New Law: Hearing Loss Statute Becomes Law

The Rhode Island General Assembly recently amended the Workers' Compensation Act to provide a more state-of-the-art method to identify and indemnify employees who suffer occupational hearing loss. The revised legislation was drafted through collaboration between the Workers' Compensation Advisory Council and the Medical Advisory Board and effectuated by the General Assembly.

Here are answers to questions you may receive:

TO WHOM DOES THE STATUTE APPLY?
The statute provides benefits to employees who work in a noisy environment and as a result suffer a hearing loss. A noisy environment is an exposure to sound greater than 90 decibels over an eight-hour period. The revised statute and new Medical Advisory Board protocol dictate the mechanisms for measuring both the noise and hearing loss. However, the statute does not apply to employees who suffer from age-related loss, recruitment, tinnitus, congenital or psychogenic hearing loss or hearing loss above three thousand (3,000) hertz.

WHEN DOES THE STATUTE APPLY?
The new statute became law on July 15, 2001. It applies immediately to workers who suffer an acute hearing loss such as from an explosion or a basal skull fracture. For all others, the statute provides benefits for occupational hearing losses that occur on and after September 1, 2003.

ARE OTHER CAUSES OF HEARING LOSS CONTEMPLATED?
Even if the employee proves an occupational hearing loss, it does not necessarily mean that the employer is responsible for the entire loss. Although the statute contemplates that the last employer is responsible for the occupational hearing loss, the employer can limit its responsibility by conducting pre-employment hearing tests. This baseline screening will serve to distinguish the hearing loss related to your employment from previous employers or other non-work related factors. The last employer can look to previous employers for contribution.

The statute also contemplates age-related hearing loss or "presbycusis." The Medical Advisory Board protocol contains a formula for distinguishing age-related hearing loss.

WHAT BENEFITS ARE AWARDED?
The benefits for occupational hearing loss have been increased. For total occupational deafness of one ear, the award is seventy-five (75) weeks of specific compensation benefits. For total occupational deafness of both ears, the award is two hundred forty-four (244) weeks of specific compensation. Partial occupational deafness in one or both ears is paid proportionally.

TO WHAT TREATMENT IS THE EMPLOYEE ENTITLED?
The Medical Advisory Board has established a protocol for treating work-related hearing loss. This treatment includes aural rehabilitation and surgery. Hearing aids are not considered treatment.

WHAT CAN AN EMPLOYER DO TO LIMIT EXPOSURE?
The General Assembly purposely delayed implementation of the statute to give employers the opportunity to identify noisy work environments and create safer workplaces. Therefore, if during noise testing it is determined that your employee(s) may be exposed to greater than 90 decibels of noise over an eight-hour time-weighted average (TWA), hearing protection must be provided.
To limit exposure for non-work related or pre-existing hearing loss, the employer must conduct baseline screening (audiometric testing) of the employee within one year of exposure to harmful noise. This testing may be coordinated in any number of ways through either a health-care provider or private laboratories.

HOW DOES THE NEW LAW IMPACT AN ORGANIZATION'S OBLIGATION TO MEET OSHA'S STANDARD? The changes do not minimize your obligation to meet the requirements set forth in OSHA's "Occupational Noise Exposure" Standard 1910.95. Under the OSHA standard, employees exposed to 85 decibels (dbs) over an eight-hour TWA must be included in a hearing conservation program. The program includes:

- Having an annual audiometric testing program
- Making hearing protection available to employees (when noise is over 85 dbs on an eight-hour TWA)
- Mandating hearing protection (when noise is over 90 dbs on an eight-hour TWA)
- Holding annual training regarding the effects of noise on hearing

HOW CAN AN INSURED DETERMINE IF ITS EMPLOYEES ARE EXPOSED TO NOISE? Use the following as a quick rule-of-thumb to determine excessive noise levels: If you can't talk with and understand someone at a conversational level (regular speaking voice), you may have excessive noise.

WHAT CAN INSUREDs DO IF THEY BELIEVE THEY HAVE EXCESSIVE NOISE LEVELS? Beacon Mutual's Loss Prevention Department can conduct sound-level testing to determine the potential exposure and recommend corrective actions. If you have any questions regarding noise or need assistance in controlling your exposure level, please contact Doug Stephens at 825-2726.