

INTER-OFFICE MEMORANDUM

TO: ALL ATTORNEYS/ALL OFFICES & CLIENTS

FROM: W. JOSEPH TRUCE

DATE: November 14, 2001

RE: COURT OF APPEAL HOLDS THAT INJURED EMPLOYEES
ARE NOT ENTITLED TO EITHER WAGE LOSS OR
TEMPORARY DISABILITY INDEMNITY FOR TIME LOST
FROM WORK WHILE UNDERGOING TREATMENT

Although Labor Code §4600 allows reimbursement to the applicant of temporary disability for actual wages lost while attending a medical-legal examination Labor Code §4600, case law is silent on whether or not an injured employee is entitled to temporary disability when said employee loses time from work while undergoing treatment.

The Court of Appeal has now addressed this issue in a case entitled **State of California, Department of Rehabilitation v. WCAB**. Unfortunately this case is certified for non-publication- meaning that it cannot be cited as judicial authority.¹

In Lauher, the injured employee, after returning to work (and after being found permanent and stationary) continued to treat under his Award of future medical treatment.

While doing so the applicant lost time from work and the employer refused to reimburse him with temporary disability benefits or wages. The applicant was forced to use his sick pay and vacation time. As a result the applicant filed a Labor Code §132a action alleging that he was discriminated against by the employer by reason of having sustained an industrial injury.

The workers' compensation judge found a Labor Code §132 violation and was affirmed in a 2 to 1 decision of the Appeals Board.

However, the Court of Appeal then granted defendant's Petition for Writ of Review. The summary prepared for the California Workers' Compensation Reporter summarizes the Court's Opinion as follows:

¹I am enclosing a copy of a summary of the Court's Decision in **State of California, Department of Rehabilitation v. WCAB (Lauher)** which has been published in the California Workers' Compensation Reporter and cited as 29 CWCR 211.

"However, no language in Labor Code §4600 confirms a right to TD (on a person who has returned to work and whose disability is permanent and stationary) for wages lost while attending ongoing medical care. The right is limited to medical-legal examinations. . . ."

The Court then referred to the Board's en banc decision in **Mead v. Diamond International Corporation (1974) 2 CWCR 30, 39 CCC 1** in which the Board held as follows:

"In compensation practice day in and day out employees are totally uncompensated for wages lost while attending to medical treatment during their work day. It has long been considered that in exchange for the blanket coverage of compensation without regard to fault, the employee bears some of the burden. . . ."

The Court went on to note as follows:

"Applicant's argument that he is entitled to TD cannot be harmonized with well established law holding that TD stops on return to work or attainment of permanent and stationary status. When applicant returned to work, he was no longer entitled to TD except as provided in Labor Code §4600, which limits the benefit to examinations . . . "

In the above Decision the Board has tried to come to grips with the question of whether or not the Labor Code or case law allows for an employee to either be reimbursed with wages or temporary disability when he and or she misses time from work as a result of undergoing treatment. Most insurance carriers and third-party claims administrators voluntarily pay temporary disability (or a portion thereof) when an applicant misses time from work as a result of undergoing treatment. The Court in **Lauher** limited its decision to the situation in which the applicant has been found to be permanent and stationary and has returned to work. However, based on the dicta in the en banc decision (which is presumably binding on all workers' compensation judges) in **Mead (Supra)** it would appear that there is no obligation for the employer and/or carrier to pay either lost wages and/or temporary disability benefits at any time when the applicant loses time from work as a result of undergoing treatment.

WJF:wf

Enclosure- CWCR, Vol 29 pages 211-214