

## Rise in Disability Discrimination

*Workers with medical restrictions are more likely to seek modified jobs after cuts in Vocational Rehabilitation made changing jobs harder. Employers are obligated to help employees get back to work.*

The federal Americans with Disabilities Act (ADA) and California's Fair Employment and Housing Act (FEHA) prohibit discrimination based on disability.

Two of the law firm's attorneys recently described in a leading legal journal how the elimination of meaningful Vocational Rehabilitation increases an employer's potential liability.

Employers who fail to reasonably accommodate restricted workers are committing disability discrimination, write Mark Edelstein and Gary N. Stern in *CAAdemics* magazine, and can be ordered to pay damages for past and future lost earnings and emotional distress in a civil action.

After an employee injured at work has completed medical treatment, his or her doctor must decide if the patient can return to their previous job with or without restrictions. If the worker is restricted, the issue arises of their employer's obligation to help them

return to work.

Before 2004, injured employees who couldn't return to their old jobs – and weren't offered modified work – could be retrained for a new job consistent with their medical limits. However, since "Voc Rehab" was virtually abolished in January 2004, more workers are likely to seek alternate jobs with their current employer.

California employers cannot ignore their legal obligations to injured employees who later seek to return to work with medically imposed restrictions. Employers who know of an employee's disability must inform him or her of all potential reasonable accommodations. They must engage in an interactive, problem-solving process with disabled workers – including consultations with doctors or other qualified experts – to identify and implement effective accommodations.

The law firm has successfully pursued claims for workers who were victims of disability discrimination.

## Our Mission

The law firm of Gordon, Edelstein, Krepack, Grant, Felton & Goldstein is dedicated to protecting the legal rights of injured people. The firm promises honesty and integrity, and delivers expertise in the areas of Personal Injury and Workers' Compensation law. Our goal is to provide each client with the most responsive service and best resolution of his or her case.

## PERSONAL INJURY AND WORKERS' COMPENSATION LAW REPORTER

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PERSONAL INJURY AND WORKERS' COMPENSATION LAW

# REPORTER

SUMMER 2006

*Justice* for the INJURED™

## Court of Appeals Rules for Injured Workers

*First good break since 2004*

By Richard Felton

The last two years have been a disaster for California's injured workers: Temporary Disability benefits have been limited to two years; most employees have lost the right to choose their own doctor; the complicated utilization review process denies treatment to many workers; and Permanent Disability benefits have been slashed, even for the most severely injured.

Our law firm has helped lead the fight to return some justice to the Workers' Compensation system since the current assault began with Gov. Arnold

Schwarzenegger's so-called "reform."

In June, injured workers received their first good news in two years when the District Court of Appeals sided with them on how to calculate the effect of prior disability awards.

The Schwarzenegger Law changed the rules of apportionment – the ability to reduce Permanent Disability awards for prior disabilities – to make it easier for employers to cut Workers' Compensation costs.

The Court of Appeals, however, ruled in both the *Dykes* and *Nabors* cases that

*Continued inside*

## Lawsuit Against Toxic Polluter at 28th Street Elementary Grows

Legal actions on behalf of dozens of teachers, students and neighbors of 28th Street Elementary School continue to move forward against a metal-plating factory across the street from the central Los Angeles campus.

The L.A. County Superior Court has designated a lawsuit against Palace Plating as "complex" and transferred it to the Central Civil West Courthouse. Cases that involve numerous parties and witnesses, as well as substantial documentary evidence and legal proceedings, are sometimes reassigned to this court for exceptional judicial management. An experienced and knowledgeable trial judge, Emilie Elias, is now in charge of the case.

Lead attorney Roger Gordon applauded the decision to transfer the case. "This means that the relatively complicated legal and medical issues we are presenting will get the time and attention they deserve," Gordon said.

*Continued inside*

## 44½¢ per Mile for Medical, Legal Travel

*New mileage rate began July 1*

The Department of Personnel Administration recently amended its travel rules, raising the mileage rate for travel to and from medical and medical-legal appointments to 44.5¢ per mile. The rate had been 34¢ per mile since 2001. The State Legislature must ratify the DPA agreement in August, but the new rate will apply for travel beginning July 1, regardless of the date of injury.

## Our People



Attorney David Goldstein trains staff at UNITE-HERE Local 11 in how hotel workers are affected by Gov. Arnold Schwarzenegger's Workers' Comp law. Goldstein and paralegal Lilly Manzo also hold training sessions for janitors and garment workers.

*Law & Politics* magazine has named Workers' Comp attorneys Jennifer Kuklin and Joanna Sacavitch to its 2006 list of "Rising Stars" for Los Angeles and Orange counties. Local lawyers cast ballots for peers who are 40 years or younger and in practice 10 years or less. Only 2.5% receive the honor.

*American Lawyer* magazine has named Roger Gordon, Mark Edelstein, Sherry Grant, Richard Felton and Larry Goldstein to its 2007 list of Best Lawyers in America. The annual list will appear this fall in the Los Angeles *Times' West* magazine.

Personal Injury attorney Gary N. Stern was recently elected Vice President of the California Respiratory Care Board, which licenses and disciplines the 19,000 respiratory care practitioners in the state.

## Jury Awards \$1.7 Million to Sanitation Worker

In May, a jury in L.A. County Superior Court awarded \$1.7 million to a worker who was permanently crippled when a trash bin fell as it was about to empty its contents in a waste-disposal truck.

The 500-pound bin knocked Ramiro Serrano unconscious and broke his neck. Serrano – a 45-year-old father of four who had been on the job for 17 years – was permanently disabled. Today he has difficulty putting on socks and performing other routine tasks.

Attorney Roger L. Gordon and co-counsel Vincent Vallin Bennett presented testimony that the manufacturer of the truck, Amrep Inc., knew that such an accident could easily occur, but did nothing to prevent it.

Evidence revealed that the truck design did not incorporate any hooks, latches or even a non-slip surface on the forklift that could have prevented the accident. Instead, Amrep trucks rely on gravity to

keep the bins in place.

"This devastating injury could have been prevented with some forethought by the manufacturer," said Gordon. "We hope this decision gives companies pause before releasing a potentially hazardous product."

One of Serrano's co-workers testified that everyone who operates similar trucks drops bins by mistake from time to time, and the defendant's own experts acknowledged in trial that operator errors are inevitable.



Gordon demonstrated several simple, inexpensive safety devices that could eliminate the risk of serious harm to workers, as well as pedestrians and other drivers near trucks emptying their bins.

## Summer: The Season for Sun, Sport and Serious Safety Issues

By Howard D. Krepack and Gary N. Stern

For many people, summer is the season for sports and outdoor activities. Whatever the recreational pursuit – from baseball and soccer to surfing and white-water rafting – parents often assume their child will have safe conditions and competent

supervision. Don't take anything for granted.

Although someone's negligence may justify a lawsuit, the best option is to avoid an accident. These common sense tips apply to most summer pursuits:

- 1) Never leave children unattended in or near water. Use Coast Guard-approved life vests – also known as personal flotation devices – on boats, docks and around deep or swift water.
- 2) Always wear a helmet when rollerblading, skateboarding or riding a bicycle or scooter.
- 3) Protect children from excessive exposure to sun. Use a sunscreen with a Sun Protection Factor (SPF) of 15 or higher, especially from 10 a.m. to 4 p.m.
- 4) Supervise children on playground equipment. For example, make sure they stay clear of the front and back of swings. Never allow them to ride on lawnmowers.
- 5) Cut the risk of bee and insect stings by wearing lightly colored clothing and shoes. Use insect repellent sparingly on older children and never on infants.
- 6) Children under 14 should never operate an adult-sized All-Terrain Vehicle. All ATV riders should wear helmets, eye protection and reflective clothing.

## Safe Teams Make Good Sports

California law severely limits the right to sue in case of an injury during a recreational activity. The law presumes that risks are a part of nearly all such pursuits, and that athletes and their parents know and accept those risks when they agree to participate.

There is one major exception. An injured party may recover damages from a coach, fellow participant or other sponsor whose actions increase or alter the risks beyond the boundaries usually associated with the sport or what is foreseeable.

Follow these suggestions for children in an organized league or competitive sport:

- Obtain a general health exam and an orthopedic exam.
- Make sure the team coach is certified as a youth coach, is trained in CPR, and has a first aid kit. If possible, your child should have access to an athletic trainer.
- Children of all ages should stretch, warm up, and drink lots of water or sports drinks to replace fluids.
- Make sure the child gets full, easily understood instructions in game techniques and rules.
- Make sure there are no rocks, holes or other hazards in the field of play.
- Make sure there is constant supervision during the game or event.
- Allow time for rest in the event.
- Make sure the child doesn't try to "tough out" an injury.

## Workers' Comp Windfall for Insurers

California employers paid \$23.6 billion in Workers' Comp premiums during 2004. How much of that went to injured workers? About \$8.5 billion, and only 20% goes to Permanent Disability benefits. Insurance companies, meanwhile, made \$9.7 billion in profits.



## Permanent Disability Ratings Slashed

The Schwarzenegger 2005 permanent disability rating schedule slashes the average PPD rating by 50% to 60%.



Change in average PPD rating after adoption of Schwarzenegger PPD rating schedule on 1/1/05

## Lawsuit Against Toxic Polluter...

Continued from over

Judge Elias recently ordered Palace Plating to disclose the names of the companies that manufactured the toxic chemicals identified by the 28th Street plaintiffs in their complaint. Topping the list is Chromium 6, a particularly hazardous chemical that has been well documented to cause cancer in humans.

Also, more than two dozen students have joined the lawsuit against Palace Plating for injuries they have suffered after years of chronic chemical exposure at 28th Street School.

Co-counsel Vincent Vallin Bennett said he was disheartened to review the children's case histories and see the nature and extent of the suffering they have experienced.

"It shocks the conscience to think of the poisonous environment that must exist to cause these injuries – from daily nosebleeds, headaches, nausea and respiratory distress to neurological and even ovarian cancer – in elementary school children," Bennett said. "Innocent children shouldn't pay the price for society's obvious lack of concern. This lawsuit will help make a difference."

On another legal front, Palace Plating recently pleaded no contest to illegally disposing hazardous waste. The company was fined \$65,000 and ordered to pay \$60,000 in additional penalties to the state's Department of Toxic Substances Control.

## Top 10 Reasons to Vote Against Schwarzenegger

- 10 Took \$3 billion from public schools to pay for car tax rebate.
- 9 Wasted \$54 million on a special election.
- 8 Tried to punish teachers with Prop. 74.
- 7 Said about nurses, "I'm always kicking their butts."
- 6 Eliminated free choice of doctor for work-related injuries.
- 5 Called legislators "Girlie men" for resisting his anti-labor attacks.
- 4 Limited Temporary Disability to two years, even if still disabled.
- 3 Tried to silence workers' political voice with Prop. 75.
- 2 Slashed up to 80% of Permanent Disability benefits.
- 1 Broke his promise that he would never "hurt the injured workers".

## First Break...

Continued from over

workers should receive an award based on their overall percentage of disability, deducting only the money paid for an earlier award.

Under the old law, an employer could pay less compensation by splitting the amount of disability into separate awards. Thanks to the Court's new interpretation – and because awards rise progressively for higher percentages of Permanent Disability – seriously injured workers will receive more benefits.

The *Dykes* and *Nahors* cases are small but encouraging victories in the larger fight against unjust Workers' Compensation laws.

Given the additional complexity and changing interpretation of the new law, it is more important than ever for employees to contact an experienced Workers' Compensation attorney as soon as possible in the event of an injury.