

AMENDED IN ASSEMBLY APRIL 25, 2013

AMENDED IN ASSEMBLY APRIL 10, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1309**

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**Introduced by Assembly Member Perea**

(Principal coauthor: Senator Lieu)

~~(Coauthor: Assembly Member Hagman)~~

*(Coauthors: Assembly Members Buchanan, Conway, Hagman, and Hall)*

*(Coauthors: Senators Correa, Hill, and Huff, Lara, and Wyland)*

February 22, 2013

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1309, as amended, 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 the professional athlete's last day of work within the state, 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 this exception would apply to all occupational disease and cumulative injury claims filed against that employer of professional athletes, unless the professional athlete was employed for 8 or more consecutive years by the same California-based employer pursuant to a contract of hire entered into in California, and*

80% or more of the professional athlete's employment as a professional athlete occurred while employed by that California-based employer against whom the claim is filed. 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:

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

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

17 (A) The extraterritorial provisions of this division are recognized  
18 in the other state.

19 (B) The employers and employees who are covered in this state  
20 are likewise exempted from the application of the workers'  
21 compensation insurance or similar laws of the other state.

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

1 professional athlete is temporarily within this state doing work for  
2 his or her employer if both of the following apply:

3 (A) The employer has furnished workers' compensation  
4 insurance coverage or its equivalent under the laws of a state other  
5 than California.

6 (B) The employer's workers' compensation insurance or its  
7 equivalent covers the professional athlete's employment while in  
8 this state.

9 (2) If the conditions described in paragraph (1) are satisfied,  
10 then the benefits under the laws of the other state, and other  
11 remedies under those laws, shall be the exclusive remedy against  
12 the employer for any injury, whether resulting in death or not,  
13 received by the employee while working for the employer in this  
14 state.

15 (3) A professional athlete shall be deemed, for purposes of this  
16 subdivision, to be temporarily within this state doing work for his  
17 or her employer if, during the 365 days immediately preceding the  
18 professional athlete's last day of work within the state, the  
19 professional athlete performs less than 90 total days of required  
20 services within the state under the direction and control of the  
21 employer.

22 (4) (A) An employer of a professional athlete that is subject to  
23 this division is not liable for occupational disease or cumulative  
24 injury pursuant to Section 5500.5 if at the time application for  
25 benefits is made the professional athlete performed his or her last  
26 year of work in an occupation that exposed him or her to the  
27 occupational disease or cumulative injury as an employee of one  
28 or more other employers that are exempt from this division  
29 pursuant to paragraph (1) or any other law.

30 (B) *This paragraph shall apply to all occupational disease and*  
31 *cumulative injury claims filed against an employer of professional*  
32 *athletes if the employer is subject to this division, unless the*  
33 *professional athlete was employed for eight or more consecutive*  
34 *years by the same California-based employer pursuant to a*  
35 *contract of hire entered into in California, and 80 percent or more*  
36 *of the professional athlete's employment as a professional athlete*  
37 *occurred while employed by that California-based employer*  
38 *against whom the claim is filed. For purposes of the paragraph,*  
39 *both of the following apply:*

1 (i) A California-based employer is one with a principal place  
2 of business in this state that also plays the majority of its home  
3 games in California.

4 (ii) Whether 80 percent or more of a professional athlete's  
5 employment as a professional athlete occurred while employed by  
6 the same California-based employer shall be determined solely  
7 by taking the total number of days the professional athlete was  
8 employed by a California-based employer pursuant to a contract  
9 of hire entered into in California and dividing that number by the  
10 total number of days the professional athlete was employed as a  
11 professional athlete.

12 (5) The term "professional athlete" for purposes of this  
13 subdivision means an athlete who is employed at either a minor  
14 or major league level in the sport of baseball, basketball, football,  
15 hockey, or soccer.

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

19 (d) For purposes of this section, a certificate from the duly  
20 authorized officer of the appeals board or similar department of  
21 another state certifying that the employer of the other state is  
22 insured in that state and has provided extraterritorial coverage  
23 insuring his or her employees while working within this state shall  
24 be prima facie evidence that the employer carries workers'  
25 compensation insurance.

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

27 5412. (a) The date of injury in cases of occupational diseases  
28 or cumulative injuries is that date upon which the employee first  
29 suffered disability therefrom and either knew, or in the exercise  
30 of reasonable diligence should have known, that the disability was  
31 caused by his or her present or prior employment.

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

33 (1) The date of injury in cases of occupational disease or  
34 cumulative injuries is the date of the employee's last injurious  
35 exposure while employed anywhere as a professional athlete, or  
36 the date of diagnosis by a licensed physician, whichever occurs  
37 later.

38 (2) The date of diagnosis by a licensed physician is that date on  
39 which the licensed physician informed the professional athlete of  
40 his or her medical diagnosis.

1 (3) The time limitation in subdivision (a) of Section 5405 may  
2 be tolled only by reason of the employee’s mental incompetence  
3 during the time permitted to commence proceedings pursuant to  
4 subdivision (a) of Section 5405.

5 (4) The term “professional athlete” as used in this subdivision  
6 shall have the same meaning as set forth in paragraph (5) of  
7 subdivision (c) of Section 3600.5.

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