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*From the desk of*

**John Karlen, CPCU, APA, ARe**  
**Legislation That Can't Be Ignored**

**F**or the last ten years I have avoided jumping into the legislative process. Like most of our shop leaders, I view my job is to work hard and get the best results possible in the environment that surrounds us. When legislation would change matters, my job would be to adjust and figure out how to succeed and represent our members with the

best results possible. I think that's probably what most of our shop managers do. However, things change and all of a sudden it appears that we have no choice but to be more involved.

As I look at the legislative changes for our shops in just the last eight months, there have been dramatic shifts in policy that effects our businesses. As many of you are aware, we have been active partners with the Michigan Manufacturers Association. They have a strong legislative arm. MTM is also a member of the Insurance Alliance of Michigan (IAM). That is a group of insurance companies that also has a legislative presence. For the most part MTM and myself individually have attended but not been active in those legislative efforts. With the introduction of House Bill 4390, it is obvious to me that we must be more involved and encourage our members to be involved also.

House bill 4390 states: "to regulate the time and manner of payment of wages and fringe benefits to employees; to prescribe rights and responsibilities of employers and employees, and the powers and duties of the Department of Labor; to require keeping of records to provide for the settlement of disputes regarding wages and fringe benefits; to prohibit certain practices by employers; to prescribe penalties and remedies; and

to repeal certain acts and parts of the act." All that is about nearly eliminating the use of independent contractors. Not only does it end the use of nearly all independent contractors, but it prescribes penalties that are severe if a violation of this act is found. As I visit with most of our shop owners, they have designers, IT people, sales representatives, , engineers that for one reason or another are independent contractors. We at MTM have the same independent contractor issue. We use investigators, case managers, auditors, and I.T. specialists. These people are hired to do a three-hour task or a two-week project when requested. None of them are "employees". These contractors fill a void when we as a small employer do not have a regular need. While your shop and my shop have different "products", the business needs are the same—a short term project that requires assistance with outside skills that we do not have internally. Because of this and the ability of the Michigan legislature to move things quickly through the process, I am adding MTM's weight to the effort. We should all be contacting our legislators to weigh in on this topic. If we do not, we will be living with something that makes our life much more difficult. The present house bill has scary words like: 1) The department may assess a civil fine of not more than \$10,000 against an employer who violates this act. BTW – the current fine

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**Ruth Kiefer**  
Vice President  
of Loss Control

## MIOSHA Inspection Reminders:

**M**IOSHA is back out in the field with a seemingly whole new crew of enforcement officers and they are knocking on lots of policyholder doors. After a few years off due to Covid, it is now necessary that you put safety back into the forefront of your businesses. It is very important that you take this time to dust off your safety programs and review your programs and when the last time your employee's were trained. You need to ensure that your safety training is up-to-date or determine if you are missing some programs due to new equipment installed or change of staffing.

You can find all the necessary safety programs on our portal. These safety programs are fill-in-the-blank templates that help you satisfy the written program requirements for MIOSHA. Also on the portal is everything you need for your safety training requirements as well, with well over 700 videos you'll definitely find what your looking for. If you need to narrow the scope of your training needs, reach out to your MTM loss control person so they can direct you to the right video or written program.

Once the inspector has reviewed your safety programs, they will be moving on to your production floor. Some of the hot buttons will be guarding of your equipment, whether it be an abrasive wheel, a band saw, drill press, brake press, to

plastic injection machines. Guarding is a major component of their inspections. The other is equipment inspections, are you conducting regular inspections on your equipment? This equipment entails, industrial trucks, cranes, hydraulic presses, mechanical presses and any other equipment that you have should be inspected to ensure that the equipment has the proper safeguards, is in good condition, and properly adjusted.

The other hot button item we have noticed is the electronic reporting of occupational injuries. We remind our policyholders every year of this requirement, so none of you should be getting this violation. So please, please, please, upload your annual electronic submission of your MIOSHA form 300A if you have between 20-250 employees and are in a high hazard industry (which most of you are). This must be done no later than March 2nd, of EVERY year. This fine alone has ranged from \$300- \$1400. The window is closed for this year and will not reopen until January 1. We will remind you when the time comes around for next year.

Please update your contact information with our Marketing department if you need a reminder email to go to the right person. We promise to keep you up to date with this reminder we send out every year along with anything else that affects you in the realm of safety and MIOSHA. It is important to keep this information updated so we can inform you or your designated representative of any important changes that affect your business.

If you want to have your loss control representative come out and review your safety programs or inspect your production floor for the common MIOSHA violations, please contact us so that we can get you squared away.



**Donna Motley**  
Vice President  
of Claims

## What's in a Dispute?

**M**ichigan Workers' Compensation Administrative Rules dictate that once a claim form concerning an employee work related injury is submitted to the Workers' Compensation carrier, the Workers' Compensation carrier has 30 days to make a determination "of some kind". A definite or final determination of benefits does not have to be made when a claim is first filed with the carrier; BUT the claim has to be addressed. If the initial investigation results in the carrier being able to make a determination that the claim is valid, benefits commence. Benefits would include authorization for medical testing and/or treatment, payment of related bills submitted and payment of wage loss benefits

if/when applicable.

If the carrier is unable to make a valid determination within 30 days, it usually means additional investigation is necessary, medical records need to be obtained, written statements requested, a medical evaluation scheduled, etc. The 30 day clock is ticking, so the carrier has to file a form with the State of Michigan entitled Notice of Dispute. The Dispute includes the reason why it is being filed – under the above circumstances the reason would be "Further Investigation Required", "Additional Information Required from Employee" or "Other".

A Dispute can be filed for multiple reasons. If, after review of all the information provided or obtained in relation to the claim, it is determined the claim is not going to be accepted as a work related injury, a Dispute is filed indicating "Injury Not Work Related". If we receive medical bills that are unrelated to a claimed injury, a Dispute is filed indicating "Medical Treatment not Related to Injury". If an employee submits a request for mileage reimbursement and the carrier is unable to verify the dates of service within 30 days





**Melanie English**  
Underwriter / LPT  
Program Manager

## Workers' Compensation Coverage for Out-of-State Employees

The MTM Underwriting and Marketing Departments regularly receive inquiries about Workers' Compensation coverage for our Member's out-of-state employees. Often it is because a Member has hired a salesperson, clerical staff or installers who work in other states or an acquired out-of-state facility. Due to an increase in these inquiries, we thought it was a good time to update you on the out-of-state coverage requirements.

Your MTM policy covers all Michigan employees. This coverage follows a Michigan employee when they work temporarily at an out-of-state location or even at a worksite out of the country. This means that if your employee attends a convention in California, your MTM Michigan coverage follows them there. If you send your employee to another country for work, coverage also exists. Any temporary work assignment for a Michigan employee, even worldwide, is covered by your MTM policy. The requirements are that they be a Michigan employee, which means they normally work, were hired, and get paid in Michigan. They must also have Michigan State income taxes deducted from their salary. Your Michigan employee can even live in another state, but be hired to work at your Michigan location and have Michigan taxes taken out of their paycheck. We frequently see a resident of Ohio, who drives to work at a Michigan plant.

Alternatively, if a Michigan employer hires a salesperson in Ohio and the employee's main reporting office is in Ohio and

of receipt, a Dispute is filed to explain the employee has not been reimbursed (and why). If a treating physician imposes restrictions in relation to the work injury and the employer is able to accommodate said restrictions but the injured worker refuses to return to the light duty work, a Dispute is filed indicating "Work Avoidance". When injured workers have refused to attend medical appointments and/or therapy, we have filed a Dispute indicating "Non-complaint with Recommended Medical Treatment" or "Claimant Refusing Medical Treatment".

Even if a claim has been accepted and benefits are being paid, we can stop benefits by filing a Dispute. We've had cases where the injured worker became incarcerated, cannot be located, or no one can get in touch with them – filing a Dispute will "suspend" their benefits. If a claim has been accepted and benefits are being paid but additional information or medical records become available that contradict the validity of the claim, we can stop benefits by filing a Dispute.

There is no expiration date in terms of the Dispute. But, because a Dispute is filed at some point in time during the

the employer deducts Ohio state taxes from the employees check, then they are an Ohio employee. This would apply whether the remote employee was in Ohio, West Virginia, Florida or any other state. The requirements are where is the employee's normal work site located, and, in today's world, that sometimes is at their home. Another key is where do they pay their state income tax.

Workers' compensation coverage is governed by state law, which means the coverage rules change from state to state. Because of our close proximity to Ohio, it is the most frequently asked about state by our Members. Ohio is different from Michigan in that all workers' compensation coverage is required to be purchased from a state agency, called Ohio Bureau of Workers' Compensation (BWC). Private insurance carriers are not allowed to provide coverage in Ohio. In the insurance world, Ohio is called a monopolistic coverage state. The other monopolistic states that require workers' compensation insurance to be provided exclusively by a state fund are Wyoming, Washington State, and North Dakota.

Using the information above, shows that if an employee lives in Toledo, but works at a plant in Detroit and has Michigan taxes taken out of their paycheck, they are a Michigan employee. However, if the employee is hired in Ohio, works in Ohio and has Ohio income tax taken out of their paycheck, then workers' compensation coverage is needed from the State of Ohio. I have listed the BWC link at the end of this article.

The MTM Marketing Department is well versed on out-of-state coverage. It is complicated and varies by state, but know that the MTM Marketing staff is ready to provide guidance if needed. Please, contact our Marketing Department at 248-715-0012 or sales@mtmic.com.

<https://info.bwc.ohio.gov/for-employers/workers-compensation-coverage>

life of a claim, does not mean the claim won't or can't be accepted at a later date. Again, filing a Dispute protects the Workers' Compensation carrier by indicating the Rules are not being violated and the alleged claim and injured worker is being acknowledged.

Filing a Dispute keeps the State informed that the claim is not proceeding as it should, but that we are performing our due diligence. The State of Michigan publishes statistics for the year listing the Total Claims filed and the percent of Disputed Claims of those filed. While I am not totally sure how they calculate the Total Claims filed, I would assume they are only referring to Indemnity Claims where wage loss would be due/paid. The most recent State statistic covering 1/1/2021 through 12/31/2021 for Manufacturing Technology Mutual Insurance Company indicates Disputes filed were 7.59% of claims.

Per the Rules, most of claims handling is to be conducted in 30 day windows. Filing a Dispute more or less "Stops the Clock".

**FEEL FREE TO CONTACT ANY OF US IF WE CAN BE OF SERVICE TO YOU:**

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limit is \$1,000. 2) A person who is ALLEGED to have violated this section has the burden of proving by a “preponderance of the evidence”.....that they are innocent. Forget innocent until proven guilty.

From my 50 years of insurance experience, I have many friends around the United States that run insurance companies. I contacted two of my colleagues in California. They had a bill like House Bill 4390 that did the same thing about two and a half years ago. The result was the legislation passed and became law. It was then fought in court and ultimately moved to a statewide voter initiative which was passed to amend it significantly and reduce the scope of the law. While it was in effect, there was turmoil and uncertainty about how employers should proceed on a daily basis. The law in part is still effective in California, but there have been multiple adjustments to add specific job titles that were exempt from the act. The exemptions now total more than 100 job types. And there is a backlog of other job types that are being considered as excluded. So, in the end, the restrictions on independent contractors have been greatly watered down but the process was, and remains, ugly. Because of this, I am writing to my legislative member to weigh in using much of the format that was provided by

MMA. I have attached a link to the MMA form and its guidance. Like me, this is not something in our normal wheelhouse. However, from talking with my out of state colleagues and seeing what has happened so far in 2023, I see that we have no choice. I hope that you will take the time to click on the link and use the format that has been provided to help us reduce the impact that House Bill 4390 will have on each of our shops.

[mimfg.org/Advocacy-Issues/Action-Center?vsrc=%2Fcampaigns%2F107051%2Frespond](https://mimfg.org/Advocacy-Issues/Action-Center?vsrc=%2Fcampaigns%2F107051%2Frespond)

Until next time,  
John



**WE NEED  
YOUR VOTE!**

The ballots for the MTM Board of Directors election are about to hit your mailbox. Please complete your ballot and return it by **October 13th.**