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Gallagher Sharp Shop Talk: Workers' Compensation

This week, we will take a look at some workers' compensation reform efforts in the State of Michigan. On November 2, 2011, the Michigan House of Representatives passed House Bill 5002 that, if enacted, would modify many facets of the workers' compensation system. While Ohio is one of the few states with a state-fund "monopolistic" system, Michigan employers either self-insure or purchase their workers' compensation insurance through private carriers. However, many of the issues faced by employers are similar. The most significant proposed changes concern the computation of lost wages, aggravation of pre-existing conditions, and the treatment of undocumented aliens.

In the bill, "wage loss" is defined as the amount of wages lost due to a disability. (This is in contrast to the term "wage loss," a specific type of compensation paid in Ohio.) A claimant would need to establish his/her "wage earning capacity," which would be the wages the employee earns or is capable of earning at a job reasonably available to that employee, whether or not the wages were actually earned. An employee would have an affirmative duty to seek work reasonably available to him or her, and the failure to do so would result in lost wages being cut accordingly. If an employee receives a bona fide offer of employment and refuses that employment without reasonable cause, that employee will not receive any lost wages during the period of refusal. Those changes would significantly reduce the amount of wage loss paid to claimants, and with regard to claimants making near-minimum wage, may eliminate wage loss entirely.

As to compensation for aggravation of pre-existing conditions, the bill would allow compensation only if the on-the-job incident caused, contributed to, or aggravated pathology in a manner that was medically distinguishable from the employee's prior condition. (This change is analogous to, but somewhat less onerous than, Ohio's "substantial aggravation" standard.) The bill would also allow an insurer who believes that an injured worker is an undocumented alien to report that belief to the federal government. If it is confirmed that the worker is an undocumented alien, the insurer could discontinue payment of all compensation and medical benefits to that worker.

The Michigan State Senate has yet to vote on the bill which has been sent to committee, but the political climate appears right for Michigan to implement most, if not all, of those changes. If you have any specific questions about Michigan law, you can direct them to my associate, Adam Sadowski (admitted to practice in Michigan) in our Toledo office. If you would like to discuss these or any other workers' compensation issues, you can also contact me at the address listed below.

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