

CALIFORNIA LEGISLATIVE UPDATE 2011 - WORKERS' COMPENSATION

California Insurance Commissioner Dave Jones approved a 37% increase in workers' compensation rates for 2012. The decision means California employers will likely pay more for workers' compensation insurance in 2012. Further analysis is pending regarding this recent proposed rate increase and to what degree carriers will adopt the new rates; however, large increases in rates and premiums are expected.

Part of the rationale for this increase is that California workers' compensation claim costs have been steadily rising since the 2005 workers' compensation reform. According to the most recent Workers' Compensation Insurance Rating Bureau (WCIRB) study, a California 2010 workers' compensation claim is now estimated to equal \$64,000, which reflects almost a 40% increase since the previous reform.

Prior to the announcement of this rate increase, California Governor Jerry Brown vetoed several workers' compensation bills that could have been costly for employers. He did so with the message that he would not approve any bills to increase workers' compensation claim costs that did not also include a corresponding cost reduction. Governor Brown also signed a number of bills, summarized below.


Governor Brown indicated that he wants to see broad workers' compensation reforms instead of piecemeal changes that will increase employer costs. It is anticipated that reform may include increases in permanent disability rates which were reduced by the 2005 reform. To offset this increase, areas to be evaluated include frictional costs including litigation and med-legal costs associated with the defense of additional injuries, such as psyche, sleep disturbance and similar allegations.

Key bills vetoed by Governor Brown that would have increased workers' compensation costs:

ASSEMBLY BILL 947 would have allowed up to 240 weeks of temporary disability for injured workers who are still recovering from surgery when the current 104 week cap is exhausted. It is estimated this bill would have increased claim costs for employers by tens of millions of dollars.

ASSEMBLY BILL 1155 would have prohibited apportionment to characteristics such as race, gender and age. Anti-discrimination laws already exist, so Brown rejected this bill which would have increased litigation and related claim costs.

This issue of *You Should Know* is one in a series of brief articles designed to keep our clients abreast of significant breaking news in the claim and loss control areas that could affect their operations or exposures. Additional information about this and other topics can be obtained from your Regional Strategic Outcomes Practice Associate.



ASSEMBLY BILL 211 would have provided supplemental job displacement vouchers of \$6,000 on all claims with possible permanent disability versus providing voucher of lower or higher value based on actual permanent disability.

ASSEMBLY BILL 584 would have required California medical licenses for Utilization Review doctors, which would have increased administrative costs.

ASSEMBLY BILL 826 would have required the adoption of the Current Procedural Terminology (CPT) codes for medical bills.

Key bills approved by Governor Brown:

ASSEMBLY BILL 378 removes financial incentives associated with prescribing expensive and questionable compound medications by bringing these drugs under standard billing regulations and fee schedules. This bill is estimated to save potentially millions of dollars each year.

ASSEMBLY BILL 469 Effective January 1, 2012, private employers must provide their nonexempt employees a written notice with detailed wage information in their new hire materials. A new written notice is also required to all nonexempt employees of private employers of any change of workers' compensation insurer occurring after January 1, 2012. The Labor Commissioner is required to prepare a template of the new notice and make it available to employers. It is not yet available but will be posted to website at <http://www.dir.ca.gov/dlse>. The requirements of this bill do not impact the current worker's compensation notification requirements under LC 3551, such as provided by the "Facts About Workers' Compensation" pamphlet or the posting notices requirements.

ASSEMBLY BILL 335 requires the Administrative Director (AD) of the Division of Workers' Compensation to adopt new benefit notices written in easily understandable language. The information will be available on the Division's website and through other means. The intent is to streamline other, currently required notices to employees.

ASSEMBLY BILL 397 requires contractors to provide proof of workers' compensation coverage to obtain a license renewal.

ASSEMBLY BILL 228 allows State Compensation Insurance Fund to provide coverage to the out-of-state employees of California employers.

ASSEMBLY BILL 585 provides a cancer presumption for firefighters at NASA installations.


ASSEMBLY BILL 878 requires a workers' compensation insurer to report a contractor's canceled policy to the Contractor's State License Board.

ASSEMBLY BILL 1168 limits fees for vocational rehabilitation experts.

ASSEMBLY BILL 1426 eliminates the workers' compensation court administrator position.

ASSEMBLY BILL 457 requires WCAB to determine on the basis of liens filed, reimbursement for benefits paid or services provided by self-insured employee welfare benefit plan when an award is made for reimbursement for self-procured medical costs.

ASSEMBLY BILL 684 requires insurers to provide written disclosure to California employers if the carrier includes in the employer's policy a provision that requires disputes to be arbitrated or resolved in courts outside of California.



ASSEMBLY BILL 826 requires an administrative penalty be assessed against claim administrators for violating data reporting requirements.

In addition to these legislative changes, there were a few important decisions issued by the California Workers' Compensation Appeals Board (WCAB).

The WCAB reached an important en banc decision in *Valdez v. Warehouse Demo Services*, Case No. ADJ7048296. The board concluded that a report from a non-medical provider network (MPN) physician was inadmissible. This decision provides a defense for payment of medical treatment, liens and disability resulting from these inadmissible reports – positive news for employers. In order to take advantage of this decision, employers may need to provide evidence of proper notification to their employees of the medical provider network. Employers will want to keep records and contact information of the employer representative who can verify that the MPN notices were timely and appropriately sent to all employees. If the MPN notification process is contested, a photograph of the MPN posting notice “in a conspicuous location frequented by employees” may also be beneficial. If there are any concerns that the MPN notification was defective, it may be worth evaluating and correcting any potential problems.

The California Supreme Court affirmed the case law known as *Alvarez/Guzman (Alvarez v. Environmental Recovery Services/Guzman v. Milpitas Unified School District Case No. ADJ1078163 (BAK 0145426) – Mario Almaraz ADJ3341185 (SJO 0254688) – Joyce Guzman – 74 Cal. Comp. Cases 1084)*, which finalizes a protracted dispute on how physicians can utilize the AMA Guide to determine permanent disability. The case law essentially allows a physician to use any chapter or table in the AMA Guides to determine an injured worker's level of impairment rather than just the chapter related to the injured body part. This decision has potential to significantly increase claim costs including on existing claims.

Summarizing all of these factors: the California Workers' Compensation climate is continually changing. Given the anticipated rate increases and potential reform, which may include permanent disability increases, employers need to prepare for

these anticipated changes. We recommend working with your Willis claim consultant to ensure claims are being aggressively managed to a timely and cost effective closure to mitigate claim costs.

CONTACT

If you have any questions regarding compliance or potential impact of these new legislative or legal updates, please contact your Willis Client Advocate® or:

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