



June 10, 2016

Florida Supreme Court deems 104-week cap for temporary total disability unconstitutional

On June 9, 2016, more than two years after oral arguments were heard, the Supreme Court of Florida issued its opinion in [Westphal v. City of St. Petersburg](#). This 5-2 decision deemed unconstitutional the portion of the workers' compensation statute that cuts off disability benefits after 104 weeks to a worker who is totally disabled and incapable of working but who has not reached maximum medical improvement (MMI).

In reaching this conclusion, the high court revived the limitation in the workers' compensation law preceding the 1994 amendments, which provided temporary total disability (TTD) benefits not to exceed 260 weeks, or five years.

Background and case summary

The case involves Bradley Westphal, a former firefighter and paramedic for the City of St. Petersburg, Florida, who sustained compensable injuries to his back and knee. He was provided TTD benefits and medical treatment that included multiple surgeries. Westphal was recovering from his final surgery, a five-level lumbar fusion, when his entitlement to 104 weeks of TTD was exhausted. Although completely unable to work, because MMI had not been attained, Westphal was not entitled to impairment benefits or permanent total disability (PTD) benefits under the Florida workers' compensation act.

On Feb. 28, 2013, a three-judge panel of the Florida First District Court of Appeals (DCA) [declared the 104-week TTD limitation unconstitutional](#) and extended entitlement to those benefits to 260 weeks. The First DCA agreed to rehear the panel decision *en banc* (before the full court) and on Sept. 23, 2013, overturned the panel ruling, thus reinstating the 104-week benefits. In this decision, referred to as *Westphal II*, the court had to recede its 2011 *en banc* decision in *Matrix Employee Leasing, Inc. v. Hadley* and find that a claimant in TTD status at the expiration of 104 weeks is eligible to receive PTD benefits. Additionally the court certified the following question to the Supreme Court of Florida:

“Is a worker who is totally disabled as a result of the workplace accident, but still improving from a medical standpoint at the time temporary total disability benefits expire, deemed to be at maximum medical improvement by operation of law and therefore eligible to assert a claim for permanent and total disability benefits?”

In analyzing the constitutionality of the 104-week limit for TTD, the state high court found that Westphal and similarly situated injured employees are deprived of common law and statutory remedies during the “statutory gap”

when TTD is no longer due, yet there is no entitlement to any other indemnity benefits despite the inability to work while recovering from injuries. The court concluded that this result does not keep with the notion of legal justice because it violates the injured employee's state constitutional rights of access to courts and the administration of justice "without ... denial or delay" under Article I, Section 21, of the Florida constitution.

The state high court reasoned that whereas "almost seven years or even five years post-accident should be a reasonable period for an injured worker to achieve maximum medical improvement, clearly two years is not for the most severely injured of workers, like Westphal, who might be in need of multiple surgical interventions."

Impact of this decision

This decision will impact any Florida workers' compensation claim with a date of accident on and after Jan. 1, 1994, that has not been settled or not reached the statute of limitation if the injured employee falls into the described "statutory gap."

Most injured employees attain MMI within 104 weeks, so the decision is not expected to affect a large number of claims. However, it may provide an incentive for some injured employees and their attorneys to pursue more medical treatment and extend the attainment of MMI, resulting in the payment of additional weeks of TTD. Alternatively, some believe that the extension of TTD to 260 weeks may actually delay the filing of some claims for PTD and limit or mitigate exposure on those claims.

Because the *Westphal* decision involved only the claimant's entitlement to TTD benefits, **the decision is silent as to the statutory cap on temporary partial disability (TPD) benefits.** The current statute maintains a statutory cap of 104 weeks for TPD benefits. It is anticipated that claimant attorneys will seek to have the *Westphal* decision applied to TPD benefits as well, but the rationale explained by the court in *Westphal* may not be relevant to claims involving an employee released to work with restrictions. **Based upon the decision, any workers' compensation claims that have exhausted 104 weeks of TTD and for which PTD benefits are not being paid must be evaluated for reinstatement of TTD.**

On May 27, 2016, the National Council of Compensation Insurance (NCCI) recommended a 17.1 percent workers' compensation rate increase with 15 percent for the first year impact of the [Castellanos](#) decision. NCCI is evaluating the impact of the *Westphal* decision on loss costs and rates and is expected to amend the pending rate filing under review by the Florida Office of Insurance Regulation (OIR).

What's next?

The Florida legislature adjourned March 11, 2016. Given that this is a major election year, it remains uncertain whether a special session will occur. If it does not, it will be 2017 before legislation to address this issue is a possibility. In the meantime, there is growing debate about changes needed in the Florida workers' compensation system.

Sedgwick is actively involved in efforts by the [Workers' Compensation Coalition](#), led by the Associated Industries of Florida, to develop a broad strategy

addressing this and other challenges to workers' compensation in the state, including recommendations regarding legislative changes.

Should you have any questions about this case or how it may impact your claims program, please contact your Sedgwick client services representative.

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