Workers' Compensation

The Connecticut Workers' Compensation Act came into effect in 1913. It was enacted as the system to allow injured workers to obtain fair and quick compensation when they were injured on the job. Although the benefits offered to injured workers are not as generous as those benefits allowed to someone injured outside of the work place (for example, a person injured in a car accident or slip and fall accident), the trade-off is that the injured employee does not have to prove that anyone was at fault in order to recover in the workers' compensation system. The system has been called a "no fault" system because the injured employee merely has to prove that he was on the job doing what he was supposed to do at the time that he was injured in order to allow him or her to recover benefits through the system. There are exceptions which will prohibit an injured employee from recovering if he or she is intoxicated or engaged in horse play, for example.

INJURY

Some injuries are more readily apparent than others. For example, there is an immediate cause and effect relationship between an employee who slips on an oily floor in a garage and injuries his back. The onset of pain following the injury is immediate, and therefore, much less subject to debate by the employer. On the other end of the spectrum is the situation where an injured employee is exposed to asbestos in the workplace and then, 30 years later, develops mesthelioma. In this case the onset between the injurious exposure and the symptoms is sometime three decades. The chances are very high that such a delay between the cause and the effect will cause the employer to vigorously oppose such a claim. Somewhere in the middle of this spectrum of cause and effect events is repetitive trauma, in which the employee engages in an activity on a daily, and sometimes, hourly basis, the sum total of which creates an injury. This injury is not identifiable as to a particular time and place, but rather is a result of a continuous process. Examples of this would include someone who operates a jack hammer on a repetitive basis who develops either carpal tunnel or cubital tunnel syndrome. Similarly, a computer data entry person who is constantly typing four to eight hours a day can develop carpal tunnel syndrome.

REPORT OF CLAIM

An employee who was injured on the job has, in most cases, one year from the date of his injury to file a Form 30C. This form should be sent by certified mail to both the employer and to one of the eight workers' compensation districts in the State of Connecticut. If the injury is of the type that does not occur at a specific time and place, but rather is a repetitive trauma claim, such as the computer date entry person in the illustration above, the employee has one year from the last date of injurious exposure to file the Form 30C. In the event of a claim for occupational illness such as the asbestos claim stated-above, the injured employee has three years from the first manifestation of a symptom of the occupational illness. The case law has clarified that the "first manifestation of a symptom" refers to a symptom when it "plainly" appears, not when it is only a possible or suspected symptom. For example, one high blood pressure reading in a heart and hypertension claim does not necessarily equate to a manifestation of a symptom.

In July, 2008 the Connecticut passed a law requiring all employers to provide employees with a Form 30C that the injured employee must complete and forward to the workers' compensation commissioner in order to preserve their claim. This was an attempt to mitigate the harsh result of an injured employee believing that because he had reported the claim to the employer and that he had sufficiently preserved his workers' compensation claim. While the employer must provide this form to the injured employee, the employee is still required to submit this claim to the comp office in the district in which he was injured as well as a copy to the employer. Failure to do so this may result in his or her claim being barred if such form is not filed within the required time period. While there are exceptions to this rule such as the employer furnishing medical treatment, or the employee asking for a hearing prior to the one year having elapsed, the safest alternative is for the injured employee to file a Form 30C within one year of the date of injury.

BENEFITS PAID (VA)

The employer has 28 days from receipt of the Form 30C to either issue a Voluntary Agreement in which the employer accepts responsibility for the accident having happened within the course of employee's employment, or the employer has to issue a Form 43 in which the employer contests the injury for a stated reason. This could be because the employer does not have sufficient information to establish a connection between the alleged incident at work and the injury claimed by the claimant, or because the employer believes that the injury did not take place at work or for any number of reasons. The VA is not a settlement of the claim; it is nearly an admission by the employer that they are accepting liability for this claim. The VA will set out the compensation rate which is the amount that the injured claimant can expect to recover on a weekly basis if he is temporarily and totally disabled from this employment. In order to determine what the compensation rate, the employer must calculate the average weekly wage for the last 52 weeks prior to the date of the injury, or in the event that the employee worked for less than 52 weeks, for the number of weeks that he worked prior to the date of the injury. This average weekly wage is then applied to the compensation tables which are produced by the State of Connecticut on October 1st of each year through September 30th the following year. The employee must determine what his filing status was as of the date of the injury and then apply his average weekly wage to the tables to derive his comp rate, if the employee is a high wage earner, his or her comp rate will be maxed out when he gets to a certain dollar amount. The fact that an employer issues a VA does not mean that they agree to the nature or extent of the injuries sustained by the claimant. A typical scernio is an employer may issue a VA for a back strain shortly after the injury takes place. This means that the employer is accepting responsibility for the claimant having strained his or her back at a specific time and place. However, if it is subsequently learned that the claimant has sustained a herniated disc which will require surgery, the employer may contest its responsibility for the herniation of the disc. The fact that the VA was filed does not preclude the employer for making such an argument. The employer could argue for example, that the herniation was pre-existing and therefore any treatment, including surgery, required for the herniation (rather than the strain) is not the employer's responsibility. Similarly, if such an employee is awarded a 10% permanent partial impairment as a result of that injury, the employer can argue that the strain itself would not have resulted in a permanent impairment and therefore contest payment of this permanent injury.

TEMPORARY TOTAL

An employee must be out for four consecutive days before the employer is responsible to pay temporary total benefits. These benefits are retroactive to the first day of the injury the employee is out of work for seven or more days, and will be paid at the comp rate as described above. In most cases, the employer will require a report from a treating physician indicating that the injury was causally related to the work place in order for the temporary total benefits to be triggered. Certain employers offer salary continuation by virtue of a negotiated contract for a period of time, usually not in excess of two years.

TEMPORARY PARTIAL BENEFITS

In Connecticut, once the injured employee has some work capacity his status shifts from temporary total disability to temporary partial disability, otherwise known as light duty. Once the treating physician has informed the employee that he has some work capacity, it is his duty to return to the employer and try to find a job that is within the restrictions that the treating physician has placed upon the employee. In the event that the employer does not have such a job available, there is no requirement that the employer must create such a job. Rather, the injured employee must attempt to seek gainful employment on a temporary basis with another employer who can accommodate the restrictions of the treating physician.

Although there is no statutory requirement to do so, the custom that has been adopted in the workers' comp forum in Connecticut is for the employee to do job searches which are not necessarily restricted to the line of employment that he has with his current employer. It is a requirement that he attempt to seek employment anywhere within the State of Connecticut. It should be noted that if an employee is determined to be temporarily and totally disabled by his physician, he cannot simultaneously collect TT benefits and unemployment benefits. Further, if the claimant attempts to tide himself over by collecting unemployment benefits during a period when the doctor has indicated that he is temporarily and totally disabled, this is also prohibited by law. The claimant may collect unemployment benefits when he only has a light duty capacity, but again, he cannot collect both temporary partial benefits and unemployment at the same time. He must choose which benefits he will collect.

SPECIFIC AWARD BENEFITS

Once the injured employee has reached maximum medical improvement as defined by the doctor (often immediately after he has been provided a permanent partial impairment by the treating physician) the employer is obligated to pay the claimant based on the percentage of disability that he has been awarded. There is a schedule of body parts set forth in 31-308a which specifies how many weeks is awarded for each body part. A computation of the number of weeks awarded can be made by multiplying the percentage of disability times the number of weeks allotted for a specific body part. For example, the lumbar spine is awarded 374 weeks for 100%. Therefore a 10% award of the lumbar spine can be calculated by multiplying 374 by 10% or 37.4 weeks. These benefits are paid by the workers' compensation carrier on a weekly basis, not in a lump sum. However, the employee may request the Commissioner to order a commutation (or lump sum payment) if the employee can demonstrate financial hardship which would necessitate a lump sum. In such circumstances there is a discount applied to the lump sum, and the employee may not return to temporary total status until after the original

number of weeks in which he would have received the specific award benefits have elapsed. This is known as a moratorium.