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Workers' Compensation

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Workers' Compensation

Workers' Compensation; uninsured employers

Labor Code §§3700.5, 3732, 4903.3, 5814.1 (new); §§3716, 3716.1, 3716.2, 3717, 4753.5, 4754.5 (amended).

AB 1529 (Berman); STATS. 1981, Ch 894

Support: Department of Finance

Existing law requires every employer,¹ except the state, to take steps to secure the payment of workers' compensation claims that may become due an employee.² If the employer fails to comply, the Director of Industrial Relations³ (hereinafter referred to as the Director) may prohibit the employer from further using employee labor until the employer secures payment.⁴ An employer who fails to heed this prohibition is guilty of a misdemeanor.⁵ Under Chapter 894, failure by an employer to secure payment as required is a misdemeanor.⁶ The use of employee labor after the Director has forbidden it continues to be a misdemeanor.⁷

An employee with a work-related injury, other than occupational disease or cumulative injury,⁸ whose employer is illegally uninsured may, under existing law, bring an action for damages against the employer and may also file an application for compensation with the Appeals Board of the Department of Industrial Relations (hereinafter referred to as the Appeals Board).⁹ Chapter 894 provides that if the employer is found by the Appeals Board to be a corporation, all parents¹⁰ and shareholders¹¹ may be jointly and severally liable for the

1. See CAL. LAB. CODE §3300 (definition of employer).

2. See *id.* §§3352 (definition of employee), 3700, 3701. See generally 2 B. WITKIN, SUMMARY OF CALIFORNIA LAW *Workmen's Compensation* §§82-84 (8th ed. 1974).

3. See CAL. LAB. CODE §3710 (description of enforcement powers of the Director of Industrial Relations).

4. See *id.* §3710.1.

5. See *id.* §3710.2.

6. See *id.* §3700.5.

7. *Id.* §3710.2.

8. See *id.* §3208.1 (definition of cumulative injury).

9. See *id.* §3715. See generally 12 PAC. L.J., REVIEW OF SELECTED 1980 CALIFORNIA LEGISLATION 606 (1981).

10. See CAL. CORP. CODE §175; CAL. LAB. CODE §3717(a).

11. See CAL. LAB. CODE §3717(a), (b) (a substantial shareholder is one who owns at least 15% of the total value of all classes of stock or at least 15% of the beneficial interests in the corporation).

unpaid benefits.¹² If the Appeals Board makes an award to the employee which the employer does not pay, the Director may pay the employee with funds from the Uninsured Employers Fund (hereinafter referred to as the Fund).¹³ Chapter 894 specifically states that the purpose of the fund is to ensure that entitled employees are not deprived of benefits as a result of the wrongdoing of their employers.¹⁴ The fund is not intended to supplement the money provided by employers and insurance carriers for payment of workers' claims¹⁵ or to supply funds for any medical treatments that are to be paid for by the State Department of Health Services (Medi-Cal),¹⁶ nor is it intended to provide payment of any interest or penalties on any award made by the Appeals Board.¹⁷

If an employee has a claim for occupational disease or cumulative injury, Chapter 894 provides that the employee may not bring an action against an illegally uninsured employer as in other types of injuries, but must proceed through the Appeals Board.¹⁸ If the Appeals Board finds in favor of the employee, and the employer fails to pay the award, the employee may be paid by the Director,¹⁹ but *only* if no employer was insured during the entire period of disease or injury.²⁰ Apparently, if any of the claimant's employers were insured during the specific period, that employer will be held liable for the amount of the compensation award.²¹ The paying employer will not be entitled to contribution from the fund for any liability that should have been paid by the illegally uninsured employer.²² The paying employer may, under existing law, however, be entitled to reimbursement by the uninsured employer.²³

Chapter 894 gives the Director two courses of action when an award of benefits by the Appeals Board is not paid by the employer.²⁴ The Director may institute a liquidated claim for damages against the employer²⁵ and recover the compensation award sum, costs, and expenses for hearings and litigation, including attorney's fees.²⁶ This claim pre-

12. *Id.* §3717(a).

13. *Id.* §3716(a).

14. *Id.* §3716(b).

15. *See id.* *See also id.* §3753.

16. *See id.* §3716(c).

17. *Id.* §3716.2.

18. *See id.* §3716(b).

19. *Id.* §3716(a).

20. *See id.* §3716(b).

21. *See id.* *See generally id.* §5500.5.

22. *See id.* §3716(b).

23. *See id.* §5500.5(a).

24. *See id.* §§3717, 3732.

25. *Id.* §3717(a).

26. *Id.* §§3717(a), 4753.5.

viously was referred to the Attorney General who instituted a civil action on behalf of the Director and the fund.²⁷ Chapter 894 also grants the Director the power to sue other parties whose acts or omissions resulted in the death or injury of any employee.²⁸ This action must be brought within one year of the payment from the fund to the employee.²⁹ Damages may include the compensation amount, interest,³⁰ penalties,³¹ and any expense incurred by the Director in litigating the claim, including attorney's fees.³² The amount recoverable by the Director may not be reduced by imputing negligence or fault of the employer to the Director.³³

27. *See* CAL. STATS. 1980, c. 852, §13.5, at — (amending CAL. LAB. CODE §3717).

28. CAL. LAB. CODE §3732(a).

29. *Id.* §3732(c).

30. *See id.* §5800 (awards of the Appeals Board earn interest at the same rate as judgments in civil actions).

31. *See id.* §5814 (a penalty of 10% of the award will be assessed when payment of an award is unreasonably delayed or refused).

32. *See id.* §3732(a).

33. *See id.* §3732(d).

