

LIPSITZ, GREEN,
FAHRINGER, ROLL,
SALISBURY
& CAMBRIA LLP
ATTORNEYS AT LAW

LAW FOR LABOR

Volume 3, Issue 1

Spring, 2004

Workers' Compensation, The Importance of Legal Guidance

by: Phil Scaffidi
pscaffidi@glaw.com

If you have been injured at work, one of the first questions you need to ask is – should I have an attorney represent me? It is important to keep in mind that your employer and its insurance company have attorneys who begin working on your case as soon as your claim is filed. They are always looking for ways to deny your claim, or pay you as little as possible. Even if your claim is accepted and benefits are being paid, you should not assume you are getting everything you are entitled to. Do not be fooled into thinking that the insurance adjusters handling your claim are on your side – they're not. If you do not have a knowledgeable attorney protecting your rights,



Workplace injuries pose a serious threat to your quality of life. It is important to secure an experienced advocate to ensure you are fully compensated for your losses.

you are making it much easier for the insurance company and its attorneys to take advantage of you. A qualified attorney will have the knowledge and expertise to help you when the insurance company goes on the attack, or when complex

Continued on page five .

New Financial Reporting Requirements, Mandate Required by July 2004

by: Rob Boreanaz
rboreanaz@glaw.com

As you may know, the Secretary of Labor has instituted new Union financial reporting requirements (LM-2), under the LMRDA. The new requirements were originally set to go into effect on January 1, 2004, but were delayed by Court Order because the government failed to



timely provide unions the necessary electronic reporting software. Depending on when the new electronic reporting software is made available by the government, the new Union financial reporting requirements could become effective as early as July 1, 2004.

While the United State Labor Department has raised the annual threshold for Unions that must file forms LM-2's from \$200,000 to \$250,000, there

Continued on page two

Inside this
issue:

Union

2 Administration

New Union Financial
Reporting Regulations

Personal

3 Injury

Planning Ahead in the
Event of an Auto
Accident

Auto Accident

4 Feature

Auto Accident Info Log
Tear Out and Save

Workers'

5 Compensation

The Role of an Attorney
in your Compensation
Case

Benefit Fund

6 Planning

2003 Medicare Reform,
the Health Savings
Account

THE LIPSITZ, GREEN TRADITION

LOYALTY TO LABOR ♦ LEADERSHIP IN LAW

FIFTY YEARS OF EXCELLENCE IN SERVING EVERY LEGAL NEED

Union Financial Reporting Changes

Continued from page one.

are a number of additional burdensome requirements. The highlights of the new requirements are listed below.

Unions are now required to use six (6) categories of disbursements and/or receipts. The new categories are: Representational Activities; Political Activities and Lobbying; Contributions, Gifts and Grants; General Overhead; Union Administration and Strike Benefits.

For each and every disbursement of \$5,000 or more to a single entity that falls into one (1) of the six (6) new categories, the union must report the name, address, amount and purpose of disbursement to the vendor.

If the total of all contributions to an entity within a given reporting year reaches \$5,000 in any one of the new categories, then the Union must also report the required information such as name, address, amount and purpose of the disbursement.

Any accounts payable or receivable that are over \$5,000 and are past due, must be reported and itemized.

The Union officers' time must be allocated by

estimate to each of the new categories. Further, any employee who receives more than \$10,000 must also have their time allocated between these six (6) categories.

A new T-1 Report must be filed for "significant trusts" – those entities in which the Union appoints at least one (1) Trustee if its primary purpose is to provide benefits to the members, the receipts are at least \$200,000 and the Union has contributed at least \$10,000 annually.

The LM-2 Reports must now be filed electronically with the software provided by the U.S. Department of Labor.

Overall, the new LM-2 reporting requirements will require your union to make substantial changes to its accounting systems. Your Union must collect the necessary financial information and keep track of the finances to comply with the LM-2 Reports at the end of the fiscal year.

INFORMATION TO BE REPORTED IN FORM LM-2

- Whether the union has a subsidiary organization
- Whether the union has a political action committee (PAC)
- Whether the union discovered any loss or shortage of funds
- Number of members
- Rates of dues and fees
- 7 asset categories such as accounts payable and mortgages payable
- 16 receipt categories such as dues and interest
- 18 disbursement categories such as payments to officers and repayment of loans obtained
- A schedule of payments to officers
- A schedule of payment to employees
- A schedule of office and administrative expenses
- A schedule of loans payable

Source: U.S. Department of Labor

Our office will be conducting Workshops to help Union officials understand and comply with the new LM-2 requirements. Please call our office if you're interested in attending our Workshops.

REPRODUCE *LAW FOR LABOR* ARTICLES IN YOUR NEXT UNION NEWSLETTER

If you would like to reproduce any of the articles found in this publication for your union's newsletter, or any other purpose - please contact us at (716) 849-1333, ext. 417 or via e-mail at lawforlabor@lglaw.com

Auto Accident Aftermath, Plan now for reacting in the future

by: Richard Weisbeck
rweisbeck@lglaw.com

Most drivers will have to endure the unfortunate experience of a car accident. At the moment of impact, the chilling feeling of “now what do I do?” takes over.

This guide and the Auto Accident Log on the following page outlines the steps you need to take to protect yourself and those around you. We suggest you keep this guide in your glove compartment in case you find yourself in an emergency situation. The page is perforated and easy to remove for your convenience.



- Names, addresses, and phone numbers of all witnesses.
- Responding Police Officer's Name, Police Department and phone number.
- Request a copy of the police report.
- Take photographs if possible.

IMPORTANCE OF ATTORNEY INVOLVEMENT

Consulting an attorney is an important step to take when you are facing the stressful circumstances that accompany an automobile accident. An experienced attorney will thoroughly explain whether you have the right to sue for any injuries you may have suffered as a result of the accident.

An attorney can also: explain your right to obtain no-fault benefits under New York State law; assist you when insurance companies begin to call; and help ensure that evidence is properly gathered and preserved. Ultimately, an attorney will make sure all claims or lawsuits are filed within the time required by the law and help you recover for your pain, suffering, lost wages and other damages resulting from your accident.

TRUSTED ATTORNEYS TO CONTACT

When selecting an attorney, it is important that you feel informed and well taken care of. Our attorneys have many years of experience and a long history helping injured people. We have been nationally recognized for our personal injury work and we are committed to helping you. Please feel free to call us and ask for James Scime, Richard Weisbeck, Thomas Mercure, or Laraine Kelley. They can be reached at 849-1333, toll free at 1-800-870-8138, or through our after hours answering service at 1-888-523-6481.

You cannot control when accidents happen, but preparing now can protect you and your loved ones in the future.

We wish you a safe journey.

IMMEDIATE STEPS FOLLOWING AUTO ACCIDENT

The first action you want to take is secure the area and the people in it. Call 911 for police and ambulance assistance. While waiting for law enforcement and paramedics to arrive, direct uninjured people safely from the vehicle(s) and away from traffic. It is important to note you should *not*, under general circumstances, move an injured person. Allow medical professionals to address injured parties in an appropriate manner. Finally, use emergency flashers, flares, reflectors, or even a flashlight to warn approaching vehicles of the hazard ahead in the accident area.

IMPORTANT INFORMATION TO GATHER

The following is a list of information you should obtain at the scene of the accident:

- Name, addresses, and phone numbers of all drivers and passengers.
- Drivers' license numbers of all drivers.
- Car license plate numbers, year, make, and model of all cars involved.
- Names of insurance companies, policy numbers and agents.

Workers' Compensation, The Importance of Legal Guidance

Continued from page one

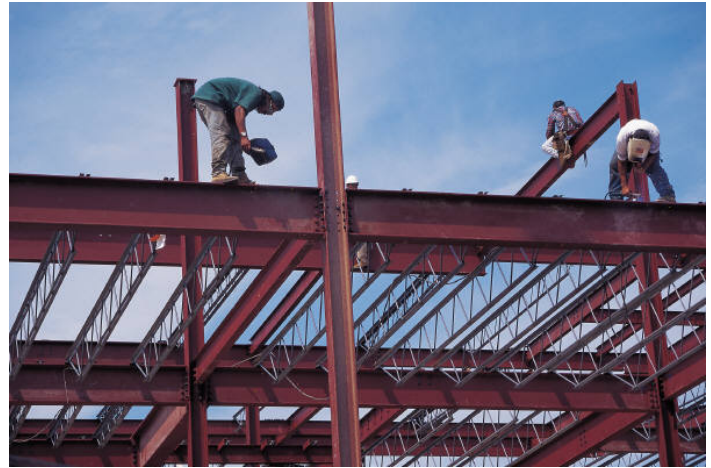
issues arise. Here are examples of issues an attorney can help you with:

1. When you have a *partial* disability, you must look for work within your restrictions.

If you don't, the insurance company will claim that you have "voluntarily withdrawn from the labor market" and it will try to have your benefits suspended. The insurance companies believe that if you are not totally disabled from all work, then you must look for a job you can perform within your restrictions. Even if you try to find work, the insurance companies will sometimes argue that you are not trying hard enough and will claim that you are not entitled to continue receiving benefits. An experienced Workers' Compensation attorney can fight to make sure your rights are protected and get you all the benefits you are entitled to.

2. Issues of fraud are frequently raised. In the last few years, employers and their insurance companies have cried "fraud" in an increasing number of cases. They often hire private investigators to follow you and videotape your activities in order to allege fraud and avoid paying the benefits you deserve. Fraud issues are usually sprung on workers at a hearing without warning. It is extremely important that fraud issues be handled properly the moment they are raised. If an insurance company successfully raises fraud, your compensation benefits could be eliminated and you could face possible criminal charges. If you don't already have an attorney when the insurance company alleges fraud, you risk mishandling this very serious issue at a very crucial moment.

3. Properly establishing all injuries and their relationship to your work can be a complicated matter. Medical issues are a hotly controverted topic in many compensation cases. The insurance companies often use doctors whose opinions concerning the extent of your injuries and their relationship to your work are very different from the opinions of your own doctors. Sorting out these opinions usually requires taking the sworn testimony of the doctors. A qualified attorney's distinct knowledge and skill can be invaluable in these cases.



4. Sometimes there are other rights available to you in addition to Workers' Compensation benefits.

Although the Workers' Compensation Law prohibits you from suing your employer for on-the-job injuries, sometimes those injuries are not your employer's fault, but are caused by the carelessness of another company. If so, you may be entitled to sue that other company for causing your injury, in addition to filing for workers' compensation benefits. The manufacturers of defective or unsafe machinery or products are sometimes held responsible for injuries. In construction accidents, many times the property owner is held accountable for an unsafe work place. Slip and fall accidents are often caused by the neglect of an outside company hired to handle snow and ice removal. There are many situations where someone other than the employer is at least partly to blame for an injury. In those cases, it is important to consult with an attorney to determine whether you can bring an action against the responsible party and recover additional money.

These issues highlight some of the more complicated matters an attorney can help you with. There are countless other issues which may arise as a case progresses through the Workers' Compensation system. An attorney will help you obtain all the benefits you are entitled to receive and will be there to fight for you when the insurance company goes on the attack.

Health Savings Accounts, All you need to know about the new reform

by: Mark Stulmaker
mstulmaker@lglaw.com

The 2003 Medicare reform law created a new type of account, a health savings account (HSA), to allow individuals covered by a high-deductible health plan to put aside money on a before-tax basis for future medical expenses. HSA's are an addition to the list of tax-favored accounts available for the payment of medical expenses.

HSA's are much like medical savings accounts (MSA's) and, in essence, take their place since MSA's may not be established after 2003. HSA's must be established with a bank or other IRS-approved custodian for the benefit of an individual. Contributions may only be made to an HSA if the individual is covered by a high-deductible health plan. But unlike an MSA, an HSA can be established by employees of any size employer. MSA's could only be established by employees of businesses employing 50 or less.

HIGH DEDUCTIBLE HEALTH PLAN

An individual may establish an HSA only if he or she is covered by a qualifying high deductible health plan. A qualifying high deductible health plan is one which has an annual deductible not less than \$1,000 for single coverage (\$2,000 for family coverage) and has an out-of-pocket limit (other than for premiums) equal to \$5,000 for single coverage (\$10,000 for family coverage). A health plan may provide preventative care without a deductible and still qualify as a high deductible health plan. Also, an individual may have dental, vision, disability, or long-term care insurance and still qualify for an HSA.

CONTRIBUTIONS

There is a monthly cap on contributions to an HSA equal to 1/12 of the deductible under the health plan, but no more than \$216.67 (\$2,600 per year) for single coverage and \$429.17 (\$5,250 per year) for family coverage. For individuals ages 55 to 65, the contribution limit in 2004 is increased by \$500 per calendar year, or \$41.67 per month. The contribution limit for this age group increases by \$100 each year until 2009 when such individuals may contribute up to \$1000 per year in excess of the plan's deductible.



Details of healthcare benefit programs can be overwhelming - but mastering all the rules and regulations is a must to properly serve your members.

Contributions to an HSA may be made by the account owner or his or her employer. And unlike MSA's, contributions to an HSA may be made through salary reduction under a cafeteria plan.

Employee contributions to an HSA are deductible as to a calendar year if made at any time prior to the filing of the eligible individual's tax return for that calendar year. Employer contributions are not taxable to the covered employee, nor are they subject to FICA.

TAX TREATMENT OF HSA'S

HSA's are tax-exempt; interest, dividends, and capital gains on account assets are not subject to tax. Distributions to the account owner are not taxable if made in reimbursement of qualified medical expenses for the owner, spouse, or dependents. Qualified medical expenses are, generally, those that can be deducted by an individual, although health insurance premiums are not considered qualified medical expenses unless they are premiums for long-term care insurance, COBRA coverage, or health care coverage while an individual is unemployed.

Upon the account holder's death, if the surviving spouse is the named beneficiary of the HSA, the HSA becomes the HSA of the surviving spouse. The surviving spouse is subject to income tax only if

Health Savings Accounts

Continued from previous page.

distributions from the HSA are not used for qualified medical expenses. If the HSA passes to someone other than a surviving spouse, that beneficiary is taxed on the value of the HSA assets as of the date of death.

Distributions other than for qualified medical expenses are taxed to the account owner and are subject to a ten percent penalty if the account owner is under age 65.

PORTABILITY

An HSA belongs to the individual owner and is portable between jobs. Any amounts left in the HSA at the end of a calendar year may be carried over into subsequent years.

STRUCTURING A HEALTH PLAN WITH HSA'S

It's not clear under the new law whether an employer or plan administrator may retain control over the distribution of money from an HSA. In those situations where the employer or the trustees wish

to fund an account-based type of plan and still ensure that the money is used only for healthcare, they will not likely use HSA's. But in those situations where the employer is committed to a specific dollar contribution to fund health benefits under a collective bargaining agreement, a portion of that money could go to an HSA to be controlled by the employee.

CONCLUSION

Since the new Medicare law was signed late in 2003, insurance companies and financial institutions didn't have enough time to roll out new products to take advantage of HSA's for the 2004 plan years of most health plans. When they do hit the market, HSA's with their accompanying high-deductible health insurance policies will likely be popular with young, healthy individuals. They will be able to set aside money on a tax-favored basis for incidental medical expenses that are not covered by insurance in any case, and there would be no risk that they would forfeit their contributions.

CONSTRUCTION ACCIDENTS



Injuries that occur on the job can have a shattering effect on your life.

PROTECT YOUR RIGHTS • PRESERVE YOUR FUTURE
PREVENT FURTHER PAIN

Lipsitz, Green offers nationally recognized Injury Attorneys, dedicated to serving the needs of the labor community. We proudly work until the very best result is obtained.

Five Conveniently Located Western New York Locations • 716-849-1333 • www.lglaw.com

**LIPSITZ, GREEN,
FAHRINGER, ROLL,
SALISBURY
& CAMBRIA LLP**

ATTORNEYS AT LAW

BUFFALO OFFICE

42 Delaware Avenue, Suite 300
Buffalo, NY 14202-3857

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

ADDITIONAL OFFICES

Amherst, NY

Cheektowaga, NY

Niagara Falls, NY

Alden, NY

New York, NY

Beverly Hills, CA

Online: www.lglaw.com

E-mail: lawforlabor@lglaw.com

LAW FOR LABOR

PRSR STD
US POSTAGE
PAID
Buffalo, NY
Permit #4626

Return Service
Requested

Disclaimer: Information in this newsletter is provided "as is" without warranty of any kind, either express or implied, including but not limited to, the implied warranties of merchantability, fitness for a particular purpose, or non-infringement. Information in this newsletter may contain technical inaccuracies or typographical errors. Information in this is not legal advice pertaining to specific cases or specific legal matters. You do not become a client of Lipsitz, Green, Fahringer, Roll, Salisbury & Cambria LLP by e-mailing us. You are urged to consult an attorney-at-law of your choice from Lipsitz, Green, Fahringer, Roll, Salisbury & Cambria LLP directly if you have a pressing legal matter or feel that you are affected by the topics discussed in this newsletter. Do not send confidential or personal information by e-mail.

THE LIPSITZ, GREEN TRADITION

LOYALTY TO LABOR ♦ LEADERSHIP IN LAW

FIFTY YEARS OF EXCELLENCE IN SERVING EVERY LEGAL NEED

Personal Injury

Union Administration Matters

Labor Relations • Workers' Compensation

Benefits Funds • Social Security Disability

Asbestos Exposure • Estate Planning • Medicaid Planning

Real Estate • Matrimonial & Family Law • Criminal Defense

Find every issue of *Law For Labor* online at www.lglaw.com