

The Worker's Compensation Compromise

On Monday April 19th, Governor Schwarzenegger finalized substantial changes to California's Worker's Compensation program by signing SB 899 (Poochigian R- Fresno) into law. The driving force behind the new legislation is to get people back to work as quickly as possible. In an effort to achieve that goal, businesses are penalized for not providing a suitable work place for an employee to return to; and workers are penalized for not going back to work once the doctor says they are healthy. Previously employees were asked to come back to work in a position that paid less or was inadequate in some other way; many would refuse, giving California the worst return to work rate in the Country. Another provision of the bill requires employees to prove how much of their injury was work related. Under the new system, Worker's Compensation will only pay for the portion of the injury that was created by a deficient work environment. Finally, employees can only choose their own doctor after an independent review board has determined that three doctors in the pool of doctors set up by either the employer or the employer's insurer has failed to provide the injured worker with the proper care.

The new legislation states if the doctor providing your treatment says you are able to return to work, and you don't, your disability payments are reduced by 15%. If you are able to return to work, and your employer doesn't bring you back, you get a 15% increase on your disability payment. This portion of the legislation does not affect businesses with less than 50 people. The thought behind this portion of the policy is that small businesses need to fill job vacancies immediately to continue to compete, and it would be unfair to require a small business to hold a position open or terminate a newly hired employee to comply with the new Worker's Compensation legislation. In addition, the legislation creates a fund that will provide small businesses a maximum grant of \$2,500 to modify workspace to the needs of the employee with a Worker's Compensation claim.

The portion of the bill that requires doctors to define the portion of your injury that is work related has raised concerns with people in some communities. For instance if a Supermarket Clerk has a bad elbow because s/he enjoys playing tennis and drops a heavy box they are carrying, the examining doctor must determine what percentage of the injury is due to employees enthusiasm for tennis, and how much of the injury was due to the Supermarket Clerk's workload. Under the previous system, if any part of the injury were work related, Worker's Compensation would pay for the entire cost of medical treatment. The argument (which was heavily litigated) was that the aggravation of the injury made the worker less able to compete in the job market and therefore s/he should be compensated. The benchmark for the ability to compete in the job market was eliminated and the new measuring stick is whether or not you have a diminished earning capacity.

The biggest concern of critics however, is the fact that the injured worker can only see their own doctor if the appeal process concludes the designated pool of doctors has provided inadequate care. The first concern is the inherent motivation for the doctors in the pool to provide inadequate care in an effort to reduce the expense of the treatment. The second concern is the Governor makes the appointments to the "independent" review board, charged with deciding if the pool of doctors has provided the adequate care for the worker.

The bill has been called a compromise, leading one to assume that there are no real winners and that there is something in the bill for everyone. I believe it is fair to say that there is something in the bill for everyone, however it seems that the insurance industry is the winner. The issue of “rate relief” (lower insurance rates) is not addressed in the new law. Last year the legislature made some changes to the worker’s compensation law, and the insurance industry expected a 15% decrease in premiums do to the cost reductions in last year’s bill. The reduction in insurance rates has only been 3% since then. The insurance industry has not ventured a guess to what the rate reductions may be as a result of the new law signed by the Governor on April 19th.

It remains to be seen if the SB 899, makes a dent in the California’s problematic Worker’s Compensation system. However, it is important to note that business owners and employees are being held to a higher standard to get people back to work. While those who write insurance policies are allowed to continue to operate as they choose, with little or no scrutiny.