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Gallagher Sharp Shop Talk: Workers' Compensation

Last year, we discussed the proposed changes to Michigan's workers' compensation system. On December 19, 2011, Michigan Governor Rick Snyder, signed House Bill 5002 into law. As stated previously, Michigan employers either self-insure or purchase their workers' compensation insurance through private insurance carriers. The new law reforms important facets of the Michigan workers' compensation system, however, not all of the original bill's provisions were enacted.

The most significant changes to Michigan's workers' compensation system concern the calculation of wage loss and pre-existing conditions. To obtain wage loss benefits, a claimant now needs to establish his/her "wage earning capacity," which is 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 has an affirmative duty to seek work reasonably available to him or her, and the failure to do so results in lost wages being cut accordingly. Factoring in the wages a claimant could earn will significantly reduce the amount of wage loss paid to claimants, and may eliminate wage loss entirely. As to compensation for aggravation of pre-existing conditions, compensation is only allowed if the on-the-job incident caused, contributed to, or aggravated pathology in a manner that is "medically distinguishable" from the employee's prior condition.

The new law also requires that claimants wait 28 days prior to being eligible to treat with the physician of his/her choice while the original requirement was 10 days. However, one controversial change that did not make it to the final signed bill concerned undocumented aliens. The original House Bill allowed an insurer to discontinue payment of all compensation and medical benefits to a claimant that was confirmed to be an undocumented alien. However, the signed bill removed this provision and expressly includes aliens as ones entitled to receive benefits.

The above changes are a big victory for employers and will undoubtedly result in less amounts being paid out to claimants. 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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