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Absenteeism

Ah, spring is in the air. The winter chill is gone, and the trees and flowers are blooming. And we all know that with warmer weather comes a string of unexpected employee absences. How can you rein in your workers' weather-related "illnesses"? At www.HRhero.com/news, you can find the following helpful tools:

- HR Sample Policy — Attendance and Punctuality, www.HRhero.com/lc/policies/311.html
- HR Sample Policy — Vacation, www.HRhero.com/lc/policies/501.html

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WORKERS' COMPENSATION

State workers' comp program offers security to retired NFL players

by Michael Futterman and Jaime Touchstone

In a recent series of articles in the New York Times, Alan Schwarz reports that hundreds of retired football players are pursuing workers' compensation claims in California. In the past, the players' claims were limited to orthopedic injuries; however, a new claim looks to expand the scope of coverage to long-term cognitive injuries like dementia. Schwarz reports that because of its employee-friendly system, California is perhaps the only state in which players can file workers' comp claims for long-term medical care and security.

Player's wife fights for workers' comp coverage

Ralph Wenzel is a former professional football player who played guard for the Pittsburgh Steelers and the San Diego Chargers in the 1960s and '70s. Currently 67 years old, he has been diagnosed with dementia and has resided in an assisted-living facility for several years. His wife, Dr. Eleanor Perfetto, recently filed a workers' comp claim in California asserting that her husband's early onset dementia was an occupational hazard of his seven seasons in the National Football League (NFL). She claims that he is entitled to lifetime medical care under California's workers' comp program.

Professional football is an extremely dangerous profession. Players suffer heightened rates of mental and physical injuries. In the past, most NFL workers' comp claims have sought compensation for orthopedic injuries. Perfetto's claim on behalf of Wenzel seeks to expand recovery to include severe cognitive injuries. Some experts have estimated that NFL teams and their insurers could face future liability in excess of \$100 million to compensate retired athletes for the costs of assisted living and long-term medical care.

CA's employee-friendly workers' comp provisions

California is at the forefront of the emerging legal battle because its workers' comp system appears to provide refuge for retired professional athletes across the country. It is reported that about 700 former NFL players are currently pursuing claims in California; most of them would be ineligible to file claims for latent or progressive injuries in any other state.

There are two features of California law that can work to the benefit of retired NFL players. First, unlike most states that require workers' comp claims to be filed within one to five years of an injury, California's statute of limitations may not begin to

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run until the employer formally advises the injured worker of his right to workers' comp. Schwarz reports that NFL teams have long tried to minimize the number of claims by not informing players of their right to seek compensation. Ironically, this lack of notice has enabled retired players to file for injuries sustained decades ago without running afoul of the statute of limitations.

Second, an NFL player may be entitled to pursue a workers' comp claim in California even if he played for a team based in another state, provided he played at least one game in California. That reflects California's public policy of protecting out-of-state workers who are injured here. This peculiarity in the law reportedly developed to compensate workers who are injured in transit, such as truckers and flight attendants.

Proper legal advice needed to retain medical care

If Wenzel and other players succeed in obtaining relief, California's workers' comp program can provide access to lifetime medical care, which may not otherwise be available to them upon retirement. In the case of NFL athletes, who generally suffer numerous career injuries, ranging from blown knees to repeated concussions, that would appear to be an extremely valuable benefit. However, Schwarz reports that more than 90 percent of players opt for lump-sum settlements in lieu of the medical care and security for which the program is designed.

**The latent injuries
that plague
professional
football players
aren't common to
all professions.**

Players have chosen to accept from the insurance companies an additional \$60,000 to \$100,000 in settlement dollars in exchange for a waiver of the right to lifetime medical coverage for existing injuries and a release absolving the insurance companies of any obligation to provide future care for unknown injuries. Many players apparently fail to recognize that any settlement without provisions for future medical care is generally undervalued because of the potential for latent medical problems caused by repeated head trauma, which is common in professional football.

Attorneys claim that they advise employees against forgoing their important rights to lifetime health care, but at the same time, in many circumstances, an attorney can earn more fees from a large lump-sum settlement than from an award of future medical care.

Bottom line

California's employee-friendly workers' comp system has placed the state at the forefront of the scarred NFL veterans' battle to obtain lifetime health benefits. While the latent and progressive injuries that plague professional football players aren't common to all professions, this situation nevertheless demonstrates the long-term costs that can be associated with workers' comp claims. From a public-policy perspective, the question is whether the tangible benefits to injured workers outweigh the economic burdens on employers from losing business in this state.

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