



## September 2010 Blog Posts

### [DOT and OSHA Join Forces to Combat Distracted Driving](#)

Thursday, September 30, 2010

In workers compensation defense news, Secretary of Labor Hilda L. Solis recently announced that the United States Department of Labor's Occupational Safety and Health Administration (OSHA) was joining forces with the United States Department of Transportation (DOT) in an effort to crack down on the dangers of distracted driving .

Specifically, the two agencies will seek to: 1) reprimand employers whose policies encourage distracted driving (i.e., texting while driving) and 2) educate employers lacking clearly defined policies on distracted driving.

"It is imperative that employers eliminate financial and other incentives that encourage workers to text while driving. It is well recognized that texting while driving dramatically increases the risk of a motor vehicle [work] injury or fatality," said Solis.

There is no denying the dangers of distracted driving. According to DOT estimates, nearly 5,500 people were killed in distracted-driving accidents in the United States last year.

One of the main highlights of the joint endeavor is a multi-faceted OSHA initiative.

Some of the key components of this OSHA initiative include:

- Formation of strategic alliances with the National Safety Council and other safety advocacy groups dedicated to educating employers about the dangers of distracted driving and helping them implement the necessary policies
- Posting of an open letter to employees on the OSHA website, as well as model policies and procedures
- Coordination with other federal agencies to inform younger employees of the dangers of distracted driving
- Launch of a formal educational campaign for all employers during "Drive Safely Work Week" (held the week of October 4)
- Investigation and issuance of citations/penalties upon receipt of a credible complaints that an employer is encouraging or requiring texting while driving

"We call upon all employers to prohibit any work policy or practice that requires or encourages workers to text while driving. The Occupational Safety and Health Act is clear; employers must provide a workplace free of recognized hazards," said Dr. David Michaels, Assistant Secretary of Labor for OSHA.

Stay tuned for further other developments in the area of [workers' compensation defense](#) ...

This post was provided for informational purposes only and is not to be construed as legal advice.

#### **Related Resources:**

- [OSHA Launching Initiative to Discourage Texting While Driving on the Job](#) (United States Department of Labor)
- [Summit Calls for Reduction in Distracted Driving](#) (ABC News)

#### **[9/28 - A Brief Summary of California Workers' Compensation News](#)**

Tuesday, September 28, 2010

*Today's post will briefly examine workers' compensation defense news from around the state.*

A.B. 933, a proposed bill that would require all physicians who provide services related to work comp/utilization reviews to be licensed in the state of California, was recently vetoed by Governor Arnold Schwarzenegger.

(The following definition is provided for the uninitiated:

"A utilization review (UR) is the process used by employers or claims administrators to review treatment to determine if it is medically necessary. All employers or their workers' compensation claims administrators are required by law to have a UR program. This program is used to decide whether or not to approve medical treatment recommended by a physician which must be based on the medical treatment guidelines."- California Department of Industrial Relations)

According to Governor Schwarzenegger's veto message, the licensing requirement "would be inconsistent with how utilization review is conducted in other areas of medicine and not in line with best practices nationwide."

His statement went on to declare that "the proponents of [A.B. 933] have not demonstrated a need for this disparity in treatment."

The bill's original sponsor, Rep. Paul Fong, D-Cupertino, believed that the physician-licensing requirement would both increase worker protections and generate the necessary transparency in all [utilization review decisions](#).

A.B. 933 was met with strong resistance by several prominent organizations, including the California Chamber of Commerce and the American Insurance Association (AIA).

Steve Suchil, western region assistant vice president for AIA, released the following statement regarding Governor Schwarzenegger's veto:

"We applaud the governor for vetoing a bill that would have added costs and delays to the treatment of injured workers. It would have done nothing to improve the actual treatment of workers. Medical guidelines are generally consistent across all 50 states."

Stay tuned for further other developments in the area of California [workers' compensation defense](#) ...

This post was provided for informational purposes only and is not to be construed as legal advice.

#### **Related Resources:**

- [9/24 Legislative Update: Vetoed](#) (Office of Governor Arnold Schwarzenegger)
- [AIA Comments on Veto of Costly California Workers' Compensation Measure](#) (Insurancenews.net)
- Division of Workers' Compensation - Utilization Review (California Department of Industrial Relations)

#### **[An Examination of California Workers' Compensation Benefits - I](#)**

Friday, September 24, 2010

As an employer in the state of California, you are more than likely familiar with the workers' compensation system, your basic legal obligations under state law and the potential need for a strong workers' compensation defense. However, you may not have a true understanding of the intricacies of the system itself.

For example, you may have seen various acronyms for work comp benefits (PTD, TTD, TPD, etc.), and been somewhat uncertain as to what they stood for and under what circumstances an injured employee would be entitled to them.

Today's post is the first in a series. It is designed to help clarify California's system of [workers' compensation](#) benefits and debunk common misperceptions.

In California, workers' compensation benefits can be divided into two general categories: temporary benefits and permanent benefits. These two general categories can then be further divided into two subcategories: partial and total.

It breaks down as follows:

Temporary

- Temporary Partial Disability (TPD)

- Temporary Total Disability (TTD)

Permanent

- Permanent Partial Disability (PPD)
- Permanent Total Disability (PTD)

### **Temporary Total Disability (TTD)**

*What is a temporary total disability?*

Simply put, a temporary total disability is any injury that leaves an employee unable to perform any aspect of their job for a short period. A TTD assumes that the employee will fully recover and return to their previous position.

*How are temporary total disability benefits paid?*

The calculation for temporary total disability benefits is fairly basic: multiply the (pre-tax) average weekly wage of the injured employee by 2/3.

*When do temporary total disability payments begin and end?*

The California Department of Industrial Relations provides a rather concise summary:

"TD payments begin when your doctor says you can't do your usual work for more than three days or you get hospitalized overnight. Payments must be made every two weeks. Generally, TD stops when you return to work, or when the doctor releases you for work, or says your injury has improved as much as it's going to."

It is important to note that in California, an injured employee is eligible to receive 104 weeks of temporary total disability payments within a five years period (beginning from the date of the injury).

Future posts will continue to discuss California work comp benefits ...

This post was provided for informational purposes only and is not to be construed as legal advice.

Stay tuned for further developments in the area of [workers' compensation defense](#) ...

#### **Related Resources:**

- [Work Comp 101: Lost Time Indemnity Benefits Explained](#) (WorkersCompensation.com)
- CHSWC Summary of System Changes in California Workers' Compensation (The California Commission on Health and Safety and Workers' Compensation)

- Answers to Frequently Asked Questions About Workers' Compensation For Employees (California Department of Industrial Relations)

### [Common California Construction Site Injuries - III](#)

Wednesday, September 22, 2010

*Today's workers' compensation defense post will continue to explore the topic of common injuries suffered by employees on construction sites. Please see "[Common California Construction Site Injuries - I](#)" and "[Common California Construction Site Injuries- II](#)" for more information.*

Visit any construction site around the state of California, and you will see workers performing a variety of physically challenging tasks that require them to kneel, crouch, bend over or stoop forward for a prolonged period. While these types of actions are a vital element of job performance, they can also result in potentially debilitating injuries to the knees or lower back, decreased production and increased legal fees.

However, [employers](#) who are aware of these potential knee and lower back injuries can take steps to implement the necessary safety measures, saving their organization both time and money.

#### *Lower Back Injuries*

There are small gelatinous discs located between the vertebrae of the spine that enable movement. When a worker bends over, these discs are compressed by both the ligaments and the back muscles.

However, if a worker is required to remain bent over for a prolonged period of time, these discs in their back can weaken and even rupture. This rather painful condition is known as a herniated disc.

In addition, workers also frequently suffer serious muscle strains or pulls in their lower backs. These conditions are typically caused by sudden, violent motions or repetitive motions.

#### *Knee Injuries*

Workers who place significant strain on their knees on a regular basis can suffer a rather serious condition known as bursitis. Bursitis is caused by an inflammation of the bursa, tiny fluid sacs located between the tendons and bones in the leg/knee. An inflamed or swollen bursa makes knee movement painful or even impossible.

Another common injury suffered by workers who frequently place great stress on their knees is tendinitis. This condition is caused by inflamed muscle tendons and can make knee movement difficult (if not impossible).

Lastly, construction workers who have previously suffered a debilitating knee injury but continue to perform ground-related work are predisposed to arthritis.

Future posts will examine this topic in greater detail, including potential steps that can be taken to prevent these knee and lower back injuries ...

This post was provided for informational purposes only and not to be construed as legal or medical advice.

Stay tuned for further developments in the area of [workers' compensation defense](#) law ...

#### **Related Resources:**

- [Simple Solutions for Lifting, Holding and Handling Materials](#) (National Institute for Occupational Safety and Health)

#### **[9/17 - A Brief Summary of California Workers' Compensation News](#)**

Friday, September 17, 2010

*NICB: Referrals for Investigation of Possible Work Comp Fraud Decline By 9 Percent in 2010*

The National Insurance Crime Bureau (NICB), the non-profit organization that "partners with insurers and law enforcement agencies to facilitate the identification, detection and prosecution of insurance criminals" recently released a study concerning the incidence of workers' compensation/employee fraud in the first half of 2010.

The results?

The number of dubious claims (i.e., potentially fraudulent workers compensation claims) referred to the NICB for investigation in the first half of 2010 was nine percent less than the previous year.

Specifically, the following categories all demonstrated significant decreases in the number of potential work comp/employee fraud claims submitted for review:

- Prior injury/not related to work
- Claimant fraud
- Working while collecting

These three categories accounted for 72 percent of all referrals submitted to the NICB.

[Workers compensation fraud/employee fraud](#) is a very serious crime. If you suspect that such a crime has been perpetrated against your organization, you should strongly consider speaking with an experienced workers' comp defense attorney.

*Update: WCIRB to Recommend Significant Increase in Work Comp Base Rates*

The Workers' Compensation Insurance Rating Bureau (WCIRB) of California made headlines this summer when it recommended a 30 percent increase in the workers' compensation rates that insurance companies charge employers across the state.

In recent developments, WCIRB announced that it will be amending its submission to Insurance Commissioner Steve Poizner. Specifically, the organization will now be recommending a 27.7 percent increase in work comp rates, a reduction of two percent.

The original filing to the Insurance Commissioner indicated that WCIRB would review certain data made available June 30 (accident year experience), and, if necessary, amend its recommendations.

A public hearing on the proposed rate increase is scheduled for September 28.

The proposed 30 percent increase would affect all new and renewed policies starting January 1.

(Please see "[WCIRB to Recommend Significant Increase in Work Comp Base Rates](#)" for more information.)

Stay tuned for further news on developments in the area of California [workers' compensation defense](#) ...

This post was provided for informational purposes only and is not to be construed as legal advice.

#### **Related Resources:**

- [Overall Reports of Workers' Comp Fraud Fell 9 Percent in First Half of '10](#) (Risk & Insurance)
- [Calif. Rating Bureau Wants to Lower Recommended Workers' Comp Rate 2%](#) (Insurance Journal)
- About NICB (National Insurance Crime Bureau)

#### **[9/15 - A Brief Summary of California Workers' Compensation News](#)**

Wednesday, September 15, 2010

*Today's post will briefly examine workers' compensation defense news from around the state.*

A.B. 933, a proposed bill that would require all physicians who provide services related to work comp/ utilization reviews to be licensed in the state of California, was recently approved by the Senate Labor and Industrial Relations Committee.

(The following definition is provided for the uninitiated:

"A utilization review (UR) is the process used by employers or claims administrators to review treatment to determine if it is medically necessary. All employers or their workers' compensation claims administrators are required by law to have a UR program. This program is used to decide whether or not to approve medical treatment recommended by a physician

which must be based on the medical treatment guidelines." - California Department of Industrial Relations)

The bill's sponsor, Rep. Paul Fong, D-Cupertino, believes that the physician-licensing requirement will both increase worker protections and generate the necessary transparency in all utilization review decisions.

"California is the only state that requires doctors to obtain 12 hours of special education on pain management, which is the leading cause of disability. During these tough times, it's critical that safe and equitable laws are in place to protect Californians when they are hurt on the job," said Fong.

A.B. 933's main adversary is the California Chamber of Commerce. The institute believes that the bill would 1) create unnecessary delays for the state Division of Workers' Compensation by requiring that the term of approval for the medical provider network to be submitted every three years and 2) increase costs significantly.

The Chamber of Commerce also believes that there is relatively little evidence to support the notion that the care of injured workers would be greatly improved by a mandatory physician-licensing requirement.

"California's workers' compensation law already contains strict requirements to assure that physicians who make utilization review decisions use evidence-based standards and are competent to evaluate the specific medical issues in the workers' compensation claim. Limiting the ability to make utilization review recommendations to physicians licensed in California would only limit the number of doctors available to provide the service, thereby creating a logjam of cases to be reviewed and driving up the cost of the review and overall costs for employers," the organization stated.

Following its unanimous approval by the Senate Labor and Industrial Relations Committee, A.B. 933 is now referred back to the Senate Committee on Appropriations.

Stay tuned for further news on A.B. 933 and other developments in the area of California [workers' compensation defense](#)...

This post was provided for informational purposes only and is not to be construed as legal advice.

#### **Related Resources:**

- [California: Chamber Says Recently Approved Bill Will Increase WC Costs](#) (Risk & Insurance)
- [Division of Workers' Compensation - Utilization Review](#) (California Department of Industrial Relations)



## [Common California Construction Site Injuries - II](#)

Friday, September 10, 2010

*Today's workers' compensation defense post will continue to explore the topic of common injuries suffered by employees on construction sites. Please see "[Common California Construction Site Injuries - I](#)" for more information.*

Visit any construction site around the state of California, and you will see workers operating heavy equipment, carrying heavy loads, pushing or pulling building materials, lifting lumber or holding roofing tiles over their heads. While these types of actions are a vital element of job performance, they can also result in potentially debilitating injuries, decreased production and increased legal fees.

However, [employers](#) who are aware of these potential injuries can take steps to implement the necessary safety measures, saving their organization both time and money.

The following safety measures, if implemented correctly, can greatly reduce the incidence and/or duration of the aforementioned [construction site injuries](#).

### **Safety Measures**

#### *User-friendly Materials*

If economically feasible and permitted by the client, the implementation of certain "user-friendly" building materials/components can have a significant impact on neck, back and spine injuries

"User-friendly" materials are those that can be handled by workers without extensive exertion, repetitive motion or uncomfortable body posture.

To illustrate, it may be beneficial to use to half-weight bags of concrete or lighter construction blocks. Please note, such an action is generally subject to approval by engineers, architects, contractors, clients, etc.

#### *User-friendly Tools*

Another potential method of reducing the number of serious neck, back and spine injuries is to use "user-friendly" construction tools and devices, meaning those that reduce the need for workers to pull, hold, lift or carry heavy materials.

Examples of these user-friendly tools include:

- Jacks and stands
- Dollies and Rolling carts
- Specialized grips and handles

- Mechanical lifts, vacuum lifts and hydraulic lifts

Again, such an action is generally subject to approval by engineers, architects, contractors, clients, etc.

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Stay tuned for more from our Los Angeles County [workers' compensation defense](#) blog...

#### **Related Resources:**

- [Simple Solutions for Lifting, Holding and Handling Materials](#) (National Institute for Occupational Safety and Health)

#### **[Court of Appeal Opinion on Guzman Upholds WCAB Expansive Use of AMA Guides](#)**

Wednesday, September 8, 2010

In an opinion released at the end of August, the Court of Appeal for the Sixth Appellate District, in the case of *Milpitas Unified School District vs. WCAB & Joyce Guzman*, affirmed the WCAB En Banc opinion.

The Court concluded that the language of Section 4660 permits reliance on the entire Guides, including the instructions on the use of clinical judgment in deriving an impairment rating in a particular case.

Essentially, this does not change the current practice because the Board's decision was En Banc, meaning it was binding on all judges until overturned on appeal. This first appeal gives solid credence to the reasoning of the WCAB and opens the door to the next level for the defendants: the Supreme Court. Of course, had the decision been the reverse, the outcome would have been the same: further appeal.

It's important to note that multiple additional parties had joined the district in their appeal by filing *Amicus Curiae* briefs and had essentially argued that the Guides must be used "as written" in order for the Schedule for Rating Permanent Disabilities to promote consistency, uniformity, and objectivity. The district took the position on appeal that the Schedule is rebuttable, but the criteria set forth in the Guides are not for purposes of making a determination of whole person impairment. That objective is defeated if impairment ratings could be based on chapters that do not apply to the employee's injury.

While the Court agreed with the district in theory and stated that the Guides should be applied "as intended," the Court further said that one must take into account the instructions on its use, "...which clearly prescribe the exercise of clinical judgment in the impairment evaluation, even beyond the descriptions, tables, and percentages provided for each of the listed conditions." The Court agreed with the WCAB's expansionist view regarding multiple chapter use where

appropriate in the judgment of the physician. This agreement was in spite of the arguments made by many brief filers and the district that potential abuses could occur.

A copy of the full opinion can be found [here](#). In the weeks ahead much focus and interpretation of this opinion is certain to come. One fact remains: *This is not the last word on this highly important issue.*

### [CA Legislature Sends Much-Discussed Work Comp Bill to Governor](#)

Tuesday, September 7, 2010

Today's workers' compensation defense post will take a closer look at A.B. 2490, an interesting piece of legislation passed by both the Assembly and the Senate by rather wide margins, and now submitted to Governor Schwarzenegger for final approval.

A.B. 2490, sponsored by Assemblyman Dave Jones (D-Sacramento), would prevent work comp insurance companies from resolving their disputes with California employers in other states with more favorable arbitration provisions (unless both parties agree). In other words, Davis' legislation would mandate that work comp insurers resolve disputes with California employers in a California venue/forum in accordance with California law.

If passed, A.B. 2490 would apply only to those employers that utilize California as their principal place of business, and generally affect agreements between work comp insurers and rather complex [employers](#) (i.e., those with a business presence in several states).

It is worth noting that even though work comp insurance policies must be approved by the insurance commissioner, it is still no guarantee that these unfavorable arbitration provisions will not make their way into the final agreement. In fact, it is common practice for insurers to reach "side agreements" whereby an employer must travel to another jurisdiction (and rely on that jurisdiction's arbitration laws) in the event of a dispute.

According to Jones, this has been "a big problem."

While the state legislature has expressed widespread support for the measure, The American Insurance Association (AIA) has asked Governor Schwarzenegger to veto A.B. 2490. (The state Chamber of Commerce has changed its position from opposition to neutral.)

"AIA will request that the governor veto several bills that are unnecessary, impede an insurer and business owner's ability to contract ...," said AIA assistant vice president of state affairs, Steve Suchil.

Stay tuned for further developments in the area of [workers' compensation defense](#) ...

This post was provided for informational purposes only and not to be construed as legal advice.

## Related Resources:

- [California Lawmakers Advance Workers' Comp Bills, Including Arbitration Restriction](#) (InsuranceNews.net)

## [Common California Construction Site Injuries - I](#)

Friday, September 3, 2010

*Today's workers' compensation defense post will explore some of the more common injuries suffered by employees on construction sites.*

Visit any construction site around the state of California, and you will see workers operating heavy equipment, carrying heavy loads, pushing or pulling building materials, lifting lumber or holding roofing tiles over their heads. While these types of actions are a vital element of job performance, they can also result in potentially debilitating injuries, decreased production and increased legal fees.

Employers who are aware of these potential injuries can take steps to implement the necessary safety measures, saving their organization both time and money.

### *Back Injuries*

There are small gelatinous discs located between the vertebrae of the spine that enable movement. When a worker pushes, pulls, lifts, stretches, bends or performs any other type of physical activity, these discs are compressed by both the ligaments and the back muscles.

However, if a worker is required to remain bent over for a prolonged period of time, the discs in their back can weaken and eventually rupture. This rather painful condition is known as a herniated disc.

In addition, workers also frequently suffer serious muscle strains or pulls in their backs. These conditions are typically caused by sudden, violent motions or repetitive motions.

### *Shoulder and Neck Injuries*

Workers who place significant strain on their shoulders on a regular basis can suffer a rather serious condition known as bursitis. Bursitis is caused by an inflammation of the bursa, tiny fluid sacs located between the tendons and bones in the shoulder. An inflamed or swollen bursa makes shoulder movement painful or even impossible.

Another common injury suffered by workers who frequently place great stress on their shoulders is tendinitis. This condition is caused by inflamed shoulder tendons and can make shoulder movement difficult (if not impossible).

Future posts will examine this topic in greater detail, including potential steps that can be taken to prevent these injuries ...

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**Related Resources:**

- [Simple Solutions for Lifting, Holding and Handling Materials](#) (National Institute for Occupational Safety and Health)