



Sedgwick CMS

CompManagement, Inc.
A Sedgwick CMS Company

Salary Continuation Update

Employers who usually pay or have paid salary continuation in lieu of the BWC paying Temporary Total Disability compensation are probably already familiar with the following BWC rules:

- The wages must be the injured worker's full salary including any regular benefits; the employer may not reduce the payment amount to reflect what the employer "calculates" as the TT rate.
- The wages must be paid in an uninterrupted manner from the original date of injury.
- The payment cannot wait until either a BWC or IC determination is made.
- Within seven days of the filing of the FROI or seven days from the onset of disability causing lost wages (changeovers), the employer must notify BWC that the injured worker will continue to receive his/her regular (full) salary/wages during the disability.
- Employers can also notify the BWC CSS during the initial contact of their intent to pay salary continuation, and submit documentation as follow-up.
- A C55 (Salary Continuation Agreement) should be completed, signed by both employer and employee, and submitted to the BWC.
- The employer must submit historical payroll (from the 52 weeks prior to the date of injury) so that the BWC can calculate and post the wages.

Recently, the Ohio Bureau of Worker's Compensation announced stricter guidelines for employers electing to pay salary continuation to their injured workers. During initial contact, the BWC will discuss with the employer whether or not Salary Continuation will be paid. If the employer **does advise that Salary Continuation is being paid**, the employer must, **within fourteen (14) days, submit the historical payroll and a completed C55**. The BWC has stated that **the consequence of non-compliance with these requirements is that the Salary Continuation payments will not be built into the payment plan, and reserves will be assessed**. (Historically, if an employer paid wage continuation in a claim, the employer was not charged a reserve for that claim, whether or not the C55 form had been filed.)

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Here is a sample scenario: The employer elects to pay the injured employee full salary while he/she is off work due to the claim; however, the employer fails to do one or more of the following: 1) advise the BWC within the proper time frame, 2) submit a completed C55, and/or 3) submit the historical wages. In response, the BWC will issue an order granting TTD compensation (if medically supported). If the employer elects to appeal the order because full wages are being paid, and the hearing officer acknowledges the payments and denies TTD, the BWC will not pay the TTD. However, the Salary Continuation will not be built into the payment plan, and the reserve will not be suppressed.

In addition to the above-mentioned rules:

- **The BWC requires that a new C55 be submitted for all subsequent periods of salary continuation paid; this must be done within 14 days of the date of the previous C55 form.**
- **If there is incorrect payment or incomplete documentation, the employer will have 48 hours to make corrections and provide notice of same to the BWC.**
- **If the claimant is suffering lost income from additional current employers, BWC will review for TTD compensation if Salary Continuation payments do not cover the lost wages from all current employers; this will result in a reserve being assessed.**

After the employer's initial contact with the BWC (within seven days of the filing of the FROI or seven days from the onset of disability) during which the employer advises that Salary Continuation is being paid, the BWC will send a "Salary Continuation Compliance" letter. The letter is a reminder of the requirements discussed in this article; however, please be sure to contact your CompManagement, Inc. (a Sedgwick CMS company) claims team to verify that you are in compliance with the BWC rules and that your best interests are being protected.

For a tutorial on Salary Continuation, please go to <http://www.sedgwickcms.com/ohioworkcompadvisory>.

Unemployment Update

Delays Possible in Unemployment Rule Changes

The Unemployment Advisory Council has been meeting quarterly to discuss the health of the Unemployment Trust Fund, what changes may be a good idea, and potential ramifications if no changes are made.

The average tax rate for 2008 is 2.6%. There have been no changes to ODJFS tax laws as had originally been anticipated. This has caused the fund to be at its lowest point in many years, \$120 million, but it is not yet in a negative balance. Unfortunately, benefit rates continue to go up each year based on the cost of living, so the fund is anticipated to be in the negative by 2011, with the state beginning to borrow money to pay benefits sometime in 2009.

A change in the wage base would help to increase the fund, but even a change in 2008 would not solve the fund balance problem for at least the next four years.

Since dependency classes do remain in effect, the weekly benefit amounts have increased for 2008. The maximum benefit for a claimant with no dependents is \$365; with one or two dependents, \$443; and with three or more, \$493.

CompManagement will continue our participation in the Council and will keep our clients informed of any changes. Any questions or concerns should be sent to Mary Lloyd-Marucco at Mary.Lloyd-Marucco@sedgwickcms.com.

UWC Annual Conference in Cleveland in May

The annual Unemployment Issues Conference for UWC (a national group that researches unemployment and workers' compensation laws) will be held May 20-22 in Cleveland at the Renaissance Cleveland Hotel.

Mary Lloyd-Marucco will be speaking on May 21, 2008 on Unemployment Best Practices. Non-UWC members may attend; please visit the UWC website at www.uwcstrategy.org for details.

Why I Like Sedgwick CMS

By Kevin Lowry, Senior Vice President



It has been over a year and a half since CompManagement, Inc. (CMI) was purchased by Sedgwick CMS, the largest workers' compensation claims administration firm in the U.S. Since the merger, a few faces have changed, as have a number of things behind the scenes. However, one thing will never change: our commitment to providing outstanding service to our clients.

People sometimes ask how the Sedgwick CMS acquisition has affected CMI. The short answer is that we are better positioned than ever to succeed in the future. Here are just a few of the reasons I like Sedgwick CMS:

Valuing People

As an organization, Sedgwick CMS does a tremendous job of valuing people. One of the ways in which this is evident is the Company's recertification as an Employer of Choice® for two years. This award is based on objective measures of attracting, developing and retaining talented team members. Sedgwick CMS strives to always treat individuals with dignity and respect.

Responsiveness

Sedgwick CMS brings a strong record of responsiveness and client service focus to further strengthen our culture. We continue to maintain offices in many locations throughout the state where our clients do business, and this helps us to serve you locally, and rapidly. Hometown service combined with an impressive depth of national level resources has been a winning combination for our clients.

Technology

A large portion of Sedgwick CMS' resources are focused exclusively on continuously enhancing our technology. While many national clients are on the JURIS® platform, the CMI suite of applications, TEAM, continues to be updated and improved for our clients in Ohio and Washington. This helps us to remain on the cutting edge of technological innovation.

Training

Sedgwick CMS University is a training facility (and just as importantly, a training team) that helps to develop our colleagues throughout their careers with the Company. Two of our Sedgwick CMS team trainers were recently in our Dublin, Ohio office conducting a team building and client service training session. This helps us to fulfill the Company's core value of helping us to "grow as individuals" and translates into – you guessed it – superior client service.

Building on Success

CMI has always been renowned for our focus on client service. In a sense, Sedgwick CMS has taken the best of what made CMI great, and added to it an impressive array of additional resources. Our people and our technology are what set us apart, and we look forward to serving you for many years to come.

Special Notice to Public Employers

The Ohio Bureau of Workers' Compensation (BWC) has just announced a rule change for public employers (counties, cities, townships, villages, schools, special taxing districts). Beginning on May 15, 2008, public employers that fail to remit their payroll report and premiums when due to the BWC will see a lapse in their workers' compensation coverage. When a lapse in coverage occurs, any claims that occur during the lapse will be the responsibility of the employer and will not be covered by the BWC.

If you have any questions regarding this change or if you receive notification from the BWC that your coverage has lapsed, please contact a member of our Rate & Underwriting Services Department at 1-800-825-6755.

Seventh District Court of Appeals Declares Ohio's Employment Intentional Tort Statute to be Unconstitutional

by Ryan Bonina, Roetzel & Andress, LPA

On March 18, 2008, the Seventh District Court of Appeals considered the constitutionality of Ohio Revised Code section 2745.01, which provides the requirements for an employer intentional tort action (*Kiminski v. Metal & Wire Products Co.* (Ohio App. 7 Dist), Case No. 07-CO-15). This court is the first appellate court to consider the constitutionality of the latest version of this statute.

The Employer Intentional Tort Statute

Ohio's Workers' Compensation laws provide compensation for employees injured at work and, as such, there is a general rule that employees may not sue their employers in tort, seeking tort damages, for those same injuries. However, there is an exception to this rule under an intentional tort theory. The Ohio Supreme Court previously held that a plaintiff alleging an intentional tort must prove only that the employer knew of a dangerous work condition and that the employer required the employee to work despite the knowledge that the dangerous work condition was substantially certain to cause harm (*Fyffe v. Jenos, Inc.* (1991), 59 Ohio St. 3d 115).

The current version of R.C. 2745.01, which became effective on April 7, 2005, provides a much stricter standard than that which was set forth by the *Fyffe* court and others. Specifically, the statute provides that an employer cannot be liable in intentional tort unless the plaintiff proves that the employer actually intended to cause injury.

The Seventh District Court of Appeals Decision

The underlying facts before the *Kiminski* court involved a plaintiff, Rose Kiminski, who was seriously injured when a metal coil fell on her legs at work. The plaintiff's complaint alleged that her employer acted with the intent to cause injury by requiring her to participate in the performance of a dangerous activity without proper safety systems, in violation of R.C. 2745.01. Ms. Kiminski also asserted in her complaint that this statute is unconstitutional. The defendant-employer filed a counterclaim for declaratory judgment that R.C. 2745.01 is constitutional. The Columbiana Court of Common Pleas granted the defendant-employer's motion for summary judgment and found the statute to be constitutional. The plaintiff appealed to the Seventh District Court of Appeals.

In ruling that this version of the statute is unconstitutional, the Seventh District Court of Appeals accepted the plaintiff's argument that the statute conflicts with and exceeds the legislative authority granted to the General Assembly pursuant to the Ohio Constitution. In support of its holding, the Court relied upon the Ohio Supreme Court's rejection of the previous version of R.C. 2745.01 in *Johnson v. BP Chemicals, Inc.* (1999), 85 Ohio St.3d 298. The Court interpreted the *Johnson* decision to prohibit any statute which limits employers' liability for their intentional tortious acts. The Court specifically took issue with the statute's requirement that an employer must act with the deliberate intent to cause injury in order to be liable for an intentional tort.

The *Kiminski* court's ruling would clearly make it easier for employees injured at work to file suit against their employers under an intentional tort theory. This ruling means that the **counties in the Seventh District (Belmont, Carroll, Columbiana, Harrison, Jefferson, Mahoning, Monroe and Noble)** will now be subject to the less strict standard of employer intentional tort set forth by the Ohio Supreme Court in *Fyffe*. Whether other Courts of Appeal will find the *Kiminski* decision persuasive remains to be seen. Ultimately, clarification by the Ohio Supreme Court will be necessary.

The Ohio Bureau of Workers' Compensation Extends the Safety Council Discount Program

The BWC and Ohio safety councils are once again partnering this year to provide a program that pays off. Private and public employers actively participating in their local safety council from July 1, 2008 through June 30, 2009 will receive a one-time 2% workers' compensation premium discount. This discount can be added to any Drug-Free Workplace Program, Premium Discount Program+ and/or group rating discount employers may already receive. In addition, employers that reduce their claims frequency and severity by 10% or more will receive an additional refund of 2% of their annual premium.

BWC's Division of Safety & Hygiene sponsors more than 60 safety councils statewide. These safety councils:

- Increase workplace safety awareness;
- Promote greater interest in preventing occupational accidents and disease;
- Provide quality occupational safety and health programs to local communities;
- Give employers easy access to workers' compensation and risk management information.

To qualify for this premium discount, employers must meet each of these requirements:

- Enroll in a local safety council by July 31, 2008; and
- Have a representative attend at least ten monthly meetings from July 1, 2008 to June 30, 2009 OR eight monthly meetings and either the BWC's Workers' Compensation University, Ohio Safety Congress, BWC's Division of Safety & Hygiene safety training courses or industry specific training; and
- Send a qualified representative to a CEO event (this counts toward one of the ten meetings); and
- Submit semi-annual reports for the 2008 calendar year.

Self-insured employers and state agencies are excluded from the discount offer but are encouraged to participate in the safety council program.

If you have any questions about the Safety Council rebate or other safety / loss prevention programs, please contact Dennis Kimple at RHS Solutions at (888) 264-2635.

Good News From CMI's Settlement Department

Good news! The Legal Department at the Bureau of Workers' Compensation has approved our signing settlement documents on behalf of our clients. An internal review by legal counsel concurs with this process. Included with the standard authorization that clients are familiar with signing will be an additional question at the bottom where the client can give us the authorization to sign the settlement application on their behalf, based on the monetary settlement range specified. This is a significant change that will greatly streamline the settlement process.

If you have any questions feel free to contact the Settlement Department at 1-800-825-6755.



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CompManagement, Inc.

A Sedgwick CMS Company

P.O. Box 884
Dublin, Ohio 43017

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MCO Payment Adjustments for Hospital Bills

The Bureau of Workers' Compensation recently lost a lawsuit brought by the Ohio Hospital Association regarding reimbursement methodology for medical bills. As a result, the BWC is now required to reimburse hospitals for the amount of the difference in bills that were paid below the agreed-upon rate. The time period in question covers 10/1/2005 through 12/31/2006 for inpatient bills and 10/1/2005 through 8/31/2007 for outpatient bills. There are more than 500,000 hospital bills currently being adjusted and paid.

How will these payments impact employers?

As these adjustments are made, the additional medical costs may be added to employers' experiences, and employers may see rate changes in their premiums. If, and how, these adjustments will impact employer premiums is still under review. The BWC will be making every effort to consider options to minimize the impact to employers. We will keep you updated as more information is known.

If you have any questions, please feel free to contact our Rate & Underwriting Services Department at 1-800-825-6755.

CompManagement, Inc.
A Sedgwick CMS Company
P.O. Box 884, Dublin, OH 43017
Phone: (614) 766-5223
Toll-Free: (800) 825-6755

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