

THE MISSOURI WORKERS' COMPENSATION LAW CHANGES OF 2005

By Ann G. Dalton, Esq.

Injuries happen at work. It is a fact of life. Because of this, most every state in America has enacted a workers' compensation law to provide benefits to injured workers such as medical care, compensation for time missed from work, and compensation for permanent injuries. In this system, the injured worker does not have to prove fault to receive benefits. In exchange, employers are protected from being sued in a civil court for unlimited damages. Missouri has had a workers' compensation law, in one form or another, since 1925. Over the years, although the law has changed, the original idea of providing a compromise to benefit both injured workers and employers has essentially remained.

Almost two years ago, on August 25, 2005, a new Missouri Workers' Compensation Law went into effect in Missouri. Conservative lawmakers rewrote a piece of social legislation, which had worked as a compromise deal between employers and injured workers for many years. The new law was clearly aimed at limiting benefits and breaching the once level playing field for injured workers, both procedurally and substantively. The new law's effect was seen almost immediately. Specifically, the political climate and the new direction of the Division of Workers' Compensation after these changes began to immediately impact the ability of injured workers to protect their rights and obtain their benefits under the Missouri Workers' Compensation Statute.

At a seminar presented by the Bar Association of Metropolitan St. Louis, the Chief Judge from the St. Louis Division of Workers' Compensation spoke about the new law and its impact on workers compensation benefits. During his speech, the Chief Judge showed a slide which read "**Workers' Comp Developments: The Goal**" and under that, the statement "**Expedite resolution of cases and ensure the integrity and independence of ALJs**" (Administrative Law Judges). "The Goal" wasn't protection of benefits for injured workers or preservation of the integrity of the system for injured workers. "The goal" was to move cases more quickly no matter what the cost to the injured worker.

A prime example of what was done to achieve this goal was the elimination of legal advisors at the Division of Workers' Compensation. For over 25 years, the Division of Workers' Compensation employed Legal Advisors to act in the same capacity as an Associate Administrative Law Judge with the power to approve compromise settlements.

Over the years, the position of Legal Advisor became a very integral part of the operation of the Division of Workers' Compensation, particularly in St. Louis where hundreds of cases were discussed and often resolved by unrepresented injured workers with the help of an unbiased third party.

On January 1, 2006, the new Missouri Workers' Compensation law eliminated entirely the position of the legal advisor (Section 287.616 R.S. Mo. repealed). Not only did 23 dedicated public servants lose their jobs, but injured Missouri workers who

sought to resolve their workers' compensation claims without an attorney, also lost their protection.

After January 1, 2006, those individuals who attend Settlement Conferences without the benefit of legal representation put themselves at risk of not only receiving lower and inadequate compensation for permanent injuries, but also at risk of ignoring other benefits for which they might otherwise be entitled. They also put themselves at risk of negatively impacting future claims and even at risk of negatively affecting concurrent benefits such as Medicare and Social Security Disability.

With regard to receiving less compensation for permanent injuries, an article written by Scott Lauck for Missouri Lawyers Weekly compared the amount of compensation received by individuals who were unrepresented and those who were represented by a lawyer during the year immediately following the change in the law. In his analysis of the statistics kept by the Division of Workers' Compensation, the author concluded that unrepresented workers received significantly less than the represented injured workers even after taking into account the attorney's fees. 20 M.O.L.W. 1206 (Dec. 11, 2006).

That same unrepresented injured worker may have also unknowingly given up additional compensation from the Missouri Second Injury Fund for pre-existing disability because the law requires that an injured worker have at least 12.5% permanent partial disability of the body as a whole or 15% permanent partial disability of a major extremity to qualify for additional money from the Second Injury Fund. Claims settled with the employer for less than these thresholds will not qualify for additional compensation for pre-existing disabilities.

In addition, workers that settle claims while receiving Social Security Disability may jeopardize the amount of monthly income received from social security if certain precautions are not taken in the settlement agreement. Similarly, workers who are eligible or may become eligible for Medicare when they resolve a workers' compensation claim could limit or eliminate altogether Medicare payments for certain conditions or body parts associated with the work injury.

To make matters worse, the new Workers' Compensation law also requires the Administrative Law judges to approve all settlements as long as they are not the result of undue influence or fraud. The judges are specifically instructed not give information, to answer questions or hear the facts of any case on behalf of an unrepresented person at a conference. Section 287.390 R.S. Mo 2005. This alone places the unrepresented worker at a serious disadvantage to the employer and its insurer in the state of Missouri.

The changes in 2005 do not reflect the original intention of a law set up as a compromise between the worker and the employer to provide protection for both parties in a world where accidents at work cannot always be prevented.