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# the california workers' compensation appeals board says that employees on leave must receive full benefits -- but there is a way to fight back

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*MSK Client Alert*

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California Labor Code Section 132(a) prohibits "discrimination" against employees who have filed a Workers' Compensation claim. The Workers' Compensation Appeals Board applies a very broad definition to the term "discrimination," and in recent years has ruled that cutting off an employee's health insurance while he or she is on leave is prohibited, at least until it is medically clear that the employee can never return to work. The WCAB applies this rule even if the employer cuts off insurance for all other absent employees under the same circumstances. Under the WCAB's position, the employer may be required to pay the absent employee's health insurance premiums for years, even if the employer's health insurance policy mandates a cutoff.

A recent decision of the federal District Court in Los Angeles gives employers a new avenue to oppose this rule. *Scotti v. Los Robles Regional Center, et al.*, 117 F. Supp.2d 982 (C.D.Cal. 2000), held that where ERISA governs the employer's health insurance plan, it completely preempts a claim for continuing benefits under Labor Code Section 132(a). The Court held that the employer had the right to remove such a petition from the Workers' Compensation Appeals Board to federal court, where the employer may have the claim dismissed.

Based on this decision, employers should consider taking the following steps:

- Examine employee group health insurance plans to make sure that they properly establish coverage cutoff provisions.
- Monitor Labor Code Section 132(a) petitions filed with the WCAB, and when appropriate remove the petition to U.S. District Court within 30 days of service of the petition. **NOTE: This last point is imperative! This 30-day deadline cannot be extended.**

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In order to take advantage of this defense, the employer must have a health insurance plan drafted in a way that will preempt the WCAB's rule. Our labor and employment lawyers can review your company's plan to determine whether you are in a position to protect yourself, and advise whether amendments to your plan are needed.

Bill Cole

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Labor & Employment Chair