

Introduced by Senator Mountjoy

February 20, 1998

An act to amend Section 3201.5 of the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

SB 2019, as introduced, Mountjoy. Workers' compensation.

Under existing law, a person injured in the course of employment is, in general, entitled to workers' compensation. Existing law provides that a collective bargaining between a private employer or groups of employers engaged in construction, construction maintenance, or activities limited to rock, sand, gravel, cement, and asphalt operations, heavy-duty mechanics, surveying, and construction inspection and a union that is the recognized or certified exclusive bargaining representative of employees may establish various things, including an alternative dispute resolution system governing disputes between employees and employers or their insurers that supplements or replaces all or part of those dispute resolution processes ordinarily applicable to workers' compensation. That collective bargaining agreement may also provide for the use of an agreed list of providers of medical treatment that may be the exclusive source of all medical treatment, the use of an agreed, limited list of qualified medical evaluators and agreed medical evaluators that may be the exclusive source of qualified medical evaluators and agreed medical evaluators, joint labor management safety committees, a light-duty, modified job or



return-to-work program, or a vocational rehabilitation or retraining program utilizing an agreed list of providers of rehabilitation services that may be the exclusive source of providers of rehabilitation services under this division.

This bill would permit agreements between those employers or groups of employers and their employees without the requirement that the agreement be part of a collective bargaining agreement.

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 3201.5 of the Labor Code is
2 amended to read:

3 3201.5. (a) Except as provided in subdivisions (b)
4 and (c), the Department of Industrial Relations and the
5 courts of this state shall recognize as valid and binding any
6 provision in a ~~collective bargaining~~ *an* agreement
7 between a private employer or groups of employers
8 engaged in construction, construction maintenance, or
9 activities limited to rock, sand, gravel, cement and
10 asphalt operations, heavy-duty mechanics, surveying,
11 and construction inspection and a ~~union that is the~~
12 ~~recognized or certified exclusive bargaining~~
13 ~~representative~~ *employees* that establishes any of the
14 following:

15 (1) An alternative dispute resolution system
16 governing disputes between employees and employers or
17 their insurers that supplements or replaces all or part of
18 those dispute resolution processes contained in this
19 division, including, but not limited to, mediation and
20 arbitration. Any system of arbitration shall provide that
21 the decision of the arbiter or board of arbitration is subject
22 to review by the appeals board in the same manner as
23 provided for reconsideration of a final order, decision, or
24 award made and filed by a workers' compensation judge
25 pursuant to the procedures set forth in Article 1
26 (commencing with Section 5900) of Chapter 7 of Part 4
27 of Division 4, and the court of appeals pursuant to the



1 procedures set forth in Article 2 (commencing with
2 Section 5950) of Chapter 7 of Part 4 of Division 4,
3 governing orders, decisions, or awards of the appeals
4 board. The findings of fact, award, order, or decision of
5 the arbitrator shall have the same force and effect as an
6 award, order, or decision of a workers' compensation
7 judge. Any provision for arbitration established pursuant
8 to this section shall not be subject to Sections 5270, 5270.5,
9 5271, 5272, 5273, 5275, and 5277.

10 (2) The use of an agreed list of providers of medical
11 treatment that may be the exclusive source of all medical
12 treatment provided under this division.

13 (3) The use of an agreed, limited list of qualified
14 medical evaluators and agreed medical evaluators that
15 may be the exclusive source of qualified medical
16 evaluators and agreed medical evaluators under this
17 division.

18 (4) Joint labor management safety committees.

19 (5) A light-duty, modified job or return-to-work
20 program.

21 (6) A vocational rehabilitation or retraining program
22 utilizing an agreed list of providers of rehabilitation
23 services that may be the exclusive source of providers of
24 rehabilitation services under this division.

25 (b) Nothing in this section shall allow a ~~collective~~
26 ~~bargaining~~ *an* agreement that diminishes the entitlement
27 of an employee to compensation payments for total or
28 partial disability, temporary disability, vocational
29 rehabilitation, or medical treatment fully paid by the
30 employer as otherwise provided in this division. The
31 portion of any agreement that violates this subdivision
32 shall be declared null and void.

33 (c) Subdivision (a) shall apply only to the following:

34 (1) An employer developing or projecting an annual
35 workers' compensation insurance premium, in
36 California, of two hundred fifty thousand dollars
37 (\$250,000) or more, or any employer that paid an annual
38 workers' compensation insurance premium, in
39 California, of two hundred fifty thousand dollars
40 (\$250,000) in at least one of the previous three years.



1 (2) Groups of employers engaged in a workers'
2 compensation safety group complying with Sections
3 11656.6 and 11656.7 of the Insurance Code, and
4 established pursuant to a joint labor management safety
5 committee or committees, which develops or projects
6 annual workers' compensation insurance premiums of
7 two million dollars (\$2,000,000) or more.

8 (3) Employers or groups of employers that are
9 self-insured in compliance with Section 3700 that would
10 have projected annual workers' compensation costs that
11 meet the requirements of, and that meet the other
12 requirements of, paragraph (1) in the case of employers,
13 or paragraph (2) in the case of groups of employers.

14 (4) Employers covered by an owner or general
15 contractor provided wrap-up insurance policy applicable
16 to a single construction site that develops workers'
17 compensation insurance premiums of two million dollars
18 (\$2,000,000) or more with respect to those employees
19 covered by that wrap-up insurance policy.

20 (d) Employers and labor representatives who meet
21 the eligibility requirements of this section shall be issued
22 a letter by the administrative director advising each
23 employer and labor representative that, based upon the
24 review of all documents and materials submitted as
25 required by the administrative director, each has met the
26 eligibility requirements of this section.

27 (e) The premium rate for a policy of insurance issued
28 pursuant to this section shall not be subject to the
29 requirements of Section 11732 or 11732.4 of the Insurance
30 Code.

31 (f) No employer may establish or continue a program
32 established under this section until it has provided the
33 administrative director with all of the following:

34 (1) Upon its original application and whenever it is
35 renegotiated thereafter, a copy of the ~~collective~~
36 ~~bargaining~~ agreement and the approximate number of
37 employees who will be covered thereby.

38 (2) Upon its original application and annually
39 thereafter, a valid and active license where that license
40 is required by law as a condition of doing business in the



1 state within the industries set forth in subdivision (a) of
2 Section 3201.5.

3 (3) Upon its original application and annually
4 thereafter, a statement signed under penalty of perjury,
5 that no action has been taken by any administrative
6 agency or court of the United States to invalidate the
7 ~~collective bargaining~~ agreement.

8 (4) The name, address, and telephone number of the
9 contact person of the employer.

10 (5) Any other information that the administrative
11 director deems necessary to further the purposes of this
12 section.

13 (g) *If employees who would be subject to the*
14 *agreement are represented by the union, the agreement*
15 *shall be between the employer or group of employers and*
16 *the union that is the recognized or certified exclusive*
17 *bargaining representative of the employees.*

18 (h) No collective bargaining representative may
19 establish or continue to participate in a program
20 established under this section unless all of the following
21 requirements are met:

22 (1) Upon its original application and annually
23 thereafter, it has provided to the administrative director
24 a copy of its most recent LM-2 or LM-3 filing with the
25 United States Department of Labor, along with a
26 statement, signed under penalty of perjury, that the
27 document is a true and correct copy.

28 (2) It has provided to the administrative director the
29 name, address, and telephone number of the contact
30 person or persons of the collective bargaining
31 representative or representatives.

32 ~~(h)~~

33 (i) Commencing July 1, 1995, and annually thereafter,
34 the Division of Workers' Compensation shall report to the
35 Director of the Department of Industrial Relations the
36 number of ~~collective bargaining~~ agreements received
37 and the number of employees covered by these
38 agreements.

39 ~~(i)~~



1 (j) By June 30, 1996, and annually thereafter, the
2 Administrative Director of the Division of Workers'
3 Compensation shall prepare and notify Members of the
4 Legislature that a report authorized by this section is
5 available upon request. The report based upon aggregate
6 data shall include the following:

7 (1) Person hours and payroll covered by agreements
8 filed.

9 (2) The number of claims filed.

10 (3) The average cost per claim shall be reported by
11 cost components whenever practicable.

12 (4) The number of litigated claims, including the
13 number of claims submitted to mediation, the appeals
14 board, or the court of appeals.

15 (5) The number of contested claims resolved prior to
16 arbitration.

17 (6) The projected incurred costs and actual costs of
18 claims.

19 (7) Safety history.

20 (8) The number of workers participating in vocational
21 rehabilitation.

22 (9) The number of workers participating in light-duty
23 programs.

24 The division shall have the authority to require those
25 employers and groups of employers listed in subdivision
26 (c) to provide the data listed above.

27 (j)

28 (k) The data obtained by the administrative director
29 pursuant to this section shall be confidential and not
30 subject to public disclosure under any law of this state.

31 However, the Division of Workers' Compensation shall
32 create derivative works pursuant to subdivisions ~~(h) and~~

33 (i) and (j) based on the ~~collective bargaining~~ agreements
34 and data. Those derivative works shall not be
35 confidential, but shall be public. On a monthly basis the
36 administrative director shall make available an updated
37 list of employers and unions entering into collective



1 bargaining agreements containing provisions authorized
2 by this section.

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