

WORKING IT OUT:

A year after reform, lawyers like Michelle Haskins still are assessing the effects on workers' comp.

VOL. 25, NO.9

KANSAS CITY BUSINESS JOURNAL

kansascity.bizjournals.com

NOVEMBER 3-9, 2006

IN DEPTH

INSURANCE

A year later ...

Lawyers continue to uncover effects of workers' comp reform in Missouri

BY TAMMY WORTH | CONTRIBUTING WRITER

It's been more than a year since workers' compensation reform was enacted in Missouri, and its full effect remains uncertain.

"These cases aren't ripe, and we don't know how they are going to be interpreted by the Labor and Industrial Relations Committee," said Michelle Haskins, partner at Evans & Dixon LLC, which helped craft the legislation. "Both sides are still feeling out the issue, and each case is factor-driven, so we'll see how they shake out."

Most of those involved agree that the legislation has made the system more employer-friendly.

"Our clients' interests are to minimize exposure and prevent any injuries," said Haskins, whose firm is one of the largest insurance defense litigation firms in Missouri. "We view (the legislation) as very employer-oriented. Before, under the looser provisions, they were at a disadvantage."



DAVE KAUP | KCBJ

Michelle Haskins, a partner at Evans & Dixon LLC, an insurance defense litigation firm, says "both sides are still feeling out the issue. ... We'll see how they shake out."

REFORM: New law eliminates advisers

Two specific areas are expected to affect cases, said Gary Kemp, business manager of the Greater Kansas City Building Trades Council. First, work-related causes must now be a prevailing, rather than a substantial, factor for an injury to qualify for workers' compensation benefits. Also, legal advisers no longer are available for plaintiffs without attorneys.

"The center and crux of the bill is it denies access for a lot of former injuries and does away with legal access, so we have gone a long way to shift the burden to the individual employee," Kemp said.

The Building Trade Council is one of 72 groups that filed suit last year to overturn the legislation, saying it strips employees of their rights and breaches the workers' compensation social contract. The Cole County Court has been considering pretrial motions from both sides of the case and will continue hearings on Nov. 9.

Although the former law provided legal advisers for those who were injured, plaintiffs wanting a case to go to a hearing must have an attorney unless they plan to navigate the system on their own.

"That in itself probably hurt many workers as much as anything else," Kemp said. "It wasn't a huge cost to the state ... and I would dare say most of us have no idea of workers' compensation and wouldn't have the foggiest idea of where to start."

By eliminating the legal advisers and adding 14 administrative law judges, the state's fiscal year 2007 workers' compensation budget of just more than \$9.2 million was downsized by \$457,500, or just less than 5 percent, according to the Missouri Department of Labor and Industrial Relations.

Haskins said the move to eliminate advisers has helped to minimize the financial risk to insurance companies because without legal advisers, more claimants are likely to settle a case.

WORKERS' COMPENSATION STATISTICS AT A GLANCE

PRIOR YEAR WORKERS' COMPENSATION WEIGHTED RATE CHANGES

This chart shows the average change in workers' compensation insurance premiums each year since deregulation in 1994.

<u>YEAR</u>	<u>RATE CHANGE</u>
2005	0.00%
2004	2.13%
2003	14.7%
2002	9.2%
2001	4.7%
2000	-1.1%
1999	-6.1%
1998	-14.8%
1997	-13.5%
1996	-7.4%
1995	-5.9%
1994	15.0%

INJURIES REPORTED FROM THE MISSOURI DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

8/28/00 – 8/27/01	164,268
8/28/01 – 8/27/02	153,754
8/28/02 – 8/27/03	144,388
8/28/03 – 8/27/04	145,944
8/28/04 – 8/27/05	142,908
8/28/05 – 8/27/06	137,225

NUMBER OF CLAIMS FILED FROM THE MISSOURI DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

8/28/00 – 8/27/01	24,997
8/28/01 – 8/27/02	24,054
8/28/02 – 8/27/03	24,180
8/28/03 – 8/27/04	22,221
8/28/04 – 8/27/05	22,161
8/28/05 – 8/27/06	17,001

SOURCE: Missouri Department of Insurance Financial Institutions & Professional Registration

Although plaintiff attorneys think it is an "egregious" move, it reinforces the claimant's burden of providing information, she said.

To ensure that they understand their rights, claimants must go before a judge prior to reaching a settlement. They have the right to an attorney and the ability to procure their medical evidence — though Haskins said many employees find it too burdensome to do so. If the judge thinks the claimant does not understand the case, the judge may reject the settlement.

Stephen Mayer, partner at Kansas City's Mayer & Rosenberg, said that thus far he doesn't think the changes have affected smaller cases. But he said the legislation places a higher burden of proof on the employee, particularly in larger cases.

"The workers' comp system is unfair to anybody who suffers a serious injury,"

Mayer said. "It tends to be OK for those who recover more or less whole."

In the former system, benefit of doubt went to the plaintiff, which is no longer the case. Other changes include a reduction in allowable soft tissue injuries (i.e. carpal tunnel and back pain) and a 25 percent to 50 percent reduction in benefits if an employee is injured in conjunction with the use of alcohol or drugs, or is not properly using safety equipment.

Steve Millikan, vice president of Missouri Employers Mutual Insurance, said some insurance companies are using the new drug and alcohol changes to lower benefits after post-accident drug testing. He said the company has seen a decreased number of drug- and alcohol-related injuries since the legislation passed last year.

"We have seen some good, positive movement in the right direction there,"

REFORM: Opponents say overhaul unfair

Millikan said. “We are not talking about taking benefits away from people, but we are seeing fewer claims and less severity of claims as a result of some of the changes.”

Millikan, whose company is the largest provider of workers’ compensation insurance in the state, said MEM took a 5 percent rate reduction in its workers’ compensation insurance, banking on the effects of the legislation and the company’s experience in 2005. He said that there has been a decline in rates overall in the past two years and that the National Council on Compensation Insurance recently called for a 7 percent rate reduction across the board.

One of the main reasons given by proponents of the legislation for changing the workers’ compensation system was to reduce the number of claims filed each year and, in turn, reduce the cost of doing business in Missouri.

But Kemp said overhauling the system was not a necessary step to reducing claims because claims had been dropping for a number of years in Missouri anyway.

The number of injuries has been dropping steadily since 2000, according to the Missouri Department of Labor and Industrial Relations’ Division of Workers’ Compensation. The number of claims filed also has decreased since 2000.

But although the number of injuries reported has steadily decreased, workers’ compensation insurance rates have risen since 2001 and held steady in 2005, according to numbers released by the Missouri Department of Insurance Financial Institutions & Professional Registration.

As of last month, this year has seen the first rate dip since 2001, down 1.27 percent from rates in 2005. In 2006, 87 companies’ rates decreased by an average of around 7 percent; 46 companies saw an increase by an average of 6.92 percent.

“With the changes made, Missouri has become a more attractive state for business,” Millikan said. “We are probably about in the middle of the pack in terms of cost and the workers’ comp

system, but it is considerably better than it was.”

Haskins agrees and said she thinks the bill was well-written and will reduce employers’ costs in the state and stimulate the economy.

“There is a lot of talk saying this is going to put injured workers on the street,” she said. “But what it has done is clarified and focus what injuries are entitled to compensation and what aren’t. We had gotten so far from what is work-related and what is not.”

Kemp said the Greater Kansas City Building Trades Council will continue to fight what it considers to be unfair workers’ compensation reform.

“Under the circumstances, maybe we should ... let workers go back to the courts to seek remedy for workplace injuries,” Kemp said. “And if that were available, I think all parties could probably come back to an agreement.”

Tammy Worth | Worth is a freelance writer in the Kansas City area.