

AMENDED IN SENATE AUGUST 30, 2011

AMENDED IN SENATE JULY 12, 2011

AMENDED IN ASSEMBLY MAY 9, 2011

AMENDED IN ASSEMBLY APRIL 26, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1155**

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

**(Principal coauthor: Assembly Member Charles Calderon)**

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

**(Coauthors: Senators Hancock, Leno, Rubio, and Steinberg)**

February 18, 2011

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An act to amend Section 4663 of the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1155, as amended, 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 state the intent of the Legislature to prohibit the use of risk factors and specified characteristics to deny an injured worker his or her rightful benefit when disabled in the workplace. The bill would also state the intent of the Legislature to prohibit the

apportionment of risk factors and characteristics without prohibiting the apportionment of documentable preexisting nonindustrial causes of disability or holding an employer liable for any percentage of permanent disability not directly caused by an injury arising out of and occurring in the course of employment.

(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. *Existing law requires a physician to make an apportionment determination by finding what approximate percentage of the permanent disability is caused by the direct result of injury arising out of and occurring in the course of employment and what approximate percentage is caused by other factors.*

This bill would prohibit *the approximate percentage of the permanent disability caused by other factors from including consideration of 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 4663 of the Labor Code is amended to
- 2 read:
- 3 4663. (a) Apportionment of permanent disability shall be based
- 4 on causation.
- 5 (b) Any physician who prepares a report addressing the issue
- 6 of permanent disability due to a claimed industrial injury shall in
- 7 that report address the issue of causation of the permanent
- 8 disability.
- 9 (c) In order for a physician’s report to be considered complete
- 10 on the issue of permanent disability, the report shall include an
- 11 apportionment determination. A physician shall make an
- 12 apportionment determination by finding what approximate
- 13 percentage of the permanent disability is caused by the direct result
- 14 of injury arising out of and occurring in the course of employment

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

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

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

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

29 SEC. 2. (a) The Legislature finds and declares all of the  
30 following:

31 (1) Under the state’s workers’ compensation system, injured  
32 workers or their dependents are entitled to certain benefits that  
33 include compensation for permanent partial disability or death  
34 arising out of, and in the course of, employment, without regard  
35 to fault. In return, employers are shielded from civil liability in  
36 any claims of negligence related to the employee’s injury.

37 (2) Workers’ compensation benefits should never be based on  
38 the personal characteristics and risk factors of the employee, and  
39 their use runs counter to the original intent of apportionment.

1 (b) It is the intent of the Legislature to ensure that risk factors  
2 and characteristics of race, religious creed, color, national origin,  
3 age, gender, marital status, sex, sexual orientation, or genetic  
4 characteristics are not used to deny an injured worker his or her  
5 rightful benefit when disabled in the workplace.

6 (c) It is the intent of the Legislature to prohibit the  
7 apportionment of risk factors and characteristics without  
8 prohibiting the apportionment of documentable preexisting  
9 nonindustrial causes of disability in individual cases or without  
10 holding an employer liable for any percentage of permanent  
11 disability not directly caused by the injury arising out of and  
12 occurring in the course of employment.