



**September 2013**

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## **MOCO Wins Overtime Lawsuit**

Dear Members,

On August 27, 2013 the Missouri Corrections Officers Association was notified by our attorneys that the State Court of Appeals has ruled in the Associations favor regarding the ongoing lawsuit. This lawsuit was brought about by the Department of Corrections forcing employees to work overtime then forcing them off before the end of the week to avoid accrual of overtime.

The court stated in their reply that the Department had violated the terms of the Bargaining Agreement by forcing such actions on employees. They further stated that in 2009 the Department had created conflicting policy regarding the “twelve hour notice rule” when the Agreement stated that they were required to give fourteen days written notice before mandating compensatory time be taken by an employee.

The court document ended by stating, “We close by emphasizing the limited nature of our holdings. We hold only that after a corrections officer works hours in excess of his or her assigned daily shift, the Department may not use later scheduling changes to alter the status of the earlier beyond shift hours as state compensatory time. We do not address the scope of the Department’s authority to modify corrections officers schedule (except to the extent such schedule changes purport to affect the accrual of state compensatory time for hours previously worked) nor did we address whether DOC has the power to modify the provisions of its Department Manual on which this opinion relies. Conclusion, “We reverse the circuit courts judgment, and remand the case to the circuit court for entry of an order granting summary judgment to the Association, on terms consistent with this opinion.”

The Department now has the right to appeal to the Missouri Supreme Court if they choose to do so. The exact time frame for the Department to appeal is not known by us at this time.

Gary D. Gross,  
MOCOA Executive Director

## **Directors Report**

**P.R.E.A.** - As you all know by now, PREA has caused quite a stir throughout the Department with concerns of the effects it will have on officer job assignments. After meeting with Department heads, it appears that at this time the PREA law will only affect a few jobs that are exposed to nudity on a regular basis. The most affected area seems to be the receiving and diagnostic areas where nudity is a daily issue.

Other areas concerning PREA would be both transportation and the visiting area. The effect on transportation is that for now, each institution will have a minimum of 60% same sex officers assigned to that duty. Visiting areas appear to only be affected in the strip-search area. This is basically no change since the department has never practiced opposite sex strip searches except in emergency cases. If you have questions or feel your institution is attempting to make improper changes to job posts please give us a call here at the MOCOA offices toll-free at 866-346-6262.

**Employee Pay Raises** - State employee raises are still frozen by the Governor's Office. The fight continues over House Bill 253 between the Governor's Office and legislators. This is a piece of legislation giving small businesses in Missouri tax breaks in an attempt to spur the economy and create growth.

The Governor vetoed this legislation saying that this would create a short fall in revenue income and not allow the state enough revenue to operate. The Governor then "froze" several billion dollars of the state budget which included state employee raises that should have taken effect in July of 2013.

It is expected that the legislators will attempt an override of the Governor's veto in September during veto session. Keep in mind the raise has not been removed from the budget but rather it is frozen for the time being.

We will continue to monitor this situation and keep trying to get your money freed up as soon as possible.

**MOCOA Offices** - We are happy to tell our Members that the MOCOA facility at 7141 Business 50 West in Jefferson City is finally paid off and are again debt free. Thanks for all your support in making this happen.

**Conceal and Carry** - On July 27, 2013 MOCOA sponsored a conceal and carry class at the California Shooters Club for members wanting to qualify for their conceal and carry permits. We had 14 officers from JCCC, ACC and TCC participate in the event and all successfully completed the course.

We want to thank COI's Mark and Patricia Stafford for putting on the class for us. Mark has been teaching conceal and carry since it became a law in Missouri. We also want to thank Ken Stover, Training Officer at TCC, for coming out and assisting on the range. Also, we want to thank the California Shooters Club for the use of their facility. It is our goal to reach every area of the state and hold conceal and carry classes for our members if they choose to get certified. When we have a class in your area we will give you as much notice as possible. Look forward to seeing you there.

## **Grievance Office Update**

My name is Tim Cutt, and I have been working as your Grievance Officer for about three years now, and I really enjoy my work. I have recently taken this position on full time and look forward to assisting anyone in need.

However, I have noticed in the last few months that there has been an influx of members claiming harassment by supervisors at various institutions throughout the state. These claims of harassment (as well as retaliation) need to be well documented. I would encourage everyone that may be experiencing this to familiarize themselves with Departmental Policy D2-11.4 Discrimination, Harassment & Retaliation. This policy outlines not only what is considered harassment, but the exact steps you need to take to address the situation, as well as the responsibility of your supervisors when they receive reports of these allegations.

I would like to remind everyone that just because you report this type of behavior, does not mean that it will be dealt with in a proper way. That is why I am asking you to read the policy and really understand it. I also cannot emphasize enough how important documenting these events are. If, for example, you experience a supervisor talking to you in a rude and degrading manner, document this as it is

happening. Don't wait until later in your shift to write it down. Pull out a notebook or piece of paper and begin taking notes on what is being said and the manner in which it is being said. Just because someone has a higher rank than you do does not mean that they have a different Code of Conduct to follow. We are all supposed to be correctional *professionals*, and have the same Employee Standards to abide by. When a supervisor crosses the line into un-professionalism there is nothing in policy that states that you have to become a victim of this behavior. Document it. Some supervisors want to be the first to accuse you of violations of Employee Standards and the Code of Conduct when they themselves are in violation of them. Hold them accountable for their behavior too and document it. Please feel free to call me if you are unsure what to do and how to handle these instances and I will do my best to assist you in any way I can. ***Document! Document! Document!***

## **Election Time Again**

Once again it is time to elect Board Members from the following institutions:

**BCC**

**CCC**

**CRCC**

**ERDCC**

**FRDC**

**SECC**

We cannot stress enough how important it is for someone at each institution to take up the reigns and lead. Member's voices cannot be heard at Board meetings, in discussion with Central Office and with legislators if no one is willing to run for these positions. If you are interested in being placed on the ballot please call toll-free at 866-346-6262 and let us know no later than October 1, 2013. You must be a member in good standing. Please call and get more information on this position if you are interested.

## **TWENTY-FIVE PERCENT OF WHAT?**

I often hear Department of Corrections officers say that they are not going to

hire an attorney so they don't have to pay him or her 25% of their money. The question that I always ask myself and wish that the Department of Corrections officers would ask themselves is "25% of what?" In order to understand my dilemma, you must first be aware of how settlements are computed. Settlement value of a workers' compensation injury is based upon the following formula:

Doctor's rating or percentage of disability multiplied by part of the body (using a body chart that has numbers for each body part) multiplied by wage rate (two-thirds of the injured worker's pre-taxed earnings for the 13 weeks before his injury) equals' settlement amount. or doctor's % X part of the body X wage rate = \$.

When looking at the above formula, please note that there are three numbers that affect the dollar amount at the end of the case. Two of these numbers are usually fairly easy to establish. They are the part of the body and the wage rate. Normally, Department of Corrections workers have an effective rate of compensation of \$365.00 (plus or minus \$10.00), so for purposes of this article, I am going to use \$365.00 for the wage rate. The next easy part of this formula is the part of the body. There is a chart established by the Division of Workers' Compensation that establishes the number of weeks or units to be used in this computation. For example, a hand is worth 175 units whereas a neck or back is worth 400 units or weeks of compensation.

For purposes of illustration, please note the following computation for 1% of a hand and 1% of a neck or back injury:

1. One percent of the hand - .01 times 175 times \$365 equals \$638.75;
2. One percent of the neck or low back – 0.1 times 400 times \$365 equals \$1,460.00.

Using the above illustration, you can compute what you would get for each percentage of the body part by merely taking the doctor's rating (say 1%) and plug it into the calculation above. The bottom line in this circumstance is that the "battleground in workers' compensation" is establishing what the applicable doctor's rating or percentage should be for the corrections officer's injury and that is what drives the ultimate dollar figure that the corrections officer will receive for his or her injury. Rest assured that the doctors hired by CARO know who pays them. They will also keep this in mind when providing an assessment of the disability that the corrections officer has at the end of his or her treatment. These doctors are proud of their work and typically give incredibly and unrealistically low

ratings or disability percentages because of this circumstance. It is not uncommon that a CARO doctor will give someone a 1% disability of the hand following carpal tunnel surgery or 0-1% of the entire person (400 a week level) for a neck sprain or strain which results in continued pain for the corrections officer even after he or she is healed. Please look above in this article to see what 1% of each of these body parts is worth and what the corrections officer without an attorney would receive in his pocket (and thereby avoid paying that attorney 25% of what he or she has coming).

In comparison, should that corrections officer hire an attorney to handle this matter, the attorney will get 25% of the disability amount that he or she obtains for his client but normally the attorney will be able to reach a settlement of a more realistic and accurate disability percentage than the CARO doctor originally places on the injury (with a much higher dollar amount also).

For example, I would never settle an operated carpal tunnel syndrome surgery for anything less than 10% of the hand. In order to obtain that 10% (which is a minimum in my book and indicates an outstanding surgical result), it would require that I have a medical doctor see my client and then I will have to pay out \$500.00 (or more) for a report in order to get to this result.

If I have spent \$500.00 obtaining a report for that carpal tunnel syndrome case, and I settle it for 10% of the hand, the computation is as follows:

<u>10% of the hand</u> – 0.10 times 175 times \$365 equals	\$6,387.50
less 25% attorney's fees	1,596.88
less cost of doctor's report	<u>500.00</u>

Net total to the client	\$4,290.62
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Let's follow this with an example with regard to a neck or back injury. You will note above the value of a 1% of the neck or back (\$1,460.00). In most circumstances, I would not settle a neck sprain or strain (injury not requiring surgery) for anything less than 5% of what is called the entire person or "body as a whole." The computation for this including the cost of a medical report is set forth below:

<u>5% of the entire person</u> – 0.5 times 400 times 365 equals	\$7,300.00
less 25% attorney's fee	1,825.00

less cost of doctor's report

500.00

Net total to the client

\$4,975.00

As you can see from both of the examples set forth above, a corrections officer that hires an attorney who knows what he or she is doing in the workers' compensation system would end up with approximately \$3,500.00 more in his or her pocket at the end of the day than they would representing themselves and accepting the rating given by the CARO doctor. Please keep in mind that it is the attorney's knowledge of the right doctor to send you to that makes all the difference in this circumstance and just going to your family doctor on your own is not a viable option. Also keep in mind that the attorney hopefully handles the case from the very beginning and is able to advise and guide the client from beginning to end. That attorney makes sure that medical care is being provided on a timely basis and that the client knows of all of the rights that he or she has coming including mileage and prescription expenses. The lawyer will also assist the client in fighting negative opinions given by CARO doctors indicating that the case should not be accepted under workers' compensation (usually indicating the problem to be considered a preexisting condition or a non-work related condition). Further keep in mind that the numbers set forth above are minimum numbers and the difference in the amount of money in the client's pocket can be much greater than set forth above depending on the severity of the injury.

The bottom line is that it costs you nothing to call an attorney to see what he or she thinks about your case before doing it on your own. You are better off doing so early in the case than late in the case and it costs you nothing so long as the attorney provides you with an initial free consultation (which is always the case with my office). I would welcome any calls from corrections officers to discuss their own personal situation as the need arises. I would caution all corrections officers to stop and think before they fail to make such a phone call, "25% of what?"

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