



## California Supreme Court Provides Employers Some Assistance in Managing Workers' Compensation Leaves

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### Summary

The California Supreme Court recently provided some common sense that is good news to California's employers in the workers' compensation arena. The Court held that an employer is not liable for workers' compensation discrimination merely because an employee with a work-related injury suffers economic harm as a result of the injury. Rather, to prove workers' compensation discrimination, the employee must show that he or she was "singled out for disadvantageous treatment because of the industrial nature of his [or her] injury."

### Details

Twenty-five years ago the California Supreme Court held that Labor Code section 132a (the provision that prohibits discrimination because an employee has filed a workers' compensation claim) should be "liberally construed in favor of injured workers." This liberal construction evolved to the point that the Workers' Compensation Appeals Board ("WCAB") concluded that if an employer's personnel decision caused any "detriment" to the injured worker, it violated section 132a. This conclusion made the employer's actual intent, or even the fact that the employer's actions were consistent with its treatment of non-work related leaves, irrelevant.

Fortunately, the Supreme Court recently addressed this expansive reading of section 132a in [\*Dept. of Rehabilitation v. WCAB\*](#). In that case, an employer required an injured worker, who had previously been declared "permanent and stationary" and had returned to work, to use his sick and vacation benefits for the continuing doctor visits necessitated by his previous work injury. The employee argued that this was discriminatory because he would not have had to use these benefits had he not been injured at work. The employer argued that its policy was not discriminatory because *all* employees had to use these benefits for their doctor's appointments.

After reviewing the increasingly broad definition given to workers' compensation discrimination over the last quarter century, the Supreme Court held that an employer's actions are not "discriminatory" merely because the employee suffers some disadvantage due to an industrial injury. Rather, the employee must show that the disadvantage was unique *because* his or her injury was work-related, and that employees with non-industrial injuries were not

subject to the same rules. Notably, the Court declined to require that the employee prove that the employer had any discriminatory intent.

### **What This Means**

With increasing benefit levels for workers' compensation leaves, employers are expecting a continuing increase in workers' compensation claims and longer leaves. Thus, it is critical for employers to effectively manage these issues.

This recent decision gives employers the right to manage workers' compensation leaves under the same rules that apply to non-industrial injuries (subject to the obligation to return the employee to his or her former position unless a business necessity exists for not doing so). It also dovetails with last year's WCAB decision ([Navarro v. A & A Farming](#)) that employers can terminate health benefits to employees after 12 weeks of workers' compensation leave *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 differentiate between industrially and non-industrially injured workers.

In sum, the lesson from these recent cases is that employers should establish uniform policies concerning continuation of health coverage and use of vacation and sick leave and apply them consistently. Any exceptions, unless well-reasoned and documented, will create potential liability. Consistency will provide predictability and a presumption of non-discrimination.

This E-Update was authored by [Mike Sullivan](#). If you have any questions about this E-Update, please contact the author or any PPS&C attorney at (619) 237-5200.

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