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Workers' Compensation

University of the Pacific; McGeorge School of Law

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Workers' Compensation

Workers' Compensation; disability benefits

Labor Code §4750.5 (new).

AB 1987 (Lancaster); 1983 STAT. Ch 1160

Support: California Compensation Defense Attorneys Association;
Department of Finance; Department of Industrial Relations

Under existing law, if an employee suffers from a disability or physical impairment sustained prior to employment, and later sustains an industrial injury, the employee can receive worker's compensation from the employer only to the extent of the industrial injury incurred.¹ Compensation is not allowed for the two injuries considered together.² Recently, in *Jensen v. Worker's Compensation Appeals Board*,³ a California court of appeal annulled a decision of the Worker's Compensation Appeals Board that apportioned a worker's claim for benefits between the industrial injury and a subsequent unrelated nonindustrial injury.⁴ The decision of the court was based on the finding that permanent disability compensation could not be apportioned between an industrial injury and a subsequent noncompensable injury that substantially aggravated the existing injury.⁵ The Worker's Compensation Appeals Board, therefore, was required to award the injured worker compensation for the entire disability, without apportionment.⁶ Chapter 1160 specifically rejects this ruling by providing that an employee who suffers a compensable injury followed by an injury that is noncompensable, cannot receive permanent disability solely caused by the noncompensable injury.⁷

1. CAL. LAB. CODE §4750.

2. *Id.*

3. 136 Cal. App. 3d 1042, 186 Cal. Rptr. 570 (1982).

4. *Id.* at 1047, 186 Cal. Rptr. at 574.

5. *Id.* at 1047, 186 Cal. Rptr. at 573.

6. *Id.* at 1047, 186 Cal. Rptr. at 574.

7. CAL. LAB. CODE §4750.5.

