
COLORADO WORKERS' COMP LEGISLATION UPDATE

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2019 – 2020 COLORADO LEGISLATIVE SESSION

- Democratic House and Senate
 - Claimant's attorney bar (WCEA) had the power to propose and pass legislation favorable to the injured worker. Lots of talk, almost no legislation resulted.
 - Creation of the Colorado Uninsured Employer Fund, January 2020
 - HB19-1105 – Nurse Practitioners can join Physician's Assistants in achieving Level I Accreditation – NPs and Pas cannot independently place injured worker at full duty or MMI for purposes of terminating TTD. MD must co-sign report.
 - All bills proposed in 2019 were on track to be addressed this year. Due to COVID, very little legislation was addressed during the 2020 legislative session.
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LEGISLATION PASSED OVER OR REJECTED

- SB 20-216 “COVID Presumption Bill”
 - Presented but did not pass
 - As of October 10, 2020, in CO:
 - 2,525 COVID-19-related claims, of which there are
 - 22 fatal first reports; 3 fatal admissions; 18 fatal denials; 1 fatal case pending position
 - 512 non-fatal final admissions
 - 235 non-fatal general admissions
 - 1,695 non-fatal denials
 - 61 pending non-fatal position statements
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COLORADO COVID-19 WC CLAIMS (CONT'D)

- To date, no COVID-19-related claims have proceeded to hearing
- Theory of recovery for employees: the contraction of COVID-19 is an “occupational disease”

[A] disease which results directly from the employment or the conditions under which work was performed, which can be seen to have followed as a natural incident of the work and as a result of the exposure occasioned by the nature of the employment, **and which can be fairly traced to the employment as a proximate cause and which does not come from a hazard to which the worker would have been equally exposed outside of the employment.**

C.R.S. §8-40-201(14) (Emphasis added).

- Under current Colorado law, it is the claimant’s burden to prove that contraction of COVID-19 can be fairly traced to his/her employment.
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HOW DOES COLORADO'S COVID-19 WC CLAIMS LEGISLATION COMPARE TO OTHER STATES?

- National statistics (through August 21)

- More than 1/3 of states have accepted COVID-19 as an “occupational illness” for certain workers
 - 19 states have made changes to workers’ comp compensability amid COVID-19
 - 11 states issued executive orders, directives, or emergency rules on COVID-19 “presumptions” of compensability for workers who can claim they contracted COVID-19 on the job
 - 8 states passed legislation establishing “presumptions” of compensability for workers
 - Shifts the burden of proof onto the employer
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WORKERS' COMP LEGISLATION WAITING TO BE ADDRESSED

- Lowering statutorily capped benefits in C.R.S. §8-42-107(5)
 - Agreed legislation will reduce the lower cap to 19% or less
 - 24 Month DIME – HB 1154
 - Will require respondents meet five elements before applying for a Division IME. Current legislation requires four elements. New element: IME stating MMI must be at least 20 months after the Date of Injury (DOI).
 - Apportionment
 - TTD and Medical Benefits proposal overrules two Court of Appeals decisions allowing apportionment.
 - PPD proposal provides no apportionment for a prior impairment rating unless the injured worker received an impairment rating and compensation for that rating was received in a prior WC claim
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WORKERS' COMP LEGISLATION WAITING TO BE ADDRESSED (CONT'D)

- Statute of Limitations on ability to move to withdraw admissions
 - Currently, no statute of limitations. Proposed legislation would put a two year statute of limitations on ability to withdraw admissions.
 - Recovery of Overpayments
 - WCEA proposes eliminating ability of employers to recover if benefits were due when paid.
 - Elimination of SSD offset when claimant is older than 45 on date of injury
 - Presently, employers receive a 50% offset for SSD if injured worker is over 45 on date of injury that causes permanent and total disability. Proposed legislation eliminates offset if claimant is already receiving SSD on the date of injury.
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WORKERS' COMP LEGISLATION WAITING TO BE ADDRESSED (CONT'D)

- Re-opening of Permanent and Total Disability Claims
 - Proposed change to amount injured worker can earn from \$4,000 to \$7,500 after being declared PTD without risking a petition to re-open.
- Mileage Reimbursement
 - Payments will be required to be paid within thirty days of receipt.

RIGHT TO CONTROL MEDICAL CARE IN FIRST INSTANCE

- Crucial for employer to provide WCRP 8 letter, listing four providers
 - Must be given to injured worker within seven business days of notice of injury
 - Tip: list both clinic and doctor
 - If employer fails to provide WCRP 8 letter, injured worker is free to choose any doctor
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TIPS TO HANDLE FULLY CONTESTED WORKERS' COMP CLAIMS

- Do not deny medical care unless absolutely certain your attorney will win the claim in court
 - Provide WCRP 8 letter
 - Secure statements from all witnesses and get injured worker to provide statement
 - If fraud is suspected, notify health care clinic of suspicion
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EFFECT OF PRE-EXISTING CONDITION ON NEW INJURY

- Unless you can prove that the injured worker did not recover from prior injury, any new injury will constitute an aggravation of a pre-existing condition
 - Tip: pre-employment functional capacity evaluation, which measures employee's baseline of function prior to hiring or moving into a new role
- Colorado law follows the “you take them as you hire them” theory of liability, also known as “egg shell” theory.

QUESTIONS?

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