

Senate Bill 3829 - Collectively Bargained Workers' Compensation

by Jennifer Caputo and
James Rohlfing

The Illinois Legislature is considering an alternative for Illinois employees and employers tired of inefficiencies in the State's heavily criticized workers' compensation system. If enacted, Senate Bill 3829 would revise the Workers' Compensation Act (820 ILCS 305/1) (the "Act") to allow employers and employee representatives (unions) to agree to certain binding procedures, including arbitration, relating to the resolution of workers' compensation claims for injured workers. For the first time, Illinois employers and employees would be offered alternatives to the inflexible procedures of the Workers' Compensation Act, alternatives that have come to be known as "Collectively Bargained Workers' Compensation."* With collectively bargained workers' compensation, employers and unions would be permitted to agree to modify obligations and procedures in the Act based on what they believe to be in their mutual best interest, given their own work environment and unique set of circumstances. Though the Bill would not allow an agreement that would diminish an employee's entitlement to benefits under the Act, it does propose to permit agreement on important procedural elements of the workers compensation process in Illinois.

What is it about collectively bargained workers' compensation that is different from the current system?

Currently, Illinois workers' compensation claims are handled according to statutory procedures and hearings are conducted before the Illinois Industrial Commission. Under collectively bargained workers' compensation, employers and unions would have the authority to decide on some of the procedures for handling claims. They could negotiate to meet their workers' compensation needs by shaping a mutually agreed upon policy that is fair and equitable to both sides outlining how an injured employee would be treated after an injury and how a worker's claim for damages incurred on the job would be settled. The Illinois Industrial Commission would still oversee the

process to ensure that the statute is being followed, but some aspects of the claim would be handled in a manner agreed upon in advance of the claim by the employer and union.

Do other states permit Collective Bargaining for Workers' Compensation?

Several States presently offer collectively bargained workers compensation in one form or another, including California, Florida, Hawaii, Kentucky, Maine, Massachusetts, Minnesota and New York. Employers as well as employee groups that have utilized the collectively bargained workers' compensation process in other states have generally reported favorable results.

Why is collectively bargained workers' compensation effective?

Currently in Illinois: i) the cost of resolving workers' compensation claims is relatively high; ii) the time for settling claims is long, exceeding an average of four years; and iii) the rules are inflexible. Under collectively bargained workers' compensation, the parties to the system would be empowered to agree on several items for the purpose of: i) reducing the time required to resolve claims – getting the employee back to work sooner; ii) reducing the cost of adjudicating claims – potentially lowering workers' compensation premiums; and iii) enhancing procedural flexibility - letting dissimilar industries with differing characteristics more efficiently resolve claims in a way that works best for them.

What exactly would the parties be permitted to change about workers' compensation if Senate Bill 3829 is passed into law?

The current language of the bill would permit, but

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not require, an employer and the representative of its employees to enter into a written agreement relating to workers' compensation covering one or more of the following seven areas:

1. Alternative Dispute Resolution.

The agreement could establish an alternative dispute resolution system to supplement, modify, or entirely replace the dispute resolution provisions of the current Act. The use of alternative dispute resolution processes, including arbitration, mediation and similar methods, would allow the parties to negotiate alternatives to costly legal actions. While the establishment of an alternative dispute resolution agreement could not limit an employee's right to a legal remedy, it would allow employers and employees to more efficiently resolve claims of an injured worker.

2. Medical Providers.

The parties could agree to a list of medical treatment providers as the exclusive source for medical and related treatment for employees who sustain a workplace injury. Though historically, employers have been unable to mandate the type of medical treatment or identity of medical providers for their employees in the event of a workplace injury, such an agreement would be helpful in various situations. Importantly, by eliminating time-consuming conflicts over who would provide the care, the emphasis would be placed on getting the injured employee well and back to work quickly, with as few health limitations as possible. Moreover, transport to a facility could be pre-established and more efficient in an emergency and when treatment and ongoing medical attention would be required, direction could be offered to employees to seek medical attention from providers who are familiar with the company, the unique work environment, and the employees' particular needs. In addition, care to an employee under

a collective agreement could be more closely monitored to ensure that the employee is receiving treatment effectively, which could, in turn, ultimately lower costs for the employer.

3. Medical Evaluations.

Agreement could be reached as well on medical evaluators trusted by both sides. This would eliminate the necessity of both sides having their own experts who would each testify differently, thereby creating conflict over the actual severity of an injury.

4. Return to Work Program.

An agreed return to modified or light duty work program could describe the circumstances under which an employee would return to work, how quickly it should occur and a modified job description if the employee were unable to perform his or her prior vocational role. Having all of this determined in advance of an injury would facilitate a more prompt return and, consequently, engender a more productive work force.

The collective establishment of a return-to-work program has proven successful in other states where it has been reported employees feel valued for their light-duty contributions. In addition, modified vocational opportunities getting an employee back on the job as quickly as medically allowable save employers costly claims dollars. Studies suggest that employees placed in their work environment with appropriate modified duty work tend to heal more quickly than when they are at home, thus lessening extended and expensive disability.

5. Rehabilitation Programs.

By agreeing to a list of individuals and companies to provide vocational rehabilitation or training programs, another source of potential conflict would be eliminated.

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6. Safety Procedures.

The indirect benefit to agreeing to safety committees and safety procedures is an emphasis on preventing injury and thereby reducing workers' compensation claims.


7. Health Care Coverage.

Finally, the employer and employee are permitted to agree upon the adoption of a 24 hour health care coverage plan if they so chose.

The collective bargaining agreements that would be permitted if Senate Bill 3829 is enacted could result in greater control and cost efficiencies for companies' workers' compensation programs. In addition, such agreements have the potential to make the claims process faster, fairer and more dignified for workers who suffer injuries on the job. The new provisions would not allow agreements to diminish an employee's benefits under the current Act, but they would foster

an environment in which a company and its employee representative could work together before workers' compensation claims occur to eliminate their adverse impact on the employee as well as the company. Thus, uniquely, the bill has the potential to increase the size of the pie and not merely redistribute the pieces.

*See article in the Spring 2009 edition of SubStance Magazine by Deann French, entitled "Collectively Bargained Workers' Compensation: Putting an End to the Frustration"

If you have any questions about the above article, please contact James Rohlfing (jrohlfing@rolaw.net) or Jennifer Caputo (jcaputo@assuranceagency.com). 

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CHICAGO - CORAL SPRINGS **LAW**

Tel: 312-425-2900
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221 N. LaSalle St., Suite 1137, Chicago, IL 60601

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