

AMENDED IN ASSEMBLY APRIL 28, 2009

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 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.~~

This bill would provide that for purposes of determining whether to grant or deny a workers' compensation claim, if an employee is injured or killed by a 3rd party in the course of the employee's employment, no personal relationship or personal connection shall be deemed to exist between the employee and the 3rd party based only on a determination that the 3rd party injured or killed the employee solely because of the 3rd party's personal beliefs relating to his or her

perception of the employee's sex, race, color, religion, ancestry, national origin, marital status, or sexual orientation.

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 3600 of the Labor Code is amended to
2 read:
3 3600. (a) Liability for the compensation provided by this
4 division, in lieu of any other liability whatsoever to any person
5 except as otherwise specifically provided in Sections 3602, 3706,
6 and 4558, shall, without regard to negligence, exist against an
7 employer for any injury sustained by his or her employees arising
8 out of and in the course of the employment and for the death of
9 any employee if the injury proximately causes death, in those cases
10 where the following conditions of compensation concur:
11 (1) Where, at the time of the injury, both the employer and the
12 employee are subject to the compensation provisions of this
13 division.
14 (2) Where, at the time of the injury, the employee is performing
15 service growing out of and incidental to his or her employment
16 and is acting within the course of his or her employment.
17 (3) Where the injury is proximately caused by the employment,
18 either with or without negligence.
19 (4) Where the injury is not caused by the intoxication, by alcohol
20 or the unlawful use of a controlled substance, of the injured
21 employee. As used in this paragraph, "controlled substance" shall
22 have the same meaning as prescribed in Section 11007 of the
23 Health and Safety Code.
24 (5) Where the injury is not intentionally self-inflicted.
25 (6) Where the employee has not willfully and deliberately caused
26 his or her own death.
27 (7) Where the injury does not arise out of an altercation in which
28 the injured employee is the initial physical aggressor.
29 (8) Where the injury is not caused by the commission of a
30 felony, or a crime which is punishable as specified in subdivision
31 (b) of Section 17 of the Penal Code, by the injured employee, for
32 which he or she has been convicted.

1 (9) Where the injury does not arise out of voluntary participation
2 in any off-duty recreational, social, or athletic activity not
3 constituting part of the employee's work-related duties, except
4 where these activities are a reasonable expectancy of, or are
5 expressly or impliedly required by, the employment. The
6 administrative director shall promulgate reasonable rules and
7 regulations requiring employers to post and keep posted in a
8 conspicuous place or places a notice advising employees of the
9 provisions of this subdivision. Failure of the employer to post the
10 notice shall not constitute an expression of intent to waive the
11 provisions of this subdivision.

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

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

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

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

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

29 For purposes of this paragraph, an employee provided notice
30 pursuant to Sections 44948.5, 44949, 44951, 44955, ~~44955.6,~~
31 72411, 87740, and 87743 of the Education Code shall be
32 considered to have been provided a notice of termination or layoff
33 only upon a district's final decision not to reemploy that person.

34 A notice of termination or layoff that is not followed within 60
35 days by that termination or layoff shall not be subject to the
36 provisions of this paragraph, and this paragraph shall not apply
37 until receipt of a later notice of termination or layoff. The issuance
38 of frequent notices of termination or layoff to an employee shall
39 be considered a bad faith personnel action and shall make this
40 paragraph inapplicable to the employee.

1 (b) Where an employee, or his or her dependents, receives the
2 compensation provided by this division and secures a judgment
3 for, or settlement of, civil damages pursuant to those specific
4 exemptions to the employee's exclusive remedy set forth in
5 subdivision (b) of Section 3602 and Section 4558, the
6 compensation paid under this division shall be credited against the
7 judgment or settlement, and the employer shall be relieved from
8 the obligation to pay further compensation to, or on behalf of, the
9 employee or his or her dependents up to the net amount of the
10 judgment or settlement received by the employee or his or her
11 heirs, or that portion of the judgment as has been satisfied.

12 ~~(c) No workers' compensation claim shall be denied if the~~
13 ~~employee's injury or death resulted from a violent act perpetrated~~
14 ~~against the employee because of a characteristic of that employee~~
15 ~~that is listed in subdivision (b) of Section 51 of the Civil Code.~~

16 (c) *For purposes of determining whether to grant or deny a*
17 *workers' compensation claim, if an employee is injured or killed*
18 *by a third party in the course of the employee's employment, no*
19 *personal relationship or personal connection shall be deemed to*
20 *exist between the employee and the third party based only on a*
21 *determination that the third party injured or killed the employee*
22 *solely because of the third party's personal beliefs relating to his*
23 *or her perception of the employee's sex, race, color, religion,*
24 *ancestry, national origin, marital status, or sexual orientation.*