

ASSEMBLY BILL

No. 2423

Introduced by Assembly Members Niello and Solorio

February 19, 2010

An act to amend Section 62.5 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 2423, as introduced, Niello. Department of Industrial Relations: funds: employer surcharges: regulations.

Existing law establishes the Workers' Compensation Administration Revolving Fund, the Uninsured Employers Benefits Trust Fund, the Subsequent Injuries Benefits Trust Fund, and the Occupational Safety and Health Fund in the State Treasury and requires the Director of Industrial Relations to levy a separate surcharge upon all employers for purposes of deposit in those funds. Existing law requires the director to adopt reasonable regulations governing the manner of collection of the surcharges and exempts those regulations from the rulemaking provisions of the Administrative Procedure Act.

This bill would delete that exemption from the rulemaking provisions of the Administrative Procedure Act.

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

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

1 SECTION 1. Section 62.5 of the Labor Code is amended to
2 read:

1 62.5. (a) (1) The Workers' Compensation Administration
2 Revolving Fund is hereby created as a special account in the State
3 Treasury. ~~Money Moneys~~ in the fund may be expended by the
4 department, upon appropriation by the Legislature, for all of the
5 following purposes, and may not be used or borrowed for any other
6 purpose:

7 (A) For the administration of the workers' compensation
8 program set forth in this division and Division 4 (commencing
9 with Section 3200), other than the activities financed pursuant to
10 Section 3702.5.

11 (B) For the Return-to-Work Program set forth in Section 139.48.

12 (C) For the enforcement of the insurance coverage program
13 established and maintained by the Labor Commissioner pursuant
14 to Section 90.3.

15 (2) The fund shall consist of surcharges made pursuant to
16 paragraph (1) of subdivision (f).

17 (b) (1) The Uninsured Employers Benefits Trust Fund is hereby
18 created as a special trust fund account in the State Treasury, of
19 which the director is trustee, and its sources of funds are as
20 provided in paragraph (1) of subdivision (f). Notwithstanding
21 Section 13340 of the Government Code, the fund is continuously
22 appropriated for the payment of nonadministrative expenses of the
23 workers' compensation program for workers injured while
24 employed by uninsured employers in accordance with Article 2
25 (commencing with Section 3710) of Chapter 4 of Part 1 of Division
26 4, and shall not be used for any other purpose. All moneys collected
27 shall be retained in the trust fund until paid as benefits to workers
28 injured while employed by uninsured employers.
29 Nonadministrative expenses include audits and reports of services
30 prepared pursuant to subdivision (b) of Section 3716.1. The
31 surcharge amount for this fund shall be stated separately.

32 (2) Notwithstanding any other provision of law, all references
33 to the Uninsured Employers Fund shall mean the Uninsured
34 Employers Benefits Trust Fund.

35 (3) Notwithstanding paragraph (1), in the event that budgetary
36 restrictions or impasse prevent the timely payment of administrative
37 expenses from the Workers' Compensation Administration
38 Revolving Fund, those expenses shall be advanced from the
39 Uninsured Employers Benefits Trust Fund. Expense advances
40 made pursuant to this paragraph shall be reimbursed in full to the

1 Uninsured Employers Benefits Trust Fund upon enactment of the
2 annual Budget Act.

3 (4) Any moneys from penalties collected pursuant to Section
4 3722 as a result of the insurance coverage program established
5 under Section 90.3 shall be deposited in the State Treasury to the
6 credit of the Workers' Compensation Administration Revolving
7 Fund created under this section, to cover expenses incurred by the
8 director under the insurance coverage program. The amount of
9 any penalties in excess of payment of administrative expenses
10 incurred by the director for the insurance coverage program
11 established under Section 90.3 shall be deposited in the State
12 Treasury to the credit of the Uninsured Employers Benefits Trust
13 Fund for nonadministrative expenses, as prescribed in paragraph
14 (1), and notwithstanding paragraph (1), shall only be available
15 upon appropriation by the Legislature.

16 (c) (1) The Subsequent Injuries Benefits Trust Fund is hereby
17 created as a special trust fund account in the State Treasury, of
18 which the director is trustee, and its sources of funds are as
19 provided in paragraph (1) of subdivision (f). Notwithstanding
20 Section 13340 of the Government Code, the fund is continuously
21 appropriated for the nonadministrative expenses of the workers'
22 compensation program for workers who have suffered serious
23 injury and who are suffering from previous and serious permanent
24 disabilities or physical impairments, in accordance with Article 5
25 (commencing with Section 4751) of Chapter 2 of Part 2 of Division
26 4, and Section 4 of Article XIV of the California Constitution, and
27 shall not be used for any other purpose. All moneys collected shall
28 be retained in the trust fund until paid as benefits to workers who
29 have suffered serious injury and who are suffering from previous
30 and serious permanent disabilities or physical impairments.
31 Nonadministrative expenses include audits and reports of services
32 pursuant to subdivision (c) of Section 4755. The surcharge amount
33 for this fund shall be stated separately.

34 (2) Notwithstanding any other law, all references to the
35 Subsequent Injuries Fund shall mean the Subsequent Injuries
36 Benefits Trust Fund.

37 (3) Notwithstanding paragraph (1), in the event that budgetary
38 restrictions or impasse prevent the timely payment of administrative
39 expenses from the Workers' Compensation Administration
40 Revolving Fund, those expenses shall be advanced from the

1 Subsequent Injuries Benefits Trust Fund. Expense advances made
2 pursuant to this paragraph shall be reimbursed in full to the
3 Subsequent Injuries Benefits Trust Fund upon enactment of the
4 annual Budget Act.

5 (d) The Occupational Safety and Health Fund is hereby created
6 as a special account in the State Treasury. Moneys in the account
7 may be expended by the department, upon appropriation by the
8 Legislature, for support of the Division of Occupational Safety
9 and Health, the Occupational Safety and Health Standards Board,
10 and the Occupational Safety and Health Appeals Board, and the
11 activities these entities perform as set forth in this division, and
12 Division 5 (commencing with Section 6300).

13 (e) The Labor Enforcement and Compliance Fund is hereby
14 created as a special account in the State Treasury. Moneys in the
15 fund may be expended by the department, upon appropriation by
16 the Legislature, for the support of the activities that the Division
17 of Labor Standards Enforcement performs pursuant to this division
18 and Division 2 (commencing with Section 200), Division 3
19 (commencing with Section 2700), and Division 4 (commencing
20 with Section 3200). The fund shall consist of surcharges imposed
21 pursuant to paragraph (3) of subdivision (f).

22 (f) (1) Separate surcharges shall be levied by the director upon
23 all employers, as defined in Section 3300, for purposes of deposit
24 in the Workers' Compensation Administration Revolving Fund,
25 the Uninsured Employers Benefits Trust Fund, the Subsequent
26 Injuries Benefits Trust Fund, and the Occupational Safety and
27 Health Fund. The total amount of the surcharges shall be allocated
28 between self-insured employers and insured employers in
29 proportion to payroll respectively paid in the most recent year for
30 which payroll information is available. The director shall adopt
31 reasonable regulations governing the manner of collection of the
32 surcharges. The regulations shall require the surcharges to be paid
33 by self-insurers to be expressed as a percentage of indemnity paid
34 during the most recent year for which information is available,
35 and the surcharges to be paid by insured employers to be expressed
36 as a percentage of premium. In no event shall the surcharges paid
37 by insured employers be considered a premium for computation
38 of a gross premium tax or agents' commission. In no event shall
39 the total amount of the surcharges paid by insured and self-insured

1 employers exceed the amounts reasonably necessary to carry out
2 the purposes of this section.

3 (2) The surcharge levied by the director for the Occupational
4 Safety and Health Fund, pursuant to paragraph (1), shall not
5 generate revenues in excess of fifty-two million dollars
6 (\$52,000,000) on and after the 2009–10 fiscal year, adjusted for
7 each fiscal year as appropriate to reconcile any over/under
8 assessments from previous fiscal years pursuant to Sections 15606
9 and 15609 of Title 8 of the California Code of Regulations, and
10 may increase by not more than the state-local government deflator
11 each year thereafter through July 1, 2013, and, as appropriate, to
12 reconcile any over/under assessments from previous fiscal years.
13 For the 2013–14 fiscal year, the surcharge level shall return to the
14 level in place on June 30, 2009, adjusted for inflation based on the
15 state-local government deflator.

16 (3) A separate surcharge shall be levied by the director upon all
17 employers, as defined in Section 3300, for purposes of deposit in
18 the Labor Enforcement and Compliance Fund. The total amount
19 of the surcharges shall be allocated between employers in
20 proportion to payroll respectively paid in the most recent year for
21 which payroll information is available. The director shall adopt
22 reasonable regulations governing the manner of collection of the
23 surcharges. In no event shall the total amount of the surcharges
24 paid by employers exceed the amounts reasonably necessary to
25 carry out the purposes of this section.

26 (4) The surcharge levied by the director for the Labor
27 Enforcement and Compliance Fund shall not exceed thirty-seven
28 million dollars (\$37,000,000) in the 2009–10 fiscal year, adjusted
29 as appropriate to reconcile any over/under assessments from
30 previous fiscal years, and shall not be adjusted each year thereafter
31 by more than the state-local government deflator, and, as
32 appropriate, to reconcile any over/under assessments from previous
33 fiscal years pursuant to Sections 15606 and 15609 of Title 8 of the
34 California Code of Regulations.

35 ~~(5) The regulations adopted pursuant to paragraph (1) to (4),~~
36 ~~inclusive, shall be exempt from the rulemaking provisions of the~~
37 ~~Administrative Procedure Act (Chapter 3.5 (commencing with~~
38 ~~Section 11340) of Part 1 of Division 3 of Title 2 of the Government~~
39 ~~Code).~~

1 (g) On and after July 1, 2013, subdivision (e) and paragraphs
2 (2) to (4), inclusive, of subdivision (f) are inoperative, unless a
3 later enacted statute, that is enacted before July 1, 2013, deletes
4 or extends that date.

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