ANOTHER INSTALLMENT IN THE *GEORGE THE BARTENDER* SERIES

For past installments of the *George the Bartender* series, please visit our web site at http://www.kttlaw.us/memos.html

RE: GEORGE THE BARTENDER AND THE ATTEMPTED END RUN AROUND THE TWO YEAR TEMPORARY DISABILITY LIMITATION IN LABOR CODE §4656

FROM THE LOBBY BAR AT THE HYATT:

As I eased into my customary seat at the lobby bar, Kim, the Hyatt's breathtakingly beautiful cocktail waitress, appeared out of nowhere with my favorite cocktail, a Beefeater's martini straight up with two olives.

Kim explained that George's Worker's Compensation attorney, Ron Summers, had just announced that he was buying a second round of drinks for everyone at the bar.

Not wanting to look a gift horse in the mouth I accepted my free cocktail. After my first sip I looked up into the face of a beaming Ron Summers.

Ron explained that he was celebrating a huge account that he was about to nail down – the Short Beach Unified School District.

As our law office was on the panel of defense attorneys for Short Beach Unified, I knew several applicant attorneys who represented their employees in Worker's Compensation litigation and Ron was not among them.

Ron broke into my thought process by telling me that he had just come from a seminar in which he made an impassioned presentation to the leading Union of Short Beach Unified which represented a majority of the School District employees.

A smiling Ron told me he had explained his master plan to the Union leaders as to how to get around the two year cap on temporary disability imposed by Labor Code §4656.[1]

As I knew that Labor Code §4656, enacted as part of the Senate Bill 899 reform on April 19, 2004, limited an employer's liability for the payment of temporary total disability to an aggregate of 104 weeks, I was interested in Ron's strategy.

Still in the afterglow of his presentation to the Union, Ron outlined his strategy to me. Ron indicated that by virtue of Education Code §44043, School District employees were entitled to one year of full salary called Industrial Disability Leave or IDL.

As the payment of full salary was not equivalent to temporary total disability, the employer would not receive credit for the one year payment of salary. This would in turn extend the School District's liability to another two years of temporary disability after a worker's full salary benefits had been exhausted.

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1 For the purpose of this memo I have referred to the School District's Unions but it is illegal for public employees to be represented by Unions. Instead they are represented by Bargaining Units. Bargaining Units cannot have Union Contracts. Instead, written agreements between the Bargaining Unit and the Public Entity are called Memorandums of Understanding. A rose by any other name. . .

I decided to wait for the next free round before bursting Ron's bubble of enthusiasm.

Once I had my next Beefeater's martini safely in hand I explained to Ron that this strategy had already been tried against the Mt. Diablo Unified School District by an applicant's attorney who had recently been shot down by the Court of Appeal decision in Mt. Diablo Unified School District, Petitioner v. Workers' Compensation Appeals Board, Nicole Rollick, Respondents, 165 Cal. App. 4th 1154; 73 CCC 1212.

In its published decision in the Mr. Diablo case the Court of Appeal ruled that Industrial Disability Leave (IDL) was paid by the School District in lieu of temporary disability and counted against the two year cap.

With a stricken look Ron gulped what was left of his cocktail, pulled out his cell phone and quickly began dialing the number of the Union leaders at the Short Beach School District.

DISCLAIMER:

Although the above story and characters are fictional, the well-reasoned decision of the Court of Appeal in the Mr. Diablo case is real and as it is a published decision this decision can be cited as authority in this State.

Although the two year cap on temporary disability is relatively new, the attempt to force employers to make double payments is not. This comes under the heading of coordination of benefits.

In the late 1960s and early 1970s several large employers created programs by which their employees, suffering either industrial or non-industrial injuries, would continue to receive full salary during their periods of disability. Applicant attorneys claimed then, as they are claiming now, that payment of full salary to an employee did not mitigate an employer's obligation to also pay temporary disability benefits.

It certainly does not make sense that an employer would have an obligation to pay temporary disability to an injured employee who has suffered no wage loss as he and/or she is receiving full salary, but the ongoing attempts to collect double benefits continue.

A very happy holiday to one and all from me, George, Kim and all the characters at the lobby bar.

Make mine a double, George.

-Joe Truce