

COMPNOTES

A PUBLICATION OF COMPMANAGEMENT, INC.

Proudly Serving Ohio Employers for Over 25 Years

CMI Welcomes New Clients and Colleagues

CMI is pleased to announce new partnerships with the following associations:

- Ohio Farm Bureau Federation
- Columbus Chamber of Commerce
- Ohio State Medical Association
- Ohio Municipal League
- Ohio School Boards Association
- Ohio Newspaper Association
- Ohio Association of School Business Officials (Group Retrospective Rating Program)

Collectively, these associations represent almost 10,000 employer participants in their group rating programs for the 2009 rate year. We are honored to serve both our long-standing and new association partners and their members, who represent the very fabric of Ohio's culture and economy. Consistent with our core values, we strive to deliver excellence each and every day, as Ohio's leading

workers' compensation group rating administrator. We are proud to welcome these outstanding organizations to the CMI family, and look forward to serving their members.

You may also recognize that we have added many colleagues to our ranks in order to support these new partnerships. These professionals come with years of Ohio workers' compensation experience, adding even more depth and expertise to our team. During these challenging economic times, we are grateful that the growth of our business is creating jobs for the people of Ohio. In fact, our parent company Sedgwick CMS has invested heavily in Ohio and across all business lines. We have added over 100 new colleagues in the past year, many of whom support national business activities that Sedgwick CMS chose to base in Ohio because of the quality and experience of our workforce. With this new talent on board, we look forward to building on past success and continuing as the preeminent TPA in the State.

Unemployment Update

Extensions For Unemployment Benefits Are Likely

The U.S. House of Representatives passed an unemployment bill in September which is currently awaiting action in the Senate. It is likely that the bill will go to the floor of the Senate within the next week.

We expect several amendments to the House-passed language, including the following:

- (1) An extension of benefits ranging from 1 to 20 weeks depending on the individual state's unemployment rate (Ohio qualifies);
- (2) An extension of the 0.2% FUTA surtax through 2010 and half of 2011;
- (3) Removing the additional "New Hire" reporting provisions and language to expand the IRS offset;
- (4) "Compelling family reasons" language to make it easier for states to meet the conditions for incentive funding;
- (5) The eligibility of individuals receiving SNAP benefits (formerly food stamps) will not be affected by the additional unemployment compensation provided by the bill.

We have heard several options regarding funding of the above, including not requiring a pay-for because it is stimulus spending, or offsetting it with stimulus funds that were previously authorized but have not been spent. However, due to the varying degrees of support (and opposition) to these options, it is difficult to tell how the Senate will decide. Ultimately, it is important to recognize that state UI tax rates are already drastically increasing, and the extension of the 0.2% FUTA surtax will likely make it more difficult for businesses to create jobs.

If your company is interested in reducing its unemployment rates via aggressive claims management, hearing representation, and/or common rating, please contact Stephanie Hill at 614-760-8181 or Stephanie.hill@sedgwickcms.com.

CompManagement Celebrates a Milestone



September 10, 2009 was a significant milestone for CMI: we celebrated our 25th year of working for Ohio employers! CMI opened for business in 1984 convinced that good service makes a difference, and today we are the largest TPA in Ohio.

On behalf of our 700 colleagues throughout Ohio, we would like to acknowledge you, our clients, for your continued support of our organization. Without your partnership it would not have been possible. Thank you for 25 terrific years!

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CompNotes is a quarterly newsletter of CompManagement, Inc., A Sedgwick CMS company.

CompNotes is provided to clients and friends for general information purposes only and should not be construed as legal advice. You should consult with an attorney or other appropriate professional if you have questions about any of the topics included in this publication.

It's Group Rating Enrollment Time Again!

The Ohio Bureau of Workers' Compensation Board of Directors is expected to approve the new maximum group discount (for the July 1, 2010 policy period) at their October 30, 2009 Board Meeting. Assuming this action takes place, CompManagement will then start generating group enrollment offers.

As a current client of CompManagement, you are automatically reviewed for group participation every year to determine your eligibility status. For those that qualify, you will receive the results of our analysis and an invitation to enroll in the program. The vast majority of these quotes should be received by the end of November.

If you are reviewing savings quotes from other group administrators, please make sure that you are comparing apples to apples. This important decision affects how much you pay in workers' compensation premiums, as well as who will be handling any claims that may occur. While CompManagement takes great pride in the accuracy and consistency of our savings forecast, others within our industry may promote inflated savings figures in an effort to secure additional business.

It should also be mentioned that not all group administrators offer the same level of service. Examine other quotes thoroughly to ensure that you are comparing similar discounts and service offerings. Going into the July 1, 2010 rate year, CompManagement is once again the largest group administrator and able to offer the most stable programs available in the State of Ohio. Through our multiple-tiered savings system, we are able to pinpoint the greatest savings discount for which your organization is eligible.

Enrollment occurs only once a year, so please be certain to send back the documents needed to ensure your continued participation in our program.

Should you have any questions regarding group rating or the savings quote you receive, please contact our Customer Support Unit at (800) 825-6755, option 3.

New Programs from the Ohio Bureau of Workers' Compensation

Last July, the Ohio Bureau of Workers' Compensation (BWC) offered two new programs to Ohio employers: Group Retrospective Rating and the Deductible Program. Recently the BWC announced plans to introduce two additional programs in 2010: a Large Deductible Program and an Individual Incurred Loss Retrospective Program. Following are summaries of some of these new programs:

Group Retrospective Rating

Group Retrospective Rating is a program offered by the Ohio Bureau of Workers' Compensation (BWC) that allows employers in similar industries to "pool" their workers' compensation exposure. The goal of this program is to eliminate workers' compensation injuries, which in turn will provide the members of the program a refund from BWC. Employers in the program pay their individual premiums to the BWC, and after the policy year has ended, BWC compares the premiums paid to the losses developed for the year. If the total premiums paid are more than the losses developed for the year, the group gets a refund of the difference. Conversely, if the losses are higher, the group would be assessed for the additional amount. There is a maximum assessment amount that the group would select to minimize its exposure.

This program is really designed for mid-sized to large employers (at least \$25,000 in annual premium) that have a commitment to safety and transitional work. CompManagement is one of three TPAs that are administering a group retro program in Ohio, and we administer five programs in the State of Washington. The deadline to file a group retro program with the Ohio BWC is December 19, 2009 for public employers, and April 30, 2010 for private employers. We are currently evaluating all of our public employer clients for group retrospective rating and will be providing proposals in the near future.

Large Deductible Program

This program is very similar to the Deductible program introduced by BWC in July 2009. The key differences are the deductible limits (\$25k, \$50k, \$100k, \$250k) and the option of having an aggregate cap on the program (proposed to be 3 times the amount of deductible level). This program is still in the developmental stage at BWC; therefore, we do not know at this time what type of discounts will be available.

Individual Incurred Loss "Retro" Program

This "retro" program for individual employers is similar to the group retrospective rating program in that the employer pays the BWC their full individual premium, and may receive a refund if the developed losses are less than the premium. While this program is also in the development stage, we feel that the current "paid loss" retrospective program offers more advantages at this time.

For more information on any of these programs, please contact your CMI Account Manager. We will consult with you on the feasibility of pursuing these programs and provide you a detailed analysis of the impact.

Free Half-Day Client Seminar

Please join us for a FREE ½ day seminar scheduled in a city near you, or via a webinar from your office!

Recommended especially for:

- New CMI clients
- The HR generalist, HR Specialist or Workers' Comp Coordinator, who has a basic knowledge of workers' compensation, but would like to learn more about:
 - Workers' Comp 101 plus...
 - BWC, IC, MCO and TPA - Who are they and what do they do?
 - Practical application of transitional duty
 - Wage continuation - Is it still an effective tool?
 - Current cost containment strategies
 - Updates on BWC rate reform and pending changes which may impact your day-to-day business operations
- Other CMI services and updates: Unemployment Compensation, Risk Services

Date	Location	Address
11/5/09	Cincinnati	CompManagement, Inc. office 7731 E. Kemper, Cincinnati, Ohio 44249
11/6/09	Cleveland	CompManagement, Inc. office 5700 Lombardo Ctr. Dr., Seven Hills, Ohio 44131
11/9/09	Findlay	Comfort Suites 3700 Speedway Dr., Findlay, Ohio 45840
11/9/09	Dayton	Dayton Marriott 1414 S. Patterson Blvd., Dayton, Ohio 45409
11/10/09	Mentor	Residence Inn 5660 Emerald Ct., Mentor, Ohio 44060
11/13/09	Canton	Cambria Suites 1787 Thorn Dr., Uniontown, Ohio 44685
11/16/09	Dublin	CompManagement, Inc. office 6377 Emerald Parkway, Dublin, Ohio 43016
11/17/09	Webinar	Client Webinar via telephone and internet
11/19/09	Cambridge	Pritchard Laughlin Civic Center 7033 Glenn Highway, Cambridge, Ohio 43725
11/20/09	Newark	Licking/Knox Goodwill Industries 55 S. Fifth St., Newark, Ohio 43058

Time: All seminars will begin at 9:30am and will end at noon. The webinar will begin at 1:30 pm and will end at 3:30pm.

Registration is easy! Simply send an email to seminarsvp@sedgwickcms.com, noting: the name(s) of those wishing to attend, your BWC policy number and the date/city you wish to attend.

Seats will be limited; your prompt response is greatly appreciated. Feel free to contact Nina Nye with questions at the above email or by phone at 614.760.2420. Once you've registered, expect a confirmation email several days prior to the date of the seminar. We look forward to seeing you!

The Voluntary Abandonment Defense Takes Another Hit

by Holly L. Papalia, Esq., Mark A. Shaw, Esq., and James B. Yates, Esq., Eastman & Smith Ltd.

For years, employers have successfully defended against claims for temporary total disability (TTD) compensation by asserting a voluntary abandonment of employment. This doctrine was first established clearly by the Ohio Supreme Court in *State ex rel. Louisiana-Pacific Corp. v. Indus. Comm.* (1995) 72 Ohio St.3d 401, which held that an employee who engages in specific conduct that leads to his or her termination will be deemed to have voluntarily abandoned his or her employment if the employer maintains a written policy that: (1) clearly defines the prohibited conduct, (2) has been previously identified by the employer as a dischargeable offense, and (3) is known or should have been known to the employee. Thus, even if the underlying claim is allowed, it is still possible to defeat any request for TTD compensation by asserting voluntary abandonment of employment where the claimant is discharged for violation of a written work rule.

In the context of drug testing cases, employers have previously been successful in arguing the holding of *Louisiana-Pacific* applied to preclude payment of TTD compensation to claimants who were terminated for violation of a drug free workplace policy. A complication arises, however, where the employee is immediately disabled from his or her employment after the accident and at the time of the discharge. In *State ex rel. Pretty Products v. Indus. Comm.* (1996), 77 Ohio St.3d 5, the Ohio Supreme Court held a claimant can voluntarily remove himself from the workforce only if he has the physical capacity for employment at the time of the abandonment or removal. While the Supreme Court has yet to specifically apply this holding to drug testing cases, a few lower courts have recently done so and held that, despite a positive post-accident drug screen, a claimant will still be entitled to future payment of TTD compensation if he or she was disabled from his or her employment at the time of his or her termination for a violation of the employer's drug free workplace policy.

In *State ex rel. Clevenger v. Ohio Staff Leasing, Inc.* (2009), 10th Dist. No. 08AP-828, 2009-Ohio-3085, and *Ohio Welded Blank v. Indus. Comm.* (2009), 10th Dist. No. 08AP-772, 2009-Ohio-4646, the claimants were involved in a workplace accident and submitted to a post-accident drug tests pursuant to the employers' drug free workplace policies. The results of the drug screens were positive for marijuana. Thereafter, both claimants were terminated from employment pursuant to a violation of the employer's drug free workplace program. The claimants subsequently sought TTD compensation based upon the medical records of their treating physicians, who totally disabled the claimants from their jobs beginning the day of the injury. In both cases, the court found the termination did not constitute a voluntary abandonment of employment to preclude payment of TTD compensation because the claimants were disabled from their employment at the time of their discharge. The courts considered it irrelevant that the conduct for which the employee was terminated, i.e. illegal drug use, occurred prior to the injury. The courts acknowledged there was a clear tension between the *Louisiana-Pacific* line of cases and *Pretty Products* and its progeny.

Therefore, until the Supreme Court decides the issue, it is unclear whether employers will continue to prevail under the voluntary abandonment defense where a claimant is terminated for violation of a drug and alcohol free workplace policy after an industrial injury. As a practical matter, though, workers' compensation claims involving drugs or alcohol are extremely significant in terms of financial and human resources ramifications, and employers should continue to vigorously challenge these types of claims.

Online Account Access

Enhancements to CMI's eTEAM product

In an ongoing effort to improve the information we are able to provide to our clients, we have made enhancements to our online employer site. A new policy page has been added that will allow an employer to review workers' compensation coverage history as well as payroll and premium as reported to the BWC, and to have quick and easy access to the employer's EMR. As with claim information that has been available through the site, all employer information is password-protected to ensure privacy.

Another enhancement is a section dedicated to programs in which employers may be participating to control their worker's compensation costs. The first section available is for employers enrolled in the BWC's new Deductible Program, who are now able to check their performance in the program through this section. Additional BWC program tracking will continue to be developed.

If you have any questions about eTEAM or would like a password to view the demo, please call us at 1-800-825-6755 or contact your Account Representative.

BWC Proposes Changes to Reserving of Salary Continuation and Medical Only Claims

Last year, the Bureau of Workers' Compensation (BWC) had a comprehensive study completed by Deloitte Consulting LLP (Deloitte). Two of the recommendations made by Deloitte are to discontinue suppressing reserves for medical only claims and to cease suppressing reserves on claims with salary continuation.

Background: When the BWC changed reserving systems a number of years ago, they implemented what they called "transition rules." One of the transition rules is that for claims where the only type of compensation paid is salary continuation, the reserve is set to zero, or in other words, suppressed. In addition, reserves for claims with salary continuation followed by living maintenance (compensation paid while an injured worker is in a rehabilitation plan) are suppressed. One of the other transition rules is that medical only claims are not reserved.

Proposed Changes: Based on the Deloitte findings, the BWC is proposing the following changes:

- Cease suppressing reserves for claims with salary continuation or salary continuation followed by living maintenance for claims with dates of injury 1/1/2010 or later. Claims with dates of injury prior to 1/1/2010 will be "grandfathered" and continue to have reserves set to zero.
 - Begin reserving medical only claims. The proposed start date for this change is the 2011 policy year for private employers and 2012 for public employers.
- Impact:
- Salary Continuation: Employers would still be allowed to pay salary continuation and any salary continuation payments would be subtracted from the total cost of the claim. However, if the claim is still "active" when it enters your experience, the claim would carry a reserve and have an impact on your premium rates.
- Note: BWC changed reserving systems last year from MIRA I to MIRA II. MIRA II has shown to be much more reactive than MIRA I in that reserves are shut off more quickly when claims become inactive. Therefore, the impact of this change for claims with short periods of compensation may be limited.
- Medical Only Claims: Most medical only claims are deemed inactive relatively quickly and would not carry a reserve by the time they enter an employer's experience. BWC statistics show that 94% of medical only claims are inactive within 14 months of the date of injury. However, medical only claims that are medically active as of the survey date would carry a reserve and would therefore have an impact on your premium rates.

Again, these changes have not been finalized as of this printing, and are subject to change. We will keep you informed as we learn more.

Does your incident report include a medical release? If not, there may be some delay in getting information related to the claim while waiting for a medical release to be signed by the injured worker. If you need an incident report that includes this release, please contact your CMI Claims Examiner at 1-800-825-6755 for a sample report.

New Lapse Rules Effective October 1, 2009

Lapses in BWC coverage can be very costly and may jeopardize an employer's ability to participate in alternate rating plans. A lapse in coverage occurs when BWC premium payments are not made in a timely fashion. Under previous BWC rules, this would occur only when an employer failed to file its payroll reports and pay the semi-annual or annual premiums on time.

Effective 10/1/09, BWC has extended this concept so that a lapse will also occur when any regular invoice of more than \$1,000 goes unpaid for more than sixty days. These invoices may be generated as a result of audit findings or retroactive rate adjustments, for example. Coverage will be reinstated once payment is made. If an employer files a protest on such an issue, then coverage will not lapse until sixty days following a final administrative or court order for the appeal, assuming the employer's protest is denied.

Please contact CMI's Rate and Underwriting Department if you have questions regarding this new rule.

\$15,000 Medical-Only Program Update

As reported in prior issues of CompNotes, in December 2007, Congress approved section 111 of the Medicare, Medicaid and SCHIP Extension Act (MMSEA). This action established mandatory reporting requirements for group health plans as well as liability insurance (such as self-insurance, no-fault insurance and workers' compensation plans). The act was created to protect the Medicare system from having to bear current or future medical costs that are considered to be the obligation of an insurance company or another party.

To comply with this requirement, the Ohio Bureau of Workers' Compensation (BWC) will report all claims of Medicare beneficiaries paid by the state insurance fund. However, the BWC will not report for self-insured employers or for those who participate in the \$15,000 Medical Only Program (15K Program). Therefore, if you are participating in the 15K Program, you are the Responsible Reporting Entity (RRE) for claims covered under the program.

For employers enrolled in the 15K Program, all claims that were in an open status as of 1/1/09 or later and have over \$750.00 in paid medical costs must be queried against the Centers for Medicare and Medicaid Services (CMS) database on a quarterly basis in order to identify any claims for Medicare-eligible individuals. Querying must continue until the claim is statutorily closed. If there is a match (there is a claimant that is Medicare-eligible), the employer will be required to report additional information to CMS via an electronic data transfer. However, once a claim is turned over to the BWC, the BWC will become the RRE and be responsible for sending future updates to CMS.

CMS has changed the deadlines for compliance as follows:

- Year end 2009: RREs are requested to register electronically with the Centers for Medicare and Medicaid Services (CMS).
- January 1 to March 31, 2010: Testing for reporting of claims electronically to CMS.
- April 1 to June 30, 2010: Employers must start reporting claims electronically based on the schedule determined by CMS.
- Note: Failure to properly comply with this new federal mandate could result in penalties of \$1,000 per claim, per day.

Other Options:

Opt out of the 15K Program: If you are going to opt out of the 15K Program you must do so prior to April 1, 2010 to avoid any MMSEA reporting requirements. To opt out of the program, you will need to call the BWC at 1-800-OHIOBWC (1-800-644-6292). In addition, you will need to opt out of any active claims (claims with medical bills paid in 2009) with medical payments in excess of \$750.00 by contacting your BWC claims service specialist.

Remain in the program for the first \$750: If you desire to remain in the 15K Program, one option is to pay only the first \$750 in medical bills and turn any claims that exceed the \$750 threshold over to the BWC. This will transfer reporting requirements to the BWC once the \$750 reporting threshold has been met.

TWO-HOUR SAFETY TRAINING FOR GROUP EXPERIENCE- AND GROUP RETRO-RATED EMPLOYERS

In an effort to refocus group rating participants' attention to the importance of safety in the workplace, the Ohio Bureau of Workers' Compensation requires group participants that have sustained an allowed claim in the past two years to complete two hours of safety training annually. The training can be offered by the sponsoring organization, the sponsoring organization's third party administrator, or the Ohio BWC.

Private employers who have an allowed claim in 2007 or 2008 calendar years must complete the training between July 1, 2009 and June 30, 2010. Public employers who have an allowed claim in 2008 or 2009 calendar years must complete the training between January 1, 2010 and December 31, 2010.

An employer may fulfill the two hour safety training requirement by attending a live training session, participating in a webinar training session, or completing an online training session. Failure to complete the required two-hour safety training within the above parameters may result in disqualification from future group rating participation.

CMI will be maintaining the required documentation on behalf of our sponsor partners. Please visit www.compmgt.com/riskservices and click on the "Report Safety Training" button to have your safety training recorded and reported appropriately.

CMI Risk Services offers the following safety training options to help you meet this requirement.

CMI Safety Academy - Our safety workshops provide you with compliance programs to meet OSHA's core regulatory standards, while equipping you with tools to reduce your occupational incidents and eliminate potential physical hazards. In the workshop, you will be furnished with draft safety guidelines and PowerPoint training programs to meet OSHA standards. Visit www.compmgt.com/riskservices/academy for additional information including dates, locations and registration.

Online Safety Training - Fulfill the two-hour safety training requirement from the convenience of your own office or workstation with our online safety training. View our extensive catalog of OSHA approved courses at www.compmgt.com/riskservices/onlinelearning.aspx and click on "OSHA training."

Onsite Safety Training - Schedule a customized onsite training program specific to your organization. We can tailor these training sessions for regulatory compliance or best management practices. A list of topics is available at <http://www.compmgt.com/riskservices/safetytraining.aspx>.

Please feel free to contact our Risk Services department at 1-888-264-2635 should you require additional information about this new safety requirement or available training opportunities.

Ohio Industrial Commission Office Consolidations

To enhance efficiency and cost-effectiveness, the Ohio Industrial Commission (IC) has closed and consolidated multiple local offices in 2009. Hearings previously scheduled at these IC offices will be redistributed to the remaining IC offices closest to the injured worker's residence. Employer attendance at hearings is always encouraged, so please be aware that you may need to travel to a different IC office. New hearing locations and directions will be indicated on the Notice of Hearing.

Our staff of 24 hearing representatives will continue to provide experienced hearing coverage across the state. As a reminder, you have a right to legal counsel at hearings. Should you choose to obtain counsel, please notify your Claims Examiner as soon as possible.

Below is a summary of the IC consolidations:

- March 27, 2009 - Springfield IC closed, consolidated operations with Dayton IC (hearings redistributed to Dayton, Lima, and Columbus)
- June 29, 2009 - Canton IC closed, consolidated operations with Akron IC (hearings redistributed to Akron, Cambridge, and Youngstown)
- August 21, 2009 - Zanesville IC and Bridgeport IC closed, consolidated operations into the new Cambridge IC office (hearings redistributed to Cambridge, Columbus, and Logan)
- November 6, 2009 - Hamilton IC scheduled to close, will consolidate operations with Cincinnati IC (hearings to be redistributed to Cincinnati and Dayton)

Recording Occupational Illnesses /Injuries on the OSHA 300 Form

All employers covered by the Occupational Safety and Health (OSH) Act of 1970 are required to comply with OSHA's injury and illness recordkeeping regulations. However, there are two categories of employers that are partially exempted from routinely recording workplace injuries and illnesses: those with 10 or fewer employees, and business establishments in certain low-hazard industry classifications.

How to decide if an injury or illness is work-related

An injury or illness is considered to be work-related if an event or exposure in the work environment either caused or contributed to the condition, or significantly aggravated a pre-existing condition.

Injury and illness recording criteria

You must record an employee's injury or illness that is work-related, a new case, and results in one of the following general recording criteria:

- Death
- Loss of consciousness
- Days away from work
- Restricted work activity or job transfer
- Medical treatment beyond first aid
- A needle-stick injury or cut from a sharp object that is contaminated with another person's blood or other potentially infectious material

What is medical treatment?

Medical treatment includes managing and caring for a patient for the purpose of combating disease or disorder. The following procedures are exempt from being classified as medical treatments and do not make a case recordable:

- Visits to a doctor or healthcare professional solely for observation or counseling;
- Diagnostic procedures, including x-rays, blood tests, and administering prescription medications that are used solely for diagnostic purposes; and
- Any procedure that can be labeled first aid.

If additional information is needed, please do not hesitate to contact John Lanning in our Risk Services Department at 1-888-264-2635, ext. 1773.