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## Structured Settlements

There have been some recent major changes to Washington Workers Compensation Laws. The biggest change is that the State will allow structured settlements, where an injured worker can negotiate with the Department of Labor & Industries (DLI) or the self-insured employer (SIE) to settle a claim. Beginning January 1, 2012, structured settlements are available to those who are at least 55 years old, and whose claim is at least six months old. The age requirement will be reduced to 50 years old over the next few years.

Before we discuss the details of structured settlements, it is important to realize that neither the Department nor a self-insured employer is going to enter into a settlement unless they believe it saves them money. It is estimated the 2011 reforms will save the Department \$1.1 billion dollars over four years. It is projected that more than half of the savings will be due to structured settlements. **The Department claims it will save over a half a billion dollars in four years, by settling claims.** Obviously, these millions of dollars are coming from benefits that injured workers will not receive.

That said, there are some very valid reasons for an injured worker to settle, including: entering into vocational rehabilitation on your own, going back to work and moving on with your life. However, this comes at a cost in current and future benefits.

### Periodic Payments

There are limits to the amounts a worker can be paid at one time. Depending on the amount of settlement, you will likely **NOT** receive a lump sum payment. The initial payment cannot be more than six times the average monthly wage in Washington State. The average monthly wage, in June 2010, was \$1,812. Using that number, the initial payment could not exceed \$10,872. If there are payments after the first payment, then they must be at least 25 percent of the state's average monthly wage but no more than 150 percent. Therefore, using the 2010 numbers, subsequent monthly payments would have to be at least \$453, and could not exceed \$2,718.

### Negotiation Process

The structured settlement process is initiated by the injured worker or the claims manager. The injured worker must complete an Application for Structured Settlement, in part, explaining why the injured worker wants to settle the claim.

To manage the new Structured Settlement program, the DLI has assembled an experienced team including DLI employees with decades of experience, paralegals and attorneys from the Attorney General's office. **They know what they are doing.**

Once the process is initiated, someone from DLI's Structured Settlement Team will contact the injured worker and will likely ask a lot of very detailed and personal questions. They may also request statement regarding various issues.

The Department will require you to explain why you want to settle, to make sure it is in your "best interest." To determine if it is in your "best interest," the Department may ask you a lot of personal questions including discussions about your related and non-related medical conditions, require you to provide all your past medical records, questions about your spouse and children, financial information including assets and liabilities, and vocational questions about your education, training and past work history.

Of course, as with any resolution, the devil is in the details. For example, an injured worker may be asked to agree that certain conditions were not caused or aggravated by the industrial injury; that the claim will be closed with no further medical treatment; agree to a statement as to the nature and extent of the injuries and disability; a statement about the other benefits (if any) that the worker is receiving or entitled to receive; other sources of income the marital or domestic partnership status of the worker; the workers' number of dependants; and any other details that may be looked at and allowed by law.

You can count on the DLI and the SIE saving money in two different ways: 1) reducing current benefits to the injured worker, and 2) reduce or, more likely, preventing future benefits.

### **After the Parties Reach an Agreement**

If an injured worker is not represented by an attorney, the agreement is sent to Board of Industrial Insurance Appeals. A conference is held before a judge, who tries to determine if it is in the "best interest" of the worker to sign the agreement. The judge then approves or rejects the agreement, subject to review by the Board. Then, the parties have a 30 day waiting period within which they can revoke the agreement. If they do not, it goes into effect.

If a worker is represented, the parties submit the agreement to the Board of Industrial Insurance Appeals and it approves or rejects the agreement. There is no conference with a judge. The parties then have 30 days to revoke consent.

### **Potential Consequences**

The Department and your employer will likely ask you to agree to not seek future time loss if you reopen your claim. This could be devastating if your condition worsens in the future. Surgery on a joint such as your shoulder (e.g. rotator cuff tear) or knee (e.g. meniscus tear), can be a contributing factor to development of future arthritic type conditions. Back surgeries can weaken discs, causing wear and tear on other discs and can contribute to the development and/or exacerbation of the degenerative process. These are just to name a few.

Additionally, the Department and the employer will likely seek to make it difficult to receive future permanent partial disability, vocational rehabilitation and pension benefits. This could be catastrophic if the industrial injury, or its worsened condition, affects your future ability to work.

It is important to understand, that health care insurance, DSHS, Medicaid and Medicare may not cover future treatment of these conditions.

## **Public Records Request**

You might be wondering what happens with all this information, whether you settle or not? It is not settled yet, but it is possible that some or all of this information may become a public record subject to public records requests. In addition, it may be possible for past, current, and future employers to have access to this information in certain scenarios. At the time of this article, there is pending legislation that, if passed, will limit the public's access to this information.

## **Attorney Fees**

Attorney fees on structured settlements are limited by law to 15% of the settlement amount.

## **Do I Need An Attorney?**

An attorney experienced in workers' compensation law can help you understand the issues in your case and help you determine if a settlement is in your best interest, while maximizing your recovery. Perhaps more importantly, an attorney can help you identify potential unforeseen consequences of settling a claim. Frequently, the cost of hiring an attorney will be made up by the increased settlement you would receive or making sure you do not lose future benefits.

Regarding whether to hire an attorney to assist with a "structured settlement," the Department states:

L&I strongly recommends workers and employers consider if they would benefit from the advice of legal counsel and/or a financial consultant. Settlements like these involve sophisticated legal procedures, and they can have a major financial impact on injured worker as well as their families. It is important for workers and employers, to be informed of their rights and how a settlement may impact their future livelihoods.

## **Medical Benefits**

Injured workers who enter into a settlement agreement can continue to receive medical treatment under the claim as long as it is authorized. Medical benefits cannot be waived or settled.