

Beware: Workers' comp benefits favors injured worker

Employers who have had the misfortune of having an employee injured on the job know that the workers' compensation system in Washington State is oftentimes complicated and frustrating for both them and the injured worker.

BIAW's claim management team can help employers participating in BIAW's Return on Industrial Insurance (ROI) Program navigate the workers' comp system. Your BIAW Claims Specialist will assist with the paperwork and other components key to reducing the costs of time loss claims, such as implementing Kept on Salary and Light Duty Return to Work programs.

Usually claims move smoothly through the system, but there are those special circumstances that require close scrutiny. Occupational disease claims, fraudulently filed claims, workers or doctors refusing to cooperate, claims managers not responding to protests and appeals are some of the situations that routinely surface. While these situations are commonplace and are dealt with as a matter of course, they require close attention. And occasionally a claim manager with the state Department of Labor & Industries (L&I) can surprise us with a skewed interpretation of the law and we have to dig in even harder to stop the flow of time loss benefits.

The current case in point concerns an injured worker who was sentenced by a judge to serve time for failing to appear for a court date related to a drunk driving charge. RCW 51.32.040 states that an injured worker is not entitled to time loss benefits while incarcerated and under sentence. In this case, the injured worker was sentenced to house arrest and directed to wear an electronic monitoring ankle bracelet.

The BIAW Claims Specialist representing the employer contends that the injured

worker is incarcerated and should not be receiving time loss benefits. However, L&I continued to pay benefits to the injured worker. BIAW submitted a protest letter on behalf of the employer citing the relevant law—the basis for the protest was the claimant was under sentence and confined, thus according to the law time loss benefits must be terminated.

The claim manager from L&I countered that because the worker is not physically housed or confined within a jail or prison facility, it does not qualify as incarceration. BIAW is still protesting this decision on the employer's behalf.

This is just one example of what employers can face when dealing with injured worker claims. And while there are many legitimately injured workers receiving benefits and the laws are working for both them and the employers, there are also hundreds of cases that illustrate the need for a comprehensive reform of the workers' comp system.


The fact is workers' comp laws are designed to "liberally construe in favor of the injured worker." Under the current system, L&I will allow and pay time loss benefits if:

- An injured worker is an illegal immigrant who fraudulently obtained employment (by using a false SSN, etc.).
- An injury occurs while the worker is high on alcohol, methamphetamine or cocaine.
- A worker is injured while driving without a valid license, or incarcerated for failure to appear in court on a traffic violation.

These workers are entitled to an 8 percent cost of living raise each year they are able to convince a doctor of their inability to work due to the injury. They can continue to receive benefits after moving out of the state or even out of the country. And if the worker does accept a light duty

job offer from the employer, but fails to follow company policy and is fired due to his or her own actions, benefits will continue.

Claims Corner regularly reports on the most outrageous abuses of the workers' compensation system. Because L&I has allowed these abuses to continue unchecked, employers are this year forced to shoulder a workers' comp tax increase averaging 29 percent. The silver lining in this cloud is that this huge tax increase has caught the attention of some legislators who are now demanding an explanation as to why such an increase is necessary. These legislators have promised a thorough review of L&I's operating practices.

Hopefully, with the urging of BIAW, these lawmakers will see fit to finally make the changes in the laws to close the loopholes for freeloaders, and start helping businesses for once. 

BIAW/NAHB 2003 Calendar of Events

- February 24-26, 2003
BIAW Winter Board Meeting
BIAW Legislative Reception
Olympia, WA
- May 7-11, 2003
NAHB Spring Board Meeting
Washington, DC
- June 25 - 27, 2003
BIAW Summer Board Meeting
Semi-ah-Moo, WA
- September 17-21, 2003
NAHB Fall Board Meeting
Boston, MA
- October 22-24, 2003
BIAW Fall Board Meeting
Skamania, WA

