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25 YEARS
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WKM Clients

RE: *Crabb v. Dep't of Labor & Industries*

Dear Wallace, Klor & Mann Clients:

We have enclosed a copy of *Crabb v. Dep't of Labor & Indus.*, 181 Wn. App. 648, 326 P.3d 815 (2014). This is a Court of Appeals decision that was filed on June 5, 2014. At issue in the case was the legislature's 2011 elimination of the automatic COLA to workers' compensation benefits for that year. Therefore, because of the 2011 COLA suspension, there was no adjustment on July 1, 2011 as was typically required by statute. The COLA suspension did not, however, alter the statutory provisions for calculation of time loss benefits codified in RCW 51.32.090.

In *Crabb*, the claimant was receiving time loss at the maximum rate following a 2007 industrial injury. Claimant did not receive a COLA adjustment in July 2011 due to the COLA freeze. Claimant argued that the COLA increase is separate from the annual maximum time loss rate change, and that he should have been entitled to the July 1, 2011 maximum time loss rate. The Board affirmed the Department order denying the COLA increase. The Superior Court reversed, entering summary judgment in favor of the claimant, and the Department appealed to the Court of Appeals.

The Court of Appeals determined the legislative suspension of the 2011 COLA was ambiguous. Applying the doctrine of liberal construction in favor of the injured worker, the Court of Appeals agreed with the Superior Court that the Department erred in not adjusting the maximum time loss rate. The Department was directed to pay benefits at the maximum 2011 monthly amount, concluding that the 2011 COLA suspension did not prevent payment of Claimant's benefits at the 2011 maximum rate.

In light of this decision, employers and TPA's should be aware of the fact that all workers who were entitled to the maximum time loss or pension rate must now be compensated for the July 1, 2011 increase. By our reading, the claim must be open in order for this decision to apply. In such cases, you will need to go back and recalculate the rate. While this decision by the Court of Appeals is certainly disappointing, and contradicts the intent of the legislature's 2011 COLA freeze, the decision is now final and will require recalculation of maximum time loss rates. Failure to do so would run the risk of a penalty assessment.

If you have any questions regarding this case or implementation on calculation of maximum time loss rates, please contact Wallace, Klor & Mann.

Very truly yours,

WALLACE, KLOR & MANN, P.C.