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2026 ★ ISSUE #5

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## PROPOSED LEGISLATION AB 2098 PROTECTION FOR THE INJURED WORKER

BY: SCOTT A. O'MARA

The California Constitution indicates that the injured worker has entitlement to receive medical care to cure or relieve the effects of the injury. The worker is to schedule a medical treatment appointment with the doctor that has been either designated as a treater, or accepted by the employer as the treater. If the treatment occurs during working hours, the worker shall provide advanced notice to the employer. The employer is to authorize treatment even if it is during business hours unless there is a business necessity that would require the treatment to occur at a different time or a different day. This is the area of discussion that will occur as to what a business necessity is, and many times, it will be dependent upon what the assignment is and what the backup availability is of other people to fill that slot. Even with that in mind, there are certain medical conditions that need immediate medical care to cure or relieve the effects of the injury. Delay of that will cause further harm and cause delay in recovery.

If the employer takes issue with the date or time of the medical appointment, they would have to establish a business necessity that would show that the treatment should occur at a different time and date.

For the injured worker the problem becomes the doctor's schedules are very busy and sometimes a geographical location of the doctor is such that it is difficult if not very challenging to get to an appointment other than what the typical workers regular work hours are.

There is proposed modification of the Labor Code (AB 2098) that acknowledges that this issue of medical care to cure or relieve in getting an appointment can be problematic. It places responsibility upon the employer to grant the treatment requested unless there is some high level showing that the business necessity supersedes the medical needs.

AB 2098 might require planning by the employer. The employer needs to recognize that if they do not comport with the new proposed legislation Assembly Bill 2098 when passed the employer can be subject to a penalty pursuant to Labor Code §132(a). Labor Code §132(a) indicates that it is a misdemeanor for any employer that discharges, or threatens to discharge, or in any manner discriminates against any employee that has filed or made known their intention to file a claim or seeks medical care and is denied relative to the fact that it is work-related. The misdemeanor shall place a penalty of up to \$10,000.00 against the employer, plus the cost and expenses not to exceed \$250.00. The employee also will be entitled to reimbursement and reinstatement for lost wages and work benefits caused by the act of the employer if there is discrimination pursuant to violation of Labor Code §132(a).

