

RESOLUTION 08-11-2014

DIGEST

Labor Code: Eliminates 240 Week-Deadline from Injury for Death Benefits

Amends Labor Code section 5406 to eliminate the 240 weeks from date of injury deadline for wrongful death claims, while retaining the one year from date of death deadline for such claims.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Labor Code section 5406 to eliminate the 240 weeks from date of injury deadline for wrongful death claims, while retaining the one year from date of death deadline for such claims. This resolution should be approved in principle because cutting off death benefits based on a work place injury, if the injured worker does not die within 240 weeks of injury, results in many otherwise eligible claims being denied.

The 240 week time period is not realistic because workers often contract injuries that cause death more than 240 weeks after the injury. In recognition of this, the Legislature amended the Labor Code to provide exceptions for HIV and asbestos related injuries (the amendment that created an exception for HIV was a result of CCBA sponsored legislation (Labor Code, § 5406.6), enacted in 1999. However, there are injuries other than HIV and asbestos related injuries that cause death more than 240 weeks after the initial injury. Silicosis was an early example of a work place injury that resulted in death after 240 weeks. (See *Ruiz v. Industrial Acc. Com.* (1955) 45 Cal.2d 409 [death benefits denied because death occurred more than 240 weeks after injury].) Silicosis is a form of occupational lung disease caused by inhalation of crystalline silica dust, and is marked by inflammation and scarring of the lungs. It causes shortness of breath, cough, fever and cyanosis (bluish skin). Though incidence of silicosis has declined in the United States, the example shows that this 240 week deadline has been the cause of denied claims for a long time. A more current workplace injury that may result in death after 240 weeks is heart disease. (See *Massey v. Worker's Comp. Appeals Bd.* (1993) 5 Cal.4th 674.)

In sum, this resolution will ensure that those with otherwise eligible claims for death benefits will not be denied based on a rule that does not take the realities of workplace injuries into account. This resolution would make Labor Code sections 5404.5 and 5405.6 moot, as there would no longer be a need for an exception from the 240 week rule based on HIV or asbestos related injury.

TEXT OF RESOLUTION

RESOLVED, that the Conference of California Bar Associations recommends that legislation be sponsored to amend Labor Code section 5406 to read as follows:

§ 5406

- 1 Except as provided in Section 5406.5 or 5406.6, the period within which may be
- 2 commenced proceedings for the collection of the benefits provided by Article 4 (commencing
- 3 with Section 4700) of Chapter 2 of Part 2 is one year from:
- 4 (a) The date of death where death occurs within one year from date of injury; or

- 5 (b) The date of last furnishing of any benefits under Chapter 2 (commencing with Section
6 4550) of Part 2, where death occurs more than one year from the date of injury; or
7 (c) The date of death, where death occurs more than one year after
8 the date of injury and compensation benefits have been furnished.
9 No such proceedings may be commenced more than one year after the date of death, ~~nor~~
10 ~~more than 240 weeks from the date of injury.~~

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Contra Costa County Bar Association

STATEMENT OF REASONS

The Problem: The current section states that no proceedings for death benefits for an industrially caused death can be commenced more than 240 weeks from the date of injury. In other words the injured worker must live more than 240 weeks after the injury in order for his dependents to be eligible for death benefits. Many injuries do not cause death within 240 weeks, and two of those have been the subject of special legislation, e.g. asbestosis and HIV deaths. (This conference sponsored LC 5406.6 for HIV deaths enacted in 1999). Heart disease is one of several examples of an injury which may not result in death within 240 weeks, and for which there is no statutory exception. The existing 240 week limitation will result in the right to death benefits being lost before the right accrues.

The Solution: Rather than propose exceptions on a disease by disease basis (the HIV legislation was adopted by the conference in 1994 and took three legislative sessions before finally being enacted in 1999), the elimination of the 240 week limitation would give dependents of industrially injured employee one year from the date of death from an industrial injury within which to file an application for death benefits, providing compensation benefits had been previously provided for the injury.

The elimination of the 240 week provision as this resolution proposes would leave in place the present alternate dates for the commencement of death benefit claims. Dependents would be still being limited to one year for the commencement of proceedings, but the one year would be measured as one year from:

- (a) The date of death where the death occurs within one year of the date of injury, or
- (b) The date of the last furnishing of compensation benefits, or
- (c) The date of death where compensation benefits have been furnished.

The current time limits would remain in effect, but there would be no 240 week cut off.

The 240 week limitation on applications for death benefits was never a part of the Workmen's (sic) Compensation Act until the 1947 amendment. This was a period after WWII when effects of chemicals was first being recognized, and a death occurring beyond 240 weeks of the injury was thought to be too hard to oppose because of the lapse of time. Current medical research advances have made this a meaningless and unfair limitation.

LEGISLATIVE HISTORY

Not known.

IMPACT STATEMENT

This resolution would impact Labor Code Sections 5405.5 and 5405.6, which provide exceptions dealing with asbestosis and HIV, would be unnecessary and should be repealed.

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