Workers' compensation bills worth watching

THE CHAMBER VIEW
by Pamela Tumpap

Workers' compensation costs are one of the biggest challenges and expenses businesses face, with ever-increasing payroll costs and the need for employees to return to work when healed.

Currently, the Maui Chamber of Commerce and chambers throughout our state are watching and providing testimony on three workers' compensation bills that would increase workers' compensation costs.

Senate Bill 1060 amends workers' compensation law — including limiting an employer's ability to terminate benefits; authorizing the recovery of attorney's fees and costs by the injured employee; specifying procedures for medical examinations by the employer's physician; establishing fines for violations; requiring the reporting of denials of claims and relevant information; and further restricting the rulemaking authority of the director of the Department of Labor and Industrial Relations (DLIR). We oppose this bill because it:

• Unrealistically requires mutual agreement for the first independent medical examiner (IME) doctor. If no mutual agreement is obtained, the employee and employer must select from a list of IMEs submitted by the DLIR. This will lengthen the time employees are out of work, affect productivity, and eventually impact the cost of doing business, especially for small businesses.

• Imposes unnecessary reporting obligations on employers, which will hurt businesses, especially small businesses that do not have the staff to undertake this mandatory obligation.

• Denies employers paying for the medical care of their employees the right to rely on an IME of their choosing. Hawaii law already provides for coverage by the group health plan if workers' compensation benefits are controverted.

• Unreasonably interferes with an independent examination by allowing the employee and the employee's physician to record the examination and unfairly question the examining physician's qualifications at the examination.

• Increases the attorney's fees and penalties, and thereby slows the efficient delivery of medical care to injured workers.

House Bill 854 House Draft 1, Senate Draft 1, which clarifies that temporary total disability (TTD) benefits shall be terminated only upon order of the DLIR or if the employee's treating physician determines that the employee is able to resume work and the employer has made a bona fide offer of work within the employee's medical restrictions.

While the bill allows for the employer to request that the DLIR director issue a credit for the amount of TTD benefits paid by the employer after the date which the director had determined should have been the last date of payment, it does not define "credit" and recouping the overpayment will be challenging. The Maui Chamber of Commerce is opposing this bill because it:

• Unnecessarily extends inappropriate medical care and burdens the system by denying the employer the opportunity to rely on an IME.

• Limits the termination of benefits only if the employee's own treating physician says he/she can return to work, which could lead to some employees switching treating physicians if their original doctor tells them they are going to be released. There are cases where the employee's physician will not release an employee solely because the employee wants to stay out on leave, creating a disincentive for the injured employee to return to work.

• Does not provide an equal hearing process. Employees can receive an expeditious DLIR hearing and a prompt decision, if requested, but this option is not provided to employers.

• Does not clearly define "credit" and how the credit will be issued. If the employer is forced to pay out unnecessary benefits, recovery is a long legal process.

• Will lead to a rise in the cost of doing business, an unstable work environment, and potential litigation, which ultimately will impact the business and all employees.

House Bill 855 House Draft 1, Senate Draft 1, ensures that uninterrupted medical care is provided to an injured employee, even if the injured employee's employer denies further treatment, until DLIR renders a final decision in the matter. This bill may cause unreasonable and unnecessary treatment for unrelated conditions, which would increase workers' compensation insurance costs to businesses. The Maui Chamber of Commerce is opposing this bill as well because:

• It requires the employer to continue to pay for the employee's medical treatment, even if later it is determined that the treatment was unnecessary.

• Although the bill allows the employer to recover from the injured employee's personal health care provider if the treatment was deemed unnecessary, the bill will have a cost on the employer, as the employer provides the employee's personal health care provider through a prepaid health plan.

• While employers support employees seeking medical treatment when necessary and their genuine efforts to improve their health, the bill does not address situations where an employee fraudulently acts an injury.

Businesses, watch these bills that may directly impact your business. Fortunately, the Maui Chamber of Commerce and the chamber network already are advocating on your behalf.

Pamela Tumpap is president of the Maui Chamber of Commerce.