

RESOLUTION 09-01-2014 (as amended)

DIGEST

Workers Compensation: Extension of Temporary Disability

Amends Labor Code section 4656 to extend periods of temporary disability for on the job injuries requiring surgery and for catastrophic brain or spinal cord injuries.

RESOLUTIONS COMMITTEE RECOMMENDATION

DISAPPROVE (Reasons for disapproval mooted by amendments taken at Conference)

History:

No similar resolutions found.

Reasons:

This resolution amends Labor Code section 4656 to extend periods of temporary disability for on the job injuries requiring surgery and for catastrophic brain or spinal cord injuries. This resolution should be disapproved because it creates a situation in which certain injured workers would be entitled to fewer weeks of benefits if they had surgery than they would if the same injury did not require surgery.

The resolution amends Labor Code section 4656 by adding provisions designed (1) to allow up to 240 weeks of temporary disability benefits to a worker who suffers an on-the-job injury to the brain or spinal cord and (2) to allow a worker who suffers an on-the-job injury that requires surgery to receive up to 156 weeks of temporary disability benefits, to be taken within 5 years of the injury.

~~This resolution should be disapproved because, as drafted, the resolution creates an unanticipated reduction in benefits for certain serious injuries. The statute sets a maximum period of temporary disability benefits, with a variety of serious injuries being exceptions to the stated maximum. As drafted, the provision permitting up to 156 weeks of temporary disability benefits is an exception to the basic limit. It is also an exception to the provision granting longer benefits to certain serious injuries. As a result of this construction, if a worker suffers from severe injuries that do not require surgery, including hepatitis, HIV, amputations, high velocity eye injuries, and pulmonary fibrosis, the worker could receive up to 240 weeks of benefits, but if the same injury required surgery, the maximum temporary disability benefit would be 156 weeks.~~

TEXT OF RESOLUTION

RESOLVED, that the Conference of California Bar Associations recommends that legislation be sponsored to amend Labor Code section 4656 to read as follows:

§ 4656

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

4 (b) Aggregate disability payments for a single injury occurring on or after January 1,
5 1979, and prior to April 19, 2004, causing temporary partial disability shall not extend for more
6 than 240 compensable weeks within a period of five years from the date of the injury.

7 (c) (1) Aggregate disability payments for a single injury occurring on or after April 19,
8 2004, causing temporary disability shall not extend for more than 104 compensable weeks within
9 a period of two years from the date of commencement of temporary disability payment.

10 (2) Aggregate disability payments for a single injury occurring on or after January 1,
11 2008, causing temporary disability shall not extend for more than 104 compensable weeks within
12 a period of five years from the date of injury.

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

17 (A) Acute and chronic hepatitis B.

18 (B) Acute and chronic hepatitis C.

19 (C) Amputations.

20 (D) Severe burns.

21 (E) Human immunodeficiency virus (HIV).

22 (F) High-velocity eye injuries.

23 (G) Chemical burns to the eyes.

24 (H) Pulmonary fibrosis.

25 (I) Chronic lung disease.

26 (4) Notwithstanding paragraphs (1) and (2), aggregate disability payments for a single
27 injury occurring on or after January 1, 2015 causing temporary disability to an employee, who
28 undergoes surgery to cure or relieve the effects of an industrial injury, shall not extend for more
29 than 156 weeks within a period of five years from the date of injury; provided, however, if
30 paragraph (3) applies, then the timeframe set forth in paragraph (3) controls..

31 (5) Notwithstanding paragraphs (1), (2), (3) and (4) for an employee who suffers from an
32 industrial injury to the brain or spinal cord, aggregate disability payments for a single injury on
33 or after January 1, 2015, causing temporary disability shall not extend for more than 240
34 compensable weeks within a period of five years from the date of injury.

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

PROPONENT: Gerald C. Benezra, Dennis S. Weaver, Mervyn R. Israel, Stuart I. Barth, Sheldon L. Goldflam, Louis H. Berger, Nestor A. Michelena, John L. Michelena, Joseph Goldstein, Frank Kaye, Charles Clark and National Lawyers Guild, Bay Area Chapter

STATEMENT OF REASONS

The Problem: Under existing law, an injured worker is limited to 104 weeks of temporary disability within a five year period from the date of injury. 104 weeks of temporary disability is often insufficient where the injured worker has undergone extensive conservative medical treatment prior to surgery and has been subject to a protracted litigation process. Having exhausted the 104 weeks of temporary disability the injured worker faces the threat of no temporary disability income after surgery.

Injuries to the brain or spinal cord are catastrophic injuries and require long periods of treatment extending beyond the 104 weeks of temporary disability under existing law.

The Solution: This amendment would provide eligibility for up to an additional 52 weeks of temporary disability for an injured worker who undergoes surgery for his industrial injury.

This amendment would also add injury to the brain or spinal cord to the categories of severe injuries and allow a period of up to 240 weeks of temporary disability in a five year period from the date of injury.

LEGISLATIVE HISTORY

Not known.

IMPACT STATEMENT

The proposed resolution does not affect any other law, statute or rule.

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