

Salary Continuation Benefit Paid to Public Safety Officer Counts toward Temporary Disabilities Aggregate, California Court Rules

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Practices

Workplace Training

Is the special salary continuation benefit payable only to public safety officers under California's workers' compensation law subject to the 104-week limit on payments for a temporary disability? The California Court of Appeal concluded that it is and has annulled an order directing Alameda County to pay additional benefits to an injured deputy sheriff. *County of Alameda v. Workers' Comp. Appeals Bd.*, No. A135889 (Cal. Ct. App. Jan. 30, 2013).

Background

On September 13, 2009, Alameda County Deputy Sheriff Bryan Knittel injured his knee while on duty and was classified as temporarily disabled for over two years. The County of Alameda paid him public safety officer salary continuation benefits pursuant to Labor Code Section 4850 during the first year. Thereafter, the County paid him temporary disability indemnity benefits for an additional year. It then stopped paying benefits, citing the 104-week limit on aggregate disability payments for a temporary disability.

Knittel requested a hearing before the Workers' Compensation Appeals Board on the County's decision. The workers' compensation judge sided with Knittel, concluding Section 4850 benefits do not count toward the 104-week limit. The County petitioned for a rehearing, which the WCAB denied. The WCAB adopted the workers' compensation judge's opinion. The County appealed.

Applicable Law

The California Workers' Compensation Law provides for payment of "temporary disability indemnity" to employees who are temporarily disabled due to workplace injury. Cal. Lab. Code § 4650. An injured employee may receive temporary disability indemnity until the employee returns to work or is able to work, or when the employee's medical condition becomes permanent and stationary. *City of Martinez v. Workers' Comp. Appeals Bd.*, 85 Cal. App. 4th 601 (Cal. Ct. App. 2000).

The California Workers' Compensation Law also provides for payment of a special benefit for injured public safety officers. Cal. Lab. Code § 4850. Under that provision, eligible public safety officers who become disabled while performing their duties are entitled to a one-year leave of absence without loss of salary "in lieu of temporary disability payments." If the disability continues beyond one year, the officer may be entitled to an unpaid leave of absence and other available Workers' Compensation benefits. *Ritchie v. Workers' Comp. Appeals Bd.*, 24 Cal. App. 4th 1174 (Cal. Ct. App. 1994). "Payments pursuant to section 4850 are not salary, but workmen's compensation benefits." *Boyd v. City of Santa Ana*, 6 Cal. 3d 393, 397 (Cal. 1971).

In 2004, as part of a comprehensive reform of the Workers' Compensation Law, the California Legislature enacted a 104-week limit on disability payments for temporary disabilities. Cal. Lab. Code § 4656. The law provides that "aggregate disability payments for a single injury . . . causing temporary disability shall not extend for more than 104 compensable weeks within a period of five years from the date of injury."

Claim for Additional Benefits Rejected

The County argued that the phrase, "aggregate disability payments" encompassed both temporary disability indemnity and Section 4850 benefits because the latter benefits are considered workers' compensation benefits. The appeals court agreed. Therefore, the Court determined, Section 4850 benefits should be considered part of the "aggregate" of disability payments when they are paid for a temporary disability.

The Court also pointed out that, if the 104-week limitation applied only to temporary disability indemnity, the Legislature would not have used the term "aggregate disability payments" in the statute. The Court stated, "[T]he Legislature's choice of words was not an idle act . . . if the Legislature had meant 'aggregate

disability payments' to mean 'temporary disability indemnity,' it would have simply used the latter phrase, which has a well-understood, specific meaning in workers' compensation law." The workers' compensation judge was in error, the Court said, in interpreting the 104-week limitation to cover only temporary disability indemnity and effectively rewriting the statute. The Court concluded Knittel was entitled to a total of 104 weeks of combined disability benefits, consisting of 52 weeks of Section 4850 benefits and 52 weeks of temporary disability indemnity. Accordingly, it reversed the WCAB's order and returned the case to the WCAB.

Public agencies should consider contacting their workers' compensation administrators to determine if they have any employee on leave who has received more than 104 weeks of benefits. If an employee has exceeded 104 weeks of benefits, public agencies should work with legal counsel to determine if any excess payments can be recovered. Agencies also should work with legal counsel to ensure coordination between workers' compensation, disability and retirement laws that may impact an employee's benefits.

If you have any questions about this or other workplace developments, please contact the Jackson Lewis attorney with whom you regularly work.

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