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Workers' Compensation

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Workers' Compensation

Workers' Compensation; disability benefits

Labor Code § 3865 (new); § 4904 (amended);
Unemployment Insurance Code § 2629.1 (repealed); § 2629.1 (new);
§§ 2629, 3253 (amended).
SB 804 (Greene); 1989 STAT. Ch. 1280
Sponsor: California Federation of Labor, AFL-CIO

Under existing law, an employer or injured employee can bring suit against a third party for damages resulting from an injury, even though the injury is covered by workers' compensation benefits.¹ Under Chapter 1280, the Employment Development Department (Department)² can file a lien against the amount of the judgment awarded against a third party.³ Existing law allows parties reaching a compromise and release agreement in a disputed workers' compensation claim to propose to the Workers' Compensation Appeals Board (Appeals Board) an amount to be paid to any lien claimant.⁴ Under Chapter 1280, if the lien claimant objects to the proposed amount, the Appeals Board must investigate the dispute.⁵ The Board may not disallow a lien in whole or in part unless the claimant has been properly notified.⁶

1. CAL. LAB. CODE § 3852 (West Supp. 1989).

2. See CAL. UNEMP. INS. CODE § 301 (West 1986) (creating and defining the Employment Development Department within the Health and Welfare Agency).

3. 1989 Cal. Stat. ch. 1280, sec. 1, at ____ (enacting CAL. LAB. CODE § 3865). The Employment Development Department can also file a lien against amounts paid in unemployment compensation and unemployment compensation disability benefits during the time that the employee received temporary disability benefits unless the employer has reimbursed the Department for benefits paid. *Id.* sec. 2, at ____ (amending CAL. LAB. CODE § 4904).

4. CAL. LAB. CODE § 5003(f) (West 1971).

5. 1989 Cal. Stat. Ch. 1280, sec. 2, at ____ (amending CAL. LAB. CODE § 4904). The Appeals Board must file findings on all facts involved in the dispute within 30 days after the case is submitted. CAL. LAB. CODE § 5313 (West Supp. 1989). The Appeals Board must file a decision stating the determination of the rights of the parties within 30 days. *Id.* The Appeals Board must serve the parties involved in the controversy with a summary of the evidence received and relied upon and the grounds upon which the decision was made. *Id.*

6. 1989 Cal. Stat. ch. 1280, sec. 2, at ____ (amending CAL. LAB. CODE § 4904). The defendant must serve the lien claimant with all medical and rehabilitation documents and a copy of the proposed compromise and release agreement not less than 15 days before the

Under existing law, an employee who is covered by an approved voluntary compensation plan⁷ cannot receive benefits from the Unemployment Compensation Disability Fund (Fund)⁸ if the disability began while the voluntary plan was in force.⁹ Under Chapter 1280, the voluntary plan must be in force at the beginning of the disability benefit period¹⁰ in order for the employee to be denied disability benefits from the Fund.¹¹

Under prior law, the filing of a lien with the Appeals Board did not stop payment of unemployment disability benefits while the Appeals Board reviewed a petition.¹² Under Chapter 1280, unemployment compensation benefits cease if the employee receives benefits from an employer or insurer.¹³ If the employer or insurer does not pay after receiving notice from the Department, the employee will receive unemployment compensation disability benefits pending the employer's or insurer's payment.¹⁴ The employer or insurer may dispute liability, but must fully reimburse the Department for benefits paid, as well as interest and a possible ten percent penalty, if the Appeals Board later finds the employer liable.¹⁵

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Appeals Board action. *Id.* The Appeals Board may approve a compromise and release agreement on all issues except for the amount of the lien claimant's reimbursement, which may be deferred to subsequent proceedings, if the defendant agrees to pay the amount that is later determined to be owing under the lien claim. *Id.*

7. The Director of Employment Development may approve plans for the payment of disability benefits submitted by an employer or a majority of the employees in California of an employer. CAL. UNEMP. INS. CODE § 3251 (West 1986). See generally CAL. UNEMP. INS. CODE §§ 3251-3272 (West 1986) (describing voluntary plans).

8. See CAL. UNEMP. INS. CODE § 3001 (West 1986) (establishing the Unemployment Compensation Disability Fund).

9. CAL. UNEMP. INS. CODE § 3253 (amended by 1989 Cal. Stat. ch. 1280, sec. 6, at ____).

10. The disability benefit period is the continuous period of unemployment and disability that begins on the first day for which the employee files a valid claim for disability benefits. CAL. UNEMP. INS. CODE § 2608 (West 1986).

11. 1989 Cal. Stat. ch. 1280, sec. 6, at ____ (amending CAL. UNEMP. INS. CODE § 3253). If the employee is covered by an approved voluntary plan at the commencement of the disability period, all disabling conditions that may occur during the disability period are the liability of the voluntary plan, even if the conditions occur subsequent to the original disability. *Id.*

12. 1970 Cal. Stat. ch. 985, sec. 2, at 1758 (amending CAL. UNEMP. INS. CODE § 2629.1) (repealed by 1989 Cal. Stat. ch. 1280, sec. 4, at ____).

13. 1989 Cal. Stat. ch. 1280, sec. 5, at ____ (enacting CAL. UNEMP. INS. CODE § 2629.1(a)).

14. *Id.* (enacting CAL. UNEMP. INS. CODE § 2629.1(b)).

15. *Id.* (enacting CAL. UNEMP. INS. CODE § 2629.1(e)). A penalty will be imposed on the employer if the Appeals Board finds that the employer's failure to pay was unreasonable and if a penalty has not been imposed under section 5814 of the Labor Code, which requires the payment of a 10% penalty when compensation payments are unreasonably delayed or refused. *Id.* sec. 5, at ____ (amending CAL. LAB. CODE § 2629.1).

Workers' Compensation; reform

Government Code § 50920 (amended);
Insurance Code §§ 11745,* 11746, 11747, 11748, 11751.51 (new);
§§ 11732.5, 11734, 11751.1, 11751.3, 11751.35, 11770 (amended);
Labor Code §§ 124, 139, 4453.1, 4460, 5401, 5502 (repealed); §§
55.5, 62.5, 124, 129.5, 139, 139.2, 139.3, 3208.3, 3208.4, 3362.5,
4061, 4062, 4062.2, 4063, 4064, 4065, 4066, 4067, 4628, 4635,
4636, 4637, 4638, 4639, 4640, 4641, 4642, 4643, 4644, 4645, 4646,
4703.5, 4903.4, 5270, 5271, 5272, 5273, 5275, 5276, 5277, 5401,
5502, (new); §§ 110, 111, 112, 117, 122, 123.5, 129, 132a, 139.5,
3208.3, 3362.5, 3364, 3501, 3702.6, 4453, 4458.2, 4600, 4624, 4628,
4650, 4651, 4652, 4658, 4659, 4661.5, 4701, 4702, 4703.5, 4903.4,
4906, 5307.3, 5402, 5405.5, 5410, 5500, 5703.5, 5814, 5908
(amended).

AB 276 (Margolin); 1989 STAT. Ch. 892

SB 47 (Lockyer); 1989 STAT. Ch. 893

Chapter 892 enacts the Margolin-Bill Greene Workers' Compensation Reform Act of 1989.¹ Chapter 893 enacts amendments to the Act and states that the Act provisions are not retroactive to injuries which occurred before January 1, 1990 unless specified otherwise.² A detailed treatment of the subject is scheduled for publication as a Legislative Note in volume 21, number 3 (April 1990) of the *Pacific Law Journal*.

INSURANCE

Chapter 892 states specific insurance company expense rates which must be included in the classification of risks and premium rates until January 1, 1993.³ The expense rates must be applied uniformly to all insured employers.⁴ Prior law only required that the Insurance Commissioner hold a public hearing before changing a classification

* It is unclear if this section is in effect due to the subsequent enactment of 1989 Cal. Stat. ch. 1369, sec. 1, at _____ (adding CAL. INS. CODE § 11745) (effective October 2, 1989) (containing an entirely different substance).

1. 1989 Cal. Stat. ch. 892, sec. 57, at _____.

2. 1989 Cal. Stat. ch. 893, sec. 6, at _____.

3. 1989 Cal. Stat. ch. 892, sec. 2, at _____ (amending CAL. INS. CODE § 11732.5(b), (c)).

4. *Id.* (amending CAL. INS. CODE § 11732.5(a)).

or system which is used in premium calculations.⁵ Chapter 892 imposes additional requirements of actuarial and economic proof of the need for any change.⁶

In conjunction with the reform program, Chapter 892 creates a Workers' Compensation Rate Study Commission within the Department of Insurance for the purpose of assessing the minimum rate-making process and its relative effectiveness compared with the processes of other states.⁷ Chapter 892 specifically directs that the Commission analyze the states which use an exclusive state fund rather than permitting competition by private carriers.⁸ Chapter 892 further requires that the Insurance Commissioner's rating organization prepare statistical analyses of any changes in workers' compensation costs resulting from enactments during the 1989-90 Regular Session of the Legislature.⁹

STATE ADMINISTRATION

In order to fund the state's administrative costs for workers' compensation, Chapter 892 creates the Workers' Compensation Administration Revolving Fund, consisting of appropriations from the General Fund plus assessments on employers to be levied only under specified circumstances.¹⁰

With respect to administrative structure, Chapter 892 abolishes the Disability Evaluation Bureau¹¹ and creates the Office of Benefit Determination to perform the services previously provided by the Disability Evaluation Bureau and the Rehabilitation Bureau.¹² Chap-

5. 1935 Cal. Stat. ch. 145, at 723 (enacting CAL. INS. CODE § 11734) (amended by 1989 Cal. Stat. ch. 892, sec. 2.5, at ____).

6. 1989 Cal. Stat. ch. 892, sec. 2.5, at ____ (amending CAL. INS. CODE § 11734(a)).

7. *Id.* sec. 3, at ____ (enacting CAL. INS. CODE §§ 11745-11748).

8. *Id.* (enacting CAL. INS. CODE § 11746).

9. *Id.* sec. 7, at ____ (enacting CAL. INS. CODE § 11751.51(a)).

10. *Id.* sec. 9.5, at ____ (enacting CAL. LAB. CODE § 62.5). Chapter 893 appropriates \$2,500,000 from the General Fund as a loan to carry out the Act. 1989 Cal. Stat. ch. 893, sec. 7, at ____.

11. 1989 Cal. Stat. ch. 892, sec. 16, at ____ (repealing CAL. LAB. CODE § 124).

12. *Id.* sec. 17, at (enacting CAL. LAB. CODE § 124(b)(2)). See 1989 Cal. Stat. ch. 893, sec. 1, at ____ (amending CAL. LAB. CODE § 139.5(a)) (duties of the vocational rehabilitation unit within the Office of Benefit Determination will include: Approval of plans, development of rules, coordination, development of a fee schedule for vocational rehabilitation services designed to lower costs by 10%, and development of standards for timeliness and quality of plans).

ter 892 also creates the Office of Benefit Assistance and Enforcement to perform the services previously rendered by the Claims Bureau and the Information and Assistance Bureau and to enforce penalties¹³ against those¹⁴ who commit violations in the course of claims administration.¹⁵

Existing law requires audits of the claims of insurers and self-insurers.¹⁶ Chapter 892 adds the requirement that half the audit subjects be selected at random and the other half be selected on the basis of their failure to perform adequately.¹⁷

EMPLOYER MISCONDUCT

Existing law prohibits employers from discriminating against an employee because that employee has filed an application for adjudication of a workers' compensation claim.¹⁸ Prior law had been interpreted broadly to prohibit discriminatory actions against employees who have sustained industrial injuries.¹⁹ Chapter 892 codifies that judicial interpretation.²⁰

DETERMINATION OF MEDICAL ISSUES

Chapter 892 requires that a notice be included with an injured worker's final payment of temporary disability stating the employer's position with respect to the employee's eligibility for permanent

13. See 1989 Cal. Stat. ch. 892, sec. 19, at ____ (enacting CAL. LAB. CODE § 129.5) (delineation of specific violations for which penalties can be assessed, dollar levels for penalties, factors to be taken into consideration in determining whether penalties should be assessed, and processes for appealing penalties).

14. Parties punishable include self-insured employers and third party administrators. *Id.* (enacting CAL. LAB. CODE § 129.5(a)).

15. *Id.* sec. 17, at ____ (enacting CAL. LAB. CODE § 124(b)(1)). Chapter 893 authorizes additional staffing, including funding for twelve workers' compensation judges. 1989 Cal. Stat. ch. 893, sec. 7(b), at ____.

16. Cal. Lab. Code § 129 (West Supp. 1989) (amended by 1989 Cal. Stat. ch. 892, sec. 18, at ____).

17. 1989 Cal. Stat. ch. 892, sec. 18, at (amending CAL. LAB. CODE § 129(a), (b)).

18. CAL. LAB. CODE § 132a (amended by 1989 Cal. Stat. ch. 892, sec. 20, at ____).

19. See *Judson Steel Corp. v. Workers' Compensation Appeals Bd.*, 22 Cal. 3d 658, 666, 586 P.2d 564, 568, 150 Cal. Rptr. 250, 254 (1978) (discriminatory actions other than those specifically named in Labor Code section 132a are prohibited because the legislature intended to carry forward the broad policy that there should not be discrimination against workers who are injured in the course and scope of their employment).

20. 1989 Cal. Stat. ch. 892, sec. 20, at ____ (amending CAL. LAB. CODE § 132a).

disability compensation.²¹ Chapter 892 describes alternative procedures for resolving medical disputes which are dependent upon whether the employee is represented by an attorney.²²

If the employee is represented by an attorney, Chapter 892 permits the parties to reach an agreement, within specified time limits, regarding the selection of a medical evaluator to render an opinion on disputed medical issues.²³ Chapter 892 requires that such agreement be reached within ten days after notice is given that a matter is in dispute.²⁴ If no agreement is reached within the specified time limits, Chapter 892 does not permit the parties to select an agreed medical evaluator at any later time.²⁵

If an employee is not represented by an attorney, Chapter 892 prohibits the employer from obtaining an agreement on the selection of a medical evaluator.²⁶ Instead, Chapter 892 requires that in the event of a medical dispute with an unrepresented employee, the employer must request that the Medical Director²⁷ assign a panel of three qualified medical evaluators from which the employee can make a selection.²⁸ The employer is obligated to pay the reasonable costs of reports which are obtained by an unrepresented employee to rebut the conclusions of the qualified medical evaluator.²⁹ Chapter 892 additionally requires that any medical evaluation concerning an unrepresented employee that apports any of the causation of permanent impairment to factors other than the employment, must be submitted to the Office of Benefit Determination for consideration whether further medical clarification is needed.³⁰ In order to expedite

21. *Id.* sec. 28, at _____ (enacting CAL. LAB. CODE § 4061(a)(1), (2), (3)). The employer must take one of three positions: (1) That the employee is not permanently disabled; (2) that the employee's condition has not reached the point of maximum improvement and it is not yet known whether there will be permanent disability; or (3) that the employer has received medical information indicating that the employee is or may be eligible for permanent disability compensation. *Id.* Chapter 892 requires that each notice advise the employee regarding rights and administrative options. *Id.* (enacting CAL. LAB. CODE § 4061(b)).

22. *Id.* (enacting CAL. LAB. CODE §§ 4061, 4062).

23. *Id.* (enacting CAL. LAB. CODE §§ 4061(c), (d), 4062(b)).

24. *Id.* Chapter 892 permits the parties to extend the time for agreement up to a maximum of 20 days. *Id.*

25. *Id.*

26. *Id.* (enacting CAL. LAB. CODE § 4061(d)(2)).

27. *See* CAL. LAB. CODE § 122 (West 1971) (Medical Director qualifications and appointment procedures).

28. *Id.*

29. *Id.* (enacting CAL. LAB. CODE § 4064(a)).

30. *Id.* (enacting CAL. LAB. CODE § 4061(i)).

payments to injured workers, Chapter 892 requires that once a medical opinion is received from an agreed or qualified medical evaluator indicating that compensation is payable, the employer must either commence benefits or immediately file an application for adjudication.³¹

Chapter 892 requires that the Office of Benefit Determination calculate and serve a permanent disability rating within twenty days of receipt of the formal medical assessment.³² No application for adjudication can be filed by either party regarding any disputed medical issue until an agreed or qualified medical evaluator has made a finding on that issue.³³ Chapter 892 also prohibits admission into evidence of any medical opinion, other than a report from the treating physician, that was obtained before the service of the assessment by the agreed or qualified medical evaluator.³⁴

PSYCHIATRIC INJURIES

Chapter 892 narrows the scope of compensability for psychiatric conditions by imposing a requirement that the employee demonstrate industrial causation by a preponderance of the evidence.³⁵ Chapter 892 further requires that at least ten percent of the causation of a psychiatric condition be attributable to actual employment factors before the employee will be eligible for workers' compensation benefits.³⁶

31. *Id.* (enacting CAL. LAB. CODE § 4061(k)).

32. *Id.* (enacting CAL. LAB. CODE § 4061(h)).

33. *Id.* (enacting CAL. LAB. CODE §§ 4061(1), 4062(e)).

34. *Id.* (enacting CAL. LAB. CODE § 4061(1)).

35. *Id.* sec. 25, at ____ (enacting CAL. LAB. CODE § 3208.3(b)). Before the enactment of Chapter 892, substantiality in the record as a whole was the sole evidentiary standard for all workers' compensation issues. *LeVesque v. Workmen's Compensation Appeals Bd.*, 1 Cal. 3d 627, 637, 463 P.2d 432, 439, 83 Cal. Rptr. 208, 215 (1970).

36. 1989 Cal. Stat. ch. 892, sec. 25, at ____ (enacting CAL. LAB. CODE § 3208.3(b)). *See Albertson's Inc. v. Workers' Compensation Appeals Bd.*, 131 Cal. App. 3d 308, 314, 182 Cal. Rptr. 304, 307-308 (1982) (under judicial interpretation of prior law, trial courts were to use a completely subjective test for psychiatric injuries which determined whether the particular worker actually perceived stress on the job rather than whether a normal person should have perceived stress in the same situation). *See also Lawrence, The Causation Issue in Workers' Compensation Mental Disability Cases: An Analysis, Solutions and a Perspective*, 36 VAND. L. REV. 263, 266 (1983) (because mental disorders are inherently subjective, workers' compensation decision makers are forced to make evaluative decisions which may conflict with policy objectives of a workers' compensation system).

DEATH BENEFITS

Chapter 892 increases burial expense reimbursements to a maximum of \$5000 for injuries occurring in 1991 or after.³⁷ Chapter 892 also raises death benefit levels in January of 1991 to \$115,000 for two or more total dependents, \$115,000 when there is one dependent and one or more partial dependents, \$95,000 when there is only one total dependent, and four times the amount of annual support of partial dependents not to exceed \$95,000 when there are no total dependents and one or more partial dependents.³⁸ However, if the deceased worker leaves minor children, Chapter 892 requires that the death benefits continue until the youngest child reaches the age of eighteen, even if the total amount paid exceeds the specified maximum.³⁹ Chapter 892 also enacts a conclusive presumption that a surviving spouse who earned \$30,000 or less in the year before the death was wholly dependent.⁴⁰

TEMPORARY DISABILITY BENEFITS

Under existing law, compensation rates are based upon two-thirds of the worker's average weekly wage.⁴¹ Chapter 893 raises the maximum rate for temporary disability from \$294⁴² to \$504 in 1991.⁴³ Under prior law, the waiting period for temporary disability was composed of the first three full working days after the injury, not including the date of injury.⁴⁴ Chapter 892 treats the day the injury occurs as the first day of the three-day waiting period prior to the commencement of temporary disability benefits unless the employee received full pay for that day.⁴⁵ Rather than requiring payment of compensable claims in advance, Chapter 892 requires that the first

37. 1989 Cal. Stat. ch. 892, sec. 39, at (amending CAL. LAB. CODE §§ 4701(a)).

38. *Id.* sec. 40, at ____ (amending CAL. LAB. CODE § 4702).

39. *Id.* sec. 41, at ____ (enacting CAL. LAB. CODE § 4703.5).

40. *Id.* sec. 26.5, at ____ (amending CAL. LAB. CODE § 3501(b)).

41. CAL. LAB. CODE § 4653 (West Supp. 1989).

42. 1989 Cal. Stat. ch. 893, sec. 3, at ____ (amending CAL. LAB. CODE § 4453(a)(3)).

43. *Id.* (amending CAL. LAB. CODE § 4453(a)(4)).

44. *See* 1973 Cal. Stat. ch. 1021, sec. 1, at 2025 (amending CAL. LAB. CODE § 4650) (amended by 1989 Cal. Stat. ch. 892, sec. 34, at ____) (required payment one week in advance beginning on the fourth day *after* the injury date).

45. 1989 Cal. Stat. ch. 892, sec. 36, at ____ (amending CAL. LAB. CODE § 4652).

payment be made within fourteen days of the employer's knowledge of disability in the amount then due.⁴⁶ Chapter 892 also requires that payments be made at precise two-week intervals following the first payment.⁴⁷

Under judicial interpretation of prior law, the Appeals Board had the authority to apply a ten percent penalty to the entire class of benefits if there had been an unreasonable delay in any payment.⁴⁸ By contrast, when a regular, sequential indemnity payment of any kind is not issued on time, Chapter 892 applies the penalty only to the amount which is late and imposes the penalty automatically without requiring the employee to first request the penalty.⁴⁹

PERMANENT DISABILITY BENEFITS

Chapter 893 enacts tables⁵⁰ of benefit weeks payable for permanent disability, with the number of weeks payable increasing annually over a three-year period.⁵¹ Chapter 893 additionally provides for the computation of minimum and maximum levels of permanent disability benefits.⁵² However, Chapter 893 establishes a separate maximum for permanent disability when the percentage of disability is twenty-five percent or greater.⁵³

VOCATIONAL REHABILITATION

Under existing law, the state is empowered to supervise the rehabilitation process and to adopt such rules as will expedite and facilitate rehabilitation.⁵⁴ Chapter 892 specifically provides for timely intervention by requiring that the employer assign a rehabilitation

46. *Id.* sec. 34, at ____ (amending CAL. LAB. CODE § 4650(a)).

47. *Id.* (amending CAL. LAB. CODE § 4650(c)).

48. *See* Gallamore v. Workers' Compensation Appeals Bd., 23 Cal. 3d 815, 827, 591 P.2d 1242, 1248, 153 Cal. Rptr. 590, 596 (1979) (the penalty applies to the full amount due under a particular class of benefits and the employer, therefore, cannot receive a credit in the computation for the amounts which were paid on time).

49. 1989 Cal. Stat. ch. 892, sec. 34, at ____ (amending CAL. LAB. CODE § 4650(d)).

50. *See* 1989 Cal. Stat. ch. 893, sec. 4, at ____ (amending CAL. LAB. CODE § 4658(b)(1)) (within each table, the number of weeks are cumulative and increase with the severity of the injury).

51. *Id.* (amending CAL. LAB. CODE § 4658).

52. *Id.* sec. 3, at ____ (amending CAL. LAB. CODE § 4453(b), (c)).

53. *Id.* sec. 3, at ____ (amending CAL. LAB. CODE § 4453(b)(3)).

54. CAL. LAB. CODE § 139.5 (amended by 1989 Cal. Stat. ch. 893, sec. 1, at ____).

representative⁵⁵ after ninety days of disability to explain the worker's rights and duties under vocational rehabilitation.⁵⁶ If no decision on medical eligibility has been reached after ninety days of disability, Chapter 892 requires the vocational representative and the employee to develop a description of the worker's duties at the time of the accident for use by the physician in making the determination.⁵⁷ Chapter 892 also specifically requires that the employer notify the employee of medical eligibility within ten days of the employer's knowledge.⁵⁸ If the employer disputes the treating physician's opinion regarding medical eligibility for vocational rehabilitation and the employee's medical condition has reached the point of maximum improvement, Chapter 893 expressly requires⁵⁹ the employer to continue to pay the maintenance allowance pending resolution of the dispute.⁶⁰

As an incentive for employers, Chapter 892 provides for premium refunds under certain circumstances to those employers who provide alternative or modified work for injured employees who are permanently unable to return to their pre-injury duties.⁶¹ However, Chapter 892 imposes a duty upon the employer, under specified circumstances, to provide further rehabilitation if the modified or alternative work is no longer available.⁶² To expedite the rehabilitation process, Chapter 892 imposes a ninety day time limit⁶³ during which the employer must either submit an agreed rehabilitation plan or submit a request that the Office of Benefit Determination intervene for dispute resolution.⁶⁴

55. See 1989 Cal. Stat. ch. 892, sec. 33, at ____ (enacting CAL. LAB. CODE § 4635(b)) (definition of qualified rehabilitation representative).

56. *Id.* (enacting CAL. LAB. CODE § 4636(a)).

57. *Id.*

58. *Id.* (enacting CAL. LAB. CODE § 4637(a)).

59. Judicial interpretation of prior law reached the same result. See *Webb v. Workers' Compensation Appeals Bd.*, 28 Cal. 3d 621, 626, 620 P.2d 618, 621, 170 Cal. Rptr. 32, 34-35 (1980) (the employer was held liable for continuing temporary disability after the worker's medical condition reached the point of maximum improvement because the employer failed to notify the employee or the Rehabilitation Bureau of the employee's potential eligibility for vocational services).

60. 1989 Cal. Stat. ch. 893, sec. 1, at ____ (amending CAL. LAB. CODE § 139.5(d)(2)).

61. 1989 Cal. Stat. ch. 892, sec. 33, at ____ (enacting CAL. LAB. CODE § 4638(a)).

62. *Id.* (enacting CAL. LAB. CODE § 4644(d)). The employer is liable for additional vocational rehabilitation services if the employee returned to work with the same employer in a modified or alternative position which is unavailable in the open labor market and the employee is terminated for reasons other than cause within 12 months after placement in the modified or alternative position. *Id.*

63. See *id.* (enacting CAL. LAB. CODE § 4638(b)) (the 90-day time period begins with the determination of the injured worker's vocational feasibility).

64. Chapter 893 establishes a maximum limit of \$246 per week for the maintenance

If the employer wishes to terminate the maintenance allowance in connection with rehabilitation due to the employee's unreasonable failure to cooperate, Chapter 892 requires the employer to send the worker a ten-day notice of intent to terminate.⁶⁵ If the employee objects within that time period, the temporary benefits must continue until the Office of Benefit Determination issues a determination in the matter.⁶⁶ Chapter 892 additionally requires the development of a fee schedule for vocational rehabilitation services designed to reduce costs by ten percent.⁶⁷

LIEN DISPUTES

Existing law permits the Appeals Board to order the employer to pay specified kinds of liens as deductions from the total amount of compensation which is due to the injured worker.⁶⁸ Chapter 892 requires a separate proceeding for lien disputes and allows binding arbitration if agreed by the parties including the lien claimant.⁶⁹

APPLICANT ATTORNEY'S FEES

Under existing law, an applicant's attorney is entitled to receive a reasonable fee as a lien against the injured worker's compensation.⁷⁰ Existing law also provides that no agreement about an attorney's fee is binding if the agreement is in excess of a reasonable amount as determined by the Worker's Compensation Appeals Board on a case by case basis.⁷¹ Chapter 892 allows the attorney to enter into a fee

allowance during the period of vocational rehabilitation as a separate category of benefit. 1989 Cal. Stat. ch. 893, sec. 1, at ____ (amending CAL. LAB. CODE § 139.5(d)(1)).

65. 1989 Cal. Stat. ch. 892, sec. 33, at ____ (enacting CAL. LAB. CODE § 4643).

66. *Id.*

67. 1989 Cal. Stat. ch. 893, sec. 1, at ____ (amending CAL. LAB. CODE § 139.5(a)(4)).

68. *See* CAL. LAB. CODE § 4903 (West Supp. 1989). Allowable liens include a reasonable attorney's fee, reasonable expenses incurred by or on behalf of the injured employee, the reasonable value of living expenses after the injury, reasonable burial expenses, reasonable living expenses of the spouse or minor children after the injury if the injured worker has deserted or is neglecting them, unemployment compensation, and compensation paid by the Asbestos Workers' Account. *Id.*

69. 1989 Cal. Stat. ch. 892, sec. 42 at ____ (enacting CAL. LAB. CODE § 4703.4).

70. CAL. LAB. CODE § 4903(a) (West Supp. 1989).

71. *Id.* § 4906 (amended by 1989 Cal. Stat. ch. 892, sec. 43, at ____). *See* Reich v. Workers' Compensation Appeals Bd., 99 Cal. App. 3d 225, 229, 160 Cal. Rptr. 218, 220 (1979) (the Workers' Compensation Appeals Board judge determines the reasonableness of the requested fee).

agreement with the client if that agreement is submitted for judicial approval within ten days after the agreement is made.⁷²

CLAIM INITIATION AND DETERMINATION

Under existing law, the injured employee has an obligation to submit written notice of an injury to the employer.⁷³ Chapter 892 imposes the requirement that the injured employee complete a claim form in order to initiate the claims process.⁷⁴ Chapter 892 requires the employer to provide the form and a notice regarding worker's compensation eligibility to the employee within one day of notice or knowledge of the injury.⁷⁵ Information from any source constitutes notice to the employer of the injury.⁷⁶ Failure to deny the claim within ninety days of the employee's completion of the claim form results in a presumption of claim compensability.⁷⁷ The presumption can be rebutted only by evidence discovered after the initial ninety day period.⁷⁸

ADJUDICATION, ARBITRATION, AND PENALTIES

Chapter 892 imposes a requirement that hearings be held within sixty days after the application for a hearing is filed and requires expedited proceedings within thirty days when specified issues are in dispute.⁷⁹ If the employee is represented by legal counsel, Chapter 892 additionally requires that a settlement conference be held within thirty days after the application is filed and that a hearing be held within seventy-five days of the filing.⁸⁰ Chapter 892 specifically prohibits the initial filing of an application for adjudication with respect to an issue of permanent disability or medical treatment before an agreed or qualified medical evaluator has made findings on the issue.⁸¹

72. 1989 Cal. Stat. ch. 892, sec. 43 at ____ (amending CAL. LAB. CODE § 4906(c)).

73. CAL. LAB. CODE § 5400 (West 1971).

74. 1989 Cal. Stat. ch. 892, sec. 46, at ____ (enacting CAL. LAB. CODE § 5401(b)).

75. *Id.* (enacting CAL. LAB. CODE § 5401(a)).

76. *Id.* sec. 47, at ____ (amending CAL. LAB. CODE § 5402).

77. *Id.*

78. *Id.*

79. *Id.* sec. 52, at ____ (enacting CAL. LAB. CODE § 5502(a), (b)). *See id.* (enacting CAL. LAB. CODE § 5502(b)) (delineation of specific disputes requiring expedited hearings).

80. *Id.* (enacting CAL. LAB. CODE § 5502(d)).

81. *Id.* sec. 28, at ____ (enacting CAL. LAB. CODE § 4061(l)).

Chapter 892 requires arbitration of the issues of insurance coverage and the right of contribution for benefits paid for injuries arising from cumulative trauma.⁸² Unless the applicant has obtained a continuance, Chapter 892 additionally requires arbitration of the issue of permanent disability where the disability level described in one medical report has been informally rated at twenty percent or less and a hearing cannot be set within 150 days of the date the application was filed.⁸³ Chapter 892 permits arbitration of other specified issues by agreement of the parties.⁸⁴

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82. *Id.* sec. 44, at ____ (enacting CAL. LAB. CODE § 5275(a)).

83. *Id.* (enacting CAL. LAB. CODE § 5275(a)(3), (4)).

84. *Id.* (enacting CAL. LAB. CODE § 5275(d)). *See id.* (enacting CAL. LAB. CODE §§ 5270.5, 5271) (selection of arbitrators); *id.* (enacting CAL. LAB. CODE § 5272) (powers of arbitrators); *id.* (enacting CAL. LAB. CODE § 5273) (responsibilities for the payment of arbitration costs).

