

**VOLUNTARY COLLECTIVELY BARGAINED WORKERS' COMPENSATION (VCBWC)
IS ILLINOIS READY FOR A CREATIVE OPT-OUT SYSTEM
TO REDUCE COSTS AND IMPROVE WORKPLACE SAFETY?**

There is new legislation for change in workers' compensation -- Voluntary Collectively Bargained Workers' Compensation (VCBWC). This concept would allow employers to opt out of the Illinois Workers' Compensation System and use a private network of physicians and mediators to handle work issues and resolve workers' compensation cases.

Collectively bargained workers' compensation allows labor and management to meet their workers' compensation needs by shaping a policy that is fair and equitable. Employers and union leaders are provided greater decision making authority in the medical management and resolution of disputes.

While it is a relatively new topic in Illinois, this practice has proven successful in 10 states. These states have reported a more efficient system benefitting the injured worker and their employer. Many Chicago labor and large construction companies are taking notice and leading the charge for its quick resolution and its focus on return to work.

VCBWC includes the following elements:

- **Panel of physicians from which injured employee must select a treating physician**
- **Panel of independent medical examiners**
- **Panel of vocational counselors**
- **Assigned insurance or TPA adjusters and case managers**
- **Aggressive return to work programs (transitional duty)**
- **Impartial "ombudsperson" to intervene informally in order to resolve a dispute before it becomes adversarial**
- **A labor-management committee that oversees the VCBWC program and contains drug-free workplace provision and other strong safety elements**
- **Modification to the statutory resolution of workers' compensation claims as follows:**
 - **Intervention by "ombudsperson" within certain time of dispute's existence**
 - **Mediation of dispute by panel mediator within specified time frame following failure of "ombudsperson" intervention**
 - **Arbitration of dispute upon failure of mediation by panel arbitrator within specific time from of mediation failure (lawyer participation allowed). Arbitration governed by similar substantive, procedural and evidentiary rules to normal worker's compensation arbitrations.**
 - **Appeal permitted beyond Arbitration within certain time frame to worker's compensation board or commission, or appeal skips to appellate court level.**

Recently, the Construction Industry Service Corporation (CISCO) produced a video promoting a Voluntary Collectively Bargained Workers' Compensation System. [Click here to download and watch the video.](#) These industry leaders (which includes large construction companies and representatives from nearly every building trade) formed CISCO in the Chicagoland area. CISCO currently represents over 8,000 union contractors and 140,000 workers in Cook, DuPage, Lake, Kane, Kendall and McHenry Counties.

SafeWorks Illinois in its efforts to stay on the cutting edge of the Illinois Workers' Compensation System - first presented this issue at the 15th Annual Work Injury Conference in October 2007.

Angie King, RN, COHN, MS, Director of the Midwest Region Laborer's Health and Safety Fund of Springfield, Illinois spoke about the successful Olmstead Dam Project which was a "win-win" for employers, insurers, and union employees. A memorandum of understanding (MOU) was signed between labor and management that took advantage of the already existing Section 8(a) Closed Physician Panel provision. The MOU was approved by the IWCC and voluntary arbitration was adopted.

Dr. David Fletcher of SafeWorks Illinois was asked to speak in the recent CISCO video. He spoke from his vast experience working with injured workers and how he felt the current IWCC system is not functioning well to the detriment of the injured worker and the improvements that can be made. In fact, SafeWorks Illinois has been working with Amy Masters, the IWCC Acting Chairperson, to recommend new rules and regulations. The current system is flawed because it can take too long to get an injured worker through the system and back to work. Medical care is fragmented and it is hard to get approval for treatment which is detrimental to the worker and the employer who wants their top assets, their injured employee, back to work and productive.

Rep. David Reis (R, Olney 108th District) who spoke at the 16th Work Injury Conference, sponsored HB 58 that included provisions for VCBWC, along with other proposed changes for the IWCC. The bill was not moved out of the Rules committee during the Spring 2009 session. John Brining, the executive director for CISCO that produced the ground-breaking film production advocating for VCBWC, said, "We hope to have a new bill ready for the 2010 legislative session. We have distributed over 300 of the video/media kits and have another 200 on hand for future workshops."

For more information on CISCO's views on Voluntary Collectively Bargained Workers' Compensation, [click here](#).

[Seabright Insurance](#) has pioneered the writing of VCBWC policies nationwide and has offices in Chicago. Claims staff do not get tied up with lengthy cases and litigation with swift, non-adversarial resolution of claims, according to Marguerite Diken, Vice President, Midwest Region, Seabright. This unique labor management agreement opens the door to new markets that other insurance carriers avoid.

Some petitioner attorneys are not in favor of this concept and have raised concerns over this potential legislation. They fear they may be asked to be involved too late in the process when initial negotiations do not result in a settlement causing even further delay.

Several petitioner's attorneys have spoken out against VCBWC legislation. They believe that any legislative change is unnecessary because the Illinois Workers' Compensation Act (WCA) already contains provisions that allow employers and unions to craft alternatives to prevent litigation at the IWCC, e.g.: Section 8(a) Panel of Physicians; Section 19(P) Binding Arbitration; and Section 19(b) approval of pro-se settlements. Many also believe that self-insured employers and insurance carriers will not save money with collective bargaining agreements (CBA) because they will not be exempt them from IWCC assessments in place to help pay for the administration and operation of the Illinois WCA and the IWCC through the premium and payroll taxes.

Both the petitioner's and respondent's bar have concerns VCBWC may affect their livelihood but veteran respondent's attorney Gene Keefe believes the IWCC system is so flawed that he is willing to give any "reform" a chance to work; though he doubts union "members will give it all up for a program that appears to make a lot more sense. It is hard to say it would be a monster success without seeing it in action. We vote to reform the current system and make it do everything the "new" system would do. If you think this "opt out" process is better than our current WC system, why does it have to be limited to the construction industry and construction unions?" asks Keefe.

Contrary to many attorneys' fears, an injured worker's right to counsel should not be eliminated at any stage of a VCBWC proceeding, if Illinois adopts enabling VCBWC legislation.

In SafeWorks Illinois' opinion, VCBWC is going to work best in only certain employment situations. Larger employers at fixed locations having union employees will benefit most from VCBWC. Larger construction projects spanning a year or more, such as the possible Olympic Games in Chicago in 2016 which will require having many union crafts, will also gain from a VCBWC agreement. Smaller, "mom and pop"

employers will not gain enough advantage from a VCBWC program to make it worthwhile. A good VCBWC program also needs a large number of physicians and hospitals knowledgeable and experienced in the management of work-related injuries.

Mike Holt, a respondent's attorney who works for Hennessey and Roach, believes what is critical to passing VCBWC in Illinois is assuring that the attorney-client and physician-patient privileges are maintained. In addition, he believes VCBWC in Illinois must complement the current system, not supplant it. In other words, Holt believes VCBWC oversight should fall under the jurisdiction of the Illinois Worker's Compensation Commission. And, to be most effective, collectively bargained worker's compensation should skip the Commission level of review and go directly to the circuit court or a reduced panel of the appellate court, worker's compensation division. Also, the standard of review, post arbitration, should be limited to errors in the application of law and fraud. Findings of fact are conclusive, which means a more strict review than the current, manifest weight of the evidence standard. If these precautions are followed, no genuine objections to adoption of VCBWC in Illinois remain.

In summary, VCBWC is an alternative dispute resolution that provides a cost-effective solution to the expensive, highly litigious workers' compensation system. It offers a closed panel of physicians to provide high quality medical care delivered in a timely fashion to injured workers. VCBWC reduces litigation costs by shortening the average indemnity claim lifespan. It will help the Illinois construction industry be more competitive and could become a model for expanding this novel concept to other segments of the Illinois economy.

What are your thoughts? [Click here to take a survey on Voluntary Collectively Bargained Workers' Compensation and share your thoughts.](#)

ABOUT SAFEWORKS ILLINOIS

SafeWorks Illinois provides comprehensive occupational health services and return to work programs to create safe, drug-free business and industries. SafeWorks' ultimate goal is to promote wellness in the workplace by developing prevention programs, providing injury treatment and industrial rehabilitation services that deliver results to help employees recover, rehabilitate and return to work. SafeWorks Illinois provides 24-hour access to doctors and 'Fast-Track' services with offices in Decatur, Champaign and Chicago. www.safeworksillinois.com

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