

Functional Capacity Evaluations in California Workers' Compensation Law: Legal Analysis and Implementation Framework

(PART-A INJURED WORKERS ANALYSIS)

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FUNCTIONAL CAPACITY EVALUATIONS IN CALIFORNIA WORKERS' COMPENSATION LAW

Part 1: What Is a Functional Capacity Evaluation?

Overview of the FCE

A Functional Capacity Evaluation (FCE) is a medical test that measures what your body can physically do after a workplace injury. A licensed physical therapist (PT) or occupational therapist (OT) conducts the evaluation using standardized clinical methods to measure your strength, range of motion, endurance, and ability to perform specific work tasks such as lifting, carrying, standing, sitting, bending, and climbing stairs. The evaluator then classifies your ability along a scale from sedentary work (mostly sitting) to very heavy work (frequent heavy lifting). Visionary Law Group, "Functional Capacity Evaluation Workers Comp" (<https://visionarylawgroup.com/functional-capacity-evaluation-workers-comp/>)

Why FCEs Matter in Your Workers' Compensation Case

In California's workers' compensation system, an FCE gives your employer, the insurance company, your doctor, and the judge objective, task-based information about what you can and cannot do physically. FCE results are used to make decisions about your return to work, your work restrictions (limits on what tasks you can do), your permanent disability rating (a percentage that measures how much the injury permanently affects your ability to work), and the amount of benefits you receive. Laguna Law Firm, "Understanding the Role of FCEs in Workers' Compensation" (<https://www.lagunalawfirm.com/understanding-the-role-of-functional-capacity-evaluations-in-workers-compensation-cases/>)

An FCE does not, by itself, decide your settlement amount or disability rating. However, it carries significant weight because it provides measurable, objective data rather than relying only on what you or your doctor report about your condition. Fontes Law Group, "Is Settlement in Workers' Comp Determined by an FCE?" (<https://fonteslawgroup.com/is-settlement-in-workers-comp-determined-by-an-fce/>)

When an FCE Is Typically Ordered

An FCE is usually scheduled at specific points in your case:

- When you have reached or are approaching maximum medical improvement (MMI), meaning your condition has stabilized and is unlikely to improve significantly with more treatment within a 12-month period. Pacific Workers' Compensation, "What is Maximum Medical Improvement?" (<https://www.pacificworkers.com/blog/2025/july/what-is-maximum-medical-improvement-mmi-and-why-/>)
- Before decisions about whether you can return to work.
- When there is a disagreement between you and the insurance company about your physical abilities.
- When your permanent impairment percentage and long-term work restrictions are being determined.

Who Orders an FCE

An FCE can be ordered by your employer, the insurance company, your treating doctor, or an independent medical examiner. If your treating doctor orders it, the insurance company must first authorize it through a process called utilization review (a system where the insurance company reviews whether a medical service is necessary). Laguna Law Firm, "Understanding the Role of FCEs" (<https://www.lagunalawfirm.com/understanding-the-role-of-functional-capacity-evaluations-in-workers-compensation-cases/>)

Part 2: California Laws That Apply to FCEs

The Statutory Foundation

California's workers' compensation system is found primarily in Labor Code Division 4, starting at Labor Code § 3200. This system is a no-fault insurance system, which means you do not have to prove your employer was at fault to receive benefits for a workplace injury. You are entitled to medical care and income replacement. DWC, "Workers' Compensation in California: A Guidebook for Injured Workers" (<https://www.dir.ca.gov/injuredworkerguidebook/injuredworkerguidebook.html>)

Although no California law specifically requires an FCE, several laws create the legal framework where FCEs are used:

- Cal. Lab. Code § 4600 (<https://employeesfirstlaborlaw.com/labor-code-%c2%a74600-right-to-medical-treatment-workers-comp/>) gives you the right to medical treatment that is "reasonably required to cure or relieve the effects of" your workplace injury. This includes evaluations like FCEs when they are necessary to understand your condition and plan your treatment or return to work.
- Cal. Lab. Code § 4061 (<https://employeesfirstlaborlaw.com/labor-code-%c2%a74061-permanent-disability-disputes-workers-comp/>) governs permanent disability disputes. When you and your employer disagree about whether your condition has stabilized or about your disability rating, this law sets the process for resolving that dispute through medical evaluations.
- Cal. Lab. Code § 4062 (<https://employeesfirstlaborlaw.com/labor-code-%c2%a74062-objections-to-medical-determinations/>) addresses disputes over other medical issues, including whether treatment is necessary, whether you have reached MMI, and other medical decisions that affect your benefits.
- Cal. Lab. Code § 5307.1 (<https://law.justia.com/codes/california/code-lab/division-4/part-4/chapter-1/section-5307-11/>) requires California's Division of Workers' Compensation (DWC) to maintain an Official Medical Fee Schedule (OMFS) that sets maximum payment rates for medical services, including FCEs. DWC Official Medical Fee Schedule (<https://www.dir.ca.gov/dwc/omfs9904.htm>)

Key Regulations

California's regulations add important details to these laws:

- Cal. Code Regs. tit. 8, § 10152 (<https://www.dir.ca.gov/t8/10152.html>) defines when a disability is considered "permanent." Your disability is permanent when you have reached MMI, meaning your condition is "well stabilized, and unlikely to change substantially in the next year with or without medical treatment." This is the point when FCEs are commonly ordered.
- Cal. Code Regs. tit. 8, § 9785 (<https://www.dir.ca.gov/t8/9785.html>) requires your primary treating physician (PTP) — the main doctor managing your injury — to report findings about permanent impairment and work limitations within 20 days of determining your condition is permanent and stationary. Doctors frequently rely on FCE data when making these reports.
- Cal. Code Regs. tit. 8, §§ 9792.9–9792.9.1 (<https://www.dir.ca.gov/t8/979291.html>) establish the utilization review process for authorizing medical services. An FCE may need to go through this authorization process before it can be performed.

FCE Billing Rules

Under current California rules, an FCE is billed using CPT code 97750 (physical performance test or measurement with written report, billed in 15-minute increments). The maximum billable time is 2 hours (8 units) per patient per day. No legislative changes in 2025 altered these billing limits. Medrina Technology Management, "Guide to FCE Billing for California Workers' Compensation" (<https://www.medtechmgnt.com/understanding-functional-capacity-evaluation-billing-for-california-workers-compensation>)

Part 3: How an FCE Affects Your Case

The Permanent Disability Rating Process

Your permanent disability rating is a percentage that represents how much your injury permanently limits your ability to work. California uses the American Medical Association's Guides to the Evaluation of Permanent Impairment (Fifth Edition), adjusted with a 1.4 multiplier factor under Cal. Lab. Code § 4660.1 (<https://law.justia.com/codes/california/code-lab/division-4/part-2/chapter-2/article-3/section-4660-1/>), to calculate this percentage. DWC Schedule for Rating Permanent Disabilities (<https://www.dir.ca.gov/t8/ch45sb16.html>)

An FCE provides the objective measurements that rating physicians use when applying these Guides. For example, if the FCE shows you can only lift 10 pounds, a rating physician will use that data point alongside other clinical findings to determine your permanent disability percentage. Ergoscience, "FCE vs IR vs IME" (<https://ergoscience.com/updates/functional-capacity-evaluation-vs-impairment-rating-vs-independent-medical-exam/>)

How FCE Results Can Help You

FCE results can support your claim if they document significant functional limitations. If the evaluation shows you cannot perform your usual job duties—such as heavy lifting, prolonged standing, or repetitive bending—this supports a higher permanent disability rating and stronger work restrictions. Strong FCE results backed by validity indicators (tests that confirm you gave honest, consistent effort) make it harder for the insurance company to argue that you can do more than you claim. Visionary Law Group, "Functional Capacity Evaluation Workers Comp" (<https://visionarylawgroup.com/functional-capacity-evaluation-workers-comp/>)

How FCE Results Can Hurt You

If FCE results show you can do more than you have reported to your doctor, the insurance company may use those results to:

- Reduce or deny your benefits
- Push for an earlier return to work
- Argue for a lower permanent disability percentage
- Challenge your credibility with the workers' compensation judge

Important: Validity testing is a key part of the FCE. The evaluator checks whether you gave consistent, maximum effort during each test. If the validity testing suggests you did not try your hardest or that your pain responses do not follow expected medical patterns, this can become a serious credibility issue in your case.

FCE as a "Snapshot"

An FCE measures your abilities on one particular day. It may not reflect your true long-term capacity if you experience good days and bad days, if fatigue from prior appointments affected your performance, or if environmental factors influenced your symptoms. Courts recognize this limitation but still give FCE results significant weight when the evaluation is well-documented. D.I. Attorney, "Can an FCE Deny Your Disability Claim?" (<https://www.diattorney.com/assurant-disability-insurance-claims/disability-benefit-tips/disability-insurance-company-rely-functional-capacity-exam-deny-long-term-disability-benefits>)

Part 4: The FCE Process Step by Step

Phase 1: Decision and Ordering (Weeks 1–2)

The process begins when someone decides an FCE is needed. This is usually triggered when:

- Your treating doctor says you have reached MMI and permanent restrictions need to be set
- A dispute arises about whether you can return to work
- The insurance company questions your doctor's restriction recommendations
- Permanent disability rating requires objective data

If your treating doctor orders the FCE, they submit a Request for Authorization (RFA) on DWC Form RFA to the insurance company, explaining why the evaluation is medically necessary. Cal. Code Regs. tit. 8, § 9792.9.1 (<https://www.dir.ca.gov/t8/979291.html>). The insurance company's utilization review unit then has 5 to 14 business days to approve, modify, delay, or deny the request.

Phase 2: Preparation and Notification (Weeks 2–4)

Once the FCE is scheduled, you should receive written notice including:

- The date, time, and location of the evaluation
- The name and qualifications of the evaluator
- The purpose of the evaluation
- What to bring (insurance card, medication list, comfortable clothing for physical activity)
- Your right to have your attorney present and to bring medical records

The evaluator should receive copies of your complete medical records, including your medical history, imaging reports, surgical notes, treating doctor's progress notes, and medication records. Cal. Code Regs. tit. 8, § 35 (<https://www.dir.ca.gov/t8/35.html>)

Phase 3: The Evaluation (Weeks 4–6)

The FCE typically lasts 4 to 8 hours, conducted over one or two days. The evaluation includes:

- Medical history review and interview
- Standardized physical tasks: lifting, carrying, pushing, pulling, reaching, bending, stooping, stair climbing, and sitting/standing tolerance
- Job simulation tasks if your specific job is known
- Validity and effort testing
- Pain and symptom monitoring throughout testing
- Observation of your body mechanics and pain behaviors

The evaluator should explain each test before doing it, let you ask questions, and monitor your vital signs. Testing should stop if you experience acute pain that could risk re-injury. APTA, "Evaluating Functional Capacity Guidelines"

(https://www.orthopt.org/uploads/contentfiles/OHSIGGuidelines/OccupationalHlthPTEvaluatingFunctionalCapacity040610_2.pdf)

Phase 4: Report Writing and Delivery (Weeks 6–10)

The FCE report should be completed within 2 to 4 weeks after the evaluation. The report includes:

- Your injury details and medical history
- Description of all tests performed with specific measurements (pounds lifted, minutes standing, steps climbed)
- Your functional abilities classification (sedentary, light, medium, heavy, or very heavy work)
- Assessment of your effort consistency and validity
- Observations of pain behaviors
- Comparison of your tested abilities to your job demands
- Recommendations for work restrictions or further treatment

The signed report is delivered to the ordering party, with copies to you and your attorney. Cal. Code Regs. tit. 8, § 9785 (<https://www.dir.ca.gov/t8/9785.html>)

Phase 5: Integration with Disability Determination (Weeks 10–16)

Your treating doctor reviews the FCE findings and either incorporates them into a permanent and stationary report or issues a written rebuttal explaining why the FCE findings are inconsistent with clinical observations. If there is disagreement about the FCE, the dispute goes to the Qualified Medical Evaluator (QME) panel process under Cal. Lab. Code §§ 4061–4062 (<https://law.justia.com/codes/california/2005/lab/4060-4068.html>).

Phase 6: Settlement or Trial (Weeks 16–24+)

The FCE report becomes part of your evidence for settlement negotiations or trial. The evaluator may be called to testify about their methods and conclusions.

Part 5: Arguments That Support Your Position

Overview

This section explains the arguments you or your attorney can make if an FCE produces results that are unfavorable to your case.

The FCE Methodology Was Deficient

If the FCE report does not follow accepted professional standards—such as guidelines from the American Physical Therapy Association (APTA) or the AMA Guides—you can argue the evaluation is unreliable. Specific problems include:

- The evaluator did not warm you up properly before testing
- Non-standardized or unclear test procedures were used
- Your pain responses were not adequately documented
- The evaluation did not simulate tasks from your actual job

- The evaluator relied on validity tests that lack scientific support

A strong rebuttal involves having an independent evaluator or QME critique the original evaluation's methodology. APTA, "Evaluating Functional Capacity Guidelines" (https://www.orthopt.org/uploads/contentfiles/OHSIGGuidelines/OccupationalHlthPTEvaluatingFunctionalCapacity040610_2.pdf)

Your Doctor's Findings Contradict the FCE

If your treating doctor has consistently documented functional limitations in your office visit notes and recommended work restrictions that are stricter than what the FCE suggests, this is a strong argument. Your doctor has seen you many times over months or years and has a longitudinal view (long-term understanding) of your condition. An FCE is only a snapshot of one day. Courts and judges often give significant weight to treating physician testimony. Laguna Law Firm, "Understanding the Role of FCEs" (<https://www.lagunalawfirm.com/understanding-the-role-of-functional-capacity-evaluations-in-workers-compensation-cases/>)

The Evaluator Was Biased or Had a Conflict of Interest

If the FCE evaluator is contracted with the insurance company, has a history of favorable findings for insurers, or has been previously found to be biased or incompetent, you can raise this as grounds to discount the FCE. In the QME process, you can strike a proposed evaluator from a panel if there is evidence of bias. Koszdin, Fields & Sherry, "California QME Workers Comp Guide" (<https://koszdin.com/blog/2025/08/qualified-medical-evaluation-workers-comp-in-california/>)

Validity Testing Results Are Scientifically Questionable

Some validity tests used during FCEs have been questioned in medical literature as unreliable. If the evaluator relied heavily on a single validity measure without explaining confounding factors like fatigue, medication effects, or normal daily pain fluctuation, the validity conclusions can be challenged. Enlyte, "FCE Frequently Asked Questions" (<https://www.enlyte.com/insights/article/specialty-physical-medicine/functional-capacity-evaluation-fce-frequently-asked>)

Your Job Demands Were Not Properly Tested

If the FCE was a general-purpose evaluation that did not test your ability to perform your actual job tasks—such as repetitive lifting at specific heights, prolonged standing on concrete, or operating particular equipment—you can argue the evaluation does not prove you can return to your specific job. A job demand analysis (JDA) showing your position's physical requirements, compared to the FCE protocol, can reveal gaps in the evaluation.

Part 6: Arguments the Insurance Company Will Make

Overview

Understanding the insurance company's strongest arguments helps you and your attorney prepare to respond effectively.

The FCE Is More Objective Than Your Self-Report

The insurance company's strongest argument is that an FCE provides objective, standardized, performance-based measurement. They will argue this is inherently more reliable than what you say about your pain and limitations, because your self-reports may be influenced—even unconsciously—by the fact that you are seeking benefits. This argument is particularly powerful if the FCE shows you performing tasks you said you could not do. Enlyte, "FCE Frequently Asked Questions" (<https://www.enlyte.com/insights/article/specialty-physical-medicine/functional-capacity-evaluation-fce-frequently-asked>)

Validity Testing Shows You Did Not Try Your Hardest

If validity testing shows inconsistent grip strength, pain behaviors that do not follow expected medical patterns, or other signs of submaximal effort (not giving your full effort), the insurance company will argue your reported limitations are not credible.

The Evaluator Was Qualified and Followed Proper Procedures

If the evaluator is a licensed PT or OT with documented FCE training and experience, the insurance company will argue the evaluation should be given significant weight. California does not restrict FCE performance to specially credentialed evaluators beyond the standard PT or OT license. Metriks, "Who Can Perform FCEs?" (<https://metriksfce.com/en-us/blogs/news/who-can-perform-a-functional-capacity-evaluation>)

Your Doctor Endorsed the FCE Results

If your treating doctor reviewed the FCE report and adopted its conclusions in subsequent treatment notes, this significantly weakens your argument that the FCE is unreliable. The insurance company will argue that your own doctor agreed with the findings.

Surveillance Evidence Supports the FCE

If the insurance company conducted video surveillance showing you performing activities inconsistent with your reported limitations—such as lifting heavy items while claiming you cannot lift light objects—and those observations match the FCE conclusions, their position is greatly strengthened. D.I. Attorney, "Can an FCE Deny Your Disability Claim?" (<https://www.diattorney.com/assurant-disability-insurance-claims/disability-benefit-tips/disability-insurance-company-rely-functional-capacity-exam-deny-long-term-disability-benefits>)

Multiple Evaluations Reach the Same Conclusion

If you have undergone multiple FCEs or medical evaluations with different providers at different times, and they all reach similar conclusions about your abilities, the insurance company will argue that this consistent evidence outweighs your disagreement.

Important: To overcome the insurance company's arguments, you must present credible evidence that either: (a) the FCE methodology was deficient; (b) the evaluator was biased or unqualified; (c) the FCE findings directly contradict your doctor's consistent clinical observations; or (d) the validity testing is scientifically questionable. Without one or more of these specific critiques, most workers' compensation judges will give substantial weight to FCE findings.

Part 7: The QME and AME Process When FCE Results Are Disputed

What Is a QME and AME?

A Qualified Medical Evaluator (QME) is an independent doctor certified by the DWC to perform medical-legal evaluations in workers' compensation cases. An Agreed Medical Evaluator (AME) is a doctor that both you and the insurance company agree to use for an independent evaluation. These evaluators are independent—they do not work for you or the insurance company. DWC QME FAQs (<https://www.dir.ca.gov/dwc/medicalunit/faqiw.html>)

When You Need a QME or AME

If you or the insurance company disputes any medical decision made by your treating doctor—including decisions about permanent disability, MMI, or work restrictions—either side can request a QME or AME evaluation. The QME or AME may order a new FCE as part of their evaluation, or they may review and comment on a previously performed FCE. Cal. Lab. Code § 4062.2 (<https://employeesfirstlaborlaw.com/labor-code-%c2%a74062-2-panel-qme-process-represented-workers/>)

The QME Panel Selection Process for Represented Workers

If you have an attorney and cannot agree on an AME, either side can request a panel of three QMEs from the DWC Medical Unit. Here is the process:

1. You or the insurance company requests a QME panel from the DWC.
2. The DWC sends a list of three QME doctors.
3. You (or your attorney) have 10 days from receiving the list to strike one name from the panel.
4. The remaining two names go to the insurance company, which selects one to perform the evaluation.

Critical: If you miss the 10-day deadline to strike a QME, the insurance company gets to choose the evaluator. Do not miss this deadline.

QME Evaluation Timeline

Once a QME is selected:

- The QME must schedule your appointment within 30 calendar days of receiving the request (unless both sides agree to extend this).
- Medical records must be provided to the QME. Cal. Code Regs. tit. 8, § 35 (<https://www.dir.ca.gov/t8/35.html>)
- The QME's report must be completed and sent to all parties within 60 calendar days of the evaluation.
- The QME's opinion carries significant weight and often becomes the controlling medical evidence unless clearly contradicted by other substantial evidence.

Objection Deadlines

If a party objects to a treating doctor's determination regarding permanent disability, work restrictions, or medical necessity of continued treatment, the objection must be made within 20 days of receiving the medical report under Cal. Lab. Code § 4062 (<https://employeesfirstlaborlaw.com/labor-code-%c2%a74062-objections-to-medical-determinations/>). This deadline applies to represented workers.

Part 8: Risk Assessment

Best-Case Scenario

Your best outcome happens when an adverse FCE can be successfully challenged and your treating doctor's restrictions control the permanent disability determination. This is most likely if:

- The FCE report has clear methodological flaws
- The evaluator is biased or unqualified
- Your treating doctor has consistently documented functional limitations that contradict the FCE
- A QME evaluation discredits the original FCE
- Your pain and functional reports are consistent with objective findings like MRI or X-ray results

In this scenario, your doctor's more restrictive limitations become the controlling restrictions. The rating physician uses your doctor's documented limitations instead of the FCE findings, resulting in a higher permanent disability percentage and greater benefits, potentially including supplemental job displacement benefits (a voucher for retraining or skill enhancement if you cannot return to your usual job). DWC Supplemental Job Displacement Benefits FAQ (https://www.dir.ca.gov/dwc/sjdb/sjdb_faq.html)

Worst-Case Scenario

Your worst outcome happens when an FCE showing greater capacity than you reported becomes the controlling evidence. This is most likely if:

- The FCE is well-documented with clear measurements and thorough validity testing
- The evaluator is qualified with good credentials and no apparent bias
- Validity testing suggests you did not give full effort
- Your treating doctor endorses the FCE findings
- You lack strong contrary evidence

In this scenario, your permanent disability rating is significantly lower than expected. Temporary disability benefits (payments you receive while recovering) may end earlier. If the employer offers modified work consistent with FCE findings and you refuse, you may lose entitlement to vocational rehabilitation or supplemental job displacement benefits under Cal. Lab. Code § 4658 (<https://www.dir.ca.gov/dwc/sjdb.html>).

Intermediate Scenarios

In many cases, the FCE shows you can do some things but not others. A workers' compensation judge may accept parts of the FCE (such as its lifting capacity conclusions) while rejecting other parts (such as conclusions about pain-related limitations). This partial acceptance is common.

Timing Risks

- If the FCE is scheduled too late, your permanent disability determination is delayed.
- If the FCE is scheduled too early (before you finish treatment or your condition stabilizes), results may not accurately reflect your long-term abilities.
- Delays in FCE scheduling can extend temporary disability payments but also postpone settlement.

Part 9: Your Rights and Next Steps

Your Medical Records Disclosure Obligations

Under Cal. Lab. Code § 4663(d) (<https://www.geklaw.com/workers-compensation/medical-history.htm>), if you claim a workplace injury, you must disclose all previous permanent disabilities or physical impairments when asked. However, you can object to overly broad requests for medical records unrelated to your injury, such as mental health, reproductive health, or dental records that have no connection to your functional capacity.

Your Right to Medical Care

Under Cal. Lab. Code § 4600 (<https://employeesfirstlaborlaw.com/labor-code-%c2%a74600-right-to-medical-treatment-workers-comp/>), your employer must provide medical treatment "reasonably required to cure or relieve" the effects of your workplace injury. This includes evaluations like FCEs when necessary.

Before an FCE Is Scheduled

- Make sure your treating doctor has thoroughly documented your functional limitations and the clinical reasons for your work restrictions.
- Ask your doctor to explain in writing why your reported limitations are reliable, even if there appear to be inconsistencies.

When an FCE Is Proposed or Ordered

- Get copies of the FCE provider's credentials and experience.
- Talk to your attorney about whether to request an independent FCE by a different provider for comparison (you may have to pay for this yourself).

Before Attending an FCE

- Meet with your attorney and your doctor to prepare.
- Understand what to expect: what tasks will be tested, how to report pain accurately, and how to give your honest maximum effort.
- Do not exaggerate your limitations, and do not minimize them either. Be truthful and consistent.

After Receiving an Adverse FCE Report

- Contact your attorney and treating doctor within 10 to 14 days.
- Request a written rebuttal from your doctor explaining any inconsistencies between the FCE and your clinical records.
- Evaluate whether requesting an independent FCE or a QME evaluation makes strategic sense.
- Object in writing within the required deadlines if you dispute the findings.

If Permanent Disability Determination Is Proceeding

- Participate fully in any QME or AME process.
- Provide the evaluator with complete medical records.
- Be honest during the evaluation and follow up with any information the evaluator requests.

Required Forms Checklist

- DWC Form RFA (Request for Authorization): Your doctor submits this to the insurance company to request approval for the FCE. Cal. Code Regs. tit. 8, § 9792.9.1 (<https://www.dir.ca.gov/t8/979291.html>)
- Notice of Evaluation: The insurance company or ordering party sends you this with the date, time, location, and evaluator information.
- Medical Records Release: You sign this to allow the FCE evaluator to receive and review your medical records.

Important: Keep copies of all documents you receive and send. Your attorney should have a complete file of your medical records, FCE reports, and all correspondence related to your case.

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Functional Capacity Evaluations in California Workers' Compensation Law: Legal Analysis and Implementation Framework

(PART-B LEGAL ANALYSIS)

Generated by: Legal AI Assistant

Facilitated by: The Law Offices of Fernando Hidalgo, Inc.

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Functional Capacity Evaluations in California Workers' Compensation Law: Comprehensive Legal Analysis and Implementation Framework

Executive Summary

A Functional Capacity Evaluation (FCE) is a standardized clinical assessment conducted by a licensed physical therapist or occupational therapist to objectively measure an injured worker's physical capacities—including strength, range of motion, endurance, and tolerance for various postures and movements—and to determine ability to perform specific job tasks or classify functional level along the spectrum from sedentary to very heavy work.[1][7][1] In California workers' compensation practice, FCEs supply critical objective, task-based data that complement clinical examinations and imaging studies to inform safe work status determinations, work restrictions, return-to-work decisions, permanent disability ratings, and benefits calculations. The FCE has become an indispensable tool in resolving disputes between injured workers and insurance carriers regarding functional capacity after workplace injury, particularly as claims progress toward closure and permanent disability determination.

Key Findings: FCEs can significantly influence workers' compensation outcomes but do not unilaterally determine settlement amounts or disability ratings. An FCE will typically be scheduled at or near the point of maximum medical improvement (MMI), before return-to-work decisions, during claim disputes, or when permanent impairment percentages and work restrictions are being considered.[1][2][1] FCE results may either support an injured worker's claim by documenting significant functional limitations or potentially harm a claim if results show greater capacity than the worker has reported.[1][1] The evaluation is often ordered by an employer, insurance carrier, treating physician, or independent medical examiner, and results are used by rating physicians, vocational rehabilitation specialists, and workers' compensation judges to make determinations affecting long-term benefits and return-to-work feasibility.[1][2][1] California law does not prescribe a single "comprehensive FCE guideline document," but legal precedents and best practices—including standards from the American Physical Therapy Association and the American Medical Association's Guides to the Evaluation of Permanent Impairment—significantly shape how FCEs are conducted and interpreted throughout the state.[33][43][33]

Risk Assessment: The risk profile of an FCE depends heavily on what the evaluation shows and how well results reflect the injured worker's true functional capacity. If FCE results show higher capacity than an injured worker has reported, the insurance carrier may aggressively seek to reduce or deny benefits, accelerate return-to-work timelines, or argue for lower permanent disability percentages.[1][1] Conversely, if an FCE documents significant, objectively verifiable limitations with strong validity indicators, results can support higher impairment ratings and corresponding benefits.[1][1][14] Validity testing—designed to assess whether the worker gave consistent, maximum effort during the evaluation—can become a credibility issue that shapes how both treating physicians and workers' compensation judges weigh the FCE evidence.[1][1] An injured worker challenging adverse FCE results faces the burden of obtaining a second opinion or independent FCE, requesting a Qualified Medical Evaluator (QME) panel evaluation, or presenting evidence that the original FCE was methodologically flawed or the evaluator was biased.[2][22]

Primary Strategic Options: Injured workers and their counsel should consider the following decision-making framework when an FCE is proposed or ordered: (1) Preparation and Participation Strategy involves full disclosure of medical information to the evaluator, honest pain reporting during testing, and careful observation of testing conditions to identify potential biases in evaluation design or interpretation; (2) Dispute Resolution Strategy contemplates requesting an independent FCE at the worker's own expense before accepting adverse results, obtaining a written rebuttal from the treating physician if FCE findings conflict with the medical record, or proceeding to QME or AME (Agreed Medical Evaluator) process if the insurance carrier or opposing party disputes the primary treating physician's restrictions;[2] and (3) Evidence Preservation Strategy focuses on building a comprehensive medical record that documents functional limitations through treating provider notes, diagnostic imaging, and objective clinical findings so that any disagreement with FCE results can be contextualized as a methodological or validity issue rather than wholesale lack of credibility.[1][1][1] The choice among these options should reflect the client's risk tolerance, the strength of other medical evidence, the apparent bias or competence of the assigned evaluator, and the stage of the case (early medical treatment versus permanent disability rating phase).

Timeline and Deadline Considerations: California workers' compensation law does not impose a specific statutory deadline for ordering an FCE, but timing is typically triggered by clinical events and administrative

milestones. An FCE is commonly scheduled after the injured worker has reached or is approaching maximum medical improvement (MMI)-the point at which medical condition has stabilized and is unlikely to improve further with additional treatment within a 12-month period.[2][2][17][20] For represented workers, if a party objects to the primary treating physician's determination regarding permanent disability, work restrictions, or medical necessity of continued treatment, that objection must be made within 20 days (for represented workers) of receiving the medical report under California Labor Code Section 4062.[18][38] Once an objection is properly filed and a QME panel is requested, the worker has 10 days to select or strike an evaluator from the panel before the insurance carrier or opposing party can make the selection.[38][40] An FCE report should typically be completed within two to four weeks of the evaluation date, though some evaluators may require longer if complex findings require additional analysis or consultation with specialists.[1][1]

Likelihood of Success Assessment: The qualitative likelihood that an injured worker will successfully challenge or overcome adverse FCE findings is medium to low absent compelling countervailing evidence. FCEs are designed to provide objective, standardized measurement that courts and administrative judges often credit as reliable evidence of functional capacity.[24][29][43] However, if the FCE suffers from methodological flaws-such as failure to simulate job-specific tasks, insufficient validity testing, or apparent evaluator bias-a worker can successfully argue that the evaluation is unreliable or should be discounted.[1][1][2] The strength of the worker's case to overcome an adverse FCE depends on: (a) whether the treating physician's clinical findings and functional restrictions are consistent with or support a different conclusion than the FCE;[1] (b) whether medical records document pain behaviors, functional limitations during office visits, or adverse responses to previous work attempts that would support the worker's subjective reports;[2] (c) whether the evaluator appears to be biased or unqualified for the worker's specific injury type;[3][16][22] and (d) whether the validity testing component of the FCE is methodologically sound or subject to criticism as unreliable.[1][1][33] If these factors weigh against the worker, the FCE will likely control the outcome unless the worker can afford a competing independent FCE with favorable findings or can secure QME testimony contradicting the original evaluator's conclusions.

Legal Framework: Statutory Authority, Regulatory Provisions, and Binding Precedent

Statutory Foundation for Functional Capacity Evaluations in California Workers' Compensation

California's workers' compensation system, codified principally in Labor Code Division 4 (commencing with Labor Code Section 3200), establishes a comprehensive no-fault insurance system designed to provide prompt, adequate medical care and income replacement to employees injured in the course of employment.[56][69] Although the Labor Code does not explicitly mandate FCEs by statute, several provisions create the legal environment in which FCEs are utilized and given evidentiary weight.

Labor Code Section 4600 establishes the injured employee's entitlement to medical treatment reasonably required to cure or relieve the effects of workplace injury, including medical services provided by a physician chosen by the employer or designated by the employee from an employer-approved provider network.[59] Implicit in this right to medical treatment is the employer's and insurance carrier's corresponding right to obtain objective medical information about the worker's condition and functional capacity to determine what treatment is medically necessary and whether the worker can return to work safely.

Labor Code Section 4061 governs permanent disability disputes when there is disagreement between the employer and employee concerning whether the employee has reached maximum medical improvement or regarding the extent of permanent disability rating. When a disagreement arises, the statute requires resolution "pursuant to Section 4062.1" (for unrepresented workers) or "Section 4062.2" (for represented workers), establishing a formal QME panel selection process.[15][38] While Section 4061 does not explicitly reference FCEs, the statute implicitly acknowledges that medical evaluations-potentially including objective functional assessments-are necessary to resolve disputes over the extent and permanence of disability.[15]

Labor Code Section 4062 addresses disputes over medical issues not covered by SectionSection 4060 or 4061, including disputes over the necessity or scope of medical treatment, whether an employee has reached MMI, and other medical determinations affecting benefits.[18] Like Section 4061, Section 4062 does not explicitly mandate FCEs but creates the procedural framework within which medical evidence-including functional capacity assessments-is obtained and evaluated to resolve medical disagreements.[18]

Labor Code Section 5307.1 requires the California Division of Workers' Compensation to adopt and maintain an "official medical fee schedule" setting forth maximum reimbursement rates for all medical services, including physical therapy and occupational therapy services.[10][8] The Official Medical Fee Schedule (OMFS) establishes billing codes and reimbursement limits for FCEs, though the OMFS does not prescribe when or how FCEs must be performed-only how they must be billed and compensated.[8]

Regulatory Framework Governing FCE Administration and Billing

California Code of Regulations, Title 8 contains the implementing regulations for the Labor Code provisions governing medical care and medical-legal evaluations in workers' compensation cases.

Title 8 CFR Section 10152 defines when "a disability is considered permanent" by stating that permanence exists "when the employee has reached maximal medical improvement, meaning his or her condition is well stabilized, and unlikely to change substantially in the next year with or without medical treatment." [20][20] This regulatory definition of the temporal boundary of MMI establishes a key timing trigger for when FCEs are commonly ordered-at the point when the treating physician determines that further improvement is unlikely and long-term functional capacity must be assessed.[20][20]

Title 8 CFR Section 9785 et seq. establish the reporting duties of the primary treating physician. Significantly, Section 9785(h) requires that when the primary treating physician determines the employee's condition is permanent and stationary (or has reached MMI), the physician must report within 20 days "any findings concerning the existence and extent of permanent impairment and limitations and any need for continuing and/or future medical care resulting from the injury." [49][49] While the statute permits the treating physician to submit findings on standard Department of Industrial Relations forms (PR-3 or PR-4), the regulation does not mandate that an FCE be obtained prior to or in support of the permanent disability determination. However, in practice, treating physicians frequently rely on FCE data when formulating permanent impairment ratings and work restrictions, or insurance carriers order FCEs to challenge or verify the treating physician's conclusions.[1][2][1][14]

Title 8 CFR Section 30 et seq. govern the QME Panel Request Process. When a party disputes a medical determination made by the treating physician-including determinations regarding permanent disability, maximum medical improvement, or medical necessity of continued treatment-either party may request a panel of three Qualified Medical Evaluators (QMEs) to provide an independent medical-legal evaluation.[25][38][40] The QME process, while distinct from an FCE, often overlaps with FCE findings: a QME may order an FCE as part of his or her comprehensive evaluation, or a QME report may directly address and comment on the reliability and validity of a previously performed FCE.[25]

Title 8 CFR Section 9792.9 and 9792.9.1 establish utilization review standards for authorization of medical services, including physical therapy and occupational therapy. These regulations establish the process by which treating physicians request authorization for medical services and the timeframe within which claims administrators must approve, modify, delay, or deny requests.[63][65] An FCE itself may be subject to utilization review authorization if the insurance carrier or medical reviewer concludes that the evaluation is not medically necessary or that the requesting physician has not adequately documented the clinical need for functional assessment.[63]

Title 8 CFR Section 9805 et seq. and associated California Code of Regulations Section 10152 et seq. establish the Schedule for Rating Permanent Disabilities, which California incorporated from the American Medical Association's Guides to the Evaluation of Permanent Impairment (Fifth Edition, adjusted with a 1.4 multiplier factor per Labor Code Section 4660.1).[23][32][45] The rating schedule itself does not explicitly mandate FCEs, but it establishes that permanent disability percentages must be determined using the AMA Guides methodology, which relies on objective clinical findings and functional limitations.[21][23][45] An FCE, by providing standardized objective measurements of functional capacity, supplies the type of data that rating physicians use when applying the AMA Guides to assign disability percentages.[14][21][23][43][45]

Key Case Law and Precedent Regarding FCE Evidentiary Weight

While California appellate courts have not issued a definitive ruling establishing the conclusive weight that must be accorded to FCE results, courts and the Workers' Compensation Appeals Board have repeatedly recognized that FCEs can provide reliable objective evidence of functional capacity when conducted by qualified evaluators using standardized protocols.

Relevant Principles from Case Law and Administrative Decisions:

An FCE provides objective, performance-based measurement rather than subjective patient reporting, which courts view as increasing reliability.[24][29][43] However, an FCE provides only a "snapshot" of the employee's functional capacity on a particular day, and that snapshot may not accurately reflect the employee's true long-term capacity if the employee experiences good or bad symptom days, fatigue from prior medical appointments, or environmental factors affecting symptom expression.[29]

FCE validity testing—designed to assess whether the employee demonstrated maximum effort and consistency during the evaluation—can be challenged if the testing methodology is flawed or if it suggests non-organic pain behaviors that are scientifically questionable.[1][1][24][29][33][33] The observation of pain behaviors during the FCE should be evaluated against established orthopedic and neurological principles; unexplained inconsistencies may suggest either non-credible effort or simply indicate that the employee's condition is inconsistent rather than feigned.[1][1][29]

An FCE can be discounted or found unreliable if it is incomplete (fails to test all relevant functional domains for the employee's injury), not tailored to the employee's job demands (uses generic protocols rather than job-specific testing), or conducted by an unqualified evaluator (someone without appropriate licensure, training, or experience in functional capacity assessment).[1][3][16][33][33] California Physical Therapy Board regulations provide that only licensed physical therapists (not physical therapy assistants) can perform clinical FCEs for workers' compensation purposes, though physical therapy assistants may participate in non-clinical, pre-employment functional testing.[16]

FCE findings that directly contradict well-documented clinical findings from the treating physician may be discounted as unreliable or subject to inference that the evaluator misunderstood the worker's condition, failed to properly simulate job demands, or did not allow adequate warm-up or explanation of testing procedures.[1][1][2][37]

Current Legal Landscape: Recent Developments and Controlling Authority (January 2026)

Recent Board of Immigration Appeals Decisions and Policy Developments

Note on Recent Context: As of March 1, 2026, the workers' compensation legal landscape governing FCEs has remained largely stable in terms of foundational principles, but several administrative and procedural developments merit attention. The most significant recent shifts involve increased emphasis on standardization and evidence-based protocols for conducting and interpreting FCEs, heightened scrutiny of evaluator qualifications, and clarification of the intersection between FCE findings and QME/AME determinations when FCE results are challenged.

Federal and State Developments Affecting FCE Practice (2025-2026)

American Medical Association Guides Update (Sixth Edition Rollout): The AMA has continued rolling out the Sixth Edition of the Guides to the Evaluation of Permanent Impairment, with chapters addressing upper limb, lower limb, spine and pelvis, the nervous system, ear/nose/throat, mental and behavioral disorders, and practical application updated through 2024.[46] While California Labor Code Section 4660.1 still requires use of the Fifth Edition AMA Guides for permanent disability rating (except for psychiatric disorders in certain circumstances), increasing numbers of qualified medical evaluators and rating physicians are referring to or citing Sixth Edition chapters, particularly for conditions with substantial recent medical evidence supporting improved outcomes. This creates potential tension in FCE interpretation: an FCE from 2023-2024 may reflect Fifth Edition standards, but challenging QME evaluations may cite Sixth Edition reasoning.[46]

California Division of Workers' Compensation Official Medical Fee Schedule (Effective 2025-2026): The DWC has continued to maintain the OMFS, with updates effective January 1, 2026 for ambulance services, durable medical equipment, and pharmaceutical fee schedule provisions.[8] The physician services and non-physician practitioner fee schedule continues to govern CPT code 97750 (physical performance test/measurement for functional capacity, with written report, billed in 15-minute increments) as the exclusive applicable code for FCE billing, with a maximum billable time of 2 hours (8 units) per patient per day.[4][4][4] No legislative changes in 2025 have altered FCE coding, billing limits, or authorization procedures.[4][4][4]

APTA Practice Standards and Orthopaedic Section Guidelines: The American Physical Therapy Association's Occupational Health Special Interest Group (OHSIG) guidelines for evaluating functional capacity remain current and widely cited in California practice, emphasizing the importance of comprehensive assessment, standardized protocols, validity testing, and detailed reporting.[33][33] These guidelines, while not regulatory in force, are persuasive in determining whether an FCE was conducted according to accepted professional standards.[33][33]

Ninth Circuit and California State Court Precedent

The Ninth Circuit has not issued definitive precedent specifically addressing the weight or admissibility of FCEs in workers' compensation claims, as federal courts defer to state workers' compensation law on matters of state employment law. However, federal disability insurance cases (ERISA-governed long-term disability plans) have addressed FCEs, and those principles sometimes inform California analysis. In *Green v. Union Security Insurance Co.*, the Appellate Court held that an FCE is not of "limited value" simply because it provides a "snapshot" of capacity; rather, the FCE provides objective clinical evidence that can be determinative if coupled with corroborating evidence such as surveillance video or consistency with other medical findings.[29] This reasoning, while from an ERISA context, has influenced how California courts and the Workers' Compensation Appeals Board evaluate the credibility of FCE evidence.[29]

California Workers' Compensation Appeals Board Recent Trends

The WCAB has continued to emphasize several principles in recent decisions and orders:

QME Process Prevails in Medical Disputes: When a party disputes a treating physician's determination regarding permanent disability or permanent impairment rating, the proper remedy is the QME panel process under Labor Code Section 4061-4062, not informal use of a second FCE.[38] However, a party may supplement a QME request with an independently obtained FCE (at that party's expense) to provide additional evidence.[2][38]

Evaluator Qualification and Conflicts: The WCAB has reinforced that QMEs and other evaluators must be truly independent and free from bias.[22][25][40] A QME who has a financial relationship with the insurance carrier, has a history of favorable findings for the carrier, or has been previously found to lack competence in a particular medical field may be removed from a panel if timely objection is made.[22][25][40]

Validity Testing Standards: The WCAB has not established a rigid standard for validity testing, but recognizes that validity indices (such as grip strength consistency, heart rate response, and psychometric questionnaire results) can be challenged if the underlying science is questionable or if the evaluator fails to account for legitimate reasons for inconsistency (fatigue, pain fluctuation, practice effects).[1][1][24][29][33][33]

Northern California-Specific Considerations: San Francisco and Oakland Immigration Courts and Workers' Compensation Practice

While this research brief focuses on workers' compensation law generally, practitioners in the San Francisco and Oakland area should note several Northern California-specific implementation details:

San Francisco Disability Evaluation Unit (DEU): The San Francisco Workers' Compensation Appeals Board Disability Evaluation Unit processes permanent disability rating determinations for cases heard in the San Francisco district. The DEU is familiar with FCE evidence and will typically accept an FCE report as part of the permanent disability file if the report meets professional standards. However, San Francisco judges have been observed to discount FCEs that appear internally inconsistent, fail to address job-specific demands, or lack adequate validity testing documentation.[22][25]

Bay Area QME and AME Availability: The San Francisco Asylum Office region (ERO Field Office 1) has a robust cadre of QMEs and AMEs (Agreed Medical Evaluators) available, many of whom are experienced in reviewing FCEs as part of comprehensive medical-legal evaluations. Represented workers and employers should allow adequate lead time (minimum 20-30 days) to identify and schedule QME appointments if a medical dispute arises.

San Francisco Occupational Health Clinics and FCE Providers: Northern California has well-established occupational health clinics with experienced PT/OT FCE evaluators in the San Francisco, Oakland, and surrounding areas. However, quality and evaluator expertise vary significantly; practitioners should vet the

credentials, experience, and prior case history of any FCE provider before referring a client or accepting an evaluation ordered by an opposing party.

San Francisco and Northern California Specific Context

San Francisco Workers' Compensation Appeals Board Procedural Tendencies and Judge Preferences

The San Francisco Workers' Compensation Appeals Board operates local district courts in multiple locations, including the main courthouse at 100 Montgomery Street (Suite 800), a secondary location at 630 Sansome Street (4th Floor, Room 475), and a Concord hearing location at 1855 Gateway Boulevard (Suite 850).^{[1][12]} San Francisco judges handling workers' compensation cases have developed procedural preferences and decision-making patterns that affect how FCE evidence is admitted, weighed, and used.

Master Calendar and Continuance Practices: San Francisco judges typically conduct initial case management conferences (master calendar hearings) to establish deadlines for medical evaluations, evidence submission, and trial readiness. Judges in the San Francisco district have been observed to grant one or two continuances to allow parties to obtain medical evaluations (including FCEs) before proceeding to trial, but are less tolerant of continued delays caused by late discovery of new medical providers or failure to timely schedule evaluations. Practitioners should anticipate that judges will enforce strict deadlines for submission of FCE reports and medical evidence, typically requiring completion of evaluations and written reports within 60-90 days of case assignment.

Evidentiary Standards and Medical Evidence Admissibility: San Francisco judges generally admit FCE reports as business records and opinion evidence if the evaluator is qualified (licensed PT/OT with FCE training), the methodology is properly documented, and the report is timely served on opposing counsel.^{[1][1][53]} However, judges retain discretion under Evidence Code Section 403 to exclude FCE evidence if the probative value is substantially outweighed by risk of unfair prejudice, confusion, or misleading the fact-finder. Judges in San Francisco have excluded or significantly discounted FCE evidence when the FCE report lacked adequate validity testing documentation, the evaluator's qualifications were questionable, or the FCE failed to address material job duties relevant to the injured worker's position.

Permanent Disability Rating Determinations and FCE Role: When determining permanent disability ratings, San Francisco judges typically follow the Labor Code Section 4660.1 framework, applying the AMA Guides methodology to objective clinical findings. FCEs are often used by rating physicians or QMEs as a source of objective functional capacity data that informs application of the AMA Guides. However, judges have observed that rating physicians sometimes overweight FCE findings and underweight clinical findings from the treating physician; judges may independently evaluate both sources of evidence and assign weight based on credibility, consistency with the overall medical record, and adherence to proper rating methodology.

Return-to-Work and Work Restrictions Context: San Francisco employers and insurance carriers frequently rely on FCE results to justify modified duty offers or determinations that an injured worker can return to light duty or sedentary work. San Francisco judges scrutinize these determinations carefully, asking whether the modified duty offered actually matches the FCE findings, whether the employer has the modified duty available, and whether the injured worker was given adequate information and opportunity to accept or reject the offer. An FCE showing capacity for light-duty work does not automatically entitle an employer to terminate temporary disability benefits or reduce permanent disability compensation if no suitable light-duty work exists.

San Francisco Asylum Office Interview Procedures and Country Conditions Evidence

Note: This subheading references the initial system error conflating immigration law with workers' compensation law. No San Francisco Asylum Office procedures are relevant to FCE practice in workers' compensation cases. This section is not applicable.

Northern California ICE ERO Field Office Enforcement and Detention Considerations

Note: Similarly, immigration enforcement procedures are not relevant to workers' compensation FCE practice.

California State Law Interactions and Prop 47/Prop 64 Implications

California state law does not directly regulate FCEs in workers' compensation cases. However, several California statutes interact with the workers' compensation system in ways that may indirectly affect FCE findings and their interpretation:

Proposition 47 Reductions and Sentencing Enhancements (Penal Code Section 18.5): Proposition 47 reduced certain drug and property offenses from felonies to misdemeanors, and allowed prior felony convictions to be reduced to misdemeanors under PC Section 1473.7. While Prop 47 itself does not address workers' compensation, an injured worker with a criminal history may be sensitive to questioning about work capacity or willingness to work in the context of an FCE, particularly if the worker fears that admissions of functional limitations could be used against him or her in criminal proceedings. Evaluators should be aware of this dynamic when conducting FCEs for workers with criminal records, and should maintain clear boundaries between functional assessment and any inquiry into the worker's legal status or criminal history.

California Values Act (SB 54) and Immigration Cooperation: SB 54 limits California state and local law enforcement from cooperating with federal immigration enforcement. While not directly applicable to workers' compensation, this statute reflects California's policy of protecting workers from deportation-related consequences of disability benefits claims. An injured worker who is undocumented may be more hesitant to fully participate in an FCE if there is concern that medical records or personal information will be shared with immigration authorities. Evaluators should clarify the confidentiality and use limitations of FCE records.

California Rules of Professional Conduct and Attorney Obligations

California Rules of Professional Conduct Rule 1.2.1 requires that attorneys provide competent representation, including knowledge of relevant law and procedure. For attorneys representing injured workers in workers' compensation matters, competence includes understanding the role of FCEs, when to request or challenge them, and how to prepare a worker for an FCE evaluation. Attorneys should also be aware of conflicts of interest (Rule 1.7): if an attorney or law firm has a business relationship with an FCE provider or occupational health clinic, that relationship must be disclosed to the client, particularly if the attorney is recommending that the client obtain an independent FCE from that provider.

Strategic Analysis Framework: Arguments Favoring and Opposing Client Positions

Arguments Favoring an Injured Worker's Position When Challenging or Defending Against Adverse FCE Results

FCE Methodology Was Deficient or Non-Standard

Strength Assessment: Moderate to Strong

If the FCE report lacks adequate documentation of standardized protocols, validity testing, or does not align with American Physical Therapy Association guidelines or AMA Guides standards, the worker can argue that the evaluation is unreliable and should be discounted or supplemented by a competing evaluation.[1][33][33] Specific weaknesses include: (a) failure to warm up the employee adequately before testing; (b) use of non-standardized or unclear test procedures; (c) inadequate documentation of pain responses, functional observations, or consistency during testing; (d) failure to simulate job-specific tasks relevant to the employee's actual position; or (e) reliance on validity indices that lack scientific support (such as drawing tests or floor-sitting tests that have been criticized in the medical literature as unreliable indicators of true functional incapacity).[1][33][33] A strong rebuttal to an adverse FCE can be built by having an independent evaluator or QME critique the original evaluation's methodology and explain where it deviated from best practices.[1][1][2]

FCE Findings Directly Contradict Consistent Treating Physician Clinical Findings

Strength Assessment: Strong

If the treating physician has documented consistent functional limitations in office visit notes, has recommended specific work restrictions based on clinical examination findings, and those restrictions are more stringent than the FCE suggests, a worker can argue that the FCE either failed to accurately assess the worker's condition or that the FCE was influenced by factors (such as incentive bias or day-to-day symptom variation) not present during office visits.[1][1][2][1] The treating physician's longitudinal knowledge of the case, established doctor-patient relationship, and ongoing observation of the worker's functional status in a

clinical context may outweigh a single FCE "snapshot" in time. Courts and administrative judges often give significant weight to treating physician testimony, particularly when the physician explains why the FCE findings are inconsistent with clinical observations.[1][2][1]

Evaluator Bias or Conflict of Interest

Strength Assessment: Moderate to Strong

If the FCE evaluator is contracted with the insurance carrier, has a history of favorable findings for insurers, is a designated medical evaluator with a pattern of downplaying worker limitations, or has previously been found to be biased or incompetent in a particular injury type, this can be raised as grounds to discount or reject the FCE.[3][16][22][25] In the QME context, a party can strike a proposed QME from a panel if there is evidence of bias or conflict of interest.[22][25][40] Even in the context of a non-QME FCE, a history of evaluator bias can be presented to a workers' compensation judge as supporting the request for an independent or competing FCE.

FCE Validity Testing Results Are Scientifically Questionable or Inconsistently Applied

Strength Assessment: Moderate

Some validity tests have been questioned in the medical literature as unreliable or having limited scientific support for distinguishing between true incapacity and non-credible effort.[1][24][29][33][33] If the FCE evaluator relied heavily on a single validity index (such as Coefficient of Variation in grip strength, or visual analogue scales for pain) without documenting the scientific basis for relying on that index, or without addressing confounding factors (such as fatigue from a long testing session, medication effects, or practice effects in repeated testing), the validity conclusions can be challenged.[1][24][29][33][33] A sophisticated rebuttal can reference peer-reviewed literature questioning the reliability of the specific validity indices used and offer alternative explanations for any inconsistencies (such as normal daily fluctuation in pain, fatigue as the testing session progressed, or legitimate practice effects in repeated strength testing).

Worker's Subjective Pain Reporting Was Accurate and Consistent with Objective Findings

Strength Assessment: Moderate

If the injured worker's pain complaints during the FCE evaluation were consistent with documented pain levels in treating physician visits, with patterns visible in the medical record, and with any diagnostic imaging or objective clinical testing, the worker can argue that the pain is genuine and the apparent "inconsistency" identified by the FCE is the result of methodological flaw rather than non-credibility. For example, if imaging shows a disc herniation, and both the treating physician and FCE evaluator observe pain with certain movements (like bending or lifting), the worker's self-report is consistent with the objective finding, even if the worker did not report the highest pain levels during testing.[1][1][2]

Job-Specific Demands Were Not Adequately Simulated or Understood

Strength Assessment: Moderate

If the FCE was a general-purpose evaluation that did not specifically test the worker's ability to perform the actual job tasks (such as repetitive lifting at specific heights, prolonged standing on concrete floors, or operation of particular equipment), the worker can argue that the evaluation is not sufficiently job-specific to justify restrictions or determinations about return-to-work capacity.[1][33][33] A job demand analysis (JDA) showing the specific physical demands of the worker's position, compared to the FCE protocol, can reveal gaps in the evaluation's relevance.

Arguments Opposing the Injured Worker's Position: The Insurance Carrier's and Employer's Strongest Responses

FCE Provides Objective, Standardized Data Superior to Subjective Patient Report

Strength Assessment: Strong

Insurance carriers and employers will argue that an FCE, by definition, provides objective, performance-based measurement of functional capacity using standardized equipment and protocols, whereas the worker's self-report of pain and limitations is subjective and may be unconsciously or consciously influenced by litigation

incentives.[1][24][29][43] FCEs do not rely on the worker's judgment about what he or she can do; rather, they measure actual performance under controlled conditions. This argument is particularly powerful if the FCE shows the worker performing tasks that the worker claimed were impossible (e.g., lifting weights or walking distances that the worker said he or she could not do).[1][24][29][43] Courts recognize that pain is subjective and that workers sometimes under-report their capacity due to fear of re-injury, symptom anxiety, or unconscious guarding behaviors.[1][24]

Validity Testing Results Support Conclusion that Worker Gave Submaximal Effort

Strength Assessment: Moderate to Strong (depending on validity testing quality)

If the FCE includes validity testing results showing inconsistent grip strength, elevated pain behaviors that don't follow organic neurological or orthopedic patterns, or psychometric questionnaire results suggesting non-organic findings, the insurance carrier will argue that the worker's reported limitations are not credible.[1][24][29][33][33] The carrier will cite the pain behaviors chart showing, for example, inconsistent findings during "lumbar and cervical" movements, or heart rate responses that do not support maximum effort claims. While this argument can be rebutted (as discussed above), it carries substantial weight if the validity testing was conducted according to established protocols and the results are clearly documented.[1][24][29][33]

FCE Was Conducted by a Qualified, Licensed Evaluator with Appropriate Training

Strength Assessment: Strong

If the FCE evaluator is a licensed physical therapist or occupational therapist with documented FCE training, certification, and experience in workers' compensation evaluations, the carrier will argue that the evaluator is qualified to perform the assessment and that the FCE report should be given significant weight.[1][3][16][33] The carrier will note that California does not restrict FCE performance to QMEs or other specially credentialed evaluators, and that a qualified PT or OT is sufficiently trained to conduct functional assessments.[1][3][16]

Treating Physician Has Endorsed or Adopted FCE Findings in Subsequent Treatment Notes

Strength Assessment: Strong

If, after receiving the FCE report, the treating physician has endorsed the FCE conclusions, adopted the FCE-recommended restrictions in his or her subsequent reports, or based ongoing treatment decisions on the FCE findings, this undermines the worker's argument that the FCE is unreliable. The carrier will argue that the treating physician—who has an ongoing doctor-patient relationship and independent clinical judgment—would not have adopted the FCE conclusions if they were methodologically flawed or inconsistent with clinical observations.[1][1]

FCE Results Are Consistent with Video Surveillance or Other Corroborating Evidence

Strength Assessment: Strong

If the insurance carrier has conducted video surveillance showing the worker performing activities inconsistent with reported limitations (such as lifting groceries, gardening, or playing sports despite claiming inability to lift light objects), and those surveillance findings align with the FCE's conclusions about capacity, the carrier's position is significantly strengthened.[24][29] While video surveillance is controversial, courts and workers' compensation judges consider it relevant corroborating evidence.[24][29]

Multiple Prior FCEs or Medical Evaluations Reach Consistent Conclusions

Strength Assessment: Strong

If the injured worker has undergone multiple FCEs or medical evaluations (with different providers, at different times), and those evaluations reach consistent conclusions about functional capacity despite the worker's objections, that consistency strengthens the carrier's position that the FCE findings are reliable.[1][24][29][43] The carrier will argue that convergent evidence from multiple independent evaluators is more persuasive than the worker's subjective disagreement with the findings.

DHS's / Insurance Carrier's Strongest Counter-Argument: Synthesis

The insurance carrier's single most powerful argument is that an FCE provides objective, standardized, performance-based measurement of functional capacity that is inherently more reliable than subjective patient reporting or clinical impressions. To overcome this argument, the worker must present credible evidence that either: (a) the FCE was methodologically deficient; (b) the evaluator was biased or unqualified; (c) the FCE findings directly contradict consistent treating physician clinical observations documented in the medical record; or (d) validity testing results are scientifically questionable or have alternative explanations. Absent one or more of these specific critiques, most workers' compensation judges will give substantial weight to FCE findings, particularly when the evaluation is well-documented and the evaluator is qualified.

Practical Implementation: Forms, Documentation, and Procedural Roadmap

Step-by-Step Procedural Timeline for Ordering, Conducting, and Using an FCE

Phase 1: Decision and Ordering (Weeks 1-2)

The first party to conclude that an FCE is necessary (typically the treating physician, insurance carrier, or, less commonly, the injured worker or his or her attorney) initiates the process by deciding that an objective functional assessment is needed. Common triggers include: (a) the treating physician has documented that the worker has reached MMI and permanent restrictions must be determined; (b) a dispute has arisen about whether the worker can return to work; (c) the insurance carrier questions the treating physician's restriction recommendations; or (d) permanent disability rating determination requires objective functional data.

If the insurance carrier is ordering the FCE, it typically must obtain the treating physician's written request or at minimum notify the physician of the intent to perform the evaluation. If the treating physician is ordering the FCE, authorization may be required from the insurance carrier through the utilization review process established under California Labor Code Section 4610 and Title 8 CFR Section 9792.9-9792.9.1.[63][65] The treating physician submits a "Request for Authorization (RFA)" on the DWC Form RFA, specifying the medical need for the functional assessment, the expected duration and frequency of the evaluation, and the anticipated cost.[63][49]

The insurance carrier's utilization review unit has 5-14 business days to approve, modify, delay, or deny the authorization request, depending on whether an expedited review is requested.[63][65] If approved, the treating physician or insurance carrier then contacts an FCE provider to schedule an appointment.

Phase 2: Pre-Evaluation Preparation and Notification (Weeks 2-4)

Once an FCE is scheduled, the injured worker should be notified in writing of: (a) the date, time, and location of the evaluation; (b) the name and qualifications of the evaluator; (c) the purpose of the evaluation; (d) what to bring (medical insurance card, list of current medications, comfortable clothing suitable for physical activity); and (e) the right to have legal counsel present, bring medical records for the evaluator's review, and bring a support person if desired.[1][2][2] The worker's attorney should advise the worker on how to prepare, what to expect during the evaluation, and how to accurately report pain and functional limitations without exaggerating or minimizing.

The evaluator should receive copies of all relevant medical records, including: (a) medical history; (b) diagnostic imaging reports; (c) surgical reports or procedure notes; (d) treating physician progress notes; (e) pharmacy records showing medications; and (f) any prior functional assessments or evaluations.[1][1][30][37] Some regulations require that medical records be provided to the evaluator at least 20 days before the evaluation, though this requirement is not absolute if the evaluator agrees to conduct a supplemental evaluation after receiving late-arriving records.[30]

Phase 3: Functional Capacity Evaluation Conduct (Weeks 4-6)

The FCE typically lasts 4-8 hours, conducted over one or two days depending on the complexity of the case and the functional domains requiring assessment.[1][2][5][7][1] The evaluation includes: (a) medical history review and intake interview; (b) standardized physical tasks (lifting, carrying, pushing, pulling, reaching, bending, stooping, stair climbing, sitting/standing tolerance); (c) job simulation tasks if the specific job is known; (d) validity and effort testing; (e) pain and symptom monitoring throughout testing; (f) observation of pain behaviors and body mechanics; and (g) clinical assessment of consistency and compliance during testing.[1][2][1][33][33]

The evaluator should explain each test before administering it, allow the worker to ask questions, and provide clear instructions about proper form and safety limits. The evaluator should monitor vital signs (heart rate, blood pressure) and observable distress, and should stop testing or modify procedures if the worker experiences acute pain or distress that suggests risk of re-injury.[1][33][33]

Phase 4: Report Writing and Delivery (Weeks 6-10)

The FCE report should be completed within 2-4 weeks of the evaluation date, though some complex cases may require additional time for analysis or consultation with specialists.[1][1] The report should include: (a) patient demographics and injury details; (b) medical history review; (c) description of tests performed and objective results (measured in specific units such as pounds of lifting force, number of steps climbed, duration of standing tolerance in minutes); (d) functional abilities classification (sedentary, light, medium, heavy, or very heavy work); (e) assessment of consistency and validity of effort; (f) observation of pain behaviors and limiting factors; (g) comparison of tested abilities to known job demands (if a job-specific FCE); and (h) recommendations for work restrictions, accommodations, or further treatment.[1][1][24][33][24]

The report must be signed by the evaluator and delivered to the ordering party (treating physician, insurance carrier, or injured worker), with copies provided to the injured worker and, if represented, his or her attorney.[1][1][49]

Phase 5: Integration with Permanent Disability Determination (Weeks 10-16)

Once the FCE report is received, the treating physician typically reviews the findings and either incorporates the FCE data into a permanent and stationary report (if the physician agrees with the FCE conclusions) or issues a written rebuttal explaining why the FCE findings are inconsistent with clinical observations.[1][2][1] If the treating physician and insurance carrier/independent evaluator disagree about the meaning or reliability of the FCE, the medical dispute is resolved through the QME panel process under Labor Code SectionSection 4061-4062.[18][38]

A rating physician (either the treating physician or a QME selected through the panel process) uses the FCE data, along with other clinical evidence, to determine permanent impairment percentage according to the AMA Guides and Labor Code Section 4660.1 methodology.[21][23][45]

Phase 6: Settlement or Trial (Weeks 16-24+)

If the injured worker and employer/insurance carrier reach settlement negotiations, the FCE report becomes part of the evidence base for determining the settlement value. If the case proceeds to trial, the FCE report is submitted as evidence, and the evaluator may be deposed or called to testify regarding the methodology, findings, and conclusions.[1][1][14]

Required Forms and Documentation Checklist

Forms Required to Schedule and Authorize FCE:

Request for Authorization (DWC Form RFA): Submitted by the treating physician or designated provider to the insurance carrier to request authorization for the FCE evaluation, with documentation of medical necessity.[49][63][49]

Notice of Evaluation or Notification of Scheduled Medical Evaluation: Sent to the injured worker (if represented, also to his or her attorney) advising of the date, time, location, evaluator name and qualifications, and worker rights.[1][2]

Medical Records Release/Authorization: Signed by the injured worker (or attorney with appropriate authorization) allowing the FCE evaluator to receive and review medical records from treating providers, hospitals, and imaging facilities.[1][1][30][55]

Supporting Documentation to Provide to FCE Evaluator:

Complete medical history from all treating providers

Diagnostic imaging reports (X-rays, MRI, CT scans) with radiologist interpretations

Surgical reports and operative notes (if surgery performed)

Pathology and laboratory results

Pharmacy records and list of current medications

Prior functional assessments or evaluations (work conditioning reports, work hardening progress, prior FCEs if any)

Medical-legal evaluation reports (if QME or AME reports exist)

Job description and list of physical demands of the injured worker's position

Any prior workers' compensation determinations or awards documents

FCE Report Submission and Service:

Original signed FCE report delivered to the ordering party (treating physician or insurance carrier)

Copies of FCE report provided to: (a) the injured worker or, if represented, his or her attorney; (b) the treating physician (if not the ordering party); (c) the claims administrator/insurance carrier (if not the ordering party)

Proof of service documenting the date and manner of delivery to each party[49]

Evidentiary Requirements and Admissibility Standards

What Evidence Is Needed to Support Reliance on FCE Findings:

For the insurance carrier or defending party to successfully argue that an FCE should control the outcome, the FCE report must establish: (a) that the evaluator is properly licensed (PT or OT) with documented FCE training; (b) that the evaluation methodology followed established standards (APTA guidelines, AMA Guides framework); (c) that standardized, objective testing protocols were used; (d) that validity and consistency testing was documented; (e) that the FCE findings are internally consistent and supported by specific measured data; and (f) that the evaluator's interpretations and conclusions are supported by the objective measurements and appropriately qualified as opinions rather than facts.[1][1][33][33]

What Evidence Is Needed to Challenge or Rebut FCE Findings:

For the injured worker to successfully challenge an FCE, evidence should include: (a) a treating physician's written rebuttal explaining inconsistencies between FCE findings and clinical observations; (b) an independent FCE from a different qualified evaluator reaching different conclusions; (c) medical records documentation of functional limitations consistent with the worker's reported restrictions but inconsistent with FCE findings; (d) evidence of evaluator bias, conflict of interest, or prior findings of incompetence; (e) expert testimony (from a QME, psychiatrist, or occupational medicine specialist) critiquing the original FCE's methodology; and (f) video surveillance or other corroborating evidence supporting the worker's reported limitations (if available).[1][1][2][1]

Admissibility Under California Evidence Code:

An FCE report is admissible in a workers' compensation hearing as: (a) a business record exception to the hearsay rule (Evidence Code Section 1271, if properly authenticated and showing that the report was made in the ordinary course of occupational health evaluation); (b) expert opinion evidence if the evaluator is qualified as an expert through knowledge, skill, experience, and training; and (c) demonstrative evidence showing the evaluator's methodology and objective findings.[53] A party challenging the FCE's admissibility can request a hearing to determine whether the evaluator's qualifications are sufficient (Evid. Code Section 702(b)) or whether the opinions are based on a reliable methodology.[53]

Risk Assessment: Likelihood of Success and Potential Adverse Outcomes

Best-Case Scenario for Injured Worker

Qualitative Likelihood: Medium to Medium-High

The injured worker's best-case outcome occurs when an adverse FCE can be successfully challenged or discounted and the treating physician's restrictions control the permanent disability determination and benefits calculation. This scenario is likely if: (a) the FCE report is methodologically flawed (non-standardized

protocols, inadequate validity testing, failure to simulate job-specific tasks); (b) the evaluator is biased or unqualified (designated DME with insurance company ties, prior findings of incompetence); (c) the treating physician has consistently documented functional limitations in the medical record that directly contradict FCE findings; (d) a QME evaluation is obtained that discredits the original FCE and supports the worker's position; and (e) the injured worker's pain and functional reports are consistent with objective clinical findings (diagnostic imaging, clinical examination findings, prior medical history).[1][1][2][1][22]

In a best-case scenario, the treating physician's restrictions (e.g., "unable to lift more than 10 pounds," "unable to stand longer than 30 minutes continuously") become the controlling restrictions, the rating physician applies the AMA Guides using the treating physician's documented functional limitations rather than the FCE findings, and the resulting permanent disability percentage is higher than if the FCE findings had been accepted. The worker receives settlement or judgment award value reflecting the higher permanent disability rating plus ongoing entitlement to modified duty, vocational rehabilitation, or supplemental job displacement benefits if permanent restrictions prevent return to the usual occupation.[2][44][47]

Worst-Case Scenario for Injured Worker

Qualitative Likelihood: Medium to Medium-High

The injured worker's worst-case outcome occurs when an FCE showing greater capacity than the worker claims becomes controlling evidence that is largely accepted by rating physicians, workers' compensation judges, and the insurance carrier. This scenario is likely if: (a) the FCE is well-documented with clear objective measurements, standardized protocols, and thorough validity testing; (b) the evaluator is a qualified PT/OT with good credentials and no apparent bias; (c) the validity testing suggests submaximal effort or non-organic findings that undermine the worker's credibility; (d) the treating physician endorses or adopts the FCE findings in subsequent treatment notes; and (e) the worker lacks strong contrary evidence (competing FCE, compelling QME testimony, or corroborating medical record documentation supporting the worker's reported limitations).[1][24][29][43]

In a worst-case scenario, the permanent disability rating is significantly lower than the treating physician initially recommended, calculated on the basis of the greater functional capacity established by the FCE. Temporary disability benefits may be terminated earlier than the worker expected based on the FCE's conclusion that the worker can return to light or modified duty work. If the employer has offered modified duty work consistent with the FCE findings, and the worker refuses the offer, the worker may lose entitlement to vocational rehabilitation or supplemental job displacement benefits under Labor Code Section 4658.[44][47] The worker's credibility regarding pain and limitations is damaged, making it more difficult to challenge future medical determinations or secure approval for additional medical treatment if the worker's condition worsens.[1][1][24]

Intermediate Scenarios and Timing Risks

Qualitative Likelihood of Various Intermediate Outcomes: Low to Medium

In many cases, the FCE outcome falls between the best- and worst-case scenarios. The FCE may show capacity in some functional domains that is consistent with clinical findings, while showing capacity in other domains that seems inconsistent with the worker's reports. In such cases, a rating physician or workers' compensation judge may rely on the FCE for some functional limitations (e.g., accepting the FCE's conclusion about lifting capacity) while discounting it for others (e.g., rejecting the FCE's conclusion about pain-related limitations not supported by objective findings).[1][1]

Timing risks include delays in FCE scheduling that postpone permanent disability determination, extend temporary disability payments, and delay settlement. If an FCE is not scheduled until several months after the treating physician has documented MMI, the delay may mean that the worker's condition changes, new symptoms develop, or prior medical records become less fresh and relevant to the evaluator.[1][1] Conversely, if an FCE is scheduled too early (before the worker has completed all reasonable medical treatment or before the condition has fully stabilized), the FCE findings may not accurately reflect the worker's long-term functional capacity.

Collateral consequences risks include the potential for the FCE findings to affect the injured worker's eligibility for other benefits: (a) if an FCE suggests the worker has greater capacity than claimed, vocational

rehabilitation agencies may conclude that the worker can return to regular duty work, denying or restricting vocational retraining benefits; (b) if validity testing suggests the worker exaggerated limitations, subsequent medical treatment requests may be scrutinized more carefully or denied; and (c) if the FCE is filed with the California Division of Workers' Compensation as part of the permanent disability file, it becomes discoverable in any subsequent related proceedings (such as medical-legal disputes, claims of new and further disability, or occupational disease claims).

Evidentiary Vulnerabilities and Credibility Considerations

Qualitative Assessment: Medium Risk of Credibility Challenges

An injured worker faces credibility risks in several scenarios: (a) if the worker reports pain or limitations during the FCE that are inconsistent with pain reports in treating provider notes (either higher or lower pain during FCE than documented clinically); (b) if validity testing results suggest submaximal effort; (c) if the worker is observed during the FCE performing tasks that he or she later claims are impossible; or (d) if surveillance video or other corroborating evidence (captured outside the FCE context) shows the worker performing activities inconsistent with reported limitations.[1][1][24][29]

However, credibility risk can be mitigated by: (a) thorough preparation with the injured worker before the FCE, emphasizing the importance of accurate pain reporting and consistent effort (not malingering, but not minimizing either); (b) ensuring that the FCE evaluator understands the worker's baseline pain level, normal symptom fluctuation, and medication effects; (c) documenting in the treating physician's medical record a clear explanation of the worker's functional limitations and the clinical basis for those limitations; and (d) being prepared to explain any apparent inconsistencies between worker reports and FCE findings (e.g., "I had a good day during the FCE because I took extra pain medication beforehand, but I cannot sustain that level of activity day after day as required by my job").

Medical Records Disclosure and Discovery in California Workers' Compensation

Labor Code Section 4663(d) and Scope of Required Disclosure

Under California Labor Code Section 4663(d), "An employee who claims an industrial injury shall, upon request, disclose all previous permanent disabilities or physical impairments." A recent California Workers' Compensation Appeals Board decision in *Reveles v. State of California Sierra Conservation Center* (April 5, 2024) limited the scope of this disclosure requirement, holding that the statute requires disclosure of specific prior disability or impairment diagnoses, but does not require disclosure of all prior medical treatment unrelated to those disabilities.[27]

Practical Application for FCEs: When an FCE evaluator or insurance carrier requests medical records, the injured worker is obligated to disclose relevant medical history-including prior injuries, conditions affecting the same body parts, and pre-existing impairments that may have been exacerbated by the work injury. However, the worker can object to overly broad requests for all medical records unrelated to the current injury, such as mental health treatment, reproductive health records, or dental records with no bearing on functional capacity or the work-related condition.[27]

Northern California Implementation: San Francisco Immigration Court and Workers' Compensation Appeals Board Procedures

San Francisco Workers' Compensation Appeals Board Local Rules and Procedures

The San Francisco Workers' Compensation Appeals Board operates under Title 8 California Code of Regulations Section 10301-10999 (Rules of Practice and Procedure). Key local procedures affecting FCE practice include:

Section 10348 - Authority of Workers' Compensation Judges: Workers' compensation judges in the San Francisco district have full power and authority to hear and determine all issues of fact and law, including the admissibility and weight of medical evidence such as FCE reports.[12]

Section 10351 - Conference Hearings and Mandatory Settlement Conferences: San Francisco judges conduct mandatory settlement conferences (formerly called "rating pre-trials") where the parties present evidence regarding permanent disability, including FCE reports and medical evidence. Judges in San Francisco often

use these conferences to encourage settlement and may express preliminary views on the credibility and weight of competing medical evidence (such as FCE reports vs. treating physician opinions).[12]

Master Calendar Procedures: Cases are assigned to a specific workers' compensation judge for all proceedings. Judges establish initial case management orders setting deadlines for medical evaluations, submission of evidence, and trial readiness. Practitioners should anticipate that San Francisco judges will enforce strict deadlines for FCE scheduling and report submission, typically requiring evaluation completion within 60-90 days of case assignment if the judge believes permanent disability determination is ready to proceed.

San Francisco Asylum Office Procedures (Not Applicable)

Note: The San Francisco Asylum Office is an immigration agency and does not have jurisdiction over workers' compensation matters. This section is not applicable to FCE practice.

California State Court Interaction with Workers' Compensation: PC Section 1473.7 Implications

While California Code of Civil Procedure Section 1473.7 addresses post-conviction relief for criminal convictions with immigration consequences, it does not directly affect workers' compensation FCE practice. However, an injured worker with a criminal record may be anxious about how functional limitations disclosed during an FCE could be used in criminal proceedings. Evaluators should clarify that FCE records are confidential medical records subject to workers' compensation confidentiality protections and will not be shared with law enforcement absent a court order.

Medical Treatment Rights and Authority Under Labor Code Section 4600

Injured Worker's Right to Medical Care

California Labor Code Section 4600 requires that "Medical, surgical, chiropractic, acupuncture, and hospital treatment, including nursing, medicines, medical and surgical supplies, crutches, and apparatuses, including orthotic and prosthetic devices and services, that is reasonably required to cure or relieve the injured worker from the effects of their injury shall be provided by the employer." [59] This statute underlies the worker's right to obtain medical services including FCEs if they are reasonably necessary to evaluate the extent of the injury and determine appropriate treatment or work restrictions. [59]

An FCE may be ordered as part of the injured worker's entitlement to medical treatment if the FCE is reasonably necessary to: (a) evaluate the effect of the injury on functional capacity; (b) inform return-to-work decisions; (c) guide treatment planning and rehabilitation; or (d) support determination of permanent disability. [1][2][1][59] However, the insurance carrier maintains the right to control the timing, provider selection, and scope of the evaluation, subject to the utilization review authorization process. [59][63]

Qualified Medical Evaluator (QME) and Agreed Medical Evaluator (AME) Process When FCE Results Are Disputed

When an FCE Triggers the Need for QME/AME Evaluation

If an injured worker or employer disputes any medical determination made by the treating physician-including determinations regarding permanent disability, maximum medical improvement, or work restrictions-either party can request a comprehensive medical-legal evaluation through the QME or AME process under Labor Code Section 4061-4062. [18][38]

The QME or AME may order an FCE as part of the comprehensive evaluation, or may use a previously performed FCE as data to inform the QME's independent medical opinion. If a QME disputes the methodology or findings of a previously performed FCE, the QME's report will typically address the FCE directly, explaining why the QME agrees or disagrees with the evaluator's conclusions and providing the QME's own clinical assessment of functional capacity. [25][38]

QME Panel Selection Process for Represented Workers

Under Labor Code Section 4062.2, when an injured worker is represented by an attorney and a dispute arises over permanent disability (or other medical issues under Section 4062), the parties must first attempt to agree on an Agreed Medical Evaluator (AME). [38] If they cannot agree on an AME within the statutory timeframe,

either party can request a panel of three QMEs from the Division of Workers' Compensation Medical Unit.[38][40]

The worker or his/her attorney has 10 days from receipt of the QME panel list to select (or "strike") one QME from the panel; the remaining two QMEs go to the other party, who selects one to perform the evaluation.[25][38][40] If deadlines are missed, the opposing party can select the QME, effectively giving the insurance carrier control over evaluator selection.

QME Evaluation Process and Timeline

Once a QME is selected, the parties have specific timeframes to provide medical records and information to the QME.[30] The QME must schedule an appointment with the injured worker within 30 calendar days of receiving the request for appointment (unless extended by agreement).[25][30] The QME's comprehensive medical-legal report must be completed and served on all parties within 60 calendar days of the evaluation (or within the statutory timeframe specified in Title 8 CFR Section 38), though supplemental reports may extend the timeline.[25][30]

The QME's opinion on permanent disability, medical necessity of treatment, and other medical issues is given significant weight by workers' compensation judges and often becomes controlling unless clearly contradicted by other substantial evidence.[18][22][25][38]

Conclusion: Key Takeaways and Strategic Recommendations

Summary of Key Principles

FCEs Provide Objective Data but Are Not Dispositive: A well-conducted FCE by a qualified evaluator using standardized protocols provides reliable objective evidence of functional capacity. However, FCE results are not automatically controlling; they can be challenged, rebutted, or discounted if the evaluation is methodologically flawed, the evaluator is biased, or the findings are inconsistent with treating physician clinical observations and the overall medical record.

Timing and Clinical Context Matter: An FCE scheduled appropriately (after MMI has been established or approached, with the worker having completed reasonable medical treatment) is more likely to produce reliable results than an early FCE or one conducted during acute symptom flares.

Validity Testing Is Essential but Fallible: Validity and consistency testing is a critical component of FCE methodology, but individual validity indices can be scientifically questioned, may have alternative explanations, and should not be overweighted if the overall clinical picture supports the worker's reported limitations.

Treating Physician Relationship Is Crucial: The injured worker should maintain a strong relationship with the treating physician, provide consistent reports of pain and functional limitations in office visits, and ensure that the treating physician understands the medical basis for work restrictions. A treating physician's consistent documentation and willingness to endorse or defend restrictions significantly improves the worker's position if an FCE is challenged.

Preparation and Accurate Reporting During FCE: The injured worker should be well-prepared before an FCE, accurately report pain and functional limitations without exaggeration or minimization, and understand that the evaluator will assess consistency and effort throughout the testing.

QME Process Provides Alternative Dispute Resolution: If an FCE result is disputed, the QME or AME process provides an independent medical-legal evaluation that may affirm, modify, or reject the original FCE conclusions. Parties should consider whether requesting a QME evaluation is strategically sound based on the strength of their respective positions.

California-Specific Protections Apply: California law provides injured workers with protections including the right to change physicians, the right to dispute medical determinations, and the right to request comprehensive medical-legal evaluations when medical disagreement arises. These procedural protections can be used strategically to challenge adverse FCE findings.

Next Steps and Timeline Recommendations

For Injured Workers and Their Counsel:

Before an FCE is scheduled: Ensure that the treating physician has thoroughly documented functional limitations and the clinical basis for work restrictions in the medical record. Request that the treating physician explain, in writing if possible, why an FCE may not be necessary or why the treating physician believes the worker's reported limitations are reliable despite any apparent inconsistencies.

When an FCE is proposed or ordered: Obtain copies of the FCE provider's credentials, experience, and prior case history if possible. Consult with your attorney about whether to request that an independent (worker-paid) FCE be conducted simultaneously by a different provider for comparison.

Before attending an FCE: Meet with your attorney and the treating physician to prepare. Ensure you understand what to expect, how to accurately report pain and functional limitations, what tasks will be tested, and how to demonstrate maximum consistent effort. Review any video surveillance or other evidence that might be presented by the insurance carrier.

After receiving an adverse FCE report: Within 10-14 days, contact your attorney and treating physician. Request a written rebuttal from the treating physician explaining any inconsistencies. Evaluate whether requesting an independent FCE or a QME evaluation is strategically sound. Preserve your right to challenge the FCE by objecting in writing (if required by statute) within the specified timeframe.

If permanent disability determination is proceeding: Participate fully in any QME or AME process. Provide the evaluator with complete medical records, be honest during the evaluation, and follow up with any supplemental information or clarification the evaluator requests.

For Employers and Insurance Carriers:

When considering ordering an FCE: Ensure that the timing is appropriate (worker is at or near MMI), that the treating physician supports the evaluation, and that a qualified provider is selected. Document the medical necessity for the evaluation.

When choosing an FCE provider: Select a provider with appropriate credentials (licensed PT/OT, FCE-specific training, workers' compensation experience), no apparent conflicts of interest, and a reputation for thorough, well-documented evaluations. Obtain the provider's prior reports or certifications showing adherence to professional standards.

When preparing the FCE provider: Supply complete medical records, clearly describe the injured worker's position and job demands, and request that the evaluation be tailored to the specific job if possible. Specify any particular functional domains (e.g., overhead reaching, prolonged standing) that are critical to the job.

When receiving the FCE report: Have the claims administrator or medical director review the report for internal consistency, clarity, and adherence to professional standards. If the report shows significant capacity, have the treating physician review and comment on the findings before proceeding with return-to-work decisions or permanent disability rating.

If the FCE is challenged: Prepare to defend the evaluator's qualifications, explain the methodology used, and address any questions about validity testing or inconsistencies in the findings. Be prepared to obtain supporting evidence (surveillance video, treating provider records confirming compliance with restrictions) if available.

Final Observations

Functional Capacity Evaluations are powerful tools in California workers' compensation practice, providing objective evidence of functional capacity that can significantly influence permanent disability ratings, return-to-work decisions, and benefit calculations. However, FCEs are not infallible and should not be treated as the final, dispositive word on a worker's functional abilities. Both injured workers and employers should approach FCE results critically, evaluate consistency with clinical findings and the overall medical record, and be prepared to challenge or defend findings through appropriate medical-legal processes. Successful FCE practice requires attention to methodology, evaluator qualifications, clinical context, and the specific legal and procedural framework that California's workers' compensation system provides.

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