



Legislative and Industry Updates – April 2017

Since our last meeting, the new two year session is underway in Sacramento with workers' compensation bills introduced for review. The following information is provided with the status of bills introduced so far.

LEGISLATIVE ACTIVITY

AB 570 - Permanent Disability Apportionment (Gonzalez Fletcher)

This bill intends to prohibit apportionment of permanent disability, in cases of physical injury on or after January 1, 2018, from being based on pregnancy, childbirth, or other medical conditions related to pregnancy or childbirth.

It closely resembles AB 1643 and last session's AB 305, which were vetoed in part because the proposed apportionment standards were "ill-defined and unscientific." Creating standards based on anything other than evidence-based medicine would undermine an employer's legal right to apportionment. The flawed standards in AB 570 would lead to increased litigation and costs, and delay claim resolution.

With this 3rd attempt at pushing a bill aimed at gender discrimination through, Assembly member Gonzalez Fletcher continues to pursue permanent disability apportionment as a gender issue. The bill is sponsored by the California Applicants' Attorney Association (CAAA). Staff will continue to monitor status.

AB 44 - Workers' Compensation benefits relating to "Terrorist Attacks" (Reyes – Applicants Atty)

AB 44 appears to have been introduced in reaction to the San Bernardino terrorist attack and the perceived delay in provision of medical care to those impacted. The bill proposes to eliminate utilization review services, making any disputes in treatment recommendations to be resolved by workers' compensations judges (who do not have medical expertise), these decisions would be related to determining appropriate medical care and increase the period of time individuals may receive temporary disability or Labor Code 4850 benefits for those filing claims related to injury arising from an act of terrorism or violence in the workplace.

While well intentioned, applying this general definition of causation, so frequently misinterpreted or left to the perception of an individual or individuals, AB 44 may lead to increased litigation costs, at the same time delaying review and approval of appropriate medical care as outlined in

the Medical Treatment Utilization Schedule (MTUS). Further, AB 44 seeks to impose increased periods of temporary disability based upon causation, rather than specific injury as currently outlined in Labor Code 4656.

Governor Brown has noted in his vetoes of AB 1451 and SB 897, referencing increased disability benefits for “safety” workers (such as first responders), that “Many local agencies are under significant financial stress. They must consider employee benefit increases in light of competing demands for critical services and long term pension and health care debts.”

AB 221 - Cumulative Trauma Claims and Fraud (Gray)

This bill attempts to curb the problem of medical providers filing liens for care and medical testing of potential injured workers for cumulative trauma claims in which there is no substantiation of industrial injury. In some cases, these claims may resolve, with no admission of liability, for a minimal, or nuisance value amount. While the employee may not receive a substantial sum in settlement of their disputed claim, the medical liens filed can be substantial. This bill attempts to curtail the filing of these disputed and unsubstantiated claims and their corresponding medical liens by stating there would be no liability for medical payments unless the claim resolved for less than \$25,000 and involves one of the following circumstances:

- The claimed body part injured had been accepted;
- The employer had authorized the care;
- A Hearing or Stipulation found injury to the body part claimed; or
- An evaluating doctor (AME/PQME) found industrial injury.

It is noted each of the circumstances listed above are already in place and would result in payment of medical care. While the filing of cumulative trauma claims does require legislative clarification to more accurately address industrial injury versus an aging workforce involved in long term employment, this bill does not meet that need.

Additional information and feedback is being provided to the author.

AB 553 - RTW Fund (Daly)

SB 863 created a Return-to-Work (RTW) Fund administered by the State to provide injured workers with supplemental payments when their Permanent Disability (PD) benefits are disproportionately low in comparison to their earnings loss. This program is funded annually in the amount of \$120,000,000 from the Workers’ Compensation Administration Revolving Fund which in turn is funded by the Department of Industrial Relations (DIR) assessments to employers.

As it stands, Employees may apply for payment from this fund to receive a one-time \$5,000 Return-to-Work supplement. The amount of this supplement may be adjusted by the director of DIR based on further studies conducted by the director in accordance with Labor Code section 139.48.

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This bill proposes to require the fund be depleted each year and any remaining funds at year-end be distributed pro-rata to eligible workers subject to a maximum of \$25,000. This “clearing out” of the fund will allow the injured worker to actually receive more from the fund at the end of the year, than the original supplement payment. There is no requirement for the injured worker to pursue employment, education or demonstrate any focus on RTW to receive the additional funds.