

AMENDED IN ASSEMBLY AUGUST 19, 2010

AMENDED IN SENATE APRIL 27, 2009

AMENDED IN SENATE MARCH 26, 2009

SENATE BILL

No. 145

Introduced by Senator DeSaulnier

February 11, 2009

An act to amend Sections 3600 and 4663 of the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

SB 145, as amended, DeSaulnier. Workers' compensation.

(1) Existing workers' compensation law generally requires employers to secure the payment of workers' compensation, including medical treatment, for injuries incurred by their employees that arise out of, and in the course of, employment.

This bill would provide that no workers' compensation claim shall be denied because the employee's injury or death was related to the employee's race, religious creed, color, national origin, age, gender, marital status, sex, sexual orientation, or genetic characteristics.

This bill would also state the intent of the Legislature to enact legislation that would apply employment discrimination protections to workers' compensation law in order to prohibit the wrongful reduction or denial of workers' compensation benefits.

(2) Existing law requires any physician who prepares a report addressing the issue of permanent disability due to a claimed industrial injury to address the issue of causation of the permanent disability, and requires that the report include an apportionment determination in order to be considered complete on the issue of permanent disability.

This bill would prohibit race, religious creed, color, national origin, age, gender, marital status, sex, sexual orientation, or genetic characteristics from being considered a cause or other factor of disability considered in any determination made pursuant to those provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 3600 of the Labor Code is amended to~~
2 ~~read:~~
3 ~~3600. (a) Liability for the compensation provided by this~~
4 ~~division, in lieu of any other liability whatsoever to any person~~
5 ~~except as otherwise specifically provided in Sections 3602, 3706,~~
6 ~~and 4558, shall, without regard to negligence, exist against an~~
7 ~~employer for any injury sustained by his or her employees arising~~
8 ~~out of and in the course of the employment and for the death of~~
9 ~~any employee if the injury proximately causes death, in those cases~~
10 ~~where the following conditions of compensation concur:~~
11 ~~(1) Where, at the time of the injury, both the employer and the~~
12 ~~employee are subject to the compensation provisions of this~~
13 ~~division.~~
14 ~~(2) Where, at the time of the injury, the employee is performing~~
15 ~~service growing out of and incidental to his or her employment~~
16 ~~and is acting within the course of his or her employment.~~
17 ~~(3) Where the injury is proximately caused by the employment,~~
18 ~~either with or without negligence.~~
19 ~~(4) Where the injury is not caused by the intoxication, by alcohol~~
20 ~~or the unlawful use of a controlled substance, of the injured~~
21 ~~employee. As used in this paragraph, "controlled substance" shall~~
22 ~~have the same meaning as prescribed in Section 11007 of the~~
23 ~~Health and Safety Code.~~
24 ~~(5) Where the injury is not intentionally self-inflicted.~~
25 ~~(6) Where the employee has not willfully and deliberately caused~~
26 ~~his or her own death.~~
27 ~~(7) Where the injury does not arise out of an altercation in which~~
28 ~~the injured employee is the initial physical aggressor.~~
29 ~~(8) Where the injury is not caused by the commission of a~~
30 ~~felony, or a crime that 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 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 notice of termination or layoff.

For purposes of this paragraph, an employee provided notice pursuant to Sections 44948.5, 44949, 44951, 44955, 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

1 ~~be considered a bad faith personnel action and shall make this~~
2 ~~paragraph inapplicable to the employee.~~

3 ~~(b) Where an employee, or his or her dependents, receives the~~
4 ~~compensation provided by this division and secures a judgment~~
5 ~~for, or settlement of, civil damages pursuant to those specific~~
6 ~~exemptions to the employee's exclusive remedy set forth in~~
7 ~~subdivision (b) of Section 3602 and Section 4558, the~~
8 ~~compensation paid under this division shall be credited against the~~
9 ~~judgment or settlement, and the employer shall be relieved from~~
10 ~~the obligation to pay further compensation to, or on behalf of, the~~
11 ~~employee or his or her dependents up to the net amount of the~~
12 ~~judgment or settlement received by the employee or his or her~~
13 ~~heirs, or that portion of the judgment as has been satisfied.~~

14 ~~(c) No workers' compensation claim shall be denied because~~
15 ~~the employee's injury or death was related to the employee's race,~~
16 ~~religious creed, color, national origin, age, gender, marital status,~~
17 ~~sex, sexual orientation, or genetic characteristics.~~

18 ~~(d) For purposes of this section, "genetic characteristics" has the~~
19 ~~same meaning as that term is defined in subdivision (d) of Section~~
20 ~~10123.3 of the Insurance Code.~~

21 *SECTION 1. Section 3600 of the Labor Code is amended to*
22 *read:*

23 3600. (a) Liability for the compensation provided by this
24 division, in lieu of any other liability whatsoever to any person
25 except as otherwise specifically provided in Sections 3602, 3706,
26 and 4558, shall, without regard to negligence, exist against an
27 employer for any injury sustained by his or her employees arising
28 out of and in the course of the employment and for the death of
29 any employee if the injury proximately causes death, in those cases
30 where the following conditions of compensation concur:

31 (1) Where, at the time of the injury, both the employer and the
32 employee are subject to the compensation provisions of this
33 division.

34 (2) Where, at the time of the injury, the employee is performing
35 service growing out of and incidental to his or her employment
36 and is acting within the course of his or her employment.

37 (3) Where the injury is proximately caused by the employment,
38 either with or without negligence.

39 (4) Where the injury is not caused by the intoxication, by alcohol
40 or the unlawful use of a controlled substance, of the injured

1 employee. As used in this paragraph, “controlled substance” shall
2 have the same meaning as prescribed in Section 11007 of the
3 Health and Safety Code.

4 (5) Where the injury is not intentionally self-inflicted.

5 (6) Where the employee has not willfully and deliberately caused
6 his or her own death.

7 (7) Where the injury does not arise out of an altercation in which
8 the injured employee is the initial physical aggressor.

9 (8) Where the injury is not caused by the commission of a
10 felony, or a crime ~~which~~ *that* is punishable as specified in
11 subdivision (b) of Section 17 of the Penal Code, by the injured
12 employee, for which he or she has been convicted.

13 (9) Where the injury does not arise out of voluntary participation
14 in any off-duty recreational, social, or athletic activity not
15 constituting part of the employee’s work-related duties, except
16 where these activities are a reasonable expectancy of, or are
17 expressly or impliedly required by, the employment. The
18 administrative director shall promulgate reasonable rules and
19 regulations requiring employers to post and keep posted in a
20 conspicuous place or places a notice advising employees of the
21 provisions of this subdivision. Failure of the employer to post the
22 notice shall not constitute an expression of intent to waive the
23 provisions of this subdivision.

24 (10) Except for psychiatric injuries governed by subdivision (e)
25 of Section 3208.3, where the claim for compensation is filed after
26 notice of termination or layoff, including voluntary layoff, and the
27 claim is for an injury occurring prior to the time of notice of
28 termination or layoff, no compensation shall be paid unless the
29 employee demonstrates by a preponderance of the evidence that
30 one or more of the following conditions apply:

31 (A) The employer has notice of the injury, as provided under
32 Chapter 2 (commencing with Section 5400), prior to the notice of
33 termination or layoff.

34 (B) The employee’s medical records, existing prior to the notice
35 of termination or layoff, contain evidence of the injury.

36 (C) The date of injury, as specified in Section 5411, is
37 subsequent to the date of the notice of termination or layoff, but
38 prior to the effective date of the termination or layoff.

39 (D) The date of injury, as specified in Section 5412, is
40 subsequent to the date of the notice of termination or layoff.

1 For purposes of this paragraph, an employee provided notice
2 pursuant to Sections 44948.5, 44949, 44951, 44955, 72411, 87740,
3 and 87743 of the Education Code shall be considered to have been
4 provided a notice of termination or layoff only upon a district's
5 final decision not to reemploy that person.

6 A notice of termination or layoff that is not followed within 60
7 days by that termination or layoff shall not be subject to the
8 provisions of this paragraph, and this paragraph shall not apply
9 until receipt of a later notice of termination or layoff. The issuance
10 of frequent notices of termination or layoff to an employee shall
11 be considered a bad faith personnel action and shall make this
12 paragraph inapplicable to the employee.

13 (b) Where an employee, or his or her dependents, receives the
14 compensation provided by this division and secures a judgment
15 for, or settlement of, civil damages pursuant to those specific
16 exemptions to the employee's exclusive remedy set forth in
17 subdivision (b) of Section 3602 and Section 4558, the
18 compensation paid under this division shall be credited against the
19 judgment or settlement, and the employer shall be relieved from
20 the obligation to pay further compensation to, or on behalf of, the
21 employee or his or her dependents up to the net amount of the
22 judgment or settlement received by the employee or his or her
23 heirs, or that portion of the judgment as has been satisfied.

24 (c) For purposes of determining whether to grant or deny a
25 workers' compensation claim, if an employee is injured or killed
26 by a third party in the course of the employee's employment, no
27 personal relationship or personal connection shall be deemed to
28 exist between the employee and the third party based only on a
29 determination that the third party injured or killed the employee
30 solely because of the third party's personal beliefs relating to his
31 or her perception of the employee's race, religious creed, color,
32 national origin, age, gender, disability, sex, or sexual orientation.

33 *(d) No workers' compensation claim shall be denied because*
34 *the employee's injury or death was related to the employee's race,*
35 *religious creed, color, national origin, age, gender, marital status,*
36 *sex, sexual orientation, or genetic characteristics.*

37 *(e) For purposes of this section, "genetic characteristics" has*
38 *the same meaning as that term is defined in subdivision (d) of*
39 *Section 10123.3 of the Insurance Code.*

40 SEC. 2. Section 4663 of the Labor Code is amended to read:

1 4663. (a) Apportionment of permanent disability shall be based
2 on causation.

3 (b) Any physician who prepares a report addressing the issue
4 of permanent disability due to a claimed industrial injury shall in
5 that report address the issue of causation of the permanent
6 disability.

7 (c) In order for a physician's report to be considered complete
8 on the issue of permanent disability, the report must include an
9 apportionment determination. A physician shall make an
10 apportionment determination by finding what approximate
11 percentage of the permanent disability is caused by the direct result
12 of injury arising out of and occurring in the course of employment
13 and what approximate percentage of the permanent disability is
14 caused by other factors both before and subsequent to the industrial
15 injury, including prior industrial injuries. If the physician is unable
16 to include an apportionment determination in his or her report, the
17 physician shall state the specific reasons why the physician cannot
18 make a determination of the effect of that prior condition on the
19 permanent disability arising from the injury. The physician shall
20 then consult with other physicians or refer the employee to another
21 physician from whom the employee is authorized to seek treatment
22 or evaluation in accordance with this division in order to make the
23 final determination. Race, religious creed, color, national origin,
24 age, gender, marital status, sex, sexual orientation, or genetic
25 characteristics shall not be considered a cause or other factor of
26 disability with regard to any determination made under this section.

27 (d) An employee who claims an industrial injury shall, upon
28 request, disclose all previous permanent disabilities or physical
29 impairments.

30 (e) Subdivisions (a), (b), and (c) shall not apply to injuries or
31 illnesses covered under Sections 3212, 3212.1, 3212.2, 3212.3,
32 3212.4, 3212.5, 3212.6, 3212.7, 3212.8, 3212.85, 3212.9, 3212.10,
33 3212.11, 3212.12, 3213, and 3213.2.

34 (f) For purposes of this section, "genetic characteristics" has
35 the same meaning as that term is defined in subdivision (d) of
36 Section 10123.3 of the Insurance Code.

37 SEC. 3. (a) The Legislature finds and declares all of the
38 following:

39 (1) The federal and state constitutions, federal law, and state
40 statutes prohibit employment discrimination against individuals

1 on the basis of immutable characteristics, such as race, age, gender,
2 and sexual orientation, as well as other factors, such as religion
3 and marital status.

4 (2) Under the state's workers' compensation system, injured
5 workers or their dependents are entitled to certain benefits that
6 include compensation for permanent partial disability or death
7 arising out of, and in the course of, employment, without regard
8 to fault. In return, employers are shielded from civil liability in
9 any claims of negligence related to the employee's injury.

10 (3) Workers' compensation benefits have been reduced or denied
11 on the basis of personal characteristics of the employee that, if
12 applied in an employment context, would be prohibited
13 employment discrimination.

14 (b) It is the intent of the Legislature to enact legislation that
15 would apply employment discrimination protections to workers'
16 compensation law in order to prohibit the wrongful reduction or
17 denial of workers' compensation benefits.