

November 2010

## A Case for Workers' Compensation Reform in Illinois

### *Illinois Lags the Nation in Providing Economic Opportunities:*

Illinois ranks 48th in economic performance according to the "2010 Rich States, Poor States, ALEC-Laffer State Competitiveness Index, Third Edition". The same index also ranked Illinois 47th in "2010 Economic Outlook". The Index had previously ranked Illinois' economic outlook as 44<sup>th</sup> in 2009 and 43<sup>rd</sup> in 2008.<sup>1</sup>

#### 2010 ALEC-Laffer State Economic Competitiveness Index

<i>State</i>	<i>2010 Rank Economic Performance</i>	<i>2010 Rank Economic Outlook</i>	<i>2009 Rank Economic Performance</i>	<i>2008 Rank Economic Outlook</i>
<b>Illinois</b>	48	47	44	43
<b>Missouri</b>	35	15	23	25
<b>Iowa</b>	41	28	35	23
<b>Wisconsin</b>	44	23	27	33
<b>Indiana</b>	47	20	17	12

CNBC released its "America's Top States for Business 2010" and ranked Illinois 30<sup>th</sup> out of 50 states. Our neighboring states all ranked higher: Iowa-6<sup>th</sup>; Missouri-17<sup>th</sup>; Indiana-21<sup>st</sup>; and Wisconsin-29<sup>th</sup>. most costly to do business and 43<sup>rd</sup> in business friendliness. Our neighboring states all ranked significantly more favorably than Illinois on these factors.<sup>2</sup>

#### CNBC "America's Top States for Business 2010"

<i>State</i>	<i>2010 Rank Cost of Business</i>	<i>2010 Rank Business Friendliness</i>
<b>Illinois</b>	35	39
<b>Iowa</b>	1	12
<b>Missouri</b>	5	25
<b>Indiana</b>	9	6
<b>Wisconsin</b>	24	27

(continued)

<sup>1</sup> "Rich States, Poor States, ALEC-Laffer State Competitiveness Index; 3<sup>rd</sup> Edition; Arthur Laffer, Stephen Moore, Jonathon Williams

<sup>2</sup> CNBC "America's Top States for Business 2010"

Earlier this year, *Chief Executive's* annual survey of over 650 corporate CEOs ranked the best and worst states for business. Illinois' 2010 rank was 46<sup>th</sup> worst based on their survey results. What is even more troubling from the survey results is that Illinois had the biggest ranking loss of all 50 states for a five year period. Our 2005 ranking was 17<sup>th</sup>.<sup>3</sup>

What more needs to be said about the direction Illinois is taking and the need to reverse ourselves by changing the public policy decisions out of Springfield.

### **Chief Executive Magazine "Best and Worst States for Business 2010"**

<i>State</i>	<i>2010 Rank</i>
<b>Illinois</b>	46
<b>Indiana</b>	16
<b>Iowa</b>	17
<b>Missouri</b>	26
<b>Wisconsin</b>	42

### ***Illinois Also Lags the Nation in Reducing Workers' Compensation Costs:***

The National Council on Compensation Insurance (NCCI) has recommended since 2006 a total average increase in Illinois workers' compensation rates of 16.7%, 6.3% in 2009 alone. During the same period, average rates for workers' compensation across the country decreased 19.2%. For its 2008/2009 rate filings, 30 states saw average rate reductions while Illinois joined only four other states that had an average recommended rate increase. (Source: NCCI Illinois State Advisory Forum, October 28, 2010)

A number of states that Illinois competes with have addressed or are addressing their workers' compensation cost issues and employers in those states are experiencing significant reductions in costs. Florida's workers' compensation rates fell over 18% in 2009. Florida businesses have seen an average decrease in workers' compensation costs of nearly 70% since 2006. Colorado businesses experienced a 16% reduction for workers' compensation in 2009, will see an additional 9.7 decrease in 2010 and have seen a 36.2% reduction since 2006. Arkansas workers' compensation rates decreased nearly 20% the past two years and Pennsylvania has experienced a 19% reduction since 2006 as well. (Sources: NCCI State Advisory Forums for Florida, Colorado and Arkansas; Pennsylvania Compensation Rating Bureau)

### **Oregon 2010 Index Indicates Illinois 3<sup>rd</sup> Highest Cost State**

The Oregon Department of Commerce & Business Services provides a biannual "Premium Rate Ranking. In its 2010 report released in October, Illinois' index rate of \$3.03 placed our state as 3rd highest cost of 51 jurisdictions analyzed. Two previous

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<sup>3</sup> Chief Executive Magazine: "Best and Worst States for Business 2010"

rankings by Oregon had Illinois 10<sup>th</sup> highest in 2008 and in 2006 had placed Illinois at 20th highest.<sup>4</sup>

**Oregon Department of Commerce & Business Services  
2010 Workers' Compensation Rate Ranking**

<i>State</i>	<i>2010 Ranking</i>	<i>2008 Ranking</i>	<i>2006 Ranking</i>	<i>2010 Index Rate</i>	<i>2008 Index Rate</i>	<i>2006 Index Rate</i>
<b>Illinois</b>	<b>3</b>	<b>10</b>	<b>20</b>	<b>3.05</b>	<b>2.79</b>	<b>2.69</b>
<b>Wisconsin</b>	<b>19</b>	<b>34</b>	<b>35</b>	<b>2.21</b>	<b>2.12</b>	<b>2.18</b>
<b>Missouri</b>	<b>33</b>	<b>28</b>	<b>25</b>	<b>1.90</b>	<b>2.20</b>	<b>2.50</b>
<b>Iowa</b>	<b>36</b>	<b>41</b>	<b>45</b>	<b>1.82</b>	<b>1.86</b>	<b>1.75</b>
<b>Indiana</b>	<b>50</b>	<b>50</b>	<b>50</b>	<b>1.16</b>	<b>1.23</b>	<b>1.24</b>

States in our region tout their workers' compensation cost advantage constantly to Illinois employers and businesses that are planning job expansions in the region. The 2008 Actuarial & Technical Solutions, Inc State Rankings of Workers' Compensation Comparative Costs for Manufacturers ranks Indiana 2nd, Wisconsin 14<sup>th</sup>, Iowa 15<sup>th</sup> and Missouri 31st. Illinois was ranked 38<sup>th</sup> highest cost state by this organization.

**What Changes are Needed to Illinois Workers' Compensation Laws**

Protectors of the status quo and many Illinois politicians will claim workers' compensation was "reformed" in 2005 and all is well for employers. As noted above, the 2005 changes have not lowered costs and are not worthy of being characterized as "reform". While other states have aggressively addressed their workers' compensation costs by reducing costs for their businesses, Illinois policy-makers so far have been satisfied with slowing down the growth of medical costs for workers' compensation. Even with medical costs, there is mixed results with the Workers' Compensation Research Institute's (WCRI) analysis that places Illinois workers' compensation medical fee schedule at the second highest in the nation. (WCRI "Benchmarks for Designing Workers' Compensation Medical Fee Schedules: 2006")

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<sup>4</sup> Oregon Department of Consumer & Business Services; "2010 Oregon Workers' Compensation Premium Rate Ranking Summary, October 2010"

The status quo is unacceptable if Illinois wants to retain and attract good-paying jobs.

Chamber members doing business in other states consistently advise us that Illinois is their highest cost state when it comes to workers' compensation. A number of other states have adopted far more sweeping changes. In 2005, Missouri lawmakers enacted reforms and have seen their costs drop over 20% since 2005. Until we address critical cost drivers, the states that border Illinois will continue to flaunt their lower workers' compensation costs.

### **Requiring the workplace to be the principle cause of an injury:**

Missouri in 2005 changed its law to allow compensation if the accident was the prevailing factor in causing the condition. Illinois' standard is that the workplace needs to merely aggravate a prior injury. Missouri law also limits benefits for pre-existing conditions in cases where a work-related injury causes increased permanent disability and reduces compensation by the amount of permanent partial disability that was pre-existing. These are areas of constant abuse in Illinois.

Specifically, Illinois must address the following:

- Require the workplace to be the "primary" cause of the injury instead of just a "contributing" factor when determining eligibility for benefits.
- Allow credit for previous man as a whole claims to same body parts and limiting permanent partial disability to 100% of man as a whole.
- Allow reopening of wage differential cases for changes in economic circumstances, provide credit for previous wage differential claims and cap benefits to retirement age instead of lifetime.

### **Achieving balance, understanding, and efficiency in the workers' compensation process:**

Many employers perceive the Illinois workers' compensation system is so biased against the employers that it effectively serves as an alternative social welfare system or additional employment benefit.

To achieve greater balance, efficiency and understanding of the process, we propose:

- Requiring nationally-recognized, medically-defined, objective evidence for disability determinations that include, but are not limited to, the following: loss of range of motion; loss of strength; measured atrophy of tissue mass consistent with the injury.
- Enhancing the impartiality of the Illinois Workers' Compensation adjudication system by:

1. Merit review of all future Arbitrators by the Workers' Compensation Advisory Board requiring a majority vote of the Advisory Board for appointment as an Arbitrator.
2. A requirement that all future Commissioners have ten years of experience in workers' compensation and all future Arbitrators have seven years of experience in workers' compensation.
3. Apply to all Arbitrators and Commissioners impartiality and demeanor ethics similar to those found in Illinois courts

### **Acknowledging workers have responsibilities to be alcohol and drug-free in workplaces:**

A number of states, including Missouri, eliminate or dramatically reduce benefits when a worker's injuries are caused by their intoxication.

### **Fully Implement 2005 Fraud Provisions:**

One of the key components of the 2005 changes to the workers' compensation law was establishing civil and criminal penalties for fraud related to workers' compensation and the establishment of a fraud investigation unit at the Illinois Department of Insurance (DOI). Unfortunately, the budget for the fraud unit was dramatically cut for FY 2009 and FY 2010 and the follow-through to prosecute cases has been very limited. The fraud unit budget must be restored.

The most recent report from DOI made on July 22, 2008 indicated that in 2007, 47 cases of alleged fraud were referred for prosecution. Only seven of these referred cases have been advanced by state's attorneys. Special prosecutors must be established in the Fraud Unit to provide focus and commitment to prosecute these crimes.

