

THE INSIDE PERSPECTIVE

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SMITH MOORE LLP
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September 2005

Workers' Compensation Amendment Adopted

An amendment to the Workers' Compensation Act (House Bill 99) was passed by the legislature at the end of the 2005 session. Its most significant accomplishment is the establishment of a Study Committee to analyze some of the tough issues on which the General Assembly could reach no consensus. The Committee will make its final report to the 2007 General Assembly. Issues to be studied include:

- Caps on the duration of benefits and analysis of benefit levels
- The interaction between workers' compensation and other disability benefits
- Comparison of North Carolina's benefits with those of surrounding states
- Return to work issues
- Appropriate compensation for asbestos and silica related diseases.

In addition to establishing the Study Committee, the amendment:

- Clarifies the circumstances under which an employer may be sanctioned for failure to admit or deny a claim in a timely fashion. The employer must "promptly investigate" each alleged injury and then admits or denies the claim "at the earliest practicable time."
 - ◊ The Commission may not order "reasonable sanctions," however, unless the employer fails to admit or deny the claim (or pay without prejudice) within 30 days following notice from the Commission of the filing of a claim by an employee.
- Restricts the employer's access to medical information and narrows the scope of records the employee must share with the employer.
 - ◊ Except to obtain treatment records for the condition at issue, the employer may only communicate with medical providers in cases in which the employer is paying compensation, and even then only by using written inquiries promulgated by the Commission and sent simultaneously to the employee. Other forms of communication with a medical provider may be authorized by a valid written authorization signed by the employee.
- Eases the standard of proof for defending claims in which an employee is injured due to the use of alcohol or drugs.

TIP

The 2005 Amendment to the North Carolina Workers' Compensation Act is not as favorable for employers as some had hoped. However, it establishes a study committee to report on other areas of possible change in 2007.



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