Crabb v. Dept. of Labor & Industries: The WA Court of Appeals holds the 2011 COLA freeze does not apply to maximum time-loss claims.

By Christy Doornick and Shawna Fruin • July 1, 2014

On June 5, 2014 the Washington Court of Appeals published a decision that affects time-loss calculations for workers receiving the maximum time-loss rate, specifically holding that workers receiving the maximum time-loss rate in 2011 **are** entitled to a recalculation/increase despite the 2011 cost of living adjustment (COLA) freeze. To understand the Court's decision, background information about calculating Washington's workers' compensation time-loss benefits is helpful:

- Per RCW 51.32.090(1) and RCW 51.32.060, a worker's time-loss rate is calculated by multiplying his or her monthly wage at the time of injury by a statutory-mandated percentage, based on the worker's marital status and dependents.
- Per 51.32.090(9), a worker's time-loss rate can be no higher than 120 percent of the average Washington wage.

For workers with modest-to-average incomes (i.e., around 60 percent of their wage is less than 120 percent of the state's average wage), the time-loss cap in RCW 51.32.090 will not affect their time-loss calculations. However, for high-income workers, RCW 51.32.090 establishes a time-loss maximum.

Crabb v. Department of Labor and Industries involved a high-income worker whose time-loss was capped by RCW 51.32.090. Crabb's monthly wage of injury was $8,917.92. Because he was single without dependents, Crabb's wage of injury was multiplied by 60 percent to calculate his monthly time-loss rate, $5,350.57. However, 120 percent of Washington's average wage at the time of Crabb's injury was $4,258.40, so RCW 51.32.090 capped his time-loss benefit to that amount.

Workers receiving the maximum time-loss rate in 2011 are entitled to a recalculation/increase

RCW 51.32.075 directs the Department to give COLA increases in a worker's time-loss rate each year except 2011. In light of the 2011 COLA freeze, the Department did not increase Crabb's time-loss benefits in 2011. Crabb argued that the COLA freeze did not apply to the maximum time-loss rate, and the parties litigated the issue up to the Court of Appeals. The Court of Appeals acknowledged that both parties made reasonable but conflicting arguments, found the scheme ambiguous, and proceeded to resolve the problem via

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canons of construction. Primarily because RCW 51.12.010 mandates liberal construction in favor of injured workers, the Court ultimately held the 2011 COLA freeze did not apply to the 2011 maximum time-loss rate.

Assuming *Crabb* is not reversed at the Supreme Court, the effect of the decision will be adverse to employers but at least relatively easy to address and contain. Administrators should review their claims to identify maximum time-loss workers from July 1, 2011 to July 1, 2012. For those claims, time-loss benefits should be recalculated with that year's average wage used to create the time-loss cap.

If you have additional questions on how to implement this decision in your claims, please contact one of our Washington practice attorneys at Reinisch Wilson Weier PC. ■

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