

Legal Updates of Interest to SDRMA Members



The Court of Appeal held that unless Labor Code provisions are specifically made applicable to public employers, they only apply to employers in the private sector. The court found that California Labor Code sections 510 and 512 did not expressly apply to public entities; as such they were not applicable. Further the court ruled that applying sections 510 and 512 of the Labor Code to the district would infringe on the district's sovereign power to regulate its workforce.

According to the court, the Labor Code infringes on a public entity's sovereign powers if "the statute affects the entity's governmental purposes and functions." The district functions through its employees and it has the power to set employees' compensation. Therefore, the court determined application of the Labor Code sections at issue would infringe upon the district's power to set compensation. In the ruling the court found that:

Fair Standards Labor Act (FSLA) Ruling

Johnson v. Arvin-Edison Water Storage District (Super. Ct. No. S-1500-CV-262871)

In a recent court decision certified for publication by the California Court of Appeal, Fifth Appellate District the court held that most of the state's wage and hour laws do not apply to California public agencies. In Johnson, an employee of the district filed a class action lawsuit against the Arvin-Edison Water Storage District claiming the district failed to pay him and other employees overtime and provide meal periods in accordance with the Industrial Welfare Commission's (IWC) wage orders and the California Labor Code. Johnson argued the district was required to comply with the Labor Code's wage and hour provisions because there was no specific exemption for public employers. Johnson also argued the IWC's wage order applicable to "miscellaneous" employees applied to the district.

In appealing a trial court ruling against him, Johnson argued that public employees are subject to the California wage and hour provision unless they are expressly made exempt.

"... As discussed below, unless Labor Code provisions are specifically made applicable to public employers, they only apply to employers in the private sector. Since sections 510 and 512 do not expressly apply to public entities, they are not applicable here. Further, applying sections 510 and 512 to the District would infringe on its sovereign power to regulate its workforce. Also, IWC Wage Order No. 17 is inapplicable to this case. Finally, the District is a "municipal corporation" and, therefore, is exempt from sections 201, 202, and 203. Accordingly, the trial court correctly sustained the District's demurrer and the judgment will be affirmed."

The Johnson decision relied on the district's status as a "municipal corporation" as defined under labor Code §220(b) in that that the district performed an essential governmental function for the public. Public agencies should work with their counsel to determine the entity's status under the Johnson ruling and take the appropriate steps to ensure compliance with either FSLA or California wage and hour rules to the extent that those rules would apply to the specific entity.



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Medicare Secondary Payer Act (MSP)

Recently, SDRMA has received many calls from members regarding the new Medicare Secondary Payer Act (MSP) and the impact on individual entities. Medicare Secondary Payer is the term used when the Medicare program does not have primary payment responsibility (that is, another entity has the responsibility for paying before Medicare).

Under Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007, Mandatory Insurer Reporting, it is the Centers for Medicare and Medicaid Services (CMS) goal to prevent Medicare from making payments if a payment has been made or be reasonably expected to be made by the primary plans when certain conditions are met: Group Health Plans (GHP) and Non-Group Health Plans (NGHP) which consists of Liability Insurance or no fault insurance and Workers' Compensation Insurance. For liability, workers' compensation and no-fault claims, Medicare seeks recovery directly from the Medicare beneficiary not the entity or JPA.

Medicare's recovery efforts do not include subrogation of the beneficiary's right to recover from a third party. Although Medicare has always been a secondary payer for workers' compensation and liability (bodily injury only) claimants, Medicare now wants to make sure that it (CMS) preserves and

maximizes its recovery rights and makes its payments in the proper order. Policies or self-insurance allegedly are "supplemental" to Medicare, by statute, Medicare is secondary to liability insurance (including self-insurance), no-fault insurance, and workers' compensation. An insurer or workers' compensation carrier or JPA cannot, by contract or otherwise, supersede federal law. The data collected under Section 111 reporting will be used by CMS in processing claims billed to Medicare for reimbursement for items and services furnished to Medicare beneficiaries and for MSP recovery efforts, as appropriate.



Responsible Reporting Entities (RREs)

The coordination of reporting the status of pending claims to CMS lies with the Responsible Reporting Entities (RREs). Under the guidelines for both Liability and Workers' Compensation for all SDRMA participating members, SDRMA is considered the RRE. If the self-insurance pool or trust *(1) is a separate legal entity, (2) with full responsibility to resolve and pay claims using pool funds, (3) without involvement of the participating entities*, the self-insurance pool or trust is the RRE and the individual participating public entity(s) does not have to register for participation in this program. The same requirements apply to public agencies participating in a self-insurance pool (JPA) for workers' compensation coverage.

SDRMA meets the three requirements listed above and would be considered the Responsible Reporting Entity. Under the Mandatory Insurer Guidelines, SDRMA is defined as a registered Joint Powers Authority (JPA) formed under California Government Code §6500 et. seq. and a registered Public Agency with the California Secretary of State's Office and is a separate legal entity separate and apart from the participating pool members. RRE's will submit information electronically on liability insurance (including self-insurance), no-fault insurance, and workers' compensation claims where the injured party is a Medicare beneficiary.

For any member of SDRMA that participates in the Liability, Workers' Compensation or both programs, SDRMA will act as the Responsible Reporting Entities (RRE) and will be contracting with a certified reporting agent to meet the registration deadline of September 30, 2009. For those individual entities who do not participate in both programs (Liability and Workers' Compensation) you should check with your broker or program group to determine the identity of the registered proper Responsible Reporting Entities. ▲