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Workers' Compensation

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Workers' Compensation

Workers' Compensation; domestic workers

Insurance Code §§108.1, 11590, 11591, 11592, 11593, 11720 (repealed); §§108.1, 11590, 11591, 11592, 11720, 11743, 11758.1 (new); Labor Code §§3351, 3352, 3354, 3713, 4453, 4453.1, 5500.5, 5500.6 (repealed); §§3351, 3352, 3354, 3355, 3356, 3713, 4453, 4453.1, 5500.5, 5500.6 (new); §§3708, 3715, 3716, 5307.1 (amended).
AB 133 (Robinson); STATS 1977, Ch 17
(*Effective March 25, 1977*)
Support: Association of California Insurance Companies; Insurance Agents and Brokers Legislative Council
Opposition: Sacramento County Board of Supervisors

Chapter 17 has apparently been enacted to clear up ambiguities and limit the far-reaching liability imposed on employers of domestic workers by legislation enacted during 1975. This prior legislation, which went into effect January 1, 1977, provided for the following: (1) an extension of workers' compensation coverage to all domestic workers unless employed by his or her parent, spouse, or child; (2) the establishment of alternative procedures for determining the domestic workers' average annual income and the liability of an employer for a cumulative injury; and (3) the establishment of workers' compensation coverage for domestic employees through the employers' comprehensive personal liability policy [CAL. STATS. 1975, c. 1263, §§1, 3, 4, 5.5, 11.5, 13, at 3313-20]. Due to the fact that the insurance coverage required by this prior legislation was "not readily available to many thousands of persons who would be employers under [it]" [CAL. STATS. 1977, c. 17, §32, at —], Chapter 17, with certain exceptions, has repealed the provisions of the 1975 law and has substituted new provisions that limit the class of domestic workers covered by workers' compensation [*See* CAL. LAB. CODE §§3351(d), 3352(h)]. Chapter 17 also requires that this coverage be subject to competitive ratings and be included in all comprehensive personal liability policies issued or renewed in this state unless other workers' compensation insurance is applicable [CAL. INS. CODE §§11590, 11592].

Prior law extended workers' compensation coverage to all persons employed by the *owner* of a private residence except those employed by their parent, spouse, or child and left the status of a tenant's employee unclear [*See* CAL. STATS. 1975, c. 1263, §§4, 5, at 3314]. Chapter 17, now specifically extends coverage of workers' compensation to tenants' employ-

ees and establishes a threshold for coverage of domestic employees [CAL. LAB. CODE §§3351(d), 3352(h)]. Labor Code Section 3351(d) provides that any person employed by the *owner or occupant* of a residential dwelling whose duties are incidental to the ownership, maintenance, or use of the dwelling, including child supervision, is an employee covered by workers' compensation. Section 3351(d) only pertains to employees whose duties are personal and not in the course of the trade, business, profession or occupation of the owner or occupant. The term "course of trade, business, profession or occupation" includes all services tending toward the maintenance, preservation or operation of the business and the business property of the employer, including any undertaking engaged in regularly regardless of the trade name, articles of incorporation or principal business of the employer [CAL. LAB. CODE §§3355, 3356]. Persons employed by their parent, spouse, or child are still specifically excluded [CAL. LAB. CODE §3351(d)]. As a means of reducing the number of employers who previously would have had to obtain insurance coverage for their domestic employees, Chapter 17 sets a minimum employment requirement below which workers' compensation insurance is no longer required [*See* CAL. LAB. CODE §3352(h)]. If a domestic employee works for the employer to be held liable less than 52 hours or has earned less than $100 during the 90 calendar days immediately preceding the date of the injury or the date of the last employment in an occupation exposing the employee to the hazards of such disease or injury, then such an employee need no longer be covered under a workers' compensation insurance policy [*See* CAL. LAB. CODE §3352(h)]. Furthermore, while not prohibiting any employer from providing workers' compensation coverage, Chapter 17 indicates that an employer who has elected to provide such coverage to certain domestic employees before March 25, 1977, the effective date of Chapter 17, is not liable for compensation to those domestic employees who fall below the work and pay thresholds prescribed by Section 3352(h) [*See* CAL. LAB. CODE §4156].

Previously, any employee who was injured and discovered that his or her employer was uninsured, could apply to the Workers' Compensation Appeals Board and in the event the employer failed to pay the amount awarded by the Board, obtain these benefits from the Uninsured Employers' Fund [*See* CAL. STATS. 1971, c. 1598, §§3, 4, at 3437-38]. With regard to domestic employees, Chapter 17 now limits the use of this alternative means of obtaining injury compensation to those domestic employees who were covered by workers' compensation prior to January 1, 1977 [*Compare* CAL. LAB. CODE §3715 *with* CAL. STATS. 1975, c. 928, §1, at 2045]. Specifically, only the following domestic employees may now apply to the Appeals Board or seek compensation from the Uninsured Employers' Fund: (1) persons engaged in household domestic service for one employer over 52

hours per week; (2) persons engaged as part-time gardners at a private dwelling for more than 44 hours per month; and (3) persons engaged in casual employment where the work is to be completed in not less than ten days and the total cost for personal services exceeds $100 [CAL. LAB. CODE §3715(b)]. Since Section 3715, however, specifically precludes domestic employees who were not covered by workers' compensation prior to January 1, 1977, from taking advantage of this alternative funding procedure, it would appear that the only remedy available to these employees when an uninsured employer refuses to provide compensation is to proceed against this employer in a civil action [*See* CAL. LAB. CODE §§3706, 3715]. In such actions, the employers of these previously unprotected domestic workers are no longer presumed negligent and the defenses of contributory negligence and assumption of the risk are now available to these employers [CAL. LAB. CODE §3708]. To apparently further lighten the burden on employers of domestic workers, Chapter 17 also provides that most of these employers are no longer subject to the special procedures and penalties for failure to secure compensation for injured domestic employees [*See* CAL. LAB. CODE §3354]. Finally, employers of domestic workers are no longer required to post a notice indicating the employers insurance carrier or the fact that the employer is self-insured [CAL. LAB. CODE §3713(d)].

Section 5500.5 of the Labor Code establishes the procedure to be followed in determining the liability of multiple employers for occupational disease and cumulative injuries. Liability to a domestic worker for occupational diseases or cumulative injuries that results from exposure solely during employment as a domestic employee is currently limited to the employers for whom the employee worked on the last day he or she was exposed to the hazards of the employment [CAL. LAB. CODE §5500.6]. Prior to the enactment of Chapter 17, however, if none of these employers had workers' compensation coverage, liability was imposed upon the last employer for whom the employee actually worked [CAL. STATS. 1975, c. 1263, §13, at 3320]. Section 5500.6 now provides that if the employer on the last day of hazardous employment has no workers' compensation coverage, then the liability will fall upon the *last* employer of the injured worker who was insured. Furthermore, liability for these cumulative injuries or occupational diseases is not to be apportioned among prior employers although evidence of previously compensated disabilities and disabilities due to nonwork-related causes is admissible for purposes of apportionment [CAL. LAB. CODE §5500.6]. Chapter 17 also amends Section 5307.1 of the Labor Code requiring the administrative director of the Division of Industrial Accidents to hold public hearings to adopt and revise the official medical fee schedule every two years rather than twice a year.

Under prior law neither personal liability insurance policies nor endorsements to such policies were to be issued, amended, or renewed unless they provided for payment of workers' compensation to domestic employees [CAL. STATS. 1975, c. 1263, §3, at 3313]. Likewise, the law previously provided that although the premium charged for domestic employee coverage must be separately stated, the insured could delete the coverage for these workers by certifying that he or she did not employ any workers "not excluded by Section 3352" [CAL. STATS. 1975, c. 1263, §3, at 3313-14]. Chapter 17 has deleted these provisions and indicates that on or after January 1, 1977, no personal liability insurance policy, *except an endorsement to such a policy*, may be issued or renewed unless the policy provides for specified domestic employees [CAL. INS. CODE §11590]. In addition, any personal liability policy in effect will be construed as if coverage for domestic employees, as defined by Section 3351(d), were included [CAL. INS. CODE §11590]. Furthermore, Section 11590 provides that if any other workers' compensation insurance is applicable to the injury or death of such domestic employees, the coverage provided for in the personal liability insurance policy will not apply. If a domestic employee's services are connected to the employer's trade, business, profession or occupation, however, the provisions of Section 11590 are inapplicable [CAL. INS. CODE §11591]. Moreover, the rates, classification and rating system for workers' compensation insurance covering domestic workers are no longer to be governed by the state's minimum rate law [*See* CAL. INS. CODE §11743], nor need these rates be computed by any rating bureau [*See* CAL. INS. CODE §11758.1], but are now to be set competitively under the McBridge-Grunsky Insurance Regulatory Act of 1947 [CAL. INS. CODE §§1850-1860.3, 11592]. Finally, the Insurance Code now exempts insurers that provide workers' compensation coverage for household employees from the requirement of posting a bond in favor of the Insurance Commissioner as security for beneficiaries of workers' compensation [CAL. INS. CODE §11720]. Thus, it appears that Chapter 17 is an attempt to create a more responsive system of workers' compensation coverage for domestic employees by limiting the class of persons covered and making workers' compensation insurance more readily available to Californians through personal liability insurance policies.

See Generally:

1) 2 B. WITKIN, SUMMARY OF CALIFORNIA LAW, *Workmen'sCompensation* §§106, 107 (excluded employments and relationships, casual employment and domestic service) (8th ed. 1973),§§105a, 105b (casual employment, domestic service) (Supp. 1976).
2) 7 PAC. L.J., REVIEW OF SELECTED 1975 CALIFORNIA LEGISLATION 565 (domestic workers) (1976).
3) 1a LARSON, THE LAW OF WORKMEN'S COMPENSATION §§50.00-51.23 (nonbusiness employment, casual employment) (1973).

Workers' Compensation; cumulative injuries

Labor Code §5500.5 (amended).
AB 155 (Goggin); STATS 1977, Ch 360
Support: American Insurance Association, Association of California Insurance Companies; Department of Industrial Relations, Department of Insurance; Industrial Indemnity Insurance Co.; State Compensation Insurance Fund
Opposition: California Manufacturers' Association; California Self-Insurers Association; Canners League of California; League of California Cities; Supervisors Association of California; United Auto Workers; United Steel Workers

Chapter 360 has been enacted to reduce the amount of time for which employers and their insurance carriers are liable for cumulative injuries and occupational diseases [CAL. LAB. CODE §5500.5]. Section 3208.1 of the Labor Code defines a cumulative injury as a repetitive mentally or physically traumatic activity extending over a period of time, the combined effect of which causes any disability or need for medical treatment. The Labor Code, however, does not define an occupational disease, but the term is described by case law as a disease "in which the cumulative effect of the continual absorption of small quantities of deleterious substance from the environment of the employment ultimately results in manifest pathology" [Associated Indem. Corp. v. Industrial Accident Comm'n, 124 Cal. App. 378, 381, 12 P.2d 1075, 1076 (1932)]. Prior to 1974, when an employee suffered from an occupational disease or cumulative injury, he or she was entitled to proceed against any person who was one of his or her employers during the entire period of exposure [*See* CAL. STATS. 1965, c. 1513, §141, at 3591]. In an effort to limit employers' liability for cumulative injury and occupational disease, the legislature in 1973 amended Labor Code Section 5500.5 so that after 1974, liability was apportioned among only the employers who employed an injured worker during the *five* year period immediately preceding either the date of the injury or the last date of employment in the occupation exposing the employee to the hazards of the disease or injury, whichever occurred first [CAL. STATS. 1973, c. 1024, §4, at 2032]. The legislature, however, also created the "single-employer" exception to this new five-year rule so that if any injured employee worked for the same employer, or its predecessor in interest, for more than the five years, the liability was apportioned among all the insurers who covered the employer during the entire period of the employee's exposure to the injury or disease [CAL. STATS. 1973, c. 1024, §4, at 2034].

Despite legislative attempts to provide greater certainty for employers and their insurance carriers in handling cumulative injury claims by limiting

exposure to liability to the five years immediately preceding the date of the injury [CAL. STATS. 1973, c. 1024, §4, at 2032], the length of this period of liability has apparently continued to hamper the employers' ability to anticipate future costs [*See Hearings on the Problems of Assuring Payments of Compensation for Cumulative Occupational Injuries Before the Assembly Committee on Finance, Insurance, and Commerce*, Jan. 12 & 19, 1977, at 8-9 (Background Information) (hereinafter cited as *Cumulative Occupational Injuries Hearings*)]. It is believed that a further reduction of the period of liability for occupational disease and cumulative injury would simplify the gathering of essential statistical data, improve the accuracy of the data submitted to the rating bureau, and produce rates more responsive to the actual changes in loss experience as they occur [*Id.* at 17].

Thus, Section 5500.5 of the Labor Code has been amended to reduce over the next three years (1978-1981) the employers' and their insurance carriers' liability period for cumulative injuries and occupational diseases from five years to one year and to eliminate the single-employer exception. The liability for occupational disease and cumulative injury claims filed on or after January 1, 1978, will be limited to the employers who employed the injured worker during the *four* years immediately preceding either the date of injury or the last date on which the employee was employed in an occupation exposing him or her to the hazards of the occupational disease or injury, whichever occurs first [CAL. LAB. CODE §5500.5(a)]. The liability period for claims filed on or after January 1, 1979, is *three* years; *two* years for claims filed on or after January 1, 1980; and for claims filed on or after January 1, 1981, the liability period in *one* year [CAL. LAB. CODE §5500.5(a)]. If none of the employers was insured for workers' compensation coverage or an approved alternative during the time period in which liability for cumulative injury or occupational disease is based, then liability is to be imposed on the last year of employment during which the employee was exposed to the hazards of such injury or disease and was working for an employer who was insured for workers' compensation coverage or an approved alternative [CAL. LAB. CODE §5500.5(a)]. Furthermore, an employer who is held liable for workers' compensation benefits because of another employer's failure to have secured the required insurance coverage is entitled to reimbursement from the employers who were unlawfully uninsured [CAL. LAB. CODE §5500.5(a)]. In addition, an employer paying the benefits as a result of another employer's failure to be insured is to be subrogated to the rights granted the employee against the unlawfully uninsured employers in a tort action for damages or against the Uninsured Employers Fund [*Compare* CAL. LAB. CODE §5500.5 (a) *with* CAL. LAB. CODE §§3706, 3707, 3708, 3715, 3716].

All self-insured employers are subject to the new provisions of Section

5500.5(a) except for self-insured employers who own and operate a work location in California and have sold the work location to another self-insured person or entity after January 1, 1974, but before January 1, 1978 [CAL. LAB. CODE §5500.5(d)]. If such a sale has been completed during this four year period, the liability of the employer-seller and employer-buyer for cumulative injuries suffered at the work location before the sale is to be governed until January 1, 1986, by the law which was in effect at the time of the sale [CAL. LAB. CODE §5500.5(d)]. Self-insured employers qualify for this exception if the sale of the work location meets the following requirements: (1) the sale constitutes a material change in ownership of the work location; (2) the buyer continues the operation of the work location; (3) the buyer becomes the employer of substantially all of the employees of the seller; and (4) the buyer and seller made no special provisions for the allocation of workers' compensation liability in the sales agreement [CAL. LAB. CODE §5500.5(d)(1)]. The term "work location" is defined as a fixed place of business at which the employees regularly work [CAL. LAB. CODE §5500.5(d)(2)]. In addition, the term "material change of ownership" means a change in ownership whereby the seller does not retain, directly or indirectly, a controlling interest in the work location [CAL. LAB. CODE §5500.5(d)(2)]. The exception established by Section 5500.5(d) does not apply to an employee who has been transferred by the employer-buyer after the sale of the work location and prior to the employee's filing of an application for workers' compensation benefits, nor is it effective after January 1, 1986, unless otherwise extended by the legislature [CAL. LAB. CODE §5500.5(d)(3)]. Thus, it appears that by gradually reducing the period of liability for occupational disease and cumulative injury from five years to one year, the legislature is hopeful of providing employers and their insurance carriers with greater certainty in handling cumulative injury and occupational disease claims without reducing the workers' compensation benefits of the employees.

COMMENT

It has been estimated that Chapter 360 will cause up to $100 million in workers' compensation obligations to shift from the insurance companies and the State Insurance Fund to the new and self-insured employers [*Occupational Cumulative Trauma Hearing,* NEWSLETTER, CAL. CONF. OF EMPLOYER ASS'NS, Jan. 21, 1977, at 1]. The greatest fiscal impact of this shift will probably fall on the recently self-insured public agencies since they tend to have more long-term employees [*See Cumulative Occupational Injuries Hearings*, at 298 (Statement by Melvin E. Griffin, Chairman of the Council of Self-Insured Public Agencies)]. Under prior law these agencies would have been able to rely on the "single-employer exception" and apportion

the liability among all insurance companies who covered the agency during the employee's employment period [*See* CAL. STATS. 1973, c. 1024, §4, at 2034]. Now the self-insured public agency will have to pay the entire compensation award to the injured employee [*See* CAL. LAB. CODE §5500.5].

The recently self-insured employers facing this anticipated shift in liability claim Chapter 360 violates the constitutional provision that prohibits the states from passing any law "impairing the obligation of contracts" [*See* SACRAMENTO REPORT, Mar. 25, 1977, at 1. *See generally* U.S. CONST. art. I, §10]. These employers assert that they paid workers' compensation premiums to prior insurance carriers with the understanding that the carriers would continue to be responsible for employee injuries that occurred during the coverage period, even though no claim was filed at that time [*See Cumulative Occupational Injuries Hearings*, at 323 (statement by E. Ted Meyers, Director of Personnel, Administration and Benefits for the City of Santa Clara)]. By relieving insurance carriers of their responsibilities under previously executed contracts, self-insured employers will have to pay for claims that were incurred during the period for which insurance coverage was purchased, thereby effectively negating previously held contract rights and obligations [*See Cumulative Occupational Injuries Hearings* at 294-95 (Statement by William McClure, County Supervisors Association of California), at 324 (Statement by E. Ted Meyers, Director of Personnel, Administration and Benefits for the City of Santa Clara)].

The proponents of Chapter 360, on the other hand, maintained that the State Insurance Fund and other insurance carriers were faced with an immediate financial crisis thereby threatening the cumulative injury and occupational disease protection afforded California workers [*See Cumulative Occupational Injuries Hearings*, at 68 (Statement by Terry Goggin, Assemblyman)]. The United States Supreme Court has recognized the state's power to modify contract remedies to safeguard the vital interests of its people [Home Bldg. & Loan Ass'n v. Blaisdell, 290 U.S. 398, 434-35 (1934)]. The Court, however, has not fixed a definite test to distinguish between the alterations of a remedy that are deemed legitimate and those alterations that are deemed to so substantially impair the rights of a contract as to be violative of Article I, Section 10 of the United States Constitution [*Id.* at 430]. Rather the Court apparently considers the test to be one of reasonableness [*Id.*].

Thus, if the complaints of the self-insured employers in this state result in litigation, the constitutionality of Chapter 360 will apparently hinge upon the courts' interpretation of the reasonableness of the contract impairment imposed by this new law in light of the financial crisis faced by workers' compensation insurance carriers.

See Generally:
1) 5 PAC. L.J., REVIEW OF SELECTED 1973 CALIFORNIA LEGISLATION 505 (cumulative injuries) (1974).
2) *Hearings on the Problems of Assuring Payments of Compensation for Cumulative Occupational Injuries Before the Assembly Committee on Finance, Insurance, and Commerce*, Jan. 12 & 19, 1977.

Workers' Compensation; notice by employer

Labor Code §3714 (new).
AB 739 (Lockyer); STATS 1977, Ch 969
Support: California Applicants Attorneys Association; California Teamsters' Public Affairs Council
Opposition: Associated Builders and Contractors, Inc.

Section 3714 has been added to the Labor Code by Chapter 969 to extend to pre-injury situations, the requirement that employers notify new employees of their right to workers' compensation benefits. Under prior law employers were only required to give *personal notice* of these benefits to employees or their dependents after an employer learned of the injury or death of an employee, unless an application for workers' compensation benefits had already been filed [*See* CAL. LAB. CODE §5402]. Employers, except for employers of domestic workers, were also required to give *general notice* by conspicuously posting a notice stating the name of their workers' compensation insurance carrier or the fact that the employer was self-insured [CAL. LAB. CODE § 3713(a)]. Along with this notice, employers had to post the expiration date of the policy, the phone number of the nearest office of the Labor Commissioner, and an invitation to any employee to call the Labor Commissioner if the policy had expired [CAL. LAB. CODE §3713(b)]. Failure to post the notices required by Section 3713 was a misdemeanor and constituted prima facie evidence that the employer was uninsured [CAL. LAB. CODE §3713(c)].

The new law retains all of the above notice requirements, but Section 3714 now imposes an additional requirement that all employers, except those employing domestic workers, notify every *new* employee, either at the time of employment or by the end of the first pay period, of his or her right to workers' compensation benefits in the event of a job-related injury incurred while in the employer's service. An employer may satisfy this new requirement by giving the prescribed notice orally or in writing [CAL. LAB. CODE §3714]. Further, Section 3714 specifies that these new provisions are in addition to the notice requirements of Section 3713, but fails to indicate whether the penalty provisions of Section 3713 will also apply in the event of a failure to provide the necessary notice to new employees [*See* CAL. LAB. CODE §3714]. Thus, although there appears to be no enforcement mechanism for this pre-injury notice, employees must now be notified of

their right to workers' compensation benefits both early in their employment and subsequent to their employer learning of their work-related injury [*See* CAL. LAB. CODE §§3714, 5402].

See Generally:
1) 8 PAC. L.J., REVIEW OF SELECTED 1976 CALIFORNIA LEGISLATION 497 (penalties for uninsured employers) (1976).
2) 7 PAC. L.J., REVIEW OF SELECTED 1975 CALIFORNIA LEGISLATION 568 (notice by employer) (1975).

Workers' Compensation; rule amendments

Labor Code §5307.4 (new); §§5307, 5307.3 (amended).
AB 812 (Young); STATS 1977, Ch 517
Support: State Bar of California

The Workers' Compensation Appeals Board and the Administrative Director of the Division of Industrial Accidents have the statutory duty to hold public hearings prior to adopting, amending, or rescinding any rule or regulation pertaining to workers' compensation [CAL. LAB. CODE §§5307, 5307.3]. After such hearings the appeals Board may adopt, by an order signed by four members, rules and regulations concerning: (1) practice and procedure; (2) representation of minors and incompetent persons; (3) notices; and (4) the nature and extent of proofs and evidence [CAL. LAB. CODE §5307]. Similarly, the administrative director may then adopt, amend, or repeal regulations reasonably necessary to enforce the Labor Code Provisions establishing a complete system of workers' compensation unless an area was specifically reserved to the appeals board [CAL. LAB. CODE §5307.3]. Chapter 517 has added Section 5307.4 to the Labor Code to apparently specify the nature, scope, and purpose of these public hearings.

Although these public hearings were conducted to afford interested persons an opportunity to be heard with respect to proposed rules and regulations [CAL. STATS. 1965, c. 1513, §§126, 128, at 3587], prior to the enactment of Chapter 517, they were apparently held only as a mere *pro forma* compliance with the statutory mandate for such hearings [*See* STATE BAR OF CALIFORNIA, COMM. ON WORKERS' COMPENSATION INTERIM REPORT at 2 (Apr. 2, 1976)]. Furthermore, under the prior law there was apparently no requirement that the appeals board or the administrative director publish the reasoning behind the adoption of any given rule or the factors that went into this decisionmaking process. These deficiencies in the workers' compensation rulemaking process seem to have resulted in a lack of respect for this system and have potentially exposed the appeals board and administrative director to charges of abuse of discretion in adopting, amending, or rescinding the rules of practice and procedures [*See* STATE

BAR OF CALIFORNIA, COMM. ON WORKERS' COMPENSATION INTERIM REPORT at 1, 4 (Apr. 2, 1976)].

Section 5307.4 has been added to the Labor Code to establish procedural guidelines for the public hearings conducted by the Workers' Compensation Appeals Board and the Administrative Director of the Division of Industrial Accidents prior to the adoption, amendment, or rescision of certain rules or regulations [*See* CAL. LAB. CODE §§5307, 5307.3]. These new guidelines approximate the current procedures utilized by agencies of the federal government when modifying or adding regulations [*See* STATE BAR OF CALIFORNIA, COMM. ON WORKERS' COMPENSATION INTERIM REPORT at 2 (Apr. 2, 1976). *Compare* CAL. LAB. CODE §5307.4 *with* 5 U.S.C. §553 (1970)]. The requirement that interested persons be afforded an opportunity to be heard and that notice of the public hearing be given to persons requesting such notification have been deleted from Sections 5307 and 5307.3 [*See* CAL. STATS. 1965, c. 1513, §§126, 128, at 3587] and incorporated into Section 5307.4. The appeals board and the administrative director are now required to provide notice of any rule or regulation proposed to be adopted, amended, or rescinded to all requesting business and labor organizations and firms or individuals not less than 30 days prior to these public hearings [CAL. LAB. CODE §5307.4(a), (e)]. This notice must now contain: (1) a statement of the time, place, and nature of the hearing; (2) reference to legal authority under which the rule is proposed; and (3) the terms or substance of the rule or a description of the subjects and issues involved [CAL. LAB. CODE §5307.4(b)]. Interested persons are to be given the opportunity to participate in the rulemaking process through the submission of written data, views, or arguments and the opportunity to make oral presentations [CAL. LAB. CODE §5307.4(d)]. If, after considering the relevant matter presented, the appeals board or the administrative director adopts a particular rule, a concise, general statement is to be published giving the reasons for the adoption of the rule [CAL. LAB. CODE §5307.4(d)]. The adopted rule and this statement of reasons must be given to the same individuals and organizations who requested notice of the public hearings [CAL. LAB. CODE §5307.4(d)].

The public hearings required by Sections 5307 and 5307.3 are now subject to these new procedures unless these hearings involve matters relating to management, personnel, public property, loans, grants, benefits or contract of the appeals board or the administrative director [CAL. LAB. CODE §5307.4(a)]. Furthermore, unless a proposed rule or regulation has a significant impact on the public, Section 5307.4 does not apply to interpretive rules, general statements of policy, or rules of agency organization [CAL. LAB. CODE §5307.4(c)]. Thus, Chapter 517 would appear to enhance public input in the creation and amendment of workers' compensation rules

and regulations by establishing guidelines to insure timely notification of the public hearings and to encourage participation by individuals and organizations interested in this rulemaking process.

See Generally:
1) 2 B. WITKIN, SUMMARY OF CALIFORNIA LAW, *Workmen's Compensation* §219 (statutes and board rules) (8th ed. 1973).
2) CONTINUING EDUCATION OF THE BAR, CALIFORNIA WORKMEN'S COMPENSATION PRACTICE §3.36 (rule-making power) (1973), §3.1 (constitutional and legislative authority) (Supp. 1976).
3) 1 W. HANNA, CALIFORNIA LAW OF EMPLOYEES INJURIES AND WORKMEN'S COMPENSATION §1.02(6) (meetings of the appeals board, rules and regulations), §1.04(4) (administrative director—rules, regulations, and schedules) (2d ed. 1977).

Worker's Compensation; choice of physician

Labor Code §4600 (amended).
SB 520 (Foran); STATS 1977, Ch 1172
Support: California Applicants Attorneys Association; California Labor Federation, AFL-CIO
Opposition: Association of California Insurance Companies; California Manufacturers Association; California Self-Insurers Association; Construction Industry Legislative Council

Labor Code Section 4600 has been amended by Chapter 1172 to allow injured workers to be treated by their personal physician from the date of the injury. Prior to the enactment of Chapter 1172, as long as employers seasonably tendered the required medical treatment, they had the right to control and direct the treatment of any injured employee for at least the first 30 days following an industrial accident unless the injured employee was willing personally to assume the cost of such treatment [*See* CAL. STATS. 1975, c. 1259, §1, at 3304; CAL. STATS. 1937, c. 90, §4605, at 282; CONTINUING EDUCATION OF THE BAR, CALIFORNIA WORKMEN'S COMPENSATION PRACTICE §14.34 (Supp. 1976)]. After this 30 day period, employees were allowed to be treated by a physician of their own choice or at a facility of their own choice within a reasonable geopraphic area [CAL. STATS. 1975, c. 1259, §1, at 3304].

As amended by Chapter 1172, Section 4600 now gives employees the right to be treated by their personal physician from the date of the injury. In order to qualify for this right, however, employees are required to notify their employer *prior to the date of the injury* that they have a personal physician, as defined by this section [CAL. LAB. CODE §4600]. If an employee fails to notify his or her employer in this manner, the employer then retains control of the treatment for at least the first 30 days following the injury [CAL. LAB. CODE §4600]. "Personal physician" as it is used in Section 4600, is defined as the employee's regular physician and surgeon

who has previously directed the employee's medical treatment and retains the employee's medical records and history [CAL. LAB. CODE §4600]. Furthermore, the employee's personal physician must be licensed by the state as required by law [CAL. LAB. CODE §4600; *see* CAL. BUS. & PROF. CODE §§2000-2696].

The courts have stated that by requiring the employer to provide medical treatment and by allowing the employer to control such treatment, Section 4600 has served the dual purpose of assuring prompt relief to the employee and minimizing the danger of unnecessary and extravagant treatment [Zeeb. v. Workman's Comp. App. Bd., 67 Cal. 2d 496, 501, 432 P.2d 361, 364, 62 Cal. Rptr. 753, 756 (1967); Gallegos v. Workman's Comp. App. Bd., 273 Cal. App. 2d 569, 573, 78 Cal. Rptr. 157, 159 (1969)]. Although Chapter 1172 eliminates, in some instances, the employer's right to control the initial medical treatment, the employer is not without recourse to avoid unnecessary medical expenses [*See* CAL. LAB. CODE §4603]. When an employee selects a physician pursuant to Section 4600, the employee or physician must notify the employer of the name and address of such physician [CAL. LAB. CODE §4603.2]. The employee-selected physician is then required to submit a report to the employer within five days of the initial examination and periodic reports at reasonable intervals thereafter [CAL. LAB. CODE §4603.2; 8 CAL. ADM. CODE §9785]. If the employer believes there is good cause for a change in physicians, he or she may petition the administrative director of the Department of Industrial Relations for such a change [CAL. LAB. CODE §4603]. Good cause for changing physicians includes, but is not limited to, a showing that: (1) the treating physician has failed to submit the necessary reports; (2) the treatment is inappropriate; and (3) the employee-selected physician or facility is not within a reasonable geographic area [8 CAL. ADM. CODE §9786(b)]. If the administrative director finds that good cause exists, he or she may order the employer to provide a panel of five physicians or, if requested by the employee, four physicians and one chiropractor, from which the employee must make his or her selection [CAL. LAB. CODE §4603]. Thus, it is apparent that by notifying their employers that they have a personal physician, employees are now entitled to receive medical treatment from a physician of their own choice from the date of the injury. It is clear, however, that while employers now have less control over this initial medical treatment, they are still entitled to prevent employees from incurring unreasonable expenses in the form of unnecessary treatment.

See Generally:
1) 2 B. WITKIN, SUMMARY OF CALIFORNIA LAW, *Workmen's Compensation* §§161, 164, 165, 167 (medical treatment and expense) (8th ed. 1973).

2) CONTINUING EDUCATION OF THE BAR, CALIFORNIA WORKMEN'S COMPENSATION PRACTICE §14.34, 14.35, 14.39. 14.40 (control of medical treatment, self-procured medical treatment) (1973); §§14.34, 14.35, 14.35a (control of medical treatment, limitation on employer's control of medical treatment) (Supp. 1976).
3) 7 PAC. L.J., REVIEW OF SELECTED 1975 CALIFORNIA LEGISLATION 569 (choice of physician) (1976).

Workers' Compensation; services of psychologists

Labor Code §3209.3 (amended).
SB 311 (Carpenter); STATS 1977, Ch 1168
Support: California Applicants' Attorneys Association; California State Psychological Association
Opposition: Association of California Water Agencies

An employer is required to provide any medical, surgical or hospital treatment reasonably necessary to cure or relieve an employee from the effects of an industrial injury [CAL. LAB. CODE §4600]. In *Miles v. Workers' Compensation Appeals Board* [67 Cal. App. 3d 243, 136 Cal. Rptr. 508 (1977)] a California Appellate Court recently held that the cost of services of a clinical psychologist was chargeable to the employer and insurance carrier since the psychotherapy was beneficial and contributed to the well-being of the employee-patient [*Id.* at 249-50, 136 Cal. Rptr. at 512]. In an apparent response to this case, Section 3209.3 of the Labor Code has been amended by Chapter 1168 to include psychologists within the meaning of "physician" for workers' compensation purpose. A "psychologist" is defined as a licensed psychologist having a doctorate degree in psychology and who has had either two years of clinical experience in a recognized health setting, or has met the standards of the National Register of the Health Service Providers in Psychology [CAL. LAB. CODE §3209.3(b)]. When an employee is being treated or evaluated for an injury by a psychologist, provisions for appropriate medical collaboration must be made when such collaboration is requested by the employer or the insurer [CAL. LAB. CODE §3209.3(c)]. Thus, Chapter 1168 would appear to improve the quantity and quality of medical care provided to employees covered by workers' compensation by requiring employers to provide the services of a clinical psychologist when considered necessary to cure or relieve an employee from the effects of an industrial or work-related injury.

See Generally:
1) 2 B. WITKIN, SUMMARY OF CALIFORNIA LAW, *Workmen's Compensation* §§161, 163, 164 (medical treatment and expense) (8th ed. 1973); §164 (expense of employee's doctor) (Supp. 1976).
2) 2 W. HANNA, CALIFORNIA LAW OF EMPLOYEE INJURIES AND WORKMEN'S COMPENSATION §§16.01, 16.05 (scope of treatment required, employee's rights concerning treatment) (2d ed. 1977).