

Trovillion, Inveiss & Demakis

Trovillion, Inveiss & Demakis, APC has grown in reputation as one of Southern California's premier law firms specializing in representation of employers, insurance carriers and third party administrators in workers' compensation litigation.

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2016 TOP ATTORNEYS

San Diego Magazine has named attorneys Daniel Trovillion and Stephen Wismar to their list of 2016 Top Lawyers in Workers' Compensation.

The magazine relies upon Martindale-Hubbell, the company that has long set the standard for peer review ratings to compile the magazine's list of the 2016 local lawyers who have reached the highest levels of ethical standards and professional excellence. Congratulations to Dan and Steve!

You can contact both Dan and Steve at TID's San Diego office or by email DTrovillion@TIDlaw.com and SWismar@TIDlaw.com

SUPPLEMENTAL JOB DISPLACEMENT BENEFIT VOUCHER OBLIGATION AND DISPUTE RESOLUTION PROCESS

Since its implementation on January 1, 2013, Senate Bill 863 reforms brought many changes to Workers Compensation. One of the areas affected was the issuance of job displacement benefit vouchers.

For dates of injury occurring between January 1, 2004, and December 31, 2012, if the injury caused permanent partial disability and the injured employee did not return to work within 60 days of the termination of temporary disability, the injured employee was eligible for a supplemental job displacement benefit voucher with a value that varied from \$4,000 for permanent partial disability awards of less than 15%, up to \$10,000 for permanent partial disability awards between 50% and 99%. In practice, the parties could resolve these vouchers in a Compromise and Release agreement.

An employer was not liable to furnish a voucher in either of the following situations:

- If within 30 days of the termination of temporary disability payments, the employer offers, and the



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employee rejects or fails to accept, modified work that accommodated the employee's work restrictions; or

- If within 30 days of the termination of temporary disability payments, the employer offers, and the employee rejects or fails to accept, alternative work that met all of the following: the employee had the ability to perform the essential functions of the job provided; the job provided was for a regular position lasting at least 12 months; the job provided offered wages and compensation that were within 15% of those paid to the employee at the time of injury; and, the job was located within reasonable commuting distance of the employee's residence at the time of injury.

SB 863 added LC § 4658.7, which applies to all injuries occurring on or after January 1, 2013. Now, if the injury causes permanent partial disability, the injured employee is entitled to a voucher UNLESS the employer makes an offer of regular, modified, or alternative work that meets both of the following criteria:

- The offer is made no later than 60 days after the claims adjuster receives the first report from either the Primary Treating Physician, an AME, or a QME, that declares the injury permanent and stationary and that the injury has caused permanent partial disability; and,
- The offer is for regular work, modified work, or alternative work lasting at least 12 months.

An employee that has missed no time from work and continues to work the same job for the same employer is deemed to have been offered and accepted regular work.

The voucher must be offered to the employee within 20 days after the expiration of the time for making an offer of regular, modified, or alternative work as prescribed above.

Regardless of the permanent partial disability rating, the voucher is worth up to \$6,000 and may be applied to education-related retraining or skill enhancement, or both,

at a California public school or with a provider that is certified and on the state's Eligible Training Provider List. The voucher may also be used for occupational licensing or professional certification fees, related examination fees, and examination preparation course fees, among other services.

VOUCHER EXPIRATION

The voucher expires either two years after the date of issuance or 5 years after the date of injury, whichever is later. It is important to note that vouchers *issued* prior to January 1, 2013 do not have an expiration date.

The buy-out of a voucher is no longer allowed as a part of a Compromise and Release settlement. Also of note, the employer is not liable for compensation for injuries incurred by the employee while they are using the voucher.

A claims adjuster's liability to issue a voucher terminates in any of the following three situations:

- An offer of regular, modified, or alternative work as described above is offered;
- The maximum funds of the voucher have been exhausted or the voucher has expired if it was issued on or after January 1, 2013; or
- The voucher was included as a part of the settlement for dates of injury prior to January 1, 2013.

VOUCHER DISPUTE RESOLUTION

When there is a dispute regarding vouchers, California Code of Regulations § 10133.54 governs the resolution process. Either the employee or the claims administrator must call upon the Administrative Director (AD) to resolve the dispute, not the Workers Compensation Appeals Board.

The party requesting the resolution must submit form DWC-AD 10133.55 entitled "Request for Dispute Resolution Before Administrative Director." In addition to submitting this form, the requesting party must clearly state the issue(s) and identify supporting information for each issue and

position, attach all pertinent documents, submit a copy of the form and all attached documents to the AD and serve a copy with attached documents on all parties, and attach a signed and dated proof of service.

The opposing party has 20 days from the date of the proof of service of the Request to submit a response and all attached documents to the AD. The opposing party must also serve the response to all parties.

The AD has 30 days from the date of the opposing party's response to issue a written determination and order based solely on the Request, response, and all attached documents. Should the AD request further information from the parties, then the due date for the determination is 30 days from receipt by the AD of the additional information. If the AD has not issued a response within 60 calendar days from the due date of the opposing party's response, the Request is deemed to be denied.

Either party can appeal the determination and order of the AD by filing a written petition together with a Declaration of Readiness to Proceed pursuant to Regulation 10250 within 20 calendar days of the issuance of the determination or if the request has been deemed denied because the 60 days have passed. The petition must set forth the specific factual and/or legal reasons for the appeal.

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