

By Mark Noonan

In California, another interesting workers' compensation case is quickly unfolding. California has the only workers' compensation system that allows retired pro athletes to file workers' compensation claims for long-term injuries sustained while playing years or decades before – even if they only played one game within state borders or had a California agent. This new workers' compensation issue is gaining attention across all states. Louisiana, for example, introduced a similar bill that the New Orleans Saints were advocating because it would require professional athletes that play for Louisiana teams to accept Louisiana workers' compensation benefits if they are injured in a game or practice. The proposed bill gained more debate as the carve-out for athletes was removed and it was broadened to apply to all workers in Louisiana. Although House Bill 1097 was shelved for the 2010 Louisiana Legislative session, we believe this is not the last time employers – in all states – will be faced with the new issues created by the California case.

Dementia and Workers' Compensation

A recent California workers' compensation claim is one for employers to watch. Dr. Eleanor Perfetto, the wife of Ralph Wenzel who retired from playing in the National Football League in 1973, has filed a claim under the California workers' compensation system for coverage of her husband's brain injury while he was a professional football player. His repeated head traumas, which cannot be proven to have happened when he played a game in California, have led to his severe dementia and need for institutionalization.

Since California law requires that employers or the insurance carrier pay all current and future medical costs but also all incurred costs from the injury, Wenzel's workers' compensation claim runs the likelihood of costing millions. California's statute of limitations does not begin until the employer formally advises the injured worker of their right to workers' compensation. Originally, the law was meant to protect transient workers, such as flight attendants and truckers, who are injured or become ill while working in California. It is believed that California has attracted more football related claims than all other states – an estimated 700 cases.

This case is more than an NFL workers' compensation debate. The larger issue this case brings to light: what happens if Wenzel's dementia is determined to be a work related condition? What happens to employers with ex-employees who suffer from dementia? Could their illness be tied back to a past work-related injury, and then covered by workers' compensation? Would the exclusive remedy provision of workers' compensation come into play, giving health insurers the means to refuse payment for treatment? If the federal government had a chance to move the costs of caring for dementia patients out of the social security system, would they do so? And land one more worry and expense onto employers and the already maxed workers' compensation system?

If dementia, in such cases as Wenzel's, is legally tied to head trauma and brain injury, what happens with those types of injuries that occur at the workplace? Head trauma, then, could be likened to asbestos exposure with the effects of workplace danger taking years to manifest. And, keep in mind that if an insurance company goes out of business due to an increase in severe claims such as these, a state fund will serve as backup – a fund typically paid for by businesses held in that state.

Head Trauma

Although the U.S. Bureau of Labor and Statistics (BLS) has reported that nonfatal work-related injuries have declined since 2007, according to the National Center for Injury Prevention, each year 50,000 Americans die of a traumatic brain injury and 235,000 are hospitalized. At least 5.3 million Americans currently need long-term or lifelong help to perform daily living activities as a result of a traumatic brain injury (TBI). They note that TBI can increase the risk for conditions such as Alzheimer's, Parkinson's, and other brain disorders that become more prevalent with age.

Falls, motor vehicle accidents, and being struck by or against a stationary object are the leading causes of TBI. The National Safety Council reports that there are over 300 head injuries sustained every day on the job, or over 120,000 every year. More than 50 percent of the cases required days away from work and/or job transfers or restrictions.

Employers should provide head protection when there is the possibility of falling or flying objects that could strike the head, if the employee's head could bump against a fixed object, if there is potential for electrical shock or burns, and/or if loose hair could be entangled in machinery. Take the time to re-address health and safety hazards.

Aging Workforce

From 401k programs being damaged by the economy to employees having children (and college bills) later in life, a variety of economic hardships are influencing and changing the age of the workforce. According to the BLS, the number of people 65 and older in the workforce has increased more than 100 percent since 1977. According to the BLS, this number will continue to grow until 2016. The most dramatic increase (80 percent) will be seen in the oldest groups – workers between 65 and 74, and workers 75 and up. These workers will also be working longer schedules. Up 44 percent since 1995, BLS shows that more than half of all older workers now work full-time.

These statistics may suggest that older workers have a negative effect on productivity and safety, but it is just the opposite. Older workers are more productive and have an overall higher workplace safety. According to the BLS, productivity increases as the percentage of over-55 workers increases and there is also a decline in accident frequency in the older demographic. The catch for employers comes into play, however, when they get injured.

The severity of a workers' compensation claim for an older worker is significant and is an issue that must be addressed by an employer. The BLS estimates that it takes older workers approximately two to three times longer than a younger worker to recover from an injury – an average of 20 days away from work. This also means medical and prescription claims will cost two to three times as much. Compared to workers aged 20 to 24, NCCI reports that claim costs for workers aged 55 to 64 are generally 64 percent higher for indemnity claims and 40 percent higher for medical claims.

The aging workforce has and will continue to affect how employers approach their workers' compensation programs and risk control procedures in the workplace. So, what can employers do to accommodate and capitalize on the aging workforce?

- Older workers are good for companies so it pays to modify work environments in order to prevent injuries and limit their severity when they do occur.
- Utilize and implement preventative safety efforts. Companies can develop specific slip and fall prevention tactics since, according to the National Safety Council, slips and falls account for 33 percent of all injuries sustained by workers 65 and older.
- Shoulders, backs, and wrists are body areas with the highest musculoskeletal claim severity in older workers. Identify causes of strain and fatigue through an ergonomic evaluation of workstations and workspaces, and implement corrections. Consider task rotation.

Since studies connect the amount of healing time and the age of the worker, a highly responsive return to work effort can benefit the employer by increasing healing time. Not only are these overall good risk control practices for an employer, and an injured employee of any age, but being aware of older workers will benefit a company's bottom line as our American workforce continues to age over the next ten to twenty years.

NCCI State of the Line Report

The National Council on Compensation Insurance (NCCI) reported in their annual State of the Line report that workers' compensation insurance rates, for most jurisdictions, continued to decline in 2009. The rate and loss cost decreases were largely driven by frequency declines and by moderate increases in indemnity and medical average claim costs.

Claim frequency continued to decrease, dropping 4 percent in 2009. This follows a drop of 3.4 percent and 3 percent during the previous two years. NCCI research points towards the recession, and the lack of hiring, as the reason for the downward pressure on claim frequency.

Although medical costs have somewhat slowed over the past years, it still continues to increase faster than wages. Workers' compensation medical losses continue to represent more than half of total losses: 58 percent in 2009 versus 47 percent in 1989. The Insurance

Information Institute predicts that if the current trends hold, medical costs will reach 70 percent by the year 2017. During this year and the following, we will see states look for ways to control medical costs during their legislative sessions. NCCI notes that one market challenge that remains uncertain is the impact of the healthcare reform on workers' compensation - from new taxes to Medicare reimbursement changes.

Next Step for Employers

The worker's compensation soft market will eventually come to an end, potentially in the next year or so. Healthcare reform will have an impact on workers' compensation that could result in cost of service increases, changes in Medicare reimbursement, and continued prescription cost increases. At Integro, we anticipate a continued rise in workers' compensation medical expenses (especially in the medication spend) along with an uptick in claims that eventually come with extended periods of high unemployment and/or the re-call of workers from layoffs longer than six months.

Even during a recession and rough economic times, there are opportunities for companies to reduce their workers' compensation costs through savvy risk management practices. Implementing the right workers' compensation program can improve worker safety and productivity (no matter the age of the employee) and can enable the company to be more financially secure.

For More Information

At Integro, we aspire to be a client's broker of choice by consistently exceeding expectations and building intimate trust. If you need assistance or more information on any of the workers' compensation issues discussed, please contact an Integro representative or visit us online at www.integrogroup.com.

Mark Noonan

Managing Principal

Integro Insurance Brokers

303 Congress Street, 3rd Floor

Boston, MA 02110

Tel: (617) 531-6855

Email: Mark.Noonan@integrogroup.com

James Bacon

Managing Principal

Integro Insurance Brokers

One Bush Street, 14th Floor

San Francisco, CA 94104

Tel: (415) 365-4230

Email: Jim.Bacon@integrogroup.com

Integro is an insurance brokerage and risk management firm dedicated to serving the insurance and risk management needs of complex institutional risks. Integro has offices across North America, as well as in Bermuda and London. Its headquarter office is located at 1 State Street Plaza, 9th Floor, New York, NY 10004. 1-877-688-8701. www.integrogroup.com.

© Integro USA Inc. 2010