

White Paper: Comparing the Stated Purpose of the Louisiana Second Injury Fund with the Actual Behavior of the Louisiana Second Injury Board. Oct 30, 2007

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The statute claims that the purpose of the fund is to encourage the employment of physically handicapped employees. What is a physical handicap? Is alcoholism a physical handicap? The answer to this question is beyond the scope of this paper.

PART V. LOUISIANA WORKERS' COMPENSATION SECOND INJURY FUND

§1371. Purpose and construction

A. It is the purpose of this Part to encourage the employment of physically handicapped employees who have a permanent, partial disability by protecting employers, group self-insurance funds, and property and casualty insurers from excess liability for workers' compensation for disability when a subsequent injury to such an employee merges with his preexisting permanent physical disability to cause a greater disability than would have resulted from the subsequent injury alone.

B. This Part shall not be construed to create, provide, diminish, or affect in any way the workers' compensation benefits due to an injured employee. The payment of compensation to an injured employee under this Chapter shall be determined without regard to this Part, and the provisions of this Part shall be considered only in determining whether an employer or his insurer is entitled to reimbursement from the Workers' Compensation Second Injury Fund herein created.

However, for an accident occurring on or after October 1, 1995, and approved by the Louisiana Workers' Compensation Second Injury Board, the employer, if self-insured, or the insurer shall obtain prior written approval from the board of any lump sum or compromise settlement of the claim as provided for in Part III of this Chapter, to be entitled to reimbursement.

C. As used in this part, the merger of an injury with a preexisting permanent partial disability is limited to the following:

(1) The subsequent injury would not have occurred but for the preexisting permanent partial disability; or

(2) The disability resulting from the subsequent injury in conjunction with the preexisting permanent partial disability is materially and substantially greater than that which would have resulted had the preexisting permanent partial disability not been present, and the employer has been required to pay and has paid compensation for that greater disability.

Added by Acts 1974, No. 165, §1. Amended by Acts 1977, No. 267, §1, eff. Oct. 1, 1977; Acts 1983, 1st Ex. Sess., No. 1, §6; Acts 1995, No. 188, §1, eff. June 12, 1995; Acts 1995, No. 245, §1, eff. June 14, 1995.

A number of states have elected to drop their SIF programs. The cost savings promised by the insurance industry have not materialized and the willingness of the employer community to hire workers with physical impairments declined. Surprise!

The Second Injury Fund allows an employer to ask health questions that they could not otherwise ask due to medical privacy laws. With no Second Injury Fund critical health information that could be used to prevent an accident or medical complications is off limit to the employer.

What types of physical handicaps are bars to employment? Diabetes is a presumptive condition. The presumption means that the employer does have to prove that the medical condition was a bar to employment. Deafness, sickle cell anemia, alcoholism, the inability to read or write is some examples of conditions at are not considered presumptive conditions. If you hire an employee with any of these conditions then you will need to prove that you considered it a bar to employment. How?

Benchmarking Information:

RiskSAVER's experience shows that 25 out of every 100 lost time claims can result in a potential Second Injury Fund claim. From 1994 through 2003 the Second Injury Board approved 33% of the cases presented for consideration. Today the Second Injury Board approves less than 10% of the cases submitted for consideration.

In 2004 the Second Injury Fund thresholds were raised from \$7500 for medical to \$25,000.00 and from 104 weeks of disability benefits to 130 weeks. Before the thresholds were changed about 35% of the cases submitted to the Second Injury Board met the threshold requirement, today less than 12% of the cases submitted will reach threshold.

The Second Injury Fund is financed by assessments. The Second Injury Board determines the expected level of the funds it needs in order to pay reimbursement request in the next calendar year and dividing that sum by the total of all medical and disability benefits paid in the prior year. For example if the Second Injury Fund needs to raise 50,000,000 to pay reimbursements and in the period year all employers paid out 500,000,000.00 in medical and indemnity benefits then the assessment rate will be 50M divided by 500M or 10%. Each employer is then assessed based on their prorate share of the 500M. If you paid \$100,000.00 in medical and disability benefits then your assessment for the New Year would be \$10,000.00. If you pay the assessment and also recover \$10,000.00 from the fund then you break even.

The assessment formula is one reason why selecting the correct TPA to handle your claims is a critical decision. If the TPA does not investigate your claims, or identify potential SIF claims, or overpays benefits or overpays settlements then your assessment will be higher then the norm. In 1997 the average cost of a lost time claims for a self insured employer was 30% less then the cost of claim handled by an insurance company.

Why? The claims handling approach is the critical factor in the average cost of a closed claim. You paid an SIF assessment based on their results.

To find out more about the Louisiana Second Injury Fund and how to use it effectively call RiskSAVER at 504-840-9946 or send your email to gary@risksavers.com