

S. 332 Conference Report Summary

Part 1 - Workers' Compensation Reform

Appeals

- Appeals from full Commission go to Court of Appeals (currently goes to circuit court).

Fraud

- Expands the definition of “false statement or misrepresentation” to specifically include:
 - 1) intentional acts of false reporting of business activity;
 - 2) miscount or misclassification by an employer of its employees;
 - 3) failure to timely reduce reserves;
 - 4) failure to account for Second Injury Fund or other third party reimbursements; and
 - 5) failure to provide verifiable information to insurance rating bureaus and the Department of Insurance.
- States that “underserved economic benefit” includes favorable insurance premium, payment schedule, award or settlement.
- Increases penalties for fraud:
 - *misdemeanor* if economic benefit received is less than \$10,000;
 - *felony* if economic benefit received is \$10,000 or more, or for two or more violations, regardless of the amount received.
- Authorizes Attorney General’s office to hire a forensic accountant for the Insurance Fraud Division.

Motor Carriers/Independent contractors

- Individual who owns or has a lease purchase or installment purchase agreement for a vehicle (tractor trailer) and who has a valid independent contractor contract is exempt from workers compensation unless the parties mutually agree otherwise. The lease purchase or installment purchase agreement can be between the individual (driver) and the motor carrier’s affiliate, subsidiary or related entity if the finance terms are equal to terms customary and usual retail transactions in SC.

Commission Forms

- Parties must be specific in completing forms (commission has standardized forms) - example: employee’s notice of claim cannot declare “all body parts” unless the employee died from the accident and employer’s answer cannot declare “all defenses apply” unless all of them do apply.
- A commissioner may consider a condition or defense not included in the original form if it is shown that:
 - (a) the employee’s condition is caused by the injury and that the employee did not know about the notice of the condition when he completed the form (does not excuse failure to amend notice);

(b) the employer had no knowledge of the facts supporting the omitted defense. All parties must verify that the contents of their statement are accurate.

Commission

- If there is a vacancy for 60 days or more, commission can vote on a deputy commissioner to take testimony and make a recommendation, but the commissioner makes the award.
- Governor appoints chairman, but if he does not, a majority of the commission would elect an interim chairman who would serve until the Governor makes an appointment.
- Commission reviews could be made by all commissioners or 3 member panels (excluding hearing commissioner) appointed by the chairman.
- Commissioners may hire an administrative assistant.
- Commission to keep files for 15 years in paper or electronic form.
- Commissioner must make written findings substantiating the award.

Contempt

- Commission has contempt authority if award is ignored without good cause.
- If contempt is determined, person failing to abide by award pays employee's costs for attorney and enforcement of award and may be fined up to \$500 per day of violation.
- Commission must notify Department of Insurance (DOI) of failure to pay benefits and DOI may impose penalties if there has been a violation of the insurance code.
- If commission discovers pattern of failure to pay benefits (3 or more intentional failures within 2 years), the commission must report the failure to pay to DOI. DOI may revoke the insurer's license upon determination failure that to pay at least 3 times within 2 years was intentional.

Fines

- Increase fines for failure to provide insurance from 10 cents to \$1 for each employee but not more than \$100 per day.

Awards

- **Shoulder** is added to scheduled injuries - valued at 300 weeks;
- **Hip** is added to scheduled injuries - valued at 280 weeks;
- An employee with a permanent physical impairment or preexisting condition who suffers an injury on the job can receive compensation for the resulting disability caused by the permanent physical impairment and the injury. The employee must have medical evidence to show the injury aggravated the permanent physical impairment (or vice versa). If an injury is limited to one body part and it does not affect another body part, the employee can only receive compensation for a scheduled injury (except when an employee suffers a back injury that alone causes total disability).

- Rebuttable presumption that 50% loss of use of **back** is total and permanent disability (assume 50% loss of back is total disability but other side has the ability to show otherwise). If 49% or less loss of use of back, can receive compensation up to 300 weeks; if 50% or more loss of use, can receive compensation up to 500 weeks (proportion to disability).

Representation

- If each party is represented by an attorney, the employer must file the agreement with the commission; if the employee is not represented, a commissioner must approve the agreement.

Occupational Disease

- Defined as disease arising out of and in the course of employment due to hazards in excess of those ordinarily incident to employment and peculiar to the occupation.
- Employee must establish that disease arose directly and naturally from exposure in S.C. to hazard peculiar to employment by preponderance of the evidence.
- Defines “medical evidence”.
- Compensation allowed under total, partial or scheduled injury.

Repetitive trauma

- “Repetitive trauma” is defined as an injury that happens gradually and is caused by cumulative effects of repetitive traumatic events (not caused by a single event but happens over time by doing something that strains your body over and over again).
- Commissioner must make a specific finding of fact in the award that the repetitive, regular job activities caused the injury.
- Employee must have medical evidence to show the employment conditions caused the injury.
- Once the employee reaches maximum medical improvement, he may receive compensation for total disability, partial disability or scheduled injury.
- Notice must be given within 90 days when employee knew or should have known with reasonable diligence that condition is compensable, unless reasonable excuse is made and employer is not prejudiced.
- Employee must file a claim with the commission within 2 years after the employee knew or should have known his injury was compensable, but no later than 7 years after the last date of injurious exposure (when he stopped doing the activities that could lead to a repetitive trauma injury).
- Change of condition request must be filed within 1 year after last compensation payment.

Burden of Proof

- In cases involving **stress, mental injuries or mental illness** that arose out of employment (*no physical injury exists*), the employee must prove that the employment conditions were extraordinary and unusual (as compared to normal conditions of that type of work) and have medical evidence (defined as expert testimony, documents or other material stated to reasonable degree of medical certainty by a health care provider) to show the stress, mental injury or mental illness was caused by the job.
- In cases involving stress, mental injuries, heart attacks, strokes, embolisms or aneurisms incidental to normal employer/employee relations are not compensable unless actions are taken in extraordinary and unusual manner.
- In cases where stress, mental injury or mental illness are *aggravated* by a work-related physical injury, the employee can receive benefits only if the aggravation is:
 - 1) admitted by the employer; or
 - 2) an authorized doctor (including psychologist or psychiatrist) determines the condition is related to the injury.
- **Medically complex cases** are defined as sophisticated cases that require highly scientific procedures or techniques for diagnosis or treatment (excludes MRI, CAT scans, x-rays and other similar diagnostic techniques).
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Exemptions

- Trucker - person who owns or has lease-purchase or installment purchase of vehicle and who has a valid independent contractor agreement may be exempted from workers compensation, unless the driver and motor carrier mutually agree otherwise. Lease purchase or installment purchase cannot be between the motor carrier and the individual but may be between the individual and affiliate, subsidiary, or related entity of the motor carrier as long as the financial terms are customary and usual in SC.

Medical

- Employer will provide medical treatment for 10 weeks after an injury and for an additional time as the commission deems will tend to lessen the period of disability as shown by expert medical evidence.
- If claim is settled by Agreement for Permanent Disability/Disfigurement (form 16) and the form does not state that the employer must provide further medical benefits, employer is no longer responsible for future medicals after 1 year.
- Awards must be as specific as possible regarding future medicals, but the employer is not responsible for future medicals if there is lapse of treatment of more than 1 year unless:
 - (1) order/agreement says otherwise; or
 - (2) employee attempted to obtain treatment but could not (through no fault of his own).

- In cases involving total disability, employer is responsible for all medicals for the employee's lifetime (reverts to current law).

BiLo (addresses S.C. Supreme Court case)

- Workers compensation commission to promulgate regulations concerning rehabilitation professionals regarding their duties to the employer and employee and standards of care.
- Establishes that an employee is considered to give consent for release of medical information related to job injury upon seeking treatment under workers' compensation.
- Provides employee must be given notice of communication between health care provider and interested parties (provides threshold requirements for written and oral)
- Information received in violation of this section cannot be used in any legal proceeding.

Interest Rate

- Interest to be paid on unpaid award at the legal rate (provided by statute).

PART II - SECOND INJURY FUND (SIF)

- Lower SIF assessment to 135%.
- Provides communication between NCCI, SIF & DOI to ensure experience modifier is properly addressed by insurance carriers.
- Eliminates language relied on in *Ellison* (SC Supreme Court case).
- Eliminate arthritis & "catch-all" claims as of 7/1/07.
- Last date for injuries to be eligible for SIF reimbursement is June 30, 2008.
- SIF receives notice of claim by 12/31/10. This provides for the 2 year reporting period, plus time for the insurance company to figure out if it's eligible for SIF.
- All documentation to accept the claim must be submitted by 6/30/11 (currently there is no time period to submit this information).
- Acceptance of claims must be made by 12/31/11. This gives the fund adequate time to review the info submitted in June.
- SIF terminates on 7/1/13, Budget & Control Board provides winding down.
- Uninsured Employers Fund moves to State Accident Fund on 7/1/13.

PART III - LOST COST MULTIPLIER

- Insurers must file lost cost multiplier with Department of Insurance and DOI must review the filing (provides guides as to what must be contained in filing).
- Copy of filing must be provided to Consumer Advocate at least 30 days before insurer uses new rates.
- DOI can disapprove rates if the Director or his designee determines the rates do not meet statutory requirements.
- Director or his designee must issue an annual report to the General Assembly that evaluates workers' compensation in S.C.