INTEROFFICE MEMORANDUM
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TO: Trindel

FROM: Hanna Brophy Barret T. Alexander

DATE: April 16, 2018

SUBJECT: Analysis on compensability of claims for Applicant's on Probation

DISCLAIMER: THIS IS A GENERAL OUTLINE AND ANALYSIS AND IS NOT INTENDED TO ADDRESS ALL SITUATIONS. IF YOU HAVE QUESTIONS ABOUT A CASE OR FACT PATTERN YOU SHOULD CONSULT WITH COUNTY COUNSEL OR YOUR PRIVATE ATTORNEY.

I. Question Presented

a. Whether an Applicant convicted of an infraction, misdemeanor or crime (but not in jail) working community service in exchange for time served is an employee for purposes of Workers' Compensation benefits.
b. Is there a difference between inmates performing community service while incarcerated in exchange for time served versus someone who is not incarcerated but still performing community service to work off a fine or similar punishment?

II. Legal Analysis

The question of whether a person injured while performing community service (not in jail) is an employee for purposes of Workers' Compensation benefits was recently answered in the by the California Supreme Court. The primary question is whether the Applicant was a volunteer or an employee at the time of injury.

As a matter of law, County prisoners/ community service workers are not expressly included in the Labor Code Section dealing with employees. The California Supreme Court in, Arriaga vs. County of Alameda, 60 Cal, Comp Cases 316, held where work is performed in exchange for reduced sentence, fine or other punishment then an employment relationship is established between the individual and the County.

> "We find Fullerton unpersuasive. As set out above, [Labor Code] section 3352, subdivision (i), applies only if the person seeking compensation is "performing voluntary service." We do not believe that persons who perform work pursuant to a court order are performing "voluntary service" within the meaning of this section, even if the order permits them to pay a fine instead of working. As generally understood, the term "voluntary" at minimum "means an exercise of will, i.e., it "implies freedom from any compulsion that could constrain one's choice."

Arriaga vs. County of Alameda, 60 Cal. Comp. Cases 316, 321 (Cal. April 24, 1995)

The court has interpreted the term voluntary service broadly in an effort to protect injured workers. An Applicant working to pay off a fine in lieu of jail time or other punishment will not be deemed as performing a voluntary service and therefore will not be considered a volunteer.

> "Nor do we agree that such a person "receives no remuneration for the services other than meals, transportation, lodging, or reimbursement for incidental expenses." (§ 3352, subd. (i).) As Fullerton recognizes, "remuneration" for purposes of section 3352, subdivision (i), need not be in monetary form. (Fullerton, supra, 16 Cal.App.4th at p. 1826, fn. 6.) Thus, in Barragan v. Workers' Comp. Appeals Bd. (1987) 195 Cal.App.3d 637, 650 [240 Cal. Rptr. 811, 52 Cal. Comp. Cases 467], the court found that "a worker who receives instruction and training designed to provide the worker with a skill" receives remuneration and therefore is not a volunteer under that section. Here, in exchange for her work, Arriaga received credit against the court-imposed fine. She thus received remuneration sufficient to render section 3352, subdivision (i), inapplicable."

Arriaga vs. County of Alameda, 60 Cal. Comp. Cases 316, 321-322 (Cal. April 24, 1995)

> "Arriaga contends she was not an employee within the meaning of the Act because she was not a "worker whose services form a regular and continual part of the cost of [the] product" of her employer. The point lacks merit. As shown by the decisions in Laeng, supra, 6 Cal.3d 771, and Conroy, supra, 30 Cal.3d 391, the Act protects more than traditional industrial workers it also extends to persons who, like Arriaga, are under an employer's direction and control and whose services both benefit the employer and expose them to the same risks of employment as traditional workers."

60 Cal. Comp. Cases 316, 323 (Cal. April 24, 1995)

The court has also interpreted the definition of remuneration broadly so as to further protect injured workers. Here, the court held receiving credit for a court ordered fine was sufficient to constitute remuneration and Applicant an employee.

To summarize:

The analysis for the incarcerated inmate is the same as the worker who was injured while performing community service.

In determining compensability of a claim for either an incarcerated inmate or a person on probation performing community service for some reduction in punishment, you should examine whether a "Quid Pro Quo" relationship exists. Meaning is the employer receiving some benefit from the Applicant's employment and is the Applicant receiving some benefit/remuneration in return for the work performed.

As discussed above the benefit to the employer will be determined by the work the Applicant is doing. If the Applicant is picking up trash on the side of the road then the employer has the benefit of a cleaner highway, beach, park, etc.

The question then becomes what benefits the Applicant experiences in return. If the Applicant is receiving credit for a fine (like Arriaga), credit for time served or learns a "skill" by virtue of completing the work then Applicant has received remuneration sufficient to be an employee. We have even seen cases where an incarcerated inmate performed assigned employment duties and received an additional meal. The WCJ determined the additional meal was sufficient to establish a Quid Pro Quo relationship making the inmate an employee.

Please note, if the prisoner/community service worker is loaned out to a third party to actually perform the work then absent a specific agreement to the contrary they would be considered an employee of that third-party. For example Counties will often have individuals assigned to community service work for a local nonprofit or a state agency such as Caltrans. Under those circumstances the third-party controls this individual and therefore is considered to be the employer.

Typically there is an agreement that is entered into between the third-party and the County as to who is going to be liable for workers compensation benefits. Most commonly these nonprofits and state agencies will require the County to agree to cover the individual for workers compensation benefits in exchange for their agreement to accept them as workers.

As I understand your question it has to do with responsibility as between departments within the County. The court is a separate state agency and unless the individual is assigned to the Superior Courts to actually do work they would not be responsible.

With respect to the various departments within the County, i.e. Probation, Buildings and Grounds etc., it would appear to be an issue of whose budget the cost of workers

compensation coverage comes from. My experience with public agencies in general is that typically it will come out of the probation department's budget. However this is a decision to be made by the Board of Supervisors at the time that they put together a budget. There is no strict requirement.

With respect to volunteers, the County must enact a specific ordinance making these individuals employees. Otherwise they are expressly excluded from the definition of an employee under Labor Code Section 3352. These ordinances are a good idea. Otherwise if a volunteer gets hurt they can sue the County civilly if they can establish negligence.

If the County has enacted the above ordinance and chooses to have these individuals work in non-county settings they remain the employer unless the County reaches an agreement with this third-party as to workers compensation coverage. With respect to liability within the County departments once again that depends on whose budget it is allocated under.

III. Questions Answered

a. Whether an Applicant convicted of an infraction, misdemeanor or crime (but not in jail) working community service in exchange for time served is an employee for purposes of Workers' Compensation benefits.

Generally, the answer to this question will be yes. However, it is important to examine the work Applicant is performing and identify any benefit to the County and the employee. Once that is determined you will have a Quid Pro Quo relationship sufficient to establish employment.

Please note, every case is different and it is important to run any questions by County Counsel, if available, or your other legal representation.

b. Is there a difference between inmates performing community service while incarcerated in exchange for time served versus someone who is not incarcerated but still performing community service to work off a fine or similar punishment?

Generally, the analysis of whether the injured worker is an employee will remain the same. For inmates, you will need to identify whether the injured worker was performing assigned employment duties at the time of injury. For people on probation, you will need to establish the Quid Pro Quo relationship for both the employer and the probationer.