

Common Sense Changes to Workers' Compensation and Unemployment Insurance Laws

If you want to agitate an employer, ask about their most recent workers' compensation or unemployment insurance claim. Chances are their experience was poor. Employers value the safety net aspects of both laws for employees but see far too much abuse in both systems. Mismanagement at the Industrial Commission and Employment Security Commission are part of the problem. The good news is bills passed to restructure both Commissions and the statutes they administer. The end result is a more rational resolution of claims, some new features for deserving employees and more predictable costs for you.

A NEW SHERIFF IN TOWN AT ESC (TO BECOME "DES")

Our own Employers Coalition of North Carolina, which is CAI and the state's other employer associations, led a coalition of business groups to achieve major reforms at ESC. The Governor vetoed the bill June 30, but prospects are good for an override this summer. We will update you in the CAI Newsletter.

ESC faces serious problems such as software, overpayments, inexperienced appeals referees, indifferent management, ridiculous appeals decisions and a severe recession. Bad decisions and bad times made it clear employers will not support future tax changes (to repay \$2.5 billion in debt to the feds for loans) with current management and processes in place. The ESC would become the Division of Employment Security (DES) within the Department of Commerce led by an Assistant Secretary. An outside consultant will review and report on the true financial condition and possible solutions. Further, important changes to how claims are handled were included in the bill.

WORKERS' COMPENSATION: THE ORIGINAL INTENT

Workers' Compensation can be one of the most difficult to predict expense line items on employer income statements. Some employers have no claims due to office and non-manual work, but those with physical demands experience claims for unlimited lifetime income benefits in hard-to-defend soft tissue cases and doubtful "suitable employment" defenses. It is so bad that North Carolina has THE highest cost-per-claim in the latest WCRI study.

No one could have predicted what just happened: a broad coalition agreed on workers' compensation reform this session! Expert legislating by the prime sponsor, Rep. Dale Folwell of Forsyth County, and a motivated plaintiff's bar (due to the elections of 2010) made it possible. All compromises are imperfect, but this one moves us much closer to the original intent of workers' compensation laws: provide a medical and income safety net for injured employees regardless of fault or cause and, in return, limit the scope and duration. This bill was signed by the Governor and is law.



WHAT THE CHANGES WOULD DO:

- Give employers confidence in a recovery plan at DES
- Bring professional management to DES
- Bring balance to the new three member "Board of Review" with legislative confirmation of the Governor's appointments
- Re-invigorate a 15 member Advisory Council from the community
- Separate the appeals process from management of DES
- Make important changes to the law such as "no benefits if in jail"
- Re-define "misconduct" to mean "intentional acts or omissions" rather than "willful and wanton" conduct
- "Negligence of an equivalent degree" is also misconduct
- Written alcohol/drug policy violations are now misconduct (not just on site impairment)



WHAT THE CHANGES WILL DO:

- Define "suitable employment" to encourage return to work, modified work and removing other roadblocks to re-employment
- Prevent claims by employees committing fraud in pre-hire questionnaires
- Revise the second opinion and doctor replacement processes with objective standards
- Provide for real employer access to health care providers for needed information
- Cap temporary total disability (TTD) at 500 weeks of wages (previously no cap)
- Cap temporary partial disability (TPD) at 500 weeks (previously 300 weeks)
- New emphasis on return to work and the re-definition of suitable employment means new vocational rehabilitation provisions in the law can be put to good use
- The Commission is reduced to 6 members, limited to two six year terms each, and subject to legislative confirmation following appointment by the Governor.
- The Commission's rulemaking process is now governed by the APA like other agencies
- Changes apply to future claims only (except doctor communication)

Contact me directly if I can help you or your team.

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Executive Scan provides a quick monthly update on internal and external issues affecting your workplace with timely advice on ways to respond. It is provided to members and friends of CAI.

Executive Scan is written by CAI's CEO, Bruce Clarke, JD.

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