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Analysis of Hernandez vs. JBS USA, LLC



Recently, in *Hernandez vs. JBS USA, LLC*, the Nebraska Court of Appeals confirmed that employers and insurers may not take a credit against workers' compensation benefits for state unemployment benefits received by an injured worker during the same period. In *Hernandez*, an employer argued that if it was ordered to retroactively pay temporary total disability benefits for a specified period, the temporary total disability benefits payable should be reduced or set off by the amount of state unemployment benefits received by the worker during that period. Disagreeing with this argument, the Nebraska Court of Appeals determined that in cases where a workers' compensation claimant receives unemployment benefits, the claimant's temporary total disability benefits should *not* be reduced by the amount of state unemployment benefits received by the claimant during that period of time.

The Nebraska Court of Appeals in *Hernandez* reasoned that the Nebraska Legislature has spoken clearly regarding the intersection of state unemployment and workers' compensation benefits. Analyzing Neb. Rev. Stat. §48-130, §48-147, and §48-628, the Nebraska Court of Appeals reasoned that the Legislature has specifically stated that the amount of unemployment benefits received by a claimant should *not* be reduced from a workers' compensation award. The Court reasoned that these statutes have uniformly been interpreted to mean that benefits secured by an injured worker from collateral sources may not affect the amount of workers' compensation benefits to be received under the Workers' Compensation Act. The Nebraska Court of Appeals reasoned that as unemployment benefits were paid from a collateral source - the Nebraska Unemployment Compensation Fund - workers' compensation benefits could not be reduced accordingly.

The Nebraska Court of Appeals acknowledged that Neb. Rev. Stat. §48-601, et seq. did require that the amount of contemporaneously-paid unemployment benefits received by a worker should be *reduced* when an individual was receiving temporary disability benefits. Nevertheless, the requirement to reduce the state unemployment benefits did not mean that an employer was entitled to a credit against temporary disability benefits for any state unemployment benefits paid concurrently. The Nebraska Court of Appeals stated that in situations where a worker was receiving workers' compensation indemnity benefits, that worker could only receive

contemporaneous unemployment benefits for the difference between the amount received in workers' compensation benefits and any higher amount recoverable unemployment benefits. Therefore, if a worker was entitled to a higher amount state unemployment benefits than for temporary disability workers' compensation benefits, the worker could receive state unemployment benefits in the amount of the difference between the two.

Essentially, the Nebraska Court of Appeals determined there should not be a set off against temporary total disability benefits for unemployment benefits paid. Perhaps signaling its understanding that its ruling could result in a windfall to claimants, the Nebraska Court of Appeals noted that it could not allow a set off against temporary total disability workers' compensation benefits for unemployment benefits paid "unless the Legislature expressly provides the authority to do so."

If this is an issue that concerns you as an employer or insurer, we recommend that you contact *Nebraskans for Workers' Compensation Equity and Fairness*, an organization dedicated to working with the Nebraska Legislature to implement common sense legislation affecting employers in Nebraska workers' compensation matters. Baylor Evnen partner Dallas Jones currently serves as President of the organization, and would be pleased to discuss the organization's efforts with you. For more information, you may also go to www.nwcef.com.