

Assembly Bill No. 2378

Passed the Assembly May 28, 2014

Chief Clerk of the Assembly

Passed the Senate August 21, 2014

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2014, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2378, Perea. Workers' compensation: temporary disability payments.

Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, to compensate an employee for injuries arising out of and in the course of his or her employment. Existing law requires that aggregate disability payments for a single injury occurring on or after certain dates be limited, as provided.

Existing law provides that whenever any member of the Department of Justice falling within the state peace officer/firefighter class is disabled by injury arising out of and in the course of his or her duties, he or she shall become entitled, regardless of his or her period of service with the Department of Justice to a leave of absence while so disabled without loss of salary, in lieu of disability payments under this chapter, for a period not exceeding one year. Existing law also provides that certain peace officers, firefighters, and other specified state and local public employees are entitled to a leave of absence without loss of salary while disabled by injury or illness arising out of and in the course of employment.

This bill would provide that the above-specified leaves of absence without loss of salary are payable in addition to the maximum aggregate disability payments for a single injury that is applicable to all workers. The bill would make these provisions applicable to all claims, regardless of the date of injury. The bill would also make related findings and declarations.

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

SECTION 1. The Legislature finds and declares all of the following:

(a) Under current law, the courts are compelled to liberally construe the workers' compensation statutes with the purpose of extending related benefits for the protection of workers injured in the course of their employment, so long as the intent of the Legislature, as expressed in a particular statute, is not supplanted.

(b) With the enactment of Assembly Bill 338 of the 2007–08 Regular Session (AB 338), the Legislature expressly intended to ameliorate what was then the unintended consequence of unfairly penalizing an injured employee who returned to work that resulted from the two-year limit that was placed on aggregate disability payments for certain single injuries causing temporary disability.

(c) As introduced, the clearly stated purpose of AB 338 was to alleviate the penalty to injured workers pursuant to Section 4656 of the Labor Code by increasing the maximum number of weeks of temporary disability payments for which an injured worker may be eligible, while also extending the time period of eligibility.

(d) In enacting AB 338, the Legislature adopted a consensus solution that more closely upholds the purpose of the workers' compensation system, which, by design, encourages and supports injured workers in their efforts to return to work.

(e) Article 6 (commencing with Section 4800) and Article 7 (commencing with Section 4850) of Chapter 2 of Part 2 of Division 4 of the Labor Code, both of which govern industrially injured firefighters and other local public safety officers, provide for a leave of absence for up to one year without a loss of salary in lieu of temporary disability payments or maintenance allowance payments while the public safety officer or firefighter is recovering from a disability arising out of and in the course of his or her duties.

(f) The Legislature, in enacting AB 338, did not intend to limit or reduce the amount of payments made to a public safety officer or firefighter during his or her period of temporary disability.

(g) In January 2013, California's Court of Appeal, First District, Division 4, issued a ruling in *County of Alameda v. Workers' Compensation Appeals Board (Knittel)* (2013) 213 Cal.App.4th 278, which linked the limitations on temporary disability indemnity payments established by Section 4656 of the Labor Code and the payments provided under Article 6 (commencing with Section 4800) and Article 7 (commencing with Section 4850) of Chapter 2 of Part 2 of Division 4 of the Labor Code.

(h) Knittel starkly contradicts a longstanding, prevailing authority on this issue, including several Workers' Compensation Appeals Board decisions, that determined that the leave of absence afforded under Article 6 (commencing with Section 4800) and Article 7 (commencing with Section 4850) of Chapter 2 of Part 2 of Division 4 of the Labor Code is not a temporary disability indemnity benefit, and, therefore does not count against an industrially injured public safety officer's allowable number of compensable weeks of temporary disability indemnity payments.

(i) In rendering Knittel, the court attributed this new interpretation aggregating both the temporary disability indemnity payments and the salary in lieu payments to public safety officers (Article 6 (commencing with Section 4800) and Article 7 (commencing with Section 4850) of Chapter 2 of Part 2 of Division 4 of the Labor Code) to the subtleties of the language changes found in AB 338.

(j) This interpretation has also disenfranchised and potentially created a disability bias against the small number of public safety officers and firefighters who suffer severe industrial injuries as a matter of course and rely upon the in lieu of salary payments in addition to the temporary disability indemnity afforded to all workers under the California system.

(k) It is imperative that the Legislature abrogate the holding in Knittel and restore the Legislature's intent to limit aggregate temporary disability indemnity payments under Section 4656 of the Labor Code for a single injury causing temporary disability without disturbing the in-lieu payments afforded under Article 6 (commencing with Section 4800) and Article 7 (commencing with Section 4850) of Chapter 2 of Part 2 of Division 4 of the Labor Code.

SEC. 2. Section 4656 of the Labor Code is amended to read:

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

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

(c) (1) Aggregate disability payments for a single injury occurring on or after April 19, 2004, causing temporary disability shall not extend for more than 104 compensable weeks within a period of two years from the date of commencement of temporary disability payment.

(2) Aggregate disability payments for a single injury occurring on or after January 1, 2008, causing temporary disability shall not extend for more than 104 compensable weeks within a period of five years from the date of injury.

(3) Notwithstanding paragraphs (1) and (2), for an employee who suffers from the following injuries or conditions, aggregate disability payments for a single injury occurring on or after April 19, 2004, causing temporary disability shall not extend for more than 240 compensable weeks within a period of five years from the date of the injury:

- (A) Acute and chronic hepatitis B.
- (B) Acute and chronic hepatitis C.
- (C) Amputations.
- (D) Severe burns.
- (E) Human immunodeficiency virus (HIV).
- (F) High-velocity eye injuries.
- (G) Chemical burns to the eyes.
- (H) Pulmonary fibrosis.
- (I) Chronic lung disease.

(d) (1) The employee benefits specified in Article 6 (commencing with Section 4800) and Article 7 (commencing with Section 4850), are payable in addition to the maximum aggregate disability payments established in this section. This subdivision applies to all claims, regardless of the date of injury.

(2) In enacting this subdivision, it is the intent of the Legislature to abrogate the holding in *County of Alameda v. Workers' Compensation Appeals Board (Knittel)* (2013) 213 Cal.App.4th 278.

Approved _____, 2014

Governor