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The Division of Workers' Compensation and the Sunset Process: What's Next?

Proposed changes to the Division of Workers' Compensation that could affect nonsubscribers will be considered by the Texas Sunset Commission when it meets on July 6. Commission members will vote on staff recommendations that include better coordination between state agencies to identify nonsubscribers who do not comply with reporting regulations in filing forms DWC-5 and DWC-7.

The Alliance has suggested to the Commission that compliance could be improved by allowing employers to file the forms electronically. Currently, the Commission requires that forms be submitted by certified mail or in-person.

In a letter to the Commission, Alliance Chair Margaret Greenshield stated the organization's position that it does not believe the legislature needs to increase reporting requirements for nonsubscribers. Some lawmakers have argued that more information should be required from nonsubscribers on work-place injuries.

According to a staff report, only 10 percent of nonsubscribers file the required reports. The report also notes that many nonsubscribers may not know they are required to file the forms. The Sunset staff has recommended increasing nonsubscriber awareness by including more information about nonsubscriber requirements in state agencies' print and electronic newsletters.

Once the Commission has adopted its recommendations, the proposals will be used to develop legislation that will be considered by the full legislature when it convenes in 2011.

The Sunset Advisory Commission was established in 1977 by the state legislature to eliminate waste and inefficiency in government agencies. The 12-member commission is a legislative body that reviews the policies and programs of more than 150 government agencies. Each agency is reviewed every 12 years. The commission looks for duplication of other public services or programs, and considers changes to improve each

agency's operations and activities. Under the Sunset review, legislation must be enacted for the continuation of an agency.

Members of the Sunset Commission are Senator Glenn Hegar (R-Katy) - Chair, Rep. Dennis Bonnen (R-Angleton) -Vice Chair, Senator Juan Hinojosa (D-McAllen), Senator Joan Huffman (R-Houston), Senator Robert Nichols (R-Jacksonville), Senator John Whitmire (D-Houston), Rep. Rafael Anchia (D-Dallas), Rep. Byron Cook (R-Corsicana), Rep. Linda Harper-Brown (R-Irving), and Rep. Larry Taylor (R-Friendswood). Public members are Charles McMahan of Schulenberg and Lamont Jefferson of San Antonio.

Alliance Grassroots Network Showing Promise

In recent weeks members of the Alliance have been asked to participate in the development of the organization's grassroots advocacy network. The network will be used to link Alliance members with their respective legislators during the 2011 legislative session. It will be a key component of the of the organization's legislative advocacy during a session that is expected to focus significant attention on the state's workers' compensation system and several nonsubscribers-related issues.

As a first step in the network development process, members were asked to designate a "coordinator" for their companies. Response to the request has been very favorable and has resulted in the Alliance identifying over 40 legislators who currently represent members of the organization or the areas where their businesses are located.

"We're thrilled with the initial response and with the fact that we have the opportunity to build relationships with over forty legislators who have links to our members and their businesses. This is a great start and strong foundation from which to grow the network," said Margaret Greenshield, chair of the Alliance.

To expand on the legislative connections already identified, each company's grassroots coordinator will now be asked to recruit three to five additional individuals from within their company to participate in the network. The recruitment of additional networkers has the potential to significantly expand the organization's reach and influence during a critical session for the state's nonsubscribers.

Strategies to Keep Workers Healthy Paying Off

With two of every three adults Americans overweight or obese and obesity rates for children tripling since 1980, employers spend an estimated \$13 billion a year on obesity-related issues.

Obesity and the health conditions associated with it - hypertension, type 2 diabetes, stroke, coronary heart disease, and certain types of cancer - are responsible for an estimated 27 percent of the increase in health care spending by employers. Weight issues also reduce worker productivity because the more chronic medical conditions employees have, the higher the probability of absenteeism.

Workplace obesity prevention programs have proven to reduce obesity, decrease health-care costs, reduce absenteeism, and increase employee productivity.

According to the Journal of Health Promotion, spending on workplace obesity prevention programs has a 6:1 return on investment ratio when reduced medical costs are combined with increases in worker productivity.

An estimated 50 percent of an organization's health-care costs are driven by lifestyle behaviors of its employees, including smoking, poor diet, and lack of exercise.

According to the Texas Department of State Health Services (TDSHS), the average reduction in health-plan costs, sick leave, disability costs, and workers' compensation is more than 25 percent for well-designed worksite wellness programs.

Experts say that building a successful worksite wellness program requires staff time as well as money. Some larger organizations may spend 20 hours per week for three to six months preparing all the steps prior to launching a worksite wellness program.

Costs can fluctuate, depending on whether the employer pays all costs, the employees pay all costs, or the costs are shared. The Wellness Council of America estimates the cost per employee to be between \$100 and \$150 per year for an effective wellness program that produces a return on investment of \$300 to \$450. It takes about three to five years after the initial program investment to realize these savings.

TDSHS says worksite wellness programs should address unhealthy behaviors that can help employees eat healthier, increase their level of physical activity, help reduce stress, lower blood pressure and cholesterol, and quit smoking. Experts stress that the goal of wellness programs should focus on assisting employees achieve and maintain their optimal health status

DWC Offers Information on Protecting Employees From Heat-Related Illnesses

The Texas Department of Insurance, Division of Workers' Compensation (TDI-DWC), urges Texas employers to help prevent heat-related injuries and illnesses. During the warm months, many dangers exist for all people working outdoors, ranging from sun-damaged skin to fatal illnesses. From 2003 thru 2008, heat-related illnesses resulted in twenty work-related fatalities in Texas, according to the Census of Fatal Occupational Injuries (CFOI).

Texas employers and employees should be aware that extended exposure to a hot environment can tax the body beyond its ability to cool. The effects of heat can be magnified in the very young, the elderly and those with medical conditions. Knowing the signs and symptoms of heat-related illnesses and heat stress such as heat cramps, heat exhaustion, and most dangerous, heat stroke, and by taking precautions can help prevent their onset. Symptoms indicative of heat exhaustion, which is caused by the loss of large amounts of fluid and/or salt sweating, include: clammy and moist skin; extreme weakness or fatigue; giddiness; nausea; headache; or fainting. Warning signs of heat stroke vary, but could include an extremely high body temperature (above 103°, orally); red hot, and dry skin (no sweating); rapid, strong, pulse; throbbing headache; dizziness; nausea; confusion; or unconsciousness. Prompt assessment of employees experiencing any of these symptoms, and the delivery of appropriate first aid or emergency medical care are advised.

The best defense against heat-related illnesses is prevention. By following heat-related safety tips, employers can aid in protecting employees from extreme heat conditions.

- Ensure all of your employees have been trained in recognizing heat-related illnesses (document training).
- Monitor weather forecasts to determine when a "Heat Advisory" or "Heat Alert" is in effect.
- Drink 16 - 32 ounces of cool fluids each hour when working outdoors.
- Replace salt and minerals with electrolyte drinks.
- Do not rush; a slower but steady pace reduces stress on the body.
- Avoid working in direct sunlight whenever possible, and take frequent breaks.
- Protect the face and head by wearing a wide-brimmed hat.
- Wear UV-absorbent sunglasses to protect the eyes.
- Perform most strenuous outdoor tasks during the morning, if possible.
- Wear loose-fitting, light weight, light-colored clothing.
- Use a buddy system and check on employees often; monitoring for heat-related symptoms increases the chances of avoiding illness.
- Avoid hot foods and heavy meals, since they add heat to the body;

- avoid caffeine and alcohol, due to their dehydrating properties.
- Ensure provisions are in place for prompt medical attention.

TDI-DWC has resources to assist employers in training employees about how to prevent heat-related injuries and illnesses. The agency offers free safety publications, including Heat-Related Injuries and Illness Prevention, Heat Stress Safety Training Program, and Sun Safety, as well as a variety of free safety training audiovisuals available for loan. These publications and the audiovisual loan catalog are available on the agency website at <http://www.tdi.state.tx.us/wc/safety/index.html>, or by calling 512-804-4625.

Tracking the Gulf Coast Oil Spill: Its Impact on Texas

The tragic loss of life and massive ecological damage will not be only things the gulf coast tragedy will leave behind. Increased fuel costs and unhealthy seafood will be the most noticeable effects in Texas from the spill.

But as hurricane season approaches, experts warn that the Texas coast is not guaranteed to escape the disaster. Prevailing winds currently are carrying the spilled oil toward Louisiana, Mississippi, Alabama and Florida, but a tropical storm or hurricane could change that making safety for Texas residents and workers a likely issue.

First responders, U.S. National Guardsmen and others working on cleanup efforts are likely to be the most affected.

"Volunteers will be at the highest risk," said Paul Lioy of the University of Medicine & Dentistry of New Jersey and Rutgers University. Lioy was one of several health experts to attend a workshop convened by the Institute of Medicine (IOM) at the request of the U.S. Department of Health and Human Services in New Orleans in June.

Lioy said 17,000 National Guard members have been deployed to help with clean-up and that many lack extensive training in the types of hazards that they face.

Others who face immediate risk include seamen and rescue workers, residents living in close proximity to the disaster, people eating fish and seafood, tourists and beach-goers, said Dr. Nalini Sathiakumar, an occupational epidemiologist and pediatrician at the University of Alabama at Birmingham.

The Centers For Disease Control and Prevention, with state and local health departments, is tracking symptoms related to the eyes, skin, and respiratory, cardiovascular, gastrointestinal, and neurological systems,

including worsening of asthma, cough, chest pain, eye irritation, nausea, and headache. If the surveillance systems identify groups of people with these symptoms, state and local public health officials will be able to investigate whether there is an association between the symptoms and the oil spill.

Many of the ailments, including nausea, headache and dizziness, are already evident, especially in clean-up workers, some of whom have had to be hospitalized.

"Petroleum has inherent hazards and I would say the people at greatest risk are the ones actively working in the region right now," said Dr. Jeff Kalina, associate medical director of the emergency department at The Methodist Hospital in Houston. "If petroleum gets into the lungs it can cause quite a bit of damage to the lungs [including] pneumonitis, or inflammation of the lungs."

Physical contact with volatile organic compounds (VOCs) and with solvents can cause skin problems as well as eye irritation, said Sathiakumar, who said that VOCs can also cause neurological symptoms such as confusion and weakness of the extremities.

Third Party Administrators Supporting the Alliance

Employers Comp Associates, Inc.-Addison
www.employerscompassociates.com

J I Companies-Austin
www.jicompanies.com

Midlands Management-Addison
www.midlandsmgt.com

1-2-1 Claims-Helotes
<http://1-2-1claims.com>

Providence Risk & Insurance Services-San Antonio
www.pristx.com

Sedgwick CMS-Dallas
www.sedgwickcms.com

The Combined Group-Dallas
www.combinedgroup.com

Federal legislation being monitored by the Alliance

HR 635 by Rep. Baca (D-CA)

Description: Establishes the National Commission on State Workers' Compensation Laws.

STATUS: Referred to the House Committee on Education and Labor on January 22, 2009.

HR 991 by Rep. Gutierrez (D-IL)

Description: *Consumer Fairness Act of 2009* - Amends the Consumer Credit Protection Act to treat as an unfair and deceptive trade act or practice under federal or state law any written provision in a consumer transaction or contract that requires binding arbitration to resolve a controversy arising out of or related to the transaction or contract, or the failure to perform any part. Declares such a provision unenforceable. Permits a written agreement to determine an existing controversy by binding arbitration if the parties agree after the controversy has arisen.

STATUS: Referred to the House Committee on Financial Services on February 11, 2009.

HR 1020 by Rep. Johnson (D-GA)

Description: *Arbitration Fairness Act of 2009* - Declares that no pre-dispute arbitration agreement shall be valid or enforceable if it requires arbitration of: (1) an employment, consumer, or franchise dispute, or (2) a dispute arising under any statute intended to protect civil rights. Declares, further, that the validity or enforceability of an agreement to arbitrate shall be determined by a court, under federal law, rather than an arbitrator, irrespective of whether the party resisting arbitration challenges the arbitration agreement specifically or in conjunction with other terms of the contract containing such agreement. Exempts from this Act arbitration agreements in collective bargaining agreements.

STATUS: 6/21/2010. Subcommittee on Commercial and Administrative Law Discharged.

HR 1237 by Rep. Sanchez (D-CA)

Description: *Fairness in Nursing Home Arbitration Act* - Provides that a pre-dispute arbitration agreement between a long-term care facility and a resident (or anyone acting on the resident's behalf) shall not be valid or specifically enforceable.

STATUS: 6/21/2010. Subcommittee on Commercial and Administrative Law Discharged.

S 512 by Sen. Martinez (R-FL)

Description: *Fairness in Nursing Home Arbitration Act* - Provides that a pre-dispute arbitration agreement between a long-term care facility and a resident (or anyone acting on the resident's behalf) shall not be valid or specifically enforceable.

STATUS: Read twice and referred to the Committee on the Judiciary on March 3, 2009.

Important Compliance Information for Nonsubscribers

State law requires employers in Texas that do not carry workers' compensation insurance to file DWC Form-5 with the Texas Department of Insurance-Division of Workers' Compensation (TDI-DWC). Additional information on DWC Form-5 is available at: <http://www.tdi.state.tx.us/forms/dwc/dwc005nocov.pdf>.

Nonsubscriber employers with four or more employees are also required to use form DWC Form-7 to report each work-related injury resulting in more than one day of lost time, all occupational diseases of which the employer has knowledge (regardless of lost time), and all fatalities occurring during the calendar month. The completed form reporting all such injuries that have occurred during a calendar month must be filled with the TDI-DWC no later than the 7th day of the following month. For more information on DWC Form-7 go to: <http://www.tdi.state.tx.us/forms/dwc/dwc7.pdf>.

Failure to comply with either requirement is an administrative violation and could result in administrative penalties. The Alliance encourages its members and all nonsubscribers to comply with these requirements.

Links to DWC-Forms 5 and 7 are available on the Alliance Web site at: www.nonsubscriberalliance.org.

Future Board Meetings (All calls are 1:00 p.m. CST)

- **July 21, 2010 – Conference call**
- **September 15, 2010 – Conference call**
- **October 20, 2010 – Annual meeting in Dallas**



The Texas Alliance of Nonsubscribers

An employer-driven, nonprofit trade association dedicated to ensuring that nonsubscription interests are better prepared, more cohesive, and strategically proactive in preserving their choice to manage occupational injury claims.

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