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TWO-YEAR LIMITATION ON LABOR CODE §4850 BENEFITS HARMFUL NOT ONLY TO WORKERS, BUT EMPLOYERS AS WELL

By Scott O'Mara

Assembly Bill 2378 was proposed on 2/21/14 for the purpose of correcting the inadequacies which occurred with imposition of the 104-week limitation on Labor Code §4850 benefits by the *County of Alameda* decision of 1/30/13. However, while AB 2378 was approved by both the Assembly and the Senate, it was subsequently vetoed by Gov. Brown on 9/29/14.

Law enforcement assignments are unique, and the extraordinary exposures faced by law enforcement personnel are very similar to military activities in a combat zone. These facts alone clearly justify a face-to-face meeting with the Governor to educate him as to the appropriateness of the bill which he vetoed. It is of paramount importance for him to recognize that passage of this bill would not only protect workers and their families; it also would have tremendous benefit for employers because it would allow workers sufficient time to recover from their injuries and return to work instead of being forced into a disability retirement.

Labor Code §4850 is specific legislation crafted for safety workers. The basic concept of this statute is acknowledgment of the unique risks faced by California safety officers. It is designed to provide a full salary for eligible safety officers if they sustain a job-related injury.

The public has acknowledged that safety officers engage in unique and highly dangerous and injurious work activities to protect the public. One of the purposes of Labor Code §4850 was to allow injured officers ample time for a full and complete recovery so they could return to work instead of seeking an industrial disability retirement.

Labor Code §4656 sets forth an artificial limitation of two years for payments of temporary disability benefits to California workers. This legislative enactment was

created to save money, and the initial thought was that safety officers who receive benefits pursuant to Labor Code §4850 would be restricted from receiving such payments for more than two years (with no more than one year of §4850, and no more than one year of TTD).

However, a few landmark cases subsequently evolved out of the City of Oakland and the County of Sacramento which acknowledged the unique roles that safety officers have in California. It was found that the artificial two-year limitation did not encompass benefits pursuant to Labor Code §4850.

As the reader is aware, safety officers who sustain job-related injuries which preclude them from performing their substantial duties as officers are in a position to receive disability retirements. This type of retirement affords a substantial tax benefit, and it also provides early retirement benefits to workers who are not of age to receive a regular retirement.

However, as readers are also aware, the population of safety officers is composed of people who are highly-driven and highly-motivated, and 99.9 percent of these individuals want to continue with their work rather than seek retirement or be forced into retirement.

In the *City of Oakland* case, Joanna Watson had such serious injuries that she was off work for a period of time beyond the two-year limitation for receiving L.C. §4850 and temporary disability benefits artificially imposed on all California workers. The decision rendered in this case again acknowledged the uniqueness of Labor Code §4850 and determined it was not subject to the two-year limitation, thereby affording Ms. Watson additional benefits outside the two-year window. The extra time allowed Officer Watson to undergo her back surgery as she continued to receive temporary disability benefits, ultimately enabling her to reach the point where she could return to work.

Then, on 1/30/13, the First Appellate District, Division 4, issued a decision in the *County of Alameda* case which causes great harm to employers and safety officers who are severely injured but highly motivated to continue with their work as officers and not go into disability retirement mode. This decision crafts the opinion that benefits pursuant to Labor Code §4850 are indeed subject to the two-year limitation. Their rationale was that these benefits are not salary, but Workers' Compensation payments, and the law states that "aggregate disability payments for a single injury occurring on or after January 1, 2008, causing temporary disability shall not extend for more than 104 compensable weeks within a period of five years from the date of injury". There was legislation in 2007 to correct inadequacies of the Labor Code regarding time limits. The purpose of this legislation was to provide clarification — *not* bring safety officers within the artificial two-year limitation for receiving temporary disability benefits.

The Court unfortunately embraced the 104-week limit, creating a conundrum of problems for employers. If a worker sustains a serious injury which causes him/her to be off work for more than two years, that indeed is a serious injury. Yet, with this new decision, many safety officers who otherwise would continue their employment if given sufficient time to recover will be forced to seek and receive a disability retirement because they cannot continue to receive money during their full recovery period. Thus, the end result will be more disability retirements, not only forcing many officers into ending their careers prematurely, but also creating greater costs.

This decision also ignores the uniqueness of California safety officers and the extreme situations of harm and risk in which they are placed, and it ignores the fact that we as a society seek to protect those who protect us. If additional appeals occur and are not successful, legislative review must be made to correct this wrong.

I had the opportunity to speak with Alex J. Wong, Esq., an attorney for the law firm of Jones, Clifford, *et al.*, who appeared before the Court to make the argument on behalf of the safety member. It should be noted that this law firm did this work *pro bono*, and they also were instrumental in the *City of Oakland* case that eviscerated application of the two-year restriction to safety workers in 2007. Mr. Wong's thoughts are thus consistent with my views and what I express herein.

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