

LEGISLATIVE UPDATE

HOUSE BILL 805 (HB 805)

The Illinois General Assembly concluded their fall veto session on November 18, 2004. Among the many legislative initiatives that were discussed in the veto session was House Bill 805 (HB 805). No action was taken on HB 805 during the veto session. The 93rd General Assembly will reconvene on January 10 and 11, 2005. It is possible that action will be taken on HB 805 at that time.

The 94th General Assembly will convene the 2005 spring legislative session on January 12, 2005. If HB 805 has not received action from the Senate prior to that date, the bill will die. Proponents of this measure will be forced to reintroduce this measure and attempt to pass it through each house of the legislature once again.

BACKGROUND ON HB 805

HB 805 proposes 35 changes to the Illinois Workers' Compensation Act. The most significant changes are summarized below.

- Permanent Partial Disability (PPD) Rate Increase

Under the terms of HB 805 the PPD rate will increase to 66-2/3% of average weekly wage (from 60%). Additionally, the bill proposes including overtime wages in the calculation of average weekly wage and sets a higher minimum PPD rate equal to 66-2/3% of the federal minimum wage multiplied by 40 hours per week.

Based upon figures contained in the 2003 Annual Report of the Illinois Industrial Commission, the proposed PPD changes contained in HB 805 will result in a 21% increase in permanency costs – an increase that could reach \$380 million for employers annually.

- Overtime

Under the language of HB 805, overtime pay would be included in the computation of the Average Weekly Wage. Currently, overtime wages are either excluded from Average Weekly Wage computations or included at a “straight time” rate. Since all workers compensation benefits are calculated from the Average Weekly Wage, the inclusion of overtime pay will significantly increase the base from which benefits are determined.

- 8(d)(1) (Wage Loss)

In addition to the increased exposure associated with the higher permanency rate, claims for “wage loss” under Section 8(d)(1) of the Illinois Workers' Compensation Act (Act) will increase significantly. Illinois is considered to be a high-income state in regard to employee earnings. This amendment doubles the “wage loss” award for those employees earning high wages. In its current form, this amendment affords an individual who returns to the workforce on a full-time basis following an industrial injury the same rate of compensation received by an individual who is permanently and totally disabled or the beneficiary of an employee whose death is the result of a workplace injury. In fact, the average weekly benefit paid to these individuals would be greater than \$1,000 per week.

- Increased Penalty Exposure

The Illinois Workers' Compensation Act presently provides for penalties for unreasonable or vexatious conduct on the part of employers. Penalty provisions presently can be assessed at a rate of \$10.00 per day with a total cap on penalties of \$2,500.00.

Under the terms of HB 805, penalties would be available to claimants and their attorneys in every disputed case. Therefore, not only are the fixed costs associated with the Illinois workers' compensation system substantially increased (see above), but also for those employers that choose to dispute their claims – even in good faith – penalties of \$30.00 per day (total cap of \$16,425.00) will be assessed as a result of employers exercising their statutory and constitutional right to proceed to a full hearing. These proposed changes to the penalty provisions of the Illinois Workers' Compensation Act not only strip employers of their due process rights to present a valid defense, they also will result in a estimated \$50 million increase in exposure for Illinois employers.

- Medical Fee Schedule

HB 805 proposes abolishing balanced medical billing in the workers' compensation setting and establishes a medical fee schedule allowing employers to pay 90% of the 80th percentile of the usual and customary medical fees.

Proponents of HB 805 allege that the cost savings contained in the proposed medical fee schedule will offset the increased exposure in permanency and penalty costs for employers. The Illinois State Chamber of Commerce has concluded that any alleged medical cost savings of HB 805 will not be sufficient to offset the substantial increase in benefit costs.

The drafters of HB 805 have overlooked the fact that the overwhelming majority (nearly 70%) of Illinois employers are already benefiting from cost-savings agreements with medical providers which are equal to or more beneficial than the reimbursement rate contained in HB 805. Thus, little or no cost reduction is provided to a majority of Illinois employers under the terms of this bill.

OPPONENTS & NEXT STEPS

In the veto session HB 805 required a 3/5 vote for approval (36 of 59 members). For the session days of January 10 and 11, 2005, a simple majority (30 members) is all that is needed to obtain passage of this bill.

The following is the most recent list of opponents to HB 805:

AHEAD, a coalition of 18 construction associations
 Ameren
 Archer Daniels Midland
 Associated Builders & Contractors
 Bridgestone/ Firestone NA
 Carpenter Contractors of America
 Caterpillar Inc.
 Chicago Board of Education
 Chicagoland Chamber of Commerce
 City of Chicago
 Concrete Contractors Association of Greater Chicago
 Daimler- Chrysler
 Deere & Co.
 DuPage County Mayors & Managers
 Edward Hines Lumber
 E.L.A. Security
 Employment Law Council
 Flex-line Automation, Inc.
 Ford Motor Co.
 General Motors
 Homebuilders Association of IL
 Illinois Chamber of Commerce

Illinois Lumber & Material Dealers Association
Illinois Municipal League
Illinois Press Association
Illinois Self-Insurers Association
Innovative Staff Solutions
International Truck & Engine Corp.
Metro Counties
Mitsubishi Motor Manufacturing of North America
NICOR
Professional Independent Insurance Agents of IL
Property Casualty Insurers Assn. of America
Quebecor World
South Suburban Mayors and Managers
Southwestern Illinois Employers Association
Tempco Products Co
United Airlines

Working with members of both political parties in the Illinois Senate, we have assisted in building opposition to HB 805. The Senate Republican caucus was unanimous in its opposition to this bill. Additionally, numerous key Democratic senators remain opposed to the increased costs to business contained in this Democrat-sponsored measure.

When the Illinois Senate reconvenes in January we will continue our vigorous opposition to HB 805.

We urge you to contact your local elected officials to voice your opposition to the increased costs for employers proposed in HB 805. Please contact Mark Wiedner or John Pearman with any questions you have regarding HB 805.
