

Date of Hearing: April 3, 2024

ASSEMBLY COMMITTEE ON INSURANCE

Lisa Calderon, Chair

AB 1870 (Ortega) – As Amended April 1, 2024

SUBJECT: Notice to employees: legal services

SUMMARY: Requires the posted employee notices related to the workers' compensation system to include information concerning an injured employee's ability to consult a licensed attorney, as specified.

EXISTING LAW:

- 1) Establishes a workers' compensation system that provides benefits to an employee who suffers from an injury or illness that arises out of, and in the course of, employment, irrespective of fault. This system requires all employers to secure payment of benefits by either securing the consent of the Department of Industrial Relations (DIR) to self-insure or by securing insurance against liability from an insurance company duly authorized by the state. (California Constitution Article XIV, Section 4)
- 2) Requires all employers in the state to provide workers' compensation benefits to their employees, as specified. (Labor Code Section (LAB) 3700)
- 3) Requires employers to post and keep posted a notice to employees that states the name of the current workers' compensation carrier of the employer, as specified. (LAB 3350(a))
- 4) Directs the administrative director of the Division of Workers' Compensation (DWC), in consultation with the Commission on Health Safety and Workers' Compensation (CHSWC), to prescribe the form and content of the required employee notices, as specified. (LAB 3350(d))

FISCAL EFFECT: Unknown

COMMENTS:

- 1) *Purpose.* According to the author:

There is no mention of the right to an attorney, nor explanation of attorney fees on the posted Workers Compensation notification. The California Judicial Counsel found that the most common reason unrepresented civil litigants give is, "I can't afford a lawyer." Unlike criminal proceedings, there is no right to an attorney in civil cases. Legal Services/Legal Aid estimates that 86% of lower-income people have no attorney in those cases.

In each of the last six years, an average of 1,810 unrepresented injured workers asked to have their denial of benefits adjudicated. In each of those same six years, an average of 145,799 represented injured workers asked to have their denial of benefits adjudicated.

Many injured workers who go through the Workers' Compensation process are either unaware that they have the right to hire an attorney or believe that they cannot afford one and, therefore, miss out on valuable insight from an applicant attorney. The Workers' Compensation process is often complicated and overwhelming for workers to navigate on their own. AB 1870 will let workers know that they can hire an attorney, most of the time at no upfront cost, to guide them through the Workers' Comp claims process and help them receive the benefits they are owed.

- 2) *Discussion.* Injured workers that have access to a lawyer generally have more success in navigating the workers' compensation system. Injured workers who are represented by an attorney are more likely to challenge any initial denial of benefits and ultimately receive treatment and workers' compensation benefits for their workplace injuries.

According to the California Judicial Counsel one of the main reasons civil litigants give for not retaining a lawyer is that they cannot afford one. The same perception likely applies for injured workers who do not seek legal help with their workers' compensation case. However, attorneys in the workers' compensation system are generally not paid until the case is resolved and are paid out of the injured worker's recovery. Additionally, attorney fees must be approved by the Workers' Compensation Appeals Board.

This bill requires notice of an employee's right to consult an attorney, in relation to their workers' compensation claim, be included on the Employees' Rights posters posted by employers. In general, employers must replace state and federal labor law posters whenever the language of the employment law changes. At a minimum, this tends to happen annually.

Note that the "Notice of Potential Eligibility" that appears on the standard claim form that employers are already required to provide injured workers also includes a statement about the injured worker's right to consult an attorney. (Workers' Compensation Claim Form (DWC 1) & Notice of Potential Eligibility)

REGISTERED SUPPORT / OPPOSITION:

Support

Afscme CA
California Applicants' Attorneys Association
California Labor Federation, Afl-cio
California Nurses Association

Opposition

None on file

Analysis Prepared by: Claire Wendt / INS. / (916) 319-2086