

AMENDED IN SENATE SEPTEMBER 1, 2011

AMENDED IN SENATE AUGUST 29, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1426

Introduced by Assembly Member Solorio

March 22, 2011

An act to amend Sections 110, 123.5, 123.6, 127, 133, 138, 138.1, 138.2, 5307, 5307.3, 5310, 5311.5, 5500.3, and 5502 of, and to repeal Section 127.5 of, the Labor Code, relating to workers' compensation, *and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1426, as amended, Solorio. Workers' compensation: court administrator.

Existing law creates the position of court administrator with respect to the workers' compensation adjudicatory process at the trial level. The court administrator is appointed by the Governor with the advice and consent of the Senate and has specified powers and duties relating to the workers' compensation trial process, including supervision of administrative law judges and prescribing certain forms and calendars.

This bill would remove the position of court administrator and distribute the duties to the Workers' Compensation Appeals Board and the Administrative Director of the Division of Workers' Compensation, as specified. The bill would make other technical and conforming changes.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ~~majority~~^{2/3}. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

1 SECTION 1. The Legislature finds and declares that the court
2 administrator in the Division of Workers' Compensation, created
3 pursuant to Chapter 6 of the Statutes of 2002, fails to achieve the
4 intended uniformity and expedition of proceedings in the district
5 offices of the workers' compensation appeals board. The court
6 administrator creates divided lines of authority and accountability,
7 and it does not promote coordination of the functions of the
8 Division of Workers' Compensation. The Legislature therefore
9 intends to eliminate the position of the court administrator and to
10 reassign the powers and duties of the court administrator to the
11 Workers' Compensation Appeals Board or to the Administrative
12 Director of the Division of Workers' Compensation, as appropriate.

13 SEC. 2. Section 110 of the Labor Code is amended to read:
14 110. As used in this chapter:
15 (a) "Appeals board" means the Workers' Compensation Appeals
16 Board. The title of a member of the board is "commissioner."
17 (b) "Administrative director" means the Administrative Director
18 of the Division of Workers' Compensation.
19 (c) "Division" means the Division of Workers' Compensation.
20 (d) "Medical director" means the physician appointed by the
21 administrative director pursuant to Section 122.
22 (e) "Qualified medical evaluator" means physicians appointed
23 by the administrative director pursuant to Section 139.2.

24 SEC. 3. Section 123.5 of the Labor Code is amended to read:
25 123.5. (a) Workers' compensation administrative law judges
26 employed by the administrative director shall be taken from an
27 eligible list of attorneys licensed to practice law in this state, who
28 have the qualifications prescribed by the State Personnel Board.
29 In establishing eligible lists for this purpose, state civil service
30 examinations shall be conducted in accordance with the State Civil
31 Service Act (Part 2 (commencing with Section 18500) of Division
32 5 of Title 2 of the Government Code). Every workers'
33 compensation judge shall maintain membership in the State Bar
34 of California during his or her tenure.

1 A workers' compensation administrative law judge may not
2 receive his or her salary as a workers' compensation administrative
3 law judge while any cause before the workers' compensation
4 administrative law judge remains pending and undetermined for
5 90 days after it has been submitted for decision.

6 (b) All workers' compensation administrative law judges
7 appointed on or after January 1, 2003, shall be attorneys licensed
8 to practice law in California for five or more years prior to their
9 appointment and shall have experience in workers' compensation
10 law.

11 SEC. 4. Section 123.6 of the Labor Code is amended to read:

12 123.6. (a) All workers' compensation administrative law judges
13 employed by the administrative director shall subscribe to the Code
14 of Judicial Ethics adopted by the Supreme Court pursuant to
15 subdivision (m) of Section 18 of Article VI of the California
16 Constitution for the conduct of judges and shall not otherwise,
17 directly or indirectly, engage in conduct contrary to that code or
18 to the commentary to the Code of Judicial Ethics.

19 In consultation with the Commission on Judicial Performance,
20 the administrative director shall adopt regulations to enforce this
21 section. To the extent possible, the rules shall be consistent with
22 the procedures established by the Commission on Judicial
23 Performance for regulating the activities of state judges, and, to
24 the extent possible, with the gift, honoraria, and travel restrictions
25 on legislators contained in the Political Reform Act of 1974 (Title
26 9 (commencing with Section 81000) of the Government Code).

27 (b) Honoraria or travel allowed by the administrative director,
28 and not otherwise prohibited by this section in connection with
29 any public or private conference, convention, meeting, social event,
30 or like gathering, the cost of which is significantly paid for by
31 attorneys who practice before the board, may not be accepted
32 unless the administrative director has provided prior approval in
33 writing to the workers' compensation administrative law judge
34 allowing him or her to accept those payments.

35 SEC. 5. Section 127 of the Labor Code is amended to read:

36 127. The administrative director may do all of the following:

37 (a) Charge and collect fees for copies of papers and records, for
38 certified copies of official documents and orders or of the evidence
39 taken or proceedings had, for transcripts of testimony, and for
40 inspection of case files not stored in the place where the inspection

1 is requested. The administrative director shall fix those fees in an
2 amount sufficient to recover the actual costs of furnishing the
3 services. No fees for inspection of case files shall be charged to
4 an injured employee or his or her representative.

5 (b) Publish and distribute from time to time, in addition to the
6 reports to the Governor, further reports and pamphlets covering
7 the operations, proceedings, and matters relative to the work of
8 the division.

9 (c) Prepare, publish, and distribute an office manual, for which
10 a reasonable fee may be charged, and to which additions, deletions,
11 amendments, and other changes from time to time may be adopted,
12 published, and distributed, for which a reasonable fee may be
13 charged for the revision, or for which a reasonable fee may be
14 fixed on an annual subscription basis.

15 (d) Fix and collect reasonable charges for publications issued.

16 SEC. 6. Section 127.5 of the Labor Code is repealed.

17 SEC. 7. Section 133 of the Labor Code is amended to read:

18 133. The Division of Workers' Compensation, including the
19 administrative director and the appeals board, shall have power
20 and jurisdiction to do all things necessary or convenient in the
21 exercise of any power or jurisdiction conferred upon it under this
22 code.

23 SEC. 8. Section 138 of the Labor Code is amended to read:

24 138. The administrative director may appoint a deputy to act
25 when he or she is absent from the state due to official business,
26 vacation, or illness.

27 SEC. 9. Section 138.1 of the Labor Code is amended to read:

28 138.1. The administrative director shall be appointed by the
29 Governor with the advice and consent of the Senate and shall hold
30 office at the pleasure of the Governor. He or she shall receive the
31 salary provided for by Chapter 6 (commencing with Section 11550)
32 of Part 1 of Division 3 of Title 2 of the Government Code.

33 SEC. 10. Section 138.2 of the Labor Code is amended to read:

34 138.2. (a) The headquarters of the Division of Workers'
35 Compensation shall be based at and operated from a centrally
36 located city.

37 The administrative director shall have an office in that city with
38 suitable rooms, necessary office furniture, stationery, and supplies,
39 and may rent quarters in other places for the purpose of establishing

1 branch or service offices, and for that purpose may provide those
2 offices with necessary furniture, stationery, and supplies.

3 (b) The administrative director shall provide suitable rooms,
4 with necessary office furniture, stationery, and supplies, for the
5 appeals board at the centrally located city in which the board shall
6 be based and from which it shall operate, and may rent quarters
7 in other places for the purpose of establishing branch or service
8 offices for the appeals board, and for that purpose may provide
9 those offices with necessary furniture, stationery, and supplies.

10 (c) All meetings held by the administrative director shall be
11 open and public. Notice thereof shall be published in papers of
12 general circulation not more than 30 days and not less than 10 days
13 prior to each meeting in Sacramento, San Francisco, Fresno, Los
14 Angeles, and San Diego. Written notice of all meetings shall be
15 given to all persons who request, in writing directed to the
16 administrative director, that they be given notice.

17 SEC. 11. Section 5307 of the Labor Code is amended to read:

18 5307. (a) The appeals board may, by an order signed by four
19 members, do all of the following:

20 (1) Adopt reasonable and proper rules of practice and procedure.

21 (2) Regulate and provide the manner in which, and by whom,
22 minors and incompetent persons are to appear and be represented
23 before it.

24 (3) Regulate and prescribe the kind and character of notices,
25 where not specifically prescribed by this division, and the service
26 thereof.

27 (4) Regulate and prescribe the nature and extent of the proofs
28 and evidence.

29 (b) No rule or regulation of the appeals board pursuant to this
30 section shall be adopted, amended, or rescinded without public
31 hearings. Any written request filed with the appeals board seeking
32 a change in its rules or regulations shall be deemed to be denied
33 if not set by the appeals board for public hearing to be held within
34 six months of the date on which the request is received by the
35 appeals board.

36 SEC. 12. Section 5307.3 of the Labor Code is amended to read:

37 5307.3. The administrative director may adopt, amend, or
38 repeal any rules and regulations that are reasonably necessary to
39 enforce this division, except where this power is specifically
40 reserved to the appeals board.

1 No rule or regulation of the administrative director pursuant to
2 this section shall be adopted, amended, or rescinded without public
3 hearings. Any written request filed with the administrative director
4 seeking a change in its rules or regulations shall be deemed to be
5 denied if not set by the administrative director for public hearing
6 to be held within six months of the date on which the request is
7 received by the administrative director.

8 SEC. 13. Section 5310 of the Labor Code is amended to read:

9 5310. The appeals board may appoint one or more workers'
10 compensation administrative law judges in any proceeding, as it
11 may deem necessary or advisable, and may refer, remove to itself,
12 or transfer to a workers' compensation administrative law judge
13 the proceedings on any claim. The administrative director may
14 appoint workers' compensation administrative law judges. Any
15 workers' compensation administrative law judge appointed by the
16 administrative director has the powers, jurisdiction, and authority
17 granted by law, by the order of appointment, and by the rules of
18 the appeals board.

19 SEC. 14. Section 5311.5 of the Labor Code is amended to read:

20 5311.5. The administrative director shall require all workers'
21 compensation administrative law judges to participate in continuing
22 education to further their abilities as workers' compensation
23 administrative law judges, including courses in ethics and conflict
24 of interest. The director may coordinate the requirements with
25 those imposed upon attorneys by the State Bar in order that the
26 requirements may be consistent.

27 SEC. 15. Section 5500.3 of the Labor Code is amended to read:

28 5500.3. (a) The appeals board shall establish uniform district
29 office procedures, uniform forms, and uniform time of court
30 settings for all district offices of the appeals board. No district
31 office of the appeals board or workers' compensation
32 administrative law judge shall require forms or procedures other
33 than as established by the appeals board. A workers' compensation
34 administrative law judge who violates this section may be subject
35 to disciplinary proceedings.

36 (b) The appeals board shall establish uniform court procedures
37 and uniform forms for all other proceedings of the appeals board.

38 SEC. 16. Section 5502 of the Labor Code is amended to read:

39 5502. (a) Except as provided in subdivisions (b) and (d), the
40 hearing shall be held not less than 10 days, and not more than 60

1 days, after the date a declaration of readiness to proceed, on a form
2 prescribed by the appeals board, is filed. If a claim form has been
3 filed for an injury occurring on or after January 1, 1990, and before
4 January 1, 1994, an application for adjudication shall accompany
5 the declaration of readiness to proceed.

6 (b) The administrative director shall establish a priority calendar
7 for issues requiring an expedited hearing and decision. A hearing
8 shall be held and a determination as to the rights of the parties
9 shall be made and filed within 30 days after the declaration of
10 readiness to proceed is filed if the issues in dispute are any of the
11 following:

12 (1) The employee's entitlement to medical treatment pursuant
13 to Section 4600.

14 (2) The employee's entitlement to, or the amount of, temporary
15 disability indemnity payments.

16 (3) The employee's entitlement to compensation from one or
17 more responsible employers when two or more employers dispute
18 liability as among themselves.

19 (4) Any other issues requiring an expedited hearing and
20 determination as prescribed in rules and regulations of the
21 administrative director.

22 (c) The administrative director shall establish a priority
23 conference calendar for cases in which the employee is represented
24 by an attorney and the issues in dispute are employment or injury
25 arising out of employment or in the course of employment. The
26 conference shall be conducted by a workers' compensation
27 administrative law judge within 30 days after the declaration of
28 readiness to proceed. If the dispute cannot be resolved at the
29 conference, a trial shall be set as expeditiously as possible, unless
30 good cause is shown why discovery is not complete, in which case
31 status conferences shall be held at regular intervals. The case shall
32 be set for trial when discovery is complete, or when the workers'
33 compensation administrative law judge determines that the parties
34 have had sufficient time in which to complete reasonable discovery.
35 A determination as to the rights of the parties shall be made and
36 filed within 30 days after the trial.

37 (d) The administrative director shall report quarterly to the
38 Governor and to the Legislature concerning the frequency and
39 types of issues which are not heard and decided within the period
40 prescribed in this section and the reasons therefor.

1 (e) (1) In all cases, a mandatory settlement conference shall be
2 conducted not less than 10 days, and not more than 30 days, after
3 the filing of a declaration of readiness to proceed. If the dispute is
4 not resolved, the regular hearing shall be held within 75 days after
5 the declaration of readiness to proceed is filed.

6 (2) The settlement conference shall be conducted by a workers'
7 compensation administrative law judge or by a referee who is
8 eligible to be a workers' compensation administrative law judge
9 or eligible to be an arbitrator under Section 5270.5. At the
10 mandatory settlement conference, the referee or workers'
11 compensation administrative law judge shall have the authority to
12 resolve the dispute, including the authority to approve a
13 compromise and release or issue a stipulated finding and award,
14 and if the dispute cannot be resolved, to frame the issues and
15 stipulations for trial. The appeals board shall adopt any regulations
16 needed to implement this subdivision. The presiding workers'
17 compensation administrative law judge shall supervise settlement
18 conference referees in the performance of their judicial functions
19 under this subdivision.

20 (3) If the claim is not resolved at the mandatory settlement
21 conference, the parties shall file a pretrial conference statement
22 noting the specific issues in dispute, each party's proposed
23 permanent disability rating, and listing the exhibits, and disclosing
24 witnesses. Discovery shall close on the date of the mandatory
25 settlement conference. Evidence not disclosed or obtained
26 thereafter shall not be admissible unless the proponent of the
27 evidence can demonstrate that it was not available or could not
28 have been discovered by the exercise of due diligence prior to the
29 settlement conference.

30 (f) In cases involving the Director of the Department of
31 Industrial Relations in his or her capacity as administrator of the
32 Uninsured Employers Fund, this section shall not apply unless
33 proof of service, as specified in paragraph (1) of subdivision (d)
34 of Section 3716, has been filed with the appeals board and provided
35 to the Director of Industrial Relations, valid jurisdiction has been
36 established over the employer, and the fund has been joined.

37 (g) Except as provided in subdivision (a) and in Section 4065,
38 the provisions of this section shall apply irrespective of the date
39 of injury.

1 SEC. 17. All regulations adopted by the court administrator
2 shall remain in effect unless amended or repealed by either the
3 Workers' Compensation Appeals Board or the Administrative
4 Director of the Division of Workers' Compensation. Regulations
5 of the court administrator that have been adopted pursuant to
6 Sections 5307, 5500.3, or subdivision (a) of Section 5502 shall be
7 deemed to be regulations of the Workers' Compensation Appeals
8 Board. All other regulations of the court administrator shall be
9 deemed to be regulations of the Administrative Director of the
10 Division of Workers' Compensation.

11 *SEC. 18. This act is an urgency statute necessary for the*
12 *immediate preservation of the public peace, health, or safety within*
13 *the meaning of Article IV of the Constitution and shall go into*
14 *immediate effect. The facts constituting the necessity are:*

15 *In order to streamline the procedures used in the workers'*
16 *compensation adjudication system by giving the Administrative*
17 *Director of the Division of Workers' Compensation and the*
18 *Workers' Compensation Appeals Board the authority that statute*
19 *presently gives to the court administrator as quickly as possible*
20 *while there is currently no court administrator, it is necessary that*
21 *this act take effect immediately.*