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MEMO

From: Dirk Anderson, Director of Workers' Compensation and Safety 
To: Workers' Compensation Insurance Adjusters, Workers' Compensation Attorneys,
Department of Labor Staff, and other interested parties
Re: Changes to Vermont Workers' Compensation Statutes
Date: June 28, 2023

On June 20, 2023, the Vermont General Assembly voted to override the Governor's veto of H. 217. While this legislation primarily addresses childcare and early education, it also makes several substantive changes to Vermont's workers' compensation law. The full text of the legislation is here: <https://legislature.vermont.gov/Documents/2024/Docs/BILLS/H-0217/H-0217%20As%20Passed%20by%20Both%20House%20and%20Senate%20Unofficial.pdf>

The changes to workers' compensation law can be found in Sections 26 through 38. The sections that directly affect the day-to-day adjustment of claims will be explained below. Please note that these changes go into effect on **July 1, 2023**. The convening of a special veto session on June 20, 2023 meant that we were unable to disseminate this guidance any earlier. I apologize for the short notice.

1. CALCULATING TEMPORARY PARTIAL DISABILITY BENEFITS

The method for calculating temporary partial disability benefits (TPD) has been changed. TPD is currently calculated as two-thirds of the difference between the injured employee's average weekly wage (AWW) before the injury and the amount the employee earns during each week of disability.

The new method requires a carrier to calculate the claimant's entitlement to temporary total disability (TTD), factoring in annually adjusted minimum and maximum benefits to get the compensation rate (CR), and then subtract the wages actually earned to get a TPD benefit, UNLESS the claimant would receive a greater TPD benefit using the old TPD calculation. In either case, the new TPD dependent benefit (See Item 2, below) is added on at the end.

Compare
(CR – wages earned)
against
(AWW – wages earned x 0.667)
TPD will be the greater of the two.



EXAMPLE 1: 90% compensation rate (low wage earner)

AWW is \$200.00. CR \$180.00

Injured worker returns to work making \$50.00 in gross wages.

Old way - $\$200.00 - \$50.00 = \$150.00 \times 0.667 = \100.05

New way - $\$180.00 - \$50.00 = \$130.00$

In this scenario, you will use the new method of calculating TPD.

IW has 2 dependents; total compensation would be \$170.00. ($\$130.00 + 2 \times \$20.00 = \170.00)

EXAMPLE 2: Minimum compensation rate

AWW is \$800.00. CR is \$567.00 (\$567.00 is the new minimum CR as of July 1, 2023)

Injured worker returns to work making \$100.00 in gross wages.

Old way - $\$800.00 - \$100.00 = \$700.00 \times 0.667 = \466.90

New way - $\$567.00 - \$100.00 = \$467.00$

In this scenario, you will use the new method of calculating TPD.

IW has 2 dependents; total compensation would be \$507.00. ($\$467.00 + 2 \times \$20.00 = \507.00)

EXAMPLE 3: Two-thirds compensation rate

AWW is \$1000.00 CR is \$667.00

Injured worker returns to work making \$500.00 in gross wages.

Old way - $\$1000.00 - \$500.00 = \$500.00 \times 0.667 = \333.50

New way - $\$667.00 - \$500.00 = \$167.00$

In this scenario, you will use the old method of calculating TPD.

IW has 2 dependents; total compensation would be \$373.50. ($\$333.50 + 2 \times \$20.00 = \373.00)

EXAMPLE 4: Maximum compensation rate (\$1,700.00 is the new max. CR as of July 1, 2023)

AWW is \$5,000.00 and CR is \$1,700.00

Injured worker returns to work making \$500.00 in gross wages.

Old way - $\$5,000.00 - \$500.00 = \$4,500.00 \times 0.667 = \$3,001.50$

New way - $\$1,700.00 - \$500.00 = \$1,200.00$

In this scenario, you will use the old method of calculating TPD.

IW has 2 dependents; total compensation would be \$3,041.50. ($\$3,001.50 + 2 \times \$20.00 = \$3,041.50$)

The reason given by lawmakers for changing the TPD calculation was to incentivize low wage earners to return to work rather than remain on TTD. We will attempt to track how this plays out in real life.

(The amended TPD calculation can be found in Section 31 of the bill linked to above)



2. INCREASE TO THE DEPENDENT BENEFIT AND EXPANSION OF THE DEPENDENT BENEFIT TO TEMPORARY PARTIAL DISABILITY PAYMENTS

Effective July 1, 2023, the weekly benefit for each dependent child under 21 years of age will increase from \$10.00 to \$20.00. In addition, the dependent benefit will apply to temporary partial disability benefits as well as temporary total disability benefits.

(The full text of the increase to the dependent benefit can be found in Sections 31 and 33 of the bill linked to above)

3. EXPANSION OF THE PREAUTHORIZATION PROCESS

The preauthorization process for medical treatment will be expanded to include services, supplies and durable medical equipment. Specifically, the amended language in 21 V.S.A. § 640b reads as follows:

(a) As used in this section, “benefits” means medical treatment and surgical, medical, and nursing services and supplies, including prescription drugs and durable medical equipment.

If a carrier receives a preauthorization request for any of the above, they will have 14 days to authorize or deny, as they do now for medical treatment.

(The full text of the preauthorization expansion can be found in Section 29 of the bill linked to above)

4. LIMITATIONS ON WORK SEARCH REQUIREMENTS

This statutory change gives carriers guidance on allowable work search requirements. A claimant who is released to return to work, with or without limitations, but who cannot return to their former job, may be required to conduct no more than 3 work searches a week. A carrier may not require a work search if the claimant is already working in another job, or if they have been referred for or are scheduled for a surgical procedure.

(The full text of the work search requirement and its exceptions can be found in Section 30 of the bill linked to above)

5. EFFECTIVE DATE

The above statutory changes go into effect on **July 1, 2023**, and should be applied to the work week commencing on Sunday July 2, 2023. As stated above, we apologize for the short notice. Department staff will work with adjusters and attorneys to make this transition as smooth as possible. We fully anticipate that there will be issues with implementation, but ask that carriers and adjusters work in good faith to implement these changes into adjusting Vermont claims.

