



## **Legislative and Industry Updates – June 2018**

Workers' Compensation activity continues at the Capitol with many bills progressing through the system. The following is an update on some of the activity which may impact the Workers' Compensation program:

### **LEGISLATIVE ACTIVITY**

#### **AB 1749: Off-Duty Police Officers (Daly)**

This bill is in response to the Las Vegas shooting incident from which several off duty Police Officers in attendance at the concert have filed Workers' Compensation claims for injury. Many, if not all, of these claims have been denied and are currently in litigation.

Labor Code 3600.2(a) currently provides for Workers' Compensation benefits for a "peace officer" when they are injured "from performing his duties as a peace officer by reason of engaging in the apprehension or attempted apprehension of law violators or suspected law violators, or protection or preservation of life or property, or the preservation of the peace anywhere in this state, including the local jurisdiction in which he is employed, but is not at the time acting under the immediate direction of his employer, he or his dependents, as the case may be, shall be accorded by his employer all of the same benefits, including the benefits of this division, which he or they would have received had that peace officer been acting under the immediate direction of his employer."

This code provides that the activity must occur in the State of California. As the Las Vegas shooting incident occurred in the State of Nevada, coverage under this code is not provided. AB 1749 would provide that the coverage is extended if the duties engaged in occur in this State or in another State. The bill does not provide for a "presumption" of compensability.

Concerns with the bill include the increased assumption of risk for Public Entities and 24/7 coverage for Safety Officers regardless of where they may be.

Due to the high profile nature of the Las Vegas incident, formal opposition is focusing on proposed amendments to compromise and mitigate the exposure for Public Entities. Considerations may include restricting the geographic locations to States which closely surround California, rather than all States and perhaps other Countries.

The bill has passed to the Senate.

**SB 617: Genetic Apportionment (Bradford)**

Permanent Disability (PD) relating to industrial injury or illness requires the determining physician to address the issue of causation of the PD. This bill is an attempt to correct recent case-law (City of Jackson v WCAB (Rice)) which found apportionment of the employee’s PD “to his personal history including “genetic issues”.

SB 617 requires that heredity and genetics be excluded as a basis for causation of PD and assignment of apportionment. Concerns exist as the bill erodes the apportionment granted in SB 899 (effective 2004), which provided that only the PD related to employment is awarded and that apportionment to other factors must be considered.

SB 899 specifically requires the City of Jackson v WCAB case to be set aside.

Formal opposition has not been noted.

**AB 1998: Opioids - Safe Prescribing Policy (Rodriguez)**

This bill would require, by July 1, 2019, every health care practitioner who prescribes, orders, administers, or furnishes opioids classified as Schedule II and Schedule III to adopt, review, and periodically update a safe opioid prescribing policy, as specified. The bill would prohibit the safe opioid prescribing policy from placing a limitation on the prescription, ordering, administration, or furnishing of opioids to patients with prescribed conditions. The bill would require a health care practitioner who determines, based on his or her professional judgment, that the safe prescribing policy is not appropriate for a specific patient’s treatment, to provide adequate documentation in the patient’s record to support the treatment decision. The bill would make the failure to establish or adopt a safe opioid prescribing policy to be referred to the appropriate state professional licensing board for administrative sanctions. Because violation of these provisions is also a crime, the bill would create a new crime, thereby imposing a state-mandated local program.

The bill has been passed on to the Senate after passing through the Assembly. It is of note that CAJPA is in support of this bill as it would deter abuse of opioid medications and it’s harmful effects on California workers.

**SB 880: Workers’ Compensation – Prepaid Cards (Pan)**

This bill proposes a pilot program that would run until January 1, 2023 allowing the State Compensation Insurance Fund (SCIF) to provide temporary disability payments to injured workers via prepaid card accounts. The bill requires the agreement of the injured worker, and that specific requirements are met including:

- “For purposes of this section, a prepaid card shall also meet all of the following requirements:
- (i) Allow the employee to withdraw the entire balance on the card in one transaction without incurring fees.
  - (ii) Allow the employee reasonable access to in-network automatic teller machines (ATMs).

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(iii) Allow the employee to make point-of-sale purchases without incurring fees from the financial institution.

(iv) Prohibit a link to any form of credit, including a loan against future payments or a cash advance on future payments.

(B) The fees associated with the use of the prepaid card shall be disclosed to the employee in writing. The only permissible fees associated with the use of a prepaid card are those for a replacement card provided through expedited delivery, out-of-network ATM fees on the third and subsequent withdrawal per deposit, and fees associated with foreign transactions.”

The analysis published on this bill states it “attempts to address the issue of unbanked workers receiving their TD benefits without significant fees”.