

Workers' Compensation Law Bulletin

Challenging questionable claims...Learning from the experience of others.

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Medical Benefits

Employer must pay for worker's weight-loss surgery

Citation: *PS2, LLC v. Childers*, 910 N.E.2d 809 (Ind. Ct. App. 2009)

A pizza parlor must pay for weight-loss surgery for a cook, who needed the operation before undergoing surgery to correct a work-related back injury, according to the Indiana Appeals Court.

The cook, Childers, was a 25-year-old man who weighed about 340 pounds and smoked about 30 cigarettes a day when he was hurt at work in March 2007. The accident occurred when he was hit in the back by a freezer door, resulting in an injury to his lower back.

Medical tests revealed a herniated disc, and Childers reported a high level of lower back and hip pain, which radiated down his leg. Despite treatment over the next few months, his back pain worsened and radiated down both legs. By August, his doctor recommended spinal fusion surgery, despite the associated risks, due to severe escalation of Childers' pain, which by then also affected his neck.

Childers underwent an independent medical exam by a specialist who recommended against surgery due to Childers' weight and age. The specialist recommended spinal decompression treatment instead.

Childers' treating doctor ordered spinal decompression treatment, but he later observed that Childers' pain returned after each treatment.

By this time, Childers' weight had "ballooned to 380 pounds," according to the treating physician, who counseled that treatment of his back problem was "doomed to fail" unless Childers lost some weight. He said that because of Childers' weight, spinal fusion surgery presented a "high risk for nonunion and failure." The treating physician noted that Childers had been unable to lose weight on his own and recommended that Childers consult a doctor about lap band or gastric bypass surgery to "get his weight down to a more reasonable level."

Childers asked for adjustment of his claim to add a request for weight-loss surgery. He was ordered to undergo a psychological evaluation to determine whether he would be a candidate for lap band surgery. During the evaluation, Childers told the doctor that his weight had increased dramatically to 386 pounds because he had been unable to exercise after the accident. The doctor found that Childers was a reasonable candidate for the proposed lap band surgery.

The employer unsuccessfully argued that the worker's alleged need for lap band surgery was the result of a risk that was personal, and therefore, not the responsibility of the employer.

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After a hearing, the workers' compensation board found that Childers' weight condition "combined with an injury that arose out of his employment to produce a single injury." As a result, the board ruled that Childers was entitled to receive secondary medical treatment, including surgery, for weight reduction as a precursor to back surgery. The board awarded Childers temporary total disability benefits while preparing for, undergoing, and recovering from both operations, until such time as he achieved maximum medical improvement.

The employer appealed.

DECISION: Affirmed.

The employer had to pay for Childers' weight loss surgery.

The evidence supported the board's conclusion that Childers' injury was related to his employment and resulted in a weight gain such that it was necessary to provide medical treatment to reduce his weight as part of the treatment for his work-related lower back injury.

It was undisputed that Childers suffered a lower back injury in the course of his employment and that nonsurgical options had provided him with no relief from his persistent, immobilizing pain. Although he weighed 340 pounds at the time of the injury, there was no evidence that it impaired his health or required treatment. After the injury, Childers had been unable to exercise and experienced significant weight gain, and his efforts to lose weight by other means had been unsuccessful.

There was no evidence that Childers' weight at the time of the injury prevented him from successful treatment for his back problem, but there was evidence that after the weight gain, further treatment for his pain was "doomed to fail." Finally, the treating physician rec-

ommended the lap band surgery so that Childers could lose substantial weight and potentially improve his back symptoms and possibly even avoid surgery.

This evidence established the required causal connection between Childers' work-related back injury and the need for lap band surgery. Childers proved that his weight at the time of the injury, the blow to his lower back, and the immobility resulting from the injury resulted in an overweight condition with back pain—that is, a single injury that required the lap band procedure. Furthermore, his weight at the time of the injury made him more susceptible to the immobilization that resulted from his workplace back injury, thereby requiring the lap band procedure as part of the necessary treatment for his back injury.

The employer unsuccessfully argued that the worker's alleged need for lap band surgery was the result of a risk that was personal, and therefore, not the responsibility of the employer. The court said that it was the lower back injury for which the board awarded the weight-loss surgery, and it was undisputed that his back injury arose out of his employment.

See also: *Estey Piano Corp. v. Steffen*, 164 Ind. App. 239, 328 N.E.2d 240 (1975).

See also: *Four Star Fabricators, Inc. v. Barrett*, 638 N.E.2d 792 (Ind. Ct. App. 1994).

Case Notes: Courts in other states—including California, Florida, Ohio, Oregon, and South Dakota—have allowed workers' compensation benefits that include weight-loss treatment as part of the treatment of work-related injuries.

Recreational Activity

Go-cart mishap at company outing leads to workers' compensation claim

Citation: *Douglas v. Ad Astra Information Systems, L.L.C.*, 213 P.3d 764 (Kan. Ct. App. 2009)

A Kansas appeals court recently ruled that an employer, which decided to thank employees for extra work by sponsoring an outing at a recreational facility, was liable to pay workers' compensation benefits to an employee injured in a go-cart accident.

Douglas was a customer service representative for a software company. The couple who owned the company arranged for an event to thank employees for their extra work at a recent conference. The event was planned for a Friday afternoon during work hours at a nearby recreational facility where employees could eat, play video games, play pool, and ride go-carts.

On the day of the event, Douglas received an e-mail at work with details about the outing. He and other employees said that they believed the outing was a "team-building" activity. Attendance was not mandatory, and employees could remain at work; nevertheless, Douglas said that he felt pressured to attend to show that he was part of the company's team. Another employee said that she also felt pressured to go, but that she and one or two others stayed behind.

When he arrived at the facility, Douglas was met by one of the company's owners, who directed him to a private meeting room where food had been prepared exclusively for employees. The compa-

ny paid for the food and all go-cart rental fees. While food was being served, the owner divided the employees into teams for competitive events planned for the afternoon. At the beginning of the meeting, the other company owner thanked employees for their extra work at the conference and gave what Douglas considered a "pep talk" about the release of a new software product.

The company reserved the go-cart track exclusively for its employees and encouraged employees to participate. Douglas said that he normally would not race a go-cart, but that he wanted to be part of his team. He said that the teams were encouraged to go as fast as they could because there would be prizes for the fastest teams. He said that the go-cart racing "was meant to boost morale and boost sales to kind of energize the company."

While racing the go-cart, Douglas swerved to avoid a go-cart that had stopped in the track. He was ejected and landed on his right side. He did not complete the race because of pain, but he stayed at the facility because he said he did not believe he was free to leave early. He received his normal rate of pay for the afternoon.

Over the next few weeks, Douglas experienced worsening pain. Eventually, he was diagnosed with a rib fracture and underwent surgery to repair it.

Kansas law barred benefits for injuries sustained while employees were engaged in a recreational or social event under certain circumstances.

Douglas filed for benefits, but the employer argued that the law excluded coverage for injuries from recreational or social events.

After a hearing, the workers' compensation board ruled that Douglas was entitled to benefits. The board said that the law barring benefits for recreational or social events applied only when the employee was under no duty to attend. Even though the outing was not mandatory, the board ruled that the company impliedly required participation by insisting that employees remain at work as the only option to attending the event.

The employer appealed.

DECISION: Affirmed.

Douglas was entitled to benefits for injuries sustained in the go-cart accident.

Kansas law barred workers' compensation benefits for injuries sustained while employees were engaged in a recreational or social event when two conditions were met:

- the employee was under no duty to attend the event; and
- the injury did not result from the performance of the employee's normal tasks or as specifically instructed by the employer.

Clearly, the second condition was satisfied—go-cart racing was not part of Douglas' normal job duties. However the law applied only if an employee was under no duty to attend—conversely, the law did not bar compensation benefits if the employee was under some duty to attend the event.

The company unsuccessfully argued that Douglas was under no duty to attend because attendance at the event was not mandatory. However, the court pointed out that the event was scheduled during the company's regular working hours, as opposed to being scheduled in the evening or on a weekend when Douglas would have been on his own time. Although employees

OSHA News

Inspection program focuses on safety of airport traffic-control tower personnel

The Occupational Safety and Health Administration (OSHA) recently launched an inspection targeting program to monitor how airport traffic-control tower personnel clear a control tower in case of fire and other emergency.

The monitoring program requires the Federal Aviation Administration (FAA) to bring FAA-owned and -operated towers into compliance with the alternate standard for egress and fire safety. Current guidance based on the FAA's alternate standard allows for a single exit route where the building size, occupancy level, type of construction, and workplace arrangement is such that all workers would be able to evacuate safely during an emergency. OSHA inspectors will inspect randomly selected towers to determine if the FAA is meeting this requirement.

The standard also includes requirements such as incorporating fire detection and alarm systems, fire suppression equipment, and emergency action plans. The standard currently covers 386 towers, of which 190 have been certified by the FAA as being in compliance.

"This agency's fundamental responsibility is to protect workers from unsafe workplaces," acting Assistant Secretary of Labor for OSHA Jordan Barab said in a statement. "Those who work in airport traffic control towers risk their safety if exit routes are not in place in the event of a fire. OSHA recognizes the importance of this inspection program and is confident that monitoring compliance with this standard will result in fewer worker injuries and deaths."

Source: *Occupational Safety and Health Administration*

had the choice between going to the event and remaining at work, it was not surprising that only two or three employees in the entire company chose not to attend the event. Furthermore, Douglas testified that he did not believe he was free to leave early, and in fact, stayed at the event even after he was injured.

The event was recreational and social in nature, but it also contained some business components. Douglas and others said they thought it was intended as a team-building event and the owner gave what Douglas considered a "pep talk" about the release of a new software product. Although there was conflicting evidence, the board had enough evidence to find that Douglas was under "some duty" to attend the event.

See also: *Hizey v. MCI*, 39 Kan. App. 2d 609, 181 P.3d 583 (2008), review denied, (Sept. 24, 2008).

Termination of Employment

Fired employee protests denial of compensation benefits

Citation: *State ex rel. Saunders v. Cornerstone Found. Sys., Inc.*, 2009-Ohio-4083, 2009 WL 2568613 (Ohio 2009)

As a result of a recent decision by the Ohio Supreme Court, a worker may be entitled to temporary total disability benefits despite the termination of his employment for violating a work rule.

When he was hired in January 2004, Saunders signed an acknowledgement that he received a copy of the company's employment policy. Allegedly, the policy was revised in June to include work rules with ex-

amples of conduct that could result in disciplinary action, up to and including termination of employment. Among them was insubordination, which the policy defined as a "refusal to follow any order given by an employee's supervisor or management, or the refusal or failure to perform work assigned." The records reviewed by the court included only portions of the documents.

Saunders denied that either the January or June versions of the employment policies contained any work rule discussing insubordination or its penalty. He alleged that he never received a copy of the June update or knew that it existed prior to mid-2005.

In April 2005, Saunders hurt his knee at work and returned two days later. About a month later, his supervisor allegedly ordered Saunders to run a bulldozer. According to Saunders, he refused because the activity exceeded his medical restrictions against his use of foot pedals—although the court said that such a limitation was not contained in any restrictions ordered by his attending physician. He also alleged the order violated his agreement with the employer against use of heavy equipment, but he had no proof to substantiate that agreement.

As a result of his refusal to operate the bulldozer, Saunders was fired for insubordination. He later underwent knee surgery and filed a claim for temporary total disability benefits. The claim was denied based on a finding that his refusal to follow orders amounted to a voluntary abandonment of his former employment.

An employee's voluntary abandonment of his or her former position of employment can bar temporary total disability compensation.

Sometime later, Saunders asked the workers' compensation commission to reopen the claim based on alleged fraud by his employer. As proof, Saunders presented a statement by a former coworker that both Saunders and the supervisor had told him about the work agreement that prohibited Saunders from operating heavy equipment. The hearing officer found no evidence of fraud, and the commission refused to reopen his claim.

Saunders sued, alleging that the commission improperly denied his claim. An appeals court refused to consider the matter, so Saunders appealed to the state's highest court.

DECISION: Reversed.

The court ruled that the commission abused its authority in finding that Saunders' discharge was a voluntary abandonment of his employment.

An employee's voluntary abandonment of his or her former position of employment can bar temporary total disability compensation. Even when an employee was fired for cause, it may be considered a voluntary abandonment of employment because it was a consequence of the employee's own behavior. For this principle to apply, however, it must be shown that the employee knew, or should have known:

- that the conduct that prompted the termination was prohibited; and
- what consequences would follow.

The commission was wrong to find that Saunders knew or should have known that he could be fired for refusing his supervisor's orders. The commission mistakenly believed that the insubordination policy was in the January 2004 version of the employment handbook that Saunders received when he was hired, but it was not. That rule was added to

the policy in June 2004, and there was no evidence that Saunders knew about the rule or that what appeared to be a first-time violation was a dischargeable offense.

Because of the risk of abuse in allowing a simple allegation of misconduct to preclude temporary total disability benefits, the law required clear, written policies containing both the work rules and the penalties for their violation. In this case, the only employment policy that Saunders apparently received did not include the rule addressing insubordination or its consequences, so he could not have known that he was violating any rule or that a violation would lead to dismissal. The commission decision had to be overturned.

See also: *State ex rel. Louisiana-Pacific Corp. v. Indus. Comm.*, 72 Ohio St. 3d 401, 1995-Ohio-153, 650 N.E.2d 469 (1995).

See also: *State ex rel. Liposchak v. Indus. Comm.*, 73 Ohio St. 3d 194, 1995-Ohio-138, 652 N.E.2d 753 (1995).

Case Notes: In effect, the high court's ruling opens the door for the worker to pursue a claim for compensation benefits.

Work-Related Injury

No benefits for auto accident en route to attorney's office to prepare for deposition

Citation: *Keovorabouth v. Industrial Com'm*, 2009 WL 2381141 (Ariz. Ct. App. Div. 1 2009)

An Arizona appeals court recently ruled against a worker, who was

Conference News

Changes in store for this year's WCRI conference

Each November, nearly 300 workers' compensation experts converge on Boston for the Workers' Compensation Research Institute (WCRI) Annual Issues and Research Conference. In light of the economic challenges facing many organizations this year, WCRI found that travel restrictions might affect as many as one-third of last year's attendees—particularly those in the public sector.

In response, WCRI has decided to move the conference to be closer to the attendees this year. Rather than requiring travel to Boston, conference attendees will be able to attend one-day events at locations in approximately 10 different cities. In early 2010, WCRI plans to host groups of 15-30 people in each of the cities, provide live presentations and panels, and allow for questions and discussion among participants at all of the locations.

For details about the conference, including dates and locations, topics, cost, and registration forms, visit WCRI's website at <http://www.wcri-net.org/conference.html>.

Research & Findings

Drop in California's workers' compensation spending slows growth in national spending in 2007

U.S. workers' compensation payments for medical care and cash benefits for workers injured on the job increased 2% to \$55.4 billion in 2007, according to a study released recently by the National Academy of Social Insurance (NASI). The modest growth in national spending in 2007 (the most recent year with complete data) reflects large declines in California

cash benefit payments that followed reforms enacted in 2003 and 2004.

Nationally, the \$55.4 billion in workers' compensation spending in 2007 includes \$27.2 billion for medical care (an increase of 3.3% over the prior year) and \$28.3 billion in wage replacement benefits for injured workers (an increase of 0.8%).

The costs to employers for workers' compensation are what they pay each year. For employers who buy insurance, costs are premiums that they pay to insurance companies, plus benefits that they pay under deductible arrangements in their insurance policies. For employers who insure their own workers, costs are the benefits that they pay, plus administrative costs.

In 2007, employers paid a total of \$85 billion nationwide for workers' compensation. A sharp drop in California employers' costs (of 14.3%) led to a small drop for the nation (2.7%). Outside California, employer costs for workers' compensation were almost unchanged (up 0.1%).

The new report compares trends in workers' compensation cash benefits and Social Security disability insurance benefits, each as a share of payrolls covered by each program. Trends in the two programs have moved in opposite directions since 1980. When workers' compensation cash payments rose in the 1980s, Social Security disability benefits declined as a share of payroll. After 1990, workers' compensation cash payments declined and Social Security disability insurance payments rose as a share of payroll.

According to John F. Burton, Jr., chair of the panel that oversees the study, "The different trends suggest that retrenchment in one program may cause injured workers to turn to the other program for benefits to re-

injured in an automobile accident while traveling to her attorney's office to prepare for pretrial proceedings in a workers' compensation case.

Under Arizona law, injuries sustained during travel to receive medical treatment of a compensable industrial injury are usually compensable, but injuries sustained during travel for litigation purposes are generally not compensable.

The employee, Keovorabout, filed a workers' compensation claim, alleging that she was injured in the course and scope of her employment in 2005. The employer denied the claim, so Keovorabout requested a hearing.

In early January 2006, Keovorabout was scheduled to be questioned under oath in a deposition at her attorney's office. Her attorney arranged for her to meet him in his office a few hours early to prepare for the scheduled deposition. While en route to her attorney's office, she was involved in a car accident, resulting in personal injuries requiring medical treatment and loss of time from work.

Keovorabout filed a second workers' compensation claim related to the 2006 car accident. A month later, the Industrial Commission denied the 2005 claim, and the appeals court later affirmed the ruling.

Meanwhile, an administrative judge ruled that the second claim was noncompensable, and the Industrial Commission affirmed.

Keovorabout appealed.

DECISION: Affirmed.

Keovorabout was not entitled to benefits related to her second workers' compensation claim.

In some cases, the Arizona courts have allowed compensation for an

accidental injury sustained during travel to obtain medical treatment for an industrial injury. The reasoning was that employers are required to furnish medical care to injured workers, and employees are similarly under a duty to submit to reasonable medical treatment. Therefore, an employee's travel for this treatment was considered necessary and similar to performing a special errand for the employer.

However, courts have denied compensation for injuries sustained during travel to attend an independent medical exam for purposes of pursuing a workers' compensation claim. Unlike the duty to submit to reasonable medical care, an employee was under no duty to pursue a compensation claim.

Travel for the purpose of attending a deposition was similar to travel to attend an independent medical exam. In both cases, the employee is traveling for the purpose of pursuing a workers' compensation claim. When a claimant was hurt while traveling to a deposition related to the claimant's workers' compensation claim, any causal connection with the industrial injury will usually be too removed to support a compensation claim.

See also: *Whittington v. Industrial Commission*, 105 Ariz. 567, 468 P.2d 926 (1970).

See also: *Joplin v. Industrial Com'n of Arizona*, 175 Ariz. 524, 858 P.2d 669 (Ct. App. Div. 1 1993).

Case Notes: Under current Arizona law, the court said that injuries sustained during travel to receive medical treatment of a compensable industrial injury are usually compensable, but injuries sustained during travel for litigation purposes generally are not compensable.

State Highlights

Arkansas

Regulatory News—Employers warned against paying workers' compensation medical bills out of pocket

Arkansas Insurance Commissioner Jay Bradford recently issued a bulletin warning employers to stop making direct payments for medical bills incurred on small workers' compensation claims—with or without the knowledge of their insurers.

State insurance officials said that they recently learned that some employers have been operating under the mistaken impression that a state law, which authorizes insurers to offer deductibles to policyholders, also authorizes an employer to make direct payments on claims under the deductible amount.

The law simply does not allow for such direct payments, according to the bulletin. Even with an authorized deductible program, the bulletin says that all claims must be submitted for "first dollar" payment by the insurer; then the insurer will be reimbursed by the employer for any deductible amounts paid by the insurer.

Bradford warned that employers who directly pay medical bills for injured employees may be violating state laws against workers' compensation fraud. The laws prohibit employers from making materially false representations for the purpose of avoiding payment of the proper insurance premium. According to Bradford, it is obvious that failure to report any worker injuries would affect an employer's experience rating and payment of proper premium based thereon. History has already shown that employers who pay deductibles directly often negligently

or intentionally fail to fully inform the insurer of worker injuries, he said.

Source: *Arkansas Department of Insurance*

California

Workers' Compensation News—Insurance Commissioner sues to halt \$1 billion sale of SCIF assets

California Insurance Commissioner Steve Poizner has filed a lawsuit to have the \$1 billion sale of State Compensation Insurance Fund (SCIF) assets declared unconstitutional.

ABX4 12, part of the July budget revision, authorizes the Department of Finance to sell or otherwise dispose of assets and liabilities belonging to SCIF with the intent of raising \$1 billion in general fund revenue. The lawsuit asks the court to rule that ABX4 12 violates provisions in the California Constitution that require the Legislature to enact "appropriate legislation" to establish a "complete system of workers' compensation." According to Poizner, selling SCIF's assets for the purpose of benefiting the General Fund violates that provision of the state constitution.

Poizner says that sale of SCIF's assets could lead to skyrocketing workers' compensation insurance costs for California's construction firms, agricultural industry, and other small businesses. One of SCIF's primary roles is as the workers' compensation insurer of last resort for employers who have difficulty in finding workers' compensation insurance in the private market because of the dangerous nature of the work performed by their employees. Construction and agricultural work-

place their lost wages." NASI is sponsoring a policy research seminar on November 18, 2009, to look further into how developments in workers' compensation affect Social Security disability insurance.

The new report, "Workers' Compensation: Benefits, Coverage and Costs, 2007," is the 12th in a NASI series that provides the only comprehensive national data on workers' compensation cash and medical payments for each state, the District of Columbia, and federal programs.

Source: *National Academy of Social Insurance*

Safety & Health

Manufacturing industry reports highest nonfatal occupational injury rates

Overall, the rate of nonfatal occupational illness across all U.S. private industry has dropped significantly in recent years. According to the National Institute for Occupational Safety and Health (NIOSH), the rate decreased from 30.7 per 10,000 in 2003 to 21.8 in 2007.

Nevertheless, NIOSH says that certain sectors of private industry account for disproportionate share of the illness rates. The numbers show the highest rates of illness occur in manufacturing, utilities, and health care and social assistance. The average rate of nonfatal occupational illnesses in the manufacturing sector was 2.4-fold greater than U.S. private industry averages (65.5/10,000 vs. 26.3/10,000). Likewise, the utility and health care and social assistance sectors each reported rates that exceeded the private industry 2003–2007 average by 50%.

To illustrate the point, NIOSH has created a chart comparing incidence rates across private industry sectors, which is available at <http://www.cdc>.

gov.niosh/enews/enewsv7n4chart.html.

Source: *National Institute for Occupational Safety and Health*

Federal News

Energy Employees Occupational Illness Compensation Program reaches milestone

The U.S. Department of Labor recently announced that it has paid more than \$5 billion in compensation and medical benefits to more than 52,600 workers nationwide under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA). This milestone coincides with the eighth anniversary of the Labor Department's administration of the EEOICPA, which provides compensation and medical benefits to employees who became ill as a result of working in the nuclear weapons industry.

"I am proud to announce that the Labor Department has delivered more than \$5 billion in compensation and medical benefits to deserving workers and their families during the eight years it has administered the EEOICPA," Shelby Hallmark, acting assistant secretary of labor for employment standards, said in a statement. "The department is dedicated to carrying out the vital mission of this program: getting compensation and medical benefits to eligible workers and their survivors as quickly and consistently as possible. We will continue to strengthen the adjudication process, our outreach efforts and claimant services in order to carry out the EEOICPA in a manner that is consistent with the law as enacted by Congress."

Source: *U.S. Labor Department*

ers are SCIF's two largest industries, representing 27% of their business.

In addition, many newer small businesses that have yet to establish a safety track record also are compelled by the market to purchase workers' compensation insurance from SCIF. Of SCIF's 200,000 policyholders, nearly 75% are small businesses that have less than \$5,000 in premiums per year. Overall, SCIF sells nearly one out of every five workers' compensation insurance policies in the state.

"The pilfering of funds used to pay the claims of injured workers to instead help fill the state budget gap is both unconscionable and unconstitutional," Poizner said in a statement. "This \$1 billion sale of SCIF assets could not only endanger the solvency of SCIF, but is a direct affront to the state's jobs and business climate. In these tough economic times, the state should be doing everything possible to create jobs, not use budget gimmickry to hurt the economy. The Schwarzenegger Administration simply got it wrong with their proposal and the Legislature failed to adequately scrutinize the consequences."

According to Poizner, similar efforts like this have been attempted in other states and have failed. He pointed to both Colorado and Utah, where legal authorities have determined that funds could not be transferred from their respective insurers to the states' general funds.

Source: *California Department of Insurance*

Kentucky

Workers' Compensation Rates—Workers' compensation costs continue to drop

Most employers in Kentucky should see another drop in their

workers' compensation premiums after state officials approved the 2009 filing that most insurance carriers will use to develop rates for workers' compensation coverage, effective October 1, 2009.

The annual filing is by the National Council on Compensation Insurance Inc. (NCCI), an advisory organization that serves as the oldest provider of workers' compensation and employee injury data and statistics in the nation. The most recent filing shows the fourth consecutive decrease in loss costs and a continuing decline in the number of workplace injuries and the severity of those claims.

Data collected from insurance carriers is used to develop loss costs, which is the average compensation for lost wages, based on the level of disability, plus medical benefit payments. Use of the information is voluntary but most workers' compensation carriers use the NCCI loss cost values as a base to which the insurer's own loss adjustment and overhead expenses are added to arrive at the rates charged to Kentucky employers.

The 2009 loss cost figures show an average reduction of 6.4% for the 598 industrial classes used in Kentucky. These classes include manufacturing, office and clerical, contracting, and goods and services. For coal classes, underground mining costs dropped 20.4% while surface mining decreased 13.1%.

"Kentucky employers and employees alike should view this as very good news," Department of Insurance Commissioner Sharon P. Clark said in a statement. "Not only do employers benefit since workers' compensation insurance is a large cost of doing business, but we are seeing evidence of safer working conditions for hardworking Kentuckians."

Source: *Kentucky Department of Insurance*