

## **CHAPTER 59 SEVERANCE PAYMENT CREDITS**

### **59.00 SEVERANCE PAYMENT CREDIT AGAINST WORKERS' COMPENSATION BENEFITS**

#### **59.01 OVERVIEW**

The Act 57 Amendments authorized the Insurer/Employer to assert a credit against workers' compensation indemnity wage loss payments for the "severance" payments made to the disabled employee. Prior to this amendment, employers would argue that post-injury severance payments should be credited against their workers compensation obligations. The "general rule" that was typical of appellate court review, was the whether the payments were "in lieu" of workers' compensation benefit (ie, when the employee was not working), or did the employee receive payment based upon his/her years of service or as an exhaustible benefit. Often this discussion arose in the context of the statute of limitations upon filing a work comp claim.

#### **59.02 STATUTORY LANGUAGE**

Section 204 (a) ... the **severance benefits** paid by the employer directly liable for the payment of compensation (and the benefits from a pension plan) to the extent funded by the employer directly liable for the payment of compensation which are received by an employe shall also be credited against the amount of the award made under sections 108 and 306, except for benefits payable under section 306 (c).

Section 204 (c) The employe is required to report regularly to the insurer the receipt of unemployment compensation benefits, wages receive in employment or self-employment, benefits commonly characterized as "old age" benefits under the Social Security Act, **severance benefits** and pension benefits, which post-date the compensable injury under this act, subject to the fraud provisions of Article XI.

#### **59.03 LIMITATIONS UPON ASSERTION OF THE SEVERANCE CREDIT**

[1] The credit only applies to injuries occurring on or after June 24, 1996.

[2] The credit does not apply to “specific loss” or disfigurement benefits paid pursuant to section 306 (c).

[3] The employer must be directly liable for the workers’ compensation benefit payments.

[4] The offset does not apply to severance benefits to which an employee may be entitled, but not receiving. Regulation 123.11(a).

[5] **“Gross vs “Net” Credit?** The statute and regulations refer to the amount employee receives, which in other offset/credit cases has been interpreted to mean the “net” amount received by employee.

#### **59.04 PROCEDURE FOR THE ASSERTION OF THE SEVERANCE CREDIT**

The procedure for the proper assertion of the severance offset appears in the regulations at the “Application of offset generally” section 123.4.

[1] Employees “shall” report to the insurer amounts received in UC, Pension, Severance or Social Security benefits via LIBC 756 “Employee’s Report of Benefits” form.

[2] The LIBC 756 form is to be completed and returned to the insurer within 30 days of employee’s receipt of any of these specified benefits.

[3] After receipt of the LIBC 756 form, the insurer may offset workers’ compensation benefits via preparation and filing of LIBC 761 “Notice of Workers’ Compensation Benefit Offset”.

[4] At least 20 days prior to taking the offset, the insurer “shall” notify the employee that workers’ compensation benefits will be offset.

[5] The employee may challenge the offset via the filing of a Petition to Review Offset LIBC 378 with the Bureau of Workers’ Compensation.

#### **59.05 PARTY ENTITLED TO CREDIT? “EMPLOYER” vs INSURER**

The statutory language at section 204 specifically mentions the “employer” as the party entitled to assert the credit for the severance payments made to the disabled employee. When an “insurer” asserted a credit, the issue was litigated to the Pennsylvania Supreme Court. In *Kramer v WCAB (Rite Aid Corp.)*, (Pa.2005). The Pennsylvania Supreme Court held that an **insured employer** was entitled to assert the severance credit, reasoning that the employer paid for the cost of its insurance coverage. The effect of this ruling was that this credit is not limited to self-insured employers. Employers purchasing workers’ compensation insurance have the same right to this credit.

#### **59.06 WHAT TYPE OF PAYMENT QUALIFIES AS A “SEVERANCE” PAYMENT?**

Benefits paid by the employer during a lay-off, furlough or temporary break in employment are **not** the type of payments which qualify for the severance credit.

Where it is anticipated the employee may return to work pursuant to a collective bargaining agreement, without loss of seniority and has “recall rights” for 4 years, this credit is not available. Where the employee did in fact return to work, the credit is not available.

See: *Kelly v. U.S. Airways Group*, (Pa. 2010).

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