House
Legislative
Analysis
Section

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WORKER'S COMP AMENDMENTS

House Bill 4821 as enrolled
Second Analysis (7-5-94)

Sponsor: Rep. Walter J. DeLange
House Committee: Labor
Senate Committee: Labor (Discharged)

THE APPARENT PROBLEM:

Currently, the Worker's Disability Compensation Act provides that members of a volunteer fire department or ambulance service are entitled to all the benefits of the act when injured in the performance of their volunteer duties. Recently however, there have been several instances of members of volunteer fire departments not being compensated under the worker's compensation provisions designed for members of a volunteer fire departments; instead, they have been compensated from the Dual Employment Fund, because of the small stipend they receive as a member of a volunteer fire department. The stipend amount has been used to calculate part of their weekly benefit (rather than receiving benefits based on the state average weekly wage, as under the volunteer fire fighter provisions of the act). As a result, the benefit is reduced, causing financial hardship for the fire fighters and their families. Legislation has been called for to offer financial protection to the volunteer fire fighters and their families in case of injury.

In another matter, with greater numbers of women becoming worker's compensation magistrates, increasing numbers of women have asked for and received maternity leave. This situation, along with other magistrates being absent for various reasons, has caused lengthy vacancies on the board of magistrates. Legislation has been requested to allow these vacancies to be filled on a temporary basis.

Additionally, it has been noted by members of the qualifications advisory committee that some otherwise seemingly qualified attorneys with worker's compensation experience are reluctant to take the written exam to become a magistrate for fear of professional humiliation if they should not pass the examination. This has caused a shortage of qualified applicants. Legislation has been proposed to address this situation.

Furthermore, under current law, individual employers who are "self-insured" under the act are provided record confidentiality, as are insurance companies, but the provision does not specifically apply to groups of employers seeking self-insured status. It is a widely held view that the lack of specific provisions for record confidentiality for group self-insurers was an oversight, and legislation is needed to remedy the situation.

Finally, the Worker's Disability Compensation Act generally requires all employers to purchase worker's compensation disability insurance for their employees either through the State Accident Fund or from a private insurer, or to be self-insured. For employers within the construction industry, however, the act allows a single insurance policy to be issued to cover all employees (who may work for different employers) working at the same work site if the cost of the construction at the site will exceed $100 million and the project is expected to take 10 years or less to complete, and if otherwise authorized by the director of the Department of Labor. Such policies, known as "wrap-ups," allow companies to pool their workers under a single policy and, thus, lower their worksite insurance costs. Companies that qualify for such policies usually, at their own discretion, employ a "safety and health" director who is charged with ensuring that various safety practices are instituted at the job site to reduce the number of accidents that can lead to injuries and death. By encouraging a safer and healthier job-site environment, companies can reduce the dangers presented to those working at such sites and further reduce their insurance costs. Some people believe the threshold for qualifying for a wrap-up policy should be cut in half so that a greater number of construction projects--those with smaller overall budgets but still relatively large--and the companies involved with them could qualify for wrap-up policies. Also, as smaller companies may not always employ a safety and health director for such projects, it has been suggested that provision be

made to require either the general contractor or insurance carrier for a project that qualifies for a wrap-up policy to employ someone who was qualified to ensure that a safe and healthy working environment existed at the job site.

THE CONTENT OF THE BILL:

Currently, the Worker's Disability Compensation Act provides that members of a volunteer fire department or ambulance service are entitled to all the benefits of the act when injured in the performance of their volunteer duties. The bill would amend the act by expanding the definition of an "employee" to include on-call members of fire departments and life support agencies, whether paid or unpaid. The bill also specifies that for the purpose of calculating a weekly compensation claim, an on-call member of a fire department or life support agency would be considered to be receiving the state average weekly wage at the time of the injury, except that if the member's average weekly wage was greater, then that actual weekly rate of compensation would be used.

Additionally, the bill would amend the Worker's Disability Compensation Act as follows:

The bill would allow five years of experience to substitute for successful completion of the worker's compensation magistrate examination. The bill would require the qualifications advisory committee to interview an applicant who successfully completed the examination or who had at least five years experience as an attorney in the field of worker's compensation. To meet the five-year requirement the applicant would have to document to the qualification advisory committee a period of time totaling five years during which he or she had met one of the following criteria:

**Demonstrated that a significant portion of his or her law practice had been in active worker's compensation trial practice.

**Demonstrated that a significant portion of his or her law practice had been in active worker's compensation appellate practice.

**Demonstrated service as a member of the former worker's compensation appeal board or the worker's compensation appellate commission.

The bill would require the qualifications advisory committee to develop the examination in consultation with the board of magistrates. Furthermore, the bill would allow the department to develop a pamphlet to assist those who desire to take the worker's compensation magistrate examination.

The bill would allow the chairperson of the board of magistrates, in the case of an extended leave of absence or disability of a member of the board, to select a temporary magistrate to serve for not more than six months in any two-year period. Temporary magistrates would be selected from a list of licensed attorneys who are former or retired worker's compensation magistrates, hearing referees, or administrative law judges. A temporary magistrate would have the same powers and duties as an appointed magistrate.

Currently, records submitted to the bureau from an employer who is self-insured are confidential and exempt disclosure under the Freedom of Information Act. The bill would amend the act to expand the confidentiality provisions to include groups of self-funded employers (associations).

The Worker's Disability Compensation Act currently provides that, under procedures and conditions determined by the director of the Department of Labor, a separate worker's compensation insurance policy may be issued to cover employers performing work at a specified construction site if certain criteria are met, including that the cost of construction at the site will exceed $100 million and the expected completion period for the construction will be 10 years or less. Under the bill, a separate policy to cover all employees at a site could be issued if construction costs at the site would exceed $50 million and the time to complete a project would be five years or less.

The bill also would require the filing of a notice of issuance of an insurance policy on a form provided by the Bureau of Worker's Disability Compensation for each employer working on a specific construction site. The notice of issuance would have to conform to the requirements of the act regarding such filings (to include such information as its effective date, who was covered and other pertinent data).

In addition, the bill specifies that each construction site would have to have an appointed construction

safety and health director employed by the general contractor of the site or insurance carrier for the project, who would have to have experience in the field of construction health and safety. The director would be a full-time director with job duties limited to occupational safety and health-related issues, and would have to be located at and work from the construction site, whenever construction activity took place on the site. The owner or general contractor would have to designate an alternate construction safety/health director with experience in this field during multiple shifts and temporary absences of the director, who would exercise the same responsibilities and authority as the director and report to him or her at the site during his or her absence.

The construction safety/health director would be responsible for coordination among all employers at the site to provide a "safe and healthful" worksite, and would be the final authority for resolution of all disputes related to construction safety and health at the site. All construction contractors at the worksite would have to accept the services of the education and training personnel from the Departments of Labor or Public Health, or both, who provided the services pursuant to the Michigan Occupational Safety and Health Act. The worksite safety/health director also would have to assist all contractors at the site in developing comprehensive accident prevention programs as required by administrative rule.

MCL 418.161 et al.

FISCAL IMPLICATIONS:

According to the Bureau of Worker's Disability Compensation in the Department of Labor, the bill has minimal fiscal implications for the state. Construction companies to which the bill's provisions would apply, however, could reduce what they otherwise would pay for worker's compensation insurance at a construction site. (10-11-93 and 5-31-94)

ARGUMENTS:

For:

There have been several reported instances where members of nonprofit volunteer fire departments and life support agencies who have been injured during the course of their "volunteer" service have been viewed as employees and not as volunteers (because they are paid a small stipend for their service). Their worker's compensation benefit is being calculated on what they have been compensated for as a volunteer and not the higher state average weekly wage. This causes their worker's compensation benefit payment to be much lower and in many cases creates financial hardships on the workers and their families.

For:

With greater numbers of women becoming worker's compensation magistrates, increasing numbers of women have asked for and received maternity leave. This situation, along with other magistrates being absent for various leaves of absence, has caused lengthy vacancies on the board of magistrates. Additionally, it has been noted by members of the qualifications advisory committee that some otherwise seemingly qualified attorneys with worker's compensation experience are reluctant to take the written exam to become a magistrate for fear of professional humiliation if they should not pass the examination. This has caused a shortage of qualified applicants. This legislation is seen as a way of alleviating both of these situations. Further, under current law, individual self-insured employers and insurance companies are allowed record confidentiality. The confidentiality issue is as important to group self insurers as it is to self insurers and insurance companies.

For:

The bill would lower the threshold for qualifying for a so-called "wrap-up" worker's disability compensation insurance policy that may be issued, at the labor department director's approval, to cover all the employees working at the same site on a construction project from $100 million to $50 million. (The bill also specifies that for a project to qualify it would have to be completed in five years or less, rather than 10 years or less; but because even projects of this size usually are finished well within even five years, the time period requirement generally does not figure in determining eligibility for a wrap-up policy.) Wrap-up policies essentially enable the general contractor on such expensive projects, as well as all those who subcontract for work on the project from the general contractor, to reduce what they pay for worker's disability compensation insurance. The $100 million threshold was established years ago to apply only to larger projects (apparently, this figure was adopted back when the Renaissance Center was being constructed so that the cost to build this structure

could be reduced), but there is no reason to limit qualification for such policies only to very expensive projects. The bill, however, not only would lower the threshold for a project to qualify for a wrap-up policy, but also would require that a project for which a wrap-up policy was issued would have to have someone (employed either by the general contractor or insurance carrier on the project) working full-time at the site who was qualified to ensure that a safe and healthy work environment existed at the site. Reportedly, a special "health and safety director" generally is hired to oversee large construction projects, but companies choose to do so to help reduce safety hazards and unhealthy working conditions and thereby cut insurance costs. The bill, however, specifies that in order for a project to qualify for a wrap-up policy, someone would have to be hired to work at the project site specifically to ensure that safe and healthy working conditions were present there.

Against:

Lowering the threshold at which a project could qualify for a wrap-up worker's disability insurance policy to qualify more projects for them may lower insurance costs for the general contractor on a qualifying project, though would not necessarily, but could very well raise what subcontractors on such projects have to pay for this insurance. Because a wrap-up policy is issued to the general contractor, it ultimately determines the specific provisions of the policy, such as the levels of deductibles. Usually, subcontractors on a project buy insurance to cover their own deductibles under a policy and, if no wrap-up policy applies, may choose from among insurance policies offering lower deductibles from competing insurers. Under a wrap-up policy, however, subcontractors are subject to the deductibles, chosen by the general contractor, under that policy even if they could save money purchasing a different policy with lower deductibles elsewhere. Wrap-up policies generally discourage competition for providing insurance to subcontractors on large construction projects, which raises their worker's compensation insurance costs. Some people argue that the threshold for qualifying large projects for wrap-up policies should, instead, be raised to reduce the number of projects that qualify for them.