

LMAC member questions and comments specific to the Kalispell Regional Healthcare System proposed legislation language are inserted into the proposed legislation below in red.

I. PROPOSED LEGISLATION

False statement on employment application or questionnaire.

A false statement made by an employee, either in an employment application or a questionnaire calling for the **disclosure of the employee's medical condition** (this is a huge HIPPA violation as it is open ended they could ask about pregnancy to injuries, is their intent to ask about open work comp claims?? Where one may be actively getting benefits?? Even disabilities is questionable, disabilities from birth, accident, illness etc.?? You can't discriminate), bars all benefits under this title if: 1) the employee knowingly or willfully, by omission or commission, makes a false representation regarding the employee's physical condition; 2) the employer relies upon the false representation and this reliance is a contributing factor in the hiring of the employee; and 3) there was a **causal connection** (this is extremely broad and the employee is at the employers mercy eg. I fell off a horse 40 years ago as a young child hurt my back and now injured my back lifting an obese patient...so they could say it is enough of a relationship-casual- therefore no benefits??? Who would define this??) between the false representation and the injury for which benefits are claimed.

II. SUMMARY OF THE ISSUES

I. Safety

In the post-offer, pre-hire setting, when an applicant is not forthcoming in responding to **legally permissible questions** (what do these entail now) about medical limitations, the employer is denied the opportunity to provide reasonable accommodations, resulting in **safety** risks in the workplace.

Furthermore, injuries that result from an employee trying to do more than he/she has been medically cleared to do are **costly** to the employee, the employer, and the system. When accurate information about an **employee's limitations** (they clearly stated they could ask about any prior medical history, not just worker comp related-This is NOT OK--HIPPA violation) is provided, workplace safety is enhanced and expensive claims can be avoided.

For example, an individual, who did not disclose that he had a **previous back injury** (**what is time limit, again who decides**) and is under a current lifting restriction of 20 lbs., is hired and subsequently asked to lift more than he is capable of lifting. Workplace safety is impacted in the following ways:

- The employee may injure or re-injure himself/herself
- The employee may injure co-workers
- The employee may injure population served and/or bystanders
(*E.g., Nurse drops hospital patient*)

Had the applicant disclosed the pre-existing condition (**they would not be hired**), the employer could have accommodated the lifting restriction through light or modified duty, or, if lifting were an essential function of the job, the employer would have recognized that the applicant did not qualify. The proposed legislation is (**is NOT supportive of employees**) supportive of employees (both the affected employee and co-employees), (**is supportive of employers and the system**) employers, the public, and the system. (**I am unsure how the public would be affected if I did not disclose I had hepatitis for example, it is monitored, controlled and treated but should not be a factor of employment.**)

II. The Cost of Fraud

Insurance fraud is a multi-billion dollar per year enterprise¹. (**Insurance fraud encompasses more than just workers comp**) The amount of workers' compensation claims paid out annually is reported to be \$60.2 billion. Workers' compensation fraud is estimated to cost about ten percent of that or \$6 billion each year². While most employees are honest, a small number scam the system for personal profit, causing enormous damage. People who defraud the workers compensation system increase already expensive insurance premiums on businesses, draining business profits and costing honest workers their pay and jobs. Workers comp fraud also is an affront to the truly injured workers and makes it harder for them to get the compensation they deserve.

LMAC member general comments for the proposed legislation.

- Not sure this will get much traction.
- Seems it is a chink in the "Exclusive Remedy" Armor.
- If an on-site injury occurs and is not covered by Work Comp it seems the remedy would be tort action w/o the beneficial limits.
- Many potential problems with this bill as proposed, might be worthwhile to run this through the Human Rights office at Employment Relations Division to get their comments on where issues might arise.
- It is likely there are ADA, HIPAA, and EEOC issues that might arise in this bill as proposed.
- There is a process for employers to identify the essential functions of a particular job that would include physical requirements for lifting, pushing, pulling, reaching, etc. Once those are identified, the employer as a part of their hiring process can make a conditional offer of employment to an individual and have them complete a physical or functional capacity evaluation to determine if the employee possess' the physical abilities to perform the requirements of a job. This process is designed to determine if a person can physically do that job and if not, allow the employer to have sufficient evidence to not offer the position and revoke the conditional offer.
- I just think more work needs to be completed on this proposal prior to LMAC being able to support it in its current version.