



1-1-1975

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*, 6 PAC. L. J. 426 (1975).

Available at: <https://scholarlycommons.pacific.edu/mlr/vol6/iss1/29>

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; rehabilitation

Labor Code §139.5 (amended).

AB 760 (Brown); STATS 1974, Ch 1435

Support: California Labor Federation

Requires Division of Industrial Accidents to establish Rehabilitation Unit; authorizes employee who chooses to enroll in rehabilitation plan to receive temporary disability payments plus living expenses; requires employer to meet expenses of the rehabilitation plan; deletes former provisions permitting employer to refuse to participate in such plans, allowing employer credit for advance payments against permanent disability awards, and authorizing computation of permanent disability award at time employee completes rehabilitation plan.

Section 139.5 of the Labor Code has been amended to require the Administrative Director of the Division of Industrial Accidents to establish a Rehabilitation Unit within the Medical Bureau of the Division of Industrial Accidents. The unit will consist of a professional staff with the following duties: (1) to foster, review, and approve rehabilitation plans developed by the employer, insurance carrier, state agency, or employee; (2) to adopt rules and regulations which will facilitate the identification, notification, and referral of industrially injured employees to rehabilitation services; and (3) to coordinate and enforce implementation of rehabilitation plans. Additionally, section 139.5 now provides that when a qualified injured workman chooses to enroll in a rehabilitation program, he will continue to receive temporary disability indemnity payments, plus additional living expenses necessitated by the rehabilitation program, together with all reasonable and necessary vocational training, at the expense of the employer or the employer's insurance carrier.

Prior to this legislation, section 139.5 expressly permitted a nonpublic employer or his insurer to refuse to participate in a rehabilitation program coordinated with a disabled employee's claim for workmen's compensation benefits. Moreover, disabled employees of nonpublic employers were frequently not informed of the availability of rehabilitation programs developed with the aid of the Division of Industrial Ac-

cidents. Section 139.5 has been amended to delete the former provision which granted an employer the right to refuse to participate in a rehabilitation plan; this amendment thus extinguishes the employer's right to control rehabilitation in conjunction with the payment of workmen's compensation benefits. Under section 139.5, as amended, an employee's participation in a rehabilitation program is voluntary, while an employer's participation is compulsory. A potential result of these provisions is a significant increase in the number of employees who enroll in rehabilitation plans. The number of such employees will possibly be amplified by the activities of the Rehabilitation Unit in notifying industrially-injured employees of their rehabilitation opportunities.

In amending section 139.5, the legislature has additionally deleted two important provisions of the former statute which expressly limited an employer's liability exposure when an employee chose to participate in a rehabilitation plan: first, prior to this amendment, section 139.5 authorized the advance to an injured workman of \$70 per week, in addition to temporary disability payments, with the employer receiving up to 26 weeks credit for such advances against his liability for an eventual permanent disability award. Section 139.5, as amended, no longer gives an employer credit for such payments against an eventual permanent disability award. It does, however, provide that the expense of temporary disability payments, the participating employee's additional living expenses, and all reasonable and necessary vocational training expenses must be met by the employer, or his insurer; presumably these expenses are now limited only by the reasonable requirements of the plan authorized by the Rehabilitation Unit. Significantly, section 139.5 now sets forth *no* guidelines as to the maximum amount of employer liability for rehabilitation expenses, nor does it prescribe at what point following an industrial injury (during the period in which an employee is being provided temporary disability payments) that an employee may enroll in a rehabilitation plan.

Second, section 139.5, as amended, also deletes the provision under which the determination of the employee's permanent disability percentage was figured with reference to the employee's age and occupation at the time rehabilitation was completed and the employee had acquired a new occupation. This provision was formerly an incentive for an employer to participate in a rehabilitation plan, and in its absence, it is unclear what guideline as to occupation and age will now be used in computing the permanent disability rating of injured employees.

COMMENT

To the extent that chapter 1435 gives an injured employee the right to enroll in a rehabilitation program approved by the Rehabilitation Unit and does away with the veto power of the employer over rehabilitation plans, it represents a significant change in the approach to the rehabilitation of industrially-injured employees in California. The deletion of several provisions which, prior to this legislation limited employer liability, coupled with the requirement of compulsory employer participation in employee or Rehabilitation Unit developed plans, entails the granting of substantial new power to the Rehabilitation Unit which is not plainly evident from the generally worded expression of the Unit's duties, as set forth in chapter 1435. Lastly, a sizeable portion of the direct cost of this program will now be borne by employers and their insurers, although the extent of their liability is uncertain at this time.

See Generally:

- 1) CONTINUING EDUCATION OF THE BAR, CALIFORNIA WORKMEN'S COMPENSATION PRACTICE, appendix A (1973) (vocational rehabilitation assistance).
- 2) Comment, *Workmen's Compensation and Vocational Rehabilitation in California*, 9 SAN DIEGO L. REV. 962 (1972).

Workmen's Compensation; compromise and release agreements

Labor Code §5005 (new).

AB 4227 (Maddy); STATS 1974, Ch 1164

Support: State Bar of California

Authorizes partial release of employers in claims brought under Labor Code Section 5500.5; requires referee to determine what would have been released employer's liability when apportioning liability among nonsettling employers.

Section 5500.5 of the Labor Code sets forth a procedure which is used by an injured employee in pursuing a claim for benefits based on an occupational disease or cumulative injury which arose out of more than one employment. When an injured employee has worked for more than one employer during the 5 year period before his date of injury or within the 5 year period before his last date of job exposure to a disease, an employee may elect to proceed against one or more of his respective employers for that 5 year period. Each of those employers is held jointly and severally liable for an award subsequently issued. Section 5500.5(e) provides that any of the employers thus held liable may institute a proceeding before the appeals board for the purpose of determining an apportionment of liability or right

of contribution from other employers during the period giving rise to liability for the award. Prior to this legislation, however, it was not clear how to proceed under section 5500.5 where an employee agreed to a partial settlement of his claim by releasing one or more, but not all, of his employers.

Section 5005 has been added to authorize an employee who brings a claim under section 5500.5 to release one or more employers. The release of one employer will be total as to that employer, but it will not bar an employee from proceeding against one or more of the other remaining employers according to the procedures of section 5500.5. In a subsequent proceeding to apportion liability among employers, a referee must determine what would have been each employer's relative share of liability for the employee's award in the absence of any partial settlement. A released employer will not be liable for any amount greater than that in his compromise and release agreement, nor will he be entitled to a refund where his settlement figure exceeds that which would have been his ultimate liability. A nonreleased employer will be given credit for the amount for which the released employer, in the absence of any compromise and release agreement, would have been liable. He will not be given credit for a larger amount if the compromise and release figure was greater. In approving compromise and release agreements under section 5005, a referee must judge the adequacy of the settlement amount at the time of settlement based on the employer's potential liability. The referee need not make a final determination of what otherwise would be the relative liability of all of the employers at the time he approves a partial compromise and release agreement.

COMMENT

By codifying the above guidelines in section 5005 the legislature has encouraged a reduction in the number of employers and insurers who litigate claims brought under section 5500.5. This furthers the purpose of section 5500.5—to simplify the adjudication of claims brought for occupational disease and cumulative injuries. It is now clear that a referee must compute what would otherwise have been the ultimate liability of all responsible parties, and that the referee's figures must be used to allocate the ultimate liability among employers for a section 5500.5 award.

See Generally:

- 1) 2 W. HANNA, CALIFORNIA LAW OF EMPLOYEE INJURIES AND WORKMEN'S COMPENSATION §11.03(4)(f)(ii) (2d ed. 1974) (occupational disease and successive employers).

Workmen's Compensation; volunteers

Labor Code §3363.6 (new); §3363.5 (amended).

AB 2861 (Keene); STATS 1974, Ch 912

Support: California Trial Lawyers' Association

Section 3363.5 of the Labor Code has been amended to provide that the governing body of a *public agency* may now elect to designate persons who perform volunteer service without pay for the agency to come within the coverage of workmen's compensation law. Similarly, section 3363.6 has been added to provide that the board of directors of private, nonprofit organizations which are exempt from federal income tax under section 501(c) of the Internal Revenue Code (certain tax exempt corporations, various business, charitable, civic, labor, professional, and religious organizations, etc.) may now designate their volunteer workers to be included under such coverage.

Prior to this legislation, section 3363.5 authorized *counties* to elect to extend coverage to workers who performed voluntary services without pay. However, other public agencies and all private agencies were precluded from electing to bring several categories of volunteers within such coverage via the enabling language of section 4150 by the prohibitory language in section 3352 (which excludes these volunteers from qualifying as eligible "employees" as defined in §3351). Volunteers who were thus ineligible for elected coverage and who sustained injuries were compelled to pursue civil actions against responsible employers under Labor Code Sections 2800-2804. This limitation is now removed by the language of sections 3363.5 and 3363.6 which expressly authorizes an election notwithstanding section 3352.

This legislation is the sequel to several additions to the Labor Code passed in the last few years which expanded the coverage of workmen's compensation law to certain limited categories of public volunteer workers [See CAL. LABOR CODE §§3361-3363, 3364-3368]. As a result of this amendment to section 3363.5 and the addition of section 3363.6, substantial numbers of volunteers working for public *and* private organizations may now be eligible for workmen's compensation benefits, subject to the election of the governing bodies of their respective agencies.

See Generally:

- 1) CONTINUING EDUCATION OF THE BAR, CALIFORNIA WORKMEN'S COMPENSATION PRACTICE §3.26 (civil actions of volunteers), §17.31 (excluded employees) (1973).
- 2) S. HERLICK, CALIFORNIA WORKMEN'S COMPENSATION LAW §2.2 (1970) (voluntary coverage).