

ASSEMBLY BILL

No. 1155

**Introduced by Assembly Members Alejo, Roger Hernández, and
Lara**

**(Coauthors: Assembly Members Allen, Ammiano, Cedillo,
Dickinson, Eng, Fong, Furutani, Hueso, Ma, Mendoza, Monning,
and Swanson)**

(Coauthors: Senators Hancock, Rubio, and Steinberg)

February 18, 2011

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1155, as introduced, Alejo. Workers' compensation.

(1) 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.

This bill would provide that a workers' compensation claim shall not be denied because the employee's injury or death was related to the employee's race, religious creed, color, national origin, age, gender, marital status, sex, sexual orientation, or genetic characteristics.

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 in order 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 characteristics 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.

1 (8) Where the injury is not caused by the commission of a
2 felony, or a crime ~~which~~ *that* is punishable as specified in
3 subdivision (b) of Section 17 of the Penal Code, by the injured
4 employee, for which he or she has been convicted.

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

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

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

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

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

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

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

38 A notice of termination or layoff that is not followed within 60
39 days by that termination or layoff shall not be subject to the
40 provisions of this paragraph, and this paragraph shall not apply

1 until receipt of a later notice of termination or layoff. The issuance
2 of frequent notices of termination or layoff to an employee shall
3 be considered a bad faith personnel action and shall make this
4 paragraph inapplicable to the employee.

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

16 (c) For purposes of determining whether to grant or deny a
17 workers' compensation claim, if an employee is injured or killed
18 by a third party in the course of the employee's employment, no
19 personal relationship or personal connection shall be deemed to
20 exist between the employee and the third party based only on a
21 determination that the third party injured or killed the employee
22 solely because of the third party's personal beliefs relating to his
23 or her perception of the employee's race, religious creed, color,
24 national origin, age, gender, disability, sex, or sexual orientation.

25 (d) *A workers' compensation claim shall not be denied because*
26 *the employee's injury or death was related to the employee's race,*
27 *religious creed, color, national origin, age, gender, marital status,*
28 *sex, sexual orientation, or genetic characteristics.*

29 (e) *For purposes of this section, "genetic characteristics" has*
30 *the same meaning as that term is defined in subdivision (d) of*
31 *Section 10123.3 of the Insurance Code.*

32 SEC. 2. Section 4663 of the Labor Code is amended to read:
33 4663. (a) Apportionment of permanent disability shall be based
34 on causation.

35 (b) Any physician who prepares a report addressing the issue
36 of permanent disability due to a claimed industrial injury shall in
37 that report address the issue of causation of the permanent
38 disability.

39 (c) In order for a physician's report to be considered complete
40 on the issue of permanent disability, the report must include an

1 apportionment determination. A physician shall make an
2 apportionment determination by finding what approximate
3 percentage of the permanent disability ~~was~~ *is* caused by the direct
4 result of injury arising out of and occurring in the course of
5 employment and what approximate percentage of the permanent
6 disability ~~was~~ *is* caused by other factors both before and subsequent
7 to the industrial injury, including prior industrial injuries. If the
8 physician is unable to include an apportionment determination in
9 his or her report, the physician shall state the specific reasons why
10 the physician ~~could not~~ *cannot* make a determination of the effect
11 of that prior condition on the permanent disability arising from the
12 injury. The physician shall then consult with other physicians or
13 refer the employee to another physician from whom the employee
14 is authorized to seek treatment or evaluation in accordance with
15 this division in order to make the final determination. *Race,*
16 *religious creed, color, national origin, age, gender, marital status,*
17 *sex, sexual orientation, or genetic characteristics shall not be*
18 *considered a cause or other factor of disability with regard to any*
19 *determination made under this section.*

20 (d) An employee who claims an industrial injury shall, upon
21 request, disclose all previous permanent disabilities or physical
22 impairments.

23 (e) Subdivisions (a), (b), and (c) shall not apply to injuries or
24 illnesses covered under Sections 3212, 3212.1, 3212.2, 3212.3,
25 3212.4, 3212.5, 3212.6, 3212.7, 3212.8, 3212.85, 3212.9, 3212.10,
26 3212.11, 3212.12, 3213, and 3213.2.

27 (f) *For purposes of this section, “genetic characteristics” has*
28 *the same meaning as that term is defined in subdivision (d) of*
29 *Section 10123.3 of the Insurance Code.*

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

32 (1) The federal and state constitutions, federal law, and state
33 statutes prohibit employment discrimination against individuals
34 on the basis of immutable characteristics, such as race, age, gender,
35 and sexual orientation, as well as other factors, such as religion
36 and marital status.

37 (2) Under the state’s workers’ compensation system, injured
38 workers or their dependents are entitled to certain benefits that
39 include compensation for permanent partial disability or death
40 arising out of, and in the course of, employment, without regard

1 to fault. In return, employers are shielded from civil liability in
2 any claims of negligence related to the employee's injury.

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

7 (b) It is the intent of the Legislature to enact legislation that
8 would apply employment discrimination protections to workers'
9 compensation law in order to prohibit the wrongful reduction or
10 denial of workers' compensation benefits.