

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 305

Introduced by Assembly Member Gonzalez
(Coauthors: Assembly Members Chiu and McCarty)

February 12, 2015

An act to amend Section ~~1174~~ 4663 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 305, as amended, Gonzalez. ~~Employers: payroll records. Workers' compensation: permanent disability apportionment.~~

Existing workers' compensation law generally requires employers to secure payment of workers' compensation, including medical treatment, for injuries incurred by their employees that arise out of, or in the course of, employment. An employer is liable only for the percentage of the permanent disability directly caused by the injury arising out of, and occurring in the course of, employment.

Existing law requires apportionment of permanent disability to be based on causation, and a physician who prepares a report addressing the issue of permanent disability due to a claimed industrial injury is required to address the issue of causation of the permanent disability. The physician is required to make an apportionment determination by finding what approximate percentage of the permanent disability was caused by the direct result of injury arising out of and occurring in the course of employment, and what approximate percentage of the permanent disability was caused by other factors both before and subsequent to the industrial injury, including prior industrial injuries.

This bill would prohibit apportionment of permanent disability, in cases of physical injury, from being based on pregnancy, breast cancer, menopause, or osteoporosis. The bill would also prohibit apportionment of permanent disability, in cases of psychiatric injury, from being based on psychiatric disability or impairment caused by sexual harassment, pregnancy, breast cancer, menopause, or osteoporosis.

~~Existing law requires an employer to furnish to the Industrial Welfare Commission, upon request, reports or information regarding the wages, hours, and other information that the employer is required by law to keep regarding his or her employees. A violation of this provision is a crime.~~

~~This bill would make a nonsubstantive change to this provision.~~

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 4663 of the Labor Code is amended to
2 read:

3 4663. (a) Apportionment of permanent disability shall be based
4 on causation.

5 (b) Any physician who prepares a report addressing the issue
6 of permanent disability due to a claimed industrial injury shall in
7 that report address the issue of causation of the permanent
8 disability.

9 (c) (1) In order for a physician's report to be considered
10 complete on the issue of permanent disability, the report must
11 include an apportionment determination. ~~A~~

12 (A) A physician shall make an apportionment determination by
13 finding what approximate percentage of the permanent disability
14 was caused by the direct result of injury arising out of and
15 occurring in the course of employment and what approximate
16 percentage of the permanent disability was caused by other factors
17 both before and subsequent to the industrial injury, including prior
18 industrial injuries. ~~If~~

19 (B) *Apportionment in cases of physical injury shall not be based*
20 *on any of the following conditions:*

21 (i) *Pregnancy.*

22 (ii) *Breast cancer.*

23 (iii) *Menopause.*

1 (iv) *Osteoporosis.*

2 (C) *Apportionment in cases of psychiatric injury shall not be*
3 *based on psychiatric disability or impairment caused by sexual*
4 *harassment or caused by any of the conditions listed in*
5 *subparagraph (B).*

6 (3) *If the physician is unable to include an apportionment*
7 *determination in his or her report, the physician shall state the*
8 *specific reasons why the physician could not make a determination*
9 *of the effect of that a prior condition on the permanent disability*
10 *arising from the injury. The physician shall then consult with other*
11 *physicians or refer the employee to another physician from whom*
12 *the employee is authorized to seek treatment or evaluation in*
13 *accordance with this division in order to make the final*
14 *determination.*

15 (d) An employee who claims an industrial injury shall, upon
16 request, disclose all previous permanent disabilities or physical
17 impairments.

18 (e) Subdivisions (a), (b), and (c) shall not apply to injuries or
19 illnesses covered under Sections 3212, 3212.1, 3212.2, 3212.3,
20 3212.4, 3212.5, 3212.6, 3212.7, 3212.8, 3212.85, 3212.9, 3212.10,
21 3212.11, 3212.12, 3213, and 3213.2.

22 ~~SECTION 1. Section 1174 of the Labor Code is amended to~~
23 ~~read:~~

24 ~~1174. Any person employing labor in this state shall:~~

25 ~~(a) Furnish to the commission, at its request, reports or~~
26 ~~information that the commission requires to carry out this chapter.~~
27 ~~The reports and information shall be verified if required by the~~
28 ~~commission or any member thereof.~~

29 ~~(b) Allow any member of the commission or the employees of~~
30 ~~the Division of Labor Standards Enforcement free access to the~~
31 ~~place of business or employment of the person to secure any~~
32 ~~information or make any investigation that they are authorized by~~
33 ~~this chapter to ascertain or make. The commission may inspect or~~
34 ~~make excerpts, relating to the employment of employees, from the~~
35 ~~books, reports, contracts, payrolls, documents, or papers of the~~
36 ~~person.~~

37 ~~(c) Keep a record showing the names and addresses of all~~
38 ~~employees employed and the ages of all minors.~~

39 ~~(d) Keep, at a central location in the state or at the plants or~~
40 ~~establishments at which employees are employed, payroll records~~

1 ~~showing the hours worked daily by and the wages paid to, and the~~
2 ~~number of piece-rate units earned by and any applicable piece rate~~
3 ~~paid to, employees employed at the respective plants or~~
4 ~~establishments. These records shall be kept in accordance with~~
5 ~~rules established for this purpose by the commission, but in any~~
6 ~~case shall be kept on file for not less than three years. An employer~~
7 ~~shall not prohibit an employee from maintaining a personal record~~
8 ~~of hours worked, or, if paid on a piece-rate basis, piece-rate units~~
9 ~~earned.~~

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