

PUBLICATION

Overhaul of The Mississippi Workers' Compensation System

May 16, 2012

On May 14, 2012, Mississippi Governor Phil Bryant signed into law Senate Bill (S.B.) 2576, initiating sweeping changes to Mississippi's workers' compensation system and overturning the court precedent that presumes the compensability of a claim should favor the injured worker.

Specifically, effective July 1, 2012, Section 71-3-1 of the Mississippi Code will now state, "notwithstanding any common law or case law to the contrary, this chapter shall not be presumed to favor one party over another and shall not be liberally construed in order to fulfill any beneficent purposes." Additionally, Mississippi's Workers' Compensation Law has been amended to provide a defined primary purpose: "to pay timely temporary and permanent disability benefits to every worker who legitimately suffers a work-related injury or occupational disease arising out of and in the course of his employment, to pay reasonable and necessary medical expenses resulting from the work-related injury or occupational disease, and to encourage the return to work of the worker."

Notwithstanding the now "neutral" compensation presumption, additional provisions in S.B. 2576 favor the employer. For example, on a claim in which no benefits have been paid, the injured worker must now file medical records to support the claim when filing a petition to controvert. If an employee is treated by a physician for six months or longer or if the employee has surgery performed by a physician, that physician is deemed the employee's selected physician. Additionally, S.B. 2576 expands apportionment for preexisting conditions and limits attorneys' fees.

Moreover, employers may require alcohol and drug tests "in the event that the employee sustains an injury at work or asserts a work-related injury," and employers should take advantage of this new provision. Under the new Mississippi workers' compensation system, no benefits are due if the use of illegal drugs, the use of a valid prescription medication "taken contrary to the prescriber's instructions and/or contrary to label warnings" or intoxication from alcohol proximately caused the employee's injury. A positive test or a refusal to take the test creates a presumption that the use of the drug, medication and/or alcohol likely caused the employee's injury and that the employee is not entitled to benefits. The burden then shifts to the employee to prove that the illegal drug, medication or alcohol was not a "contributing cause" of the accident that caused the injury, which is a high burden.

There are some provisions that favor the injured worker. For example, the maximum award for facial or head disfigurement has been raised from \$2,000 to \$5,000. The immediate lump-sum death benefit has been increased from \$250 to \$1,000, and reasonable funeral expenses have increased from \$2,000 to \$5,000.

S.B. 2576 requires the Mississippi Workers' Compensation Commission to draft a written statement that details the changes made to the workers' compensation system. Within ten days of the Commission issuing the statement, all employers must post the Commission's statement in the workplace adjacent to other notices for which posting is required by law.

It will be interesting to see if S.B. 2576 will be judicially challenged. The workers' compensation system was created to provide injured workers with a fast and efficient way to gain compensation from their employers for work-related injuries without having to first sue the employer. In fact, the workers' compensation system is the exclusive remedy for workplace injuries (with certain limited exceptions). The trade-off for workers was a

judicial presumption in favor of compensation under the workers' compensation system. That presumption is now obsolete.

If you have questions as to how S.B. 2576 may impact you or your workers, please contact any of our nearly 70 Labor & Employment attorneys located in Birmingham, Alabama; Atlanta, Georgia; Baton Rouge, Mandeville and New Orleans, Louisiana; Jackson, Mississippi; Chattanooga, Johnson City, Knoxville, Memphis and Nashville, Tennessee; and Houston, Texas.