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**CALIFORNIA EMPLOYERS ARE NO LONGER REQUIRED
TO PROVIDE GROUP HEALTH COVERAGE INDEFINITELY
TO EMPLOYEES ON WORKERS' COMPENSATION LEAVE
(April 24, 2002)**

In an *en banc* decision filed late last month, the California Workers' Compensation Appeals Board (WCAB) announced a dramatic about-face concerning the treatment of employees on extended workers' compensation leaves. In prior decisions, the WCAB had found that employers who discontinued payment of group health premiums for employees on workers' compensation leave violated California Labor Code section 132a, regardless of the period of time the employer waited before discontinuing premium payments for the employees, and regardless of whether the employer treated employees on workers' compensation leave the same way it treated employees on other types of leave.

Although these prior decisions were never tested by the California courts, the WCAB's position presented employers with the dilemma of either continuing payment of group health premiums for industrially injured workers indefinitely, or terminating these benefits in accordance with company policy and facing the risk of exposure under Labor Code section 132a. As a result, employers were left to struggle with the difficult decision of whether, and when, to discontinue benefits for employees on prolonged workers' compensation leaves.

The Navarro Decision

In [*Alfonso Navarro v. A & A Farming, Western Growers Insurance Co.*](#) (March 28, 2002), the WCAB ruled that so long as an employer has an ERISA-based health plan that provides for the discontinuance of benefits after a specific period of leave (90 days in the *Navarro* case), and the plan does not discriminate between industrially and non-industrially injured workers, Labor Code section 132a is preempted by ERISA and the employer can lawfully terminate its contributions to its group health plans on behalf of that injured worker.

What this Means

Employers who have ERISA-based group health plans (most group health plans are ERISA plans) may now discontinue contributions on behalf of injured workers without exposure to liability under Labor Code section 132a, as long as

(1) the termination of the contributions is effected pursuant to the plan's provisions, and (2) the plan itself does not distinguish between employees who are disabled due to industrial vs. non-industrial injuries.

In order to take advantage of this decision, employers should review their group health plans to determine whether their plans contain a provision allowing the employer to discontinue contributions for disabled workers after a specific period of disability, without regard to whether the worker is disabled by industrial or non-industrial causes. Employers should also ensure that their leave of absence policies are consistent with the relevant provisions of their group health plans.

This E-Update was authored by [Fred Plevin](#) and [Sarah Thomas](#). If you have any questions about this E-Update, please contact Mr. Plevin or Ms. Thomas or any PPS&C attorney.

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