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2011 Session

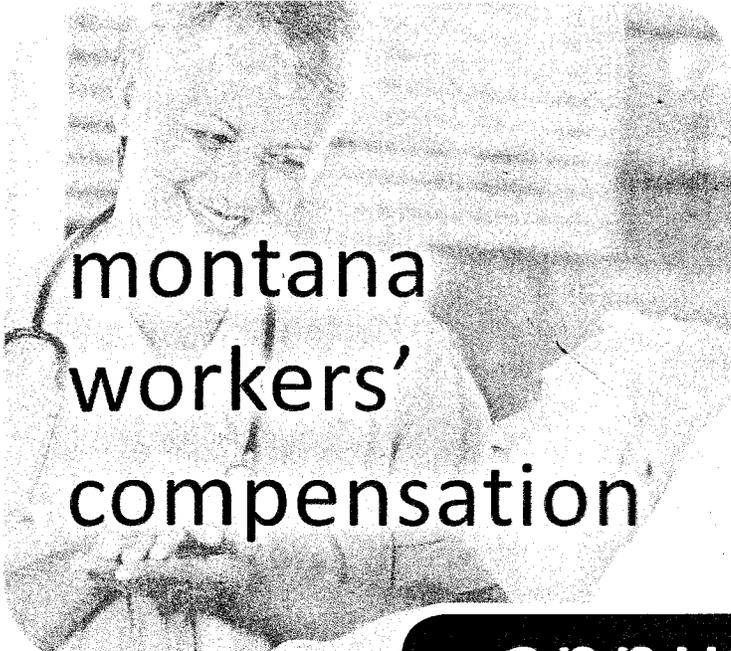
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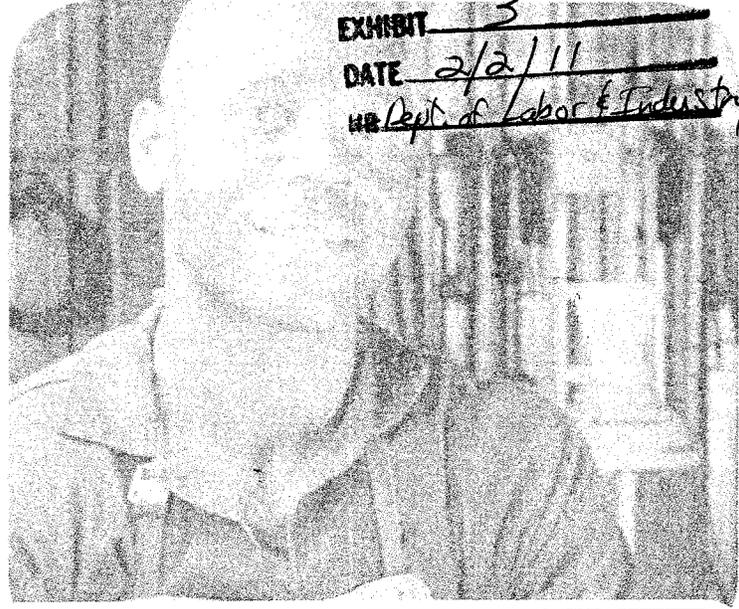
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montana
workers'
compensation



annual report



fiscal year 2009

Montana Department
of Labor & Industry
Employment Relations Division

montana workers' compensation



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Governor Brian Schweitzer
Keith Kelly, Commissioner

Montana

Department of Labor and Industry

Commissioner's Office

Dear Colleagues and Fellow Montanans,

It is my pleasure to present the Workers' Compensation Annual Report for Fiscal Year 2009 to the Governor, the legislature, and to stakeholders in Montana's workers' compensation system. The report provides an overview of system activities and statistics.

Since last year's Annual Report, there has been significant research and work on the workers' compensation system by the Department, the Labor-Management Advisory Council (LMAC) and the Economic Affairs Interim Committee (EAIC). LMAC is an advisory council attached to the Department, composed of representatives of both management and labor that studies and recommends improvement to Montana's system. EAIC was authorized by the 2009 Montana Legislature (SJR30) to study workers' compensation cost drivers in Montana and the laws related to the Montana State Fund.

LMAC continued to study and recommend changes that would reduce workers' compensation system costs, plus reviewed Montana's workers' compensation benefit structure and developed recommendations to modify benefits to improve predictability, consistency, and equity. Another major effort completed during the year was an evaluation and selection of Montana's new utilization and treatment (U&T) guidelines by a cross-section of medical practitioners. The new guidelines, a combination of the Colorado and either ACOEM or ODG guidelines, will be implemented in late 2010. The guidelines are intended to provide evidence-based medical treatments to injured workers while helping to contain the rising cost of medical care.

Created in 2008 by LMAC as a public/private partnership to address workplace safety and return to work, WorkSafeMT held its first Safety Fest in Helena in May 2010. The event was a resounding success in terms of numbers and positive feedback, attracting over 500 participants and 2,900 classroom seats. Additional safety conferences are planned in various locations across the state over the next year. The Stay at Work/Return to Work Committee developed and published "Montana's Best Practices for Stay at Work/Return to Work Programs", while the Communications Committee developed a focused and effective spring social marketing campaign.

We hope you find the information in this report useful in understanding what's happening in Montana's system. The Department is committed to continue working to meet its goals of system wide improvements that serve the interests of Montana's employers and employees.

Sincerely,

A handwritten signature in cursive script, appearing to read "Keith Kelly".

Keith Kelly, Commissioner
Department of Labor & Industry



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Listed below are highlights from the Montana Workers' Compensation Annual Report, Fiscal Year 2009. This report contains information about Montana's workers' compensation system, including injury statistics and characteristics, benefits paid by insurers, dispute resolution and miscellaneous regulatory programs and functions. Unless otherwise cited, all reported numbers, charts, and tables are derived from the Employment Relations Division workers' compensation database (WCAP).

Claims Statistics

There were 28,206 claims reported in Fiscal Year 2009 (FY09) compared with 32,236 reported in FY08, a decrease of 12.5%. From FY08 to FY09, private carriers witnessed a 10.6 decrease in the number of claims reported. The number of claims reported by self-insured carriers decreased by 6.7%. Claims reported by Montana State Fund decreased by 16.8%. The service industry was responsible for 37.4% of all claims reported in FY09, the most of any industry. The most common nature of injury in FY09 was sprain/rupture, which accounted for 43.1% of injuries. Strains, jumping, or lifting (33.2%) caused more injuries than other categories of cause and upper extremities (29.1% of injuries) were more often injured than other parts of the body. In FY09, 6,394 claims were denied by insurers.

Benefits

Total indemnity (wage loss) and medical benefits paid in FY09 were \$247.9 million. Adjusted for inflation, medical payments increased 3%, while indemnity payments decreased 4%.

Dispute Resolution

The Mediation Unit of the Employment Relations Division (ERD) is the front line in dispute resolution. The Unit holds conferences between disputing parties and issues written recommendations. During FY09, the unit processed 1,387 petitions, with a resolution rate of 79%.

The Hearings Bureau received four new petitions for contested case hearings in FY09.

The Workers' Compensation Court (WCC) received 208 petitions, dismissed 51 petitions and issued 191 decisions in FY09.

Workers' Compensation Assessments as Expended

The administration of the Workers' Compensation and Occupational Disease Acts and the various occupational safety laws is funded by an assessment on employers and insurers. The cost of the regulatory functions in FY09 was \$6.84 million. Each insurer is assessed up to 3% of benefits paid. For policies written by private insurers and the Montana State Fund, the assessment is collected as a premium surcharge paid by individual policy holders.

Subsequent Injury Fund

The Subsequent Injury Fund (SIF) payments in FY09 for all dates of injury totaled \$817,130. There were 168 new SIF certifications during FY09 resulting in a total of 4,376 certified individuals in Montana.

Uninsured Employers' Fund

Uninsured Employers' Fund (UEF) provides benefits for injured employees when employers are without appropriate workers' compensation insurance. In FY09, UEF collections decreased 7.8% from FY08, from \$2.1 to \$1.9 million. Injured workers received \$1,381,544 in medical and indemnity benefits in FY09.

Construction Contractor Registration

The Construction Contractor Registration program (CCR) facilitates the registration of construction contractors working in Montana. In FY09 there were 11,107 active Construction Contractor Registrations, with approximately 2,652 contractors registered as having employees.

Independent Contractor Exemptions

Independent contractors who do not wish to be covered under workers' compensation insurance may file for an exemption with the Department of Labor and Industry (DLI). The number of independent contractor exemption applications received for FY09 totaled 7,998, of which 7,682 were approved. Sixty-three percent of independent contractors are in the construction industry.

Professional Employer Organizations

To be licensed, a Professional Employer Organization (PEO) must submit an application and proof of workers' compensation coverage. Forty (40) PEOs were licensed in Montana at the end of FY09. These PEOs leased 2,917 employees to 517 client companies.

It is an objective of the Montana workers' compensation system to provide, without regard to fault, wage-loss and medical benefits to a worker suffering from a work-related injury or disease. Wage-loss benefits are not intended to make an injured worker whole, but are intended to assist a worker at a reasonable cost to the employer. Within that limitation, the wage-loss benefit should bear a reasonable relationship to actual wages lost as a result of a work-related injury or disease.

It is the intent of the legislature to assert that a conclusive presumption exists that recognizes that a holder of a current, valid independent contractor exemption certificate issued by the department is an independent contractor if the person is working under the independent contractor exemption certificate. The holder of an independent contractor exemption certificate waives the rights, benefits, and obligations of this chapter unless the person has elected to be bound personally and individually by the provisions of compensation plan no. 1, 2, or 3.

A worker's removal from the workforce because of a work-related injury or disease has a negative impact on the worker, the worker's family, the employer, and the general public. Therefore, an objective of the workers' compensation system is to return a worker to work as soon as possible after the worker has suffered a work-related injury or disease.

Montana's workers' compensation and occupational disease insurance systems are intended to be primarily self-administering. Claimants should be able to speedily obtain benefits, and employers should be able to provide coverage at reasonably constant rates. To meet these objectives, the system must be designed to minimize reliance upon lawyers and the courts to obtain benefits and interpret liabilities.

Title 39, chapter 71, MCA must be construed according to its terms and not liberally in favor of any party.

The legislature's intent regarding stress claims, often referred to as mental-mental claims and mental-physical claims, is not to provide for compensation under Montana's workers' compensation and occupational disease laws. The legislature recognizes that these claims are difficult to objectively verify and that the claims have a potential to place an economic burden on the workers' compensation and occupational disease system. The legislature also recognizes that there are other states that do not provide compensation for various categories of stress claims and that stress claims have presented economic problems for certain other jurisdictions. In addition, not all injuries are compensable under the present system, and it is within the legislature's authority to define the limits of the workers' compensation and occupational disease system.

¹ §39-71-105, MCA (2005)