



## SUMMARY



# A Review of the South Carolina Workers' Compensation Commission

## BACKGROUND

The S.C. Workers' Compensation Commission (Commission) administers the workers' compensation laws in this state. With certain notable exceptions, every employer and employee in South Carolina is presumed to be covered by the state workers' compensation laws. An employee covered by these laws may receive compensation for personal injury or death for accidents arising out of and in the scope of his employment. Our requesters had concerns, in part, about how the Commission handles contested cases and whether these files are processed in compliance with state law.

Members of the General Assembly requested the Legislative Audit Council to conduct an audit of the South Carolina Workers' Compensation Commission. We reviewed the Commission's process for handling informal conferences, efforts to identify uninsured employers, efforts to refer claimants to obtain vocational rehabilitation services, and compliance with state laws regarding contested and appealed cases. We did not examine the amount attorneys may charge claimants in South Carolina as compared to other states. Also, we did not compare the method of determining disability in this state, including the use of American Medical Association impairment ratings, to those in other states.

## COMPLIANCE AND ADMINISTRATIVE ISSUES

### UNTIMELY DEPOSIT OF CHECKS

The Commission violated state law by not depositing checks received for fines in a timely manner. From May 1, 2010, through June 4, 2010, the Commission had assessed fines against South Carolina employers and carriers and collected checks totaling more than \$244,000, but did not deposit them in state accounts. The Commission took this action so that, in the event the General Assembly prohibited agencies from keeping their unexpended funds at the end of the fiscal year, the Commission would not have these funds for the General Assembly to take away. We notified management of this violation and the agency ceased the practice and deposited the checks immediately.

### PUBLIC AFFAIRS AND OMBUDSMAN DUTIES

S.C. Regulation 67-202.A.(12) defines the Commission's public affairs division as the division responsible for responding to the general inquiries of employees and employers concerning their rights, benefits, and obligations under the workers' compensation act. The Commission employed a person who addressed these responsibilities, including those of an ombudsman, for which a position was specifically budgeted in FY 05-06. However, when that employee separated from the agency, the Commission decided to leave that position vacant and divide the duties among various employees within the agency.

### IDENTIFYING UNINSURED EMPLOYERS

The compliance division of the agency identifies employers which should have workers' compensation insurance, but do not. In addition, this division generates revenue for the agency by fining uninsured employers. In FY 09-10, the compliance division collected \$446,702 in fines. One way the division identifies uninsured employers is by comparing a database of employers with 6 to 20 employees maintained by the S.C. Department of Employment and Workforce (formerly known as the Employment Security Commission) to the workers' compensation coverage database. The agency employs two compliance officers to investigate 50 matches each month to determine if these employers have coverage. This leaves a significant number of matches which the Commission does not have the staff to address.

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INFORMATION

Our full report, including comments from relevant agencies, is published on the Internet. Copies can also be obtained by contacting our office.

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Council

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The issue of uninsured employers has also been identified as an area which is being addressed by the Workers' Compensation Advisory Committee. This committee was created to consider improvements of the workers' compensation laws and to present annual reports to the General Assembly. The committee has stated that one potential way to lower the cost of workers' compensation insurance in the state is to bring more employers into compliance with the act.

### REFERRAL OF CLAIMANTS TO VOCATIONAL REHABILITATION

The Commission could improve its efforts to refer claimants needing vocational counseling, evaluation, training, or placement to the S.C. Vocational Rehabilitation Department (Voc Rehab) by implementing a formal policy for referrals. We found that a Voc Rehab employee working in Richland County was identifying claimants in that county who may need services; however, no other counties had a similar arrangement. To ensure that claimants from across the state are properly referred, the Commission should develop a memorandum of understanding with Voc Rehab to ensure that all applicable workers' compensation claimants are referred for appropriate services.

### INFORMAL CONFERENCE PROCESS

As part of our review of the S.C. Workers' Compensation Commission, we observed informal conferences and reviewed documentation of a sample of informal conference files. Informal conferences are meetings with the workers' compensation claimant, the employer's representative, and a claims mediator, during which the claims mediator proposes a settlement of the claim. The Commission employs four staff, working in various capacities within the agency, who also serve as claims mediators. In FY 2009-10, the Commission approved more than \$31 million in benefits proposed by these employees.

To assess compliance with state regulations, we also examined a statistically valid sample of 95 of 5,362 informal conferences from 2008 and 2009, and found that most of the required documentation was in the files. However, the files did not contain sufficient information to assess compliance with Commission standards regarding the claims mediator's proposed settlement.

We found that the Commission's process could be improved by establishing guidelines, training claims mediators, and requiring checklists to ensure that claimants are informed of all of their rights. Formal training of staff conducting these informal conferences could ensure more consistency and equity in the process.

### CONTESTED CASE FILES

Based on the audit request, we reviewed a sample of contested case files to determine if they were complete and processed in compliance with state laws and regulations. Overall, we did not identify significant noncompliance regarding the proper forms being filed, the dates of injury changing between the hearing request and the pre-hearing filing, the body parts for which compensation was sought being improperly added, or missing physician impairment rating statements. In our sample, however, we identified 16 of 49 cases where the receipt of compensation (Form 19) was signed by the claimant before the commissioner had signed the decision and order with the award amount specified. According to an agency official, the Commission has no authority over when the employer/carrier sends the claimant an award check.