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Workers Compensation Medical Losses Are More Than Half of Total Losses

All Claims—NCCI States

There are two components to workers compensation claims costs: payments for lost income, known as indemnity costs, and payments for medical care. Two decades ago indemnity costs made up the greater part of total losses.

1985

Indemnity — 56%

Medical — 44%

1995

Indemnity — 48%

Medical — 52%

2005

Indemnity — 42%

Medical — 58%

Source: NCCI Holdings, Inc.

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LEGISLATIVE HIGHLIGHT

Oregon Legislative Update 2007

The 2007 Oregon legislature passed numerous bills this session that will have a noticeable impact on employers. Most will be effective January 1, 2008. The following highlights some of the bills that affect employer obligations under various state employment laws.

HB 2485—OFLA

Effective: 1/1/08

This bill expands purposes for which employees taking family leave may use paid sick leave. It allows use of any paid accrued sick leave for any period of Oregon family leave.

HB 2635—OFLA

Effective: 1/1/08

This bill allows eligible employees to take family leave from work to care for grandparent or grandchild. It includes grandparent or grandchild as “family members” for purposes of Oregon family leave. The bill also provides that a covered employer commits unlawful practice if the employer denies family leave to which eligible employee is entitled or retaliates or discriminates against an individual because of inquiry about or lawful exercise of family leave provisions.

HB 2460—OFLA

Effective: 1/1/2008

This bill redefines “family leave” to exclude leave taken by an employee who is unable to work because

HB2460 redefines “family leave” to exclude leave taken by an employee who is unable to work because of disabling compensable injury under Workers Compensation Law.

of disabling compensable injury under Workers Compensation Law. OFLA leave will automatically begin to run when an eligible employee on workers’ compensation leave refuses a bona fide offer of light-duty or modified work before he or she is medically stationary. Qualifying FMLA leave will continue to run concurrently.

HB 2260—

DISCRIMINATION CLAIMS

Effective: 1/1/08

This bill expands the recovery of compensatory and punitive damages for discrimination on the basis of an individual’s race, color, religion, sex, sexual orientation, national

origin, marital status, age or association with protected classes.

SB 2—SEXUAL ORIENTATION

Effective: 1/1/08

This bill prohibits discrimination, in specified areas of law (employment, housing, public accommodations, public education, adult foster homes and foster parenting) against persons based on sexual orientation. It defines “sexual orientation”, authorizes enforcement of prohibition through civil action for actual and punitive damages and requires state agencies to eliminate discrimination against persons based on sexual orientation.

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ENFORCEMENT UPDATE

Federal Government Stepping Up Immigration Enforcement

On August 10, 2007, the Department of Homeland Security in conjunction with the Department of Commerce and the White House released information on upcoming immigration enforcement measures which will directly affect employers. Following are some highlights within the Worksite Enforcement section of the DHS release:

In The Coming Months, The Administration Will Publish A Regulation That Will Reduce The Number Of Documents That Employers Must Accept To Confirm The Identity And Work Eligibility Of Their Employees.

Presently, no fewer than 29 categories of documents can be used to establish identity and work eligibility. Employers have little capacity to verify the authenticity of these documents, and the sheer quantity of

accepted documents is an invitation to fraud. This regulation will reduce unlawful employment by weeding out insecure documents now used often for identity fraud.

The Administration Will Continue To Expand Criminal Investigations Against Employers Who Knowingly Hire Large Numbers Of Illegal Aliens.

Arrests by U.S. Immigration and Customs Enforcement for criminal violations have increased from 24 in FY 1999 to a record 716 in FY 2006. There have been 742 criminal arrests since the beginning of FY 2007 (through July 31), and there is anecdotal evidence that companies are taking notice and adjusting their business practices to follow the law.

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Oregon Legislative Update 2007 (con't)

SB 946—CRIME VICTIMS

Effective: 5/25/07

This bill requires employers with six or more employees to allow eligible employees to take reasonable unpaid leave to obtain services or treatment relating to domestic violence, sexual assault or stalking. The bill also allows employers to limit the amount of leave, if leave creates undue hardship to employer's business.

HB 2255—WAGES

Effective: 1/1/08

This bill allows an employee to file either a BOLI complaint or a claim in court for employment discrimination resulting from the employee's pursuit of a wage claim or from their complaints about the failure to pay wages. The bill also allows for compensatory damages.

HB 2258—WAGES

Effective: 1/1/08

This bill states that when an employer has notice that an employee has not been paid the full amount the employee is owed on a regular payday and there is no dispute regarding the unpaid wages, (a) the employer must pay the employee the unpaid amount no later than the next regular payday, if the unpaid amount is less than five percent of the employee's gross wages; or (b) pay the employee the unpaid amount within three days after the employer has notice of the unpaid amount, if the unpaid amount is five percent or more of the employee's gross wages.

HB 2674—WAGES

Effective: 1/1/08

This bill requires employers to pay over, in accordance with law or agreement requiring or authorizing deductions from wages, amounts deducted from employee's wages. The bill also makes failure to pay as required unlawful deduction and allows Commissioner of BOLI to assess civil penalty for unlawful deduction.

HB 248—ARBITRATION AND NON-COMPETITION AGREEMENTS

Effective: 1/1/08

This bill voids an arbitration agreement between an employer and an employee unless the employer notifies the employee at least two weeks prior to the beginning of employment that the employee will be required to enter into an agreement. The bill also requires employers to provide at least two weeks advance notice prior to the beginning of employment that a non-competition agreement will be required. Only certain employees can be required to enter into such agreements and will be valid for no more than two years following termination of employment.

HB 2372—NURSING MOTHERS

Effective: 1/1/08

This bill requires employers with 25 or more employees to provide no more than 30 minutes' unpaid rest time for every four hours worked to a female employee who needs to express milk for her child and a location for employees to express milk, if no undue hardship is caused. This rest period is preferably to be taken at the same time as rest or meal periods otherwise provided to the employee.

HB 2222—WORKPLACE SAFETY

Effective: 1/1/2008

This bill eliminates the 10-employee threshold from Oregon statute and replaces the safety committee requirement with a requirement for all employers to have safety committees or use safety meetings under rules adopted by DCBS. The bill also requires appropriate consideration for agriculture, small employers and employers with mobile worksites.

HB 2259—WORKPLACE SAFETY

Effective: 6/1/07

This bill extends the statute of limitations time frame for filing OSHA retaliation complaints about workplace safety from 30 to 90 days.

HB 2254—PERSONNEL RECORDS

Effective: 1/1/08

This bill requires personnel records to be presented for inspection or provided to the employee (certified copy) within 45 days of request. The bill also provides civil penalties for violations.

Federal Government Stepping Up Immigration Enforcement (con't)

The Department Of Homeland Security Issued A "No-Match" Regulation That Will Help Employers Ensure Their Workers Are Legal And Help The Government Identify And Crack Down On Employers Who Knowingly Hire Illegal Workers.

In cases in which an employer has a significant number of employees with inaccurate personal identity information, the Social Security Administration will send the employer a "No-Match" letter. The regulation clarifies that employers may be held liable if they ignore the "No Match" problems by failing to take specified steps within 90 days of receiving the letter.

Basically, under this new rule, employers are obligated to terminate employees for whom they receive "no match" letters from the Social Security Administration (SSA) if their identity cannot be properly confirmed and/or Social Security information corrected within 90 days. This is a significant change. Previously, the "no match" letters from the SSA specifically instructed employers not to take employment action based upon the letter.

On Friday August 31st, a Federal Judge in San Francisco temporarily stopped the implementation of the new Department of Homeland Security (DHS) Safe Harbor Rules which would have required employers to take certain actions when they receive "No Match" letters from the Social Security Administration (SSA).

In this case, the ACLU and labor groups sued DHS and SSA, claiming that requiring employers to act on an immigration issue based upon information from the SSA violates Federal law. It is not clear how the case will turn out but the judge has issued a stay until October 1st prohibiting the DHS and SSA from moving forward with the new rules.

For the time being, the rules do exist but the DHS may not enforce them. Accordingly, employers may wish to familiarize themselves with the new rules so that they are prepared for their application if the DHS is successful on October 1st and the rules are reinstated. However, it is also possible that this lawsuit may result in significant changes to the rules or they could be thrown out altogether.