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SIGNIFICANT PANEL DECISION FINDS SATURDAY NOT A "WORKING DAY" IN CONTEXT OF LABOR CODE 4610:

Utilization Review Determination Due on Saturday Rolls Over to Next Working Day

September 16, 2019

At last, a victory for utilization review and proponents of the sanctity of Saturdays. The WCAB has issued a significant panel decision—and simultaneously providing clarity concerning a previous decision in *California Department of Corrections v. WCAB (Gomez)*—finding that, for the purposes of utilization review determinations, Saturdays are not "working days" within the meaning of Labor Code Section 4610. With the benefit of "hindsight," the WCAB found that linking the Civil Code Section 9 definition of "business day" to the Labor Code 4610 definition of "working day" in its aforementioned decision, was an error with implications not initially considered by the *Gomez* court or the Court of Appeal.

In the present case, a request for authorization was received by the utilization review company on Monday March 12, 2018. The utilization review denial was served one week later on Monday March 19, 2018. The trial court found that for the purposes of Labor Code Section 4610 timeliness considerations, Saturdays are not "working days" within the meaning of the statute, and concluded that the utilization review determination was timely. The trial judge justified this decision arguing that under Civil Code Section 7.1, Saturdays are listed as an "optional bank holiday."

On Reconsideration, the WCAB affirmed the holding of the trial judge, but reached the conclusion a different way. Noting that the term "working day" is not defined in the Labor Code, the WCAB revisited the historical context of the terms "business day" and "working day" going back to the late 19th century. Using dictionary and other definitions of the term "working day" in lieu of any statutory definition, the WCAB concluded that the usage of the term had evolved in modern times, and that Saturday was not a day on which work was "normally" performed. Therefore, the WCAB argued, it was reasonable to assume the Legislature had not intended Saturday to be considered a "working day."

In support of that position, the WCAB noted that Labor Code Section 4600.4, upon which the WCAB's previous decision in *Gomez* had relied, states that utilization review services must be available on each "normal business day." This term was defined by Civil Code Section 9 to include Saturday. However, the panel noted, the term "working day" was used in Section 4610, and evidenced intent to "differentiate" the two terms from each other. Although the *Gomez* court linked the two terms, the WCAB reasoned that this finding was not essential to the holding in *Gomez*, and that equating the two terms,

though reasonable under the circumstances, was "not based on sufficiently solid basis to withstand careful scrutiny." The WCAB concluded that it was not the intention of the Legislature to include Saturday as a "working day" within the meaning of Labor Code 4610, and that the utilization review determinations were therefore timely.

The panel found more support for this proposition in Code of Civil Procedure Section 12a, which holds that if the last day for performance of an act falls on a holiday "that period is…extended to include the next day that is not a holiday." For the purposes of the section, Saturday and Sundays are considered holidays. Thus, the WCAB found that even if Saturday were considered a "working day" within the meaning of section 4610, the utilization review decisions would **still** have been timely, as the last day fell on a "holiday" and therefore rolled over to the next non-holiday.

Ultimately, the WCAB's holding returns some clarity to the utilization review process which had been made foggy by its previous holding in *Gomez*, and returns some semblance of sanctity to Saturdays.

By: Mark Turner, Sacramento

Laughlin, Falbo, Levy & Moresi LLP
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