

ASSEMBLY BILL

No. 638

Introduced by Assembly Member Alejo

February 20, 2013

An act to amend Section 5502 of the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

AB 638, as introduced, Alejo. Workers' compensation: proceedings: expedited hearings.

Existing law establishes a workers' compensation system to compensate an employee for injuries sustained in the course of his or her employment. Under this system, the Workers' Compensation Appeals Board has jurisdiction to adjudicate claims relating to workers' compensation. Existing law creates the Administrative Director of the Division of Workers' Compensation, who has specified powers and duties relating to the workers' compensation trial process. Existing law requires the administrative director to establish a priority conference calendar for cases in which the employee is represented by an attorney and the disputed issues are employment or injury, as specified.

This bill would additionally require that cases in which the employee has an illegally uninsured employer and the disputed issues are employment or injury, as specified, be placed on the priority conference calendar established under existing law.

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 5502 of the Labor Code is amended to
2 read:

3 5502. (a) Except as provided in subdivisions (b) and (d), the
4 hearing shall be held not less than 10 days, and not more than 60
5 days, after the date a declaration of readiness to proceed, on a form
6 prescribed by the appeals board, is filed. If a claim form has been
7 filed for an injury occurring on or after January 1, 1990, and before
8 January 1, 1994, an application for adjudication shall accompany
9 the declaration of readiness to proceed.

10 (b) The administrative director shall establish a priority calendar
11 for issues requiring an expedited hearing and decision. A hearing
12 shall be held and a determination as to the rights of the parties
13 shall be made and filed within 30 days after the declaration of
14 readiness to proceed is filed if the issues in dispute are any of the
15 following, provided that when an expedited hearing is requested
16 pursuant to to resolve the matter identified in paragraph (2), no
17 other issue may be heard until the medical provider network dispute
18 is resolved:

19 (A)

20 (1) The employee’s entitlement to medical treatment pursuant
21 to Section 4600, except for treatment issues determined pursuant
22 to Sections 4610 and 4610.5.

23 (B)

24 (2) Whether the injured employee is required to obtain treatment
25 within a medical provider network.

26 (C)

27 (3) A medical treatment appointment or medical-legal
28 examination.

29 (D)

30 (4) The employee’s entitlement to, or the amount of, temporary
31 disability indemnity payments.

32 (E)

33 (5) The employee’s entitlement to compensation from one or
34 more responsible employers when two or more employers dispute
35 liability as among themselves.

36 (F)

1 (6) Any other issues requiring an expedited hearing and
2 determination as prescribed in rules and regulations of the
3 administrative director.

4 (c) The administrative director shall establish a priority
5 conference calendar for cases in which the employee is represented
6 by an attorney *or has an illegally uninsured employer* and the
7 issues in dispute are employment or injury arising out of
8 employment or in the course of employment. The conference shall
9 be conducted by a workers' compensation administrative law judge
10 within 30 days after the declaration of readiness to proceed. If the
11 dispute cannot be resolved at the conference, a trial shall be set as
12 expeditiously as possible, unless good cause is shown why
13 discovery is not complete, in which case status conferences shall
14 be held at regular intervals. The case shall be set for trial when
15 discovery is complete, or when the workers' compensation
16 administrative law judge determines that the parties have had
17 sufficient time in which to complete reasonable discovery. A
18 determination as to the rights of the parties shall be made and filed
19 within 30 days after the trial.

20 (d) (1) In all cases, a mandatory settlement conference, except
21 a lien conference or a mandatory settlement lien conference, shall
22 be conducted not less than 10 days, and not more than 30 days,
23 after the filing of a declaration of readiness to proceed. If the
24 dispute is not resolved, the regular hearing, except a lien trial, shall
25 be held within 75 days after the declaration of readiness to proceed
26 is filed.

27 (2) The settlement conference shall be conducted by a workers'
28 compensation administrative law judge or by a referee who is
29 eligible to be a workers' compensation administrative law judge
30 or eligible to be an arbitrator under Section 5270.5. At the
31 mandatory settlement conference, the referee or workers'
32 compensation administrative law judge shall have the authority to
33 resolve the dispute, including the authority to approve a
34 compromise and release or issue a stipulated finding and award,
35 and if the dispute cannot be resolved, to frame the issues and
36 stipulations for trial. The appeals board shall adopt any regulations
37 needed to implement this subdivision. The presiding workers'
38 compensation administrative law judge shall supervise settlement
39 conference referees in the performance of their judicial functions
40 under this subdivision.

1 (3) If the claim is not resolved at the mandatory settlement
2 conference, the parties shall file a pretrial conference statement
3 noting the specific issues in dispute, each party's proposed
4 permanent disability rating, and listing the exhibits, and disclosing
5 witnesses. Discovery shall close on the date of the mandatory
6 settlement conference. Evidence not disclosed or obtained
7 thereafter shall not be admissible unless the proponent of the
8 evidence can demonstrate that it was not available or could not
9 have been discovered by the exercise of due diligence prior to the
10 settlement conference.

11 (e) In cases involving the Director of Industrial Relations in his
12 or her capacity as administrator of the Uninsured Employers Fund,
13 this section shall not apply unless proof of service, as specified in
14 paragraph (1) of subdivision (d) of Section 3716, has been filed
15 with the appeals board and provided to the Director of Industrial
16 Relations, valid jurisdiction has been established over the employer,
17 and the fund has been joined.

18 (f) Except as provided in subdivision (a) ~~and in Section 4065,~~
19 the provisions of this section shall apply irrespective of the date
20 of injury.