



Workers' Comp 101: A Technical Primer

October 29, 2019

9:30 – 11:00 AM

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DISCLAIMER

This information is general in nature and is not meant to apply to any specific case. Please feel free to contact us with specific questions. Also, please note that this presentation is not exhaustive. Cases, Regulations, and the Labor Code change frequently.

This is meant to provide you with a useful reference in order to help you determine with your lawyer on a case-by-case basis whether you should and how you might contest the issues discussed herein.



California Workers' Comp

- **Broad definition of “employee” -- LC 3351;**
- **Presumption of employment status for work performed -- LC 3357**
- **Requirement of WC insurance or state authorized self- insurance -- LC 3700**
- **Severe consequences for lack of insurance**
 - **LC 3706-09 [tort liability with no employee fault];**
 - **10% penalty—LC 4554;**
 - **Uninsured Employers Benefits Trust Fund remedy against employer—LC 3716----all this plus regular WC benefits LC 3715**



Who is involved in Workers' Comp Claims?

- Injured worker
- Employer
- Insurance carrier or self-insured employers and their TPA
- Excess Insurers and their pools
- Attorneys
- Medical treatment providers and evaluators
- Judicial officers
- State employees from Division of Workers' Compensation
- Other (ie: UR / IMR / VR professionals)

Workers' Comp vs. Civil Tort

Workers' Comp

- ✓ Court of special jurisdiction: Workers' Compensation Appeals Board [WCAB]
- ✓ No-Fault system
- ✓ No jury
- ✓ Judge is civil servant who tests for job and is selected from eligible list

Civil

- ✓ General Jurisdiction: Superior Court
- ✓ Fault based system
- ✓ Jury
- ✓ Judge elected or appointed by Governor

Workers' Comp vs. Civil Tort

Workers' Comp

- ✓ Largely document-based evidence
- ✓ No damages for pain and suffering
- ✓ Special legislatively enumerated benefits only
- ✓ Informal pleadings and procedures: LC 5708,5709

Civil

- ✓ Largely live evidence
- ✓ Special damages including past and future wage loss, past and future medical and general damages for pain and suffering may be awarded
- ✓ Formal pleadings and procedures

Workers' Comp vs. Civil Tort

Workers' Comp

- ✓ Rules of evidence are relaxed
- ✓ Liberal construction of facts and law. LC 3202: “This division...shall be liberally construed by the courts with the purpose of extending their benefits for the protection of persons injured in the course of their employment”
- ✓ Typical trial: ½ day
- ✓ Settlements reviewed and approved by Judge

Civil

- ✓ Rules of evidence strictly applied
- ✓ Approx. five days to accomplish same amount of evidence as in ½ day of WC trial
- ✓ With some exceptions (e.g. minors), no review of adequacy of settlements

Workers' Comp vs. Civil Tort

Workers' Comp

- ✓ Decision by mail within 90 days of submission case
- ✓ Award according to PDRS paid in installments and may include lifetime medical
- ✓ May include cost of living adjustment (“COLA”) subject to SAWW.
- ✓ Life pension if disability 70% or greater, permanent total disability, death.
- ✓ Reconsideration to WCAB

Civil

- ✓ Immediate decision by jury [verdict] upon submission and after deliberation
- ✓ Lump sum award including value of past and future losses
- ✓ Motion for new trial to trial Judge

Workers' Comp vs. Civil Tort

- Workers'Comp

- ✓ **Court of Appeal: discretionary review pursuant to writ of review**
- ✓ **Most costs paid by employer/insurer (win or lose)**
- ✓ **Attorney fees 12-18%; generally 15% of award.**
- ✓ **Attorney fees approved by Judge**

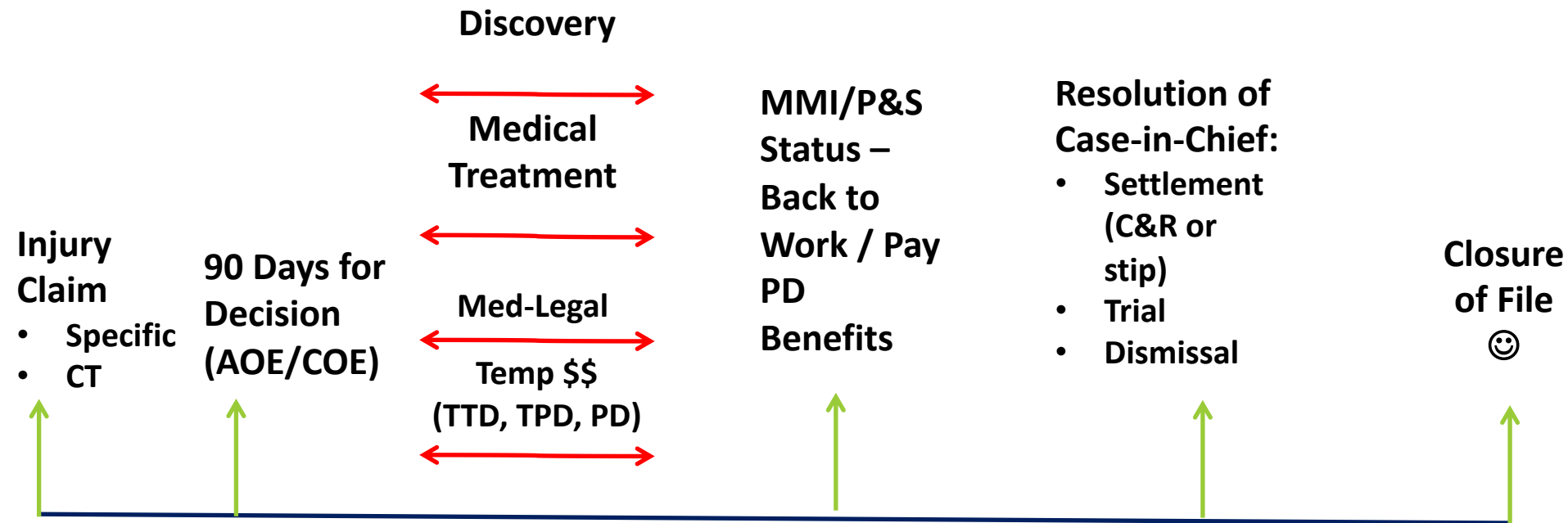
- Civil

- ✓ **Court of Appeal: Appellate court must hear and issue opinion in any appealed case**
- ✓ **Some costs for both sides may be paid by loser, but generally each side pays own expenses**
- ✓ **Attorney fees generally 33% to 40% of award**
- ✓ **Attorney fees by contract between attorney and client**

WCAB Legal Documents

- DWC-1 – “Claim Form”
- Application for Adjudication of Claim
- Answer: Employer can / must raise defenses
 - AOE/COE [whether injury “arose ot of employment” and occurred in “course of employment”]; employment; insurance coverage; earnings; apportionment; Statute of Limitations; and miscellaneous others such as horseplay; self-inflicted injury; voluntary intoxication
- 4906(g) declaration
- Declaration of Readiness (DOR)
 - Employer may have liability for attorneys fees if ER files a DOR (LC4906)
- EAMS – system and document requirements

General Timeline of a Workers' Compensation Claim



****Settlement options should be assessed at ALL stages of the claim!**



Gig Economy / Independent Contractors vs. EEs

- *Dynamex – ABC Test*
- AB5 passed & signed into law
- Workers' compensation covers employees.



Notice of Injury

- **Knowledge = Notice (LC 5402)**
 - “Injury”
 - More than first aid
 - Time off work
- **Responsibilities of ER:**
 - Provide claim form within 1 day of knowledge
- **Duties of EE:**
 - Return/File claim form
- **Next Action (by ER/TPA/Insurer)**
 - Set up Medical Treatment (LC 5402)
 - Strategize with Team re: Decision to Accept/Deny/Delay

DECISION TIME – ER STRATEGY

- **Accept**
 - **Medical treatment**
 - **Liens – may still have “med-legal” per LC 4620**
- **Delay**
 - **LC5402 – up to \$10k.**
 - **MPN can be enforced**
- **Deny**
 - **Factual**
 - **Legal**
 - **Medical**





EARLY CONSIDERATIONS

- **Early Return to Work possible?**
- **Rally the team to discuss restrictions, if any**
- **Able to accommodate?**
- **Afford to accommodate? Afford not to?**
 - **Temporary Total or Temporary Partial Disability**
 - **Voucher / Supplemental Job Displacement Benefit**
- **Medical risk to self, others**
- **Ability to monitor EE while performing modified duties vs. surveillance / investigation**
- **Impact on morale of other EEs?**



Common Defenses

Statute of Limitations

- What is SOL?
 - Jurisdiction.
 - “Soft denial”
- How long?
 - 30 days to report the claim
 - 1 year from denial of benefits to file Application for Adjudication
 - 5 years from DOI, 1 year from last provision of compensation (define) - whichever is later.
- How does the DWC1 play into SOL defenses?



Common Defenses

AOE/COE

- **Must be both AOE and COE to be compensable**
- **Burden of proof on IW - very easy to meet (medical, legal, factual)**
- **Denial AOE / COE**
 - **Procedural implications**
 - **Loss of medical control**
- **4621(b) - 60 days med-legal control – Use it!**



Common Defenses

- **Psyche claims**
 - **Burden of proof on IW - 50+ % of all causes combined**
 - **6 month rule *unless* sudden & extraordinary**
 - **Post-termination standards different**
 - **LC4660.1 – no increased permanent disability after 1/1/13 *unless* violent or catastrophic. (Still get TD and treatment)**
- **Good faith personnel defense - employer's burden of proof**



Common Defenses

- **Horseplay**
 - **General rule**
 - **Employer's burden to prove**
 - **Supervisor participation negates defense**
 - **No "idiot" defense**
 - **Key evidence: Video / witness / equipment**
 - **Maintain custody & control of any evidence**
 - **CalOSHA / OSHA reporting requirements**



Safety Officers



Special Benefits for Public Safety Employees

- Full Salary “in lieu of” other benefits; LC 4850
- Presumptions; LC 3712 et seq.
 - I.e.: Heart, hernia, cancer, gunbelt (low back) [all presumptions at end]
 - New law: extends Psyche/ PTSD
 - 5 years of service
- Special IDR / Industrial Disability Retirement under CalPERS or '37 Act, etc.
- Special Death Benefits



Advanced IDR payments: LC 4850.3

A city, county, special district, or harbor district that is a member of certain retirement programs may make advanced disability pension payments to any local safety officer who has qualified for benefits under [Section 4850](#) and is approved for a disability allowance.

- No less than 50 percent of the estimated highest average annual compensation earnable by the local safety officer during the three consecutive years of employment immediately preceding the effective date of his or her disability retirement, unless the local safety officer chooses an optional settlement in the permanent disability retirement application process which would reduce the pension allowance below 50 percent.

... Advanced disability pension payments shall not be considered a salary under this or any other provision of law. All advanced disability pension payments made by a local agency with membership in the Public Employees' Retirement System shall be reimbursed by the Public Employees' Retirement System pursuant to [Section 21293.1 of the Government Code](#) .



Safety Presumptions

- **“Presumption”**
 - **Presumptions** are used to relieve a party from having to actually prove the truth of the fact being **presumed**. **The law requires a court to assume that a certain fact is true.**
 - **Normally, an injured worker has to prove to the court that their injury is industrial. If the injury is presumed then the court will find it industrial and the burden shifts to Defendant to prove otherwise.**
- **It is very difficult to rebut a presumptive injury, but not impossible. Discovery should be done before giving up!**



Safety Presumptions

“Anti-Attribution” Clause

- **LC4663(e)**
 - **Apportionment from pre-existing disabilities does not apply to presumptive disabilities arising under LC 3212 – 3213.2.**
 - **Note: 4664 apportionment to prior awards still applies.**
- **Labor Code Section 4663 e) eliminates apportionment even if the particular presumption does not contain an anti-attribution clause. (*California Dpt. of Corrections v. WCAB (2009) 74 CCC, unpublished.*)**
- **If one of the presumptions applies there cannot be apportionment to other industrial injuries.**



Ed. Code in 60 Seconds

- **Labor Code PLUS**
- **Certificated EEs have special rights**
- **Local MOU and district contracts prevail**
- **Rehire list & salary continuation vs TTD**
- <https://www.cde.ca.gov/re/lr/cl/>



Life of a California Workers' Comp. Claim

- **The Injury**
 - **Specific versus Cumulative**
 - **Initial Handling**
 - **Claim Form**
 - **Acceptance versus Denial**
- **Treatment**
 - **Primary Treating Physician**
 - **Utilization Review/Independent Medical Review**
- **Work Status**
 - **Temporary Disability (Total v. Partial)**
 - **Supplemental Job Displacement Benefits**
- **Med-Legal**
- **Resolution**
- **Liens**



The beginning of the claim.

THE INJURY

Injury Defined

Labor Code Section 3208.1

Specific

“Occurring as the result of one incident or exposure which causes disability or need for medical treatment”

Examples:

- A slip and fall
- A car accident

Cumulative

“Occurring as repetitive mentally or physically traumatic activities extending over a period of time, the combined effect of which causes disability or need for medical treatment.”

Example:

- Overuse syndrome from keyboarding

What is the date of injury?

Specific

“The date of injury...is that date during the employment on which occurred the alleged incident or exposure, for the consequences of which compensation is claimed.” (LC 5411)

Examples:

- Day of the slip and fall
- Day of the car accident

Cumulative

“...that date upon which the employee first suffered disability therefrom and either knew, or in the exercise of reasonable diligence should have known, that such disability was caused by his present or prior employment.” (LC 5412)

The key is knowledge and disability.

Date of Injury for a Cumulative Trauma

Knowledge

- Generally, “knowledge” of a cumulative injury requires a medical opinion.
- However, in Morrell, the WCAB found knowledge before the injured worker sought medical treatment because he admitted he knew his work caused his injury and his injury is the reason he stopped working. (2001) 66 CCC 947).

Disability

- There is a lot of case law on the issue of the definition of “disability.”
- Rodarte is the current standard, which says disability is identified by “either compensable temporary disability or permanent disability.” (2004) 69 CCC 579.



Peculiarities of a Cumulative Trauma Claim

- Date of injury is a question of fact and law to be decided by a Judge.
- The cumulative trauma period may be any length of time, as long as it is more than one day.
- The cumulative trauma period is not the same as the *liability period*.
- The period of liability is limited to one year prior to either (a) the date of injury or (b) the last day of injurious exposure, whichever occurs first. (Per Labor Code Section 5500.5)
- Liability for the cumulative trauma may be shared by multiple employers, but only those that employed the injured worker within the one year liability period.

The Claim Form (DWC-1)

- Once the Employer receives notice of an injury (from any source), it must provide the Injured Worker a claim form within one working day. Failure to timely provide a form may effect a subsequent Statute of Limitation defense.

- If the claims administrator learns that the Employer has not provided the Injured Worker with a form, it may do so within 3 days of learning that one was not properly provided.

- If the claims administrator cannot determine if a form was provided to the Injured Worker, it may so provide one within 30 days of his or her knowledge of the claim.

- Providing a claim form is technically only required for those injuries that cause lost time and medical treatment beyond first aid.

State of California
Department of Industrial Relations
DIVISION OF WORKERS' COMPENSATION

WORKERS' COMPENSATION CLAIM FORM (DWC 1)

Employee: Complete the "Employee" section and give the form to your employer. Keep a copy and mark it "Employee's Temporary Receipt" until you receive the signed and dated copy from your employer. You may call the Division of Workers' Compensation and hear recorded information at (800) 736-7401. An explanation of workers' compensation benefits is included in the Notice of Potential Eligibility, which is the cover sheet of this form. Detach and save this notice for future reference. You should also have received a pamphlet from your employer describing workers' compensation benefits and the procedures to obtain them. You may receive written notices from your employer or its claims administrator about your claim. If your claims administrator offers to send you notices electronically, and you agree to receive these notices only by email, please provide your email address below and check the appropriate box. If you later decide you want to receive the notices by mail, you must inform your employer in writing.

Any person who makes or causes to be made any knowingly false or fraudulent material statement or material representation for the purpose of obtaining or denying workers' compensation benefits or payments is guilty of a felony.



Estado de California
Departamento de Relaciones Industriales
DIVISION DE COMPENSACION AL TRABAJADOR

PETITION DEL EMPLEADO PARA DE COMPENSACION DEL TRABAJADOR (DWC 1)

Empleado: Complete la sección "Empleado" y entregue la forma a su empleador. Quédese con la copia designada "Recibo Temporal del Empleado" hasta que Ud. reciba la copia firmada y fechada de su empleador. Ud. puede llamar a la División de Compensación al Trabajador al (800) 736-7401 para obtener información grabada. Una explicación de los beneficios de compensación de trabajadores está incluido en la Notificación de Posible Elegibilidad, que es la hoja de portada de esta forma. Separe y guarde esta notificación como referencia para el futuro.

Ud. también debería haber recibido de su empleador un folleto describiendo los beneficios de compensación al trabajador lesionado y los procedimientos para obtenerlos. Es posible que reciba notificaciones escritas de su empleador o de su administrador de reclamos sobre su reclamo. Si su administrador de reclamos ofrece enviarle notificaciones electrónicamente, y usted acepta recibir estas notificaciones solo por correo electrónico, por favor proporcione su dirección de correo electrónico abajo y marque la caja apropiada. Si usted decide después que quiere recibir las notificaciones por correo, usted debe de informar a su empleador por escrito.

Toda aquella persona que a propósito haga o cause que se produzca cualquier declaración o representación material falsa o fraudulenta con el fin de obtener o negar beneficios o pagos de compensación a trabajadores lesionados es culpable de un crimen mayor "felonía".

Employee—complete this section and see note above	Empleado—complete esta sección y note la notación arriba.
1. Name, Nombre. _____	Today's Date, Fecha de Hoy. _____
2. Home Address, Dirección Residencial. _____	
3. City, Ciudad. _____ State, Estado. _____ Zip, Código Postal. _____	
4. Date of Injury, Fecha de la lesión (accidente). _____ Time of Injury, Hora en que ocurrió. _____ a.m. _____ p.m.	
5. Address and description of where injury happened, Dirección/lugar dónde ocurrió el accidente. _____	
6. Describe injury and part of body affected, Describe la lesión y parte del cuerpo afectada. _____	
7. Social Security Number, Número de Seguro Social del Empleado. _____	
8. <input type="checkbox"/> Check if you agree to receive notices about your claim by email only. <input type="checkbox"/> Marque si usted acepta recibir notificaciones sobre su reclamo solo por correo electrónico. Employee's e-mail. _____ Correo electrónico del empleado. _____	
You will receive benefit notices by regular mail if you do not choose, or your claims administrator does not offer, an electronic service option. Usted recibirá notificaciones de beneficios por correo ordinario si usted no escoge, o su administrador de reclamos no le ofrece, una opción de servicio electrónico.	
9. Signature of employee, Firma del empleado. _____	
Employer—complete this section and see note below. Empleador—complete esta sección y note la notación abajo.	
10. Name of employer, Nombre del empleador. _____	
11. Address, Dirección. _____	
12. Date employer first knew of injury, Fecha en que el empleador supo por primera vez de la lesión o accidente. _____	
13. Date claim form was provided to employee, Fecha en que se le entregó al empleado la petición. _____	
14. Date employer received claim form, Fecha en que el empleado devolvió la petición al empleador. _____	
15. Name and address of insurance carrier or adjusting agency, Nombre y dirección de la compañía de seguros o agencia administradora de seguros. _____	
16. Insurance Policy Number, El número de la póliza de Seguro. _____	
17. Signature of employer representative, Firma del representante del empleador. _____	
18. Title, Título. _____ 19. Telephone, Teléfono. _____	

Employers: You are required to date this form and provide copies to your insurer or claims administrator and to the employee, dependent or representative who filed the claim within one working day of receipt of the form from the employee.

SIGNING THIS FORM IS NOT AN ADMISSION OF LIABILITY

Empleador: Se requiere que Ud. feche esta forma y que proporcione copias a su compañía de seguros, administrador de reclamos, o dependiente/representante de reclamos y al empleado que hayan presentado esta petición dentro del plazo de un día hábil desde el momento de haber sido recibida la forma del empleado.

EL FIRMAR ESTA FORMA NO SIGNIFICA ADMISION DE RESPONSABILIDAD

Employer copy/Copia del Empleador Employee copy/Copia del Empleado Claims Administrator/Administrador de Reclamos Temporary Receipt/Recibo del Empleado



The Claim Form (DWC-1)

- The Injured Worker must “file” the completed form with the Employer by mail or hand delivery.
- Once the claim form is “filed,” the Injured Worker has effectively commenced his or her claim.
- If a claim is to be denied, the denial must be made within 90 days from the filing of the claim form. Otherwise, the claim will be presumed compensable.
- It may only be denied after that period if based on evidence that could not have been obtained within the first 90 days.

Initial Treatment of a Claim

Accept

Delay

Deny

- In situations where the injury producing event was observed, the injury is more or less evident, and there are no causes for concern, the claim should be accepted.
- This will create immediate exposure for indemnity benefits and unlimited amounts of medical treatment.
- However, potential liens will be mitigated because the Injured Worker will have less incentive to self-procure. There is also the benefit of Utilization Review and Independent Medical Review.

Initial Treatment of a Claim

Accept

Delay

Deny

- A delay notice should be sent where the claims administrator needs additional facts to decide whether to accept or deny the case.
- The claim must be denied within 90 days of the claim form filing so use the delay period wisely; consider subpoenaing medical records and conducting an investigation.
- During the 90 day decision period until a decision is made, the Injured Worker is allowed up to \$10,000 in medical treatment pursuant to LC 5402.
- If this cap is met, there is exposure for liens for self-procured medical treatment.

Initial Treatment of a Claim

Accept

Delay

Deny

- Consider denying a claim when there is no evidence that the injury “arises out of and in the course of employment” (“AOE/COE”). For example, if there is no medical evidence indicating that there is industrial causation.
- You may also deny a claim if there is an affirmative defense such as:
 - Statute of Limitations: the claim was not filed within 1 year of the date of injury,
 - Post-Termination: the claim was filed after a termination for an injury that occurred before the termination (i.e. claim of a disgruntled employee)

Initial Treatment of a Claim

Accept

Delay

Deny

- A denial notice must be sent within 90 days of the filing of the claim form. A claim may not later be denied based on facts that could have been discovered within the initial 90 days.
- There is no exposure for medical treatment or indemnity benefits once a claim is denied.
- However, there is increased exposure for liens because the Injured Worker will likely self-procure treatment and may apply for EDD SDI benefits. These liens would be negotiable whether the claim stays denied or is at some point accepted, but nevertheless they will arise and must be dealt with.



Handling an accepted claim.

TREATMENT

A BETTER PAIN CHART



0: Hi. I am not experiencing any pain at all. I don't even know why I'm here.

1: I am completely unsure whether I am experiencing pain or itching, or maybe I just have a bad taste in my mouth.

2: I probably just need a Band Aid.

3: This is distressing. I don't want this to be happening to me at all.

4: My pain is not f_cking around.

5: Why is this happening to me??

6: Ow. Okay, my pain is super legit now.

7: I see Jesus coming for me and I'm scared.

8: I am experiencing a disturbing amount of pain. I might actually be dying. Please help.

9: I am almost definitely dying.

10: I am actively being mauled by a bear.

11: Blood is going to explode out of my face at any moment.

Too Serious For Numbers: You probably have ebola. It appears that you may also be suffering from Stigmata and/or pinkeye.



When to Manage Treatment

- **This section is only applicable when the claim is accepted.**
- **While the claim is denied, the Injured Worker may seek treatment from whomever he or she pleases, without regard for Utilization Review or Independent Medical Review.**
- **If the claim is denied and later accepted, the claims administrator may and should impose the restrictions outlined herein. However, be aware that medical treatment liens will likely surface from the facilities that treated the Injured Worker during the denial period. The Injured Worker may also request reimbursement for self-procured treatment. These issues are negotiable, but nevertheless must be addressed.**



Primary Treating Physician

- **Once a claim is accepted, the Injured Worker must establish a Primary Treating Physician.**
- **The claims administrator may require the Injured Worker to treat within a Medical Provider Network (“MPN”).**
- **However, such networks are considered defective if there are not three physicians capable of providing primary care (irrespective of the preferred specialty) within 15 miles or 30 minutes of the Injured Worker’s home. (Soto v. Sambrailo Packaging (2016) Cal. Wrk. Comp. P.D. LEXIS; 8 CCR 9767.5(a)).**
- **In this rural area, it is common for MPNs to be defective. If an MPN is defective, the Injured Worker may select a treater of his or her choice – within reason.**



Primary Treating Physician

- Many In Pro Per Injured Workers select chiropractors or physical therapists as their Primary Treating Physicians.
- Be aware that Labor Code Section 4604.5(c)(1) still limits the Injured Worker to 24 chiropractic, 24 occupational therapy, and 24 physical therapy visits per industrial injury.
- How is that counted? Consider the split panel decision of Molina Romero v. California Pizza Kitchen (2016) Cal. Wrk. Comp. P.D. LEXIS 20. In that case, a chiropractor sought payment for 48 office visits on an accepted case, arguing that he provided a 50/50 mix of chiropractic and physical therapy visits. The WCAB determined that if he was licensed to provide both treatments and there were 24 visits for each type of service, he would be entitled to reimbursement.
- Nevertheless, when the limit is reached, the Injured Worker will need to select a new Primary Treating Physician.

Requests for Authorization & Utilization Review

- Medical treatment is controlled by Labor Code Section 4610, the Utilization Review process.
- A primary or secondary treater may submit to the claims administrator a Request for Authorization (“RFA”) of any particular treatment.
- A response must be made within 5 days of receipt of an RFA, using the day after receipt as day one per 8 CCR 9792.9.1(c)(1).
 - EXCEPTIONS:
 - Expedited request – 72 hours from receipt of RFA
 - Retrospective request – 30 days from receipt of all information necessary to make a decision

State of California, Division of Workers' Compensation
REQUEST FOR AUTHORIZATION
 DWC Form RFA

Attach the Doctor's First Report of Occupational Injury or Illness, Form DLSR 5021, a Treating Physician's Progress Report, DWC Form PR-2, or equivalent narrative report substantiating the requested treatment.

<input type="checkbox"/> New Request					<input type="checkbox"/> Resubmission – Change in Material Facts				
<input type="checkbox"/> Expedited Review: Check box if employee faces an imminent and serious threat to his or her health									
<input type="checkbox"/> Check box if request is a written confirmation of a prior oral request.									
Employee Information									
Name (Last, First, Middle):									
Date of Injury (MM/DD/YYYY):					Date of Birth (MM/DD/YYYY):				
Claim Number:					Employer:				
Requesting Physician Information									
Name:									
Practice Name:					Contact Name:				
Address:									
City:			State:						
Zip Code:			Phone:			Fax Number:			
Specialty:					NPI Number:				
E-mail Address:									
Claims Administrator Information									
Company Name:					Contact Name:				
Address:									
City:			State:						
Zip Code:			Phone:			Fax Number:			
E-mail Address:									
Requested Treatment (see instructions for guidance; attached additional pages if necessary)									
List each specific requested medical services, goods, or items in the below space or indicate the specific page number(s) of the attached medical report on which the requested treatment can be found. Up to five (5) procedures may be entered; list additional requests on a separate sheet if the space below is insufficient.									
Diagnosis (Required)	ICD-Code (Required)	Service/Good Requested (Required)	CPT/HCPCS Code (If known)	Other Information: (Frequency, Duration Quantity, etc.)					
Requesting Physician Signature:					Date:				
Claims Administrator/Utilization Review Organization (URO) Response									
<input type="checkbox"/> Approved <input type="checkbox"/> Denied or Modified (See separate decision letter) <input type="checkbox"/> Delay (See separate notification of delay)									
<input type="checkbox"/> Requested treatment has been previously denied <input type="checkbox"/> Liability for treatment is disputed (See separate letter)									
Authorization Number (if assigned):					Date:				
Authorized Agent Name:					Signature:				
Phone:			Fax Number:			E-mail Address:			
Comments:									

Requests for Authorization & Utilization Review

- Responses to the RFA may be as follows:
 - Either the claims administrator or the medical reviewer may approve, delay, or deny an RFA. A delay is used when an RFA is incomplete.
 - Only the medical reviewer may modify an RFA. (i.e. authorize 4 physical therapy sessions instead of 8).
 - Only the claims administrator may defer an RFA. Deferral is used for non medical reasons only, such as AOE/COE, to preserve one's rights.
- A decision to approve, modify, or deny an RFA is valid for 12 months absent a change in circumstances.

State of California, Division of Workers' Compensation
REQUEST FOR AUTHORIZATION
 DWC Form RFA

Attach the Doctor's First Report of Occupational Injury or Illness, Form DLSR 5021, a Treating Physician's Progress Report, DWC Form PR-2, or equivalent narrative report substantiating the requested treatment.

<input type="checkbox"/> New Request	<input type="checkbox"/> Resubmission – Change in Material Facts			
<input type="checkbox"/> Expedited Review: Check box if employee faces an imminent and serious threat to his or her health				
<input type="checkbox"/> Check box if request is a written confirmation of a prior oral request.				
Employee Information				
Name (Last, First, Middle):				
Date of Injury (MM/DD/YYYY):	Date of Birth (MM/DD/YYYY):			
Claim Number:	Employer:			
Requesting Physician Information				
Name:				
Practice Name:	Contact Name:			
Address:	City: State:			
Zip Code: Phone:	Fax Number:			
Specialty:	NPI Number:			
E-mail Address:				
Claims Administrator Information				
Company Name:				
Contact Name:				
Address:				
City: State:				
Zip Code: Phone:	Fax Number:			
E-mail Address:				
Requested Treatment (see instructions for guidance; attached additional pages if necessary)				
List each specific requested medical services, goods, or items in the below space or indicate the specific page number(s) of the attached medical report on which the requested treatment can be found. Up to five (5) procedures may be entered; list additional requests on a separate sheet if the space below is insufficient.				
Diagnosis (Required)	ICD-Code (Required)	Service/Good Requested (Required)	CPT/HCPCS Code (If known)	Other Information: (Frequency, Duration Quantity, etc.)
Requesting Physician Signature:				Date:
Claims Administrator/Utilization Review Organization (URO) Response				
<input type="checkbox"/> Approved <input type="checkbox"/> Denied or Modified (See separate decision letter) <input type="checkbox"/> Delay (See separate notification of delay)				
<input type="checkbox"/> Requested treatment has been previously denied <input type="checkbox"/> Liability for treatment is disputed (See separate letter)				
Authorization Number (if assigned):				Date:
Authorized Agent Name:			Signature:	
Phone:	Fax Number:	E-mail Address:		
Comments:				



Independent Medical Review

- **When an RFA is denied, the Injured Worker has a right to Independent Medical Review (“IMR”).**
- **IMR may either uphold or overturn UR’s decision that the requested treatment was not medically necessary.**
- **If IMR overturns the denial, the treatment is considered approved.**
- **IMR’s decision is binding for one year absent a change in circumstances.**
- **IMR’s decision is final. It may not be appealed by either party.**



Handling an accepted claim.

WORK STATUS



The Importance of Work Status

- **Work status bears on the issues of temporary disability indemnity and liability for the Supplemental Job Displacement Voucher.**
- **There is no liability for the above-referenced benefits in denied claims.**
- **Therefore, work status is of primary concern in accepted claims, including those claims that were once denied but are now accepted.**

Possible Work Statuses

TTD

TPD

Full Duty

- If a doctor deems the Injured Worker “TTD” or “totally temporarily disabled,” he or she is not permitted to work in any capacity.
- The Injured Worker is entitled to receive two-thirds of his or her Average Weekly Wage (“AWW”) while TTD. (Calculate from wage statement).

Possible Work Statuses

TTD

TPD

Full Duty

- If you believe the Injured Worker is being continued on TTD unnecessarily, it is important to issue a JC Penny letter disputing the ongoing TTD status and asserting a right to a credit for overpaid temporary disability indemnity against future benefits due in the event of a retroactive permanent and stationary date.
- Notice to the Injured Worker is key when starting, changing, or terminating TTD benefits.

Possible Work Statuses

TTD

- TTD ends when (1) the Injured Worker returns to work in any capacity or (2) the Injured Worker is deemed permanent and stationary.

TPD

- If the Injured Worker cannot return to work after being deemed permanent and stationary, a reasonable estimation of permanent disability advances are due per Labor Code Section 4650(a).

Full Duty

- When advancing permanent disability in a represented case, always reserve 15% for attorney's fees.

Possible Work Statuses

TTD

TPD

Full Duty

- In cases with pre 1/1/2013 dates of injury, permanent disability indemnity due may be increased or decreased 15% per Labor Code Section 4658(d).
- The Employer must make an offer of regular work, modified work, or alternative work that is to last at least 12 months, within 60 days of the Injured Worker's permanent and stationary date in order to take advantage of the 15% bump down.
- If no such work is offered, the Injured Worker may be entitled to a 15% bump up.
- There are occasions where the parties agree on a "flat rate" or no bump. For example, the Injured Worker was terminated for cause.

Possible Work Statuses

TTD

TPD

Full Duty

- If the injured worker is given work restrictions that effect the amount of hours he or she can work, he or she is considered “TPD” or “temporarily partially disabled.”
- When TPD, an injured worker is entitled to wage loss.
- Per Labor Code Section 4654, wage loss is “two-thirds of the weekly loss in wages during the period of such disability.”
- $TPD = AWW - (2/3 \text{ actual weekly wages})$

Possible Work Statuses

TTD

- An injured worker is entitled to no more than 104 weeks of temporary disability within five years of the date of injury.

TPD

- Each day of TTD and TPD count towards the 104 week maximum.

Full Duty

Possible Work Statuses

TTD

TPD

Full Duty

- If the Injured Worker loses no time from work and therefore receives no temporary disability, no permanent disability advances (“PDAs”) are due per Labor Code Section 4650(a).
- If the Injured Worker loses time from work, but returns to full duty later, PDAs can be delayed when:
 - The Injured Worker is working for the same Employer earning at least 85% of his or her pre-injury wages, or
 - The Injured Worker is working for a new employer earning at least 100% of his or her pre-injury wages.



Supplemental Job Displacement Benefits

- This is typically referred to as the “Voucher.”
- The Voucher is a specific amount of money that an injured worker may draw from for specific retraining purposes.
- There are different rules depending on whether the date of injury pre or post dates 1/1/2013.
- However, regardless of the date of injury, a “Voucher” will only be due if (1) the injury resulted in permanent disability, and (2) the injured worker does not timely return to work.
- Facts available at:
https://www.dir.ca.gov/dwc/sjdb/SJDB_FAQ.html

Supplemental Job Displacement Benefits - Pre 1/1/2013

- A Voucher is due when the Employer, within 30 days of the termination of temporary disability payments, makes an offer of modified work lasting at least 12 months within 60 days of the termination of temporary disability indemnity and the Injured Worker rejects or *fails to accept* that offer. (LC 4658.6).
- When due, the Voucher must issue within 25 calendar days of an Award of permanent disability.
- Vouchers in pre-1/1/2013 cases can be settled. In those cases, it is important to make sure that the Injured Worker initials next to “Supplemental Job Displacement Benefits” in a Compromise & Release.

State of California
Division of Workers' Compensation
Retraining and Return to Work Unit

SUPPLEMENTAL JOB DISPLACEMENT
NONTRANSFERABLE TRAINING VOUCHER FORM
FOR INJURIES OCCURRING BETWEEN 1/1/04-12/31/12
DWC - AD 10133.57

Injured Employee (To Be Completed By The Employer or Claims Administrator) (All information in this section must be completed)

First Name _____ MI _____

Last Name _____

Address/PO Box (Please leave blank spaces between numbers, names or words) _____

City _____ State Zip Code _____

Claim Number _____ Date of Birth: MM/DD/YYYY _____

Phone _____ Date Voucher Expires _____ MM/DD/YYYY _____

Claims Administrator (To Be Completed By The Employer or Claims Administrator) (All information in this section must be completed)

Name (Please leave blank spaces between numbers, names or words) _____

Claims Mailing Address (Please leave blank spaces between numbers, names or words) _____

City _____ State Zip Code _____

Claims Representative _____ Phone _____

\$ _____ is available to the injured employee based on _____ % of Permanent Partial Disability Award

Supplemental Job Displacement Benefits - Pre 1/1/2013

- The amount of the Voucher varies depending on the total permanent disability level.
- The Voucher may be used for tuition, fees, books, and other expenses required for retraining.
- Payment issues directly to the school or as reimbursement when receipts are presented. It is not issued as cash.
- The Voucher does not expire.

PD Level	Voucher Amount
1 to 14	\$4,000
15 to 25	\$6,000
26 to 49	\$8,000
50 to 99	\$10,000

Supplemental Job Displacement Benefits - Post 1/1/2013

- A Voucher in a post 1/1/2013 case is always worth \$6,000.
- The Injured Worker may also submit the signed Voucher to the State, which will pay him or her an additional \$5,000 in cash.
- In order for the Injured Worker to obtain State benefits, the Voucher must be signed and dated by the claims administrator.
- The Voucher does expire within two years of issuance or five years from the date of injury, whichever is sooner.

This section is to be completed by the Claims Administrator

Employee Last Name		Employee First Name	MI
Claims Administrator		Claims Representative	
Claims Mailing Address			
City	State	Zip Code	Claim No.
Claims Phone Number	Claims Email Address (optional)		Date of Injury

After this voucher expires, it will be unusable. All claims for expenses and reimbursement must be submitted to the claims adjuster before the expiration date.

Date Voucher Expires: _____
MMDDYYYY

Vocational Return-to-Work Counselor (if any) (To Be Completed By the Employee)
If you will be using the services of a vocational return-to-work counselor, and/or training provider/school, please complete the bottom of this page and mail it to the claims administrator.

Last Name		First name	MI
Address:			
City:	State	Zip Code	
Phone	Funds used for counseling (not to exceed \$600): \$ _____		

Training Provider or School Details (if any) (To Be Completed By the Employee)


Provider Name			
Address:			
City:	State	Zip Code	
Phone	Training Cost: \$ _____		

The Injured Employee Must Sign and Date this Voucher Form

Signature: _____	Date: _____
	MMDDYYYY

Supplemental Job Displacement Benefits - Post 1/1/2013

- For injuries occurring *after* 1/1/2013, a completed Physician's Return to Work & Voucher Report must be received before a Voucher may be due.
- When the Report is received, the Employer has 60 days to make an offer of modified work. It is best if the offer is written, dated, and signed by the Employer.
- If an offer cannot be made, a Supplemental Job Displacement Voucher is due and must issue within 20 days of the expiration of the 60 day period to make an offer of modified work.


Physician's Return-to-Work & Voucher Report
 For injuries occurring on or after January 1, 2013

The Employee is P&S from all conditions and the injury has caused permanent partial disability

Employee Last Name _____ Employee First Name _____ MI _____ Date of Injury _____

Claims Administrator: _____ Claims Representative _____

Employer name: _____ Employer Street Address: _____

Employer City: _____ State Zip Code _____ Claim No. _____

The Employee can return to regular work

The Employee can work with restrictions:

	1-2 hours	2-4 hours	4-6 hours	6-8 hours	None
Stand	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Walk	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sit	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bend	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Squat	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Climb	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Twist	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Reach	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Crawl	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Drive	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Reach	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
R/L/Blat Hand(s) (circ):	Grasp <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
R/L/Blat Hand(s) (circ):	Push/Pull <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Lift/Carry Restrictions: May not lift/carry at a height of _____ more than _____ lbs. for more than _____ hours per day.

Other Restrictions:

If a Job Description has been provided, please complete: Job Description provided of: Regular Modified Alternative Work

Job Title: _____ Work Location: _____

Are the Work Duties compatible with the activity restrictions set forth in the provided job description? Yes No, explain below

Physician's Name _____ Role of Doctor (PTP, QME, AME)

Physician's Signature _____ Date _____

DWC AD Form 10133.36 (Effective 1/13)

Supplemental Job Displacement Benefits

Pre 1/1/2013

- Offer of modified work due within 30 days of termination of TD.
- Voucher does not issue before the claim is settled.
- Voucher can be settled.
- Voucher does not expire.

Post 1/1/2013

- Offer of modified work due within 60 days of receipt of the Physician's Return to Work & Voucher Report.
- Voucher may issue during the life of the claim.
- Voucher cannot be settled.
- Voucher does expire.



Finalizing litigated issues.

MED-LEGAL



Role of Med-Legal Evaluators

Med-legal evaluators exist to determine the following:

- **Compensability of a claim**
- **Diagnoses**
- **Periods of temporary disability**
- **Permanent disability**
- **Apportionment (pre-existing or between dates of injury)**
- **Future medical treatment (now controlled by UR/IMR)**
- **Permanent Work restrictions**

Who Can Be a “Med-Legal” Evaluator?

Primary Treating Physician

A PTP may issue a Permanent & Stationary Report (PR-4) addressing all necessary issues. However, the Injured Worker must always be apprised of his or her right to be evaluated by a QME. In unrepresented cases, Judges may not approve settlements based on PR-4s.

Qualified Medical Evaluator

A QME may be obtained in the manner prescribed by the Labor Code (unrepresented – 4062.1; represented – 4062.2). They are considered neutral third-parties, but may have reputations as more Applicant-oriented or more Defense-oriented.

Agreed Medical Evaluator

In represented cases only, the parties may agree on a physician to evaluate the Injured Worker. AMEs are more likely to find claims compensable in an effort to appease both parties. Their opinions are carry the most weight in the eyes of Judges since they were agreed to.



When to Obtain a PQME

- **When the Injured Worker is unrepresented,**
- **When the Injured Worker is represented, but:**
 - **The case is not moving,**
 - **The Applicant's Attorney has a reputation of obtaining pain-management panels,**
 - **An AME is not desired, or**
 - **The parties cannot agree on an AME.**



Reviewing a Med-Legal Report

Upon receipt of the PR-4, AME report, or QME report, ask yourself:

- Is the report likely substantial medical evidence? (See subsequent slides). If not, undertake additional discovery.
- In a denied claim where the physician finds the injury compensable, is there a defect in the report or do you have additional evidence that you could use to maintain your denial? If not, consider accepting the claim.
- Is the Injured Worker permanent, stationary, and ratable? If so, consider whether permanent disability advances are due.
- Does the apportionment decision seem reasonable? If not, undertake additional discover.



Substantial Medical Evidence

A Med-Legal bears the burden of issuing an opinion that constitutes “substantial medical evidence.” “Substantial medical evidence” is not well defined, however the following guidelines are used:

- The physician must use a correct legal theory. (See *Zemke v. WCAB* (1968) [68 Cal.2d 794](#), 33 Cal. Comp. Cases 358 (Supreme Court in Bank)),
- The physician’s opinion may not be based on “surmise, speculation, conjecture or guess.” (See *Garza v. WCAB* (1970) [3 Cal.3d 312](#), 35 Cal. Comp. Cases 500 (Supreme Court in Bank)),
- The physician’s report must NOT be “based upon inadequate medical history or examinations.” (See *West v. IAC* (1947) [79 Cal. App. 2d 711](#), 12 Cal. Comp. Cases 86), and
- The physician’s opinions must be within a “reasonable degree of medical probability.” (See *Escobedo v. Marshalls* (2007) [70 Cal. Comp. Cases 604](#)(Appeals Board en banc)).



Substantial Medical Evidence

If you believe a report does not rise to the level of “substantial medical evidence,” the following options exist:

- 1. Take the issue to trial.** If a Judge agrees that the doctor’s opinions do not meet the threshold, a new med-legal may be obtained. However, this may unnecessary delay resolution of the matter.
- 2. Obtain clarification.** You can solicit supplemental reports or depose the doctor in an attempt to bolster or otherwise alter his opinions.
- 3. Settle.** In represented cases, deficiencies in medical reports can be used as a bargaining position to obtain a favorable settlement.



Apportionment

In accepted cases, whether represented or unrepresented, our most useful tool to limit liability for permanent disability indemnity is apportionment.

There are three types of apportionment:

- 1) Labor Code Section 4663 – a physician’s opinion that part of the injury is the result of other factors including, but not limited to: chronic conditions like obesity or diabetes, automobile accidents, non-industrial injuries, or the effects of tobacco usage.
- 2) Labor Code Section 4664 – apportionment to a prior award of permanent disability for the same body part (less common).
- 3) Benson – apportionment between dates of injury. Must treat each date of injury as independent of all others.



Apportionment

- Judges scrutinize physician's opinions on apportionment, particularly in cases with In Pro Pers.
- Apportionment opinions must rise to the level of substantial medical evidence. Therefore, they should be well-reasoned, thoroughly explained, and based on documented evidence and medical studies.
- Consider City of Jackson v. WCAB ("Rice") (2017 Cal. App. LEXIS 383):
 - The QME apportioned 49% of Applicant's cervical degenerative disc disease to genetics without any evidence that Applicant had a family history of degenerative disc disease.
 - The Court of Appeal permitted it because the QME's opinion was very well explained and she relied on a number of medical studies that showed that every degenerative disc disease is caused up to 75% by genetics or heredity.



Wrapping it up.

RESOLUTION

Resolution of Case

- **Direct negotiation between parties**
- **Mediation**
 - **Voluntary, facilitated settlement meeting**
- **Arbitration**
 - **Mandatory: LC 5275 (c) –Coverage; Contribution**
 - **Voluntary Arbitration: by agreement of parties, any issue**
 - **May appeal to WCAB**
- **Trial**
 - **Evidence presented—witnesses and documentary evidence; summary of evidence prepared by Judge, rating instructions, Findings & Award**



Trial

- **If a case cannot be settled, it must be tried.**
- **The primary issues to try are permanent disability, apportionment, and future medical treatment.**
- **After trial, the Judge will issue a “Findings & Award,” which operates much like a Stipulation & Request for Award.**
 - **It finalizes the permanent disability level such that indemnity can be paid at its weekly rate and it identifies which body parts require future medical treatment.**



Appeals

- **Reconsideration by WCAB on petition from aggrieved party**

- **Petition for Writ of Review to Court of Appeal**
 - **Deciding whether to appeal**
 - Is this an important issue for the workers' compensation system?
 - Are these the best facts for the issue?
 - Is it worth the time and expense? (Appeal to final decision is about 1 year, cost if it is not granted is about \$5,000; cost if it is granted is about \$20,000.)
 - Would losing be detrimental to the defense bar?
 - Remember that it is a long-shot. About 5% of civil appeals are granted review.

- **Request for review by Supreme Court**
 - Formatting rules can be very complex and time consuming.



Appeals

Time Limits for Drafting an Appeal

- **Per Labor Code section 5950, "The application for writ of review must be made within 45 days after a petition for reconsideration is denied, or, if a petition is granted or reconsideration is had on the appeals board's own motion, within 45 days after the filing of the order, decision or award following reconsideration."**
 - **Note that the trigger is filing of the decision, not service. There is no 5 day extension for mailing.**
- **Under Labor Code section 5909, if the Board does not act on a petition for reconsideration within 60 days from the date of filing, the petition is deemed denied by operation of law.**
 - **Note: The Board may grant recon, but not issue a decision for a while. While the actual decision is pending, the time to file your writ is tolled.**



Appeals

- **Grounds for Review (CA Supreme Court)**
 - **Per California Rules of Court, rule 8.500(b), the Supreme Court may order review of a Court of Appeal decision:**
 - **when necessary to secure uniformity of decision or to settle an important question of law;**
 - **when the Court of Appeal lacked jurisdiction;**
 - **when the Court of Appeal decision lacked the concurrence of sufficient qualified justices; or**
 - **to transfer the matter to the Court of Appeal for such proceedings as the Supreme Court may order.**
- **The first two grounds are the most common.**



Counsel sensed that the panel might not be taking his argument as seriously as he had hoped.



Settlement of Case: Stipulation

- **Stipulated Award:**
 - **Agreement as to permanent disability, etc.**
 - **May or may not provide future medical or other benefits**

- **Filing a Petition to Reopen:**
 - **Case can be reopened within 5 years of injury date for new/further disability -- LC 5804**
 - **Medical treatment may be required for valid compensable consequences after stipulated award**



Settlement of Case: C&R

- **Compromise and Release:**

- Ends case in whole or part
- Annuity versus lump sum
- Reviewed for adequacy by Judge
- Must be approved by Judge

- **Social Security / Medicare considerations**

- Medicare set-aside trust may be required
- Self-administered versus set-aside trust fund

Settlement

Stipulations with Request for Award

- This agreement finalizes the permanent disability level and clarifies which body parts require future medical treatment.
- The Injured Worker continues to treat within the workers' compensation system subject to UR/IMR.
- The Injured Worker has five years from his or her date of injury to file a Petition to Reopen should his or her condition worsen.

Compromise & Release

- This agreement settles all issues, including the Injured Worker's right to medical treatment.
- A Medicare-Set Aside may be required (see subsequent slides).
- Be cautious in using this type of agreement when you are still on the risk for the Injured Worker (i.e. they still work for the same Employer for which you are liable) as they may have another claim for the same body part.

Settlement

Stipulations with Request for Award

- Narrowly identify body parts because of ongoing liability for future medical care.
- Clearly note body parts that warrant future medical care in the comments section.

Compromise & Release

- Broadly identify body parts to close out as many potential injuries as possible.
- Clearly notate that the settlement resolves “any and all compensable consequence of the primary injuries claimed herein.”

Settlement

Stipulations with Request for Award

- Ensure the settlement is reviewed with an interpreter if English is not the Injured Worker's native language.

Compromise & Release

- Ensure the settlement is reviewed with an interpreter if English is not the Injured Worker's native language.
- The agreement must be signed by two disinterested (unrelated) witnesses or a notary.



Medicare Set-Aside

- **This applies to settlement by Compromise & Release only where future medical care is bought out/closed.**
- **Medicare wants to ensure the parties are not attempting to shift liability for medical care onto the federal government.**
- **The following guidelines are not outlined in the Labor Code or elsewhere codified, but they are the generally accepted practices in this industry.**
- **A Judge will not likely approve a Compromise & Release that does not address Medicare.**



Medicare Set-Aside

- A Medicare Set-Aside (“MSA”) is required when the Injured Worker is (a) receiving Medicare benefits, (b) is age-eligible to receive benefits (eligible for Social Security), or (c) is reasonably expected to receive benefits in the next 30 months.
- If that is not applicable, include language to that effect in the “Comments” section of your Compromise & Release. For example:

“IT IS NOT THE INTENTION OF THE PARTIES TO SHIFT LIABILITY FOR FUTURE MEDICAL TREATMENT TO THE FEDERAL GOVERNMENT. APPLICANT HAS NOT APPLIED FOR SOCIAL SECURITY, IS NOT A CURRENT MEDICARE RECIPIENT, AND IS NOT EXPECTED TO BECOME MEDICARE ELIGIBLE WITHIN THE NEXT 30 MONTHS.”
- Note that an MSA must be approved by California Medicare Services (“CMS”) in some instances as outlined in the following chart.

Medicare Set-Aside

Settlement Amount	Medicare Recipient	Age-Eligible or Applied
Under \$25,000	MSA	No MSA
\$25,001 - \$250,000	CMS-approved MSA	MSA
\$250,000 and Above	CMS-approved MSA	CMS-approved MSA



Walk- Through/Submission

- Settlements can be “walked-through” or submitted. In unrepresented cases, the WCAB requires the following items to accompany a submission or be filed a few days prior to a walk-through:
 - The settlement agreement,
 - The medical report(s) upon which settlement was based,
 - The DEU Rating of that medical report(s),
 - A wage statement,
 - A benefit printout,
 - All correspondence to the Injured Worker regarding settlement, and
 - A proof of service of the walk-through packet demonstrating that it was served on all lien claimants and the injured worker.
- In unrepresented cases, the Judges may wish to speak to the Injured Worker by telephone prior to approving the agreement.

Issuing Payment

Stipulations with Request for Award

- **Payments should be retroactive to the last day of temporary disability. If no temporary disability issued, they should be retroactive to the permanent and stationary date.**
- **Include language in the “Comments” section that payment will issue within 30 days of receipt of the Award. If such language is not included, payment is due within 14 days of the Award per Labor Code Section 4650(d).**
- **(See Leinon v. Fishermen’s Grotto; Mid-Century Insurance Co., Op. and Decision After Reconsideration (En Banc)).**

Compromise & Release

Payment must be issued within 30 days (from service of the Order Approving C&R) to avoid penalties or interest.

Include language to that effect in the “Comments” section of the agreement.



But Wait, There's More (maybe)

- **Petition to Reopen for New & Further**
- **Petition for Reconsideration**
- **Petition to Reduce PD**
- **Petition for Writ of Review**
- **Death claims**
- **Liens**



EDD SDI

- EDD SDI files liens in all cases where they have issued benefits.
- Ensure EDD paid benefits for a body part that Defendant is liable for. A copy of the physician's disability certification may be requested.
- Reimbursement to EDD is limited to those periods when EDD paid for benefits that Defendant should have been liable for.
 - Example – In a denied case that is later accepted, EDD may pay have paid benefits during the period that it was denied.
- Reimbursement is paid at the lesser rate, which is typically EDD's rate.
- Never pay in the face of an EDD lien. If EDD has issued notice that it is paying benefits, ensure they stop paying before benefits are picked up. Otherwise, double benefits may be due.



EDD UI

- Occasionally, the unemployment division of EDD will file a lien in a workers' compensation matter.
- In order to obtain unemployment benefits, an individual must certify that they are not only willing and able to work, but are actively looking for work. Therefore, it is not likely that temporary disability would be due concurrently such that EDD UI would be due reimbursement.
- EDD UI cannot attach its lien to permanent disability benefits.
- Overall, EDD UI liens are very negotiable and it is worth taking to a lien conference if they are not agreeable to a reasonable settlement.
- However, EDD UI will not withdraw or resolve liens prior to the issuance of a disposition (settlement or Findings & Award).



Copy Service

- **Be wary of the following subpoenas:**
 - **Records ordered by the same party from the same location,**
 - **Records ordered by Applicant's Attorney that have already been produced or could have been produced informally (i.e. the claims file),**
 - **Records ordered by Applicant's Attorney without written notice.**
 - **Records "ordered" before an Application for Adjudication is filed / Case number assigned.**
- **Object to invoices that fall into the above categories or are not compliant with fee schedule.**

<https://www.dir.ca.gov/dwc/DWCPPropRegs/CopyServiceFeeSchedule/FinalRegulations/FinalRegulationsClean.pdf>



Copy Service

- **The copy service fee schedule became effective as of July 1, 2015. However, prior to that the standard was “reasonableness.” Therefore, a bill could be objected to as “unreasonable.”**
- **It is useful to argue that the fee schedule codifies a standard of reasonableness that should be applicable to all invoices, even those pre-dating July 1, 2015.**
- **Many copy services are becoming more aggressive in this region, pushing for lien conferences and trials or filing Petitions for Determination of Non-IBR Med-Legal Services (8 CCR 10451.1).**



Medical Treatment

- Liens may be filed by insurance companies that paid for self-procured treatment.
- This is most common in cases that were denied or delayed, but later accepted.
- Arguments to be made include, but are not limited to:
 - The treatment provided may not have been authorized by UR/IMR,
 - The cost is unreasonable,
 - The Injured Worker already settled all issues of self-procured medical treatment by way of Compromise & Release



Lien Settlements

- **Obtain / Verify lien representatives declarations and itemized billing.**
- **Be sure that all settlement agreements are in writing and include “full & final settlement” language including all penalties/interest arising from the dates of service being resolved.**
- **If a case number is assigned at the WCAB, have the agreement approved by a Judge.**
- **Do not issue payment until the written (or approved) agreement is received.**



BAKERSFIELD



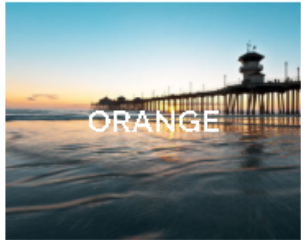
FRESNO



LOS ANGELES



OAKLAND



ORANGE



REDDING



RIVERSIDE



SACRAMENTO



SAN DIEGO



SAN FRANCISCO



SAN JOSE



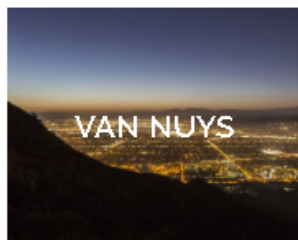
SAN LUIS OBISPO



SANTA ROSA



STOCKTON



VAN NUYS

Questions?

<https://hannabrophy.com>



Safety Presumptions

- **FIREFIGHTERS**

- Note: LC Section 3212 applies only to firefighters, not police officers, except for hernia.
- Police get heart and hernia presumption under §3212.5.



Safety Presumptions

Heart Trouble – Labor Code Section 3212

- **1. The presumption applies to all members of fire departments except those whose principal duties are clerical.**
- **2. The heart trouble is presumed compensable if it develops or manifest itself during the period of employment.**
- **3. The presumption cannot be rebutted by evidence of pre-existing heart trouble but it can be rebutted by evidence of concurrent causation.**

Example: Firefighter's spouse shoots employee through the heart, this can be a concurrent cause that can rebut the presumption.

Cont'd next slide



Safety Presumptions

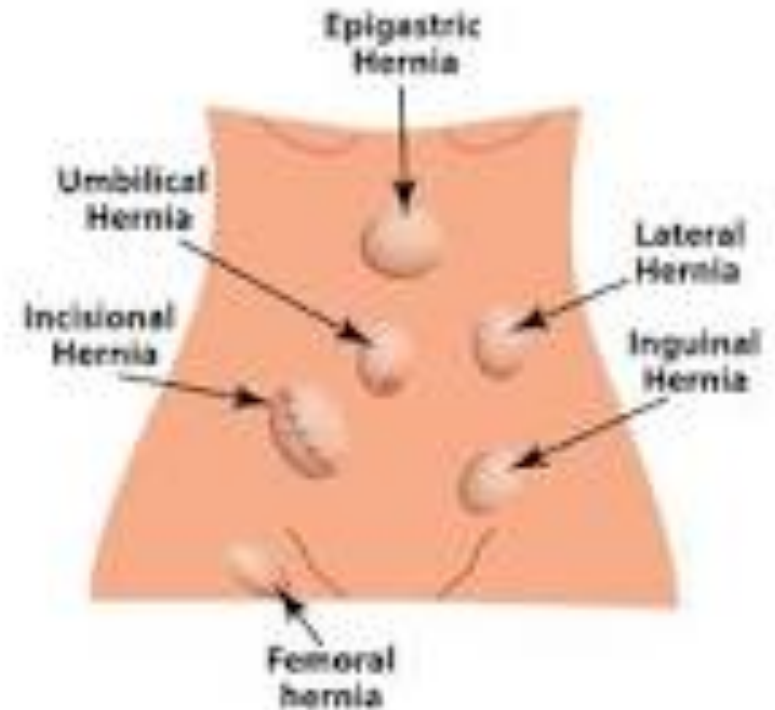
Heart Trouble – Labor Code Section 3212, cont'd

- 4. The presumption can be extended up to 60 months from the last day of actual work as a firefighter. The extension is three calendar months for each full year of employment.
- 5. As long as an employee is a member of the fire department providing fire fighting services he or she is covered by the presumption whether the firefighter is a volunteer, apprentices, fully or partially paid. Labor Code Section 3211.5.
- 6. The presumption applies on the first day of employment. (FF)
- 7. The heart trouble disability cannot be attributed to any disease prior to the development or manifestation.

Safety Presumptions

Hernia

- **Types of hernias include:**
- Inguinal **hernia**.
- Femoral **hernia**.
- Umbilical **hernia**.
- Incisional **hernia**.
- Epigastric **hernia**.
- Hiatal **hernia**
-





Safety Presumptions

Hernia – Labor Code Section 3212

- **1. The presumption applies to all members of fire departments except those whose principal duties are clerical.**
- **2. The hernia presumption applies if the hernia develops or manifest itself during the employment.**
- **3. The presumption cannot be rebutted by evidence of a pre-existing hernia but it is disputable**
- **4. The presumption can be extended up to 60 months from the last day of actual work as a firefighter. The extension is three calendar months for each year of employment.**
- **Cont'd next slide**



Safety Presumptions

Hernia – Labor Code Section 3212, cont'd

- **5. As long as an employee is a member of the fire department providing fire fighting services he or she is covered by the presumption whether the firefighter is a volunteer, an apprentice, fully or partially paid. (LC Section 3211.5)**
- **6. The hernia presumption applies to all types of hernias not just abdominal and groin hernias. It also applies to hiatal hernias (even though doctors say hiatal hernia is not really caused by work, but can become symptomatic during the period of employment).**



Safety Presumptions

Pneumonia – Labor Code Section 3212

- **1. The presumption applies to all members of fire departments except those whose principal duties are clerical.**
- **2. The pneumonia presumption applies if the pneumonia develops or manifests itself during the employment.**
- **3. The presumption cannot be rebutted by evidence of pre-existing pneumonia but it can be rebutted by evidence of concurrent causation.**
- **4. The presumption can extend up to 60 months beyond the last day of actual work as a firefighter. Extension is three months for each year of employment.**

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Safety Presumptions

Pneumonia – Labor Code Section 3212, cont'd

- 5. As long as the employee is a member of the fire department providing fire fighting services he / she is covered by the presumption whether the firefighter is a volunteer, an apprentice, fully or partially paid. (LC 3211.5)
- 6. The presumption applies on the first day of employment.
- 7. The medical definition of what is pneumonia is very broad. It is simply an infection of the lungs. The cause can be a viruses, fungi, bacteria or parasites.
- Can be rebutted by concurrent causation. Eg. Valley Fever - if show employee not exposed to the valley fever while working, maybe can rebut (this will be very difficult to rebut).



Safety Presumptions

Cancer Presumption – Labor Code Section 3212.1

- **1. The presumption applies to active fire fighting members who are volunteers, partly paid or fully paid if they are members of a city or county or district fire department. It also applies to the fire departments of the University of California and California State University.**
- **2. The presumption applies to a cancer, including leukemia, that develop or manifest itself during the period of which the employee works as a firefighter.**
- **Cont'd next slide**



Safety Presumptions

Cancer Presumption – Labor Code Section 3212.1, cont'd

- **3. In order for the presumption to apply, a firefighter has to demonstrate that he or she was exposed to a known carcinogen as defined by the International Agency for Research on Cancer or as defined by the Administrative Director. NOTE: demonstrating merely that one was exposed to a burning methamphetamine laboratory, for example, is not sufficient to meet the burden.**
- **Cont'd next slide**



Safety Presumptions

Cancer Presumption – Labor Code Section 3212.1, cont'd

- The presumption can be rebutted if the primary source of the cancer site is known and it has been established that the carcinogen to which the firefighter was exposed is not reasonably linked to the disabling cancer.
- Medical Literature - You need to provide medical literature that shows there is no reasonable link that the carcinogens exposed to can lead to or cause the specific cancer the claimant has.
- Latency - you may be able to rebut the presumption if the type of cancer the claimant has does not manifest until only after a certain period of time.
- Cont'd next slide



Safety Presumptions

Cancer Presumption – Labor Code Section 3212.1, cont'd

- 5. The presumption can be extended up to 120 months from the last day of service based upon a three-month extension for each year of service.
- To obtain the 10 year extension the employee would have to have been employed 40 years.



Safety Presumptions

Tuberculosis – Labor Code Section 3212.6 (no anti-attribution clause)

- **1. The presumption applies to members of fire departments of any city, county, district or other public or municipal corporation or political subdivisions.**
- **2. The employee must be employed on a regular full-time basis. It does not apply to volunteers.**
- **3. The presumption applies from the first day of employment.**
- **4. The presumption applies if the tuberculosis develops or manifest itself while a firefighter is a member of the department.**



Safety Presumptions

Tuberculosis – Labor Code Section 3212.6, cont'd (no anti-attribution clause)

- **5. The presumption can be rebutted by evidence that the disease existed prior to the development and manifestation. There is no anti attribution clause.**
- **6. The presumption can be extended up to 60 months after the last day of actual work based upon three-months for each calendar year of service.**
- **7. The fire department can require applicants for employment who have the benefit of the presumption be tested for tuberculosis infection. This requirement applies to firefighters only.**

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Safety Presumptions

**Tuberculosis – Labor Code Section 3212.6, cont'd
(no anti-attribution clause)**

- **8. Not Clear if Volunteers & Apprentices are covered –**
 - **Labor Code section 3211.5 seems to extend section 3212.6 to cover volunteers and apprentices.**
 - **Section 3212.6, however, specifically states that it only applies to regular fully paid members.**



Safety Presumptions

- **Blood-borne Pathogens – Labor Code Section 3212.8**
- **1. The presumption applies to all fire departments and to all fire fighters (whether volunteer or fully paid) except those whose duties are clerical or otherwise not in the scope of active fire fighting.**
- **2. Anti-Attribution Clause - the presumption cannot be rebutted by evidence that the disease existed prior to the development or manifestation of the disease but may be controverted by other evidence.**

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Safety Presumptions

- **Blood-borne Pathogens – Labor Code Section 3212.8, cont'd**
- **3. The presumption can be extended up to 60 months from the actual last day of work based upon three-month of extension for every year of service. However, the presumption for methicillin-resistant Staphylococcus aureus skin infection is only extended for 90 days after the last day of employment.**

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Safety Presumptions

- **Blood-borne Pathogens – Labor Code Section 3212.8, cont'd**
- **4. A blood borne pathogens are pathogenic microorganisms that are present in human blood and can cause disease in humans, including those pathogenic microorganisms that are defined as blood born pathogens by the Department of Industrial Relations.**
- **The presumption includes also includes methicillin-resistant Staphylococcus aureus skin infection (MRSA).**

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Safety Presumptions

Exposure to Biochemical Substance – Labor Code Section 3212.85

- 1. The presumption applies to all members of fire Dpts.
- 2. The presumption applies if the firefighter develops an illness due to a biochemical substance while the firefighter is employed.
- 3. The presumption is refutable and can be rebutted by evidence of preexisting disease process. The anti-attribution clause does not apply.
- 4. The presumption can be extended up to 60 months from the last day of actual work based upon three-month extension for each one year of service.

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Safety Presumptions

Exposure to Biochemical Substance – Labor Code Section 3212.85, cont'd

- **5. A biochemical substance means any biological or chemical agent that may be used as a weapon of mass destruction including but not limited to a chemical warfare agent, biological agents or nuclear radioactive agent as determined by Section 11417 of the Penal Code.**
- **6. As long as an employee is a member of the fire department providing fire fighting services, he or she is covered by the presumption whether the firefighter is a volunteer, an apprentice, fully or partially paid. Labor Code Section 3211.5**



Safety Presumptions

Meningitis—Labor Code Section 3212.9

- **1. Applies to members of a fire department of a city, county or district, or other public or municipal corporation or political subdivision of any county forestry or fire fighting department or unit.**
- **2. The firefighter must be a full-time salaried employee. Volunteers are not covered.**
- **3. The presumption can be extended up to 60 months from the actual last day of work based upon three-month of extension for every year of service.**
- **4. The presumption is disputable. There is no anti-attribution clause, it can be rebutted by evidence of pre-existing meningitis.**



Earnings – Volunteer Firefighters

Earnings Presumed Maximum for Volunteer Firefighters – Labor Code Section 4458

- **1. If a member is registered as an active fire fighting member of any regularly organize volunteer fire department, suffers injury or death during performance of his or her duties and irrespective of his / her remuneration from this or other employment, average weekly wages are considered maximum for purposes of temporary disability and permanent disability.**
- **2. The earning presumption also applies if a person is engaged in fire suppression pursuant to section 4153 44436 of the public resource code.**



UNIVERSITY OF CALIFORNIA FIREFIGHTERS

- **A. Heart Trouble, Hernia and Pneumonia Labor Code Section 3212.4**
 - **The presumption is the same for fire fighters as to heart, pneumonia and hernia except that probationary employees are excluded, may not apply from the first day of employment.**
- **B. Cancer—Labor Code Section 3212.1**
 - **The presumption is the same as firefighters for cancer. No probationary exception.**
- **C Biochemical Substance Labor Code Section 3212.85**
 - **The presumption is the same as firefighters for biochemical substances. No probationary exception.**



PEACE OFFICERS

Heart Trouble -- Labor Code Section 3212.5

- **1. Applies to members of police departments of any city or municipality, sheriff, deputy sheriff, inspector or investigator in the district attorney's office if they are regular full time salaried employees. The employee must**
- **be classified as a peace officer.**

- **Who is Covered - animal control? Jailers? Need to look at this on an individual basis.**

Cont'd next slide



PEACE OFFICERS

Heart Trouble -- Labor Code Section 3212.5, cont'd

- **2. Five Year Requirement - The presumption only applies if the covered employee has served five years or more in such capacity.**
- **NOTE: This is very different than for Firefighters, who get the presumption from day one of employment.**

Cont'd next slide



PEACE OFFICERS

Heart Trouble -- Labor Code Section 3212.5, cont'd

- 3. The heart trouble is presumed compensable if it develops or manifest itself during the period of employment
- 4. The presumption cannot be rebutted by evidence of pre-existing heart trouble but it is rebuttal by evidence of concurrent causation.
- 5. The presumption can extend up to 60 months beyond the last day of actual work as a firefighter. Extension is three months for each year of employment
- 6. Volunteers are not covered.



PEACE OFFICERS

Hernia – Labor Code Section 3212

- **1. Applies to members of police departments of any city or municipality, sheriff, deputy sheriff, inspector or investigator in the district attorney's office if they are volunteers, partly paid or regular full time salaried**
- **Employees**
- **2. The hernia presumption applies if the hernia develops or manifest itself during the employment.**
- **3. The presumption cannot be rebutted by evidence of a pre-existing hernia but it is rebuttal.**

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PEACE OFFICERS

Hernia – Labor Code Section 3212

- **4. The presumption can extend up to 60 months from the last day of actual work as a peace officer. The extension is three calendar months for each year of employment.**
- **5. The peace officer does not have to be employed five years for the presumption to apply.**
- **6. The hernia presumption applies to all types of hernias not just abdominal and groin hernias. It also applies to hiatal hernias.**



PEACE OFFICERS

- **Pneumonia – Labor Code Section 3212.5**
- **1. Applies to members of police departments of any city or municipality, sheriff, deputy sheriff, inspector or investigator in the district attorney’s office if they are regular full time salaried employees.**
- **2. Volunteers are not covered.**
- **3. The presumption only applies if the covered employee has served five years or more in such capacity.**
- **4. The pneumonia trouble is presumed compensable if it develops or manifest itself during the period of employment.**



PEACE OFFICERS

- **Pneumonia – Labor Code Section 3212.5, cont'd**
- **5. The presumption cannot be rebutted by evidence of pre-existing pneumonia but it is rebuttal by evidence of concurrent causation.**
- **6. The presumption can extend up to 60 months beyond the last day of actual work as a peace officer. Extension is three months for each year of employment.**
- **7. No clear definition as to the meaning of pneumonia within the statute. Can be broadly interpreted.**
 - **From a medical point of view, pneumonia is defined as any infection in the lungs no matter what the cause.**



PEACE OFFICERS

Cancer Presumption – Labor Code Section 3212.1

- **1. The presumption applies to all peace officers as defined in Section 830.1, subdivision (a) of Section 830.2 and subdivision (a) and (b) of Section 830.7 of the Penal Code.**
- **2. The presumption applies to cancers including leukemia that develop or manifest itself during the period of which the employee works as a**
 - **firefighter.**
- **3. In order for the presumption to apply, a peace officer has to demonstrate that he or she was exposed to a known carcinogen as defined by the International Agency for Research on Cancer or as defined by the Administrative Director.**

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PEACE OFFICERS

Cancer Presumption – Labor Code Section 3212.1, cont'd

- **4. The presumption can be rebutted if the primary source of the cancer site is known and it has been established that the carcinogen to which the firefighter was exposed is not reasonably linked to the disabling cancer.**
- **5. The presumption can be extended up to 120 months from the last day of service based upon a three-month extension for each year of service.**



PEACE OFFICERS

Tuberculosis – Labor Code Section 3212.6

- **1. Applies to members of police departments of any city or municipality, sheriff, deputy sheriff, inspector or investigator in the district attorney's office if they are regular full time salaried employees.**
- **2. The TB is presumed compensable if it develops or manifest itself during the period of employment.**
- **3. The presumption is rebuttal. There is no statute stating it cannot be rebutted by evidence of pre-existing TB. It is rebuttal by evidence of concurrent causation.**
- **4. The presumption can extend up to 60 months beyond the last day of actual work as a peace officer. Extension is three months for each year of employment.**
- **5. No statute stating that applications for employment for peace officer positions can be required to test for infection for TB as is in the case of firefighters.**



PEACE OFFICERS

Blood-borne Infectious Disease – Labor Code Section 3212.8

- **1. The presumption applies to all members of a police department of a city, county or city and county, member of sheriff's office of the county, county probation officer, inspector or investigator in district attorney office whose duties consist of active law-enforcement service.**
- **2. Presumption applies even if the person is a volunteer, partly or fully paid.**
- **3. The presumption can be rebutted but it cannot be rebutted by evidence that the disease existed prior to the development or manifestation of the disease.**

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PEACE OFFICERS

Blood-borne Infectious Disease – Labor Code Section 3212.8, cont'd

- 4. The presumption can be extended up to 60 months from the actual last day of work based upon three-month of extension for every year of service.
- 5. However, the presumption for methicillin-resistant *Staphylococcus aureus* skin infection is only extended for 90 days after the last day of employment.
- 6. A blood borne pathogens is a pathogenic microorganism that are present in human blood and can cause disease in humans, including those pathogenic microorganisms that are defined as blood born pathogens by the Department of Industrial Relations. It also includes methicillin-resistant *Staphylococcus aureus* skin infection.
- 7. There is no five year of employment requirement for the presumption to apply.



PEACE OFFICERS

Meningitis – Labor Code Section 3212.9

- **1. The presumption applies to all members of a police department of a city, county or city and county, member of sheriff's office of the county, county probation officer, inspector or investigator in district attorney office whose duties consist of active law-enforcement service.**
- **2. Volunteers are not covered, but be regular full time employee.**
- **3. The presumption is rebuttal but it cannot be rebutted by evidence of the disease existed prior to the development or manifestation of the disease.**
- **4. The presumption can be extended up to 60 months from the actual last day of work based upon three-month of extension for every year of service.**
- **5. There is no five year employment requirement for the presumption to apply.**



PEACE OFFICERS

Exposure to Biochemical Substance -- Labor Code Section 3212.85

- **1. The presumption applies to all peace officers described in sections 830.1 to 830.5 inclusive of the Penal Code.**
- **2. The presumption applies if the peace officer develops an illness due to biochemical substance while the peace officer is employed.**
- **3. The presumption is rebuttal and can be rebutted by evidence of preexisting disease process.**
- **4. The presumption can be extended up to 60 months from the last day of actual work based upon three-month extension for each one year of service.**
- **5. Any biological or chemical agent that may be used as a weapon of mass destruction including but not limited to chemical warfare agent, weapon I biological agents or nuclear radiological agent (Sec. 11417 of the Penal Code)**



PEACE OFFICERS

Back Impairment – Labor Code Section 3213.2

- **1. The presumption applies to all members of a police department of a city, county or is city and county, member of sheriff's office of the county whose duties require the member as a condition of employment to wear a duty belt. A duty belt requires at least these 3 items, gun, handcuffs and baton, which is important when you look at jailers.**
- **2. The presumption requires that the member be employed for at least five years as a peace officer.**
- **3. The peace officer must be a regular full time salaried employee.**

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PEACE OFFICERS

Back Impairment – Labor Code Section 3213.2

- **4. The presumption applies to lower back impairment not general spine injury.**
- **5. The presumption can be rebutted by evidence that the back impairment existed before the employment.**
- **6. The presumption can be extended up to 60 months from the last day of actual work based upon a three-month extension for each one year of service.**



PEACE OFFICERS

Maximum Earning for Reserve Peace Officers Labor Code Section 4458.2

- **A reserve peace officer of any regularly organized police or sheriff's department sustains an injury then his or her average weekly earning shall be taken as maximum.**



UNIVERSITY OF CALIFORNIA POLICE OFFICERS

Heart Trouble and Pneumonia

- **1. Requires 5 years of employment.**
- **2. Must be a member of a UC police department.**
- **3. Must have graduated from an academy certified by the Commission on Peace Officer Standards and Training. It is interesting you do not have to be a peace officer.**
 - **So, dispatcher may get presumption.**
- **5. Must be a regular full time salaried employee of the department.**
- **6. The presumption can be rebutted. There is no anti-attribution clause.**



PRISON GUARDS

Tuberculosis – Labor Code Section 3212.6

- **1. Applies to prison or jail guards even if they are not members of the sheriff's department or a police department.**
- **2. The tuberculosis is presumed compensable if it develops or manifest itself during the period of employment.**
- **3. The presumption is rebuttable. There is no statute stating it cannot be rebutted by evidence of pre-existing tuberculosis. It is rebuttal by evidence of concurrent causation. No anti-attribution clause.**
- **4. The presumption can extend up to 60 months beyond the last day of actual work as a peace officer. Extension is three months for each year of employment.**
- **5. No statute stating that applications for employment prison or jail guard positions can be required to test for infection for tuberculosis as is in the case of firefighters.**