Workers' Comp

Kentucky Legislature Passes Workers' Comp Reform Legislation

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By Brian Allen, VP of Government Affairs

Prompted by a Kentucky Supreme Court ruling in Parker v. Webster County Coal, the Kentucky legislature recently passed HB 2, sponsored by Rep. Adam Koenig. The bill addresses the constitutionality questions raised by the court regarding disparate treatment of older workers receiving disability benefits and makes other significant changes to the workers' compensation system in Kentucky. The bill is on its way to Governor Bevin's desk for signature. The Governor is expected to sign the bill. Based on the projected end of the session, the bill should become law on July 12, 2018 (90 days after the end of the session).

Highlights of the legislation include:

- For claims resulting in an award for permanent partial disability, benefits shall be paid for 780 weeks, with the ability to extend that time based on a continuing medical need. Injured employee must file a request for extension demonstrating the medical need.
- Contested extensions can be heard by an Administrative Law Judge (ALJ). If the ALJ determines that there is a continuing medical need, the benefits continue. If the ALJ determines that this is not an on-going need or that the injured failed to file the extension request properly, benefits are discontinued and future medical treatment will be deemed to be unrelated to the injury.
- Added a section regulating urine drug testing. Limits payments for drug testing to one test per year for low-risk patients, two tests per year for patients with a moderate risk and 4 times per year for high-risk patients. If a test reveals aberrant behavior, the insurer, employer or obligor may request additional tests that do not count against the maximums. Also requires the Department of Workers Claims (DWC) commissioner to promulgate rules for drug screenings.

- Allows for a waiver of utilization review if the carrier, self-insured group or self-insured employer agrees that the recommended medical treatment is necessary and appropriate or the injured worker does not proceed with treatment.
- Requires the commissioner to develop or adopt evidenced-based treatment guidelines, including guidelines for treating chronic pain and opioid use, prior to December 31, 2019.
- Requires the commissioner to develop or adopt a workers' compensation drug formulary and related rules prior to December 31, 2018.
- Added time frames for filing cumulative trauma claims — two years from the date the employee is told by a physician that the injury is work related, or five years from the last injurious exposure to the cumulative trauma.
- Made some changes to settlement agreement provisions related to the discount rate that can be used.
- Added some clarifying language regarding evaluations for occupational injury, disease and hearing loss claims.
- Included some new language allowing for the suspension of benefits when workers refuse to fully participate in spirometric testing.
- Introduces some new language related to the use of commission-selected physicians in coal worker pneumoconiosis claims and a procedure for auditing and evaluating those physicians.
- Provides for a modest increase in the maximum amount for attorney fees.
- Revises the language around proximate cause due to voluntary intoxication to include illegal, non-prescribed substances or prescribed substances used in excess of prescribed amounts and creates a presumption standard determined by a scientifically based blood test.
- Increases the average weekly wage ceiling for temporary or permanent total disability and permanent partial disability.
- Changes the benefit termination date from “qualified for normal old age Social Security retirement benefits” to “reaches the age of seventy (70).” This satisfies one of the issues found unconstitutional in the Kansas Supreme Court ruling.
- Added a provision for calculating a disability benefit offset when an injured worker returns to light duty.
- Created a new paragraph dealing with professional athletes from teams located in Kentucky defining when disability benefits end.
- Modified provisions related to retraining for coal workers, including the use of an on-line training portal.
- Added a definition of a “board certified pulmonary specialist” and requires the commission to use one when evaluating coal workers.

The legislation should satisfy the questions raised by the Supreme Court. The items of particular interest that will impact services Mitchell provides to our customers are the treatment guidelines and the drug formulary provisions. Both issues will require significant rulemaking by the commission. Mitchell will be engaged in that process as the rulemaking moves forward and we encourage our customers to stay engaged as well. We will provide updates as those efforts progress.

A complete text of HB2 can be found here, along with Senate floor amendment 1 here.

If you have questions about this legislation, or about any other legislative or regulatory matter, please contact Brian Allen, vice president of government affairs at Brian.Allen@mitchell.com or at 801.661.2922.



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