

INTER - OFFICE MEMORANDUM

TO: ALL ATTORNEYS/ALL OFFICES

FROM: W. JOSEPH TRUCE

DATE: November 14, 2001

RE: LABOR CODE §4651-PAYMENT OF COMPENSATION BY
WRITTEN INSTRUMENT WHICH IS IMMEDIATELY
NEGOTIABLE

Although this issue does not come up very often all attorneys should be familiar with Labor Code §4561 and the applicable case law.

Labor Code §4651 entitled Acceptable Method of Payment provides in relevant part as follows:

"No disability indemnity payment shall be made by any written instrument unless it is immediately negotiable and payable in cash, on demand, without discount at some established place of business in the state. . . "

There are certain applicant's attorneys that try to take advantage of this section by claiming that their client's check was not immediately negotiable thereby raising the specter of a Labor Code §5814 penalty.

I am enclosing the Board's en banc Decision in the case of **Heidi Lyn Barney (Christenson) v. Esson's Snack Bar and the Travelers Insurance Company** confirming that a 10% penalty pursuant to Labor Code §5814 will be imposed if it is determined that the defendant has violated Labor Code §4651.

In years past insurance carriers issued what were referred to as sight drafts (not checks) in both liability and workers' compensation cases.

This practice continued despite the enactment of Labor Code §4651. A sight draft was not immediately negotiable as the bank, before releasing the funds, would call the insurance carrier for a final okay.

The practice of issuing drafts instead of checks was discontinued after the imposition of several Labor Code §5814 penalties. Insurance carriers then began issuing checks but in some instances (such as in the **Barney** case) these checks were payable on an out of state banking institution. In the **Barney**

case the check was payable at Hartford, Connecticut. Therefore there was not only a delay in payment to the applicant but the applicant had a \$4.00 collection charge deducted from her workers' compensation benefits.

Accordingly the Board held that the defendants draft/check was not immediately negotiable and therefore imposed a 10% penalty for a violation of Labor Code §4651.

Subsequent to the **Barney** decision most carriers now ensure that their checks are immediately negotiable in the state of California. However there still are cases in which the delay in payment is not the fault of the carrier but is a **banking error** and this can be utilized as a defense to a Labor Code §5814 penalty.

One of the provisions in the recently vetoed benefit bill (SB 71) was a provision that defendants would not be held liable for a Labor Code §5814 penalty in case of a "banking error" which was beyond their control.

WJT:wt

Enclosure- **Heidi Lyn Barney (Christenson) v. Esson's Snack Bar and the Travelers Insurance Company**