WORKERS' COMPENSATION

CALIFORNIA LAWYERS ASSOCIATION

Legal Specialization Boot Camp – 2025
Disability Evaluation

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Overview

Session 1

- Permanent Partial Disability
    - Permanent Disability Rating Schedule (PDRS)
    - Rebuttal of the PDRS
- Permanent Total Disability
- Life Pensions
- Commutations

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Overview

Session 2

- Apportionment of Permanent Disability
- Psychiatric Claims
- Rating Instructions
- Temporary Disability

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Session 1

- Permanent Partial Disability
    - Permanent Disability Rating Schedule (PDRS)
    - Rebuttal of the PDRS
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Permanent Partial Disability (PPD)

PPD is calculated using the Permanent Disability Rating Schedule (PDRS).

- The PDRS is prima facie evidence of permanent disability – Labor Code §§ 4660(c), 4660.1(d)

Which PDRS is used depends on the date of injury:

- Pre 4/30/2004: Use the 1997 PDRS, only where a comprehensive medical-legal report or PTP report exists documenting the existence of PD prior to 4/30/2004, or employer was required to send 4061 notice prior to 4/30/2004 (i.e. TD ended).
- Post 4/30/2004: Use the 2005 PDRS (based on the AMA Guides).
- Post 1/1/2013: Use the 2005 PDRS as modified by Labor Code § 4660.1(b), which incorporates the 1.4 multiplier for all disabilities instead of the DFEC chart in the 2005 PDRS.

Permanent Partial Disability – Statutory Basis

- Pre 1/1/2013

  Labor Code § 4660(a) - In determining the percentages of permanent disability, account shall be taken of the nature of the physical injury or disfigurement, the occupation of the injured employee, and his or her age at the time of the injury, consideration being given to an employee's diminished future earning capacity.

- Post 1/1/2013

  Labor Code § 4660.1(a) - In determining the percentages of permanent partial or permanent total disability, account shall be taken of the nature of the physical injury or disfigurement, the occupation of the injured employee, and his or her age at the time of injury.

The Nature of the Physical Injury or Disfigurement

The first step in determining PD is to take into account the Nature of the Physical Injury or Disfigurement (i.e. the Impairment Standard).

- The 1997 PDRS had defined values for the impairment standard, which took into account the injured worker's diminished ability to compete in the open labor market.
    - For example, loss of sight of one eye would yield a 25-30% impairment standard. The standard varied depending upon whether or not the loss of eyesight was noticeable to an observer (i.e. during a job interview).

The 2005 PDRS incorporates the whole person impairment values as set forth in the American Medical Association Guides to the Evaluation of Permanent Impairment, 5th Edition (AMA Guides), which is then modified by either the Diminished Future Earnings Capacity chart (DOI pre-1/1/2013) or modified by a factor of 1.4 (DOI post-1/1/13).

The Nature of the Physical Injury or Disfigurement (continued)

The biggest difference between the 1997 PDRS and 2005 PDRS:

The AMA Guides do not consider the ability to work in the whole-person impairment values. Rather, they only consider how a disability impacts activities of daily living (ADLs):

- Self-care
- Communication
- Physical Activity
- Sensory Function
- Non-specified Hand Activities
- Travel
- Sexual Function
- Sleep

Permanent Partial Disability – Statutory Basis (continued)

Other Adjustment Factors:

- Pre-1/1/2013:
  - Diminished Future Earnings Capacity (DFEC)
  - Age
  - Occupation
- Post-1/1/2013:
  - 1.4 Modifier
  - Age
  - Occupation

When determining occupation, actual job duties of position control, not necessarily what the injured worker was doing at the time of injury. However, if the injured worker has a dual occupation, they are entitled to the higher occupational code if injured while working in a dual capacity.

Rebuttal of PDRS (continued)

"[A] permanent disability rating established by the Schedule is rebuttable; the burden of rebutting a scheduled permanent disability rating rests with the party disputing it; one method of rebutting a scheduled permanent disability rating is to successfully challenge one of the component elements of that rating, such as the injured employee's WPI under the AMA Guides; and when determining an injured employee's WPI, it is not permissible to go outside the four corners of the AMA Guides; however, a physician may utilize any chapter, table, or method in the AMA Guides that most accurately reflects the injured employee's impairment."

Almaraz v. Environmental Recovery Servs./Guzman v. Milpitas Unified Sch. Dist. (2009) 74 Cal.Comp.Cases 1084, 1114 (*en banc*).

Rebuttal of PDRS (continued)

The original *Almaraz/Guzman* decision was an *en banc* opinion from the Workers' Compensation Appeals Board, but this method of rebuttal was endorsed by the California Court of Appeal when it determined that the AMA Guides "calls for the physician's exercise of clinical judgment to evaluate the impairment most accurately, even if that is possible only by resorting to comparable conditions described in the *Guides*." However, the Court of Appeal emphasized that in rebutting the strict rating set forth in the AMA Guides, the physician's opinion must constitute substantial medical evidence.

Milpitas Unified Sch. Dist. v. Workers' Comp. Appeals Bd. (2010) 187 Cal.App.4th 808

Rebuttal of PDRS (continued)

"[A]n employee may challenge the presumptive scheduled percentage of permanent disability prescribed to an injury by showing a factual error in the calculation of a factor in the rating formula or application of the formula, the omission of medical complications aggravating the employee's disability in preparation of the rating schedule, or by demonstrating that due to industrial injury the employee is not amenable to rehabilitation and therefore has suffered a greater loss of future earning capacity than reflected in the scheduled rating."

Ogilvie v. Workers' Comp. Appeals Bd. (2011) 197 Cal.App.4th 1262, 1277.

Rebuttal of PDRS (continued)

Rebutting the PDRS under *Ogilvie* requires an injured worker to prove two things:

1. They are not amenable to rehabilitation

2. The non-amenability to rehabilitation has caused the injured worker to suffer a greater loss of future earnings capacity than what is reflected in the PDRS.

The non-amenability to rehabilitation must be due to the industrial injury and not due to extraneous factors. *Contra Costa County v. Workers' Comp. Appeals Bd. (Dahl)* (2015) 240 Cal.App.4th 746, 761.

Rebuttal of PDRS (continued)

So how exactly does one rebut a scheduled rating under *Ogilvie*?

Some theories:

- The DFEC simply substitutes for the PD rating?
- The actual DFEC replaces the DFEC modifier in the PDRS table?
  - The WCAB's opinion in *Ogilvie* was based on this type of mathematical modification to the DFEC.

In lieu of systemic rebuttal, we have case by case rebuttal of an unknown nature.

Rebuttal of PDRS (continued)

For 100% permanent total disability cases, it may be more straightforward to rebut the scheduled rating than with disabilities under 100%.

Medical evidence can presumably demonstrate that due to the industrial injury, the employee is not amenable to rehabilitation and therefore has suffered a greater loss of future earning capacity than reflected in the scheduled rating.

Vocational evidence can then demonstrate that if the injured worker has lost complete access to the labor market, they have a 100% diminished future earning capacity (similar to the holding in *LeBoeuf v. Workers' Comp. Appeals Bd*. (1983) 34 Cal.3d 234, in which the Supreme Court recognized under pre-SB 899 law that an injured worker may be found to be 100 percent if they are not amenable to vocational rehabilitation and the effects of the industrial injury completely diminish the ability to compete in the open competitive labor market).

Combined Values Chart (CVC)

Rationale:

> Impairment under the AMA Guides is designed to reflect how a disability affects a person's activities of daily living (ADLs) (i.e., self-care, communication, physical activity, sensory function, non-specialized hand activities, travel, sex, and sleep). An impairment to two or more body parts is generally expected to have an overlapping effect upon the activities of daily living. For example, a low back impairment and a knee impairment would likely both affect a person's physical activity, ability to travel, and potentially perform other ADLs. Thus, per the AMA Guides two or more impairments should be combined in a way to eliminate any overlapping impact on ADLs.

There is a chart in the AMA Guides and the PDRS that combines two or more disabilities for this purpose.

Rebuttal of CVC

But what if there is no overlapping impact on ADLs?

"The Combined Values Chart (CVC) in the Permanent Disability Ratings Schedule (PDRS) may be rebutted and impairments may be added where an applicant establishes the impact of each impairment on the activities of daily living (ADLs) and that either:

(a) there is no overlap between the effects on ADLs as between the body parts rated; or

(b) there is overlap, but the overlap increases or amplifies the impact on the overlapping ADLs."

Vigil v. County of Kern (2024) 89 Cal.Comp.Cases 686 (*en banc*).

Permanent Total Disability (PTD)

PDRS Definition of PTD:

A permanent disability rating can range from 0% to 100%. Zero percent signifies no reduction of earning capacity, while 100% represents permanent total disability. A rating between 0% and 100% represents permanent partial disability. Permanent total disability represents a level of disability at which an employee has sustained a total loss of earning capacity.

PTD = Applicant cannot work (i.e. has a 100 percent diminished future earning capacity).

Permanent Total Disability (PTD) (continued)

Presumptions of Permanent Total Disability (Labor Code § 4662):

(a) Any of the following permanent disabilities shall be conclusively presumed to be total in character:

(1) Loss of both eyes or the sight thereof.
(2) Loss of both hands or the use thereof.
(3) An injury resulting in a practically total paralysis.
(4) An injury to the brain resulting in permanent mental incapacity.

(b) In all other cases, permanent total disability shall be determined in accordance with the fact.

Permanent Total Disability (PTD) (continued)

Just because section 4662(b) states that "in all other cases, permanent disability shall be determined in accordance with the fact," that doesn't mean an injured worker can bypass the requirements of section 4660 in an attempt to establish permanent total disability.

Dept. of Corrections & Rehab. v. Workers' Comp. Appeals Bd. (Fitzpatrick) (2018) 27 Cal.App.5th 607.

In other words, if scheduled rating using the AMA Guides and the PDRS does not establish 100 percent permanent total disability, an injured worker must still use one of the methods of rebuttal (i.e. those set forth in *Almaraz/Guzman*, *Ogilvie* and/or *Vigil*) in order to do so.

Life Pensions

Labor Code § 4659

- Payable if permanent disability is at least 70%.
- For injuries occurring on or after January 1, 2003, the life pension payment shall be increased annually each January 1st after it becomes payable by an amount equal to the percentage increase in the "State Average Weekly Wage" as compared to the prior year.

Life Pensions (continued)

Under Labor Code § 4650(b), permanent disability benefits are payable upon the last payment of temporary disability indemnity, even if the injured worker's condition is not yet permanent and stationary. This means the corresponding life pension payments for permanent disabilities of 70% or greater start earlier than they would if the PD was payable upon a permanent and stationary finding.

Also, when an injured worker who is receiving permanent disability payments becomes permanent and stationary and is determined to be permanently totally disabled, the defendant shall pay permanent total disability indemnity retroactive to the date its statutory obligation to pay temporary disability indemnity terminated.

Brower v. David Jones Constr. (2014) 79 Cal.Comp.Cases 550 (*en banc*)

Commutations

Labor Code § 5100 – The WCAB may commute compensation payable to a lump sum and order it to be paid forthwith or at some future time if any of the following conditions appear:

(a) That such commutation is necessary for the protection of the person entitled thereto, or for the best interest of the applicant. In determining what is in the best interest of the applicant, the appeals board shall consider the general financial condition of the applicant, including but not limited to, the applicant's ability to live without periodic indemnity payments and to discharge debts incurred prior to the date of injury.

(b) That commutation will avoid inequity and will not cause undue expense or hardship to the applicant.

(c) That the employer has sold or otherwise disposed of the greater part of his assets or is about to do so.

(d) That the employer is not a resident of this state.

Commutations (continued)

Labor Code § 5101

- Temporary Disability Benefits – The WCAB will estimate the probable duration and amount payable, and will not discount that amount for present value or the life expectancy of the injured worker.

- Permanent Disability Benefits – The WCAB will estimate the present value of the PD benefits payable using a three percent interest rate, but will not consider the life expectancy of the injured worker.

- Life Pension Benefits (including Permanent Total Disability Benefits) – The WCAB will estimate the present value using a three percent interest rate and will consider the injured worker's life expectancy.

Commutations (continued)

Labor Code § 5100.5

> Subsequent Injuries Benefits Trust Fund (SIBTF) benefits (including attorney fees payable for an award of benefits from the SIBTF) shall not be commuted.

5 Minute Break . . .

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Apportionment of Permanent Disability

Bases for apportionment:

- § 4663 – Causation of Disability
- § 4664 – Prior Award
- As between dates of injury – *Benson*
- Vocational Apportionment – *Nunes*

§ 4663 Apportionment

- Any report addressing permanent disability must also address apportionment.
- Defendant has the burden to prove the percentage of permanent disability caused by factors other than the industrial injury.
- Apportionment can be to factors such as pathology, asymptomatic prior conditions, and retroactive prophylactic work preclusions, as long as these medical determinations constitute substantial medical evidence.
  - Must be framed in terms of reasonable medical probability.
  - Must not be speculative.
  - Must be based on pertinent facts and an adequate examination and history.
  - Must set forth the reasoning to support its conclusions.

Escobedo v. Marshalls (2005) 70 Cal.Comp.Cases 604 (*en banc)*

§ 4663 Apportionment (continued)

Causation of Injury vs. Causation of Disability

- Apportionment is only appropriate if it is to the causation of disability, not to the causation of the injury. *But what does this mean?*

- Steps to determine if apportionment is to causation of disability or causation of injury:

    1. Define the injury.
    2. Determine the cause(s) of the injury.
    3. Define the disability resulting from the injury.
    4. Determine the cause(s) of the permanent disability.

§ 4663 Apportionment (continued)

Example: A 60-year-old person with preexisting, significant, but asymptomatic degenerative disk disease trips and falls at work, herniating a disk in the lumbar spine that requires surgery.

1. Define the injury.
   - The injury is a herniated disk in the lumbar spine.

2. Determine the cause(s) of the injury.
   - There is only one cause of the injury in this example, which was a trip and fall at work. In other words, even though the injured worker had significant degenerative disk disease, they would not have herniated a disk absent the trip and fall at work. The trip and fall proximately caused the herniated disk. The cause of the injury is 100 percent industrial.

§ 4663 Apportionment (continued)

3. Define the disability resulting from the injury.
   - This is the permanent disability rating resulting from the injury. In this example, let's say the injured worker was given an 8% whole person impairment rating under DRE Lumbar Category II of the AMA Guides (i.e. individual had a clinically significant radiculopathy and has an imaging study that demonstrates a herniated disk at the level and on the side that would be expected based on the previous radiculopathy, but no longer has the radiculopathy following conservative treatment).

§ 4663 Apportionment (continued)

4. Determine the cause(s) of the permanent disability.
   - Here is where the evaluating physician can apportion to causation of the disability. For example, the physician may state that while the herniated disk was caused wholly by the injury, the 8% whole person impairment rating (based on a herniated disk with resolved radiculopathy following conservative treatment), was caused at least in part by the preexisting and nonindustrial degenerative disk disease. If this opinion constitutes substantial medical evidence, apportionment to the causation of the disability to nonindustrial factors would be appropriate, even though the causation of the injury was entirely industrial.

§ 4663 Apportionment (continued)

Apportionment under Labor Code § 4663 does not apply to injuries or illnesses covered under most public safety officer presumption statutes (Labor Code §§ 3212, et seq.).

Labor Code § 4663(e)

§ 4664 Apportionment

If the applicant has received a prior award of permanent disability, it shall be conclusively presumed that the prior permanent disability exists at the time of any subsequent industrial injury.

Because this presumption is conclusive, an injured worker cannot establish rehabilitation from an injury for which he received a prior award. However, the defendant still has the burden to prove the current disability overlaps with the prior disability. *Kopping v. Workers' Comp. Appeals Bd.* (2006) 142 Cal.App.4th 1099.

- Common issue is determining whether disability rated under current PDRS overlaps with disability rated under prior PDRS.

An order approving a compromise and release, without more, is not a "prior award of permanent disability" within meaning of Labor Code § 4664. *Pasquotto v. Hayward Lumber* (2006) 71 Cal. Comp. Cases 223 (*en banc*).

§ 4664 Apportionment (continued)

The accumulation of all permanent disability awards issued with respect to any one region of the body shall not exceed 100 percent over the employee's lifetime (unless conclusively presumed to be total. The regions of the body are the following:

(A) Hearing.
(B) Vision.
(C) Mental and behavioral disorders.
(D) The spine.
(E) The upper extremities, including the shoulders.
(F) The lower extremities, including the hip joints.
(G) The head, face, cardiovascular system, respiratory system, and all other systems or regions of the body not listed in subparagraphs (A) to (F), inclusive.

Apportionment under *Benson*

Prior to Senate Bill 899, when an injured worker sustained two or more successive injuries to the same body part, and those injuries became permanent and stationary at the same time, the worker was entitled to an award based on the combined disability. *Wilkinson v. Workers' Comp. Appeals Bd.* (1977) 19 Cal.3d 491.

Under *Benson v. Workers' Comp. Appeals Bd.* (2009) 170 Cal.App.4th 1535, however, it was determined that the holding of *Wilkinson* is inconsistent with the apportionment reforms enacted by SB 899. Now, under Labor Code §§ 4663 and 4664, each distinct industrial injury must be separately compensated based on its individual contribution to a permanent disability.

Apportionment under *Benson* (continued)

The Court in *Benson* noted that there may be limited circumstances where evaluating physicians cannot parcel out, with reasonable medical probability, the approximate percentages to which each successive injury causally contributed to the employee's overall permanent disability. Under these circumstances, a combined award of permanent disability may be justified.

- While the phrase "inextricably intertwined" was not used in the *Benson* opinion, it has now been commonly invoked to argue the exception set forth above when an evaluating physician cannot reasonably apportion between two successive injuries.

Vocational Apportionment - *Nunes*

"Vocational apportionment," which is an attempt to apportion to non-medical conditions (like education, work history, etc.) by a non-physician is not a statutorily authorized form of apportionment.

However, vocational evidence may be used to address various issues relevant to the determination of permanent disability (i.e. in an *Ogilvie* analysis).

Vocational evidence must address the medical apportionment found by a physician and may be utilized to identify and distinguish industrial and nonindustrial vocational factors.

Nunes v. State of Cal., Dept. of Motor Vehicles (2023) 88 Cal.Comp.Cases 741 (*en banc*)

Psychiatric Claims

An employee shall demonstrate by a preponderance of the evidence that actual events of employment were predominant as to all causes combined of the psychiatric injury. Labor Code § 3208.3.

- Was the alleged psychiatric injury caused by actual events of employment? This is a factual inquiry.

- If so, were the actual events of employment predominant as to all causes combined of the psychiatric injury? This is a medical inquiry.

    - Note that for a physical injury, there only needs to be contributory causation (i.e. >0%), but for a psychiatric injury, there needs to be predominant causation (i.e. 50%)
    - If the injury resulted from being a victim of a violent act or from direct exposure to a significant violent act, there only needs to be substantial causation (i.e. 35% to 40%).

Psychiatric Claims (continued)

Affirmative Defense: Six Months of Employment

- Employee must have been employed by the employer for at least six months in order for a psychiatric injury to be compensable.
    - The six months of employment need not be continuous.
    - There is an exception to this rule if the injury is caused by a "sudden and extraordinary" employment condition.
        - What is "sudden and extraordinary"? Very fact specific; cases all over the spectrum.

Psychiatric Claims (continued)

Affirmative Defense: Lawful, Nondiscriminatory, Good Faith Personnel Action

- *Rolda* Analysis (*Rolda v. Bowes* (2001) 66 Cal.Comp.Cases 241 (*en banc*))

    1. Did the alleged injury involve actual events of employment? (Trier of fact decides.)
    2. Does competent medical evidence establish the required percentage of industrial causation? (Physician decides.)
    3. Were the actual events personnel actions that were lawful, nondiscriminatory and in good faith? (Trier of fact decides.)
    4. If so, were the lawful, nondiscriminatory, good faith personnel actions a "substantial cause" of the psychiatric injury? (Physician decides.)

Psychiatric Claims (continued)

Compensability of Permanent Disability for Injuries on or after 1/1/2013

"[T]he impairment ratings for sleep dysfunction, sexual dysfunction, or psychiatric disorder, or any combination thereof, arising out of a compensable physical injury shall not increase." Labor Code § 4660.1(c)(1).

- This only bars permanent disability benefits if the psyche injury is a compensable consequence of a physical injury. It does not bar the psychiatric claim altogether, and temporary disability benefits and medical care are still available.

- This does not bar permanent disability benefits if they are the direct result of a psychiatric injury; only if they are a compensable consequence.

Psychiatric Claims (continued)

Compensability of Permanent Disability for Injuries on or after 1/1/2013

Permanent disability benefits are payable if the compensable psychiatric injury resulted from:

- Being a victim of a violent act or direct exposure to a significant violent act.
    - Violent Act: An act that is characterized by either strong physical force, extreme or intense force, or an act that is vehemently or passionately threatening.

Psychiatric Claims (continued)

Compensability of Permanent Disability for Injuries on or after 1/1/2013

Permanent disability benefits are payable if the compensable psychiatric injury resulted from:

- A catastrophic injury, including, but not limited to, loss of a limb, paralysis, severe burn, or severe head injury.
    - Catastrophic Injury: Fact-driven inquiry, but focuses on the nature of the injury itself, and is not measured by the injury's impact on the employee's earning capacity or minimum level of permanent disability. *Wilson v. State of Cal. Dept. of Forestry* (2019) 84 Cal.Comp.Cases 393 (*en banc*).

Psychiatric Claims (continued)

The WCAB in *Wilson* listed the following five factors to consider in determining whether an injury may be deemed catastrophic:

1. The intensity and seriousness of treatment received by the employee that was reasonably required to cure or relieve from the effects of the injury.
2. The ultimate outcome when the employee's physical injury is permanent and stationary.
3. The severity of the physical injury and its impact on the employee's ability to perform activities of daily living (ADLs).
4. Whether the physical injury is closely analogous to one of the injuries specified in the statute: loss of a limb, paralysis, severe burn, or severe head injury.
5. If the physical injury is an incurable and progressive disease.

Rating Instructions

The physician, the workers' compensation judge (WCJ), and the Disability Evaluation Unit (DEU) rater have distinct roles in determining an injured worker's permanent disability rating.

- Physician's Role: Assess the injured worker's whole person impairment percentage(s) in a report that sets forth facts and reasoning to support its conclusions, and that comports with the AMA Guides and existing case law.
- WCJ's Role: Frame instructions, based on substantial medical evidence, that specifically and fully describe the whole person impairment(s) to be rated.
- DEU Rater's Role: Issue recommended permanent disability rating based solely on the WCJ's formal rating instructions. Rater has no authority to issue a rating based on their own assessment of whether the whole person impairment rating(s) referred to in the WCJ's instructions are based on substantial evidence or are consistent with the AMA Guides.

Blackledge v. Bank of America (2010) 75 Cal.Comp.Cases 613 (*en banc*)

Rating Instructions (continued)

- A WCJ is not bound by a DEU rater's recommended permanent disability rating, and a WCJ may elect to independently rate an employee's permanent disability. However, a WCJ's rating still must be based on substantial evidence.

- In the context of a formal rating, there must be no *ex parte* communication between the WCJ and the DEU rater.

- Potential AMA Guides rating problems may be minimized by the early and proper use of informal Consultative Rating Determinations from the DEU.

Temporary Disability

- Payable at the rate of two-thirds of the injured worker's average weekly earnings, subject to statutory maximums based on date of injury.
- Temporary disability benefits terminate if:
  - Employee returns to work; or,
  - Injury is declared "permanent and stationary"; or,
  - 104 weeks of benefits have been paid.
- Temporary disability benefits are not payable when an employee has to miss work to attend medical appointments for the industrial injury.

Temporary Disability (continued)

As the goal of temporary disability benefits is to compensate for lost wages, an actual loss of earnings is generally a prerequisite for payment of TD.

- When an injured worker completely retires from the open labor market, no TD benefits are payable. However, when an injured worker retires from the job at which they were injured but not from the open labor market, TD benefits are payable. Similarly, when the retirement is due to the industrial injury, TD benefits are payable. *Gonzales v. Workers' Comp. Appeals Bd.* (1998) 68 Cal.App.4th 843.
- If an injured worker is temporarily partially disabled and the employer offers modified duty, no TD benefits are payable if the injured worker refuses to work the modified duty assignment (or retires/resigns). *See Pacific Employers Ins. Co. v. Indus. Acc. Comm'n (Stroer)* (1959) 24 Cal.Comp.Cases 144.
- What if modified duty is available but an employee is terminated for cause?

Temporary Disability (continued)

When any temporary total disability indemnity payment is made two years or more from the date of injury, the amount of this payment shall be based on the rate in effect on the date the payment is made. Labor Code § 4661.5.

- This applies even if the payment covers a retroactive period within two years from the date of injury. *Hoffmeister v. Workers' Comp. Appeals Bd.* (1984) 156 Cal.App.3d 848.

Certain groups of public safety offers are entitled to one year of full salary benefits in lieu of temporary disability benefits under Labor Code § 4850 and similar provisions.

For public safety officers with presumptive injuries following termination of active service, temporary disability benefits are paid at the statutory maximum rates, regardless of actual earnings from any postactive employment. Labor Code § 4458.5.

Temporary Disability (continued)

104-week cap on temporary disability benefits depends on date of injury.

- Pre 4/19/2004: No cap on TD benefits, but no jurisdiction to award benefits after five years from the date of injury. However, TD benefits can continue beyond five years if the TD period is continuous and begins prior to five years from the date of injury.
- 4/19/2004-12/31/2007: 104 compensable weeks within a period of two years from the date of commencement of temporary disability payment.
- 01/01/2008-Present: 104 compensable weeks within a period of five years from the date of injury.

Temporary Disability (continued)

What counts towards the 104-week cap:

- Temporary total or temporary partial disability benefits
- IDL payments
- Labor Code § 4850 benefits
- Wage loss payments in lieu of TD

What does not count towards the 104-week cap:

- Full wages
- State disability benefits from EDD when made (although they may count if/when EDD's lien is satisfied)
- TD to attend a medical-legal evaluation

Temporary Disability (continued)

104-week cap is extended to 240 weeks for the following conditions:

(A) Acute and chronic hepatitis B.
(B) Acute and chronic hepatitis C.
(C) Amputations.
(D) Severe burns.
(E) Human immunodeficiency virus (HIV).
(F) High-velocity eye injuries.
(G) Chemical burns to the eyes.
(H) Pulmonary fibrosis.
(I) Chronic lung disease.

Temporary Disability (continued)

Temporary Partial Disability

- The injured worker has restrictions but is able to work in some capacity.
- If temporarily partially disabled and unable to work full-time, the payment is two-thirds of the weekly loss in wages during the period of such disability.
- If the injured workers is deemed temporarily partially disabled but the employer is unable to accommodate the restrictions imposed by the physician, they are entitled to temporary total disability benefits.

Questions?