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DISRUPTIVE TRAILER BILL 75582

BY: SCOTT A. O'MARA

The Subsequent Injuries of Benefit Trust Fund (SIBTF) was enacted by the State of California in 1945. This system was developed to allow all workers the opportunity to be able to continue to work or return back to work even if they had a prior disability before their new employment opportunity that they sought. The 1945 view was developed in part because there were some military veterans that had returned back to work who had disabilities and the need to return to the civilian labor market. There are also workers that had residual disabilities, either from non-work or other work-related situations that could have limited their opportunity to return to the labor market because of a previous level of disability.

SIBTF is designed to pay additional benefits based upon the difference between the disability caused by the most recent occupational injury and the worker's overall disability. The SIBTF is established to provide coverage when there is a disability that existed prior to a new work-related injury. There are several types of disabilities; one is a work-related injury that existed prior to the most current one, and the second is a non-work disability that existed prior to the current work-related injury that was not work-related, and the third are conditions that are silent that the worker is not aware of the existence of the disease disability.

The preexisting conditions which are proven to exist prior to the current job-related injury are important elements to establish for the benefits of the SIBTF. It is not an issue as to whether the disabilities are industrial, or non-industrial to obtain coverage by the SIBTF. The key element is that SIBTF provides an umbrella of protection to the worker and the employer regarding past injuries or past disabilities. SIBTF encourages and allows the worker and employer to grant or obtain new employment opportunities. The protection for the employer is a limit of the cost of the new disability from the current job injury. Yet, not all disabilities are related to the current job injury.

For our society as a whole allowing and encouraging workers with prior injuries to return back to work is one of societal and economic protection for the worker, the family and our community. The SIBTF protects the worker and the employer in the event of a new injury or disability when the combining prior residual disability is a totality of 70%. This is combining the prior disability and the current job-related injury or disability. This umbrella provides protection for the employer and the worker. The elements that the injured worker must prove are: (1) that the injured worker has a level of disability of 70% or greater; (2) the current work

injury has caused 35% or greater of the disability; (3) different standards for preexisting disability is a limb or eye or a current job analysis that involves opposite corresponding body parts causing 85% or greater disability.

The SIBTF does not penalize the injured worker for coming back to work, does not penalize the employer for hiring the worker with a preexisting condition. The SIBTF is an economic cushion for both the worker and the employer. A new Trailer Bill 75582 is now being promoted which attempts to undermine SIBTF and attacks other systems that provide protection to the injured worker and their family. The key notice is that the proposed legislation is a Trailer Bill. A Trailer Bill is a vehicle used to implement the state's annual budget by amending existing state laws. These Trailer Bills can be enacted by a simple majority vote and establish major changes without or limited public input. It only requires a majority vote for the passage of a Trailer Bill and the Bill takes effect immediately.

The Trailer Bill as stated lowers the threshold of passage and does not require a 2/3 vote for approval, but rather a simple majority vote. This different standard of passage lowered the previous mandate of 2/3 vote or 66.67 to simple majority.

Standard Bills grant a time for review, communication and discussion as to the purpose of the bill they have. The usage of a Trailer Bill limits important review and discussion of legislative enactment.

This Trailer Bill 75582 is pushed forward not to protect the California worker, but from the surface lower the cost of certain work-related injuries. The legislation 75582 goes beyond the enactment that was made in 1945 and attacks other protected resources that the California worker has earned. This removal or eviscerating of the Subsequent Injuries Benefit Trust Fund (SIBTF) is a frightening attempt to minimize and take away the protection that we as a society accept and acknowledge for work-related and other conditions that are non-work-related but affect the overall residual impairment that the worker has because of the work-related injury. This is attempted legislative conduct which requires constant examination.

The Labor Code is changed by adding Labor Code §4750 which attacks the umbrella of protection that is provided to the California workers for preexisting conditions and lowering the level of compensation payable that either existed prior to the subsequent industrial injury or an awareness of same that became prominent.

The legislators must review this attack. They need to go back to examine the umbrella of protection that has been provided previously because of the 1945 legislation. Further, to recognize that the new system that is being promoted seeks offsets as to a disability pension payment that is based in part of a preexisting disability impairment granting that the SIBTF benefit that could be awarded can be reduced by the entire pension payment for a disability condition. This pension benefit is a separate and distinct

benefit that is granted to the worker who has a work-related injury that precludes them from doing their substantial duties.

A major element of the Trailer Bill 75582 is the significant procedural changes that are being made that harm the worker and create greater thresholds that need to be met for the admission or acceptance of evidence or development of same. Some procedural changes that they seek are going to create more time for the judicial system and more time for the counsel representing the worker. The procedural changes they seek do not improve the foundation of the case they only create potential barriers that could be raised to delay the case. These barriers are ones that are not justified by judicial need or medical need.

This new legislation seeks to inroad and takes away from the protection that has been offered and granted under a different system, such as the retirement system. The legislation that is promoted is a cancer that harms our society by not encouraging the employer and the worker to obtain or grant employment that is going to be productive for society, the employer and the worker. The damage that will be created by Trailer Bill 75582 which removes the opportunity for substantial discussions and considerations as to the benefits being derived by the SIBTF. The SIBTF is paid for not directly by the employer, but by the State of California. This enactment is a tool that causes harm and is destructive to the job opportunities and family protection that is established by the SIBTF. This legislation also is able to get by because the threshold by Trailer Bills do not require 2/3 vote, but a simple majority. The legislation is incorrect and undermines the concept of labor opportunities and the opportunity for employers to employ people they have need for in our labor market. Bill 75582 must be either removed or modified where it goes back to reflect what was established in 1945.



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