

AMENDED IN ASSEMBLY APRIL 26, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1155

**Introduced by Assembly Members Alejo, Roger Hernández, and
Lara**

(Principal coauthor: Assembly Member Charles Calderon)

**(Coauthors: Assembly Members Allen, Ammiano, Beall, Cedillo,
Dickinson, Eng, Fong, Furutani, Hueso, Ma, Mendoza, Monning,
and Swanson Perea, Swanson, and Williams)**

(Coauthors: Senators Hancock, Rubio, and Steinberg)

February 18, 2011

An act to amend ~~Sections 3600 and~~ *Section* 4663 of the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1155, as amended, Alejo. Workers' compensation.

(1) 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.

~~This bill would provide that a workers' compensation claim shall not be denied because the employee's injury or death was related to the employee's race, religious creed, color, national origin, age, gender, marital status, sex, sexual orientation, or genetic characteristics.~~

~~This bill would also state the intent of the Legislature to enact legislation that would apply employment discrimination protections to workers' compensation law in order to prohibit the wrongful reduction or denial of workers' compensation benefits.~~

(2) Existing law requires any physician who prepares a report addressing the issue of permanent disability due to a claimed industrial injury to address the issue of causation of the permanent disability, and requires that the report include an apportionment determination in order to be considered complete on the issue of permanent disability.

This bill would prohibit race, religious creed, color, national origin, age, gender, marital status, sex, sexual orientation, or genetic characteristics from being considered a cause or other factor of disability considered in any determination made pursuant 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 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.~~

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

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

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

18 ~~(10) Except for psychiatric injuries governed by subdivision (c)~~
19 ~~of Section 3208.3, where the claim for compensation is filed after~~
20 ~~notice of termination or layoff, including voluntary layoff, and the~~
21 ~~claim is for an injury occurring prior to the time of notice of~~
22 ~~termination or layoff, no compensation shall be paid unless the~~
23 ~~employee demonstrates by a preponderance of the evidence that~~
24 ~~one or more of the following conditions apply:~~

25 ~~(A) The employer has notice of the injury, as provided under~~
26 ~~Chapter 2 (commencing with Section 5400), prior to the notice of~~
27 ~~termination or layoff.~~

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

30 ~~(C) The date of injury, as specified in Section 5411, is~~
31 ~~subsequent to the date of the notice of termination or layoff, but~~
32 ~~prior to the effective date of the termination or layoff.~~

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

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

1 A notice of termination or layoff that is not followed within 60
 2 days by that termination or layoff shall not be subject to the
 3 provisions of this paragraph, and this paragraph shall not apply
 4 until receipt of a later notice of termination or layoff. The issuance
 5 of frequent notices of termination or layoff to an employee shall
 6 be considered a bad faith personnel action and shall make this
 7 paragraph inapplicable to the employee.

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

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

28 (d) A workers' compensation claim shall not be denied because
 29 the employee's injury or death was related to the employee's race,
 30 religious creed, color, national origin, age, gender, marital status,
 31 sex, sexual orientation, or genetic characteristics.

32 (e) For purposes of this section, "genetic characteristics" has
 33 the same meaning as that term is defined in subdivision (d) of
 34 Section 10123.3 of the Insurance Code.

35 **SEC. 2.**

36 *SECTION 1.* Section 4663 of the Labor Code is amended to
 37 read:

38 4663. (a) Apportionment of permanent disability shall be based
 39 on causation.

1 (b) Any physician who prepares a report addressing the issue
2 of permanent disability due to a claimed industrial injury shall in
3 that report address the issue of causation of the permanent
4 disability.

5 (c) In order for a physician's report to be considered complete
6 on the issue of permanent disability, the report must include an
7 apportionment determination. A physician shall make an
8 apportionment determination by finding what approximate
9 percentage of the permanent disability is caused by the direct result
10 of injury arising out of and occurring in the course of employment
11 and what approximate percentage of the permanent disability is
12 caused by other factors both before and subsequent to the industrial
13 injury, including prior industrial injuries. If the physician is unable
14 to include an apportionment determination in his or her report, the
15 physician shall state the specific reasons why the physician cannot
16 make a determination of the effect of that prior condition on the
17 permanent disability arising from the injury. The physician shall
18 then consult with other physicians or refer the employee to another
19 physician from whom the employee is authorized to seek treatment
20 or evaluation in accordance with this division in order to make the
21 final determination. Race, religious creed, color, national origin,
22 age, gender, marital status, sex, sexual orientation, or genetic
23 characteristics shall not be considered a cause or other factor of
24 disability with regard to any determination made under this section.

25 (d) An employee who claims an industrial injury shall, upon
26 request, disclose all previous permanent disabilities or physical
27 impairments.

28 (e) Subdivisions (a), (b), and (c) shall not apply to injuries or
29 illnesses covered under Sections 3212, 3212.1, 3212.2, 3212.3,
30 3212.4, 3212.5, 3212.6, 3212.7, 3212.8, 3212.85, 3212.9, 3212.10,
31 3212.11, 3212.12, 3213, and 3213.2.

32 (f) For purposes of this section, "genetic characteristics" has
33 the same meaning as that term is defined in subdivision (d) of
34 Section 10123.3 of the Insurance Code.

35 ~~SEC. 3.~~

36 *SEC. 2.* (a) The Legislature finds and declares all of the
37 following:

38 (1) The federal and state constitutions, federal law, and state
39 statutes prohibit employment discrimination against individuals
40 on the basis of immutable characteristics, such as race, age, gender,

1 and sexual orientation, as well as other factors, such as religion
2 and marital status.

3 (2) Under the state's workers' compensation system, injured
4 workers or their dependents are entitled to certain benefits that
5 include compensation for permanent partial disability or death
6 arising out of, and in the course of, employment, without regard
7 to fault. In return, employers are shielded from civil liability in
8 any claims of negligence related to the employee's injury.

9 (3) Workers' compensation benefits have been reduced or denied
10 on the basis of personal characteristics of the employee that, if
11 applied in an employment context, would be prohibited
12 employment discrimination.

13 (b) It is the intent of the Legislature to enact legislation that
14 would apply employment discrimination protections to workers'
15 compensation law in order to prohibit the wrongful reduction or
16 denial of workers' compensation benefits.