

LEGALLY SPEAKING: Workers' Comp Costs: Are You Ready for Increases in 2013?

By Matthew J. DeVries

Over my legal career, I have handled a significant amount of workers' compensation disputes, representing injured employees, defending employers and insurance carriers, and even a few years working for an appellate judge that addressed workers' compensation appeals. Recently I was discussing the process for determining an employers' experience rating, and I was surprised to learn about some dramatic cost increases that will likely occur in 2013.

The National Council on Compensation Insurance, Inc. ("NCCI") is a group that performs national insurance ratings based upon data collection, particularly in the area of worker's compensation. NCCI has been operating as not-for-profit since 1922, performing the following:

- engaging studies on workplace injuries and other national and state factors impacting workers compensation
- providing analysis of industry trends
- preparing workers compensation insurance rate and loss costs recommendations
- determining the cost of proposed legislation
- providing a variety of data products to over 900 insurance companies and nearly 40 state governments.

What is the increase? According to a fact sheet from NCCI, the experience rating split point was set to \$10,000 on January 1, 2013. While I have a basic understanding of the rating methodology, I am not an expert. You will really benefit by reading the fact sheet and talking with your insurance agent. (A copy of the fact sheet can be downloaded at: www.bestpracticesconstructionlaw.com/uploads/file/split-point-faq.pdf)

There are approximately 38 states that participate in the NCCI plan and all of the states have approved the updated experience rating formula. Although a majority of the states updated their rate filings on January 1, 2013, not all of them have done so. Some states have effective changes dates scheduled for later in the year.

Why the increase? The last split point update occurred two decades ago and the average cost of a worker's compensation claim has tripled

since that time. The result is that the rating plan is given less weight to each employer's actual experience. With the new proposal, the split point will be increased to \$10,000 in 2013; to \$13,500 in 2014; and to \$15,000 in 2015.

How will the point change affect employers? It will depend on how many claims the employer has that exceed \$5,000. If no claims exceed this amount, then the employer will see a decrease in their experience rating modification. However, in an industry like construction, where more significant type of injuries tend to occur, it is likely the number of claims exceeding \$5,000 will increase the experience rating modification. Additionally, the change also requires re-scoring for 2009-2011, which means that the increased penalty could also result in a readjustment of past assessments.

What to do with this information? As an employer, you need to understand that this is going to be a significant change over how the rating system has been handled for the past 30 years. You and your risk department need to be more diligent in the workers' compensation claim process and you should have a return-to-work program. As you work closely with your insurance agent, you need to understand the difference between medical only claims versus indemnity claims. You could be assessed a huge penalty if a claim is turned into an indemnity status because the claimant has not returned to work after a certain time period, depending upon your state.

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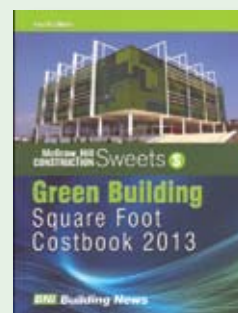
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