

*from us to you...*

# The David Agency Gazette

May 4, 2011

*...staying in touch to serve you better*

## Breaking News...

The David Agency Insurance, Inc. is forwarding the message below from the Illinois Chamber of Commerce regarding proposed legislation to reform the state's Worker's Compensation.

May 4, 2011

[Respond Directly to Doug](#)

### **Urgent Alert on Workers' Compensation Legislation**

**THE CALL TO ACTION:** May is the most important month in the legislative calendar. The opportunity for significant change in Illinois' workers' compensation laws is before the General Assembly this month. I ask you to resolve to engage your legislators on this important topic throughout the month and commit to making contact this week. I also encourage you to forward this message on to other business leaders and ask them to join you in the effort to urge Illinois legislators to "do the right thing" for employers by attacking our non-competitive workers' compensation system.

NOW is the time to take positive, proactive steps to communicate with your legislators about the need for change and how important this matter is to employers. If we are going to be successful with this endeavor it is important that you, the constituent, take the initiative to let your legislators know about your experiences, your costs, your concerns, and your frustrations with our broken system.

Make sure the legislators with whom you communicate understand that this is an issue where failure is not an option, nor is tokenism. Specifically, we do not want a repeat of the 2005 "fix" that resulted in Illinois' workers' compensation rates increasing by nearly 17 percent while at the same time average rates across the country declined by 19 percent.

Illinois legislators must make sufficient revisions to bring our state's workers' compensation system into line with those of other states, and put Illinois closer to the norm instead of among the states with the highest workers' compensation costs in the country.

Legislators must understand that the actions they take this year will be measurable. Consequently, the task at hand is to make sure that when we look back upon the consequences of their decisions four years from now, we'll see that Illinois' status has improved. We need to be clearly competitive, and reflect a system that is closer to the mainstream of the nation's laws.

Click [here](#) to access our Grassroots Action Page and to Take Action on this issue.

## **WHERE DOES IT STAND THIS WEEK?**

Governor Quinn continues to say workers' compensation legislation is a priority of his administration. He calls it the most important pro-business act the General Assembly can undertake to improve the state's business climate. State Senate President John Cullerton calls the case for changing Illinois' workers' compensation laws "compelling."

Yet, neither the governor's office nor the Senate Democratic Caucus has revealed their versions of what a revised workers' compensation law should include. It is anticipated both proposals will be unveiled this week.

It has been two weeks since Republican Senator Kyle McCarter's proposal (SB 1349) failed to receive the 30 votes necessary to approve the measure and send it to the House of Representatives. Although the resulting tally was disappointing, the vote total was telling. All members of the Senate Republican Caucus voted for the legislation. The expression of Republican solidarity was significant. The McCarter bill was drafted at the behest of, and with guidance from, the business community. The Illinois Chamber members' initiatives were incorporated in the bill, as were elements known to be favored by the Quinn administration.

Meanwhile, only six Democrats voted against the measure while 28 pressed the yellow button on their desks to cast a "present" vote. It was obvious the Democratic majority in the Illinois Senate was uncomfortable voting against this bill. Most Democratic members of the Senate understand the significance of the issue, but lacked the will to support Illinois employers. Presumably, they are waiting to embrace their party's version, but at the time of the vote there was no Democratic bill to compare or contrast.

Opponents to reform have been clear that they see nothing errant in Illinois law and want no change. Absent a counterproposal, the Democrats' "present" votes revealed their timidity towards the issue. They know they need to make substantial changes, but as of yet are unwilling to abandon their traditional constituencies. The opponents' position is irrational in light of the undisputed facts concerning Illinois workers' compensation costs and the evolving scandals associated with how the state handles its own employees' workers' compensation cases.

Because they are the majority party, it is hard for Democratic legislators to ignore Illinois' high unemployment, increased business taxation, job migration, and the poor public relations resulting from other governors' aggressive approaches toward business climate issues. Doing nothing is not a good solution for the governor and the Democratic majorities.

Worthy of singular praise is the courage of Democratic State Senator Mike Jacobs, who represents the Quad Cities and clearly understands the competitive contrasts that exist between Illinois and neighboring states. Senator Jacobs was the only Democrat to embrace the employers' goals and vote in the affirmative.

The Illinois Senate has been in recess for the past two weeks. To date, all the action on workers' compensation proposals has been either in the purview of the Senate or orchestrated by the governor's inner circle. State Senator Kwame Raoul of Chicago has recently been tapped to lead the Senate Democrats' package. Speaker Madigan's designee on the issue remains Representative John Bradley of Marion, and Leader Cross's designee on the issue has been Representative Dan Brady of Bloomington. Other than acknowledging

workers' compensation as an important issue before the 97th General Assembly at the convening of the session in January, Speaker Madigan has remained behind the scenes and adopted his typically reserved persona.

## **EMPLOYERS GOALS:**

Workers' compensation covers many facets, but four have been at the heart of most discussions. A critical point to note is that none of the fundamental objectives employers desire for Illinois can truly be characterized as impractical, outlandish or out of the norm.

Indeed, each of the elements employers seek for inclusion in Illinois law has already been adopted by more than half of the states in the nation. The fact that Illinois has not previously embraced these measures is further confirmation that Illinois' approach to workers' compensation is seen to be that of an "outlier" rather than in the mainstream.

**1. Causation:** Twenty-nine states have a higher standard for determining whether workers' compensation claims are attributable to workplace accident or injury. Illinois' current threshold for the cause of a workplace claim is deemed to be as little as 1 percent. An Illinois employee is only required to show the work accident or duties *could or might have been* a cause of the injury, or *could or might have been* a cause in aggravating, accelerating, or exacerbating a preexisting condition to any extent or degree.

Under these rules, any doctor or arbitrator is likely to find causation and award compensation. At the crux of the matter of causation is the importance that a valid workplace-related injury be required to trigger a worker's compensation claim, and that preexisting conditions and chronic health issues are more appropriately handled as health insurance claims.

**2. AMA Guidelines:** Thirty-seven states require the use of American Medical Association guidelines to determine disability awards. The AMA has published guides to create a standard for rating physical impairment. In states that use AMA guidelines, the rating is used to determine the monetary award for any permanent disability. In Illinois an arbitrator, not a doctor, determines the extent of the impairment. Arbitrator rulings are neither consistent nor uniform. The process for determining impairment, and thus the extent of the cash award, is very subjective and causes workers to seek an attorney to obtain a high award.

**3. Employer-Directed Care:** Twenty-one states require the employee seeking care for a workers' compensation case to use the physician selected by the employer from among a list of "authorized" physicians. Nineteen of the remaining 29 "employee choice" states limit the employee's options to physicians within a managed care-type network. Thus, it is clearly obvious that employer-directed medical care in a workers' compensation setting is the standard practice across the nation. This means that employers are allowed to direct injured workers to specific doctors, hospitals, and specialists that the business or insurance company has determined to be the most effective in achieving successful medical outcomes. Securing health care networks and managing care for workers has proven to help secure better medical outcomes and lower employer costs. It is perfectly logical to extend the use of employer-directed medical care to worker compensation cases as well as health insurance cases.

**4. Strengthen Utilization Review:** Utilization review is a routine and standard process used by employers, insurance companies, and claims administrators to determine if proposed treatments are medically appropriate and necessary. The review process is based on

previous reviews and best practices. Utilization review is an effective way to ensure better medical outcomes, and control unnecessary costs. It is a widely accepted review process used in group health insurance and Medicare. Utilization review should be applicable to all medical treatments. Many of the more debilitating and costly services are provided outside of therapy care. Utilization review helps reduce the need for additional future care, avoids greater disability of the worker and helps get the worker back to work in a timely fashion. In states with a medical fee schedule in place for workers' compensation calculations, the standard application of utilization review is critical to ensure cost savings are not undermined by the application of an extraordinary number of treatments.

Although Illinois law was changed in 2005 to allow utilization review, it is not mandatory and has been inconsistently applied by the Workers' Compensation Commission and the courts. As currently applied in Illinois, utilization review has proven ineffectual as arbitrators have routinely ignored evidence or given little weight to the employer's submission to require the treating physician present a stronger case.

### **OTHER CHANGES OF CONSEQUENCE UNDER CONSIDERATION:**

The 2005 revisions to the state's workers' compensation act introduced a medical fee schedule to Illinois for the first time. It should be of no surprise to learn that Illinois was one of the last states to implement a medical fee schedule for workers' compensation payments. Unfortunately, the employer savings that were expected to come from a fee schedule were negated when the members of the Workers' Compensation Commission adopted a schedule that yielded the third-highest compensation payment rates in the country.

The governor's office has zeroed in on the medical fee schedule as an obvious and efficient change that can be undertaken to ensure significant and quantifiable cost savings will be achieved in a new law. The governor's people have suggested the medical fee schedule should be reduced by 30 percent. While such a reduction is guaranteed to reduce costs, it must be noted that even after a 30 percent reduction, Illinois' medical fee schedule will remain the third-highest reimbursement schedule in the country.

There is also a desire to cap wage differentials at the later of age 67, or five years from the date when the award becomes final. Illinois is one of only a handful of states that offers wage differential benefits for life.

Intoxication can be a contributing factor in workplace injuries. There is sentiment for eliminating benefits when drugs or alcohol are contributing factors to workplace injuries. The objective of promoting drug-free workplaces will be strengthened by putting the burden of proof that intoxication was not a factor on the plaintiff.

As a result of the workers' compensation scandals revolving around Menard Prison, Workers' Compensation Commission employees, and investigations affecting other state agencies, the governor's office and legislators are proposing several changes aimed at restructuring commission appointments and operations.

There is also consideration for rolling back employee benefit gains that were increased in 2005, providing an option for workers' compensation benefits to be eligible for collective bargaining, strengthening the fraud unit that exists within the Department of Insurance, adding repetitive trauma hand and arm issues to the list of pre-determined body parts subject to specified awards and requiring insurance companies to make electronic payments to medical providers.

As is always the case when significant legislation is being written, the devil is in the details. There is no certainty that any of the aforementioned elements will be addressed in the legislation or what form the proposal may take. The Illinois Chamber staff and member review committees will remain vigilant and will continue to make the case for the strongest possible pro-employer language.

There are literally hundreds of millions of dollars at stake. It is important to remember the cost of workers' compensation laws is always paid by the employer, whether through insurance, self-insurance or taxes.

You have a huge interest in how the Illinois General Assembly chooses to address this fundamental component of the cost of doing business in our state. If the legislature approves significant reforms, employer costs will be reduced, job growth will be encouraged, the business climate will improve and the people of Illinois will benefit from a better economic environment.

NOW is the time to step up and do your part, and voice the need for your government to be responsive to one of your biggest employer costs and aggravations. DO send this President's Message to others whom you know should be concerned about this topic and encourage them to support this effort.

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