

AMENDED IN SENATE JULY 12, 2011

AMENDED IN ASSEMBLY MAY 9, 2011

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, Carter,
Cedillo, Dickinson, Eng, Fong, Furutani, Hueso, Ma, Mendoza,
Monning, Perea, Skinner, Swanson, and Williams)**

(Coauthors: Senators Hancock, Leno, Rubio, and Steinberg)

February 18, 2011

An act to amend 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 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~~ *prohibit the use of risk factors and specified characteristics to deny an injured worker his or her rightful benefit when disabled in the workplace. The bill would also state the*

intent of the Legislature to prohibit the apportionment of risk factors and characteristics without prohibiting the apportionment of documentable preexisting nonindustrial causes of disability or holding an employer liable for any percentage of permanent disability not directly caused by an injury arising out of and occurring in the course of employment.

(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 4663 of the Labor Code is amended to
2 read:

3 4663. (a) Apportionment of permanent disability shall be based
4 on causation.

5 (b) Any physician who prepares a report addressing the issue
6 of permanent disability due to a claimed industrial injury shall in
7 that report address the issue of causation of the permanent
8 disability.

9 (c) In order for a physician’s report to be considered complete
10 on the issue of permanent disability, the report shall include an
11 apportionment determination. A physician shall make an
12 apportionment determination by finding what approximate
13 percentage of the permanent disability is caused by the direct result
14 of injury arising out of and occurring in the course of employment
15 and what approximate percentage of the permanent disability is
16 caused by other factors both before and subsequent to the industrial
17 injury, including prior industrial injuries. If the physician is unable
18 to include an apportionment determination in his or her report, the
19 physician shall state the specific reasons why the physician cannot
20 make a determination of the effect of that prior condition on the

1 permanent disability arising from the injury. The physician shall
2 then consult with other physicians or refer the employee to another
3 physician from whom the employee is authorized to seek treatment
4 or evaluation in accordance with this division in order to make the
5 final determination. Race, religious creed, color, national origin,
6 age, gender, marital status, sex, sexual orientation, or genetic
7 characteristics shall not be considered a cause or other factor of
8 disability with regard to any determination made under this section.

9 (d) An employee who claims an industrial injury shall, upon
10 request, disclose all previous permanent disabilities or physical
11 impairments.

12 (e) Subdivisions (a), (b), and (c) shall not apply to injuries or
13 illnesses covered under Sections 3212, 3212.1, 3212.2, 3212.3,
14 3212.4, 3212.5, 3212.6, 3212.7, 3212.8, 3212.85, 3212.9, 3212.10,
15 3212.11, 3212.12, 3213, and 3213.2.

16 (f) For purposes of this section, “genetic characteristics” has
17 the same meaning as that term is defined in subdivision (d) of
18 Section 10123.3 of the Insurance Code.

19 SEC. 2. (a) The Legislature finds and declares all of the
20 following:

21 ~~(1) The federal and state constitutions, federal law, and state~~
22 ~~statutes prohibit employment discrimination against individuals~~
23 ~~on the basis of immutable characteristics, such as race, age, gender,~~
24 ~~and sexual orientation, as well as other factors, such as religion~~
25 ~~and marital status.~~

26 ~~(2) Under the state’s workers’ compensation system, injured~~
27 ~~workers or their dependents are entitled to certain benefits that~~
28 ~~include compensation for permanent partial disability or death~~
29 ~~arising out of, and in the course of, employment, without regard~~
30 ~~to fault. In return, employers are shielded from civil liability in~~
31 ~~any claims of negligence related to the employee’s injury.~~

32 ~~(3) Workers’ compensation benefits have been reduced or denied~~
33 ~~on the basis of personal characteristics of the employee that, if~~
34 ~~applied in an employment context, would be prohibited~~
35 ~~employment discrimination.~~

36 ~~(b) It is the intent of the Legislature to enact legislation that~~
37 ~~would apply employment discrimination protections to workers’~~
38 ~~compensation law in order to prohibit the wrongful reduction or~~
39 ~~denial of workers’ compensation benefits.~~

1 (1) Under the state’s workers’ compensation system, injured
2 workers or their dependents are entitled to certain benefits that
3 include compensation for permanent partial disability or death
4 arising out of, and in the course of, employment, without regard
5 to fault. In return, employers are shielded from civil liability in
6 any claims of negligence related to the employee’s injury.
7 (2) Workers’ compensation benefits should never be based on
8 the personal characteristics and risk factors of the employee, and
9 their use runs counter to the original intent of apportionment.
10 (b) It is the intent of the Legislature to ensure that risk factors
11 and characteristics of race, religious creed, color, national origin,
12 age, gender, marital status, sex, sexual orientation, or genetic
13 characteristics are not used to deny an injured worker his or her
14 rightful benefit when disabled in the workplace.
15 (c) It is the intent of the Legislature to prohibit the
16 apportionment of risk factors and characteristics without
17 prohibiting the apportionment of documentable preexisting
18 nonindustrial causes of disability in individual cases or without
19 holding an employer liable for any percentage of permanent
20 disability not directly caused by the injury arising out of and
21 occurring in the course of employment.