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ANALYSIS

Workers' Compensation Legislative Changes in New York State

Three pending Senate bills could have a major impact on workers' compensation laws that have been in effect for decades, as well as significant repercussions for every industry operating in the state.

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By Sarah Thomas | October 12, 2022 at 10:30 AM

With a spotlight on employee wellness and mental health, largely due to the pandemic, a flurry of proposed legislative changes await the signature of Gov. Kathy Hochul. Three pending Senate bills in particular could have a major impact on workers' compensation laws that have been in effect for decades, as well as significant repercussions for every industry operating in the state.

Senate Bill S9149

Senate Bill S9149 proposes that “no determinations by the workers' compensation board shall be given collateral estoppel effect in any other action or proceeding arising out of the same occurrence, other than the determination of the existence of an employer-employee relationship.”

This bill was introduced as a way for lawmakers to balance New York state case law that supports prior workers' compensation case determinations to be used in other cases arising out of the same accident. The goal of the bill is to provide “fairness” in that a decision in one forum does not always stand in another. The only exception to this bill is regarding an employee-employer relationship. If it is determined the individual was not employed by a company at the time of the injury, that determination by the workers' compensation board can be used in other cases.

In some instances there are two proceedings when an employee is injured—a workers' compensation case and a labor law case. If this bill is signed into law, a determination in workers' compensation proceedings will not be given collateral estoppel in labor law proceedings. This takes away the ability to create a cohesive litigation strategy between labor law and workers' compensation cases. Without the ability to create a cohesive litigation strategy, there is potential to keep individuals out of work for longer as cases will take more time to be fully litigated. If, for instance, there is a finding that an injured worker did not injure his back during his workplace fall as he had a prior back injury due to an earlier motor vehicle accident; that finding is of no matter in any other case. The issue of whether his back is injured could still be fully litigated in other forums. Allowing an injured worker to re-litigate any issue that was already decided by the workers' compensation board will allow for prolonged litigation and increased costs associated with that re-litigation. The bill allows for the workers' compensation board to be the final determining agency for the issue of employee-employer relationships. There is no reason why this same consideration cannot be extended for the many matters in which the Board issues decisions such as injured body parts, wages, fraud, etc.

Senate Bill S9149 has passed both the Senate and Assembly and could be signed into law at any time by the governor. If counsel disagree with the bill, they can write to their local legislator in opposition. Attorneys may also want to communicate with any clients on how they would be impacted by enactment of this legislation.

Senate Bill S768

Perhaps the most discussed legislative change currently on the docket, Senate Bill S768 proposes to change the definition of temporary total disability. Currently, the finding of a temporary total disability is a medical determination. Senate Bill S768 proposes temporary total disability be defined, “as the injured employee's inability to perform his or her pre-injury employment duties or any modified employment offered by the employer that is consistent with the employee's disability,” changing the origin of the definition from medical to legal.

Redefining temporary total disability has the potential to change decades of case law in New York state and completely redefine workers' compensation law. The onus to find work for the injured employee would no longer sit with the individual but would pass to the employer.

The purpose behind Senate Bill S768 is important. It works to rectify both job and labor shortages in New York state borne from the COVID-19 pandemic and looks to establish more of an employee-first mentality within workers' compensation law. However, the bill will have far-reaching and potentially damaging implications to many of the industries potentially overlooked by the legislators who introduced it.

Light duty work programs can be extremely beneficial for an organization as they help employees get back to work more quickly and in a sustainable way. However, if the business does not have the infrastructure in place to create or support a light duty program, it can create undue burden. The new proposed definition is too general and is missing much of the nuance necessary to make workers' compensation law fair and just. The effects and cost of the bill on employers and insurance carriers should be more closely studied before signing the bill into law.

This shift in responsibility impacts an employer's ability to defend itself against workers' compensation claims when an employee has yet to return to work. This bill could also affect the labor market by taking opportunities away from qualified external candidates if an employer must give an existing role to an injured employee. It is also a major burden on the employer to create unnecessary positions to sufficiently meet the needs of the injured employee. Legislators should consider the effects on a small business without the resources or ability to create new roles.

As Senate Bill S768 has passed both Senate and Assembly, employers should take necessary steps to prepare by considering what light duty roles are currently available in their organization, what those or similar roles will look like and how to create additional, similar positions if the bill is passed.

Senate Bill S6373

If passed [Senate Bill S6373](#) would amend workers' compensation law to eliminate the case law requirement that mental stress injuries be based on work-related stress which is material and substantially greater than that of those in similarly situated positions. Currently, the standard is if an employee asserts a claim for mental injury, they must show proof that the work-related stress is greater than that experienced by workers in a similar situation. Not only would Senate Bill S6373 affect the way mental health cases are litigated in New York, but it will also increase the number of cases and make it easier for employees to assert and win a mental health case.

The COVID-19 pandemic has put more of a spotlight on mental health and there is more pressure on employers to provide proper mental health resources. While this is an important topic, often mental health crises are not work-related. If signed, this bill will allow mental health claims to be more subjective to an individual's perspective. Workers' compensation law was created to give injured workers medical treatment for work-related injuries and to give indemnity benefits if they lost work due to injury. In this scenario, we could see an explosion of mental health claims potentially unrelated to work which also do not fit within the traditional definition of workers' compensation law.

If Senate Bill S6373 becomes law it will create costly financial implications for employers and carriers alike, in addition to reshaping workers' compensation law as we have known it. If more mental injury claims are asserted and won, the cost of those claims could result in skyrocketing insurance premiums and higher out-of-pocket fees for mental health care.

New York state workers' compensation law is in a time of unprecedented change. While the legal industry has a responsibility to evolve with its current environment, many of the proposed changes will stretch far beyond the scope considered by legislators and may well have a deleterious effect on many industries operating within the state. Many of these issues are litigated daily. If these bills become law, navigating the changes would be difficult for counsel and judges alike, and cost prohibitive for many employers. The goal of workers' compensation law is to get employees back to work, earning money and doing their jobs as soon and as safely as possible. When considering these changes legislators should keep that goal top of mind and seriously consider all implications the change could have on the industry.

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