

LAW OFFICES
JUBELIRER, PASS & INTRIERI, P.C.

219 FORT PITT BOULEVARD
PITTSBURGH, PENNSYLVANIA 15222-1576

JOSEPH J. PASS
NEAL R. CRAMER
ERNEST B. ORSATTI
EDWARD H. WALTER
ROBERT A. EBERLE
JAMES A. WELKER
JOSEPH SANTINO PASS

412-281-3850
412-261-0147

BEN PAUL JUBELIRER (1904-1983)
FRANK P.G. INTRIERI (1942-1976)

Fax: 412-281-1985

TEAMSTERS JOINT COUNCIL 40
REPORT OF LEGAL COUNSEL
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**Pa. Court Holds That Worker's Comp Claimant's Execution of Release Is
Not Cause of Necessitous and Compelling Nature for Unemployment Benefits**

The Pennsylvania Commonwealth Court, in Lee v. UCBR, ruled that a worker's compensation claimant who executed a release with her employer was ineligible for unemployment benefits.

The employee worked in a classroom position for her employer (a school district) until she suffered an injury at work. She was later released to a light-duty position as an assistant secretary. At a later date, the claimant (through her attorney) and the insurance carrier reached a settlement of the worker's compensation case. As part of that settlement, the claimant executed a resignation and release in regard to her position as an assistant secretary. The school district claimed to be unaware that the insurance carrier required the employee to resign her position as an assistant secretary. The district asserted that there was still work available for the claimant in her light-duty position.

The referee held that the claimant resigned for cause of a necessitous and compelling nature and was therefore eligible for u/c benefits. The UCBR reversed, holding that the claimant did not prove cause of a necessitous and compelling nature where work was available to her within her medical restrictions.

The Commonwealth Court affirmed the UCBR and held that the claimant was not entitled to u/c benefits. According to the Commonwealth Court, where the claimant voluntarily resigned her employment in order to settle the worker's compensation case, the claimant did not prove that her resignation was for cause of a necessitous and compelling nature.

The significance of this decision may be limited to those situations where ongoing employment within the claimant's medical restrictions continues to be available. The holding

may not have application in those situations where work within the claimant's medical restrictions is not available as well as those situations where the employee has been out of work for an extended period and does not have sufficient earnings to qualify for benefits. However, the decision points up the need for caution when structuring an agreement that assumes the claimant will be able to collect u/c benefits.

**FMCSA Amends Regulations to Require CDL Holders to Provide Medical
Examiner's Certificate to State Licensing Agency**

The Federal Motor Carrier Safety Administration amended the Federal Motor Carrier Safety regulations to require that commercial driver's license holders provide a current copy of their Medical Examiner's Certificate to the state driver's licensing agency. The new federal regulations require ALL commercial driver's license holders to self-certify to the state the type of driving in which they operate. In Pennsylvania ALL CDL drivers will be required to self-certify using the PennDOT Self-Certification Form (DL-11CD).

Commercial drivers who are required to obtain a Medical Examiner's Certificate will be required to submit the Self-Certification Form DL-11CD *and* a copy of their current Medical Examiner's Certificate. This category includes employees of private-sector employees (with some limited exceptions such as school bus drivers).

Commercial drivers who are not required to obtain a Medical Examiner's Certificate will be required to submit the Self-Certification Form DL-11CD, indicating that they operate or expect to operate in Excepted Interstate Transportation or Excepted Intrastate Transportation. This includes primarily employees of the federal and state governments, political subdivisions and municipalities, as well as most school bus drivers.

Full compliance is required by January 1, 2014. PennDOT has scheduled a rolling calendar of deadlines and notifications to allow for this process to be completed. Each CDL holder will be notified by PennDOT. Once the process is complete, all CDL holders (including those not currently driving a commercial motor vehicle and those on suspension) must self-certify or automatically lose their commercial driving privileges.

RESPECTFULLY SUBMITTED,

ROBERT A. EBERLE, ESQUIRE