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Florida court ruling in *Westphal v. City of St. Petersburg* may create exposure for extended TTD benefits

Since 1994, temporary total disability benefits (TTD) for Florida claims have been limited to only 104 weeks. A decision by the Florida First District Court of Appeal (DCA) now extends the payment of TTD benefits to up to 260 weeks, or five years.

On February 28, 2013, the Florida First DCA held in [*Westphal v. City of St. Petersburg*, 1D12-3563 2013 WL 718653 \(Fla. 1st DCA Feb. 28, 2013\)](#) that Section 440.15(2)(a), Florida Statutes, which limits injured employees to no more than 104 weeks of temporary disability benefits, is unconstitutional.

Most injured employees attain maximum medical improvement (MMI) within 104 weeks, so the decision is not expected to affect a large number of claims. However, this decision 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 more weeks of TTD. Alternatively, some believe that the extension of TTD to 260 weeks may actually delay the filing of some claims for permanent total disability (PTD) and limit or mitigate exposure on those claims. Additionally, litigation is anticipated surrounding the payment of temporary partial disability (TPD), which is included in the 104-week limit but not addressed in this decision.

The case involves Bradley Westphal, a 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. At that time, according to his authorized treating physician, Westphal remained completely unable to work and had not yet reached MMI. Because MMI had not been reached, Westphal was not entitled to impairment benefits or PTD benefits under the Florida Statute, Chapter 440.

In analyzing the constitutionality of the 104-week limit for TTD, the 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 benefit despite the inability to work while recovering from injuries. The court concluded that this result is not in keeping 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 court indicated that its decision, if it becomes final, would not apply to rulings, adjudications, or proceedings finalized prior to the date of the opinion. A motion for rehearing has been filed; depending on the outcome, an appeal to the Florida Supreme Court may be considered.

We understand that industry groups like the Florida Workers' Comp Coalition for Business and Industry are evaluating the impact of this decision and possible actions to be taken in response. Sedgwick's subject matter experts are involved and assessing how we can meaningfully assist.

Meanwhile, the Florida legislature convened on March 5, 2013 and may be asked to intervene as the case advances through the appeals court process, as it did after the Florida Supreme Court decision in *Murray v. Mariner Health*.

Sedgwick has already started to review open Florida claims to determine if exposure exists for an extension of temporary total disability benefits. Reserves will be addressed for those claims if the court's decision becomes final.

If you have any questions about this case and its potential impact on your pending or future claims, please contact your Sedgwick client services representative.

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