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NEW LAW REGARDING OFFSETS TO PTD BENEFITS Minn. Stat. §176.1292

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[Read Minn. Stat. § 176.1292](#)

New Law Regarding Offsets to PTD Benefits

A new law went into effect on May 31, 2017, regarding offsets to permanent total disability benefits that were reduced by retirement benefits before August 13, 2014, entitled "Forbearance of Amounts Owed to the Special Compensation Fund." The law is the product of the Workers' Compensation Advisory Committee in response to the Minnesota Supreme Court rulings in *Ekdahl v. ISD 213* and *Hartwig v. Traverse Care Center* issued on August 13, 2014. In the *Ekdahl/Hartwig* cases, the Supreme Court addressed the meaning of the phrase "old age and survivor insurance benefits" as used in Minn. Stat. §176.101, Subd. 4, which provides in relevant part:

This compensation shall be paid during the permanent total disability of the injured employee, but after a total of \$25,000 of weekly compensation has been paid, the amount of the weekly compensation benefits being paid by the employer shall be reduced by the amount of any disability benefits being paid by any government disability benefit program if the disability benefits are occasioned by the same injury or injuries which give rise to the payments under this subsection. *This reduction shall also apply to any old age and survivor insurance benefits.*

The Supreme Court concluded the phrase "old age and survivor insurance benefits" unambiguously refers to only federal social security benefits under the Social Security Act. Thus, only federal social security retirement benefits can be used to offset PTD benefits.

The new law has been a long time in the making as there was much discussion as to whether the *Ekdahl/Hartwig* decisions should be applied retroactively in cases where PTD benefits were reduced by retirement benefits other than federal social security retirement benefits. Representatives for employees and employers were able to provide their input on the issue and this resulted in a compromised bill. The new law applies to:

- The Minnesota Department of Labor & Industry's Special Compensation Fund;
- Injured workers with dates of injury before August 13, 2014 (and their dependents and heirs if applicable); and
- Payers (workers' compensation insurers, employers, or group of employers that are self-insured for workers' compensation).

The law does not apply to:

- Injured workers with dates of injury on or after August 13, 2014, as those cases would be governed by the *Ekdahl/Hartwig* decisions;
- Injured workers whose last PTD benefits were paid (or would have been paid if not reduced by retirement benefits) before January 1, 2000;
- The employee died before January 1, 2008;
- Injured workers with settlement agreements approved by a Compensation Judge, if the settlement was a full, final and complete settlement of workers' compensation benefits in exchange for a lump sum; and
- Injured workers where a final court order or Stipulation for Settlement approved by a judge explicitly states the employee's PTD benefits may be reduced by a specified retirement benefit or a final court order or a Stipulation for Settlement that was vacated after the effective date of the law (May 31, 2017).

The purpose of the legislation is to correct underpayments of PTD benefits that resulted from payers taking offsets for retirement benefits that the Supreme Court has ruled improper. Types of government retirement benefits that cannot be used to reduce PTD benefits included those paid by Public Employees Retirement Association (PERA), Teachers Retirement Association (TRA), Minnesota State Retirement System (MSRS) and other agencies that pay government retirement benefits.

The new law provides that if a payer pays past and future PTD benefits to all of the PTD employees, dependents and legal heirs without reducing the benefits by retirement benefits (other than social security retirement benefits), the Special Compensation Fund will reimburse the payer supplementary benefits paid or payable before August 13, 2014, if the Special Compensation Fund has denied reimbursement of supplementary benefits based on *Ekdahl/Hartwig* decisions. In addition, the payer will receive relief from paying a portion of the Fund's assessments on increased PTD benefits paid due to the removal of the retirement offset.

The payer must re-characterize supplementary benefits paid to all employees as PTD benefits if the supplementary benefits were paid because the PTD benefits were reduced by retirement benefits received by the employee.

The Special Compensation Fund will not recalculate assessments previously paid by any payer because of the assessment adjustments.

The new law requires the Department of Labor & Industry to establish a procedure for implementing the legislation. The procedures and forms can be found on the Department of Labor & Industry's website at <https://www.dli.mn.gov/workcomp.asp>. Forms for dates of injury before October 1, 1995, are to be sent to the Special Compensation Fund. The forms for dates of injury on or after October 1, 1995 should be sent to Compliance, Records and Training Department at the Department of Labor & Industry. There are specific time frames for implementing the new law. Injured workers must be paid corrected ongoing PTD benefits no later than October 27, 2017 and past underpayment of PTD benefits no later than December 26, 2017. Dependents and legal heirs must be paid any underpayment of benefits no later than February 24, 2018. A payer may request an extension/waiver of PTD benefits if, for example, the payer was unable to locate an employee who may have been entitled to the recalculated PTD benefits.

Minn. Stat. §176.1292 will no doubt require a complicated audit and a lot of manpower on the part of the payers to recalculate and pay the additional PTD benefits that were previously reduced by retirement benefits the Supreme Court has now deemed inappropriate. While the law is not strictly mandatory, if the payer desires the break on the assessments and relief from paying the Special Compensation Fund for the additional PTD benefits, they may wish to participate in the program. This will require a cost analysis. The risk for penalties will also factor into the analysis as the law includes a penalty provision in the event the payer goes to hearing and is found liable for the increased PTD benefits as a result of the employee's PTD benefits being improperly reduced by retirement benefits.

Of course, there is always the chance of discovering an actual overpayment once these old PTD cases are re-examined.

This is a synopsis of this new legislation. The complete and official version is attached to this article.

Should you have any questions, please do not hesitate to contact myself, or any of the attorneys at Brown & Carlson regarding any PTD issues. We look forward to assisting you in any way we can.

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