

Introduced by Senator DeSaulnier

February 11, 2009

An act to amend Sections 3600 and 4663 of the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

SB 145, as amended, DeSaulnier. Workers' compensation.

(1) 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 no workers' compensation claim shall be denied ~~solely because the motivation behind what caused the employee's injury or injury resulting in death was related to an immutable characteristic of the employee~~ *the employee's race, religious creed, color, national origin, age, gender, marital status, sex, sexual orientation, or genetic predisposition.*

This bill would also state the intent of the Legislature to enact legislation that would apply employment discrimination protections to workers' compensation law in order to prohibit the wrongful reduction or denial of workers' compensation benefits.

(2) Existing law requires any physician who prepares a report addressing the issue of permanent disability due to a claimed industrial injury to address the issue of causation of the permanent disability, and requires that the report include an apportionment determination to be considered complete on the issue of permanent disability.

This bill would prohibit race, religious creed, color, national origin, age, gender, marital status, sex, sexual orientation, or genetic predisposition from being considered a cause or other factor of disability considered in any determination made pursuant to those 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 3600 of the Labor Code is amended to
2 read:

3 3600. (a) Liability for the compensation provided by this
4 division, in lieu of any other liability whatsoever to any person
5 except as otherwise specifically provided in Sections 3602, 3706,
6 and 4558, shall, without regard to negligence, exist against an
7 employer for any injury sustained by his or her employees arising
8 out of and in the course of the employment and for the death of
9 any employee if the injury proximately causes death, in those cases
10 where the following conditions of compensation concur:

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

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

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

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

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

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

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

29 (8) Where the injury is not caused by the commission of a
30 felony, or a crime that is punishable as specified in subdivision

1 (b) of Section 17 of the Penal Code, by the injured employee, for
2 which he or she has been convicted.

3 (9) Where the injury does not arise out of voluntary participation
4 in any off-duty recreational, social, or athletic activity not
5 constituting part of the employee's work-related duties, except
6 where these activities are a reasonable expectancy of, or are
7 expressly or impliedly required by, the employment. The
8 administrative director shall promulgate reasonable rules and
9 regulations requiring employers to post and keep posted in a
10 conspicuous place or places a notice advising employees of the
11 provisions of this subdivision. Failure of the employer to post the
12 notice shall not constitute an expression of intent to waive the
13 provisions of this subdivision.

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

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

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

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

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

31 For purposes of this paragraph, an employee provided notice
32 pursuant to Sections 44948.5, 44949, 44951, 44955, 44955.6,
33 72411, 87740, and 87743 of the Education Code shall be
34 considered to have been provided a notice of termination or layoff
35 only upon a district's final decision not to reemploy that person.

36 A notice of termination or layoff that is not followed within 60
37 days by that termination or layoff shall not be subject to the
38 provisions of this paragraph, and this paragraph shall not apply
39 until receipt of a later notice of termination or layoff. The issuance
40 of frequent notices of termination or layoff to an employee shall

1 be considered a bad faith personnel action and shall make this
2 paragraph inapplicable to the employee.

3 (b) Where an employee, or his or her dependents, receives the
4 compensation provided by this division and secures a judgment
5 for, or settlement of, civil damages pursuant to those specific
6 exemptions to the employee's exclusive remedy set forth in
7 subdivision (b) of Section 3602 and Section 4558, the
8 compensation paid under this division shall be credited against the
9 judgment or settlement, and the employer shall be relieved from
10 the obligation to pay further compensation to, or on behalf of, the
11 employee or his or her dependents up to the net amount of the
12 judgment or settlement received by the employee or his or her
13 heirs, or that portion of the judgment as has been satisfied.

14 ~~(e) No workers' compensation claim shall be denied solely~~
15 ~~because the motivation behind what caused the employee's injury~~
16 ~~or injury resulting in death was related to an immutable~~
17 ~~characteristic of the employee.~~

18 *(c) No workers' compensation claim shall be denied because*
19 *the employee's injury or death was related to the employee's race,*
20 *religious creed, color, national origin, age, gender, marital status,*
21 *sex, sexual orientation, or genetic predisposition.*

22 SEC. 2. Section 4663 of the Labor Code is amended to read:

23 4663. (a) Apportionment of permanent disability shall be based
24 on causation.

25 (b) Any physician who prepares a report addressing the issue
26 of permanent disability due to a claimed industrial injury shall in
27 that report address the issue of causation of the permanent
28 disability.

29 (c) In order for a physician's report to be considered complete
30 on the issue of permanent disability, the report must include an
31 apportionment determination. A physician shall make an
32 apportionment determination by finding what approximate
33 percentage of the permanent disability is caused by the direct result
34 of injury arising out of and occurring in the course of employment
35 and what approximate percentage of the permanent disability is
36 caused by other factors both before and subsequent to the industrial
37 injury, including prior industrial injuries. If the physician is unable
38 to include an apportionment determination in his or her report, the
39 physician shall state the specific reasons why the physician cannot
40 make a determination of the effect of that prior condition on the

1 permanent disability arising from the injury. The physician shall
2 then consult with other physicians or refer the employee to another
3 physician from whom the employee is authorized to seek treatment
4 or evaluation in accordance with this division in order to make the
5 final determination. Race, religious creed, color, national origin,
6 age, gender, marital status, sex, sexual orientation, or genetic
7 predisposition shall not be considered a cause or other factor of
8 disability with regard to any determination made under this section.

9 (d) An employee who claims an industrial injury shall, upon
10 request, disclose all previous permanent disabilities or physical
11 impairments.

12 (e) Subdivisions (a), (b), and (c) shall not apply to injuries or
13 illnesses covered under Sections 3212, 3212.1, 3212.2, 3212.3,
14 3212.4, 3212.5, 3212.6, 3212.7, 3212.8, 3212.85, 3212.9, 3212.10,
15 3212.11, 3212.12, 3213, and 3213.2.

16 SEC. 3. (a) The Legislature finds and declares all of the
17 following:

18 (1) The federal and state constitutions, federal law, and state
19 statutes prohibit employment discrimination against individuals
20 on the basis of immutable characteristics, such as race, age, gender,
21 and sexual orientation, as well as other factors, such as religion
22 and marital status.

23 (2) Under the state's workers' compensation system, injured
24 workers or their dependents are entitled to certain benefits that
25 include compensation for permanent partial disability or death
26 arising out of, and in the course of, employment, without regard
27 to fault. In return, employers are shielded from civil liability in
28 any claims of negligence related to the employee's injury.

29 (3) Workers' compensation benefits have been reduced or denied
30 on the basis of personal characteristics of the employee that, if
31 applied in an employment context, would be prohibited
32 employment discrimination.

33 (b) It is the intent of the Legislature to enact legislation that
34 would apply employment discrimination protections to workers'
35 compensation law in order to prohibit the wrongful reduction or
36 denial of workers' compensation benefits.

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