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SB-1127 Workers' compensation: liability presumptions. (2021-2022)

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Senate Bill No. 1127

CHAPTER 835

An act to amend Sections 3761, 4656, and 5402 of, and to add Section 5414.3 to, the Labor Code, relating to workers' compensation.

[Approved by Governor September 29, 2022. Filed with Secretary of State September 29, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1127, Atkins. Workers' compensation: liability presumptions.

Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, to compensate an employee for injuries arising out of and in the course of their employment. Existing law requires an injured employee to file a claim form with the employer. Under existing law, except for specified injuries, if liability is not rejected within 90 days after the date the claim form is filed with the employer, the injury is presumed compensable and the presumption is rebuttable only by evidence discovered subsequent to the 90-day period.

For certain injuries or illnesses, including hernia, heart trouble, pneumonia, or tuberculosis, among others, sustained in the course of employment of a specified member of law enforcement or a specified first responder, this bill would reduce those time periods to 75 days. The bill would make other conforming changes.

Existing law prohibits aggregate disability payments for a single injury occurring on or after January 1, 2008, causing temporary disability from extending for more than 104 compensable weeks within a period of 5 years from the date of injury, except if an employee suffers from certain injuries or conditions.

This bill would, for specified firefighters and peace officers claiming illness or injury related to cancer, increase the number of compensable weeks to 240 without limitation as to time from the date of injury.

Existing law requires that certain proceedings, including proceedings for the enforcement against the employer or an insurer of any liability for compensation, be instituted before the Workers' Compensation Appeals Board. Existing law authorizes the appeals board to fix and determine, in its award, the total amount of compensation to be paid and specify the manner of payment, or may fix and determine the weekly disability payment to be made and order payment during the continuance of disability. Existing law requires that when payment of compensation has been unreasonably delayed or refused, either prior to or subsequent to the issuance of an award, the amount of the unreasonably delayed or refused payment be increased up to 25% or up to \$10,000, whichever is less. Existing law requires the appeals board to use its discretion to accomplish a fair balance and substantial justice between the parties.

This bill would require, if liability for an injury has been unreasonably rejected for specified claims of injury or illness, including hernia, heart trouble, pneumonia, or tuberculosis, among others, sustained in the course of employment of a specified member of law enforcement or a specified first responder, the amount of the penalty to be 5 times the amount of the benefits unreasonably

delayed due to the rejection of liability. The bill would limit the penalty to no more than \$50,000. The bill would require the appeals board to determine the question of whether the rejection of liability is reasonable. The bill would apply this provision to all injuries, without regard to whether the injury occurs before, on, or after the operative date of the bill.

Existing law requires the Administrative Director of the Division of Workers' Compensation, among other duties, to develop a workers' compensation information system in consultation with the Insurance Commissioner and the Workers' Compensation Insurance Rating Bureau, with certain data to be collected electronically.

This bill would require the division, upon an appropriation by the Legislature, to identify and amend its existing data collection processes to include collection of the date on which a claimant is notified of acceptance, denial, or conditional denial of liability.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 3761 of the Labor Code is amended to read:

3761. (a) An insurer securing an employer's liability under this division shall notify the employer, within 15 days, of each claim for indemnity filed against the employer directly with the insurer if the employer has not timely provided to the insurer a report of occupational injury or occupational illness pursuant to Section 6409.1. The insurer shall furnish an employer who has not filed this report with an opportunity to provide to the insurer, prior to the expiration of the applicable time period specified in subdivision (b) of Section 5402 for rejecting a claim, all relevant information available to the employer concerning the claim.

(b) (1) An employer shall promptly notify its insurer in writing at any time during the pendency of a claim if the employer has actual knowledge of any facts that would tend to disprove any aspect of the employee's claim. If an employer notifies its insurer in writing that, in the employer's opinion, no compensation is payable to an employee, at the employer's written request, to the appeals board, the appeals board may approve a compromise and release agreement, or stipulation, that provides compensation to the employee only if there is proof of service upon the employer by the insurer, to the employer's last known address, not less than 15 days prior to the appeals board action, of notice of the time and place of the hearing at which the compromise and release agreement or stipulation is to be approved. The insurer shall file proof of this service with the appeals board.

(2) Failure by the insurer to provide the required notice shall not prohibit the board from approving a compromise and release agreement, or stipulation. However, the board shall order the insurer to pay reasonable expenses as provided in Section 5813.

(c) In establishing a reserve pursuant to a claim that affects premiums against an employer, an insurer shall provide the employer, upon request, a written report of the reserve amount established. The written report shall include, at a minimum, the following:

- (1) Estimated medical-legal costs.
- (2) Estimated vocational rehabilitation costs, if any.
- (3) Itemization of all other estimated expenses to be paid from the reserve.

(d) If an employer properly provides notification to its insurer pursuant to subdivision (b), and the appeals board thereafter determines that no compensation is payable under this division, the insurer shall reimburse the employer for any premium paid solely due to the inclusion of the successfully challenged payments in the calculation of the employer's experience modification. The employer shall not be required to refund the challenged payment.

SEC. 2. Section 4656 of the Labor Code is amended to read:

4656. (a) Aggregate disability payments for a single injury occurring prior to January 1, 1979, causing temporary disability shall not extend for more than 240 compensable weeks within a period of five years from the date of the injury.

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

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

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

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

- (A) Acute and chronic hepatitis B.
- (B) Acute and chronic hepatitis C.
- (C) Amputations.
- (D) Severe burns.
- (E) Human immunodeficiency virus (HIV).
- (F) High-velocity eye injuries.
- (G) Chemical burns to the eyes.
- (H) Pulmonary fibrosis.
- (I) Chronic lung disease.

(d) Notwithstanding subdivisions (a), (b), and (c), for an employee who suffers from an injury or condition defined in Section 3212.1, aggregate disability payments for a single injury occurring on or after January 1, 2023, causing temporary disability shall not extend for more than 240 compensable weeks.

SEC. 3. Section 5402 of the Labor Code is amended to read:

5402. (a) Knowledge of an injury, obtained from any source, on the part of an employer, the employer's managing agent, superintendent, foreman, or other person in authority, or knowledge of the assertion of a claim of injury sufficient to afford opportunity to the employer to make an investigation into the facts, is equivalent to service under Section 5400.

(b) (1) If liability is not rejected within 90 days after the date the claim form is filed under Section 5401, the injury shall be presumed compensable under this division. The presumption of this subdivision is rebuttable only by evidence discovered subsequent to the 90-day period.

(2) Notwithstanding paragraph (1), for injuries or illnesses defined in Sections 3212 to 3212.85, inclusive, and Sections 3212.9 to 3213.2, inclusive, if the liability is not rejected within 75 days after the date the claim form is filed pursuant to Section 5401, the injury shall be presumed compensable under this division. The presumption of this subdivision is rebuttable only by evidence discovered subsequent to the 75-day period.

(c) Within one working day after an employee files a claim form under Section 5401, the employer shall authorize the provision of all treatment, consistent with Section 5307.27, for the alleged injury and shall continue to provide the treatment until the date that liability for the claim is accepted or rejected. Until the date the claim is accepted or rejected, liability for medical treatment shall be limited to ten thousand dollars (\$10,000).

(d) Treatment provided under subdivision (c) does not give rise to a presumption of liability on the part of the employer.

(e) Upon appropriation by the Legislature, the Division of Workers' Compensation shall identify and amend its existing data collection processes to include collection of the date on which the claimant is notified of acceptance, denial, or conditional denial of liability for a claim, consistent with this section.

SEC. 4. Section 5414.3 is added to the Labor Code, to read:

5414.3. (a) Notwithstanding Section 5814, when liability has been unreasonably rejected for claims of injury or illness as defined in Sections 3212 to 3213.2, inclusive, the amount of the penalty shall be five times the amount of the benefits unreasonably delayed due to the rejection of liability, but in no case shall the penalty exceed fifty thousand dollars (\$50,000). The question of rejection and the reasonableness of the cause shall be determined by the appeals board in accordance with the facts.

(b) Penalties issued pursuant to this section shall be reported to the audit unit within the Division of Workers' Compensation.

(c) This section shall apply to all injuries, without regard to whether the injury occurs before, on, or after the operative date of this section.