

AMENDED IN SENATE MAY 13, 1999

SENATE BILL

No. 320

Introduced by Senator Solis

February 8, 1999

An act to amend Sections 139.5, 4453, 4658, 4659, and 4702 of the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

SB 320, as amended, Solis. Workers' compensation: benefits: *staffing of workers' compensation courts.*

Existing law requires the Administrative Director of the Division of Workers' Compensation of the Department of Industrial Relations to develop a fee schedule governing certain fees that may be charged for various workers' compensation vocational rehabilitation services, with the fees not to exceed specified maximum levels.

This bill would delete those maximum fee levels.

Existing law provides certain methods for determining workers' compensation benefits payable to a worker or his or her dependents for purposes of temporary disability, permanent total disability, and permanent partial disability, and in case of death.

This bill would provide alternative unspecified methods for determining these benefits for injuries or deaths occurring on and after certain unspecified dates.

This bill would declare the intent of the Legislature to meaningfully increase workers' compensation benefits for all injured workers and their dependents.

This bill would also require the Director of Industrial Relations to establish 25 additional workers' compensation administrative law judge positions and other associated positions.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. It is the intent of the Legislature to
2 meaningfully increase temporary disability indemnity,
3 permanent total disability indemnity, permanent partial
4 disability indemnity, vocational rehabilitation, life
5 pension, and death benefits for all injured workers and
6 their dependents.

7 SEC. 2. Section 139.5 of the Labor Code is amended
8 to read:

9 139.5. (a) The administrative director shall establish
10 a vocational rehabilitation unit, which shall include
11 appropriate professional staff, and which shall have the
12 following duties:

13 (1) To foster, review, and approve vocational
14 rehabilitation plans developed by a qualified
15 rehabilitation representative of the employer, insurer,
16 state agency, or employee. Plans agreed to by the
17 employer and employee do not require approval by the
18 vocational rehabilitation unit unless the employee is
19 unrepresented.

20 (2) To develop rules and regulations, to be
21 promulgated by the administrative director, providing
22 for a procedure in which an employee may waive the
23 services of a qualified rehabilitation representative
24 where the employee has been enrolled and made
25 substantial progress toward completion of a degree or
26 certificate from a community college, California State
27 University, or the University of California and desires a
28 plan to complete the degree or certificate. These rules
29 and regulations shall provide that this waiver as well as
30 any plan developed without the assistance of a qualified



1 rehabilitation representative must be approved by the
2 rehabilitation unit.

3 (3) To develop rules and regulations, to be
4 promulgated by the administrative director, which would
5 expedite and facilitate the identification, notification and
6 referral of industrially injured employees to vocational
7 rehabilitation services.

8 (4) To coordinate and enforce the implementation of
9 vocational rehabilitation plans.

10 (5) To develop a fee schedule, to be promulgated by
11 the administrative director, governing reasonable fees
12 for vocational rehabilitation services provided on and
13 after January 1, 1991. The initial fee schedule
14 promulgated under this paragraph shall be designed to
15 reduce the cost of vocational rehabilitation services by 10
16 percent from the level of fees paid during 1989. The
17 administrative director shall establish the maximum
18 aggregate permissible fees that may be charged for
19 counseling.

20 (6) To develop standards, to be promulgated by the
21 administrative director, for governing the timeliness and
22 the quality of vocational rehabilitation services.

23 (b) The salaries of the personnel of the vocational
24 rehabilitation unit shall be fixed by the Department of
25 Personnel Administration.

26 (c) When an employee is determined to be medically
27 eligible and chooses to participate in a vocational
28 rehabilitation program, he or she shall continue to receive
29 temporary disability indemnity payments only until his or
30 her medical condition becomes permanent and
31 stationary and, thereafter, may receive a maintenance
32 allowance. Rehabilitation maintenance allowance
33 payments shall begin after the employee's medical
34 condition becomes permanent and stationary, upon a
35 request for vocational rehabilitation services. Thereafter,
36 the maintenance allowance shall be paid for a period not
37 to exceed 52 weeks in the aggregate, except where the
38 overall cap on vocational rehabilitation services can be
39 exceeded under this section or Section 4642 or subdivision
40 (d) or (e) of Section 4644.



1 The employee also shall receive additional living
2 expenses necessitated by the vocational rehabilitation
3 services, together with all reasonable and necessary
4 vocational training, at the expense of the employer. The
5 administrative director shall adopt regulations to ensure
6 that the continued receipt of vocational rehabilitation
7 maintenance allowance benefits is dependent upon the
8 injured worker's regular and consistent attendance at,
9 and participation in, his or her vocational rehabilitation
10 program.

11 (d) The amount of the maintenance allowance due
12 under subdivision (c) shall be two-thirds of the
13 employee's average weekly earnings at the date of injury
14 payable as follows:

15 (1) The amount the employee would have received as
16 continuing temporary disability indemnity, but not more
17 than two hundred forty-six dollars (\$246) a week for
18 injuries occurring on or after January 1, 1990.

19 (2) At the employee's option, an additional amount
20 from permanent disability indemnity due or payable,
21 sufficient to provide the employee with a maintenance
22 allowance equal to two-thirds of the employee's average
23 weekly earnings at the date of injury subject to the limits
24 specified in subdivision (a) of Section 4453 and the
25 requirements of Section 4661.5. In no event shall
26 temporary disability indemnity and maintenance
27 allowance be payable concurrently.

28 If the employer disputes the treating physician's
29 determination of medical eligibility, the employee shall
30 continue to receive that portion of the maintenance
31 allowance payable under paragraph (1) pending final
32 determination of the dispute. If the employee disputes
33 the treating physician's determination of medical
34 eligibility and prevails, the employee shall be entitled to
35 that portion of the maintenance allowance payable under
36 paragraph (1) retroactive to the date of the employee's
37 request for vocational rehabilitation services. These
38 payments shall not be counted against the maximum
39 expenditures for vocational rehabilitation services
40 provided by this section.



1 (e) No provision of this section nor of any rule,
2 regulation, or vocational rehabilitation plan developed or
3 promulgated under this section nor any benefit provided
4 pursuant to this section shall apply to an injured
5 employee whose injury occurred prior to January 1, 1975.
6 Nothing in this section shall affect any plan, benefit, or
7 program authorized by this section as added by Chapter
8 1513 of the Statutes of 1965 or as amended by Chapter 83
9 of the Statutes of 1972.

10 (f) The time within which an employee may request
11 vocational rehabilitation services is set forth in Sections
12 5405.5, 5410, and 5803.

13 (g) An offer of a job within state service to a state
14 employee in State Bargaining Unit 1, 4, 15, 18, or 20 at the
15 same or similar salary and the same or similar geographic
16 location is a prima facie offer of vocational rehabilitation
17 under this statute.

18 (h) It shall be unlawful for a qualified rehabilitation
19 representative or rehabilitation counselor to refer any
20 employee to any work evaluation facility or to any
21 education or training program if the qualified
22 rehabilitation representative or rehabilitation counselor,
23 or a spouse, employer, coemployee, or any party with
24 whom he or she has entered into contract, express or
25 implied, has any proprietary interest in or contractual
26 relationship with the work evaluation facility or
27 education or training program. It shall also be unlawful
28 for any insurer to refer any injured worker to any
29 rehabilitation provider or facility if the insurer has a
30 proprietary interest in the rehabilitation provider or
31 facility or for any insurer to charge against any claim for
32 the expenses of employees of the insurer to provide
33 vocational rehabilitation services unless those expenses
34 are disclosed to the insured and agreed to in advance.

35 (i) Any charges by an insurer for the activities of an
36 employee who supervises outside vocational
37 rehabilitation services shall not exceed the vocational
38 rehabilitation fee schedule, and shall not be counted
39 against the overall cap for vocational rehabilitation or the
40 limit on counselor's fees provided for in this section.



1 These charges shall be attributed as expenses by the
2 insurer and not losses for purposes of insurance rating
3 pursuant to Article 2 (commencing with Section 11730)
4 of Chapter 3 of Division 2 of the Insurance Code.

5 (j) Any costs of an employer of supervising vocational
6 rehabilitation services shall not be counted against the
7 overall cap for vocational rehabilitation or the limit on
8 counselor's fees provided for in this section.

9 SEC. 3. Section 4453 of the Labor Code is amended to
10 read:

11 4453. (a) In computing average annual earnings for
12 the purposes of temporary disability indemnity and
13 permanent total disability indemnity only, the average
14 weekly earnings shall be taken at:

15 (1) Not less than one hundred twenty-six dollars
16 (\$126) nor more than two hundred ninety-four dollars
17 (\$294), for injuries occurring on and after January 1, 1983.

18 (2) Not less than one hundred sixty-eight dollars
19 (\$168) nor more than three hundred thirty-six dollars
20 (\$336), for injuries occurring on and after January 1, 1984.

21 (3) Not less than one hundred sixty-eight dollars
22 (\$168) for permanent total disability, and, for temporary
23 disability, not less than the lesser of one hundred
24 sixty-eight dollars (\$168) or 1.5 times the employee's
25 average weekly earnings from all employers, but in no
26 event less than one hundred forty-seven dollars (\$147),
27 nor more than three hundred ninety-nine dollars (\$399),
28 for injuries occurring on and after January 1, 1990.

29 (4) Not less than one hundred sixty-eight dollars
30 (\$168) for permanent total disability, and for temporary
31 disability, not less than the lesser of one hundred
32 eighty-nine dollars (\$189) or 1.5 times the employee's
33 average weekly earnings from all employers, nor more
34 than five hundred four dollars (\$504), for injuries
35 occurring on and after January 1, 1991.

36 (5) Not less than one hundred sixty-eight dollars
37 (\$168) for permanent total disability, and for temporary
38 disability, not less than the lesser of one hundred
39 eighty-nine dollars (\$189) or 1.5 times the employee's
40 average weekly earnings from all employers, nor more



1 than six hundred nine dollars (\$609) for injuries occurring
2 on and after July 1, 1994.

3 (6) Not less than one hundred sixty-eight dollars
4 (\$168) for permanent total disability, and for temporary
5 disability, not less than the lesser of one hundred
6 eighty-nine dollars (\$189) or 1.5 times the employee's
7 average weekly earnings from all employers, nor more
8 than six hundred seventy-two dollars (\$672) for injuries
9 occurring on and after July 1, 1995.

10 (7) Not less than one hundred sixty-eight dollars
11 (\$168) for permanent total disability, and for temporary
12 disability, not less than the lesser of one hundred
13 eighty-nine dollars (\$189) or 1.5 times the employee's
14 average weekly earnings from all employers, nor more
15 than seven hundred thirty-five dollars (\$735) for injuries
16 occurring on and after July 1, 1996.

17 (8) Not less than _____ dollars (\$_____) nor
18 more than _____ dollars (\$_____) for injuries
19 occurring on and after _____.

20 (b) In computing average annual earnings for
21 purposes of permanent partial disability indemnity,
22 except as provided in Section 4659, the average weekly
23 earnings shall be taken at:

24 (1) Not less than seventy-five dollars (\$75) nor more
25 than one hundred ninety-five dollars (\$195), for injuries
26 occurring on and after January 1, 1983.

27 (2) Not less than one hundred five dollars (\$105) nor
28 more than two hundred ten dollars (\$210), for injuries
29 occurring on and after January 1, 1984.

30 (3) When the final adjusted permanent disability
31 rating of the injured employee is 15 percent or greater
32 but not more than 24.75 percent: (A) not less than one
33 hundred five dollars (\$105) nor more than two hundred
34 twenty-two dollars (\$222) for injuries occurring on and
35 after July 1, 1994; (B) not less than one hundred five
36 dollars (\$105) nor more than two hundred thirty-one
37 dollars (\$231) for injuries occurring on and after July 1,
38 1995; *and* (C) not less than one hundred five dollars
39 (\$105) nor more than two hundred forty dollars (\$240)
40 for injuries occurring on and after July 1, 1996.



1 (4) When the final adjusted permanent disability
2 rating of the injured employee is 25 percent or greater,
3 not less than one hundred five dollars (\$105), nor more
4 than two hundred twenty-two dollars (\$222), for injuries
5 occurring on and after January 1, 1991.

6 (5) When the final adjusted permanent disability
7 rating of the injured employee is 25 percent or greater
8 but not more than 69.75 percent: (A) not less than one
9 hundred five dollars (\$105), nor more than two hundred
10 thirty-seven dollars (\$237), for injuries occurring on and
11 after July 1, 1994; (B) not less than one hundred five
12 dollars (\$105), nor more than two hundred forty-six
13 dollars (\$246), for injuries occurring on and after July 1,
14 1995; and (C) not less than one hundred five dollars
15 (\$105), nor more than two hundred fifty-five dollars
16 (\$255), for injuries occurring on and after July 1, 1996.

17 (6) When the final adjusted permanent disability
18 rating of the injured employee is 70 percent or greater
19 but less than 99.75 percent: (A) not less than one hundred
20 five dollars (\$105), nor more than two hundred fifty-two
21 dollars (\$252), for injuries occurring on and after July 1,
22 1994; (B) not less than one hundred five dollars (\$105),
23 nor more than two hundred ninety-seven dollars (\$297),
24 for injuries occurring on and after July 1, 1995; and (C)
25 not less than one hundred five dollars (\$105), nor more
26 than three hundred forty-five dollars (\$345), for injuries
27 occurring on and after July 1, 1996.

28 (7) For injuries occurring on and after _____, the
29 average weekly earnings, except as provided in Sections
30 4456 and 4459, shall be arrived at as follows: _____.

31 (c) Between the limits specified in subdivisions (a)
32 and (b), the average weekly earnings, except as provided
33 in Sections 4456 to 4459, shall be arrived at as follows:

34 (1) Where the employment is for 30 or more hours a
35 week and for five or more working days a week, the
36 average weekly earnings shall be the number of working
37 days a week times the daily earnings at the time of the
38 injury.

39 (2) Where the employee is working for two or more
40 employers at or about the time of the injury, the average



1 weekly earnings shall be taken as the aggregate of these
2 earnings from all employments computed in terms of one
3 week; but the earnings from employments other than the
4 employment in which the injury occurred shall not be
5 taken at a higher rate than the hourly rate paid at the time
6 of the injury.

7 (3) If the earnings are at an irregular rate, such as
8 piecework, or on a commission basis, or are specified to
9 be by week, month, or other period, then the average
10 weekly earnings mentioned in subdivision (a) shall be
11 taken as the actual weekly earnings averaged for this
12 period of time, not exceeding one year, as may
13 conveniently be taken to determine an average weekly
14 rate of pay.

15 (4) Where the employment is for less than 30 hours per
16 week, or where for any reason the foregoing methods of
17 arriving at the average weekly earnings cannot
18 reasonably and fairly be applied, the average weekly
19 earnings shall be taken at 100 percent of the sum which
20 reasonably represents the average weekly earning
21 capacity of the injured employee at the time of his or her
22 injury, due consideration being given to his or her actual
23 earnings from all sources and employments.

24 (d) Every computation made pursuant to this section
25 beginning January 1, 1990, shall be made only with
26 reference to temporary disability or the permanent
27 disability resulting from an original injury sustained after
28 January 1, 1990. However, all rights existing under this
29 section on January 1, 1990, shall be continued in force.
30 Except as provided in Section 4661.5, disability indemnity
31 benefits shall be calculated according to the limits in this
32 section in effect on the date of injury and shall remain in
33 effect for the duration of any disability resulting from the
34 injury.

35 SEC. 4. Section 4658 of the Labor Code is amended to
36 read:

37 4658. (a) For injuries occurring prior to January 1,
38 1992, if the injury causes permanent disability, the
39 percentage of disability to total disability shall be
40 determined, and the disability payment computed and



1 allowed, according to paragraph (1). However, in no
2 event shall the disability payment allowed be less than the
3 disability payment computed according to paragraph
4 (2).

5 (1)

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Column 2—Number of weeks
for which two-thirds of
average weekly earnings
allowed for each 1 percent
of permanent disability
within percentage range:
Under 10 3
10–19.75 4
20–29.75 5
30–49.75 6
50–69.75 7
70–99.75 8

20 The number of weeks for which payments shall be
21 allowed set forth in column 2 above based upon the
22 percentage of permanent disability set forth in column 1
23 above shall be cumulative, and the number of benefit
24 weeks shall increase with the severity of the disability.
25 The following schedule is illustrative of the computation
26 of the number of benefit weeks:

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Column 1—	Column 2—
Percentage	Cumulative
of permanent	number of
disability	benefit weeks:
incurred:	
5	15.00
10	30.25
15	50.25
20	70.50
25	95.50
30	120.75
35	150.75
40	180.75



1	45	210.75
2	50	241.00
3	55	276.00
4	60	311.00
5	65	346.00
6	70	381.25
7	75	421.25
8	80	461.25
9	85	501.25
10	90	541.25
11	95	581.25
12	100	for life

13
14 (2) Two-thirds of the average weekly earnings for four
15 weeks for each 1 percent of disability, where, for the
16 purposes of this subdivision, the average weekly earnings
17 shall be taken at not more than seventy-eight dollars and
18 seventy-five cents (\$78.75).

19 (b) This subdivision shall apply to injuries occurring
20 on and after January 1, 1992. If the injury causes
21 permanent disability, the percentage of disability to total
22 disability shall be determined, and the disability payment
23 computed and allowed, according to paragraph (1).
24 However, in no event shall the disability payment
25 allowed be less than the disability payment computed
26 according to paragraph (2).

27 (1)

28		
29	Column 1—Range	
30	of percentage	Column 2
31	of permanent	
32	disability incurred	
33	<i>incurred:</i>	
34	Under 10	3.0
35	10–19.75	4.0
36	20–24.75	5.0
37	25–29.75	6.0
38	30–49.75	7.0
39	50–69.75	8.0
40	70–99.75	9.0



1 The numbers set forth in column 2 above are based
2 upon the percentage of permanent disability set forth in
3 column 1 above and shall be cumulative, and shall
4 increase with the severity of the disability in the manner
5 illustrated in subdivision (a).

6 (2) Two-thirds of the average weekly earnings for four
7 weeks for each 1 percent of disability, where, for the
8 purposes of this subdivision, the average weekly earnings
9 shall be taken at not more than seventy-eight dollars and
10 seventy-five cents (\$78.75).

11 (c) This subdivision shall apply to injuries on and after
12 _____. If the injury causes permanent disability, the
13 percentage of disability to total disability shall be
14 determined, and the disability payment computed and
15 allowed as follows: _____.

16 SEC. 5. Section 4659 of the Labor Code is amended to
17 read:

18 4659. (a) If the permanent disability is at least 70
19 percent but less than 100 percent, 1.5 percent of the
20 average weekly earnings for each 1 percent of disability
21 in excess of 60 percent is to be paid during the remainder
22 of life, after payment for the maximum number of weeks
23 specified in Section 4658 has been made. For the purposes
24 of this subdivision only, average weekly earnings shall be
25 taken at not more than one hundred seven dollars and
26 sixty-nine cents (\$107.69). For injuries occurring on or
27 after July 1, 1994, average weekly wages shall not be taken
28 at more than one hundred fifty-seven dollars and
29 sixty-nine cents (\$157.69). For injuries occurring on or
30 after July 1, 1995, average weekly wages shall not be taken
31 at more than two hundred seven dollars and sixty-nine
32 cents (\$207.69). For injuries occurring on or after July 1,
33 1996, average weekly wages shall not be taken at more
34 than two hundred fifty-seven dollars and sixty-nine cents
35 (\$257.69). For injuries occurring on and after _____,
36 average weekly wages shall not be taken at more than
37 _____ dollars (\$_____).

38 (b) If the permanent disability is total, the indemnity
39 based upon the average weekly earnings determined



1 under Section 4453 shall be paid during the remainder of
2 life.

3 SEC. 6. Section 4702 of the Labor Code is amended to
4 read:

5 4702. (a) Except as otherwise provided in this section
6 and Sections 4553, 4554, 4557, and 4558, the death benefit
7 in cases of total dependency shall be as follows:

8 (1) In the case of two total dependents and regardless
9 of the number of partial dependents, ninety-five
10 thousand dollars (\$95,000), for injuries occurring on and
11 after January 1, 1991, one hundred fifteen thousand
12 dollars (\$115,000), for injuries occurring on or after July
13 1, 1994, one hundred thirty-five thousand dollars
14 (\$135,000), and for injuries occurring on or after July 1,
15 1996, one hundred forty-five thousand dollars (\$145,000).

16 (2) In the case of one total dependent and one or more
17 partial dependents, seventy thousand dollars (\$70,000),
18 ~~or~~ for injuries occurring on and after January 1, 1991,
19 ninety-five thousand dollars (\$95,000), for injuries
20 occurring on or after July 1, 1994, one hundred fifteen
21 thousand dollars (\$115,000), and for injuries occurring on
22 or after July 1, 1996, one hundred twenty-five thousand
23 dollars (\$125,000), plus four times the amount annually
24 devoted to the support of the partial dependents, but not
25 more than a total of ninety-five thousand dollars
26 (\$95,000), for injuries occurring on and after January 1,
27 1991, one hundred fifteen thousand dollars (\$115,000), for
28 injuries occurring on or after July 1, 1994, one hundred
29 twenty-five thousand dollars (\$125,000), and for injuries
30 occurring on or after July 1, 1996, one hundred forty-five
31 thousand dollars (\$145,000).

32 (3) In the case of one total dependent and no partial
33 dependents, seventy thousand dollars (\$70,000), for
34 injuries occurring on and after January 1, 1991, ninety-five
35 thousand dollars (\$95,000), for injuries occurring on or
36 after July 1, 1994, one hundred fifteen thousand dollars
37 (\$115,000), and for injuries occurring on or after July 1,
38 1996, one hundred twenty-five thousand dollars
39 (\$125,000).



1 (4) In the case of no total dependents and one or more
2 partial dependents, four times the amount annually
3 devoted to the support of the partial dependents, but not
4 more than seventy thousand dollars (\$70,000), for injuries
5 occurring on and after January 1, 1991, a total of
6 ninety-five thousand dollars (\$95,000), for injuries
7 occurring on or after July 1, 1994, one hundred fifteen
8 thousand dollars (\$115,000), and for injuries occurring on
9 or after July 1, 1996, one hundred twenty-five thousand
10 dollars (\$125,000).

11 (5) In the case of three or more total dependents and
12 regardless of the number of partial dependents, one
13 hundred fifty thousand dollars (\$150,000) for injuries
14 occurring on and after July 1, 1994, and one hundred sixty
15 thousand dollars (\$160,000), *for injuries occurring* on or
16 after July 1, 1996.

17 (b) The death benefit in all cases shall be paid in
18 installments in the same manner and amounts as
19 temporary total disability indemnity would have to be
20 made to the employee, unless the appeals board
21 otherwise orders. However, no payment shall be made at
22 a weekly rate of less than two hundred twenty-four dollars
23 (\$224).

24 (c) Disability indemnity shall not be deducted from
25 the death benefit and shall be paid in addition to the
26 death benefit when the injury resulting in death occurs
27 after September 30, 1949.

28 (d) All rights under this section that existed prior to
29 January 1, 1990, shall be continued in force.

30 *SEC. 7. The Director of Industrial Relations shall*
31 *establish the following new positions for staffing of the*
32 *workers' compensation courts:*

33 (a) *Twenty-five workers' compensation*
34 *administrative law judges.*

35 (b) *Twenty-five hearing reporters.*

36 (c) *Twenty-five senior typists (legal).*

37 (d) *Twenty-five office assistants (II).*

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