

# The JLF Report

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## Workers' Comp Bill Passed

On June 26, 2007, Governor Mark Sanford signed a bill which significantly changes many aspects of South Carolina's workers' compensation laws. While some changes will reduce the rights of injured workers, there were also some changes which will help hold workers' compensation insurance companies more accountable for a failure to promptly pay benefits or provide medical care. In this article, Ken Harrell, the head of the Joye Law Firm's workers' compensation/social security disability department, summarizes the most significant changes which have been made, and then provides a brief opinion on how the change will affect injured workers. As a member of the executive committee of the Association of South Carolina Workers' Compensation Claimants' Attorneys, Mr. Harrell was very involved in lobbying efforts over the past two years directed at protecting the rights of South Carolina's workers.

**CHANGE:** Appeals - Appeals will now go directly from the Workers' Compensation Commission's appellate panel to the South Carolina Court of Appeals, as opposed to going to a circuit court judge before going to the Court of Appeals.

**EFFECT:** There is a split of opinion about whether this is a positive change. I believe it is as the circuit court appeal rarely results in a reversal of what has been decided by the Workers' Compensation Commission, and it adds another nine months to a year to the appellate process. This additional time can have a severe effect on an injured worker.

**CHANGE:** The penalties for insurance fraud have been increased and the definition of fraud has been expanded to include misrepresentations by employers and insurance companies.

**EFFECT:** Fraud hurts all honest injured workers and employers. This change makes it clear that the fraud provisions were never intended to be solely directed at injured workers, but also cover fraudulent employers and insurance companies.

**CHANGE:** Truck drivers who own or have a lease purchase agreement for a truck and who enter into a valid independent contractor contract may be exempted from workers' compensation coverage.

**EFFECT:** This is dangerous provision as it encourages specific industries seeking to have exemptions to coverage carved out. Independent contractors have always been excluded from the Workers' Compensation Act. Unfortunately, some trucking compa-

nies will now try to keep their drivers from receiving workers' compensation benefits. This provision has several complicated factors. If you are injured while working as a truck driver, seek legal advice if your employer advises you that you are barred from workers' compensation coverage.

**CHANGE PREVENTED:** Number of Commissioners - the original workers' compensation bill passed by the Senate would have expanded the number of Commissioners from seven to nine. The bill which was eventually passed did not increase the number of Commissioners.

**EFFECT:** This is a positive change made to the original bill. There was no need shown for the increased number of Commissioners now that evidentiary hearings are typically being held in approximately four months from the date a hearing request is filed.

**CHANGE:** Contempt powers for the Workers' Compensation Commission - the bill has given the Workers' Compensation Commission power to hold parties in contempt. If an insurance company fails to properly pay an award or provide ordered medical treatment, the commission may order the insurance company to pay the injured worker's attorneys' fees

related to enforcing the order and the insurance company may be fined up to \$500.00 per day for the violation. Further, if an insurance company is guilty of a pattern of failure to properly pay ordered benefits (three or more intentional failures within two years), the Commission is to report the failure to the Department of Insurance and the Department of Insurance may revoke the insurance company's license.

**EFFECT:** This is a positive step in forcing insurance companies to meet their legal obligations.

**CHANGE:** Specific values for the shoulder and hip - The new law values the shoulder at 300 weeks of benefits and the hip at 280 weeks of benefits. In the past, the shoulder was typically valued as the arm (220 weeks), or it was valued at an even lower figure of 180 weeks by some Commissioners. The hip had typically been valued as the leg (195 weeks).

**EFFECT:** This is a gain for injured workers with shoulder or hip injuries. It recognizes that a shoulder or a hip injury is significant to workers who perform manual labor. It will also still allow workers with these injuries to pursue benefits for permanent, partial disability or total and permanent disability, if appropriate.

*(continued on p. 2, "Workers Comp Bill")*



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# Workers' Comp Bill (continued from page 1)

**CHANGE:** Pre-existing conditions - An employee who suffered from a pre-existing health problem (such as heart disease or diabetes) may have this pre-existing condition factored into a determination of their injury-related disability only if the employee has medical evidence to show that the work injury aggravated the pre-existing health problem (or vice versa). If the work injury is limited to one body part and another body part is not affected, the injured employee can only receive compensation for the scheduled injury.

**EFFECT:** This change addressed a Supreme Court decision issued in November of 2006. This decision held that an employee's pre-existing health problems could be factored into a disability determination by a workers' compensation Commissioner, even if the work injury had not aggravated the pre-existing condition or the work injury was not worsened as the result of the pre-existing condition. Obviously, we would have preferred to keep this standard as it gave disabled workers a better chance to receive full benefits. This provision was one of the key goals of the Chamber of Commerce and we knew it would be difficult to prevent this change from occurring.

**CHANGE:** Approval of settlement agreements - Commission approval will no longer be required for settlements where the injured worker is represented by an attorney. It is only required that the settlement agreement be filed with the Commission. Unrepresented workers must still go through an approval process before their settlement can be finalized.

**EFFECT:** This is a positive change for injured workers as it will expedite when workers can receive their settlement benefits. Being able to avoid the delay of having to go through an approval hearing for your settlement is another reason why workers with significant injuries should consider retaining an experienced attorney.

**CHANGE:** Repetitive trauma - Provisions were passed addressing the requirements for a viable repetitive trauma claim. These provisions require that the injured worker

have medical evidence showing a causal connection between their repetitive work activities and a resultant injury. The employee must also give notice of the repetitive trauma injury within 90 days of when he or she knew or should have reasonably known that their condition was compensable. A two-year statute of limitations will begin to run from the same date.

**EFFECT:** The requirement of medical evidence establishing a repetitive trauma claim will have no significant effect on how these claims are handled. No good lawyer is willing to pursue these claims without having a doctor stating that the repetitive work activities caused the injured worker's injury. These are complicated cases to pursue. The time requirements could end up trapping some employees. If an injured worker believes he has a legitimate repetitive trauma injury claim, he should immediately contact an experienced attorney.



**CHANGE:** Future medical care - An employee who settles his workers' compensation claim on a Form 16 will not be entitled to any medical coverage after one year from the date of the settlement unless the Form 16 specifically states the medical coverage to be provided. Awards by the Commission must also make specific findings regarding what future medical treatment will be provided to an injured worker. Further, an injured worker's entitlement to future medical coverage may be voided if the employee has a lapse of treatment for more than one year.

**EFFECT:** The possible ramifications from these changes are huge. Thousands of unrepresented injured workers will end up having their future medical rights ended based on the way they settle their workers' compensation cases. This has been a problem in the past but it has now become even more crucial that injured workers are careful about how they settle their workers' compensation cases. If a worker has an injury that is likely to result in their having future medical needs, I would strongly urge them to talk to a good workers' compensation lawyer. Otherwise, they are going to step on a land mine and never know what hit them.

**CHANGE:** Insurance company attorneys, adjusters, and rehab nurses contacting an employee's doctors - the new law gives insurance company representatives greater latitude in when and how they can contact an injured worker's doctors. The law does include certain requirements about the notice to be given to the injured worker (or the injured worker's attorney) about the planned direct contact with the injured worker's doctors. Failure to give notice could prevent the insurance company from introducing any reports received from the doctors as the result of the direct contact into evidence.

**EFFECT:** This provision was another goal of the Chamber of Commerce. There have been abuses in the past when an injured worker's doctor was contacted by an insurance company representative outside of the worker's presence. When you consider that South Carolina law allows the insurance company to choose an injured worker's doctors, it is a dangerous change to now allow defense attorneys, adjusters, and rehab nurses to talk to the worker's doctors without more safeguards to prevent the doctors from receiving false information. Hopefully, the expanded insurance fraud provisions will apply to this type of fraud.

**CHANGE:** Eventual abolishment of the South Carolina Second Injury Fund - the South Carolina Second Injury Fund has reimbursed employers and insurance companies for some of their workers' compensation costs in cases where an injured worker's disability was increased because of the existence of a pre-accident health problem or a previous injury to the same body part injured in the work accident. The new law will result in the Second Injury Fund's abolishment as of July 1, 2013.

**EFFECT:** There is some concern that the abolishment of the Second Injury Fund will make it harder for persons with pre-existing disabilities to find employment. The South Carolina Small Business Chamber of Commerce concluded that the abolishment of the Fund will cause the premiums of smaller businesses to be increased.

*(continued on p. 3, "Workers Comp Bill")*

# JLF Awards \$2,500 Scholarships To Four Local High School Students



*Pictured at left (l. to r.) are JLF attorneys Tina Walker and Ken Harrell, North Charleston winner Jo Lisa D'nise Dickinson, JLF attorneys Reese Joye, Amy Rothschild and Mark Joye*

Again this year, Joye Law Firm presented four \$2500.00 college scholarships to graduating seniors from local area high schools to assist them with their college expenses. This year, the four scholarships were awarded to graduating seniors from Goose Creek, Hanahan, North Charleston and Summerville High Schools.

Selection of the recipients is based on an application process, which includes requests for information about each candidate's school activities, positions of leadership, special honors and awards, community and religious involvement, academic performance, and academ-



*JLF attorney Ken Harrell is shown at left with Hanahan High winner Joseph L. Bishop.*

ic and professional pursuits. In addition, each candidate is asked to write a short essay addressing the topic of teen-agers drinking and driving. This year, students were asked to write an essay as to how to influence their friends not to drive under the influence of alcohol.

Upon selection, each candidate is personally presented with their award followed by a dinner hosted by Joye Law Firm attorneys and attended by the recipients and their families.

Joye Law Firm wishes to congratulate this year's recipients: Kimberly Dodson of Goose Creek High, Joseph L. Bishop of Hanahan High, Jolisa D. Dickinson of North Charleston High, and Joseph P. Current of Summerville High.



*Pictured above is JLF attorney Matt Jackson and Goose Creek winner Kimberly Dodson.*



*JLF attorneys Ken Harrell and Reese Joye are pictured above with happy Summerville High winner Joseph P. Current.*

## Workers' Comp Bill (continued from page 2)

**CHANGE:** Loss Cost Multiplier - The new law requires that all workers' compensation insurance companies must file information with the Department of Insurance regarding their costs and profits.

**EFFECT:** This is a very complicated but extremely useful provision. We can all be grateful to Senator Glenn McConnell for his leadership in insuring that the new law included provisions to shed more light on the practices of our state's workers' compensation insurance companies, and to require these companies to open up their books to more accurately reflect what their costs and profits are in South Carolina. To have passed a law reducing the rights of injured workers without including this provision would have been shameful.

**CHANGE PREVENTED:** No study committee formed - under the original bill passed by the Senate, a workers' compensation task force consisting of three senators and three house members would have been created to further study our workers' compensation law over the next five years. The final bill passed did not create this task force.

**EFFECT:** This was a positive change made to the original Senate bill. I cannot imagine any topic being more intensely studied and debated than our state's workers' compensation laws have been over the past few years. The creation of this task force would have resulted in an ongoing debate

over the next five years. The only persons who would have benefitted from this would have been lobbyists working for the insurance industry.

### FINAL THOUGHTS:

In politics, you cannot win them all. While there are certain aspects of this new law which I believe are dangerous for injured workers, the law which was passed was far different from the mean-spirited proposals which were made by the Chamber of Commerce when this debate first started several years ago. Thanks to countless hours spent by attorneys who devote their lives to representing injured workers, we were able to get some pro-worker provisions included in the law. While there were numerous persons who worked hard for our state's injured workers, I would like to give special recognition to three persons who went above and beyond in this fight. These persons are Coretta Bedsole, the executive director of the Association of South Carolina Workers' Compensation Claimant's Attorneys; Hood Temple, a Florence attorney who is the current president of this association; and David Pearlman, a Charleston attorney who headed up our association's legislative efforts. I am proud to call each of these persons my friend. If you are a worker in South Carolina, you may never know these persons but they are certainly your friends also.



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## Joye Law Firm's Recycling Program To Benefit Children With Burn Injuries



Pictured above, from left to right: Erin Rojas (JLF workers' compensation paralegal); Amy Rothschild (JLF product liability attorney); Fireman Andrew Frateroli (Station 2, Town of Mt. Pleasant); and Patrick Jennings (JLF workers' compensation attorney).



Joye Law Firm, L.L.P., has commenced a program of internally recycling its aluminum soft drink cans. In June, JLF delivered its first installment of bagged cans to Fire station No. 2, located off of Longpoint Road in Mt. Pleasant, South Carolina. Many local fire stations in the area collect cans for recycling for the Burned Children's Fund at the Medical University of South Carolina's Children's Hospital. The South Carolina Children's Hospital's Burn Unit cares for about 100 inpatient and almost 400 outpatient youths each year.

Proceeds received through this recycling program pay for non-medical and service items necessary to the physical and emotional recovery of pediatric burn patients, including rehabilitation equipment and wound care dressings, and image enhancement programs and items like school re-entry programs, and wigs, make-up and special clothing. The funds from the recycling program are also used for other purposes, including to educate children and families about burn prevention and care, to provide funding for families during treatment such as lodging, food and transportation, and to pay for a special annual camp for burned children called "Camp Can Do." It is expected that this summer's camp will be attended by 50 children ranging in age from six (6) to seventeen (17).

How can you help? It's easy. Take your cans from home or place of employment to your local fire department. JLF plans to continue supporting this worthwhile program.

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