Workers’ Comp. 102

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DISCLAIMER

The content of this presentation is NOT intended to be used as a substitute for specific legal advice or opinions.

The rights and liabilities of the parties will vary depending on facts. Also, new statutes, cases and regulations occur regularly so check with your attorney.
At the 2013 conference, in Workers’ Comp 101, these panelists gave an overview of the legislative and procedural structure of WC, compared the WC system to the civil tort system, and they reviewed the benefits available through comp.

You can find a link to that program on the PARMA website at:

EMPLOYMENT

- Who is an Employee?
- Presumption of Employment
- Independent Contractor
- General and Special Employers
- Volunteers
- Prisoners
- Uninsured Employers
- Neither an Employee nor an Employer
Who Is An Employee?

- Every person in the service of an employer under any appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed...
- Lots more! See Labor Code Section 3351
Presumption of Employment:

- Any person rendering service for another, other than as an independent contractor, or unless expressly excluded herein, is presumed to be an employee.
- See Labor Code Section 3357
Independent Contractor

"Independent contractor" means any person who renders service for a specified recompense for a specified result, under the control of his principal as to the result of his work only and not as to the means by which such result is accomplished.

See Labor Code Section 3353
Independent Contractor

- The principal test of an employment relationship is whether the person to whom service is rendered has the right to control the manner and means of accomplishing the result desired.

- Strong evidence in support of an employment relationship is the right to discharge at will, without cause.
Independent Contractor

- a) distinct occupation or business;
- b) work done under the direction of the principal or by a specialist without supervision;
- c) higher skill required in the particular occupation;
- d) supplies his/her own instruments, tools, and place of work;
- e) length of time for which the services are to be performed;
- f) method of payment, whether by the time or by the job;
- g) whether or not the work is a part of the regular business of the principal; and
- h) whether or not the parties believe they are creating the relationship of employer-employee.

General Employers and Special Employers

- Employees may have more than one employer—think Kelly Services;

- Liability for WC follows paycheck [general employer]

- [special employer generally has no liability for WC or civil damages unless by contract].
  
Volunteers

- Rule for public agencies ~ LC3365
- A person who is designated and authorized by the governing body of the agency or its designee
- Who performs voluntary service without pay
- May be deemed an employee if the governing agency passes a resolution
- While performing such service.
Volunteers
“Voluntary service without pay”

- Services performed by any person, who receives no remuneration other than payment of meals, transportation, lodging, or reimbursement for incidental expenses.

- Recreation and park districts - Labor Code Section 3361.5

- Volunteer firefighters - Labor Code Section 3361

- Lots of special rules for volunteers.
Prisoners

- Each inmate of a state penal or correctional institution shall be entitled to the workers' compensation benefits provided by this division for injury arising out of and in the course of assigned employment and for the death of the inmate if the injury proximately causes death, subject to several conditions.
- Labor code Section 3351(e)
- Where prisoners are required to work as part of their sentence they may not be covered for workers’ compensation.
Uninsured Employers

- If any employer fails to secure the payment of compensation, any injured employee or his dependents may bring an action at law against such employer for damages, as if this division did not apply.
- Huge penalties and fines against ER
- UEF involvement
  - Labor Code Section 3706
Other Concerns

- Presumption of negligence
- No comparative fault—LC 3708
Who is Not an Employer or Employee?

- Sponsors of bowling teams (not ER)
- Family members
- Ski patrol
- Ski lift operators skiing on their own time
- Student athletes
- Some referees at sporting events
- Household Employees (with exceptions)
CONDITIONS OF COMPENSATION

- Exclusive Remedy
- No Fault
- AOE/COE
Conditions of Compensation: AOE/COE

- Liability for the compensation provided by this division, in lieu of any other liability whatsoever to any person ... shall, without regard to negligence, exist against an employer for any injury sustained by his or her employees arising out of and in the course of the employment and for the death of any employee if the injury proximately causes death, in those cases where the following conditions of compensation concur:
  - LC3600(a)
  - Exceptions: Sections 3602, 3706, and 4558.
Conditions of Compensation: AOE/COE

- Where, at the time of the injury, both the employer and the employee are subject to the compensation provisions of this division.
  - Labor Code Section 3600(a)(1)
Conditions of Compensation: AOE/COE

- Where, at the time of the injury, the employee is performing service growing out of and incidental to his or her employment and is acting within the course of his or her employment.
- Labor Code Section 3600(a)(2)
Conditions of Compensation: AOE/COE

- No fault system:
  - Where the injury is proximately caused by the employment, either with or without negligence.
  - Labor Code Section 3600(a)(3)
Proximate Cause

- Traditional meaning: The loss is the result of one event - also known as direct cause. The result of a direct action that sets in motion a chain of events that is unbroken and causes damage, injury and destruction with no other interference.


- BUT in WC: Apportionment of permanent disability shall be based on causation. (Labor Code Section 4663)
OTHER AOE/COE CONCEPTS

- AOE/COE Issues and Defenses
  - Voluntary Intoxication
  - Self-Inflicted Injuries
  - Drug overdose and Suicide
  - Irresistible Impulse
  - Initial Physical Aggressor
  - Felony Conviction
  - Off-Duty Recreational Activity
  - Post-Termination Cases
OTHER AOE/COE CONCEPTS

- Psychiatric Cases
- Death Under Mysterious Circumstances
- Horseplay / Skylarking
- Personal Comfort Doctrine
- Normal Bodily Movement
- Compensable Consequences
Voluntary Intoxication

- Where the injury is not caused by the intoxication, by alcohol or the unlawful use of a controlled substance, of the injured employee.
  - Labor Code Section 3600(a)(4)

- Note: Insurer/ER’s burden to prove intoxication was the cause of the injury.
  - For affirmative defenses, see Labor Code Section 5705
Voluntary Intoxication

- Where the employer can show the employee’s intoxication caused his/her injury the claim is not compensable.
  - Eagles Home Assoc’n v Ind. Acci. Com. (Leger), (1934) 140 Cal. App. 646. (Facts)

- ER liable for EE’s death where alcoholic beverages were provided at company Christmas party.
Self-Inflicted Injuries

- Where the injury is not intentionally self-inflicted.
  - Labor Code Section 3600(a)(5)
  - Test: It is not whether the action was intentional, but whether the worker intended to cause injury to him/herself.
Drug Overdoses and Suicide

- Where the employee has not willfully and deliberately caused his or her own death.
- Labor Code Section 3600(a)(6)
Drug Overdose

- Employee died from an overdose caused by a combination of sleep medication and non-industrial pain medication. The AME opinion did not support that the EE took sleep medication for his industrial injury.

- Compensable or not?

- Not compensable – the test was whether the overdose was due to industrial medications.

- **South Coast Framing Inc. v WCAB** – WCAB No. ADJ7324566: Court of Appeal 4th District, (unpublished decision cited in the 12/13 CWCR at page 268).
Suicide

- Substantial medical evidence showed EE intent in overdosing with medications prescribed for her industrial injury was to gain attention via being “rescued.”
- Compensable or not?
- Compensable because there was no evidence showing EE intended to actually kill herself.
  - *San Bernardino County Superintendent of Schools v WCAB (Satterly) (1998) 63 Cal. Comp Cases 344 (writ denied).*
Suicide
Irresistible Impulse Exception

- Once it has been established that the employee's mental state was caused by the work-related injury, the test is whether the decedent had the mental capacity to resist the suicidal impulse.

- See also Hanna Section 4.22[2]
Irresistible Impulse
Examples - Employee Wins

- EE’s industrial psychiatric medications were reduced right before suicide, putting him in an unstable mental state such that he could not resist the impulse to commit suicide.
Irresistible Impulse
Examples - Employer Wins

- EE’s overdose was precipitated by a fight with her boyfriend so the court found her suicide was intentional and not due to irresistible impulse.
AOE/COE
Initial Physical Aggressor

Where the injury does not arise out of an altercation in which the injured employee is the initial physical aggressor.

Labor Code Section 3600(a)(7)
Initial Physical Aggressor
Example

- Employee (Mathews) uttered an obscene statement to his coworker and advanced towards coworker with clenched fists. The coworker, fearing for his safety, threw a rock at the EE striking him in the forehead. Employee died as a result of this injury.

- Q: Is the deceased employee’s case compensable?
  - Not compensable:
    - Employee was the initial physical aggressor because even though he was not the first to physically strike the court held that under appropriate circumstances, clenching a fist or even aiming a gun may be sufficient to convey a real, present and apparent threat of physical injury. In other words: one can be an "initial physical aggressor" within the meaning of this statute without committing a battery.

Felony Conviction

- Where the injury is not caused by the commission of a felony, or a crime which is punishable as specified in subdivision (b) of Section 17 of the Penal Code, by the injured employee, for which he or she has been convicted.
- Labor Code Section 3600 (a)(8)
- Burden of proof on the ER to show that the commission of the felony caused the accident.
Felony Conviction Example

- Employee, driver, was on an assigned run for Employer when charged with speeding, crossing a double solid centerline of the highway, and non-felony reckless driving. Although no actual accident occurred, only a near accident, Employee later filed a psyche claim arising out of this incident.

- Compensable or not?
  - Compensable. The test was whether the felonious act takes Employee outside the employment relationship (AOE/COE!)
Off-Duty Recreational Activities

- Where the injury does not arise out of voluntary participation in any off-duty recreational, social, or athletic activity not constituting part of the employee's work-related duties, except where these activities are a reasonable expectancy of, or are expressly or impliedly required by, the employment.

- ERs must keep posted in a conspicuous place(s) a notice advising employees of this, but failure of the ER to post the notice shall not constitute an expression of intent to waive the provisions of this subdivision.

Labor Code Section 3600(a)(9)
Off-Duty Recreational Activities

- Marilyn (EE) was hurt playing the company sponsored softball game. She was not required to participate but felt obligated to do so.

- Compensable?
  - Test: Whether the employee subjectively believes participation is expected by the employer AND whether that belief is reasonable under the circumstances.
  - EE’s claim was found compensable.

In non-psychiatric claims where the claim for compensation is filed after notice of termination or layoff, including voluntary layoff, and the claim is for an injury occurring prior to the time of notice of termination or layoff, no compensation shall be paid unless...
Post-Termination Claims Exceptions

EE must demonstrate one of these exceptions applies by a preponderance of the evidence:

(A) The ER has notice of the injury, as provided under Chapter 2 (commencing with Section 5400), prior to the notice of termination or layoff.

(B) The EE’s medical records, existing prior to the notice of termination or layoff, contain evidence of the injury.

(C) The date of injury, as specified in Section 5411, is after the date of the notice of termination or layoff, but prior to the effective date of the termination or layoff.

(D) The date of injury, as specified in Section 5412, is after the date of the notice of termination or layoff.
Post-Termination Claims

The post-termination defense has been upheld where first notice of injury provided during an exit interview.

**Ramon Macias v Southwire Corp.** (2012)  
W.C.A.B. No. ADJ7257085 (Panel decision).
Psychiatric Cases

- Six months employment required **unless** injury is *both* sudden and extraordinary:
  - **Examples:**
    - Fruit picker falling off ladder—*not*
    - Laundress getting burned by steam—*not*
    - Having rack of lumber fall at Home Depot—*is*
    - Jack-knife truck in storm for driver—*not*
    - Construction wall collapsing—*is*
    - Falling out of tree for a lumberjack—*might be*
    - Robbery at gun point—*might be*. (Still needs substantial causation)
  - **Note:** 6 months of employment does not need to be continuous.
  - **Labor Code Section 3208.3**
Psychiatric Cases

- Actual events of employment required
  - The psychiatric condition must be predominantly caused by (ie: at least 51% due to) actual events of employment.
  - Labor Code Section 3208.3; Sonoma State
Psychiatric Cases

- Non-Discriminatory, good-faith personnel actions
  - ER has the burden of proof
  - But, GFP actions defense requires lower causation versus other psyche cases (good for ER asserting the defense).
  - “Substantial” instead of “predominant”
    - Substantial = 35-40%
Psychiatric Cases

- Argue when the medical evidence is close!
- The 3rd District court of appeal held in 2013 that the issue of causation is a legal fact to be determined by the judge. The medical evidence is only part of the equation. (also held: EE’s feelings of not being supported by supervisors did not constitute “personnel actions.” Feelings are reactions to facts.
  - County of Sacramento v WCAB (Brooks), 78 Cal. Comp. Cases 379 (2013) (3rd District Court of Appeal, Published)
Death Under Mysterious Circumstances

- Just because death happens at work does not establish employer liability.
- Deceased employee’s dependents must prove industrial causation.
  - *Hanna* Section 4.05[2][b] and [c].
- Low standard for EE: If evidence merely suggests a work connection, then the burden shifts to employer to negate industrial causation where death occurs at work. (*res ipsa loquitur*)
Horseplay/Skylarking

- Generally not compensable unless condoned by employer.

- A non-participant’s injury is compensable.

- Hanna Section 4.51[3][c]
Horseplay/Skylarking Example

- On a company trip, John dove from the third floor into a swimming pool in response to a $20 bet from a co-worker. While others had dived from the first floor, no one had ever dived from the third. He was injured and later died.

- Compensable?
Horseplay/Skylarking
Example cont’d

- Not compensable. “It could not be seriously argued that an employee who dies as a result of playing "Russian Roulette" with fellow employees even while on the employer's premises, was, at the time, in the scope of his employment.

- Such conduct is **beyond reason and not what any employer could reasonably contemplate** -- neither is diving from a height of four stories into an ordinary swimming pool.”

Personal Comfort Doctrine

- Injuries are generally compensable if there is an employment *benefit* to the employer.

- Purely personal activities are not compensable.

- Time and place of injury are guides to reasonableness.

- *Hanna* Section 4.138.
Personal Comfort Doctrine Example

- Rich is a firefighter who is assigned to Catalina Island. While at home on the island, he fell off a ladder while trimming his wisteria. Local residents know he’s a firefighter and sometimes come to his house to report fires. He keeps the wisteria trimmed to make it easier for residents to approach his house.
  - Compensable?
Personal Comfort Doctrine
Answer

- The claim was found compensable because this activity benefitted the employer.

- Benefit? The activity was felt to aid local residents in reporting fires.

Normal Bodily Movements

- Technically, normal bodily movements are not compensable, but most injuries are found to be compensable as there is usually a case to be made that something about the employment relationship was a factor in the injury.
- Note: catching a cold at work is not compensable unless there is a special risk.
- *Hanna* Section 4.91.
Compensable Consequences

- Further injury results from the original injury
  - Eg: EE strains his left knee and while in treatment has to put more pressure on the right knee to support his body weight. If the right knee becomes strained/injured that is a compensable consequence of the original left knee injury.

- For DOI on/after 1/1/13: no additional PD for sleep, psyche or sexual dysfunction per SB863. (Treatment may still be required) LC4660.1(c)(1)

- Note: This is where a lot of cases get very expensive!
Compensable Consequences

- Typical cases:
  - Car accidents on way to and from doctor appointments [but not personal travel to WCAB hearings or appointments with applicant’s lawyers];
  - Reactions to medications;
  - Falling while going to get medications;
  - Exercising as a form of physical therapy;
  - Opposite body part injured due to overuse necessitated by first injury;
  - Knee “gives out” resulting in further injury;
Compensable Consequences

- Not-so-typical cases (but still compensable):
  - Getting hit by car while a pedestrian because EE misjudged time to cross street due to effects of prior industrial injury.
  - Cutting off finger with saw caused by vision problems from prior industrial injury.

- *Hanna Section 4.94*
GOING & COMING RULE
GOING & COMING RULE

- General Rule
- Commuting
- Special Mission
- Commercial Travelers
- Bunkhouse Rule
- Special Risks, Left Turn Exception
- Extension of Employer Premises
- Employer-Required Vehicle
Going and Coming

General Rule

- The going and coming rule “precludes compensation for injury suffered during the course of a local commute to a fixed place of business at fixed hours in the absence of exceptional circumstances.”

- In other words, while en route to or from work, an employee is not considered as being on the job, (i.e., is not in the course of employment.)
  - See also Herlick, 1-8 Herlick, California Workers' Compensation Handbook section 8.11, and Hanna 4.150.
Going and Coming Rule: Commuting

- If ER pays EE to drive to work it’s probably compensable.
  - Injuries during participation in an alternative commute programs are not compensable.
    - Labor Code section 3600.8
- Is the trip an ordinary local commute?
  - TEST: whether or not the trip involves an incidental benefit to the employer, not common to commute trips by ordinary members of the work force.
- Compensation/salary paid during commute may render injury during commute compensable, but simple reimbursement for costs of a commute will not.
- Hanna 4.151.
Going and Coming Rule: Special Mission

- Be careful how you use your employees!

- An injury suffered by an EE during their regular commute is compensable if EE was also performing a special mission for the ER.
Going and Coming Rule: Special Mission Examples

- Boss asks EE to come in on a Saturday to collate a key report – compensable as a special mission.

- Boss asks EE to go to his house and feed his dogs over her lunch hour – compensable as a special mission.

- WC Defense attorney slips and falls while putting files back into her car after returning home from a WCAB appearance…Compensable?
Going and Coming Rule: Special Mission Examples

- Employer, a WC defense law firm, provided Applicant defense attorney with a car allowance and a gas card and a Blackberry to be used for office-related telephone calls, texting, and e-mails.
- Applicant was carrying the Blackberry when she fell.
- The day before the fall, Applicant made an afternoon appearance at the Marina Del Rey WCAB District Office and from there went directly home.
- The Marina Del Rey WCJ had ordered Applicant to file and serve the Minutes of Hearing from that day’s proceedings, and those Minutes, in addition to other documents, were in the banker’s box Applicant was carrying when she fell.
Going and Coming Rule: Special Mission Examples

- Not compensable
  - The act of bringing home the files and carrying them to/from her car was not a special mission, but instead was purely a matter of convenience for the employee. *Gellman v WCAB* (2013) 78 Cal. Comp. Cases 236 (writ denied).

- See also *Hanna* 4.157.
Going and Coming Rule: Commercial Travelers

- As long as the EE’s trip is necessitated *in part* by the employment, the dual existence of a personal reason for engaging in the injurious activity does not take the employee out of the course of employment.

- However, if the injury occurs during a personal activity that is of no benefit to the employer it may not be compensable.
  - EE had a heart attack while traveling for work and dies from a bacterial infection.
    - *Hanna* 4.117
Going and Coming Rule: Bunkhouse Rule

“When the employer provides the employee with a place to live as part of the employment contract, the living place becomes part of the employer’s premises subject to the same rules of compensability for injuries as the portion of the premises where the employee works.”

EE (Park Ranger) had compensable injury while residing on his employer's premises and engaged in an activity that was incidental to his employment with the State.


- *Hanna* 4.62
Going and Coming Rule: Special Risk Exception

- Two-pronged test for the special risk exception to apply:
  
  - (1) if "but for" the employment the employee would not have been at the location where the injury occurred
  - and
  - (2) if "the risk" is distinctive in nature or quantitatively greater than risks common to the public.

- Hanna 4.156.
Going and Coming Rule: Special Risk Exception

- Due to location of parking area, Employees were forced to jaywalk to get from parking area to workplace entrance. ER was aware of and condoned jaywalking. Since applicant would routinely jaywalk to get to workplace entrance when she parked in ER’s north lot or the adjacent road, which had limited purpose and use, the EE’s risk was greater than that of general public. Compensable.

- Elba Capitulo v Providence Holy Cross Medical Center (2008) W.C.A.B. No. ADJ 1801681 (Panel decision)
Going and Coming Rule: Special Risk Exception

- EE was struck and killed by a passing motorist while walking from a public parking space to the ER’s premises. This time it was held that the special risk exception did not apply because in this case it was a risk that the public is subject to daily and nothing indicated that the deceased was exposed to a greater risk from motorists than was anyone else on the street that morning. Not Compensable.

Going and Coming Rule: Left Turn Exception

- Injury sustained while making a left turn onto the employer's premises from a public street in front of oncoming traffic is compensable.
- The public is not generally exposed to the risk of making a left turn at this location whereas Employee was required to endure the particular risk of making a left turn in order to reach the employer premises.
  - Greydanus v IAC (Basterretche) (1965) 63 Cal. 2d 490; 30 Cal. Comp. Cases 376
  - Hanna 4.156[3]
Going and Coming Rule: Extension of Employer Premises

- Employee parking lots, areas of reasonable access and egress, and streets and sidewalks adjacent to the premises are generally considered within an "extended zone of employment."

- *Hanna 4.152[3]*
Going and Coming Rule: Employer Required Vehicle

- Supreme Court case held that when Employer required employee Hinojosa to use a car for work, the Employer derived a benefit and thereby placed an extraordinary requirement upon the Employee, re-establishing the employment relationship in the case of transit.
  - Hinojosa v. WCAB (1972) 8 Cal. 3d 150, 37 Cal. Comp. Cases 734.
Going and Coming Rule: Employer Required Vehicle

- Create and adhere to company policy regarding use of company vehicle!

- Where availability of ER’s car had become an expectation, the injury sustained while EE was running errands was found AOE/COE.
APPORIONMENT
APPORTIONMENT

- Leading Cases
- What may not be apportioned?
- What can we apportion to?
- “Other Factors”
- Prior Awards
Apportionment: Leading Cases


Benefits Not Subject to Apportionment

- **Temporary Disability:** *Granado v. WCAB* (1968) 69 Cal. 2d 399, 33 Cal. Comp. Cases 647
- **Medical Treatment:** See *Granado* re: non-apportionability
  - Also, ER may have to treat non-industrial conditions in order to cure/relieve.
    - *Braewood Convalescent Hospital v. WCAB (Bolton)* (1983) 34 Cal.3d 159, 48 Cal. Comp. Cases 165. Applicant with life-long obesity should have weight loss program to relieve from effects of back injury.
- **Death benefits:** Any industrial causation is enough.
Apportionment: Other Factors

- “Other factors”: Labor Code Section 4663:
  - **Causation**: Labor Code Section 4663(a) Apportionment of permanent disability shall be based on causation.
  - Broad scope: just about anything the ER can prove via substantial medical evidence.
  - In order for a physician's report to be considered complete on the issue of permanent disability, the report must include an apportionment determination. (LC4663(c)).
Apportionment: Pre- and Post-Injury Disability

- A physician shall make an apportionment determination by finding:
  - The approximate percentage of the permanent disability caused by the direct result of injury arising out of and occurring in the course of employment and
  - The approximate percentage of the permanent disability caused by other factors both before and subsequent to the industrial injury, including prior industrial injuries...

- LC4663(c)
Apportionment

- Retroactive prophylactic restrictions are now allowed to be considered for apportionment purposes.

- What can you prove to the doctor to make his report substantial evidence?
Apportionment: Prior Awards (LC4664)

- If the applicant has received a prior award of permanent disability, it shall be conclusively presumed that the prior permanent disability exists at the time of any subsequent industrial injury.

- This presumption is a presumption affecting the burden of proof. Generally, the ER must prove this.
  - Labor Code Section 4664(b)
Apportionment: Impact in Safety Cases

- Apportionment rules may not be applied to disability in safety officer presumption cases.

- “Anti-Attribution Clause”
  - Labor Code Section 4663(e).
ENHANCED BENEFITS
ENHANCED BENEFITS

- Serious and Willful Misconduct
  - Of the Employee
  - Of the Employer
- Labor Code Section 132a / Discrimination
- Special Rules for Public Safety
- Life Pensions, COLA’s, and SAWW Impact
- Death Benefits for Dependents
- Penalties
- Subsequent Injuries Benefit Trust Fund
Serious and Willful Misconduct
Misconduct of the EE

- May result in *reduction* of EE’s compensation
- Compensation otherwise recoverable shall be reduced one-half.
- Exceptions (Labor Code Section 4551):
  - Where the injury results in death.
  - Where the injured EE is under 16 years of age at the time of injury.
  - Permanent disability of 70 percent or more.
Serious and Willful Misconduct of the EE cont’d

- Do not reduce benefits until you have an award / finding of the EE’s misconduct!
- The reduction of compensation because of the serious and willful misconduct of an employee is not enforceable, valid, or binding in any respect until the appeals board has so determined by its findings and award as provided in Chapter 6 of Part 4 of this division.
- Labor Code Section 4552
Serious and Willful Misconduct of the ER

- May result in an increase of compensation to the EE. Labor Code Section 4553

- May include failure to comply with a safety order of the Division of Occupational Safety and Health, with reference to the safety of places of employment.

- Note: S&W cases extremely difficult to prove. Even gross negligence not enough. Sometimes the standard is stated as “quasi-criminal.”
Serious and Willful Misconduct of the ER

- The amount of compensation otherwise recoverable shall be increased one-half, together with costs and expenses not to exceed two hundred fifty dollars ($250), where the employee is injured by reason of the serious and willful misconduct of the “Employer.”
Serious and Willful Misconduct: “Employer” Defined

- Employer may be any of the following:
  - The employer, or his managing representative.
  - If the employer is a partnership, on the part of one of the partners or a managing representative or general superintendent thereof.
  - If the employer is a corporation, on the part of an executive, managing officer, or general superintendent thereof.

- Labor Code Section 4553
Labor Code Section 132a: Discrimination

- It is the declared policy of this state that there should not be discrimination against workers who are injured in the course and scope of their employment.
- May apply where EE not injured.
- Applies to those cases where EE has made known their intention to pursue WC.
- Applies to EE’s who testify.
- Not an insurable offense.
Labor Code Section 132a: Discrimination

- Consequences of a 132a Finding against the Employer:
  - Misdemeanor;
  - One-half compensation, up to $10,000;
  - Reinstatement, if EE was terminated;
  - Other lost benefits may need to be restored
Enhanced Benefits: Safety Officers

- Labor Code 4850 benefits
  - One year of indemnity at full pay, plus additional TTD indemnity subject to LC4656
    - **Knittel decision**: One year of 4850 counts towards the TTD limitations in Labor Code Section 4656.
- Labor Code 3212 Presumptions, including:
  - Cancer
  - Heart trouble
  - MRSA, pneumonia
  - Hernia
  - “Gun-belt”
  - Etc.
Enhanced Benefits: Indemnity

- Life Pensions where permanent disability rating is 70% or higher
- Cost of Living Adjustments (COLA)
  - Rate generally increases every year based on Statutory average weekly wages
  - COLA commences only after regular PD benefits are paid.
  - Baker v. WCAB (2011) 52 Cal.4th, 76 Cal. Comp. Cases 701

- Labor Code Section 4659:
Penalties

Delayed Compensation

- Unreasonable delay/refusal to pay compensation timely
  - Does not require an Award to have issued
  - Amount actually delayed/refused unreasonably subject to increase up to 25% (or up to $10,000), whichever is less.
  - “Appeals board shall use its discretion to accomplish a fair balance and substantial justice between the parties.”
- Labor Code Section 5814(a)
- Labor Code Section 5814.5: Attorneys fees may be owed
Penalties
Delayed Compensation, cont’d

- It does not matter whether EE or ER discovers the delay

- ER has 90 days from date of discovery to pay a self-imposed penalty (10% of delayed amount) along with the amount previously delayed/refused.

- If ER properly self-imposes the penalty then 10% is the max penalty on that delayed benefit.
Penalties
Delayed Compensation, cont’d

- When benefits are unreasonably delayed or refused after issuance of award, the appeals board **shall**, **in addition** to increasing the order/decision/award pursuant to Section 5814, award reasonable attorneys’ fees incurred in enforcing the payment of compensation awarded.

- Labor Code Section 5814.5
Enhanced Benefits: SIBTF

Subsequent Injuries Benefit Trust Fund

- (1) EE gets award of 70% permanent partial disability
- (2) EE later has another injury causing additional permanent disability above the prior awarded level.
- Rules (see next slide)
- Labor Code Section 4751.
Enhanced Benefits: SIBTF

- Either:
  (a) Opposite arm, foot, leg, or eye now affected by 5% or more:
    “the previous disability or impairment affected a hand, an arm, a foot, a leg, or an eye, and the permanent disability resulting from the subsequent injury affects the opposite and corresponding member, and such latter permanent disability, when considered alone and without regard to, or adjustment for, the occupation or age of the employee, is equal to 5 percent or more of the final rating;” or

  (b) Injury #2 rates at least 35% by itself:
    “the permanent disability resulting from the subsequent injury, when considered alone and without regard to or adjustment for the occupation or the age of the employee, is equal to 35 percent or more of the final rating.”
Questions?

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