

SA2003 RF0080



**PEOPLE'S
ADVOCATE, INC.**

Paul Gann, Founder

Your Voice in Government

December 23, 2003

Hon Attorney General
Bill Lockyer

Attention Trish Knight, Initiative Coordinator

RECEIVED
DEC 24 2003

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

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

SA2003RF0080



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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, 2004

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DEC 24 2003

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

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.