Future compensation is not fair computation, holds Washington Court of Appeals

By Charles P. Pearson ■ April 24, 2017

It is ok to plan for the future—rest assured that next year's raise will not be included in today's wage computation.

As strange as it sounds, a similar issue was recently litigated up to the Court of Appeals of Washington. In *Miller v. Shope Concrete Products Company*,[1] the Court of Appeals reversed a Washington Superior Court decision that granted a probationary employee's request to have the value of healthcare benefits, to which regular employees were entitled but probationary employees were not, included in his wage computation. The Court of Appeals reversed and reassuringly held that wage computations were limited to payments or contributions actually made towards a worker's healthcare before the time of injury.

For wage-computation purposes, the tendency to view 'wages' expansively is not new to Washington law. In the well-known *Cockle*[2] opinion, the Supreme Court held that healthcare benefit payments or contributions made on an employee's behalf must be included when computing an injured worker's monthly wage.

Subsequently, in *Granger*,[3] the Supreme Court ruled that employer healthcare payments that had been made before the time of injury should have been factored into the employee's monthly wage, even though the employee did not have access to the funds or related healthcare benefits at the time of injury. The Supreme Court explained that the proper focus under RCW 51.08.178 is the employer's payment of the benefits, not their receipt by the employee.

Future compensation, even if promised or anticipated, should be excluded from monthly-wage computations

In this context, the recent Court of Appeals of Washington decision in *Miller* could be seen as a bookend, limiting the expanding definition of 'wages' under RCW 51.08.178. In the *Miller* case, the claimant began his employment subject to the completion of a ninety-day probationary period. Once employees completed the probationary period, the company customarily provided qualifying employees with healthcare benefits. After approximately forty-five days at his new position, the claimant suffered a lower back injury that ceased work. Due to the claimant's ongoing probationary status, the company had never paid or contributed funds towards present or future healthcare benefits on his behalf.

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Future compensation is not fair computation (continued)

After the Department of Labor and Industries calculated claimant's wages without any reference to healthcare benefits, the claimant eventually appealed the issue to the Board of Industrial Insurance Appeals, arguing that he was entitled to the same wage computation as a regular employee (i.e., including healthcare benefits). Although the Board agreed with the Department's computation, the Superior Court later held that claimant was indeed entitled to have his wages computed as if he were a regular employee.

The Court of Appeals of Washington authored a tidy opinion that honed in on the deciding issue in *Granger*—whether the employer had made payments on the claimant's behalf before the time of injury. Because the claimant conceded that the employer had not made any payments or contributions on the claimant's behalf before the time of injury, the Court of Appeals held that claimant was not entitled to a wage computation that included employer-provided healthcare benefits. Accordingly, the Court of Appeals reversed the Superior Court ruling.

Although the *Miller* opinion did not go as far as to declare a bright-line rule that future compensation, even if promised or anticipated, should be excluded from monthly-wage computations, the implication is exactly that. Indeed, the holding in *Miller* could be extrapolated to all structured policies that promise raises or benefits to employees upon the completion of fixed time periods or the accomplishment of certain performance benchmarks. For example, an employee would not be entitled to his or her customary fifth-year raise until the employee worked at the company for five years. While it is important that an injured employee's monthly wage be accurately and fairly calculated, the *Miller* Court appropriately denied the claimant's request to factor in benefits that were tantamount to future wages.

Please call on any of the Reinisch Wilson Weier PC attorneys for wage calculation questions or other concerns about your claims. ■

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[1] *Miller v. Shope Concrete Prods. Co.*, No. 76013-1-L (Wash. Ct. App. Mar. 20, 2017).

[2] *Cockle v. Dep't of Labor & Indus*., 142 Wn.2d 801 (2001).

[3] *Dep't of Labor & Indus. v. Granger*, 159 Wn.2d 752 (2007).

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