

## Limits on Temporary Disability

SB 899 created a limit on the payment of temporary disability. Labor Code § 4656(c) reads as follows:

- (1) Aggregate disability payments for a single injury occurring on or after the effective date of this subdivision, causing temporary disability shall not extend for more than 104 compensable weeks within a period of two years from the date of commencement of temporary disability payment.
- (2) Notwithstanding paragraph (1), for an employee who suffers from the following injuries or conditions, aggregate disability payments for a single injury occurring on or after the effective date of this subdivision, causing temporary disability shall not extend for more than 240 compensable weeks within a period of five years from the date of the injury:
  - (A) Acute and chronic hepatitis B
  - (B) Acute and chronic hepatitis C
  - (C) Amputations
  - (D) Severe burns
  - (E) Human immunodeficiency virus (HIV)
  - (F) High-velocity eye injuries
  - (G) Chemical burns to the eyes
  - (H) Pulmonary fibrosis
  - (I) Chronic lung disease

We are now starting to see cases which are interpreting this code section. One of the issues is what constitutes an amputation?

According to Judge Clark in Salinas and Judge Duncan in San Francisco, a back surgery constitutes an amputation. Judge Ward in Los Angeles disagrees. Applicant's attorneys are arguing that the removal of a disc, or portion of a disc, constitutes an amputation. Obviously, there are many definitions of an amputation, depending upon where you look, but generally, the definition appears to be limited to the loss of a limb or appendage. Reconsideration was granted in the Salinas case on April 9, 2007. Reconsideration was also filed in the Los Angeles case. The San Francisco decision was just issued on April 4, 2007, but chances are it will also be appealed. A copy of the Salinas decision is attached.

Two other issues raised in the Los Angeles case are when the 104 weeks starts and whether the 104 weeks can be tolled. Specifically, Judge Ward indicated that the 104 weeks starts on the date of the first indemnity payment. Defendant is arguing on reconsideration that it should start at the earliest date of retroactive temporary disability that the first payment covers. Judge Ward also provided a 113-day tolling period based upon the defendant's unreasonable delay in authorizing the applicant's spinal surgery. Defendant's have appealed this additional period.

As soon as we are advised of the results of these appeals, we will advise you accordingly.