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## TYPES OF INJURIES: SPECIFIC AND CUMULATIVE

BY: SCOTT A. O'MARA

In Workers' Compensation, the Labor Code defines two types of injury — *specific injuries*, which occur at a particular place and time from one event (such as injuries resulting from a fall or a vehicular accident); and *cumulative trauma injuries*, which result not from one specific event, but from a combination of activities or exposures over a period of time (such as cancer resulting from carcinogenic exposures, orthopedic injuries resulting from repetitive physically demanding activities, hearing loss due to repetitive noise exposure, or heart disease resulting from sustained stress). A cumulative trauma injury is akin to the bending of a paper clip. If you bend it back and forth enough, it will break — not immediately, but eventually. The breakage will result not from one bend, or several bends, but from the combined effect of repeated bending over a period of time.

Both specific injuries and cumulative trauma injuries — once they have been established as being work-related — create an entitlement for the injured worker to receive benefits. However, the employer has a litany of tools which can be used to deny a job-related injury, such as the statute of limitations, which defines a limited window of time within which the injured worker must seek relief from the effects of a job-related injury — whether it be in the form of medical care, pay for time off work, permanent disability benefits, or other relief — or else forfeit the opportunity to receive such benefit.

Once the worker is aware that he or she has sustained a job-related injury, the statute of limitation takes effect. Typically, this limited window for seeking relief is a one-year period of time. Depending upon the particular circumstances of a case, this period could be one year from the date of injury, or the date of initial knowledge of an injury; one year from the date medical care was last received; or one year from the date of last payment of Labor Code §4800.5/§4850 or temporary disability benefits.

There are certain aspects of employer conduct which may toll the statute of limitations, but injured workers are strongly encouraged to file a Claim Form when any type of work injury has been sustained. Labor Code §5400 states specifically:

“Except as provided by sections 5402 and 5403, no claim to recover compensation under this division shall be maintained unless within thirty days after the occurrence of the injury which

is claimed to have caused the disability or death, there is served upon the employer notice in writing, signed by the person injured or someone in his behalf, or in case of the death of the person injured, by a dependent or someone in the dependent's behalf.”

If the employer can claim prejudice, or claim being misled, within 30 days of the filing, the employer can seek dismissal of the claim.

With these guidelines embedded in the system, the employer wants to be able to conduct a timely and reasonable review of the claim. The longer the time from the date of injury or filing, the more difficult is the process for the employer.

In essence, based on the rules which exist, any worker who sustains an injury or condition which he or she knows or reasonably believes is job-related should file a timely Workers’ Compensation claim to protect his/her rights related to this matter.

A study has been published regarding safety officer claims in Los Angeles, but the results from the audit review and summary are being taken out of context in an attempt to take issue with the claims being filed. The study reviewed the claims of 9,983 peace officers and 3,246 firefighters — two safety groups which together comprise 28% of the City’s labor force — and the audit noted that these groups accounted for more than 60% of the Workers’ Compensation cases. However, those figures do not take into account the unique exposures to harm which police and fire personnel have, nor does it acknowledge the valuable front-line role these safety groups play — like soldiers in a war zone — in defending and protecting the public from criminal activity and potentially disastrous situations. To put safety personnel in the same category as other labor groups is disingenuous, uninformed and totally without substance, yet there is some discussion regarding same.

The study further noted that in Los Angeles the claim ratios for safety personnel are 31.7 per 100 police officers, and 37.1 per 100 firefighters. These numbers are compared with those in other cities, including San Diego, where these same claim ratios are 24.7 per 100 police officers, and 29.4 per 100 firefighters.

The study also delves into the fact that costs in Los Angeles have increased more than 35% over the past five years. ***It is very interesting to note how this increase in costs runs parallel to the failure of the Utilization Review and Independent Medical Review systems which have been mandated in California.***

If an injured worker does not file a timely claim for Workers’ Compensation due to pressure from his/her employer, supervisor or peers, it gives the employer an opportunity to raise a statute of limitations issue, which employers have been doing with greater frequency in the past 48 months. So, if a worker who knows or believes he/she has sustained a job-related injury does not timely file same because of feeling pressured not to do so, and residual problems eventually produce the need for medical care, time off from work, or permanent disability benefits, the employer — despite being responsible for the initial injury — will raise the statute of limitations issue to bar the worker (and his/her family) from receiving any benefits or recovery for the work-related injury.

It is incumbent upon the associations and their members not to be drawn into the misstatements which have been publicized regarding the Los Angeles Workers' Compensation claim audit relative to police officers and firefighters. These safety occupations naturally do have higher levels of injury, more injuries of a serious nature, and more injuries which require complex medical needs, than occupations which do not face life-and-death situations and the repeated risk of physical harm, such as a city council man or woman, an administrator of a program, someone who works at a computer, a gardener, or people in thousands of other occupations which function in what are routinely risk-free environments. That is not to say that those jobs cannot cause injury, but their physical and emotional demands are substantially smaller, and the need to file Workers' Compensation claims is considerably less, than is the case for police officers and firefighters.



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