



What is a Good-Faith Job Search Effort? Michigan Legislature Considers New Bill

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Foster Swift Workers' Compensation Update

January 4, 2020

MCL 418.301(5) sets forth the four requirements a claimant must satisfy in order to qualify for workers' compensation wage loss benefits. The claimant must:

1. Disclose his qualifications and training,
2. Provide a list of jobs he is qualified and trained to perform within the same salary range as the job at which he was injured,
3. Demonstrate that the work-related injury prevents him from performing the jobs he identified as within his qualifications and training that pay maximum wages, and
4. If he is capable of performing any of the jobs within his qualifications, he must demonstrate that he cannot obtain any of those jobs by showing a *good-faith attempt to procure post-injury employment*.

When analyzing the fourth element, how does a magistrate determine what is and what is not a good-faith job search effort?

The Act does not include express guidelines for how a claimant can satisfy this final element. Magistrates are left only with the various and sundry Michigan Compensation Appellate Commission opinions to inform their decisions regarding the adequacy of an employee's job search. Most notably, in *Crockett v Daimlerchrysler Corp*, 2013 ACO #76, the Appellate Commission wrote that good-faith job searches include two elements: diligence and scope. The Commission stated "[d]iligence identifies plaintiff's tenacity in looking for work[,]" and "[s]cope includes the breadth of the search geographically and categorically." Thus, magistrates have had a fair amount of discretion in determining whether a claimant has made a good-faith attempt to secure employment.

On June 12, 2019, fifteen Michigan State Senators introduced Senate Bill No. 368 in an attempt to help guide magistrates when they are determining whether claimants have engaged in a "good-faith job search effort". Pursuant to the newly proposed legislative language, a claimant has made a good-faith job search when he has satisfied one

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of the following:

1. He is still employed by the employer that he alleges is responsible for workers' compensation benefits,
or
2. He submits at least two job applications to one or more employers per calendar week, or
3. He is employed full-time in reasonable employment.

The bill goes on to set forth three specific circumstances which will relieve a claimant from seeking work at all:

1. When a physician opines that the employee is unable to perform work, or that employment or a job search poses a danger to the employee's health or interferes with medical treatment; or
2. When the employee is already employed; or
3. When the employee demonstrates other good and reasonable cause.

Senate Bill No. 368 establishes specific guidelines governing magistrates' decision-making process, but it also makes it much easier for claimants to meet the good-faith job search requirement. We will continue to track this bill to see if it receives any bipartisan support, but we do not expect it to be passed into law in its current form this term.