

AMENDED IN SENATE JUNE 17, 2009

AMENDED IN ASSEMBLY APRIL 28, 2009

AMENDED IN ASSEMBLY APRIL 14, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1093

Introduced by Assembly Member Yamada

February 27, 2009

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1093, as amended, Yamada. 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, and in the course of, employment.

This bill would provide that for purposes of determining whether to grant or deny a workers' compensation claim, if an employee is injured or killed by a 3rd party in the course of the employee's employment, no personal relationship or personal connection shall be deemed to exist between the employee and the 3rd party based only on a determination that the 3rd party injured or killed the employee solely because of the 3rd party's personal beliefs relating to his or her perception of the employee's sex, race, color, religion, ancestry, national origin, marital status, or sexual orientation.

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

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

1 SECTION 1. This act shall be known, and may be cited, as the
2 Taneka Talley Workers' Compensation Act.

3 SECTION 1.

4 SEC. 2. Section 3600 of the Labor Code is amended to read:

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

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

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

19 (3) Where the injury is proximately caused by the employment,
20 either with or without negligence.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 subdivision (b) of Section 3602 and Section 4558, the
2 compensation paid under this division shall be credited against the
3 judgment or settlement, and the employer shall be relieved from
4 the obligation to pay further compensation to, or on behalf of, the
5 employee or his or her dependents up to the net amount of the
6 judgment or settlement received by the employee or his or her
7 heirs, or that portion of the judgment as has been satisfied.

8 (c) For purposes of determining whether to grant or deny a
9 workers' compensation claim, if an employee is injured or killed
10 by a third party in the course of the employee's employment, no
11 personal relationship or personal connection shall be deemed to
12 exist between the employee and the third party based only on a
13 determination that the third party injured or killed the employee
14 solely because of the third party's personal beliefs relating to his
15 or her perception of the employee's sex, race, color, religion,
16 ancestry, national origin, marital status, or sexual orientation.