Workers' compensation

We talk a lot about the rights and protections afforded by OSEA's collective bargaining agreements with management. But state and public employes have other rights and protections available to them; one of these is workers' compensation (called workmen's compensation until the 1977 legislature changed the name).

A compensable injury is an accidental injury arising out of and in the course of employment requiring medical services or resulting in disability or death.

The only questions which arise from this definition are: (1) Was there an injury? and (2) was it incurred on the job? Once those two questions have been settled in the affirmative, a schedule of benefits laid out in law set the amount of compensation due to the injured worker.

However, also arising out of the original on-the-job compensable injury are "secondary consequences" which also may be compensable. A couple of examples may help to illustrate. A worker sustains a hernia during the course of his employment from lifting a heavy object. This was compensable and he was hospitalized. During the course of the surgery to repair the hernia, and for other complicated medical reasons, he becomes totally blind. The blindness is a compensable consequence of the industrial injury.

Another example of a secondary consequence, would be that of a worker hospitalized for a compensable injury who contracts pneumonia while recovering. Both the treatment for the initial injury and the treatment for pneumonia are compensable.

A third example would be a case of where a workman has lost a leg due to amputation caused by an industrial injury, and because of his ungainly gait and the stress imposed on his back because of the loss of his leg, the back condition also is compensable.

These indirect situations, of course, must be much more carefully handled. The worker must prove that the initial injury contributed to the final result. In these cases, the proof is obtained through the opinion of a physician.

A heart attack may be a compensable injury if it can be shown that the claimant exerted himself in carrying out his job and if medical proof can be provided that the job exertion materially contributed to the injury or death.

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Workers' compensation
From whence it came

How did workers' compensation come into being?

Like so many things, it was a compromise between management and labor. Before workers' compensation, industrial accident claims were resolved by suing in the courts. Generally, there were two outcomes. Either the injured worker was successful and was awarded a huge claim or he received nothing at all.

Also, the employer had three defenses. The employer could say that the injury was the result of an act by a fellow employe, that it was the result of the injured worker's own contributory negligence or that the injured worker had assumed the risk for the job he or she was doing. Those defenses no longer apply; negligence is not a concern. The only defenses which remain are that either the worker isn't injured or it didn't occur on the job.

If the worker is injured and the injury occured in the course of his employment, then a schedule of benefits, listed in Oregon law, determines the amounts of compensation.

ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT

There is no quick way of giving a definition as to whether or not the injury arose out of or in the course of employment, but the Workers' Compensation Board will consider the following factors:

(1) Whether the activity was for the benefit of the employer;

(2) Whether the activity was contemplated by the employer and employe either at the time of hiring or later;

(3) Whether the activity was an ordinary risk of or incidental to the employment;

(4) Whether the employe was paid for the activity;

(5) Whether the activity was on the employer's premises;

(6) Whether the activity was in an area near the employer's premises, under the employer's control and necessary to the employe's employment, and

(7) Whether the activity was directed by or acquiesced in by the employer, and whether the employe was on a personal mission of his own.

A great deal of time could be spent in discussing each of the above factors, but merely listing them should give some idea on what an attorney is looking for in evaluating a claim.

FILING A CLAIM

The statute requires that notice of an accident resulting in injury or death shall be given immediately by the workman or his dependent to the employer, but not later than 30 days after the accident. The notice does not need to be in any particular form, although most employers will have a form available. It should be in writing and the employe should state when, where and how the injury occurred. A report from the employe's doctor signed by the workman also is considered notice.

There are several exceptions to the rule that would still allow an employe to legally file a claim. The most important of these are that the employer had knowledge of the injury or had not been prejudiced by the failure to receive the notice, or the notice is given within one year after the date of the accident and the workman establishes that he had good cause for failure to give the notice within 30 days of the accident.

TEMPORARY TOTAL DISABILITY BENEFITS

Compensation must be paid within 14 days of notice or knowledge of the claim unless the claim is denied. If the employer cannot decide whether to accept or deny and wishes additional investigation, compensation must still be paid within 14 days. The employer then has 46 days to investigate and he must accept or deny the claim within 60 days.

OCCUPATIONAL DISEASES

An occupational disease is any disease or infection which arises out of and in the course of the employment and to which an employe is not ordinarily subjected or exposed other than during a period of regular actual employment. Some examples of occupational diseases are loss of hearing, silicosis, bursitis, an allergic reaction to a product with which the workman was required to come in contact during his employment.

TIME LIMITATIONS

With some exceptions, occupational disease claims must be filed (1) within five years after the last exposure in employment; (2) within 180 days from the date the claimant becomes disabled; or (3) is informed by the physician that he is suffering from an occupational disease, whichever (2 or 3) is later.

COMPENSATION

Compensation means all benefits, including medical services, provided an injured worker for a compensable injury or occupational disease. Medical services include medical, surgical, hospital, nursing, ambulance and other related services, and drugs, medicine, crutches and prosthetic devices, braces, supports and, where necessary, physical restorative services. The worker may choose his own attending doctor or physician within the State of Oregon.

The medical services continue for such period as the nature of the injury or process of the recovery requires, including after a determination of permanent disability.

DETERMINATION ORDER

When an injured workman has reached a medically stationary condition and is not in an authorized program of vocational rehabilitation, the carrier requests a determination by the board. The board makes a claim review and establishes (1) the time period during which temporary total disability is allowed; and (2) the degree of permanent disability expressed in percentages and degrees, and awards the compensation expressed in corresponding dollar amounts.

If an employee is not satisfied with the Determination Order, he may request a hearing at any time within one year after the mailing date.

DENIED CLAIMS

If the employer has given the worker notice of denial of his claim stating the reasons for the denial, the worker may request a hearing within 60 days of the mailing of the notice of denial. An exception is that the request for hearing may be filed up to 180 days after the notification of the denial, where the claimant establishes at the hearing that there is good cause for failure to file the request within 60 days.

AGGRAVATION

Whenever a worker has suffered a compensable industrial injury and the injury subsequently becomes worse necessitating additional medical care, time loss or increased permanent disability, the worker is entitled to additional compensation.

A worker has five years from the date of the first Determination Order to file a claim for aggravation.

The worker must show a worsening of physical condition since the last arrangement of compensation.

WORKERS COMPENSATION BOARD CONTINUING JURISDICTION

The Workers' Compensation Board has continuing jurisdiction over all claims. Under certain circumstances, the board may require that a claim is reopened even though it is beyond the five-year period of aggravation.

ATTORNEY FEES

There can be no payment of attorney fees unless the fee is approved by the Workmen's Compensation Board. If an attorney is successful in having a denied claim accepted, the attorney fees are paid by the employer or by the insurance carrier. If an attorney is successful in assisting a worker obtain a larger award than that which was granted, the attorney fee is a percentage of the increase.