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WORKERS' COMPENSATION ALERT

TO: **Our Clients and Friends**

FROM: **Bleakley, Cypher, Parent, Warren & Quinn, P.C.**

RE: **Michigan Governor Rick Snyder Signs Bill Reforming Michigan Workers' Disability Compensation Act**

DATE: **December 21, 2011**

We at Bleakley, Cypher, Parent, Warren & Quinn would like to update you on the status of the legislative bill that makes various amendments to the Workers' Disability Compensation Act.

Governor Signs Bill That Amends Workers' Disability Compensation Act

After being revised by both the Michigan House and Senate, the bill that proposed changes to the Michigan Workers' Disability Compensation Act was signed into law by Governor Rick Snyder on December 19, 2011. Now signed, the changes to the Act are almost entirely favorable to employers, insurance carriers, and third party administrators.

Perhaps most notably, the signed version of the amended Act allows employers and carriers to reduce a partially disabled claimant's wage loss rate by the amount the claimant earns, or is capable of earning, post-injury in a job that is reasonably available to that individual, whether or not actually earned. However, a claimant's good-faith efforts to secure post-injury employment entitles that claimant to his/her full weekly rate, regardless of the success of those efforts.

The amended Act also provides other pro-employer changes to the law, including an increase in the time period following an injury in which the employer controls medical treatment from 10 days to 28 days. The initial bill passed by the House increased this period from 10 days to 45 days, but the version passed by the Senate and signed into law scaled it back to 28 days.

Another employer-friendly portion of the revised Act is the elimination of the 100-week rule. Under the old 100-week rule, employers were obligated to pay wage

loss benefits to employees who were performing light duty work and were terminated "for whatever reason" within 100 weeks of the return to restricted work. Now, employees terminated within 100 weeks of the return to restricted work (as well as after 100 weeks) are only eligible for weekly benefits if the termination is "through no fault of the employee." Historically, terminations of these types that precluded the payment of wage loss benefits were known as "just cause" terminations.

The new Act also modifies the test to be utilized by Magistrates when deciding whether a claimant is an employee or independent contractor. As of January 1, 2013, the Magistrates will use a 20-factor test developed by the IRS.

The new version of the Act also brings the law in line with recent and important Supreme Court decisions. Specifically, the Act now enumerates the definition of disability from Stokes, demands a pathologic aggravation of a pre-existing condition pursuant to Rakestraw, and reiterates that a claimant—even after establishing disability—must also establish a causal connection between a work injury and wage loss under Romero. The new Act also effectively eliminates the Trammell decision by establishing that specific loss analysis in joint replacement cases must take into account the impact of the replacement.

For those following our newsletters during the bill's progression through the legislative process, the final amended version of the Act differs from the version passed by the House in several important ways. First, the new Act eliminates the formal mediation process. All claims will now likely proceed directly to the pre-trial docket. In addition, the signed bill eliminates the requirement that all redemption agreements be approved by a Magistrate after holding a full hearing and making specific determinations. Instead, the new law allows the parties to stipulate to those determinations in lieu of the full hearing. The Magistrate will still need to approve redemptions, and has discretion to hold full hearings.

Another important modification of the bill occurred in the portion dealing with plaintiffs' attorneys' fees on medical expenses. Prior to amendment, the Act allowed a Magistrate to charge attorney fees on unpaid medical expenses, but was silent as to who is responsible for those fees. To resolve this apparent issue, the initial version of the amended Act presented by the House explicitly clarified that the fees could not be charged to the employer or carrier. Unfortunately, the final version

passed by the Senate and signed by the Governor eliminates this protection. As a result, employers and carriers once again face potential exposure for payment of fees on medical expenses.

Finally, the amended Act puts a limit on potential rate reduction based on coordination with Social Security benefits received for claimants receiving Social Security old age benefits prior to any claimed work injury. Before, Section 354 allowed an employer to reduce a claimant's weekly workers' compensation rate by 50% of the amount of Social Security old age benefits received. Now, if the claimant was receiving Social Security benefits before suffering a work injury, the offset with Social Security benefits cannot reduce the weekly rate below one-half of the rate.

Ultimately, the final bill signed by the Governor modifies the Act in primarily employer-friendly ways, by codifying favorable Supreme Court decisions, adding new provisions, and modifying or eliminating old provisions. As discussed in our newsletter issued after the House passed its version of the bill, the final changes should effectively reduce workers' compensation costs for employers by reducing benefit rates for partially injured employees, allowing employers better control over medical treatment, and reducing compensable claims by heightening or adding legal thresholds and standards.

Although the signed bill takes effect immediately, the amended portions of the Act will apply only to injuries that occur on or after the effective date of the amended Act. In other words, any of the Act's changes cannot be used in pending cases, or in future cases that allege injury dates prior to the Act's effective date.

This Newsletter is meant to highlight some significant changes in the Act as a result of the newly signed bill. The full version of the signed bill is available on our website for your review. We will also make the amended version of the Act available when it is published.

If you would like to discuss in more detail any portion of the bill or have any questions regarding possible changes to any portion of the Act, please do not hesitate to contact any of the attorneys at Bleakley, Cypher, Parent, Warren & Quinn, P.C., directly.