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## MUNICIPAL LAW ALERT

### Recent Decision Impacting Employer Reimbursement for Advance or Continued Compensation

Please be advised that certain reimbursements for advance or continued wage payments made by employers to employee-claimants are subject to a recent change under New York's Workers' Compensation Law.

The Workers' Compensation Law (WCL) permits reimbursement out of an employee-claimant's award for either the employer's advance payment of compensation or continued payment of wages. Advanced or continued payments made to the employee which are paid by the employer in the "like manner as wages" are reimbursed under WCL § 25(4)(a). Employers may also be reimbursed for compensation paid to an employee-claimant when compensation was paid in accordance with a contract, collective bargaining agreement or employee benefit plan. These contract- or plan-related reimbursements fall under WCL §25(4)(c).

Generally, employers should seek timely reimbursement from the Workers' Compensation Board (the "Board") for compensation payments or continued wages that are paid in advance of a workers' compensation award to an employee, while that employee is out of work or working with reduced earnings. The right to reimbursement under either subsection of the WCL may be lost, however, if the employer fails to file a claim for reimbursement before a workers' compensation award is made.

Reimbursement requests that fall under WCL §25(4)(c) may be impacted by a recent decision<sup>1</sup> from the Appellate Division (Third Department). In that case, the court held that any time an employer continues payment of an employee's wages pursuant to a contract (including an employee handbook, collective bargaining agreement or employee benefit plan), the

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<sup>1</sup> Dobney v. Eastman Kodak, 122 A.D.3d 1145 (2014).

employer **must** do the following before the employer can obtain reimbursement for wages paid out of a workers' compensation indemnity award:

1. Submit a timely reimbursement request; **AND**
2. **Provide proof of the relevant terms of the contract/collective bargaining agreement/employee benefit plan.**

In other words, if an employer submits an otherwise timely request for wage reimbursement, but fails to file proof of terms of the contract/collective bargaining agreement/employee benefit plan, the wage reimbursement will be forfeited.

The second step, above, is a marked departure from the procedures for reimbursement currently followed by many employers. Further, please note that both procedural requirements must be met *before* the award of compensation to the employee-claimant for lost time or reduced earnings is made by the Board. A recent example of untimely filing involved an employer who was party to a collective bargaining agreement that provided reduced wage payments to employees out of work on medical leave. In that case, the Board refused to grant a reimbursement request, because the employer submitted the relevant terms of the agreement *after* the employee had already been awarded workers' compensation. See *Great Neck UFSD*, 2014 WL 6802045 (Dec. 1, 2014).

This emphasis on procedural requirements for employer reimbursements under WCL §25(4)(c) is being well-publicized by workers' compensation plaintiffs' attorneys, which may result in increased litigation. To avoid a reimbursement challenge, we recommend that employers take the following actions:

- Immediately modify your reimbursement procedures so that proof of terms of the contract/collective bargaining agreement/employee benefit plan regarding compensation payments<sup>2</sup> is submitted to the Board before or at the same time as the reimbursement request is submitted.
- If you have already submitted a reimbursement request, but did not submit the relevant agreement/plan terms and an award has not yet been made, submit the applicable terms immediately.
- If an award has already been made, contact your attorney/administrator and submit proof of terms to the Board as soon as possible. If there is no detriment to any of the parties involved, your lawyer may be able to convince the Board to accept the proof of terms, even though it is late.

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<sup>2</sup> Please note that only the terms of the contract, collective bargaining agreement or employee benefit plan dealing with payments to injured or ill employees need to be submitted.

As always, Hancock Estabrook, LLP, is happy to answer any questions you have regarding this issue.

This alert can also be read on our Municipal Law blog: <http://www.hancocklaw.com/municipal-law-blog/>

If you have any questions or would like more information on the issues discussed in this communication, please contact any of the following Hancock Estabrook attorneys:

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