

INTER-OFFICE MEMORANDUM

TO: ALL ATTORNEYS/ALL OFFICES/CLIENTS
FROM: JOE TRUCE
DATE: December 11, 2001
RE: LABOR CODE §4650(d) APPLIES TO LATE PAYMENTS OF
VRMA

In the case of **Baker v. Lucky Stores, Inc.**, a panel of the Appeals Board has affirmed the decision of a workers' compensation judge that under Labor Code §4650(d) a defendant must increase by 10% late weekly payments of vocational rehabilitation maintenance allowance benefits (VRMA) which the Rehabilitation Unit had ordered payable at the temporary disability rate.¹

This case can be cited as 29 CWCR 286 and the summary of the case states in relevant part as follows:

"Although Labor Code §4650(d) does not expressly include or exclude VRMA, its application of VRMA at the TD rate is consistent with the purpose of VR and harmonizes the statutes and rules to give effect to each in light of the workers' compensation system as a whole . . . "

The workers' compensation judge in this case did not rule that all VRMA payments are subject to a Labor Code §4650(d) penalty, but only addressed the narrow issue that VRMA payments payable at the temporary disability rate are so subject.

The judge also noted that in the case of **State Comp Insurance Fund v. WCAB (Monroy) (1999) 64 CCC 1324** a panel of the Board applied the Labor Code §4650(d) penalty to even those VRMA payments that were not payable at the temporary disability rate. Therefore, we have a conflict between two panel decisions of the Board, i.e., in **Monroy (Supra)** a panel of the board affirmed a decision by the workers' compensation judge (Judge Renetsky) that applied the Labor Code §4650(d) penalty to all VRMA payments and the subsequent decision of the Board in **Baker v. Lucky Stores** in which the Board only applied the Labor Code §4650(d) penalty to VRMA that was ordered payable at the temporary disability rate.


¹ Please find enclosed the case of **Baker v. Lucky Stores, Inc. 29 CWCR 286** as summarized in the California Workers' Compensation Reporter.

Inter-Office Memorandum
December 11, 2001

RE: **LABOR CODE §4650(d) APPLIES TO LATE PAYMENTS
 OF VRMA**

Page 2

These two conflicting decisions may be the subject of an en banc decision by the Board in the near future.

WJT:wf 

Enclosure- Baker v. Lucky Stores, Inc. 29 CWCR 286