

From: Don Drinko
Sent: Thu 1/31/2013 9:18 AM
Gallagher Sharp Shop Talk: Workers' Compensation

Question: What is salary continuation? Does the Industrial Commission have jurisdiction over salary continuation? Can I terminate salary continuation based upon a finding of MMI?

These are some of the questions I've received over the years about salary continuation, or the practice of paying wages in lieu of temporary total disability compensation. This practice, favored by employers seeking to limit the impact of lost-time claims, is authorized by the BWC with some limitations. Absent a collective bargaining agreement, salary continuation is voluntary and the claimant can choose not to accept it. Either party can also terminate salary continuation at any time, and at that point the BWC will pay temporary total disability, if appropriate. Payment of salary continuation does not interrupt service time that impacts seniority or other benefits, such as vacation. Unlike temporary total, employers may not wait until the claimant has missed 14 days to pay the first 7 days of salary. However, if an employer pays salary continuation for a claim where the claimant ultimately misses fewer than 8 days, the claim remains a "medical only" claim. Employers are required to submit a *Salary Continuation Agreement (C-55)* signed by a representative of the company and the claimant for each period (up to 45 days) of salary continuation paid. If salary continuation is discontinued, the BWC requires notice from the employer within 72 hours.

It should be noted that employers who pay salary continuation do lose some control over the claim for the simple reason that the Industrial Commission has very little jurisdiction over this practice. Revised Memo C-4, effective September 10, 2012, is intended to provide guidance to Hearing Officers presented with salary continuation issues at hearing. Among the notable provisions of Memo C-4:

- Hearing Officers are instructed to grant temporary total benefits in their orders as usual, but include the language "less wages received";
- Hearing Officers do not have the authority to terminate salary continuation based upon "maximum medical improvement." Hearing Officers may not consider the issue of "maximum medical improvement" unless temporary total benefits have been granted or requested;
- The "waiting period" for requesting permanent partial disability benefits prescribed by R.C. 4123.57 (26 weeks after the last payment of compensation) is generally not applicable to employees who receive salary continuation;
- If a claim for a violation of a specific safety requirement (VSSR) is filed, the award of which would be based upon the amount of compensation paid, the amount of the award should be based upon the amount of TTD which would have been paid.

Salary continuation can be useful to reduce lost time claims, protect group ratings, and keep rates lower, particularly for lost-time injuries which are not serious in nature. However, guidance is necessary when assessing whether this tool is right for your company. If you would like to submit a question to Shop Talk, or would like to discuss this or any other workers' compensation issues, you can contact me.

Donald G. Drinko, Esq.
Certified Workers' Compensation Specialist,
Ohio State Bar Association
Gallagher Sharp
1501 Euclid Avenue
Cleveland, OH 44115
Direct: 216.522.1326
ddrinko@gallaghersharp.com