



FIRE AGENCIES SELF INSURANCE SYSTEM

Legislative and Industry Updates – June 22, 2010

The following is an update on legislative activity as well as current discussions or actions in the industry.

Case Law Decisions –

Duncan v WCAB

The 6th District Court of Appeal issued a decision November 25, 2009 which established January 1, 2004 as the starting date for Cost of Living (COLA) increases per Labor Code 4659© relating to Permanent Total Disability (PTD) and Life Pension regardless of when the injured worker became eligible for the benefit. The application of the COLA increase back to January 1, 2004 requires an increase each January from 2004 forward in which PTD or Life Pension benefits become payable and will likely lead to benefit rates in excess of the employee's wage at the time of injury.

The Department of Industrial Relations Director, John Duncan, has asked the California Supreme Court to review the case due to the negative impact to the workers' compensation industry. The California Chamber of Commerce has also urged the Supreme Court to review the case as an "unwarranted legal assault" that will cause a significant increase for all California employers and as of March 25, 2010, the California Supreme Court has indicated it WILL REVIEW the decision.

Unless, or until the case is overturned by the Supreme Court, benefits are now due retroactively at the higher rate, imposing a COLA increase back to January 1, 2004 for all applicable cases in which PTD or Life Pension are payable. A failure to pay the benefits at the higher rate will expose the payee to the potential for self-imposed increases in benefits (penalties) and possible assessments for failure to accurately provide benefits. Benefit increases have already begun on applicable cases to avoid penalty exposure.

Industry Discussions –

WCIRB Realignment of Medical Payments

The Workers' Compensation Insurance Rating Bureau (WCIRB) has recommended amending the Uniform Statistical Reporting Plan (Unit Stat Reports) as of July 1, 2010, and moving costs associated with utilization review (UR) and medical bill review out of the "Medical" category for payment on workers' compensation claims and placing them in the "Adjustment" (or Allocated Expense) payment category. The Unit Stat Reports are used to establish experience modifications (X-Mods) for insured programs based on loss history.

This change to posting of what have historically been "Medical" payments will have an impact on individual employer rates and is expected to be implemented on new coverage periods as of July 1, 2010.

Staff has continued to follow this change for impact to self-insured programs and the transition to posting these former “Medical” payments in the “Adjustment” category has not been adopted for self-insured programs at this time and it appears unlikely this change will be addressed before the end of the fiscal year. A change to the FASIS Memorandum of Coverage has been recommended to accommodate this change should it be implemented by Self Insurance Plans.

Workers Satisfied with Care.

The Division of Workers’ Compensation (DWC) released a study in May 2010 of nearly 1,000 injured workers who were surveyed from May to July 2008, indicating that the majority were satisfied with the care provided for their industrial injuries. The DWC acting Administrative Director, Carrie Nevans also stated however, that “this study does show that when workers have barriers inhibiting access to care they are more likely to be off work longer.”

While the majority was satisfied with their overall care, nearly half of those surveyed experienced barriers to accessing care, with these barriers relating to an approximate 60% increase in the duration of time loss (26 days increased to 43 days). It was noted that those experiencing access barriers included older workers, those with multiple injuries, language issues or had an attorney involved in their case.

Legislative Updates -

SB 1026 – Wyland. Vocational Rehabilitation.

This bill was originally identified as involving Vocational Rehabilitation and made a technical, “nonsubstantive” change to Labor Code 4651.2. However, the bill was actually established as “place holder” and no longer involves or impacts workers’ compensation.

AB 1603 – Solorio. Temporary Disability and Offers of Work.

AB 1603 is the first new bill of 2010 and proposes to require payment of Temporary Disability (TD) benefits up to 60 days AFTER the employee has been notified their condition is permanent and stationary until the employer has made a decision on offering regular, modified or alternative work. TD benefits were established to pay an injured worker for their temporary time loss from work during recovery.

The payment of this benefit AFTER an injured worker’s recovery will depend upon not only the employer’s prompt offer of work, but also rely upon more timely preparation of final medical reports outlining work restrictions from which the employer can make considered decisions on offering appropriate work. Currently, final medical reports, providing sufficient information to make an offer of work may take weeks to months to receive. Although it remains active, the Committee has postponed Hearings on this bill.

This bill is opposed by the California Chamber of Commerce, the California Association of Counties (CSAC) and the California Manufacturers and Technology Association (CMTA).

AB 1696 – Berryhill. Public Safety Workers Extension of Benefits to Dependent Children

Current law provides for the payment of dependent benefits for minor children up to 18 years of age. This bill proposes to continue payment of death benefits for only the minor dependent children of Public Safety Workers while they are in high school up to 19 years of age.

This bill is supported by the California Professional Firefighters who state “If the child is still in high school, it’s our belief that for their future and the continuity of the family they should be able to finish high school without having to suffer the wrenching impact of losing a significant economic resource,” The bill is also supported by the CDF Firefighters Association Local 2881(Co-Sponsor); California Association of Highway Patrolmen; and the California State Firefighters' Association (CSFA).

However, in opposition the California Coalition of Workers’ Compensation (CCWC) states they “can identify no factor that makes the children of public safety officers more deserving of additional survivor benefits than the children of any other deceased employee.” The bill is also opposed by CSAC Excess Insurance Authority (CSAC-EIA).

The bill is in committee at this time.

AB 2253 – Coto. Cancer Presumption for Firefighters.

This bill has been amended to propose to extend the current cancer presumption for firefighters from five years to a maximum of 10 years, allowing for a year of eligibility for the presumption for each year of active service. This presumption is now applied to certain employees who develop cancer (or cancer manifests) during their employment period and there was exposure to a known carcinogen. The presumption is extended to employees for a period following termination of service for three calendar months for each full year of requisite service, not to exceed 60 months starting the last date they worked in the specified capacity.

It is noted in the Legislative analysis that the author and sponsors of the bill state “the original purpose of the workers' compensation cancer presumption for public safety workers and firefighters, which was enacted over 20 years ago, was to recognize that it was probable that many cancers that afflicted safety officers were job-related, but due to the passage of time during the latency period, it was difficult to prove that relation to the job. Subsequent research in the cancer arena suggests that carcinogens can impact the body well beyond their initial impact and well beyond the five-year window in current law.”

The same analysis also notes, “Dozens of city and county agencies oppose this bill. According to opponents, public entities that employ safety officers already face a nearly impossible burden in attempting to defend presumption claims. Cities and counties statewide are struggling with budget deficits. In addition, the opposition is alarmed at the fiscal burden this bill creates by lifting the five-year presumption cap.”

The bill is supported by the many organizations, including California Professional Firefighters (Sponsor); California Association of Highway Patrolmen (Co-Sponsor); CDF Firefighters Local 2881 (Co-Sponsor); Peace Officers Research Association of California (Co-Sponsor); Association for Los Angeles Deputy Sheriffs; California Applicants' Attorneys Association; California Nurses Association/National Nurses Organizing Committee; International

Association of Fire Fighters; National Peace Officers and Firefighters Benefit Association; and Orange County Professional firefighters' Association.

The bill is opposed by Acclamation Insurance Management Services (AIMS); Allied Managed Care (AMC); California Association of Joint Powers Authorities; California Chamber of Commerce; California Coalition on Workers' Compensation; California Highway Patrol; California Special Districts Association; California State Association of Counties; City of San Marcos; City of Santa Rosa; City of Vista; County of Orange Board of Supervisors; CSAC Excess Insurance Authority (a California Joint Powers Authority); Department of Industrial Relations; Howard Jarvis Taxpayers Association; League of California Cities; Los Angeles County Board of Supervisors; and Regional Council of Rural Counties

The bill has been referred to committee.

AB 2397 Labor Code 4850 Salary Continuation.

Existing law under Labor Code 4850 provides that when certain public employees are disabled, whether temporarily or permanently, by injury or illness arising out of, and in the course of, their duties, they become entitled to a leave of absence without loss of salary in lieu of temporary disability payments for the period of disability up to one year. This bill proposes to extend the period of this leave with pay for one additional year, with mutual agreement between the employee and employer. In some circumstances this may entitle an injured worker to up to four years time off from work when combining 4850 benefits and Temporary Disability benefits.

The bill is opposed by the California Association of Counties (CSAC) and the California Association of Joint Powers Authorities (CAJPA) who indicate “No one is saying it's not a worthy group, but we can't afford it.”

The bill is supported by the Peace Officers Research Association of California who have stated “This is not something that would be casually done, but in the extreme scenarios. . . “It would be used on a limited basis, but we do see a need for it.”

The bill has been referred to committee.