



Federal Law Preempts Labor Code 132(a) on Duration of Health Benefits

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How long must an employer maintain health benefits for an employee on a leave of absence for an industrial injury? California Labor Code section 132(a) makes it illegal to discriminate against a worker who suffers an injury covered by workers' compensation. Fearing 132(a) claims, and in an environment of conflicting regulatory and court decisions, employers have faced uncertainty on this issue. Earlier in 2002, the full panel of the Workers' Compensation Appeals Board (WCAB) resolved the question. It decided that a section 132(a) claim made by a worker whose employer terminates or refuses to provide coverage under an ERISA-covered health benefits plan, is instead precluded by federal Employee Retirement Income and Security Act (ERISA).

The WCAB concluded that Congress enacted ERISA to reserve the regulation of employee benefit plans to federal power and eliminate the threat of conflicting state and local regulation. Therefore the state cannot require an employer to provide health benefits to an employee it would not otherwise cover. The WCAB decision involved a claim against A&A Farming, which provided its employee health benefits through an ERISA-regulated multi-employer trust. The plan allowed each participating employer to establish how long it would cover a disabled employee, up to 180 days of disability. A&A Farming elected to cover its disabled employees for 90 days for both work and non-work related absences. Navarro, who had an industrial injury, had health benefits under the plan. The company advised him that his health benefits would end after 90 days unless he chose to extend under COBRA. Navarro alleged discrimination under section 132(a), arguing that he would have had continued coverage but for his industrial injury. *Navarro v. A&A Farming and Western Growers Insurance Co.* GOL 0087934, 0087935, 0087936 (February 13, 2002).

For additional information on safety plans and policies for your workplace, purchase either of the Cal/OSHA guides, *Cal/OSHA Basics—Written Plans and Programs* and *Cal/OSHA Handbook—Surviving A Visit From The Inspector*. ■

What Should You Do?

- Create and administer policies governing continuation of health benefits for employees on disability leave without regard to the reasons for their disabilities.
- Be sure your policies governing continuation of health benefits comply with the minimum requirements of FMLA/CFRA and pregnancy disability leave.
- Maintain a safety conscious workplace.