

ASSEMBLY BILL

No. 1309

Introduced by Assembly Member Perea
(Coauthor: Assembly Member Hagman)
(Coauthors: Senators Correa, Hill, and Lara)

February 22, 2013

An act to amend Sections 3600.5 and 5412 of the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1309, as introduced, Perea. Workers' compensation: professional athletes.

Existing workers' compensation law requires employers to secure the payment of workers' compensation, including medical treatment, for injuries incurred by their employees that arise out of, or in the course of, employment.

Existing law provides that an injury may be either "specific," occurring as the result of one incident or exposure that causes disability or need for medical treatment, or "cumulative," occurring as repetitive mentally or physically traumatic activities extending over a period of time, the combined effect of which causes any disability or need for medical treatment. Existing law provides that the date of injury in cases of occupational diseases or cumulative injuries is that date upon which the employee first suffered disability therefrom and either knew, or in the exercise of reasonable diligence should have known, that the disability was caused by his or her present or prior employment.

Existing law provides that an employee who has been hired outside of this state and his or her employer are exempt from these provisions while the employee is temporarily within this state doing work for his

or her employer if the employer has furnished workers' compensation insurance coverage under the workers' compensation insurance or similar laws of a state other than California, as specified.

This bill would provide that an employee hired outside of this state, his or her dependents, and his or her employer shall be exempt from this state's workers' compensation laws if the employee is a professional athlete, defined, for purposes of these provisions, to include an athlete who is employed at the minor or major league level in the sport of baseball, basketball, football, hockey, or soccer, and that professional athlete is temporarily within this state doing work for his or her employer. This bill would deem a professional athlete to be temporarily within the state doing work for his or her employer if, during the 365 days immediately preceding either the professional athlete's date of injury, or, in the case of an occupational disease or cumulative injury claim, the professional athlete's last date of injurious exposure while employed anywhere as a professional athlete, the professional athlete performs less than 90 total days of required services within the state under the direction and control of the employer. The bill would provide that if the employee is a professional athlete, the date of injury in cases of occupational diseases or cumulative injuries is the date of the employee's last injurious exposure while employed anywhere as a professional athlete, or the date of diagnosis, as defined, by a licensed physician, whichever occurs later.

The bill would also provide that an employer of a professional athlete that is subject to California's workers' compensation laws is not liable for occupational disease or cumulative injury if at the time application for benefits is made the professional athlete performed his or her last year of work in an occupation that exposed him or her to the occupational disease or cumulative injury as an employee of one or more other employers that are exempt from California's workers' compensation laws or pursuant to the above provisions or any other law. The bill would provide that these changes apply to all pending claims for benefits, as specified.

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 3600.5 of the Labor Code is amended to
 2 read:

1 3600.5. (a) If an employee who has been hired or is regularly
2 employed in the state receives personal injury by accident arising
3 out of and in the course of ~~such~~ employment outside of this state,
4 he *or she*, or his *or her* dependents, in the case of his *or her* death,
5 shall be entitled to compensation according to the law of this state.

6 (b) ~~Any~~ (1) *Except as provided in subdivision (c), an employee*
7 *who has been hired outside of this state and his or her employer*
8 *shall be exempted from the provisions of this division while ~~such~~*
9 *the employee is temporarily within this state doing work for his*
10 *or her employer if ~~such the~~ employer has furnished ~~workmen's~~*
11 *workers' compensation insurance coverage under the ~~workmen's~~*
12 *workers' compensation insurance or similar laws of a state other*
13 *than California, so as to cover ~~such the~~ employee's employment*
14 *while in this state; provided, the state if both of the following apply:*

15 (A) *The extraterritorial provisions of this division are recognized*
16 *in ~~such the~~ other state and provided.*

17 (B) *The employers and employees who are covered in this state*
18 *are likewise exempted from the application of the ~~workmen's~~*
19 *workers' compensation insurance or similar laws of ~~such the~~ other*
20 *state. The*

21 (2) *In any case in which paragraph (1) is applicable, the benefits*
22 *under the ~~Workmen's Compensation Insurance Act~~ workers'*
23 *compensation insurance or similar laws of ~~such the~~ other state, or*
24 *and other remedies under ~~such act or such~~ those laws, shall be the*
25 *exclusive remedy against ~~such the~~ employer for any injury, whether*
26 *resulting in death or not, received by ~~such the~~ employee while*
27 *working for ~~such the~~ employer in this state.*

28 (c) (1) *Any professional athlete who has been hired outside of*
29 *this state and his or her dependents and his or her employer shall*
30 *be exempted from the provisions of this division while the*
31 *professional athlete is temporarily within this state doing work*
32 *for his or her employer if both of the following apply:*

33 (A) *The employer has furnished workers' compensation*
34 *insurance coverage or its equivalent under the laws of a state other*
35 *than California.*

36 (B) *The employer's workers' compensation insurance or its*
37 *equivalent covers the professional athlete's employment while in*
38 *this state.*

39 (2) *If the conditions described in paragraph (1) are satisfied,*
40 *then the benefits under the laws of the other state, and other*

1 remedies under those laws, shall be the exclusive benefits and
2 remedies against the employer for any injury, whether resulting
3 in death or not, received by the employee while working for the
4 employer in this state.

5 (3) A professional athlete shall be deemed, for purposes of this
6 subdivision, to be temporarily within this state doing work for his
7 or her employer if, during the 365 days immediately preceding
8 either the professional athlete’s date of injury, or, in the case of
9 occupational disease or cumulative injury claims, the professional
10 athlete’s last date of injurious exposure while employed anywhere
11 as a professional athlete, the professional athlete performs less
12 than 90 total days of required services within the state under the
13 direction and control of the employer.

14 (4) An employer of a professional athlete that is subject to this
15 division is not liable for occupational disease or cumulative injury
16 pursuant to Section 5500.5 if at the time application for benefits
17 is made the professional athlete performed his or her last year of
18 work in an occupation that exposed him or her to the occupational
19 disease or cumulative injury as an employee of one or more other
20 employers that are exempt from this division pursuant to paragraph
21 (1) or any other law.

22 (5) The term “professional athlete” for purposes of this
23 subdivision means an athlete who is employed at either a minor
24 or major league level in the sport of baseball, basketball, football,
25 hockey, or soccer.

26 (6) The amendments made to this section by the act adding this
27 paragraph apply to all pending claims for benefits pursuant to
28 this division that have not yet been adjudicated.

29 **A**

30 (d) For purposes of this section, a certificate from the duly
31 authorized officer of the appeals board or similar department of
32 another state certifying that the employer of ~~such~~ the other state
33 is insured ~~therein~~ in that state and has provided extraterritorial
34 coverage insuring his or her employees while working within this
35 state shall be prima facie evidence that ~~such~~ the employer carries
36 ~~such workmen’s~~ workers’ compensation insurance.

37 SEC. 2. Section 5412 of the Labor Code is amended to read:

38 5412. (a) The date of injury in cases of occupational diseases
39 or cumulative injuries is that date upon which the employee first
40 suffered disability therefrom and either knew, or in the exercise

1 of reasonable diligence should have known, that ~~such~~ *the* disability
2 was caused by his or her present or prior employment.

3 *(b) In the event the employee is a professional athlete:*

4 *(1) The date of injury in cases of occupational disease or*
5 *cumulative injuries is the date of the employee's last injurious*
6 *exposure while employed anywhere as a professional athlete, or*
7 *the date of diagnosis by a licensed physician, whichever occurs*
8 *later.*

9 *(2) The date of diagnosis by a licensed physician is that date*
10 *on which the licensed physician informed the professional athlete*
11 *of his or her medical diagnosis.*

12 *(3) The time limitation in subdivision (a) of Section 5405 may*
13 *be tolled only by reason of the employee's mental incompetence*
14 *during the time permitted to commence proceedings pursuant to*
15 *subdivision (a) of Section 5405.*

16 *(4) The term "professional athlete" as used in this subdivision*
17 *shall have the same meaning as set forth in paragraph (5) of*
18 *subdivision (c) of Section 3600.5.*