

Date of Hearing: June 26, 2024

ASSEMBLY COMMITTEE ON INSURANCE

Lisa Calderon, Chair

SB 1205 (Laird) – As Amended May 16, 2024

SENATE VOTE: 29-8

SUBJECT: Workers' compensation: medical benefits

SUMMARY: Provides that an injured employee, who is still able to work, is entitled to receive additional benefits incident to receiving treatment. Specifically, **this bill:**

- 1) Provides that an injured employee who is working, in addition to all other benefits, is entitled to receive all reasonable expenses of transportation, meals, and lodging incident to receiving medical treatment for the injury, as provided.
- 2) Defines "reasonable expenses of transportation" to include mileage fees from the employee's home to the place of the treatment and back at the rate adopted by the director of Human Resources pursuant to Government Code Section 19820, plus bridge tolls.
- 3) Provides that an injured employee who is working is entitled to receive one day of temporary disability (TD) benefits, or a percentage of one day of TD representative of the percentage of the wages lost as a result of attending a medical appointment.
- 4) Provides that an employer may require an employee to first exhaust specified leave before the employer is required to provide TD leave.
- 5) Specifies that the employer may not discharge or in any way discriminate against the employee for receiving treatment during normal business hours or during the hours of the day when the employee is customarily at work.
- 6) Specifies that these provisions apply whether the injury has become permanent and stationary or not.

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) Provides that medical care and services that are reasonably required to cure or relieve the injured worker from the effects of the injury shall be provided by the employer. (Labor Code Section (LAB) 4600(a))

- 3) Specifies that when at the request of the employer, the employer's insurer, the administrative director, the appeals board, or a workers' compensation administrative law judge, the employee submits to examination by a qualified medical evaluator (physician), the employee is entitled to receive, in addition to all other benefits herein provided, all reasonable expenses of transportation, meals, and lodging incident to reporting for the examination, together with one day of TD for each day of wages lost in submitting to the examination. Regardless of the date of injury, "reasonable expenses of transportation" shall include mileage fees from the employee's home to the place of the examination and back at the rate of twenty-one cents (\$0.21) a mile or the mileage rate adopted by the Director of Human Resources pursuant to Government Code Section 19820, whichever is higher, plus any bridge tolls. The mileage and tolls shall be paid to the employee at the time the employee is given notification of the time and place of the examination. (LAB 4600(e))
- 4) Establishes within the workers' compensation system temporary and permanent benefits, referred to as disability indemnity, which offer wage replacement equal to two-thirds of a specified injured employee's average weekly earnings for up to 240 weeks while an employee is unable to work due to a workplace illness or injury. (LAB 4653-4656)
- 5) Establishes procedures for the payment of TD and permanent disability indemnity. This includes a requirement that a Qualified Medical Evaluator make a determination about the degree of disability experienced by the injured worker. (LAB 4650)
- 6) Provides that any employer who discharges or threatens to discharge or in any manner discriminate against an injured employee is guilty of a misdemeanor, and the employee's compensation shall be increased by one-half but to more than \$10,000, together with costs and expenses up to \$250. The employee shall also be entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer. (LAB 132a)
- 7) Requires the Director of the Department of Human Resources to, among other things, adopt general rules and regulations that provide for reasonable reimbursement for expenses incurred by an agent of the state. The current personal vehicle mileage reimbursement rate, effective January 1, 2024, is 67 cents per mile. (Government Code Section 19820)

FISCAL EFFECT: Unknown.

COMMENTS:

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

Currently, employees injured at work can be denied necessary medical treatment during work hours. In cases where employees are at work during regular business hours, this forces those employees to forgo essential medical care, which can worsen their condition and potentially turn a temporary injury into a permanent one, or face losing wages, benefits, or employment simply for seeing a doctor during work hours.

Senate Bill 1205 protects workers injured on the job by ensuring they can access timely medical care, without retaliation, for their occupational injuries by prohibiting employers

from retaliating in any way against workers who must receive care during normal business hours. Injured workers deserve care and compassion, not retaliation

- 2) *Background.* Workers' compensation has always been based on a compromise that employers would pay for the treatment for their injured employees in exchange for certain fraud and legal protections. Workers' comp allows employees who are injured at work to receive employer-funded medical care, temporary disability to replace lost wages, and permanent disability to compensate for lasting impairment. In exchange for these benefits, the injured worker cannot sue their employer for their injury. This is why the workers' comp system is often referred to as the "grand bargain." For California's workers' compensation system to remain functional, the balance of this compromise must be maintained.

Additionally, any discussion on the expansion of workers' compensation benefits, including what is proposed in this bill, should begin with the understanding that the workers' compensation system faces a relatively high degree of frictional costs. Frictional costs are those expenses that are not part of the normal business expenses anticipated as part of underwriting including claim adjustment and administrative expenses. A significant proportion of every dollar spent to deliver benefits goes to cover frictional costs. According to the 2023 State of the System report by the Workers' Compensation Insurance Rating Bureau of California, California ranked the second highest in the country in terms of Unallocated Loss Expenses within the Workers' Comp system.

- 3) *Bill runs counter to purpose of TD.* The purpose of TD is to temporarily provide wage replacement to injured employees who are unable to work due to an occupational injury. TD, as the name implies, is meant to be temporary and not ongoing. Once, an employee is able to return to work TD is no longer necessary, because they are back at work. Following a diagnosis from the injured worker's medical provider that the condition is not improving but not worsening, the condition is considered permanent and stationary and the employee would instead become eligible for permanent disability benefits.

The goal of TD is to approximate an employee's take home pay during the period after injury when the employee is temporarily unable to work. This goal is implemented by basing the weekly TD benefit on 2/3 of the employee's average weekly wages. The TD benefit is capped at \$1,619 per week. Currently, TD is available for up to 104 weeks of aggregate benefits, payable within five years of the date of injury.

It is unclear from the provisions of this bill how TD benefits would actually be claimed and what would happen in the event an employee has exhausted their available TD benefits. Additionally, under the provisions of this bill it is possible that employees will consistently be starting and stopping the receipt of TD benefits. For claims administrators this could prevent a significant administrative hurdle, for among other reasons, the fact that a notice has to be provided to an employee each time TD is started and stopped.

- 4) *Employees already have several types of leave available to use for medical appointments.* California law already provides employees with several types of paid leave. This includes paid sick leave (PSL) and the California Family Rights Act (CFRA). A worker who has a workers' compensation claim may already qualify for and is eligible to use PSL or CFRA to take time off work.

PSL is a permanent law in California that requires employers to provide paid time off to workers for treatment, diagnosis or preventative care for themselves, a family member or a designated person. Starting January 1, 2024, with limited exceptions, employers must provide at least 40 hours or five days off each year to employees.

CFRA allows an employee to take up to 12 weeks of family leave to care for a newborn child or to care for a family member suffering from a serious medical condition. CFRA originally applied only to employers with 50 more employees. However, in 2020 CFRA was expanded to apply to employers with five or more employees.

No clear data was provided to the committee to show that employees are having difficulties using existing leave provisions to access medical care for workers' compensation claims or are being denied time-off by employers to attend medical appointments. Therefore, it is unclear how widespread of an issue this is, especially considering the various types of leave already available for employees to use, in addition to any other flexibility they have within their schedule.

- 5) *Employees could bargain for additional benefits.* If the sponsor has concerns about their members being able to attend medical appointments related to workers' compensation claims there is nothing in current law that prevents them from collectively bargaining for this benefit. California law allows labor groups to collectively bargain carve outs to the statutorily mandated workers' compensation system, so long as the Administrative Director of DWC approves these changes to benefits. However, labor groups and employers are generally given wide latitude by DWC, as evidenced by the numerous carve outs and special provisions that already exist.
- 6) *Workers' compensation is already subject to anti-discrimination law.* LAB 132a provides that "It is the declared policy of this state that there should not be discrimination against workers who are injured in the course and scope of their employment." These provisions apply to the entire workers' compensation portion of the labor code. These provisions are arguably more compressive than what is proposed in this bill and provide for penalties and a method of enforcement. This seems to render the anti-discrimination provisions proposed in this bill as unnecessary and likely to create confusion.
- 7) *Bill's provisions run counter to established case law.* The courts have repeatedly held that an employee is not entitled to TD to attend medical appointments. By allowing an employee to collect TD to attend a medical appointment this bill would represent a departure from existing case law. Two examples are provided below.
 - a) *Skelton v. Workers Compensation Appeals Board*, 39 CalApp.5th 1098 (2019). This case limited the type of medical-legal appointments an injured employee may be reimbursed for. The workers' compensation claimant sought benefits for time lost from work due to injuries to her ankle and shoulder, which were separately sustained in 2012 and 2014. She continued to work after each injury and missed work to attend appointments with her treating physicians and to attend two qualified medical evaluator appointments, which are considered medical-legal evaluations. Her work hours were fixed, not flexible, and she could not see the treating physicians on the weekends. After having exhausted all leave, her paycheck was reduced for missed time at work. She then missed doctor appointments because she could no longer afford to miss work.

A workers' compensation judge determined she was not entitled to TD for lost time from work to attend medical appointments, based on *Department of Rehabilitation*. She petitioned WCAB for reconsideration, which affirmed she was only entitled to TD for missed work to attend a qualified medical evaluator appointment.

- b) *Department of Rehabilitation v. Workers' Compensation Appeals Board (Lauher)*, 30 Cal. 4th 1281, 1295 (2003). This case determined an employee returning to work following a permanent and stationary determination by the physician is not entitled to TD to compensate them for time off from work while continuing to receive medical treatment for the injury. The question of whether an employee is entitled to TD for missing work to attend medical appointments before permanent and stationary status was not addressed.
- 8) *Arguments in support*. CFT - A Union of Educators & Classified Professionals, the sponsor this bill, writes in support saying, "SB 1205 will prohibit employers from firing or retaliating against workers who must receive care during normal business hours. The bill does not in any way affect non-occupational injuries and illnesses, leaving untouched any laws governing how workers receive medical care for these conditions. Given that non-occupational injuries constitute roughly 98% of the healthcare system, the number of employers affected should be relatively small."
- 9) *Arguments in opposition*. A coalition of employers and insurers, including the California Chamber of Commerce, the California Coalition on Workers' Compensation, and the American Property Casualty Insurance Association write saying they are opposed to this bill because, "[it] would increase costs and administrative friction in California's workers' compensation system by broadly expanding the payment of temporary disability benefits in a way that fundamentally undermines its purpose, which is to be available as wage replacement in situations where the worker is temporarily disabled and unable to work while recovering from an industrial injury."
- 10) *Recommended committee amendments*. Delete the contents of the bill and insert the following amendments to LAB 4600 (shown in underline and bold.)

SECTION 1. Section 4600 of the Labor Code is amended to read:

4600 (a)(1) Medical, surgical, chiropractic, acupuncture, licensed clinical social worker, and hospital treatment, including nursing, medicines, medical and surgical supplies, crutches, and apparatuses, including orthotic and prosthetic devices and services, that is reasonably required to cure or relieve the injured worker from the effects of the worker's injury shall be provided by the employer. In the case of the employer's neglect or refusal reasonably to do so, the employer is liable for the reasonable expense incurred by or on behalf of the employee in providing treatment.

(2) When possible, an employee should make a reasonable effort to schedule treatment outside of regular work hours. A reasonable effort shall not require a worker to consequentially delay treatment.

(3) If the treatment occurs during working hours and if the timing of the treatment is foreseeable, the employee must provide reasonable advance notification to the

employer. If the timing of the treatment is unforeseeable, the employee shall provide notice of the treatment as soon as practicable.

(4) Leave taken by an employee pursuant to this section shall run concurrently with leave taken pursuant to the federal Family and Medical Leave Act of 1993 (29 U.S.C. Sec. 2601 et seq.), if the employee would have been eligible for that leave at the time leave was taken, and the Moore-Brown-Roberti Family Rights Act, commonly referred to as the California Family Rights Act (Sections 12945.2 and 19702.3 of the Government Code), if the employee would have been eligible for that leave at the time leave was taken.

(5) If an employer denies an employee's request to attend scheduled treatment during regular work hours the employer's conduct constitutes a violation under the provisions of Labor Code Section 132a.

- 11) *Additional committee concerns.* The above recommended committee amendments address many of the committee's concerns related to the TD provisions in this bill. However, paragraph (3) in the above recommended amendments does not provide any opportunity for an employer to turn down an employee's leave request. Should this bill move forward, the committee recommends that the author consider adding additional language to provide employers some ability, in limited circumstances, to reject an employee's leave request.

REGISTERED SUPPORT / OPPOSITION:

Support

CFT- a Union of Educators & Classified Professionals, Aft, Afl-cio
Smart - Transportation Division (SMART-TD)

Opposition

American Property Casualty Insurance Association
Association of California Healthcare Districts
California Association of Joint Powers Authorities
California Chamber of Commerce
California Coalition on Workers Compensation
California Grocers Association
California Joint Powers Insurance Authority
California Manufacturers & Technology Association
California State Association of Counties (CSAC)
City of Thousand Oaks
County of Los Angeles Board of Supervisors
Public Risk Innovation, Solutions, and Management (PRISM)
Valley Industry and Commerce Association (VICA)

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