

TO: Workers' Compensation Program Staff; W.C. Adjusters;
Injured Workers; And All Attorneys Handling W.C. Claims

FROM: J. Stephen Monahan, Director
Workers' Compensation & Safety Division

DATE: Friday, June 03, 2011

RE: Application Of COLA To Permanent Partial And Permanent Total Disability
Compensation Pursuant To 21 VSA §650(d)

Section 12 of Act 208 (2007 Adj. Sess.) amended 21 VSA §650(a) and 21 VSA §650(d) to increase the number of weeks used to calculate an injured worker's average weekly wage, and, limit the application of a COLA for temporary total disability benefits until after the first July 1 following the receipt of 26 weeks of benefits.

I have been asked for an opinion as to the application of the COLA to permanent partial (or permanent total) disability benefits, when medical end occurs after the first July 1 occurring following the injury, but before 26 weeks of temporary total (or partial) disability benefits has been paid.

21 V.S.A. § 650(d) provides:

(d) Compensation computed pursuant to this section shall be adjusted annually on July 1, so that such compensation continues to bear the same percentage relationship to the average weekly wage in the state as computed under this chapter as it did at the time of injury. Temporary total or temporary partial compensation shall first be adjusted on the first July 1 following the receipt of 26 weeks of benefits

(Emphasis added).

The fact that the Legislature specifically limited the delay in applying the COLA to TTD and TPD, evinces a clear intent that the limitation not apply to permanency benefits.

Therefore, when an injured worker reaches medical end result and has a permanent partial or permanent total disability, it is necessary to adjust the compensation rate for purposes of the permanency benefits, by the applicable July 1 COLA, even if temporary total or partial benefits had not been adjusted because 26 weeks had not passed since the injury.

/JSM