



March 7, 2008

LEGISLATIVE UPDATE (by *Nancy LaCasse, School Services of California*):

February 22, 2008, was the deadline for bills to be introduced in the 2008 Legislative session. SELF has already identified close to a dozen bills affecting workers' compensation and other school liability-related issues that we will weigh in on this coming year.

Of particular note is legislation that would change existing law by stating that race, religious creed, color, national origin, age, gender, marital status, sex or genetic predisposition could not be used as factors to reduce a workers' compensation injury award. SB 1115 (Migden) was heard in the Senate Labor and Industrial Relations Committee, chaired by Senator Migden (D-San Francisco) and passed 3-2 on a party line vote. Once again, Senate President Pro Tem Don Perata (D-Oakland) has introduced placeholder legislation that would adjust the formula for determining the amount of permanent partial disability benefits.

In continuing efforts to serve as a resource to the Legislature, SELF's Chief Executive Officer Nat Lord and Legislative Advocate Nancy LaCasse met with members of the Legislature who focus on liability and insurance issues. Meetings were held with Assembly Member John Benoit (R-Palm Desert), Senator George Runner (R-Antelope Valley), staff to Assembly Member Joe Coto (D-San Jose), and representatives from the California Chamber of Commerce to discuss common ground. We will meet with Insurance Commissioner Steve Poizner and other legislators in the coming weeks.

BILL UPDATE: Now that the bills have been identified, SELF will analyze them and develop a position recommendation to the Board. If you have comments on any of the bills, please do not hesitate to share them. We will report on the approved positions and keep you posted on the status of the bills throughout the legislative session.

AB 545 (Walters)

Title: Insurance fraud

Status: Assembly Banking, Finance and Insurance.

Position:

Summary:

Existing law requires an insurer, upon written request of an authorized governmental agency, as defined, to release to the agency all relevant information deemed important to the agency that the insurer may possess relating to any specific workers' compensation insurance fraud investigation. This bill would authorize the Public Employees' Retirement System to obtain information from an insurer for purposes of determining the eligibility of a member, or unlawful application or receipt of benefits under the Public Employees' Retirement System, and would add the Public Employees' Retirement System to the list of authorized governmental agencies to which an insurer is required to release that information, as specified.

AB 1051 (Calderon, Charles)

Title: Insurance Rates

Status: Assembly Banking, Finance and Insurance

Position:

Summary:

Existing law provides that rates set by the Insurance Commissioner pursuant to Proposition 103 of the 1988 statewide General Election may be judicially challenged for various reasons, as specified. This bill would provide that if any judicial rate challenge has been exhausted, no retrospective adjustment may be awarded on the grounds that it is excessive,

inadequate, or unfairly discriminatory absent noncompliance with the commissioner's approval. This bill would also define "unfairly discriminatory," as specified.

AB 1868 (Walters)

Title: Charter Schools

Status: Assembly Education Committee

Position:

Summary:

This bill would deem an independent, non-district operated charter school to be a school district for purposes of laws governing state-mandated local costs. This bill contains other existing laws.

AB 2091 (Fuentes)

Title: Workers' Compensation: Pharmacy Services: Reimbursement

Status: Not yet assigned

Position:

Summary:

This bill would declare the intent of the Legislature to enact legislation that would authorize the administrative director of the Division of Workers' Compensation to periodically revise and adjust the reimbursement rates for drug and pharmacy services provided to injured workers pursuant to workers' compensation claims.

AB 2181 (Ruskin)

Title: Workers' Compensation: Return-to-Work Program

Status: Assembly Insurance

Position:

Summary:

This bill would extend to January 1, 2015, the provisions requiring the establishment and implementation of the Return-to-Work Program, and would require the administrative director, in consultation with the Department of Fair Employment and Housing and the Commission on Health and Safety and Workers' Compensation, no later than September 30, 2009, to develop, make available, and publish a guide covering the Return-to-Work Program requirements, containing specified information. It would also require a workers' compensation insurer to provide a copy of the guide in printed form to every insured employer within 30 days of the insurer's receipt of the employer's first claim for temporary or permanent disability indemnity benefits made under any annual policy period.

AB 2320 (Niello)

Title: School Litigation

Status: Not yet assigned

Position:

Summary:

This bill would amend the provision authorizing school districts to sue and be sued to make a technical, non-substantive change. According to the author's office, this bill is the result of a report prepared by the California Against Lawsuit Abuse organization, and the ultimate goal is to develop a system to track what is being spent on litigation.

AB 2351 (Garrick)

Title: Workers' Compensation: Medical Treatment Utilization Reviews

Status: Assembly Insurance

Position:

Summary: This bill would make technical changes to the medical treatment utilization review process. It would require that, in cases where the review is retrospective, the decision to modify, delay, or deny services be communicated to the individual who received services, or to the individual's designee, within 30 *working* days of receipt of information that is reasonably necessary to make this determination.

AB 2639 (Lieu)**Title:** School Safety Plans**Status:** Not yet assigned**Position:****Summary:**

The bill would require principals or school site administrators to make copies of their school safety plans available upon request to parents, teachers, and other members of the school staff, and would authorize a principal or school site administrator to distribute those copies using electronic mail. This bill contains other related provisions and other existing laws.

AB 2657 (Solorio)**Title:** School Safety: Security and Police Officers**Status:** Not yet assigned**Position:****Summary:**

This bill would declare the intent of the Legislature to evaluate the safety needs of public comprehensive high schools in California and enact legislation to decrease the ratio of school security officers to pupils in those high schools.

AB 2692 (Hernandez)**Title:** Insurance: Workers' Compensation**Status:** Not yet assigned**Position:****Summary:**

Existing law requires the Insurance Commissioner to take various actions to approve or disapprove workers' compensation rates and insurance premium increases. This bill would prohibit excessive rates.

AB 2717 (Fuentes)**Amended:****Title:** Special Education: Due Process Hearing: Burden of Proof**Status:** Not yet assigned**Position:****Summary:**

This bill would assign the burden of proof, as defined, in a special education due process hearing to the responsible educational agency, except with regard to the appropriateness of a unilateral parental placement or related services in a case where the parent or guardian is seeking tuition reimbursement for the placement or services.

AB 2969 (Lieber)**Title:** Workers' Compensation: Medical Treatment Utilization Reviews**Status:** Not yet assigned**Position:****Summary:**

This bill would make technical changes in the licensing requirements of licensed physicians who conduct evaluations for medical treatment services.

AB 2981 (Soto)**Title:** Education: Emergency Schools**Status:** Not yet assigned**Position:****Summary:**

Existing law authorizes the county superintendent of schools, subject to approval by the county board of education, to insure all real and personal property that the county superintendent constructs, purchases, or otherwise provides for emergency schools that the county superintendent establishes. This bill would make technical, non-substantive changes to this provision.

AB 2987 (Benoit)**Title:** Workers' Compensation: Supplemental Job Displacement Benefits**Status:** Not yet assigned**Position:****Summary:**

Existing law requires employers to secure the payment of workers' compensation, including medical treatment, for injuries incurred by their employees that arise out of, or in the course of, employment. Existing law provides for the payment of temporary disability indemnity payments to any injured employee under specified circumstances, and provides for payment of supplemental job displacement benefits to an injured employee if an injury causes permanent partial disability and the injured employee does not return to work for the employer within 60 days of the termination of temporary disability indemnity payments.

This bill would, instead, provide for the payment of those supplemental job displacement benefits to any injured worker if the injury causes permanent partial disability and the injured employee does not return to work for the employer within 60 days of the disability becoming permanent and stationary.

SB 1115 (Migden)**Title:** Workers' Compensation: Permanent Disability Reports: Apportionment**Status:** Senate Floor**Position:****Summary:**

Existing workers' compensation law generally requires employers to secure the payment of workers' compensation, including medical treatment, for injuries incurred by their employees that arise out of, or in the course of, employment. Existing law requires any physician who prepares a report addressing the issue of permanent disability due to a claimed industrial injury to address the issue of causation of the permanent disability, and requires that such a report include an apportionment determination to be considered complete on the issue of permanent disability.

This bill would provide that race, religious creed, color, national origin, age, gender, marital status, sex, or genetic predisposition shall not be considered to be a cause or other factor considered in any determination made pursuant to those provisions.

SB 1189 (Cedillo)**Title:** Workers' Compensation: Supplemental Job Displacement Benefits**Status:** 03/03/2008-Set for hearing March 26.**Position:**

Existing law requires the payment of disability benefits to eligible individuals for injuries sustained in the course of employment that cause permanent disability, and specifies that the amount of those payments be computed in accordance with a prescribed formula.

This bill would require, for injuries occurring on or after January 1, 2009, if the employee has not returned to work within 60 days of a disability becoming permanent and stationary, the provision of such a voucher to an injured employee no later than 74 days after the date the disability has been determined to be permanent and stationary.

The bill would require the employer, if the percentage of permanent disability has not been determined, to provide a voucher based on the reasonable estimate of the percentage of permanent disability, as specified, and would require the employer, if the percentage of permanent disability is later determined to be higher than that estimate, to provide the additional voucher amount immediately upon determining the correct percentage of permanent disability.

The bill would require an employer, if the percentage of permanent disability is later determined to be lower than the estimate, to reissue the voucher in the correct amount, and to notify the employee that any unused portion of the original voucher in excess of the appropriate amount is no longer available.

The bill would also require an employer to notify the employee, in a manner prescribed by the administrative director, of an employee's determination of permanent disability consistent with those provisions, and of any delay in determining the employee's correct percentage of permanent disability benefits.

SB 1202 (Harman)

Title: Attorney's Fees: Public Interest: Class Action

Status: 03/06/2008-Set for hearing March 25.

Position:

Summary:

Existing law allows a court, upon motion, to award attorney's fees to a successful party against one or more opposing parties in any action that has resulted in the enforcement of an important right affecting the public interest, if certain conditions are met.

This bill would authorize the judge in a class action lawsuit to order a part of the attorney's fees awarded pursuant to this provision to be withheld until the class members have received their portion of the settlement funds.

SB 1309 (Calderon)

Title: Workers' Compensation: Medical Devices

Status: Not yet assigned

Position:

Summary:

Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, to compensate an employee for injuries sustained in the course of his or her employment. Existing law requires that implantable medical devices, hardware, and instrumentation for specified Diagnostic Related Groups (DRGs) be separately reimbursed in accordance with a prescribed formula. This bill would make technical, non-substantive changes to these provisions.

SB 1338 (Migden)

Title: Workers' Compensation: Medical Treatment: Predesignation of Physician

Status: 03/03/2008-Set for hearing March 26.

Position:

Summary:

Existing law, until December 31, 2009, provides an employee with the right to be treated by his or her personal physician from the date of injury if specified requirements are met, including a requirement that the physician agrees to be predesignated. This bill would delete the December 31, 2009, repeal date for those provisions pertaining to an employee's predesignation of a personal physician.

SB 1717 (Perata)

Title: Workers' Compensation: Permanent Partial Disability Benefits

Status: 02/25/2008-Read first time.

Position:

Summary:

Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, to compensate an employee for injuries sustained in the course of his or her employment. Existing law requires the payment of disability benefits to eligible individuals for injuries sustained in the course of employment that cause permanent disability, and specifies that the amount of those payments be computed in accordance with a prescribed formula.

This bill would declare the intent of the Legislature to enact legislation that would adjust the formula for determining the amount of permanent partial disability benefits to ensure that the amount of benefits provided to injured workers is adequate to comply with constitutional mandates requiring that substantial justice be afforded to all injured workers in workers' compensation cases.
