



Workers' Compensation eALERT

Current Law Developments and Legal Issues

That May Affect You Or Your Business

Lafayette Shreveport

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2009 Legislation Workers' Compensation Amendments

The 2009 Legislature has adjourned and gone home. Even though this was a fiscal year a number of bills affecting workers comp did pass. The most significant bills were a change in prescription and bill authorizing the creation of a medical treatment schedule. Unfortunately as part of the fiscal package however the Legislature gutted the OWC's budget by stripping it of \$671,732.00 (HB 802). We will not know the full effect of this until we get further into the year, but for an underfunded department this is not good news. The other bills are as follows:

Act No. 5 (HB 232) amends RS 32:681 to require drug and alcohol testing of anyone involved in a fatality while operating a watercraft. The prior law was restricted to the operators of motor vehicles.

HB 658 amends RS 23:1209 (A) (3) to extend the prescriptive period for developing injuries from two years to three years. The claim is allowed as long as brought within one year of manifestation as long as the proceedings are brought within three years from the date of the accident.

Act No. 99 (HB 669) amends RS 22:1641 et seq governing the regulation of third party administrators (TPA's). The new statute defines a TPA as anyone who "solicits or effects coverage of, underwrites, collects charges or premiums from, or adjusts or settles claims ...in connection with ...self insurance of workers' compensation coverage ..." The amendment further deletes the prior exemption from the definition of one who serves solely as a claims adjuster. This will require all such persons to be licensed as and regulated as TPA's.

HB 729 amends RS 23:1036 to require the State Fire Marshall to provide workers' compensation coverage for volunteer firemen. The coverage provided is for medical and in the event of death funeral expenses. There is no wage or indemnity benefit.

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SB 303 enacts RS 23:1203.1 which provides for the creation of a medical advisory council which will with the Director of the OWC be charged with the creation of a medical treatment schedule. The schedule shall be based on guidelines which shall meet the following criteria: 1) rely on specified, comprehensive, and ongoing systematic medical literature review; 2) contain published criteria for rating studies and for overall strength of the medical evidence; 3) are current and the most recent version produced (within the previous five years); 4) are interdisciplinary and address the frequency, duration, intensity, and appropriateness of treatment procedures and modalities; and 5) or adopted by any other state for the treatment of workers' compensation injuries. These rules are to be promulgated no later than September 30, 2010. Once promulgated medical treatment pursuant to RS 23:1203 shall mean treatment pursuant to the promulgated medical treatment schedule. Treatment outside the schedule shall be due when evidence demonstrates to the medical director that a variance is reasonably required to cure or relieve the injured worker from the effects of the injury. In the event of a dispute the aggrieved party shall file within 15 days an appeal with the medical director who shall render a decision in not more than thirty days. After the ruling on the appeal any party who disagrees may file a 1008. The decision of the medical director may be overturned when it is shown by clear and convincing evidence that the decision of the medical director was not in accordance with the provisions of this section.

The idea is to provide an evidence based schedule of treatment. The real key as to whether this will work will be in the area of deviations from the schedule which will in the end be decided by the courts.

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