



# **PROPOSED LEGISLATION SEEKS TO REMOVE LIMITATIONS IMPOSED BY LABOR CODE §4656**

**By Scott O'Mara**

California workers who sustain job-related injuries have entitlement to significant benefits under the Labor Code. One of these benefits is temporary total disability payments, which are based upon the occurrence of a job-related injury which precludes the worker from being able to perform his or her substantial job duties, and the employer not being able to modify the job to accommodate the injured worker's medical restrictions.

The level of compensation received by an injured worker is defined by the date of injury. Many safety members – including Highway Patrol Officers, Police Officers, Firefighters, Deputy Sheriffs, Probation Officers and various other safety people – are eligible for enhanced benefits pursuant to either Labor Code §4800.5 or Labor Code §4850. These statutes entitle injured safety members to receive up to one year of their full salary tax-free instead of temporary disability payments if they are off work due to a job-related injury which precludes them from being able to perform their substantial duties.

The Labor Code for temporary disability was modified by the enactment of §4656. Based upon case law, this statute initially was thought to be directed towards non-safety workers in California, placing a limit on the temporary disability benefits they could receive, without having any impact on the one year of Labor Code §4800.5/4850 benefits and the additional two years of temporary disability payments safety officers can receive.

However, Section §4656 underwent several amendments. The most current amendment states that for a single injury occurring on or after 1/1/08, temporary disability benefits cannot be paid for more than 104 weeks during a five-year period from the date of injury. This limitation was artificial and did not consider the fact that it would force many injured workers back to work prematurely and potentially cause additional injury.

The changes resulting from Labor Code §4656 originally had impact only on the limitation of no more than two years of temporary disability benefits, and did not impact additional payments of §4800.5 and §4850 after case law acknowledged the unique benefits needed for safety officers, Highway Patrol Officers, Police Officers, Firefighters, Deputy Sheriffs, Probation Officers and various other safety people. Ultimately, however, litigation occurring in 2013 – *County of Alameda v. WCAB (Knittel)* – stated that the legislative intent of §4656 was *not* limited to non-safety people, but included safety officers as well. Therefore, pursuant to this determination, an injured safety member who sustained a job-related injury could receive a maximum of one year of Labor Code §4800.5 or §4850 benefits, and only one year of temporary disability benefits.

Because of the unique nature of the work performed by safety people and the extraordinary injuries which befall them – such as being shot by a suspect, run over by a vehicle, burned in a fire, etc. – the 2013 decision in *County of Alameda* has created an artificial limitation. Many associations have been active in attempting to initiate change relative to this limitation. Assembly Bill 2378 specifically addresses this issue.

AB 2378 amends Labor Code §4656 to exclude Labor Code §§4800.5 and 4850 from part of the calculations of the two-year cap. With this change, safety officers could receive one full year of §4800.5/4850 benefits and up to two years of temporary disability payments. This legislation would give safety members who sustain job-related injuries a longer period of time to recover without being forced to return to work prematurely and possibly sustain further injury, sometimes to the extent that retirement becomes necessary. AB 2378 passed the Senate Committee on Labor and Industrial Relations by a vote of 5 to 0 on June 25, 2014, and has subsequently been referred to the Committee on Appropriations, with a hearing scheduled for August 4, 2014.

Additional legislative corrections are being considered, including Assembly Bill 2052. This bill would extend law enforcement personnel status to individuals described in Penal Code §§830-830.35, thereby addressing the artificial limitations imposed by Labor Code §§3212, 3212.1, 3212.5, 3212.6, 3212.85 and 3212.9, impacting individuals who develop hernias, heart trouble, pneumonia, cancer, tuberculosis and meningitis, as well as those who have exposures to biochemical substances. AB 2052 would afford the additionally-covered safety people a much-needed and correct benefit pursuant to the presumption of work-related injury.

There have been previous discussions by safety workers of employers' offers of light-duty positions. If such a position accommodates the injured worker's medical restrictions, then the employer's obligation — pursuant to either Labor Code §4800.5 or §4850 — no longer exists. Therefore, the injured worker needs to examine the light-duty position carefully to ensure that what is offered is indeed an accommodation meeting the worker's restrictions. If it is, that will benefit both the employer and the worker. The benefit for the worker is that it can extend access to benefits pursuant to Labor Code §4800.5 or §4850 and/or temporary disability payments.

However, if the accommodation increases the worker's symptomatology, it raises the specter of delayed recovery, increased residual impairment, and, in the worst-case scenario, the possible necessity of having to seek a disability retirement, which most workers do not desire. In this case, the position offered is *not* an accommodation. Therefore, §4800.5/§4850 or temporary disability payments should continue.

In conclusion, employers and injured workers must recognize that light-duty positions have both advantages and disadvantages. The final decision as to whether such a position should be offered and accepted can be based on a medical determination by the injured worker's doctor, who can provide direction and guidance regarding this matter.

*UPDATE:* Unfortunately, AB 2378 was vetoed by Gov. Brown on 9/29/14.



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