

# COMPENSATION NEWS

MONTHLY REPORT

## Appellate Court finds employer liable for civil damages for not taking employee back to work timely

This is a non published Appellate Court decision that has major implications.

This is a very significant case for workers' compensation purposes. Even though this was initially a workers' compensation claim it resulted in huge civil verdict for the applicant. I would anticipate many more of these claims since this applicant had a huge recovery under FEHA.

The applicant had an admitted injury. The employer paid benefits. The applicant had hip replacement surgery. The facts become very convoluted as to the applicant returning to work.

The applicant wanted to return to work and had a release to return to work. The employer would not take the applicant back. The employer wanted the applicant permanent and stationary.

The applicant filed a complaint with The California Department of Fair Housing and filed in Superior Court alleging a violation of California's Fair Employment Housing Act (FEHA).

The applicant prevailed in Superior court and was awarded \$380,306. In addition the court

awarded \$21,836 in costs and \$569,608 in attorney fees.

The appellate court indicated that under section 12940, subdivision (n) the employer must make a reasonable accommodation. The employee may file a civil action based on the employer's failure to engage in the interactive process of bringing the employee bad to work.

Lesson to be learned is be careful what you advise an employer about taking an employee back to work.

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