

Senate Bill No. 1717

Passed the Senate May 27, 2008

Secretary of the Senate

Passed the Assembly August 29, 2008

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2008, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 4658 of the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

SB 1717, Perata. Workers' compensation: permanent partial disability benefits.

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 payment of disability benefits to eligible individuals for injuries sustained in the course of employment that cause permanent disability, and specifies that the amount of those payments shall be computed in accordance with a prescribed formula. Existing law provides that if, within 60 days of an employee's disability becoming permanent and stationary, the employer does not offer the injured employee regular work, modified work, or alternative work, as specified, for the period of at least 12 months, or, if the regular work, modified work, or alternative work is terminated before the end of the period for which disability payments are due the injured employee, the employer shall pay the employee an increased amount of permanent disability benefits. Existing law also provides further that, if within 60 days of a disability becoming permanent and stationary, an employer offers the injured employee regular work, modified work, or alternative work, for a period of at least 12 months, regardless of whether the injured employee accepts or rejects the offer, the employer shall pay the employee a decreased amount of permanent disability benefits.

This bill would eliminate those provisions requiring an employer to pay an injured employee a decreased amount of permanent disability benefits if, within 60 days of a disability becoming permanent and stationary, the employer offers the injured employee regular work, modified work, or alternative work, within those specified time periods, regardless of whether the injured employee accepts or rejects the offer. The bill would also revise the formula

for computing those benefits for injuries causing permanent disability, which occur on or after January 1, 2009.

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

SECTION 1. The Legislature finds and declares all of the following:

(a) In enacting Assembly Bill 227 (Chapter 635 of the Statutes of 2003), Senate Bill 228 (Chapter 639 of the Statutes of 2003), and Senate Bill 899 (Chapter 34 of the Statutes of 2004), it was the intent of the Legislature to create a workers' compensation system that is fair to all parties involved.

(b) Ensuring that permanently disabled workers receive fair compensation is a high priority of the Legislature.

(c) Until we know the full effect workers' compensation reform has had on the workers' compensation system in general, and permanently disabled workers in particular, we should ensure that permanently disabled workers receive adequate benefits.

(d) In ensuring adequate benefit levels to permanently disabled workers, it is not the intent of the Legislature to undermine the positive effect workers' compensation reform has had on California's employers and workers.

SEC. 2. Section 4658 of the Labor Code is amended to read:

4658. (a) For injuries occurring prior to January 1, 1992, if the injury causes permanent disability, the percentage of disability to total disability shall be determined, and the disability payment computed and allowed, according to paragraph (1). However, in no event shall the disability payment allowed be less than the disability payment computed according to paragraph (2).

(1)

Column 1—Range of percentage of permanent disability incurred:	Column 2—Number of weeks for which two-thirds of average weekly earnings allowed for each 1 percent of permanent disability within percentage range:
Under 10.....	3
10–19.75.....	4
20–29.75.....	5

30-49.75.....	6
50-69.75.....	7
70-99.75.....	8

The number of weeks for which payments shall be allowed set forth in column 2 above based upon the percentage of permanent disability set forth in column 1 above shall be cumulative, and the number of benefit weeks shall increase with the severity of the disability. The following schedule is illustrative of the computation of the number of benefit weeks:

Column 1— Percentage of permanent disability incurred:	Column 2— Cumulative number of benefit weeks:
5.....	15.00
10.....	30.25
15.....	50.25
20.....	70.50
25.....	95.50
30.....	120.75
35.....	150.75
40.....	180.75
45.....	210.75
50.....	241.00
55.....	276.00
60.....	311.00
65.....	346.00
70.....	381.25
75.....	421.25
80.....	461.25
85.....	501.25
90.....	541.25
95.....	581.25
100.....	for life

(2) Two-thirds of the average weekly earnings for four weeks for each 1 percent of disability, where, for the purposes of this

subdivision, the average weekly earnings shall be taken at not more than seventy-eight dollars and seventy-five cents (\$78.75).

(b) This subdivision shall apply to injuries occurring on or after January 1, 1992. If the injury causes permanent disability, the percentage of disability to total disability shall be determined, and the disability payment computed and allowed, according to paragraph (1). However, in no event shall the disability payment allowed be less than the disability payment computed according to paragraph (2).

(1)

Column 1—Range of percentage of permanent disability incurred:	Column 2—Number of weeks for which two-thirds of average weekly earnings allowed for each 1 percent of permanent disability within percentage range:
Under 10.....	3
10–19.75.....	4
20–24.75.....	5
25–29.75.....	6
30–49.75.....	7
50–69.75.....	8
70–99.75.....	9

The numbers set forth in column 2 above are based upon the percentage of permanent disability set forth in column 1 above and shall be cumulative, and shall increase with the severity of the disability in the manner illustrated in subdivision (a).

(2) Two-thirds of the average weekly earnings for four weeks for each 1 percent of disability, where, for the purposes of this subdivision, the average weekly earnings shall be taken at not more than seventy-eight dollars and seventy-five cents (\$78.75).

(c) This subdivision shall apply to injuries occurring on or after January 1, 2004. If the injury causes permanent disability, the percentage of disability to total disability shall be determined, and the disability payment computed and allowed as follows:

Column 1—Range of percentage of permanent disability incurred:	Column 2—Number of weeks for which two-thirds of average weekly earnings allowed for each 1 percent of permanent disability within percentage range:
Under 10.....	4
10–19.75.....	5
20–24.75.....	5
25–29.75.....	6
30–49.75.....	7
50–69.75.....	8
70–99.75.....	9

The numbers set forth in column 2 above are based upon the percentage of permanent disability set forth in column 1 above and shall be cumulative, and shall increase with the severity of the disability in the manner illustrated in subdivision (a).

(d) (1) This subdivision shall apply to injuries occurring on or after the effective date of the revised permanent disability schedule adopted by the administrative director pursuant to Section 4660. If the injury causes permanent disability, the percentage of disability to total disability shall be determined, and the basic disability payment computed as follows:

Column 1—Range of percentage of permanent disability incurred:	Column 2—Number of weeks for which two-thirds of average weekly earnings allowed for each 1 percent of permanent disability within percentage range:
0.25–9.75.....	3
10–14.75.....	4
15–24.75.....	5
25–29.75.....	6
30–49.75.....	7
50–69.75.....	8
70–99.75.....	16

The numbers set forth in column 2 above are based upon the percentage of permanent disability set forth in column 1 above and shall be cumulative, and shall increase with the severity of the disability in the manner illustrated in subdivision (a).

(2) If, within 60 days of a disability becoming permanent and stationary, an employer does not offer the injured employee regular work, modified work, or alternative work, in the form and manner prescribed by the administrative director, for a period of at least 12 months, each disability payment remaining to be paid to the injured employee from the date of the end of the 60-day period shall be paid in accordance with paragraph (1) and increased by 15 percent. This paragraph shall not apply to an employer that employs fewer than 50 employees.

(3) If, within 60 days of a disability becoming permanent and stationary, any employer offers the injured employee regular work, modified work, or alternative work and the regular, modified, or alternative work is terminated by the employer before the end of the period for which disability payments are due the injured employee, the amount of each of the remaining disability payments shall be paid in accordance with paragraph (1) and increased by 15 percent. An employee who voluntarily terminates employment shall not be eligible for payment under this subparagraph. This paragraph shall not apply to an employer that employs fewer than 50 employees.

(4) For compensable claims arising before April 30, 2004, the schedule provided in this subdivision shall not apply to the determination of permanent disabilities when there has been either a comprehensive medical-legal report or a report by a treating physician, indicating the existence of permanent disability, or when the employer is required to provide the notice required by Section 4061 to the injured worker.

(5) The changes made to this subdivision by this act shall apply to injuries occurring on or after January 1, 2009.

(e) This subdivision shall apply to injuries occurring on or after January 1, 2009. If the injury causes permanent disability, the percentage of disability to total disability shall be determined, and the disability payment computed and allowed as follows:

Column 1—Range of percentage of permanent disability incurred:	Column 2—Number of weeks for which two-thirds of average weekly earnings allowed for each 1 percent of permanent disability within percentage range:
0–9.75.....	4
10–14.75.....	5
15–24.75.....	7
25–29.75.....	8
30–49.75.....	9
50–69.75.....	11
70–99.75.....	21

The numbers set forth in column 2 above are based upon the percentage of permanent disability set forth in column 1 above and shall be cumulative, and shall increase with the severity of the disability in the manner illustrated in subdivision (a).

(f) This subdivision shall apply to injuries occurring on or after January 1, 2010. If the injury causes permanent disability, the percentage of disability to total disability shall be determined, and the disability payment computed and allowed as follows:

Column 1—Range of percentage of permanent disability incurred:	Column 2—Number of weeks for which two-thirds of average weekly earnings allowed for each 1 percent of permanent disability within percentage range:
0–9.75.....	5
10–14.75.....	7
15–24.75.....	8
25–29.75.....	10
30–49.75.....	12
50–69.75.....	13
70–99.75.....	27

The numbers set forth in column 2 above are based upon the percentage of permanent disability set forth in column 1 above

and shall be cumulative, and shall increase with the severity of the disability in the manner illustrated in subdivision (a).

(g) This subdivision shall apply to injuries occurring on or after January 1, 2011. If the injury causes permanent disability, the percentage of disability to total disability shall be determined, and the disability payment computed and allowed as follows:

Column 1—Range of percentage of permanent disability incurred:	Column 2—Number of weeks for which two-thirds of average weekly earnings allowed for each 1 percent of permanent disability within percentage range:
0-9.75.....	6
10-14.75.....	8
15-24.75.....	10
25-29.75.....	12
30-49.75.....	14
50-69.75.....	16
70-99.75.....	32

The numbers set forth in column 2 above are based upon the percentage of permanent disability set forth in column 1 above and shall be cumulative, and shall increase with the severity of the disability in the manner illustrated in subdivision (a).

Approved _____, 2008

Governor