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1. Citation for the state's workers' compensation statute.

Section 71-3-1 et. seq., MISS. CODE ANN. SCOPE OF COMPENSABILITY

2. Who are covered "employees" for purposes of workers' compensation?

"Employee means any person, including a minor, whether lawfully or unlawfully employed in the service of an employer under any contract of hire or apprenticeship, written or oral, express or implied, provided that there shall be excluded therefrom all independent contractors " § 71-3-3(d)

3. Identify and describe any "statutory employer" provision.

Employees of subcontractors without workers' compensation coverage are statutory employees of the general contractor. The condition precedent is that a general contract be in existence and that the statutory employer not be merely a premises owner. § 71-3-7

4. What type of injuries are covered and what is the standard of proof for each:

- A. Traumatic or "single occurrences" claims.

Accidental injury is defined as an injury resulting from an untoward event or events or aggravated or accelerated by the employment in a significant manner, including events causing unexpected results. § 71-3-3(b)

- B. Occupational disease (including respiratory and repetitive use).

These injuries are covered and the standard of proof is no different than any "traumatic" Injury.

5. What, if any, injuries or claims are excluded?

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Intentional acts, intoxication bar receipt of benefits. § 71-3-7

6. What psychiatric claims or treatments are compensable?

Psychiatric claims are covered; however, mental/mental claims require clear and convincing proof of something outside the ordinary employment experience or in excess of the ordinary employment experience.

7. What are the applicable statutes of limitations?

Two-year statute of limitations for claims in which no indemnity benefits have been paid. § 71-3-35(1)
If indemnity benefits have been paid, there is a one-year statute of limitation that begins to run with the filing of a Commission Form B-31 in the appropriate manner. § 71-3-53

8. What are the reporting and notice requirements for those alleging an injury?

There is a statutory requirement that the employer receive notice of injury within 30 days after its occurrence. However, prejudice must be shown in order to use the absence of notice as a bar to recovery. § 71-3-35(1)

9. Describe available defenses based on employee's conduct:

A. Self-inflicted injury.

Benefits are barred. § 71-3-7

B. Willful misconduct, horseplay, etc.

Benefits are barred for willful conduct, including the acts of an aggressor in what might otherwise appear to be a horseplay situation. Simple horseplay, something that falls within the reasonable expectations of interaction between coworkers, will typically not act as a bar, nor will a claim by the object of the aggressor be barred.

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C. Injuries involving drugs and/or alcohol.

Recovery of benefits is barred if the intoxication is the proximate cause of the injury.

§ 71-3-7. See also § 71-3-121 regarding presumption of proximate cause in certain cases.

10. What, if any, penalties or remedies are available in claims involving fraud?

The Commission has authority to assess reasonable expenses, including attorney's fees, and sanctions up to \$10,000. § 71-3-59. Additionally, it is a misdemeanor to make any false or misleading statement or representation for the purpose of obtaining benefits, with punishment being a fine not to exceed \$1,000 and/or imprisonment not to exceed one year. § 71-3-69.

11. Is there any defense for falsification of employment records regarding medical history?

Although employers have asserted fraud in the inducement as a defense, as a practical matter, this argument has not historically worked to defeat compensability.

12. Are recreational and other non-work activities paid for or supported by the employer compensable?

Yes.

13. Are injuries by co-employees compensable?

Yes.

14. Are acts by third-parties unrelated to work, but committed on the premises, compensable (e.g. "irate paramours" claims)?

A case-by-case analysis is required. If the assault by the third person be totally unrelated to the work, theoretically the injury is not compensable; however, consideration must be given for the "zone of risk", which may bring compensability into play.

BENEFITS

15. What criterion is used for calculating the average weekly wage?

Fifty-two weeks prior to injury.

16. How is the rate for temporary/lost time benefits calculated, including minimum and maximum rates?

Two-thirds of employee's average weekly wage, subject to the weekly maximum (which is \$585.82 for 2023 injuries). The weekly minimum temporary benefit is \$25.00 a week.

17. How long does the employer/insurer have to begin TTD benefits from the date disability begins?

Fourteen (14) days.

18. What is the "waiting" or "retroactive" period for temporary benefits?

Must be out five days before receiving any benefits and must be out for 14 days or more to receive benefits retroactive to date disability began. § 71-3-11

19. What is the standard/procedure for terminating temporary benefits?

Temporary benefits may be terminated upon the claimant's reaching maximum medical improvement and/or returning to work. Additionally, if an individual is deemed to be available for light duty and light duty is provided by the employer, temporary benefits may be terminated if the claimant returns to his pre-injury wage rate. If claimant returns to restricted or light duty work prior to reaching MMI, and if claimant is making less, claimant will be entitled to temporary partial disability. From the Commission's standpoint, a Form B-18 notifying the claimant and the Commission of any suspension and/or modification to indemnity benefits and the basis for that suspension and/or modification should also be prepared and filed.

20. Is the amount of temporary total disability paid credited toward the amount entitled for permanent partial disability?

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Only in cases of permanent total disability or when the combination of the two would exceed the overall maximum. (NOTE: Any payment beyond maximum medical improvement date or return to work date would be treated as permanent benefits, even if denominated as "TTD".)

21. What disfigurement benefits are available and how are they calculated?

For injuries occurring prior to July 1, 2012, up to \$2,000 calculated at the discretion of the Commission. A determination can be made no less than one year after the date of the injury. For injuries occurring on or after July 1, 2012, up to \$5,000.00.

22. How are permanent partial disability benefits calculated, including the minimum and maximum rates?

A. How many weeks are available for scheduled members/parts, and the standard for recovery.

Reference is made to the schedule. § 71-3-17(c)

B. Number of weeks for "whole person" and standard for recovery.

450 weeks are available for "whole person" injuries. The standard is the loss of wage-earning capacity.

23. Are there any requirements/benefits for vocational rehabilitation, and what is the standard for recovery?

No, although for injuries occurring prior to July 1, 2012, a claimant may receive up to \$10/wk for up to 52 weeks while receiving vocational rehabilitation retraining, at the discretion of the Commission. For injuries occurring on or after July 1, 2012, \$25/wk. (This is a limited benefit rarely requested by claimants.)

24. How are permanent maximum rates?

Disability benefits calculated, including the minimum and

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Two-thirds of the claimant's weekly lost wage earning capacity provides the basis for benefits. Maximum is as previously stated, based on two-thirds of the state average weekly wage. For injuries after May, 1992, there is no minimum permanency award. For injuries prior to May, 1992, there was a \$25.00 minimum if there was a finding of any permanent loss of wage earning capacity.

25. How are death benefits calculated, including the minimum and maximum rates?

§ 71-3-25

(The statute should always be reviewed and consulted before payment of benefits.)

A. Funeral expenses -

For injuries occurring prior to July 1, 2012, not to exceed \$2,000.00. Not to exceed \$5,000.00 for injuries from and after July 1, 2012.

B. Dependency claims –

For injuries occurring prior to July 1, 2012, if there be a surviving spouse, an immediate lump sum of \$250.00 is payable to a surviving spouse. (\$1,000.00 for injuries from and after July 1, 2012.) If there be a surviving spouse and no child of the decedent, that surviving spouse shall receive 35% of the average weekly wage of the deceased during widowhood. If there also be a surviving child or children, then each such child shall receive an additional amount of 10% of the average weekly wage; and, in the case of death or remarriage of the surviving spouse, each such child shall have his/her percentage increased to 15%, all subject to a total cap of 66 2/3% of the average weekly wage, as well as subject to the maximum limitations as to weekly benefits. If there be no surviving spouse, then the surviving children shall each get 25% of the average weekly wage of the decedent, subject to the limitations. If the combination of surviving spouse and child or children does not aggregate 66 2/3% of the average weekly wage of the decedent, subject to the maximum limitations as to weekly benefits, then dependent grandchildren or brothers and sisters or parents and grandparents, would each be entitled to 15% of the average weekly wage, again all subject to the maximum limitations and with the aggregate amount of that category not exceeding the difference between the 66 2/3% of the average weekly wage and the amount payable to the surviving spouse and surviving children. As for children, their entitlement to the benefit, is subject to the \$450 week limitation, but will not extend beyond their 18th birthday unless they remain in school, in which case it can extend to their 23rd birthday, again subject to the \$450 week limitation.

26. What is the criteria for establishing a "second injury fund" recovery?

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Only applicable if there is total industrial loss of use of a scheduled member accompanied by a prior total industrial loss of use of a scheduled member by injury or otherwise.

27. What are the provisions for re-opening a claim for worsening of condition, including applicable limitations periods?

Within one year after the filing of a Commission Form B-31, if claimant can demonstrate a change in condition, a claim can be reopened.

28. What situation would place responsibility on the employer to pay a claimant's attorney fees?

Nothing outside of a sanctions situation.

EXCLUSIVITY/TORT IMMUNITY

29. Is the compensation remedy exclusive?

A. Scope of immunity.

B. Exceptions (intentional acts, contractual waiver, "dual capacity," etc.).

The workers' compensation remedy is exclusive except in the instance of intentional act, including bad faith in claims handling.

30. Are there any penalties against the employer for unsafe working conditions?

No.

31. What penalty, if any, for an injured minor?

Compensation and death benefits shall be doubled if the injured minor was under 18 at the time of the

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injury and if employed or permitted to work in violation of any provision of the Mississippi Labor Laws. § 71-3-107. The employer alone is liable therefor.

32. What is the potential exposure for "bad faith" or claims handling?

Denials of claims and contests of benefits must have an "arguable basis". If the denial of a claim or benefit is done without an arguable basis, then the next inquiry is whether the conduct by the claim's handler was malicious, wanton, or reckless.

33. What is the exposure for terminating an employee who has been injured?

None under the Mississippi Workers' Compensation Act, although such a discharge does have a substantial detrimental effect on the issue of extent of permanent disability, effectively creating a rebuttable presumption of a total loss of wage-earning capacity.

THIRD-PARTY ACTIONS

34. Can third-parties be sued by the Claimant?

Yes.

35. Can co-employees be sued for work-related injuries?

No.

36. Is subrogation available?

Yes. § 71-3-71

MEDICALS

37. Is there a time limit for medical bills to be paid, and are penalties available for late payment?

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Providers must supply bills and reports within 20 days of the initial service provided or the claims handler can refuse payment. The Commission has the authority to excuse such failure and order payment. § 71-3-15(1) The Fee Schedule controls payment upon receipt of complete supporting documentation from a provider. Payment of properly documented uncontested bills should be made within 30 days of receipt. If no payment is made within 60 days, the payer may be subject to a 10% penalty for each 30-day period after 60 days.

38. What, if any mechanisms are available to compel the production of medical information (reports and/or an authorization) at the administrative level?

The Fee Schedule requires that all billings submitted be accompanied by corresponding and supporting medical reports. Bills do not have to be paid without this supporting documentation. As such, from a practical standpoint, if a provider wants to get paid, or be considered for payment, they must provide reports. Of course, in litigated cases, medical records are subject to subpoena. The Commission will also allow the filing of a Notice of Controversion by the employer/carrier as a vehicle for serving a subpoena when a claimant has not otherwise controverted a claim.

39. What is the rule on choice of physician?

- A. Generally speaking an injured worker is entitled to choose his own physician. Some restrictions do apply. Notwithstanding statutory language, reasonableness and medical necessity of treatment are the ultimate determinants. For injuries from July 1, 2012. forward. a physician will be deemed as employee's selection without regard to written acceptance if the employee is treated by an employer's physician for six months or longer. or the employee has surgery performed by that physician.

B. Pursuant to Rule 1.9, an employer and carrier have the right to an evaluation by a physician of their choosing.

40. What is the standard for covered treatment (e.g. chiropractic care, physical therapy, etc.)?

Reasonableness and medical necessity.

41. Which prosthetic devices are covered, and for how long?

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All for duration of medical necessity.

42. Are vehicle and/or home modifications covered as medical expenses?

Yes.

43. Is there a medical fee guide or schedule, or other provisions for cost containment?

Yes.

PRACTICE/PROCEDURE

44. What is the procedure for contesting all or part of a claim?

Filing of a Petition to Controvert by claimant. A Notice of Controversion may be filed by the employer and carrier but is only limitedly actionable.

45. Method of adjudication:

A. Administrative level.

B. Trial court.

C. Appellate.

Initial trial before Administrative Judge. Right to request review of the Judge's Order/Award by the Full Commission, which is deemed the finder of fact. Thereafter, appeal is taken to the Supreme Court, with substantial evidence being the test. The Supreme Court typically will refer the appeal to the Court of Appeals. Decisions of the Court of Appeals may be reviewed by the Supreme Court on Certiorari.

46. What are the requirements for stipulations or settlements?

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Generally speaking for settlements, claimants must be at maximum medical improvement. Settlements are approved by Commission. Unrepresented claimants are required to be personally interviewed by a Commissioner (or Administrative Judge) prior to approval.

47. Are full and final settlements with closed medical available?

Yes.

48. Must stipulations and/or settlements be approved by the state administrative body?

Yes.

49. What insurance is required? What is available (e.g. private carriers, state Fund, assigned risk pool, etc.)?

Private carriers and state assigned risk pool. § 71-3-77

50. What are the provisions/requirements for self-insurance?

See General Rule 7.

51. What insurance is required; and what is available (e.g. private carriers, state fund, assigned risk pool, etc.)?

Private insurers and a state assigned risk pool are available. § 71-3-77

52. What are the provisions for "Independent Contractors"?

When there is a general contractor, employees of uninsured independent contractors are considered to be employees of the general contractor. § 71-3-7 With regard to whether or not an injured worker is an "employee" or an "independent contractor" outside the context of a general/sub situation, the "relative nature of the work" test is utilized, with factors such as exclusiveness and continuity of the relationship strongly influencing the case-by-case analyses.

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53. Are there any specific provisions for "Independent Contractors" pertaining to professional employment organizations/temporary service companies/leasing companies?

Leased workers are considered employees of the leasing company as well as employees of the companies to whom they are leased.

54. Are there any specific provisions for "Independent Contractors" pertaining to owner/operators of trucks or other vehicles for driving or delivery of people or property?

The same factors are considered.

55. Are there any state specific requirements which must be satisfied in light of the obligation of the parties to protect Medicare's interests when settling the right to medical treatment benefits under a claim?

No.

56. Does your state permit medical marijuana and what are the restrictions for use and for work activity in your state Workers' Compensation law?

No.

57. Does your state permit the recreational use of marijuana and what are the restrictions for use and for work activity in your state Workers' Compensation law?

No.

An additional note from Gary Jones and DCH&B -

When reviewing the information above, please keep in mind that this summary is a very general summary. Every workers' compensation claim is case specific, and the application of the Act, as interpreted by the Commission, is quite dynamic. Please feel free to contact us with any questions you might have.

Gary K. Jones, Esquire gjones@danielcoker.com Tel: (601) 969-7607