

AMENDED IN ASSEMBLY APRIL 14, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1093

Introduced by Assembly Member Yamada

February 27, 2009

An act to amend Section 3600 of the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1093, as amended, Yamada. Workers' compensation.

Existing workers' compensation law generally requires employers to secure the payment of workers' compensation, including medical treatment, for injuries incurred by their employees that arise out of, and in the course of, employment.

Existing law, the Unruh Civil Rights Act, grants specified rights regardless of specified characteristics of an individual.

This bill would provide that no workers' compensation claim shall be denied ~~solely because the motivation behind what caused the employee's injury or death was related to an immutable personal characteristic of that employee.~~ *if the employee's injury or death resulted from a violent act perpetrated against the employee because of a characteristic of that employee that is listed in the Unruh Civil Rights Act.*

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

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

SECTION 1. Section 3600 of the Labor Code is amended to read:

3600. (a) Liability for the compensation provided by this division, in lieu of any other liability whatsoever to any person except as otherwise specifically provided in Sections 3602, 3706, and 4558, shall, without regard to negligence, exist against an employer for any injury sustained by his or her employees arising out of and in the course of the employment and for the death of any employee if the injury proximately causes death, in those cases where the following conditions of compensation concur:

(1) Where, at the time of the injury, both the employer and the employee are subject to the compensation provisions of this division.

(2) Where, at the time of the injury, the employee is performing service growing out of and incidental to his or her employment and is acting within the course of his or her employment.

(3) Where the injury is proximately caused by the employment, either with or without negligence.

(4) Where the injury is not caused by the intoxication, by alcohol or the unlawful use of a controlled substance, of the injured employee. As used in this paragraph, "controlled substance" shall have the same meaning as prescribed in Section 11007 of the Health and Safety Code.

(5) Where the injury is not intentionally self-inflicted.

(6) Where the employee has not willfully and deliberately caused his or her own death.

(7) Where the injury does not arise out of an altercation in which the injured employee is the initial physical aggressor.

(8) Where the injury is not caused by the commission of a felony, or a crime which is punishable as specified in subdivision (b) of Section 17 of the Penal Code, by the injured employee, for which he or she has been convicted.

(9) Where the injury does not arise out of voluntary participation in any off-duty recreational, social, or athletic activity not constituting part of the employee's work-related duties, except where these activities are a reasonable expectancy of, or are expressly or impliedly required by, the employment. The administrative director shall promulgate reasonable rules and

1 regulations requiring employers to post and keep posted in a
2 conspicuous place or places a notice advising employees of the
3 provisions of this subdivision. Failure of the employer to post the
4 notice shall not constitute an expression of intent to waive the
5 provisions of this subdivision.

6 (10) Except for psychiatric injuries governed by subdivision (e)
7 of Section 3208.3, where the claim for compensation is filed after
8 notice of termination or layoff, including voluntary layoff, and the
9 claim is for an injury occurring prior to the time of notice of
10 termination or layoff, no compensation shall be paid unless the
11 employee demonstrates by a preponderance of the evidence that
12 one or more of the following conditions apply:

13 (A) The employer has notice of the injury, as provided under
14 Chapter 2 (commencing with Section 5400), prior to the notice of
15 termination or layoff.

16 (B) The employee's medical records, existing prior to the notice
17 of termination or layoff, contain evidence of the injury.

18 (C) The date of injury, as specified in Section 5411, is
19 subsequent to the date of the notice of termination or layoff, but
20 prior to the effective date of the termination or layoff.

21 (D) The date of injury, as specified in Section 5412, is
22 subsequent to the date of the notice of termination or layoff.

23 For purposes of this paragraph, an employee provided notice
24 pursuant to Sections 44948.5, 44949, 44951, 44955, 44955.6,
25 72411, 87740, and 87743 of the Education Code shall be
26 considered to have been provided a notice of termination or layoff
27 only upon a district's final decision not to reemploy that person.

28 A notice of termination or layoff that is not followed within 60
29 days by that termination or layoff shall not be subject to the
30 provisions of this paragraph, and this paragraph shall not apply
31 until receipt of a later notice of termination or layoff. The issuance
32 of frequent notices of termination or layoff to an employee shall
33 be considered a bad faith personnel action and shall make this
34 paragraph inapplicable to the employee.

35 (b) Where an employee, or his or her dependents, receives the
36 compensation provided by this division and secures a judgment
37 for, or settlement of, civil damages pursuant to those specific
38 exemptions to the employee's exclusive remedy set forth in
39 subdivision (b) of Section 3602 and Section 4558, the
40 compensation paid under this division shall be credited against the

1 judgment or settlement, and the employer shall be relieved from
2 the obligation to pay further compensation to, or on behalf of, the
3 employee or his or her dependents up to the net amount of the
4 judgment or settlement received by the employee or his or her
5 heirs, or that portion of the judgment as has been satisfied.

6 (c) No workers' compensation claim shall be denied ~~solely~~
7 ~~because the motivation behind what caused the employee's injury~~
8 ~~or death was related to an immutable personal characteristic of~~
9 ~~that employee.~~ *if the employee's injury or death resulted from a*
10 *violent act perpetrated against the employee because of a*
11 *characteristic of that employee that is listed in subdivision (b) of*
12 *Section 51 of the Civil Code.*