

Henderson Brothers, Inc. White Paper

Newly-Enacted Act 111 Is Intended To Be a Compromise After the Fall-Out of the Protz Decision and Resulting Workers' Comp Rating Changes.

In June and July of 2017, Henderson Brothers reported on the impact that the Pennsylvania Supreme Court's decision in Protz v. W.C.A.B. (Derry Area School District), 161 A.3d 827 (Pa. 2017) ("Protz") would have on workers' compensation insurance. In Protz, the Commonwealth's highest court found the American Medical Association's Guides underlying Section 306(a.2) of the Workers' Compensation Act, 77 P.S. § 511.2, relating to Impairment Rating Evaluations ("IREs") for worker disability assessments, to be an unconstitutional delegation of legislative authority. Following the Protz decision, the Pennsylvania Bureau of Workers' Compensation declared that it would no longer authorize physicians to perform IREs.

IREs were previously used to cap disability benefits at 500 weeks. The elimination of the IRE process meant that injured workers would be able to receive lifetime partial disability benefits. In turn, many insurers sought to raise rates for workers' compensation insurance premiums.

After about 16 months of fall-out from Protz, on October 24, 2018, Governor Wolf signed House Bill 1840, now Act 111 of 2018, into law. Act 111 is effective immediately, and it re-institutes the IRE process but with modifications. The significant provisions of Act 111 are:

- Employers can request injured workers, who have received 104 or more weeks of disability, to be subject to an IRE. The IRE can be requested retroactively (to apply to injured workers within the last year) and will be performed pursuant to the 6th Edition of the AMA Guides.
- The threshold to modify partial disability benefits is now under 35% impaired, instead of the prior level of 50%. This means that, after an injured worker receives 104 or more weeks of total disability benefits, an employer can seek to cap its exposure on that claim at 500 weeks of benefits received, if the IRE results in an impairment rating under 35%.

It is expected that the return of the 500-week cap will result in lower across-the-board workers' compensation insurance costs. Act 111 includes a requirement

for the PCRB to calculate the savings achieved through these changes. This may result in immediate rate cuts. Based on past PCRB filings, it is estimated that the rate reductions will occur in the first quarter of 2019. The PCRB sought a rate hike of over 6% following the Protz decision. Under the framework of Act 111's compromise, it is not unreasonable to project a 4-6% rate decrease.

At the individual claim/case level, employers should view Act 111 as an opportunity to review all current files where the injured worker has received 104 or more weeks of disability benefits. Some have suggested that a 35% impairment rating under the 6th Edition of the AMA Guides is almost equivalent to the previous 50% threshold. As a result, many have termed Act 111 as the "Protz fix" where the previous ratings, impairment levels, and claim pricing will be restored. Only time will tell if this is the case.

If you have questions regarding the Protz case or the new legislative developments of Act 111 and their respective impacts on your workers' compensation program, please contact your Henderson Brothers Insurance Consultant today.

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