



Is the Department of Labor and Industries providing your Washington company with the wage subsidy to which it is entitled?

By Jennifer Kramer • February 18, 2015

Employers that insure through the Washington State Fund received a favorable ruling from the Division One, Washington State Court of Appeals, regarding the subsidy owed to them by the Department when they return their workers to light or transitional duty work. In *Dept. of Labor & Indus. v. Cascadian Building Maintenance, LTD.*,¹ the employer returned the worker, Ms. Tellez, to light duty work the day after her industrial injury. She continued to work her normal schedule for six days, while performing the light duty work, and then returned to her regular work.

Pursuant to RCW 51.32.090(4)(the subsidy provision of the statute added as part of the stay-at-work program), Cascadian sought a wage subsidy from the Department for the wages it paid to Ms. Tellez during the six days she worked light duty. The Department paid Cascadian a wage subsidy of only \$168.12, which represented the subsidy it owed for the **last** three days of light duty worked by Ms. Tellez. The Department refused to pay the subsidy for the first three days of light duty, reasoning that RCW 51.32.090(7) rendered Ms. Tellez ineligible for time loss compensation the day of injury and the first three days after her injury. The Department reasoned that it did not have to pay the subsidy if the worker would not have been entitled to time loss during that period.

The Court ruled that the Department had wrongly withheld the subsidy for the first three days of light duty work. Based on the legislative intent, the Court concluded that the stay-at-work program was enacted to encourage workers to "remain at work following their injury," by carrying out light or transitional duty work offered by their employers. Withholding the subsidy for the first three days of light duty work, in those cases where the workers return to regular duty within 14 days, would encourage employers not to offer light duty until after the third day following the injury. The Court ruled that such an interpretation was not supported by the text of the statute, and conflicted with the purpose of the stay-at-work program.

State fund employers may be owed a wage subsidy for injured workers even for the first three days after the injury.

Continued



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Wage subsidies (continued)

If you suspect that your company has not been provided with the full wage subsidy it is owed, one of our Washington attorneys would be happy to analyze whether the Department fulfilled its statutory obligation to subsidize the light duty work provided to your injured worker. ■

¹ Dep't. of Labor & Indus. v. Cascadian Building Maintenance, LTD, No. 71209-8-1, ___ P.3d ___ (February 2, 2015)

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