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LawTalk Blog



Impending Changes to WorkCover in South Australia

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In January 2014, I wrote a article ["An overhaul of the workers compensation system in South Australia"](#) regarding the Weatherill Government's announcement to overhaul the workers compensation system in South Australia.

It is clear to those who work within the current laws that many aspects of the existing workers compensation scheme are flawed. Most people are deeply unhappy with the management of workers compensation claims in SA. Whether it's the workers arguing that their entitlements have been eroded over the years and compensation is too difficult to obtain, or the employers arguing that their premiums are too high, workers compensation law is a minefield of complexity that successive governments have attempted to rectify.

The Minister for Industrial Relations, the Honourable John Rau MP, has previously referred to the existing laws as 'buggered'; few people would disagree.

Minister Rau introduced legislation into Parliament in early August 2014 regarding the establishment of a new Tribunal to deal with employment related matters (including workers compensation) and the establishment of a new workers compensation system. If the law passes, it will have a huge impact on injured workers in this state.

Of course, no Bill is guaranteed smooth passage through Parliament, so the proposed law as it stands now could be subject to amendment over the coming months. At Andersons, we will keep you updated regarding the proposed changes and the passage of the law as it makes its way through Parliament.

Also, the law will be accompanied by a large volume of 'Regulations' which have not yet been released to the public. So we really only have a snapshot of the new laws and how they will likely operate in practice.

But from our initial reading of the proposed legislation, the key changes to the workers compensation system in SA could include the following:

- Our current law states that for a claim involving a *physical* injury to be accepted, the injury 'must arise out of or in the course of employment'. If the physical injury is deemed a 'disease' or 'secondary injury' (ie, the new injury is simply an aggravation/exacerbation of a pre-existing or previous injury), then the worker needs to show that employment contributed to the injury. Under the proposed laws, employment must be a significant contributing cause of the physical injury.
- Our current law states that for a claim involving a *psychological* injury to be accepted, employment must be a 'substantial cause' of the injury. The new law suggests that employment must be a significant contributing cause of the psychological injury.
- Under the new laws, the obligations of WorkCover and the employer will increase in relation to getting the injured worker back to work sooner. In fact, workers will be able to pursue legal options if they believe that the employer has the capacity to offer suitable duties, but has chosen not to.
- Under the proposed laws, income maintenance (weekly payments) will cease after 2 years unless the worker is 'seriously injured' (ie, a permanent impairment above 30%, which is a very high threshold), in which case payments can continue until retirement, albeit at a rate of 80% of pre-injury earnings; only the first year will be paid at the full 100% income rate. This is a significant change from the current law, and many workers will simply be cut off the system after being on it for 2 years.
- Eligibility for permanent impairment will continue under the new scheme, but injured workers will be limited to one assessment per claim; that is for example, if a worker has already had a lump-sum payment for a physical injury and then aggravates their injury in the future, they will likely be precluded from pursuing further lump-sum compensation, even if their impairment has significantly increased. The threshold for compensation will remain at 5%. However, the new scheme will calculate different payments depending on the age of the worker at the time of the injury, and the payments will also be pro-rated depending on whether the worker was employed on a full-time or part-time capacity. Also, this form of compensation will not be available to people who suffer a 30% permanent impairment or greater. We hope to be able to provide further clarification on this at a later date.
- The current system does not allow injured workers to sue their employer for negligence. However, under the new system, if the injury has a permanent impairment at 30% or higher (which is extremely high and would be a significant injury), or the injury is psychological in nature which was primarily caused by the employer's negligent conduct, workers can choose to sue their employer under 'common law'.
- Presently, the WorkCover Corporation does not allow an injured worker to enter into a redemption agreement to receive a lump-sum of money to settle their claim for all future income maintenance and medical expenses (although redemptions are currently available if the claim is managed by a 'self-insured employer'). The new scheme will allow redemptions when all parties agree.
- Importantly, under the new scheme, a worker whose income has been cut off from WorkCover has to wait for their lawsuit to finalise before receiving income payments. They can sometimes go a year or longer without payment. The new system will allow income payments to continue if a dispute is being heard before the proposed new Employment Tribunal.

These are simply a few important distinctions between the current laws and proposed new laws, and there are many more changes that will likely eventuate and significantly impact injured workers in South Australia. Like with most legislative changes, the full impact of the changes will not be known until the laws have passed Parliament and have been operational for some time.

At Andersons, we are paying close attention to the Parliamentary debate to ensure we are ready to work with our clients as soon as the new laws come into effect.

Please note, this Blog is posted in Adelaide, South Australia by Andersons Solicitors. It relates to South Australian legislation. Andersons Solicitors is a medium sized law firm servicing metropolitan Adelaide and regional South Australia across all areas of law for individuals and businesses.