

ASSEMBLY BILL

No. 2230

Introduced by Assembly Member Chu

February 18, 2016

An act to amend Sections 4600, 5502, and 5710 of the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

AB 2230, as introduced, Chu. Workers' compensation: language interpreters.

(1) Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, that generally requires employers to secure the payment of workers' compensation for injuries incurred by their employees that arise out of, or in the course of, employment. Existing law requires an employer to provide all medical, surgical, chiropractic, acupuncture, and hospital treatment that is reasonably required to cure or relieve the injured worker from the effects of his or her injury, and makes the employer liable for the reasonable expense incurred by or on behalf of the employee in providing treatment, as specified.

Existing law requires, in a workers' compensation proceeding, an employer to provide the services of a qualified interpreter, as defined, when, at the request of the employer, the employer's insurer, the administrative director, the appeals board, or a workers' compensation administrative law judge, an employee submits to examination by a physician and the employee does not proficiently speak or understand the English language. In addition, existing law requires, upon request of the injured employee, the employer or insurance carrier to pay for interpretation services if the injured employee cannot effectively

communicate with his or her treating physician because he or she cannot proficiently speak or understand the English language.

This bill would require the interpreter to be an interpreter of the employee's choice under both circumstances. The bill would also authorize the employer to select the interpreter if interpretation services are required and the employee has not selected an interpreter.

(2) Existing law establishes the Workers' Compensation Appeals Board and vests the appeals board with full power, authority, and jurisdiction to try and to determine specified matters in workers' compensation proceedings, including matters relating to the recovery of compensation, and enforcement against the employer or an insurer of liability for compensation imposed upon the employer. Existing law authorizes the appeals board to appoint one or more workers' compensation judges in any proceeding. Existing law governs hearing held before the appeals board or a workers' compensation judge.

This bill would require, upon request from either the employee or witness, the employer to pay for the services of a language interpreter who is selected by the employee and who meets specified criteria, if interpretation services are required in workers' compensation proceedings because the injured employee or witness does not proficiently speak or understand the English language. The bill would authorize the employer to select the interpreter if interpretation services are required and the employee has not selected an interpreter, as specified.

(3) Existing law authorizes the appeals board, a workers' compensation judge, or any party to the action or proceeding, in any investigation or hearing before the appeals board, to cause the deposition of witnesses. Existing law requires the employer to pay for the services of a language interpreter, upon request from either a witness or deponent, if interpretation services are required because the injured employee or deponent does not proficiently speak or understand the English language.

This bill would require the interpreter to be selected by the employee, but would also authorize the employer to select the interpreter if interpretation services are required and the employee has not selected an interpreter. The bill would also authorize a witness, rather than a deponent, who does not proficiently speak or understand the English language to request the employer to pay for the services of a language interpreter.

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 4600 of the Labor Code is amended to
2 read:

3 4600. (a) Medical, surgical, chiropractic, acupuncture, and
4 hospital treatment, including nursing, medicines, medical and
5 surgical supplies, crutches, and apparatuses, including orthotic and
6 prosthetic devices and services, that is reasonably required to cure
7 or relieve the injured worker from the effects of his or her injury
8 shall be provided by the employer. In the case of his or her neglect
9 or refusal reasonably to do so, the employer is liable for the
10 reasonable expense incurred by or on behalf of the employee in
11 providing treatment.

12 (b) As used in this division and notwithstanding any other law,
13 medical treatment that is reasonably required to cure or relieve the
14 injured worker from the effects of his or her injury means treatment
15 that is based upon the guidelines adopted by the administrative
16 director pursuant to Section 5307.27.

17 (c) Unless the employer or the employer's insurer has
18 established or contracted with a medical provider network as
19 provided for in Section 4616, after 30 days from the date the injury
20 is reported, the employee may be treated by a physician of his or
21 her own choice or at a facility of his or her own choice within a
22 reasonable geographic area. A chiropractor shall not be a treating
23 physician after the employee has received the maximum number
24 of chiropractic visits allowed by subdivision (c) of Section 4604.5.

25 (d) (1) If an employee has notified his or her employer in
26 writing prior to the date of injury that he or she has a personal
27 physician, the employee shall have the right to be treated by that
28 physician from the date of injury if the employee has health care
29 coverage for nonoccupational injuries or illnesses on the date of
30 injury in a plan, policy, or fund as described in subdivisions (b),
31 (c), and (d) of Section 4616.7.

32 (2) For purposes of paragraph (1), a personal physician shall
33 meet all of the following conditions:

34 (A) Be the employee's regular physician and surgeon, licensed
35 pursuant to Chapter 5 (commencing with Section 2000) of Division
36 2 of the Business and Professions Code.

37 (B) Be the employee's primary care physician and has
38 previously directed the medical treatment of the employee, and

1 who retains the employee’s medical records, including his or her
2 medical history. “Personal physician” includes a medical group,
3 if the medical group is a single corporation or partnership
4 composed of licensed doctors of medicine or osteopathy, which
5 operates an integrated multispecialty medical group providing
6 comprehensive medical services predominantly for
7 nonoccupational illnesses and injuries.

8 (C) The physician agrees to be predesignated.

9 (3) If the employee has health care coverage for nonoccupational
10 injuries or illnesses on the date of injury in a health care service
11 plan licensed pursuant to Chapter 2.2 (commencing with Section
12 1340) of Division 2 of the Health and Safety Code, and the
13 employer is notified pursuant to paragraph (1), all medical
14 treatment, utilization review of medical treatment, access to
15 medical treatment, and other medical treatment issues shall be
16 governed by Chapter 2.2 (commencing with Section 1340) of
17 Division 2 of the Health and Safety Code. Disputes regarding the
18 provision of medical treatment shall be resolved pursuant to Article
19 5.55 (commencing with Section 1374.30) of Chapter 2.2 of
20 Division 2 of the Health and Safety Code.

21 (4) If the employee has health care coverage for nonoccupational
22 injuries or illnesses on the date of injury in a group health insurance
23 policy as described in Section 4616.7, all medical treatment,
24 utilization review of medical treatment, access to medical
25 treatment, and other medical treatment issues shall be governed
26 by the applicable provisions of the Insurance Code.

27 (5) The insurer may require prior authorization of any
28 nonemergency treatment or diagnostic service and may conduct
29 reasonably necessary utilization review pursuant to Section 4610.

30 (6) An employee shall be entitled to all medically appropriate
31 referrals by the personal physician to other physicians or medical
32 providers within the nonoccupational health care plan. An
33 employee shall be entitled to treatment by physicians or other
34 medical providers outside of the nonoccupational health care plan
35 pursuant to standards established in Article 5 (commencing with
36 Section 1367) of Chapter 2.2 of Division 2 of the Health and Safety
37 Code.

38 (e) (1) When at the request of the employer, the employer’s
39 insurer, the administrative director, the appeals board, or a workers’
40 compensation administrative law judge, the employee submits to

1 examination by a physician, he or she shall be entitled to receive,
2 in addition to all other benefits herein provided, all reasonable
3 expenses of transportation, meals, and lodging incident to reporting
4 for the examination, together with one day of temporary disability
5 indemnity for each day of wages lost in submitting to the
6 examination.

7 (2) Regardless of the date of injury, “reasonable expenses of
8 transportation” includes mileage fees from the employee’s home
9 to the place of the examination and back at the rate of twenty-one
10 cents (\$0.21) a mile or the mileage rate adopted by the Director
11 of *the Department of Human Resources* pursuant to Section 19820
12 of the Government Code, whichever is higher, plus any bridge
13 tolls. The mileage and tolls shall be paid to the employee at the
14 time he or she is given notification of the time and place of the
15 examination.

16 (f) When at the request of the employer, the employer’s insurer,
17 the administrative director, the appeals board, or a workers’
18 compensation administrative law judge, an employee submits to
19 examination by a physician and the employee does not proficiently
20 speak or understand the English language, he or she shall be
21 entitled to the services of a qualified interpreter *of his or her choice*
22 in accordance with conditions and a fee schedule prescribed by
23 the administrative director. These services shall be provided by
24 the employer. For purposes of this section, “qualified interpreter”
25 means a language interpreter certified, or deemed certified,
26 pursuant to Article 8 (commencing with Section 11435.05) of
27 Chapter 4.5 of Part 1 of Division 3 of Title 2 of, or Section 68566
28 of, the Government Code. *The employer may select the interpreter*
29 *if interpretation services are required and the employee has not*
30 *selected an interpreter.*

31 (g) If the injured employee cannot effectively communicate
32 with his or her treating physician because he or she cannot
33 proficiently speak or understand the English language, the injured
34 employee is entitled to the services of a qualified interpreter *of his*
35 *or her choice* during medical treatment appointments. To be a
36 qualified interpreter for purposes of medical treatment
37 appointments, an interpreter is not required to meet the
38 requirements of subdivision (f), but shall meet any requirements
39 established by rule by the administrative director that are
40 substantially similar to the requirements set forth in Section

1 1367.04 of the Health and Safety Code. The administrative director
2 shall adopt a fee schedule for qualified interpreter fees in
3 accordance with this section. Upon request of the injured employee,
4 the employer or insurance carrier shall pay for ~~interpreter~~
5 *interpretation* services. An employer shall not be required to pay
6 for the services of an interpreter who is not certified or is
7 provisionally certified by the person conducting the medical
8 treatment or examination unless either the employer consents in
9 advance to the selection of the individual who provides the
10 interpreting service or the injured worker requires interpreting
11 service in a language other than the languages designated pursuant
12 to Section 11435.40 of the Government Code. *The employer may*
13 *select the interpreter if interpretation services are required and*
14 *the employee has not selected an interpreter.*

15 (h) Home health care services shall be provided as medical
16 treatment only if reasonably required to cure or relieve the injured
17 employee from the effects of his or her injury and prescribed by
18 a physician and surgeon licensed pursuant to Chapter 5
19 (commencing with Section 2000) of Division 2 of the Business
20 and Professions Code, and subject to Section 5307.1 or ~~5703.8~~
21 *5307.8*. The employer shall not be liable for home health care
22 services that are provided more than 14 days prior to the date of
23 the employer's receipt of the physician's prescription.

24 SEC. 2. Section 5502 of the Labor Code is amended to read:

25 5502. (a) Except as provided in subdivisions (b) and (d), the
26 hearing shall be held not less than 10 days, and not more than 60
27 days, after the date a declaration of readiness to proceed, on a form
28 prescribed by the appeals board, is filed. If a claim form has been
29 filed for an injury occurring on or after January 1, 1990, and before
30 January 1, 1994, an application for adjudication shall accompany
31 the declaration of readiness to proceed.

32 (b) The administrative director shall establish a priority calendar
33 for issues requiring an expedited hearing and decision. A hearing
34 shall be held and a determination as to the rights of the parties
35 shall be made and filed within 30 days after the declaration of
36 readiness to proceed is filed if the issues in dispute are any of the
37 following, provided that if an expedited hearing is requested, no
38 other issue may be heard until the medical provider network dispute
39 is resolved:

1 (1) The employee's entitlement to medical treatment pursuant
2 to Section 4600, except for treatment issues determined pursuant
3 to Sections 4610 and 4610.5.

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

6 (3) A medical treatment appointment or medical-legal
7 examination.

8 (4) The employee's entitlement to, or the amount of, temporary
9 disability indemnity payments.

10 (5) The employee's entitlement to compensation from one or
11 more responsible employers when two or more employers dispute
12 liability as among themselves.

13 (6) Any other issues requiring an expedited hearing and
14 determination as prescribed in rules and regulations of the
15 administrative director.

16 (c) The administrative director shall establish a priority
17 conference calendar for cases in which the employee is represented
18 by an attorney or is or was employed by an illegally uninsured
19 employer and the issues in dispute are employment or injury arising
20 out of employment or in the course of employment. The conference
21 shall be conducted by a workers' compensation administrative law
22 judge within 30 days after the declaration of readiness to proceed.
23 If the dispute cannot be resolved at the conference, a trial shall be
24 set as expeditiously as possible, unless good cause is shown why
25 discovery is not complete, in which case status conferences shall
26 be held at regular intervals. The case shall be set for trial when
27 discovery is complete, or when the workers' compensation
28 administrative law judge determines that the parties have had
29 sufficient time in which to complete reasonable discovery. A
30 determination as to the rights of the parties shall be made and filed
31 within 30 days after the trial.

32 (d) (1) In all cases, a mandatory settlement conference, except
33 a lien conference or a mandatory settlement lien conference, shall
34 be conducted not less than 10 days, and not more than 30 days,
35 after the filing of a declaration of readiness to proceed. If the
36 dispute is not resolved, the regular hearing, except a lien trial, shall
37 be held within 75 days after the declaration of readiness to proceed
38 is filed.

39 (2) The settlement conference shall be conducted by a workers'
40 compensation administrative law judge or by a referee who is

1 eligible to be a workers' compensation administrative law judge
2 or eligible to be an arbitrator under Section 5270.5. At the
3 mandatory settlement conference, the referee or workers'
4 compensation administrative law judge shall have the authority to
5 resolve the dispute, including the authority to approve a
6 compromise and release or issue a stipulated finding and award,
7 and if the dispute cannot be resolved, to frame the issues and
8 stipulations for trial. The appeals board shall adopt any regulations
9 needed to implement this subdivision. The presiding workers'
10 compensation administrative law judge shall supervise settlement
11 conference referees in the performance of their judicial functions
12 under this subdivision.

13 (3) If the claim is not resolved at the mandatory settlement
14 conference, the parties shall file a pretrial conference statement
15 noting the specific issues in dispute, each party's proposed
16 permanent disability rating, and listing the exhibits, and disclosing
17 witnesses. Discovery shall close on the date of the mandatory
18 settlement conference. Evidence not disclosed or obtained
19 thereafter shall not be admissible unless the proponent of the
20 evidence can demonstrate that it was not available or could not
21 have been discovered by the exercise of due diligence prior to the
22 settlement conference.

23 (e) In cases involving the Director of Industrial Relations in his
24 or her capacity as administrator of the Uninsured Employers Fund,
25 this section shall not apply unless proof of service, as specified in
26 paragraph (1) of subdivision (d) of Section 3716, has been filed
27 with the appeals board and provided to the Director of Industrial
28 Relations, valid jurisdiction has been established over the employer,
29 and the fund has been joined.

30 (f) *If interpretation services are required because the injured*
31 *employee or witness does not proficiently speak or understand the*
32 *English language, upon request from either the employee or*
33 *witness, the employer shall pay for the services of a language*
34 *interpreter who is selected by the employee and who is certified*
35 *or deemed certified pursuant to Article 8 (commencing with Section*
36 *11435.05) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of, or*
37 *Section 68566 of, the Government Code. The employer may select*
38 *the interpreter if interpretation services are required and the*
39 *employee has not selected an interpreter. The fee to be paid by the*
40 *employer shall be in accordance with the fee schedule adopted by*

1 *the administrative director and shall include any other*
2 *deposition-related events as permitted by the administrative*
3 *director.*

4 (f)

5 (g) Except as provided in subdivision (a), this section shall apply
6 irrespective of the date of injury.

7 SEC. 3. Section 5710 of the Labor Code is amended to read:

8 5710. (a) The appeals board, a workers' compensation judge,
9 or any party to the action or proceeding, may, in any investigation
10 or hearing before the appeals board, cause the deposition of
11 witnesses residing within or without the state to be taken in the
12 manner prescribed by law for like depositions in civil actions in
13 the superior courts of this state under Title 4 (commencing with
14 Section 2016.010) of Part 4 of the Code of Civil Procedure. To
15 that end the attendance of witnesses and the production of records
16 may be required. Depositions may be taken outside the state before
17 any officer authorized to administer oaths. The appeals board or
18 a workers' compensation judge in any proceeding before the
19 appeals board may cause evidence to be taken in other jurisdictions
20 before the agency authorized to hear workers' compensation
21 matters in those other jurisdictions.

22 (b) If the employer or insurance carrier requests a deposition to
23 be taken of an injured employee, or any person claiming benefits
24 as a dependent of an injured employee, the deponent is entitled to
25 receive in addition to all other benefits:

26 (1) All reasonable expenses of transportation, meals, and lodging
27 incident to the deposition.

28 (2) Reimbursement for any loss of wages incurred during
29 attendance at the deposition.

30 (3) One copy of the transcript of the deposition, without cost.

31 (4) A reasonable allowance for attorney's fees for the deponent,
32 if represented by an attorney licensed by the State Bar of this state.
33 The fee shall be discretionary with, and, if allowed, shall be set
34 by, the appeals board, but shall be paid by the employer or his or
35 her insurer.

36 (5) If interpretation services are required because the injured
37 employee or ~~deponent~~ *witness* does not proficiently speak or
38 understand the English language, upon a request from ~~either~~, *either*
39 *the employee or witness*, the employer shall pay for the services
40 of a language interpreter *who is selected by the employee and who*

1 *is* certified or deemed certified pursuant to Article 8 (commencing
2 with Section 11435.05) of Chapter 4.5 of Part 1 of Division 3 of
3 Title 2 of, or Section 68566 of, the Government Code. *The*
4 *employer may select the interpreter if interpretation services are*
5 *required and the employee has not selected an interpreter.* The
6 fee to be paid by the employer shall be in accordance with the fee
7 schedule adopted by the administrative director and shall include
8 any other deposition-related events as permitted by the
9 administrative director.

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