



MUTUAL EQUALITY

By Scott A. O'Mara

The California Workers' Compensation system is designed to provide benefits to injured workers in the form of:

- (1) Medical care to cure or relieve the effects of a work-related injury.
- (2) Payments in the form of temporary disability benefits. (*And for safety workers: Compensation for wage loss in the form of payments pursuant to Labor Code §4850 or §4800.5.*)
- (3) Compensation for irreversible residual harm (*i.e.*, Permanent Impairment/Permanent Disability in the use of specified body parts) and/or a reduction in earning capacity caused by the injury, or a reduction in the capacity to compete on the open labor market.

The determination as to whether an injured worker has sustained Permanent Impairment/Permanent Disability is made after the worker has reached maximum medical improvement. Taking into account that the worker will have good days and bad days, maximum medical improvement means there is no expectation that the worker's condition will undergo a substantial change in the next year, either with or without treatment.

An injured worker's Permanent Impairment/Permanent Disability (*item #3 above*) has been subject to reduction by the concept of apportionment, which means that the employer has identified pre-existing impairment or non-industrial factors which contributed to the worker's injury and impairment. Sometimes the apportionment is based on race, religion, creed, skin color, national origin, gender, marital status, sexual identity or sexual orientation.

As previously discussed in Law1199.com Newsletter 2021 Issue #4 – "Equality, Not Discrimination", legislation (S.B. 788) was introduced on 2/29/21 by Senator Steven Bradford. On 7/1/21, the Assembly voted 77-0 to go forward with an amended form of Senator Bradford's bill. The amended version of S.B. 788 removes reduction of disability values by eliminating the discriminatory elements of an injured worker's race, religion, creed, color, national origin, gender, marital status, sexual identity or sexual orientation. In the past, these factors have been a tool to lower disability values.

As readers are aware, much negotiation occurs in the creation and handling of a bill. Therefore, the current amended bill will specifically prohibit the reduction of Permanent Disability payments for Permanent Impairment/Permanent Disability based upon race, religion, creed, color, national origin, gender, marital status, sexual identity or sexual orientation. Left as elements which can and will be used to reduce compensation to injured workers are age and genetic characteristics.

It should be noted that S.B. 788 further states, in Section 1:

It is the intent of the Legislature to eliminate bias and discrimination in the workers' compensation system.

The prevalence of this discriminatory conduct has been ongoing, and the amended version of S.B. 788 is a strong step towards reducing such conduct by employers, third-party administrators and claims adjusters.

The elements which were left in – age and genetic characteristics – arguably are going to be tools used to reduce appropriate compensation. However, the language of S.B. 788 does leave some factors which may be used to challenge age as a reduction factor.

This bill – which constitutes an awareness of the ongoing discrimination that has continued to the present date and has impacted many members of the workforce who have sustained work-related injuries and have remnants of Permanent Impairment/Permanent Disability – needs the support of both houses and the Governor. In summation, S.B. 788 is a very positive development for all California workers as it creates an opportunity for mutual equality.



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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.

