

## NCCI

# NC injured workers receive benefits for a longer period

Injured workers in North Carolina receive temporary total disability benefits for a longer period than workers in any state, except for South Carolina and Louisiana, and that period has been increasing in the recession.

The National Council on Compensation Insurance reports injured workers in North Carolina receive temporary total disability benefits for about 165 days, compared to about 170 days for South Carolina and Louisiana. At the other end, workers in Rhode Island and South Dakota received TTD benefits for an average of 60 days.

The state average durations can be compared with the overall average study duration of 106 days. "The five states with the highest duration are the same in this study as in the prior TTD duration study. Three of the five states with the lowest duration were also in the lowest five in the last study," NCCI reports.

"Countrywide, our estimate of ultimate mean duration of TTD indemnity benefits has risen from about 123 days for injuries that occurred in 2006 to a forecasted 141 days for injuries that occurred in 2009. Unemployment rose nationally from 4.6% to 8.7% during this same period," NCCI says on its website ([https://www.ncci.com/documents/TTD\\_REPORT.PDF](https://www.ncci.com/documents/TTD_REPORT.PDF)).

While the recession may have resulted in injured workers receiving benefits for longer periods, all indications are fewer claims are filed during economic downturns. Workers are not more likely to file comp claims during a recession, NCCI reports.

NCCI looked at claims with injury dates from 1996 to the first six months of 2009 for which TTD indemnity benefits have been paid. The review looked at the experience in 37 states. State results are influenced by the state benefit structure, regulatory and judicial environments, and the efficiency of claim systems, the group adds.

While the recession may have resulted in injured workers receiving benefits for longer periods, all indications are fewer claims are filed during economic downturns. Workers are not more likely to file comp claims during a recession, NCCI reports.

Writing in NCCI's *Workers Compensation Issues Report 2009*, the group's chief economist, Harry Shuford, said flatly the conventional wisdom is wrong. "Indeed, in six of the seven recessions since the early 1960s, workplace injury rates fell; in five of the six expansions, they rose," he says.

The reason is simple, he adds: As the economy moves into recession, employers typically lay off their newest hired, least experienced workers, who are the ones most likely to be injured on the job.

Indeed, last fall NCCI reported "the decline in claim frequency for workers compensation injuries continued in 2009, and economic factors suggest further reductions are likely in 2010. Preliminary results indicate a decline in claim frequency of 4.0% for 2009. This is on the heels of a 3.4% drop in 2008 and extends a downward trend that started in 1991."

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President's Note

## The coming battle over comp reform



Legislation reforming workers' compensation had not yet been introduced in the General Assembly as we were putting the final touches to this issue. But plaintiffs' attorneys have already mounted a shrill campaign to defeat whatever is introduced.

In mass mailings and on a specifically devoted website, the message coming from the other side is "YOUR WORKERS' COMP BENEFITS ARE UNDER ATTACK!" The truth of the matter is recent objective studies by two major organizations have suggested our comp system may be out of whack. Our last significant workers' compensation reform was undertaken more than 16 years ago.

Last month, WCRI reported workers' compensation total costs per claim were the highest in North Carolina of 16 states studied by the group. Indemnity benefits per claim – payments for lost wages – were 64 percent higher than the 16-state median and the highest among study states.

Separately, NCCI reports injured workers in North Carolina receive temporary total disability benefits for a longer period than workers in any state, except for South Carolina and Louisiana, and that period has been increasing in the recession.

We will have a lot to say at our upcoming annual conference in Wrightsville Beach about the need for comp reform and our efforts in that regard. There is still time to register. We need your support.

With very best wishes,

Jay Norris, president

## CASE LAW UPDATE

By Joe Austin



### Medical-Only Claims

While "medical-only" claims have never been treated as admissions of liability compensability in the past, some attorneys have argued that medical-only claims should be treated in the same way as admitted claims since the Industrial Commission now has a form to document medical-only claims. Fortunately, the Court of Appeals has squarely rejected this argument. In the case of *Gross v. Gene Bennett Co.*, the employee fell at work, but was treated and released to return to full-duty work several weeks later. The employer accepted the claim on a medical-only basis. The employee was subsequently diagnosed with degenerative disc disease and sought additional treatment, for which the employer denied liability. In ruling in favor of the employee, the Commission applied a presumption that the degenerative condition was related to the original injury. However, the Court of Appeals ruled that acceptance of a claim on a medical-only basis does not constitute an admission of liability and as a result, the employee was not entitled to any presumption of causation. Thus, the Court reversed the award of benefits associated with the degenerative disc disease. This result is consistent with the public policy that an employer who provides benefits without conducting a detailed investigation, which usually is not practical in most medical medical-only claims, should not be penalized, since that would have the effect of (1) more claims being denied, (2) delaying medical treatment, and (3) increasing litigation.

### Basis For Defense Of Claims

In litigating workers' compensation claims, it is imperative for an employer to reevaluate the basis for its defense from time-to-time. This principle is underscored by the case of *Blalock v. Southeastern Material*, in which the employee asserted a claim for emphysema and obstructive pulmonary disease. Although he had smoked cigarettes for years, he was exposed to inhalation of dust as a result of his job performing carpentry work. The employer initially denied the claim on the grounds that the employee's respiratory problems were attributable to smoking and not to exposure to dust at work, but all three experts who testified refuted that argument. The Industrial Commission found the condition to be compensable, but denied the employee's motion for attorney's fees. The Court of Appeals reversed the ruling on attorney's fees, reasoning that the employer had no basis for continuing to defend the claim in the face of the uncontroverted expert testimony. As a result, the Court remanded the case for entry of an award of attorney's fees against the employer.

*Joe Austin leads the workers' compensation practice group at Young Moore and Henderson in Raleigh. A graduate of Davidson College, Joe received his law degree from Wake Forest University.*

# New faces, new rules

by Amy L. Pfeiffer

## NEW RATES

Effective 1/1/11, the new mileage rate for “sick travel” as defined in the statute is 51 cents per mile. The new maximum compensation rate is \$836.00.

## PERSONNEL

Tracey Weaver stepped down as Executive Secretary as of 2/18/11. Meredith Henderson, formerly the law clerk to Chair Pam Young, is the new Executive Secretary.

Keischa Lovelace, formerly the Claims Director, has been named a Deputy Commissioner. Taking her place will be Hugh Harris, currently an attorney at the attorney general’s office. Also, there is currently a deputy commissioner slot open.

Commissioner Laura Mavretic’s term is set to expire the last day of April of this year. She is expected to retire and not seek reappointment.

## NEW RULES

As you may know, effective January 1st the Commission implemented new and amended Rules, many of which impact our daily practice before the Commission. This is a brief summary of the rule changes; however, we would urge you to take a look at all of the new rules, which are posted on the Commission’s web site at [WWW.IC.NC.GOV](http://WWW.IC.NC.GOV).

*Information from carriers:* A new rule has been added, Rule 302. This rule requires all carriers, TPAs, and self-insured employers to designate a primary contact person. Each defendant shall provide to the Director of Claims Administration a primary contact, including the name, direct telephone and fax numbers for that person, and mailing and e-mail address. If there is a change in this person, the defendant shall notify the Commission within 30 days; they must also provide the information annually.

Please note that this primary contact person must be able to immediately provide the IC, if requested, with information on the adjuster and supervisor on each file. This person must also be in a position to disseminate information from the IC.

*New costs:* Rule 604 has been amended to provide for the payment of fees to be paid by the employer or carrier to any attorney who serves as a guardian ad litem for actual services rendered, to be shown by an affidavit of time spent on the matter.

Mediation Rule 4A was added to deal with foreign language interpreters. Despite near universal objection on this from all sides, the Commission will now require defendants to pay for interpreters in the course of mediations, unless waived by both parties.

The costs of appointed mediators has been increased from \$125 per hour to \$150 per hour. This is only in appointed mediators; mediators designated by the parties are free to charge what they choose.

Please also note that electronic payment on all fees and costs are now allowed under a new Rule 105. If one wishes to pay via e-check (Automated Clearinghouse, ACH, Transfer), you must make application to and be approved by the Commission in accordance with the procedures for ACH Transfer payments promulgated by the Office of the State Controller. Otherwise, the Commission accepts cash, check, money order, or credit card (Visa or Mastercard only) for the payment of fees, fines, and sanctions.

## NEW PROCEDURES

The Commission has now codified in Rule format (Rule 609A) their procedure for Expedited and Emergency Medical Motions. This is nothing new, but is now an official rule. The Commission has also codified the procedures for hearings, found in Rule 610, for deposition lists and fees for expert witnesses.

There are also new rules on appeals to the Full Commission and the Court of Appeals, and also a new section of Rule 703 dealing with reviews of administrative decisions.



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# coming up

March 23-25, 2011

North Carolina Association of Self-Insurers Annual Meeting  
& Educational Conference.

Holiday Inn Resort, Wrightsville Beach.

April 13-15, 2011

Members-Only Forum, SC Self-Insurers Association.

Litchfield Beach & Golf Resort.

May 1-5, 2011

RIMS 2011 Annual Conference & Exhibition.

Vancouver Convention Center West, Vancouver.

October 19-21, 2011

16th Annual North Carolina Workers' Compensation Educational Conference.

Raleigh Convention Center, Raleigh

NC Workers' Comp News is produced quarterly by the North Carolina Association of Self-Insurers. To be added to our distribution list, please contact Moby Salahuddin, executive director, at [MSALAHUDDIN@SC.RR.COM](mailto:MSALAHUDDIN@SC.RR.COM)

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*The employers' voice in workers' comp*

## Comp costs poised to increase

Writing on his well-respected blog, **Managed Care Matters**, Joseph Paduda says workers' compensation costs will likely rise in 2012 because of three factors:

- Rise in the number of uninsured
- Rise in employment numbers
- Impact of Medicare Set-Asides

According to the most recent figures from the U.S. Census Bureau, the number of people without health insurance is at 50.7 million, an all-time high. All indications are this number will drop only slowly over the next couple of years.

"Many of these uninsureds will still need care, which will lead to more cost shifting to soft targets - like workers' comp," Mr. Paduda writes. "Those without insurance are going to be more expensive to treat because their work comp payer has to cover all the care necessary to get them back to work, even if that care is not - strictly speaking - for the occupational injury or illness," he says.

The second factor likely to drive comp costs higher is the improving economy. More employees in the workforce mean more injuries. Work-related injuries increased in five of the last six economic expansions, according to the National Council on Compensation Insurance.

Mr. Paduda says the third factor driving up workers' comp costs is the impact of Medicare Set-Asides. "Pharmacy costs - and CMS' treatment of same - are causing many payers to delay or reconsider settling claims," he writes, alluding to the posture taken by the Centers for Medicare & Medicaid Services.