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EXTENT OF ENTITLEMENT TO LABOR CODE §4850 BENEFITS AT ISSUE

By SCOTT O'MARA

Labor Code §§4850 and 4800.5 set forth compensation that many safety people can receive in the event of a job-related injury. The concept is that certain designated groups are entitled to a full salary not to exceed one year instead of the temporary disability benefits which are paid to non-safety workers.

However, the common thinking has been that "full salary" does not include paid vacation time or medical benefits, based on a 2000 case known as *Wirsing*. The thought also has been that a safety officer's full salary does not include salary step increases, based on a 2003 County of Riverside case.

Additional cases address the safety member not having access to vacation hours exceeding the maximum allowed by a government entity while a safety officer is on disability leave prior to retirement. Benefits pursuant to Labor Code §4850 and 4800.5 also do not apply to periods of disability subsequent to an officer's retirement, resignation, termination or dismissal from employment. The intent of these statutes is to protect safety officers.

Recently, the decision in a Northern California case potentially expands the calculation of benefit levels pursuant to Labor Code §4850. The Court reviewed evidence which established that the officer was receiving shift differential pay for several years prior to the job-related injury, and when time was taken off from work for holidays, vacation or sick leave, the officer continued to receive the shift differential pay. This template established that the employer had a clear pattern of practice of paying the officer as a shift worker prior to the job-related injury.

Subsequent to the job-related injury, the officer received benefits pursuant to Labor

Code §4850, but the employer determined he was not entitled to receive the 5% shift differential increase for the entire time he was on light or modified duty either full or part-time pursuant to Labor Code §4850. Upon further review of the evidence, the Court found there was a clear pattern and practice of paying the officer as a shift worker. The County chose to place the officer on a day shift rather than a differential evening shift while he was on light duty, but would not continue to pay the shift differential.

The Court stated:

"Based upon a review of the facts, evidence, and case law, it is found that the employer could not change Officer Lade's status for purposes of LC 4850 so as to avoid indemnification for the shift pay. Applicant is entitled to the 5% shift differential increase for the entire time he was on light or modified duty, either full-time or part-time, less a reasonable attorney's fee of 15%."

The employer again asserted that since the worker returned to modified or light duty, he was no longer entitled to benefits pursuant to Labor Code §4850; therefore, the enhancement which is argued pursuant to that statute had no play.

The Court refined its decision, indicating that for the period of time the worker was on modified duty and working less than 40 hours per week, he would fall under the umbrella of temporary disability wage loss, thereby entitling him to benefits pursuant to Labor Code §4850 and enhanced benefits as previously established by the shift differential pay.

Interestingly, the Court embraced the concept that Labor Code §4850 benefits are intended to provide the injured worker with replacement of his salary, and that salary included shift differential pay. The employer challenged the decision, but the Workers' Compensation Appeals Board adopted the judge's decision and denied reconsideration on 5/21/13. The employer has challenged this, and the case is now

before the Third District Court of Appeal for their review and consideration.

Assembly Bill 1373 — which would have increased from 240 to 480 the number of weeks for safety officer dependents to seek benefits for the death of a safety officer caused by cancer, tuberculosis, Methicillin-resistant staphylococcus aureus or bloodborne infectious disease — was vetoed by Gov. Brown. However, he subsequently signed into law AB 1035, which extended the death benefit to up to 420 weeks.

Assembly 607, sponsored by PORAC, was passed by the Assembly on 4/18/13, and the Senate on 8/26/13. This bill revises the Labor Code statute which denied full death benefits to families with a totally-dependent surviving parent.



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