

## Safety and Workers' Compensation Management

### October 31 is Next BWC Drug Free Safety Program Enrollment

Learn the benefits that becoming a drug free workplace, and enrolling in the Bureau of Workers' Compensation Drug Free Safety Program (DFSP) program, can bring to your workplace. OMA Connections Partner, **Working Partners®** is offering no-charge **webinars** in time for you to make a decision prior to the BWC's next enrollment deadline, October 31.

09/16/2011

### Supreme Court Decides a Six-Year Period to Assert Certain Subrogation Claims

On September 7, 2011, the Ohio Supreme Court issued its decision written by Justice Cupp in Ohio Bur. of Workers' Comp. v. McKinley. In its syllabus, the Court stated:

"A claim brought by a statutory subrogee pursuant to recover its subrogation interest is a claim "upon a liability created by statute" and is therefore subject to the six-year statute of limitations of R.C. 2305.7."

This decision extends the period of time that statutory subrogees, which includes self-insuring manufacturers, have to assert claims for benefits paid to injured workers, whose injuries were caused by third-party tortfeasors.

OMA Counsel, Tom Sant, of Bricker & Eckler LLP summarized, "That is a good thing particularly in situations ... where the injured worker and third party tortfeasor settled the case without paying the statutory subrogee. Because the self-insured manufacturer receives dollar for dollar reimbursement to the extent that payment is available, the advantage it has is more beneficial than to the state fund employer, which receives only partial benefits when the BWC collects from the injured worker and/or the third party tortfeasor."

Read Sant's **summary** of the case.

09/16/2011

### OMA Supports BWC Proposed Regulation of Self-Insured PEOs

The Bureau of Workers' Compensation (BWC) is developing **policy** regarding financial assessments and security requirements for the state's self-insured professional employer organizations (PEOs). While there are fewer than ten self-insured PEOs in the Ohio workers' comp system, it is important that the security requirements imposed on them are commensurate with those imposed on the entire community of self-insured employers.

OMA has gone on **record** with the BWC that it supports this development of fair policy for the protection and prudent administration of the Self-Insuring Employers Guaranty Fund.

09/09/2011

### BWC Administrator Asks TPAs to Hold Offers, Wants Time to Study Programs and Discounts

In a **letter** this week to workers' compensation third party administrators (TPAs) and associations that sponsor Bureau of Workers' Compensation (BWC) programs, BWC administrator Steve Buehrer asked for a moratorium on marketing specific discounts to potential group rating clients for the 2012/13 policy year. He indicated "that we (BWC) will not be bringing forward a recommendation on credibility levels and break-even factors for 60-90 days."

Buehrer explained that the BWC will use this 60 to 90 day timeframe to "work to develop a comprehensive pricing package that looks at all programs and considers modifications to incentives, requirements, and compatibility."

In addition to potentially modifying the specific factors that are used to calculate program discounts, such as credibility levels and break-even factors, the administrator also hinted that there may be additional program or product offerings: "...we should restructure both existing employer programs and evaluate potential new options to encourage the right behaviors,

promote participation in multiple programs, and measure our collective efforts...”

As there is no ban on TPAs to solicit AC3 applications for group rating proposals to be issued later, employers will likely see continued solicitations. We will keep members informed of BWC program impacts and opportunities in ongoing OMA communications.

Offers received before the moratorium is lifted, and final BWC rules are issued, should be ignored.

09/09/2011

### **When Workers' Compensation and Disabilities Laws Collide**

The legal worlds of workers' compensation law and the laws against disability discrimination sometimes collide and leave employers with difficult decisions about how to comply with each. A recent decision by the U.S. Court of Appeals for the Sixth Circuit serves as a cautionary tale to employers that impose work restrictions upon an employee based on what they perceive their responsibilities to be under a workers' compensation order. **Read more** in this Bricker & Eckler Human Resources Bulletin. *From OMA Connections Partner, Bricker & Eckler LLP.*

09/06/2011

### **OMA Expresses Concerns with Proposed BWC Discount Program**

The OMA **communicated** concerns with a proposed new premium discount program of the Ohio Bureau of Workers' Compensation (BWC). The "Grow Ohio Incentive Program" would provide a two-year 25% premium discount to employers new to Ohio. While the aim of the program is laudable, encouraging economic growth, the proposal is unfair to Ohio's existing employers.

In a letter to the BWC, OMA Managing Director for Workers' Compensation Services Denny Davis wrote: "This new program would require subsidization of new employers' premiums by employers already operating in the state. We

oppose any program that forces one group of Ohio businesses to pay inflated premiums to offset the cost of unearned discounts given to another class of Ohio businesses. This circumstance is most concerning, of course, when a company is forced by the government to subsidize a competitor."

Davis also expressed concerns about potential unintended consequences and operational complexity within the rule's provisions.

09/02/2011

### **BWC Plans Discount Program to Benefit New Ohio Employers**

Following the Ohio Bureau of Workers' Compensation (BWC) actuarial committee meeting this week where the idea was presented, BWC issued a **release** indicating about its proposed "economic development initiative" that would discount a new Ohio employer's premium by as much as 51 percent.

If approved by the BWC Board of Directors on September 29, "Grow Ohio" would offer eligible employers a 25 percent discount on their workers' compensation premiums for two years, or give them immediate access to participation in the group experience rating program. If approved, the incentives will apply to new business entities or out-of-state businesses that are new to Ohio and report payroll in Ohio on or after July 1, 2011.

Actuarially, this new program will require existing Ohio companies to subsidize the premium of new-to-Ohio companies. The OMA will express concerns to the BWC about the equity of such a circumstance.

08/26/2011

### **Hot Enough for You?**

OSHA urges employers to have a heat illness plan and communicate it to workers who may be exposed to the heat. Heat illness and death are preventable and **resources** are available.

07/22/2011

## **BWC Administrator Sets Priorities, Assigns Workgroups**

In a **press release** issued by the Bureau of Workers' Compensation (BWC), we learned that Administrator Steve Buehrer has "identified three primary areas improvement: reducing medical and indemnity costs that are outpacing national averages, reducing recent increases in the time it takes workers to return to work, and reducing the total length of time spent paying claims, in which Ohio ranks worst in the nation. To address the root cause of these issues, Buehrer has established five workgroups on Triaging Claims, Medical Management, Drug Utilization, Vocational Rehabilitation, and Settlements."

And, "In the coming months, Buehrer expects to prioritize a list of changes requiring legislative action and is compiling data to help answer questions surrounding issues such as benefits structure, marketplace competition and the appellate process."

The BWC and the OMA are engaged in discussions about legislative priorities. To follow this issue, log on to **MY OMA** and subscribe to OMA's Safety & Workers' Compensation committee.

07/22/2011

## **BWC Administrator Names Two Top Managers**

This week, Ohio Bureau of Workers' Compensation (BWC) Administrator/CEO Steven Buehrer **announced** the appointment of two professionals to leadership roles. Dale Hamilton will serve as Chief Operating Officer and Kevin Abrams will head BWC's Employer Services Division. Both managers have previous experience in the Ohio BWC system.

07/15/2011

## **Insurers Not Liable to Defend Employers Against Workplace Injury Tort Claims?**

This week the Ohio Supreme Court upheld a lower court ruling involving insurance coverage

for employer intentional torts. In a 7-0 decision authored by Justice Lundberg Stratton (with Justice Pfeifer concurring in judgment only), the Court held that insurers are not responsible for defending claims against insured employers for substantially-certain intentional torts unless such torts are expressly covered by the policy.

In **Ward v. United Foundries**, an injured employee and family filed an intentional tort claim against the employer for injuries sustained in the workplace. Such claims are made in addition to workers' compensation claims.

The dispute underscores the need for employers to understand and be abundantly clear about the terms of their insurance coverage. Additionally, the unanimous decision may indicate that employers in similar situations may find themselves out of luck in getting insurance to defend against tort actions stemming from workplace injury.

07/08/2011

## **Supreme Court Protects Confidentiality of Workers' Comp Files**

Unanimously and without comment, the Ohio Supreme Court ruled that state law exempts from public disclosure data contained in claim files of the Ohio Bureau of Workers' Compensation. Various interests continually attempt to gain access to claim files for commercial purposes; this decision is a welcome protection to confidentiality for injured workers.

Assistant Attorney General Elise Porter argued that the information sought was excluded from release under the Public Records Act: "The only reasonable interpretation of the statute as a whole is that the public cannot obtain data, information, or documents contained in the bureau's claim files or any other bureau files that pertain to the claim files without authorization," Ms. Porter said. "The only exception is for journalists, who can only obtain the addresses and telephone numbers and nothing else."

Plaintiffs lawyers have attempted to gain access to the claim information by dressing up as journalists, too, but so far have been stopped.

07/08/2011

### **Workers' Compensation Privatization Study Fizzles**

Senator Tim Grendell (R-Geauga) convened a **final meeting of a task force** created by the Ohio Senate in 2010. The task force was to determine if opening Ohio's monopoly workers' compensation system to private insurance would lower overall premiums for employers. The task force was comprised of senators, Bureau of Workers' Compensation leadership, employer representatives, injured worker representatives and insurance company executives.

After seven meetings that included testimony from interested parties and experts, the task force members this week adopted a **summary**. "The findings were largely inconclusive," said the OMA's Ryan Augsburger, who noted that the task force chairman conceded there was insufficient data to model costs.

The privatization task force has wrapped up its work and disbanded. Its time now to address the system's cost drivers. The OMA Safety and Workers' Compensation Committee is engaged in that work. **Join it** by logging in to your OMA profile and clicking on My OMA Management Communities.

07/01/2011

### **OSHA Launches Interactive Web Site to Help Employers with Recordkeeping Rule**

The Occupational Safety and Health Administration (OSHA) has **created** an interactive web tool to help employers determine whether injuries and illnesses are work-related and recordable under the OSHA Recordkeeping rules.

The **OSHA Recordkeeping Advisor** is an interactive tool that simulates an employer's interaction with a Recordkeeping rules expert. The Advisor relies on users' responses to questions and automatically adapts to the situation presented. Responses put into the program are strictly confidential and the system does not record or store any of the information.

The Advisor helps employers determine whether an injury or illness (or related event) is work-related, whether a work-related injury or illness needs to be recorded, and more.

07/01/2011