

ASSEMBLY BILL

No. 2123

Introduced by Assembly Member Smyth

February 18, 2010

An act to amend Section 4660 of the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

AB 2123, as introduced, Smyth. Workers' compensation.

Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, to compensate an employee for injuries sustained in the course of employment. Existing law requires the administrative director to formulate a rating schedule for determining the percentage of an injured employee's permanent disability.

This bill would make a technical, nonsubstantive change to those provisions.

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 4660 of the Labor Code is amended to
2 read:
3 4660. (a) In determining the percentages of permanent
4 disability, account shall be taken of the nature of the physical injury
5 or disfigurement, the occupation of the injured employee, and his
6 or her age at the time of the injury, consideration being given to
7 an employee's diminished future earning capacity.

1 (b) (1) For purposes of this section, the “nature of the physical
2 injury or disfigurement” shall incorporate the descriptions and
3 measurements of physical impairments and the corresponding
4 percentages of impairments published in the American Medical
5 Association (AMA) Guides to the Evaluation of Permanent
6 Impairment (5th Edition).

7 (2) For purposes of this section, an employee’s diminished future
8 earning capacity shall be a numeric formula based on empirical
9 data and findings that aggregate the average percentage of
10 long-term loss of income resulting from each type of injury for
11 similarly situated employees. The administrative director shall
12 formulate the adjusted rating schedule based on empirical data and
13 findings from the Evaluation of California’s Permanent Disability
14 Rating Schedule, Interim Report (December 2003), prepared by
15 the RAND Institute for Civil Justice, and upon data from additional
16 empirical studies.

17 (c) The administrative director shall amend the schedule for the
18 determination of the percentage of permanent disability in
19 accordance with this section at least once every five years. This
20 schedule shall be available for public inspection and, without
21 formal introduction in evidence, shall be prima facie evidence of
22 the percentage of permanent disability to be attributed to each
23 injury covered by the schedule.

24 (d) The schedule shall promote consistency, uniformity, and
25 objectivity. The schedule and any amendment thereto or revision
26 thereof shall apply prospectively and shall apply to and govern
27 only those permanent disabilities that result from compensable
28 injuries received or occurring on and after the effective date of the
29 adoption of the schedule, amendment or revision, as the fact may
30 be. For compensable claims arising before January 1, 2005, the
31 schedule as revised pursuant to changes made in legislation enacted
32 during the 2003–04 Regular and Extraordinary Sessions shall apply
33 to the determination of permanent disabilities when there has been
34 either no comprehensive medical-legal report or no report by a
35 treating physician indicating the existence of permanent disability,
36 or when the employer is not required to provide the notice required
37 by Section 4061 to the injured worker.

38 (e) On or before January 1, 2005, the administrative director
39 shall adopt regulations to implement the changes made to this

1 section by the act that added this subdivision *Chapter 34 of the*
2 *Statutes of 2004.*

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