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## **House Bill Would Substantially Revise Michigan's Worker's Disability Compensation Act**

Michigan House Bill 5002, approved by the House on November 2, 2011, would substantially revise Michigan's Worker's Disability Compensation Act, M.C.L. § 418.101, *et seq.* (WDCA). The Michigan Senate is expected to consider this bill. The attorneys at Honigman will stay abreast of House Bill 5002 as it makes its way through the Michigan Senate, and will update this Alert upon the bill's enactment or if any other substantive changes should occur.

House Bill 5002 would make the following notable changes:

- To be found to be disabled, an employee would have to show a limitation in wage earning capacity (*e.g.*, to be found totally disabled, an employee must be unable to earn in any job paying the maximum wages in work suitable to his or her qualifications and training);
- Make pre-existing conditions compensable only where the alleged workplace injury causes, contributes or aggravates the pre-existing condition "in a manner that is medically distinguishable";
- Employees would have an "affirmative duty" to find other work, and a magistrate may consider whether such efforts were done in "good faith";
- To establish a disability and wage loss, an employee would have to disclose his or her qualifications and training; provide evidence of other jobs he or she is qualified and trained to perform in the same salary range as his or her prior job's maximum wage earning capacity; demonstrate the workplace injury either causes him or her to be unable to perform these other jobs; or, if able to perform these other jobs, prove such jobs are unobtainable;
- Employers would have the right to conduct discovery to rebut any of the employee's showings listed above;
- Employers and insurance carriers would be shielded from attorneys' fees related to disputes over medical expenses with employees;
- Other benefits, such as Social Security, would offset the amount of disability benefits payable as long as the employee is eligible for such benefits, not only when he or she elects to receive the other benefits;

- Employers would have 45 days, instead of the current 10 days, to require an employee to see a medical physician of the employer's choosing before the employee may choose a different physician;
- Degenerative arthritis would now be considered a "condition of the aging process" and only compensable if tied to a workplace injury that causes, contributes or aggravates this condition;
- The presumption that a wife is "wholly dependent" on a disabled employee-husband would be eliminated; and
- Allow insurance carriers to report suspected undocumented aliens to the Federal Bureau of Investigation or Immigration and Customs Enforcement and discontinue benefit payments if either of those entities conclude the employee is, in fact, an undocumented alien.