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FAIR & EQUITABLE DISTRIBUTION OF 3RD PARTY RECOVERY

BY: SCOTT A. O'MARA

The California firefighters and California peace officers provide unlimited protection to the public. The protection they provide places the peace officers and firefighters in numerous situations of high risk and harm to them.

There are work situations where the cause of the industrial injury is by a third-party other than the employers, but in a work situation. This can be a common factor for firefighters and police officers responding to auto accident, safety protections, fires, arresting suspects, transportation of the injured public to a hospital.

The safety officers (firefighters/peace officers) may have additional remedies to assist and protect themselves in the form of a civil law suit against the harmful party causing injury. The California Supreme Court and the California Constitution states the injured worker has the right to have medical care to cure or relieve the effects of the job-related injuries, and this obligation is one that is placed upon the employer.

Parallel to this obligation that the employer has to protect the safety member, there can be additional remedies that the worker may have if a third-party other than the employer is a factor in the situation that has caused harm to the safety member. The California employer also has additional mechanisms to shift some of their economic responsibilities by exercising subrogation rights. The employer use of the subrogation system can be a shift of the employer's responsibility to provide medical care to cure or relieve the effects of the injury to the worker. The employer's use of the subrogation system can be a legal maneuver to shift all of the employer's responsibility to provide medical care to cure or relieve the effects of the injury to the workers in the recovery that was obtained from the worker's civil law suit against the entity causing the harm.

Some injuries cause high level of harm to the safety workers that go beyond the parameter of workers' compensation system, and retirement system. When this develops it may take many years for the full impact of injury to happen. The additional protection the injured worker (firefighter/peace officer) can obtain is through a civil law suit against the party causing the harm. The current unlimited subrogation legal maneuver gives the employer the ability to shift all current costs and future costs. This maneuver undermines

the firefighter/peace officer's ability to be protected against these serious damages. The employer is mandated by the California Constitution to provide medical care to cure or relieve the effects of the injury.

In some situations of the job-related injury there can be parallel litigation ongoing; one, the workers' compensation benefits and/or civil litigation against the party causing the harm. This civil litigation can be both by the injured worker and/or the employer.

The key factor in the workers' compensation system is the requirement of medical care to cure or relieve the effects of the injury. The care can be lifelong medication, can be surgery, physical therapy, and placement of the injured worker into a care facility on a lifelong basis.

Medical care does not have limitations as to the date of injury and the need for medical care. Medical care may be something that is not needed for 5-20 years from the date of injury and is not identified until a significant amount of time has passed and the development of the need for care emanates from the job-related injury. The medical care to cure or relieve the job-related injury is a paramount provision of protecting those that protect us. In addition, there is compensation that the worker can receive in the workers' compensation system, and potential compensation from pursuing the third-party cause of action.

Legislation is being offered through Senate Bill 487 by Senator Grayson that recognizes the uniqueness of the work and protection that firefighters and peace officers provide to our society. This legislation encompasses the concept that medical care is to cure or relieve the effects of the injury, and there should be no fair justification to allow that to be washed away through subrogation procedures that the employer may try and use against the firefighter/peace officer.

The legislation Senate Bill 487 recognizes the uniqueness of the firefighters and peace officers and the high level of risk and harm to them. This legislation provides guidance as to the amount of compensation that the employer can garner from exercising third-party rights to recover by usage of the subrogation system.

The employee shall receive no less than two-thirds of the third-party defendant's liability insurance policy, or coverage. This guidance as the Senate Bill 487 states is intended to reflect a fair and equitable share of the recovery in light of the injured worker's total damages, attorney's fees, and costs of the suit, and shall be deemed exclusive of any lien or offset by the employer.

The legislation which establishes the two-thirds rule states the employer shall have no right to assert any credit or offset against future medical compensation benefits owed to the employee. Once the resolution has been entered into as to the compensation to the worker, the employer can garner from a third-party one third of the damages. The two-thirds rule governs the payment to the worker.

This mandate of removing the employer's ability to seek unreasonable compensation beyond the one-third collection protects the firefighter/peace officer.

The legislation Senate Bill 487, establishes the one-third rule and the two-third rule. Senate Bill 487 state the employer shall have no right to assert any credit, offset or denial against future medical care compensation of medical benefits. Without this specific protection language the employer could attempt to seek credit beyond one-third of the net recovery.

As stated, the future medical care is to cure or relieve and can be expansive. If the injured worker had side-effects from a medication, that could become the responsibility of the employer for the job-related injury. What may appear to be a simplistic injury may be one that evolves to a more complex medical situation that requires more surgeries, hospitalizations, and/or dependency on treatment for lifelong medical care in a facility.

This legislation, Senate Bill 487, protects the people that are protecting us. It does allow some reasonable compensation to the employer for the expenses that they have paid, but places a reasonable direction on the employer/carrier for reimbursement for ongoing medical care and costs the same. Senate Bill 487 is specific that it is to reflect a fair and equitable share of the recovery in light of the employee's total damages, and the possible need of expanded medical care.

The legislation proposed is one that is meaningful and does not discourage the governmental entities whether that is the State, City, County or other sub-divisions from obtaining employees that will do the work of a firefighter and peace officer. We are protecting the firefighters and peace officers and ensuring that there is an equitable distribution of the monies obtained from a third-party law suit. The legislation is much needed and does provide protection to us as a society.



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