SA2003RF0080

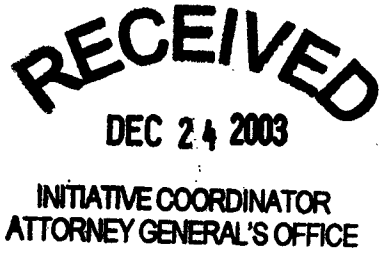
PEOPLE'S ADVOCATE, INC.

Paul Gann, Founder

Your Voice in Government

December 23, 2003

Hon Attorney General
Bill Lockyer



Attention Trish Knight, Initiative Coordinator

Dear Trish Knight, Initiative Coordinator:

Enclosed you will find a check for $200.00 and a six page initiative entitled, "The California Jobs Protection Act". As a registered voter in the state of California, and an American citizen, (Affidavit-9608 enclosed,) I am asking you to prepare a title and summary.

Thank You

Edward J. " Ted" Costa

3407 Arden Way Sacramento, CA 95825 (916) 482-6175 FAX: (916) 482-2045

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AFFIDAVIT

I, Ted Costa, acknowledge that it is a misdemeanor under state law (Section 18650 of the Elections Code) to knowingly or willfully allow the signatures on an initiative petition to be used for any purpose other than qualification of the proposed measure for the ballot. I certify that I will not knowingly or willfully allow the signatures for this initiative to be used for any purpose other than qualification of the measure for this ballot.

Ted Costa

Dated this 23 day of DECEMBER, 2003

3407 Arden Way Sacramento, CA 95825 (916) 482-6175 FAX: (916) 482-2045

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THE CALIFORNIA JOBS PROTECTION ACT

INITIATIVE INTENT

This measure will substantially eliminate the abuse of the California workers' compensation program by those who seek to profit from the system's liberality. The changes will impose on applicants a reasonable standard of eligibility for workers' compensation benefits, and will exclude claimants who seek payments for long-developing conditions that do not predominantly arise out of a work injury or illness. The statute will enhance California's business climate by placing reasonable controls on doctors and chiropractors who often benefit from over-treating legitimately injured workers and who can encourage fraudulent claims. It preserves resources for legitimately injured workers by ensuring that permanent disability benefits go only to those who remain with some objective medical evidence of a loss of work capacity. Finally, this provision encourages employers to hire workers with chronic medical conditions or a history of industrial injuries, by ensuring that the new employment will be responsible only for benefits arising out of an injury or illness arising out of the new employment.

INITIATIVE

APPORTIONMENT
Add Labor Code section 5705.1:

a. The burden of proof for apportionment regarding permanent disability under Labor Code sections 4663, 4750 and 4750.5 shall rest upon the defendant. In accordance with Labor Code section 3202.5, defendant must demonstrate by a preponderance of the evidence that absent the industrial injury the injured worker, as a consequence of a previous injury or illness, lost some capacity to perform the activity affected by the injury.

b. Notwithstanding any other provision of the Labor Code relating to workers' compensation benefits:

1.The Workers' Compensation Appeals Board must deduct from any award of permanent disability all the permanent disability previously awarded for prior injury to the same body part or affecting the same capacity to do work.

2. Apportionment to a prior illness or injury must be found and assessed whenever the injured worker remains with a loss of capacity to perform work of any sort as a consequence of a prior or pre-existing injury, disease, illness or diagnosable medical condition. The prior or pre-existing loss of capacity must be ascertainable at the time of the subsequent injury with reasonable medical certainty, whether or not the loss was previously described by a physician or determined in a judicial or administrative proceeding.

3. The appeals board may not rely upon any medical report that fails to describe to a reasonable medical certainty the medical findings on which the reporting physician relies in determining that a prior or pre-existing loss of capacity, injury, disease or illness healed without a permanent loss of work capacity at the time of the evaluation. A report that records only that the injured worker returned to work of any sort does not adequately describe the medical process of recovery for the purpose of this paragraph.

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.

INJURY THRESHOLD

Amend § 3208.1
An injury may be either: (a) "specific," occurring as the result of one incident or exposure which causes disability or need for medical treatment; or (b) "cumulative," occurring as repetitive mentally or physically traumatic activities extending over a period of time, the combined effect of which causes any disability or need for medical treatment. The date of a cumulative injury shall be the date determined under Section 5412. In order to establish that an injury, either specific or cumulative, is compensable, an employee shall demonstrate 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 specific injury, or cumulative injury or occupational disease according to Section 5412, is compensable, an employee shall demonstrate by a preponderance of the evidence that activities of employment were predominant as to all causes combined of the injury. It is the intent of the People of California in enacting this section to establish a new and higher threshold of compensability for injury under this division without creating an exception to the exclusive remedy doctrine. Nothing in this subdivision shall be construed to authorize an employee, or his or her dependents, to bring an action at law or equity for damages against the employer for an injury, where those rights would not exist pursuant to the exclusive remedy doctrine set forth in Section 3602 in the absence of the amendment of this section by the act adding this subdivision.

Amend Labor Code Section 3600.
(a) Liability for the compensation provided by this division, in lieu of any other liability whatsoever to any person except as otherwise specifically provided in Sections 3602, 3706, and 4558, shall, without regard to negligence, exist against an employer for any injury sustained by his or her employees arising out of and in the course of the employment and for the death of any employee if the injury proximately causes death, in those cases where the following conditions of compensation concur:
(1) Where, at the time of the injury, both the employer and the employee are subject to the compensation provisions of this division.
(2) Where, at the time of the injury, the employee is performing service growing out of and incidental to his or her employment and is acting within the course of his or her employment.
(3) Where the injury is proximately caused by the employment, either with or without negligence.
(4) Where the injury is not caused by the intoxication, by alcohol or the unlawful use of a controlled substance, of the injured employee. As used in this paragraph, "controlled substance" shall have the same meaning as prescribed in Section 11007 of the Health and Safety Code.
(5) Where the injury is not intentionally self-inflicted.
(6) Where the employee has not willfully and deliberately caused his or her own death.
(7) Where the injury does not arise out of an altercation in which the injured employee is the initial physical aggressor.

(8) Where the injury is not caused by the commission of a felony, or a crime which is punishable as specified in subdivision (b) of Section 17 of the Penal Code, by the injured employee, for which he or she has been convicted.
(9) Where the injury does not arise out of voluntary participation in any off-duty recreational, social, or athletic activity not constituting part of the employee's work-related duties, except where these activities are a reasonable expectancy of, or are expressly or impliedly required by, the employment. The administrative director shall promulgate reasonable rules and regulations requiring employers to post and keep posted in a conspicuous place or places a notice advising employees of the provisions of this subdivision. Failure of the employer to post the notice shall not constitute an expression of intent to waive the provisions of this subdivision.
(10) Except for psychiatric injuries governed by subdivision (e) of Section 3208.3, where the claim for compensation is filed after notice of resignation, termination or layoff, including voluntary layoff, and the claim is for an injury occurring prior to the time of notice of termination or layoff, no compensation shall be paid unless the employee demonstrates by a preponderance of the evidence that one or more of the following conditions apply: (A) The employer has notice of the injury, as provided under Chapter 2 (commencing with Section 5400), prior to the notice of termination or layoff. (B) The employee's medical records, existing prior to the notice of termination or layoff, contain 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 for a specific injury, or under Section 5412 for a cumulative trauma or an industrial illness, unless the employee demonstrates by a preponderance of the evidence that activities of employment were predominant as to all causes combined of the injury.

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.

Amendment of Measure.

This measure may not be amended except by the voters; provided, however, this measure may be amended to further its purposes by a two-thirds (2/3ds) roll call vote of both houses of the Legislature, entered in the Journal, only if the bill as amended is in print for at least twelve (12) legislative business days prior to the vote in either house, and further provided that notice is published in the Journal of the filing of amendments to this measure.

Conflicting Measures.

In the event that this measure and another measure or measures relating to workers compensation reform shall appear on the same statewide election ballot, the provisions of the other measure or measures shall be deemed to be in conflict with this measure. In the event that this measure receives a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and the other measure shall be null and void.

Severability.

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.