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MICHIGAN WORKERS' COMPENSATION LEGAL TRENDS

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GOVERNOR WHITMER'S WORKERS' COMPENSATION SHAKE-UP

Newly elected Governor Gretchen Whitmer has made her presence felt with an extensive structural reorganization of key departments in the Michigan executive branch. Many of these changes implicate the Michigan workers' compensation administration. This newsletter will highlight and analyze some of these key changes.

OVERVIEW

Previously, the Michigan Workers' Compensation Agency was under the Department of Licensing and Regulatory Affairs (DLARA). The Workers' Compensation Board of Magistrates and Michigan Compensation Appellate Commission were part of the Michigan Office of Administrative Hearings and Rules, also under DLARA. The Michigan Compensation Appellate Commission heard appeals of decisions and orders involving workers' compensation and unemployment cases.

As a preliminary matter, Governor Whitmer's Executive Order No. 2019-13 renames the Department of Talent and Economic Development to the Department of Labor and Economic Opportunity (DLEO). The Order then renames the Workers' Compensation Agency to the Workers' Disability Compensation Agency and transfers it to DLEO. The Order also transfers the Board of Magistrates within the Workers' Disability Compensation Agency. See the New Executive Organization Chart on the following page for more information.

The order's most significant change involves the Michigan Compensation Appellate Commission. The order abolishes the Michigan Compensation Appellate Commission and creates the new Workers' Disability Compensation Appeals Commission. The Workers' Disability Compensation Appeals Commission will be located within the Workers' Disability Compensation Agency.

The new Workers' Disability Compensation Appeals Commission will review decisions and orders of the Board of Magistrates. It will consist of three commissioners appointed by the governor, one of whom will be designated as the chairperson. If a commissioner must recuse themselves, the Workers' Compensation Board of Magistrates chairperson will fill the recused Commissioner's role in the specific case.

ANALYSIS

The changes will have wide-reaching consequences on litigated workers' compensation claims. The first impact will be the composition of the new Commission. The three commissioners will only hear workers' compensation appeals and presumably have more expertise with the Workers' Disability and Compensation Act. It is also expected that the new members will be more employee-friendly because they will be appointed by a governor who is affiliated with the Michigan Democratic Party.

Second, the Commission's efficiency is likely to increase. It was common for the old Commission to take 18 months or more to issue a decision. This was due to the backlog of appeals involving both workers' compensation and unemployment cases. The new Commission will devote its decision-making solely to matters involving workers' compensation. This should decrease the amount of time it takes to receive a decision on appeal to the Commission.

Finally, the Board of Magistrates chairperson will have an expanded role. The current Board of Magistrates chairperson is Magistrate Luke McMurray, who was appointed to this role earlier this year. Magistrate McMurray will fill the role of a

commissioner if an appointed commissioner must recuse themselves from a decision. Although this situation is likely to be rare, it does expand the Board of Magistrates chairperson's role and influence.

THE NEXT STEPS

The executive order will take effect 60 days from the date of issue, unless it is rejected by the House and Senate.

The next step will be to name the three new Commissioners. Once we have further information regarding the Commission members, we will be sure to pass it along.

NEW EXECUTIVE ORGANIZATION



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This Newsletter is meant to highlight developments in the workers' compensation arena and to elaborate on general concepts. If you would like to discuss in more detail this issue or any other issue please contact any of the attorneys at Bleakley, Cypher, Parent, Warren & Quinn, P.C., directly.