



REVIEWED COSTS

g.c.g. risk management, inc.

WORKERS' COMPENSATION, INSURANCE, CLAIMS AND LAW FOR THE EMPLOYER

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PAID FAMILY LEAVE BENEFITS BEGIN JANUARY 1, 2018;

PAYROLL DEDUCTIONS CAN BEGIN JULY 1, 2017

Beginning January 1, 2018, New York State Disability policies will require mandatory Paid Family Leave coverage to be included for all qualifying employees of New York State employers. Paid Family Leave will provide up to 12 weeks of job-protected paid leave, within any 52-week period, so that the employee may address family related issues that may include any of the following: 1) Bonding with and caring for a newborn, adopted or foster care child during the first 12 months, 2) Caring for a seriously ill family member, and 3) Addressing important needs related to a family member's military service. All current New York State Disability policies will automatically be endorsed to add Paid Family Leave coverage effective January 1, 2018.

Paid Family Leave is an employee paid benefit, for which full-time employees who have worked 26 or more consecutive weeks, or part-time employees who have worked 175 days, are eligible. While Paid Family Leave does not go into effect until January 1st, employers may begin deducting employee contributions on July 1, 2017. The premium rate for 2018 is 0.126% of an employee's weekly wage, with a maximum contribution of \$1.65 per week. Paid Family Leave benefits begin on the first full day the employee requires it. The benefit amounts will be 50% of the employee's average weekly wage for eight (8) weeks in 2018, with both the wage percentage and number of weeks increasing in the coming years. If you have any questions regarding Paid Family Leave, please contact Stephanie Stopera at stephanie.stopera@gcgriskmanagement.com, or (518)370-3303, ext. 8818.

IS IT A CAP? IS IT A SAFETY VALVE? IS IT MERELY PIE IN THE SKY?

NEW YORK STATE ENACTS WORKERS' COMPENSATION REFORM

On April 10, 2017, the Legislature passed, and the Governor signed, the 2017/2018 New York State Budget Bill. Included in the agreement are amendments to the Workers' Compensation Law. The highlights of these amendments are as follows:

DETERMINATION OF MAXIMUM MEDICAL IMPROVEMENT (MMI)

This amendment provides that, for accidents occurring on or after April 10, 2017, following payment of the first 130 weeks (2.5 years) of temporary disability benefits, the employer/carrier may be entitled to a credit against the weeks the employee receives AFTER being classified permanent partial disabled (PPD). Temporary total benefit weeks are not included in the credit. Prior to this amendment, the employee could continue to collect temporary benefits until he or she was classified by the Workers' Compensation Board (WCB). This had the effect of delaying the commencement of PPD benefits, which are capped. In theory, this amendment is intended to discourage employees from prolonging temporary partial benefits indefinitely. However, the amendment allows the employee to continue to collect temporary benefits IF the WCB finds, after hearing arguments and reviewing depositions, that the claimant has not reached maximum medical improvement (MMI).

In addition, the credit is against the PPD benefit weeks, not the actual temporary partial disability benefits paid to the employee following the 130 weeks. For example, assume an employee is paid four weeks of temporary partial disability benefits at \$600 per week after the first 130 weeks ($\$600 \times 4 = \$2,400$). The employee is ultimately classified PPD, but at a lower rate of \$500 per week with a loss of wage earning capacity that would entitle the employee to a total

of 300 weeks of capped benefits. The employer/carrier will receive a credit of four weeks at the \$500 rate (\$2,000) which will be deducted from the 300 weeks of capped benefits. Thus, the employee will receive a total of 296 weeks of PPD benefits.

The New York State Business Council interpreted this amendment as “capping classification of maximum medical improvement at 2.5 years by creation of a credit to employers for temporary payments beyond the threshold.” However, the WCB, in a subject bulletin following the legislation, asserts “the statutory changes create a safety valve that extends the period of temporary disability beyond 2.5 years (130 weeks) when the Board makes a determination that the claimant has not yet reached maximum medical improvement on that date.”

ATTACHMENT TO THE LABOR MARKET

Prior to this amendment, employees classified PPD were required to demonstrate attachment to the labor market. An employee who did not make a consistent effort to seek employment, within the restrictions imposed by a doctor, could be faced with the suspension of benefits. Effective immediately, the employee is no longer required to provide proof that he has looked for work, and PPD benefits will continue uninterrupted. This eliminates the incentive for the employee to seek work within the limitations of his partial disability.

REDETERMINATION THRESHOLD

The threshold for redetermination to permanent total disability (PTD) based upon extreme hardship is now 75% instead of 80%. This means that a classified employee with a loss of wage earning capacity of more than 75% can file to reopen his or her case. This application just be submitted one year before PPD benefits terminate. The employee must produce documentation regarding assets, tax returns, income from Medicare, Social Security, as well as any spousal income. While the criteria might be difficult to meet because it requires the employee to show “extreme” hardship, this change opens the door for a greater number of employees to make this claim.

ADDITIONAL PROTECTION FOR FIRST RESPONDERS

This change pertains to persons certified to provide service in emergencies. Prior to this reform, police officers, firefighters, EMS technicians, paramedics, and emergency dispatcher, were required to establish that the work-related incident caused stress that was greater than what they experienced in a normal work day. This burden of proof by the employee is no longer required.

The above amendments are a mixed bag for the employer/carrier, and they fall short of the “significant reforms” and “meaningful savings” you may have read about in the press releases issued by its supporters. Maybe these reforms and savings will be realized “down the road” as the budget bill requires the WCB to develop a prescription drug formulary which is to be adopted by 12/31/17. The WCB is also required to publicize new permanent impairment guidelines by January 1, 2018. For the moment, the jury remains out on the question of these “significant” Workers’ Compensation reforms.

Judith Brodsky, Esq. contributed this article.

NEW YORK RATING BOARD FILES REQUEST FOR 4.5% DECREASE IN LOSS COSTS

The New York Compensation Insurance Rating Board (NYCIRB) has filed a request for a 4.5% decrease in Loss Costs (rates) with the New York State Department of Financial Services (NYSDFS). The request, which includes a reduction of 1.7% attributed to the recently enacted Workers’ Compensation reform, affects policies renewing on or after October 1, 2017. Outstanding policies, i.e. those already in force, are to receive a pro-rated portion of the 1.7% based upon the rating date of those policies. NYSDFS has until July 2017 to approve or deny NYCIRB’s request.

NYCIRB deserves credit for not succumbing to the hype that accompanied the reforms. We believe that even the 1.7% estimate may be optimistic, as any projected savings will be subject to the practical realities associated with the Workers’ Compensation system. Furthermore, any costs savings won’t be quantifiable until 2020 at the earliest. NYCIRB has declined to estimate cost savings attributable to either the prescription drug formulary or the new impairment guidelines that are to be developed by the Workers’ Compensation Board.