

AMENDED IN SENATE JUNE 18, 2012

AMENDED IN SENATE JUNE 6, 2012

AMENDED IN ASSEMBLY MARCH 12, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1687

Introduced by Assembly Member Fong

February 14, 2012

An act to amend Section 138.4 of, and to add Section 4610.2 to, the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1687, as amended, Fong. Workers' compensation.

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. Existing law requires every employer to establish a utilization review process, either directly or through its insurer or an entity with which an employer contracts for these services, for the purpose of reviewing and approving, modifying, delaying, or denying treatment recommendations made by physicians with respect to injured workers. Existing law requires that the administrative director, in consultation with the Commission on Health and Safety and Workers' Compensation, ~~prescribed~~ *prescribe* rules and regulations for serving notices that contain specified information on employees.

This bill would add information regarding objections to decisions based on utilization reviews to those *prescribed* notices ~~for which rules and regulations are required to be prescribed~~.

Under existing law, when a party to a proceeding institutes proceedings to terminate an award made by the Workers’ Compensation Appeals Board for continuing medical treatment and is unsuccessful in these proceedings, the appeals board is authorized to award reasonable attorney’s fees to an applicant resisting these proceedings.

This bill would authorize the appeals board to award attorney’s fees reasonably incurred by an applicant who prevails in a proceeding in connection with the enforcement of a ~~medical~~ *final award of permanent disability* following a *medical* dispute that arises in the course of the utilization review process ~~if the applicant employs an attorney to enforce the award.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

1 SECTION 1. Section 138.4 of the Labor Code is amended to
2 read:

3 138.4. (a) For the purpose of this section, “claims
4 administrator” means a self-administered workers’ compensation
5 insurer; or a self-administered self-insured employer; or a
6 self-administered legally uninsured employer; or a
7 self-administered joint powers authority; or a third-party claims
8 administrator for an insurer, a self-insured employer, a legally
9 uninsured employer, or a joint powers authority.

10 (b) With respect to injuries resulting in lost time beyond the
11 employee’s work shift at the time of injury or medical treatment
12 beyond first aid:

13 (1) If the claims administrator obtains knowledge that the
14 employer has not provided a claim form or a notice of potential
15 eligibility for benefits to the employee, it shall provide the form
16 and notice to the employee within three working days of its
17 knowledge that the form or notice was not provided.

18 (2) If the claims administrator cannot determine if the employer
19 has provided a claim form and notice of potential eligibility for
20 benefits to the employee, the claims administrator shall provide
21 the form and notice to the employee within 30 days of the
22 administrator’s date of knowledge of the claim.

23 (c) The administrative director, in consultation with the
24 Commission on Health and Safety and Workers’ Compensation,

1 shall prescribe reasonable rules and regulations, including notice
2 of the right to consult with an attorney, where appropriate, for
3 serving on the employee (or employee's dependents, in the case
4 of death), the following:

5 (1) Notices dealing with the payment, nonpayment, or delay in
6 payment of temporary disability, permanent disability,
7 supplemental job displacement, and death benefits.

8 (2) Notices of any change in the amount or type of benefits
9 being provided, the termination of benefits, the rejection of any
10 liability for compensation, and an accounting of benefits paid.

11 (3) Notices of rights to select the primary treating physician,
12 written continuity of care policies, requests for a comprehensive
13 medical evaluation, explanations of the options available to object
14 to a decision made pursuant to the utilization review process, as
15 described in Section 4610, to modify, delay, or deny medical
16 treatment, and offers of regular, modified, or alternative work.

17 (d) The administrative director, in consultation with the
18 Commission on Health and Safety and Workers' Compensation,
19 shall develop, make fully accessible on the department's Internet
20 Web site, and make available at district offices informational
21 material written in plain language that describes the overall
22 workers' compensation claims process, including the rights and
23 obligations of employees and employers at every stage of a claim
24 when a notice is required.

25 (e) Each notice prescribed by the administrative director shall
26 be written in plain language, shall reference the informational
27 material described in subdivision (d) to enable employees to
28 understand the context of the notices, and shall clearly state the
29 Internet Web site address and contact information that an employee
30 may use to access the informational material.

31 SEC. 2. Section 4610.2 is added to the Labor Code, to read:

32 4610.2. If ~~an~~ a final award of permanent disability made by
33 the appeals board specifies the provision of future medical
34 treatment and a *medical* dispute arises in the course of a utilization
35 review conducted pursuant to Section 4610 in connection with the
36 enforcement of this award, and the applicant employs an attorney
37 for purposes of enforcing the award and prevails, the appeals board

- 1 may award attorney's fees reasonably incurred by the applicant in
- 2 connection with enforcement of the award.

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