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BULLETIN

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California's State Average Weekly Wage (SAWW) rose just over 3.9 percent from $1,120.67 to $1,164.51 in the 12 months ending March 31, 2016, which will require increases in minimum and maximum temporary total disability (TTD) and permanent total disability (PTD) rates for 2017 injuries as well as several other workers' compensation benefits.

Under Labor Code §4453(a)(10), TTD and PTD rates are tied to the percentage increase in the state average weekly wage (the average weekly wage paid to employees covered by unemployment insurance as reported by the Department of Labor for California for the 12 months ending March 31 of the year preceding the injury). As a result of the latest SAWW increase, maximum TTD and PTD rates for accident year (AY) 2017 claims will increase to $1,172.57 per week, up 3.912 percent from the current rate of $1,128.43 per week paid on AY 2016 claims, while the weekly minimum rate will jump from $169.26 to $175.88. In addition, the SAWW increase means other workers' compensation benefits will need to be bumped up in 2017 as well:

- LC §4661.5 requires that TTD paid two or more years after the date of injury be based on the TTD rate in effect on the date of the payment unless that would reduce the amount paid, so claims administrators will need to increase payments on existing claims that are eligible for more than 104 weeks of TTD. Those include claims involving amputations, severe burns, chronic lung disease or any of nine long-term injuries noted in LC §4656(c)(3), where the injured worker may continue to be paid TTD for up to 240 compensable weeks within 5 years of the date of injury. For example, a worker who was severely burned while on the job on July 1, 2015, and who is still receiving TD at the 2015 weekly maximum of $1,103.29, should see that payment bump up to the 2017 maximum of $1,172.57 per week beginning July 1, 2017, as long as that rate is justified by their at-injury earnings. Claims organizations also may need to increase TTD payments on claims in which the initial TTD payment was delayed, or was started, stopped, and then resumed, if the injured worker is still eligible for the benefit more than two years after the injury date.

- LC §4659(c) requires cost of living adjustments (COLAs) for workers injured on or after January 1, 2003 who have either a permanent total disability (100 percent PD) or a permanent disability rated at least 70 percent but less than 100 percent, entitling them to a life pension. Thus, effective January 1, 2017, claims administrators will need to make cost of living adjustments to the life pension and permanent total disability payments to these claimants.

- LC §4702(b) requires that unless the Appeals Board has ordered otherwise, death benefit payments "shall be paid in installments in the same manner and amounts as temporary total disability indemnity would have to be made to the employee," so the weekly maximum rate for death benefit installment payments also will increase next January to reflect the new TTD maximum for 2017. Unlike TTD, however, state law sets the minimum weekly rate for death benefit installment payments at $224, so the 2017 TTD minimum of $175.88 per week should not be used to calculate the minimum weekly rate for these death claims.

There are penalties for underpaying benefits, so claims administrators should review all changes in benefit rates with counsel to assure appropriate and accurate adjustments. For reference, the Department of Labor has posted California's SAWW for the year ending March 31, 2015 along with other labor force data at workforcesecurity.doleta.gov/unemploy/content/data_stats/datasum15/DataSum_2015_1.pdf while the SAWW for the year ending March 31, 2016 can be found at workforcesecurity.doleta.gov/unemploy/content/data_stats/datasum16/DataSum_2016_1.pdf.

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