

### ANSWER TO QUESTION 8

Jack should be advised to file a claim for weekly workers' compensation benefits because he has an excellent chance of receiving weekly benefits. Michigan's workers' compensation statute offers generous protections to employees disabled by work injuries who return to work post injury at what is characterized under the statute as "reasonable employment." MCL 418.301(5)-( 9); *McJunkin v Cellasto Plastic Corp*, 461 Mich 590 (2000). "Reasonable employment," formerly called "favored work," is post-injury work that can be performed by an employee deemed "disabled" under Ma, 418.301(4) and *Stokes v Chrysler, LLC*, 481 Mich 266 (2008). The exam question is structured such that Jack is to be considered "disabled," given his severe restrictions and the employer's tacit concession Jack is unable to work elsewhere. The "make work" nature of Jack's work virtually confirms that Jack is laboring at the heavily favored work clearly fitting within the rubric of "reasonable employment."

A person, such as Jack, who labors at post-injury "reasonable employment . . . for less than 100 weeks" and who "loses his or her job for *whatever* reason . . . shall receive compensation based upon his or her wage at the original date of injury." MCL 418.301(5) (e) (emphasis added); *Russell v Whirlpool Financial Corporation*, 461 Mich 579 (2000). Therefore, even though Jack's cessation of work will be due to the plant closing, §301(5)(e) protects his right to weekly compensation because he will have lost his job after having performed less than 100 weeks of "reasonable employment."

Jack's receipt of unemployment compensation benefits does not preclude receipt of weekly workers' compensation benefits. Jack can receive both. MCL 418.358; *Paschke v Retool Industries*, 445 Mich 502 (1994). If Jack receives both benefits, his weekly workers' compensation benefits will be reduced dollar-for-dollar by the unemployment compensation benefits. MCL 418.358. Unemployment compensation benefits are usually much less than weekly workers' compensation benefits. And, in any event, unemployment compensation benefits are limited in duration, whereas weekly workers' compensation benefits can continue for Jack's lifetime.

In discussing whether Jack can receive weekly workers' compensation payments, examinees might address the question of whether Jack is "disabled" under §301(4)/*Stokes* and/or whether his wage loss relates to his disability under the second sentence of §301(4). The question is structured to avoid delving into those

issues. If an examinee delved into those issues nevertheless and discussed §301(5)-(9) and the unemployment compensation provision of §358, they are entitled to additional (not less) consideration for awareness of deeper latent issues. Finally, an examinee might discuss the time lag between Jack's injury and his claim for weekly benefits. As long as the "reasonable employment" and unemployment issues are correctly addressed, discussion of the timeliness of Jack's claim should also not be held against an examinee. Jack's claim is clearly timely. MCL 418.381.