Lipsitz Green Scime Cambria LLP

Volume 6, Issue 2
Spring/Summer 2007

Law *for* Labor

News that's important to you, from people you're important to.

Historic Changes Made to Workers' Compensation Law

By Keith T. Williams

Governor Eliot Spitzer signed a bill on March 13, 2007, agreed upon by the Governor's Office, the New York State Senate and Assembly, the New York State AFL/CIO, and the Business Council of the State of New York, which made many significant changes to the Workers' Compensation Law. The most significant changes include an increase in the maximum weekly compensation rate for injured workers and a "cap" on "permanent partial" disability indemnity payments. We expect there to be further changes in the law as these new rules go into effect. We are available to provide you information on the changes as they occur.

Maximum and minimum benefit rate changes.
For the last 15 years, the maximum benefit has been capped at $400 per week. Under the new law, workers injured on or after July 1, 2007 are eligible for increasing rates as follows:

Workers injured between July 1, 2007 and July 1, 2008: Maximum rate - $500.

Workers injured between July 1, 2008 and July 1, 2009: Maximum rate - $550.

Workers injured between July 1, 2009 and July 1, 2010: Maximum rate - $600

For workers injured after July 1, 2010 the maximum rate will be set at two-thirds of the New York State average weekly wage, to be determined annually by the Commissioner of Labor. This rate will then be "indexed" to the State's Average Weekly Wage. This means that workers will no longer have to go begging to the legislature to receive an increase in the Compensation rates.


Gov. Spitzer at a labor event in the Lipsitz Green office with partner James T. Scime.

These are the "maximum" rates – each worker's individual rate is payable at the rate of 2/3 of his/her average weekly wage for 12 months of employment preceding the date of the injury – up to that "maximum" rate.

The minimum benefit rate is also increased under the new law from $40 to $100 for injuries sustained after July 1, 2007.

Permanent partial disability benefits changes.
Under the old law, payments for injuries that were "classified" (typically back and spine injuries and disabling occupational diseases) were awarded for life. For all individuals injured on or after March 13, 2007 the new law places time limits on these monetary awards. The length of time for which benefits are payable in the future depends on the extent of the

Inside *this* Issue

Workplace Safety, The Battle Continues

By: Richard P. Weisbeck

A recent tragedy in WNY's construction trade compels our community to reemphasize the crucial importance of safety on the worksite. In one fleeting second a life can be lost, a family devastated, coworkers scarred and a community wondering how such things can happen in this day and age - though only a few decades ago, this tragedy would have been a common occurrence.

From the death of 146 workers at the Triangle Shirtwaist Factory fire in New York City in 1911 sprang the passage of many labor laws designed to compel companies and people to do what they should have done voluntarily – make workplaces safe. Strict laws and union demands have acted as the strong counterbalance to the pull of profits.

Continued on page four.

Medicaid Planning, Act Now to Protect Your Future

By George E. Riedel

You have worked hard all your life to save for retirement but your savings can be quickly wiped out if you haven't planned for the possibility that in the future you or your spouse may need the services of a nursing home or some other type of long term care. Medicaid Planning allows you to protect some of your assets so that all of your savings are not used to pay for your care.

Unfortunately, nursing homes are a fact of life affecting almost all of us at one time or another. Today, the average nursing home stay is approximately 30 months and the average cost is between $5,000 and $8,000 a month or more. Bills for nursing home care can quickly use up retirement savings. Medicaid is a joint federal/state program that pays for nursing home or other qualified care for those who meet certain income and asset criteria.

The qualification rules for Medicaid coverage are complex. They include a review of the assets and income of the person seeking Medicaid nursing home care as well as the assets and income of the person's spouse. In determining eligibility, transfers and gifts of assets or income in the 5 years prior to applying for Medicaid may also be examined. Even transfers between husbands and wives are reviewed. Therefore, you must begin Medicaid planning well before you need to apply for Medicaid. The earlier you obtain planning advice, the more your family may benefit.

Some common questions about Medicaid eligibility for nursing home care include:

1. Will I qualify if I have income?

Presently, the rules limit income of a Medicaid recipient to $50.00 per month. If he or she has income of more than $50 per month then the excess must be used to pay for nursing home care. Your spouse, however, may continue to receive income of up to $2,541.00 per month. If your spouse has income of more than $2,541.00 per month that additional income must be used to pay for your nursing home care.

2. Will I qualify if I have savings or other resources?

Currently, Medicaid will not pay for your nursing home services if you have assets of more than $4,200.00. Assets include almost anything of value including savings, stocks, bonds, personal belongings, collections, art, the cash value of life insurance, any trust interests, jewelry, autos and boats. If you have more than $4,200.00 in assets, you must use those assets to pay for your nursing home care. Once you have used up all but $4,200.00 in assets, then you will qualify for Medicaid. Your spouse may keep assets with a total value of up to $74,820.00 but your spouse must use all additional assets to pay for your nursing home care.

To ensure your assets are protect for your loved ones, it is important to plan now.

3. Can I protect my savings?

Through the use of gifts or trusts and by planning ahead your savings can be used to benefit you and your family. Since a Medicaid eligibility review can involve looking back as far as 5 years (60 months) to determine whether you have transferred property or assets to avoid the Medicaid requirements, you must act early to protect your assets. The advice of a knowledgeable Medicaid planning attorney can help you protect your savings.

4. What if I own a home?

If you are a single person your home is exempt from the asset limit *only if you have a reasonable expectation of returning to your home after your nursing home stay.* If you are not likely to return to your home in the future, the full value of your home will be included in determining whether you meet the $4,200.00 asset limit discussed above. In other words if you won't be returning to your home and it is worth more than $4,200.00 your home must be sold to pay for your nursing home care. If you are married, your home is exempt from the asset limit during the time your spouse lives in your home.

5. Can Medicaid planning help protect my home?

The law permits you to transfer certain property to your loved ones if it is done far enough in advance (60 months before applying for Medicaid). For example, you may wish to give your home to your children and keep the right to live in the home throughout your lifetime. The part you retain is called a life estate. If you fail to plan ahead, the full value of the house will be included in determining your assets. Consulting an attorney about this option and other planning strategies can help save your home.

The best way to protect you hard earned savings and your home is to start Medicaid planning early. Since you never know what is around the corner, the sooner you consult with a Medicaid planning attorney, the more options you have to protect your home and assets. We are available to assist you in planning for the future. If you would like our advice, please give us a call. Our Estate and Elder Law Attorneys are here to help – phone number: 849-1333 Michael Schiavone (ext. 309), George Riedel (ext. 324).

George E. Riedel is a Senior Partner, practicing in the areas of Estate Planning and Elder Law. He can be reached at (716) 849-1333 ext. 324 or griedel@lglaw.com

Changes to Workers' Compensation Law

Continued from page one

worker's loss of earning capacity (or "degree of disability"). The various time limitations are:

Degree of Disability = Weeks of benefits
96-99% = 525 weeks.
91-95% = 500 weeks.
86-90% = 475 weeks.
81-85% = 450 weeks.
76-80% = 425 weeks.
71-75% = 400 weeks.
61-70% = 375 weeks.
51-60% = 350 weeks.
41-50% = 300 weeks.
31-40% = 275 weeks.
16-30% = 250 weeks.
01-15% = 225 weeks.

The new law recognizes that the medical guidelines for determining these disability levels must now be amended and it establishes a task force to institute these changes.

As previously noted, the permanent partial "cap" applies to any worker injured from March 13, 2007 forward. All claims with an accident date before March 13, 2007 are not affected by the changes. Those individuals who were injured between March 13, 2007 (when the new permanent partial disability rules took affect) - and July 1, 2007 (when the new maximum rates take affect) have their benefit weeks capped under this new schedule at the old maximum rate of $400.

The effect of these time limitations is offset by a new section of the law entitled "Safety Net." This new law includes methods to insure that workers who are injured and cannot return to employment have some "Safety Nets" to rely on. Art Wilcox of the New York State AFL-CIO, the lead negotiator on this bill for the State Fed., relates that:

"*The safety nets on PPD's are many. We have all read about the extreme hardship provision , but in addition to that, there is now included a right to rehabilitation and retraining, reevaluation for the potential of an industrial total disability later in life, retraining of judges, medical care for life, and the capturing of the reserves in each case, which will go far to create fairness. We also should not forget that none of the cap restrictions commence until the claim is classified.*"

Medical Care and Treatment
For years, labor has advocated for changes to deal with the delay in medical treatment and care for injured workers. Employees suffered needlessly as they waited for approval for medical care to help them get back to work. This affected not only the worker but often the employers as delays in treatment meant unnecessary delay in the worker's ability to return to work.

The new law adds the following: *The pre-authorization limit for diagnostic testing and treatment is raised from $500 to $1,000.* The Board is also directed to issue and maintain a list of pre-authorized procedures. This will allow doctors to quickly authorize necessary diagnostic tests and treatment for their patients. It should also help avoid the situation we have all seen where long delays in approving MRI's, needed to diagnose injuries, result in even longer delays in a worker's ability to return to work.

A task force is being impaneled to come up with the "best practices" so that certain medical procedures can proceed without authorization. For example, if a worker has a knee injury with a torn cartilage, the doctor wants to do arthroscopic surgery, and that procedure is determined to be the "best practice" for that condition, the doctor would be able to proceed without authorization. These are the types of matters the task force will attempt to address.

Fraud by Employers
When studying the need to make changes to the workers' compensation system, it became apparent that some employers were under reporting their number of employees to lower their Workers' Compensation insurance rates. Also, many employees were being classified as "independent contractors" so that employers could avoid paying their insurance. The new law includes strict penalties for employers who do not report and pay premiums correctly. Again Art Wilcox states;

"*A study done by the Fiscal Policy Institute shows that nearly 20% of the premium in New York State was being avoided each year by bad employers. This placed an increased burden on the law abiding employers. By forcing all to pay their fair share, this will result in the good employers in our state having a major reduction in workers' compensation costs*."

While there are many changes in this new law we have highlighted those we believe will have the most immediate impact on your workers. The Lawyers and Licensed Representatives at Lipsitz Green are working hard to ensure that your members receive the finest representation in all their Workers' Compensation cases. Be assured that we are involved in a daily basis with the continuing changes in this law and will continue to report on the implementation of these changes in future editions of this newsletter. In the meantime, if you or your members have any questions, we are here to answer them.

Keith Williams is a licensed workers' compensation representative, focused on the representation of injured workers. He can be reached at (716) 849-1313, or ktwilliams@lglaw.com

Lipsitz Green Scime Cambria LLP

BUFFALO OFFICE
42 Delaware Avenue, Suite 120
Buffalo, NY 14202-3924

Phone: 716 849 1333
Toll Free: 1 800 870 8138
Fax: 716 855 1580

ADDITIONAL OFFICES
Amherst, NY
Cheektowaga, NY
Fredonia, NY
New York, NY
Beverly Hills, CA

Online: www.lglaw.com
E-mail: lawforlabor@lglaw.com

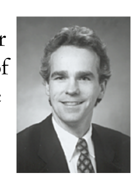
PRSRT STD
US POSTAGE
PAID
Buffalo, NY
Permit #4626

Workplace Safety, The Battle Continues

Continued from page one

In the construction field, special safety laws reflect the extraordinary risks borne by those working in this area. While there are always movements a foot to scale back these legal protections – usually spurred by insurance companies - unions have led the charge by proving that safety saves money. As a result, a range of safety protections have been created including industries and contractors who have full time safety inspectors; subcontractors who are required to have safety training; and training funds that sponsor health and safety instructional courses.

History has shown that the soft slap of an OSHA fine pales in comparison to the whip of union demands and the strengthened rights of the injured worker as a means of forcing safety to its rightful place at the top of construction and industry concerns. The recent death of a young man at a Buffalo construction site reminds us - a business focus on safety does not come voluntarily. Union leaders must vigilantly shine their spotlight on the costs in human lives and economic impact so that not one step is lost in the hard-fought safety gains made since the loss of 146 lives at the Triangle Shirtwaist Factory. The battle continues…as the death of a local construction worker sadly reveals.



Richard P. Weisbeck is a senior partner, practicing in all areas of personal injury law. He can be reached at (716) 849-1333, ext. 348 or rweisbeck@lglaw.com