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IML Recommendations for Worker's Compensation Reform

The IML believes that the following issues are the most critical for meaningful reform to the Workers' Compensation Act.

1. Medical Reform

- a. Revise the current medical fee schedule
 - i. The implementation of the 2005 fee schedule has not only failed to provide meaningful relief but has actually increased medical costs over and above what the industry was paying via PPO network reductions and usual and customary discounts before the reform.
 - ii. Base the fee schedule on Medicare reimbursement rates.
- b. Allow employers to direct medical care
 - i. Many states allow the employer to direct medical care for the duration of the claim, other states allow the employer to direct care for a specific period of time 6, 9, 12 months... Allowing employers to direct medical care will increase the quality of medical care provided to injured workers and reduce over utilization.
- c. Utilization Review:
 - i. Make utilization review mandatory and binding (as it is in most group health insurance plans and in surrounding states) as an effective protocol for controlling medical expense or determining "reasonableness of care". Under the current system, finding under UR protocols will be "considered by the Commission "in the same manner as all other evidence...". It is unreasonable to allow arbitrators to decide whether to adhere to, or ignore an accredited utilization review program. Between the failed fee schedule and UR provisions that have not been effectively applied by the IWCC, the reductions in medical costs promised by the 2005 amendments have not been realized.

2. Indemnity / Permanent Impairment Rating Reform

- a. Allow credit for prior recoveries under 8(d)2, Person-as-a-whole
 - i. Currently there is no credit allowed for settlements/awards granted as a person-as-a-whole, therefore allowing for repetitive (or stacking) of recoveries above the original intent of the act.
 - ii. Each time an employee is injured, the impairment rating starts from 0% and no credit is given for prior ratings. For example, if the injured employee hurts his/her back 3 times, they can receive a 40% impairment rating each and every time, with the total impairment exceeding 100%. We are asking new injuries be "credited" for previous ratings.



- b. Base impairment ratings on either AMA guidelines and/or physician ratings.
 - i. The current impairment rating process is purely subjective and left to the opinion of the arbitrator. Many states rely on the treating physician and/or AMA guidelines to establish impairment ratings. We recommend adopting an objective rating system, such as the AMA guidelines for rating impairment.
- c. Re-define basis for claims under 8(d)1: Wage Differential
 - i. Adjust the benefit so it is capped for certain period, 10 years is common; or based on “work life expectancy” rather than based on lifetime expectancy.
 - ii. Enable employers to recalculate the wage differential based on current earnings. Under the current system, an award for wage differentials will be paid for the injured workers lifetime at the rate determined at the time of award even if they find a job earning 2 or 3x more than their prior salary.

3. Alcohol and Drug Abuse in the Workplace

- a. We agree with previous recommendations that if an accident or injury is caused by or a result of intoxication (drug or alcohol) recovery should be barred. There is currently no deterrent to alcohol/drug abuse in the workplace. It is the burden of the employer to prove the employee was so intoxicated that he was incapable of working in furtherance of the employers interests.

4. Re-define Determination of “Accidental Injury”

The language below is taken from the Missouri Workers’ Compensation Law and provides a model for re-defining “accidental injury” to require that the accident be “the ‘prevailing factor’ in causing both the resulting medical condition and disability.” Currently, in Illinois, work need only be a “causative” factor. Any injury or underlying condition that is aggravated in the workplace is considered “compensable”. Aggravation of advanced arthritic conditions from routine motion such acts as getting out of a car, or truck can be a basis for permanent and total disability since an underlying condition has been “aggravated” at work. The original intent of the Act was to compensate workers injured as a consequence of their employment, not to compensate them for degenerative conditions that become symptomatic at work.

Missouri Revised Statutes

**Chapter 287
Workers' Compensation Law
Section 287.020**

Definitions--intent to abrogate earlier case law.

287.020. 1. The word "employee" as used in this chapter shall be construed to mean every person in the service of any employer, as defined in this chapter, under any contract of hire, express or implied, oral or written, or under any appointment or election, including executive officers of corporations. Except as otherwise provided in section 287.200, any reference to any employee who has been injured shall, when the employee is dead, also include his dependents, and other persons to whom compensation may be payable. The word "employee" shall also include all minors who work for an employer, whether or not such minors are employed in violation of law, and all such minors are hereby made of full age for all

purposes under, in connection with, or arising out of this chapter. The word "employee" shall not include an individual who is the owner, as defined in subsection 43 of section 301.010, and operator of a motor vehicle which is leased or contracted with a driver to a for-hire motor carrier operating within a commercial zone as defined in section 390.020 or 390.041, or operating under a certificate issued by the Missouri department of transportation or by the United States Department of Transportation, or any of its subagencies.

2. The word "accident" as used in this chapter shall mean an unexpected traumatic event or unusual strain identifiable by time and place of occurrence and producing at the time objective symptoms of an injury caused by a specific event during a single work shift. An injury is not compensable because work was a triggering or precipitating factor.

3. (1) In this chapter the term "injury" is hereby defined to be an injury which has arisen out of and in the course of employment. An injury by accident is compensable only if the accident was the prevailing factor in causing both the resulting medical condition and disability. "The prevailing factor" is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability.

(2) An injury shall be deemed to arise out of and in the course of the employment only if:

(a) It is reasonably apparent, upon consideration of all the circumstances, that the accident is the prevailing factor in causing the injury; and

(b) It does not come from a hazard or risk unrelated to the employment to which workers would have been equally exposed outside of and unrelated to the employment in normal nonemployment life.