

Introduced by Senator Cedillo

February 18, 2010

An act to amend Section 138.7 of the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

SB 1213, as introduced, Cedillo. Electronic access to claims information.

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 his or her employment.

Existing law provides that a person or public or private entity who is not a party to a claim for workers' compensation benefits may not obtain individually identifiable information, as defined, that is obtained or maintained by the Division of Workers' Compensation of the Department of Industrial Relations on that claim, except as specified.

This bill would require the division to provide a party to a claim with single sign-on portal real-time electronic programmatic access, at no charge, to the party's data and any public records contained within the Electronic Adjudication Management System (EAMS).

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. The Legislature finds and declares all of the
- 2 following:

1 (a) There is ongoing interest in technological advancement due
2 to its influence on the nation's economic growth, productivity, and
3 international competitiveness. Because technology can increase
4 productivity, the state encourages the incorporation of technological
5 advances where possible.

6 (b) There is a desire for transparency in government. California
7 should ensure the public trust by establishing a means to provide
8 for transparency, public participation, and collaboration within
9 state government. This openness strengthens our democracy, and
10 promotes government efficiency and effectiveness.

11 (c) California must vigilantly monitor the relationship between
12 technology and civil liberties to use technology responsibly and
13 maintain privacy.

14 SEC. 2. Section 138.7 of the Labor Code is amended to read:

15 138.7. (a) Except as expressly permitted in subdivision (b), a
16 person or public or private entity not a party to a claim for workers'
17 compensation benefits—~~may~~ *shall* not obtain individually
18 identifiable information obtained or maintained by the division on
19 that claim. For purposes of this section, "individually identifiable
20 information" means any data concerning an injury or claim that is
21 linked to a uniquely identifiable employee, employer, claims
22 administrator, or any other person or entity.

23 (b) (1) The administrative director, or a statistical agent
24 designated by the administrative director, may use individually
25 identifiable information for purposes of creating and maintaining
26 the workers' compensation information system as specified in
27 Section 138.6.

28 (2) The State Department of *Public Health*—~~Services~~ may use
29 individually identifiable information for purposes of establishing
30 and maintaining a program on occupational health and occupational
31 disease prevention as specified in Section 105175 of the Health
32 and Safety Code.

33 (3) (A) Individually identifiable information may be used by
34 the Division of Workers' Compensation, the Division of
35 Occupational Safety and Health, and the Division of Labor
36 Statistics and Research as necessary to carry out their duties. The
37 administrative director shall adopt regulations governing the access
38 to the information described in this subdivision by these divisions.
39 Any regulations adopted pursuant to this subdivision shall set forth
40 the specific uses for which this information may be obtained.

(B) Individually identifiable information maintained in the workers' compensation information system and the Division of Workers' Compensation may be used by researchers employed by or under contract to the Commission on Health and Safety and Workers' Compensation as necessary to carry out the commission's research. The administrative director shall adopt regulations governing the access to the information described in this subdivision by commission researchers. These regulations shall set forth the specific uses for which this information may be obtained and include provisions guaranteeing the confidentiality of individually identifiable information. Individually identifiable information obtained under this subdivision shall not be disclosed to commission members. ~~No individually~~ *Individually* identifiable information obtained by researchers under contract to the commission pursuant to this subparagraph ~~may~~ *shall not* be disclosed to any other person or entity, public or private, for a use other than that research project for which the information was obtained. Within a reasonable period of time after the research for which the information was obtained has been completed, the data collected shall be modified in a manner so that the subjects cannot be identified, directly or through identifiers linked to the subjects.

(4) The administrative director shall adopt regulations allowing reasonable access to individually identifiable information by other persons or public or private entities for the purpose of bona fide statistical research. This research shall not divulge individually identifiable information concerning a particular employee, employer, claims administrator, or any other person or entity. The regulations adopted pursuant to this paragraph shall include provisions guaranteeing the confidentiality of individually identifiable information. Within a reasonable period of time after the research for which the information was obtained has been completed, the data collected shall be modified in a manner so that the subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) This section shall not operate to exempt from disclosure any information that is considered to be a public record pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) contained in an individual's file once an application for adjudication has been filed pursuant to Section 5501.5.

1 However, individually identifiable information shall not be
2 provided to any person or public or private entity who is not a
3 party to the claim unless that person identifies himself or herself
4 or that public or private entity identifies itself and states the reason
5 for making the request. The administrative director may require
6 the person or public or private entity making the request to produce
7 information to verify that the name and address of the requester
8 is valid and correct. If the purpose of the request is related to
9 preemployment screening, the administrative director shall notify
10 the person about whom the information is requested that the
11 information was provided and shall include the following in
12 12-point type:

13
14 “IT MAY BE A VIOLATION OF FEDERAL AND STATE
15 LAW TO DISCRIMINATE AGAINST A JOB APPLICANT
16 BECAUSE THE APPLICANT HAS FILED A CLAIM FOR
17 WORKERS’ COMPENSATION BENEFITS.”

18
19 Any residence address is confidential and shall not be disclosed
20 to any person or public or private entity except to a party to the
21 claim, a law enforcement agency, an office of a district attorney,
22 any person for a journalistic purpose, or other governmental
23 agency.

24 ~~Nothing in this~~ This paragraph shall *not* be construed to prohibit
25 the use of individually identifiable information for purposes of
26 identifying bona fide lien claimants.

27 (c) Except as provided in subdivision (b), individually
28 identifiable information obtained by the division is privileged and
29 *is shall not be* subject to subpoena in a civil proceeding unless,
30 after reasonable notice to the division and a hearing, a court
31 determines that the public interest and the intent of this section
32 will not be jeopardized by disclosure of the information. This
33 section shall not operate to restrict access to information by any
34 law enforcement agency or district attorney’s office or to limit
35 admissibility of that information in a criminal proceeding.

36 (d) It shall be unlawful for any person who has received
37 individually identifiable information from the division pursuant
38 to this section to provide that information to any person who is
39 not entitled to it under this section.

1 ~~(e) Notwithstanding any other provision of this chapter, the~~
2 ~~division shall provide a party to a claim for workers' compensation~~
3 ~~benefits with single sign-on portal real-time electronic~~
4 ~~programmatic access, at no charge, to the party's data and any~~
5 ~~public records contained within the Electronic Adjudication~~
6 ~~Management System (EAMS).~~

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