



Legislative and Industry Updates – October 2018

Workers' Compensation activity continues at the Capitol with many bills progressing through the system. The following is an update on some of the activity which may impact the Workers' Compensation program:

LEGISLATIVE ACTIVITY

AB 553 - RTW Fund (Daly)

SB 863 created a Return-to-Work (RTW) Fund administered by the State to provide injured workers with supplemental payments when their Permanent Disability (PD) benefits are disproportionately low in comparison to their earnings loss. This program is funded annually in the amount of \$120,000,000 from the Workers' Compensation Administration Revolving Fund which in turn is funded by the Department of Industrial Relations (DIR) assessments to employers. Employee may apply for payment from this fund to receive a one-time \$5,000 Return-to-Work supplement. The amount of this supplement may be adjusted by the director of DIR based on further studies conducted by the director in accordance with Labor Code section 139.48.

This bill proposes to require the fund be depleted each year and any remaining funds at year-end are distributed pro-rata to eligible workers subject to a maximum of \$25,000. This "clearing out" of the fund will allow the injured worker to actually receive more from the fund at the end of the year, than the original supplement payment. There is no requirement for the injured worker to pursue employment, education or demonstrate any focus on RTW to receive the additional funds.

CAJPA had joined a coalition to oppose this bill as the yearly depletion of the Fund and increased number of applications for payment, as has been demonstrated from implementation, will eventually lead to both a lack of funds for injured workers as well as increased requests for funding from employers in the form of DIR Assessments.

Governor Brown vetoed this bill on 09/23/2018 with note that, "The Return-to-Work Program began in 2015 and is relatively new. I am concerned this measure proposes sweeping revisions to the Return-to-Work program that are premature. The Program's funds will likely be spent in full in the coming fiscal year. Let's see the progress of that effort before making additional changes to the Program."

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AB 1749: Off-Duty Police Officers (Daly)

This bill was proposed in response to the Las Vegas shooting incident from which several off duty Police Officers in attendance at the concert have filed Workers' Compensation claims for injury. Many, if not all, of these claims had been denied and were in litigation.

Labor Code 3600.2(a) had provided that a "peace officer" shall be covered for workers' compensation for activities taken in preservation of peace while off duty, but the activity must occur in the State of California. As the Las Vegas shooting incident occurred in the State of Nevada, coverage under this code is not provided. AB 1749 would provide that the coverage is extended if the duties engaged in occur in this State or in another State. The bill does not provide for a "presumption" of compensability. Concerns with the bill include the increased assumption of risk for Public Entities and 24/7 coverage for Safety Officers regardless of where they may be.

After much discussion and considered amendments, the bill was ultimately passed by both the Senate and the House with amendment to say that an employer is not precluded from accepting liability for workers' compensation under Labor Code 3600.2 (a), at its discretion or in accordance with written policies adopted by resolution of the employer's governing body, for an injury sustained by a peace officer "by reason of engaging in the apprehension or attempted apprehension of law violators or suspected law violators, or protection or preservation of life or property, or the preservation of the peace, outside the state of California, but who was not at the time acting under the immediate direction of his or her employer, including any claims for injuries sustained by peace officers during the October 1, 2017, mass shooting in Las Vegas, Nevada, if the employer determines that providing compensation serves the public purposes of the employer."

Governor Brown has approved this bill, with the aforementioned amendments, as of 09/23/18. It will remain to be seen what impact this will have on California's public agency employers in terms of claim cost exposures.

SB 880: Workers' Compensation – Prepaid Cards (Pan)

This bill would, until January 1, 2023, authorize an employer, with the written consent of the employee, to deposit disability indemnity payments for the employee in a prepaid card account that meets specified requirements, including, among other things, allowing the employee reasonable access to in-network automatic teller machines. The bill would require employers to provide all necessary aggregated data on their prepaid account programs to the Commission on Health and Safety and Workers' Compensation upon request, and would require the commission to issue a report on or before December 1, 2022, to the Legislature regarding payments made to those prepaid card accounts, as specified. The bill requires the agreement of the injured worker, and that specific requirements are met, including:

"For purposes of this section, a prepaid card shall also meet all of the following requirements:

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(i) Allow the employee to withdraw the entire balance on the card in one transaction without incurring fees.

(ii) Allow the employee reasonable access to in-network automatic teller machines (ATMs).

(iii) Allow the employee to make point-of-sale purchases without incurring fees from the financial institution.

(iv) Prohibit a link to any form of credit, including a loan against future payments or a cash advance on future payments.

(B) The fees associated with the use of the prepaid card shall be disclosed to the employee in writing. The only permissible fees associated with the use of a prepaid card are those for a replacement card provided through expedited delivery, out-of-network ATM fees on the third and subsequent withdrawal per deposit, and fees associated with foreign transactions.”

The analysis published on this bill states it “attempts to address the issue of unbanked workers receiving their TD benefits without significant fees”.

Governor Brown has approved this bill as of 09/23/18.