

COVID-19 AND LAYOFFS OF PARTIALLY-DISABLED WORKERS

The COVID-19 pandemic has forced many businesses to temporarily close their doors or limit their operations, leaving many workers unemployed. There is a good chance that one of those newly-unemployed workers was partially disabled as a result of a work accident. Does that partially-disabled worker now get temporary total disability? Here is what you need to know:

- The general rule is that when a partially-disabled worker is not working and is not currently under an award for wage loss benefits, she may be entitled to temporary total disability benefits so long as she suffered economic loss and looks for a sufficient number of jobs within her remaining work capacity ("marketing").
- The general rule applies to the "typical" case where a partially-disabled worker cannot return to her pre-injury job although the position still exists, and the employer cannot accommodate her light-duty restrictions. In the "typical" scenario, the worker would be working but for the work-related injury, thus proving economic loss. So, the worker need only look for a sufficient number of jobs within her work restrictions to be entitled to temporary total disability benefits.
- An "atypical" case is where the partially disabled workers' wage loss is caused by layoffs or furloughs where the workers' position is eliminated along with the positions of other able-bodied colleagues. In the "atypical" scenario, the worker will need to establish that her partial disability placed her at a disadvantage in the labor market when compared to other non-restricted workers. This can be done by showing that the worker was denied or lost other employment opportunities because of her work-related limitations.
- To determine whether the layoff or furlough should fall under the "atypical" category, Courts will look at several factors:
 - (1) the length of any furlough or layoff;
 - (2) whether that furlough or layoff included all employees, restricted or not, of the same class;
 - (3) the reason for the furlough or layoff;
 - (4) whether the term of the furlough or layoff was pre-determined by the employer; and
 - (5) whether the effected employees were offered employment at the termination of the furlough or layoff.
- The layoffs and furloughs caused by COVID-19 will likely fall under the "atypical" category unless the layoff or furlough lasted for a short period of time. A worker does not have to look for work if the layoff or furlough was only for a short period.
- **Note:** The above applies only to partially-disabled workers.

TIPS

- ✓ If a partially-disabled worker is laid off due to COVID-19, do not automatically start paying temporary total disability benefits.
- ✓ Obtain as much information as possible about the furlough or layoff, such as the types of positions that were furloughed, the length of the furlough, and whether the worker is expected to return back to work once the employer opens back up.
- ✓ Pay close attention to a workers' job search efforts, and do not start paying temporary total disability benefits without that extra proof that the worker was not offered another job because of their workers' work-related limitations.
- ✓ This issue is very fact specific, so it may be difficult to determine whether benefits are owed. If you are unsure, call us!

We welcome the opportunity to assist with any questions or concerns you may have about workers' compensation issues that may arise due to COVID-19. Please feel free to contact our attorneys with any questions or concerns you may have. We are here to help during this challenging time, and we hope you and your families stay safe and healthy!