



SENATE BILL 335 PROVIDES SIGNIFICANT ADVANCEMENT FOR INJURED WORKERS TO BE CURED OR RELIEVED

By Scott A. O'Mara

The Workers' Compensation system has been legislatively designed to allow workers to obtain medical care to cure or relieve the effects of their work-related injuries. This then allows them to minimize the level of disability which could result, and hopefully allow them to return to their work environment.

Legislation passed pursuant to Labor Code §5402 – effective for injuries occurring on or after January 1, 1990 – stated that employers have a time limit of 90 days to either accept or deny liability for a claimed injury. If the employer has not made that decision within the 90-day period after receiving notice of a claim, the injury or injuries claimed are presumed to be job-related, unless something is discoverable which could not have been discovered within the 90-day window.

The 90-day period is to put direction on employers to examine and determine whether claimed injuries are in fact work-related. The theory which has been effective since the implementation of the legislation enacted in January 1990 is that it will help to mitigate delays either intentionally or unintentionally caused by employers – delays which can bankrupt a worker and cost the employer substantially more money because of having to pay more for the worker's recovery period and time off work, and more for the medical care needed because of the employer's delay in providing *full care*.

Other sections of the Labor Code create a presumption of industrial causation for specified injuries, and these sections recognize the unique exposures which occur for significant portions of the labor force – including police officers, Highway Patrol officers, deputy sheriffs, firefighters, correctional officers and probation officers. These workers have higher levels of exposures to toxic or dangerous agents, or other aspects of their job which place them at the highest risk for the development of such conditions as heart disease, a hernia, a back injury, pneumonia, cancer, meningitis, tuberculosis, a biochemical illness, a blood-borne infectious disease, or PTSD.

Legislation presented by Sen. Dave Cortese on February 8, 2020, identifies this segment of our labor population and recognizes that the 90-day period which employers have to either accept or deny a claim as being work-related may not only increase the harm done to injured workers and their families, but also increase the employer's costs as well.

Senate Bill 335 reduces the period allowed for the denial of certain injuries or illnesses from 90 days to 45 days. The current established law also indicates that during the examination period, the employer is to provide treatment until the date of acceptance or denial of liability, and the medical cost which is covered until acceptance or denial is \$10,000. Senate Bill 335 increases the amount of medical treatment covered for that same period from \$10,000 to \$17,000.

It does not take much understanding to realize that the claims adjuster, third-part administrator or self-insured employer needs to prioritize their evaluation of cases, and make a determination within the 45-day window for certain injuries, which will expedite the period of recovery for those workers and enhance their ability to return to work.

SB 335 also provides coverage for people who contract COVID-19, and creates a window of 30 days for employers to make their liability decision from the date the claim form is filed. If an employer fails to do so, the COVID-19 is presumed to be work-related. This provision has application to numerous safety personnel, including police officers and firefighters, as well as volunteers, nurses and employees providing home care. The reduction of the employer's decision process to 30 days again expedites medical care and emphasizes the necessity of same for the benefit of the workers affected.

Regarding the time allowed for employers to make decisions regarding conditions other than COVID-19, SB 335 changes the limit from 90 days to 45 days. Again, this applies to specific safety personnel, as noted above.

If a worker falls within one of the presumptive occupations (such as specified safety workers) and has one of the presumptive conditions — such as heart disease, a hernia, a back injury, pneumonia, cancer, meningitis, tuberculosis, a biochemical illness, a blood-borne infectious disease, or PTSD — the employer's 90-day decision period is again reduced to 45 days. Therefore, employers, claims adjusters, third-party administrators and adjusting agencies must make timely decisions which ensure quicker recovery for injured workers and a greater likelihood of returning to work with less disability.

It is interesting to look at the supporters of SB 335, as well as those who oppose it. The opponents specifically include those groups which have been successful in minimizing many workers' access to care, literally forcing these workers out of the system because they cannot obtain proper medical care to cure or relieve the effects of their injuries.

As mentioned at the top of this newsletter, the Workers' Compensation system has been legislatively designed to allow workers to obtain medical care to cure or relieve the effects of their work-related injuries. These workers are entitled to some compensation for their time off work, as well as potential payment for any permanent impairment which exists following the conclusion of their medical care when maximum medical improvement has been achieved.

As noted above, prompt and timely responses with appropriate medical care enhance the likelihood of injured workers having a better recovery with the ability to return to work sooner so they can continue with their career.

The changes sought by SB335 benefit all California workers and employers who will now need to prioritize the work they are doing to ensure medical care is administered timely. Prioritization will allow them to minimize some of their costs. Also, an additional feature to encourage employers is the fact that the penalty pursuant to Labor Code §5814 has been increased. If payment is unreasonably delayed or refused following an order from the Court, the 10% penalty can be for the full amount of the decision or award, which also allows multiple penalties for repeated delays and serial payments for subsequent delays relative to the same type of injury.

Again, Senate Bill 335 will encourage employers to prioritize their work schedules so California workers can receive the benefits they deserve to be cured or relieved of their job-related injuries.

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<p>NOTICE: <i>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.</i></p>	
