



**MICHIGAN
CHAMBER**
of Commerce

MEMORANDUM

To: Members of the House Commerce Committee
From: Wendy Block, Director of Health Policy & Human Resources
Date: November 27, 2012
Subject: MI Chamber Opposes House Bill 5458

I am writing to voice the Michigan Chamber's opposition to House Bill 5458, legislation to create an exemption from for state corrections officers from certain provisions in the new workers' compensation law. We are opposed to this bill for two key reasons:

1. The carve-out for state correctional officers in HB 5458 creates a real possibility whereby the entire workers' comp reform on this point could be ruled unconstitutional (i.e., in violation of the Equal Protection Clause of the Michigan and the US Constitutions). This is because, if HB 5458 is enacted, similarly situated injured workers would be treated differently under the law. Exceptions for police and firefighters have passed constitutional muster thus far because of their unique situations. For example, we've always had police and firefighter presumptions of work relatedness for certain conditions in the statute -- but these do not apply to corrections officers. If the current disability/wage loss exemption is expanded to corrections officers we should expect constitutional challenges saying that the law impermissibly differentiates between different classes of workers.
2. The current definition of "wage earning capacity" specifies that partially disabled workers (i.e., injured workers who retain the ability to earn some wages at suitable work) have an "affirmative duty to seek work reasonably available", taking into consideration the limitations from the work-related injury or disease. The law establishes that a reduction in the worker's weekly benefit rate results if the facts compel the conclusion that the injured employee is deliberately electing not to seek or accept jobs that are reasonably available and within the employee's restrictions. This provision requires a multi-factor inquiry of the employee's ability to earn AND the realistic availability of jobs within the person's job restrictions. House Bill 5458 specifies that state corrections officers retain the affirmative duty to seek work reasonably available but exempts them from the provision that specifies that workers' comp benefits can be reduced if the worker deliberately elects not to seek or accept jobs that are reasonably available and within the employee's restrictions. (This is accomplished because the language does not include the language in Section 301(4)(B), "whether or not wages are actually earned.") This change reverses the goal of current law and many years of case law, which gives an incentive for partially disabled workers to

return to work when they are able and to make reasonable, good faith efforts to procure work.

The Michigan Chamber respectfully asks that you vote "NO" on House Bill 5458. Please do not hesitate to contact me if you have any questions at 517/927-5135 (cell) or wblock@michamber.com.