

AMENDED IN ASSEMBLY SEPTEMBER 6, 2007

AMENDED IN ASSEMBLY JULY 5, 2007

AMENDED IN SENATE MAY 8, 2007

AMENDED IN SENATE APRIL 18, 2007

AMENDED IN SENATE MARCH 29, 2007

SENATE BILL

No. 942

Introduced by Senator Migden

February 23, 2007

An act to amend Sections ~~132a~~, 3201.81, 4658.5, and 4658.6 of the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

SB 942, as amended, Migden. Workers' compensation: disability.

(1) Existing Workers' Compensation Law 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 declares that it is the policy of this state that there should not be discrimination against workers who are injured in the course or scope of their employment.~~

~~This bill would require an employer to reinstate an employee to his or her preinjury job within 5 working days after receipt of a written statement by the treating physician that the employee is able to perform the essential functions of the employee's regular position, notwithstanding the risks inherent in the position, without a risk of further injury to the employee due to the effects of the injury or illness, and when the employee is willing and available to return to work. The bill would provide that if the employer refuses to reinstate such an~~

~~employee to his or her preinjury job, the employer shall be required to reimburse the employee for lost wages and work benefits. The bill would prohibit an employer from requiring an employee to perform additional physical duties that were not required of the employee prior to his or her injury or illness as a condition for returning to employment, unless the additional physical duties are reasonably required to accommodate the employee's disability or the additional physical duties are presently being required of the employees in the same class or job assignment as the employee held at the time he or she was injured. The bill would require an employer to reimburse the employee for lost wages and work benefits for any time that the employee is unable to work due to the imposition of additional physical duties that are not reasonably required to accommodate the employee's disability.~~

~~(2) Existing~~

~~Existing law provides for the payment of temporary disability indemnity payments to any injured employee under specified circumstances, with certain exceptions, and provides that, if an injury causes permanent partial disability and the injured employee does not return to work for the employer within 60 days of the termination of temporary disability indemnity payments, the injured employee shall be eligible to receive a supplemental job displacement benefit, as specified.~~

This bill would, instead, provide that, for injuries occurring on or after January 1, 2008, if the injury causes permanent partial disability and the injured employee does not return to work for the employer within 60 days after the disability becomes permanent and stationary, the employee shall be entitled to receive a supplemental job displacement benefit, and would revise the amounts of benefits an injured employee would be eligible to receive, as specified.

~~(3)~~

~~(2) Existing law provides that the employer shall not be liable for the supplemental job displacement benefit if, within 30 days of the termination of temporary disability indemnity benefits, the employer offers, and the employee rejects, or fails to accept, modified or alternative work, as specified.~~

This bill instead would provide that an employer shall not be liable for supplemental job displacement benefits if, within 60 days of the disability becoming permanent and stationary, the employer offers the injured employee regular work or modified work. It would also make a technical, clarifying change.

(3) This bill would incorporate additional changes in Section 4658.5 of the Labor Code, proposed by this bill and AB 1636, to be operative only if this bill and AB 1636 are both chaptered and become effective January 1, 2008, and this bill is chaptered last.

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 132a of the Labor Code is amended to~~
2 ~~read:~~

3 ~~132a. (a) It is the declared policy of this state that there should~~
4 ~~not be discrimination against workers who are injured in the course~~
5 ~~and scope of their employment. It is further the policy of this state~~
6 ~~that there should not be discrimination against employees who~~
7 ~~attempt to exercise their rights under subdivision (d) of Section~~
8 ~~4600.~~

9 ~~(b) (1) Any employer who discharges, or threatens to discharge,~~
10 ~~or in any manner discriminates against any employee because he~~
11 ~~or she has filed or made known his or her intention to file a claim~~
12 ~~for compensation with his or her employer or an application for~~
13 ~~adjudication, or because the employee has received a rating, award,~~
14 ~~or settlement, is guilty of a misdemeanor and the employee's~~
15 ~~compensation shall be increased by one-half, but in no event more~~
16 ~~than ten thousand dollars (\$10,000), together with costs and~~
17 ~~expenses not in excess of two hundred fifty dollars (\$250). Any~~
18 ~~such employee shall also be entitled to reinstatement and~~
19 ~~reimbursement for lost wages and work benefits caused by the acts~~
20 ~~of the employer.~~

21 ~~(2) Any insurer that advises, directs, or threatens an insured~~
22 ~~under penalty of cancellation or a raise in premium or for any other~~
23 ~~reason, to discharge an employee because he or she has filed or~~
24 ~~made known his or her intention to file a claim for compensation~~
25 ~~with his or her employer or an application for adjudication, or~~
26 ~~because the employee has received a rating, award, or settlement,~~
27 ~~is guilty of a misdemeanor and subject to the increased~~
28 ~~compensation and costs provided in paragraph (1).~~

29 ~~(3) Any employer who discharges, or threatens to discharge, or~~
30 ~~in any manner discriminates against any employee because the~~
31 ~~employee testified or made known his or her intentions to testify~~

1 in another employee's case before the appeals board, is guilty of
2 a misdemeanor, and the employee shall be entitled to reinstatement
3 and reimbursement for lost wages and work benefits caused by
4 the acts of the employer.

5 (4) (A) An employer shall reinstate an employee to his or her
6 preinjury job within five working days after receipt of a written
7 statement by the treating physician that the employee is able to
8 perform the essential functions of the employee's regular position,
9 notwithstanding the risks inherent in the position, without a risk
10 of further injury to the employee being increased due to the effects
11 of the injury or illness, and where the employee is willing and
12 available to return to work. If an employer refuses to reinstate such
13 an employee to his or her preinjury job, the employer shall be
14 required to reimburse the employee for lost wages and work
15 benefits.

16 (B) No employer shall require an employee to perform additional
17 physical duties that the employee was not required to perform prior
18 to the injuries or illness as a condition of returning to work, unless
19 the additional physical duties are reasonably required to
20 accommodate the employee's disability or the additional physical
21 duties are presently being required of the employees in the same
22 class or job assignment as the employee held at the time he or she
23 was injured. An employer shall reimburse the employee for lost
24 wages and work benefits for any time that the employee is unable
25 to work due to the imposition of additional physical duties that are
26 not reasonably required to accommodate the employee's disability.

27 (C) Any employer who refuses to reinstate an employee to his
28 or her preinjury job in accordance with the requirements of this
29 section shall pay a civil penalty of one hundred dollars (\$100) per
30 day for each day the employer is in violation of this paragraph,
31 and the employee shall be entitled to reimbursement for lost wages
32 and work benefits. Nothing in this paragraph shall preclude an
33 employer from objecting to the opinion of the treating physician
34 pursuant to Section 4062 or from obtaining an opinion from an
35 agreed medical evaluator or qualified medical evaluator pursuant
36 to that section. However, the employee shall continue to be entitled
37 to reimbursement for lost wages and work benefits during the time
38 an employer is objecting to the opinion or obtaining an opinion
39 from an agreed medical evaluator or qualified medical evaluator.
40 The report of the agreed medical evaluator or qualified medical

1 evaluator shall be based on an in-person physical examination of
2 the employee. If the report of the agreed medical evaluator or the
3 qualified medical evaluator states that the employee is unable to
4 perform the essential functions of the employee's regular position,
5 or is unable to perform the essential functions of the employee's
6 regular position without the risk of further injury or illness to the
7 employee being increased due to the effects of the injury or illness,
8 then the employer shall have no further obligation to pay the
9 employee full wages and benefits pursuant to this paragraph for
10 any period after the date of service of the report, the employer
11 shall not be liable for lost wages and work benefits for a violation
12 pursuant to this paragraph, and the employer shall not be liable
13 for the one hundred dollar (\$100) per day civil penalty for a
14 violation imposed pursuant to this paragraph. Where the report of
15 the agreed medical evaluator or the qualified medical evaluator
16 does not concur with the report from the treating physician, the
17 employee shall not be liable for the repayment of lost wages or
18 work benefits received pursuant to this section.

19 (5) ~~Any insurer that advises, directs, or threatens an insured~~
20 ~~employer, under penalty of cancellation, a raise in premium, or~~
21 ~~for any other reason, to discharge or in any manner discriminate~~
22 ~~against an employee because the employee testified or made known~~
23 ~~his or her intention to testify in another employee's case before~~
24 ~~the appeals board, is guilty of a misdemeanor.~~

25 (6) ~~It shall be presumed that an employer has discriminated~~
26 ~~against an employee in violation of paragraph (1) if the employer~~
27 ~~denies an employee the right to predesignate a treating physician~~
28 ~~in accordance with subdivision (d) of Section 4600 prior to injury~~
29 ~~or illness or denies an employee the right to see his or her properly~~
30 ~~predesignated physician or a medical provider to whom the~~
31 ~~predesignated physician has referred the employee after the injury~~
32 ~~or illness.~~

33 (7) ~~Proceedings for increased compensation as provided in~~
34 ~~paragraph (1), or for reinstatement and reimbursement for lost~~
35 ~~wages and work benefits, are to be instituted by filing an~~
36 ~~appropriate petition with the appeals board, but these proceedings~~
37 ~~may not be commenced more than one year from the discriminatory~~
38 ~~act or date of termination of the employee. The appeals board is~~
39 ~~vested with full power, authority, and jurisdiction to try and~~
40 ~~determine finally all matters specified in this section subject only~~

1 to judicial review, except that the appeals board shall have no
2 jurisdiction to try and determine a misdemeanor charge. The
3 appeals board may refer and any worker may complain of suspected
4 violations of the criminal misdemeanor provisions of this section
5 to the Division of Labor Standards Enforcement, or directly to the
6 office of the public prosecutor.

7 (8) Nothing in this section is intended to limit any rights or
8 remedies otherwise provided by law.

9 ~~SEC. 2.~~

10 *SECTION 1.* Section 3201.81 of the Labor Code is amended
11 to read:

12 3201.81. In the horse racing industry, the organization certified
13 by the California Horse Racing Board to represent the majority of
14 licensed jockeys pursuant to subdivision (b) of Section 19612.9
15 of the Business and Professions Code is the labor organization
16 authorized to negotiate the collective bargaining agreement
17 establishing an alternative dispute resolution system for licensed
18 jockeys pursuant to Section 3201.7.

19 ~~SEC. 3.~~

20 *SEC. 2.* Section 4658.5 of the Labor Code is amended to read:

21 4658.5. (a) (1) Except as provided in Section 4658.6, if the
22 injury causes permanent partial disability and the injured employee
23 does not return to work for the employer within 60 days of the
24 termination of temporary disability, the injured employee shall be
25 eligible for a supplemental job displacement benefit in the form
26 of a nontransferable voucher for education-related retraining or
27 skill enhancement, or both, at state-approved or accredited schools,
28 as follows:

29 (A) Up to four thousand dollars (\$4,000) for permanent partial
30 disability awards of less than 15 percent.

31 (B) Up to six thousand dollars (\$6,000) for permanent partial
32 disability awards between 15 and 25 percent.

33 (C) Up to eight thousand dollars (\$8,000) for permanent partial
34 disability awards between 26 and 49 percent.

35 (D) Up to ten thousand dollars (\$10,000) for permanent partial
36 disability awards between 50 and 99 percent.

37 (2) Except as provided in Section 4658.6, for injuries occurring
38 on or after January 1, 2008, if the injury causes permanent partial
39 disability and the injured employee does not return to work for the
40 employer within 60 days after the disability becomes permanent

1 and stationary, the employee shall be entitled to a supplemental
2 job displacement benefit in the form of a nontransferable voucher
3 for education-related retraining or skill enhancement, or both, at
4 state accredited schools. The voucher shall not exceed a total
5 amount of ten thousand dollars (\$10,000). The maximum amount
6 of the voucher available for the payment of tuition, fees, books,
7 and other expenses required by the school in any one semester, in
8 any one quarter, or in any other academic term into which the
9 school divides the academic year shall be prorated for the academic
10 term at a rate not to exceed five thousand dollars (\$5,000) per year.

11 (b) The voucher may be used for payment of tuition, fees, books,
12 and other expenses required by the school for retraining or skill
13 enhancement. No more than 10 percent of the voucher moneys
14 may be used for vocational or return to work counseling. The
15 administrative director shall adopt regulations governing the form
16 of payment, direct reimbursement to the injured employee upon
17 presentation to the employer of appropriate documentation and
18 receipts, and any other matters necessary to the proper
19 administration of the supplemental job displacement benefit.

20 (c) Within 10 days of the date of the last payment of temporary
21 disability the employer shall provide to the employee, in the form
22 and manner prescribed by the administrative director, information
23 that provides notice of rights under this section. This notice shall
24 be sent by certified mail.

25 (d) Except as provided in paragraph (2) of subdivision (a), this
26 section shall apply to injuries occurring on or after January 1, 2004.

27 *SEC. 2.5. Section 4658.5 of the Labor Code is amended to*
28 *read:*

29 4658.5. (a) (1) Except as provided in Section 4658.6, if the
30 injury causes permanent partial disability and the injured employee
31 does not return to work for the employer within 60 days of the
32 termination of temporary disability, the injured employee shall be
33 eligible for a supplemental job displacement benefit in the form
34 of a nontransferable voucher for education-related retraining or
35 skill enhancement, or both, at state-approved or accredited schools,
36 as follows:

37 (1)

38 (A) Up to four thousand dollars (\$4,000) for permanent partial
39 disability awards of less than 15 percent.

40 (2)

1 (B) Up to six thousand dollars (\$6,000) for permanent partial
2 disability ~~awards~~ between 15 and 25 percent.

3 ~~(3)~~

4 (C) Up to eight thousand dollars (\$8,000) for permanent partial
5 disability ~~awards~~ between 26 and 49 percent.

6 ~~(4)~~

7 (D) Up to ten thousand dollars (\$10,000) for permanent partial
8 disability ~~awards~~ between 50 and 99 percent.

9 (2) *Except as provided in Section 4658.6, for injuries occurring*
10 *on or after January 1, 2008, if the injury causes permanent partial*
11 *disability and the injured employee does not return to work for*
12 *the employer within 60 days after the disability becomes permanent*
13 *and stationary, the employee shall be entitled to a supplemental*
14 *job displacement benefit in the form of a nontransferable voucher*
15 *for education-related retraining or skill enhancement, or both, at*
16 *state accredited schools. The voucher shall not exceed a total*
17 *amount of ten thousand dollars (\$10,000). The maximum amount*
18 *of the voucher available for the payment of tuition, fees, books,*
19 *and other expenses required by the school in any one semester, in*
20 *any one quarter, or in any other academic term into which the*
21 *school divides the academic year shall be prorated for the*
22 *academic term at a rate not to exceed five thousand dollars*
23 *(\$5,000) per year.*

24 (b) The voucher may be used for payment of tuition, fees, books,
25 and other expenses required by the school for retraining or skill
26 enhancement. No more than 10 percent of the voucher moneys
27 may be used for vocational or return to work counseling. The
28 administrative director shall adopt regulations governing the form
29 of payment, direct reimbursement to the injured employee upon
30 presentation to the employer of appropriate documentation and
31 receipts, and any other matters necessary to the proper
32 administration of the supplemental job displacement benefit.

33 (c) Within 10 days of the *date of the* last payment of temporary
34 disability, the employer shall provide to the employee, in the form
35 and manner prescribed by the administrative director, information
36 that provides notice of rights under this section. This notice shall
37 be sent by certified mail.

38 (d) (1) *For injuries occurring on or after January 1, 2008, if*
39 *the employee has not returned to work within 60 days of a disability*
40 *becoming permanent and stationary, except as provided in Section*

1 4658.6, the voucher shall be provided no later than 74 days after
2 the date the disability has been determined to be permanent and
3 stationary. If the percentage of permanent disability has not yet
4 been determined, the employer shall provide a voucher based on
5 the reasonable estimate of the percentage of permanent disability,
6 as required in subdivision (b) of Section 4650. If the percentage
7 of permanent disability is later determined to be higher than the
8 estimate, the employer shall provide the additional voucher amount
9 immediately upon determining the correct percentage of permanent
10 disability. If the percentage of permanent disability is later
11 determined to be lower than the estimate, the employer shall
12 reissue the voucher in the correct amount and notify the employee
13 that any unused portion of the original voucher in excess of the
14 appropriate amount is no longer available.

15 (2) The employer shall notify the employee, in a manner
16 prescribed by the administrative director, of the determination of
17 the percentage of permanent disability consistent with this section,
18 and of any delay in determining the correct percentage of
19 permanent disability benefits.

20 ~~(d) This~~

21 (e) Except as provided in paragraph (2) of subdivision (a) and
22 subdivision (d), this section shall apply to injuries occurring on or
23 after January 1, 2004.

24 ~~SEC. 4.~~

25 SEC. 3. Section 4658.6 of the Labor Code is amended to read:

26 4658.6. The employer shall not be liable for the supplemental
27 job displacement benefit within 60 days of the disability becoming
28 permanent and stationary if the employer offers the injured
29 employee regular work, modified work, or alternative work in the
30 form and manner prescribed by the administrative director, lasting
31 for a period of at least 12 months.

32 SEC. 4. Section 2.5 of this bill incorporates amendments to
33 Section 4658.5 of the Labor Code proposed by both this bill and
34 AB 1636. It shall only become operative if (1) both bills are enacted
35 and become effective on or before January 1, 2008, (2) each bill
36 amends Section 4658.5 of the Labor Code, and (3) this bill is
37 enacted after AB 1636, in which case Section 2 of this bill shall
38 not become operative.

O