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TEXAS WORKERS' COMPENSATION 101

WHAT IS WORKERS' COMPENSATION?

The history behind comp.

Workers' compensation is an insurance policy that provides medical benefits and wage replacement to employees injured on the job of policyholders or "subscribers" with workers' compensation insurance.

The first modern workers' compensation law - the Accident Insurance Law - was adopted by Germany in 1884. DeCarlo, Donald T. and Thompson, Roger, *WORKERS' COMPENSATION, THE FIRST HUNDRED YEARS 2015* at 8. The idea advanced through this law by German Chancellor Otto Von Bismarck was that "Germany should provide for working people a system of insurance that would protect workers against the economic consequences resulting from sickness, accident or death." *Id.* Covering employees working in the manufacturing, mining, and transportation industries, the German law presented the outline for modern workers' compensation systems by providing medical benefits and compensation for lost earnings (*i.e.*, "indemnity benefits") up to two thirds of the employee's pay.

In Texas, the workers' compensation system is governed by the Texas Workers' Compensation Act (the "Act"), TEX. LAB. CODE §§401.001 *et seq.*, and administrative rules (the "Rules"), 28 Tex. Admin. Code chs. 1-180, promulgated by the Texas Department of Insurance - Division of Workers' Compensation (the "Division" or "DWC") (collectively, the Act and Rules are referred to herein as the "Workers' Compensation Law"). Through the Workers' Compensation Law, the Division regulates the Texas system by defining when an injury or occupational disease is covered, outlining the amount and quality of benefits required, and providing an administrative dispute resolution process for aggrieved system participants.

This paper outlines the basic framework of the Texas Workers' Compensation System (the "System") to provide a "101 Course" to those interested in learning more about the Workers' Compensation Law.

WHY HAVE WORKERS' COMPENSATION INSURANCE?

Subscriber vs. non-subscriber exposures.

Although workers' compensation insurance is compulsory in most other states, Texas does not require employers to maintain workers' compensation insurance. Employers who maintain workers' compensation insurance are known in the System as "subscribers" while those who go without workers' compensation insurance - or go "bare" - are known as "non-subscribers." By

subscribing to workers' compensation insurance, the employer is protected from liability through the Exclusive Remedy defense.

Workers' compensation is a no-fault system. An employee of a "subscriber" to workers' compensation insurance is entitled to workers' compensation benefits if the employee sustains a "compensable injury" without having to prove the employer was negligent - *and* regardless of whether the employee was negligent - in causing the injury. A "compensable injury" is "an injury that arises out of and in the course and scope of employment for which compensation is payable." TEX. LAB. CODE §401.011(10). An "injury" is "damage or harm to the physical structure of the body and a disease or infection naturally resulting from the damage or harm. The term includes an occupational disease." *Id.* at §401.011(26). The injury occurs in the "course and scope of employment" if it results from any activity that has to do with and originates in the employment and that is performed in or about the furtherance of the affairs of the employer. *Id.* at §401.011(12). An injury may be in the course and scope of employment if it occurs while the employee is traveling for work, but generally, the injury is not in the course and scope of employment if it occurs during everyday travel to and from work. *Id.*

If a worker for a subscribing employer was injured in the course and scope of employment, then the worker's exclusive remedy against the employer is to obtain workers' compensation benefits in accordance with the Workers' Compensation Law as provided by the employer's workers' compensation policy. *See* TEX. LAB. CODE §408.001(a). Except in instances of a death caused by the gross negligence of the employer, an employee may not recover from the employer any other damages as a result of the negligence or fault of the employer. If a subscriber is sued in a personal injury action by the injured worker, the employer may raise the "Exclusive Remedy" affirmative defense barring the employee's action.

In contrast to the protections afforded the subscribing employer, a non-subscriber *is exposed* to civil liability for an employee's injury occurring in the course and scope of employment. An injured worker may bring a personal injury suit against the non-subscriber, and the non-subscriber is prohibited by statute from raising certain common law defenses, including contributory negligence, assumption of risk, or that the injury was caused by the negligence of a fellow employee. *See* TEX. LAB. CODE §406.033(a). The damages recovered in a civil action from the non-subscriber may greatly exceed the indemnity and medical benefits to which the injured worker would have otherwise been entitled under the Workers' Compensation Law.

By subscribing to workers' compensation insurance, an employer's exposure for an injury is limited to the premium due on the workers' compensation policy and subject to a potentially increasing experience credit resulting from injuries reported during the policy period.

HOW DOES WORKERS' COMPENSATION WORK?

The basic workers' compensation claim.

The payment of workers' compensation benefits is triggered when an employee is injured in the course and scope of employment. The liability of the insurance carrier is dependent on a series of deadlines that require timely action on the part of the employee to confirm that compensation will be paid for a work-related injury.

If an employee is injured or contracts an occupational disease, the employee is required to notify the employer of the injury within 30 days of the date: (1) the injury occurs; or (2) in the case of an occupational disease, the date the employee knew or should have known that the disease is related to the employment. TEX. LAB. CODE §409.001(a). The injured employee is also required to file a “claim for compensation” with the Division within one year of the date the injury occurs or the date the employee knows the occupational disease is work-related. TEX. LAB. CODE §409.003. Once the employee files a workers’ compensation claim, the employee is commonly referred to in the system as a “Claimant.” It is critical to the Claimant’s workers’ compensation claim to timely report the injury and to timely file the claim for compensation. The failure to meet either deadline *may relieve the insurance carrier of liability* for the work-related injury. See TEX. LAB. CODE §409.002 (failure to timely notify the employer); TEX. LAB. CODE §409.004 (failure to file claim for compensation with the Division).

The strict deadlines in the system are also applicable to the obligations of the employer and the insurance carrier. The employer must report the injury to the insurance carrier within eight days of the date that (1) the employee loses more than one day of work, or (2) the employer receives notice that the employee has an occupational disease. TEX. LAB. CODE §409.005(a)-(b). Within seven days of receiving notice of an injury from the employer, the carrier is required to file a “First Report of Injury” with the Division. *Id.* at §409.005(d). Upon receipt of the notice of injury from the employer, the insurance carrier will begin its investigation of the compensability of the alleged injury to determine: (1) whether there was an injury, (2) whether the injury occurred in the course and scope of employment, and (3) whether the carrier may be relieved of liability for any number of enumerated defenses.¹ The insurance carrier’s investigation is intended to ensure that only valid claims are paid.

Within 15 days of the date the carrier receives notice of the injury, the carrier must either deny the claim or begin issuing payments on the workers’ compensation claim. TEX. LAB. CODE §409.021(a). The failure to either initiate benefits or deny the claim within such time may subject the insurance carrier to administrative violations from the Division. *Id.* However, even after the 15th day, the insurance carrier may continue its investigation of the compensability of the claim up until the 60th day following the date it received notice of the injury. During this 60-day period, the carrier must continue to pay workers’ compensation benefits until the date the Carrier ultimately denies the claim. See *id.* at §409.021(c). Subject to a narrow exception for evidence that could not have reasonably been discovered, the insurance carrier waives the right to contest compensability of (and liability for) the injury if the dispute of compensability is made after the 60th day from the date of notice of the injury.

¹ In addition to the failure of the injured employee to timely report the injury or file the claim with the Division, the carrier is relieved from liability if the injury: (A) occurred while the claimant was intoxicated; (B) was caused by the employee’s willful attempt to injure himself or a third person; (C) was caused by a third person due to personal animosity that did not arise out of the employee’s status as an employee or because of the employment; (D) arose out of voluntary recreational, social, or athletic activity that was not required by the employment; or (E) arose out of an act of God, unless the employment placed the employee at a greater risk of injury from such act of God. TEX. LAB. CODE §406.032(1). The carrier is also relieved of liability if the employee’s horseplay was a producing cause of the alleged injury. *Id.* at §406.032(2).

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