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SENATE BILL 1127 – SIGNED BY THE GOVERNOR ON 9/29/22 – WILL PROVE BENEFICIAL TO BOTH INJURED EMPLOYEES AND EMPLOYERS

(See Issue #12.)

By Scott A. O'Mara

Senate Bill 1127, introduced by Sen. Toni Atkins on February 16, 2022, acknowledges the unique demands placed upon first responders who develop specific work-related injuries, such as cancer, hernias, heart conditions, pneumonia, tuberculosis, PTSD, COVID-19, meningitis and back injuries. This new legislation provides greater economic protection for the first responders who develop these injuries which can be presumed to be job-related by mandating a quicker response time by employers in providing medical care needed by the first responders to cure or relieve the effects of their injuries. Employers who do not meet these parameters are subject to a penalty of up to \$50,000 for failure to make timely and appropriate determinations.

Previous harmful legislation was enacted that lowered the period of time during which workers could receive compensation for disabling injury conditions to 104 weeks – including cancer – while going through their recovery. S.B. 1147 will extend the period during which compensation is available to 240 weeks for injuries occurring on or after 1/1/23 for cancer. This positive development provides recognition of the extensive period of time it can take to recover from a complex medical condition such as cancer.

Also, employers by law have had 90 days to accept or deny the notice of a claim for Workers' Compensation benefits. S.B. 1127 now reduces that window to accept or deny to 75 days from the date of knowledge of the claim in the case of injuries such as hernias, heart-related conditions, pneumonia, cancer, PTSD, blood-borne infectious disease, MRSA, biochemical disease, tuberculosis, lyme disease, meningitis and aureus skin infections, as well as the low back for certain law enforcement officers. If the employer fails to meet the 75-day deadline, the claimed injuries are presumed to be work-related.

If an employer unreasonably rejects a claim pursuant to Labor Code §§3212--3213.2, the employer can be subject to payment of five times the amount of the benefits unreasonably delayed up to a penalty of \$50,000.

The goal of S.B. 1127 is to reduce the level of a worker’s disability and time missed from work, thereby potentially reducing the necessity for a disability retirement. This goal can be achieved by employers responding promptly to claims made and providing appropriate medical care as needed. The current system has been flawed in allowing employers more time than is reasonable needed to make appropriate determinations regarding the medical status of their employees – such as 90 days to accept or deny notice of a claim for Workers’ Compensation benefits, which, pursuant to S.B. 1127, will be reduced to 75 days, depending upon the type of injury. This change will force employers and adjusting agencies to prioritize cases and move them along without delays which can slow a worker’s recovery and cause economic hardship.

The new 75-day limit for employers to accept or deny certain presumptive injuries creates a higher standard of care than previously has been the case. Similarly, the extension of the period during which workers with disabling cancer conditions can receive compensation from 104 weeks to 240 weeks also creates a higher standard of care and acknowledges the unique complexities and demands facing cancer patients.

Previous articles have contained discussions regarding PTSD – including 2021 Issue #13 and 2021 Issue #15 – and how employers’ costs could be lowered by expediting determinations regarding work-relatedness. Thus, S.B. 1127 will have benefits for both injured employees and their employers.

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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>	
