



Issue 2
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What's Happening With Workers' Compensation Rates?

While we don't have a crystal ball to predict the future, and the insurance companies are just now submitting their rate filings for Jan. 1, 2009 effective dates, we do know the significant rate decreases we've seen over the past five years have most likely run their course. The California Department of Insurance just issued the following press release:

Insurance Commissioner Poizner Rejects WCIRB's 16 Percent Increase in Claims Cost Benchmark

Increasing Medical, Claims Administration Costs Lead to Modest 5 Percent Increase

SACRAMENTO – Rejecting the Workers Compensation Insurance Rating Bureau's (WCIRB) call for a 16 percent increase in the benchmark for determining workers compensation costs, Insurance Commissioner Steve Poizner accepted a more moderate 5 percent increase to reflect higher medical and claims adjustment costs to the system.

"Last year, experts predicted that loss adjustment expenses would increase dramatically. They did not," said Commissioner Poizner. "This year, experts have predicted accelerating increases in medical costs. Given the accuracy of past forecasts, I will wait for clear and compelling data confirming such increases before

significantly increasing the Workers Compensation Claims Cost Benchmark."

In an effort to more accurately define the estimated change in claim costs that develop in the workers' compensation system, the "Pure Premium Advisory Rate" has been renamed the "Workers Compensation Claims Cost Benchmark." This term will be used in the future as it more accurately describes its role in the workers comp pricing system.

While the Department has no authority to set workers compensation rates, the Commissioner did advise workers compensation insurance companies to be cautious if they seek to adjust rates.



"Despite this adjustment to the Claims Cost Benchmark, it is clear that insurance companies remain profitable in California and still have room to reduce the premiums they charge," said Commissioner Poizner. "Insurers should work with their employer customers to control the cost of workers' compensation insurance and help California businesses to remain financially healthy and competitive. While I have no

control over workers' compensation insurance rates, I nevertheless encourage employers to work with their insurance agents and brokers to shop for the best prices."

Including today's adjustment, the Workers Compensation Claims Cost Benchmark has fallen 63.4 percent since its high in 2003. "

Welcome to the Leap/Carpenter/Kemps Insurance Agency Newsletter!

With our final newsletter of 2008 we want to thank you for choosing us for your insurance needs. We also wish you and your family a happy holiday season and look forward to the opportunities that 2009 will bring. Thank you again for being a loyal customer.





Comp-Trac Corner – WC Injury: The ‘Course And Scope’ Rule

By Chris Boggs
July 16, 2008

Workers’ compensation statutes differ among jurisdictions regarding the threshold for compulsory participation, benefit schedules, contractor/sub-contractor relationships and most other statutory specifics. But there is one workers’ compensation concept on which every state agrees and to which every state subscribes; to be compensable, injury or illness must arise out of and in the course and scope of employment.

Three Tests

“Arising out of...” indicates a causal connection between the furtherance of the employer’s business and the injury. If the employer benefits in some way from the activity, then the injury or illness suffered in the pursuit of that activity is considered to “arise out of” the employment.

“In the course...” is a function of the timing and location of the injury or illness. The implication is that the injury must occur during operations for the employer, or “during employment,” and at the employer’s location or a location mandated or reasonably expected by the employer. New working conditions and relationships do not necessarily limit this to an on-site, 8-to-5 exposure.

“Scope of employment...” serves to more specifically define the first two tests by 1) analyzing the motivations of the employee; 2) analyzing the employer’s direction and control over the actions of the employee; and 3) analyzing the employer’s foreseeability of the activities of the employee. Employee actions which ultimately lead to an accident or injury must be motivated, in whole or in part, by the “desire” to further the interests of the employer. Motivation or desire can be out of fear that failure to perform will result in the loss of a job, or from a more altruistic desire to do well for the employer. The basis for the motivation or desire is irrelevant; it is the fact that the motivation exists that leads to compensability. Further, the actions must, to some extent, be at the presumed direction of the employer or potentially foreseen by the employer.

Injury may, in fact, arise out of employment and may even occur in the course of the employment but still be outside the scope of employment, negating compensability under workers compensation law. While he is entertaining clients, a company executive gets into an argument with a group sitting at another table because they are being too loud. A fight breaks out and the executive is severely injured. Such injury is not likely compensable under workers compensation. Yes, the injury

arose out of and in the course of employment (entertaining clients to further the employer’s business), but was outside the scope of employment. The employer’s goals were not furthered by the fight (nor was that the motivation), and the employer likely never directed nor foresaw the need for the employee to be involved in a fist fight as a result of his employment.

Establishing an injury as work related is much simpler when employees work from a fixed place of employment on a fixed schedule and are injured while in the midst of their assigned duties. A production employee injured by a press (or whatever type of machinery) during her shift will meet all three tests with only minor question. Likewise, an office employee injured when a computer falls on him raises little doubt that the injury arose out of and in the course and scope of employment. There are few objections that could be raised in these situations upon which a denial of coverage could be based (beyond drug use).

Employees away from the employer’s premises, involved in employer-sponsored recreational activities, who like to horseplay or pull practical jokes on their coworkers, who have personal issues that leak over into work or with pre-existing conditions or a predisposition to injury present particular problems when judging the compensability of an injury. Injury to any employee falling into one of these categories will require careful evaluation before coverage is assured. Some of these issues will be explored in the remainder of this post and in the next.

Have Briefcase/Tool Belt, Will Travel



Even with the jump in gas prices, many employees travel to conduct business on behalf of their employer. Injury suffered by an employee away from the premises for business purposes is generally considered to arise out of and in the course and scope of employment and is compensable. The proximate cause of the employee’s injury is the furtherance of the employer’s interest; that’s the reason for such a broad extension of coverage for employees injured while traveling.

For example, a specialty electrical contractor is hired to install wiring at a plant several hundred miles away from the contractor’s home office. The eight-man crew will be on site four days. Several hotel rooms are rented for the employees to stay in when the day’s work is done. Every evening, the crew goes out to dinner. While walking to a restaurant next to the hotel, one employee steps in a hole, falls and breaks his arm. This is a compensable injury as he was still in the course and scope of his employment.

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Use Benefits Strategically to Maximize Your Company's Investment

Most employers' investment in the benefits packages they provide to employees is significant. According to data from the Department of Labor's Bureau of Labor Statistics, employee benefits account for close to a third of employee compensation costs, an average \$8.63 per hour worked (includes legally required benefits such as Social Security). With such an investment, employers of all sizes want these benefits to engender loyalty within the workforce. In smaller businesses, benefits do play this role to some degree, according to a survey from MetLife, but employers are not utilizing their benefits packages to their full strategic advantage.

MetLife polled employees and benefits decision makers in companies with at least two employees. More than half—55%—of the employers with fewer than 500 employees said that benefits play a very important role in employee retention. However, only 34% of employees at companies of this size said the benefits they receive are a very important reason to remain with their current employer, compared to 53% of employees at larger companies. This last finding is somewhat puzzling, since among employers that offer benefits, a higher percentage of smaller employers contrasted to larger employers pay the full cost for many benefits, including medical, dental and prescription drug coverage. Specifically, 36% of smaller employers paid the entire cost of employees' medical coverage and 29% footed the full bill for prescription drug coverage, compared to 15% and 13%, respectively, of larger firms that did this for employees.

Whether or not your company is among those that pick up the full tab for certain employee benefits, you do invest significantly in the benefits you provide, and you want to realize a good return on this investment. The key to maximizing this is to take steps to use benefits strategically.

Using benefits strategically requires that the benefits your company offers are those that your employees really need and want. While you can safely assume that medical, some type

of retirement plan, and time-off programs would top this list, beyond these employees' benefits needs can vary greatly. If you haven't done so recently, get input from employees—through surveys, focus groups, even a suggestion box—as to what's on their benefits "wish list." You may find that some of the most coveted benefits are those that require little financial investment, though they may demand some creative thinking on your part. For example, flex-time, job sharing and telecommuting are prized by many workers, and if you are able to figure out a way to implement them in your company you will score a hit with employees without dipping into the benefits budget.

Similarly, you can greatly expand your menu of benefits offerings at little or no cost through voluntary benefits. Your company can give employees convenient access to coverages such as dental, vision, hearing, group legal, various types of life insurance, and disability through a voluntary benefits strategy. Though employees pay the full cost of voluntary benefits, they generally get a good price because they're purchasing at a group rate; plus, they save time not having to shop for the benefits in the open market and have the convenience of paying for them through payroll deduction. Most importantly, since employees choose which, if any, voluntary benefits to enroll in, they're only paying for what they've decided they want and need, which is important, psychologically, to feeling that they've gotten their money's worth.

Finally, regardless of the benefits you decide to offer to employees, don't skimp on communications. The MetLife survey suggests inadequate communications may be part of the cause for employees' under-appreciation of their benefits, with only about a third of both smaller employers and their workers rating their benefits communications as highly effective. Where to start in shoring up your benefits communications? Consider personalization, for which 54% of employees in smaller companies expressed a preference.

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Under the application of "proximate cause," the employee would not have been walking through the parking lot to get dinner but for the fact that his employer sent him there to work. He is furthering the employer's business. Additionally, eating dinner is within the course and scope of the employment as the employer likely provided a stipend to pay for the meals, "directed" them to eat and could have reasonably foreseen them needing and wanting to eat.

After dinner, a member of the crew decides to drive over to visit some family and friends in the area. On his way back to the hotel he is badly injured in an at-fault automobile accident. Does the workers' compensation carrier have grounds to deny the compensability of the injury? Yes, payment for this injury will likely be denied. Visiting family and friends does not arise out of the employment and is not in the course and scope of the employment. The employer did not direct the employee to depart nor did he sanction the deviation from the approved path (job,

hotel, dinner). This is considered abandonment of employment. The employee has undertaken a personal task/errand that neither benefits the employer, nor is approved by the employer

Working From Home

Employees working from home-based offices are afforded the same workers compensation protection as those camped in an office building. Determining the compensability for an injury suffered at home requires meeting the same qualifications as one suffered on site; injury must arise out of and in the course and scope of employment.

Unique workers compensation exposures are created for employer's allowing employees to work from home; exposures

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that may not be present with office-based employees. These exposures could include greater exposure to road hazards, a change in the "coming and going" rule (to be discussed in a future post) and difficulty in meeting the requirement to provide a safe and healthy work environment.

For security and safety purposes or to provide a more professional appearance, employees with a home office may be directed or encouraged to set up a post office box or other mail box arrangements rather than utilizing their home address for business purposes. Having such a box requires the employee to check it periodically, unlike office-based employees whose mail is delivered to their desk. Traveling to and from the box is considered arising out of and in the course and scope of employment. Injury suffered in an auto accident may be a compensable injury.

Some employers allow certain employees to telecommute three or four days a week, only requiring them to report to the office once or twice a week for various reasons. Generally, workers compensation benefits do not apply to employees traveling to and from work (known as the coming and going rule). How-

ever, since the employee is leaving one per se office location to travel to another, the entire trip may be considered in the course and scope of employment making any injury compensable. Additional consideration must be given to telecommuting employees' health and safety. Employers are charged with providing a safe and healthy work environment; the requirement extends to employees working in their homes. Employers assure that employee workspace in the office is ergonomically designed, but rarely is such precaution taken with home-based employees.

Repetitive motion injuries (such as carpal tunnel syndrome), back injuries from incorrect desk set up and posture and eye strain are just as likely among telecommuting employees as they are among office-based staff. Employers are not on-site to risk manage and loss control the home office design, but workers compensation claims from the same sorts of office-based injuries can still present themselves.

This article does not intend to provide legal advice regarding the compensability of any workers compensation claim. This is intended for educational and discussion purposes only.



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