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Workers' Compensation

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Workers' Compensation

Workers' Compensation; reformation package

Labor Code §§3202.5, 4558, 5405.5 (new); §§132a, 139.5, 3600, 3601, 3602, 4453, 4453.1, 4460, 4553, 4553.1, 4702, 5410, 5803 (amended). AB 684 (Young); STATS. 1982, Ch 922

Support: Association of California Insurance Companies; California Labor Federation; California Trial Lawyers Association; Department of Industrial Relations; Teamsters

Opposition: California Manufacturers Association; California Trucking Association; Department of Finance; League of California Cities

Chapter 922 makes comprehensive revisions to major sections of the California workers' compensation laws.¹ In addition to redefining the scope of the exclusive remedy rule,² Chapter 922 revises provisions governing recovery requirements³ and provides for benefit increases.⁴

EXCLUSIVE REMEDY

A. *Employers' Acts*

Prior law provided that workers' compensation was an injured employee's exclusive remedy against the employer when certain conditions of compensation had been met and when the employer had secured required compensation insurance.⁵ Case law, however, reflects judicial erosion of this exclusive remedy rule.⁶ Chapter 922 codifies some of these judicially created exceptions⁷ by allowing an employee or the employee's dependents to bring a civil action for damages against the employer when (1) the employer's willful physical assault causes

1. See CAL. LAB. CODE §§132a, 139.5, 3202.5, 3600, 3601, 3602, 4453, 4453.1, 4460, 4553, 4553.1, 4558, 4702, 5405.5, 5410, 5803.

2. See *id.* §3602.

3. See *id.* §§139.5, 3202.5, 4553.1, 5405.5, 5410.

4. See *id.* §§132a, 4453, 4453.1, 4460, 4553, 4702.

5. CAL. STATS. 1971, c. 1751, §1, at 3780 (amending CAL. LAB. CODE §3601).

6. See *Bell v. Industrial Vangas, Inc.*, 30 Cal. 3d 268, 272-82, 637 P.2d 266, 269-75, 179 Cal. Rptr. 30, 33-39 (1981); *Johns-Manville Prod. Corp. v. Superior Court*, 27 Cal. 3d 465, 478, 612 P.2d 948, 956, 165 Cal. Rptr. 858, 866 (1980); *Renteria v. Orange*, 82 Cal. App. 3d 833, 841-42, 147 Cal. Rptr. 447, 452 (1978); *Magliulo v. Superior Court*, 47 Cal. App. 3d 760, 780, 121 Cal. Rptr. 621, 636 (1975).

7. 27 Cal. 3d at 478, 612 P.2d at 956, 165 Cal. Rptr. at 866 (1980); 47 Cal. App. 3d at 780, 121 Cal. Rptr. at 636 (1975).

the employee's injury,⁸ or (2) the employer's fraudulent concealment of the existence of the employee's job-related injury aggravates the injury.⁹

Chapter 922 specifically restricts application of the judicially created dual capacity doctrine¹⁰ to cases in which the injury is caused by a defective product manufactured by the employer, that has been sold, leased, or otherwise nongratiotously transferred to an independent third party who subsequently provides the defective product for employer use.¹¹ Under this limited dual capacity provision, when an injury is caused by the defective product the employee or the employee's dependents are allowed to bring an action against the employer.¹²

Chapter 922 also creates a cause of action for an employee or the employee's dependents when the employer's¹³ knowing removal¹⁴ of, or knowing failure to install,¹⁵ a point of operation guard on a power press¹⁶ causes the employee's injury or death.¹⁷ To prevail in this action, the employee or dependents must prove that the manufacturer¹⁸ intended the use of point of operation guards and conveyed that intent to the employer, and that the knowing removal or failure to install these point of operation guards created a possibility of serious injury or death.¹⁹ Chapter 922 also provides that if an employer fails to discharge the employer's share of the judgment resulting from the power press point of operation guards provision, any other defendant against whom the employee has also obtained a judgment may seek contribution from the employer.²⁰ Chapter 922 specifies that when these actions against the employer result in a judgment in favor of an employee who has already received workers' compensation benefits, the amount of workers' compensation benefits paid will be credited against the judgment.²¹ In a reaffirmation of the exclusive remedy rule, Chapter 922 prohibits an employee from bringing any action not included in its enumerated exceptions provisions.²²

8. CAL. LAB. CODE §3602(b)(1).

9. *Id.* §3602(b)(2).

10. *See generally* 2 B. WITKIN, SUMMARY OF CALIFORNIA LAW *Workmen's Compensation*, §§46, 50A (Supp. 1982).

11. CAL. LAB. CODE §3602(b)(3).

12. *Id.*

13. *Id.* §4558(a)(1) (definition of employer).

14. *Id.* §4558(a)(5) (definition of removal).

15. *Id.* §4558(a)(2) (definition of failure to install).

16. *Id.* §4558(a)(4) (definition of power press).

17. *Id.* §4558(b).

18. *Id.* §4558(a)(3) (definition of manufacturer).

19. *Id.* §4558(b), (c).

20. *Id.* §4558(d).

21. *Id.* §3600(b).

22. *Id.* §3602(a); *see id.* §§3602(b), 3706, 4558.

B. Other Employees' Acts

Prior to the enactment of Chapter 922, an employee or dependent was allowed to bring suit against another employee and to institute proceedings to collect additional compensation from the employer when the other employee's conduct²³ caused the injury or death.²⁴ Prior law permitted the injured employee to seek additional compensation from the employer under the serious and willful misconduct provisions, regardless of the employee's inability to maintain a suit against the aggressor employee.²⁵ Chapter 922 deletes this provision.²⁶ Chapter 922, however, retains the injured employee's right to bring an action against the aggressor employee.²⁷

RECOVERY REQUIREMENTS

A. Burden of Proof

Existing law directs the courts to construe liberally provisions governing workers' compensation.²⁸ Chapter 922 qualifies this liberal construction requirement by providing that the liberal construction language does not exempt an injured employee from meeting a preponderance of the evidence burden of proof.²⁹

B. Vocational Rehabilitation

Existing law permits a qualified injured employee to request vocational rehabilitation benefits.³⁰ Chapter 922 requires the request for these benefits to be made within specified time limits.³¹ Under Chapter 922, the employee must make a request for vocational rehabilitation benefits within one year from the date of either the last finding of permanent disability by the appeals board, or approval by the appeals board of a compromise and release.³²

Prior to the enactment of Chapter 922, an injured employee was allowed to institute proceedings to collect vocational rehabilitation benefits within five years from the date of injury only when the employee stated that new and further disabilities had been caused by the original

23. CAL. STATS. 1971, c. 1751, §1, at 3780 (amending CAL. LAB. CODE §3601(a)).

24. *Id.*

25. *Id.*

26. CAL. LAB. CODE §3601(a).

27. *Id.*

28. *Id.* §3202.

29. *Id.* §3202.5.

30. *See id.* §139.5(c).

31. *Id.* §139.5(e).

32. *Id.* §5405.5.

injury.³³ Chapter 922 provides that the injured worker may also claim these benefits by stating that the original injury has caused the need for rehabilitation benefits.³⁴

Prior to the enactment of Chapter 922, the appeals board had continuing jurisdiction only over all of its orders, decisions, and awards.³⁵ Chapter 922 provides that in addition to continuing jurisdiction over its orders, decisions, and awards, the appeals board also has continuing jurisdiction over any decisions and orders of the rehabilitation unit.³⁶

C. Violation of Safety Order

Prior law specified certain findings necessary to support a determination of serious and willful employer misconduct based on violation of a safety order.³⁷ Chapter 922 changes these required findings and provides that to uphold a determination of serious and willful employer misconduct, the appeals board must find all of the following: (1) the manner in which the order was violated;³⁸ (2) that the violation proximately caused the injury or death and the manner in which the violation constituted the proximate cause;³⁹ and (3) that the employer or employer representative knew of the safety order and the conditions making the order applicable, or that the condition making the safety order applicable was obvious, created a probability of serious injury, and that the failure to correct the condition constituted reckless disregard for the possible consequences.⁴⁰

BENEFITS

A. Disability Indemnity

Existing law provides for computation of temporary disability indemnity and permanent disability indemnity, based on the disabled employee's average weekly earnings.⁴¹ Chapter 922 substantially increases the allowable range of average weekly earnings for injuries that occur on and after January 1, 1983⁴² and makes similar increases in the allowable range of average weekly earnings used in computation of

33. CAL. STATS. 1965, c. 1513, §139, at 3590 (amending CAL. LAB. CODE §5410).

34. CAL. LAB. CODE §5410.

35. CAL. STATS. 1965, c. 1513, §161, at 3598 (amending CAL. LAB. CODE §5803).

36. CAL. LAB. CODE §5803; *see id.* §139.5.

37. CAL. STATS. 1965, c. 1513, §82, at 3576 (amending CAL. LAB. CODE §4553.1).

38. CAL. LAB. CODE §4553.1(1).

39. *Id.* §4553.1(2).

40. *Id.* §4553.1(3).

41. *Id.* §§4653, 4654, 4658.

42. *Id.* §4453(a)(1).

permanent partial disability indemnity.⁴³ In addition, Chapter 922 provides for further increases for injuries occurring on and after January 1, 1984.⁴⁴

Existing law provides for separate computation of temporary disability indemnity for certain workers employed by owners or occupants of residential dwellings⁴⁵ or for certain newspaper employees.⁴⁶ Chapter 922 creates a new minimum average weekly earning for the calculation of the temporary disability indemnity for these workers, of not less than the lesser of the minimum amounts used in computing temporary and permanent total disability indemnity for other workers,⁴⁷ or 1.2 times the employee's actual weekly earnings.⁴⁸ The increased upper limits for use in computing this temporary disability indemnity for these house workers and newspaper employees are also based on the maximum amounts used in computing temporary and permanent total disability indemnity.⁴⁹

B. Death Benefits

Under existing law, when an employee's death is caused by a work-related injury, the employer becomes liable for death benefits to the employee's dependent.⁵⁰ Chapter 922 increases the amount of these benefits to the following: (1) two or more total dependents—\$85,000 if the injury occurred on and after January 1, 1983, or \$95,000 if the injury occurred on and after January 1, 1984;⁵¹ (2) one total dependent and one or more partial dependents—\$60,000 and four times the annual amount devoted to support the partial dependents, but in no event more than \$85,000, if the injury occurred on and after January 1, 1983, or \$70,000 and the partial dependent support figure, but in no event more than \$95,000, if the injury occurred on and after January 1, 1984;⁵² (3) one total dependent and no partial dependents—\$60,000 if the injury occurred on and after January 1, 1983, or \$70,000 if the injury occurred on and after January 1, 1984;⁵³ (4) no total dependents and one or more partial dependents—not more than \$60,000 if the injury occurred on and after January 1, 1983, or not more than \$70,000 if

43. *Id.* §4453(b)(1).

44. *Id.* §4453(a)(2), (b)(2).

45. *Id.* §3351.

46. *Id.* §4453.1; *see id.* (definition of eligible newspaper employees).

47. *See id.* §4453.

48. *Id.* §4453.1.

49. *Id.*

50. *Id.* §4701.

51. *Id.* §4702(a).

52. *Id.* §4702(b).

53. *Id.* §4702(c).

the injury occurred on and after January 1, 1984.⁵⁴

C. Serious and Willful Employer Misconduct

Existing law authorizes assessment of an additional 50 percent of applicable workers' compensation benefits against an employer when the cause of an employee's injury is the serious and willful misconduct of the employer or the employer's representative.⁵⁵ Prior law restricted this additional amount to \$10,000 and any costs and expenses, not to exceed \$250, incurred in obtaining the increase.⁵⁶ Chapter 922 deletes the \$10,000 ceiling for this increase in workers' compensation benefits.⁵⁷

Existing law also provides that any employer who discharges, threatens to discharge or otherwise discriminates against any employee who has filed a workers' compensation claim, is guilty of a misdemeanor.⁵⁸ Prior law stated that these discriminatory acts constituted serious and willful misconduct.⁵⁹ Although Chapter 922 no longer specifies that the employer's discriminatory acts are serious and willful misconduct,⁶⁰ it continues to provide for a 50 percent increase in compensation benefits when these acts occur.⁶¹ Chapter 922 provides, however, that the increase is subject to the \$10,000 ceiling, together with costs and expenses not to exceed \$250.⁶²

CONCLUSION

Chapter 922 represents a major revision in the California workers' compensation laws.⁶³ Chapter 922 changes the scope of the exclusive remedy rule.⁶⁴ In addition, Chapter 922 amends provisions governing recovery requirements.⁶⁵ Finally, Chapter 922 authorizes substantial increases in benefits.⁶⁶

54. *Id.* §4702(d).

55. *Id.* §4553.

56. CAL. STATS. 1972, c. 1029, §1, at 1907 (amending CAL. LAB. CODE §4553).

57. CAL. LAB. CODE §4553.

58. *Id.* §132a.

59. CAL. STATS. 1978, c. 1250, §3, at 4065 (amending CAL. LAB. CODE §132a).

60. Compare CAL. LAB. CODE §132a(1) with CAL. STATS. 1978, c. 1250, §3, at 4065 (amending CAL. LAB. CODE §132a).

61. CAL. LAB. CODE §132a(1).

62. *Id.*

63. See *id.* §§132a, 139.5, 3202.5, 3600, 3601, 3602, 4453, 4453.1, 4460, 4553, 4553.1, 4558, 4702, 5405.5, 5410, 5803.

64. See *id.* §3602.

65. See *id.* §§139.5, 3202.5, 4553.1, 5405.5, 5410.

66. See *id.* §§132a, 4453, 4453.1, 4460, 4553, 4702.

Workers' Compensation; lump sum commutation

Labor code §5100 (amended).

AB 638 (Robbins); STATS. 1982, Ch 1015

Support: Department of Insurance; Teamsters

Existing law provides that workers' compensation benefits may be commuted to a lump sum payment by the Workers' Compensation Appeals Board.¹ This commutation may be made if the appeals board finds (1) that the employer is not a resident of this state;² (2) that the employer has sold or otherwise disposed of the greater part of his assets or is about to do so;³ (3) that commutation will avoid inequity and will not cause undue expense or hardship to the applicant;⁴ or (4) that commutation is necessary for the protection of the person entitled to the payments, or is in the best interest of the applicant.⁵ Because commutation circumvents the general scheme of periodic payments, the appeals board has been reluctant to consider the general financial condition of the applicant in its determination of what is in the best interest of the applicant.⁶ In making its determination of what is in the best interest of the applicant, Chapter 1015 now requires the appeals board to consider the general financial condition of the applicant, including but not limited to, the applicant's ability to live without periodic indemnity payments and to discharge debts incurred prior to the date of injury.⁷

1. See CAL. LAB. CODE §5100.

2. *Id.* §5100(d).

3. *Id.* §5100(c).

4. *Id.* §5100(b).

5. *Id.* §5100(a).

6. See *Paquette v. City of Ventura*, 43 CAL. COMP. CASES (MB) 1129 (1978) (also cited in 6 CAL. WORKERS' COMP. REP. 229 (1978)); see also *Wertzbauger v. City of Burbank*, 8 CAL. WORKERS' COMP. REP. 143 (1980).

7. CAL. LAB. CODE §5100(a).

Workers' Compensation; asbestos workers' benefits

Labor Code §§4407.3, 4407.5 (new); §§4401, 4402, 4404, 4405, 4406, 4407, 4408, 4418 (amended).

AB 2477 (Agnes); STATS. 1982, Ch 1077

(Effective September 14, 1982)

Support: Department of Finance; Department of Industrial Relations

In 1980, the Legislature created the Asbestos Workers' Account in the Uninsured Employers Fund.¹ Because there has been very little use of this program since it was enacted, Chapter 1077 eliminates certain requirements that may have inhibited its use.²

Although the typical worker injured by asbestos contact is *permanently* disabled,³ prior law provided that the injured worker could receive only *temporary* disability and medical benefits.⁴ Chapter 1077 provides that asbestos workers' benefits are to be received by all qualified injured workers with asbestosis.⁵ Chapter 1077 defines asbestos workers' benefits to include temporary total disability benefits, permanent total disability benefits, death benefits, and medical benefits.⁶

Existing law allows payments to an asbestos worker for injury resulting in asbestosis when the injured worker can prove the occurrence of several conditions.⁷ Chapter 1077 additionally provides for payments to the dependents of the asbestos worker in the event of death due to asbestosis if the asbestos worker would have been eligible to receive these payments.⁸ Chapter 1077 defines dependents to only include a surviving spouse who at the time of the injury was dependent on the deceased asbestos worker for half or more of his or her support, and minor children of the deceased asbestos worker.⁹ Furthermore, Chapter 1077 provides that asbestos workers' death benefits must be paid in installments in the same manner and amounts as temporary disability indemnity.¹⁰ Chapter 1077 also prohibits asbestos workers' benefits from being commuted into a lump-sum payment.¹¹

Prior law required an asbestos worker to submit to an independent medical examination as one of the conditions to qualify for workers' compensation benefits.¹² Chapter 1077 provides that an independent medical examination will not be required if the information and assist-

1. CAL. STATS. 1980, c. 1041, §1, at 3321-3328 (enacting CAL. LAB. CODE §§4401-4418).

2. Telephone interview with William C. George, Consultant to Assemblyman Agnos (Sept. 29, 1982) (notes on file at *Pacific Law Journal*).

3. *Id.*

4. CAL. STATS. 1980, c. 1041, §1, at 3322 (enacting CAL. LAB. CODE §4401).

5. CAL. LAB. CODE §4401.

6. *Id.* §4402(c).

7. *Id.* §4406 (the asbestos worker was within the scope of duties when exposed and is suffering from asbestosis developed from the employment).

8. *Id.*

9. *Id.* §4402(d).

10. *Id.* §4407.3.

11. *Id.* §4407.5.

12. CAL. STATS. 1980, c. 1041, §1, at 3322-3323 (enacting CAL. LAB. CODE §4406).

ance officer, in consultation with the medical director, determines that there exists adequate medical evidence that the worker developed asbestosis from the employment.¹³

13. CAL. LAB. CODE §4406(c).

