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# Workers' Compensation

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# Workers' Compensation

## Workers' Compensation; compensation for psychiatric injuries

Insurance Code §§ 11745, 11747, 11748; Labor Code § 3208.3 (amended).

AB 971 (Peace); 1991 STAT. Ch. 115  
(Effective July 16, 1991)

Under existing law, all psychiatric injuries<sup>1</sup> are compensable<sup>2</sup> under Workers' Compensation<sup>3</sup> as long as at least ten percent of the causation<sup>4</sup> of the injury<sup>5</sup> is due to actual employment events.<sup>6</sup>

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1. See CAL. LAB. CODE § 3208.3(a) (amended by Chapter 115) (requiring that the mental disorder either cause disability or require medical treatment, and that it be diagnosed pursuant to generally approved, nationally accepted psychiatric practices).

2. See *id.* § 3207 (West 1989) (definition of compensation).

3. See generally *id.* §§ 3201-3278 (West 1989 & Supp. 1991) (setting forth the scope, operation, proceedings, and coverage for California's Workers' Compensation and Insurance); Emmer, *California Comparative Negligence in Industrial Accident Cases—A Historical and Practical Approach*, 7 WHITTIER L. REV. 327 (1985); Davidson, *Workers' Compensation in California—Outdated, But Still the Best*, 56 S. BAR J. 324 (1981); Bixby, *Workmens' Compensation and Vocational Rehabilitation in California*, 9 SAN DIEGO L. REV. 962 (1972) (providing general overviews of California's Workers' Compensation).

4. See CAL. LAB. CODE § 3208.3(b) (amended by Chapter 115) (requiring employees to prove causation by a preponderance of the evidence). See also *id.* § 3202.5 (West 1989) (definition of preponderance of the evidence).

5. See *id.* § 3208 (West 1989) (definition of injury).

6. *Id.* § 3208.3(a), (b) (amended by Chapter 115). See *Review of Selected 1989 California Legislation*, 21 PAC. L.J. 333, 571 (1990) (discussing the enactment of California Labor Code section 3208.3 and its effect on recovery for psychiatric injuries under California's Workers' Compensation laws). See also CAL. LAB. CODE § 3355 (West 1989) (definition of course of trade, business, profession, or occupation). See generally Rubin, *Paying for Care: Legal Developments in the Financing of Mental Health Services*, 28 HOUS. L. REV. 143, 149 (1991) (discussing workers' compensation coverage for mentally ill persons); Troost, *Workers' Compensation and Gradual Stress in the Workplace*, 133 U. PA. L. REV. 847 (1985) (discussing coverage under workers' compensation for mental injuries resulting from workplace stress); Thamann, *Employee Mental Disability Claims and Insurance*, 17 N. KY. L. REV. 391 (1990) (providing an introduction to claims for workplace mental disability); Cook, *Workers' Compensation and Stress Claims: Remedial Intent and Restrictive Application*, 62 NOTRE DAME L. REV. 879 (1987) (discussing an overall general reluctance to compensate workplace stress induced mental injuries); Lasky, *Psychiatry and California Workers' Compensation Laws*, 17 C.W.L.R. 1 (1980) (providing an overview of psychiatric injury compensation). Cf. Gontar, *The Noncompensability of Psychologically Induced Mental Disorders in Louisiana's Worker's Compensation Law*, 34 LOY. L. REV. 311 (1988) (discussing recovery for mental injuries under Louisiana's workers' compensation laws); Comment, *Mental Stress and Workers' Compensation in Nebraska*, 69 NEB. L. REV. 842 (1990) (discussing Nebraska's approach

Chapter 115 denies recovery for those psychiatric injuries resulting from regular and routine employment<sup>7</sup> unless the employee<sup>8</sup> has worked for that employer<sup>9</sup> for at least six months.<sup>10</sup>

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to mental health claims); Comment, *Eligibility for Worker's Compensation in Cases of Nontraumatic Mental Injury: The Development of the Unusual Stress Test in Wisconsin*, 1987 WIS. L. REV. 363 (1987) (discussing Wisconsin's use of the unusual stress standard in allowing recovery on mental health claims).

7. See CAL. LAB. CODE § 3208.3(d) (amended by Chapter 115) (definition of regular and routine employment event).

8. See *id.* § 3351.5 (West 1989) (definition of employee). Compare *id.* § 3352 (West Supp. 1991) (excluding certain persons from category of employee) with *id.* § 3353 (West 1989) (definition of independent contractor).

9. See *id.* § 3300 (West 1989) (definition of employer). Cf. *id.* § 3301 (West 1989) (excluding certain sponsors from employer category).

10. *Id.* § 3208.3(d) (amended by Chapter 115). Employment need not be continuous. *Id.* Chapter 115 does not apply to psychiatric injuries related to employment-caused physical injuries or to psychiatric injuries resulting from a sudden employment condition. *Id.* Cf. *Rockwell Int'l v. Workers' Compensation Appeals Bd.*, 120 Cal. App. 3d 291, 298, 175 Cal. Rptr. 219, 222 (1981) (holding that a psychiatric injury arising out of employee discipline is not covered under the Workers' Compensation Act). Chapter 115 also deletes provisions in the California Insurance Code requiring the Department of Insurance to provide the Workers' Compensation Commission (Commission) with staff and research assistance, extends the deadline for the Commission's report until March 1, 1992, and prohibits the Commission from contracting with outside agents who have not disclosed their income sources or who have a conflict of interest. CAL. INS. CODE §§ 11745(f)(1)-(3), 11747(a) (amended by Chapter 115). See *id.* § 11745(f)(4) (amended by Chapter 115) (definition of conflict of interest).