



BILL 899 SEEKS TO ELIMINATE DISCRIMINATION BASED ON HEREDITARY OR GENETIC BACKGROUND

By Scott O'Mara

Senate Bill 899, introduced by Sen. Pan on 1/16/18, has passed the State Senate, and as of 5/29/18 has proceeded to the Assembly for that body's first reading of this legislative proposal. SB 899 seeks to identify and eliminate discrimination which occurs against California workers based on their hereditary or genetic background.

Over the years, fortunately, progress has occurred in this area of discrimination, and legislation has been enacted to address the inherent wrongs which have existed, literally, for centuries. The Civil Rights Act of 1964 and the Americans with Disabilities Act of 1990, as well as many court decisions, have dealt with the injustice of discrimination with the goal of correcting the wrongful practices which unfortunately have been allowed to exist for long periods of time. The legislative changes which have occurred have been at both the Federal and state levels.

SB 899 identifies and prohibits the discrimination which has occurred (and will continue to occur without the enactment of this legislation) in the form of reduced economic compensation to injured workers based simply on ethnic or genetic factors. It is common to see doctors in their medical reports opine that a worker's lack of pigmentation is a contributory factor to certain types of skin diseases -- specifically, skin cancer. Doctors also commonly discuss the ethnicity of injured workers in relation to their blood pressure. In many of these cases, the genetic markers involved are used to reduce the compensation which these injured workers justly deserve.

Blacks, Whites, Hispanics and Asians can all be subject to various types of discrimination based on their ethnicity when their genetic background makes them more at risk for certain illnesses. This discriminatory conduct undermines the Federal and state laws designed to create uniformity of action towards all people.

The practice of discrimination distinguishes and singles-out particular groups in arriving at decisions which deny certain individuals full compensation for their job-related injuries or medical conditions. The purpose of economic compensation for work injuries is to help offset a worker's loss of earning capacity following such an injury and its effect on the worker's activities of daily living and overall employability.

Current discrimination in compensating workers properly for their injuries is removed by SB 899, which eliminates any consideration of race or genetic make-up in impairment determinations.

The enactment of Senate Bill 899 would be consistent with Federal and state legislation, and the absolute need for this new attempt to further eliminate discrimination has been brought to light in the case of *City of Jackson v. Workers' Compensation Appeals Board*. In that case, the WCAB found that apportionment of work injuries based on genetic factors is discriminatory, but the Court of Appeal unfortunately annulled that decision by the WCAB.

This regrettable determination upon appeal highlights the need for legislation to eliminate such discriminatory conduct, and SB 899 is designed specifically to accommodate that need. This new bill provides clarity to courts and indicates that apportionment based on hereditary or genetic factors – factors which are immutable – is an abhorrent violation of legal norms and legislative intent, not to mention an abuse of dignity against the individuals subject to such discrimination.

Our sincere hope is that our representatives and the Governor fully appreciate the importance of SB 899 and it ultimately becomes law. Such accomplishment would be another major step in the effort to ensure fair and just treatment for all workers within the California Workers' Compensation system.



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