

OHIO ENACTS NEW WORKERS' COMPENSATION LEGISLATION

Effective June 30, 2006, Sub. S.B. 7 becomes law in the State of Ohio, and with the exception of some reimbursements available to self insured employers, will apply to claims arising on or after the Bill's effective date. Originally introduced in January of 2005, this workers' compensation reform will provide some additional benefits for employees, including an increase in the minimum wage to match the federal minimum, which is currently \$5.15 per hour. However, for the most part, the Bill will benefit employers of those individuals who are injured while working in the State of Ohio.

Some of the highlights of Sub. S.B. 7 include the following:

- reduces the waiting period for filing a permanent partial disability application from 40 to 26 weeks;
- reduces life of a claim to 5 years from last payment of either compensation or medical benefits (current claim life is 10 years from last payment in claims where compensation has been paid or 6 years from last payment in medical only claims);
- specifies that an employee may not receive more than 226 weeks of working and non-working wage loss in the aggregate;
- clarifies the definition of permanent total disability, and provides specific factors that will not be considered in determining whether to award PTD benefits;
- clarifies that individuals confined in a county jail, state or federal correctional institution may not receive compensation during the period of confinement;
- clarifies that permanent total disability shall not be awarded due solely to the loss of one limb and clarifies definition of "limb";
- increases the award for facial disfigurement from \$5,000 to \$10,000;
- eliminates claims for psychological conditions when there is no physical injury to the claimant, except where psychiatric conditions have arisen from sexual conduct in which the claimant was forced by threat of physical harm to engage or participate;
- requires "substantial aggravation" of pre-existing conditions and specifies that if a condition that pre-existed an injury is substantially aggravated, once that condition has

returned to a measurable level that would have existed without the injury, no compensation or benefits are payable because of the pre-existing condition;

- specifies that a claimant may not dismiss a complaint filed with the Court of Common Pleas concerning an appeal of an Industrial Commission decision without the employer's consent if the employer is the party that filed the initial appeal, but increases the attorney fee award for a successful claimant to \$4,200.00;
- expands the definition of workers' compensation fraud to include altering, forging, or creating workers' compensation certificates to falsely show correct coverage, providing false information when that information is needed to determine an employer's actual premium or assessment, and failing to secure or maintain workers' compensation coverage with the intent to defraud the Bureau;
- prohibits persons, healthcare providers, managed care organizations, and their owners from obtaining or attempting to obtain by deception, payments under the workers' compensation law to which they are not entitled;

Every new piece of workers' compensation legislation enacted in Ohio since the early 1980s has been challenged as being unconstitutional, and it is likely that S.B. 7 will likewise be the target of a constitutional challenge by those representing organized labor. Therefore, how much of the new Act will survive, and what effect it will have on employer premiums in the State of Ohio, remains to be seen.