

# SPECIAL REPORT

## MICHIGAN WORKERS' COMPENSATION ACT

(09-09-2014)

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### Michigan Workers' Disability Compensation Act is Revised

Governor Rick Snyder has signed into law Public Act 266 which makes substantial revisions to the Michigan Workers' Disability Compensation Act. Below is a general overview of several of the key changes under this Act.

#### 1. Clarifies "personal injury."

The Act provides that a personal injury "... is compensable if work causes, contributes to, or aggravates pathology in a manner so as to create a pathology that is medically distinguishable from any pathology that existed prior to the injury."

The intent of this language is to clarify that an employee with a preexisting problem should receive workers' compensation benefits only to the extent that the work caused aggravation of that problem.

#### 2. Clarifies "mental disabilities."

The Act provides that "Mental disabilities and conditions of the aging process, including but not limited to heart and cardiovascular conditions and degenerative arthritis, are compensable if contributed to or aggravated or accelerated by the employment in a significant manner. Mental disabilities are compensable if arising out of actual events of employment, not unfounded perceptions thereof, and if the employee's perception of the actual events is reasonably grounded in fact or reality."

This new language requires the employee's perception of the actual events to be reasonably grounded in fact or reality. Thus, the intent of the revised Act is to bring objectivity to mental disability claims.

### **3. Revises definition of “disability.”**

Disability is defined to mean "a limitation of an employee's wage earning capacity in work suitable to his or her qualifications and training resulting from a personal injury or work-related disease. A limitation of wage earning capacity occurs only if a personal injury covered under this act results in the employee's being unable to perform all jobs paying the maximum wages in work suitable to that employee's qualifications and training, which includes work that may be performed using the employee's transferable work skills. A disability is total if the employee is unable to earn in any job paying maximum wages in work suitable to the employee's qualifications and training. A disability is partial if the employee retains a wage earning capacity at a pay level less than his or her maximum wages in work suitable to his or her qualifications and training. The establishment of disability does not create a presumption of wage loss."

Under the above language, a limitation of wage earning capacity would occur only if a personal injury resulted in an employee being unable to perform all jobs paying the maximum wages in work suitable to his or her qualifications and training, including work that may be performed using the employee's transferable work skills.

The above language is also intended to provide a clear distinction between total disability and partial disability.

### **4. Extends time period under which the employer has control over medical treatment.**

The Act requires the employer to "... furnish, or cause to be furnished, to an employee who receives a personal injury arising out of and in the course of employment, reasonable medical, surgical, and hospital services and medicines, or other attendance or treatment recognized by the laws of this state as legal, when they are needed.

The Act further provides under this section that "After 28 days from the inception of medical care as provided in this section, the employee may treat with a physician of his or her own choice by giving to the employer the name of the physician and his or her intention to treat with the physician. The employer or the employer's carrier may file a petition objecting to the named physician selected by the employee and setting forth the reasons for the objection..."

Thus, the above language provides that after 28 days from the start of medical care, an employee may be treated by a physician of his or her own choice. The Act previously provided for the employer to control treatment immediately after the injury for the first 10 days. This time frame has been increased from 10 days to 28 days.

#### **5. Revises definition of "employee."**

The definition of "employee" includes the following language:

"Every person performing service in the course of the trade, business, profession, or occupation of an employer at the time of the injury, if the person in relation to this service does not maintain a separate business, does not hold himself or herself out to and render service to the public, and is not an employer subject to this act. On and after January 1, 2013, services are employment if the services are performed by an individual whom the Michigan administrative hearing system determines to be in an employer – employee relationship using the 20-factor test announced by the internal revenue service of the United States department of treasury in revenue ruling 87-41, 1 C.B. 296. An individual for whom an employer is required to withhold federal income tax is prima facie considered to perform service in employment under this act..."

The above language is intended to provide a clearer determination of an employment relationship based upon the 20-factor test used by the IRS.

## **IRS TEST: EMPLOYEE OR INDEPENDENT CONTRACTOR?**

The Internal Revenue Services (IRS) uses the following twenty factors to analyze whether an individual is an employee or an independent contractor:

1. Whether the individual is required to follow instructions;
2. The amount of training the individual received related to the particular job;
3. The level of integration of the individual into the employer's business;
4. Whether the individual personally renders her services;
5. Whether the individual hires, fires and pays assistants;
6. The existence of a continuing relationship;
7. Whether the individual works an established amount of hours;
8. Whether the individual works full time;
9. Whether the individual works on the employer's premises;
10. Whether the individual works according to a sequence set by the employer;
11. Whether the individual must submit regular or written reports to the employer;
12. Whether the individual is paid by time rather than by project;
13. Whether the individual is reimbursed for expenses;
14. Whether the individual furnishes the necessary tools and materials;
15. Whether the individual has invested in the facilities for performing the services;
16. Whether the individual can realize a profit or loss;

17. Whether the individual works for more than one entity at a time;
18. Whether the individual makes his or her services available to the general public;
19. Whether the employer has the right to discharge the individual; and
20. Whether the individual has the right to terminate the relationship.

IRS Revenue Ruling 87-41, 1987-1 C.B. 296. No one factor or combination of factors is dispositive, although the right of control is considered the most important.

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