

AMENDED IN SENATE SEPTEMBER 3, 2015

AMENDED IN SENATE JUNE 30, 2015

AMENDED IN SENATE JUNE 15, 2015

AMENDED IN ASSEMBLY APRIL 30, 2015

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, Cristina Garcia, and
McCarty)**

February 12, 2015

An act to amend Section 4663 of, and to add Section 4660.2 to, the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 305, as amended, Gonzalez. 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 the case of a physical injury occurring on or after January 1, 2016, from being based on pregnancy, ~~menopause, or osteoporosis causally related to~~ or menopause if the condition is contemporaneous with the claimed physical *psychiatric* injury. The bill would also prohibit apportionment of permanent disability, in the case of a psychiatric injury occurring on or after January 1, 2016, from being based on psychiatric disability or impairment caused by sexual harassment, ~~pregnancy, menopause, or osteoporosis causally related to~~ pregnancy or menopause if the condition is contemporaneous with the claimed *psychiatric* injury. The bill would also provide, notwithstanding any other law, for injuries occurring on or after January 1, 2016, that the impairment ratings for breast cancer and the aftereffects of the disease, known as sequelae, shall in no event be less than comparable ratings for prostate cancer and its sequelae.

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 4660.2 is added to the Labor Code, to
- 2 read:
- 3 4660.2. Notwithstanding any other law, for injuries occurring
- 4 on or after January 1, 2016, the impairment ratings for breast cancer
- 5 and its sequelae shall in no event be less than comparable ratings
- 6 for prostate cancer and its sequelae.
- 7 SEC. 2. Section 4663 of the Labor Code is amended to read:
- 8 4663. (a) Apportionment of permanent disability shall be based
- 9 on causation.
- 10 (b) Any physician who prepares a report addressing the issue
- 11 of permanent disability due to a claimed industrial injury shall in
- 12 that report address the issue of causation of the permanent
- 13 disability.

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

4 (2) (A) A physician shall make an apportionment determination
5 by finding what approximate percentage of the permanent disability
6 was caused by the direct result of injury arising out of and
7 occurring in the course of employment and what approximate
8 percentage of the permanent disability was caused by other factors
9 both before and subsequent to the industrial injury, including prior
10 industrial injuries.

11 (B) Apportionment in the case of a physical injury occurring
12 on or after January 1, 2016, shall not be based on ~~any~~ *either* of
13 the following conditions if those conditions are contemporaneous
14 with the claimed physical injury:

15 (i) Pregnancy.

16 (ii) Menopause.

17 ~~(iii) Osteoporosis causally related to menopause.~~

18 (C) Apportionment in the case of a psychiatric injury occurring
19 on or after January 1, 2016, shall not be based on psychiatric
20 disability or impairment caused by sexual harassment that is
21 contemporaneous with the claimed psychiatric injury, or caused
22 by any of the conditions listed in subparagraph (B) that are
23 contemporaneous with the claimed psychiatric injury.

24 (3) If the physician is unable to include an apportionment
25 determination in his or her report, the physician shall state the
26 specific reasons why the physician could not make a determination
27 of the effect of a prior condition on the permanent disability arising
28 from the injury. The physician shall then consult with other
29 physicians or refer the employee to another physician from whom
30 the employee is authorized to seek treatment or evaluation in
31 accordance with this division in order to make the final
32 determination.

33 (d) An employee who claims an industrial injury shall, upon
34 request, disclose all previous permanent disabilities or physical
35 impairments.

36 (e) Subdivisions (a), (b), and (c) shall not apply to injuries or
37 illnesses covered under Sections 3212, 3212.1, 3212.2, 3212.3,

- 1 3212.4, 3212.5, 3212.6, 3212.7, 3212.8, 3212.85, 3212.9, 3212.10,
- 2 3212.11, 3212.12, 3213, and 3213.2.

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