

**Guidance from the
Division of Workers' Compensation
South Dakota Department of Labor and Regulation
Regarding the Case of Wheeler v. Cinna Bakers**

In Wheeler v. Cinna Bakers, 2015 SD 25, issued on May 6, 2015, the South Dakota Supreme Court held the definition of "earnings" for workers' compensation benefit calculation purposes allows the aggregation of wages from all employments in which the employee was engaged when an injury at one employment renders the worker incapable of performing other concurrently held employments. The Court did not specify whether its ruling applied to any claims before May 6, 2015, when the ruling was made. We have received many questions from the insurer and self-insurer community asking if the ruling applies to pre May 6, 2015 claims, but we cannot know where this sits until the court rules on it. No doubt bills will be presented on it in the 2016 Legislature, but we had to figure out how to give some guidance on what to do in the interim. We are recommending insurers and self-insurers review any claims where disability or medical payments were being made as of May 6, 2015, and to inquire of the affected workers whether they had other jobs at the time they were injured; if they did, an effort should be made to find out what wages were paid, and those wages should be added to the worker's earnings.