

Protz Opinion – What to Expect Next

June 22, 2017

The Supreme Court of Pennsylvania has found that the IRE provisions of the Workers' Compensation Act are unconstitutional and invalid. By now we are sure that your inbox is bursting with emails from lawyers wringing their hands about the Protz Opinion. Most simply report on the development, but offer little in terms of what the case means to your company, what you should be doing differently in light of the decision, and most importantly, what to expect next.

This decision is a big deal and will have a significant impact on exposures in Pennsylvania workers' compensation cases. Questions to ask include:

1. What do we do about pending IRE petitions and appeals based on IREs?
2. What do we do about claims where benefits were already converted to partial status and the 500 weeks are still running?
3. What do we do for those files where the 500 week partial disability status has already expired?
4. What impact will Protz have on other workers' compensation issues?

Here are our recommendations to discuss with your attorney:

1. Cancel all scheduled IREs and withdraw all pending petitions to compel IREs and petitions to modify benefits based on IREs.

But don't put the files back on the shelf. Instead, consider obtaining an IME to establish work capabilities and vocational evidence to pursue traditional modifications to partial disability based on earning capacity. Seek termination if the IME warrants.

2. **For claims still in the midst of the 500 weeks**, there isn't much to do right now. While claimant's lawyers will argue to put claimants back on total disability, it is not yet clear if or how Protz will be applied retroactively. So for now, begin identifying the cases in which claimants are on partial status due to IRE results, and sit tight.

However, if you want to get a head start, consider investigating claimant's labor status: whether claimant has returned to the workforce, withdrawn from the work force, or retired.



3. **For claims where the 500 weeks have already run out** - you don't need to do anything at the moment. The Court in Protz didn't answer whether or how their Opinion is to be applied retroactively. For those cases where the 500 weeks have already expired no action is required at the moment.

4. How does the Protz Opinion impact areas beyond IREs?
We have identified several areas of potential impact where the fallout from the Protz Opinion could substantially affect the law. Each will require detailed analysis and research rather than a quick off-the cuff email. We will be identifying some of these issues and offering our analysis in the coming weeks.

We will also follow up with your office to discuss our thoughts regarding our involvement to seek legislative action to restore this employer's remedy in workers' compensation law.