

AMENDED IN SENATE MAY 8, 2007
AMENDED IN SENATE APRIL 18, 2007
AMENDED IN SENATE MARCH 29, 2007

SENATE BILL

No. 942

Introduced by Senator Migden

February 23, 2007

An act to amend Sections 132a, 3201.81, 4658.5, and 4658.6 of the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

SB 942, as amended, Migden. Workers' compensation.

(1) Existing Workers' Compensation Law requires employers to secure the payment of workers' compensation, including medical treatment, for injuries incurred by their employees that arise out of, or in the course of, employment. Existing law declares that it is the policy of this state that there should not be discrimination against workers who are injured in the course or scope of their employment.

~~This bill would provide that if, after the employee has been disabled from work as a result of injury or illness arising out of, or in the course of, employment pursuant to which the employee is eligible to receive workers' compensation benefits, the employee is willing and available to return to work, there is a rebuttable presumption that an employer has discriminated against an employee if the employer refuses to reinstate the employee to his or her regular position with full wages and benefits within 5 working days after receipt of a written statement by the employee's treating physician that the employee is able to perform the full requirements of the employee's regular position, notwithstanding the inherent risks of the position, without risk of further injury to the~~

~~employee being increased due to the effects of the injury or illness. The bill would provide that it shall be presumed that an employer has discriminated against an employee in violation of these provisions if the employer requires the~~ *require an employer to reinstate an employee to his or her preinjury job within 5 working days after receipt of a written statement by the treating physician that the employee is able to perform the essential functions of the employee's regular position, notwithstanding the risks inherent in the position, without a risk of further injury to the employee due to the effects of the injury or illness, and when the employee is willing and available to return to work. The bill would provide that if the employer refuses to reinstate such an employee to his or her preinjury job, the employer shall be required to reimburse the employee for lost wages and work benefits. The bill would prohibit an employer from requiring an employee to perform additional physical duties that were not required of the employee prior to his or her injury or illness as a condition for returning to employment, unless the additional physical duties are reasonably required to accommodate the employee's disability. The bill would require an employer to reimburse the employee for lost wages and work benefits for any time that the employee is unable to work due to the imposition of additional physical duties that are not reasonably required to accommodate the employee's disability.*

(2) Existing law provides for the payment of temporary disability indemnity payments to any injured employee under specified circumstances, with certain exceptions, and provides that, if an injury causes permanent partial disability and the injured employee does not return to work for the employer within 60 days of the termination of temporary disability indemnity payments, the injured employee shall receive a supplemental job displacement benefit, as specified. Existing law further provides that an employer shall not be liable for supplemental job displacement benefits if, within 30 days of termination of temporary disability indemnity payments, the employer offers, and the employee rejects, or fails to accept, in the form and manner prescribed by the administrative director, modified work, accommodating the employee's work restrictions, lasting at least 12 months.

This bill would, instead, provide that, for injuries occurring on or after January 1, 2008, if the injury causes permanent partial disability and the injured employee does not return to work for the employer within 60 days after the disability becomes permanent and stationary,

the employee shall receive a supplemental job displacement benefit, and would revise the amounts of benefits an injured employee would be eligible to receive, as specified.

(3) Existing law provides that the employer shall not be liable for the supplemental job displacement benefit if, within 30 days of the termination of temporary disability indemnity benefits, the employer offers, and the employee rejects, or fails to accept, modified or alternative work, as specified.

This bill instead would provide that an employer shall not be liable for supplemental job displacement benefits if, within 60 days of the disability becoming permanent and stationary, the employer offers the injured employee regular work, modified work, or alternative work, and, the employee rejects, or fails to accept, modified or alternative work. It would also make a technical, clarifying change.

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 132a of the Labor Code is amended to
2 read:

3 132a. (a) It is the declared policy of this state that there should
4 not be discrimination against workers who are injured in the course
5 and scope of their employment. It is further the policy of this state
6 that there should not be discrimination against employees who
7 attempt to exercise their rights under subdivision (d) of Section
8 4600.

9 (b) (1) Any employer who discharges, or threatens to discharge,
10 or in any manner discriminates against any employee because he
11 or she has filed or made known his or her intention to file a claim
12 for compensation with his or her employer or an application for
13 adjudication, or because the employee has received a rating, award,
14 or settlement, is guilty of a misdemeanor and the employee's
15 compensation shall be increased by one-half, but in no event more
16 than ten thousand dollars (\$10,000), together with costs and
17 expenses not in excess of two hundred fifty dollars (\$250). Any
18 such employee shall also be entitled to reinstatement and
19 reimbursement for lost wages and work benefits caused by the acts
20 of the employer.

1 (2) Any insurer that advises, directs, or threatens an insured
2 under penalty of cancellation or a raise in premium or for any other
3 reason, to discharge an employee because he or she has filed or
4 made known his or her intention to file a claim for compensation
5 with his or her employer or an application for adjudication, or
6 because the employee has received a rating, award, or settlement,
7 is guilty of a misdemeanor and subject to the increased
8 compensation and costs provided in paragraph (1).

9 (3) Any employer who discharges, or threatens to discharge, or
10 in any manner discriminates against any employee because the
11 employee testified or made known his or her intentions to testify
12 in another employee's case before the appeals board, is guilty of
13 a misdemeanor, and the employee shall be entitled to reinstatement
14 and reimbursement for lost wages and work benefits caused by
15 the acts of the employer.

16 ~~(4) (A) If, after the employee has been disabled by an injury
17 or illness arising out of, or in the course of, employment, the
18 employee is willing and available to return to work, it shall be
19 presumed that an employer has discriminated against an employee
20 in violation of paragraph (1) if the employer refuses to reinstate
21 the employee to full wages and benefits within five working days
22 after receipt of a written statement by the treating physician that
23 the employee is able to perform the full requirements of the
24 employee's regular position, notwithstanding the risks inherent in
25 the position, without a risk of further injury to the employee being
26 increased due to the effects of the injury or illness. This
27 presumption is rebuttable and may be controverted by a
28 preponderance of the evidence, but unless so controverted, the
29 appeals board is bound to find in accordance with it.~~

30 *(4) (A) An employer shall reinstate an employee to his or her
31 preinjury job within five working days after receipt of a written
32 statement by the treating physician that the employee is able to
33 perform the essential functions of the employee's regular position,
34 notwithstanding the risks inherent in the position, without a risk
35 of further injury to the employee being increased due to the effects
36 of the injury or illness, and where the employee is willing and
37 available to return to work. If an employer refuses to reinstate
38 such an employee to his or her preinjury job, the employer shall
39 be required to reimburse the employee for lost wages and work
40 benefits.*

1 ~~(B) It shall be presumed that an employer has discriminated~~
2 ~~against an employee in violation of paragraph (1) if the employer~~
3 ~~requires the employee to perform additional physical duties that~~

4 *(B) No employer shall require an employee to perform*
5 *additional physical duties that the employee was not required to*
6 *perform prior to the injuries or illness as a condition of returning*
7 *to work, unless the additional physical duties are reasonably*
8 *required to accommodate the employee's disability.—This*
9 ~~presumption is rebuttable and may be controverted by other~~
10 ~~evidence, but unless so controverted, the appeals board is bound~~
11 ~~to find in accordance with it. An employer shall reimburse the~~
12 ~~employee for lost wages and work benefits for any time that the~~
13 ~~employee is unable to work due to the imposition of additional~~
14 ~~physical duties that are not reasonably required to accommodate~~
15 ~~the employee's disability.~~

16 (C) Any employer who refuses to reinstate an employee to his
17 or her preinjury job in accordance with the requirements of this
18 section shall pay a *civil* penalty of one hundred dollars (\$100) per
19 day for each day the employer is in violation of this paragraph;
20 ~~plus the employee's full wages and, and the employee shall be~~
21 ~~entitled to reimbursement for lost wages and work benefits.~~
22 Nothing in this paragraph shall preclude an employer from
23 objecting to the opinion of the treating physician pursuant to
24 Section 4062 or from obtaining an opinion from an agreed medical
25 evaluator or qualified medical evaluator pursuant to that ~~section~~
26 ~~if the employer pays the employee his or her full wages and~~
27 ~~benefits due for that period section. However, the employee shall~~
28 ~~continue to be entitled to reimbursement for lost wages and work~~
29 ~~benefits during the time an employer is objecting to the opinion~~
30 ~~or obtaining an opinion from an agreed medical evaluator or~~
31 ~~qualified medical evaluator. The report of the agreed medical~~
32 ~~evaluator or qualified medical evaluator shall be based on an~~
33 ~~in-person physical examination of the employee. If the report of~~
34 ~~the agreed medical evaluator or the qualified medical evaluator~~
35 ~~states that the employee is unable to perform the full requirements~~
36 ~~essential functions of the employee's regular position, or is unable~~
37 ~~to perform the full requirements essential functions of the~~
38 ~~employee's regular position without the risk of further injury or~~
39 ~~illness to the employee being increased due to the effects of the~~
40 ~~injury or illness, then the employer shall have no further obligation~~

1 to pay the employee full wages and benefits pursuant to this
2 paragraph for any period after the date of service of the report, and
3 the employer shall not be liable for ~~penalties~~ *lost wages and work*
4 *benefits* for a violation pursuant to this paragraph. Where the report
5 of the agreed medical evaluator or the qualified medical evaluator
6 does not concur with the report from the treating physician, the
7 employee shall not be liable for the repayment of ~~any wages,~~
8 ~~benefits, or penalty moneys received~~ *lost wages or work benefits*
9 *received pursuant to this section.*

10 (5) Any insurer that advises, directs, or threatens an insured
11 employer, under penalty of cancellation, a raise in premium, or
12 for any other reason, to discharge or in any manner discriminate
13 against an employee because the employer testified or made known
14 his or her intention to testify in another employee's case before
15 the appeals board, is guilty of a misdemeanor.

16 (6) It shall be presumed that an employer has discriminated
17 against an employee in violation of paragraph (1) if the employer
18 denies an employee the right to predesignate a treating physician
19 in accordance with subdivision (d) of Section 4600 prior to injury
20 or illness or denies an employee the right to see his or her properly
21 predesignated physician or a medical provider to whom the
22 predesignated physician has referred the employee after the injury
23 or illness.

24 (7) Proceedings for increased compensation as provided in
25 paragraph (1), or for reinstatement and reimbursement for lost
26 wages and work benefits, are to be instituted by filing an
27 appropriate petition with the appeals board, but these proceedings
28 may not be commenced more than one year from the discriminatory
29 act or date of termination of the employee. The appeals board is
30 vested with full power, authority, and jurisdiction to try and
31 determine finally all matters specified in this section subject only
32 to judicial review, except that the appeals board shall have no
33 jurisdiction to try and determine a misdemeanor charge. The
34 appeals board may refer and any worker may complain of suspected
35 violations of the criminal misdemeanor provisions of this section
36 to the Division of Labor Standards Enforcement, or directly to the
37 office of the public prosecutor.

38 (8) *Nothing in this section is intended to limit any rights or*
39 *remedies otherwise provided by law.*

40 SEC. 2. Section 3201.81 of the Labor Code is amended to read:

1 3201.81. In the horse racing industry, the organization certified
2 by the California Horse Racing Board to represent the majority of
3 licensed jockeys pursuant to subdivision (b) of Section 19612.9
4 of the Business and Professions Code is the labor organization
5 authorized to negotiate the collective bargaining agreement
6 establishing an alternative dispute resolution system for licensed
7 jockeys pursuant to Section 3201.7.

8 SEC. 3. Section 4658.5 of the Labor Code is amended to read:

9 4658.5. (a) (1) Except as provided in Section 4658.6, if the
10 injury causes permanent partial disability and the injured employee
11 does not return to work for the employer within 60 days of the
12 termination of temporary disability, the injured employee shall be
13 eligible for a supplemental job displacement benefit in the form
14 of a nontransferable voucher for education-related retraining or
15 skill enhancement, or both, at state-approved or accredited schools,
16 as follows:

17 (A) Up to four thousand dollars (\$4,000) for permanent partial
18 disability awards of less than 15 percent.

19 (B) Up to six thousand dollars (\$6,000) for permanent partial
20 disability awards between 15 and 25 percent.

21 (C) Up to eight thousand dollars (\$8,000) for permanent partial
22 disability awards between 26 and 49 percent.

23 (D) Up to ten thousand dollars (\$10,000) for permanent partial
24 disability awards between 50 and 99 percent.

25 (2) Except as provided in Section 4658.6, for injuries occurring
26 on or after January 1, 2008, if the injury causes permanent partial
27 disability and the injured employee does not return to work for the
28 employer within 60 days after the disability becomes permanent
29 and stationary, the employee shall be entitled to a supplemental
30 job displacement benefit in the form of a nontransferable voucher
31 for education-related retraining or skill enhancement, or both, at
32 state accredited schools. The voucher shall not exceed a total
33 amount of ten thousand dollars (\$10,000). The maximum amount
34 of the voucher available for the payment of tuition, fees, books,
35 and other expenses required by the school in any one semester, in
36 any one quarter, or in any other academic term into which the
37 school divides the academic year shall be prorated for the academic
38 term at a rate not to exceed five thousand dollars (\$5,000) per year.

39 (b) The voucher may be used for payment of tuition, fees, books,
40 and other expenses required by the school for retraining or skill

1 enhancement. No more than 10 percent of the voucher moneys
2 may be used for vocational or return to work counseling. The
3 administrative director shall adopt regulations governing the form
4 of payment, direct reimbursement to the injured employee upon
5 presentation to the employer of appropriate documentation and
6 receipts, and any other matters necessary to the proper
7 administration of the supplemental job displacement benefit.

8 (c) Within 10 days of the date of the last payment of temporary
9 disability the employer shall provide to the employee, in the form
10 and manner prescribed by the administrative director, information
11 that provides notice of rights under this section. This notice shall
12 be sent by certified mail.

13 (d) Except as provided in paragraph (2) of subdivision (a), this
14 section shall apply to injuries occurring on or after January 1, 2004.

15 SEC. 4. Section 4658.6 of the Labor Code is amended to read:

16 4658.6. The employer shall not be liable for the supplemental
17 job displacement benefit within 60 days of the disability becoming
18 permanent and stationary if the employer offers the injured
19 employee regular work, modified work, or alternative work in the
20 form and manner prescribed by the administrative director, lasting
21 for a period of at least 12 months.