

AMENDED IN SENATE JULY 17, 2007

AMENDED IN ASSEMBLY JUNE 6, 2007

AMENDED IN ASSEMBLY MARCH 29, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 338

Introduced by Assembly Member Coto

February 14, 2007

An act to amend Section 4656 of, and to add Section 4453.1 to, the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

AB 338, as amended, Coto. Workers' compensation: temporary disability payments.

~~(1) Existing law provides that whenever persons confined in the county jail, industrial farm, road camp, or city jail suffer injuries or death while working in the prevention or suppression of forest, brush, or grass fires, he or she is considered to be an employee of the county or city, respectively, for purposes of workers' compensation. Existing law provides that persons performing duties under a county work release program are eligible for workers' compensation.~~

~~Existing law prescribes the amount of average weekly earnings that are used in computing average annual earnings for the purposes of temporary disability indemnity benefits.~~

~~This bill would provide that for purposes of determining temporary disability benefits for any person entitled to benefits under the workers' compensation law as a result of an injury sustained by an inmate of any county jail, industrial farm, road camp, or city jail, or by an inmate assigned to a county work release program, the average weekly earnings~~

~~shall be taken at the minimum amount set forth in the above provision regarding the calculation of temporary disability benefits, or at the actual weekly wages lost due to disability resulting from the injury at the weekly amount that the inmate actually made from qualifying earnings prior to incarceration, whichever is greater, as determined by the inmate's qualification to receive temporary disability benefits prior to incarceration.~~

~~(2) Existing~~

~~Existing workers' compensation law generally requires employers to secure the payment of workers' compensation, including medical treatment, for injuries incurred by their employees that arise out of, or in the course of, employment. Existing law prohibits aggregate disability payments for a single injury occurring on or after April 19, 2004, causing temporary disability from extending for more than 104 compensable weeks within a period of 2 years from the date of commencement of temporary disability payment, except if an employee suffers from certain injuries or conditions.~~

~~This bill would prohibit aggregate disability payments for a single injury occurring on or after January 1, 2008, causing temporary disability from extending for more than 156 compensable weeks within a period of 5 years from the date of injury, with specified exceptions.~~

~~Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.~~

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 4453.1 is added to the Labor Code, to~~
 2 ~~read:~~
 3 ~~4453.1. Notwithstanding any other provision of law, for~~
 4 ~~purposes of determining temporary disability benefits for any~~
 5 ~~person entitled to benefits under this division as a result of an~~
 6 ~~injury sustained by an inmate of any county jail, industrial farm,~~
 7 ~~road camp, or city jail, or by an inmate assigned to a work release~~
 8 ~~program under Section 4024.2 of the Penal Code, the average~~
 9 ~~weekly earnings shall be determined as follows:~~
 10 ~~(a) An inmate who would not have qualified for temporary~~
 11 ~~disability benefits under the definitions set forth in Article 2~~
 12 ~~(commencing with Section 3350) of Chapter 2 of Part 1 prior to~~
 13 ~~incarceration shall not be entitled to receive temporary disability~~
 14 ~~benefits under this section.~~

1 ~~(b) An inmate who would have qualified for temporary disability~~
2 ~~benefits under the definitions set forth in Article 2 (commencing~~
3 ~~with Section 3350) of Chapter 2 of Part 1 prior to incarceration~~
4 ~~but whose weekly earnings were less than the minimum amount~~
5 ~~set forth in Section 4453 shall be entitled to receive temporary~~
6 ~~disability payments in the minimum amount set forth in Section~~
7 ~~4453, upon release.~~

8 ~~(c) An inmate who would have qualified for temporary disability~~
9 ~~benefits under the definitions set forth in Article 2 (commencing~~
10 ~~with Section 3350) of Chapter 2 of Part 1, prior to incarceration~~
11 ~~whose weekly earnings were more than the minimum amount set~~
12 ~~forth in Section 4453 shall be entitled to receive temporary~~
13 ~~disability benefits in an amount based on the weekly amount that~~
14 ~~the inmate actually made from qualifying earnings prior to~~
15 ~~incarceration, up to the maximum amount allowed pursuant to~~
16 ~~Section 4453, upon release.~~

17 ~~SEC. 2.~~

18 *SECTION 1.* Section 4656 of the Labor Code is amended to
19 read:

20 4656. (a) Aggregate disability payments for a single injury
21 occurring prior to January 1, 1979, causing temporary disability
22 shall not extend for more than 240 compensable weeks within a
23 period of five years from the date of the injury.

24 (b) Aggregate disability payments for a single injury occurring
25 on or after January 1, 1979, and prior to April 19, 2004, causing
26 temporary partial disability shall not extend for more than 240
27 compensable weeks within a period of five years from the date of
28 the injury.

29 (c) (1) Aggregate disability payments for a single injury
30 occurring on or after April 19, 2004, and prior to January 1, 2008,
31 causing temporary disability shall not extend for more than 104
32 compensable weeks within a period of two years from the date of
33 commencement of temporary disability payments.

34 (2) Notwithstanding paragraph (1), for an employee who suffers
35 from the following injuries or conditions, aggregate disability
36 payments for a single injury occurring on or after April 19, 2004,
37 and prior to January 1, 2008, causing temporary disability shall
38 not extend for more than 240 compensable weeks within a period
39 of five years from the date of the injury:

40 (A) Acute and chronic hepatitis B.

- 1 (B) Acute and chronic hepatitis C.
- 2 (C) Amputations.
- 3 (D) Severe burns.
- 4 (E) Human immunodeficiency virus (HIV).
- 5 (F) High-velocity eye injuries.
- 6 (G) Chemical burns to the eyes.
- 7 (H) Pulmonary fibrosis.
- 8 (I) Chronic lung disease.
- 9 (d) (1) Aggregate disability payments for a single injury
- 10 occurring on or after January 1, 2008, causing temporary disability
- 11 shall not extend for more than 156 compensable weeks within a
- 12 period of five years from the date of injury, unless extended
- 13 pursuant to paragraph (2) or (3).
- 14 (2) Notwithstanding paragraph (1), for an employee who suffers
- 15 from the following injuries or conditions, aggregate disability
- 16 payments for a single injury occurring on or after January 1, 2008,
- 17 causing temporary disability shall, except as provided in paragraph
- 18 (3), not extend for more than 240 compensable weeks within a
- 19 period of five years from the date of the injury:
- 20 (A) Acute and chronic hepatitis B.
- 21 (B) Acute and chronic hepatitis C.
- 22 (C) Amputations.
- 23 (D) Severe burns.
- 24 (E) Human immunodeficiency virus (HIV).
- 25 (F) High-velocity eye injuries.
- 26 (G) Chemical burns to the eyes.
- 27 (H) Pulmonary fibrosis.
- 28 (I) Chronic lung disease.
- 29 (3) For purposes of this subdivision, the aggregate number of
- 30 weeks of payment shall be extended by the time when any of the
- 31 following occur:
- 32 (A) Temporary disability benefits are payable for any period
- 33 after the filing of a claim form and after notice of the disability to
- 34 the employer, other than the three-day waiting period, which
- 35 accrued more than 14 days prior to the date of payment.
- 36 (B) Temporary disability benefits are payable for any period
- 37 while the provision of medical treatment to the employee is delayed
- 38 by an employer's objection made or purporting to be made pursuant
- 39 to Section 4062 and the dispute is ultimately decided in favor of
- 40 providing the disputed treatment.

1 (C) Temporary disability benefits are payable for any period
2 while the provision of medical treatment to the employee is delayed
3 by the employer's conduct of utilization review pursuant to Section
4 4610 if the employer fails to communicate the utilization review
5 determination within the time requirements of Section 4610.

6 (D) Temporary disability benefits are payable for any period
7 while the provision of medical treatment to the employee is delayed
8 by a utilization review determination if the determination is timely
9 disputed by the employee and ultimately decided in favor of
10 providing the disputed medical treatment, unless the employer
11 demonstrates that the ultimate decision is based on information
12 that could not reasonably have been obtained by the employer
13 within the time allowed for a utilization review determination
14 under Section 4610.

15 (e) In the case of an employee who is entitled to a leave of
16 absence without loss of salary pursuant to Article 6 (commencing
17 with Section 4800) or Article 7 (commencing with Section 4850),
18 the one-year limitation on that leave of absence shall be extended
19 for any period when provision of medical treatment to the employee
20 is delayed under circumstances, which would extend the running
21 of the aggregate limit on temporary disability benefits pursuant to
22 subdivision (d).