014 (sample of claims > \$5,000 in medical costs)

There was one area of major concern about online services: few Spanish-speaking workers (4.4%) used the system to track their claims (Exhibit 4-4). There can be several reasons for this lack of use, such as lack of access to computers and the Internet, or a lack of familiarity with the Internet. The most obvious barrier is that My Secure L&I and the CAC are published only in English. Though not always a flawless translation tool, some government agencies use Google Translate to assist non-English speakers.¹¹

¹⁰ According to a 2013 household census, about 74.4% of US households have Internet access. The number is relatively low for households in which English is not spoken, households with older residents, and Hispanic households. See: <http://www.census.gov/content/dam/Census/library/publications/2014/acs/acs-28.pdf>.

¹¹ According to L&I, federal guidelines seem to discourage the use of online translator tools, presumably because they do not always capture the correct technical or idiomatic meaning of an English expression. But, online translators (like Google's) are not prohibited, particularly for Spanish. Notwithstanding this difficulty, it seems that offering English-only information and online communication tools is a disservice to some workers with profound English language deficits. One alternative is to put more prominent notices in Spanish and other frequently encountered languages on English language only web pages/tools that English translation is available from L&I upon request, and how to make such a request.

Exhibit 4-4: Percent of Respondents Reporting That They Used On-line Account System

Source: WorkComp Strategy Worker Survey, 2014 (sample of claims > \$5,000 in medical costs)

This percentage of usage of online services in Washington is higher than in North Dakota, where 54% reported being aware of online services, and about 26% reported using the services.

5.2 CLARITY OF MATERIALS

A segment of workers do not understand the basics of the claims process. In our interviews with stakeholders we heard several worker representatives say that many recipients of L&I letters are left confused and need to have a third party explain what is being told them by L&I. Our worker survey found that 18% of respondents thought that L&I written communication in disputed cases was “very unclear” and another 22% thought it was “somewhat unclear.” We also heard this comprehension problem emphasized in some stakeholder interviews. Project Help is a fall back for helping bewildered workers, but the best approach is to try to customize the type of communication to the worker’s needs at the start of the claim process.

Customization means being able to determine when it would be appropriate to use letters and when a worker seems particularly confused or upset about his or her claim. The latter would get a larger share of the personal contacts by the CM, who may need training on recognizing and communicating with these injured workers. In extremely difficult cases, it might be useful to allow a referral to specialized resources to assist with communications issues that are complicating the management of the claim.

As already stated, worker opinion is widely divided on the speed and quality of communication. Also noted are the barriers to communicating with a large fraction of workers (non-English speaking, functionally illiterate), and the difficulty of explaining complex workers’ compensation rules and procedures. We believe that a more flexible and individualistic approach to communication is worthy of development.¹² Whether through decision modeling or perceptive skill training the CM ought to be able to detect early in a claim that managing the claim is going to need special communication techniques or referral to specialized resources for assistance.

¹² Recognizing this, L&I has initiated special communication skills training for all CMs. While a major step to more skillful communication, honing these communication skills should be an ongoing process and not just the subject of a one-time training program. CM turnover and unsatisfactory assimilation of the training by some CMs requires close monitoring of effective use of methods covered in the training, and repeated training as needed.

The Federal agencies cite Census data to estimate that 8% of the resident Washington population is “Limited English Proficient” and requires special handling. The investigators cited several cases in which L&I had not consistently used forms and letters in Spanish, despite the fact that the worker identified a preference for Spanish.¹³ This is consistent with our findings in file reviews, where we saw several cases of English language letters being used despite the fact that the record showed a Spanish language preference. Language assistance was not always offered for treating provider or IME encounters.¹⁴

Our review of L&I letters and forms written in English, discussed above, found some shortcomings in clarity, comprehensibility, and grammar. It may be impractical for L&I to impose sufficient quality control on translating a host of letters into Korean, Serbian, Cambodian, and dozens of other languages. Given the large number of different languages involved, and the intricacies of writing about workers’ compensation laws and procedures in any language, we think that the letter and form dependent system is particularly inappropriate for workers with limited English proficiency. Personal contact with the worker using a qualified translator, or multi-lingual CM, would seem to be best suited for these special populations.

Under some circumstances it makes sense for a party that disagrees with L&I to hire an attorney. In mediation sessions or at pre-hearings, adjudicators sometimes advise workers filing appeals to seek legal counsel before proceeding with the appeal. The fact that an attorney is willing to take a case is in some sense a confirmation of a problem in the claim. Acceptance is a demonstration that the attorney thinks there is a sufficiently good chance of winning the dispute and earning a fee relative to the effort invested. The fact that between roughly 20-30% of injured workers¹⁵ whom we surveyed either hired or considered hiring an attorney is a sign of problems with communication, if not the decision process itself.

In our survey of injured workers we found the following as the most recurrent reasons for workers to hire attorneys:

- **Confusion about the process.** Most commonly workers mentioned they consulted an attorney because they were confused about the claims process or the benefits they were entitled to. Closely related to confusion about the claims process, workers often mentioned consulting an attorney to clarify the extent of their rights to benefits.

¹³After investigation of complaints of Washington residents with limited English proficiency, the US Dept. of Justice (DOJ) and US Dept. of Labor jointly determined that L&I, Insurance Services Division, was in violation of Title VI, sec 188 of the Workforce Investment Act for not providing meaningful access to information in a language that the worker can understand, including steps to: “(1) develop, monitor, and assess the effectiveness of its language access program; (2) effectively identify the number or proportion of LEP individuals served or encountered and the frequency with which they come into contact with ISD and the language needs of LEP workers ‘compensation workers; (3) ensure that LEP workers’ compensation workers are provided timely language assistance services at no cost, including oral interpretation services and vital documents and information in the workers’ preferred language; (4) require testing procedures that assess the competency of all bilingual job applicants and employees who serve as interpreters and translators; (5) provide adequate training to staff on civil rights and language access obligations; and (6) provide LEP individuals appropriate notice of language assistance services.”

¹⁴ L&I reports that this issue is currently being addressed in a new project to address limited English proficiency communication issues.

¹⁵ Our survey of injured workers found 17.5% of the respondents reporting that they hired an attorney. An additional 13.1% of workers consulted an attorney but did not become represented. WCRI estimated that in 1995 26% of lost time claims in Washington involved a worker attorney. See: *Revisiting Workers’ Compensation in Washington: Administrative Inventory*. Carol A. Telles and Dr. Sharon E. Fox. December 1996. WC-96-10.

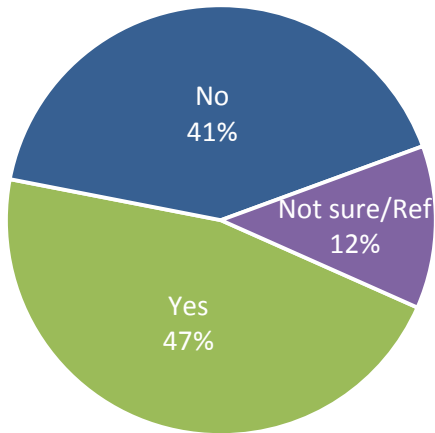
- **Termination of TL benefits.** The termination of TL benefits seems to be a trigger for seeking an attorney. There may be confusion about how and why benefits end or transition to a different type of benefit. L&I might consider a proactive, direct contact with workers when benefits are going to end. To be efficient, these contacts might be limited to claims where the benefits have had durations greater than some threshold (e.g., 30 days) or some other claim characteristic or characteristics predict a higher probability of a dispute.
- **Delay and denial of medical treatment.** This is a very important trigger. Many workers seeking an attorney indicated they were frustrated with the length of time it took to get approval for medical treatment. Another group sought an attorney after medical treatment was terminated and (in their perception) the claim closed. Ending medical treatment is not as easy a place to intervene, proactively, as the ending of a particular benefit. The ending of medical treatment tends to be much less precise. But, it might be important for CMs to contact the worker directly when a decision is made to terminate medical treatment.
- **Additional body part not allowed.** There were a number of cases where the worker consulted an attorney because a 2nd body part was not allowed to be added to the claim. These appeared to be cases where the second body part was added after the claim had been open for some time. This might be another opportunity for the CM to proactively contact the worker and explain why the additional body part is not being approved for treatment.
- **Denial of time loss payments.** Not surprisingly, a high fraction of workers who had their claim denied hired an attorney. Unlike workers that hire an attorney because of medical treatment issues, termination of benefits, or in hopes of speeding up the process, these workers are at risk of losing all, not just a fraction, of their benefits.

In our survey of injured workers (note that those surveyed had claims with relatively serious injuries) we detected strong minority opinion that L&I was not fair in how it handled the respondent's claim. Fairness is a tricky concept to query workers about. The challenge is that "fairness" is a vague concept, or more precisely, it can be inexact, understood differently by different respondents, or both. In addition, the perception of fairness can be colored by the outcome of the dispute process. We get at the issue of fairness by asking a series of three questions:

- Did the workers feel they had sufficient opportunity to present their case?
- Were the workers satisfied with the process?
- Were the workers satisfied with the outcome?

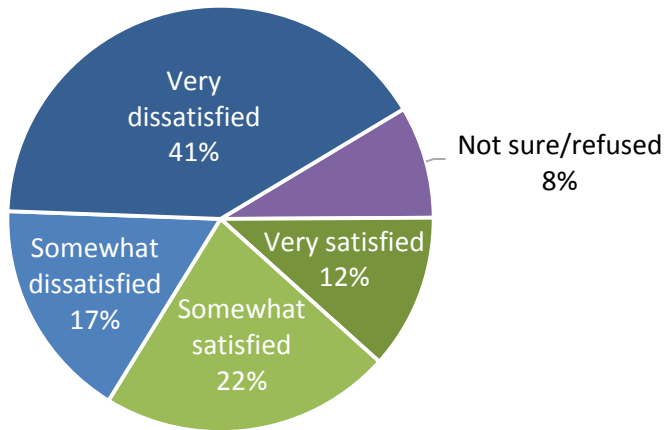
The concept of fairness should be considered in light of the answers to all three questions, shown in Exhibits 5, 6, and 7 below. The answers to the three questions are consistently negative. A large percentage (41%) did not believe they had a sufficient opportunity to present their case, 41% were "very dissatisfied" with the process, and 34% were "very dissatisfied" with the decision. Note here that in most of these figures we include the fraction of workers answering "Don't know" or "Not sure." We do this here because unlike nearly all of the other questions, the fraction answering "Don't know" or "Not sure" is not trivial. This might be an indication of how difficult it is for workers to answer questions about the concepts.

Exhibit 4-5: Workers with Protests: Sufficient Opportunity to Present Case?



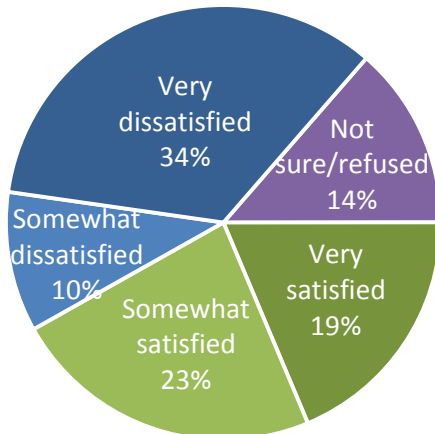
Source: WorkComp Strategies Worker Survey, 2014 (sample of claims > \$5,000 in medical costs)

Exhibit 4-6: Workers with Protests: Satisfied with Process?



Source: WorkComp Strategies Worker Survey, 2014 (sample of claims > \$5,000 in medical costs)

Exhibit 4-7: Workers with Protests: Satisfied with Decision?



Source: WorkComp Strategies Worker Survey, 2014 (sample of claims > \$5,000 in medical costs)

In summary, we believe that L&I can mitigate such perceptions of bias through better communication. This would include more:

- Early, personal contact by the CM.
- Understandable written communications explaining why their claim or medical treatment was denied.
- Careful assistance with non-English speakers who appear to be challenged by letters and online information.
- Improved letter communications, and less reliance on form letters.