
Workers' Compensation and Asthma

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Workers' compensation is the system we use to take care of men and women who are injured at work. It is a trade off. The worker receives benefits regardless of fault, but he or she only receives certain limited benefits.

To be covered under workers' compensation, a disability must "arise out of and in the course of" the employment. This means that the worker must be on the employer's premises and/or engaged in activities that further the interest of his or her employer.

In general it is said, "the employer takes the worker as it find him." We mean by this that work does not ordinarily have to be "the cause" of the disability. It is enough if the work contributes to, combines with, or aggravates a preexisting condition.

Under Michigan law benefits are equal to eighty percent of the worker's take home pay up to certain maximum benefits. The maximum rate for 2000 was \$611.00.

Under workers' compensation, workers are entitled to unlimited medical care related to their disability. There are no co-pays or deductibles.

To be eligible for wage-replacement benefits, the worker must meet the definition of disability by having some limitation in work suitable to his or her

qualifications and training. The worker must also have a wage loss and the wage loss must be the result of the work related injury. If a worker refuses an offer of reasonable employment, benefits are suspended. This puts considerable pressure on employers to make accommodations and find work for injured individuals and puts pressure on the workers to except such offers of work.

There is no time limit on benefits in Michigan. Potentially, a worker who met the criteria discussed above could receive wage loss benefits for the rest of his or her life. This rarely happens, however. In the vast majority of cases, the worker returns to work in ninety days or less. In more serious cases, some dispute often arises after benefits have been paid for a year or two. These disputed cases are most often settled through a "redemption." The worker receives a single lump sum payment and all liability for the employer is terminated.

If there are disputes concerning a workers' compensation claim, the employer or insurer usually terminates the payment of benefits. The worker then hires an attorney and requests a hearing. Hearings are held before Workers' Compensation Magistrates. There is an appeal to the Workers' Compensation Appellate Commission and, on issues of law, parties may seek permission or "leave" to appeal to the Court of Appeals and the Supreme Court.

Michigan law requires that all employers make some provision for the payment of workers' compensation benefits. This most often takes the form of purchasing a policy of workers' compensation insurance. Except for very small employers, these policies are experience rated. This means that the premiums for future years are based on the losses for past years. About 600 of the largest employers in Michigan have received permission to be self-insured. In some cases self-insured employers administer their own claims. In other cases they hire a third party administrator to manage the claims.

About two-thirds of the cases that go through the Michigan workers' compensation system never involve any disputes or litigation. Even these cases, however, require informed input from treating physicians. Most likely, the input will be sought in the form of a request for a written report. The request will usually come from the employer or its insurance company or third party administrator.

If there is a dispute in the case, the opinion of treating physicians is likely to be sought from the attorneys involved in the case. Usually this will begin by a request for a written report. If it appears that the case will go to trial, the parties may arrange the deposition of the treating physician. This means that the parties will come to the doctor's office at a time convenient for the doctor and take his or her testimony as if they were in court.

No judge is present during the deposition. Instead a court reporter records everything that is said and a transcript is typed up and handed to the judge at the time of trial.

In disputed cases, and sometimes in cases when there is no dispute, the parties may send the worker for a second opinion. These evaluations are usually referred to as "independent medical examinations." In some cases, insurance companies or employers use these routinely as a way to monitor the progress of a case. In other cases, these are used specifically to prepare for upcoming litigation.

Workers suffering from asthma present some unique issues in workers' compensation. The expert testimony of the physician treating these patients is often important in the outcome of a claim. First of all, physicians are likely to be asked if the work caused or contributed to the employee's disability. There is currently a debate within the legal community in Michigan as to whether a disability is compensable if the work merely aggravated the symptoms as opposed to changing the underlying condition. If, in your opinion, work caused increased pathologic changes (inflammatory and/or remodeling in the bronchi) it is very important that you make that clear in the form of written reports or testimony given in a deposition.

If, in your opinion, a patient was not allergic to some substance until a work related exposure and has now become allergic as a result of that exposure and will always continue to be allergic, again it is very important that you make that clear in the form of written reports or testimony given in a deposition.

Approximately fifty percent of patients reported to SENSOR apply for Workers' Compensation. Quitting on the advice of a physician is the most likely reason a patient will apply for workers' compensation (Table I).

Overall	46.7%
Still Exposed to Allergen or Irritant at Work/Conditions Unchanged	25.3%
No Longer Exposed to Allergen or Irritant at Work	56.5%
Quit on Doctor's Advice	80.8%
Sick Leave	69.6%
Fired	59.6%
Chemical Substitution	45.8%
Reassigned	28.7%
New Controls	10.0%

If, on the other hand, you believe that this worker suffered from asthma before he went to work for a given employer or before a specific event, you should indicate that. If it appears that a particular exposure or event aggravated the symptoms, you should indicate that.

If, in your view, the symptoms were aggravated for some specific period of time, it is also important to delineate the period during which the worker was worse off as a result of the work related event or exposure.

Physicians are also likely to be asked about the extent to which the patient's asthma interferes with his or her ability to work. You should indicate your best judgement as to the extent to which the asthma causes the patient to be able to perform strenuous or vigorous activities and also the extent to which the worker should avoid various exposures.

Whenever possible, it is in the best interest of both the worker and employer if the physician can work together with the parties to find a reasonable way in which the patient can return to gainful employment. If a case is contested it takes on the average 1 year for the case to be decided.

Continuing Medical Education Course

Are you interested in learning more about the Michigan Workers' Compensation System and the Healthcare Provider's role in that system?

In cooperation with Mr. Welch, we are considering setting up a one-half to full day Continuing Medical Education course.

If you might be interested in such a workshop please call our toll free number 1-800-446-7805.

MARK YOUR 2001 CALENDAR!

The **3rd International Symposium on Silica, Silicosis, Cancer and Other Diseases** will be held September 8-13, 2001 in Santa Margherita Ligure, Genoa, Italy.

The Symposium will highlight new research related to silica's role in causing silicosis, TB, lung cancer and other workplace malignancies. The program will also focus on regulatory policies, risk assessments, and methods for prevention of all silica-related diseases.

For more information or to preregister, contact the Scuola Superiore di Oncologia e Scienze Biomediche at:

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In this issue: Workers' Compensation and Asthma

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