

**\*\*CSRMA ALERT\*\*****Workers' Compensation Case Law Update**

On April 19<sup>th</sup> 2007 an appellate court decision was delivered on Labor Code §132a (discrimination based on workers' compensation). In the case of John Andersen vs. WCAB, City of Santa Barbara\*, ***the court held that if the employer provides sick leave to its employees, it cannot refuse to permit its use for industrially-related medical appointments when non-industrially injured workers are not so restricted.***

In this case, the City permitted non-industrially injured persons to use sick leave for medical appointments but required industrially injured persons to use earned vacation time. Based on this case, this is now considered to be a discriminatory practice and is not allowed. What makes this case is that the employer was following the MOU (Memorandum of Understanding) and still failed to prevail in court.

In California, temporary disability is paid by the claims administrator only for time missed from work due to disability, not for attendance at medical treatment examinations. In this circumstance, the City could have chosen not to provide sick leave to any of its employees for time missed for doctors' appointments. But, if the City provides sick leave to its employees for non-work related medical appointments, it cannot refuse to permit occupationally injured employees from using sick leave for industrially-related medical appointments.

Here is the lesson learned: An employer ***cannot treat industrially injured employees differently from non-industrially injured employees*** regardless of the provisions of Local ordinances or the MOU with the employee's bargaining unit.

**IMPORTANT NOTE TO MEMBERS:**

- An employer ***cannot treat industrially injured employees differently from non-industrially injured employees.***
- ***MOU*** with employee bargaining units ***can not supersede the law.***

If your agency would like more information regarding how this affects your agency, please contact our CSRMA WC/ Return to Work Advisor, Heather E. Truro at 925-922-0305 or [htruro@comcast.net](mailto:htruro@comcast.net), or the CSRMA Employment Practices Hotline at Liebert Cassidy & Whitmore at 415-512-3000 or 310-981-2000.

\* The case can be found at <http://www.courtinfo.ca.gov/opinions/documents/B191064.DOC>

***For More Information, Please Contact David Patzer, CSRMA Risk Control Advisor at 707.373.9709 or at [losscontrol@sbcglobal.net](mailto:losscontrol@sbcglobal.net)***