

States begin to provide guidance on applying for disability and workers' compensation benefits for exposure to COVID-19

As reported in Business Insurance on March 18th, several states have issued statements and created websites to help workers understand whether they may be eligible for workers compensation and disability payments if they are exposed to or contract COVID-19 in the workplace.

On Monday, Pennsylvania's Secretary of Labor and Industry Jerry Oleksiak announced in a statement guidance for workers who believe they were exposed to COVID-19 in the workplace, advising them to notify employers to file a typical "disease-as-injury" workers compensation claim or an "occupational disease" comp claim and provide medical evidence.

In Michigan, Gov. Gretchen Whitmer on Monday signed an executive order to expand unemployment and workers compensation benefits to workers who contract or are exposed to the virus at the workplace.

California recently created a question and answer for employers and workers, which includes links on how medical professionals who are unable to work because of COVID-19 exposure or contraction can file a disability insurance claim. An executive order signed Thursday by Gov. Gavin Newsom temporarily waives the one-week waiting period for collecting disability insurance benefits.

New Jersey also created a Q&A to help workers, providing information on how they can apply for temporary disability insurance if they are quarantined and no longer have earned sick leave, as well as workers compensation if they contracted the virus in the workplace. New Jersey also stated on its site that people who have been ordered to quarantine because of COVID-19 exposure during the course of their work may be eligible for workers compensation, and that those who cannot go to the workplace because they are at a greater risk of contracting COVID-19 may be eligible for temporary disability insurance.

WHAT'S NEW

Court Ruling Raises Questions and Uncertainty in New York Workers' Comp Cases

On 3/5/20, **New York** State's intermediate level appellate court, the Appellate Division, Third Department, decided *Green v. Dutchess County BOCES*. In what can only be described as an astonishing decision, the court has held that surviving relatives of deceased injured workers, with what are known as capped classified disability claims in New York's workers' compensation system, are entitled to receive lost wage payments when the deceased worker dies for reasons unrelated to his or her injury.

In New York's workers' compensation system, injured workers with a capped classified disability claim are entitled to lost wage benefits for up to a fixed number of weeks. The fixed number of weeks is known as a "cap," and is set by New York's Workers' Compensation Board. Once the cap in a claim expires, the worker generally receives no further lost wage benefits. Classified disability claims are one of two types of permanent disability claims recognized by New York workers' compensation. The other type is a schedule loss of use claim, which pays a fixed dollar amount for certain types of injuries, usually involving arms, hands, legs, or feet. Unlike classified disability claims, which

pay lost wage benefits only if the injured worker loses income due to his or her injury, schedule loss of use claims pay a fixed dollar amount even if the injured worker has no lost income.

The Green case involved a deceased worker who had 38.8 weeks remaining on his capped classified disability claim at the time of death. The deceased worker's son requested payment of those remaining 38.8 weeks. On administrative appeal, the New York Workers' Compensation Board denied the request based on long standing precedent, holding that the death resulted from reasons unrelated to the worker's injury, and that the claim had abated with the worker's passing.

A long standing requirement for lost wage benefits in classified disability claims is a connection between the injured worker's lost income and his or her injury. Historically, if an injured worker with a classified disability claim lost income for reasons unrelated to his or her injury, such as an economic layoff, or a voluntary resignation of employment, lost wage benefits were not paid. A death for reasons unrelated to the worker's injury had always been considered the ultimate and final severing of any connection between lost income and the worker's injury.

This requirement for a connection between lost income and a worker's injury is why the ruling in the Green case took many New York workers' compensation professionals by complete surprise. The court's holding states that a connection between lost income and a worker's injury is no longer required for capped classified disability claims. When an injured worker dies, his or her surviving relatives are now entitled to any remaining unpaid portion of the worker's capped lost wage benefits. Historically, this had been allowed only in schedule loss of use claims, which have no requirement for lost wages as a precursor to benefits.

The body of court decisions applying New York workers' compensation law had always drawn a sharp distinction between classified disability claims and schedule loss of use claims. Decisions had set forth different requirements for each type of award. The Green decision blurs, and in some cases, completely obliterates those distinctions. The court explained this dramatic departure from precedent, stating it believed changes to the laws governing New York workers' compensation had demonstrated an intent by the State's Legislature to eliminate distinctions between classified disability claims and schedule loss of use claims. The court also believed that a provision in New York law governing posthumous workers' compensation benefits drew no distinction between capped classified disability claims and schedule loss of use claims.

There are also potentially significant conflicts between this decision and established precedent from New York's intermediate and highest appellate courts. It is a safe assumption that many New York workers' compensation lawyers strongly disagree with the court's reasoning. There is reason to believe the court misapprehended the State Legislature's intent behind changes to the State's workers' compensation laws. The court also appears to have misapplied the statute governing posthumous benefits. That statutory provision states an "award" made to an injured worker "... shall in case of death arising from causes other than the injury" be payable to surviving relatives. Until now, that provision has only been applied to schedule loss of use cases, and for good reason. In New York workers' compensation, there is no "award" to pay in a classified disability claim when lost income has no connection to the worker's injury. Because New York law has always considered death for reasons unrelated to a worker's injury as the ultimate severing of any connection between lost income and the injury, no genuine dispute has ever existed about the lack of an "award" to posthumously pay to surviving relatives in classified disability claims. The court's reasoning misses this crucial issue. The court appears to assume that capped disability claims automatically pay awards, which has simply never been the case.

While there were no dissenting judges on the court panel that issued the Green decision, New York's rules would allow the Workers' Compensation Board and/or the employer to seek leave to appeal this case to New York's highest appellate court for possible reversal. We would be hopeful that the Workers' Compensation Board would make such a request.

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Comp Costs Continue to Rise with Age

National Council of Self-Insurers' friend WCRI recently held their 36th Annual Issues & Research Conference in Boston. As reported in Business Insurance the reported that the increasing number of people remaining in the workforce past traditional retirement age presents challenging questions for the workers compensation industry, according to research presented.

The U.S. Bureau of Labor Statistics projects that by 2028, 20% of workers in the labor force will be age 55 or older. "That raises lots of questions," said Bogdan Savych, public policy analyst for Boston-based WCRI. "How do you price premiums? What kind of occupational care are you providing? What will happen to outcomes?"

Aggregate numbers show that average medical payments per claim for seven or more days of lost time increase with age. Payments average around \$8,000 for the youngest workers and more than \$20,000 for workers aged 65 and older, but that data fails to show the whole story, Mr. Savych said.

Younger workers are substantially more likely to experience contact injuries compared with those aged 65 or older, who are the least likely to suffer such injuries, according to WCRI data. The oldest workers have nearly triple the frequency of experiencing a compensable fall, slip or trip. This, Mr. Savych said, is likely due to the nature of the jobs performed by younger workers, who are more likely to work in food

preparation where they're at risk of contact injuries such as cuts, and the effects of aging that make older workers more susceptible to trips and falls.

While the number of fractures didn't vary substantially from the youngest to the oldest workers, the type of fracture suffered by each age group differed. Younger workers were about as likely to experience a leg fracture as older workers and somewhat less likely to experience an upper extremity fracture. Workers 50 and older were the only ones statistically to experience a hip fracture, and the incidence increased with age.

Although the data did not break down these injuries by gender, WCRI President and CEO John Ruser said women tend to experience fractures at an earlier age than men in the workforce "and more frequently, too."

Indemnity payments also steadily increased by age from less than \$5,000 per claim with at least seven days of lost time to more than \$20,000 for workers aged 55 to 64, but this figure dropped for workers aged 65 and older, which Mr. Savych said could be attributable to these workers re-entering the workforce post retirement at a lower wage.

NCSI Welcomes New Members

The National Council of Self-Insurers' is pleased to welcome new members OptimaSIU and Lockton Companies, LLC.

OptimaSIU is the premier outsource Special Investigation Unit for Fraudulent Insurance Claims. OptimaSIU investigates deceitful insurance claims seeking compensation and benefits that are not righteous.

Lockton Companies, LLC is the world's largest privately held insurance brokerage firm, providing insurance, risk management, employee benefits and retirement services. In addition to its Kansas City, Missouri headquarters, Lockton operates more than 90+ locations in 27 countries.



MESSAGE FROM PHIL & JILL

Many of us have been in workers' compensation for decades yet rarely have we seen situations like we are seeing with the pandemic that has gripped the attention of the world. This will be a true test of compensability for many of our organizations and will present a huge challenge for everyone in the industry. While the pandemic is a problem of epic proportions, I think the bigger issue may be whether some state leaders decide to alter the definition of compensability to cover more and more workers that are affected by the virus so as not to adversely impact the state disability and unemployment funds. We shall see how this all pans out.

That said, I am very hopeful that you are all safe and sound be it as a result of a required shelter in place like we have in northern California, or a voluntary social distancing. Whatever the case may be, please take the necessary precautions to protect yourselves and your loved ones.

At this point we still plan to hold the NCSI 2020 Annual Meeting in Scottsdale so I encourage you to register as we will have a fantastic agenda and hope to have at least one session on the impact of the pandemic. If that changes we will advise everyone as soon as possible. Take good care all and hope to see you soon. *Jill Dulich, Executive Director*

Like it or not, welcome to 2020. Each new year always brings fresh perspectives, new opportunities, challenges and puzzling predicaments and this year we have them all and more. And with the Coronavirus, aka COVID-19, both our professional lives and personal lives could be impacted like never before. Yet, we all still have jobs to do...maybe in a different location than you would normally work, but workers' compensation is one of those professions where we must keep working and be ready to respond to new challenges. The clear balancing acts this year between our professional and personal obligations will definitely be a trial.

NCSI hopes that you are able to stay healthy as your first priority and that your personal/professional juggling act is kept in balance. We will continue to provide you with any breaking workers' compensation news that is critical for your operation in light of everything that is going on. I have read many opinions about what COVID-19 means from an OSHA or workers' compensation perspective but at this point they are

just opinions for your guidance. I urge you to be engaged with us and share any work comp related guidance/experience that may be useful for the self-insured work comp community.

As you know, we have our annual program scheduled for June 7-10 in Scottsdale, AZ. At this point we are hoping that those dates are still far enough in the future where we still have the opportunity to hold the event, and maybe even adjust our agenda that may include some discussion on how the current pandemic is impacting our industry. Rest assured that the health and well-being of everyone is the priority so keep an eye out for communications from Jill Dulich regarding this event. *Phil Millhollon, President*

ADVOCACY **IN ACTION**

Walmart Reports Success With Bulk Settlement Days



As reported in WorkComp Central, NCSI member Walmart Inc., already known for changing the way Americans shop, manufacture goods and manage employees, is now pioneering a new way of settling workers' compensation claims.

It's called "bulk settlement days," in which 20 to 30 injured associates will come to a central location on a given date, usually with their lawyers, and meet with Walmart attorneys and claims managers. Administrative law judges also are present in those states in which they are statutorily required for settlement approvals.

By day's end, most of the claims are settled and both sides can move on, said Janice Van Allen, senior director of risk management for the multinational company. "We settle 75% to 85% of the claims on bulk settlement days," said Van Allen. "It hasn't really been done much before, but we're doing it in just about every state now."

She spoke last week at the New York Self-Insurers' Association's annual meeting in Manhattan, where other employers and comp officials seemed to warm to the approach.

"I think it's a great idea," said Paul Sighinolfi, former director of the Maine Workers' Compensation Board.

With more than 4,700 stores across the country and some 1.5 million U.S. workers, Walmart's risk management department is kept busy with comp claims. The majority are for back strains and other musculoskeletal injuries, Van Allen said. The settlement days have been held most often in states where Walmart has distribution centers with hundreds of workers, including Ohio and Louisiana. The company staged about four events last year in both of those states. Many claims are straightforward, so a multi-claimant settlement day helps speed the process. Van Allen noted that the method has helped reduce Walmart's pending claims by a third and has reduced long-tail claims by as much as 50%.

"Financially, that's very beneficial," she said.

It started as Walmart's initiative, "but now claimants' attorneys are calling us" to set up the events, she said. The plan may sound like a conga-line approach, but Van Allen said it's helpful to both sides to see the injured worker face-to-face and to see the effects — or lack thereof — of injuries. The claimants seem to appreciate the direct interaction and that they can see movement on their claims, she said. Most Walmart associates with claims want to get them settled, get back to work and stop getting calls from adjusters.

Even judges present at the settlement days have told Van Allen that the bulk process appears to be fair to both sides. One judge wrote a letter noting that she never expected to clear 32 cases in a day. "Walmart gets a bad reputation for undercutting workers, but that's not how we do claims," Van Allen said.

The gear-up for the settlement days is important and can involve a lot of work, said Van Allen and Brenda Remington, an assistant vice president at Sedgwick, which manages some of the claims.

"You have to know the facts on the cases beforehand," Remington said.

In a similar approach, some major comp law firms now set aside claims review days to comb through dozens of claims to determine which ones can be settled sooner, said Sarah Thomas, managing partner for Jones Jones LLC, a New York insurance defense firm.

Settlement has become a driving force for the firm, and attorneys are encouraged to "get excited" about settlements and to "always be closing," she said. "We put that on everything now, on notepads and things. It's embedded in everything we do now," Thomas said. "It's been a culture change." She said one key to settling claims is for insurance attorneys to put themselves in the worker's shoes and to pay

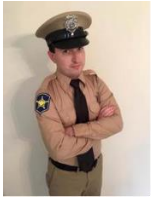
close attention to small details. One claimant, for example, was afraid to settle because of the possibility that he would need more surgery in the future. Thomas said the firm priced that type of surgery and cranked it into the settlement offer, which was then accepted.

A conversation with the claimant is also helpful, she said. In one example, a claimant, through his lawyer, for months refused to accept what Jones said she considered to be a generous settlement offer. After speaking with the worker, Thomas learned that the only real sticking point was that the man wanted to continue attending his company's holiday parties, something that had been an issue because it could have shown he was still attached to the employment, even though he couldn't work full time.

After talking to the employer, the parties were able to work out an arrangement, and a settlement was reached, Thomas said.

MEMBERSHIP NEWS

Wisconsin Council of Self-Insurers' holds Workers' Compensation College



Does Barney Fife's regret over accidentally shooting Ernest T. Bass constitute "extraordinary stress," such that his Post-Traumatic Stress Disorder is compensable under Wisconsin worker's compensation law? Was Gomer Pyle acting within the scope of his employment at Wally's Service Station when he fell while beating a hasty retreat from the old haunted Rimshaw House, or was he acting as the borrowed servant of the County of Mayberry instead? These and many other legal and medical issues will be explored at the 2020 Worker's Compensation College, put on by the Wisconsin Council of Self-Insurers May 11-13 in Wisconsin Dells.

Attendees at the College follow the fictitious worker's compensation claims of Barney Fife and Gomer Pyle from alleged injury to mock hearing. The program includes presentations on topics including course of employment, employer/employee relationship, medical causation, nature and extent of disability, and psychological and vocational science, all with the fictitious claims in mind. A presentation by a physiatrist on spinal anatomy and physiology, pain remediation procedures and narcotics is included. In addition, attendees watch experienced worker's compensation attorneys examine and cross examine witnesses including an orthopedist, a psychologist and a vocational expert, under the supervision of an administrative law judge, using "evidence" from the fictitious claims to illustrate the teaching points in each exercise. The College concludes with a discussion of the settlement value of Gomer's claims by an administrative law judge, experienced attorneys and experienced claims adjusters, followed by a mock worker's compensation hearing, featuring testimony by Gomer, Wally and Andy Taylor.

"Our theory is that attendees find the presentations more consistently interesting because they have the two fictitious cases in mind throughout the program," explains Ron Aplin, the College coordinator. "The College has received good reviews from attendees of all experience levels, most of whom have never been able to attend a hearing."

The College includes "special events" which afford attendees networking opportunities. In 2020, these will include "Aunt Bea's Dinner Cruise" on the Wisconsin River on May 11, and a bus trip to neighboring Baraboo for dinner, music and tours of the haunted Al Ringling Mansion on May 12. The bluegrass group "The Dang-lts" will perform at the dinner event, with a nod toward "The Darlings" who performed on The Andy Griffith Show in the 1960's. On the drive back to Wisconsin Dells from Baraboo, attendees will be driven to a location near the airport (where Ernest T. Bass will be "cooking meth" in a modified Winnebago camper) and witness the accidental shooting occurrence giving rise to Barney's non-traumatic mental stress claim.

Vendor members of the WCSI are encouraged to sponsor the special events, and to invite the self-insured employers for whom they provide services to participate. "We hope that the College helps our members and their TPAs get better results in adjusting worker's compensation claims," Aplin said. "We also use the College as an opportunity to recruit new members."

WCSI employer members pay just \$250 for the College, while vendor members pay \$350. Non-members pay \$450. Meals and special events are included. Attendees are given preferential room rates (through April 11) by the Chula Vista Resort, where the College is being held, and unlimited access to the water park on the premises is included. Registration for the College is still open, and can be achieved online at <https://www.eventbrite.com/e/2020-wisconsin-council-of-self-insurers-workers-compensation-college-registration-69912440993>.

For further information, please contact Ron Aplin at ron.aplin@wicouncilselfinsurers.com.

NCSI Member Southern California Edison creates novel program

Southern California Edison (SCE) has provided electrical service to customers for over 130 years. The electric utility serves more than 14 million people over a vast 50,000 square mile service territory. SCE has been self-insured and self-administered for workers' compensation in California since January 1, 1918.

One of the unique programs the SCE workers' compensation program employs is their 24/7 on-call/emergency protocol. Once notified of the incident the on-call worker's compensation advisor will determine if the injury/illness is work related and whether or not the employee will be admitted to the hospital. The on-call nurse case manager monitors the employee's condition and provides hourly updates as needed. The nurse will manage the employees ongoing medical care to include a transfer to one of SCE's Centers of Excellence within their Medical Provider Network.

Should the injured employee be hospitalized as an in-patient, within 24 hours the workers' compensation advisor will make an on-site visit to the employee in the hospital. The workers' compensation advisor will provide the employee with benefit information and all necessary forms. SCE is committed to self-insurance and self-administration as it affords them the ability to go above and beyond what is required by law, allowing them to treat their employees with compassion and a higher level of care.



CALENDAR OF EVENTS

For more information on these and other upcoming evening, please visit www.natcouncil.com.

MARCH 24 | Mississippi Association of Self-Insurers Spring Conference, 8:00 a.m. - 5:00 p.m., The Country Club of Jackson, 345 St. Andrews Dr., Jackson, MS 39211

MARCH 24 - 27 | North Carolina Self-Insurers Association Annual Conference, 8:00 a.m. - 5:00 p.m., Holiday Inn Resort, 1706 N. Lumina Ave., Wrightsville Beach, NC 28480

APRIL 16 | Illinois Self-Insurers Association Day One of "Two-Day" Basic Nuts & Bolts Workshop, 8:00 a.m. - 5:00 p.m., Hyatt Lodge Conference Center, 2815 Jorie Blvd., Oakbrook, IL 60523

MAY 6 - 8 | Washington Self-Insurers Association Annual Conference, 8:00 a.m. - 5:00 p.m., Three Rivers Convention Center Kennewick 7016 W Grandridge Blvd., Kennewick, WA 99336

MAY 11 - 13 | Wisconsin Council of Self-Insurers Annual Workers' Compensation College, 8:00 a.m. - 5:00 p.m., Chula Vista Resort 2501 River Road, Wisconsin Dells, WI 53965

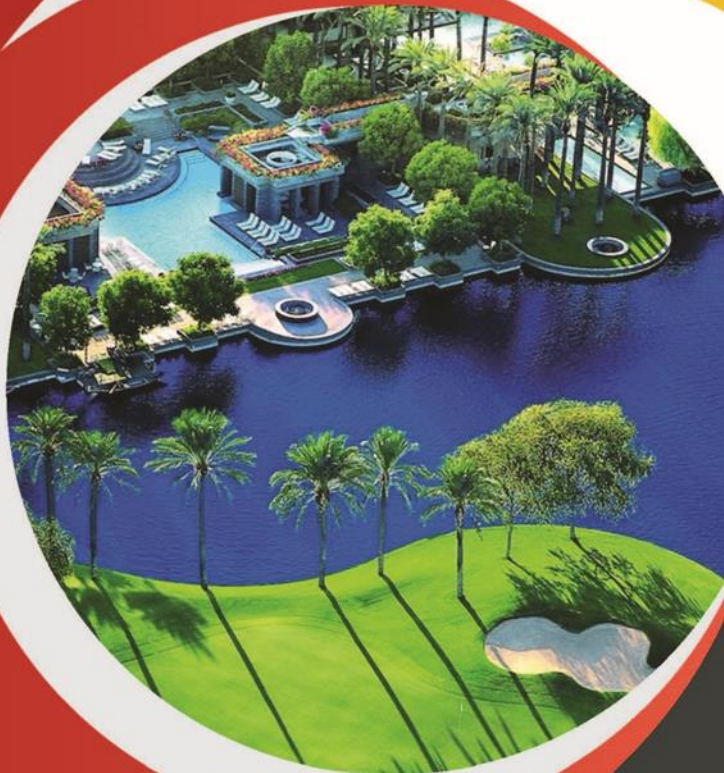
MAY 11 - 13 | Illinois Self-Insurers Association Day Two of "Two-Day" Basic Nuts & Bolts Workshop, 8:00 a.m. - 5:00 p.m., Hyatt Lodge Conference Center, 2815 Jorie Blvd., Oakbrook, IL 60523

JUNE 7 - 10 | National Council of Self-Insurers 2020 NCSI Annual Meeting "How to Build a Better Self-Insurance Program", 8:00 a.m. - 5:00 p.m., Hyatt Regency Resort and Spa at Gainey Ranch, 7500 E. Doubletree Ranch Road, Scottsdale, AZ 85258

JUNE 24 - 26 | Ohio Self-Insurers Association Annual Conference 2020, 8:00 a.m. - 5:00 p.m., Hilton Polaris, Columbus, 8700 Lyra Dr., Columbus, OH 43240



*Meet Us
at the
Oasis...*



NCSI 75th Annual Conference
JUNE 7-10
2020

Hyatt Regency Scottsdale
Resort & Spa At Gainey Ranch
Scottsdale, AZ