

# Why work at all?

## ■ State's calculation of time-loss benefits is unreal— little wonder rates must increase by 29 percent

The state Department of Labor & Industries (L&I) has once again reinforced a policy that results in construction industry workers often being paid more while on a time-loss claim than when they were working. L&I claim managers have recently received training that addresses a recent Washington Supreme Court decision that allows workers to collect time loss benefits based upon the workers' *intent* to work in the future!

What does this mean for you as an employer? It means that an employee who was injured on a short-term prevailing wage or other high wage job will likely receive time-loss payments from L&I based upon the wage at the moment of the injury rather than based upon the workers' historical wages. If a union worker has a history of putting his name on the union list in the past, then the assumption (by L&I) is he would have put his name on the list in the future. Even though the worker didn't work full-time on a continuous basis, the mere fact that he "intended to work" means the department is to consider the wages at the time of injury as *full time*. Here's an example:

Worker Joe works full time from June through September. Work drops off and he works an average of 20 hours per week through October and November. He is off of work completely from December through March and works part-time again during April and May. Finally June rolls around again and he gets a big break and is dispatched from the union to a prevailing wage job at \$25 per hour. After his first day he reports an on the job injury that will result in lost time from work. Logically, one would think that the department should collect wage information for at least the 12 months prior to the injury and average the wages in order to compute the benefit rate. However, because of L&I's policy, time loss benefits must be calculated as if he worked

full time, 52 weeks a year at \$25 per hour. After all, Joe had his name on the union list all year round "proving" he intended to work full-time even though he had various hourly earnings and his work pattern was essentially intermittent. BIAW's claims staff sees many cases where these workers will earn more on time loss (which is tax-free) than when they worked. So, why would they ever go back to work?

### What Can You Do?

There are some exceptions to this rule and if employers want to prevail, they need to be diligent in their documentation. For piece work like drywall and roofing, wages are averaged using up to three years of earnings and the highest four consecutive quarters. The Department will also average wages when the employer can provide *proof* that the job was strictly part-time (i.e., an ad was placed that states "part-time work, three days per week".) It is also im-

portant that when employers receive the Report of Accident (ROA) they complete the wage information section and provide documentation if they believe averaging of wages is applicable (for piecework or part-time). *Always* review the worker's portion of the ROA to insure the information that the worker provided is accurate. Because there is much confusion in this area on the part of many claim managers at L&I, always review the wage orders that you receive every two weeks from L&I while a worker is on time-loss. If there is any question about how the department calculated the time-loss benefit rate, contact your BIAW Claim Specialist for assistance.

In the meantime, BIAW and other business groups are applying pressure to the Legislature to correct this ridiculous method of calculating time-loss benefits. L&I has stated that they will not change their policy unless they are compelled to by lawmakers. We'll keep you posted. ↩

## Locke appoints no-growther to GMA Hearings Board

Governor Locke has appointed long time no-growth advocate Holly Gadbow to the Western Washington Growth Management Hearings Board. Gadbow will earn \$80,000 a year in her new post hearing appeals of city and county growth management decisions for every county in western Washington except Pierce, King, Kitsap and Snohomish.

A former Olympia City Councilwoman for 19 years, Gadbow has been a strong supporter of growth management. According to Olympian Mayor Bob Jacobs, Gadbow's anti-growth, pro-government sentiments make her a perfect fit for the position: "I think she's a natural for the position...she's a strong advocate for growth management." (*The Olympian*, 2-3-03)

So much for unbiased representation.

Members of the three Growth Management Hearings Board in the state are appointed by the governor—unelected bureaucrats who are accountable to no one except the governor who appointed them. ↩

