



IMA ALERT

NATIONAL TRENDS IN WORKERS' COMPENSATION

SUMMER 2018



STATES REJECT ARGUMENTS TO PAY FOR MARIJUANA TREATMENT FOR WORKERS' COMPENSATION INJURIES, WHILE OTHERS PASS NEW MEDICAL MARIJUANA LAWS

Now totaling 30 states and the District of Columbia, both Maine and Oklahoma recently passed laws which allow the sale of medical marijuana. Meanwhile, California becomes the 9th state to allow legal recreational marijuana.

As states continue to adopt new marijuana laws, the courts are deciding whether or not employers and insurance carriers will pay for cannabis treatment in the case of work-related injuries. Maine's Supreme Court overruled a lower court in June in *Bourgoin vs Twin Rivers Paper Company*. They ruled that if a carrier or employer were required to pay for the marijuana treatment prescribed for the workers' compensation injury, it would essentially be ordering the employer to violate a federal law, putting them at risk for "aiding and abetting."

Per NCCI's June, 2018: Court Case Update, they note that Florida and North Dakota are in alignment with the above decision, passing legislation in 2017 to cease payments for medical marijuana prescribed in workers' compensation cases.

In contrast, however, NCCI lists five states that have now authorized cannabis for treatment in workers' compensation injuries; CT, MN, NJ, NY and NM.

As courts are ruling on these new laws, they are also setting uniquely different precedents in each state, regarding the level of protection that businesses may have in terminating employees for use of the drug.

While Colorado's Supreme Court upheld the termination of employees that violate company drug-usage policies, Arizona, Connecticut, Massachusetts and Montana all have cases pending in district and appellate courts that will be pivotal in determining any similar action employers can take in these states. It is crucial that employers seek guidance from labor law attorneys in their states, to assure they are in compliance with these evolving laws. **For more information on the cases being heard in the aforementioned states, please contact your IMA representative.**



TEXAS EXTENDS THE EXPIRATION OF NEGOTIATED MODS

Texas has historically allowed for employers to work with their agents and their carriers to “negotiate” the experience modification factor. This factor, based on each employer’s injury experience, is applied to their workers’ compensation policies to develop annual premiums. **While these agreements did not impact the actual mod factor, produced by the National Council on Compensation Insurance (NCCI), it would adjust the final premiums that Texas employers would pay to their carrier.**

The ability to negotiate mods was set to expire on July 1, 2018. As a result of a petition put forth by the Independent Insurance Agents of Texas, the Texas Insurance Commissioner issued an order in late June, that negotiated mods would be extended until July 1, 2019.



BROAD LEGISLATION IN U.S. ON “MARKETPLACE CONTRACTORS”

While at least eight states introduced legislation this year to address aspects of marketplace contractors, according to the National Council on Compensation Insurance (NCCI), Iowa (SB2257), Florida (HB7087) and Tennessee (SB1967) all passed new laws this year to address this burgeoning new market segment.

Often referred to as the “on demand” or “gig” segment of our economy it includes companies such as Uber, Lyft, Handy, Taskrabbit and DoorDash, to name just a few.

These new laws are an attempt to clarify the relationship of the workers in these entities and whether or not the platform “parent” is their statutory employer, or, if these workers are independent contractors and not subject to workers’ compensation laws.

Conflict continues as some workers in these gig companies wish to have the benefits provided by workers’ compensation, while others point to their autonomy and “lack of control” by the parent company, giving them the freedom to operate as an independent contractor. New laws and cases being heard across the nation will help define this relatively new class of workers, but the results on how workers’ compensation coverages apply will likely vary by state.



WORKERS' COMPENSATION RATES CONTINUE TO DECLINE ACROSS THE NATION

According to the National Council on Compensation's (NCCI) "State of the Line," **this spring, results continue to improve in the workers' compensation line, with the combined loss ratio dropping, from 115% in 2010 to 94% in 2016 and a preliminary 89%, for 2017.**

These results are impacted by another year of reduced frequency of workers' compensation claims, along with a reduction in lost-time injuries.

Meanwhile, the California Workers' Compensation Insurance Rating Bureau just released their own 2018 "State of the System" report, showing, despite several years of rate decreases, California still has the highest workers' comp. rates in the nation. According to the study, California has 11% of the country's workforce, but pays 20% of the nation's workers' compensation premiums. While across the nation, the frequency of indemnity losses declined by 27%, California's remained flat and was impacted by an actual increase in losses in the Los Angeles region, along with a spike in cumulative injury claims, such as carpal tunnel injuries.

The continued reduction in workers' compensation claims costs has resulted in rate reductions in numerous states. Per NCCI's 2018 state advisory session in May, there were sixteen states with rate-percentage reductions in the double-digits; Alabama, Colorado, Connecticut, Illinois, Indiana, Maine, Maryland, Montana, New Hampshire, New Mexico, North Carolina, Oklahoma, Oregon, Tennessee, Texas and West Virginia.

ABOUT THE AUTHOR

Sonja Guenther has forty years in the insurance industry and is a recognized national expert in the field of workers' compensation insurance. She is a published author and has written numerous articles on workers' compensation topics. She is committed to education on workers' compensation issues and is an awarded speaker to both local and national groups. She has helped to draft several pieces of workers' compensation legislation, testifying on many occasions before state regulators and legislators.



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