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SAFETY OFFICERS ARE A UNIQUE GROUP OF PEOPLE PERFORMING HIGH-RISK WORK IN THE PUBLIC INTEREST AND ARE ENTITLED TO AN EXPANSION OF WORK COMP BENEFITS

BY: SCOTT A. O'MARA

The California Workers' Compensation system provides for payment of benefits when workers sustain job-related injuries and need time off from work for medical care to cure or relieve the effects of their injuries. This time off can be compensated within certain time parameters and at certain levels of benefits, and the compensation typically is payable until a worker's condition reaches maximum medical improvement, and/or the employer has a modified job position available which can accommodate the worker's actual or pending work restrictions within certain time parameters.

Temporary disability payments are based on the reasonable expectation that a worker's medical condition can be cured or at least improved with the proper medical treatment. The term "temporary" is the operative word; *i.e.*, the worker's medical condition is not permanent during this treating period.

The term "disability" indicates a worker's lack of ability to perform the tasks required in his or her employment, the result of which is a corresponding wage loss due to the work-related injury.

Temporary disability payments are one of the three principal benefits under the Workers' Compensation system. The other two benefits are medical care to cure or relieve the effects of an industrial injury; and permanent disability payments, which are payments to compensate for a worker's decreased ability to work in the open labor market and his/her diminished future earning capacity which results there from.

Substantial changes have occurred in the payments available to injured workers for periods of temporary total disability. However, there is an acknowledgement that certain sectors of the employee population have jobs which involve extraordinarily high risks in the routine course of their work protecting the public interest. Therefore, in recognition of those risks, Labor Code §4850 was enacted to give special benefit to police officers, firefighters, deputy sheriffs, probation officers, peace officers under §830.31 of the Penal Code, and numerous other law enforcement/firefighting personnel.

In addition, Labor Code §§4800 and 4800.5 were enacted to give certain state workers the same benefit. Acknowledgment that these safety officers have missions to protect public safety continues to be a much-needed priority.

Currently, Labor Code §§4850, 4800 and 4800.5 provide up to one year's full salary to safety personnel unable to work because of job-related injuries. At the conclusion of that one-year period, injured safety

workers within the designated categories are eligible to receive temporary disability benefits, which currently pay two-thirds of a worker's average weekly wage up to a maximum of \$1,128.43 per week. Unfortunately, legislative enactments have placed artificial windows of availability for access to temporary disability benefits and benefits pursuant to Labor Code §§4850, 4800 and 4800.5. In the year 2007, Labor Code §4656 was amended setting forth that for injuries occurring on or after the date of enactment of the amendment, the window of payment is not to extend beyond 104 weeks within a five-year period from the date of injury.

At one time, the 104-week limitation on these benefits was expanded pursuant to cases involving the City of Long Beach and the City of Oakland. Those cases reflected that peace officers eligible for benefits pursuant to Labor Code §4850 are entitled to a different class of benefits separate and distinct from temporary disability; therefore, the 104-week limitation did not apply to them, and they were eligible to receive their year of §4850 time *plus* an additional 104 weeks of temporary disability benefits. This judicial interpretation was much needed in recognition of the unique high-risk work performed by safety officers, and the unique injuries they sustain while engaging in their substantial duties.

Ultimately, the Long Beach and Oakland cases were overturned, as the Court interpreted Labor Code §4850 payments to be part of temporary disability payments, and not a separate and distinct class of benefits. Based on this interpretation, safety officers, like other employees, become subject to the 104-week limitation.

State Sen. Richard D. Roth had identified this inadequacy and drafted proposed legislation (RN1601045) to address it through the creation of Labor Code §4850.1. Unfortunately, however, this bill did not pass. This legislation is much needed, as it again acknowledges the uniqueness of safety workers and would allow these workers to receive up to two years of their full salary in the event of a job-related injury.

It would appear that other safety organizations, such as the California Highway Patrol and the Department of Justice — and other safety officers as set forth in Labor Code §§4800 and 4800.5 — should be considered to be eligible for this much-needed expansion of benefits in view of the fact that they are a unique and highly-valued group of people who also provide protection and safety to the citizens of California.



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