

AMENDED IN SENATE AUGUST 4, 2008

AMENDED IN SENATE JULY 2, 2008

AMENDED IN ASSEMBLY APRIL 24, 2008

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 2987

Introduced by Assembly Member Benoit

February 22, 2008

An act to amend Sections 4658.5 and 4658.6 of the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

AB 2987, as amended, Benoit. Workers' compensation: supplemental job displacement benefits.

Existing law 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 provides for the payment of temporary disability indemnity payments to any injured employee under specified circumstances, and provides for payment of supplemental job displacement benefits to an injured employee if an injury causes permanent partial disability and the injured employee does not return to work for the employer within 60 days of the termination of temporary disability indemnity payments.

This bill would, for injuries occurring on or after January 1, 2009, provide for the payment of those supplemental job displacement benefits, if the injury causes permanent partial disability and the injured employee does not return to work for the employer within 60 days after receipt by the employer or claims administrator of a report by the treating physician or an agreed medical evaluator or a qualified medical

evaluator, as specified, finding that the disability has become permanent and stationary.

Existing law provides that the employer shall not be liable for the payment of those supplemental job displacement benefits if, within 30 days of the termination of temporary disability indemnity benefits the employer offers, and the employee rejects, or fails to accept, as specified, (1) modified work, accommodating the employee’s work restrictions, lasting at least 12 months, or (2) alternative work meeting specified conditions.

~~This bill would, instead, provide~~ *would provide that the above provision shall apply to injuries occurring on or after January 1, 2004, but that, for injuries occurring on or after January 1, 2009, the employer shall not be liable for the payment of those supplemental job displacement benefits, if, not later than 60 days after receipt by the employer or claims administrator of a report by the treating physician or an agreed medical evaluator or qualified medical evaluator, as specified, finding that the disability has become permanent and stationary the employer offers, and the employee rejects, or fails to accept, (1) modified work, accommodating the employee’s work restrictions, lasting at least 12 months, or (2) alternative work meeting certain conditions.*

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 4658.5 of the Labor Code is amended to
- 2 read:
- 3 4658.5. (a) (1) Except as provided in Section 4658.6, if the
- 4 injury causes permanent partial disability and the injured employee
- 5 does not return to work for the employer within 60 days of the
- 6 termination of temporary disability, the injured employee shall be
- 7 eligible for a supplemental job displacement benefit in the form
- 8 of a nontransferable voucher for education-related retraining or
- 9 skill enhancement, or both, at state-approved or accredited schools,
- 10 as follows:
- 11 (A) Up to four thousand dollars (\$4,000) for permanent partial
- 12 disability awards of less than 15 percent.
- 13 (B) Up to six thousand dollars (\$6,000) for permanent partial
- 14 disability awards between 15 and 25 percent.

1 (C) Up to eight thousand dollars (\$8,000) for permanent partial
2 disability awards between 26 and 49 percent.

3 (D) Up to ten thousand dollars (\$10,000) for permanent partial
4 disability awards between 50 and 99 percent.

5 (2) Except as provided in Section 4658.6, for injuries occurring
6 on or after January 1, 2009, if the injury causes permanent partial
7 disability and the injured employee does not return to work for the
8 employer within 60 days after receipt by the employer or claims
9 administrator of a report by the treating physician or an agreed
10 medical evaluator, or a qualified medical evaluator, in the form
11 and manner prescribed by the administrative director, finding that
12 the disability has become permanent and stationary, the injured
13 employee shall be eligible for a supplemental job displacement
14 benefit in the form of a nontransferable voucher for
15 education-related retraining or skill enhancement, or both, at
16 state-approved or accredited schools, as follows:

17 (A) Up to four thousand dollars (\$4,000) for permanent partial
18 disability awards of less than 15 percent.

19 (B) Up to six thousand dollars (\$6,000) for permanent partial
20 disability awards between 15 and 25 percent.

21 (C) Up to eight thousand dollars (\$8,000) for permanent partial
22 disability awards between 26 and 49 percent.

23 (D) Up to ten thousand dollars (\$10,000) for permanent partial
24 disability awards between 50 and 99 percent.

25 (b) The voucher may be used for payment of tuition, fees, books,
26 and other expenses required by the school for retraining or skill
27 enhancement. No more than 10 percent of the voucher moneys
28 may be used for vocational or return to work counseling. The
29 administrative director shall adopt regulations governing the form
30 of payment, direct reimbursement to the injured employee upon
31 presentation to the employer of appropriate documentation and
32 receipts, and any other matters necessary to the proper
33 administration of the supplemental job displacement benefit.

34 (c) Within 10 days of the last payment of temporary disability,
35 the employer shall provide to the employee, in the form and manner
36 prescribed by the administrative director, information that provides
37 notice of rights under this section. This notice shall be sent by
38 certified mail.

1 (d) This section shall apply to injuries occurring on or after
2 January 1, 2004, except as provided in paragraph (2) of subdivision
3 (a).

4 SEC. 2. Section 4658.6 of the Labor Code is amended to read:
5 4658.6. ~~For (a) Except as provided in subdivision (c), for~~
6 injuries occurring on or after January 1, ~~2009~~ 2004, the employer
7 shall not be liable for the supplemental job displacement benefit
8 if the employer meets either of the following conditions:

9 ~~(a) Not later than 60 days after receipt by the employer or claims~~
10 ~~administrator of a report by the treating physician or an agreed~~
11 ~~medical evaluator or a qualified medical evaluator, in the form~~
12 ~~and manner prescribed by the administrative director, finding that~~
13 ~~the disability has become permanent and stationary,~~

14 (1) *Within 30 days of the termination of temporary disability*
15 *indemnity payments*, the employer offers, and the employee rejects,
16 or fails to accept, in the form and manner prescribed by the
17 administrative director, modified work, accommodating the
18 employee’s work restrictions, lasting at least 12 months.

19 ~~(b) Not later than 60 days after receipt by the employer or claims~~
20 ~~administrator of a report by the treating physician or an agreed~~
21 ~~medical evaluator or a qualified medical evaluator, in the form~~
22 ~~and manner prescribed by the administrative director, finding that~~
23 ~~the disability has become permanent and stationary,~~

24 (2) *Within 30 days of the termination of temporary disability*
25 *indemnity payments*, the employer offers, and the employee rejects,
26 or fails to accept, in the form and manner prescribed by the
27 administrative director, alternative work meeting all of the
28 following conditions:

29 (1)

30 (A) The employee has the ability to perform the essential
31 functions of the job provided.

32 (2)

33 (B) The job provided is in a regular position lasting at least 12
34 months.

35 (3)

36 (C) The job provided offers wages and compensation that are
37 within 15 percent of those paid to the employee at the time of
38 injury.

39 (4)

1 (D) The job is located within reasonable commuting distance
2 of the employee's residence at the time of injury.

3 (b) For injuries occurring on or after January 1, 2009, the
4 employer shall not be liable for the supplemental job displacement
5 benefit if the employer meets either of the following conditions:

6 (1) Not later than 60 days after receipt by the employer or claims
7 administrator of a report by the treating physician or an agreed
8 medical evaluator or a qualified medical evaluator, in the form
9 and manner prescribed by the administrative director, finding that
10 the disability has become permanent and stationary, the employer
11 offers, and the employee rejects, or fails to accept, in the form and
12 manner prescribed by the administrative director, modified work,
13 accommodating the employee's work restrictions, lasting at least
14 12 months.

15 (2) Not later than 60 days after receipt by the employer or claims
16 administrator of a report by the treating physician or an agreed
17 medical evaluator or a qualified medical evaluator, in the form
18 and manner prescribed by the administrative director, finding that
19 the disability has become permanent and stationary, the employer
20 offers, and the employee rejects, or fails to accept, in the form and
21 manner prescribed by the administrative director, alternative work
22 meeting all of the following conditions:

23 (A) The employee has the ability to perform the essential
24 functions of the job provided.

25 (B) The job provided is in a regular position lasting at least 12
26 months.

27 (C) The job provided offers wages and compensation that are
28 within 15 percent of those paid to the employee at the time of
29 injury.

30 (D) The job is located within reasonable commuting distance
31 of the employee's residence at the time of injury.