



## NEW REFORMS TO WORKERS' COMPENSATION

### BRIEFLY

*The enacted reforms to workers' compensation will provide significant cost savings and system improvements. By allowing some settlement options, they move Washington's workers' compensation system closer to the national mainstream.*

Two major priorities for the business community this legislative session were unemployment insurance and workers' compensation reform. Unemployment insurance changes were enacted early in the 105-day regular session, but the more contentious proposal for workers' compensation reform was not settled until the end of the 30-day special session. The main sticking point in workers' compensation was the question of whether to allow injured workers to choose a voluntary settlement agreement over a pension.

As enacted, the reforms will help make the system healthier, improving outcomes for workers and employers. Indeed, previous Washington Research Council reports have recommended some of the reforms.

### The Problem

In December 2010, an audit found the Accident Account to be insolvent and placed a 94.1 percent probability on the Medical Aid Account becoming insolvent within five years. The loss of system contingency reserves was not due solely to the recession. The causes also included, according to the audit, the fact that loss and loss adjustment expense liabilities increased, to which "the growing duration of time loss claims and frequency of pension awards has contributed," and the fact that "for the past three years premium rates have been insufficient to fund the system." This, despite the fact that premium rates have been increasing.

On pension awards, Washington is an outlier. The Upjohn Institute estimated that Washington has "two to four times the [total permanent disability] incidence of the highest other states." In 2008, Washington paid the second highest benefits per covered worker (\$778.36) and the third highest benefits as a percent of covered wages (1.69 percent). These high benefits make for high costs.

### Enacted Reforms

As the major enacted reform bill (HB 2123) concluded, "controlling pension costs is key to a financially sound workers' compensation system for employers and workers." Consequently, the bill allows a struc-

tured settlement option in lieu of a pension for certain workers, among other changes. The bill:

- Creates the Stay-at-Work program for state fund employers. If an injured worker is given light duty or transitional work, his employer may receive a wage subsidy of 50 percent of "the basic, gross wages paid for that work" for up to 66 days within two years. Employers' experience ratings are not affected. Funding for the subsidy will come from assessments of state fund employers, and up to one-half of the assessments may come from workers.
- Suspends cost-of-living adjustments for fiscal year 2012. There will be no catch-up. For claims established on or after July 1, 2011, the first COLA will kick in the second July 1 after the date of injury or occupational disease manifestation (instead of the first July 1).
- Allows structured settlements for workers who are 55 or older. (As of January 1, 2015, workers who are 53 or older will be eligible, and as of January 1, 2016, workers who are 50 or older will be eligible.) Employers and workers will not be able to settle medical benefits. The periodic payments to the worker must be 25 percent to 150 percent of the average monthly wage in the state. The Board of Industrial Insurance Appeals will have to approve all agreements:

Before approving the agreement, the industrial appeals judge shall ensure the worker has an adequate understanding of the agreement and its consequences to the worker. [Additionally], the industrial appeals judge may approve a claim resolution structured settlement agreement only if the judge finds that the agreement is in the best interest of the worker.

After Board approval of a settlement, the parties involved have 30 days during which they can revoke consent.

- Offsets pension benefits for prior permanent partial disability (PPD) awards. Current law states that any portion of the permanent partial disability compensation which exceeds the amount that would have been paid

the injured worker if permanent total disability compensation had been paid in the first instance

is to be deducted from monthly pension benefits or pension reserve. The new bill requires simply that all prior benefits must be deducted, and the deductions are not capped. Interest paid on PPD compensation is not deducted, and interest will no longer be paid on monthly PPD awards.

- Provides Safety and Health Investment grants, for which funding comes from the Medical Aid fund. At least 25 percent of the funds will go to the development and implementation of return-to-work programs, 25 percent will go to small business projects, and 50 percent will go to prevention of workplace injury and illness.
- Creates an industrial insurance rainy day fund. If the assets of the Accident and Medical Aid Fund are together 10-30 percent in excess of funded liabilities, then the excess is transferred to the rainy day fund. Funds could be transferred to the Accident or Medical Aid funds if the transfer is necessary to reduce a rate increase or aid businesses in recovering from or during economic recessions. The director may also transfer moneys from this fund at any time liabilities increase so that total liabilities exceed assets of the accident fund, medical aid fund, or both.
- Increases fraud prevention efforts.
- Requires a performance audit (by June 30, 2015) of the claims management system by the Joint Legislative Audit and Review Committee.
- Requires a study of occupational disease claims by December 1, 2012. The Department of Labor and Industries (L&I) is required to contract with an independent entity to study occupational disease claims, including their frequency and severity, impact on long-term disability and pension trends, the definition of occupational disease (and comparison to other states), and the statute of limitations for filing claims for Washington and other states.

There is no fiscal note for the bill, but the governor's office estimates that the provisions would save \$478 million in FY 2012, and \$903 million over FY 2012–15.

Earlier in the session, the legislature enacted SB 5801, establishing a health care provider network to treat injured workers. Providers will have to meet standards set by L&I. The legislation also expands the Cen-

ters for Occupational Health and Education. This bill was endorsed by both business and labor groups, and it is expected to save \$41 million in FY 2012 and \$219 million over FY 2012–15.

Additionally, other workers' compensation changes were made in SB 5278 (rate notices must now include an accounting of all programs and services that are financed by state fund premiums or self-insurers' administrative assessments), HB 1725 (related to administrative efficiencies), and HB 1726 (changes to the vocational rehabilitation pilot program).

### Discussion

The enacted reforms represent significant savings and system improvements. Previously, Washington Research Council reports have made several recommendations for improving Washington's workers' compensation system that are not controversial nationally. These include allowing final settlement agreements, tightening the definition of occupational disease and instituting a medical provider network. Consequently, the reforms enacted are very welcome.

By allowing some settlement options, the reforms move Washington's workers' compensation system closer to the national mainstream. Although it is disappointing that the final legislation allows only certain injured workers to choose a settlement, it is a positive step that they will be allowed for some. Establishing a medical provider network and ordering a study of the definition and statute of limitation of occupational disease are also good developments.

That these reforms were enacted this year is to be applauded, but there is more work to be done as the state endeavors to bring down the costs of the system.

### References

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- Washington Research Council. 2010. *Mainstreaming Workers Compensation: Reforms For 2010*. PB 09-03. January 15.
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