



- ▶ BWC Premium Payroll True-Up.....1
- ▶ BWC Electronic Notification Option...1
- ▶ BWC Installment Schedules.....1
- ▶ Defending Unemployment Claims.....2
- ▶ Medical Marijuana.....2
- ▶ When And How To Offer Light Duty...3
- ▶ Workers' Comp Claims Involving Home-Based Workers.....4
- ▶ MCO's and TPA's.....4
- ▶ NFIB Suggested Reforms.....5
- ▶ Dates To Remember.....6

Spring 2019

KKSG *focus*

OHIO WORKERS' COMPENSATION AND UNEMPLOYMENT ADMINISTRATION AND COST CONTROL

At KKSG & Associates, we value our client relationships and take pride in providing a personal level of service that is unique in our industry.

BWC PREMIUM PAYMENT TRUE-UP

Beginning 7/1/19 you must TRUE-UP premium paid for the period 7/1/18 – 6/30/19. You must report actual payroll by manual code for the same period. The true-up will determine the premium that was due during the premium cycle. If your payments fall below the true-up premium, you **must pay the balance prior to 8/15/19** to be eligible for BWC discount programs. The true-up and any additional premium owed must be completed in a single transaction to be eligible for the Go Green (online) discount. Over-paid premium will be refunded or applied to future installment payments.

Report your payroll true-up online starting July 1, 2019 at www.bwc.ohio.gov or by calling the BWC for assistance at 1-800-644-6292.

Article by Christine Penwell

NEW BWC ELECTRONIC NOTIFICATION OPTION

Beginning July 1, 2019 when completing the True-Up, you will be prompted to sign up for Electronic Notifications. This means the BWC will send all policy notices (including Invoices) electronically. Hard copy, paper invoices, will no longer be mailed. **In order to receive the Go Green discount for true-up filing** and online payments (1% of premium up to \$2,000 annually) you **must opt in PRIOR to completing the True-Up**. If you choose to opt in at a later time, you will not be eligible for the discount. You can sign up for Electronic Notification prior to filing your true-up on the My Policy page of the BWC's web site. Click on Electronic Notification which is towards the bottom, on the right side of the page.

Article by Sherri Scott and Christine Penwell



BWC INSTALLMENT SCHEDULES 7/1/19—6/30/20

Installment schedules will be mailed by the BWC for the new rating year (July 1, 2019 – June 30, 2020) in early May. The deadline to change the installment schedule **online is May 15**. Any changes in the schedule or the estimated payroll after that date requires you call the BWC (800-644-6292), or please call KKSG to assist. Installment options are: Monthly, Bi-Monthly, Quarterly, Semi-Annual, or Annually. No matter which option you choose, **the 1st installment will be due by June 21st**.

Please check the accuracy of the **estimated payroll the BWC has provided**. Please contact the BWC or KKSG immediately to update the payroll if necessary. A ***significant*** over or under estimated payroll could result in a future audit by the BWC if not corrected.

Do not rely on the BWC invoice/statement for premium installment due dates! Always pay installment payments per the installment schedule provided by the BWC. You can re-print this schedule from the BWC web-site or contact KKSG to assist.

Article by Christine Penwell



FINAL INCIDENT CRUCIAL IN DEFENDING JUST CAUSE TERMINATIONS IN UNEMPLOYMENT CLAIMS

When you've come to the point where the discharge of an employee is inevitable, be sure you have taken the necessary steps to ensure the termination will be ruled a just cause separation if the employee files for unemployment benefits.

Regardless of how poorly an employee has performed, how many policies they have violated along the way, or how many chances you have given them, when ODJFS looks at the facts of the claim, they are going to give the most consideration to the final event or "the straw that broke the camel's back." That's not to say that the history is not important, but the final event needs to be something that forms a logical path to the decision to terminate the employment.

Consider you have an employee who is lacking in their performance. You've issued warnings and coached them and you're frustrated with their lack of improvement. You continue to notice various minor issues and your patience comes to a tipping point. You decide the employee is just not making an effort to improve and you terminate their employment. The employee files a claim for unemployment and you now need to provide all facts supporting your decision. You have documented warnings from past and ongoing issues, but when it comes to the final incident, you respond that the performance was not improving. If you are unable to provide facts and dates of specific final actions of the employee that led to your decision to end their employment, you will have an uphill battle to defend this claim.

Of course, there are policy violations that rise to the level of terminable offenses alone, but when you are dealing with more minor policy violations or unsatisfactory performance, you must first be sure that you have followed your progressive discipline policy and have made the employee aware of your expectations and the consequences of not meeting the expectations. A key question asked by claims examiners and Hearing Officers is, "Was the claimant aware that their job was in jeopardy?" Therefore, when issuing warnings throughout the progressive process, document expectations/consequences in each of the steps along the way. Then be sure that there is a clear and documented final incident supporting the decision to move to termination and you will see much more success in defending these claims.

Article by Jackie Komjati

MEDICAL MARIJUANA

With lines forming at the opening of each new Ohio dispensary, it seems clear that the use of medical marijuana is an issue that employers will not be able to ignore. Consideration will need to be given as to how to incorporate this into your drug-free-work-place policy as this could impact disciplinary actions and terminations for violations based on the use of medical marijuana. The law does not prohibit an employer from refusing to hire, discharging, or taking an adverse employment action because of a person's use of medical marijuana, however, certain sections of the new law reference the use of medical marijuana in violation of an employer's various programs or policies regulating the use.

What is the impact of the new law on BWC? The Ohio BWC has published a fact sheet to answer this question. It states that the impact on BWC and its programs is limited. It does not adversely affect the Drug-Free Safety Program, will not require BWC to pay for patient access to marijuana, and expressly states that an employee whose injury was the result of being intoxicated or under the influence of marijuana is not eligible for workers' compensation. You can access this fact sheet on the BWC website for additional details and reach out to your KKSG Account Executive with any questions.

Article by Jackie Komjati

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When And How To Offer Light Duty

It is generally understood that an effective means of limiting workers' compensation liability is to provide light duty work to an injured worker while the industrial injury heals. On occasion an injured worker will return from the initial treatment with restrictions which the employer can meet, and the employee simply returns to work. Perhaps less understood is how to proceed when the employee does not immediately return to work yet light duty is available.

Temporary total disability compensation (TTD) is payable to an injured worker where a temporary disability from the allowed conditions prevents a return to the former position of employment. An employer can utilize a good faith light duty job offer to defend against a request for TTD or to terminate such compensation if it is already being paid.

OAC 4121-3-32(A)(6) defines a "job offer" for purposes of terminating TTD as follows:

"'Job offer' means a proposal, made in good faith, of suitable employment within a reasonable proximity of the injured worker's residence. If the injured worker refuses an oral job offer and the employer intends to initiate proceedings to terminate temporary total disability compensation, the employer must give the injured worker a written job offer at least forty-eight hours prior to initiating proceedings. The written job offer shall identify the position offered and shall include a description of the duties required of the position and clearly specify the physical demands of the job." [Emphasis added]

While the rule appears to limit the writing requirement to requests to "terminate" TTD, the Industrial Commission will require that the offer be in writing whenever it is used to defend against TTD.

A light-duty offer should be considered any time the treating physician indicates an ability to work with restrictions. If the employer can

accommodate the restrictions, the offer should be made in writing and specifically state the duties of the position, tailored to the particular limitations and conditions at issue. For example, in a back injury claim the offer might include the maximum weight to be lifted, the frequency of lifting, whether the job requires standing, sitting or walking, and whether the employee has the ability to change positions.

The offer should also indicate the wages to be paid to claimant, the hours to be worked, and the date that claimant is to report to the job. Typically, a full-time employee should be offered full-time light duty employment at the same rate of pay. Finally, the offer should be sent by certified mail or other means where receipt is confirmed.

If the treating physician refuses to consider restricted duty, an employer may obtain an independent medical examination (IME) to address the issue. A light-duty offer may be made based upon restrictions indicated by the IME physician and, if claimant does not return to work, the employer can seek to terminate TTD based on the offer and IME. The job offer and IME should also be presented to the treating physician. If the physician agrees that claimant is capable of such work, compensation can be terminated without a hearing. OAC 4121-3-32(B)(1)(b).

In summary, the offer should be specific enough to demonstrate to claimant, the treating physician and the Commission that the position meets the restrictions. In instances where those restrictions are not disputed, the offer should leave no wiggle room for claimant to argue against suitability of the position.

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WORKERS' COMP CLAIMS INVOLVING HOME BASED WORKERS

In general, an injury is compensable under workers' comp if it "arises out of and in the course of employment", regardless of the location at which that injury occurs. According to OSHA, the employer is responsible for providing employees with safe work environments, whether on site or off site. All home-based workers are entitled to the same workers' comp benefits as in-office employees. Case law in multiple states show the law tends to see the home office no differently than employers on site location.

In Ohio, the BWC and Industrial Commission will determine allowance of a workers' comp claim based on:

- Did injury occur in a location at which employer anticipated the work would be performed?
 - Was employee in the midst of performing a duty required by the employer?
- Some employers may choose to establish additional safety measures to mitigate their risk, such as establishing clear working hours and break times so that the employer is not potentially liable for any accidents that occur at any time of day or night. Additionally, they may choose to clearly state the work activities that are permissible to be completed during the work hours.
- The employer may even indicate the exact location in the home or other location where the employee can complete work duties, such as a home office. On-site visits before and during the course of the arrangement may also help identify potential problems and solve them before liability arises.
- Protocols as to medical providers accepted for first treatment needs should be clear and consistent with existing policy.
- Employers may even choose to increase their level of supervision over an employee by installing task-monitoring software in which the employee's computer activities are recorded. If a claim does arise, an employer may have data that shows when certain software was being used and when the computer was idle.
- Please contact your KKSG team with any questions on claims.

Article by Lori Blaser

Managed Care Organizations (MCO) and Third Party Administrators (TPA) Different Roles/Common Goal

A MCO and a TPA play different roles but share a common interest in the world of workers' compensation. That goal is to return an injured worker back to work quickly and safely. Every state funded employer in Ohio must have a MCO upon opening up a BWC policy and their fees are included in an employer's premium. The MCO medically manages the claim, including but not limited to authorizing treatment, initiating payment of the medical bills, and reviewing and verifying treatment. They are a neutral party in a claim.

The TPA is a private company which employers contract to represent their interests in workers' comp claims and to provide cost control strategies such as alternative rating programs and rate reviews. The TPA assists in managing claims and advising employers accordingly. The TPA also provides representation at Industrial Commission hearings.

Article by Terri Thompson



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NFIB SUGGESTED REFORMS WORKERS' COMPENSATION

The National Federation of Independent Business (NFIB), founded in 1943, is an advocate for small businesses on a state and federal basis. The Ohio Chapter of the NFIB has identified "Six key topics to support Ohio entrepreneurs" for consideration by the Ohio133rd General Assembly. One of those key topics is continued improvement in the Workers' Compensation System. Below are the suggested reforms the NFIB believes will improve the current system while maintaining the system's integrity. Headed by Chris Ferruso (614-221-4107), the NFIB will lobby for these changes on your behalf. Please contact your KKSG account executive or the NFIB with any questions concerning the suggested reforms.

- **Continuing jurisdiction** – The Bureau of Workers' Compensation has a one-year window to submit medical bills for payment. The period should begin to run from the date of active medical treatment, not the last payment of a medical bill.
- **Permanent Total Disability (PTD)** – When the first application has been adjudicated and denied, a claimant must prove new and changed circumstances before a second application can be made.
- **Permanent Partial Disability (PPD)** –

Contested permanent partial cases often result in a compromise between multiple medical reports on percentages of impairment. Require hearing officers to choose one amount instead of just splitting the difference, which is not based on medical fact.

PPD should not be paid when the allowance of a claim or of a condition is pending in a court – An application should not be accepted until all of the litigation is completed.

PPD should be a one-time award for an allowed condition – A claimant would be prevented from seeking additional percentage awards for the same condition.

- **Payment in suspended claims** – If a claim is suspended for an injured workers' failure to honor a proper request to appear for an examination or to permit access to medical records, benefits should be forfeited.
- **Provider Network** – Require injured workers to see a BWC-certified provider to ensure a standard of care for better outcomes.

Article by Eric Haser

Source: NFIB Ohio Small Business Agenda 2019 ; <https://www.nfib.com/ohio/>

Dates To Remember

INFORMATION FROM BWC
WEBSITE OHIO.BWC.GOV



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Private Employers—May 1, 2019, through September 30, 2019

May 2019

- 01—Notice of estimated annual premium sent
- 15—Last date employer can change installment plan online
- 31—DFSP, ISSP, TWB program application deadlines for 7/1 start date

June 2019

- 21—1st premium installment due
- 30—Deadline for safety council participation requirements
- 30—Deadline for ISSP loss prevention activities and ISSP on-site consultation survey, SH-29

July 2019

- 01—Policy year starts
- 01—Publishing of new rates
- 01—Program year starts for BWC programs: DFSP, Deductible, Individual retro, Group rating, Group retro, OCP, ISSP, .99 EM Construction Cap, EM Cap, TWB
- 01—PY 2018 payroll true-up notice sent (approx. date)
- 01—2% Early Payment Discount due date
- 16—Last day to submit C-240 (settlement)
- 31—.99 EM construction cap deadline to opt out or submission of the safety management self-assessment (SH-26)
- 31—Safety Council enrollment deadline
- 31—DFSP accident analysis training deadline for 7/1/18 program start date initial year only. New supervisors have 60 days from hire date to complete
- 31—DFSP and ISSP online safety mgmt. self-assessment (SH-26) deadline for 7/1/18 start date

August 2019

- 15—PY 2018 payroll true-up report and payment (if any) due
- 30—DFSP action plan (DFSP-5) deadline (advanced level only) for 7/1/19 program start date
- 31—Self-Insured assessment payment due-second half

September 2019

- 30—Snapshot date for experience calculation (7/1/20 rates)

Public Employers—May 1, 2019, through September 30, 2019

May 2019

- 01—Deferred premium payment due (Jan-May)
- 31—PEC Group experience rating program application deadline (PY 1/1/20)

June 2019

- 30—Deadline for safety council participation requirements

July 2019

- 31—Group-Retrospective-rating, Deductible, Retro rating, and OCP application deadline for 1/1/20 start date
- 31—Safety Council enrollment deadline

August 2019

- 31—Self-insured assessment payment due—second half

September 2019

- 28—DFSP annual report due for 1/1/20 program start date
- 28—EM cap and OCP requirement deadline
- 28—Last date to request change in installment plan and estimated annual payroll exposure