Maxcis

Michigan Workers' Disability Compensation Act

Newsletter Date: Friday, February 17, 2012

Special points of interest:

- Independent Contractors
- Right to Direct Medical Care
- Pre-Existing Conditions or Conditions of the Aging Process

New *"Employer Favorable"* Changes

The Michigan Workers' Disability Compensation Act was amended on December 19, 2011. The last significant amendments to the Workers' Compensation Act (hereinafter referred to as the "Act") were 25 years ago. There is a long and involved process that takes place each time the Act is amended.

The Magistrates interpret the law and issue a written decision. The Appellate Commission then reviews and issues its own decision with their interpretation of the Act. The next level is the Michigan Court of Appeals and then the Michigan Supreme Court with each Court interpreting the prior court's decision. Once the Supreme Court finally tells us how to interpret the law the process could start again with each court interpreting what the Supreme Court said. As you can imagine this process can and usually does takes years from start to finish.

Over the last 25 years there have been a number of decisions interpreting the Workers' Compensation Law; some of the Court's interpretations favorable to the business community and others not so favorable. The changes made on December 19, 2011 are by and large favorable and long overdue.

This Article is not meant to be a comprehensive review of all of those changes but rather a summary of the most significant changes. If you would like a comprehensive summary of all of the changes please feel free to contact the author at the e-mail address listed at the end of the Article.

Many dealers use an individual or a group of individuals to pick up or deliver cars to either customers or other dealers. We are frequently asked if these individuals can or should be considered to be *independent contractors*. Generally speaking the Courts will look at such factors as: who has direction and control of the individual, how the individual is compensated, is the job done an integral part of your business, does the individual maintain a separate business and render services to others? The 2011 amendments added several additional provisions and on or after January 1, 2013 we will basically look to the United States Internal Revenue Services' definition of an employee. The Internal Revenue Service uses a 20 factor test to determine an employment relationship. Additionally, if the employer is required to withhold federal income tax then it is prima facie evidence that an employment relationship exists and that the individual is not an independent contractor but rather an employee. We expect there may be changes and challenges to this Section of the Act and therefore we will publish those 20 questions or 20 factors at a later time once they have been further refined by the IRS.

Under the old law if an employee is injured the employer or insurance carrier has the right to direct medical care for the first 10 days. This time period has been extended to 28 days. This could be an important change in that most injuries go on to recovery within the first 3 or 4 weeks. If you have any questions or concerns relative to where to send your employees after an injury please contact Maxcis at 1-800-930-7272.

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As the work force ages many of our current employees or our new hires have pre-existing conditions or conditions of the aging process that have effected their shoulders, back, knees, etc. The new Act now states that:

"A personal injury…is compensable if work causes, contributes to or aggravates pathology in a manner so as to create a pathology that is medically distinguishable from any pathology that existed prior to the injury."

In other words, a simple increase in symptoms is not going to be enough. The injured employee is going to have to actually show a change in the underlying condition. Additionally, the new Act contains language that clearly defines *degenerative arthritis* as a condition of the aging process and therefore to be compensable the employee is going to have to show that the degenerative arthritis was aggravated in a "significant" manner and not just simply "aggravated" as under the old Act.

As always, we encourage employers to bring employees back to favored or accommodated work during their period of recovery from an on the job injury. If a reasonable offer of favored work is made and the employee unreasonably refuses that offer their right to weekly indemnity benefits could be forfeited during the period of refusal. Our concern has always been that the employee might feel forced to return to work and in some manner after they are back on the job sabotage the job or cause other problems. Under the old Act we frequently would be required to pay workers' compensation benefits even if the employee was at fault for losing the favored work. Now under the new amendments when an employee returns to favored work and loses that favored work as a result of their own inappropriate activity or as a result of their own "fault" they could be permanently disqualified. This is a significant change and offers a new level of protection to employers who are willing to bring employees back to favored work.

Under the new act to determine if an employee is disabled we look to their wage earning capacity based on past education, training and experience. Now, more than ever before, it is important for you to take a complete job history at the time of hire.

Maxcis, our third party administrator, who handles all of our claims, is well aware of these changes and eager to help you and your employees if an injury should occur. Maxcis realizes that your employees are your most valuable asset and treats them as such.

As the Appellate Courts interpret these latest changes we will endeavor to keep you updated, in the meantime if you have any questions please feel free to contact Maxcis or our attorneys, Charfoos Reiter and Hebert, P. C. at 248-626-7300.

For a complete summary of all the 2011 changes please email James Reiter at james.reiter@micompdefense.com