

## MARSH INSIGHTS:

# MISSOURI SENATE BILL 1: TREATMENT OF OCCUPATIONAL DISEASES UNDER WORKERS' COMPENSATION POLICIES

Occupational diseases are once again subject to the exclusive remedy provisions of Missouri's workers' compensation law, as new legislation became effective January 1, 2014. While closing a loophole that had existed in the state since 2005, the law could result in added costs, particularly for mesothelioma-related claims.

### RESTORING EXCLUSIVE REMEDY FOR OCCUPATIONAL DISEASES

In 2005, Missouri lawmakers unintentionally removed occupational diseases from the definition of "accident" under the state's workers' compensation statutes, meaning they were no longer subject to exclusive remedy provisions. Such provisions bar employees from filing lawsuits against employers for work-related injuries, thus making workers' compensation claims the "exclusive remedy." By addressing this issue, the new law — Missouri Senate Bill 1 — allows employers to reduce their exposure to civil lawsuits resulting from workplace illnesses and injuries.

### ADDITIONAL TOXIC EXPOSURE BENEFITS

Missouri legislators also identified 10 occupational diseases for which enhanced benefit levels will apply, but only if the exposure results in permanent total disability or death:

- Acute myelogenous leukemia.
- Asbestosis.

- Berylliosis.
- Bronchiolitis obliterans.
- Coal worker's pneumoconiosis.
- Manganism.
- Mesothelioma.
- Myelodysplastic syndrome.
- Silicosis.
- Silicotuberculosis.

For nine of these conditions, afflicted employees in Missouri are eligible for an enhanced benefit of 200% of the state's average weekly wage for 100 weeks. But the enhanced benefit level is far greater for employees diagnosed with mesothelioma, a rare but serious type of cancer linked to the inhalation of asbestos. Employees diagnosed with mesothelioma are eligible for an enhanced benefit of 300% of the state's average weekly wage for 212 weeks.

### ACCEPT OR REJECT ADDITIONAL MESOTHELIOMA BENEFITS

The new law allows employers to accept or reject the additional mesothelioma benefits.

According to the National Council on Compensation Insurance (NCCI), since the basic and additional mesothelioma benefits are covered under a standard workers' compensation policy, an employer elects to accept the additional benefits by purchasing such a policy. The policy would include NCCI's Missouri Notification of Additional Mesothelioma Benefits endorsement (WC 24 03 02).

An employer can, however, reject the additional benefits by notifying its insurer, which would attach to the policy NCCI's Missouri Exclusion of Additional Mesothelioma Benefits Endorsement (WC 24 03 03). This endorsement alters the policy in two important ways:

- Under Part One (Workers' Compensation) of the policy, the additional benefits for mesothelioma liability will not be covered and the exclusive remedy provision will not apply to liability for additional mesothelioma benefits.
- Under Part Two (Employers Liability) of the policy, an exclusion is added for any obligations imposed by workers' compensation, occupational disease, unemployment compensation, or disability benefits laws, or any similar laws for occupational diseases due to toxic exposures that are diagnosed to be mesothelioma and result in permanent total disability or death.

Accepting the additional mesothelioma benefits preserves workers' compensation as the "exclusive remedy" available to employees, but employers' loss costs and insurance premiums could increase as a result. Rejecting the additional benefits will result in the loss of exclusive remedy and subject the employer to the possibility of civil litigation.

## THE MESOTHELIOMA FUND

Senate Bill 1 also created the Missouri Mesothelioma Risk Management Fund (Meso Fund), through which self-insured employers can pool their mesothelioma liabilities. There is much uncertainty around the Meso Fund as the rules and regulations have yet to be established. The expectation is

that Missouri employers with significant mesothelioma exposures will participate in the fund in order to share their risk with others.

Marsh's understanding is that most self-insured employers are not yet participating in the fund because of the uncertainty surrounding its operation and the possible adverse risk selection associated with it.

## NEXT STEPS

Senate Bill 1 will affect Missouri employers to varying degrees. Industries in which some employees have been or remain regularly exposed to asbestos — such as construction, automotive, and other heavy manufacturing — could see higher workers' compensation costs, including higher insurance premiums.

Missouri employers can take some steps now to manage the new law's effects. For example, employers should consult with their insurance and legal advisors about whether to accept additional mesothelioma benefits under workers' compensation. Employers should carefully weigh the potential advantages and disadvantages of each option — including the possibility of civil litigation should they choose to reject the additional benefits.

For more information, contact Marsh's Workers' Compensation Center of Excellence at [wccoe@marsh.com](mailto:wccoe@marsh.com).

Marsh is one of the Marsh & McLennan Companies, together with Guy Carpenter, Mercer, and Oliver Wyman.

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