

Workers' Compensation Coverage: A State Reacts to Out-of-Control Costs

By Michael F. Banahan and Robert L. Hinson

A driver for a messenger service is injured in a company car in a traffic accident on his way to work.

Several employees take a departing co-worker to lunch and toast his success with cocktails. Back at the office, one of the well wishers trips and injures his knee.

A manager of a residential care facility starts to rise from her chair, but her leg is “asleep,” causing her to fall and break her ankle.

Are these work-related injuries, worthy of workers' compensation coverage? Or, are they merely accidents that are not the result of work, but happened while at work or going to work?

For many employers, state workers' compensation laws are becoming, in effect, a general insurance policy for almost any type of injury. Laws and coverage vary from state to state, but the voice of business leaders is growing louder as they seek reform for systems that are becoming financially punitive. Many businesses are considering a state's workers' compensation laws when deciding where to locate or whether to expand. In addition, incidents of fraud – on both sides of a claim – must be addressed with meaningful punishment for offenders.

Last year, California revamped its workers' compensation program, and this year Missouri legislators approved a major overhaul of the state's workers' compensation laws. The Insurance Information Institute reports that Texas, West Virginia, Maryland and Oklahoma state legislators are tackling similar workers' compensation problems. Particular areas of concern vary from state to state, but the demand for reform is constant.

A Look at Missouri

The Missouri Legislature approved sweeping changes to its Workers' Compensation Act in 2005. Intended to address the liberal application of the present law, these changes will become effective on Aug. 28, 2005. The last time the state overhauled workers' compensation legislation was in 1993. Those reforms were meant to limit what arose out of and in the course of the employment, but the opposite occurred. The Missouri Labor and Industrial Relations Commission, the Court of Appeals and the state Supreme Court frequently upheld workers' claims for work-related injuries, resulting in rising premiums and employers needing to cut costs to remain competitive.

Back to Basics – Accident and Injury

One of the most significant changes contained in the amendments is the statutory definition of "accident." Pursuant to the amendments, an "accident" means "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." The Legislature re-adopted the unusual strain standard that governed workers' compensation cases prior to 1993 and limited a compensable accident to a specific or discrete work event.

As redefined by the 2005 amendments, a compensable "injury" is: "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."

An injury shall meet these requirements 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 non-employment life.”

These amendments substitute the prevailing factor standard for the substantial factor standard adopted in 1993. Under the amended definition, “an injury resulting directly or indirectly from idiopathic causes is not compensable” and a “cardiovascular, pulmonary, respiratory or other disease, or cerebral vascular accident or myocardial infarction suffered by a worker is an injury only if the accident is the prevailing factor in causing the resulting medical condition.”

These statutory changes should reduce the number of compensable claims in Missouri.

The Company Car

Missouri law is putting the brakes on accidents that occur while driving a company car. Hence, a business-owned car that is involved in an accident while traveling from the employee’s home to the employer’s principal place of business or from the employer’s place of business to the employee’s home is not compensable. The Missouri law nullifies what is known as the “extended premises doctrine.” As amended, the law provides that the “extension of premises doctrine is nullified to the extent it extends liability for accidents that occur on property not owned or controlled by the employer even if the accident occurs on customary, approved, permitted, usual or accepted routes used by the employee to get to and from his/her place of employment.”

These provisions should limit employers’ exposure and cost.

Aging Work Force

The amendments incorporate the prevailing factor standard in occupational disease cases. “An injury by occupational disease is compensable only if the occupational exposure was the prevailing factor in causing both the resulting medical condition and disability.” Gradual deterioration or progressive body degeneration caused by aging or the normal activities of day-to-day living shall not be compensable. Under the amendments, an “occupational disease due to repetitive motion is compensable only if the occupational exposure was the prevailing factor in causing both the resulting medical condition and disability.”

The 2005 amendments add a notice requirement in occupational disease cases: “No proceedings for compensation for any occupational disease or repetitive trauma under this chapter shall be maintained unless written notice of the time, place and nature of the injury, and the name and address of the person injured has been given to the employer no later than 30 days after the diagnosis of the condition unless the employee can prove the employer was not prejudiced by failure to receive the notice.”

Thus, the burden of relating an employee’s health conditions to his or her employer will be greater.

Safety Is Everyone’s Business

While employers have been forced to comply with more on-the-job safety provisions over the years, employees are now more accountable for failure to follow safety rules and policies. Missouri’s new law states, “Where the injury is caused by the failure of the employee to use safety devices where provided by the employer, or from the employee’s failure to obey any reasonable rule adopted by the employer for the safety of employees, the compensation and death benefit provided for herein shall be reduced at least 25, but not more than 50 percent, provided that it is shown that the employee had actual knowledge of the rule so adopted by the employer”

Alcohol/Drug

Missouri also clamped down on alcohol and drug use at the workplace. “Where the employee fails to obey any rule or policy adopted by the employer relating to a drug-free workplace or the use of alcohol or non-prescribed controlled drugs in the workplace, the compensation and death benefit provided for herein shall be reduced 50 percent if the injury was sustained in conjunction with the use of alcohol or non-prescribed controlled drugs.” Where “the use of alcohol or non-prescribed drugs in violation of the employer’s rule or policy is the proximate cause of the injury, then the benefits or compensation otherwise payable under this chapter for death or disability shall be forfeited.”

Prior Settlement and Evaluation

The most recent amendment to the statute addresses both credits for prior workers’ compensation settlements and objective standards for determining disability.

Employer/insurer shall receive a credit for any prior settlement and awards, diminishing any subsequent compensation owed for a later accident.

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

Strict Construction

One of the most significant changes in the amendments involved movement from liberal to strict construction.

“1. Administrative law judges, associate administrative law judges, legal advisors, the Labor and Industrial Relations Commission, the Division of Workers’ Compensation, and any reviewing courts shall construe the provisions of this

chapter strictly.

2. Administrative law judges, associate administrative law judges, legal advisors, the Labor and Industrial Relations Commission and the Division of Workers' Compensation shall weigh the evidence impartially without giving the benefit of the doubt to any party when weighing evidence and resolving factual conflicts.”

The court's interpretation of liberal construction resulted in all doubts being resolved in favor of the employee and compensation. Now an impartial standard of review, when weighing evidence, shall apply, evening the playing field for employers.

Conclusion

The legislation reform movement reflects an attempt to produce a more business-friendly environment. Reducing what is considered a work-related injury while addressing the issues involved with an aging workforce should assist in distinguishing what conditions are truly a by-product of work as opposed to general health issues. The movement to objective standard, impartial determinations and strict penalty measures should ultimately redefine employment costs and liability. The goal is to maintain protection for employees whose injuries truly are the result of their employment.

- 30 -

Michael Banahan is a member and Robert Hinson is a senior associate at Evans & Dixon L.L.C. Evans & Dixon, with offices in St. Louis, Kansas City and Springfield, Mo., and Leawood, Ks., is engaged in the practice of workers' compensation and civil litigation defense in the states of Missouri, Illinois and Kansas. Contact: mbanahan@evans-dixon.com or rhinson@evans-dixon.com. Telephone: (314) 621-7755