



## Case Law Update

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This Update contains summaries of all relevant Appellate decisions for the preceding week, with comments on how a particular decision affects you. In addition, we review daily the Merit Orders posted on the DOAH website. This Update contains summaries and links to relevant JCC decisions for the past week.

Please feel free to contact Rogers Turner ([rturner@hrmcw.com](mailto:rturner@hrmcw.com)) or Matthew Troy ([mtroy@hrmcw.com](mailto:mtroy@hrmcw.com)) with questions or comments on any of the listed cases.

### *Florida Supreme Court*

**Westphal v. City of St. Petersburg**  
**Constitutionality/Limit on 104 weeks of TTD**

**(Fla. 6/9/2016)**

The Florida Supreme Court ruled that the 104 week limitation on Temporary Total (TTD) benefits is unconstitutional as a denial of access to courts. In striking the 104 week limit, the Supreme Court revived the 260 week limit on TTD benefits which existed in the pre -1994 version of the statute.

The initial issue arose where Westphal, an injured firefighter, exhausted his 104 weeks of TTD/TPD benefits and sought Permanent Total Disability (PTD) benefits. As he still needed additional surgeries, he could not be considered to be at Maximum Medical Improvement (MMI), a pre-requisite for PTD. The JCC denied his claim. On appeal, the DCA considered this “gap period” and “valiantly attempted” to save the statute by holding that a claimant in such circumstances could seek PTD without being medically at a point of plateau.

The Supreme Court sympathized with the First DCA, but found they did not have the authority to re-write the statute. The Supreme Court found the gap period violated access to courts, cutting off a claimant’s benefits at a critical time with no redress. They rejected any notion that the 104 week limitation demonstrated an overwhelming public necessity, and found the prior 260 week limit passes constitutional muster. The court declined the invitation to rule the entirety of chapter 440 unconstitutional. [Click here to view Opinion](#)

This ruling results in uncertainty for employers and carriers:

- It's not clear if the 104 week limitation on TPD benefits still exists, as the court only addressed the limit on TTD benefits.
- The pre-1994 version of the statute provided 260 weeks of TTD and a separate 260 weeks of TPD. A possible interpretation will be that the claimant is entitled to up to 260 weeks of TTD which includes 104 weeks of TPD. Another interpretation is that a claimant could be entitled to up to 520 weeks (10 years) of combined TTD/TPD. Also not addressed is the limit on rehab TTD.
- Claimant's attorneys will likely push to have their clients kept on a no work status for as long a period of time as possible.
- Expect additional exposure for ongoing indemnity for claimants who have serious injuries that while totally disabling at the time, are unlikely to lead to permanent total disability.
- One possible silver lining is that early PTD litigation following the 104 week cap previously is likely to diminish.
- If the courts eventually extend the TPD limitation to 260 or 520 weeks, there will be a much more substantial impact as MMI will be delayed in many cases.
- It is possible that this ruling will result in additional rate increases above and beyond those already suggested by NCCI due to the Castellanos ruling, although the total number of cases the ruling impacts is not large.

## *District Court of Appeal Cases*

### **Pinera v. Target/Sedgwick,** **PTD/MMI/Sheltered Employment**

**(Fla. 1<sup>st</sup> DCA 6/7/2016)**

The DCA reversed the JCC's denial of PTD, PTD supps and penalties and interest. At the time of the hearing, claimant was not at a point of overall MMI, but had exhausted 104 weeks of temporary benefits. The DCA noted the JCC erred as a matter of law (per Westphal) when she found that Claimant could not be deemed to be MMI from her workplace injury because she was not "totally disabled." The evidence showed that the claimant was working 12 hours a week for the employer. The DCA noted the JCC further erred in concluding that the claimant could not show PTD because of the work. On remand the claimant may attempt to prove PTD by presenting evidence that the employment is sheltered, and that she may qualify for PTD on the basis of work related physical restrictions and vocational factors . [Click here to view Opinion](#)

*Please note that the DCA Opinions and Merit Orders contained in this newsletter are non-final until 30 days after their rendition. Until that time, they are subject to amendment, vacation, or other action which may remove or alter some or all of the decision. Please contact any HRMCWW attorney if you have a question as to the finality and applicability of an Opinion or Order. We endeavor to include any amendments or alterations to Opinions or Orders that may occur at a later date.*

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