



FIRE AGENCIES SELF INSURANCE SYSTEM

Legislative and Industry Updates – 07/13/09

While California budget concerns are effectively delaying movement of various bills, case-law interpretations and industry discussions continue. The following is an update on some of the bills that have been presented, as well as current discussions or actions in the industry.

Case Law Decisions –

Alvarez/Guzman v WCAB

This en banc decision issued February 3, 2009 by the Workers' Compensation Appeals Board (WCAB) determined that a party can rebut the 2005 Permanent Disability Rating Schedule by indicating reliance upon the American Medical Association (AMA) guides would be "unfair". Once the guides are determined unfair, medical opinions that do not rely upon the guides or rely only on a portion of the guides (including portions of the guides which may not be clearly related to the injury as claimed) may be used to determine disability relating to a specific claim.

On April 6, 2009, the WCAB issued a rare decision, indicating they were reconsidering their en banc decision and they invited interested parties to file amicus briefs in each case. However, the decision was not stayed. While these cases work their way through the court system, other cases are now either being delayed in resolution or continued in litigation as each side tries to determine a "fair" method or guide for determining disability.

Weiner v Ralphs Company

An en banc decision issued June 11, 2009 indicates the repeal of the Voc Rehab statute ends rights to the benefit and/or services not ordered or awarded prior to January 1, 2009. This ruling states section 139.5 is repealed and terminates any rights to Voc Rehab not awarded before January 1, 2009; clarifies there are no "ghost statutes" relating to the statutes repealed in 2003 and further states the WCAB no longer has jurisdiction over "non-vested and inchoate vocational rehabilitation claims" but does maintain jurisdiction to enforce or terminate "vested rights".

Industry Discussions –

Employer Assessment

The Governor is proposing a new employer assessment in his fiscal year budget which would fund occupational safety and labor law enforcement. His proposal establishes a new Labor Enforcement and Compliance Fund, with \$37.5 million in annual assessments along with another \$31.6 million which would be assessed to cover Cal-OSHA operational costs.

According to the Department of Industrial Relations, the impact would be an average increase of \$4.36 for employers with fewer than \$100,000 in payroll, while the average assessment on employers with \$5 million or more in premium would be increased by \$228.19. This proposal is opposed by the California Chamber of Commerce.

Medicare Reporting Requirements – Continued Change

The start date for mandatory Medicare reporting has again been pushed back and will now begin on a staggered schedule between April 1, 2010 and June 30, 2010. Registration of reporting entities has already begun and will continue to 09/30/09. Responsible Reporting Entities (RRE) are not the Third Party Administrators (TPA), but are the employers or Joint Power Authorities. However, the TPAs may be designated as the reporting agent.

Extensive penalties apply for late reporting:

- \$1,000 per claim per day; and
- Recovery of double damages, plus interest and litigation costs

The impact of this new requirement may be felt in many ways including: penalties incurred for late reporting; a need to review and possibly renegotiate TPA contracts to consider reporting agreements; and the potential for extended life of future medical claims.

Legislative Updates -

SB 3 – Cedillo. Supplemental Job Displacement Benefits

Existing law provides for supplemental job displacement benefits (SJDB) for injures from 01/01/04 forward in the form of vouchers for education-related services for employees with permanent disability if they do not return to work for the employer within 60 days of the end of Temporary Disability (TD). These vouchers are now only available once the level of permanent disability has been established.

SB 3 proposes that as of 01/01/10 an additional SJDB voucher of up to \$6,000 would be available to cover re-education and skill enhancement expenses and would expire two years after date of issuance or five years after the date of injury (whichever is later). Information regarding the right to benefits will be provided to the employee within ten days of the end of TD. This benefit would be payable to the employee once they have reached a permanent and stationary status. This determination is often disputed and may pre-date the eventual determination of a level of permanent disability by several months.

The Senate Labor and Industrial Relations Committee approved this bill with a 4-2 vote. The bill is now held in committee with no activity.

Many pro-labor groups have supported the bill, including Voters Injured at Work, the California Labor Federation, the AFL-CIO, and the American Federation of State, County and Municipal Employees. The bill is opposed by the California Association of Joint Powers Authorities (CAJPA), and the CSAC Excess Insurance Authority.

AB 128 – Coto. Safety Officer Cancer Presumption

AB 128 is the second workers' compensation bill submitted this session and pertains to the current Cancer Presumption for Safety Officers. This presumption is now applied to certain employees who develop cancer (or cancer manifests) during their employment period and there was exposure to a known carcinogen. The presumption is extended to employees for a period following termination of service for three calendar months for each full year of requisite service, not to exceed 60 months starting the last date they worked in the specified capacity.

This bill proposes to extend the presumption to employees following termination of service for a period of ONE YEAR instead of three calendar months for each full year of the requisite service.

The bill is opposed by the California Association of Joint Powers Authorities (CAJPA), the California State Association of Counties (CSAC), and the League of California Cities.

The Assembly Insurance Committee has passed this bill which now rests with Appropriations. The bill is held in committee with no action.

SB 145 – DeSaulnier. Anti-Discrimination

SB145, a bill similar to the 2008 proposal of former Senator Migden, prohibiting discrimination by apportionment to race, age, gender and genetic predisposition has been passed by the Assembly Committee on a 7-2 vote.

The 2008 proposal was vetoed by Governor Schwarzenegger. This year, SB145 is using the example of the case of T. Talley, who was killed while working at Dollar Tree. The claim for death benefits was initially denied on the basis the person who committed the crime appeared to have done so based upon her race and not related to her employment. However, this decision to deny benefits was later reversed and death benefits were provided. The 2009 version of the anti-discrimination bill is promoted by the California Applicant Attorneys Association, the California Labor Federation and the California Nurses Association. In opposition are the California Joint Powers Authority (CAJPA) and the CSAC EIA.

The impact of this bill would be a continued decrease in the gains achieved from apportionment and increased Permanent Disability Awards.