

Overview of California Workers' Compensation From Injury to Claim Resolution

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The California

Workers' Compensation System-1

- Calif. Constitution; Article XIV; Section 4:
 - “The Legislature is hereby expressly vested with plenary power...to create, and enforce a complete system of workers' compensation...”
 - “...to that end that the administration of such legislation shall accomplish substantial justice in all cases expeditiously, inexpensively, and without encumbrance of any character...”
- The “Bargain”: Provides workers a trade off of no-fault liability and smaller, but more certain benefits, in exchange for giving up traditional tort remedies
 - See *Shoemaker v. Myers* (1990) 52 Cal.3d 1 and *Charles J. Vacanti, M.D., Inc. v. State Compensation Insurance Fund* (2001) 24 Cal.4th 800

The California

Workers' Compensation System-2

- Broad definition of “employee”-- LC 3351;
- Presumption of employment status for work performed -
- LC 3357
- Requirement of WC insurance or state authorized self- insurance -- LC 3700
- Severe consequences for lack of insurance
 - LC 3706-09 [tort liability with no employee fault];
 - 10% penalty—LC 4554;
 - Uninsured Employers Benefits Trust Fund remedy against employer—LC 3716----all this plus regular WC benefits LC 3715

Who is involved in Workers' Compensation Claims?

- Injured worker
- Employer
- Insurance carrier or self-insured employers and their TPA
- Excess Insurers and their pools
- Attorneys
- Medical treatment providers and evaluators
- Judicial officers
- State employees from Division of Workers' Compensation
- Other (ie: UR / IMR / VR professionals)

Workers' Comp vs. Civil Tort-1

Workers' Comp

- ✓ Court of special jurisdiction:
workers' Compensation Appeals Board [WCAB]
- ✓ No-Fault system
- ✓ No jury
- ✓ Judge is civil servant who tests for job and is selected from eligible list

Civil

- ✓ General Jurisdiction: Superior Court
- ✓ Fault based system
- ✓ Jury
- ✓ Judge elected or appointed by Governor

Workers' Comp vs. Civil Tort-2

Workers' Comp

- ✓ Largely document-based evidence
- ✓ No damages for pain and suffering
- ✓ Special legislatively enumerated benefits only
- ✓ Informal pleadings and procedures: LC 5708,5709

Civil

- ✓ Largely live evidence
- ✓ Special damages including past and future wage loss, past and future medical and general damages for pain and suffering may be awarded
- ✓ Formal pleadings and procedures

Workers' Comp vs. Civil Tort-3

Workers' Comp

- ✓ Rules of evidence are relaxed
- ✓ Liberal construction of facts and law. LC 3202: “This division...shall be liberally construed by the courts with the purpose of extending their benefits for the protection of persons injured in the course of their employment”
- ✓ Typical trial: 1/2 day
- ✓ Settlements reviewed and approved by Judge

Civil

- ✓ Rules of evidence strictly applied
- ✓ Approx. five days to accomplish same amount of evidence as in 1/2 day of WC trial
- ✓ With some exceptions (e.g. minors), no review of adequacy of settlements

Workers' Comp vs. Civil Tort- 4

Workers' Comp

- ✓ Decision by mail within 90 days of submission case
- ✓ Award according to PDRS paid in installments and may include lifetime medical
- ✓ May include cost of living adjustment (“COLA”) subject to SAWW.
- ✓ Life pension if disability 70% or greater, permanent total disability, death.
- ✓ Reconsideration to WCAB

Civil

- ✓ Immediate decision by jury [verdict] upon submission and after deliberation
- ✓ Lump sum award including value of past and future losses
- ✓ Motion for new trial to trial Judge

Workers' Comp vs. Civil Tort-5

Workers' Comp

- ✓ Court of Appeal: discretionary review pursuant to writ of review
- ✓ Most costs paid by employer/insurer (win or lose)
- ✓ Attorney fees 12-18%; generally 15% of award.
- ✓ Attorney fees approved by Judge

Civil

- ✓ Court of Appeal: Appellate court must hear and issue opinion in any appealed case
- ✓ Some costs for both sides may be paid by loser, but generally each side pays own expenses
- ✓ Attorney fees generally 33% to 40% of award
- ✓ Attorney fees by contract between attorney and client

What is an Injury: LC 3208

- **Minor-First Aid: LC 5401**
 - Medical only; no lost time
- **Specific: LC 3208.1**
 - Occurring as the result of one incident or exposure
- **Cumulative: LC 3208.1**
 - Occurring as repetitive mentally or physically traumatic activities extending over a period of time
- **Death cases: LC 4700-4709**

Reporting an Injury Claim

- Responsibilities for issuance and return of Claim Form
 - LC 5401
- Action requirements by employer/insurer: 14 day rule-- admit/delay/deny: LC 4560; Reg. 9793(b)(3)
- 90 day rule for denial: LC 5402(b)
- Importance of acceptance of legitimate cases and prompt payment of benefits

Early Stages of Claim

- Claim may be denied for medical, legal or factual reasons
- Responsibilities for conducting and coordinating investigation
- Preservation of evidence
- Duty of claimant to cooperate with employer/insurer
- Duty of employer to cooperate with insurer

Medical Treatment-1

- All treatment “reasonably required to cure and relieve”
 - LC 4600
- Employer/Insurer Medical Provider Network [MPN]
 - LC 4616
 - Employer must provide notice
 - Employee makes choice of physician from network [see LC 4616.3(a)]
 - http://www.dir.ca.gov/dwc/mpn/dwc_mp_n_main.html
- No Employer MPN:
 - Employer controls for 1st 30 days [see LC 4600(c)]

Medical Treatment- 2

- **Predesignation of treating physician: LC 4600(d)**
- **Limitations of chiropractic and physical therapy to 24 visits. LC 4604.5 (for dates of injury on/after 1/1/13)**
- **No limitation on acupuncture by statute, but may be limited by ACOEM**
- **Compensable consequences: employer/insurer liable for such things as adverse drug reactions and injuries on the way to doctor's office.**
 - **Permanent disability (not treatment) for these eliminated by LC4660.1 (sleep, psyche, sexual dysfunction).**

Medical Treatment-3

- Delayed cases: \$10,000 potential medical cost: LC 5402(c)
- Official Medical Fee Schedule: LC 5307.1
- Non-apportionability of medical and temporary disability benefits: See *Granado v. WCAB* (1968) 69 Cal. 2d 399
- Employer/insurer's liability to treat non-industrial conditions as a prerequisite to treating industrial conditions: See *Braewood Convalescent Hospital v. WCAB (Bolton)* (1983) 34 Cal.3d 159
- Take employees as you find them; i.e. an employee who suffers from a pre-existing condition who has a subsequent industrial injury is entitled to treatment at the employer's expense, even if a healthy person would not have been injured by the event. *Braewood*.

Medical Treatment-4

- Utilization review and ACOEM Guidelines: LC 4610; 4600(b); 4604.5
- Independent Medical Review process
 - LC 4610.5 et seq.
 - Exclusive jurisdiction over treatment disputes regarding medical necessity belongs to neutral third party (Maximus), NOT to judges, UNLESS utilization review untimely conducted.
 - Current rules and developments may be found here: <http://www.dir.ca.gov/dwc/SB863/SB863.htm>

Med-Legal Evaluations

- Determine if injured worker is represented by an attorney or unrepresented
- Panel qualified medical evaluator (PQME) process
- Ratings; Importance of *AMA Guides* [American Medical Association] on:
 - Medical reports of treating doctor
 - Panel QMEs
 - Selected QMEs
 - Agreed medical evaluator (AME)
- Self-procured med-legal reports inadmissible
 - Batten (2016) 241 Cal.App.4th 1009 (2015), 194 Cal. Rptr. 3d 511

Temporary Disability

- Temporary total disability payment amount based on earnings at time of injury.
 - Weekly maximum and minimum rates: LC 4451; 4455; and 4653
 - 2017: The minimum TTD rate will increase from \$169.26 to \$175.88 and the maximum TTD rate will increase from \$1,128.43 to \$1,172.57 per week.
 - Limits on TD: 104 weeks LC 4656 [c] [some exceptions allowing for up to 240 weeks: LC 4656 (c)]
 - Salary continuation programs may count as “TTD”
- Modified/Alternative work, “constructive TD”
- Opportunities to end TTD

Permanent Disability

- Whole Person Impairment based on *AMA Guides* (5th Edition)
- PD rating schedule varies by date of injury
 - DOI on/after 1/1/13: DFEC replaced by 1.4 modifier
- Presumption of total disability in certain cases:
 - LC 4662
 - TTD for life
 - LC 4659(b)

Permanent Disability

- **Apportionment:**
 - LC 4663 – prior/subsequent disability and retroactive prophylactic restrictions.
 - LC 4664 – prior awards
 - Multiple injuries - *Benson v. Workers' Compensation Appeals Board, et al.*, 170 Cal. App. 4th 1535, (2009)
- **Life pension if PD 70% or higher: LC 4659(a)**
- **Cost of living allowance subject to SAWW: LC 4659(c)**

Permanent Disability - 2

- Duty to advance reasonable amount per PDRS.
- No duty to advance PD until Award if employee continues to work 85% wages at this ER or 100% wages at different ER.
- Return to work incentives attached to PD benefits: 15% adjustment LC 4658(d)(3) → Eliminated for DOI on/after 1/1/13
 - Return to work fund - \$5,000 to the injured worker who qualifies

Supplemental Job Displacement Benefit (Voucher)

- ❑ Rules vary by date of injury
 - ❑ DOI *on/after* 1/1/13: \$6,000 – not negotiable in settlement
- Injuries occurring during retraining are not compensable; LC 4658.5(e) and 4658.7(i)
- ER must offer voucher within 60 days of receiving first report indicating permanent disability (should attach Physician's Return to Work form) (LC 4658.7(b)(1))
 - https://www.dir.ca.gov/dwc/DWCPPropRegs/SJDB_Regs/DWCForm10133.36.pdf

Special Benefits for Public Safety Employees

- Full Salary “in lieu of” other benefits; LC 4850
- Presumptions; LC 3712 et seq.
 - I.e.: Heart, hernia, cancer, gunbelt (low back), etc.
- Special Disability Retirement under CalPERS or '37 Act, etc.

Case Preparation

- **Depositions: Labor Code 5710**
- **Medical records releases**
- **Subpoena of records and witnesses**
- **Medical evaluations including medical-legal evaluations**
- **Activity checks/surveillance**
- **Vocational evaluations**

WCAB Legal Documents

- Application for Adjudication of Claim
- Answer: Employer can raise defenses
 - AOE/COE [whether injury “arose ot of employment” and occurred in “course of employment”]; employment; insurance coverage; earnings; apportionment; Statute of Limitations; and miscellaneous others such as horseplay; self-inflicted injury; voluntary intoxication
- 4906(g) declaration - no special inducements to doctors for examinations and evaluations or to parties for benefits
- Declaration of Readiness—judicial hearing process initiated by filing of a Declaration of Readiness
 - Employer may have liability for attorneys fees for filing of DOR (LC4906)
- EAMS-required cover sheets and separator sheets for all filings.

Required EAMS Documents

STATE OF CALIFORNIA
DWC DISTRICT OFFICE
DOCUMENT COVER SHEET



Is this a new case? Yes No Companion Cases Exist Walkthrough Yes No

More than 15 Companion Cases

Date: (MM/DD/YYYY) _____ SSN: _____

Specific Injury

Case Number 1 _____ Cumulative Injury (Start Date: MM/DD/YYYY) _____ (End Date: MM/DD/YYYY)
(If Specific Injury, use the start date as the specific date of injury)

Body Part 1: _____ Body Part 3: _____

Body Part 2: _____ Body Part 4: _____

Other Body Parts: _____

Please check unit to be filed on (check only one box)

ADJ DEU SIF UEF INT RSU

Companion Cases Specific Injury

Case Number 2 _____ Cumulative Injury (Start Date: MM/DD/YYYY) _____ (End Date: MM/DD/YYYY)
(If Specific Injury, use the start date as the specific date of injury)

Body Part 1: _____ Body Part 3: _____

Body Part 2: _____ Body Part 4: _____

Other Body Parts: _____

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DOCUMENT SEPARATOR SHEET



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Pre-Trial Conferences; Expedited Hearings:

- **Mandatory Settlement Conference: LC 5502; case set for trial; evidence and witnesses disclosed; discovery closed**
 - Ratings MSC - DEU - (*Blackledge* (2010) 75 Cal. Comp Cases 613); LC 4660.1
- **Priority Conference: LC 5502; deals with questions of employment and/or injury arising from employment**
- **Status Conference: addresses various case management issues**
- **Expedited Hearing: LC 5502; deals with med-legal exams or medical treatment issues (except those now reserved to Independent Medical Review)**

Alternative Dispute Resolution:

“Carve-outs”

- LC 3201.5
- Parallel workers' compensation system available in certain collective bargaining situations
 - Same benefits
 - Potentially speedier resolution
 - Simplified procedures, eg: no IMR, ability to self-select QME.
 - Often at lower cost to employers
- Resolution by Ombudsman / Arbitrator / Mediator instead of a Workers' Compensation Administrative Law Judge
- Appeal: Reconsideration of Arbitrator's decision goes to the WCAB commissioners (similar to appeal from WCALJ decision)

Resolution of Case

- Direct negotiation between parties
- Mediation
 - Voluntary, facilitated settlement meeting
- Arbitration
 - Mandatory: LC 5275 (c) – Insurance Coverage; Contribution
 - Voluntary Arbitration: by agreement of parties, any issue
 - May appeal to Workers' Compensation Appeals Board
- Trial
 - Evidence presented—witnesses and documentary evidence; summary of evidence prepared by Judge, rating instructions, Findings & Award
- Appeal
 - Reconsideration by WCAB on petition from aggrieved party
 - Petition for Writ of Review to Court of Appeal
 - Request for review by Supreme Court

Settlement of Case: C&R

- **Compromise and Release:**
 - Ends case in whole or part
 - Annuity versus lump sum
 - Reviewed for adequacy by Judge
 - Must be approved by Judge

- **Social Security / Medicare considerations**
 - Medicare set-aside trust may be required
 - Self-administered versus set-aside trust fund

Settlement of Case: Stipulation

- **Stipulated Award:**
 - Agreement as to permanent disability, etc.
 - May or may not provide future medical or other benefits
- **Filing a Petition to Reopen:**
 - Case can be reopened within 5 years of injury date for new/further disability -- LC 5804
 - Medical treatment may be required for valid compensable consequences after stipulated award

Appeals

- **Filing a Petition for Reconsideration**
 - 20 days from Judge's decision [plus 5 days if decision served by mail]; LC 5903
- **Filing a Petition for Writ of Review (District Court of Appeal)**
 - Must be filed within 45 days from decision of WCAB (on Reconsideration); LC 5950
- **Filing Petition for Review (California Supreme Court) - # days / Add cite**

Penalties

- **LC 5814 violation:**
 - **Up to 25% of specifically delayed compensation--up to \$10,000: LC 5814(a)**
 - **Judicial discretion**
 - **Self-imposed penalties: LC 5814(b)**
- **Labor Code 4650(d): 10% penalty for indemnity payment delay**
- **Labor Code 5814.6: Penalty of up to \$400,000 for pattern of practice for non-payment**

Special Issues - 1

- **Psychiatric cases: LC 3208.3**
 - **Six-month rule: employee must have worked at least six months in order to bring claim for psychiatric injury**
 - **“Sudden and extraordinary” exception**
 - **Actual events of employment must be predominant as to all causes combined**
 - **Non-discriminatory, good faith, personnel action defense**
 - **Psyche as a compensable consequence: permanent disability eliminated (LC4660.1), but treatment may still be allowed.**
- **Post-termination claims: LC 3600(a)(10)**
- **Third-party cases: special rules on subrogation: LC 3850- 3865**

Special Issues - 2

- **Liens**
 - **Filing and activation fees**
 - **Independent Bill Review process**
- **Subsequent Injuries Benefits Trust Fund: LC 4751-4755**
- **Payment between employers/carriers:**
 - **Separate/specific injuries: “Reimbursement”**
 - **Single cumulative trauma: “Contribution”**
 - **LC 5500.5; 5412; 4600**
 - **Mandatory arbitration**
- **LC 132a – discrimination claims**
- **Serious and willful misconduct claims: LC 4551-4553.1**

Questions?
