

## **Historic Worker's Compensation Reform Legislation Signed into Law on June 28, 2011**

On Tuesday June 28, 2011, Governor Quinn signed historic overhaul reform legislation to the Workers Compensation system into law. The goal and hope of the legislative reforms are to make Illinois more attractive to the business community and stem the flow of businesses leaving the state. These changes will be the most significant changes to the Workers' Compensation Act in nearly 40 years and are projected to result in as much as \$500 million in annual savings. The widespread reforms include; required use of AMA guidelines, creation of PPO networks, strengthening of utilization review, capping wage differential awards and bringing Illinois's medical fee schedule costs more in-line with other states.

Some of the highlights of the reform that should prove beneficial to Employers are:

- Defines "injury" as an injury that has arisen out of and in the course of employment
- Clarifies that an injury by accident is compensable only if the accident was the prevailing factor in causing both the resulting medical condition and disability
- Provisions that provide a permanent partial or total disability must be certified by a physician and demonstrated by use of medically defined objective measurements. Under this provision subjective complaints shall not be considered unless they are supported by and clearly related to objective measurements. These determinations will be based on a neutral specified publication that shall be consulted and applied in determining the level of disability
- Provides that an injury is deemed to arise out of and in the course of the employment only if specified conditions are met. The following injuries are excluded:

Accidental injuries incurred while participating in voluntary recreational programs including but not limited to athletic events, parties and picnics. This exclusion shall not apply in the event that the injured employee was ordered or assigned by his employer to participate in the program.

Accidental injuries incurred while participating as a patient in a drug or alcohol rehabilitation program do not arise out of and in the course of employment even though the employer pays some or all of the costs thereof.

Any injury to or disease or death of an employee arising from the administration of a vaccine, including without limitation smallpox vaccine, to prepare for, or as a response to, a threatened or potential bioterrorist incident to the employee as part of a voluntary inoculation program in connection with the person's employment or in connection with any governmental program or recommendation for the inoculation of workers in the employee's occupation, geographical area, or other category that includes the employee is deemed to arise out of and in the course of the employment for all purposes under this Act.

- Provides that an injury resulting directly or indirectly from idiopathic causes are not compensable. Idiopathic causes are those that arise spontaneously or from an obscure or unknown cause.
- Provides a cap on Carpel Tunnel Syndrome Permanency, but this does not include RSD or wage differential.
- Provides that no compensation is payable if an injury was caused primarily by the intoxication of the employee or by the influence of alcohol or certain drugs and contains various provisions relating to the use of alcohol and drugs.
- The reform further requires Illinois Workers' Compensation Commission commissioners and arbitrators to weigh the evidence impartially without giving the benefit of the doubt to any party when weighing evidence and resolving factual conflicts.
- Requires "a physician" to report AMA Guidelines and Requires Commission to base its determination on the following: guidelines; occupation, age, earning capacity, and "evidence of disability corroborated by the treating medical records: with no single factor is "determinant."
- Fee Schedule reduction of 30%, potential savings of 14.9 million in premiums.

Highlights that add additional protection for employees:

- Strengthens regulation of employee leasing companies requiring the leasing companies to name employers in the policy, but there is no penalty listed if they do not.
- Adds additional enforcement provisions against employers that fail to maintain proper workers compensation coverage.

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- Creates a process for electronic billing providers to increase privacy.

The reform codify sentiments' that have been expressed by employers for years, specifically that an injury should only be compensable if it is truly work related and if it is not brought on by an error due to intoxication. Injuries that occur over the weekend at softball matches or in a drunken stupor should not be compensable regardless of the fact that they are reported on a Monday morning. The new reforms place the burden of proof on the employee-petitioner to establish, based on a preponderance of evidence, that an accident actually occurred, and that the accident was work related. Assumptions that appear basic and fall within in the "that goes without saying" category are now clarified in legislation. This new standard along with the requirement that beginning July 1, 2011, all new arbitrators must be licensed attorneys should result in a more critical examination of claims.

The legislation gives employers the opportunity to have a more level playing field in the denial and dispute of claims. In order to take advantage of these reforms it is even more critical now more then ever before for employers to have strong, neutral drug and alcohol policies, and procedures in place including testing parameters which clearly state that an employee must take a drug and alcohol test if an injury or accident occurs. The implementation of these policies, procedures, and testing can present a disqualification and potential claim reduction that was not available before.

If you have any questions regarding the legislation, your responsibilities, the implementation of drug testing policies and procedures and/or how it affects your business, please contact Attorney Julie Proscia at [jproscia@salawus.com](mailto:jproscia@salawus.com), in the office at (630) 587-7911 or via cellular phone at (630) 862-1288. Julie Proscia is a Partner inn Labor and Employment Group and is in the St. Charles Office.