

LABOR MANAGEMENT ADVISORY COUNCIL

AUGUST 2019



Montana Department of
LABOR & INDUSTRY

NEW POLL ITEMS

BRI LAKE

<https://www.polleverywhere.com>



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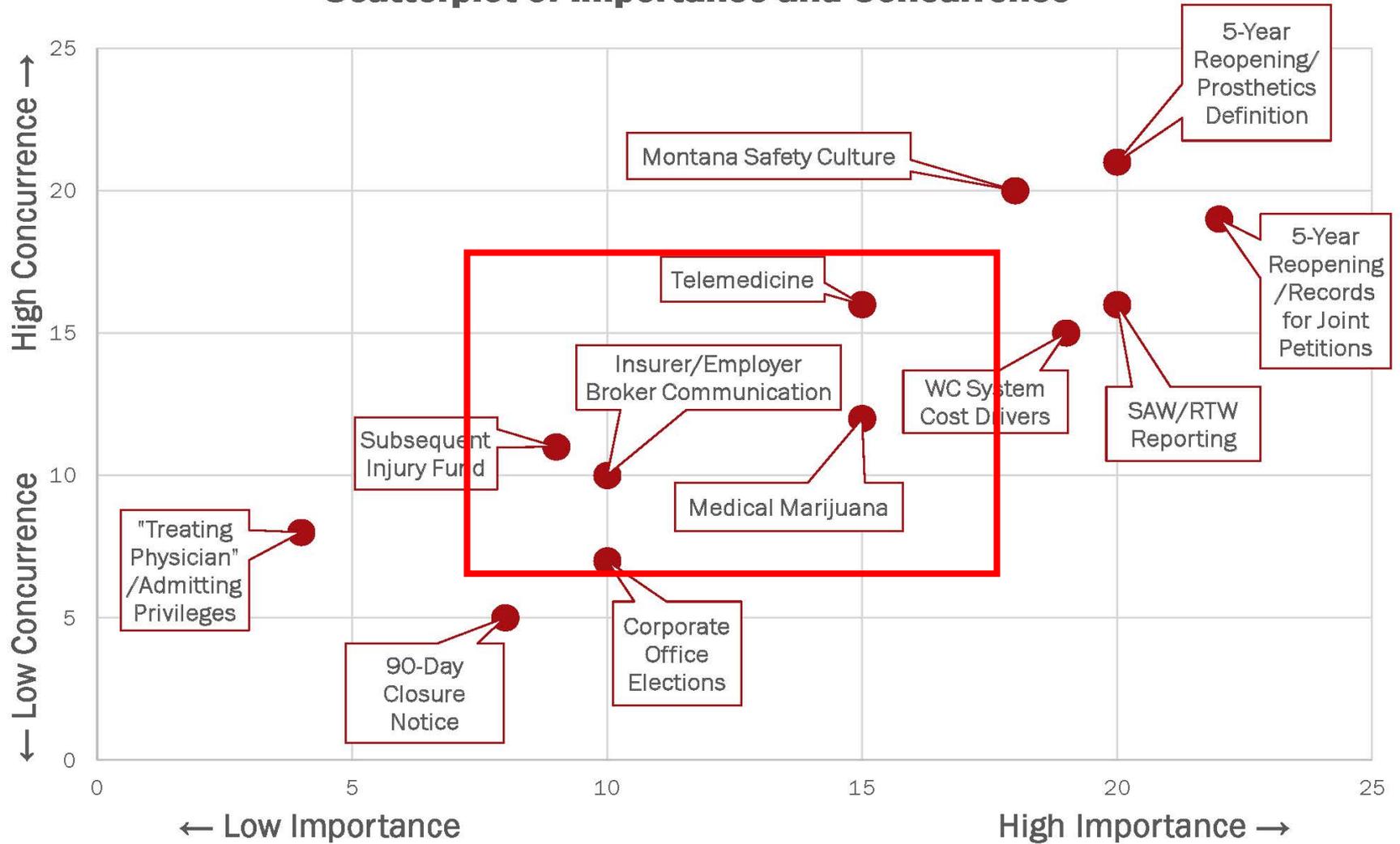
WORKPLAN

LMAC MEMBERS



Montana Department of
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Future Work Plan Topics for LMAC Scatterplot of Importance and Concurrence



DRUG FORMULARY UPDATE

BILL WHEELER



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SAFETY CULTURE ACT

ERIC STRAUSS



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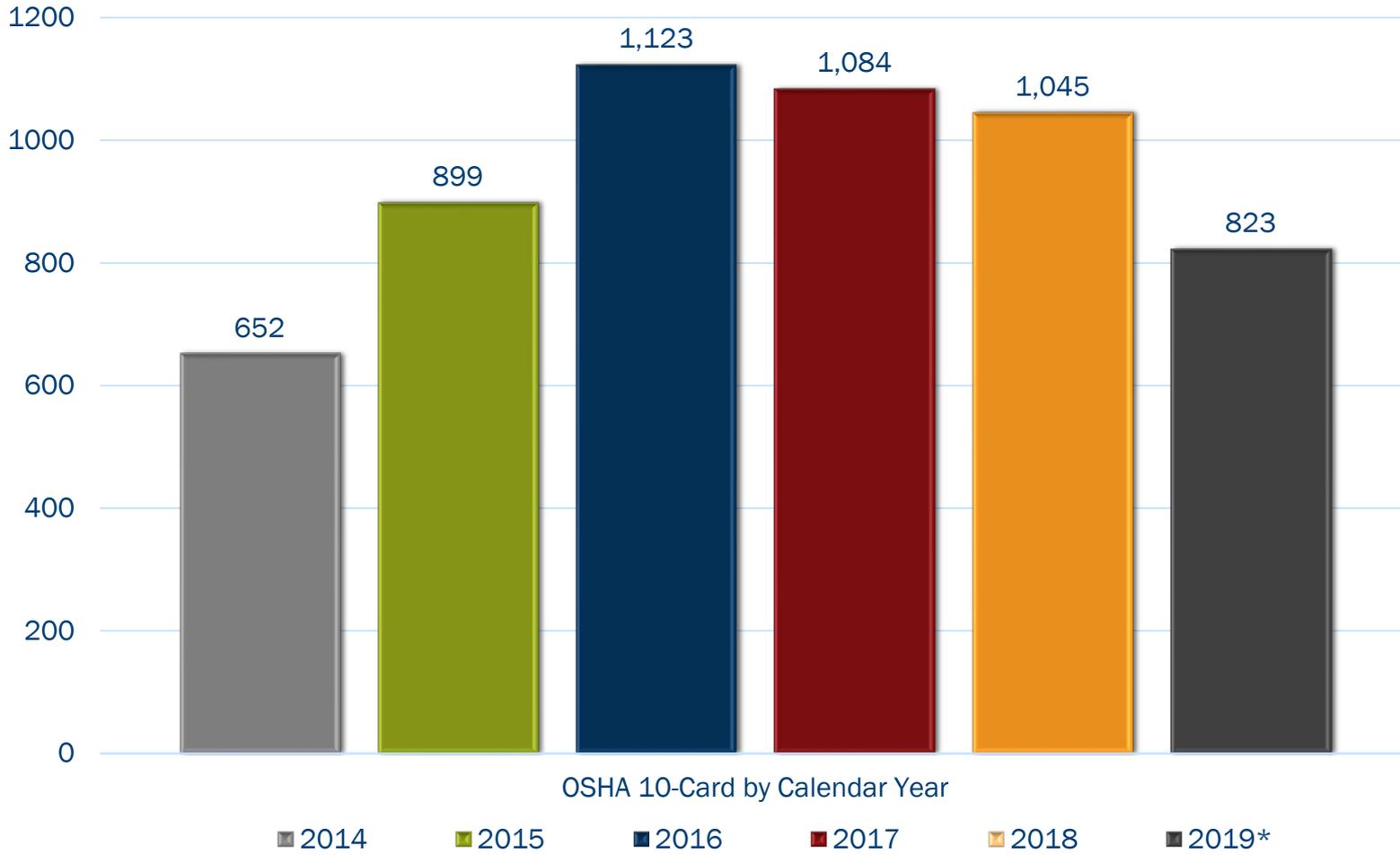
Significant Elements of Statute

- **Purpose:** "to reduce the incidence of occupational injury and illness by promoting safety in the workplace . . . to control costs of [workers' compensation] claims." 39-71-1502
- DLI and insurers to provide safety consultations to employers upon request 39-71-1503
- Public or private employers shall establish & administer a safety program. DLI shall produce & distribute materials to schools in MT and provide guest speakers to educate students 39-71-1504
- DLI shall adopt rules requiring every employer to conduct an education-based safety program including continuous refresher training 39-71-1505
- Employers of 5 or more employees to have comprehensive & effective safety program including a safety committee that holds regularly scheduled meetings 39-71-1505
- Each insurer shall notify insured employers of the safety consultation services available 39-71-1506
- Each insurer must contractually bind insured employers as part of agreement to provide coverage 39-71-1507
- Insurers are generally protected from liability for no-charge safety consultation services, unless an injury or death are directly and proximately caused by the insurer's negligent acts or omissions, or actual malice 39-71-1508

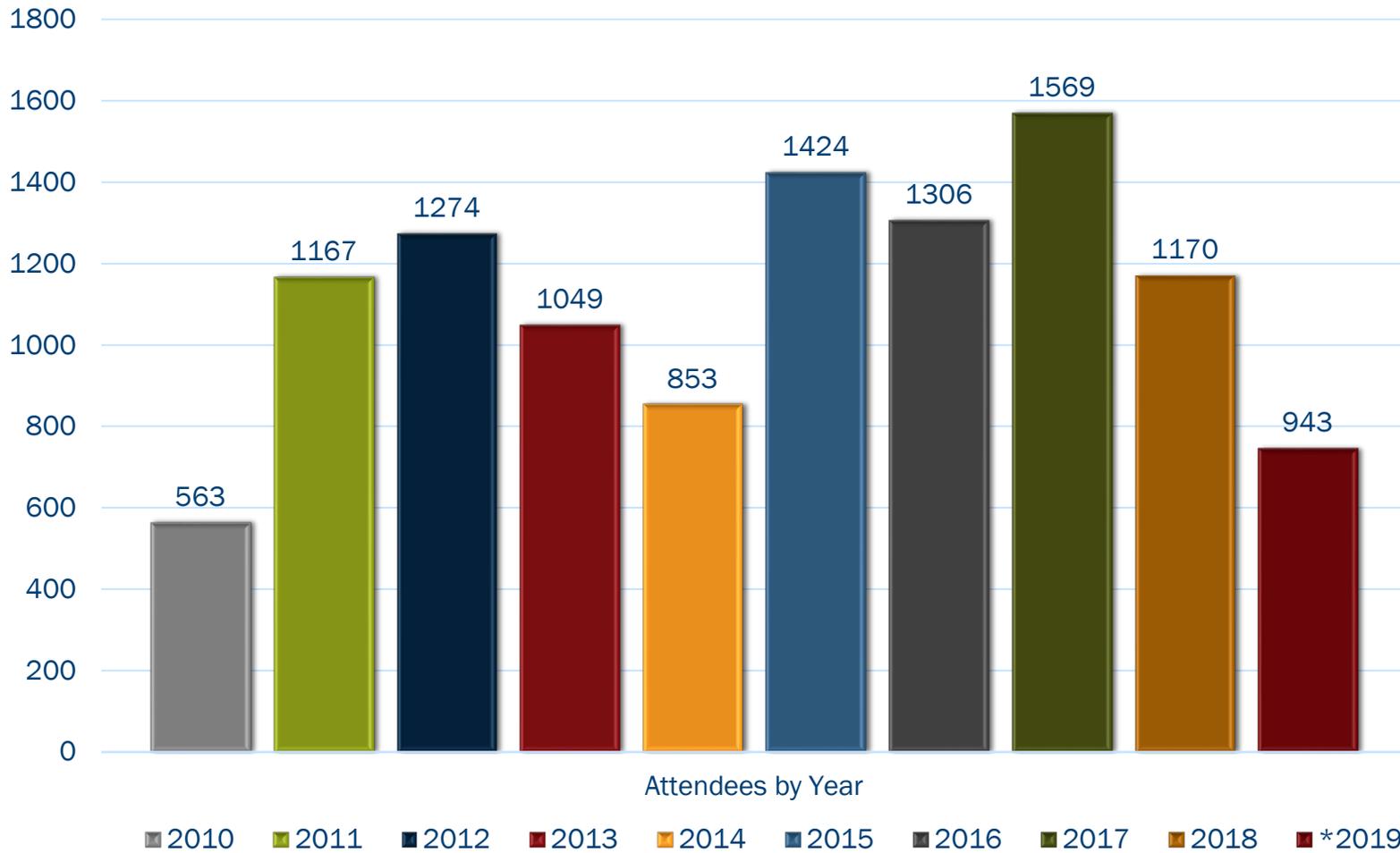
Significant Elements of Rule

- **Purpose:** “To set forth requirements employers must meet to comply with the Safety Culture Act... These rules also offer employers guidelines for implementation of workplace safety programs to help reduce the incidence of occupational injury and illness by promoting safety in the workplace.”
- Every employer shall establish, implement and maintain an education-based training program
- Provide each new employee with a general safety orientation and provide job or task-specific safety training and continuing regular refresher safety training
- A system for the employer and their employees to develop an awareness and appreciation of safety through safety meetings and incentive programs
- Regarding safety committees tread carefully around, and defer to issues related to collective bargaining agreements and federal labor law
- Require employers to maintain records of various safety program activities, including safety committee meetings
- Provide a way for insurers to grant an insured employer a waiver of the safety committee requirements, recognizing that some insured employers already have a safety committee structure that is effective in reducing workplace injuries

OSHA 10-Hour Cards Issued



SafetyFest Attendees



Safety Visits

	Jan-19	Feb-19	Mar-19	Apr-19	May-19	Jun-19	Jul-19	Aug-19	Sep-19	Oct-19	Nov-19	Dec-19	
Outreach													
10 hour class	4	7	9	7	3	7	7	0	0	0	0	0	44
Students	83	86	177	109	53	89	119	0	0	0	0	0	716
SafetyFest Classes	0	0	2	2	0	0	0	0	0	0	0	0	4
Attendees	0	0	55	23	0	0	0	0	0	0	0	0	78
Compliance													
Inspections	32	17	25	27	24	23	0	0	0	0	0	0	148
Assistance	3	2	4	4	3	4	0	0	0	0	0	0	20
Investigations	0	0	0	0	0	0	0	0	0	0	0	0	0
Interventions	0	0	5	4	0	0	0	0	0	0	0	0	9
Consultation													
Private Visits	9	21	10	19	20	29	16	0	0	0	0	0	124
Private Assistance	7	8	7	10	8	4	3	0	0	0	0	0	47
Public Visits	4	1	0	0	2	1	3	0	0	0	0	0	11
Public Assistance	3	2	5	8	2	2	0	0	0	0	0	0	22
OSHA Referred Visits	0	0	0	0	0	0	0	0	0	0	0	0	0

What We Don't Know

- Bri will conduct survey to determine how insurers are using the MSCA
- **Potential Questions:**
 1. Please describe what actions your company takes to be in compliance with the Montana Safety Culture Act
 2. Please describe what safety consultation services are available with your company
 3. Within your company's insurance contract/agreement, what must employers include within their required safety program?
 4. Is your company aware that compliance with the Montana Safety Culture Act is required by statute?
 5. How frequently is the requirement for an employer to have a safety committee waived?
 6. What barriers or challenges does your company see for **employers'** in complying with the Montana Safety Culture Act?
- Should we survey employers too?

Improvements Without Need for Statutory Changes:

Without Enforcement At Employer Level:

- Require insurers to maintain records on employer/insured's compliance; reporting to DLI on that information (de-identified vs. identified). Authority: 39-71-225, MCA
- Require insurers to maintain a copy of each employer of more than 5 employees written policy and procedures re: SCA. Authority: 39-71-225; 39-71-203; 39-71-1505, MCA
- Require insurers to demonstrate compliance with 39-71-1506 and 39-71-1507, MCA
- DLI inspection of insurers records of insured's compliance. Authority: 39-71-225; 39-71-203; 39-71-1505, MCA
- Require insurers to annually demonstrate entitlement to any waivers granted under ARM 24.30.2553, 24.30.2554, and 24.30.2558
- Require insurers [MSF] to annually report the names/addresses of insureds with a mod rating of 1.xx (or greater) to DLI. Authority: 39-71-225; 39-71-203; 39-71-1505, MCA
- Report insurer non-compliance to insurance commissioner's office

Improvements Without Need for Statutory Changes:

Enforcement At The Employer Level:

- Require employers to make SCA records available to DLI field inspectors/auditors
- Issue "safety recommendations" to employers that are non-compliant with safety committee requirements
- Limit enforcement actions to larger employers
- Limit enforcement actions to high-mod employers

Improvements That Will Require Statutory Changes:

Insurer Compliance:

- Civil penalty on insurers
- Require insurer to price SCA non-compliance as a fixed % increase in rates and/or surcharge. (Turf battle with insurance commissioner likely)

Employer Compliance:

- Civil penalty on employers
- Require insurer to price SCA non-compliance as a fixed % increase in premium rates and/ or require surcharge. (Turf battle with insurance commissioner likely)

Questions?

SAW/RTW REPORTING

CINDY ZIMMERMAN



Montana Department of
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Program Goal

The goal of stay-at-work/return-to-work assistance is to minimize avoidable disruption caused by a work-related injury or occupational disease by assisting the worker in the worker's return to the same position with the same employer or to a modified position with the same employer as soon as possible after an injury or an occupational disease occurs

Statutory Requirements 39-71-1042 MCA

What's Working Now & Verifiable:

- If an insurer accepts liability for a claim, the insurer shall provide SAW/RTW assistance and the insurer is directly liable for paying for the assistance

What May Be Working, But We Just Don't Know:

- If an insurer is providing assistance, the insurer shall provide in writing to a worker, w/ a copy to the Dept, explanation of assistance being provided
- The insurer may initiate and provide SAW/RTW assistance by providing the IW with a copy of the insurer's policy or designate a rehab provider
- If the insurer determines the IW has not suffered a compensable injury and denies liability the insurer shall terminate assistance

What Is Definitely Not Happening:

- If an insurer has **NOT** accepted liability for the claim, they may choose one of the following actions:
 - The insurer at risk may initiate SAW/RTW assistance and shall notify the Dept w/in 3 days and if the insurer provides assistance, the become responsible for directly paying
 - If the insurer at risk does not notify the Dept w/in 3 business days they are providing assistance, the Dept shall provide assistance by designating a rehab provider
- If an insurer is providing assistance, the insurer shall provide in writing to a worker, w/ a copy to the Dept, explanation of assistance being provided

Admin Rule Requirements 24.29.1807 ARM

What's Working Now & Verifiable:

- Each insurer shall adopt a SAW/RTW policy and submit a current copy to the Dept

What May Be Working, But We Just Don't Know:

- If a request for SAW/RTW is made directly to the insurer before liability is accepted, the insurer may elect to provide assistance or refer IW to Dept

What Is Definitely Not Happening:

- The insurer shall designate a single POC and shall update the Dept of changes to POC's w/in 10 days
- If the insurer declines to provide assistance, the insurer shall notify the IW & Dept w/in 3 business days of the request
- If the Dept has initiated assistance, the insurer shall notify the Dept w/in 3 business days of acceptance or denial
- The insurer shall report the outcome of assistance to the Dept using the Outcome Reporting Form w/in 30 business days
 - RTW start date
 - Termination of SAW/RTW services
 - IW reaches MMI

Language from SAW/RTW Letter

(Insurer) provides Stay at Work/Return to Work (SAW/RTW) assistance to injured employees to minimize the time an employee is off work as a result of an occupational injury or disease. A request to provide SAW/RTW services has been received with regard to your occupational injury. *(Insurer)* will facilitate SAW/RTW assistance for you by assigning a certified rehabilitation consultant to work with you and your employer to assist you in returning to work with *(Employer)* within the physical restrictions identified by your medical provider.

If you have any questions regarding the SAW/RTW process, please contact me at 406-XXX-XXXX.

Sincerely,

Mary Smith

Claim Examiner

406-XXX-XXX

cc: SAW/RTW Assistance Program PO Box 8011 Helena MT 59604-8011

Outcome Reporting Form

Insurer
SAW/RTW Assistance Outcome Reporting Form

Request of Depart Date	Request of Insurer Date	Insurer	Injured Worker's Name and Address
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(a) The injured worker refused transitional employment position because:

- wages were less than time of injury position, date: [redacted]
- disputes existed regarding job requirement and the work abilities doucmente on the medical status for, date:
- no reason was given
- another reason was given, date: Please Explain. [redacted]

(b) Employer was unable to offer a transitional employment position because:

- employer only had seasonal work, date: [redacted]
- employer had no available job tasks that met work abilities as documented on the medical status form, date:
- no reason was given, date: [redacted]
- another reason was given, date: Please Explain. [redacted]

SAW/RTW Assistance Fund

39-71-1049 – Stay-At-Work/Return-To-Work Assistance Fund – Purpose – Payment Process - Rulemaking

- **Purpose:** To pay for SAW/RTW assistance provided by Dept...as early as practicable in the WC claims process
- The Dept may establish by rule:
 - The amounts & types of assistance to be provided
 - Maximum hourly rate charged for SAW/RTW assistance obtained by the Dept
- **24.29.1815 Payment Schedule for Dept-Provided SAW/RTW Assistance**
 - The Dept shall pay a maximum of \$2,000/claim to a certified voc rehab counselor for SAW/RTW services, not including mileage, lodging and meals
 - When the Dept provides assistance, the Dept may pay up to \$2,000 to assist an employer in modifying the workplace or purchasing equipment to provide modified employment
- **Only assessment was in FY12 - assessment rate was .00082**
 - Current balance as of 8/13/19 = \$347,998.15

Potential Solutions & Possible Opportunities

WITH LIABILITY		
(9) RTW QUALIFIER DN71 (CHOOSE ONE)		(10) DATE OF RETURN OR RELEASE TO WORK DN72
1 <input type="checkbox"/> ACTUAL RTW WITHOUT PHYSICAL RESTRICTIONS	5 <input type="checkbox"/> RELEASED RTW WITHOUT PHYSICAL RESTRICTIONS	
2 <input type="checkbox"/> ACTUAL RTW WITH PHYSICAL RESTRICTIONS	6 <input type="checkbox"/> RELEASED RTW WITH PHYSICAL RESTRICTIONS	

1. Make RTW fields mandatory on SROI in EDI 1.0
 - Must give 6 -12 month notice before making fields mandatory
 - Most insurers already sending in this info
 - Would ask employers to report annually instead of claim by claim
2. Focus on compliance with insurers regarding statute & rule
 - We have no audit function to ensure compliance
 - Penalty vs incentive
 - We have no penalty function in current admin rules
3. Upgrade to EDI 3.x
 - Provides more fields for data reporting to include:
 - RTW physical restrictions
 - RTW w/ same employer
 - Long lead time - upgrade > 1 year
4. Possible use of funds as a “grant program” to assist small businesses
 - Small employers w/ less than 20 employees

Questions?

Contact:
Employment Relations Division

Cindy Zimmerman
SAW/RTW Manager
406.444.1752
cindy.zimmerman@mt.gov

WORKER'S COMPENSATION ANNUAL REPORT

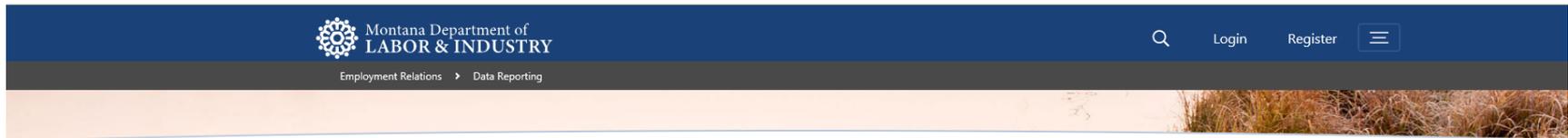
KRISTINE EDIGER



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Data Reporting

<http://erd.dli.mt.gov/publications>



Data Reporting

Summary Total Count By County By Age By Industry By Cause Total Benefits

How many work-related injuries, on average, in Montana yearly?

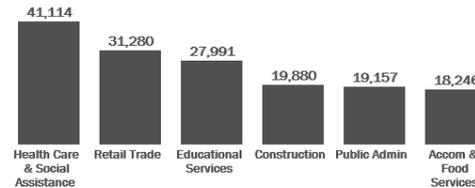
25,600
17% of those lost work time



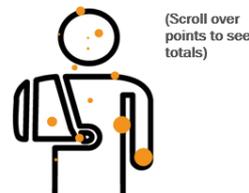
2:1 men to women ratio

25 to 34
years of age, most frequently injured

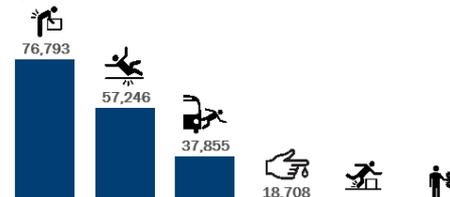
What are the top industries for work-related injuries from 2009 to 2018?



How many work-related injuries by part of body from 2009 to 2018?



What are the top causes of work-related injuries from 2009 to 2018?



INJURED WORKER SURVEY FOLLOW-UP

BRI LAKE



Montana Department of
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PROPOSED RULES FOR CE CERTIFICATION

JASON SWANT



Montana Department of
LABOR & INDUSTRY

Required Certification of Claims Examiners House Bill 757

Stakeholder Group:

Vicki Evans (MCCF)
Shari Truax (MSF)
Ashley Burch (Victory)
Linda Slavic (The Hartford- via Skype)
Ann Komac (MMIA)
Michael Marsh (MCSI & IIC)

DLI Core Team:

Wendy Jackson (ERD)
Nikki Hartman (ERD)
Jason Swant (ERD)
Bill Wheeler (ERD)
Mark Cadwallader (DLI Legal)

Rule Schedule:

Prior to October 8, 2019 – Work with stakeholders and LMAC to develop rules
October 8, 2019 - File proposed rules with SOS
October 18, 2019 – Publication date
November 7, 2019 – Public hearing
December 6, 2019 – Comment period end
January 1, 2020 – MAR Adoption Notice

<http://erd.dli.mt.gov/work-comp-claims/claims-assistance/claims-examiner-certification>

New Rules

New Rule 1

Establishes decisions that must be made by a Certified Claims Examiner

New Rule 2

Designation of Certified Claims Examiner to be accountable for new hires and claims examiner trainee decisions

New Rule 3

Reporting of employment status or change of address to the Department

New Definitions

- “Certified Claims Examiner”
- “Hour”
- “New Hire”
- “Trainee”

Certification Process

Examination:

- Passing score on the examination is at least 80%
- Applicant can take the exam up to three times within a 180 day period
- Applicant shall wait 60 days to retake the exam after the third attempt within the 180 day period

Continuing Education:

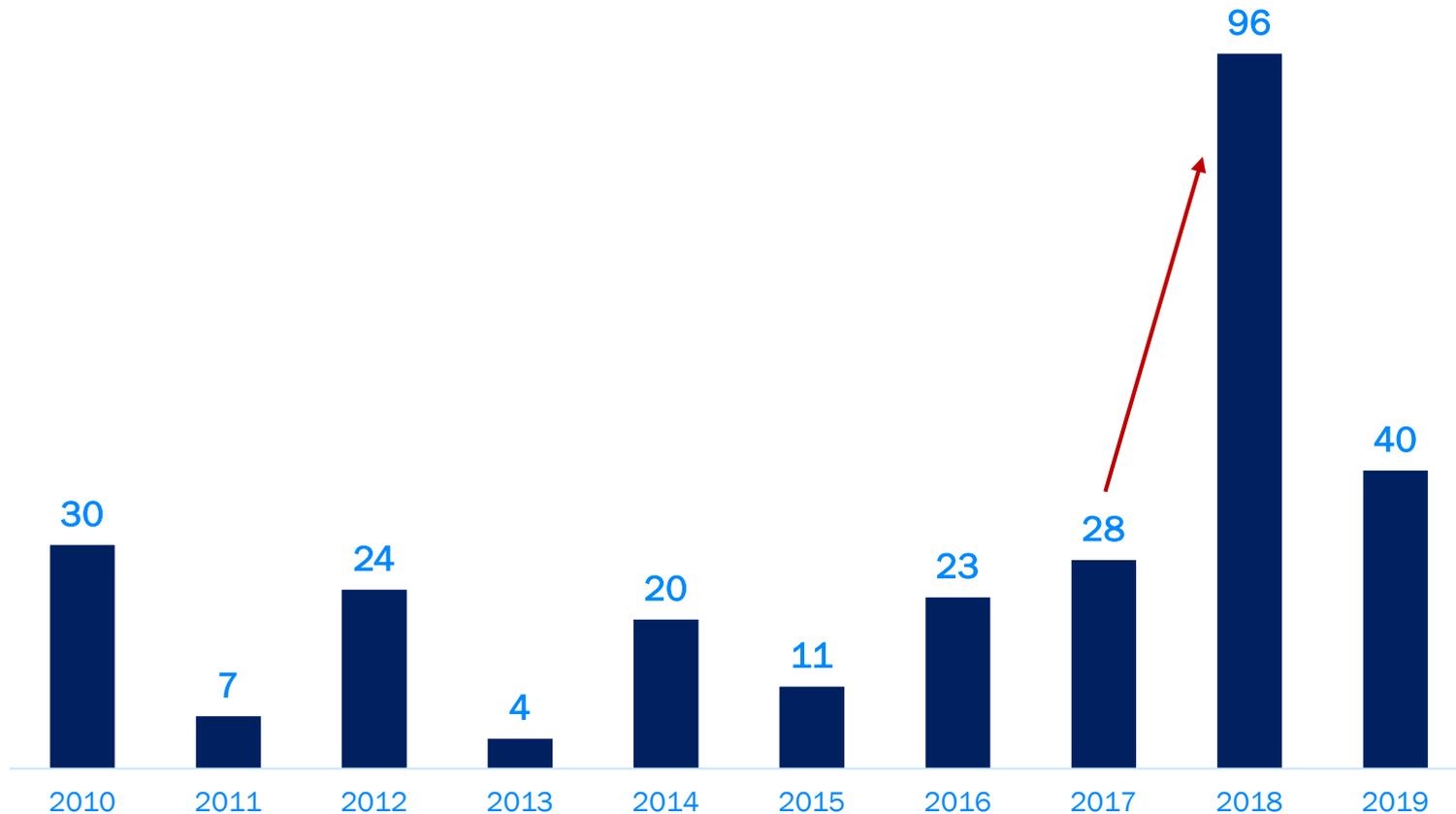
Completion of 24 hours of approved continuing education during the certification period (24 months)

- 4 hours WC statutes, administrative rules and case law
- 1 hour appropriate and ethical communication

Lapse in Certification

A person **MAY NOT** perform the functions of a claims examiner with a lapsed certification

Count of New Adjuster Certificates by Year



Questions?

Contact:
Employment Relations Division

Jason Swant
Work Comp Section Manager
406.444.6451
jswant@mt.gov