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# Workers' Compensation

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# Workers' Compensation

## Workers' Compensation; advertising

Labor Code §§ 5430, 5431, 5432, 5433, 5434 (new).  
AB 2329 (Peace); 1992 STAT. Ch. 904

Existing law requires an attorney representing an employee in a workers' compensation claim<sup>1</sup> to disclose to the employee in writing that it is a felony to file a false or fraudulent workers' compensation claim.<sup>2</sup> Existing law further requires this statement to appear on specified workers' compensation claim forms.<sup>3</sup>

Chapter 904, entitled the Workers' Compensation Truth in Advertising Act, requires that written<sup>4</sup> or broadcast<sup>5</sup> advertisements<sup>6</sup> soliciting the filing of a workers' compensation claim, or the consultation of counsel or a medical care provider for the purpose of considering such a claim, must include a description of the penalties

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1. See CAL. LAB. CODE § 4903(a) (West Supp. 1992) (granting a claimant's attorney the right to receive a reasonable fee as a lien against the injured worker's compensation); *id.* § 4906(b) (West Supp. 1992) (prohibiting an attorney or agent from demanding or accepting a fee from an employee for the purpose of representing the employee in a workers' compensation claim until the amount has been approved or set by the appeals board); *Reich v. Workers' Compensation Appeals Bd.*, 99 Cal. App. 3d 225, 229, 160 Cal. Rptr. 218, 220 (1979) (holding that the Workers' Compensation Appeals Board judge determines the reasonableness of the requested fee).

2. CAL. LAB. CODE § 4906(e)-(f) (West Supp. 1992). *Cf.* COLO. REV. STAT. § 8-43-402 (1991) (making it a felony to willfully make a false statement or representation material to a claim for workers' compensation); FLA. STAT. ANN. § 440.37(2)(a) (West 1991) (requiring all claim forms to contain a notice clearly stating that it is a third degree felony to knowingly file a false statement of claim)

3. CAL. LAB. CODE § 5401.7 (West Supp. 1992).

4. See *id.* § 5431(a) (enacted by Chapter 904) (specifying advertisements in a newspaper, magazine, circular, form letter, or open publication, published, distributed, or circulated in this state, or on any billboard, card, label, transit advertisement or other written advertising medium).

5. See *id.* § 5431(b) (enacted by Chapter 904) (specifying television or radio announcements published or disseminated in this state).

6. See *id.* § 5433(c) (enacted by Chapter 904) (defining advertisement to include a solicitation in any newspaper, magazine, circular, form letter, or open publication, published, distributed, or circulated in California, or on any billboard, card, label, transit advertisement, or other written advertising medium, including envelopes, stationary, business cards, or other material designed to encourage the filing of a workers' compensation claim).

for filing a false or fraudulent workers' compensation claim.<sup>7</sup> Failure of an advertiser<sup>8</sup> to include the notice of the penalties is a misdemeanor.<sup>9</sup>

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7. *Id.* § 5431(a)-(b) (enacted by Chapter 904). See generally *Review of Selected 1991 California Legislation*, 23 PAC. L.J. 709 (1992) (discussing SB 1218 and AB 1673, enacting and amending § 549 of the California Penal Code, which specifies the penalties for soliciting or referring business to anyone with either knowledge or reckless disregard for whether the person being solicited or referred intends to commit workers' compensation fraud); Howard Fine, *Workers' Comp Means Trouble for Anaheim Firm*, ORANGE COUNTY BUS. J., Jan. 20, 1992, vol. 15, no. 3, § 1, at 1, available in LEXIS, Nexis Library, OCBJ File (reporting on the burden imposed by workers' compensation stress claims brought by laid-off workers as a result of advertisements by lawyers and medical clinics promising money for work-related injuries, and claiming the incentive for insurance companies to reform the system is low because each stress claim results in between \$18,000 and \$25,000 of a company's workers' compensation insurance premium being kept by the insurance carrier as reserve for anticipated expenses); *Fremont Anti-Fraud Campaign Leads To First Criminal Indictments*, BUSINESS WIRE, April 22, 1992, available in LEXIS, Nexis Library, Business Wire File (reporting on the first indictments for workers' compensation insurance fraud under SB 1218, California's new anti-fraud law, and stating that fraudulent workers' compensation claims are a significant factor in the fact that, while California ranks third nationwide in per capita workers' compensation premiums paid by employers, it is only 47th in per capita benefits actually paid to injured employees); *Fremont Comp Launches Aggressive Anti-Fraud Campaign*, BUSINESS WIRE, Jan. 21, 1992, available in LEXIS, Nexis Library, Business Wire File (describing California's problem of fraudulent workers' compensation claims, and Fremont Compensation Insurance Company's aggressive advertising campaign aimed at deterring fraud claims by informing employees of the legal consequences); Liz, *Insurers Come on Strong in Probing Worker Comp Cases*, L.A. BUS. J., Aug. 31, 1992, vol. 14, no. 35, sec. 1, at 1, available in LEXIS, Nexis Library, LABJ File (reporting that 35 insurer groups submitted 3,911 claims involving suspected fraud to various government agencies in the first six months of 1992). There are currently five lawyers in the Los Angeles County District Attorney's Office who are working on five or six major workers' compensation cases involving numerous doctors and lawyers. *Id.*; Louise Kertesz, *Workers Comp Abuse Targeted; California Law Curtails 'Ghostwriting' Fraud*, BUS. INS., Aug. 5, 1992, at 61, available in LEXIS, Nexis BUSINS File (reporting on the practice of some doctors to solicit for workers' compensation claimants and then hire ghostwriters to produce the necessary medical histories on the claimants for the purpose of creating a fraudulent claim); Stuart Silverstein, *Pitching Workers' Comp; Insurance: 'Cappers' Work The Streets, Trying To Get Passersby To Pursue Workers' Compensation Claims. Authorities Say The Practice Increases Fraudulent Filings*, L.A. TIMES, Apr. 19, 1992, at D1, available in LEXIS, Nexis LA Times File (reporting on the practice of solicitation of the poor and unemployed to pursue workers' compensation claims, and its effect on the cost of insurance).

8. See CAL. LAB. CODE § 5434(b) (enacted by Chapter 904) (defining advertiser as: (1) Any provider of workers' compensation claims services which are described in the written or broadcast advertisements; (2) any person to whom persons solicited by the advertisements are directed for inquiries or the provision of workers' compensation claims related services; or (3) any person paying for the preparation, broadcast, printing, dissemination, or placement of the advertisements).

9. *Id.* § 5434 (enacted by Chapter 904). But see *Fremont Comp Launches Aggressive Anti-Fraud Campaign*, BUSINESS WIRE, Jan. 21, 1992, available in LEXIS, Nexis Library, Business Wire File (reporting that political pressure prompted the Los Angeles Times to force Fremont Compensation Insurance Company to withdraw an ad which warned people not to commit fraud because it was placed in the same column as the advertisements from law firms soliciting workers' compensation claims).

## *Workers' Compensation*

Chapter 904 requires that any advertisement which is designed to produce leads based on responses to that advertisement must disclose that an agent may contact the respondent, if that is the case.<sup>10</sup> Chapter 904 further prohibits an advertiser to use names or language which are deceptive and misleading with regard to the status, character, or capacity of the solicitor, that tend to mislead the public by implying that the advertiser is connected to a governmental agency or nonprofit organization, or that failure to respond to the advertisement will result in loss of rights under federal, state, or local law.<sup>11</sup>

*DTF*

### **Workers' Compensation; declaration of adequate insurance and public liability**

Insurance Code § 11751.7 (new); Labor Code § 3711 (amended).  
AB 3251 (Frazee); 1992 STAT. Ch. 1276

Under prior law, employers<sup>1</sup> who applied for or renewed a business license<sup>2</sup> had to produce proof that they had adequate workers' compensation insurance, a certificate of consent to self insure,<sup>3</sup> or a signed certificate stating that they would not employ

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10. CAL. LAB. CODE § 5433(a) (enacted by Chapter 904).  
11. *Id.* § 5433(b), (d)-(g) (enacted by Chapter 904).

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1. See CAL. LAB. CODE § 3300(a)-(d) (West 1989) (defining employer as: (1) The state and every state agency, (2) each county, city, district, and all public and quasi-public corporations and public agencies therein, (3) every person including any public service corporation, which has any natural person in service, (4) the legal representative of any deceased employer).

2. See CAL. GOV'T CODE § 37101(a)-(b) (West Supp. 1992) (giving the Legislature the power to license for revenue and taxation); CAL. REV. & TAX. CODE § 7284(a)-(b) (West Supp. 1992) (allowing the board of supervisors of any county to license a business for revenue and regulation).

3. See CAL. GOV'T CODE § 3700(b) (West 1989) (specifying requirements to obtain and maintain a certificate of consent to self insure).

any person so as to become subject to workers' compensation laws.<sup>4</sup> Chapter 1276 instead requires employers to sign a declaration, attesting under penalty of perjury<sup>5</sup> that they have satisfied one of the requirements above and acknowledging that an employer failing these requirements may be held liable for insurance compensation, damages, interest, attorneys' fees, and fines up to \$100,000.<sup>6</sup>

Chapter 1276 also provides that cities and counties are not responsible for verifying such declarations, and thus cannot be held liable for any damages resulting from an employer not having the proper insurance.<sup>7</sup> Furthermore, under Chapter 1276, even though a taxpayer has not complied with the workers' compensation provisions, cities and counties may still collect business taxes.<sup>8</sup> Chapter 1276 further requires rating organizations<sup>9</sup> to give the

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4. 1991 Cal. Stat. ch. 600, sec. 2, at 2416 (amending CAL. LAB. CODE § 3711(a)-(b)); see CAL. LAB. CODE § 3351(a)-(f) (West 1989) (defining employee); *id.* § 3351.5(a)-(c) (West 1989) (listing as examples of employees: Aliens and minors, all elected and appointed paid public officers, and all officers and members of boards of directors of quasi-public or private corporations while rendering actual compensated service for the corporations); see also *Borello v. State Dep't of Indus. Relations*, 48 Cal. 3d 341, 350-52, 769 P.2d 399, 403-05, 256 Cal. Rptr. 543, 547-49 (1988) (discussing the difference between independent contractors and employees including the extent to which an employer had a right to control a person and whether the person performing services was engaged in a distinct occupation or business). Prior law specified that the penalty for violating the provisions was a \$500 fine. 1991 Cal. Stat. ch. 600, sec. 2, at 2416 (amending CAL. LAB. CODE § 3711(c)).

5. See CAL. CIV. PROC. CODE § 2015.5(a)-(b) (West 1983) (defining declaration under penalty of perjury); CAL. PENAL CODE § 118(a) (West Supp. 1992) (defining perjury as when a person, having taken an oath lawfully administered that he will testify, declare, depose or certify the truth before competent tribunal, officer or person, willfully states as true any material matter which he knows to be false); *id.* § 126 (West 1988) (specifying punishment for perjury as imprisonment for up to four years); *cf.* 1992 R.I. Pub Laws 133, § 1 (providing that application for a disability insurance certificate must be verified by an oral or written declaration made under penalty of perjury); N.H. REV. STAT. ANN. § 235:37 (1991) (specifying that private contractors who work for the government must state a declaration of acceptance of workers' compensation provisions before they begin to work).

6. CAL. LAB. CODE § 3711(a), (e) (amended by Chapter 1276).

7. *Id.* § 3711(b) (amended by Chapter 1276); see *Morris v. County of Marin*, 18 Cal. 3d 901, 904, 559 P.2d 606, 608, 136 Cal Rptr. 251, 253 (1977) (discussing county liability for failing to ensure that an injured plaintiff's employer maintained adequate workers' compensation insurance).

8. CAL. LAB. CODE § 3711(d) (amended by Chapter 1276); see CAL. REV. & TAX. CODE § 7284(a)-(b) (West Supp. 1992) (specifying the requirements for business tax).

9. See CAL. INS. CODE § 11751.5 (West 1988) (specifying provisions for, and powers of, a rating organization).

Director of Industrial Relations information which would help to identify employers who do not maintain adequate insurance.<sup>10</sup>

EB

### Workers' Compensation; garnishment of benefits

Civil Code §§ 4357.5, 4390, 4390.3, 4702, 4720, 4721, 4722 (amended); Code of Civil Procedure §§ 695.210, 695.220, 704.160, 1699 (amended); Government Code § 6159 (amended); Welfare and Institutions Code §§ 276, 279 (amended).  
SB 1614 (Hart); 1992 STAT. Ch. 848  
(Effective September 22, 1992)

Existing law provides statewide uniform guidelines relating to child support<sup>1</sup> orders,<sup>2</sup> including a formula for determining the amount of support which the higher earner<sup>3</sup> must pay to the lower earner based, in part, on the percentage of time the higher earner has physical custody of the children.<sup>4</sup> Under Chapter 848, where parents

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10. *Id.* § 11751.7 (enacted by Chapter 1276).

1. See CAL. CIV. PROC. CODE § 704.160(d)(3) (amended by Chapter 848) (defining support as an obligation owing on behalf of a child, spouse, or family; or an amount owing pursuant to § 11350 of the Welfare and Institutions Code). Any past due support or arrearage is included within the definition of support. *Id.* See also CAL. CIV. CODE § 4390(h) (amended by Chapter 848) (defining support using the identical definition).

2. See CAL. CIV. CODE § 4700(a)-(e) (West Supp. 1992) (authorizing courts to order parents to pay any amount necessary for the support, maintenance, and education of the child).

3. See *id.* § 4390(c)(1)-(4) (amended by Chapter 848) (defining earnings to include: (1) Wages, salary, bonus, money, and benefits as described in §§ 704.110, 704.113, and 704.115 of the Code of Civil Procedure; (2) dividends, rents, royalties, residuals, patent rights, or mineral or other natural resource rights, or payments due for services of independent contractors; (3) payments of credits due from written or oral contracts for services or sales whether denominated as wages, salary, commission, bonus, or otherwise; or (4) any other payments or credits due or becoming due as a result of an enforceable obligation).

4. *Id.* § 4721(a)-(s) (amended by Chapter 848). The formula for determining child support orders is:  $CS = K[HN - (H\%)(TN)]$ . *Id.* § 4721(a) (amended by Chapter 848). "CS" is the child support amount; "K" is the amount of income to be allocated for child support; "HN" is the high earner's net monthly disposable income; "H%" is the approximate percentage of time that high earner

have different time-sharing arrangements for different children, the approximate percentages of time spent with each child will be averaged together to determine the percentage of time to be used in the formula.<sup>5</sup> There is a rebuttable presumption that the amount of child support established by this formula is the correct amount to be ordered.<sup>6</sup>

Existing law authorizes the court to order the assignment<sup>7</sup> of wages to enforce a support order, and requires a finding of good cause for such an order to be stayed.<sup>8</sup> Chapter 848 exempts foreign support orders and foreign wage assignment orders from these authorized stay orders.<sup>9</sup>

Existing law establishes the priorities by which credit is to be given for money received to satisfy a money judgment.<sup>10</sup> Chapter 848 deletes child support judgments from application of this priority

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has or will have primary physical responsibility for the children compared to the other parent; and "TN" is the total net monthly disposable income of both parties. *Id.* § 4721(b)(1)(A)-(E) (amended by Chapter 848). *But see id.* § 4721(b)(5) (amended by Chapter 848) (declaring that if the resulting amount calculated is a negative number, the lower earner must pay the absolute value of that amount to the higher earner). *See generally id.* §§ 4720-4732 (West Supp. 1992) (establishing the Agnos Child Support Standards Act of 1984).

5. *Id.* § 4721(b)(1)(D) (amended by Chapter 848).

6. *Id.* § 4721(d) (amended by Chapter 848); *id.* § 4721(e)(6) (amended by Chapter 848) (listing examples of the types of evidence which may be admitted to overcome this presumption by showing that application of the formula would be unjust or inappropriate, such as: (1) Cases where different time-sharing arrangements for different children exist; (2) cases where the time-sharing arrangements are equal, but one parent has a much lower or higher percentage of income used for housing than the other parent; and (3) cases where special medical or other needs exist, which would require the child support amount to exceed the formula amount).

7. *See id.* § 4390(a) (amended by Chapter 848) (defining assignment).

8. *Id.* § 4390.3(a)-(c)(4) (amended by Chapter 848); *see* BLACK'S LAW DICTIONARY 1413 (6th ed. 1990) (defining stay as a stopping; the act of arresting a judicial proceeding by the order of a court). A stay is a suspension of the case or some designated proceedings within it. *Id.* Essentially, it is like an injunction with which a court freezes its proceedings at a particular point, and can be used to stop the prosecution of the action altogether, or to hold up only some phase of it, such as an execution about to be levied on a judgment. *Id.*

9. CAL. CIV. CODE § 4390.3(c) (amended by Chapter 848); *see* CAL. CIV. PROC. CODE § 1698.3(a)-(b) (West 1982) (setting forth the procedures for registering foreign orders for the assignment of wages).

10. *Id.* § 695.220(a)-(c) (amended by Chapter 848).

list and instead provides a special priority list for crediting money paid toward child support judgments.<sup>11</sup>

Under existing law, workers' compensation benefits are exempt from enforcement of money judgments, including judgments for child or spousal support.<sup>12</sup> Chapter 848 includes workers' compensation temporary disability benefits among the earnings subject to a wage assignment<sup>13</sup> order.<sup>14</sup> Under Chapter 848, a support judgment creditor<sup>15</sup> may satisfy a support<sup>16</sup> judgment by applying the workers' compensation temporary disability benefit payments of a support judgment debtor.<sup>17</sup>

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11. *Id.* § 695.220(d)(1)-(4) (amended by Chapter 848); *see id.* (establishing that the order for crediting money received is: (1) The current month's support; (2) unsatisfied accrued interest; and then (3) unsatisfied principal amount). Money paid from tax refunds is first credited against past due support assigned to the state, with any remaining money credited according to the above priorities. *Id.* § 695.220(d)(4) (amended by Chapter 848).

12. *Id.* § 704.160(a) (amended by Chapter 848). *See generally* Geraldine Jensen, *Crack Down on Deadbeat Parents*, U.S.A. TODAY, Jan. 4, 1991, at News, 10A (reporting that over \$18 billion in unpaid support is owed to children, and the failure by parents to pay child support results in deprivation of food, clothing, shelter, health care, and educational opportunities to over 10 million children); Teresa Moore, *Wilson Warns Deadbeat Parents Child-Support Crackdown Planned*, S.F. CHRON., June 22, 1992, at News, A13 (quoting state figures showing an accumulated debt of over \$2.8 billion in unpaid child support since 1975, and reporting that unpaid child support accumulates at a rate of \$350 million per year).

13. *See* CAL. CIV. CODE § 4390(a) (amended by Chapter 848) (defining wage assignment).

14. *Id.* § 4390(c)(4) (amended by Chapter 848).

15. *See* CAL. CIV. PROC. CODE § 704.160(d)(2) (amended by Chapter 848) (defining support judgment creditor).

16. *See id.* § 704.160(d)(3) (amended by Chapter 848) (defining support).

17. *Id.* § 704.160(a)-(c) (amended by Chapter 848); *see id.* § 704.160(d)(1) (amended by Chapter 848) (defining support judgment debtor); *cf.* HAW. REV. STAT. § 386-57(a) (1985) (declaring that compensation benefits received are exempt from the reach of creditors); KY. REV. STAT. ANN. § 403.212(2)(b) (Baldwin 1992) (including workers' compensation benefits in the definition of gross income as used to calculate child support payments); OHIO REV. CODE ANN. § 3113.215(A)(2) (Baldwin 1991) (including workers' compensation benefits in the definition of gross income as used to calculate child support payments); *id.* § 3113.21(D)(2)(a) (Baldwin 1991) (authorizing a court which finds that an obligor is receiving workers' compensation payments to order that the benefits be withheld to satisfy a child support order); OKLA. STAT. tit. 43, § 118(2) (West Supp. 1993) (including workers' compensation benefits in the definition of gross income as used to calculate child support payments); TEX. FAM. CODE ANN. § 14.053(b) (West Supp. 1992) (including workers' compensation benefits in the definition of net resources for the purpose of determining child support liability); Section 386-57(a) of the Hawaii Revised Statutes does not bar a family court from ordering a father to pay the past due balance of court-ordered child support with a portion of his lump sum workers' compensation benefits. *Kishida v. Kishida*, 716 P.2d 501, 503 (Haw. 1986). *See generally* California's Child Support Program: Hi-Tech Services Advance, PR Newswire Association, Inc., June 23, 1992, available in LEXIS, Nexis Library, PR Newswire File (reporting on the current process of automating the child support program in California, and describing the procedure by which the



Under existing law, a court must obtain the approval of the appropriate public agency to accept payment of specified fines, fees, or services by credit card.<sup>18</sup> Chapter 848 expressly authorizes acceptance of payments of child or spousal support by credit card.<sup>19</sup>

Existing law authorizes the probation officer to collect money payable to a spouse or child, as well as court costs and attorney's fees resulting from a spousal or child support court order.<sup>20</sup> Existing law also authorizes a service charge for money collected by the probation officer as a trustee.<sup>21</sup> Chapter 848 deletes attorney's fees from the money that can be received by the probation officer, and expressly prohibits a service charge for child support services.<sup>22</sup>

DTF

### Workers' Compensation; regulation of self-insured employers

Labor Code §§ 3702.3, 3702.5, 3702.6 (amended).  
AB 2771 (Wright); 1992 STAT. Ch. 532

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district attorney's office locates the assets of an absent parent and obtains a court order to collect child support payments).

18. CAL. GOV'T CODE § 6159(b)(1)-(5) (amended by Chapter 848); *see id.* § 6159(a)(1) (amended by Chapter 848) (defining credit card).

19. *Id.* § 6159(b)(4) (amended by Chapter 848).

20. CAL. WELF. & INST. CODE § 276(a)-(f) (amended by Chapter 848).

21. *Id.* § 279 (amended by Chapter 848).

22. *Id.* § 279 (amended by Chapter 848). *Compare* Cal. Stat. ch. 1068, § 5, at 4757 (enacting CAL. WELF. & INST. CODE § 276) (providing that a court may order the probation officer to receive money payable to a spouse or child in an action for divorce, separate maintenance, or other similar action, along with court costs and attorney's fees) *with* CAL. WELF. & INST. CODE § 276(a) (amended by Chapter 848) (authorizing courts to order the probation officer to receive money payable for all of the above mentioned actions except attorney's fees).

Existing law requires all private and public employers,<sup>1</sup> except the state, to obtain a workers' compensation<sup>2</sup> insurance policy or a certificate of consent<sup>3</sup> to self-insure from the Department of Industrial Relations.<sup>4</sup> Existing law also requires all self-insured employers to submit to a periodic auditing program to ensure the adequacy of estimates of future liabilities of claims.<sup>5</sup> Chapter 532 instead requires only private self-insured<sup>6</sup> employers to submit to

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1. See CAL. LAB. CODE § 3300(a)-(d) (West 1989) (defining employer as: (a) The state and every state agency; (b) each county, city, district, and all public and quasi-public corporations and public agencies therein; (c) every person including any public service corporation, which has any natural person in service; and (d) the legal representative of any deceased employer).

2. See CAL. CONST. art. XIV, § 4 (vesting the Legislature with full power to create and enforce a complete system of workers' compensation, including the ability to create and enforce the liability of an employer to compensate any or all workers for injury or disability incurred or sustained in the course of employment, irrespective of the fault of any party); 1 A. LARSON, *THE LAW OF WORKMEN'S COMPENSATION* (1984) (providing a comprehensive treatment of workers' compensation law); 81 AM. JUR. 2D *Workmen's Compensation* §§ 1-239 (Supp. April, 1992) (providing a comprehensive treatment of workers' compensation law); 82 AM. JUR. 2D *Workmen's Compensation* §§ 240-690 (Supp. April, 1992) (providing a comprehensive treatment of workers' compensation law); 2 W. HANNA, *CALIFORNIA LAW OF EMPLOYEE INJURIES AND WORKMEN'S COMPENSATION* (2d ed. 1982) (providing a general guide to practice, procedure, and principles under California law).

3. See CAL. CODE REGS. tit. 8, §§ 15350-15353 (1990) (setting forth regulations for certificates of consent to self-insure).

4. CAL. LAB. CODE § 3700(a)-(c) (West 1988); see CAL. CODE REGS. tit. 8, §§ 15200-15204 (1990) (setting forth regulations for the administration of self-insurance). See generally Grover Czech, *Private Plans Go The Distance; Workers' Compensation*, 90 BEST'S REVIEW, PROPERTY-CASUALTY INSURANCE EDITION 50 (July 1989), available in LEXIS, Nexis Library, Best's--Prop/Casualty File (comparing state workers' compensation insurance funds with private workers' compensation insurance funds, and stating reasons why private funds are able to provide more extensive services at lower cost than comparable state funds).

Funds held by the state actually deplete tax revenues because they are not subject to federal or state income tax, thereby depriving the state of tax revenues which a private insurer would have been required to pay. *Id.*

5. CAL. LAB. CODE § 3702.6(a) (amended by Chapter 532); see CAL. CODE REGS. tit. 8, §§ 15400-15406 (1990) (setting forth regulations for recordkeeping and audits); *Self-Insurers Sec. Fund v. ESIS, Inc.*, 204 Cal. App. 3d 1148, 1158-59, 251 Cal. Rptr. 693, 698-99 (1988) (holding that liability for failure to secure payment of compensation due to negligent misrepresentation in underestimating the employer's workers' compensation liability does not extend to a corporate officer, even though he was acting in the scope of his employment). See also 6 Cal. Op. Att'y Gen. 258, 260-61 (1945) (stating that a holder of or the applicant for a certificate of consent to self-insure may be subjected to a physical audit and examination by the Insurance Commissioner in order to determine the amount of the bond or securities needed to insure against potential workmans' compensation liability).

6. See CAL. LAB. CODE § 3700.1(b) (West 1988) (defining private self-insurer as a private employer which has secured the payment of compensation according to § 3701 of the California Labor Code). See also *id.* § 3701 (West 1988) (establishing the procedures for depositing securities which a private self-insured employer must follow in order to secure the required liability for

these audits and requires a public self-insured employer to submit to a special audit only upon a showing of good cause.<sup>7</sup>

*DTF*

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payment of workers' compensation claims).

7. *Id.* § 3702.6(a)-(d) (amended by Chapter 532); *see* CAL. CODE REGS. tit. 8, §§ 15400-15406 (1990) (setting forth regulations for recordkeeping and audits); *see* CAL. LAB. CODE § 3701(b) (West 1988) (defining private self-insurer); *id.* § 3702.6(d) (West Supp. 1992) (defining good cause). *Cf.* ALA. CODE § 25-5-293(f) (1992) (authorizing the Director of the Workers' Compensation Services Board to conduct field audits to assure that reimbursement of workers' compensation claims are commensurate with the prevailing rate of reimbursement in the State of Alabama); FLA. STAT. ch. 440.13(i) (1991) (authorizing the Department of Insurance to conduct audits to ensure that carriers and self-insurers have adequate programs for compensation); KY. REV. STAT. ANN § 342.122(7) (Baldwin 1992) (requiring each self-insured employer, group self-insurer or insurance carrier to submit any reports to the Revenue Cabinet which are deemed essential to ensuring that the state's compensation programs are carried out).