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Nebraska -- New Laws Deal with Misclassification, Lump-Sum Settlements: *Top* [08/05/09]

The 2009 legislative session by Nebraska's unicameral legislature resulted in lawmakers making various technical and "clean-up" amendments to the state's workers' compensation law and increasing the penalties for misclassifying workers as independent contractors.

And with this year's session complete, studies are planned on workers' compensation issues for the 2010 session.

Legislative Bill 208 by Omaha Sen. Scott Lautenbaugh is designed to deter businesses from intentionally misclassifying workers or taking other actions meant to reduce the premium that they would otherwise pay for workers' compensation coverage.

Bob Hallstrom, state director of the Nebraska chapter of the National Federation of Independent Business, which supported the measure, pointed out the primary areas of concern addressed by the legislation. Those areas include the misclassification of workers as independent contractors when those workers are actually employees, the understating of payroll upon which workers' compensation premiums are based and the erroneous designation of employee status to reflect a less risky category of employment than is actually the case.

Under LB 208, anyone who "knowingly and with the intent to defraud or deceive provides false, incomplete, or misleading information to an insurer concerning the number, location, or classification of employees for the purpose of lessening or reducing the premium otherwise chargeable for workers' compensation insurance coverage" would be guilty of a felony.

The bill took effect July 23.

LB 630 by Omaha Sen. Steve Lathro, another measure approved by the Legislature, made several changes to the workers' compensation system, including allowing lump-sum settlements to become final without approval of the Workers' Compensation Court, provided that the employee is represented by counsel.

The bill also included provisions allowing vocational rehabilitation counselors to submit disputes for informal dispute resolution and changing the reimbursement date for inpatient trauma services under the inpatient hospital fee schedule.

Jamie Karl, vice president for public affairs at the Nebraska Chamber of Commerce and Industry, told WorkCompCentral Tuesday that some of the measures which failed to pass were as significant – or more significant – for employers than what was approved.

"It was definitely a defensive session for the business community," Karl commented.

Efforts by the chamber and other business groups helped defeat proposals that would have expanded workers' compensation programs and expenses to employers, Karl said.

One change the business community opposed was eliminated by senators from LB 630 after it came out of the Business and Labor Committee. It would have provided an annual cost-of-living adjustment for "high wage" workers, Karl reported.

“We lobbied to have that removed,” Karl said, and the provision was taken out after floor debate.

Karl noted that “another big fight” involved LB 622 by Omaha Sen. Jeremy Nordquist, which would have provided a 50% penalty for failure to pay benefits to an injured worker within 30 days of the benefits becoming due.

That measure would have discouraged employers from appealing Nebraska Workers Compensation Court decisions, and could have penalized employers in cases where they did not control when the payments were being made, Karl said.

Under existing law, insurance companies face a penalty of 50% of the value of a claim if they fail to pay uncontested medical payments in a workers’ compensation case.

LB 622 would have extended the penalty to contested claims under certain circumstances.

Karl reported the bill is “on select file,” meaning it will be carried over to the 2010 legislative session, which begins in January.

Currently, interim studies on workers’ compensation issues are pending under three legislative resolutions, Karl reported

LR 123 calls for an interim study of the Department of Labor’s authority to conduct workplace safety inspections. LR 185 provides for a study of the effects of misclassification of employees, and LR 186 calls for a review of workers’ compensation insurance premiums.

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