

All About Claims

Colorado Department of Labor and Employment
Division of Workers' Compensation
Claims Services Section, 1515 Arapahoe St.
Denver, CO 80202-2117
<http://workerscomp.cdle.state.co.us>

Bill Owens
Governor

Vickie L. Armstrong
Executive Director

Jeffrey M. Wells
Deputy Executive Director

Mary Ann Whiteside
Director



September 2000

Volume 15

All About Claims is a newsletter published by the Colorado Division of Workers' Compensation designed to provide information to claims handlers. Please send comments or suggestions for future topics to JoAnne Ibarra, Manager of Claims Services, at (303) 575-8816 or by e-mail to JoAnne.Ibarra@state.co.us.

From the Director's Desk...

Applying the Cap to Scheduled Injuries

by Mary Ann Whiteside, Director

In a recent decision, I ruled that in cases where scheduled and non-scheduled impairment exists, impairments would be compensated separately but combined for purposes of determining which cap on benefits applies. This represents the Division's formal interpretation of sections 8-42-107(7) (b) and 8-42-107.5, in light of HB99-1157.

Here is an excerpt from the order (modified for publication), outlining the basis for my decision.

Section 8-42-107(7)(b), as modified in 1999, clarified that when an injured worker sustains both scheduled and nonscheduled injuries, the losses are compensated on the schedule for scheduled injuries while the nonscheduled injuries are compensated as medical impairment benefits. Section 8-42-107.5 governing limits on combined temporary and permanent disability payments was not subject to legislative changes and is not affected by the distinction made in 8-42-107(7)(b) between the types of permanent impairment benefits.

The provisions of section 8-42-107.5 are separate and distinct from the provisions of section 8-42-107(7)(b). Section 8-42-107.5 distinguishes different levels of compensation to insure that more seriously injured workers receive greater benefits. When an injured worker sustains both scheduled and nonscheduled injuries, in accordance with the AMA Guides, the scheduled impairment must first be converted then combined with the whole person impairment for purposes of determining the cap.

Section 8-42-101(3.7) requires that impairment ratings be calculated in accordance with the AMA Guides, and the AMA Guides instruct that extremity ratings be converted to whole person ratings. See *Mountain City Meat Co. v. Oqueda*, 919 P.2d 246 (Colo. 1996).

The Industrial Claim Appeals Panel determined that the term impairment rating, "as used in section 8-42-107.5, refers to the claimant's whole person impairment rating even if benefits were actually awarded in accordance with the schedule of disability. The statutory purpose for distinguishing between scheduled disability awards and whole person awards under section 8-42-107(8), C.R.S. 1997, is to award greater benefits to more seriously injured workers. . . . Similarly, the statutory purpose for distinguishing between the \$60,000 cap and the \$120,000 cap in section 8-42-107.5 is to insure that more seriously injured workers are eligible for greater benefits than less seriously injured workers. . . . [T]he general reference to permanent partial disability payments in section 8-42-107.5 necessarily includes all categories of permanent partial disability benefits, including scheduled awards under 8-42-107(2)." *Krizman v. S.O.S. Services*, August 3, 1998.

COLORADO STATE WEBSITE

<http://www.state.co.us>

WORKERS' COMPENSATION HOME PAGE

<http://workerscomp.cdle.state.co.us>

Exemption from Workers' Compensation Insurance Coverage for "Domestic Workers"

by Mary Ann Whiteside, Director

Recent and specific inquiries to the Division's Coverage Enforcement Unit regarding exemptions for coverage of domestic workers resulted in a close review of the statute by division staff and myself. The following is the result of that review.

The statutory sections governing this exemption are found at §8-40-302 (4) and (5), C.R.S. 2000. These statutory sections provide an exemption from workers' compensation coverage requirements for persons who hire others to do "domestic work in the private home of the employer." The term "domestic work" is not defined in the Act; however, the Court of Appeals defined the term in Connor v. Zelaski, 839 P.2d 501 (Colo. App. 1992), as "relating to the household or the family; concerned with or employed in the management of a household or private place of residence. In its generally accepted meaning, domestic work includes care of persons in a household as well as care of the house, which would include childcare." The court concluded that childcare is "domestic work" within the scope of §8-40-302(4).

In order to qualify for this exemption, the employers must meet certain conditions.

1. The domestic worker is employed less than "full-time," which means work performed for 40 hours or more a week *or* on five days or more a week;
2. The employer has no other domestic employees for whom he or she carries workers' compensation;
3. The employer is not in the business for which the "employee" was hired.

Obviously, any employer may obtain workers' compensation coverage if he or she elects to do so, regardless of available exemptions.

Some questions that have been asked concerning this exemption are:

- Q:** In the case of childcare, if a homeowner/ employer employs a different worker each day of the week for 5 days, is workers' compensation coverage necessary?
- A:** No. The homeowner does not need to obtain workers' compensation coverage in this situation.

There is no one employee who is working 40 hours a week *or* 5 days or more a week.

- Q:** If a homeowner has a person coming in two days a week and has no other domestic help, is coverage necessary?
- A:** No. In this situation there is only one domestic employee who does not work full-time and coverage is not necessary.
- Q:** If a homeowner employs a domestic worker Monday through Friday, 40 hours a week and hires another domestic worker to work the weekend hours, is workers' compensation coverage necessary for the second worker?
- A:** Yes. In this situation the homeowner has more than one employee and an employee who works full-time, so that workers' compensation coverage is required. Since there is already one employee covered by insurance, the second part-time employee must also be covered.
- Q:** If a homeowner employs a domestic worker five days a week, 2 hours per day, is coverage necessary?
- A:** Yes. The worker would not be exempt under the "working 5 days or more a week" provision of the statute.
- Q:** Should homeowners be encouraged to obtain workers' compensation insurance coverage as a protection?
- A:** It depends. Even if they fall under one of the exemptions, they are always free to purchase workers' compensation insurance; however, the exemptions were included in the workers' compensation act to allow, in certain situations, employers to be exempt from purchasing workers' compensation insurance.

WORKERS' COMPENSATION FORMS AVAILABLE ON THE INTERNET

Visit our website at:

<http://workerscomp.cdle.state.co.us>
for current Workers' Compensation
information.

Claims--The Changing Face of Compliance Review at the Division

by JoAnne Allen Ibarra, Manager, Claims Services

About a year ago, we introduced the Claims Mentoring Project (CMP) in this newsletter.

The purpose of the project was to replace a random review of all admissions of liability, with a system in which each carrier, self-insured and TPA (Claims Handler) is assigned to a specific Claims Manager (Account Manager) in the Claims Management Unit. The objective is to (1) determine whether the claims handler's practices are in compliance with the Workers' Compensation Act and Rules of Procedure, and (2) establish the baseline of the Claims Handler's performance in order to evaluate areas for improvement and review for a succeeding 12-month period. The retrospective compliance reviews as performed by the Carrier Practices Unit are separate and remain in effect.

For the purpose of establishing the baseline of performance behaviors, all Employer's First Reports of Injury and Admissions of Liability will be reviewed over a specified period of time. Completion of Division forms; calculation and support of average weekly wage; modification or termination of temporary disability benefits; and final admission filings will be subject to review. If resources allow, compensation and medical payments will also be sampled to review timeliness of payments.

Once the information has been aggregated and verified, the preliminary findings will be summarized in a report sent to the claims handler. The report will identify the total number of documents reviewed, the period of time over which the review took place and the percentage of compliance in each category. Based on these findings,

the Division's Claims Management Unit will identify areas for improvement, establish performance expectations over the succeeding 12-month period, and place the Claims Handler on notice that failure to perform at expected levels may result in penalty imposition. The Claims Handler will have the opportunity to clarify findings and agree to the facts.

If the Claims Handler meets expected levels of compliance in some but not all categories, it is expected that the subsequent 12-month review will be limited to areas of deficiency. Thereafter, a sample will be drawn to test those areas identified for improvement. A final summary report will identify trends in compliance behavior in the tested areas, provide recommendations, if any, and notify the Claims Handler of any further action by the Division.

Focused use of Division resources, communicated performance expectations, consistent interaction between attendant claims handlers, and timely review and notification on areas requiring remediation, should result in improved system performance. The Claims Handler may also request training for its adjusters, hold staffings with the Division on areas of concern, and utilize desk aids and reference materials developed by Division staff.

We expect the program to be operational by late fall of this year although Division Account Managers have already been assigned to specific accounts. If you would like more information on this program, or would like to speak with your Account Manager, please call JoAnne Ibarra at 303.575.8816.

Publications Available From The Division of Workers' Compensation

The following publications are available from the Division of Workers' Compensation. They are available on our internet site at: <http://workerscomp.cdle.state.co.us>, or by contacting our Customer Service Unit at 303.575.8700.

- ◆ *Essentials of the Workers' Compensation Premium Cost Containment Program and Employer Certification*
- ◆ *Workers' Compensation Guide for Employees*
- ◆ *Workers' Compensation Guide for Employers*
- ◆ *Workers' Compensation Loss Prevention and Loss Control Program Manual*
- ◆ *Employer's Guide to Self-Insuring Workers' Compensation*
- ◆ *Workers' Compensation Act*
- ◆ *Dispute Resolution Services Brochure*
- ◆ *Mediation Services Brochure*
- ◆ *Overview of the Division of Workers' Compensation*
- ◆ *Colorado Work Related Injuries*
- ◆ *Introduction to Workers' Compensation Video*

Reminder:

The 3-digit numeric carrier block number and the 2-digit alpha third party administrator code must be on all documents filed with the Division.



Colorado Department of Labor and Employment
Division of Workers' Compensation
with the International Workers' Compensation Foundation

Presents our

“How to” Educational Seminar

Adams Mark Hotel
Denver, Colorado
June 18 – 19, 2001

**Mark Your
Calendar**

**Vendors
Welcome**

For More Information Call

Bob Collyer (904) 304-1993

- or -

Louise Fish (DOWC) (303) 575-8803

Look for registration information in an upcoming “All About Claims” Newsletter

ALL ABOUT CLAIMS SEPTEMBER 2000 VOLUME 15
COLORADO DIVISION OF WORKERS' COMPENSATION
CLAIMS SERVICES SECTION
1515 ARAPAHOE STREET
DENVER, CO 80202-2117

300300046