

CCS HCS SS SCS SB 1 & 130 -- WORKERS' COMPENSATION

This bill changes the laws regarding workers' compensation.

EMPLOYER AND EMPLOYEE RIGHTS AND RESPONSIBILITIES

The bill:

(1) Authorizes an employer to require an employee absent from work due to medical reasons to use any accumulated paid leave to offset the absence;

(2) Requires an employee to submit to an employer-requested vocational testing and rehabilitation assessment;

(3) Specifies that a claimant is disqualified from receiving temporary total disability benefits for the period of time he or she is receiving unemployment compensation;

(4) Specifies that an employee is ineligible to receive temporary total or temporary partial disability benefits if the employee is terminated from post-injury employment for misconduct;

(5) Specifies that an employee who fails to use safety devices provided by the employer or to obey posted safety rules will have his or her compensation or death benefit reduced by not less than 25% or more than 50%;

(6) Specifies that an employee who fails to obey any rule or policy related to a drug-free workplace or the use of alcohol will have his or her compensation and death benefit reduced by 50%;

(7) Specifies that an employee's refusal to take a test for alcohol or a nonprescribed controlled substance will result in the forfeiture of benefits;

(8) Requires that a claimant who either accepts an employer's initial offer or prevails in an action against an employer receive 100% of the initial offer;

(9) Requires that the claimant's attorney fee agreement be for a portion of the amount of the claim in dispute;

(10) Requires that certain claim information be given to the employer within 30 days of the diagnosis of a condition; and

(11) Requires that certain information must be provided to the employer within 30 days of the diagnosis for a claimant to receive compensation for any occupational disease or repetitive trauma.

COMPENSABILITY

The bill:

(1) Excludes as compensable any injury resulting from idiopathic causes;

(2) Requires that an injury sustained in a company-owned or subsidized automobile while traveling to or from home or work is not compensable;

(3) Specifies that the ordinary deterioration of the body caused by aging or ordinary activities performed in the course of day-to-day living is not compensable;

(4) Exempts as compensable any claim covered by federal law or filed under the workers' compensation laws of another state;

(5) Requires that an employee participating in a workplace-related recreational activity resulting in an injury not be compensable;

(6) Requires that certain diseases resulting from exposure to certain occupational hazards be recognized as an occupational disease and compensable. This provision applies to paid firefighters and police officers and only if a direct causal relationship is established;

(7) Requires that an injury caused by repetitive motion is compensable only if the occupational exposure is the prevailing factor resulting in the medical condition and disability; and

(8) Requires that an injury by occupational disease be compensable only if the occupational exposure was the prevailing factor in causing the resulting medical condition and disability.

DIVISION OF WORKERS' COMPENSATION

The bill:

(1) Authorizes the Labor and Industrial Relations Commission or the Director of the Division of Workers' Compensation to determine the location of hearings;

(2) Clarifies the quarterly premium tax amount calculation for all self-insured employers and all insurance carriers insuring employers against liability for personal injury;

(3) Requires the division director, beginning October 31, 2005, to estimate the amount of benefits payable from the Second Injury Fund for the following year. The division director is also required to calculate the insured or self-insurer's employer surcharge for the upcoming year;

(4) Requires the division director, beginning January 1, 2006, to calculate the employer surcharge, which is not to exceed 3% of the projected following year requirement, less any remaining balance from the previous year;

(5) Requires that the failure of the division director to calculate the surcharge by October 31 will result in the surcharge not becoming effective for any calendar quarter beginning less than 60 days from the date of the calculation;

(6) Requires that claims history data be provided to the division rather than the Department of Health and Senior Services; and

(7) Requires that the chief legal counsel working in the Jefferson City division office be compensated \$2,000 above 80% of the rate at which an associate circuit judge is compensated.

ADMINISTRATIVE LAW JUDGES

The bill:

(1) Authorizes the Governor to appoint up to 40 administrative law judges;

(2) Specifies the appointment, terms, member qualification, and duties of the Administrative Law Judge Review Committee;

(3) Requires that all administrative law judges are subject to an annual performance audit administered by the review committee;

(4) Requires that an administrative law judge receiving two no confidence votes by the committee resign;

(5) Requires that an administrative law judge or the commission approve a settlement agreement unless the agreement was found to be unjust;

(6) Requires, beginning January 1, 2006, that only administrative law judges and the commission have the power to review claims under the Workers' Compensation Law;

(7) Eliminates the legal advisor position; and

(8) Requires that the party initiating any proceeding found by the division or the commission to be without grounds may be assessed the costs of the proceedings.

GENERAL PROVISIONS

The bill:

(1) Requires that any member appointed or serving on the Labor

and Industrial Relations Commission receive Senate confirmation within 30 days after the Senate convenes for regular session or immediately resign from the commission;

(2) Requires that if a self-insured employer has filed for bankruptcy, the division is to notify any employee of the bankrupt employer having an open claim. The employee is required to provide certain information to the division, the court of jurisdiction, and the Missouri Private Sector Self-Insurance Guaranty Corporation. An employee failing to provide the required information within 30 days of the notice will bar the division from invoking jurisdiction over any matter for which the employee was entitled to workers' compensation benefits;

(3) Requires the Attorney General, beginning January 1, 2006, to annually provide the division and the General Assembly with a report containing fraud and noncompliance prosecution costs and other pertinent information;

(4) Requires that an employer's experience rating not be affected by a medical claim of less than \$1,000;

(5) Requires that the Director of the Department of Insurance formulate trend factors that allow for comparison with trend factors developed by the advisory organization for each job classification;

(6) Updates testing and standards pursuant to occupational hearing loss;

(7) Allows certain recognized religious sects to opt out of the provisions of the Workers' Compensation Law;

(8) Requires that a health care provider committing fraud under the Workers' Compensation Law is guilty of a class A misdemeanor and liable to the state for a fine of up to \$20,000. Any subsequent violation is a class D felony;

(9) Requires that an insurance company or self-insurer who knowingly and intentionally refuses to comply with a compensation obligation with the intent to defraud is guilty of a class D felony;

(10) Requires that any person who knowingly makes a false or fraudulent statement to an investigator of the division in the course of an investigation is guilty of a class A misdemeanor and liable to the state for a fine of up to \$10,000;

(11) Requires that any entity falsely providing proof of workers' compensation insurance is guilty of a class D felony and liable to the state for a fine of up to \$10,000 or double the value of the fraud, whichever is the greater;

(12) Requires that an employer who knowingly fails to insure his workers' compensation liability is guilty of a class A misdemeanor and a fine up to three times the cost of the insurance premium or up to \$50,000, whichever is greater.

(13) Redefines "accident" to mean a specific, identifiable, traumatic event during a single work shift;

(14) Defines "prevailing factor" to mean that the accident is the primary factor in relation to any other factor, causing both the resulting medical condition and disability;

(15) Requires that an injury due to an accident be compensable only if the accident was the prevailing factor in causing the resulting medical condition and disability;

(16) Requires that cardiovascular, pulmonary, respiratory, or other disease or a cerebrovascular accident or a myocardial infarction is an injury only if the accident is the prevailing factor in causing the resulting medical condition;

(17) Requires that alcohol use be the proximate cause of the injury, provided the employer required the alcohol use as part of employment duties;

(18) Requires that a permanent partial disability compensation award be reduced to the extent that a pre-existing condition or attributable aging process caused or prolonged the disability;

(19) Requires that a finding of permanent partial disability or permanent total disability be certified by a physician;

(20) Requires that for the purpose of determining compensability and disability, objective medical findings will prevail over subjective medical findings;

(21) Requires that, except where otherwise addressed, the American Medical Association's "Guide to the Evaluation of Permanent Impairment," 5th Edition, be used in determining the level of disability;

(22) Requires that in applying the provisions of the Workers' Compensation Law it be the intent of the General Assembly to reject and abrogate earlier case law interpreting the definition of "accident," "occupational disease," "arising out of," and "in the course of employment";

(23) Excludes a limited monetary bonus from the employee's total yearly pay when calculating the amount of compensation the employee is entitled;

(24) Excludes from admissibility any requested document, information, or statement pursuant to a claim unless provided within 30 days. The term "statement" does not include video, motion picture, or any reproduction of an image;

(25) Requires that provisions of the Workers' Compensation Law be construed strictly and conflicting evidence be weighed impartially in the resolution of any conflict;

(26) Requires that the burden of establishing any affirmative defense be on the employer;

(27) Requires that the burden of proving an entitlement to compensation be on the employee or dependent; and

(28) Specifies that a for-hire motor carrier not be determined to be an employer of a lessor or driver employed by the lessor and it is the intent of the legislature to reject and abrogate earlier case law interpreting the meaning of "owner," as extended in certain cases.