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BULLETIN

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New U.S. Department of Labor data show California's State Average Weekly Wage (SAWW) increased from $1,570 to $1,651 (+5.159%) in the 12 months ending March 31, 2022, so as of January 1, 2023 workers' compensation claims administrators in the state will need to bump up minimum and maximum weekly temporary total disability (TTD) and permanent total disability (PTD) rates for 2023 injuries, as well as several other benefits.

California law [LC §4453(a)(10)] ties TTD and PTD rates to the percentage increase in 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. The California Division of Workers' Compensation has confirmed that the latest increase in the SAWW means that the maximum weekly TTD and PTD rates for accident year (AY) 2023 claims will rise to $1,619.15, an increase of $79.44 from the $1,539.71 weekly maximum for AY 2022 claims, while the weekly minimum rate will increase by $11.91 from $230.95 to $242.86. The latest increase follows a record increase of more than 13.5% in the TTD and PTD rates that took effect in January of this year, an anomaly that occurred when the SAWW took a sharp jump after low-wage earners suffered a disproportionate share of the job losses in the first few months after the pandemic hit, skewing the average weekly wage upward for that year.

The latest increase in the SAWW will also require the following workers' comp benefit increases in 2023:

- 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 suffered a severe burn while on the job on March 1, 2021, and who is still receiving TD at the 2021 weekly maximum of $1,356.31, should see that payment jump by $262.84 per week to the 2023 weekly maximum of $1,619.15 beginning March 1, 2023, as long as that rate is justified by their at-injury earnings. Claims administrators 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, 2023, claims administrators will need to make cost of living adjustments to the life pension and permanent total disability payments to these claimants to account for the 5.159% increase.

- 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 maximum weekly rate for death benefit installment payments also will increase as of January 1, 2023 to reflect the new TTD maximum. The minimum weekly rate for death benefit installment payments will also need to be increased, rising to $242.86 effective January 1, 2023.

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 SAWW for the 12 months ending March 31, 2021 and for the 12 months ending March 31, 2022 can be found in the U.S. Department of Labor Unemployment Insurance database, posted at https://oui.doleta.gov/unemploy/data_summary/DataSum.asp.

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