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MICHIGAN WORKERS' COMPENSATION LEGAL TRENDS

Spring 2023

NEW YEAR, NEW CHANGES

Welcome to the latest edition of the Michigan Workers' Compensation Legal Trends. As is the case in most years, this year has brought significant change to the Michigan Workers' Compensation practice. This edition will highlight the most important changes regarding the Board of Magistrates, mileage rate, and maximum weekly wage loss rate.

BOARD OF MAGISTRATES

This January marked the retirement of two long-time magistrates. Magistrates David Grunewald and Louis Ognisanti retired effective January 26, 2023. Magistrate Grunewald heard cases at the Detroit Workers' Compensation Agency and Magistrate Ognisanti split his time between the agencies in Saginaw and Pontiac. The retirements left two vacant positions on the Workers' Compensation Board of Magistrates. On January 27, 2023, Governor Gretchen Whitmer appointed James Smith and William Watkinson Jr. to fill the vacant positions.

New Magistrate: James Smith

Magistrate James Smith of Saginaw, Michigan was appointed to the Board of Magistrates beginning on January 27, 2023. Magistrate Smith will hear cases in Saginaw, Traverse City and Gaylord. His term is four years with an expiration date of January 27, 2027.

Magistrate Smith graduated from the Detroit College of Law. For the last 22 years, he represented employees and plaintiffs in workers' compensation claims. Magistrate Smith's prior experience includes employment with the law firm Davidson, Breen & Doud and most recently as a partner in the plaintiff's firm Doud, Smith & Wagner where he claimed a winning track record against "big business and the insurance bullies."

New Magistrate: William Watkinson, Jr.

Magistrate William Watkinson, Jr. of Birmingham, Michigan was appointed to the Board of Magistrates beginning on January 27, 2023. Magistrate Watkinson hears cases in Detroit in place of retiring Magistrate Grunewald. His term is four years with an expiration date of January 27, 2027.

Magistrate Watkinson graduated from Case Western Reserve University School of Law. He has practiced law since 1995, focusing his practice on representing plaintiffs in workers' compensation and Social Security disability cases. He was a partner at the plaintiff's law firm of Bernstein & Bernstein.

Both new magistrates have extensive experience handling cases on behalf of plaintiffs in workers' compensation matters. This continues the trend of the Board of Magistrates replacing magistrates who were previously defense or neutral practitioners with plaintiff-sided practitioners. While it remains to be seen how the two new magistrates will decide cases, we anticipate their rulings will tend to favor plaintiffs. Accordingly, it is more important than ever to develop a comprehensive defense strategy that mitigates this development.

Temporary Magistrate

In light of Magistrate Rick Ehrlich's current medical leave, Magistrate Murray Gorchow is now sitting in Pontiac for an indeterminate period. Magistrate Gorchow is a former long-time plaintiff's attorney who has served as both as a magistrate and an appellate commissioner.

Returning Magistrates

Several magistrates were reappointed to new four-year terms. Returning to their respective benches are Magistrates Marvin Baisel, Michael Heck, Chris Slater, Philip Della Santina, and Luke McMurray. Most will continue to hear cases in their current agencies; however, there are several notable changes. Magistrate Heck will continue to hear cases in Detroit, but will also hear cases in Pontiac to fill the vacancy left by Magistrate Ognisanti. Magistrate Kevin Kales will now hear cases in Detroit on a full-time basis following the appointment of Magistrate Smith to hear cases in Traverse City and Gaylord.

NEW MILEAGE RATE

The Department of Technology, Management and Budget has advised that the mileage rate has increased slightly from \$0.625 to **\$0.655 per mile, effective January 1, 2023.**

NEW MAXIMUM RATE

The Bureau of Labor Market Information and Strategic Initiatives has reported the state average weekly wage is \$1,216.18. In accordance with Section 418.355(2) of the Workers' Disability Compensation Act, the 2023 maximum weekly wage loss/indemnity benefit, based on 90% of that state average weekly wage, is **\$1,095.00.** The discontinued fringe benefit ceiling has increased to **\$810.79.**

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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 these issues or any other issue, please do not hesitate to contact any of the attorneys at Bleakley, Cypher, Parent, Warren & Quinn, P.C., directly.