

# Workers' Compensation Reform...is not over



On March 8, the Ohio Legislature finally passed the long-awaited workers' compensation reform bill championed by the Ohio Chamber of Commerce. The bill, SB 7, was expected to pass last fall, but was derailed when the Ohio Bureau of Workers' Compensation (BWC) faced several investment problems. The new law, which goes into effect on June 26, 2006, makes some much-needed reform, not the least of which is curtailing "aggravation of pre-existing injury" claims. Many sections of this law address liberal court decisions over the past several years that have tortured the legislature's originally enacted laws. Unfortunately, many provisions in SB 7 are currently under attack from the United Auto Workers (UAW) and a small group of claimant attorneys. The items in SB 7 that are under attack would:

- *Designate the BWC special investigation department as a criminal justice agency, providing it with access to computerized criminal databases.*
- **Eliminate the compensability of mental conditions caused by injury to someone other than the claimant** (correcting the Bailey decision which allowed a mental-only claim based solely on an employee's witnessing of a co-worker's injury).
- **Allow claims for psychological injuries which have "arisen from sexual conduct in which the claimant was forced by threat of physical harm to engage or participate."**
- **Limit the recovery for aggravation of pre-existing conditions to situations where the condition is "substantially aggravated" by the industrial injury.** The aggravation must be **established by objective diagnostic findings**, objective clinical findings, or objective test results. Subjective complaints (i.e. "I hurt") are not sufficient to establish such claims, without objective evidence to support the complaints.
- **Terminate the payment of compensation and benefits in aggravation claims once the pre-existing condition "has returned to a level that would have existed without the injury."**
- **Prevent an employee from dismissing his complaint without the employer's consent, when the employer files an appeal into court** (this provision corrects an Ohio Supreme Court decision that an injured worker could dismiss his complaint and take up to one year to refile, even with the employer filed the appeal into court).
- **Increase from \$2,500 to \$4,200 the maximum amount of attorneys fees owed to a claimant when an employer's court appeal is unsuccessful.**
- **Reduce the amount of time a claim remains open to 5 years from the date of injury for medical-only claims** (currently 6 years) and to 5 years from the date of the last payment in the claim for lost-time claims (currently 10 years).
- **Prevent the payment of compensation to injured workers while they are confined in county jails** (current law only precludes payment of compensation when an injured worker is incarcerated in a state or federal correctional institution).
- **Significantly reduces the number of weeks during which an employee can receive wage loss compensation.** Currently, an employee can receive up to 200 weeks of working wage loss (WWL) and another 200 weeks of non-working wage loss (NWWL) compensation. Under the new law, injured workers may collect a maximum of 52 weeks of NWWL and 200 weeks of WWL. The total number of weeks for which any form of wage loss compensation may be paid will be 226.
- **Exempt injured worker's home address and phone number from public records.**
- **Return the definition of statutory permanent total disability (PTD) to what the legislature intended**—no longer is loss of one arm and one hand (for example) loss of two body parts entitling the injured worker to automatic PTD.
- **Eliminate the consideration of non-allowed medical conditions, the injured workers' age, the injured workers' decision to leave the work force for reasons unrelated to the industrial injury, and the injured workers' refusal to participate in educational or rehabilitative efforts from PTD determinations.**
- **Permit payment of PTD in the case of traumatic brain injury, despite an injured workers' employment in a sheltered workshop, so long as the injured worker does not earn more than \$2,000 per calendar quarter.**
- **Reaffirm that the weekly PTD benefit rate is to be based on the average weekly wage in effect on the date of injury or diagnosis.** This provision overturns a court decision that allowed calculation of the PTD rate based on the average weekly wage in effect on the date a claimant stops working, which can be many years after the date of injury or diagnosis.
- **Allow settlement of a state-fund claim without the employer's signature** when the claim is out of the employer's experience and the claimant is no longer employed by that employer, the employer is not current on its workers' compensation premiums, or the employer is no longer doing business in Ohio. When an employer is doing business in Ohio, the employer will be sent a copy of a settlement agreement filed by the injured worker. The employer then has 30 days to object, or the settlement agreement will be considered without its consent.
- **Provide that a settlement agreement can be voided if the injured worker dies during the 30-day "cooling off" period** (the 30 days after the parties sign the agreement).

### **Issues in SB 7 not affected by the attack include:**

- **Permits self-insured employers to irrevocably opt out of the surplus fund reimbursement plan for compensation awards overturned on appeal.**  
Currently, under the Sysco case, self-insured employers can obtain reimbursement for payments of compensation which are ordered by the Industrial Commission, but which are later overturned on appeal.
- Allows an employer to **pay up to \$5,000** (currently \$1,000) of an injured workers' medical bills **under the medical-only plan.**
- **Shortens the waiting period for payment of permanent partial disability compensation** after termination of temporary total disability compensation from 40 weeks to 26 weeks.
- Permits the BWC to require electronic funds transfer (EFT) for all payments of compensation and benefits.
- Eliminates Qualified Health Plan reporting to BWC.
- Renumbers fingers to be consistent with medical standards ("first finger" will refer to the thumb, while "fifth finger" will refer to the pinky).
- **Increases the penalty the BWC may charge an employer which is late in paying its premiums or assessments** (this applies to all employers, whether state-funded or self-insured).
- Provides procedures to ensure that a claimant's attorney's fees are paid out of a lump sum settlement before child support is paid.
- Sets the state minimum wage to be the same as the federal minimum wage.
- Provides that **BWC may refuse to hear disputes on treatment issues when standard treatment guidelines exist.**
- Sets **increased penalties for both medical provider and employer workers' compensation fraud.**
- Increases the award for facial disfigurement from \$5,000 to \$10,000.
- Mandates that the BWC establish a program to **lessen the effect of one significant claim on an employer's group rating status.**

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### **THE FIGHT IS NOT OVER . . .**

On Thursday, April 6, 2006, the UAW and a small group of claimant attorneys filed a statewide referendum petition challenging certain sections of the workers' compensation reform package. Those sections under attack are located on the first page of this summary.

Throughout the legislative process, these interested parties were invited to work with the group of legislators, business, labor and other claimant attorney representatives to develop SB 7, but they chose not to participate. Now, this small group is trying to stop several provisions in SB 7 from becoming effective, in turn destroying the collaborative efforts of several interested parties in developing a comprehensive workers' compensation reform package for both employers and injured workers.

This group has until June 26, 2006, the effective date of the bill, to collect over 193,740 valid signatures (6% of the last gubernatorial election). Half of these signatures must come from at least 44 of Ohio's 88 counties.

If this group is successful in collecting enough valid signatures by June 26 there will be a workers' compensation question on the November 2006 ballot. This question will ask voters to approve ("Yes" vote) or disapprove ("No" vote) the specific changes made to Ohio's workers' compensation law by legislators in SB 7.

A "No" vote in November would strip the employer provisions negotiated by the Ohio Chamber out of SB 7, leaving most of the provisions included in the bill for claimants.

**So, make sure to tell friends, family and coworkers around the state NOT to sign petitions for the UAW's challenge to SB 7.**

**For more information on this and other workers' compensation issues contact Ohio Chamber director of labor & human resources policy, Tony Fiore, at (614) 228-4201 or [afiore@ohiochamber.com](mailto:afiore@ohiochamber.com).**