

SENATE BILL

No. 4

Introduced by Senator Johnson

November 19, 2003

An act to amend Section 3600 of the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

SB 4, as introduced, Johnson. Workers' compensation.

Existing workers' compensation law generally requires employers to secure the payment of workers' compensation, including medical treatment, for injuries incurred by their employees that arise out of, or in the course of, employment. Existing law establishes liability for compensation against an employer for the injury or death of an employee, including instances where the injury is proximately caused by the employment and where the injury is not caused by the commission of a felony or a misdemeanor by the injured employee for which he or she has been convicted.

This bill would revise these circumstances that establish liability for an employer to include, instead, where the employment is the predominant cause of the injury compared to all other causes combined, and where the injury is not caused by the commission of a criminal act by the injured employee for which he or she has been convicted.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3600 of the Labor Code is amended to
2 read:

3 3600. (a) Liability for the compensation provided by this
4 division, in lieu of any other liability whatsoever to any person
5 except as otherwise specifically provided in Sections 3602, 3706,
6 and 4558, shall, without regard to negligence, exist against an
7 employer for any injury sustained by his or her employees arising
8 out of, and in the course of, the employment and for the death of
9 any employee if the injury proximately causes death, in those cases
10 where the following conditions of compensation concur:

11 (1) Where, at the time of the injury, both the employer and the
12 employee are subject to the compensation provisions of this
13 division.

14 (2) Where, at the time of the injury, the employee is performing
15 service growing out of, and incidental to, his or her employment
16 and is acting within the course of his or her employment.

17 (3) Where the ~~injury is proximately caused by the employment~~
18 *is the predominant cause of the injury, compared to all other*
19 *causes combined*, either with or without negligence.

20 (4) Where the injury is not caused by the intoxication, by
21 alcohol or the unlawful use of a controlled substance, of the injured
22 employee. As used in this paragraph, “controlled substance” shall
23 have the same meaning as prescribed in Section 11007 of the
24 Health and Safety Code.

25 (5) Where the injury is not intentionally self-inflicted.

26 (6) Where the employee has not willfully and deliberately
27 caused his or her own death.

28 (7) Where the injury does not arise out of an altercation in
29 which the injured employee is the initial physical aggressor.

30 (8) Where the injury is not caused by the commission of a
31 ~~felony, or a crime which is punishable as specified in subdivision~~
32 ~~(b) of Section 17 of the Penal Code,~~ *criminal act* by the injured
33 employee, for which he or she has been convicted.

34 (9) Where the injury does not arise out of voluntary
35 participation in any off-duty recreational, social, or athletic
36 activity not constituting part of the employee’s work-related
37 duties, except where these activities are a reasonable expectancy
38 of, or are expressly or impliedly required by, the employment. The



1 administrative director shall promulgate reasonable rules and
2 regulations requiring employers to post and keep posted in a
3 conspicuous place or places a notice advising employees of ~~the~~
4 ~~provisions of this subdivision~~ paragraph. Failure of the employer
5 to post the notice shall not constitute an expression of intent to
6 waive ~~the provisions of this subdivision~~ paragraph.

7 (10) Except for psychiatric injuries governed by subdivision
8 (e) of Section 3208.3, where the claim for compensation is filed
9 after notice of termination or layoff, including voluntary layoff,
10 and the claim is for an injury occurring prior to the time of notice
11 of termination or layoff, no compensation shall be paid unless the
12 employee demonstrates by a preponderance of the evidence that
13 one or more of the following conditions apply:

14 (A) The employer has notice of the injury, as provided under
15 Chapter 2 (commencing with Section 5400) of Part 4, prior to the
16 notice of termination or layoff.

17 (B) The employee's medical records, existing prior to the
18 notice of termination or layoff, contain evidence of the injury.

19 (C) The date of injury, as specified in Section 5411, is
20 subsequent to the date of the notice of termination or layoff, but
21 prior to the effective date of the termination or layoff.

22 (D) The date of injury, as specified in Section 5412, is
23 subsequent to the date of the notice of termination or layoff.

24 For purposes of this paragraph, an employee provided notice
25 pursuant to Sections 44948.5, 44949, 44951, 44955, 44955.6,
26 72411, 87740, and 87743 of the Education Code shall be
27 considered to have been provided a notice of termination or layoff
28 only upon a district's final decision not to reemploy that person.

29 A notice of termination or layoff that is not followed within 60
30 days by that termination or layoff shall not be subject to the
31 provisions of this paragraph, and this paragraph shall not apply
32 until receipt of a later notice of termination or layoff. The issuance
33 of frequent notices of termination or layoff to an employee shall
34 be considered a bad faith personnel action and shall make this
35 paragraph inapplicable to the employee.

36 (b) Where an employee, or his or her dependents, receives the
37 compensation provided by this division and secures a judgment
38 for, or settlement of, civil damages pursuant to those specific
39 exemptions to the employee's exclusive remedy set forth in
40 subdivision (b) of Section 3602 and Section 4558, the



1 compensation paid under this division shall be credited against the
2 judgment or settlement, and the employer shall be relieved from
3 the obligation to pay further compensation to, or on behalf of, the
4 employee or his or her dependents up to the net amount of the
5 judgment or settlement received by the employee or his or her
6 heirs, or that portion of the judgment as has been satisfied.

O

