



WISCONSIN MANUFACTURERS & COMMERCE

MEMORANDUM

TO: Workers Compensation Advisory Council

FROM: Scott Manley, Vice President of Government Relations

DATE: April 27, 2015

RE: Workers Compensation Reform Proposals

Employers have identified a number of areas where there is need for improvement to Wisconsin's Worker's Compensation system. Based on the concerns and recommendations of our employer members we urge the Workers Compensation Advisory Council to consider and adopt the following reforms.

In addition to the issues outlined below, Wisconsin employers continue to be concerned with the uncompetitive nature of the cost of medical care within Worker's Compensation in Wisconsin. Simply put, the continued pressure of ever increasing medical costs is not sustainable. We hope to forward a set of policy recommendations on this matter to the Council in the near future.

**Compensability Standards** – A higher standard for compensability for so-called aggravations resulting from occupational exposures should be established. Aggravation of a pre-existing condition should be compensable only where work was a "substantial cause" or a "major contributing cause" of the illness. The intent is that, if a condition is naturally progressing and would have become acute at some point regardless of employment activity, there is a higher standard for determining work-relatedness.

**Apportionment** – Benefits should be apportioned when payable to employees for conditions that are partially work related and partially non-work related. Where an injury is superimposed on a pre-existing condition the employee should be entitled to full compensation while the condition is acute. Once the condition has stabilized the employee should be compensated for only the portion of permanent disability attributable to the work injury.

**Statute of Limitations** – The statute of limitations under which a claim for a work related injury can be made should be reduced from the current 12 years to 3 years. This would make Wisconsin's limit consistent with the limits imposed in many other states.

**PPD Ratings** – The minimum permanent partial disability (PPD) rating should be removed from the administrative code. Due to improvements in medical technology and outcomes many injuries result in no medically measurable permanent impairment. There should not be a payment of permanent disability merely because a surgery has been performed. Additionally, require PPD determinations be made by qualified practitioners and be re-evaluated every 3 years.

**Wage Escalation** – Disability earnings should always be based on actual earnings at the time of injury.

**Social Security and PPD** – Permanent total disability (PTD) benefits should cease when an individual reaches full social security retirement age. This would make wage replacement benefits consistent with wages which cease to be paid upon retirement.

**Medical Information Authorization** – Any employee who presents a claim should be required to sign any and all medical information authorizations necessary to allow the employer and insurer to adequately investigate the matter. A complete understanding of medical history if needed to make appropriate determinations of causation and aggravation of pre-existing conditions.

**Hearing Notice** – All parties should be provided at least 60 days' notice of any formal hearing to ensure adequate time to investigate and prepare. Also require any medical expenses claimed be filed at least 60 days before any formal hearing.

**Workplace Wellness** – Eliminate the ability for an employee to file a worker's compensation claim for an injury that occurred while voluntarily using a company fitness center.

**Death Benefits** – There should be no automatic payment of death benefits in permanent total disability claims when the cause of death is unrelated to the injury. A basic tenant of the workers compensation system is that employer liability is triggered by illness injury or death that is work related.

**Drug and Alcohol Use** – There should be no recovery of indemnity benefits when the employee is intoxicated by alcohol or some other drug not medically prescribed at the time of injury. Create a rebuttable presumption that an injury was caused by intoxication if the worker refuses or fails a drug test at the time of injury so long as the employer has a written drug testing program.

**Unlawful Activity** – Allow a reduction of indemnity benefits of up to 50% if the employee was violating any federal or state law at the time of injury.

**Return to Work** – Temporary total disability (TTD) benefits should be denied when an employee is released to light duty work during the healing period and the employee is terminated for good cause. In many states, if an employee is discharged for legitimate reasons and would have been discharged in the absence of a work related injury, the employee is no longer entitled to temporary disability benefits.

Additionally, employees who refuse to return to light duty work that is within their capacity to perform should be deemed to have voluntarily left the labor force and no longer be eligible for further benefits during the refusal.

**Vocational Retraining** – Employers should be allowed to contest a claimed vocational retraining program based on necessity, duration or appropriateness of the rehabilitation plan. Employers should be entitled to due process if they have reason to believe that the vocational rehabilitation plan is unreasonable or unnecessary.

**Certificate of Readiness** – Eliminate the Certificate of Readiness process and replace it with a scheduling conference with the trial Administrative Law Judge.

**Secondary Injuries** – Bar Worker's Compensation for secondary injuries resulting from purely personal risks. In doing so, exceptions should be made for when a minor personal risk was made much more severe by a work risk.

Thank you for considering our recommendations and feel free to contact me or Chris Reader if you have any questions.