

Introduced by Senator Morrow

February 26, 1999

An act to amend Section 4904 of the Labor Code, and to amend Sections 2629 and 2629.1 of the Unemployment Insurance Code, relating to disability benefits.

LEGISLATIVE COUNSEL'S DIGEST

SB 1140, as introduced, Morrow. Workers' compensation: appeals board.

Existing law provides for workers' compensation for injuries incurred in the course of employment. Existing law authorizes the Workers' Compensation Appeals Board to determine and allow as liens against any award certain expenses. Existing law allows the Employment Development Department to file a lien for unemployment compensation benefits and unemployment disability benefits.

This bill would require the Employment Development Department to give notice of the claim within a specified time period.

Existing law authorizes the Workers' Compensation Appeals Board to approve a compromise and release agreement or stipulation that proposes the disallowance of a lien, in whole or in part, only where there is proof of service upon the lien claimant by the defendant, not less than 15 days prior to the appeals board action, of all medical and rehabilitation documents and a copy of the proposed compromise and release agreement or stipulation.

This bill would provide that the appeals board may not approve a compromise and release agreement or stipulation

or issue an award that proposes the disallowance of a lien, in whole or in part, unless there is proof of service upon the lien claimant by the defendant, not less than 15 days prior to the appeals board action, of all medical and rehabilitation documents and a copy of the proposed compromise and release agreement or stipulation. It would also require the defendant to provide the lien claimant and the appeals board its proposed resolution of the lien and the specific rationale for, and the calculation of, the reduction proposed. It would provide that no reduction shall be approved in a lien served on the defendant for unemployment disability benefits, as specified, if the defendant fails to notify the appeals board of the lien prior to the issuance of an award or the approval of a compromise and release or stipulation. The bill would make related changes.

Existing law provides that an individual is not eligible for disability benefits under the unemployment compensation disability provisions for any day for which he or she receives other benefits, including certain workers' compensation benefits. However, existing law provides that if these other benefits are less than the amount an individual would otherwise receive as disability benefits, he or she shall be entitled to receive, for that day, if otherwise eligible, disability benefits under this part reduced by the amount of these "other benefits." Existing law also provides that an individual shall be entitled to receive, for any day, if otherwise eligible, disability benefits reduced by the amount of the maintenance allowance and permanent disability indemnity if certain requirements are met.

This bill would instead provide that no disability benefits shall be payable to an individual for a disability due to an injury or illness for which payments have been made under the workers' compensation laws except during any period in which liability for the injury or illness under workers' compensation is challenged by the individual's employer or the employer's insurer.

This bill would also require the Employment Development Department to notify the claimant and the claimant's employer of the determination that the claimant is entitled to



other benefits not later than one year after the filing of the claim for disability benefits.

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

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

1 SECTION 1. Section 4904 of the Labor Code is
2 amended to read:
3 4904. If notice is given in writing to the insurer, or to
4 the employer if uninsured, setting forth the nature and
5 extent of any claim that is allowable as a lien, the claim is
6 a lien against any amount thereafter payable as
7 compensation, subject to the determination of the
8 amount and approval of the lien by the appeals board.
9 *The Employment Development Department shall be*
10 *required to give the notice within the time period*
11 *specified in paragraph (1) of subdivision (c) of Section*
12 *2629.1 of the Unemployment Insurance Code. When the*
13 *Employment Development Department has served an*
14 *insurer or employer with a lien claim, the insurer or*
15 *employer shall notify the Employment Development*
16 *Department, in writing, as soon as possible, but in no*
17 *event later than 15 working days after commencing*
18 *disability indemnity payments. When a lien has been*
19 *served on an insurer or an employer by the Employment*
20 *Development Department, the insurer or employer shall*
21 *notify the Employment Development Department, in*
22 *writing, within 10 working days of filing an application for*
23 *adjudication, a stipulated award, or a compromise and*
24 *release with the appeals board. In determining the*
25 *amount of lien to be allowed for unemployment*
26 *compensation disability benefits under subdivision (f) of*
27 *Section 4903, the appeals board shall allow the lien in the*
28 *amount of benefits which it finds were paid for the same*
29 *day or days of disability for which an award of*
30 *compensation for any permanent disability indemnity*
31 *resulting solely from the same injury or illness or*
32 *temporary disability indemnity, or both, is made and for*
33 *which the employer has not reimbursed the Employment*



1 Development Department pursuant to Section 2629.1 of
2 the Unemployment Insurance Code. In determining the
3 amount of lien to be allowed for unemployment
4 compensation benefits and extended duration benefits
5 under subdivision (g) of Section 4903, the appeals board
6 shall allow the lien in the amount of benefits which it finds
7 were paid for the same day or days for which an award of
8 compensation for temporary total disability is made. In
9 the case of agreements for the compromise and release of
10 a disputed claim for compensation, the applicant and
11 defendant may propose to the appeals board, as part of
12 the compromise and release agreement, an amount out
13 of the settlement to be paid to any lien claimant claiming
14 under subdivision (f) or (g) of Section 4903. If the lien
15 claimant objects to the amount proposed for payment of
16 its lien under a compromise and release settlement or
17 stipulation, the appeals board shall determine the extent
18 of the lien claimant's entitlement to reimbursement on its
19 lien and make and file findings on all facts involved in the
20 controversy over this issue in accordance with Section
21 5313. The appeals board may *not* approve a compromise
22 and release agreement or stipulation—~~which~~ *or issue an*
23 *award that proposes the disallowance of a lien, in whole*
24 *or in part, only where unless* there is proof of service upon
25 the lien claimant by the defendant, not less than 15 days
26 prior to the appeals board action, of all medical and
27 rehabilitation documents and a copy of the proposed
28 compromise and release agreement or stipulation *and the*
29 *defendant provides the lien claimant and the appeals*
30 *board its proposed resolution of the lien and the specific*
31 *rationale for, and the calculation of, the reduction*
32 *proposed. No reduction shall be approved in a lien served*
33 *on the defendant in accordance with paragraph (1) of*
34 *subdivision (c) of Section 2629.1 of the Unemployment*
35 *Insurance Code if the defendant fails to notify the appeals*
36 *board of the lien prior to the issuance of an award or the*
37 *approval of a compromise and release or stipulation. The*
38 determination of the appeals board, subject to petition for
39 reconsideration and to the right of judicial review, as to
40 the amount of lien allowed under subdivision (f) or (g)



1 of Section 4903, whether in connection with an award of
2 compensation or the approval of a compromise and
3 release agreement, shall be binding on the lien claimant,
4 the applicant, and the defendant, insofar as the right to
5 benefits paid under the Unemployment Insurance Code
6 for which the lien was claimed. The appeals board may
7 order the amount of any lien claim, as determined and
8 allowed by it, to be paid directly to the person entitled,
9 either in a lump sum or in installments.

10 Where unemployment compensation disability
11 benefits have been paid pursuant to the Unemployment
12 Insurance Code while reconsideration of an order,
13 decision, or award is pending, or has been granted, the
14 appeals board shall determine and allow a final amount
15 on the lien as of the date the board is ready to issue its
16 decision denying a petition for reconsideration or
17 affirming, rescinding, altering or amending the original
18 findings, order, decision, or award.

19 The appeals board shall not be prohibited from
20 approving a compromise and release agreement on all
21 other issues and deferring to subsequent proceedings the
22 determination of a lien claimant's entitlement to
23 reimbursement if the defendant ~~in any of these~~
24 *proceedings provides the lien claimant and the appeals*
25 *board its proposed resolution of the lien and the specific*
26 *rationale for, and the calculation of, any reduction*
27 *proposed and agrees to pay the amount subsequently*
28 *determined to be due under the lien claim in subsequent*
29 *proceedings.*

30 SEC. 2. Section 2629 of the Unemployment Insurance
31 Code is amended to read:

32 2629. (a) Except as provided in this section, an
33 individual is not eligible for disability benefits under this
34 part for any day of unemployment and disability for
35 which he or she has received, or is entitled to receive,
36 "other benefits" in the form of cash payments.

37 (b) "Other benefits," as used in this section and
38 Section 2629.1, means any of the following:

39 (1) Temporary disability indemnity under a workers'
40 compensation law of this state or of any other state or of



1 the federal government including, for purposes of this
2 code and Sections 4903 and 4904 of the Labor Code, a
3 maintenance allowance paid pursuant to Section 139.5 of
4 the Labor Code.

5 (2) Temporary disability benefits under any
6 employer’s liability law of this state or of any other state
7 or of the federal government.

8 (3) Permanent disability benefits for the same injury
9 or illness under the workers’ compensation law of this
10 state, any other state, or the federal government.

11 ~~(c) Except for a maintenance allowance paid pursuant
12 to Section 139.5 of the Labor Code, if these “other
13 benefits” are less than the amount an individual would
14 otherwise receive as disability benefits under this part, he
15 or she shall be entitled to receive, for that day, if
16 otherwise eligible, disability benefits under this part
17 reduced by the amount of these “other benefits.”~~

18 ~~(d) An individual shall be entitled to receive, for any
19 day, if otherwise eligible, disability benefits under this
20 part reduced by the amount of the maintenance
21 allowance and permanent disability indemnity if both of
22 the following conditions are met:~~

23 ~~(1) The individual elects to receive the maximum
24 permanent disability indemnity pursuant to paragraph
25 (2) of subdivision (d) of Section 139.5 of the Labor Code.~~

26 ~~(2) The sum of the maintenance allowance and
27 permanent disability indemnity is less than the amount
28 an individual would otherwise receive as disability
29 benefits under this part. *No disability benefits shall be
30 payable to an individual under this part for a disability
31 due to an injury or illness for which payments have been
32 made under Division 4 (commencing with Section 3200)
33 of the Labor Code except during any period in which
34 liability for the injury or illness under workers’
35 compensation is challenged by the individual’s employer
36 or the employer’s insurer.*~~

37 SEC. 3. Section 2629.1 of the Unemployment
38 Insurance Code is amended to read:

39 2629.1. (a) Nothing in Section 2629 shall be construed
40 to authorize the delay of payment of unemployment



1 compensation disability benefits except where the
2 claimant is currently in receipt of other benefits or where
3 the department has received notice that the claimant's
4 employer or insurer has agreed to commence the
5 payment of other benefits.

6 (b) Notwithstanding Section 2701.5, payments shall
7 commence within 14 days after notice to the employer or
8 insurer under this section unless the employer or insurer
9 has either paid or has agreed to commence the payment
10 of other benefits.

11 (c) Upon the filing of a claim for unemployment
12 compensation disability benefits, the department shall
13 make an initial determination as to the claimant's
14 entitlement to other benefits for purposes of Section 2629.

15 (1) The department shall notify the claimant and the
16 claimant's employer *not later than one year after the*
17 *filing of the claim for disability benefits* if it determines
18 that the claimant is entitled to other benefits.

19 (2) The notice to the claimant shall inform the
20 claimant that disability benefits will be paid pending
21 receipt of other benefits if the employer fails to agree to
22 pay these other benefits within 14 days of notification of
23 industrial injury and shall advise the claimant of the
24 provisions of Section 2629.

25 (3) The department shall also include with the
26 claimant's notice a pamphlet to be provided by the
27 Department of Industrial Relations which meets the
28 criteria specified in subdivision (b) of Section 139.6 of the
29 Labor Code.

30 (4) The notice to the employer shall constitute a claim
31 for compensation and knowledge of an injury for
32 purposes of Section 5402 of the Labor Code, and shall
33 inform the employer of its potential liability for interest
34 and penalties under this section.

35 (d) If the employer or the insurance carrier disputes
36 liability for the payment of other benefits, or the extent
37 thereof, the department's right to reimbursement shall
38 be subject to the jurisdiction of the Workers'
39 Compensation Appeals Board in accordance with Part 4



1 (commencing with Section 5300) of Division 4 of the
2 Labor Code.

3 (e) An employer or insurance carrier who
4 subsequently assumes liability or is determined to be
5 liable for reimbursement to the department for
6 unemployment compensation disability benefits which
7 the department has paid in lieu of other benefits shall be
8 assessed for this liability by the department. In addition,
9 the employer shall pay the department interest on the
10 disability benefits at the annual rate provided in Section
11 19521 of the Revenue and Taxation Code. The employer
12 shall also pay a penalty of 10 percent of the amount
13 reimbursed to the department if the Workers'
14 Compensation Appeals Board finds that the failure of the
15 employer to pay other benefits upon notice by the
16 department under this section was unreasonable and a
17 penalty has not been awarded for the delay under Section
18 5814 of the Labor Code. All funds received by the
19 department pursuant to this section shall be deposited in
20 the Disability Fund.

21 (f) The employer shall reimburse the department in
22 accordance with subdivision (e) within 60 days of either
23 voluntarily accepting liability for other benefits or after
24 a final award, order, or decision of the Workers'
25 Compensation Appeals Board.

