

10.14.19

Weber 
Gallagher

The New IRE Provisions Are Upheld by the Commonwealth Court

In an Opinion filed on October 11, 2019 the Commonwealth Court rejected the challenge of the PA AFL-CIO to the replacement Impairment Rating Evaluation Provisions enacted in October of 2018 (Act 111) after the previous IRE provisions were found unconstitutional by the Pennsylvania Supreme Court in *Protz v. WCAB (Derry Area School District)* 161 A.3d 827.

The PA AFL-CIO had challenged the new IRE Provisions contending that they were based upon a similar unconstitutional delegation of legislative authority to a private entity by incorporating the American Medical Association's Guide to the Evaluation of Permanent Impairment, Sixth Edition (second printing April 2009) (Guides). However the Commonwealth Court, in *Pennsylvania AFL-CIO, et al. v. Commonwealth of Pennsylvania, et al.* No.62 M.D. 2019 (Pa. Cmwlth. 10/11/19) granted the Commonwealth defendant's Preliminary Objections finding the plaintiff's complaint did not state a legally sufficient claim for declaratory or injunctive relief.

The court reasoned that the General Assembly's incorporation of the specific Sixth Edition Guides was the adoption of fixed existing standards as its own rather than a delegation of legislative authority to the AMA to set shifting legal standards without appropriate legislative guidelines. The court also rejected the argument that legislative authority had been delegated to a private entity, the AMA, by finding no delegation occurred when the General Assembly adopted known and existing standards as their own, even though they had been created by the AMA.

Comment: The new IRE Provisions have survived an important constitutional challenge. However, this Decision is not the final word. It may be appealed to the Pennsylvania Supreme Court and other challenges are working their way through the system. Nonetheless Act 111 is in effect and provides employers and insurers an important tool for managing ongoing workers' compensation disability claims.

For more information, please contact Stephen T. Potako at spotako@wglaw.com or 267.765.4132.