

LABOR'S RESPONSE TO PROPOSED WORKERS' COMPENSATION CHANGES

BACKGROUND: Workers' Compensation Law

Illinois workers' compensation law provides the sole remedy for workers who are injured on the job. The law is a historic compromise between business and labor interests in which workers surrender their right to pursue legal remedies in civil court for injuries that could result in punitive damage awards—running to the millions of dollars—where employer negligence can be shown. In return, workers are supposedly guaranteed timely payment of awards limited to coverage of medical bills and wage replacement for any job-related injury or illness.

AGREED BILL PROCESS ENSURES FAIRNESS FOR ALL

In Illinois, changes to the workers' compensation law have historically been made via the "agreed bill process" whereby representatives of the employer community and the labor movement sit down together to work out mutually-agreed upon changes. Now it appears that only the business community's concerns are being heard—and injured workers will pay the price. The kind of changes under consideration right now are far too sweeping—and potentially harmful—to be rushed through without adequate discussion and review. The General Assembly should not act on any workers' compensation legislation unless it has been developed through the "agreed bill process".

RESPONSES TO SPECIFIC EMPLOYER-PROPOSED CHANGES

Raising "Pre-existing" Threshold Will Leave Out Many Injured Workers

Employers argue that workers should not be compensated for an injury or illness unless causality can be proven to be **primarily** work-related. Because in many instances it is extremely difficult to determine the extent to which a condition was "pre-existing", such a change to the law could effectively bar a large number of injured workers from receiving any compensation at all. Some very debilitating injuries such as herniated disks or repetitive strain injuries could effectively be eliminated from compensation altogether, greatly reducing the incentives for employers to take appropriate protective measures to prevent such injuries.

Cookie-Cutter AMA Guidelines Don't Address Workers' Needs

Employers want to require that the workers' compensation system rely solely on AMA guidelines to determine awards in the case of permanent total or partial disability. But those guidelines only measure impairment, not disability, as the Illinois system currently does. Relying on the AMA guidelines is a one-size-fits-all approach that does not take into account the extent to which injuries can impact a particular individual's employment options or life circumstances.

Workers, Not Employer, Should Choose Doctor

Employers appear to be arguing that workers should no longer have the right to be treated by a doctor of their own choice, but instead should be forced to accept treatment by a doctor whom the employer chooses. Employers already have the right to have an injured employee **evaluated** by the employer's chosen physician, but employees should not be forced to accept treatment from that doctor. Traditionally, "company" doctors have minimized the seriousness of injuries in order to force employees to return to work before it is safe to do so. Injured workers should be able to be treated by their own doctor, not the employer's doctor.

Reducing Doctors' Fees Would Reduce Treatment Options

Employers want to reduce payments to doctors. But unless doctors get reimbursed adequately for treating complex work injuries, too many of them—especially specialists—may no longer be willing to treat injured workers, limiting access to quality medical care.

Utilization Review: Don't Give Treatment Decisions to Insurance Companies

The insurance companies want to dictate how much medical treatment injured workers get. They want to take away the discretion that the treating doctor uses to determine the best treatment plan for each injured worker. Utilization reviews are "medical record" reviews conducted by physicians who never actually see the patients—yet the insurance companies want to use them to override the patient's treating physician. Procedures for utilization review in certain limited circumstances are already in place and should not be expanded to give the ultimate authority to the insurance company.

Intoxication Already a Barrier for Compensation

Workers whose injury results from drug or alcohol impairment are already barred from receiving workers' compensation benefits under current law. Employers want to extend this provision to automatically bar anyone from receiving benefits who has any alcohol or any type of drug (even prescribed medicine) in his/her system, even if the amount was not significant enough to cause any impairment.

Cutting Wage Differential Means Lifetime of Lower Pay

Workers whose injury results in a partial disability that allows them to return to work, but only at a lower-paying job, can be awarded a "wage differential" that makes up at least part of the difference between the wages they previously received and those that they can earn after the injury. Employers are seeking to eliminate or limit this award—effectively forcing employees who are injured on the job to face a lifetime of lost income. Limiting the wage differential to a certain number of years unfairly affects younger workers, while limiting it to a certain age unfairly affects older workers.