

Changes To Mississippi's Workers' Compensation Law...

CHANGES TO MISSISSIPPI'S WORKERS' COMPENSATION LAW

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At the end of April, Mississippi legislators passed significant changes to the Mississippi Workers' Compensation law. The Governor signed the bill on May 15, 2012 making the law effective on July 1, 2012. The important changes are set out below.

The guiding principles of Mississippi's Workers' Compensation law

The bill sets out a couple of basic guidelines. The new bill says "This chapter shall be fairly and impartially construed and applied according to the law and the evidence in the record... [and] this chapter shall not be presumed to favor one party over another."

Further, the bill also amends the primary purpose of the bill: "to pay timely temporary and permanent disability benefits to every worker who legitimately suffers a work related injury."

Changes to medical records and the employee's right to choose his physician

The bill as amended requires that, for all claims in which no benefits have been paid, the claimant must file medical records in support of his claim for benefits when he files his petition to controvert. The amended bill does, however, allow a claimant who is unable to file his medical records at the time of his petition to controvert because of a time limitation expressly allowed in this law to file his medical records within 60 days of his filing the petition. One of the exceptions to this requirement is for a person who is mentally incapable or a minor. Further, a person whose recovery is denied on such ground that such person was an employee and defendant was an employer, the employee has an additional 60 days to file if the employer has already secured compensation. Finally, the Workers' Compensation bill allows an extension of time for "changed conditions" or because of a mistake in a determination of fact.

The legislature has also made changes with regard to physicians. Under this section, an injured employee may accept a doctor chosen by the employer or choose his own competent physician. The bill adds a stipulation to this: if the employee is treated for six months or more by a physician, or if the employee has surgery for the alleged work-place injury, that physician will be considered the employer's physician.

Changes to Preexisting Injury

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The law is also amended with regards to apportionment of preexisting injuries. Under Mississippi's Worker Compensation Act, if a preexisting injury is a material contributing factor to the injury, the compensation will be reduced by the proportion that the preexisting injury contributed to the actual injury. Under the amended bill, a preexisting injury does not have to be occupationally disabling for the apportionment to apply.

Changes to Drug and Alcohol Use

The amended bill expressly bars recovery if the proximate cause of the claimant's injury was using drugs illegally, if the claimant used a valid prescription medication contrary to the prescribers' instructions or contrary to the label warnings, or if the claimant was intoxicated due to the use of alcohol.

Further, the new bill allows the employer to administer a drug and alcohol test or require that the employee submit himself to a drug and alcohol test when an employee sustains an injury at work or asserts a work related injury. If the employee has a positive test indicating the presence at the time of injury illegal drugs, the use of prescription drugs taken contrary to the prescriber's warnings or contrary to label warning, or a blood alcohol content above .08%, the drugs or alcohol will be the presumed proximate cause of the accident. If the test is positive, the burden of proof will fall on the employee to prove that the drugs or alcohol was not a contributing cause of the accident.

Additionally, if the employee refuses to take the test, it will be presumed that the employee was using a drug illegally, was using prescriptions drugs incorrectly, or was intoxicated due to the use of alcohol.

As well, the bill has been amended to allow the results of the drug and alcohol test to be allowed as admissible evidence solely on the issue of causation.

Finally, the employee has no cause of action for libel, defamation of character, slander or damage to reputation against an employer under this section.

Changes to Amounts of Compensation to be Paid

The bill changes how compensation for disability shall be paid in the following ways:

- Disfigurement: the commission may, in its discretion, grant compensation up to \$5,000 for serious facial or head disfigurements; previously, the limit was \$2,000.
- The bill increases the amount of maintenance from \$10 per week to \$25 per week to an employee who has been partially incapacitated for a remunerative occupation and who, under the direction of the commission, is being rendered fit to engage in a remunerative occupation; this maintenance is still at the discretion of the commission.

- The clause that deals with death benefits is amended to provide an immediate lump sum to the spouse of \$1,000; previously, the lump sum was \$250. The bill also increases reasonable funeral expenses to \$5,000 from the previous \$2,000.

Changes to Attorney's Fees

Under the amended law, an attorney may not recover attorney's fees based upon benefits voluntarily paid to an injured employee for temporary or permanent disability. However, any settlement negotiated by an attorney will not be considered a voluntary payment.

The Notice Requirement

This section requires the Commission to circulate a written statement promulgating the changes made to Mississippi's Workers' Compensation Bill; the Commission must send this statement to every employer in Mississippi. Within 10 days of receipt of the Commission's statement, every employer must post this statement in a conspicuous place and adjacent to the Notice of Coverage as required under the current Workers' Compensation law.

