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SPECIAL REPORT: TOP CHALLENGES OF 2006

PATAKI'S LAST SHOT

N.Y. Urged To Follow Calif. Lead On WC

Reforms make sense, but lame duck governor might have trouble gaining approval

BY LINDA DAKIN-GRIMM AND FELTON NEWELL

WITH THE CLOCK TICKING down on his final term, New York Governor George Pataki recently announced a workers' compensation reform plan quite similar to one he advanced unsuccessfully nearly two years earlier, addressing a critical problem facing his own and many other states—out-of-control costs.

While Gov. Pataki's plan likely will suffer the same fate as the one he introduced in 2004, it contains several elements that, if implemented, could help mend the state's broken workers' comp system.

New York's recent workers' comp performance generally mirrors that of other states. According to the National Academy of Social Insurance, employer costs for workers' comp insurance nationwide were high in the early 1990s, dipped slightly in the late 1990s, and rose sharply in the early part of this decade.

From 1990-1994, costs to employers averaged $2.13 per year, per $100 of wages. In the last half of the 1990s, a combination of reform packages implemented by states, including cash benefit reductions and other economic and workplace forces, resulted in lower costs for employers. By 2000, the average cost to employers had been cut to $1.32 per $100 of wages. However, between 2000 and 2003, these costs shot up by nearly 30 percent to $1.71 per $100 of wages.

As with the national trend, while cash benefits paid to injured New York employees have remained constant over the last decade, the overall cost to employers for workers' comp insurance has increased precipitously. In fact, the problem is even more acute in New York, where employer workers' comp costs are approximately 70 percent higher than the nationwide average.

While cash benefits paid to New Yorkers injured on the job have been stable for 10 years, overall workers' comp costs are 70 percent above the national average.

This is largely the result of higher administrative costs as well as a lack of limits on long-term disability benefits. The average cost of administration of a workers' comp case is higher in New York than in 48 other states.

As a measure of the administrative inefficiencies in the New York system, while maximum cash benefits for injured workers in New York are $400 per week, nearby Massachusetts has a maximum cash benefit level of over $900 per week even though Massachusetts businesses pay lower premiums than New York businesses.

Not surprisingly, these higher overall insurance costs have taken their toll on the New York business community. When the once-venerable New York-based auto part supplier Delphi Corp. filed for bankruptcy protection in October 2005, chief executive officer Robert S. Miller cited the state's high workers' comp costs as one of the causes of the company's difficulties.

Any reform of New York's workers' comp system must address administrative inefficiencies and impose some limits on long-term cash benefits.

State legislatures across the country have begun to grapple with the specific causes of high premiums, be they high administrative costs, fraud and/or other culprits.

In 2003 and 2004, California implemented sweeping reforms that, among other things, substantially increased penalties for insurance fraud; required pharmacies to prescribe generic drugs for workers' comp patients (with few exceptions); obligated employers to pay claims on a timely basis (thus, reducing dispute costs); established a "medical treatment utilization" schedule to

Linda Dakin-Grimm is a partner and Felton Newell is an associate in the Reinsurance Group at Milbank. Both are in the law firm's Los Angeles office. They may be reached at ldakin-grimm@milbank.com and fnewell@milbank.com.

eliminate doctor discretion for certain medical services, drugs, fees and goods; and eliminated rights of employees to bring civil actions to recover penalties in connection with the workers' comp law.

While it is difficult to measure the success of California's reforms at this early stage when some of the approved reforms have yet to be implemented fully, indications suggest the reforms already have cut costs to California firms by at least $5 billion annually.

Loss ratios on California workers' comp policies have declined by more than half between 2002 and 2005, from 87 percent to 38.5 percent. Perhaps most significantly, the state's workers' comp pure premium rates have decreased 26.7 percent since enactment of reform legislation, and the insurance commissioner is pressing carriers to further reduce those rates by an additional 20 percent.

Gov. Pataki's plan for New York (see sidebar for details)—designed to provide easier access to care and speedier claim handling—could reduce the state's high administrative costs. If the pilot program is successful, and ultimately expanded, it could lead to significant premium reductions.

Drug costs have increased by 15.7 percent nationally since 2001, so a schedule that limits payments for drugs would reduce overall workers' comp costs in New York, as it has in 23 other states.

In addition, Gov. Pataki's tiered benefit structure is projected to reduce overall costs by 15 percent. His plan would peg the amount and duration of cash benefits an injured worker is entitled to receive to the severity of disability, as 37 other states do.

As a result, some permanent partial disability employees, who now receive cash benefits indefinitely, would only be eligible to receive cash benefits for 10 years. These elements are well crafted to address the causes that have led to high costs for New York employers.

A few weeks before Gov. Pataki introduced his reform plan in 2004, Democratic state legislators introduced bills designed to increase the maximum cash benefit level to approximately $600 per week. No workers' comp reform ultimately was adopted in New York in 2004 because the governor could not persuade Democratic legislators to sign onto a more modest cash benefit increase.

Now in his final lame duck year, Gov. Pataki is unlikely to build a coalition broad enough to pass workers' comp reform this year. Nonetheless, his successor would be wise to use elements of Gov. Pataki's plan as a blueprint for future reform.

If New York ultimately follows California's lead and identifies ways to reduce overall costs in its workers' comp system—leading to lower premiums—it, too, will reap the reward of lower costs for New York employers. NU

WHAT'S THE PLAN?

Pataki Proposes WC Reforms

IN NEW YORK, LAME DUCK Gov. George Pataki's 2005 workers' comp proposal essentially mirrors a reform plan he introduced in March 2004 that, like reforms approved in California, is targeted to address the specific causes of high premiums. The plan would, among other changes:

- **Provide easier access** to care and speedier handling of claims.
- **Create a system** of tiered benefit levels for permanent partial disabilities based on severity of injury.
- **Authorize a** pharmaceutical fee schedule.
- **Set up a pilot program** under which carriers are encouraged to provide compensation and medical benefits to injured workers without the intervention of the state Workers' Compensation Board unless a dispute arises.

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