



EQUALITY, NOT DISCRIMINATION

By Scott A. O'Mara

A work-related injury can at times result in permanent disability. Of significance is the fact that this disability can exist despite the fact that the worker is able to return to work. It does not require a wage loss, as many factors need to be considered relative to the injured body part or medical condition.

In some cases, however, changes may be required in activities of daily living. Also, limits could be placed on employment, and more extreme situations may result in the inability to continue in the same occupation. Permanent disability benefits constitute one of the basic benefits to which some workers may have entitlement, depending upon the impact of their injury. However, the current Workers' Compensation system allows for a reduction in permanent disability benefits if certain factors are used, and if certain sections of the Labor Code are inapplicable.

In the past (and continuing into the present, unfortunately), some physicians have used (and continue to use) such discriminatory factors as race, religious creed, color, national origin, age, gender, marital status, sex, sexual identity, sexual orientation or genetic characteristics in an attempt to minimize a worker's disability and the compensation due for same.

In 2018, Senate Bill 899 was introduced by Senator Pan, and he specifically sought to eliminate discrimination based upon race, gender or national origin. This reduction in the obligation to pay permanent impairment worked its way through both houses, but ultimately was vetoed by then-Governor Brown.

Sen. Bradford introduced S.B. 788 on 2/19/21, which eliminates discrimination imposed on certain workers by employers and third-party administrators because of a worker's race, religious creed, color, national origin, age, gender, marital status, sex, sexual identity, sexual orientation or genetic characteristics.

The concept is that when work-related injuries occur, injured workers are entitled to certain benefits to enable them to return to their level of function prior to their injury. Employers have continued to reduce the amount of workers' permanent disability and impairment based upon the above-mentioned discriminatory factors. Senator Bradford's bill, S.B. 788, introduced on 2/19/21, removes these archaic and discriminatory factors which still exist in the Worker's Compensation system. This bill creates equality for all California workers, and does not take away from compensation to which they may have entitlement because of their permanent disability. It would eliminate apportionment of that compensation because of the worker's race, religious creed, color, national origin, age, gender, marital status, sex, sexual identity, sexual orientation or other genetic characteristics. *This bill offers something which should have been legislated many years ago. It needs to go forward and be approved by the Governor.*

WE NEED EQUALITY, NOT DISCRIMINATION because of race, religious creed, color, national origin, age, gender, marital status, sex, sexual identity, sexual orientation or genetic characteristics.

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NOTICE: *Making a false or fraudulent Workers' Compensation claim is a felony subject to up to 5 years in prison or a fine of up to \$50,000 or double the value of the fraud, whichever is greater, or by both imprisonment and fine.*
