

SUMMARY of NEW S.C. WORKERS' COMPENSATION LAW

EFFECTIVE DATE: Injuries on or after July 1, 2007.

CHANGES/ADDITIONS:

Section 1-23-600 (D): Appeals from the Full Commission will go directly to the Court of Appeals, bypassing the Circuit Court.

Section 38-55-530(D): Defines false statement or misrepresentation to include but not be limited to, intentional (1) false report of business activities; (2) miscount or misclassification by an employer of its employees; (3) failure to timely reduce reserves; (4) failure to account for Second Injury Fund or subrogation reimbursements; or (5) failure to provide verifiable information to public or private rating bureaus and the Department of Insurance. An undeserved economic benefit or advantage includes, but it not limited to, a favorable insurance premium, payment schedule, insurance award, or insurance settlement.

Section 38-55-540: Provides punishments and fines for false statements or misrepresentations resulting in an undeserved economic benefit or advantage (see 38-44-530). There are **criminal** penalties, along with fines and restitution.

Section 38-55-560(E): Attorney General's office authorized to hire a forensic accountant for the Insurance Fraud Division.

Section 42-1-160: Changes stress, mental injuries, heart attacks, strokes, embolisms and aneurysms:

- (B) Stress, mental injuries, mental illness to be compensable, must show:
 - (1) that the employment conditions were extraordinary and unusual in comparison to the ordinary conditions of that particular employment
 - (2) the medical causation between the stress, mental injury, or mental illness and the stressful employment conditions by medical evidence.
- (C) Stress, mental injuries, heart attacks, strokes, embolisms, and aneurysms are not compensable if they arise out of events incidental to normal employer/employee relations
- (D) Stress, mental injuries, or mental illness alleged to be aggravated by a work injury are not compensable unless:
 - (1) admitted by the employer/carrier;
 - (2) noted in a doctor's notes to be related;

- (3) found to be connected by a psychologist or psychiatrist; or
 - (4) noted to be causally related in a medical report
- (E) In medically complex cases, employee must show by medical evidence that an injury arose in the course of employment. Medically complex means sophisticated cases requiring highly scientific procedures or techniques for diagnosis or treatment, **excluding** MRIs, CAT scans, x-rays or other similar diagnostic techniques.
- (F) Accident does not mean repetitive events. Any injury or disease attributable to such causes must be compensable only if culminating in a compensable repetitive trauma injury pursuant to Section 42-1-172 or occupational disease.
- (G) Medical evidence means expert opinion or testimony stated to a reasonable degree of medical certainty, documents, records or other material that is offered by a licensed health care provider.

Section 42-1-172: **NEW AND IMPORTANT******

- (A) Repetitive trauma means an injury which is gradual in onset and caused by the cumulative effects of repetitive traumatic events.
- (B) An injury cannot be compensable repetitive trauma injury unless a commission finds by a preponderance of the evidence that a causal connection between the repetitive activities while working and the injury is established by medical evidence
- (C) Defines medical evidence (as above in 42-1-160)
- (D) Repetitive trauma injury arises out of employment only if it is established by medical evidence that there is a direct causal relationship between the condition under which the work is performed and the injury.
- (E) Upon MMI, benefits may be awarded under Sections 42-9-10, 42-9-20 or 42-9-30,

Section 42-1-360: defines exempted employees, removes Textile Hall Corporation employees, adds railroad employees, adds agricultural product salesperson, adds real estate salesperson, adds federal employees, adds tractor-trailer independent contractors.

Section 42-1-700:

******NEW******

- (A) Injured or affected body parts must be set forth as specifically as possible in Notice of Claim and/or Request for Hearing (Form 50).
- (B) A commissioner can determine that a body part not listed is compensable if:
 - i. The condition is proven by a preponderance of the evidence to have arisen from the injuries as set forth on the form 50;
 - ii. It is proven to the satisfaction of the commissioner that the employee had no knowledge of the injury on the date of the completion of the form 50; however, the employee must amend the form 50 upon discovery; or
 - iii. The employee is represented and it appears on the Prehearing Brief
- (C) the form 50 must be signed by the claimant, if not represented, and claimant attorney, if represented and assert that the content is accurate and true.

Section 42-1-705:

******NEW******

- (A) Form 51 must be as specific as possible and cannot invoke "all defenses".
- (B) A commissioner can consider a defense not listed on a form 51 if:
 - i. It is proven the defendants had no knowledge;
 - ii. The defense is set forth on a timely filed Prehearing Brief.
- (C) The 51 must be signed by an attorney, with verification, if the employer is represented and by the employer if unrepresented.

Section 42-3-20:

Provides for appointment of a deputy commissioner in certain cases, deals with the appointment of the Commission Chairman.

Section 42-3-60:

Authorizes appointment of an administrative assistant for each commissioner.

Section 42-3-175: ****NEW AND IMPORTANT****

(A)(1) If a claimant brings an action to enforce an order authorizing medical treatment or payment of benefits and the commission determines that an insurer....or an adjuster, without good cause, failed to authorize medical treatment and/or pay benefits when ordered to do so by the commission, the insurer.....or the adjuster must pay the claimant's **attorneys' fees and costs** of enforcing the order. The commission may impose **sanctions** for willful disobedience of an order, including, but not limited to, a fine of up to \$500 per each day of violation.

(2) The commission must notify the Department of Insurance of an adjuster's failure to authorize and pay benefits for medical treatment. If the Director of the Department of Insurance determines that there has been a violation of any provision of Title 38, he may impose penalties for each violation.

(B)(1) If the commission determines there is a "pattern" of an insurer failing to pay benefits pursuant to an award, the chairman must notify the Department of Insurance. The director must then hold a hearing to determine if there was good cause for non-payment. If intentional and occurs 3 or more times in a 2-year period, the director can revoke the license of the insurer to do business in the state.

- (2) Defines "pattern" where there is failure to pay:
- (a) for individual claims;
 - (b) for a claim in which the claimant had to request enforcement of an award;
 - (c) any combinations of (a) and (b).

Section 42-3-230: deals with destruction of the commission's files, records must be retained for 15 years.

Section 42-5-40: deals with fines for uninsured employers

Section 42- 9-5: an award must be based on specific and written detailed findings of fact substantiating the award

Section 42- 9-10: **IMPORTANT CHANGE******

- (B) the loss of both hands, arms, **shoulders**, feet, legs, **hips**, or vision in both eyes, or any two thereof, constitutes total and permanent disability,,,

Section 42- 9-30: **IMPORTANT CHANGE******

- A shoulder is worth 300 weeks
- A hip is worth 280 weeks
- If permanent partial disability of the back is 49% or less, the back is 300 weeks.
- If permanent partial disability of the back is 50% or more, the back is 500 weeks.
- If permanent partial disability of the back is 50% or more, there is a **rebuttable** presumption that employee is permanently and totally disabled.

Section 42- 9-35: **NEW******

- (A) The employee must establish by a preponderance of the evidence that
- (1) the subsequent injury aggravated the preexisting condition or permanent physical impairment, or
 - (2) the preexisting condition or permanent physical impairment aggravated the subsequent injury.
- (B) The commission may award benefits where there is a permanent physical impairment or preexisting condition and subsequent injury; however, if the subsequent injury is limited to a single body part or scheduled member under 42-9-30, except for total disability to the back, the subsequent injury must impair or affect another body part or system in order to obtain benefits in addition to those provided in 42-9-30.
- (C) defines medical evidence
- (D) knowledge of the preexisting impairment of employer is irrelevant
- (E) limits award to scheduled member where the subsequent injury affects one body part

Section 42- 9-60:

Burden of proving intoxication or willful intent to injury on person asserting that defense.

Section 42- 9-150:

NEW

Where an employee sustains a subsequent injury under Section 42-9-30 or the 2d paragraph of 42-9-10 in a different employment, he can only receive an award for the degree of disability resulting from the later accident, unless he qualifies for more benefits under 42-9-35 (subsequent injuries).

Section 42- 9-170:

(A) Where an employee sustains a subsequent injury under Section 42-9-30 or the second paragraph of 42-9-10 in the same employment, he cannot receive more than a total of 500 weeks. If the employee incurs total disability through the loss of certain members in successive accidents, the employer is only liable for the subsequent injury except that the employee may receive additional benefits if qualified for pursuant to 42-7-310, 42-9-400, and 42-9-410---only until June 30, 2008.

(B) On July 1, 2008, the employee can only get additional benefits if he qualifies under 42-9-35.

Section 42- 9-390:

A clincher need only be approved by one commissioner if the employee is unrepresented. If represented, the agreement only has to be filed with the Commission.

Section 42- 11-10:

Changes to occupational disease requirements. Employee must show that the disease arose directly and naturally from exposure in this State to the hazards peculiar to the particular employment..

No compensation is payable unless the employee suffers disability under 42-9-10, 42-9-20 or 42-9-30.

Section 42- 15-20:

Adds to the 90 day notice provision that an employee must give notice of a repetitive trauma accident with 90 days of the date the employee discovered or could have discovered that his condition is compensable, unless reasonable excuse is made to the commission and the commission is satisfied that the employer was not prejudiced by lack of timely notice.

Section 42-15-40:

Adds that the right to compensation is barred for a repetitive trauma injury unless the claim is filed within 2 years after the employee knew or should have known that the injury is compensable but no more than 7 years after the last date of injurious exposure, regardless whether the employee was aware that the repetitive trauma injury was the result of his employment.

Section 42- 15-60:

(A) There must be expert medical evidence that a treatment will tend to lessen the claimant's period of disability. Carrier must provide any medical care or treatment that is considered necessary by the attending physician unless otherwise ordered by the commission for good cause shown. Employee must comply with an "evaluation" as well as treatment, etc.

(B)(1) If settled on a form 16, the employer is not required to provide further medical treatment after one year from the date of full payment unless the form specifically notes otherwise.

(2) Each award must contain a finding as to whether or not further treatment must be provided. If required, the treatment to be provided must be set forth with as much specificity as possible in the order.

(3) Future medicals are not required where there is a lapse in treatment by an authorized physician over one year unless:

- (a) the settlement agreement or commission order provides otherwise;
- (b) the employee has made reasonable attempts to obtain further treatment

Section 42- 15-80:

Adds (B): the commission shall promulgate rules regarding the role of rehabilitation professionals and other similarly situated professionals.

Section 42- 15-95:

(A) Any employee who seeks treatment under the Act is considered to give consent for release of medical records relating to that treatment.

(B) A health care provider can discuss medical history, diagnosis, causation; course of treatment, prognosis, work restrictions, and impairments with the carrier, carrier's attorney, rehab professionals, or the commission without the employee's consent but the employee must be:

- (1) given notification and has the ability to attend/participate; and
- (2) advised of the nature of the discussion in advance; and
- (3) provided with a copy of written questions and provider's response.

Any discussion must not conflict or interfere with employee's examination or treatment. Information obtained via this section does not breach the physician's duty of confidentiality.

(C) Any information or documents, etc obtained in violation of this section must be excluded from proceedings under the Act.

Section 42- 17-60: Payment on Appeal

On appeal from the Commission on questions of law, employer is required to make weekly payments of compensation and to provide medical treatment ordered by the commission. Interest accrues on an unpaid portion of the award.

Section 42- 17-90: Change of Condition

Adds:

(B) a motion for change of condition in a repetitive trauma claim must be made within one year from the date of the last compensation payment for the injury.

(C) a motion for change of condition in an occupational disease case must be made within one year from the date of the last compensation payment for the disease.

Section 42- 9-400: Second Injury Fund – **IMPORTANT CHANGES******

The subsequent injury must aggravate the preexisting impairment and can no longer “combine with”.

Removes arthritis as a listed condition.

Removes Paragraph 34(a) and (b) conditions.

Requires specific information to be contained in the written notice of claim:

- date of accident
- employee's name
- employer's name and address
- insurance carrier's name, address, and the NCCI code
- carrier's claim number, policy number, and policy effective date

The carrier must reduce the reserves and report to NCCI prior to reimbursement.

SIF director must quarterly submit information to NCCI.

NCCI must report discrepancies to the Department of Insurance.

Section 42- 7-200: Uninsured Employers' Fund

Section 42- 7-320: **ABOLISHES SECOND INJURY FUND******

Terminates the SIF as of July 1, 2013. The Fund will not accept any claims for reimbursement after 12/31/2011. The Fund cannot consider a claim for reimbursement for any injury occurring after 7/01/08.

No claims can be submitted for reimbursement after 12/31/2010.

All information for the Fund's consideration must be submitted by June 30, 2011.