

1 **WORKERS' COMPENSATION APPEALS BOARD**

2 **STATE OF CALIFORNIA**

3
4 **PUNI PA'U,**

5 *Applicant,*

6 *vs.*

7 **DEPARTMENT OF FORESTRY/CAL FIRE,**
8 **legally uninsured and adjusted by STATE**
9 **COMPENSATION INSURANCE FUND,**

10 *Defendants.*

Case Nos. ADJ9159725
ADJ7757931
ADJ9640668
(Riverside District Office)

OPINION AND DECISION
AFTER RECONSIDERATION
(SIGNIFICANT PANEL DECISION)

11 We granted reconsideration on August 20, 2018 to further study the factual and legal issues in this
12 case. This is our Opinion and Decision After Reconsideration.¹

13 Applicant sought reconsideration of the Findings, Award and Order (FA&O) issued on May 31,
14 2018 by the workers' compensation administrative law judge (WCJ), wherein the WCJ found in pertinent
15 part that defendant timely denied applicant's requests for treatment via Utilization Review (UR). Applicant
16 contends that the UR denials were untimely because Saturday is a working day for purposes of Labor Code
17 section 4610, and therefore that the Workers' Compensation Appeals Board (WCAB) has jurisdiction over
18 the dispute and that the WCJ should have awarded applicant the requested treatment.

19 We received an Answer from defendant. We also received a Report and Recommendation on
20 Petition for Reconsideration from the WCJ, recommending the petition be denied.

21 After careful review of the Petition, the Answer, and the Report, we will affirm the WCJ's finding
22 that the UR denials were timely. As described below, we conclude that although Saturday is a business

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24 ¹ The Appeals Board has designated this as a significant panel decision. Significant panel decisions are not binding precedent
25 in workers' compensation proceedings; however, they are intended to augment the body of binding appellate court and en banc
26 decisions and, therefore, a panel decision is not deemed "significant" unless, among other things: (1) it involves an issue of
27 general interest to the workers' compensation community, especially a new or recurring issue about which there is little or no
published case law; and (2) all Appeals Board members have reviewed the decision and agree that it is significant. (See *Elliott v. Workers' Comp. Appeals Bd.* (2010) 182 Cal.App.4th 355, 361, fn. 3 [75 Cal.Comp.Cases 81]; *Larch v. Workers' Comp. Appeals Bd.* (1999) 64 Cal.Comp.Cases 1098, 1099-1100 (writ den.); *WCAB Releases Significant Panel Decisions for Publication* (News Brief, August 1997) 25 Cal. Workers' Comp. Rptr. 197.)

1 day under Civil Code section 9, it is not a working day under Labor Code section 4610, because Labor
2 Code section 4610 does not incorporate the definition of business day found in Civil Code section 9.
3 Applying the principles of statutory interpretation, we determine that the phrase “working day” found in
4 Labor Code section 4610 does not include Saturdays based upon its standard modern usage, as reflected in
5 dictionary definitions, statutory and regulatory enactments, and judicial decisions. Moreover, even if
6 Saturday were a working day, the UR decisions in this case would still be timely based upon Code of Civil
7 Procedure section 12a, which extends the deadline for performance of acts that fall due on a Saturday.

8 **FACTUAL AND PROCEDURAL BACKGROUND**

9 Applicant sought radio frequency ablation, a type of medical treatment, for an accepted injury to
10 his back sustained while employed by defendant. As related in Applicant’s Petition for Reconsideration,
11 applicant’s first request for treatment was received by EK Health on March 12, 2018, a Monday.² (See
12 Defense Ex. A, at p. 1.) EK Health denied the request for treatment on March 19, 2018, also a Monday.
13 (*Id.* at p. 8.) Applicant made a second request for the same treatment; this request was received on
14 April 16, 2018, a Monday, and denied on April 23, 2018, also a Monday. (See Defense Ex. B, at p. 1, 7.)

15 On April 25, 2018, applicant filed a Declaration of Readiness to Proceed, alleging that both UR
16 denials were late, and therefore that the WCAB had jurisdiction to award him the medical care he sought.
17 (See Declaration of Readiness, 4/25/2018, at p. 7.) Defendant objected, and the matter was set for hearing
18 on May 17, 2018. The core of the parties’ dispute was over whether defendant had complied with the
19 requirement to render a decision within “five working days,” as mandated by Labor Code section 4610.

20 At the hearing on May 17, 2018, the WCJ admitted applicant’s requests for treatment, and EK
21 Health’s denials. (See Applicant’s Ex. 1 & 2, Defendant’s Ex. A & B.) The WCJ took testimony from
22 applicant, and requested post-trial briefing to be filed no later than May 29, 2018. Both parties filed their
23 post-trial briefs on that date, and the matter was taken under submission.

24 On May 31, 2018, the WCJ issued her FA&O, concluding that the UR denials were timely because
25 Saturdays and Sundays are not working days under the meaning of the Labor Code section 4610. (See
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27 ² EK Health is a certified managed care company contracted to conduct UR services for defendant.

1 Opinion on Decision, at pp. 2–3.) Specifically, the WCJ concluded that Saturday is not a working day for
2 purposes of UR because Saturday is listed as an optional bank holiday in Civil Code section 7.1, which the
3 WCJ concluded is in turn incorporated into the definition of business day provided in Civil Code section
4 9. (Report, at pp. 3–4; Opinion on Decision, at pp. 2–3.) This Petition for Reconsideration followed.

5 **DISCUSSION**

6 Pursuant to Labor Code section 4610, UR decisions on whether to approve prospective or
7 concurrent non-emergency medical treatment “shall be made in a timely fashion that is appropriate to the
8 nature of the employee’s condition, not to exceed five working days from the receipt of a request for
9 authorization[.]” (Lab. Code, § 4610(i)(1).) Administrative Director Rule 9792.9.1, the implementing
10 regulation, states that such decisions are to be made within “five (5) business days from the date of receipt.”
11 (Cal. Code Regs., tit. 8, § 9792.9.1(c)(3).)

12 “Working day” is not defined in Labor Code section 4610 or elsewhere in the Labor Code.
13 However, Labor Code section 4600.4 requires that UR services be available on “each normal business
14 day.” (Lab. Code, § 4600.4(a).) That statute goes on to define normal business day as “a business day as
15 defined in Section 9 of the Civil Code.” (*Id.* at subd. (b).)

16 Civil Code section 9 states:

17 All other days than those mentioned in Section 7 are business days for all purposes;
18 provided, that as to any act appointed by law or contract, or in any other way, to be
19 performed by, at, or through any bank organized under the laws of or doing business in this
20 state, any optional bank holiday as defined in Section 7.1 is not a business day; and
21 provided, that any act appointed by law or contract, or in any other way, to be performed
22 on any day which is an optional bank holiday as defined in Section 7.1, by, at, or through
23 any bank or branch or office thereof, whether acting in its own behalf or in any other
capacity whatsoever, may be performed on that optional bank holiday if the bank or branch
or office by, at, or through which the act is to be performed is open for the transaction of
business on that optional bank holiday, or, at the option of the person obligated to perform
the act, it may be performed on the next succeeding business day.

24 Civil Code section 7, in turn, states: “Holidays within the meaning of this code are every Sunday
25 and such other days as are specified or provided for as holidays in the Government Code of the State of
26 California.” Civil Code section 7.1 includes “Every Saturday” in the definition of “optional bank
27 holidays.” (Civ. Code, § 7.1(b).)

1 Government Code section 6700 defines “Every Sunday” as a holiday, but does not include
2 Saturdays within its definition. (Gov. Code, § 6700(a).) Government Code section 6702 states in relevant
3 part that “Saturday from noon to midnight is a holiday as regards the transaction of business in the public
4 offices of the state and political divisions where laws, ordinances, or charters provide that public offices
5 shall be closed on holidays.” (Gov. Code, § 6702.)

6 Code of Civil Procedure section 12a states: “If the last day for the performance of any act provided
7 or required by law to be performed within a specified period of time is a holiday, then that period is hereby
8 extended to and including the next day that is not a holiday. For purposes of this section, ‘holiday’ means
9 all day on Saturday” (Code Civ. Proc., § 12a(a).) The statute “applies to Sections 659, 659a, and
10 921, and to all other provisions of law providing or requiring an act to be performed on a day particular
11 day or within a specified period of time, whether expressed in this or any other code or statute, ordinance,
12 rule, or regulation.” (*Id.* at subd. (b).)

13 We recently considered the interplay of Labor Code sections 4600.4 and 4610, Civil Code sections
14 7 and 9, and the Government Code in a case involving the Friday after Thanksgiving. (See *Cal. Dept. of*
15 *Corr. & Rehab. Parole & Cmty. Servs. v. Workers’ Comp. Appeals Bd. (Gomez)* (2018) 83 Cal. Comp.
16 Cases 530 (writ den.)) In *Gomez*, the applicant requested UR authorization on November 23, 2016, the
17 Wednesday before Thanksgiving; the request for authorization was not responded to until December 2,
18 2016, the Friday one week after Thanksgiving. (*Id.* at p. 533.) We held that because Labor Code section
19 4600.4 requires UR services to be available on all business days as defined by Civil Code section 9, it was
20 reasonable to construe a “working day” for purposes of Labor Code section 4610 as the same as a business
21 day under Civil Code section 9. (*Ibid.*) The petitioner in that case sought review, and the Court of Appeal
22 denied the writ, finding the interpretation reasonable, and in accord with our regulations, which implicitly
23 equates working days with business days by requiring UR decisions to be made within five business days.
24 (*Id.* at pp. 534–35.) Because the Friday after Thanksgiving was a business day pursuant to Civil Code
25 sections 7 and 9 and the Government Code, the UR response was untimely. (*Id.* at p. 535.)

26 Initially, we address the WCJ’s conclusion that Saturday is not a business day under Civil Code
27 section 9. In the F&O, the WCJ relied on the approach articulated in our decision in *Gomez*, but concluded

1 that Saturday is not a business day under Civil Code section 9 because the WCJ interpreted Civil Code
2 section 9 as incorporating into its definition of “holiday” any optional bank holidays listed in Civil Code
3 section 7.1.

4 We cannot agree with this interpretation. The phrase in Civil Code section 9, “provided, that as to
5 any act appointed by law or contract, or in any other way, to be performed by, at, or through any bank
6 organized under the laws of or doing business in this state,” encompasses only one set of acts – those to be
7 performed *at or through a bank*. The reason the time for performance of these acts is extended is that they
8 must be performed at banks, which may be closed on optional bank holidays. It would make little sense
9 for the Legislature to define the term “holiday” for acts that have nothing to do with banks by utilizing a
10 definition based upon optional bank holidays. The statute itself reinforces this interpretation by providing
11 that these acts *may* be performed on an optional bank holiday in the event that a bank happens to be open
12 that day. (Civ. Code, § 9 [“and provided, that any act appointed by law or contract, or in any other way,
13 to be performed on any day which is an optional bank holiday as defined in Section 7.1 . . . may be
14 performed on that optional bank holiday if the bank or branch or office by, at, or through which the act is
15 to be performed is open for the transaction of business on that optional bank holiday[.]”].)

16 Viewed in its entirety, Civil Code section 9 clearly delineates one definition of holiday for all acts
17 except those to be performed at or through a bank, and another definition of holiday for those acts that are
18 to be performed at or through a bank. Because UR is indisputably not to be performed at or through a
19 bank, the normal definition of holiday applies, not the definition that includes optional bank holidays.
20 Therefore, we disagree with the WCJ that Saturdays are not business days under Civil Code section 9
21 because they are optional bank holidays under Civil Code section 7.1.

22 Similarly, we cannot agree that Saturdays are exempted from the definition of business day by any
23 other portion of Civil Code section 9. The definition of holiday found in Civil Code section 7 – which is
24 fully incorporated into the definition of business day found in Civil Code section 9 – makes holidays of
25 Sundays, “and such other days as are specified or provided for as holidays in the Government Code of the
26 State of California.” (Civ. Code, § 7.) Government Code section 6700 lists the holidays of the state; it

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1 does not include Saturdays. (Govt. Code, § 6700.)³ Court of Appeal cases have explicitly recognized this
2 and noted that Saturday is not a holiday under Civil Code section 7, and therefore is a business day under
3 Civil Code section 9. (See, e.g., *Purifoy v. Howell* (2010) 183 Cal.App.4th 166, 176; *Gans v. Smull* (2003)
4 111 Cal.App.4th 985, 989.) To the extent that some of our past panel decisions may have held otherwise,
5 they were in error.

6 However, the fact that Saturday is a business day under Civil Code section 9 does not end our
7 inquiry, because Labor Code section 4610 bases its timeline upon “working days,” not “business days,”
8 and does not reference Civil Code section 9. Admittedly, in *Gomez*, we equated “working days” with
9 “business days” under the meaning of Civil Code section 9, on the basis that Labor Code section 4600.4
10 requires UR providers to be open for business on business days as defined in Civil Code section 9. (See
11 *Gomez, supra*, 83 Cal. Comp. Cases at p. 533.) The Court of Appeal affirmed this interpretation as
12 reasonable. (*Id.* at p. 535.)

13 However, upon reflection and with the benefit of hindsight, we are convinced that we did not fully
14 consider the implications of linking “working days” under Labor Code section 4610 to business days under
15 Civil Code section 9. Specifically, it is evident that everyone involved in *Gomez* – the parties, the WCAB,
16 and the Court of Appeal – overlooked the fact that tying the definition of “working day” to Civil Code
17 section 9 would result in Saturdays being working days. This is clear because *Gomez* itself considered
18 only whether the Friday after Thanksgiving was a working day. However, in *Gomez*, the UR was received
19 on the Wednesday before Thanksgiving and not denied until the Friday one week after Thanksgiving –
20 more than five working days regardless of the status of the Friday after Thanksgiving if Saturday is
21 considered a working day, as it must be if we accept the premise that a “working day” is the same as a
22 “business day” under Civil Code section 9. (See *Gomez, supra*, 83 Cal. Comp. Cases at p. 531.) Therefore,
23 based upon the rationale adopted in *Gomez*, there was no need to consider whether the Friday after
24 Thanksgiving was a working day; the UR would have been untimely in any case. Put another way, the

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26 ³ As noted in *Gomez* with regard to the Friday after Thanksgiving, statutes specifying that Saturday is a court holiday, or a
27 holiday for government employees, do not constitute a legislative judgment that Saturday is a holiday for general purposes. (See
Gomez, supra, 83 Cal. Comp. Cases at p. 535.)

1 dispute in *Gomez* over the Friday after Thanksgiving was in fact contingent on an assumption by all
2 involved that Saturday was *not* a working day.

3 This apparent oversight persuades us that *Gomez*'s linking of "working day" under Labor Code
4 section 4610 and "business day" under Civil Code section 9 requires reconsideration. That no one involved
5 in *Gomez* appears to have entertained the possibility that Saturday could be a working day strongly suggests
6 that the adoption of Civil Code section 9's definition of business day, which includes Saturdays, is neither
7 intuitively obvious nor necessarily correct.

8 *Gomez* linked "working day" to "business day" under Civil Code section 9 based upon Labor Code
9 section 4600.4, which mandates the "availability" of UR services from 9 a.m. to 5:30 p.m. on each "normal
10 business day." (Lab. Code, § 4600.4(a).) For purposes of Labor Code section 4600.4, "normal business
11 day" means a "business day" under Civil Code section 9. (*Id.* at subd. (b).) Relying upon this section,
12 *Gomez* reasoned that because UR services are required to be available on "business days" as defined by
13 Civil Code section 9, any such day would also be a "working day" for UR service providers. (*Gomez*, 83
14 Cal. Comp. Cases at p. 535.) *Gomez* also noted that the Administrative Director's regulations interpreting
15 Labor Code section 4610 require a decision within five "business days," not five "working days." (*Id.* at
16 p. 535; Cal. Code Regs., tit. 8, § 9792.9.1, subd. (c)(3).)

17 On first glance, this reasoning appears quite convincing; it does seem reasonable that a day upon
18 which a UR organization must be available to provide services should also be a working day for UR
19 practitioners. Upon closer examination of the statutes involved, however, it becomes clear that the situation
20 is more complex than it initially appears. Specifically, not all UR decisions are created equal: in addition
21 to the ordinary UR decisions like the one at issue in this case, the statute also provides for priority UR
22 decisions when an employee faces "an imminent and serious threat to his or her health[.]" (Lab. Code,
23 § 4610(i)(3).) Instead of the five "working days" allowed for a decision under ordinary circumstances,
24 these decisions under subdivision (i)(3) must be reached no later than 72 hours after receipt of the
25 authorization request. (*Ibid.*)

26 The issue of whether Saturday is a "working day" does not affect these UR decisions, because the
27 statute specifies that a decision must be reached within 72 hours of receipt of the request for authorization,

1 not 72 working hours. (*Ibid.*) However, their existence provides an alternative reason for the Legislature
2 to require UR organizations to be available to receive UR requests on Saturdays, quite apart from any intent
3 to include Saturdays within the five “working days” within which a decision must be rendered under
4 subdivision (i)(1). If UR organizations were not open to accept priority requests for authorization under
5 subdivision (i)(3) on Saturdays, a priority request that an injured worker attempted to submit on Saturday
6 (or on Friday after 5:30p.m.) might not be deemed received until Monday morning. As a result, the 72-
7 hour deadline for a decision would not begin to run until that time, in effect extending the timeline to 120
8 hours or longer despite the critical need for speedy approval or disapproval, thereby defeating the purpose
9 of the subsection and compromising the health of injured workers. Accordingly, the Legislature had a
10 clear reason for requiring UR organizations to be open to receive and consider priority requests for
11 authorization on Saturdays, whether or not Saturday is a “working day” for purposes of normal UR requests
12 issued under subdivision (i)(1).

13 This interpretation is bolstered by the fact that the Legislature chose to use the phrase “working
14 day,” rather than simply parroting the “normal business day” language of section 4600.4 or explicitly
15 defining working days with reference to Civil Code section 9. The very fact that the Legislature chose a
16 different term to govern the timeliness of UR decisions under Labor Code section 4610(i)(1) suggests an
17 intent to differentiate; this is especially true because the phrase “working day” is not a standard term that
18 appears elsewhere in the Labor Code. If the Legislature had intended to tie “working day” to “business
19 day” under Civil Code section 9, we see no reason why it would not simply have done so itself.

20 Similarly, although the Administrative Director’s implementing regulations replace the statutory
21 phrase “working day” with “business day,” those implementing regulations do not define “business day”
22 with reference to Civil Code section 9. We have no particular bone to pick with the idea that “working
23 day” and “business day” have closely related meanings in the abstract. Instead, our concern is with the
24 specific decision to tie “working day” to the definition of “business day” provided in Civil Code section 9;
25 as described below, Civil Code section 9’s definition of business day is far from the only possible definition
26 of that term.

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1 Therefore, we conclude that the decision in *Gomez* to equate “working day” with “business day”
2 under Civil Code section 9, although understandable under the circumstances as a first attempt at making
3 sense of a complicated statutory framework, is not based upon a sufficiently solid basis to withstand careful
4 scrutiny. Instead, we must consider why the Legislature chose to employ the phrase “working day,” and
5 what the implications of that choice are for discerning the Legislature’s intended meaning.

6 Accordingly, we must return to first principles, and determine the meaning of “working day” in
7 Labor Code section 4610 without reliance on the definition of “business day” provided by Civil Code
8 section 9. In this task, we are guided by the familiar principle that the fundamental purpose of statutory
9 interpretation is to ascertain the Legislature’s intent in order to effectuate the law’s purpose. (*People v.*
10 *Murphy* (2001) 25 Cal.4th 136, 142.) Interpretation begins “with the plain language of the statute,
11 affording the words of the provision their ordinary and usual meaning and viewing them in their statutory
12 context, because the language employed in the Legislature’s enactment generally is the most reliable
13 indicator of legislative intent.” (*People v. Watson* (2007) 42 Cal.4th 822, 828.) The plain meaning controls
14 if there is no ambiguity in the statutory language. (*People v. King* (2006) 38 Cal.4th 617, 642.) If, however,
15 the language is susceptible to more than one interpretation, consideration must be given to other factors,
16 such as the purpose of the statute, the legislative history, and public policy. (*Ibid.*) If a statute is amenable
17 to more than one interpretation, the interpretation that leads to a more reasonable result should be followed.
18 (*Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735.)

19 As noted above, the phrase “working day” is not defined anywhere in the Labor Code. We therefore
20 must initially consider the “ordinary and usual meaning” of the phrase. (*Watson, supra*, 42 Cal.4th at 828.)
21 Most dictionaries define the term as identical to “workday,” a phrase that is in common use. (See, e.g.,
22 Merriam Webster New Collegiate Dict. (11th ed. 2008) <[https://www.merriam-
23 webster.com/dictionary/working%20day](https://www.merriam-webster.com/dictionary/working%20day)> [as of August 19, 2019].) “Workday,” as relevant here, can in
24 turn be employed in two distinct ways. First, it can mean simply any day upon which work is done.
25 (Merriam Webster New Collegiate Dict. (11th ed. 2008) <[https://www.merriam-
27 webster.com/dictionary/workday](https://www.merriam-
26 webster.com/dictionary/workday)> [as of August 19, 2019].) Second, it can mean a day upon which work

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1 is usually done. (American Heritage Dict. (5th ed. 2019)
2 <<https://ahdictionary.com/word/search.html?q=workday>> [as of August 19, 2019].)

3 Here, because the Legislature was defining the period within which UR decisions need to be
4 reached, it is clear that the Legislature must have been using the phrase “working day” in the second
5 sense – a day upon which work is usually done. This is because it would make little sense to mandate that
6 UR decisions be completed within five days of actual work. For example, we think it very unlikely that
7 the Legislature intended that a UR doctor who happens to pick up a case file on a Sunday or holiday and
8 glance through it could render a UR decision untimely because work was arguably done on that day.
9 Instead, “working day” must refer to a day when people normally work.

10 The question we must resolve, therefore, is whether the Legislature viewed Saturday as a day upon
11 which work is ordinarily performed. Civil Code sections 7 and 9, as noted above, include Saturday as a
12 business day, and this might be held to support the theory that Saturday is a day upon which work is
13 ordinarily performed. Those sections, however, date back to the 19th century; the last significant change
14 was in 1955, when Civil Code section 9 was amended to add the language regarding optional bank holidays.
15 (See Stats. 1955, ch. 198, § 1 & ch. 599, § 1.) Accordingly, even if we accept a general equivalence
16 between business days and working days in the abstract, these statutes serve as a poor barometer of what
17 the Legislature believed to be standard working days in 2003, when the language in question was first
18 included in Labor Code section 4610. (See Stats. 2003, ch. 639, § 28 (SB 228).)

19 Historically, there is no doubt that the terms “working day” and “business day” both generally
20 included Saturdays. Sources from the middle of the 19th century up until the middle of the 20th century
21 indicate that traditionally a working day has been defined as a day other than a Sunday or legal holiday.
22 (See, e.g., *Pedersen v. Eugster* (E.D.La. 1882) 14 F. 422, citing *Brooks v. Minturn* (1851) 1 Cal. 481, 483;
23 2 Bouvier’s Law Dictionary (3ed. 1914) p. 3487 [“In Maritime Law. Working days include all days except
24 Sundays and legal holidays and do not include days on which, by the custom of the port, baymen stop work
25 on the day of the funeral of one of their deceased members . . . Running or calendar days on which the law
26 permits work to be done. The term excludes Sundays and legal holidays, but not stormy days.”]; Black’s
27 Law Dict. (4th ed. 1968) p. 1780 [“Construction Contracts: The term working days may exclude not only

1 Sundays and holidays, but also days upon which no work can be done because of weather conditions.
2 Maritime Law: Running or calendar days on which law permits work to be done, excluding Sundays and
3 legal holidays.”].) As recently as 1986, a dictionary defined “working day” as “a day when work is
4 normally done as distinguished from Sundays and legal holidays.” (Webster’s 3d New Internat. Dict. (1986)
5 p. 2635.)

6 However, this usage began to shift beginning in the latter portion of the 20th century, resulting in
7 the dictionary definitions referenced above that define a working day as a day upon which work is
8 ordinarily undertaken. Black’s Law Dictionary removed the term entirely, and it changed its definition of
9 business day to exclude Saturdays: “A day that most institutions are open for business, usu. [*sic*] a day on
10 which banks and major stock exchanges are open, excluding Saturdays and Sundays.” (Black’s Law Dict.
11 (7th ed. 1999) p. 402.) These changes reflect a general movement away from the idea that Saturday is a
12 standard working day and towards an understanding that standard working days are Monday through
13 Friday, and we see no reason to think the Legislature’s understanding has not undergone a similar shift.

14 Although the Legislature has frequently employed the term “working day” in its legislative
15 enactments, we can find only a single instance of a codified definition of the term, and it is not particularly
16 useful one way or the other. Business and Professions Code sections 7598.4 and 7599.39, relating to the
17 registration of employees of alarm company operators, both define “three working days” as “72 hours from
18 the time an employee is first compensated for alarm agent services by a licensee.” (See Bus. & Prof. Code,
19 §§ 7598.4, subd. (b), 7599.39.) This is evidently a specialized definition applicable only to the particular
20 circumstances of those statutes, which appears to include not only Saturdays but also Sundays and holidays;
21 it therefore sheds no light on the question of whether Saturday is a working day for more general purposes.

22 To the extent that the phrase “business day” is similar to the phrase “working day” and therefore
23 has bearing upon the discussion, the Legislature has frequently provided statutory definitions of the term.
24 The balance of these definitions appears to exclude Saturdays. (See, e.g., Cal. U. Com. Code, § 6105,
25 subd. (b)(3) [“As used in this subdivision, ‘business day’ means any day other than a Saturday, Sunday, or
26 day observed as a holiday by the state government”]; Ins. Code, § 1215, subd. (g) [as used in art. 4.7 of ch.
27 2 of pt. 2 of div. 1 of the Ins. Code, “ [b]usiness day’ is any day other than Saturday, Sunday, and any

1 other day that is specified or provided for as a holiday in the Government Code”]; Fin. Code § 31033
2 [“Business day’ means any day other than (a) Saturday, (b) Sunday, and (c) any other day which is
3 specified or provided for as a holiday in the Government Code.”].⁴

4 The modern trend towards excluding Saturday from the definition of “working day” or “business
5 day” is also evident in judicial opinions interpreting recent legislation. Most notably, in the last two
6 decades copious judicial ink has been spilled over the Legislature’s use of the term “working day” in Penal
7 Code section 290 *et seq*, which details registration requirements for sex offenders and generally requires
8 such registration within “five working days” of experiencing a change in residential status. (See Pen. Code,
9 §§ 290(a), 290.011.) We find it telling that although numerous published Court of Appeal cases have
10 analyzed nearly every aspect of these registration requirements, we cannot locate a published⁵ opinion that
11 even discusses the possibility that Saturday might be a “working day.” To the contrary, where the counting
12 of particular days is relevant to the opinion, these opinions treat Saturday as a non-working day; as in
13 *Gomez*, it is unclear whether it even occurred to anyone involved in these opinions that Saturday could be
14 a working day.

15 For example, in *People v. Williams*, the defendant arrived in Madera on Thursday, May 25, 2006,
16 and was arrested for failing to register on Saturday, June 3, 2016. (*People v. Williams* (2009) 171
17 Cal.App.4th 1667, 1670.) The Court of Appeal noted that this amounted to six full working days, clearly
18 excluding Saturdays, Sundays and Holidays: “Thursday and Friday, the 25th and 26th of May, as well as
19 Tuesday through Friday, May 30 through June 2, 2006. Monday, May 29, had been the Memorial Day
20 holiday.” (*Ibid.*)

21 At least one Court of Appeal opinion has also adopted a definition of “business day” which does
22 not include Saturdays, for purposes of pet adoptions under Food and Agricultural Code section 31108.
23 (*Purifoy v. Howell* (2010) 183 Cal.App.4th 166, 180–184.)

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25 ⁴ However, it must be said that this general trend is by no means exclusive; in some relatively recent enactments, the Legislature
26 has defined business day to include Saturdays as well. (See, e.g., Civ. Code, § 1689.5 [“Business day’ means any calendar day
27 except Sunday, or the following business holidays . . .”]; Bus. & Prof. Code, §§ 2546.6, subd. (a)(2) [“Business day’ means
each day except a Sunday or a federal holiday”].)

⁵ We are, of course, prohibited by California Rule of Court 8.115(a) from making reference to unpublished opinions.

1 Similarly, all regulatory definitions of the terms “working day” or “working days” that we have
2 found exclude Saturdays. (See, e.g., Cal. Code Regs., tit. 8, § 330, subd. (b) [“‘Working days’ means
3 Mondays through Fridays but shall not include Saturday, Sunday or State Holidays.”]; Cal. Code Regs.,
4 tit. 8, § 347, subd. (dd) [“‘Working Day’ means any day that is not a Saturday, Sunday or State-recognized
5 holiday as provided in Government Code Sections 6700 and 6701.”]; Cal. Code of Regs., tit. 14, § 790,
6 subd. (w)(3) [“‘Working Days’ means those days of the week that are not State of California or federal
7 holidays, weekends, or days that State of California offices are ordered to be closed by the Governor.”];
8 Cal. Code Regs., tit. 14, § 2000, subd. (a)(48) [“‘Working days’ means all days except Saturdays, Sundays,
9 and official California State Holidays.”]; Cal. Code Regs., tit., 28 § 1300.71, subd. (a)(13) [“‘Working
10 days’ means Monday through Friday, excluding recognized federal holidays.”].)

11 Based upon the above discussion, we believe that the standard, modern definition of the phrase
12 “working day” is a day other than a Saturday, a Sunday, or a state holiday as defined in the Government
13 Code. In the absence of any specific Legislative definition to the contrary, we find this definition is most
14 likely to accord with the Legislature’s intended meaning, and it is the definition we will adopt.

15 In adopting a definition of “working day” which excludes Saturdays, we are also cognizant of the
16 Legislature’s intent that medical treatment issues be resolved through the UR system as a general rule, with
17 WCAB intervention only in limited circumstances. Since the adoption of Labor Code section 4610,
18 millions of requests for medical treatment have proceeded through the UR authorization system; as far as
19 we are aware, standard practice has been to calculate deadlines based upon an understanding that Saturday
20 was not included in the five “working days” within which to render a decision. Although the weight of
21 past practice should not blind us to the possibility of error, the fact that these millions of requests have
22 moved through the system on that understanding shows that formal adoption of a definition excluding
23 Saturdays will not itself result in compromising care for injured workers.

24 This definition also accords with the results reached in prior decisions. For example, although we
25 have adopted a different approach than the one taken in *Gomez*, our definition produces the same result:
26 namely, that the Friday after Thanksgiving is a working day, because it is not listed as a holiday in the

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1 Government Code. This definition of “working day,” therefore, does not upset the judicial applectart of
2 past decisions, and does not appear likely to prompt significant further litigation on the topic.

3 Accordingly, for the reasons articulated above, we conclude that the phrase “working day” in Labor
4 Code section 4610 means a day other than a Saturday, Sunday, or holiday as defined in the Government
5 Code. Here, because the requests for authorization were received on March 12, 2018 and April 16, 2018,
6 both Mondays, defendant had until the following Monday in each case to timely deny the request. Because
7 each request was denied on that following Monday – March 19, 2018 and April 23, 2018, respectively -
8 we will affirm the WCJ’s finding that the denial was timely.

9 Additionally, the denials in this case would have been timely even if Saturday were a working day
10 for purposes of Labor Code section 4610. Code of Civil Procedure section 12a provides: “If the last day
11 for the performance of any act provided or required by law to be performed within a specified period of
12 time is a holiday, then that period is hereby extended to and including the next day that is not a holiday.
13 For purposes of this section, ‘holiday’ means all day on Saturday, all holidays specified in Section 135
14 and, to the extent provided in Section 12b, all days that by terms of Section 12b are required to be
15 considered as holidays.” (Code Civ. Proc., § 12a(a).) UR is an act “provided or required by law to be
16 performed within a specified period of time.” Here, because each request for authorization was issued on
17 a Monday, even if the deadline for response was the following Saturday, Code of Civil Procedure section
18 12a would therefore have extended the deadline for timely denial to the following Monday, making the
19 denials timely.⁶

22 ⁶ The Petition contests the application of Code of Civil Procedure section 12a, on the putative basis that “the actual date for
23 performance of the Utilization Review decision in this matter was not a Saturday.” (Petition, at p. 7.) The Petition goes on to
24 assert that Code of Civil Procedure section 12a specifically addresses “the day upon which the acts must be performed, not dates
25 upon which the act may be performed prior to the deadline.” (*Ibid.*) We must confess that we do not understand what distinction
26 applicant is attempting to draw here. Contrary to applicant’s assertion, because each request for UR authorization was received
27 on a Monday, Saturday would indeed be the last day for timely performance if it were a working day, as Saturday is five days
after Monday. Furthermore, by its own plain language, Code of Civil Procedure section 12a applies to acts “to be performed
within a specified period of time,” and extends that time when “the *last* day for the performance” of the act falls on a Saturday.
(Code Civ. Proc., § 12a(a), emphasis added.) If there were any doubt as to the section’s application, subdivision (b) dispels that
doubt: “This section applies to Sections 659, 659a, and 921, and to all other provisions of law providing or requiring an act to
be performed on a particular day or within a specified period of time, whether expressed in this or any other code or statute,
ordinance, rule, or regulation.” (*Ibid.*, emphasis added.)

1 Therefore, as stated above, we conclude that although Saturday is a business day under Civil Code
2 section 9, it is not a working day under Labor Code section 4610, because Labor Code section 4610 does
3 not incorporate the definition of business day found in Civil Code section 9. The phrase “working day” as
4 it appears in Labor Code section 4610 does not include Saturdays based upon standard modern usage, as
5 reflected in dictionary definitions, statutory and regulatory enactments, and judicial decisions. Moreover,
6 even if Saturday were a working day, the UR decisions in this case would still be timely based upon Code
7 of Civil Procedure section 12a.

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1 For the foregoing reasons,

2 **IT IS HEREBY ORDERED** as the Decision After Reconsideration of the Workers'
3 Compensation Appeals Board that the May 31, 2018 Findings and Award is **AFFIRMED**.

4 **WORKERS' COMPENSATION APPEALS BOARD**

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6 /s/ KATHERINE A. ZALEWSKI
7 *KATHERINE A. ZALEWSKI, Chair*

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9 **I CONCUR,**

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12 /s/ MARGUERITE SWEENEY
13 *MARGUERITE SWEENEY, Commissioner*

14
15 /s/ DEIDRA E. LOWE
16 *DEIDRA E. LOWE, Commissioner*

17
18 **DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

19 **09/11/2019**

20
21 **SERVICE MADE ON THE ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR**
22 **ADDRESSES SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD.**

23 **PUNI PA'U**
24 **STATE COMPENSATION INSURANCE FUND**
25 **LAW OFFICES OF WHITING & COTTER**
26 **BOEHM & ASSOCIATES**

27 **AW:ebc**