



1-1-1974

Workmen's Compensation

University of the Pacific; McGeorge School of Law

Follow this and additional works at: <https://scholarlycommons.pacific.edu/mlr>



Part of the [Legislation Commons](#)

Recommended Citation

University of the Pacific; McGeorge School of Law, *Workmen's Compensation*, 5 PAC. L. J. 505 (1974).

Available at: <https://scholarlycommons.pacific.edu/mlr/vol5/iss1/34>

This Greensheet is brought to you for free and open access by the Journals and Law Reviews at Scholarly Commons. It has been accepted for inclusion in McGeorge Law Review by an authorized editor of Scholarly Commons. For more information, please contact mgibney@pacific.edu.

Workmen's Compensation

Workmen's Compensation; attorneys' fees

Labor Code §4607 (new).

AB 138 (Boatwright); STATS 1973, Ch 663

Support: California Trial Lawyers' Association

The Workmen's Compensation Appeals Board has no authority over the fees of the attorney for the employer or insurance carrier in a regular compensation proceeding, and its authority over the fees of an employee's attorney is generally limited to the allowance of a lien against an award [See CAL. LABOR CODE §4903(a)]. However, under certain circumstances specified by statute, fees may be allowed for an employee's attorney in addition to the award. Chapter 663 has added Section 4607 to the Labor Code to authorize the Workmen's Compensation Appeals Board to assess as costs against a moving party the attorney's fee of an injured employee who successfully defends proceedings instituted to terminate his award for continuing medical treatment previously granted him by the appeals board.

See Generally:

- 1) CAL. LABOR CODE §§3856, 3860 (fixing of fees in third-party actions), §4906 (attorneys' fees must be reasonable).
- 2) 1 W. HANNA, CALIFORNIA LAW OF EMPLOYEE INJURIES AND WORKMEN'S COMPENSATION ch. 16 (commencing with §16.01) (2d ed. 1973) (attorneys' fees).

Workmen's Compensation; cumulative injuries

Labor Code §§3208.1, 5411, 5412, 5500.5 (amended).

AB 767 (Knox); STATS 1973, Ch 1024

Support: California Applicants' Attorneys' Association

Opposition: Council of Self-Insured Public Agencies; California Self-Insurers Association

Section 3208.1 of the Labor Code specifies that an injury may be either: (1) "specific"—occurring as the result of one incident or exposure which causes disability or need for medical treatment; or (2) "cumulative"—occurring as repetitive, mentally or physically traumatic activities extending over a period of time, the combined effect of which causes a disability or need for medical treatment. Chapter 1024 has amended Section 3208.1 to provide that the date of a "cumulative injury" shall be determined in the same manner as the date of "occupa-

tional disease" pursuant to Section 5412. Section 5412, as amended, now provides that the date of injury in cases of occupational disease or *cumulative injuries* is the date upon which the employee first suffered disability therefrom and either knew, or in the exercise of reasonable diligence should have known, that such disability was caused by his present or prior employment. Under prior law, pursuant to Section 5411, the date of cumulative injury was the date of employment on which the alleged incident or exposure occurred.

Section 5500.5 of the Labor Code was enacted to cover the situation in which occupational disease, particularly silicosis, results from cumulative exposure. This section specifies elaborate procedural steps for claims based on an occupational disease arising out of more than one employment, for joint and several awards, and for apportionment of liability [CONTINUING EDUCATION OF THE BAR, CALIFORNIA WORKMEN'S COMPENSATION PRACTICE §5.14 (1973)]. Chapter 1024 has amended Section 5500.5 to provide that liability for occupational disease or *cumulative injury* shall be limited to those employers who have employed the employee during a period of five years immediately preceding either the date of injury (as determined pursuant to §5412), or the last date on which the employee was employed in an occupation exposing him to the hazards of such occupational disease or cumulative injury, whichever occurs first. If, based upon all the evidence presented, the Workmen's Compensation Appeals Board or referee finds the existence of cumulative injury or occupational disease, liability for such cumulative injury or occupational disease shall not be apportioned to prior years except as provided in subdivision (d) of this section. Subdivision (d) provides that if the employment exposing the employee to the hazards of the claimed occupational disease or cumulative injury was for more than five years with the *same employer*, or its predecessors in interest, the limitation of liability to the last five years of employment as set forth above, shall not be applicable. Liability in such circumstances shall extend to all insurers who insure the workmen's compensation liability of such employer, during the entire period of the employee's exposure with such employer, or its predecessors in interest. The respective contributions of such insurers shall be in proportion to employment during their respective periods of coverage. As used in subdivision (d) of Section 5500.5, "insurer" includes an employer who during any period of the employee's exposure was self-insured or legally uninsured. The provisions of subdivision (d) will expire on July 1, 1986, unless otherwise extended by the legislature prior to that date.

In determining such liability, however, evidence of disability (1) due to specific injury, (2) due to nonindustrial causes, or (3) previously compensated for by way of findings and award or order approving compromise and release, or a voluntary payment of disability, may be admissible for purposes of apportionment.

Section 5500.5 has been further amended to authorize an employee or his dependents, in a case where the claim for occupational disease or cumulative injury occurred as a result of more than one employment during the five year period immediately preceding the date of injury or last date of employment in an occupation exposing the employee to the hazards of such disease or injury, to proceed against any one or more employers. Prior to amendment, an employee or his dependents could make such claim without regard to time limit.

See Generally:

- 1) CONTINUING EDUCATION OF THE BAR, CALIFORNIA WORKMEN'S COMPENSATION PRACTICE (1973).

Workmen's Compensation; death benefit payments

Labor Code §4706.5 (amended).

SB 136 (Grunsky); STATS 1973, Ch 21

(Effective April 12, 1973)

Chapter 21 has amended Section 4706.5 of the Labor Code to delete the requirement that an employer pay to the state the accrued and unpaid death benefits of a deceased employee's dependent beneficiary when such person dies and there is no surviving heir of the dependent and no surviving dependent of the deceased employee. Section 4706.5 has been further amended to provide that the Department of Industrial Relations (rather than the State Treasurer) shall be the recipient of the total dependency death benefit when an employee dies and does not leave surviving him any person entitled to said benefit as provided in Section 4700. Section 4706.5 as amended also requires that the above death benefit payments shall be paid to the Department of Industrial Relations in a *lump sum* in the manner provided in Section 5101(b). Section 5101(b) in part provides that if the injury causes death, the Workmen's Compensation Appeals Board shall fix the total amount of the death benefit payable in accordance with Chapter 2 (commencing with §4700) of the Labor Code, and shall estimate the present value thereof, assuming interest at the rate of three percent per annum. Section 4706.5 as originally enacted made no mention as to the manner of payment.

Chapter 21 has additionally deleted the requirement from Section 4706.5 that the employer or his insurance carrier must notify the administrative director of an employee death in cases where the employer has actual knowledge or notice that the deceased employee left a surviving dependent. Section 4706.5 as originally enacted required notification of each employee death regardless of knowledge or notice of surviving dependents. The legislature, in enacting this section, did not intend to require such notification of each employee death, but only to require notification where the deceased employee has no surviving spouse and no minor children [S.B. 136, CAL. STATS. 1973, c. 21, §3]. The requirement that the employer pay the difference to the state where the actual burial expense of the deceased employee is less than the amount specified in Section 4701 has also been deleted.

Chapter 21 was signed and became effective on April 12, 1973, but called for retroactive effect as of March 7, 1973, the operational date of Section 4706.5 of the Labor Code [CAL. STATS. 1972, c. 1334] which it superseded [S.B. 136, CAL. STATS. 1973, c. 21, §2].

See Generally:

- 1) 4 PAC. L.J., REVIEW OF SELECTED 1972 CALIFORNIA LEGISLATION 672 (1973) (disability and death benefit payments).
- 2) 2 WITKIN, SUMMARY OF CALIFORNIA LAW, *Workmen's Compensation* §§80, 83, 89 (7th ed. 1960), (Supp. 1969).
- 3) CONTINUING EDUCATION OF THE BAR, CALIFORNIA WORKMEN'S COMPENSATION PRACTICE §§6.16, 16.49, 16.50 (1963).

Workmen's Compensation; off-duty peace officers

Labor Code §3600.3 (amended).

SB 947 (Dills); STATS 1973, Ch 508

Section 50921 of the Government Code provides that whenever any peace officer is injured, disabled, or dies in the course of performing services *anywhere in the state*, he or his dependents shall be accorded the same benefits of workmen's compensation law which would have been received had the officer been acting under the immediate direction of his employer. Section 3600.3 of the Labor Code provides that an off-duty peace officer who is performing a service *within the jurisdiction* of his employing agency, which he would have been required to perform had he been on duty, is subject to workmen's compensation law [See 4 PAC. L.J., REVIEW OF SELECTED 1972 CALIFORNIA LEGISLATION 675 (1973)]. Chapter 508 has amended Section 3600.3 (coverage for activities within the jurisdiction) to provide that it shall not preclude a peace officer, who sustains injuries resulting from *extraterritorial activities*, from recovering any benefits to

which he might be entitled pursuant to Section 50921 of the Government Code.

See Generally:

- 1) 4 PAC. L.J., REVIEW OF SELECTED 1972 CALIFORNIA LEGISLATION 675 (1973).
- 2) *Selected 1960-1961 California Legislation*, 36 CAL. S.B.J. 785 (1961).
- 3) Riesenfeld, *Contemporary Trends in Compensation for Industrial Accidents Here and Abroad*, 42 CAL. L. REV. 531 (1954).

Workmen's Compensation; persons eligible for coverage

Labor Code §3361.5 (new); §§3361, 4458 (amended).

SB 1254 (Behr); STATS 1973, Ch 953

AB 1316 (Bee); STATS 1973, Ch 472

Support: California Trial Lawyers' Association; Hayward Area Recreation and Park District

Section 3351 of the Labor Code defines an "employee" to mean every person in the service of an employer under any appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed. Chapter 472 has added Section 3361.5 to the Labor Code to provide that, notwithstanding Section 3351, a *volunteer unsalaried person* authorized by the governing board of a recreation and park district to perform volunteer services for the district shall be deemed an employee of the district for the purposes of Division 4 and shall be entitled to the workmen's compensation benefits provided by this division where: (1) the governing board of such district adopts a resolution deeming the person an employee of the district; and (2) the person sustains an injury while engaged in the performance of any service under the direction and control of the governing board.

Section 3361 of the Labor Code provides that volunteer firefighters who are members of a regularly organized fire department having official recognition and full or partial support of the government of the county, city, town, or district in which the volunteer fire department is located are considered employees of the governmental entity and entitled to workmen's compensation benefits. Section 4458 sets forth the provisions for determining the amount of temporary or permanent disability indemnity for such injured employees. Chapter 953 has amended Sections 3361 and 4458 of the Labor Code to delete any reference to *male* members of such volunteer fire departments with respect to their eligibility for workmen's compensation benefits. As amended, these sections provide that *all* firefighting members of any regular volunteer department are entitled to benefits while injured in the line of duty.