NC Legislature Clarifies 'Extended Benefits' Law

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North Carolina's Workers' Comp Act, specifically N.C. Gen. Stat. 97-29(c), has a 500 week "cap" on entitlement to temporary total disability (TTD) benefits. The statute also provides an employee with the opportunity to apply for extended TTD benefits beyond 500 weeks, upon a showing that the employee has suffered from a "total loss of wage-earning capacity." Recently, the N.C. Court of Appeals held, in the *Sturdivant v. N. Carolina Dep't of Pub. Safety*, 887 S.E.2d 85 (2023) decision, that, when seeking to prove "total loss of wage-earning capacity" to remove the 500 week cap, the employee has the same burden of establishing total disability as they would in initially showing entitlement to TTD, and that that burden could be met with the traditional standards outlined in North Carolina's (pre-500 week cap) workers' comp case law.

In the wake of the *Sturdivant* decision, the North Carolina Legislature has now added a new provision to N.C. Gen. Stat. 97-29(c), specifically confirming that the intended definition of "total loss of wage-earning capacity" when trying to extend TTD beyond 500 weeks is "the complete elimination of the capacity to earn any wages" – and – that the traditional definitions of "disability" and "suitable employment" do not apply to decisions related to employees seeking extended benefits beyond the 500 week cap. The Legislature specifically noted that this change was made in reaction to the *Sturdivant* opinion, to clarify that an employee has a different standard for meeting their burden of proof when requesting extended compensation, and that this has been the intent of the General Assembly since the 500 week cap on TTD was enacted in 2011. The new law also confirms that this clarification should be applied to all cases brought for extended benefits per N.C. Gen. Stat. 97-29(c) both retroactively and ongoing.

Please contact your Hedrick Gardner counsel with questions and for updates on further developments pertaining to North Carolina's Workers' Compensation laws and procedures.

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