

Risky Business

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Did You Know?

Ohio Injury Stats 2006:

- Allowed injuries were down 10,962 claims from 2005
- Medical benefits paid in 2006 equaled \$848,700,000

Source Ohio BWC

Claim Cost Facts:

- Head injuries are the most costly workers' compensation claims by part of body. The average head injury costs \$46,500 per claim.

Source www.nsc.org

BWC Declares Flood Relief

Ohio Bureau of Workers' Compensation (BWC) announced that employers located in nine Ohio counties included in a state of emergency declaration during recent flooding may be eligible for relief in paying the first half of their 2007 workers' compensation premiums. In addition, employers may also qualify for document recovery assistance. This Emergency Flood Initiative (EFI) will be in effect until Oct. 31, 2007.

"Those whose businesses were affected by the

devastating floods in northern Ohio should not be penalized because they were unable to access files or compile data to pay their workers' compensation premiums by the August 31, 2007 deadline," said BWC Administrator Marsha Ryan. "This initiative will make it possible for these businesses to get back on their feet without the worry or fear of consequence for their late payment."

Counties included in the state of emergency declared by Governor Ted Strickland on Aug. 22, 2007, are Allen, Crawford,

Hancock, Hardin, Putnam, Richland, Seneca, Van Wert and Wyandot.

Employers in the affected counties that can demonstrate the flooding caused them a delay in paying their premium may request that their BWC policies have the related lapse period removed and any associated penalties abated. **Employers must submit requests by Oct. 31, 2007.**



Group Rating...Changes for 2008 Confirmed

The BWC has finally publicly announced its intentions to modify the group rating program for policy year 2008. See this link for the official BWC release:

<http://www.ohiobwc.com/home/current/releases/2007/092707.asp>

Unfortunately, TPAs and Group Sponsors are still in the dark as to the extent of the changes for the first year and all subsequent years.

What the BWC has announced is that changes for policy year 2008 will occur. These changes will involve shifting the credibility table down as much as an additional 10%.

The BWC's official release states that the discount will be reduced to "not less than 80%". Obviously, this means that it will be anything from 89% to 80% for policy year 2008.

In addition to the increased premiums that will impact more than 100,000 employers across the state, the BWC's decision is also impacting the TPA marketing process for the 2008 policy year.

Since TPAs will not have the official credibility table until November 2007, at the earliest, they are unable to make projections on employers' potential savings. These projections, that were customarily received in October, will now be delayed at least a full month.

Sadly, some TPAs are compounding this already difficult issue by forwarding employers incorrect quotes. These quotes are using the prior year's credibility numbers and significantly overstate the savings the employers will realize.

Please beware of any quote you receive from a TPA prior to the official credibility tables being released. These TPAs are attempting to influence employers with incorrect data and take advantage of the BWC's delay to increase their competitive advantage.

V&A will continue to update our clients once we learn more about how the BWC intends to modify group rating in 2008.

Providing the personal touch in Workers' Compensation claims and policy management



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Wage Loss Policy Update

- BWC has temporarily stopped conducting reviews of job contacts listed on C141's due to concerns regarding release of information and the possibility of jeopardizing an IW's chances of obtaining employment.
- A new process will be implemented soon with instructions to CSS's to avoid issues with release of information or jeopardizing an injured worker's chance of obtaining employment.

"Aggravation" and "Aggravation of a Pre-existing Condition"

One of the major areas of contention in workers' compensation is determining whether a workplace injury (exposure) "aggravated" or created an "aggravation of a pre-existing" condition in an employee. While this determination is important in the administrative and legal sense, the support (evidence, opinion) for this determination is usually delegated to physicians. In many cases there may be no or limited objective criteria on which to base these medical opinions. The legal definitions were modified by the passage of Senate Bill 7 by the Ohio General Assembly in 2006. Senate Bill 7 defines "Injury" as follows:

(C)"Injury" includes any injury, whether caused by external accidental means or accidental in character and result, received

in the course of, and arising out of, the injured employee's employment. "Injury" does not include:

- Psychiatric conditions except where the conditions have arisen from an injury or occupational disease;
- Injury or disability caused primarily by the natural deterioration of tissue, an organ, or part of the body;
- Injury or disability incurred in voluntary participation in an employer-sponsored recreation or fitness activity if the employee signs a waiver;
- *A condition that pre-existed an injury unless that pre-existing condition is substantially aggravated by the injury. Such a substantial aggravation must be documented by*

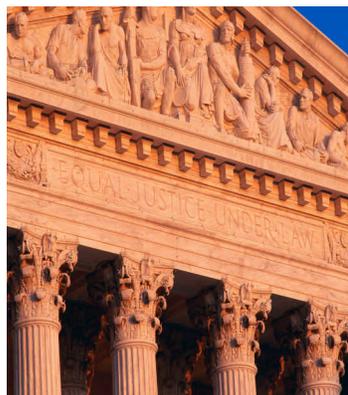
objective diagnostic findings, objective clinical findings, or objective test results.

As a result of this change in the statute for claims with date of injury on or after the effective date of the statute (October 11, 2006), only pre-existing conditions that are "substantially aggravated by the injury" shall be compensable. To be "substantially aggravated", there must be documented objective findings to support the aggravation. In the absence of objective findings or test results, the pre-existing condition would not be considered "substantially aggravated" and therefore, disallowed.

Excerpt from BWC Memo

Supreme Ct. Reversal

On September 27, 2007, the Ohio Supreme Court reversed its decision in *State ex rel. Gross v. Indus. Comm.*, 112 Ohio St.3d 65, 2006-Ohio-6500 (*Gross I*). *Gross I* held an employee, who repeatedly violated a



safety rule, voluntarily abandoned his job, thereby precluding receipt of TTD compensation.

After accepting reconsideration, the Court reversed *Gross I* and reinstated TTD compensation because the safety violation which led to discharge was causally related to the injury, and therefore, the departure from work was involuntary.

Under well settled precedent, involuntary departure from work will not preclude TTD compensation.

MIRA II

HB. 100 mandated a change in the BWC's lost time reserving system by June 30, 2008.

The law requires a reserving system that will be more "transparent and predictable". The present system's major flaws center around the fact that the system is proprietary and thus employers have no idea why reserves spike dramatically.

MIRA II is supposed to alleviate this issue and provide "predictors" for calculating reserve costs.