

YOU SHOULD KNOW

July 2013 - ISSUE 37

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SWEEPING CHANGES TO THE OKLAHOMA WORKERS' COMPENSATION ACT

Oklahoma is one of only two states to use a court-based system: a set of judges appointed by the governor hear cases with disputes, and many without disputes, simply because the system is difficult for an individual to navigate without the advice of an attorney. By the passage of **SB 1062**, Oklahoma will still be one of only two states, joining Texas, in allowing employers to “opt-out” of workers’ compensation.

Oklahoma’s workers’ compensation system is ranked as the sixth most expensive in the nation. According to a new **policy report** from the lieutenant governor, in 1990 Oklahoma’s average permanent partial disability order was \$12,069; in 2011 the average cost was \$33,681. No one disagreed that the system needed reform, but SB 1062 has generated controversy.

SB 1062 will become effective February 1, 2014, and claims with occurrence dates after that date will be handled under the new administrative system. Claims that occurred prior to February 1, 2014 will be handled by the “Court of Existing Claims.” Cases not concluded before November 1, 2017 will be sent to the district courts for hearings without a jury.


When the current court system transitions to an administrative system in February 2014, a Commission (comprised of three commissioners appointed by the governor and confirmed by the Senate) will be responsible for the new system from its beginning; meaning, they will

establish rules, procedures and build the infrastructure of staffing. The Commission will also establish the rules and regulations that an employer must follow in order to opt-out of the standard workers’ compensation system by setting up an ERISA-type plan to govern benefit payment. It is a very aggressive undertaking to have this system operational by February 1, 2014.

This legislation aims to reduce litigation and make the Oklahoma system less litigious. Moving to an administrative system had been a goal of the Oklahoma State Chamber of Commerce for many years, and they were instrumental in drafting the bill and in its promotion. The Chamber believes that this change will provide monumental improvement to the Oklahoma workers’ compensation system and ultimately lower premium costs for employers. The thought is that such lowered costs will entice business to move to Oklahoma, creating jobs for Oklahomans.

During the process of moving this legislation through the House and Senate, speculation abounded that several sections of SB 1062 may be unconstitutional and may be challenged. The Advisory Council on Workers’ Compensation (appointees by the governor, speaker and pro temp) has indeed advised that several sections may be unconstitutional.

This issue of *You Should Know* is one in a series of brief articles designed to keep our clients abreast of significant breaking news in the claim and loss control areas that could affect their operations or exposures. Additional information about this and other topics can be obtained from your Regional Risk Control and Claim Advocacy Associate.



Since attorneys' incomes will be affected, it would not be surprising if trial lawyers challenge the law as described below.

If sections are challenged, the Oklahoma Supreme Court will ultimately decide. This action could parallel SB IX in 2005, where many of the reforms were enacted only to have the Supreme Court reverse several sections of that bill over a 2-3 year period.

POSITIVE HIGHLIGHTS OF SB 1062

- TTD reduced by 30%. Currently TTD is calculated as 70% of the employee's average weekly wage not to exceed 100% of the state's average weekly wage. New law will pay 70% of the employee's average weekly wage, not to exceed 70% of the state's average weekly wage, or a 30% reduction. The maximum TTD period will be 104 weeks; reduced from the current 156 weeks.
- PPI (permanent partial impairment) reduced.-If an injured worker receives surgery and returns to work with the same pay, there is a provision that no PPI is owed. Since attorneys work on a 20% contingency fee of PPI, then the attorney involvement is expected to be reduced by 50% or more. There is clear incentive for an employer to return an injured worker to his job to remove the incentive for an attorney involvement.
- Simpler process is anticipated for the worker to file a dispute without the need of an attorney.
- Private employers will have the opportunity to offer an alternative program to the system, the opt-out ERISA type system.

SOME POTENTIAL NEGATIVE IMPACTS

- Medical cost controls are not addressed in this bill. The medical utilization controls inserted in 2011 are weakened in this bill since the Legislature removed the mandated ODG (Official Treatment Guides) making them now a "reference."
- Oklahoma loses practical enforcement control over benefit amount, eligibility or delivery of benefits when they allow the ERISA system.
- The opt-out system will only be available to employers who have a specified financial strength and loss experience.
- The cut in benefits will be borne by the injured workers, with little being done to address increasing medical costs.

Oklahoma's workers' compensation has an average cost of \$830 per employee, compared to Arkansas and Texas which are at \$300. The NCCI (National Council on Compensation Insurance) estimates that the reform will save around \$125-\$138 million in workers' compensation claim costs annually and would be an approximate 14.2% decrease. The Oklahoma Chamber estimates the savings at about twice that at \$260 million.

Oklahoma's Labor Commissioner **Oklahoma Watchdog.org**, Mark Costello, summed up the new bill saying, "The days where trial lawyers dominated Oklahoma politics for their own economic interest are at an end. After all, it is workers' comp, not lawyers' comp."

CONTACT

For additional information, contact your Willis Client Advocate® or:

Donna McLean
Senior Risk Consultant
Risk Control and Claim Advocacy Practice
Direct: 405 552 4866
donna.mclean@willis.com