

AMENDED IN ASSEMBLY APRIL 10, 2008

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2181**

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**Introduced by Assembly Member Ruskin**

February 20, 2008

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An act to amend ~~Section 139.48~~ *Sections 139.47 and 3761* of the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

AB 2181, as amended, Ruskin. Workers' compensation: Return-to-Work Program: *guide*.

Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, to compensate an employee for injuries sustained in the course of his or her employment. Existing law requires the administrative director, until January 1, 2009, to establish, to the extent that funds are available for that purpose, the Return-to-Work Program to promote the early and sustained return to work of employees following a work-related injury or illness. Existing law also requires the administrative director to reimburse an eligible employer for expenses incurred to make workplace modifications to accommodate the employee's return to modified or alternative work, in accordance with specified requirements. *Existing law requires the Director of Industrial Relations to establish and maintain a program to encourage, facilitate, and educate employers to provide early and sustained return to work after occupational injury or illness, and requires that the program include specified educational materials and guides, and training concerning the accommodation of injured employees and the prevention of reinjury.*

~~This bill would extend to January 1, 2015, the operation of those provisions requiring the establishment and implementation of the Return-to-Work Program, and would require the administrative director~~

*This bill would require the administrative director, in consultation with the Department of Fair Employment and Housing and the Commission on Health and Safety and Workers' Compensation, no later than September 30, 2009, to develop, make available, and publish a guide covering the Return-to-Work Program requirements, containing specified information.* ~~†~~

*Existing law requires that an insurer securing an employer's liability under the workers' compensation system to notify the employer, within 15 days, of each claim for indemnity filed against the employer directly with the insurer if the employer has not timely provided to the insurer, a specified report of occupational injury or illness, and furnish to an employer who has not filed this report with an opportunity to provide to the insurer, prior to a specified time period, all relevant information available to the employer pertaining to the claim.*

*This bill would also require a workers' compensation insurer to provide a copy of the guide described above in printed form to every insured employer within 30 days of the insurer's receipt of the employer's first claim for temporary or permanent disability indemnity benefits made under any annual policy period year.*

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 139.47 of the Labor Code is amended to  
2 read:

3     139.47. (a) The Director of Industrial Relations shall establish  
4 and maintain a program to encourage, facilitate, and educate  
5 employers to provide early and sustained return to work after  
6 occupational injury or illness. The program shall do both of the  
7 following:

8     (a)  
9     (1) Develop educational materials and guides, in easily  
10 understandable language in both print and electronic form, for  
11 employers, health care providers, employees, and labor unions.  
12 These materials shall address issues including, but not limited to,  
13 early return to work, assessment of functional abilities and

1 limitations, development of appropriate work restrictions, job  
2 analysis, worksite modifications, assistive equipment and devices,  
3 and available resources.

4 (b)

5 (2) Conduct training for employee and employer organizations  
6 and health care providers concerning the accommodation of injured  
7 employees and the prevention of reinjury.

8 (b) *The administrative director, in consultation with the*  
9 *Department of Fair Employment and Housing and the Commission*  
10 *on Health and Safety and Workers' Compensation, shall develop*  
11 *and publish, no later than September 30, 2009, a guide covering*  
12 *the return-to-work process, in accordance with the following*  
13 *requirements:*

14 (1) *The primary purpose of the guide shall be to provide*  
15 *practical information for employers regarding how to comply with*  
16 *requirements of Section 132a and the Fair Employment and*  
17 *Housing Act (Chapter 1 (commencing with Section 129001) of*  
18 *Division 3 of Title 2 of the Government Code) after an employee*  
19 *sustains an industrial injury or illness.*

20 (2) *The guide shall be in the form of a printed leaflet containing*  
21 *basic information and references to additional information on the*  
22 *return-to-work process. The contents of the printed leaflet shall*  
23 *also be available in electronic form on the department's Web site.*

24 SEC. 2. *Section 3761 of the Labor Code is amended to read:*

25 3761. (a) (1) *An insurer securing an employer's liability under*  
26 *this division shall notify the employer, within 15 days, of each*  
27 *claim for indemnity filed against the employer directly with the*  
28 *insurer if the employer has not timely provided to the insurer a*  
29 *report of occupational injury or occupational illness pursuant to*  
30 *Section 6409.1. The insurer shall furnish an employer who has not*  
31 *filed this report with an opportunity to provide to the insurer, prior*  
32 *to the expiration of the 90-day period specified in Section 5402,*  
33 *all relevant information available to the employer concerning the*  
34 *claim.*

35 (2) *An insurer securing an employer's liability under this*  
36 *division shall provide a printed copy of the leaflet guide published*  
37 *pursuant to subdivision (b) of Section 139.47 to the employer within*  
38 *30 days of the insurer's receipt of the first claim for indemnity*  
39 *benefits made under any policy year. Not more than one copy of*  
40 *the guide need be provided regardless of the number of indemnity*

1 *claims made under one policy year. This paragraph applies to*  
2 *claims received under policies incepting or renewing on or after*  
3 *the 90th day after the publication or revision of the guide pursuant*  
4 *to subdivision (b) of Section 139.47.*

5 (b) An employer shall promptly notify its insurer in writing at  
6 any time during the pendency of a claim when the employer has  
7 actual knowledge of any facts which would tend to disprove any  
8 aspect of the employee’s claim. When an employer notifies its  
9 insurer in writing that, in the employer’s opinion, no compensation  
10 is payable to an employee, at the employer’s written request, to  
11 the appeals board, the appeals board may approve a compromise  
12 and release agreement, or stipulation, that provides compensation  
13 to the employee only where there is proof of service upon the  
14 employer by the insurer, to the employer’s last known address,  
15 not less than 15 days prior to the appeals board action, of notice  
16 of the time and place of the hearing at which the compromise and  
17 release agreement or stipulation is to be approved. The insurer  
18 shall file proof of this service with the appeals board.

19 Failure by the insurer to provide the required notice shall not  
20 prohibit the board from approving a compromise and release  
21 agreement, or stipulation; however, the board shall order the insurer  
22 to pay reasonable expenses as provided in Section 5813.

23 (c) In establishing a reserve pursuant to a claim that affects  
24 premiums against an employer, an insurer shall provide the  
25 employer, upon request, a written report of the reserve amount  
26 established. The written report shall include, at a minimum, the  
27 following:

- 28 (1) Estimated medical-legal costs.
- 29 (2) Estimated vocational rehabilitation costs, if any.
- 30 (3) Itemization of all other estimated expenses to be paid from  
31 the reserve.

32 (d) When an employer properly provides notification to its  
33 insurer pursuant to subdivision (b), and the appeals board thereafter  
34 determines that no compensation is payable under this division,  
35 the insurer shall reimburse the employer for any premium paid  
36 solely due to the inclusion of the successfully challenged payments  
37 in the calculation of the employer’s experience modification. The  
38 employee shall not be required to refund the challenged payment.

39 ~~SECTION 1. Section 139.48 of the Labor Code is amended to~~  
40 ~~read:~~

1 139.48. ~~(a) (1) The administrative director shall establish the~~  
2 ~~Return-to-Work Program in order to promote the early and~~  
3 ~~sustained return to work of the employee following a work-related~~  
4 ~~injury or illness.~~

5 ~~(2) This section shall be implemented to the extent funds are~~  
6 ~~available.~~

7 ~~(b) Upon submission by eligible employers of documentation~~  
8 ~~in accordance with regulations adopted pursuant to subdivision~~  
9 ~~(h), the administrative director shall pay the workplace~~  
10 ~~modification expense reimbursement allowed under this section.~~

11 ~~(c) The administrative director shall reimburse an eligible~~  
12 ~~employer for expenses incurred to make workplace modifications~~  
13 ~~to accommodate the employee's return to modified or alternative~~  
14 ~~work, as follows:~~

15 ~~(1) The maximum reimbursement to an eligible employer for~~  
16 ~~expenses to accommodate each temporarily disabled injured worker~~  
17 ~~is one thousand two hundred fifty dollars (\$1,250).~~

18 ~~(2) The maximum reimbursement to an eligible employer for~~  
19 ~~expenses to accommodate each permanently disabled worker who~~  
20 ~~is a qualified injured worker is two thousand five hundred dollars~~  
21 ~~(\$2,500). If the employer received reimbursement under paragraph~~  
22 ~~(1), the amount of the reimbursement under paragraph (1) and this~~  
23 ~~paragraph shall not exceed two thousand five hundred dollars~~  
24 ~~(\$2,500).~~

25 ~~(3) The modification expenses shall be incurred in order to allow~~  
26 ~~a temporarily disabled worker to perform modified or alternative~~  
27 ~~work within physician-imposed temporary work restrictions, or to~~  
28 ~~allow a permanently disabled worker who is an injured worker to~~  
29 ~~return to sustained modified or alternative employment with the~~  
30 ~~employer within physician-imposed permanent work restrictions.~~

31 ~~(4) Allowable expenses may include physical modifications to~~  
32 ~~the worksite, equipment, devices, furniture, tools, or other~~  
33 ~~necessary costs for accommodation of the employee's restrictions.~~

34 ~~(d) This section shall not create a preference in employment for~~  
35 ~~injured employees over noninjured employees. It shall be unlawful~~  
36 ~~for an employer to discriminatorily terminate, lay-off, demote, or~~  
37 ~~otherwise displace an employee in order to return an industrially~~  
38 ~~injured employee to employment for the purpose of obtaining the~~  
39 ~~reimbursement set forth in subdivision (c).~~

40 ~~(e) For purposes of this section, the following definitions apply:~~

1 (1) ~~“Eligible employer” means any employer, except the state~~  
2 ~~or an employer eligible to secure the payment of compensation~~  
3 ~~pursuant to subdivision (c) of Section 3700, who employs 50 or~~  
4 ~~fewer full-time employees on the date of injury.~~

5 (2) ~~“Employee” means a worker who has suffered a work-related~~  
6 ~~injury or illness on or after July 1, 2004.~~

7 (f) ~~The administrative director shall adopt regulations to carry~~  
8 ~~out this section. Regulations allocating budget funds that are~~  
9 ~~insufficient to implement the workplace modification expense~~  
10 ~~reimbursement provided for in this section shall include a~~  
11 ~~prioritization schema.~~

12 (g) ~~The Workers’ Compensation Return-to-Work Fund is hereby~~  
13 ~~created as a special fund in the State Treasury. The fund shall~~  
14 ~~consist of all penalties collected pursuant to Section 5814.6 and~~  
15 ~~transfers made by the administrative director from the Workers’~~  
16 ~~Compensation Administration Revolving Fund established pursuant~~  
17 ~~to Section 62.5. The fund shall be administered by the~~  
18 ~~administrative director. Moneys in the fund may be expended by~~  
19 ~~the administrative director, upon appropriation by the Legislature,~~  
20 ~~only for purposes of implementing this section.~~

21 (h) ~~The administrative director, in consultation with the~~  
22 ~~Department of Fair Employment and Housing and the Commission~~  
23 ~~on Health and Safety and Workers’ Compensation, shall develop,~~  
24 ~~make available, and publish, no later than September 30, 2009, a~~  
25 ~~guide covering the return-to-work process, in accordance with the~~  
26 ~~following requirements:~~

27 (1) ~~The primary purpose of the guide shall be to provide~~  
28 ~~practical information for employers regarding how to best comply~~  
29 ~~with requirements of Section 132a and provisions of the Fair~~  
30 ~~Employment and Housing Act (Chapter 1 (commencing with~~  
31 ~~Section 129001 of Division 3 of Title 2 of the Government Code)~~  
32 ~~after an employee sustains an industrial injury or illness.~~

33 (2) ~~The guide may be in the form of a printed brochure or guide~~  
34 ~~containing basic information and referenees to additional~~  
35 ~~information on the return-to-work program that the administrative~~  
36 ~~director shall also make available on the division’s Web site. The~~  
37 ~~entire guide shall also be made available in electronic form on the~~  
38 ~~Web site of the Division of Workers’ Compensation.~~

39 (3) ~~A worker’s compensation insurer shall provide a copy of~~  
40 ~~the guide in printed form to every insured employer within 30 days~~

1 of the insurer's receipt of the employer's first claim for temporary  
2 or permanent disability indemnity benefits made under any annual  
3 policy period. Not more than one copy of the guide need be  
4 provided to the insured employer regardless of the number of  
5 indemnity claims made under one policy year.

6 (i) ~~This section shall remain in effect only until January 1, 2015,~~  
7 ~~and as of that date is repealed, unless a later enacted statute, that~~  
8 ~~is enacted before January 1, 2015, deletes or extends that date.~~

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