

evidence of the injury. (C) The date of injury, as specified in Section 5411, is subsequent to the date of the notice of termination or layoff, but prior to the effective date of the termination or layoff. (D) The date of injury, as specified in Section 5412, is subsequent to the date of the resignation, notice of termination or layoff.

For purposes of this paragraph, an employee provided notice pursuant to Sections 44948.5, 44949, 44951, 44955, 44955.6, 72411, 87740, and 87743 of the Education Code shall be considered to have been provided a notice of termination or layoff only upon a district's final decision not to reemploy that person. ~~A notice of termination or layoff that is not followed within 60 days by that termination or layoff shall not be subject to the provisions of this paragraph, and this paragraph shall not apply until receipt of a later notice of termination or layoff. The issuance of frequent notices of termination or layoff to an employee shall be considered a bad faith personnel action and shall make this paragraph inapplicable to the employee.~~

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

(c) Notwithstanding any other provision of this division, no compensation shall be paid pursuant to this division for a claim made against an employer under Section 5412 or 3208.1(b), unless the employee demonstrates by a preponderance of the evidence that activities of employment were predominant as to all causes combined of the injury.

Add Labor Code Section 3208.5. In order to establish that a cumulative injury or occupational disease according to Section 5412 is compensable, an employee must prove by a preponderance of the evidence that activities of employment were predominant as to all causes combined of the injury.

DISABILITY

Add Labor Code Section 4660.5

- a. In determining the percentages of permanent disability in accordance with Section 4660, nothing in this Division shall be applied, read or interpreted to require, permit or measure permanent disability resulting solely from subjective complaints in the absence of objective medical findings, which relate to the cause of the subjective complaints, remaining from the industrial injury.
- b. When used in this section or when used in evaluating permanent disability, an objective medical finding is any physiologic anomaly or pathology detected by diagnostic imaging, blood or urine analysis, electronic measurement, reproducible verifiable physical measurement or test identified as diagnostic by the College of Occupational and Environmental Medical Practice Guidelines. No measurement, the results of which are predominantly within the control of the injured worker, may be relied upon as an objective finding for the purpose of this section.

MEDICAL CARE

Amend Labor Code § 4600.

a. Medical, surgical, chiropractic, acupuncture, and hospital treatment, including nursing, medicines, medical and surgical supplies, crutches, and apparatus, including orthotic and prosthetic devices and services, that is reasonably required to cure and relieve from the effects of the injury shall be provided by the employer. In the case of his or her neglect or refusal seasonably to do so, the employer is liable for the reasonable expense incurred by or on behalf of the employee in providing treatment. After 30 days from the date the injury is reported, the employee may be treated by a physician of his or her own choice or at a facility of his or her own choice within a reasonable geographic area. However, if an employee has notified his or her employer in writing prior to the date of injury that he or she has a personal physician, the employee shall have the right to be treated by that physician from the date of injury. If an employee requests a change of physician pursuant to Section 4601, the request may be made at any time after the injury, and the alternative physician, chiropractor, or acupuncturist shall be provided within five days of the request as required by Section 4601. For the purpose of this section, "personal physician" means the employee's regular physician and surgeon, licensed pursuant to Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code, who has previously directed the medical treatment of the employee, and who retains the employee's medical records, including his or her medical history.

b. Where at the request of the employer, the employer's insurer, the administrative director, the appeals board, or a workers' compensation judge, the employee submits to examination by a physician, he or she shall be entitled to receive in addition to all other benefits herein provided all reasonable expenses of transportation, meals, and lodging incident to reporting for the examination, together with one day of temporary disability indemnity for each day of wages lost in submitting to the examination. Regardless of the date of injury, "reasonable expenses of transportation" includes mileage fees from the employee's home to the place of the examination and back at the rate of twenty-one cents (\$ 0.21) a mile or the mileage rate adopted by the Director of the Department of Personnel Administration pursuant to Section 19820 of the Government Code, whichever is higher, plus any bridge tolls. The mileage and tolls shall be paid to the employee at the time he or she is given notification of the time and place of the examination.

c. Where at the request of the employer, the employer's insurer, the administrative director, the appeals board, a workers' compensation judge, an employee submits to examination by a physician and the employee does not proficiently speak or understand the English language, he or she shall be entitled to the services of a qualified interpreter in accordance with conditions and a fee schedule prescribed by the administrative director. These services shall be provided by the employer. For purposes of this section, "qualified interpreter" means a language interpreter certified, or deemed certified, pursuant to Article 8 (commencing with Section 11435.05) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of, or Section 68566 of, the Government Code.

d. Notwithstanding any other provision of Division 3 (commencing with Section 2700) through Division 4.7 of the Labor Code, an employer's obligation to provide reasonable treatment to relieve from the effects of an industrial injury shall terminate one year

beyond the date the injury reaches a permanent and stationary plateau or at 5 years from the date of injury, whichever date occurs last. No employer may be ordered to purchase, reimburse or otherwise provide beyond the date established by this subsection any of the following: procedures set forth in subsection (e) of this Section, medication that is available without a prescription, including vitamins or food supplements, any treatment procedure performed or directed by a provider other than the primary treating physician, whether or not the provider acts as an agent, secondary treating physician or at the direction of the primary treating physician, including but not limited to physical therapy, psycho-therapy, chiropractic manipulation or acupuncture.

e. Treatment prescribed or ordered predominantly to relieve from the effects of the injury must be described as appropriate for the purpose it is prescribed according to the American College of Occupational and Environmental Medicine Occupational Medicine Practice Guidelines or official utilization schedule after adoption pursuant to Section 5307.27. Notwithstanding any provision of the Practice Guidelines or official utilization schedule, treatment ordered predominantly or solely to relieve from the effects of the injury may not include any of the following: any motorized device, personal property, real property, home improvement, home aid, home attendant, home assistance, motor vehicle purchase or maintenance, gym access or membership, weight loss program, purchase of a swimming pool, spa, Jacuzzi, exercise equipment.

f. Nothing in subsections (d) or (e) shall limit, expand or otherwise define an employer's obligation to provide reasonable treatment necessary to cure the effects of the industrial injury.

INDEPENDENT CLAUSE

The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.