

## SUBSTITUTE HOUSE BILL 80

As in House Finance on May 29, 2019

1. **Continuing jurisdiction – medical benefits** - Currently, a Workers' Comp claim goes away 5 years after the last payment of compensation or the payment of a medical bill. The problem is, the payment of the bill can be significantly delayed or never paid allowing the claim to continue theoretically forever. The amendment changes the language from last payment of a medical bill to the last day of medical service. It helps the BWC clear the books of inactive claims and provides more certainty as to the date of expiration of the claim.
2. Prohibits a private employer from requiring an individual to pay for their own medical exam to come back to full employment.
3. Requires a claim for an additional award of compensation for a violation of a specific rule to be filed within one year of the injury, death, or diagnosis of disability due to occupational disease, rather than 2 years as under current rule. This brings the claim for additional award with filing a BWC claim.
4. Corrects a cross reference to an appropriation in line 855618, Substance Use Recover and Workplace Safety Program which is incorrectly referred to as Opioid Workplace Safety Program.
5. Makes a technical correction to replace an obsolete cross reference with the correct cross reference for the purposes of defining "apprentice" and "apprenticeship agreement" in the Workers' Compensation Law.
6. Requires the Treasurer of State to remit up to \$25M cash year from the State Insurance Fund to the Workers' Compensation Fund to minimize the impact to the BWC administrative cost rate increases needed due to declines in the premium rate base. This is true up amendment to account for the rate decrease contained in HB 80.
7. Includes HB 81 from the 133<sup>rd</sup> GA that requires under certain conditions, the Administrator of Workers' Compensation or a self-insuring employer to pay for services used to determine whether a detention facility employee sustained an injury or occupational disease after exposure to another person's blood or bodily fluid.
8. **PTSD for first responders.** Currently, the law prohibits the allowance of psychological conditions without an underlying physical condition. Often, there is no underlying physical condition that caused PTSD. By definition, it is post-traumatic stress, rather than a physical component. This amendment allows PTSD to be recognized in a claim without the usual underlying physical condition, applicable to first responders only. The bill does not contemplate any other psychological conditions.

**Temporary Total disability compensation.** Currently, some employers require employees to use accrued sick leave while they are receiving TTD. This provision requires the employer to credit back the accrued sick leave when the employee receives TTD under the workers compensation claim or requires them to pay the sick leave in addition to the TTD benefits.

**Settlement of Claims.** Workers' Comp claims impact a state funded employer's premium rates for five years. The claim may still be active after five years, but has no impact whatsoever on the employer's premiums after the five year mark. Often, the BWC and the injured worker attempt to settle the claim after the five year mark essentially to get rid of older claims. Currently, the BWC, injured worker and employer must agree to the settlement of any claim. This provision permits the settlement of out of experience claims without the signature of the employer. The BWC and injured worker can reach a settlement without the need to track down the unaffected employer.

The amendment also prohibits an employer from making resignation a condition of settlement. This provision prevents an employer from using the workers' compensation claim to force the discharge of an employee solely to facilitate settlement of a claim.

9. **Employee misclassification:** Prohibits an employer from classifying an employee as an independent contractor for purposes of Workers' Compensation, Unemployment, and Income Tax. Charges the Division of Industrial Compliance with investigating complaints of misclassification and to hold an administrative hearing to determine if an employer is misclassifying employees. Establishes a fine in the amount of \$500.00 per day for every day the Superintendent determines the employer was out of compliance. Permits an employer to come into compliance voluntarily prior to hearing and avoid any fine. Upon a finding of misclassification, requires the Superintendent to notify the BWC Administrator, the Director of Job and Family Services and the Tax Commissioner of the misclassification and requires those entities to adjust the employer's premium rates and tax rate accordingly. Requires the Superintendent to notify any interested CSEA that the individual is receiving an income.
10. **Voluntary Abandonment:** Codifies the common law doctrine of voluntary abandonment. In order to be eligible for temporary total compensation, a claimant must be medically incapable of returning to the claimant's former position and the claimant's injury must be the cause of the claimant's lost earnings. If there is another reason for the lost earnings unrelated to the injury, she is not eligible for temporary total compensation. Codifies *State ex rel. Gross v. Indus. Comm.*, 115 Ohio St. 3d 249, 253 (2007) which has been misapplied.