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Features

Missouri Lays Down the Law

By Michael Banahan and Robert Hinson
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Sweeping Comp Reforms Should Curtail Costs, Claims

After years of clamoring for relief from expanding workers' compensation claims, payouts and premiums, Missouri employers are heralding legislative changes that may signal a growing trend by business to curtail runaway insurance costs in the workplace.

Missouri Gov. Matt Blunt, a Republican, signed the revised law in March with changes taking effect Aug. 28, 2005. While Missouri is not the first to legislate workers' comp reform, it appears to be part of a movement fostered by a growing pro-business environment that also targets fraudulent claims practices. Just last year, California revamped its workers' compensation program, and the Insurance Information Institute reports that Texas, West Virginia, Maryland and Oklahoma are tackling similar workers' compensation problems.

Strict rules, fewer claims

While workers' compensation laws vary from state to state, the Missouri amendments signal some of the changes other state legislatures may want to consider. Missouri business owners are anticipating lower insurance premiums once the new laws take hold, possibly as early as next summer. Meanwhile, lawyers and employers across the state expect the number of workers' comp claims to drop and the size of awards to shrink.

Fundamental changes to the older law include specific revisions in legal language. Previously, the courts liberally applied or interpreted the old Missouri workers' comp laws, finding in favor of the employees and granting compensation accordingly. Now an impartial standard of review will apply when weighing evidence. This is expected to level the playing field for employers. The changes specify a strict interpretation, rather than the more liberal standard that has been applied in such cases since 1993--the last time Missouri legislators addressed worker compensation laws.

Accidents and injuries

The new Missouri legislation narrows the definitions of work-related accidents and injuries, and it spells out issues affecting an aging work force. These reforms are designed to distinguish conditions that are truly a by-product of work as opposed to general health issues.

As redefined by the 2005 amendments, a compensable injury 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 both the resulting medical condition and disability. These amendments substitute the "prevailing factor" standard for the "substantial factor" standard that was adopted in 1993.

Another significant change is the new statutory definition for accident, now defined as "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." This language marked the return of the "unusual strain" standard that governed workers' compensation cases prior to 1993 in Missouri and limited a compensable accident to a specific or discrete work event.

Life takes it toll

The amendments also incorporate the prevailing factor standard in occupational disease cases. Gradual deterioration or progressive body degeneration caused by aging or the normal activities of day-to-day living will not be compensable, the Missouri legislature ruled. 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. Thus, the burden of relating an employee's health conditions to his or her employer will be greater --an employee has 30 days from the day of diagnosis to report the condition to his or her employer.

The new law also is expected to put the brakes on claims for accidents that occur while an employee is driving a company car. Accidents that occur when an employee is driving to or from work in the company car are not compensable. The change should limit employers' exposure and cost.

Ultimately, the movement to objective, standard and impartial determinations and the enforcement of strict penalty measures should redefine employment costs and liability. The goal is to maintain protection for employees whose injuries truly are the result of their employment.

Employee responsibility

While employers have been forced to comply with more on-the-job safety provisions over the years, employees in Missouri are now more accountable for failure to follow safety rules and policies.

Missouri also clamped down on alcohol and drug use at the workplace, specifying penalties ranging from a 50 percent reduction in compensation up to total forfeiture, depending upon the circumstances of the injury and the employer's adopted policies on a drug-free workplace.

Finally, the new law addresses both credits for prior workers' compensation settlements and objective standards for determining disability. The employer/insurer shall receive a credit for any prior settlement and awards, diminishing any subsequent compensation owed for a latter 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.

Whether or not other states follow Missouri and California's path remains to be seen. But voices of business leaders grow louder as they seek reform for workers' compensation insurance programs that are becoming increasingly burdensome to finance.

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