

Florida Court Declares 104-Week Limit of Temporary Benefits Unconstitutional, Reinstates 260-Week Cap

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The Florida First District Court of Appeals was recently presented with a question concerning the constitutionality of the 104-week limitation on temporary indemnity benefits based on an injured worker who was not yet ready to return to work after the 104 weeks of temporary benefits, but who was not able to prove eventual permanent and total disability benefits, and therefore not entitled to indemnity benefits.

In this case, the claimant's condition left him in the not-uncommon position of exhausting his statutory benefits prior to reaching the ability to return to substantial gainful employment. As amended in 1994, the Florida Statutes allowed for only 104 weeks of temporary benefits. The court, in a scathing 25-page opinion, found that the claimant was denied access to the courts and to the constitutionally granted right to the administration of justice without denial or delay, in violation of the Florida Constitution. The court then found unconstitutional the 1994 change to the law, which revised entitlement to temporary benefits from 260 weeks to 104 weeks. The court ultimately remanded the case, with instructions to grant the claimant additional temporary total disability benefits not to exceed 260 weeks, as would have been provided under the previous relevant statutory provision prior to the 1994 amendment of Fla. Stat. § 440.15(2)(a).

In reaching its decision, the court evaluated the workers' compensation statutes in all other states and found that more than 40 allow a minimum of 312 weeks, and only five jurisdictions limit disability to 104 weeks. The court concluded that the natural consequence of "such a system of legal redress is potential economic ruin of the injured worker, with all the terrible consequences that this portends for the worker and his or her family," and indicated that this system of redress for injury is "not merely unfair, but is fundamentally and manifestly unjust." The court, however, did not strike the entire 1994 or 2003 amendments to the statute, but only severed Section 440.15(2)(a), reviving the pre-1994 statute solely as it speaks to the time-limitation on temporary disability benefits.

This is a substantive change in the law and deals with an unconstitutional statute, and accordingly, the decision affects all cases, regardless of the date of accident. This case has a tremendous impact on the current cases

nearing the 104-week mark, as well as those currently in litigation for permanent and total disability benefits. For more information read *Bradley Westphal v. City of St. Petersburg*, Case No. 1D12-3562 (1st DCA Feb. 28, 2013).

Topics

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