

ASSEMBLY BILL

No. 2247

Introduced by Assembly Member Niello

February 18, 2010

An act to amend Section 4453 of the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

AB 2247, as introduced, Niello. Workers' compensation: disability indemnity.

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. Existing law provides certain methods for determining workers' compensation benefits payable to a worker or his or her dependents for purposes of temporary disability indemnity, permanent total disability indemnity, permanent partial disability indemnity, and in case of death.

This bill would make a technical, nonsubstantive change to the above-described provisions.

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. Section 4453 of the Labor Code is amended to
2 read:
3 4453. (a) In computing average annual earnings for the
4 purposes of temporary disability indemnity and permanent total

1 disability indemnity only, the average weekly earnings shall be
2 taken at:

3 (1) Not less than one hundred twenty-six dollars (\$126) nor
4 more than two hundred ninety-four dollars (\$294), for injuries
5 occurring on or after January 1, 1983.

6 (2) Not less than one hundred sixty-eight dollars (\$168) nor
7 more than three hundred thirty-six dollars (\$336), for injuries
8 occurring on or after January 1, 1984.

9 (3) Not less than one hundred sixty-eight dollars (\$168) for
10 permanent total disability, and, for temporary disability, not less
11 than the lesser of one hundred sixty-eight dollars (\$168) or 1.5
12 times the employee's average weekly earnings from all employers,
13 but in no event less than one hundred forty-seven dollars (\$147),
14 nor more than three hundred ninety-nine dollars (\$399), for injuries
15 occurring on or after January 1, 1990.

16 (4) Not less than one hundred sixty-eight dollars (\$168) for
17 permanent total disability, and for temporary disability, not less
18 than the lesser of one hundred eighty-nine dollars (\$189) or 1.5
19 times the employee's average weekly earnings from all employers,
20 nor more than five hundred four dollars (\$504), for injuries
21 occurring on or after January 1, 1991.

22 (5) Not less than one hundred sixty-eight dollars (\$168) for
23 permanent total disability, and for temporary disability, not less
24 than the lesser of one hundred eighty-nine dollars (\$189) or 1.5
25 times the employee's average weekly earnings from all employers,
26 nor more than six hundred nine dollars (\$609), for injuries
27 occurring on or after July 1, 1994.

28 (6) Not less than one hundred sixty-eight dollars (\$168) for
29 permanent total disability, and for temporary disability, not less
30 than the lesser of one hundred eighty-nine dollars (\$189) or 1.5
31 times the employee's average weekly earnings from all employers,
32 nor more than six hundred seventy-two dollars (\$672), for injuries
33 occurring on or after July 1, 1995.

34 (7) Not less than one hundred sixty-eight dollars (\$168) for
35 permanent total disability, and for temporary disability, not less
36 than the lesser of one hundred eighty-nine dollars (\$189) or 1.5
37 times the employee's average weekly earnings from all employers,
38 nor more than seven hundred thirty-five dollars (\$735), for injuries
39 occurring on or after July 1, 1996.

1 (8) Not less than one hundred eighty-nine dollars (\$189), nor
2 more than nine hundred three dollars (\$903), for injuries occurring
3 on or after January 1, 2003.

4 (9) Not less than one hundred eighty-nine dollars (\$189), nor
5 more than one thousand ninety-two dollars (\$1,092), for injuries
6 occurring on or after January 1, 2004.

7 (10) Not less than one hundred eighty-nine dollars (\$189), nor
8 more than one thousand two hundred sixty dollars (\$1,260), for
9 injuries occurring on or after January 1, 2005. For injuries
10 occurring on or after January 1, 2006, average weekly earnings
11 shall be taken at not less than one hundred eighty-nine dollars
12 (\$189), nor more than one thousand two hundred sixty dollars
13 (\$1,260) or 1.5 times the state average weekly wage, whichever
14 is greater. Commencing on January 1, 2007, and each January 1
15 thereafter, the limits specified in this paragraph shall be increased
16 by an amount equal to the percentage increase in the state average
17 weekly wage as compared to the prior year. For purposes of this
18 paragraph, “state average weekly wage” means the average weekly
19 wage paid by employers to employees covered by unemployment
20 insurance as reported by the United States Department of Labor
21 for California for the 12 months ending March 31 of the calendar
22 year preceding the year in which the injury occurred.

23 (b) In computing average annual earnings for purposes of
24 permanent partial disability indemnity, except as provided in
25 Section 4659, the average weekly earnings shall be taken at:

26 (1) Not less than seventy-five dollars (\$75), nor more than one
27 hundred ninety-five dollars (\$195), for injuries occurring on or
28 after January 1, 1983.

29 (2) Not less than one hundred five dollars (\$105), nor more than
30 two hundred ten dollars (\$210), for injuries occurring on or after
31 January 1, 1984.

32 (3) When the final adjusted permanent disability rating of the
33 injured employee is 15 percent or greater, but not more than 24.75
34 percent: (A) not less than one hundred five dollars (\$105), nor
35 more than two hundred twenty-two dollars (\$222), for injuries
36 occurring on or after July 1, 1994; (B) not less than one hundred
37 five dollars (\$105), nor more than two hundred thirty-one dollars
38 (\$231), for injuries occurring on or after July 1, 1995; (C) not less
39 than one hundred five dollars (\$105), nor more than two hundred
40 forty dollars (\$240), for injuries occurring on or after July 1, 1996.

1 (4) When the final adjusted permanent disability rating of the
2 injured employee is 25 percent or greater, not less than one hundred
3 five dollars (\$105), nor more than two hundred twenty-two dollars
4 (\$222), for injuries occurring on or after January 1, 1991.

5 (5) When the final adjusted permanent disability rating of the
6 injured employee is 25 percent or greater but not more than 69.75
7 percent: (A) not less than one hundred five dollars (\$105), nor
8 more than two hundred thirty-seven dollars (\$237), for injuries
9 occurring on or after July 1, 1994; (B) not less than one hundred
10 five dollars (\$105), nor more than two hundred forty-six dollars
11 (\$246), for injuries occurring on or after July 1, 1995; and (C) not
12 less than one hundred five dollars (\$105), nor more than two
13 hundred fifty-five dollars (\$255), for injuries occurring on or after
14 July 1, 1996.

15 (6) When the final adjusted permanent disability rating of the
16 injured employee is less than 70 percent: (A) not less than one
17 hundred fifty dollars (\$150), nor more than two hundred
18 seventy-seven dollars and fifty cents (\$277.50), for injuries
19 occurring on or after January 1, 2003; (B) not less than one hundred
20 fifty-seven dollars and fifty cents (\$157.50), nor more than three
21 hundred dollars (\$300), for injuries occurring on or after January
22 1, 2004; (C) not less than one hundred fifty-seven dollars and fifty
23 cents (\$157.50), nor more than three hundred thirty dollars (\$330),
24 for injuries occurring on or after January 1, 2005; and (D) not less
25 than one hundred ninety-five dollars (\$195), nor more than three
26 hundred forty-five dollars (\$345), for injuries occurring on or after
27 January 1, 2006.

28 (7) When the final adjusted permanent disability rating of the
29 injured employee is 70 percent or greater, but less than 100 percent:
30 (A) not less than one hundred five dollars (\$105), nor more than
31 two hundred fifty-two dollars (\$252), for injuries occurring on or
32 after July 1, 1994; (B) not less than one hundred five dollars (\$105),
33 nor more than two hundred ninety-seven dollars (\$297), for injuries
34 occurring on or after July 1, 1995; (C) not less than one hundred
35 five dollars (\$105), nor more than three hundred forty-five dollars
36 (\$345), for injuries occurring on or after July 1, 1996; (D) not less
37 than one hundred fifty dollars (\$150), nor more than three hundred
38 forty-five dollars (\$345), for injuries occurring on or after January
39 1, 2003; (E) not less than one hundred fifty-seven dollars and fifty
40 cents (\$157.50), nor more than three hundred seventy-five dollars

1 (\$375), for injuries occurring on or after January 1, 2004; (F) not
2 less than one hundred fifty-seven dollars and fifty cents (\$157.50),
3 nor more than four hundred five dollars (\$405), for injuries
4 occurring on or after January 1, 2005; and (G) not less than one
5 hundred ninety-five dollars (\$195), nor more than four hundred
6 five dollars (\$405), for injuries occurring on or after January 1,
7 2006.

8 (c) Between the limits specified in subdivisions (a) and (b), the
9 average weekly earnings, except as provided in Sections 4456 to
10 4459, shall be arrived at as follows:

11 (1) Where the employment is for 30 or more hours a week and
12 for five or more working days a week, the average weekly earnings
13 shall be the number of working days a week times the daily
14 earnings at the time of the injury.

15 (2) Where the employee is working for two or more employers
16 at or about the time of the injury, the average weekly earnings
17 shall be taken as the aggregate of these earnings from all
18 employments computed in terms of one week; but the earnings
19 from employments other than the employment in which the injury
20 occurred shall not be taken at a higher rate than the hourly rate
21 paid at the time of the injury.

22 (3) If the earnings are at an irregular rate, such as piecework,
23 or on a commission basis, or are specified to be by week, month,
24 or other period, then the average weekly earnings mentioned in
25 subdivision (a) shall be taken as the actual weekly earnings
26 averaged for this period of time, not exceeding one year, as may
27 conveniently be taken to determine an average weekly rate of pay.

28 (4) Where the employment is for less than 30 hours per week,
29 or where for any reason the foregoing methods of arriving at the
30 average weekly earnings cannot reasonably and fairly be applied,
31 the average weekly earnings shall be taken at 100 percent of the
32 sum ~~which~~ *that* reasonably represents the average weekly earning
33 capacity of the injured employee at the time of his or her injury,
34 due consideration being given to his or her actual earnings from
35 all sources and employments.

36 (d) Every computation made pursuant to this section beginning
37 January 1, 1990, shall be made only with reference to temporary
38 disability or the permanent disability resulting from an original
39 injury sustained after January 1, 1990. However, all rights existing
40 under this section on January 1, 1990, shall be continued in force.

- 1 Except as provided in Section 4661.5, disability indemnity benefits
- 2 shall be calculated according to the limits in this section in effect
- 3 on the date of injury and shall remain in effect for the duration of
- 4 any disability resulting from the injury.

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