

## WAGE AND PRICE CONTROLS

## WAIVER

## WHISTLEBLOWER LAW (See "CEPA")

## WORKERS COMPENSATION AND N.J.S.A. 18A:30-2.1

(See also "Retirement and Pensions" and "Leaves of Absence" this index)

- A determination regarding whether an injury is work related must be made by the Division of Workers Compensation prior to the Commissioner considering sick leave under N.J.S.A. 18A:30-2.1 (97:March 11, Roselle Park, aff'd St. Bd. 97:Aug. 6)
- Claim for payment of sick leave benefits beyond period for which employee receives Workers Compensation benefits must be filed within 90 days of board action which has effect on denying benefits to employee (91:1725, Verneret, aff'd w/modif. 95 N.J.A.R.2d (EDU) 134) (97:Dec. 29, Molinari)
- Claim for payment of sick leave benefits must be considered under controlling legal authority which existed prior to Verneret, as the State Board held that Verneret was to be applied on a prospective basis only. Date of filing relates back to the date of the workers' compensation judgment rendering the instant petition untimely (97:Sept. 18, Alferi)
- Commissioner has jurisdiction to decide a sick leave claim under N.J.S.A. 18A:30-2.1 without first having a worker's compensation determination, where pursuing a worker's compensation claim would have been futile because absence due to injury lasted only two days and worker's' compensation statute requires a minimum seven day waiting period (97 N.J.A.R.2d (EDU) 512, Dorfman)
- Commissioner has original exclusive jurisdiction to decide sick leave claim under N.J.S.A. 18A:30-2.1, (Hern, App. Div. unpub. op. (Dkt. No. A-339-91T3, Oct. 23, 1992))
- Employee may elect to use either accumulated sick days or workers' compensation during sick leave due to a work related injury; not within the power of the board to direct an employee to use one or the other (97:Aug. 6, Pratico, aff'd St. Bd. 98:Jan. 7)

## **WORKERS COMPENSATION AND N.J.S.A. 18A:30-2.1**

- Injured employee only has 90 days from the date of the discontinuance of statutory benefits to appeal to Commissioner. Must be done independently of workers compensation court (97 N.J.A.R.2d (EDU) 120, McKeon, aff'd St. Bd. 97 N.J.A.R.2d (EDU)) 319)
- No waiver of benefits under N.J.S.A. 18A:30-2.1 resulted from settlement agreement's broad waiver solely reserving right to pursue Workers Comp claim (96 N.J.A.R.2d (EDU) 471, Sweet, St. Bd. aff'g with mod. 95:May 26)
- Only after a determination by the Division of Workers Compensation does N.J.S.A. 18A:30-2.1 come into play (90:447, Bracoloni)
- Only after a determination by the Division of Workers Compensation does the Commissioner have jurisdiction over sick leave benefits under N.J.S.A. 18A:30-2.1 (96 N.J.A.R.2d (EDU) 940, Rotella-Suarez, aff'd St. Bd. on other grounds 97:Dec. 3)
- Only after a final determination by the Division of Workers Compensation is made does the Commissioner's jurisdiction under 18A:30-2.1 come into play; where a settlement under worker's compensation is questioned by one of the parties, no final determination has been made (97 N.J.A.R.2d (EDU) 429, Basile, aff'd St. Bd. 97:Aug. 6)
- Question of whether settlement under worker's compensation statute violates public policy should be determined by the Division of Worker's Compensation (97:March 11, Basile, aff'd St. Bd. 97:Aug. 6)
- Sick leave: A determination regarding whether an injury is work related must be made by the Division of Workers Compensation prior to the Commissioner considering sick leave under N.J.S.A. 18A:30-2.1 (97 N.J.A.R.2d (EDU) 429, Basile, aff'd St. Bd. 97:Aug. 6)
- Teacher who injured neck while waiving arm to get attention of boisterous students in rear of room could recover temporary disability benefits during summer recess - even though contract ran from September 1 through June 30. Porter v. Elizabeth Bd. of Ed., 281 N.J. Super. 13 (App. Div. 1995), certif. den. 142 N.J. 455 (1995)
- Teacher's petition alleging health problems due to working conditions dismissed when she refused to comply with order for physical exam (96 N.J.A.R.2d (EDU) 940, Rotella-Suarez, aff'd St. Bd. 97:Dec. 3)
- Ten month teacher who suffered severe injuries and temporary disability after an assault by a student is entitled to workers' compensation over the summer recess if she can establish that she would have earned income from summer employment. Outland v. Monmouth-Ocean Education Service Commission, 154 N.J. 531 (1998)

**WORKERS COMPENSATION AND N.J.S.A. 18A:30-2.1**

Test for compensability of injury was "but for" test.

Porter v. Elizabeth Bd. of Ed., 281 N.J. Super. 13 (App. Div. 1995), certif. den. 142 N.J. 455 (1995)

Untimely filing of Workers Compensation claim precluding recovery also precluded a determination by the Commissioner of Education (90:716, Sturges)

Where causal connection between an injury and the workplace is disputed, the Commissioner has no authority to award benefits under N.J.S.A. 18A:30-2.1 until there is a Workers Compensation determination (90:447, Bracoloni) (90:Nov. 9, Innocenzi)

Where employee's claim for benefits under N.J.S.A. 18A:30-2.1 is denied by a board of education prior to Workers Comp determination, the employee must file with the Commissioner within 90 days of the board's denial of benefits, and may not wait until 90 days after the Workers Comp decision (relying on Veneret, St. Bd. 1/11/95) (96 N.J.A.R.2d (EDU) 471, Sweet, St. Bd. aff'g with mod. 95:May 26) (97 N.J.A.R.2d (EDU) 276, Madeiros, aff'd St. Bd. 97 N.J.A.R.2d (EDU) 281)

Where employee's claim for benefits under N.J.S.A. 18A:30-2.1 is denied by board of education subsequent to Workers Comp determination, the 90-day filing period runs from the date of the board's denial, not from the Workers Comp determination (96 N.J.A.R.2d (EDU) 471, Sweet, St. Bd. aff'g with mod. 95:May 26)

Where petitioner voluntarily chose not to pursue workers' compensation claim, his claim under the sick leave statute, N.J.S.A. 18A:30-2.1, must be dismissed (97:Sept. 29, Burlington)

Workers compensation lien attaches to proceeds of legal malpractice and is imposed on third party recoveries. Frazier v. New Jersey Manufacturers, Insurance, 142 N.J. 590 (1995), aff'g and remanding 276 N.J. Super. 84 (App. Div. 1994)