



Oh what a difference a day makes!

By Christy Doornink ■ August 11, 2016

The Washington Supreme Court issued its decision in the watched *Kovacs v. Department of Labor and Industries*¹ case on July 14, 2016, holding the one-year statute of limitations to file an industrial injury claim begins to run the day **after** the injury.



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Mr. Kovacs sustained an injury while working on September 29, 2010, but did not file an application for benefits until September 29, 2011. The Department of Labor and Industries and Board of Industrial Insurance Appeals both held the application was untimely, but the Superior Court reversed and deemed it timely. The Court of Appeals thereafter issued a divided opinion holding that the applicable statute, RCW 51.28.050² “unambiguously” meant the worker had one year to file his application from the day of his injury.³

While a prior Washington Supreme Court case⁴ stated “in passing” that the Court “has established the rule that the one year period in which the claim must be filed commences to run on the day of the accident,” the Court called such statement dicta, which is not a ruling of the Court. Ironically, after noting the Court of Appeals appeared to have overlooked their dicta in *Nelson* on when the timeline is triggered, the Supreme Court said the Court of Appeals’ approach in the *Wilbur v. Department of Labor and Industries*⁵ case was sound. The Supreme Court unanimously held the one-year statute of limitation in RCW 51.28.050 begins to run the day after the injury.

Continue to carefully monitor whether an industrial injury claim has been timely filed within the one-year statutory requirement. However, be sure to start counting on the day **after** the injury. ■

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¹ *Kovacs v. Dept. of Labor & Ind.*, ---P.3d ---, Wash, July 14, 2016.

² No application shall be valid or claim thereunder enforceable unless filed within one year after the day upon which the injury occurred or the rights of dependents or beneficiaries accrued, except as provided in RW 51.28.055 and 51.28.025(5). RCW 51.28.050.

³ *Kovacs v. Dept. of Labor & Ind.*, 188 Wash.App. 933 (2015).

⁴ *Nelson v. Dept. of Labor and Ind.*, 9 Wash.2d 621 (1941).

⁵ *Wilbur v. Dept. of Labor and Ind.*, 38 Wash.App. 553 (1984).