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WORKERS COMPENSATION OUTLINE

June 2020

- Workers' comp is a state law benefit created by the State Legislature.
- Workers' comp provides weekly wage loss benefits, reimbursements for reasonable and necessary medical expenses, and protentional retraining.
- Workers' comp is not time limited unless there is a specific loss (such as loss of a finger). However, once a condition has stabilized and the worker has been released with restrictions, the Michigan Legislature has seen fit to mandate a worker to look for other employment if your employer cannot accommodate you within your restrictions.
- Worse, unless a very strong job search is conducted, your workers comp benefit can be reduced based on hypothetical "jobs" that may be available with your restrictions.
- Workers comp maximum benefit is slightly over \$900 per week. Workers' comp is not a taxable benefit (i.e., no taxes are taken out).
- Workers' comp pays 80% of your after-tax earnings subject to the maximum which is slightly over \$900 per week.
- Your comp rate is figured on taking the highest 39 weeks out of the year proceeding the injury of the 52 weeks of your employment history, which then gives you an average weekly wage.
- Workers' comp pays roughly 2/3rds of this average weekly wage or 80% of the after-tax amount.
- Workers' comp can be based on a specific injury, repetitive trauma (such as repetitive use of the wrist) or industrial exposure (such as work in the paint shop).
- The standard for workers comp is *cause, aggravate, or significantly contribute* – that is you do not have to prove that YOUR EMPLOYER caused the condition outright.
- When YOUR EMPLOYER disputes a case, they file a notice to dispute.

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- A notice of dispute is not a conclusive finding by an administrative law judge; this is only YOUR EMPLOYER saying they will dispute your case and you as the worker must respond.
- You respond by filing a petition for benefits with the state. It is beneficial to have an attorney file this for you. Your Local is unique in that you have an elected workers comp/unemployment representative instead of having a pension benefit rep handle workers comp issues.
- If a case is contested, it usually takes about 9-12 months to resolve; quicker for closed period cases (i.e., cases where the worker has returned to work prior to the resolution of the case).
- There is a 28-day waiting period where you must treat with YOUR EMPLOYER approved doctor. After 28 days you may treat with whoever you want. You should always let YOUR EMPLOYER know who you select.
- While a case is being contested you should draw either sick and accident or EDB *if eligible* until your case is resolved.
- Workers' comp does get coordination on the after-tax value of the EDB or SNA that you drew, but no money will still be coming in during the disputed period.
- Most cases are settled voluntarily; meaning there is no trial. Around 10% do go to trial before an Administrative Law Judge.
- It is important that you report an injury as soon as possible and give an accurate history of how the injury happened to your treating doctor.
- More cases are lost based on inadequate or incomplete history than any other reason.
- Even if you have pre-existing arthritis in a particular limb, that will not prevent you from drawing workers comp if you can show the injury or work activity significantly *aggravated or contributed* to your condition.

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WORKERS COMPENSATION & COVID

January 2022

- Initially there was a presumption that if a worker developed Covid-19, it was considered work related-, unless the presumption could be rebutted by the employer, but that would be difficult to do.
- That presumption is no longer in place. So, a worker has the burden of proof to show that Covid came from a workplace exposure. Certainly, for health care workers you have a heightened risk of exposure.
- There has been no change to the normal rules of 7 and 14 days, a worker has to be off a full 14 days before workers' comp goes back to day 1. With shortened quarantine periods employers are probably trying to have the worker return before 14 days, even with positive testing for Covid-19.
- If vaccination is required, an adverse reaction to the vaccine, which would be unusual, would be considered work-related.
- Some cases have developed, due to the worker having an adverse reaction to wearing a mask when they have an underlying breathing condition. This is a whole new area in workers' comp, and it is unclear how these types of cases will likely resolve, the worker should file the case, if they lose time due to their inability to wear the mask.