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ATTORNEYS AT LAW

TEACHER'S AVERAGE WEEKLY WAGE IS BASED ON "WEEKS WORKED" AS OPPOSED TO THE ANNUAL CONTRACTUAL AMOUNT

Claimant was a teacher who suffered left hand injuries when she tripped and fell while ascending stairs. During the year prior, she worked 39 weeks for a salary of \$40,416.48. Per contract, she opted to receive her salary over the calendar year, 52 weeks, even though she did not perform work for the District during the summer. The Commission divided her annual earnings by the number of weeks actually worked, yielding an AWW of \$1,036.32. The District appealed, claiming wages should be \$777.24 based on the number of weeks she received payments.

The appellate court referred to an Arkansas case which held that a teacher's earnings should be based on when pay was earned, not when received. It also cited to the Illinois statute, section 10, which states that weekly wages are the "actual earnings" of the employee during the period of 52 weeks immediately preceding the date of injury. But where the "employment" extends over less than 52 weeks, the statute requires that "dividing the earnings during that period by the number of weeks and parts

thereof during which the employee actually worked shall be followed."

The court found it necessary to determine whether claimant's "employment" was defined by the period of time for which she was retained to work, and concluded it was. Claimant's "employment" for purposes of section 10 was 39 weeks, the period she was required to work per contract. Therefore, the method for calculating claimant's wages was to divide the earnings during that period by the number of weeks actually worked.

EDITOR'S NOTE: This case may have effectively decided all teacher salary disputes. But will a teacher who is injured at a summer job and whose period of disability carries over to the school year argue her "employment" with the school board is year round? Stay tuned. Can a teacher claim an even higher AWW if she misses a month of work during the contract year—even if paid, will wages be based on the weeks she "actually worked?" Will it apply to other types of employment where the contract calls for less than 52 weeks of actual work in any calendar year? Some may fear this, but firefighters, for example, are generally not salaried but rather hourly employees, and seasonal employees are generally not so

fortunate to have written contracts stipulating to a “yearly” salary for a few weeks work at holiday rush. Nonetheless, we may see challenges based on the “actually worked” concept, and the possibilities are many.

It should be noted the claimant had a separate job during the summer working 30 - 32 hours per week as a pharmacy technician. She also worked this job during the school year, averaging just six to eight hours per week. Would this be classified as concurrent employment? If so, would the average weekly wage for the entire 52 weeks be applied?

Washington District 50 Schools v. Illinois Workers' Compensation Commission, No. 3-08-0923WC, decided October 16, 2009

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