

WHO WE ARE...

With offices in Salinas, Monterey, Watsonville, and Santa Cruz, California, Rucka, O'Boyle, Lombardo & McKenna have served Monterey Bay employees for over 35 years in workers' compensation, personal injury, and social security-disability matters.

Strong community ties and dedication to the representation of injured workers has lead to the creation of one of the largest law firms in the state devoted to representing injured workers.

The firm boasts among its credentials, the presence of four past-presidents of the California Applicants Attorneys' Association, an organization dedicated to the preservation of injured workers' rights.

Rucka, O'Boyle, Lombardo & McKenna also represents plaintiffs in personal injury, product liability, and wrongful death matters as well as individual claimants in social security-disability hearings.

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AREAS OF PRACTICE:

- Workers' Compensation
- Personal Injury
- Social Security-Disability

For more than 35 years, Rucka, O'Boyle, Lombardo & McKenna have fought to obtain benefits for our disabled clients. We have done so in the belief that our clients have become disabled through no fault of their own. We have always tried to level the playing field providing quality legal representation for injured workers who are opposed by highly-paid insurance company attorneys.

In the past few years, major changes have occurred in the law that will affect the rights of all workers including those who have been injured and those who will become injured in the future. Currently, many injured workers are having critical medical treatment delayed or denied because of the legislative changes requiring that the treatment your doctor recommends comply with the standardized treatments found in a book of medical guidelines put out by ACOEM—The American College of Occupational and Environmental Medicine. If the treatment does not comply with ACOEM, the insurance company will deny it swiftly.

It is our hope that through this newsletter that we will send periodically to you, we will be able to help you understand what is happening and why it is happening.

Workers' Comp "Reform" 2004...An Insurance Company Handout Paid for on the Backs of Injured Workers

On April 19, 2004, Governor Schwarzenegger signed a workers' compensation bill into law that has set back injured workers' 50 years. Here's what the new law does:

- Forces injured workers to see only company doctors. They must see three company doctors and a fourth state-approved reviewer who determines if the worker can see a doctor outside the company pool. The medical reviewer's decision is final, and the worker never sees the report. "Free choice" from a pool of company doctors is no choice.
- Reduces penalties against insurance carriers for delays in medical treatment or disability payments despite state audit data that consistently shows widespread delays. Penalties were too low to deter misconduct. Now, they are lower.
- Eliminates job retraining benefits for those who cannot return to work.
- Implements American Medical Association guidelines for rating disability despite the AMA's own admonishment that they should not be used for such purposes. This will severely reduce benefits for workers who suffer pain that cannot be identified by MRI or x-ray.
- Cuts off temporary disability payments after two years. This hurts the seriously injured including those workers who undergo spinal surgeries and those with multiple or failed surgeries. It shifts the burden to taxpayers as injured workers who lose disability payments will receive social security or state disability.
- Reduces benefits to workers with non-work-disabling underlying conditions such as arthritis, osteoporosis, hypertension, and many others, requiring injured workers prove these underlying conditions were not responsible. It inserts fault into a no-fault system. It is an attack on the elderly who naturally have more underlying conditions.
- Requires immediate medical treatment up to \$10,000 for work injuries until the claim is accepted or denied. This was the only change to the law that may have actually benefited injured workers. Unfortunately, insurance companies have already developed a scheme to avoid this: Deny claims immediately.

- Replaces the disability standard that considered one's "diminished capacity to compete in the labor market." Simply put, if an injured worker returns to work at the same job, but her earning capacity remains the same, she is penalized. The lifetime consequences of the worker are discounted. For example, if a person can continue to work as an accountant, she receives no increased benefits just because she's paralyzed from the waist down because accountants work sitting down anyhow.
- Limiting physical therapy and chiropractic visits to 24 lifetime visits, even when an injured worker is recovering from surgery.

The governor, while accepting massive cash contributions from workers' compensation insurance companies, blocked Democratic efforts to re-regulate insurance rates so that the savings would be passed on to businesses. With such regulation absent, carriers have ignored Insurance Commissioner Garamendi's advisory rate for two consecutive years. Last year, he expected \$7 billion in cuts to produce premium reductions of 14.9 percent. The average rate reduction was 3.6 percent with State Fund, which controls almost 60 percent of the market, cutting rates by 2.9 percent.

Recently, Garamendi recommended a 20.9 percent rate reduction sparking State Fund to cut rates by 7 percent. Again, injured workers had their benefits cut and again, the insurance companies will pocket the savings.

The nearly 100-year old contract with California workers was created as an employer protection; workers surrendered the right to sue employers for work injuries in exchange for certain guaranteed benefits such as medical treatment and disability payments. The injured worker, however, has almost always ended up short in the bargain, meeting insurance company resistance at every step. Now, the bargain has been obliterated.

WHAT CAN YOU DO?

If your employer offers health insurance, you are permitted to "pre-designate" your personal physician as the doctor who you would like to treat with in the event of a work injury. When company doctors are put in place beginning in January,

you will not be required to treat with one if you have pre-designated your personal physician. Rucka, O'Boyle, Lombardo & McKenna recommends that you obtain written proof documenting that you have pre-designated your personal physician.

REGISTER TO VOTE

The most powerful thing you can do is register to vote. We will provide further information in the next newsletter regarding the November elections.

KNOW YOUR RIGHTS

BECAUSE OF THE CHANGES IN THE LAW, IT IS NOW EVEN MORE IMPORTANT TO SECURE LEGAL REPRESENTATION IMMEDIATELY UPON SUSTAINING A WORK INJURY.