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**Dear Subscriber,**

**BREAKING NEWS:**

**Costco v. WCAB (Chavez)**

*[Cite pending]*

In an opinion certified for publication, the California Court of Appeals, First District, held that in order for the 1997 rating schedule to apply to a given applicant's injuries, there must be an indication of permanent disability in a medical report prior to 01/01/2005.

The Court reasoned that the clear intent of the statute was to bring as many cases as possible under the new rating schedule. In so holding, the Court declined to follow the applicant's interpretation of Labor Code Section 4660 that any comprehensive medical report prior to 01/01/05 was sufficient to preserve the 1997 rating schedule. The Court looked first to the language of Labor Code Section 4660 pertaining to the applicant's argument, then to the remaining circumstances in Labor Code Section 4660 allowing for preservation of the 1997 schedule and found that all of the other circumstances were consistent with the aim of bringing claims under the new schedule based upon the American Medical Association guidelines.

The Court further held that in order for the 1997 rating schedule to apply based upon the notice requirement concurrent with the last payment of temporary disability, the last day of temporary disability must have occurred before 01/01/05.

In so reasoning, the Court rejected the argument that the duty to issue the notice at a future date is triggered by the first payment of temporary disability. The Court again noted that this interpretation is inconsistent with the intent of the legislature in enacting the provisions of Labor Code Section 4660 and held that as the actual notice is not to be sent until the last payment of temporary disability, it is the

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date that the notice is actually to be sent that is to be considered for purposes of determining the correct rating schedule to apply.

The above is the first in what many expect to be several decisions that will issue from the Courts of Appeal on the application of the correct rating schedule. Currently, multiple cases are pending before various District Courts of Appeal for determination of similar arguments.

[Click here for the full opinion](#)

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