



# The Missouri Overhaul

by Michael Banahan and Robert Hinson

**W**hen Missouri Governor Matt Blunt signed sweeping workers compensation reform legislation in 2005, Missouri joined the list of states that have recently reformed their workers compensation systems to target fraud.

Prior to these changes, the courts had liberally applied or interpreted Missouri workers compensation laws, finding in favor of employees and granting compensation accordingly. Now an impartial standard of review has been inserted into the statute.

Missouri legislation defined work-related accidents and injuries. Specifically, a compensable injury now is one that has arisen out of, and in the course of, employment. An injury by accident is compensable only if the accident was the prevailing (primary) factor in causing the resulting medical condition and disability. These changes substituted the "prevailing factor" standard for the "substantial factor" standard.

Other significant changes include a new statutory definition of "accident." Now an accident is defined as "an unexpected traumatic event or unusual strain identifiable by time or 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." This language marked the return of the "unusual strain" standard that governed Missouri workers compensation prior to 1993 and limited a compensable accident to a specific accident or discrete work event.

The 2005 amendments also incorporated the prevailing factor standard in occupational disease cases. Now, gradual deterioration or progressive body degeneration caused by aging or the normal activities of day-to-day living will not be compensable. Under the amendments, "occupational disease due to repetitive motions is compensable only if the occupational exposure was the prevailing factor in causing both the resulting medical condition and disability." Additionally, the 2005 amendments added a notice requirement in occupational disease cases. Now an employee has 30 days from the date of diagnosis of an occupational disease to report the condition to his or her employer.

Missouri has also clamped down on alcohol and drug use in the workplace, specifying penalties rang-

ing from a 50% reduction in compensation up to a total forfeiture, depending on the circumstances of the injury and the employer's adopted policies on a drug-free work place. Further, a blood alcohol level that exceeds the legal intoxication in Missouri shall give rise to a rebuttable presumption that the voluntary use of alcohol was the proximate cause of the injury.

Additionally, while employers have been forced to comply with job safety provisions over the years, employees in Missouri are now more accountable for failure to follow safety rules and policies. Under the statutory revisions, an employee's failure to comply with safety rules and regulations can result in a penalty of at least 25% and up to 50% of benefits.

The changes also stress the importance of objective medical findings versus subjective medical complaints. Obviously, the intent appears to be that injuries will need to be substantiated by demonstrable findings and diagnostic tests, reducing the amount of permanent disability awarded based on subjective complaints.

A year later, what are the effects? According to information provided by the Missouri Department of Labor and Industrial Relations, claims filed between August 28, 2005 and August 21, 2006 have been reduced by 20% over the same time period during the previous year. There has been a 2.5% decrease in the amount of *pro se* claims filed during the same time period. The total number of injuries reported between August 25, 2005 and August 21, 2006 been reduced by 9.3%. Additionally, settlement ranges proposed by the administrative law judges appear to have decreased slightly over the same time period.

To date, the recent legislative changes appear to have created a favorable business environment in Missouri. The number of claims has been reduced and, consequently, payouts and costs have been reduced. If this trend continues, Missouri may well be a model for other states to follow. ■

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