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ATTORNEYS AT LAW

What You Need to Know About EHB 2123!

Inside this issue:

What You Need to Know Cont... 2

What You Need to Know Cont... 3

Worker Verification Form Reminder 3

In 1911, Washington State was the first state to pass a constitutionally approved Workers' Compensation system. The purpose of the system was to provide "sure and certain" benefits for injured workers in return for providing immunity to employers for their negligence in causing injury to workers. The other trade off was that injured workers would agree to reduced benefits in return for a system that was to be "liberally constructed" for the benefits of the injured worker.

In honor of the 100 year anniversary of the passage of our workers compensation law the Governor and the Legislature decided to make the biggest assault and take-away on the rights of injured workers in favor of big business in that 100 year history. The Governor and the Legislature wanted

help solve the states fiscal crisis on the backs of injured workers while continuing to give business unprecedented tax giveaways. The bill as passed takes away 1.2 billion dollars in benefits from injured workers. The bill was passed without a single hearing on the most important parts and was done without input from those who represent injured workers. Here is what EHB 2123 does:

Compromise and Release:

This is the heart of the bill and the one section that will do the most damage to injured workers. It will allow an injured worker, when he or she is most at risk financially and out of work, to agree to sign away their rights to future wage loss and pension benefits for a substantially reduced amount before all of their injuries are fully known. It allows the employer or the state to

have the injured worker sign a release for all future benefits with the exception of medical bills and to waive forever the ability to reopen their claim should their condition become worse over time. The safety net of reopening a claim when the injury gets worse is taken away forever.

Beginning January 1, 2012 for workers 55 or older; January 1, 2015 for workers age 53 or older; and January 1, 2016 for workers age 50 or older certain injury workers may compromise their claims rights be agreeing to a reduced amount of benefits paid out over time. The agreement must provide a periodic payment schedule equal to at least 25 percent, but not more than 15- percent, of the average monthly wage except that the first payment may be up to six times the av-

Continued onto next page....

What You Need to Know Continued....

average monthly wage. This in reality means that when a worker needs security and money the most he or she will only get a first installment of no more than approximately \$24,000 then the rest paid out over time.

While all such agreements must be approved by the Board of Industrial Insurance Appeals, the judge is specifically prohibited from providing the injured worker with any legal advice. If the worker has no lawyer they are at the mercy of the employer or the department and their lawyers. Once an agreement is in place it is not appealable.

Stay-at-Work:

A State Fund employer may receive a wage subsidy and other reimbursements under certain circumstances for offering a position to an injured worker. A fund is created to pay for the stay at work program with each employer being billed a certain "assessment" for the costs of the fund/program.

The wage subsidy includes 50% of basic gross wages paid for the work for a maximum of 66 work days in a consecutive 24-month period, up to a maximum of

\$10,000. And no subsidy is paid for compensation other than wages or salary.

While this may sound like a positive plan, the bill states that an injured worker can be held responsible for up to one-half of the employer's "assessment". The worker is paying the cost of his returning to work!

Permanent Total and PPD Awards:

Effective July 1, 2011 if a pension is awarded after a PPD award, all PPD compensation must be either deducted from the worker's monthly pension benefits or deducted from the pension reserve.

Additionally, currently when an injured worker is awarded a Permanent Partial Disability it is paid out over time. However, since the Department or self-insured employer gets to keep the money in investments, interest is paid on the monthly PPD award to the injured worker. The bill eliminates the interest paid to the injured worker with no fiscal impact to the employer or the Department. They get to keep the money and not pay interest to the injured worker.

Cost-of-Living Adjustments:

Cost-of-living adjustments are suspended for July 1, 2011, with no "catch-up". The first COLA occurs the second July 1, rather than the first July 1, after the date of injury or disease manifestation.

Fraud:

Worker fraud occurs in a very small amount of cases. Provider fraud is much bigger. In a direct and unnecessary shot at injured workers the Governor, the Department and the Legislature state in the bill that "The legislature finds that the department is successfully addressing employer fraud." They then go on to state that it is necessary to establish "... criteria for the periodic review of total permanent disability pension recipients including their level of disability and physical activity to determine whether they can be gainfully employed." What does this mean – it means that the Department will be investigating injured workers while they are on pension to determine if they can take away their pensions. Finally, there is nothing in the bill addressing employer or provider fraud – just worker fraud.

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What You Need to Know Continued....

Conclusion:

We have one of the best and least costly workers compensation programs in the nation. Despite this, the Governor, the Director of the Department of Labor and Industries and the Legislature attacked a system that has been one of the nation's best systems for over 100 years. They did this because it is easier to make injured workers pay for a recession they did nothing to bring on.

Let's look at the facts. Taking into consideration that injured workers pay 27% of the premium dollar, Washington ranks as 36th in premium rates for business.

Washington State has one of the best climates for business in the nation. Indeed:

-US News and World Report's ranks Washington as the #1 "Best States to Start a Business".

-Forbes Magazine in 2010 ranks Washington 5th in the "Best States for Business".

-The Kauffman Foundation's State New Economy Index ranked Washington 2nd in the nation.

Indeed, businesses have been consistently getting rebates and premium breaks from the Department. Between 1999 and 2001 the

Department returned to businesses over \$400 MILLION in rebates. The worker received nothing. The Department rate holiday of 2007 cost the system \$315 MILLION – or the equivalent of a 35% rate decrease. Hence, since 1999 businesses in the State of Washington have received rebates of over \$715 MILLION. Despite this, now the Governor, the Department and the Legislature are making the injured worker pay for the economic downturn in which they had no part by taking away \$1.2 BILLION in benefits. It is simply wrong.

Worker Verification Form Reminder!

This is a friendly reminder to persons currently or potentially receiving time loss for their workers' compensation claim.

The Department of Labor and Industries is starting to make a habit of not issuing time loss payments if worker verification forms are not completely filled out. This means that every bit of information requested on the form must be completed by the claimant.

A specific example follows:

I did not perform any work, paid or unpaid, due to a work related injury/illness from 10-08-08 to Present.

Thank you for your attention to this matter.

