

**“FUNCTION”**  
**An Executive Summary Of Recommendations**  
**For Workers’ Compensation Reform**  
**In the State of California**  
**Through Implementation Of Individualized Functional Assessments**

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*Every Californian is aware of the financial crisis confronting the state and understands that the California Workers’ Compensation System is one of the single biggest contributing factors. Workers’ compensation costs have been spiraling out of control for the past ten years. This has forced California employers to pay the highest workers’ compensation costs in the nation, while California’s injured workers receive the lowest benefits. There is a way to reform the system that will protect the interest of all parties concerned; the employers, employees, and the healthcare providers who consult them. The solution lies in the use of individualized functional assessments as a means of assisting employers in making legally compliant, cost effective, scientific and objective hiring, fit for duty and return to work decisions. Based on actual outcomes from employers who have been using this discipline over the past fifteen years, a conservative estimate of first year savings for the state of California could be in excess of two billion dollars with an expected ten billion dollars in savings over the next five years.*

In his first State of the State Address, Governor Arnold Shwarzenegger vowed to fix the California Workers’ Compensation System and improve the environment for California businesses. He challenged the legislature to deliver “real reform” by March 1, 2004.

While there is no question that many areas of workers’ compensation require reform, the biggest challenges remain:

- *how to cut workers compensation costs without cutting jobs,*

- *how to better insure worker safety by preventing accidents before they occur, and*
- *how to reduce workers compensation costs associated with managing injured workers without compromising the quality of care.*

The legal infrastructure necessary to accomplish all of these objectives is already in place. In fact, with relatively few changes and additions, the present California Workers' Compensation System can be fixed. The answer lies in:

- *the utilization of individualized functional assessments in hiring, fit for duty and return to work programs, and*
- *educating employers in how to use the data provided through these assessments in ways that don't compromise legal compliance of state and federal laws governing the use of the data in employment decisions. (See Jackson Lewis Summary Brief – Disability Management Law Grows Up, Examining The Supreme Court's Recent ADA and FMLA Rulings.)*

Some have asserted that fraud and abuse are the primary reasons the System is in trouble. While there is no doubt that fraud and abuse does exist, it is not the primary problem. What is true, however, is that all too often, delays in reporting injuries, diagnoses of injured workers based on subjective (i.e., symptoms) versus objective (functional data) means, and delayed return to work can actually encourage fraud and abuse of the system. Additionally, healthcare providers making subjective decisions on the extent and severity of injuries in order to “milk the system” can be guilty of over-utilization. This traditionally represents the greater expense associated with fraud and abuse. Currently, there is typically no consistency or objective criteria used to determine the ability of California workers to safely perform their jobs, or to determine when a worker is safe to return to work after an injury. The standard, should be “function,” determined through the use of a content valid, legally compliant, individualized functional assessment. The changes needed in substance to accomplish this are relatively minor; however, the changes needed to augment our way of thinking about the use of these assessments could be major. The California Workers' Compensation System must be reformed to align the incentives of all parties involved. The only way to accomplish this is to have an objective means of evaluating jobs, workers, and the relationship between the two. Function is the objective means necessary to accomplish this.

Function is already part of the system. Sadly, it is almost never utilized. For example, the California Workers' Compensation Official Medical Fee Schedule currently lists in the Physical Medicine Section, treatment and evaluation codes 97660, 97670 and 97680. These codes are described as job analysis, functional capacity evaluations, and work-tolerance testing. What's interesting is that the reimbursement modifier associated with the 97670 code, Functional Capacity Evaluations is “BR” meaning “by report,” a somewhat vague term. Further explanation found in fee schedule explanatory notes state that the “BR” code indicates procedures rarely used that must be justified by report. In addition, California DWC forms RU-90 and 91 require the use of function in determining the status of injured workers after 90-days of disability. However, these forms, specifically the RU-91, describing the functional requirements of the job are rarely used. These are examples of the existence of function within the present system. While rarely

used and rather poorly understood, they form the basis for the following recommendations that will lead to real reform as required by the Governor.

A brief overview of how increased use of function can save the California Workers' Compensation System is as follows:

### **1. Job Analysis and Workers Post Offer Employment Evaluations**

An analyst for the California Insurance Commission posted a recommendation on their web-site stating that California employers should implement standardized testing as described by government research agencies such as the National Institute of Occupational Safety and Health (NIOSH). The recommendation was given as a means of improving workers' safety. Studies have suggested that 10% of employees across the nation are NOT safe to perform their jobs. The same 10% account for 75% of injuries and associated costs. If a worker is not physically capable of safely performing the essential functions of the job, it isn't a matter of if they will be injured, it's a matter of when. Statistics indicate that it will most often happen between the first and fifth year of employment.

Every job has certain "essential functions." Essential functions have both mental and physical demands. Workers should be evaluated as to their ability to safely meet those physical demands before they go to work. A specializing physician, prior to job placement, should provide clearance for any significant medical risk. We are all familiar with the demands of certain jobs and we expect those performing such jobs to have the mental and physical ability to perform them. For example, we expect brain surgeons to have the knowledge of neuroanatomy and the steady hands to perform surgery. We expect a pilot to demonstrate the skills necessary to safely fly an aircraft and have the physical capability to do so. They are continuously and carefully evaluated as to whether they are able to do so. Likewise, all other jobs should be carefully analyzed to determine their essential functions and the demands of those functions. Workers should then be able to demonstrate their ability to safely perform those functions before and during employment.

Employers who have incorporated the use of individualized functional assessment as part of their post offer screening requirement are experiencing an average of 50% reduction in injuries and associated costs within the first year of implementation. Some companies have reduced injury costs as much 84% during first year of implementation. While there are a several programs currently being utilized by employers, it is important to evaluate that the program being used is legally compliant with the Americans with Disabilities Act (ADA) and other federal, state and local laws. (See "Criteria For Developing A Legally Compliant Functional Employment Testing Program"). Properly executed, these programs have an excellent record of effectiveness without unfairly discriminating against workers. A Functional Testing Model should establish safety as a mission with shared responsibility between all parties involved in the work injury management continuum; employers, employees, and their healthcare providers.

California's employers must be encouraged to implement these programs to substantially reduce injuries in the workplace. This will drastically reduce the number of workers entering the Workers' Compensation System and significantly reduce costs to the public and private sectors and state employers.

## **2. Functional Testing within the Workers' Compensation System**

Even with the best preventive programs and the resulting reductions in injuries, inevitably some work-injuries will occur. The "baby boomer" aging workforce, increased obesity, and the arthritis epidemic (expected to double in the next 20 years), all create more challenges and added costs for any healthcare system. Currently, most workers' compensation systems assume that:

- *all workers are perfect when hired,*
- *they never grow old, and*
- *whatever happens to them was caused by the workplace.*

Such thinking leads to unbelievable and unnecessary costs. Pre and post injury functional measures on an individual should create fair and unbiased accountability for all parties concerned. They should also allow the employee to accept some responsibility for "genetic, lifestyle and normal degenerative processes (apportionment)." The "human machine" is very resilient, but accidents and recurring micro trauma from repetitive work will still occur. Our athletes get the best care. Our executives, professionals, and politicians get it. Why not our workers? Function-based medical and rehabilitative treatment programs will help optimize care for our workers.

Over the past 20 years, with the growing financial investment in professional athletes, the "sports-medicine" model of injury care has been carefully developed and refined. Not long ago a complicated athletic injury such as an anterior cruciate (ACL) of the knee required over one year to repair and rehabilitate. However, the real cost of lost revenue and lost championships required the refinement and acceleration of treatment protocols for such injuries. Now treatment and rehabilitation for this injury rarely exceeds six months. In the work-injury arena, a simple back-strain treatment program often lasts as long as a complicated ACL rehabilitation program. When considering the direct and indirect costs associated with lost time for such an injury, it makes sense that the Workers' Compensation System should be as equally committed to investing the time and resources necessary to discover interventions that facilitate healing and rapid return to work for our "industrial athletes."

There are many factors contributing to the problem of protracted injury care and disability including:

- *poor education of workers and supervisors in identifying unsafe work areas and practices,*
- *poor injury reporting by employees and poor employer first aid/medical first response protocols,*
- *no means for in-house wellness programs to address minor pain complaints,*
- *disinterested, poorly trained and/or predatory medical providers,*

- *medical providers driven by referral for profit (self referral),*
- *a legal community only too available to exploit the deficiencies of the system,*
- *poor treatment protocols and early response to injuries (in contrast to the sports medicine model of early and comprehensive intervention and treatment),*
- *lack of understanding by employers and employees regarding their specific responsibilities in limiting risks,*
- *a misguided dependence of employers on the insurance industry to handle all their work injury problems,*
- *a misguided dependence of employees in the Workers' Compensation System to fix whatever ails them,*
- *poor incentives in the insurance and third part administration industry to prevent injury, limit claims costs, and actually manage claims for the best medical results at the least possible expense, (most of these entities profit from higher costs and frequency of claims, despite their claims otherwise), and*
- *finally and most important, a complete lack of OBJECTIVE, MEASURABLE, criteria with which to identify, treat, rehabilitate, manage, and close work-injury cases on an individual basis.*

Utilizing objective standards regarding functional ability of injured workers is no less important post-injury than it is pre-employment. Objective standards grounded in function must be utilized. This will have a direct impact on the majority of the above referenced problems and will decrease the time and cost of work-injury treatment and rehabilitation. The very basis of California Workers' Compensation should be to measure and focus on the worker's ability – not the disability. As soon as injured workers are stable, individualized functional assessments should be utilized to determine their ability to function with or without a reasonable accommodation.

Immediate post-injury testing helps determine the objective level of functional ability of a recently injured worker and allows for the determination of actual limitations for appropriate return-to-work decisions, whether transitional (modified or light) duty or full duty.

This post-injury objective evaluation is also extremely useful in limiting fraudulent claims. Medically and legally accepted scientific methods of functional evaluations have withstood legal scrutiny and can correctly determine whether a worker's claim of injury is valid. They may also provide strong evidence as to the apportionment of degenerative changes. These individualized assessments utilized within the first few days post-injury will most appropriately fulfill the employer's needs in determining whether to accept, deny, or investigate the work-injury claim.

Immediate post-injury testing should also be used to properly develop rehabilitation goals and plan of care to more accurately fit the functional needs of the employee in relation to their job. Instead of a physical therapist stating this typical goal, "decrease pain, increase range of motion and strength", rehabilitation goals should be more specific to the job. For example:

*Goal - improve strength to be able to lift a 52 pound box of copy paper from the 6 inch cart bed to 30 inch. shelf height.*

*Plan - perform progressive box lifting from 66 inches to 30 inches, starting at current safe level. Perform weight of 25 pounds and add weight progressing up to 52 pounds as tolerated.*

This can only be accomplished with post-injury functional testing.

Post-injury functional testing should also be utilized to determine progress in functional ability to perform work tasks. The current typical practice of a physician simply asking an injured worker if they believe they can do their job (or not ask at all) invites opportunity for misunderstanding, miscalculation producing dangerously subjective verses objective decisions regarding escalation of treatment and appropriate return to work. This area alone clearly has the highest impact in protracted treatment, re-injury when returned to inappropriate work too soon, escalated diagnostic costs (such as MRI) and more fraud and abuse by both employees and medical providers.

Stated again, post-injury functional testing should be used to accurately determine a worker's safe functional ability, to progress in rehabilitation and to monitor the extent of their effort during testing, thereby leading to accurate conclusions about possible fraud and malingering and to accelerate appropriate return to work.

Currently, many other states and countries have encouraged the use of these individualized functional tests, typically called Functional Capacity Evaluations (FCE) or Physical Capacity Evaluations (PCE). Australia and Canada emphasize the use of functional testing in work-injury management. States who emphasize function have valued their effectiveness by giving FCEs or PCEs the reimbursable value typically over \$600 per test. In the State of Texas there is now a recommended process of using three FCEs throughout the course of an injury. The first or initial FCE reimbursed at \$500, the second or interim FCE \$250, and the final or discharge FCE at \$250. This is one process that has proven valuable to the system, but it is still flawed in that it does not offer post offer and fit for duty tests as incentives to employers. California should also require certain criteria to be included in post offer, fit for duty, and functional capacity tests to legitimize them and standardize protocols for comparison of data throughout the individual's working life.

While these states are still experiencing increases in costs, they are experiencing them to a lesser degree than the state of California. The use of these objective functional evaluations may be a very important contributing factor. In one case in Texas, a workers' compensation hearing officer's final award to an injured worker was reduced by 40% by an appeals panel based solely on information gathered in a functional test that accurately compared pre and post-injury measures. Objectivity is a fair and appropriate way to treat, rehabilitate, manage, and close work-injury cases more cost-effectively.

### 3. Post-Injury and Fit For Duty Testing and the Americans with Disabilities Act

Under the ADA, employers may require medical examinations of employees, including functional employment testing, where the exams are “job related and consistent with business necessity”. Generally, this standard is met when an employer "has a reasonable belief, based on objective evidence, that: (1) an employee's ability to perform essential job functions will be impaired by a medical condition; or (2) an employee will pose a direct threat due to a medical condition."

Disability-related inquiries and medical examinations that follow up on a request for reasonable accommodation when the disability or need for accommodation is not known or obvious also may be job-related and consistent with business necessity. In addition, periodic medical examinations and other monitoring under specific circumstances may be job-related and consistent with business necessity in positions affecting public safety. Employers also may require medical examinations when employees seek to return to work following medical leaves and the employers have a reasonable belief that their present ability to perform essential job functions continues to be impaired by the medical condition or that they will pose a direct threat due to the medical condition.

The determination that an employee poses a direct threat must be based on an individualized assessment of the employee's present ability to safely perform the essential functions of the job. ADA Regulations require that this assessment be based on a reasonable medical judgment that relies on the most current medical knowledge and/or best objective evidence. The EEOC has acknowledged that, to meet this burden, employers may want to have employees examined by health care professionals, chosen by them, who have expertise in the employees’ specific conditions and can provide medical information that allows the employers to determine the effects of the conditions on the employees’ ability to perform their jobs.

The EEOC also has acknowledged that employers may require employees to see a health care provider chosen by the employer if the documentation from their treating physicians (or other health care professionals) is insufficient to make these determinations. Documentation would be insufficient where, for example:

- *the health care professional does not have the expertise to give an opinion about the employee's medical condition and the limitations imposed by it;*
- *the information does not specify the functional limitations due to the disability; or,*
- *other factors indicate that the information provided is not credible or is fraudulent. See the EEOC’s Enforcement Guidance on Disability Related Inquiries and Medical Examinations, Questions 11 and 12 (Issued July 27, 2000). <http://www.eeoc.gov/policy/docs/guidance-inquiries.html>*

In all of these post-injury situations, functional testing would be the ideal means for assessing the employee's ability to work safely and successfully. The ADA regulations and policy statements confirm the valuable and lawful uses of functional employment testing in most, if not all, post-injury scenarios. Workers’ compensation would benefit

significantly by incorporating similar guidelines or giving employers incentives to implement and pay for such tests themselves.

It simply makes good sense for supervisors, safety officers, or even fellow employees who notice a fellow worker in trouble to say and do something to intervene. For the safety of the employee and others, symptoms such as uncharacteristic or unexpected behaviors like shortness of breath, profuse sweating, frequent resting or requests for help, or inability to keep up with reasonable production standards would objectively indicate potential problems. A fit for duty evaluation should be done to determine if significant risks are present and whether further intervention is appropriate.

Lives are at stake! Recently, two city public works employees in a small central California town died within just a few weeks of each other because of heart attacks suffered on the job. Intervention triggered by observed functional limitations and physical symptoms might have saved their lives.

In its development of the Ergonomic Standard, the Occupational Safety and Health Administration (OSHA) evaluated most if not all work related research to define “physically demanding.” California Workers’ Compensation should adopt such guidelines or create their own. A partial list of examples of physically demanding qualifiers are as follows:

- *repeating the same motion every few seconds more than two consecutive hours in a workday,*
- *using an input device, such as a keyboard and/or mouse in a steady manner for more than four hours total in a workday,*
- *lifting more than 75 pounds at any one time; 55 pounds more than ten times per day; or more than 25 pounds below the knee, overhead, or at arms length 25 times per day,*
- *pushing, pulling with more than 20 pounds of initial force equivalent to pushing a 65 pound box across the floor,*
- *pinching an unsupported object weighing two or more pounds or pinching more than two hours per day, and*
- *gripping an unsupported object weighing ten pounds or using an equivalent grip force more than two hours per day.*

Such testing is invaluable in that early detection can lead to reclassification, conditioning, temporary or permanent accommodations, wellness intervention, disease process discovery, and/or other intervention strategies before claims occur. California should include verbiage for intervention strategies that would be acceptable prior to the labeling of a compensable claim. It has been the experience of employers who utilize periodic fit for duty assessments, that the practice encourages weight loss, conditioning and a general perception to maintain or improve health & fitness, all of which contribute to the overall success and productivity of the company.

Consent forms, policies and procedures and test design must specifically address the injured body part and its contribution related to the performance of job functions to insure



legal compliance and job relatedness. Such testing is invaluable in that it compares musculoskeletal and neurological symptoms to organic pathology. It has consistency checks, which verify the patient's effort. It has job related and essential functions compared to job descriptions for safe and acceptable early return to work. The policy should recommend paid time off for treatment and retesting no later than every 30 days to verify continued improvement with regard to job function. The procedure recommends a company policy limiting the time an employee can be on temporary modified duty but allows the employer to extend it if functional testing demonstrates improvement toward performing essential functions. It requests such accommodation/treatment be incorporated into any collective bargaining agreement. Finally, the process allows the employer, employee, union, healthcare provider, and insurance provider to agree on a permanent accommodation, reclassification, retraining or termination based upon fact – not speculation based upon numbers drawn “out of the air”.

#### **4. Disability Rating**

The State of California is one of only a few states in the union who do not use the American Medical Association Disability Guidelines for determining disability rating in the Workers' Compensation System. Just adopting this more standardized method of rating the final status of a worker's residual physical limitations after injury would increase the fairness and objectiveness of this procedure.

However, more than just adopting the AMA guidelines, it is essential that a standardized process of functional testing be adopted and required. Currently the process is very subjective. The “right” standard (function testing) adds objective, measurable data from which the physicians can more accurately and fairly determine permanent and stationary status. It is particularly effective when post-injury data is compared to pre-employment functional test data, accurately determining the measured difference of the medical impairment and the ability to perform job and self-care activities. This measurable difference (or lack of difference) becomes the basis for a fair and correct determination of residual permanent or temporary disability.

As previously mentioned, the Official Medical Fee Schedule presently provides for this testing in the Physical Medicine Section, code 97670, Functional Capacity Evaluation. In this instance, it is often referred to as a Residual Functional Capacity Evaluation. As mentioned before, this valuable objective tool is rarely used. However those few physicians who do request these evaluations prior to their final “permanent and stationary” reports find them extremely useful.

#### **5. Recommended Legislative Action and Language**

It is recommended that the California legislature adopt workers' compensation reform statutes that reflect the legitimacy, effectiveness, equitability and value of functional employment testing. If hundreds of public and private employers nationwide are saving an average of 50% in their first year of functional employment test implementation, the

state as a whole would potentially save over 2.5 billion dollars in the first year, even if only 50% of the state’s employers participated.

More specifically it is recommended that voluntary participation by employers in functional employment testing programs be rewarded with cash discounts or credits on premiums. This is the only way to incentivize employers to dedicate personnel and commit resources to really make a significant impact. A recommendation is as follows:

*Insured employers who can demonstrate actual implementation of functional testing and the associated ergonomic job analysis necessary in at least 50% of their most demanding physical jobs and in at least 50% of the jobs where they experience the highest incidence of work injuries should receive these credits. Credits should start at 10% discount with 50% participation of the employer.*

*Insured employers, who demonstrate implementation of greater than 50%, should receive incrementally greater discounts, roughly 5% additional discount per 10% utilization, up to a 35% credit if 100% of job classes are functionally tested. For example:*

<i>50% of job classes tested</i>		<i>10% discount/credit</i>	
60%	“	15%	“
70%	“	20%	“
80%	“	25%	“
90%	“	30%	“
100%	“	35%	“

Employers would thus receive substantial discounts for their investments in functional testing as well as the benefit of substantially declining injury experience translating into decreased experience modifiers and decreased premiums. Insured employers would essentially get paid twice for their investment in functional testing programs.

Despite these deep discounts, insurers would also stand to gain a significant increase in profits and therefore greater stability in a state where workers’ compensation insurance companies are failing or leaving in droves. As previously stated, research based on a database of 360,000 functional employment tests and the statistics gathered from testing employers, show the average savings in the first year of implementation is 50% (See “Functional Testing Outcome.”) It should be noted here that this includes the employer’s direct costs for testing. Even if an employer chooses to implement functional testing in 100% of its job classes and receive a 35% discount/credit in their premiums, the insurer would still stand to gain an average of a 15% increase in profits based on decreased costs for the employers work-injuries. (50% decreased costs minus the 35% discounts equals 15% left over profits.)

The State of California, California public agencies, as well the private self-insured employers would all experience huge “first dollar” savings up to an average of 50% of their previous year’s costs from testing their workers. These huge dollar savings would

be in addition to the savings experienced by the state from the substantially decreased usage of the resources of the state such as the Workers' Compensation Appeals Board and other agencies that participate in administering workers' compensation.

In total, with only 50% participation including the public employees, it is projected that there would be savings of over \$2.5 billion dollars just the first year post-implementation in addition to the savings experienced from the reduction of utilization of the state agencies. Increased levels of implementation greater than the 50% required in the first year and the expected significant additional cost reductions in subsequent years should translate to a projected \$10 billion savings over the first five years. It is a monumental potential based on solid data from hundreds of employers currently using these programs.

It is also highly recommended that the language of the legislation specifically set out guidelines on who can perform functional employment testing and what the testing protocols and requirements should be. The California Board of Physical Therapy has published an opinion regarding "whom" on their web site at [http://www.ptb.ca.gov/functional\\_capacity.pdf](http://www.ptb.ca.gov/functional_capacity.pdf). It is recommended that this opinion be the basis for these guidelines in the new statutes. In addition to physical therapists, performing these tests, medical doctors, doctors of chiropractic, and occupational therapists are also licensed by the state to "evaluate" and therefore would be appropriate providers for testing programs. As noted in the Physical Therapy Board Opinion, different levels of testing and analysis require different levels of expertise. The above-mentioned medical providers are allowed the use of assistants and technicians properly trained in data gathering, while only the licensed medical providers can perform diagnostic analysis and provide conclusions and recommendations.

It would also be wise to simultaneously require honest registration of facilities with ownership disclosure, a description of healthcare disciplines and credentials, and the anticipated services provided. The law might instantly address referral for profit by having a "disassociation qualifier" and/or address referral for profit by measuring outcomes, and disciplining or removing treating entities based upon the level of deception or over-utilization detected. We strongly recommend separating the medical fee guideline CPT codes with identifiers for private versus public hospitals, and corporate owned versus private practice owned medical facilities. Closer scrutiny is recommended by further requiring specialized identifiers/coding for physician owned rehabilitation versus chiropractic owned rehabilitation versus private practice physical therapy owned rehabilitation versus private practice occupational therapy owned rehabilitation and etc. Such information would easily identify who was likely responsible for over-utilization, unbundling of charges and the financial benefit of a single referral to several of their own facilities.

Guidelines must be adopted regarding the actual functional employment testing protocols. It would be a great disservice to employers, employees, and the spirit of the reform if there were no standard for testing. Other countries, states, private employers and disability insurers have utilized functional employment testing for many years. There are many protocols available. We recommend utilizing scientific measures that are

well recognized as “the standard” in the medical community. The successful established systems require certification or acknowledgement of proper training in medical and legal background, as well as the detailed procedures of the testing programs. Finally, the protocol itself must meet minimum guidelines. The states of Washington, Oregon and Texas guidelines would be generally acceptable models for California. Most of these guidelines utilize evaluation techniques or tests from the American Medical Association Disability Guidelines, the National Institute of Occupational Safety and Health (NIOSH), the Department of Labor, Dictionary of Occupational Titles, the Occupational Safety and Health Administration and various other medically and legally acceptable tests and procedures.

A review of the above-mentioned published guidelines, protocols, tests, and procedures seems to indicate the following common important functional employment testing required elements:

- *proper identification and personal data of test subject,*
- *informed consent of the test subject,*
- *comprehensive medical history performed by interview to identify imminent pre-existing risks for the safety of the test subject and provide detection of “significant risks,”*
- *measured baseline data for future reference should work-injuries occur,*
- *certain medically accepted static strength tests to establish baseline data and to ensure safety as the test progresses,*
- *dynamic strength testing as established by NIOSH to determine basic strength and to determine safe lifting ability in the postures required by the essential functions of the job,*
- *carpal tunnel, upper quadrant and cumulative trauma detection protocols accordingly to recognized scientific and medical standards,*
- *job-specific strength and agility tests to specifically determine the safe capability of the subject to perform the physical demands of their job,*
- *recommendation section for the testing professional to indicate their recommendations regarding the subject’s functional ability and other pertinent information,*
- *FCE or PCE elements are much more lengthy and the above mentioned governmental and private agencies have guidelines for these more in-depth evaluations as well,*
- *basic cardiovascular vitals meeting medically accepted criteria to identify imminent pre-existing risks for the safety of the test subject, and*
- *comprehensive musculoskeletal evaluation of each of the major joints and body areas to identify imminent pre-existing risks for the safety of the testing subject as well as to establish objectivity.*

A panel of knowledgeable and interested professionals in workers’ compensation should be asked to determine which elements would be required by the state, or in the interest of time, another state’s guidelines or requirements could be immediately adopted. Then the panel could meet periodically to evaluate the progress of the program and research and

advise the Department of Workers' Compensation or other governing agency as to their recommendations if changes are needed over years 2-5 of the initial 5-year period.

## **6. Conclusion**

The State of California is in a state of financial crisis. These times call for drastic changes to the status quo. As mentioned above, the tools needed to "fix" the workers' compensation problem are not only relatively simple, but they are already in the workers' compensation code and somewhat familiar to most parties knowledgeable in this arena.

Immediate adoption of legislation that emphasizes or carefully defines the use of functional employment testing pre-employment, post-injury, and for fit-for-duty will translate into significant reductions in work-injuries and large fiscal savings for the state's employers. These employers need to be given incentives to encourage their adoption of objective programs. The benefits of these programs will soon be realized in both significant reductions in injuries and costs to the specific employers as well as the state in general.

The potential rewards are substantial with very little risk. This is the time for "real reform" based upon the use of objective, individualized functional employment testing.