



# MAY 2009 NEWSLETTER

## WHAT A MESS!

The groups are finally filed – two months after the normal BWC deadline. All this is due to the changes that BWC implemented almost at the very last minute. Many employers are going to find that they did not qualify for group rating and we have already been notified by a couple of groups that they are in the process of filing lawsuits against the BWC citing inequity in the recent changes.

Group rating has been around since 1991 and there is no doubt that the program has saved Ohio employers billions of dollars in premiums. Now many employers are questioning the value of the incentive programs, such as the Safety Councils, Drug Free Work Place and the Premium Discount Programs, all of which required employers to qualify for, based on the employer's safety performance. BWC has indicated that they are working to equalize the loss ratio for all Ohio employers, but equalizing the loss ratio by implementing a 30% average decrease (group adjustment penalty) in base rates for non-group employers only rewards employers with high claim frequency while penalizing the employers that may have qualified for groups because of their excellent safety records. Group rated employers are going to pay more this year. Many employers will find that they are actually better off by not being in a group. Seems backwards to us.

If your company was invited into one of the TOCA groups and then later disqualified, please contact BMSO to find out what can be done to save more in premiums. We have estimated that 23% of those employers that may have previously qualified for a group rating plan, were no longer eligible due to the changes in the group rating calculations used by BWC to determine group eligibility or were better off not being in a group at all. Call BMSO at (330) 856-9213 for additional information and clarification on some of the recent changes.

The BWC Comprehensive Study conducted by Deloitte Consulting LLC made some of the following recommendations:

- change the structure of the Group Rating program
- develop an alternative to the exclusive use of MIRA II
- terminate the Salary Continuation program
- terminate the \$15K program
- require collateral from higher risk employers
- remove BWC from the ADR appeal process
- allow MCOs authority to make allowable condition decision
- terminate the Handicap Reimbursement program
- raise the minimum premium employers will pay
- prohibit exclusion of claims from Experience Rating calculations
- eliminate the Premium Discount Program

## INCREASE IN THE NUMBER OF CLAIMS BEING FILED

We have seen a significant increase in the number of claims being filed, reactivated, claimants filing for permanent-partial awards and many claimants trying to settle old claims that are no longer active. The state of the economy is the obvious reason. Claimants that are no longer employed, laid off or just want to take time off are filing to reactivate their claims. Some of the activities to watch for are the following:

- old claims with no medical treatment in past 6 months
- claims that are out of the employer's experience (we recommend not settling these claims since there is no benefit to the employer.)
- claimants requesting additional allowances in old claims
- claimants filing for compensation benefits on minor claims
- claimants filing for permanent partial awards

## INDEPENDENT CONTRACTOR? ARE YOU SURE?

The Ohio Attorney General and BWC are cracking down on employers who misclassify workers as independent contractors. Some employers do it knowingly to avoid paying the related employee costs, such as unemployment, related taxes and insurance, while other employers just do not understand the rules. Remember these three simple rules:

- direct & control – does the employer direct the contractors activity, provide tools and equipment for the contractor to use?
- financial control – is the contractor paid by the job or by the hour and does the contractor assume the risk for profit and loss?
- relationship – does the employer offer any benefits to the contractor and does the employer have a contract that clearly defines the relationship?

When in doubt, contact the IRS and Department of Labor for clarification. You can refer to IRS publication 15-A 2006 edition for guidance or check the website at [www.irs.gov/pub/irs-pdf/p15a.pdf](http://www.irs.gov/pub/irs-pdf/p15a.pdf).

## 50-50 PLAN PAYMENT DUE

Just a reminder to all employers participating in the BWC 50/50 plan that the second half payment is due by June 1, 2009.

## DO YOU KNOW THE DIFFERENCE?

**Aggravation of Pre-existing Condition** is when a pre-existing condition is worsened by an injury arising in the course of employment. These types of injuries are generally allowed by BWC. An **Exacerbation** is an aggravation of systems or an increase in the severity of a disease such as carpal tunnel.