

Legal Notes: December 2015

It was with some alarm that I read through an e-mail from Bill Brockmiller last week regarding changes to the workers compensation law. You may recall that my column last month discussed how the State legislature had upset decades long settled law regarding unemployment compensation and the misconduct standard, a standard that worked well since at least World War II. Now, the State legislature is overturning the even longer standing workers compensation law.

For the last one hundred years, since Wisconsin became the first state with a comprehensive workers compensation statute, our law has been viewed nationally as one of the WC laws that worked, and worked well. WC insurance rates are not skyrocketing in Wisconsin, and no worker is getting "rich" off a work related injury. Claims are dealt with relatively quickly and fairly. Now the Republicans want to break what isn't broken.

Also, at least for as long I've been practicing, all changes to the workers compensation came through an Advisory Council, made up of labor, insurance and business. This panel of experts then recommended changes, which the legislature dutifully passed. Some changes were good, some not, under this system. Now the legislature is bypassing this Advisory Council. The message from Bill mentioned a bill now pending that did not come out of, or was reviewed by the Advisory Council, that makes even more dramatic changes in the WC law. These changes include an astounding provision for contributory negligence.

When the original WC law came into effect a hundred years ago it created a "grand bargain," namely that employee no longer needed to prove that an employer was negligent and in return the employee would receive a smaller but more certain compensatory payment. Under this Spiros proposal, an employee would face a reduction in compensation if an injury were caused by negligence attributable to the employee. This change effectively re-introduces the negligence standard back into WC law without any changes in the compensatory rates (indeed, under other various proposals compensatory rates would be frozen or not allowed to change much any longer).