

ND Workers Compensation

Changes Needed in North Dakota's Worker's Compensation

WHEREAS: The North Dakota Workers Compensation system now known as Workforce Safety and Insurance or WSI has been changed significantly over the past decade, and

WHEREAS: The control of WC/WSI has been removed from the executive branch and placed in the hands of a board of directors, and

WHEREAS: The systems ability to provide sure and certain relief to injured workers has come under question, now, therefore, be it

RESOLVED: That the following list of recommended corrections be adopted by this ND AFL-CIO convention and, be it further

RESOLVED: That this list be provided to the legislative body of the 2007 session.

1. Require that WC/WSI use hearing officers and that the hearing officers' findings be final.
2. Fraud. Require that the bureau use the same standard for fraud that is used in all other fraud cases. The bureau's fraud standard would be the same as all other fraud legislation. Equal standards would apply no harm-no foul.
3. PPI. Change the formula for calculating PPI to eliminate the "week" calculation. Because of the use of weeks within the formula, Social Security currently takes a 100% offset because of the formula. The award does not have to be changed, it will not cost the state any money, and the claimant will not lose SS because of the offset.
4. Executive Director. The Governor should have sole power to appoint the executive director of the bureau/WSI.
5. OIR. Place the control of the Office of Independent Review in the Governors office.
6. IME. Require that independent medical examinations be conducted in the state unless the specific specialty is not available. The IME should be conducted with a physician picked from a panel of all physicians licensed in and practicing in North Dakota.
7. IMR. Give greater weight to the opinion of the claimants treating physician when the claimant undergoes an independent medical review.
8. Physician. Eliminate the requirement that an employee choose his/her own doctor at the time of hire or 30 days prior to an injury. The injured claimant should be allowed to pick the treating physician.
9. Permanent Partial Impairment (PPI) awards. Presently, an individual has to have 16 % whole body impairment to obtain a PPI award. If a person has 16 percent, in effect, they are getting 1 percent in an award. There is absolutely no justification for not giving an award. Although the Bureau/WSI does pay for the more catastrophic impairments, this still does not justify the denial of an award for 5% to 15% impairment. Exclusions for pain, disfigurement, loss of range of motion etc. need to be addressed.
10. Liberal Construction. The loss of the "liberal construction" of the Worker's Compensation Act has made it very difficult for the employee to establish an otherwise legitimate claim.
11. Definition of Compensable Injury. There is no specific definition of what is "objective medical evidence." Before 1995, the doctor's notations that the person has sustained an injury and has subjective complaints of pain sufficed. The argument is that the doctor's notations no longer meet the requirements of "objective medical evidence". Injury should be any need for treatment arising out of and as a result of any incident, event or cumulative trauma arising from work.

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12. Pre-existing condition. The Bureau now denies claims because the claimant has a preexisting condition. The language should be changed back to what it was before 1997, thereby, requiring that if there is a pre-existing condition that it must be "active" at the time of the injury to allow an offset. Burden of proof should be on the employer to prove that the pre-existing condition would have caused the disability absent the work event.
13. Disability benefits. Pursuant to 65-05-08.1, NDCC (1995), makes it more difficult for employees to receive disability benefits and demands more from the doctor as to what the doctor is required to do in order for the employee to obtain disability benefits. Presently, the doctor is required not only to say that the person is disabled but also to exclude other types of employment, for example, light or sedentary. The doctor is also to list specifically what the restrictions are. If these are not all included in the doctor's letter, the person is not eligible for disability benefits. Expert vocational evidence by those experienced in job ergonomics is preferable.
14. Closed Claim Presumption. Once again, the 1995 legislature made it much more difficult for an individual to receive benefits that they were clearly entitled to. 65-05-35, NDCC (1995) states that an individual's claim is "presumed closed" if there has not been a payment of any benefit for four years on the claim. The Bureau/WSI maintains that this can be rebutted, however, the only way to rebut this is to establish that the employee proves by "clear and convincing evidence" the work injury is the sole cause of the later symptoms. Virtually throughout the Workers Compensation Act all the employee is required to do is show "more likely than not" or a preponderance that the claim is compensable. This standard of "clear and convincing evidence" and "sole cause" makes it virtually impossible for a claimant to have their case reopened or any medical bill paid if it has been more than four years since any activity on his claim. It should go back to the old standard of simply preponderance of the evidence rather than clear and convincing evidence.
15. Rehabilitation Services. Over the past 10 years, rehabilitation services have been virtually eliminated. There are very few people being retrained and/or offered assistance back to work. Vocational Rehabilitation Services reform must address the needs of the claimant and the employers willing to hire people with special needs.

In summary, there are many changes that need to be accomplished to benefit the job and industry injured or otherwise harmed workers and their families in North Dakota