

WCAB Adopts Stunning Reversal of Position Regarding Health Insurance Obligations To Employees on Workers' Compensation Leave

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For many years, California employers have been forced to deal with a difficult standard established by the California Workers' Compensation Appeals Board ("WCAB") regarding the continuation of health insurance for employees during a leave of absence necessitated by an occupational injury. The WCAB had announced in several decisions that Labor Code Section 132a prohibits employers from terminating an industrially-injured employee's group medical coverage. The WCAB further held that the Employee Retirement Income Security Act of 1974 ("ERISA") does not preempt Section 132a or claims based on Section 132a initiated by employees with temporary disabilities.

Employers faced a predicament when they wished to treat people with occupational disabilities in the same manner as other temporarily-disabled employees. The problems arose most often when they required employees with occupational injuries to assume financial responsibility for health insurance costs if their leaves exceeded the maximum period for which the employer paid insurance premiums for other employees. Employers could either comply with the WCAB's standards or accept the risks associated with a policy that treated employees with occupational disabilities in the same manner as other employees.

1. Challenge To WCAB Position

Due to the significant issues involved, Sheppard, Mullin, Richter & Hampton LLP challenged the WCAB's rule on behalf of the Employers Group and an individual employer who faced a Section 132a claim. Richard Simmons and Tracey Kennedy filed an action in federal court challenging the WCAB. They argued that ERISA did, in fact, preempt the state law and that the prior WCAB decisions to the contrary had been decided incorrectly. Another employer, A&A Farming, also filed an action against the WCAB, making the same assertions. The WCAB initially fought the challenge and denied that ERISA preempted Section 132a claims. After the federal district court sidestepped the merits of the dispute, the Ninth Circuit Court of Appeals agreed to review the case and scheduled oral argument for March 16, 2002.

The pressure of the federal litigation appears to have influenced the WCAB. In a sudden reversal of its long-standing position, on February 13, 2002 the WCAB adopted the position advanced by Sheppard Mullin in the decision of *Navarro v. A&A Farming*; and *Western Growers Ins. Co.*, Case No. GOL 0087934, GOL 0087935, and GOL 0087936. The WCAB's en banc opinion represented a stunning reversal and concession of the merits of Sheppard Mullin's arguments. In an opinion signed by all six members of the WCAB, it concluded:

"Based on our review of the relevant statutory and case law, we conclude that where an injured employee's section 132a claim is premised upon the employer's termination of (or refusal to provide) group health plan benefits to the employee pursuant to the terms of an ERISA plan, the employee's section 132a claim 'relates to' the ERISA plan and, therefore, is preempted by ERISA. (29 U.S.C. § 1144(a).) Accordingly, we will not reach the question of whether the employer's act of discontinuing its contributions to the ERISA plan on applicant's behalf constituted 'discrimination' under section 132a."

2. The Underlying Facts

In reaching this conclusion, the WCAB first determined that the employer maintained a group health benefit plan that qualified as an "employee welfare benefit plan" within the meaning of ERISA. The employee who sought workers' compensation benefits sustained industrial injuries to his back between April 6, 1996 and April 5, 2000, when he stopped working. With the exception of one attempt to return to work for a portion of a day, his physical injury prevented him from working for the employer after April 5, 2000. After he stopped working, the employer made contributions toward his benefits for three months in 2000. The employer stated that it would only provide medical coverage for disabled employees for a period of 90 days after they commenced leave due to a disability. It also notified him that, after this 90-day period, continuation of his health coverage was available at his expense under the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA").

The employee filed a petition for benefits discrimination pursuant to Labor Code Section 132a. In substance, he alleged that the failure to continue contributions on his behalf while he was temporarily disabled constituted unlawful discrimination against an industrially-injured worker in violation of Section 132a. The WCAB noted that "whenever an employee's industrial injury causes an employer to take an adverse action against the injured employee, the employer may have engaged in an unlawful discrimination within the meaning of section 132a, unless the employer establishes that the adverse action was 'necessitated by the realities of doing business'."

The WCAB then considered the Supremacy Clause of the United States Constitution, which provides that Congress may preempt any state law either by express provision or by implication. Based on its review of Supreme Court authorities, including the leading case, *District of Columbia v. Greater Washington Board of Trade*, 506 U.S. 125 (1992), the WCAB concluded that ERISA preempts the employee's claim that his employer had discriminated against him in violation of Section 132a by terminating its contributions to the ERISA health benefits plan. The WCAB also observed "that federal law does allow an employer to discontinue its contributions to an ERISA health benefits plan "after an employee has been disabled for 12 weeks or more." The WCAB held that the applicant's Section 132a claim "relates to" his employer's ERISA plan and is preempted by ERISA. It stated:

"In essence, he is asserting that his employer's action in setting up, executing, and administering the terms of its ERISA plan discriminated against him as an industrially-injured worker because, but for his injury, he would have continued working and he would have continued receiving health benefits under the ERISA plan. Thus, applicant's section 132a claim is directly premised upon the existence of his employer's ERISA plan and upon his employer's refusal (pursuant to the terms of the ERISA plan) to continue its plan contributions on his behalf."

3. Conclusion

The decision represents a tremendous victory for employers. It eliminates the dilemma created by the WCAB's prior rules. It allows employers to adhere to their obligations under ERISA and all other laws, including the family and medical leave laws, in shaping their policies with respect to the continuation of health benefits during a leave of absence. In contrast, employers are not required to depart from those benefit plans to provide more favorable treatment to employees with occupational injuries. The WCAB no longer takes the position that employers have an unlimited obligation to provide health insurance benefits indefinitely, simply because a leave of absence is triggered by an industrial disability rather than some other type of disability.

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Attorneys

Richard J. Simmons

Practice Areas

Labor and Employment