

BACKGROUND PAPER 95-8

# **WORKERS' COMPENSATION**

Vance A. Hughey, Senior Research Analyst  
Research Division  
Legislative Counsel Bureau



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# **WORKERS' COMPENSATION**

## **INTRODUCTION**

This document provides a brief history of workers' compensation insurance, summarizes major reform legislation enacted during the 1991 and 1993 Legislative Sessions, and highlights potential future issues facing Nevada's workers' compensation program.

## **OVERVIEW OF INDUSTRIAL INSURANCE**

This section presents historical and other background information on the development of workers' compensation in the United States and Nevada. In addition, it discusses the recent financial problems of the State Industrial Insurance System (SIIS) and reforms implemented in 1993.

### **Background Information**

Workers' compensation insurance is specialized insurance purchased by employers to provide medical care, disability compensation (indemnity) payments, and rehabilitation services for workers who are injured on the job or who contract occupational diseases in the course of their employment. Workers' compensation was the first social insurance system in the United States. It developed as a consequence of the high rate of industrial accidents in the 19th and early 20th centuries.

Under common law, 19th century employers were required to provide a reasonably safe place for their employees to work. If an injury occurred, however, and the employer did not voluntarily pay compensation, then the employee had to take his case to court. The litigation which arose out of this situation proved to be an unsatisfactory means of caring for injured workers. Uncertainty of outcome and the costs associated with the delay in compensating injured workers under a common law system were instrumental in the formation of the workers' compensation system.

Even if the employee could afford legal assistance, the employer had several defenses that made it difficult for the employee to collect damages. The employer might plead contributory negligence, suggesting that the employee was at fault to some degree. The employer might attempt to prove that the real fault was lodged with a fellow worker—the so-called fellow-servant doctrine. An employer also might apply what is called the "doctrine of assumption of risk." Under this doctrine, the employee was assumed to have had knowledge that he was engaged in a dangerous occupation and, therefore, if he still chose to work in that occupation, he had to assume the known risks of being injured.

American policymakers looked to Europe where the idea of workers' compensation had originated in Germany in the 1800s and later was adopted in Great Britain, France, and other countries. Under a workers' compensation insurance program, the right to bring legal action against an employer on the grounds of negligence was exchanged for a system whereby benefits were paid for all injuries arising out of and in the course of employment. The costs of the work-related injuries were allocated to the employer, not because of any presumption that he was to blame for every individual injury, but because the inherent hazards of employment were considered to be a cost of production.

This "no-fault" approach to insuring employers soon became popular throughout the United States. Between 1911 and 1920, all but six states passed universal workers' compensation statutes. Eventually, the remaining states also enacted such laws.

### **Workers' Compensation in Nevada**

Nevada was one of the first states to enact workers' compensation laws. The original industrial insurance act was adopted in 1913, and a complete revision was drafted in 1947. The State's industrial insurance laws have been amended during every regular legislative session since 1913.

Recent legislative sessions have brought major changes to the statutes relating to workers' compensation. During the 1979 Session, self-insurance was authorized for qualified employers. The self-insurance option became effective on January 1, 1980. Prior to that time, the Nevada Industrial Commission (NIC) had been the only provider of workers' compensation insurance in the State.

The 1979 Legislature removed the hearings process for contested claims from NIC and placed it in a new Hearings Division within the Department of Administration. The Hearings Division is responsible for the hearings and appeals process.

In 1981, the Legislature completely revised the NIC structure. Effective July 1, 1982, NIC ceased to exist and SIIS began operation as the state-run workers' compensation insurance carrier. Also on that date, the Department of Industrial Relations (DIR) began operation as the primary regulator of the State's workers' compensation program.<sup>1</sup> The DIR regulatory umbrella includes SIIS and self-insured employers, the medical fee schedule, panels of treating and rating physicians, and the State's Occupational Safety and Health Administration (OSHA) responsibilities.

The Commissioner of Insurance reviews and approves SIIS premium rates and is responsible for certifying self-insured employers who meet certain statutory

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<sup>1</sup>The Commissioner of Insurance retained authority to approve premium rates charged by SIIS. In 1993, both the Department of Insurance and DIR were made divisions of the new Department of Business and Industry.

qualifications. The Division of Insurance also regulates third-party administrators of self-insured programs and managed care organizations.

In recent years, the number of self-insured employers has increased dramatically. For example, in 1988, fewer than 75 employers were self-insured. As of June 30, 1994, there were 176 self-insured employers. During the past 6 months, another 18 certificates of self-insurance have been issued by the Insurance Division.

The Nevada Attorney for Injured Workers (NAIW),<sup>2</sup> a state agency separate from SIIS, represents claimants free of charge at the Hearings Division's appeals level, in the State's district courts, and before Nevada's Supreme Court.

### **Problems in Nevada's Workers' Compensation Program and Legislative Responses to the Situation**

During the early- and mid-1980s, workers' compensation did not generate an inordinate amount of legislative interest in Nevada. Available information seemed to suggest that there were no major problems within the workers' compensation program. From 1984 through 1988, SIIS paid over \$50 million in dividends to policyholders. Additionally, from 1985 through 1988, premium rates were held constant. During the early- and mid-1980s, Nevada's compensation benefits were among the best in the Western States and premium rates were among the lowest.

Beginning in 1988, SIIS instituted the first in a series of premium rate increases. Also at about that time, injured workers began to express more concerns about the manner in which their claims were being handled by SIIS and self-insured employers. In 1989, the Legislature enacted Assembly Bill 1 (Chapter 856, *Statutes of Nevada 1989*). This bill directed the Legislative Auditor to conduct a performance audit of Nevada's workers' compensation program. The audit covered five aspects of the program:

- Medical Benefits to Injured Workers;
- Compensation and Other Benefits to Injured Workers;
- Hearings and Appeals Process;
- State Industrial Insurance System; and
- Department of Industrial Relations.

In 1991, the Legislature enacted Senate Bill 7 (Chapter 723, *Statutes of Nevada 1991*) to resolve many of the issues identified by the legislative audit. This measure reflected the Legislature's intent to reform the workers' compensation system in the following ways:

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<sup>2</sup>Originally created in 1977 as the State Industrial Claimants' Attorney, the Legislature changed the agency's name to the Nevada Attorney for Injured Workers in 1991.

1. Lower Nevada's high rate of industrial injuries by promoting safety on the job;
2. Serve Nevada's injured workers by streamlining the process for filing, hearing, and appealing claims. The object was to make certain that injured workers and their health care providers received compensation as soon as possible. In addition, the injured workers were to receive appropriate medical care and rehabilitation to allow them to return to work as soon as possible; and
3. Serve employers by protecting against fraudulent claims and by returning injured employees to work as soon as possible.

This bill also established the interim Legislative Committee on Industrial Insurance. The purpose of this committee was to study Nevada's laws concerning industrial insurance and to prepare a report for submission to the Governor and the 1993 Legislature. Eight legislators were appointed as members of the committee. The committee held eight meetings, including a 2-day work session, to obtain expert and public testimony. The committee considered 188 proposed recommendations. It adopted 62 of them covering a variety of topics including:

- Determination and payment of benefits;
- Medical care, compensation, and other benefits to injured workers;
- Fraud in workers' compensation;
- The organization of SIIS;
- Employer options for industrial insurance;
- Hearings and appeals of contested claims;
- Occupational safety and health; and
- Legislative oversight concerning industrial insurance.

Many of those 62 recommendations were subsequently adopted with the enactment of Senate Bill 316 (Chapter 265, *Statutes of Nevada 1993*), which is discussed later.

### **SIIS's Financial Difficulties**

At the April 9, 1992, meeting of the Legislative Committee on Industrial Insurance, SIIS announced that it was experiencing financial difficulty. The manager of SIIS reported that invested assets were being sold to cover current expenses. In the months following that meeting, a financial audit conducted for SIIS by KPMG Peat Marwick (independent auditors) concluded that SIIS's unfunded liability as of June 30, 1992, was approximately \$1.4 billion. This audit was followed by a Department of Insurance report that estimated SIIS's unfunded liability at \$2.2 billion. Much of the difference between the two estimates of the level of the unfunded liability was due to differences in accounting methods. KPMG Peat Marwick used "generally accepted accounting principles" while the Department of Insurance used the more conservative "statutory accounting principles."



Regardless of which figure more accurately reflected SIIS's financial condition at that time, it was clear that SIIS was on the brink of insolvency. Without large increases in premium rates to employers and/or major changes in Nevada's laws governing industrial insurance, SIIS officials expected the agency to be unable to pay claims by Fiscal Year (FY) 1996.

During the 1993 Session, the Legislature addressed many workers' compensation issues, including SIIS's financial difficulties.

After many months of hearings (at which testimony was received from employees, employers, health care providers, trial lawyers, agency officials, and others), S.B. 316 was enacted. This measure included provisions for:

- Implementation of managed health care in the workers' compensation program;
- Imposition of employer deductibles; and
- More aggressive pursuit of fraud perpetrated by employees, employers, and health care providers.

On November 15, 1994, SIIS released a report of its financial condition for FY 1994. According to the *Financial Statements*, the total accumulated deficit (unfunded liability) of SIIS decreased by \$44.1 million during the fiscal year that ended June 30, 1994. The independent accounting firm KPMG Peat Marwick conducted the audit of SIIS's financial records and concluded:

Although SIIS experienced income from underwriting activities during the year ended June 30, 1994, and the accumulated deficit decreased from \$2,097,124,000 at June 30, 1993 to \$2,053,047,000 at June 30, 1994, such accumulated deficit will need to be recovered from future revenues, operating efficiencies or from other resources to be provided to SIIS.

This improvement in SIIS's financial condition still left the agency with an unfunded liability of more than \$2 billion. However, it appears that the workers' compensation reforms enacted by the Legislature in 1991 and 1993 have helped to reverse SIIS's negative financial trends.

### **RECENT LEGISLATIVE REFORM MEASURES**

Following are summaries of the most significant workers' compensation reform measures enacted during recent Legislative Sessions:

## **Senate Bill 7 (1991)**

Senate Bill 7 (Chapter 723, *Statutes of Nevada 1991*) made substantial changes in the laws governing industrial insurance and occupational safety and health. Many of the provisions in this bill addressed specific concerns identified in a series of performance audits of the workers' compensation system by the Audit Division of the Legislative Counsel Bureau in 1990.

### *Procedural Changes*

The measure contained a variety of strategies designed to speed up the processing of claims, the delivery of benefits, and payment of providers. Specific changes included case management for extended lost time claims, imposing mandatory fines for certain violations, requiring prompt payment of benefits, expediting hearings for contested claims, and improving communication among insurers, employers, medical providers, and injured workers.

The bill also addressed certain problem areas within the workers' compensation system. Specific guidelines were established for injured workers seeking vocational rehabilitation, disability ratings, and lump sum settlements. Other sections addressed the provision of vocational rehabilitation services by SIIS, encouraged interagency agreements for these services, and provided specific guidelines for contracts with private vocational rehabilitation counselors. In addition, SIIS was required to conduct a study of mental stress claims and report to the 1993 Legislature.

Pursuant to the provisions which govern employer premium rates under SIIS, this act changed the maximum amount deemed paid by each employer to any one employee during the year for use in determining the total amount paid to employees for services performed during the year. This amount was increased from \$24,000 to \$36,000 per year.

Changes affecting providers included the addition of specially trained chiropractors to those able to provide disability ratings. The bill further provided for the establishment of a rotating list of rating physicians and chiropractors. In addition, DIR was required to adopt regulations concerning the review and revision of its fee schedule.

### *Worker Safety and Education Provisions*

The bill divided the Division of Occupational Safety and Health into two divisions—the Division of Enforcement for Industrial Safety and Health and the Division of Preventative Safety. The Director of DIR was required to allocate sufficient funding to the Division of Preventative Safety to carry out educational and informational programs relating to safety and health in the workplace.

Certain employers with high rates of occupational injury or illness or high industrial insurance premium rates were required to establish safety programs to identify hazards and promote safety in the workplace. Incentives were created to encourage employers to provide the safest possible working environment for their employees.

The bill further required every employer to provide each newly hired employee with a document or videotape presentation setting forth the rights and responsibilities of employers and employees to promote safety in the workplace.

### *Regulatory Provisions*

The bill strengthened regulatory oversight of self-insured employers, and included third-party administrators of industrial insurance. The Commissioner of Insurance was directed to certify any person who acts as a third-party administrator of the industrial insurance claims of a self-insured employer. In addition, the measure clarified the authority of DIR to regulate various matters within the workers' compensation system.

This act also prohibited a local government from issuing a business license without receiving an affidavit from the applicant that the business is covered by industrial insurance or is exempt from the industrial insurance provisions.

### *Legislative Committee on Industrial Insurance*

Finally, S.B. 7 established a Legislative Committee on Industrial Insurance to conduct an interim study to review the laws, regulations, and State agencies concerning workers' compensation, to review the implementation of the provisions of this act and to recommend any appropriate legislation to the 1993 Legislature. The Committee consisted of eight members (four legislators from each House), was limited to eight meetings, and was dissolved upon the convening of the 1993 Legislative Session.

### **Senate Bill 210 (1993)**

Senate Bill 210 (Chapter 255, *Statutes of Nevada 1993*) clarified that a contractor commencing work with the State, or any political subdivision, must furnish certification of compliance with Nevada's laws governing industrial insurance and occupational diseases to the state agency, political subdivision, or metropolitan police department in charge of letting the contract.

This measure also included officers of a metropolitan police department in the definition of police officer within the provisions regarding occupational diseases.

### **Senate Bill 316 (1993)**

Senate Bill 316 (Chapter 265, *Statutes of Nevada 1993*) was a comprehensive measure that reformed Nevada's workers' compensation programs and enacted cost savings provisions to deal with the financial situation of SIIS.

Some of the changes in the State's industrial insurance laws included provisions relating to benefit decisions, fraud, limiting or reducing the payment of compensation benefits, limits on reopening claims, SIIS management procedures, and subrogation recovery.

Contained in S.B. 316 were other major revisions to the State's workers' compensation laws, including provisions to:

- Simplify and clarify the procedures for reporting an injury. Require employer notification to the insurer of an accident only if it has required treatment or compensation for industrial insurance.
- Clarify prohibited fraudulent acts and establish a special fraud unit in the Office of the Attorney General with authority to investigate and prosecute criminal fraud for industrial insurance by employees, employers, and providers.
- Strengthen various penalties and administrative fines and establish an administrative procedure for violations of industrial insurance laws and regulations.
- Authorize SIIS to charge uninsured employers three times the amount of premium that would have been due for the period the employer was without industrial insurance, but not to exceed 6 years.
- For 2 years, freeze the average monthly wage used for calculating the payment of temporary total disability benefits.
- Prohibit payment of compensation if an employee has a preexisting condition or sustains a subsequent injury that is not the primary cause of the resulting disability.
- Reduce compensation for permanent partial disabilities by revising the factor from 0.6 percent to 0.54 percent of the average monthly wage for each degree of impairment.
- Require an injured worker who disagrees with a permanent partial disability rating, and who requests a second determination, to choose the next rating physician in rotation from the list maintained by DIR. Furthermore, require

hearing and appeals officers, when ordering new permanent partial disability ratings, to select rating physicians from the rotating list, unless the insurer and the injured worker agree otherwise.

- Extend various deadlines regarding the hearings and appeals process for contested claims and eliminate the deadline for hearing or appeals officers granting stays. In addition, provide that parties represented by legal counsel may stipulate to forego a hearing before a hearing officer and proceed directly to the appeals officer hearing. Furthermore, authorize the Director of the Department of Administration to appoint hearing officers who serve in the unclassified service and at the pleasure of the Director.
- Make it unlawful for any person who is not an attorney admitted to practice law in Nevada to represent an employee before an appeals officer. Limit the categories of persons who may be licensed to represent employers at hearings of contested cases.
- Require the State's workers' compensation laws to be interpreted according to the plain meaning of the statutes.
- Allow SIIS to contract with managed care organizations (MCOs) and establish requirements for the selection of MCOs by the manager of SIIS.
- Limit the ability of any MCO to provide care to not more than 25 percent of the employees insured by SIIS in Clark County and to not more than 34 percent of the employees insured by SIIS in Washoe County. Furthermore, require that SIIS contract with no fewer than seven MCOs in Clark County and no fewer than five MCOs in Washoe County. Prohibit MCO contracts based solely on the number of employees receiving services. Provide that the principal owner of an MCO in Clark or Washoe County, or any member of the owner's immediate family, may not be a principal owner of another MCO in the same county.
- Provide for independent evaluations of MCOs and other medical care providers. The manager of SIIS is required to contract with a private person to conduct evaluations of the utilization review procedures of MCOs.
- Freeze the medical fee schedule until October 1, 1995, unless SIIS signs contracts with MCOs or the Governor approves an increase in the fee schedule. Allow DIR to increase or decrease the medical fee schedule and authorize increases above the medical care component of the Consumer Price Index if approved by the DIR Advisory Council.
- Authorize self-insured employers to contract with MCOs.

- Require injured employees to choose their treating physician or chiropractor according to the terms of a contract which their insurer has made with an MCO.
- Provide that disputed decisions relating to accident benefits must, before going to an appeals officer, be appealed through the procedure for resolving complaints established by an MCO, if the insurer has contracted with an MCO.
- Prohibit, in most cases, a physician or chiropractor from referring an injured employee to a health service or facility in which a member of the physician's or chiropractor's immediate family has a financial interest. Exceptions are made for rural areas, certain arrangements with health maintenance organizations, group practices, surgical centers for ambulatory patients, and in cases where the financial interest represents an investment in publicly traded securities.
- Limit stress as a compensable injury. Provide that stress may be compensable if the employee proves by clear and convincing evidence that he has a mental injury caused by extreme stress in time of danger and the employment was the primary cause of the injury. Stress is not compensable if it is caused by gradual mental stimulus.
- Limit rehabilitation maintenance payments, limit eligibility for vocational rehabilitation, and require the use of private and public rehabilitation counselors.
- Allow SIIS to provide vocational rehabilitation services if it can do so at a cost lower than the services available from private or public counselors, but prohibit SIIS from developing a majority of the vocational rehabilitation plans in any one year. Limit eligibility for vocational rehabilitation to injured employees who return to work at less than 80 percent of their past wage, and provide 90 days of job placement assistance for injured workers who possess marketable skills. Other vocational rehabilitation benefits are limited as follows:
  1. Six months of benefits for an injured worker with a permanent physical impairment of less than 6 percent;
  2. Nine months of benefits for an injured worker with a permanent physical impairment of 6 percent or more, but less than 11 percent; and
  3. Twelve months of benefits for an injured worker with a permanent physical impairment of 11 percent or more.
- Extensions in the length of the vocational rehabilitation programs and benefits may be granted for exceptional circumstances.

- Require that certified vocational rehabilitation counselors must supervise and review the work of counselors who are not certified.
- Require each employer to establish a written safety program and implement its operation within 90 days and increase the maximum penalty from 3 percent to 15 percent of premium for violations of this requirement by employers insured by SIIS.
- Require the SIIS manager to adopt a plan for reviewing employers who have excessive losses and allow the imposition of disincentives on such employers. Provide for procedures to terminate an employer's participation in such a plan.
- Authorize groups of five or more public and private employers to form associations for self-insurance effective July 1, 1995.
- Abolish the SIIS Board of Directors and allow the Governor to control SIIS until July 1, 1997. Require the Governor to report on the results of reforms to the Legislature early in the 1995 Session.
- Require the SIIS to operate more like a private insurance company, remove it from the State Budget Act, and establish clearer and stronger regulatory controls by the Commissioner of Insurance.
- For employers insured by SIIS, establish an employer-paid deductible of up to \$100 for the payment of medical benefits and provide an optional program for additional deductible coverage at reduced premium. Require employers who have excessive losses to pay a deductible of up to \$1,000 for medical benefits for their employees. Require SIIS to bill employers for the amount of any deductible that is owed to the system.
- Limit the application of the subsequent injury fund to self-insured employers and authorize SIIS to manage its own subsequent injury claims.
- Increase from \$400 to \$600 the monthly compensation for each person entitled to receive benefits for a permanent total disability or a death benefit for an industrial injury or occupational disease which occurred before July 1, 1980.

### **Senate Bill 522 (1993)**

Senate Bill 522 (Chapter 622, *Statutes of Nevada 1993*) prohibited a health care practitioner from referring a patient for a service or goods to a health facility, medical laboratory, or commercial establishment in which the practitioner had a financial interest. Exceptions were provided for rural areas, certain arrangements with health maintenance organizations, group practices, surgical centers for ambulatory patients,

lithotripsy services, and cases where the financial interest represents an investment in certain publicly traded securities. The bill defined group practice and specified criteria for the services provided, and the billing and compensation procedures used, by a group practice to qualify for the exception.

### **Assembly Bill 205 (1993)**

Prior to enactment of Assembly Bill 205 (Chapter 185, *Statutes of Nevada 1993*), a contractor with employees hired in another state, but working temporarily in Nevada, was not required to obtain industrial insurance coverage in this State if the total cost of the construction project was \$250,000 or less and coverage was provided in the other state under a reciprocal coverage agreement. This bill removed that exemption. The law now requires all contractors with employees hired in another state, but working temporarily in Nevada, to obtain industrial insurance coverage in this State.

### **Assembly Bill 342 (1993)**

Assembly Bill 342 (Chapter 22, *Statutes of Nevada 1993*) repealed the existing law which set a maximum deemed wage of \$36,000 paid by each employer to any one employee for services performed during a year and reset the wage cap at \$27,000. However, the measure established a method to gradually increase the maximum deemed wage each year until the amount of \$36,000 is restored in 1996.

### **Assembly Bill 374 (1993)**

Assembly Bill 374 (Chapter 587, *Statutes of Nevada 1993*) was the "trailer" legislation to Senate Bill 316. This bill added certain provisions and made technical changes and corrections to S.B. 316.

The bill authorized licensed health care providers to form an organization for managed care under a common agreement to provide comprehensive medical and health care services for industrial injuries. Procedures and fees were specified for such providers to apply for and obtain permits from the Commissioner of Insurance. The Commissioner is required to evaluate and regulate these agreements.

Employers insured by SIIS were allowed to select an organization for managed care in a manner prescribed by the manager of SIIS and pursuant to the law.

Other changes contained in A.B. 374 included provisions to:

- Establish criteria for the manager to identify an employer with excessive losses.
- Clarify that any party to a dispute, not just the employee, may file a notice of appeal in cases involving MCO dispute resolution proceedings.



- Require that an application to reopen a claim be supported by medical evidence demonstrating an objective change in the claimant's medical condition.
- Clarify the entitlement of compensation for dependents of an employee injured before July 1, 1980.
- Remove a conflict in the bill relating to the placement of hearing officers in the unclassified service.
- Authorize public agencies and nonprofit medical facilities to enter into cooperative agreements concerning industrial insurance.
- Clarify the primary cause language of the stress provision to relate to the course of employment rather than the conditions at the place of employment.
- Clarify that an insurer may, without limitation, extend an injured worker's program for vocational rehabilitation.
- Reduce the period of time pertaining to the criteria for wage reimbursement for a program of on-the-job training from 1 year to 90 days for the employer and 6 months for the employee.
- Correct the sanctions for fraud violators to apply to any person, not just a claimant, and to include liability for the costs of the Office of the Attorney General as well as the insurer.
- Delete an erroneous reference to certification under Chapter 695F of the *Nevada Revised Statutes* (NRS) for a managed care organization and revise the population threshold language for the provision of managed care services.
- Change the references from "evaluations" to "additional independent utilization reviews" and add certain prohibitions on such contracts by the manager.
- Clarify the procedure on final determinations for disputes.
- Allow an employer representative, in hearings of contested cases, to include a licensee who is not a third-party administrator.

### **Assembly Bill 375 (1993)**

Assembly Bill 375 (Chapter 199, *Statutes of Nevada 1993*) required the manager of the State Industrial Insurance System to consider an employer's previous experience in another state in determining and fixing the employer's premium rates as a new business in this state.

### **Assembly Bill 474 (1993)**

Assembly Bill 474 (Chapter 581, *Statutes of Nevada 1993*) required that employee leasing companies obtain industrial insurance. The bill provided a procedure for those companies to apply to the State Industrial Insurance System for a certificate of insurance. The applicant must provide information about the company, including the identity of the owners, if the company is a partnership, or the officers, if the company is incorporated. The applicant must also provide proof that it has paid the business tax, industrial insurance premiums, and unemployment compensation contributions, and that it has insurance coverage for any insurance plan that it offers to its employees. The applicant must also be a member of the National Staff Leasing Association.

Employee leasing companies are required to establish a written contract with client companies and to inform employees of their employment relationship. Employee leasing companies may not offer any self-funded insurance program or be self-insured for industrial insurance. If the leasing company fails to pay industrial insurance premiums or unemployment insurance contributions, the client company is jointly and severally liable.

### **Assembly Bill 586 (1993)**

Assembly Bill 586 (Chapter 273, *Statutes of Nevada 1993*) revised the provisions which limited the number of hours an employee may work in an underground mine within any 24-hour period. It provides that the existing 8-hour limit does not include time consumed for meals or travel into or out of the actual work site.

## **WORKERS' COMPENSATION REFORM IN OTHER STATES**

Problems of rising costs in workers' compensation programs are not unique to Nevada. Many other states have enacted legislation designed to reform their workers' compensation programs. With few exceptions, reform proposals in other states mirror recent enactments in Nevada. Examples of reforms recently implemented in a number of other states include:

- Managed care programs;
- Provisions to combat fraud;
- Medical fee schedules;
- Enhanced workplace safety;
- Regulation of attorney fees; and
- Limitations on mental stress claims.

Following is a sample of specific legislative reforms enacted in other states:

**Alabama**—The Alabama Legislature enacted a bill that makes it a felony for employees to file fraudulent workers' compensation claims. Under the new law, filing a false claim could be punishable by 1 to 10 years in prison. In addition to targeting employee fraud, the legislation also makes anyone who helps an employee file a false claim liable for punishment.

**Arizona**—The Arizona Legislature recently enacted a bill to increase the penalty for workers' compensation fraud from a high misdemeanor to a low felony. The measure also penalizes an employer 10 times the amount misrepresented under certain circumstances.

**Georgia**—The Georgia General Assembly (legislature) recently enacted a workers' compensation reform package that allows employers to use managed care organizations and changes the appeals process. The National Council on Compensation Insurance (NCCI), a Florida-based advisory rating organization, expects the new managed care provisions to result in cost savings and has promised up to a 12 percent premium reduction for Georgia employers who choose managed care.

The reform measure changed the state's appeal standard from *de novo*—under which any appeal for any reason had to be heard—to what it is in most appellate courts in Georgia: error of fact, error of law, or error of application of facts to the law. According to Judge Harrill Dawkins, Chairman of the Georgia State Board of Workers' Compensation, this change is expected to reduce the number of appeals considerably.

The legislation also increases fines for committing workers' compensation fraud. Additionally, the measure bars compensation for persons who are determined to have been under the influence of alcohol or controlled substances, or who refuse to be tested for the presence of alcohol or drugs within specified times after the occurrence of an industrial injury.

**Idaho**—Last year, the Idaho Legislature enacted a bill that prohibits so-called "mental-mental" workers' compensation claims. A "mental-mental" claim is one where the employee claims that work-related mental stress caused a mental disability.

**North Carolina**—The North Carolina General Assembly (legislature) recently enacted Senate Bill 906, a workers' compensation reform bill designed to hold down rising costs. Workers' compensation premiums in that state increased from \$550 million paid in 1990 to \$1 billion paid in 1993. The new measure authorizes use of managed care organizations, allows insurers to require pre-certification for

certain kinds of medical treatment (including inpatient and outpatient surgery), and grants the North Carolina Industrial Commission authority to set maximum fee schedules and adopt utilization rules and guidelines for medical care. The law leaves intact the employer's right to select the first treating physician, with the employee given the ability to seek another provider if he or she is dissatisfied with treatment provided by the first physician. The new law also contains tougher penalties for workers' compensation fraud.

**Oregon**—Workers' compensation premium rates in Oregon are declining for the fifth time in as many years. A decrease of 3.2 percent became effective in 1995. The continued rate decline is being attributed to reforms made in 1987 and 1990 that included improved safety and enforcement, early return to work programs, and managed medical care for injured workers.

The fatality rate continued to decline in 1993, according to the Oregon Workers' Compensation Division. Only 64 fatality claims were accepted in 1993 compared with an average of 70 fatality claims per year during the 1988-1992 period. From 1977 to 1981, an average of 109 fatality claims were accepted each year. The long trend of declining fatalities has taken place in spite of an increase in employment in the state from 937,000 in 1977 to 1.3 million in 1993.

The National Conference of State Legislatures, in commenting on recent reform efforts notes:

All reform efforts are experimental and represent innovation on the part of the states who have undertaken them. Cost containment mechanisms, particularly managed care programs which have been used for years in other health care systems, are just beginning to be tested in workers' compensation. When the old answers no longer work, it takes leadership and creative thinking to institute reforms—and this is the tack that many states have taken.<sup>3</sup>

### PREFILED MEASURES

No measures involving industrial accidents, occupational diseases, or occupational safety and health had been prefiled as of January 10, 1995.

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<sup>3</sup>*The State of Workers' Compensation*, National Conference of State Legislatures, January 1994, p. 78.

## **BILL DRAFT REQUESTS**

A number of bill draft requests (BDRs) exist concerning workers' compensation and related issues. These include proposals by Executive Branch agencies, as well as those made by legislators and other interested parties. Examples of these issues include proposals to:

- Establish a preferred employee program for rehabilitation of injured employees;
- Prohibit an insurer from accepting or rejecting a claim until the employer of the injured employee receives notice of the injury;
- Prohibit "steering" of injured worker to certain providers of health care;
- Make various changes concerning premium rates for industrial insurance;
- Make changes regarding independent contractors concerning unemployment compensation and industrial insurance;
- Make various changes concerning the use of medical records by the Workers' Compensation Fraud Unit;
- Prohibit a firefighter or police officer from receiving permanent total disability benefits under certain circumstances;
- Expand the list of officers covered by provisions covering heart and lung disorders;
- Require licensing of operators of large boilers in schools;
- Require employers to report fatalities or catastrophes within 8 hours;
- Change the requirements for a quorum of the Occupational Safety and Health Review Board;
- Revise the obligation of a principal contractor to provide industrial insurance for subcontractors; and
- Require the use of updated information from the American Thoracic Society to determine the percentage of permanent disability resulting from lung diseases.

## ADDITIONAL RESOURCES AND CONCLUDING REMARKS

Section 242 of S.B. 316 included a provision that created a full-time position assigned to the Legislative Counsel Bureau for the purpose of conducting research and reviewing and evaluating data related to industrial insurance. One of the tasks assigned to that position is to publish a quarterly workers' compensation newsletter. To date, five issues have been published. Copies of the *Workers' Compensation Newsletter* or information regarding workers' compensation issues may be obtained by contacting: Vance A. Hughey, Senior Research Analyst, Research Division, Legislative Counsel Bureau, 401 South Carson Street, Carson City, NV 89710, telephone (702) 687-6825.