



## Workers' Compensation Board

### Landmark Decision – School District Wage Continuation During Summer Months

A landmark decision was recently issued by the State of New York Supreme Court (Appellate Division) in connection with a workers' compensation claim for Buffalo Board of Education (BBOE). This decision not only affects this claim and this self-insured employer – but also serves as precedent for similar cases involving indemnity reimbursement to school districts.

The case involves a teacher who has been out of work since being injured in December 2004. Under the terms of the District's collective bargaining agreement, teachers are entitled to continue their regular wages and benefits for up to two years from the date of an injury. BBOE teachers have the option to be paid their salary over a 10-month period from September through June, or be paid the same salary over a 12-month period. Many EM Risk Management school district clients have the same salary options offered to their teachers.

At issue is the claimant's entitlement to ongoing indemnity benefits during the summer. BBOE paid the injured worker her full salary, and then sought reimbursement of compensation benefits in accordance with WCL Section 25. Normally, reimbursement to an employer is a simple matter - the employer documents salary paid out, and EM Risk reimburses monies to the employer (at the appropriate workers' compensation rate).

In 2006, BBOE's request for indemnity reimbursement was denied by a Board Panel. An EM Risk adjuster and defense counsel then set out to bring the case to the next level. **Unless the Board's decision was overturned, injured workers could be paid their annual salary *and* indemnity benefits for the summer months.**

The key phrase is "annual salary." BBOE maintained all along that the claimant receives an annual salary. The annual salary just happens to be paid over the 10-month period, coinciding with the school year. EM Risk argued that the injured worker was provided with compensation or wages during the summer, as this is encompassed in her annual salary regardless of the manner in which that salary is paid, whether it's in one lump-sum check or 52 checks spread out over the whole year.

After nearly four years and much legal argument, school districts are able to continue annual salaries AND seek reimbursement from their workers' compensation plan for appropriate indemnity wages paid. **The practice of paying summer indemnity wages will be curtailed -- and there may be opportunity for school districts to seek workers' compensation reimbursement for amounts previously uncollected.** EM Risk continues to explore this avenue to determine the parameters for districts' request of such workers' compensation reimbursement.