

Key Workers' Compensation Legislation 2009 Legislative Year

AB 664 (Skinner-D; Berkley) - OPPOSE

Hospital Employees: Presumptions

This legislation would – for the first time – include private sector employees under several presumption statutes historically limited to police, fire, and other public safety employees in California. The bill will make any back or neck injury, blood borne pathogen exposure, or MRSA infection presumptively work-related for any hospital employee, regardless of job function and any non-industrial factor. Such presumptive injuries are extremely difficult to challenge in court due to existing case law and have the potential to add millions of dollars to already increasing healthcare costs and a hospital's own workers' compensation exposure.

AB 933 (Fong-D; Cupertino) - OPPOSE

Utilization Review

This bill, which is similar to legislation vetoed in 2008, would significantly increase Utilization Review (UR) costs by requiring any physician performing UR to be licensed in the state of California. Utilization Review is only process available for employers to review a medical treatment request form submitted by a physician to ensure it complies with evidence-based, medically objective and nationally recognized treatment guidelines. Since all physicians conducting UR, regardless of location, must use such treatment guidelines, there is no benefit for employers or injured workers to having only physicians who carry a state license conduct such reviews. This legislation also requires any psychologist treating a workers' compensation injury for an employee of a California business be licensed in the State of California. This requirement also significantly increases costs by requiring a California employer to fund travel back to California for out of state employees.

SB 145 (DeSaulnier-D; Walnut Creek) - OPPOSE

Apportionment

This legislation, similar to legislation vetoed in 2008, would significantly undermine the “apportionment” provisions of SB 899, which ensure that an employer provide benefits only for the portion of an injured worker's permanent disability directly resulting from the workplace injury. The bill prohibits apportionment on the basis of “race, religious creed, color, national origin, age, gender, marital status, sex, sexual orientation, or genetic predisposition.” Existing law already prohibits apportionment to such factors. Under this bill, attorneys would be able to argue that any apportionment to a pre-existing disability could be tied to such factors, significantly increasing litigation and costs to employers.

The legislation also applies these provisions to decisions over the compensability of a workplace injury.

SB 186 (DeSaulnier-D; Walnut Creek) – OPPOSE

Medical Treatment: Pre-designation of Physician

This legislation, similar to legislation that was vetoed in 2008, would remove the current sunset date for the pre-designation statute and allow an employee already covered by a group health program to pre-designate their primary care physician as their physician for workplace injuries. The proposal also eliminates the requirement for the Division of Workers' Compensation to study the impact of pre-designation, a study essential to determining the benefit or cost of non-industrial physicians treating workplace injuries.

Employers support the ability of workers to see a physician with whom they have an existing relationship for workplace injuries, but oppose this bill because it does not require that referrals for specialized or treatment be made to physicians in the employers' Medical Provider Network or Health Care Organization. This change would ensure that employees are being treated by physicians specializing in industrial medicine and that the focus will be on returning the employee back to work as quickly as appropriate.

The CalChamber, California Coalition on Workers' Compensation (CCWC), and the California Manufactures and Technology Association (CMTA) are each opposed to all of the legislation listed above.