

WI Workers' Compensation Law Changes Know the Impact on Employers

The Wisconsin State Legislature passed some sweeping workers' compensation law changes during the recent legislative session through [workers' compensation agreed bill](#). The bill was signed by Governor Scott Walker on February 29, 2016.

This bill will bring about changes that will impact how employers manage workers' compensation and it will be more important than ever for human resource and safety professionals to review and revise safety and employment policies in order to maximize the impact of these changes. **A summary of four key changes to Wisconsin workers' compensation laws and what they mean for employers follows:**

Employees Suspended or Terminated for Misconduct or Substantial Fault

If an employee is suspended or terminated from employment due to "misconduct" or "substantial fault", the employee's temporary disability benefits may now be denied.

Historically, if an employer suspended or terminated an injured employee, the employee would receive temporary disability benefits during the healing period. However, with the new law change, the employer will no longer be liable for temporary disability benefits during the healing period, when an injured employee's suspension or termination is found to arise from misconduct or substantial fault.

The most common situations in which employers and insurers may choose to deny benefits for misconduct or substantial fault may include: safety violations, violations of drug or alcohol policies or insubordination by ignoring specific employer directives.

Employers should have their human resource policies and procedures reviewed by legal counsel to make sure that disciplinary rules and procedures that call for suspension or termination meet the definitions of misconduct or substantial fault. If you have a post-accident drug testing policy, you will want to make sure that your policy and procedures are up-to-date, as "non-negative" test results may also meet the definition of misconduct or substantial fault and may be a basis for denying temporary disability benefits.

Statute of Limitations for Traumatic Injuries

The statute of limitations for traumatic injury will be reduced from the current 12-years to 6-years from the date of injury or from the date that workers' compensation benefits were last paid. **Occupational exposure conditions and cumulative/repetitive-type injuries will still have a 12-year statute of limitations.*

Employers should fully investigate all reported or alleged injuries and document the relevant facts obtained. A strong accident investigation and claims management process, including early reporting, investigation and root cause analysis, medical cost-containment, return-to-work policies and procedures and ongoing communication with the injured employee, medical providers, insurance carrier and M3 are critical and will go a long way in memorializing that an injury was traumatic in nature rather than an occupational injury or condition.



Violations of Employer Drug or Alcohol Policies

If an employee violates an employer policy against drug and/or alcohol use and such violation causes the employee's injury, then neither the employee, nor the employee's dependents may receive any compensation under the workers' compensation law. **The provision does not reduce or eliminate an employer's liability for the cost of medical treatment for the employee's injury; however the employee cannot collect any benefits for temporary or permanent disability.*

Historically, employers and insurance carriers could only reduce workers' compensation benefits by 15% for drug and alcohol policy violations that led to workplace injuries; therefore the impact of enforcement of such policies was minimal. However, with the new law change, denial of benefits for such violations will be able to be enforced with greater impact.

Employers should review and update existing policies and procedures concerning drug and alcohol testing, documentation and enforcement processes to ensure that policies and procedures are clearly written and enforced on a consistent basis. We anticipate that employers and insurers will be challenged on their policies/procedures; therefore documentation and evidence of consistent enforcement will be more important than ever.

Apportionment of Permanent Disability

If an injured employee has incurred a permanent disability, but a percentage of that disability was caused by an accidental injury sustained in the course of employment and a percentage of that disability was caused by other factors, such as a pre-existing condition before or after the time of the accidental injury. The employer is only liable for the percentage of permanent disability that was caused by the accidental injury sustained in the course of employment.

Historically, employers have been responsible for an entire injury or disease sustained by an employee, even if the employee has a known and documented pre-existing condition, as long as the employee's work "*precipitated, aggravated and accelerated the condition beyond its normal progression*".

The new law change will allow the Department of Workforce Development (DWD) to accept evidence that an employee's permanent disability was only caused partially by a work-related, accidental injury. An employer is only liable for the percentage of permanent disability that was the result of an accidental injury sustained while in the course of employment and not for any pre-existing disability from prior injuries or pre-existing conditions.

Employers may have more incentive than ever before to evaluate the concept of requiring post-offer physical screenings of employees prior to the commencement of employment. Documentation of pre-existing conditions or physical impairments may have an impact on the cost of future workers' compensation claims. This information will be invaluable and will allow employers and their workers' compensation carriers to make information available to physicians so that an apportionment opinion can be obtained.

Conclusion

It will be more important than ever for employers to review, revise and update safety and employment policies and procedures and partner with legal counsel, insurance carriers and M3 in order to maximize the potential impact of these law changes for your organization.

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