

ASSEMBLY BILL

No. 335

Introduced by Assembly Member Solorio

February 10, 2011

An act to amend Sections 138.4, 3550, 4060, 4061, 4658.5, and 5401 of the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

AB 335, as introduced, Solorio. Workers' compensation: notices.

Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, to compensate an employee for injuries sustained in the course of his or her employment. Existing law establishes, in the Department of Industrial Relations, the Commission on Health and Safety and Workers' Compensation. Existing law requires that specified notices be provided to injured employees and prescribes the contents of notices that are required to be posted, given to, or mailed to an employee. Existing law provides for specified procedures to be used in notifying employees regarding benefits and required actions in pursuing a workers' compensation claim.

This bill would require the administrative director, in consultation with the commission, to prescribe reasonable rules and regulations for serving certain notices on an employee. This bill would require the administrative director, in consultation with the commission, to develop, make fully accessible on the department's Internet Web site, and make available by mail and at district offices, a booklet written in plain language that describes the overall workers' compensation claims process. This bill would require each notice to be written in plain language and to reference the booklet to enable employees to understand

the context of the notices. This bill would modify provisions required to be in, and procedures for, specified notices, and would delete a requirement for notice by certified mail, and would make conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: yes.
 State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 138.4 of the Labor Code is amended to
 2 read:

3 138.4. (a) For the purpose of this section, “claims
 4 administrator” means a self-administered workers’ compensation
 5 insurer; or a self-administered self-insured employer; or a
 6 self-administered legally uninsured employer; or a
 7 self-administered joint powers authority; or a third-party claims
 8 administrator for an insurer, a self-insured employer, a legally
 9 uninsured employer, or a joint powers authority.

10 (b) With respect to injuries resulting in lost time beyond the
 11 employee’s work shift at the time of injury or medical treatment
 12 beyond first aid:

13 (1) If the claims administrator obtains knowledge that the
 14 employer has not provided a claim form or a notice of potential
 15 eligibility for benefits to the employee, it shall provide the form
 16 and notice to the employee within three working days of its
 17 knowledge that the form or notice was not provided.

18 (2) If the claims administrator cannot determine if the employer
 19 has provided a claim form and notice of potential eligibility for
 20 benefits to the employee, the claims administrator shall provide
 21 the form and notice to the employee within 30 days of the
 22 administrator’s date of knowledge of the claim.

23 (c) The administrative director, *in consultation with the*
 24 *Commission on Health and Safety and Workers’ Compensation,*
 25 shall prescribe reasonable rules and regulations for serving on the
 26 employee (or employee’s dependents, in the case of death), ~~notices~~
 27 *the following:*

28 (1) *Notices* dealing with the payment, nonpayment, or delay in
 29 payment of temporary disability, permanent disability,
 30 *supplemental job displacement,* and death benefits ~~and the~~
 31 ~~provision of vocational rehabilitation services, notices.~~

1 (2) *Notices* of any change in the amount or type of benefits
2 being provided, the termination of benefits, the rejection of any
3 liability for compensation, and an accounting of benefits paid.

4 (3) *Notices of rights to select the primary treating physician,*
5 *written continuity of care policies, requests for a comprehensive*
6 *medical evaluation, and offers of regular, modified, or alternative*
7 *work.*

8 (d) *The administrative director, in consultation with the*
9 *Commission on Health and Safety and Workers' Compensation,*
10 *shall develop, make fully accessible on the department's Internet*
11 *Web site, and make available by mail and at district offices, a*
12 *booklet written in plain language that describes the overall*
13 *workers' compensation claims process, including the rights and*
14 *obligations of employees and employers at every stage of a claim*
15 *when a notice is required.*

16 (e) *Each notice prescribed by the administrative director shall*
17 *be written in plain language, shall reference the booklet described*
18 *in subdivision (d) to enable employees to understand the context*
19 *of the notices, and shall clearly state the Internet Web site address*
20 *and contact information that an employee may use to obtain the*
21 *booklet.*

22 SEC. 2. Section 3550 of the Labor Code is amended to read:

23 3550. (a) Every employer subject to the compensation
24 provisions of this division shall post and keep posted in a
25 conspicuous location frequented by employees, and where the
26 notice may be easily read by employees during the hours of the
27 workday, a notice that states the name of the current compensation
28 insurance carrier of the employer, or when such is the fact, that
29 the employer is self-insured, and who is responsible for claims
30 adjustment.

31 (b) Failure to keep any notice required by this section
32 conspicuously posted shall constitute a misdemeanor, and shall be
33 prima facie evidence of noninsurance.

34 (c) This section shall not apply with respect to the employment
35 of employees as defined in subdivision (d) of Section 3351.

36 (d) The form and content of the notice required by this section
37 shall be prescribed by the administrative director, after consultation
38 with the Commission on Health and Safety and Workers'
39 Compensation, and shall advise employees that all injuries should
40 be reported to their employer. The notice shall be easily

1 understandable. It shall be posted in both English and Spanish
2 where there are Spanish-speaking employees. The notice shall
3 include the following information:

- 4 (1) How to get emergency medical treatment, if needed.
 - 5 (2) The kinds of events, injuries, and illnesses covered by
6 workers' compensation.
 - 7 (3) The injured employee's right to receive medical care.
 - 8 (4) The rights of the employee to select and change the treating
9 physician pursuant to the provisions of Section 4600.
 - 10 (5) The rights of the employee to receive temporary disability
11 indemnity, permanent disability indemnity, ~~vocational~~
12 ~~rehabilitation services~~ *supplemental job displacement*, and death
13 benefits, as appropriate.
 - 14 (6) To whom injuries should be reported.
 - 15 (7) The existence of time limits for the employer to be notified
16 of an occupational injury.
 - 17 (8) The protections against discrimination provided pursuant to
18 Section 132a.
 - 19 (9) The *Internet Web site address and contact information that*
20 *employees may use to obtain further information about the*
21 *workers' compensation claims process and an injured employee's*
22 *rights and obligations, including the location and telephone number*
23 *of the nearest information and assistance officer.*
 - 24 (e) Failure of an employer to provide the notice required by this
25 section shall automatically permit the employee to be treated by
26 his or her personal physician with respect to an injury occurring
27 during that failure.
 - 28 (f) The form and content of the notice required to be posted by
29 this section shall be made available to self-insured employers and
30 insurers by the administrative director. Insurers shall provide this
31 notice to each of their policyholders, with advice concerning the
32 requirements of this section and the penalties for a failure to post
33 this notice.
- 34 SEC. 3. Section 4060 of the Labor Code is amended to read:
35 4060. (a) This section shall apply to disputes over the
36 compensability of any injury. This section shall not apply where
37 injury to any part or parts of the body is accepted as compensable
38 by the employer.
- 39 (b) Neither the employer nor the employee shall be liable for
40 any comprehensive medical-legal evaluation performed by other

1 than the treating physician, except as provided in this section.
2 However, reports of treating physicians shall be admissible.

3 (c) If a medical evaluation is required to determine
4 compensability at any time after the filing of the claim form, and
5 the employee is represented by an attorney, a medical evaluation
6 to determine compensability shall be obtained only by the
7 procedure provided in Section 4062.2.

8 (d) If a medical evaluation is required to determine
9 compensability at any time after the claim form is filed, and the
10 employee is not represented by an attorney, the employer shall
11 provide the employee with notice either that the employer requests
12 a comprehensive medical evaluation to determine compensability
13 or that the employer has not accepted liability and the employee
14 may request a comprehensive medical evaluation to determine
15 compensability. Either party may request a comprehensive medical
16 evaluation to determine compensability. The evaluation shall be
17 obtained only by the procedure provided in Section 4062.1.

18 ~~(e) (1) Each notice required by subdivision (d) shall describe
19 the administrative procedures available to the injured employee
20 and advise the employee of his or her right to consult an
21 information and assistance officer or an attorney. It shall contain
22 the following language:~~

23 ~~“Should you decide to be represented by an attorney, you may
24 or may not receive a larger award, but, unless you are determined
25 to be ineligible for an award, the attorney’s fee will be deducted
26 from any award you might receive for disability benefits. The
27 decision to be represented by an attorney is yours to make, but it
28 is voluntary and may not be necessary for you to receive your
29 benefits.”~~

30 ~~(2)~~

31 (e) The notice required by subdivision (d) shall be accompanied
32 by the form prescribed by the administrative director for requesting
33 the assignment of a panel of qualified medical evaluators.

34 SEC. 4. Section 4061 of the Labor Code is amended to read:

35 4061. (a) Together with the last payment of temporary
36 disability indemnity, the employer shall, in a form prescribed by
37 the administrative director pursuant to Section 138.4, provide the
38 employee one of the following:

39 (1) Notice either that no permanent disability indemnity will be
40 paid because the employer alleges the employee has no permanent

1 impairment or limitations resulting from the injury or notice of the
2 amount of permanent disability indemnity determined by the
3 employer to be payable. ~~The notice shall include information~~
4 ~~concerning how the employee may obtain a formal medical~~
5 ~~evaluation pursuant to subdivision (c) or (d) if he or she disagrees~~
6 ~~with the position taken by the employer. The notice shall be~~
7 ~~accompanied by the form prescribed by the administrative director~~
8 ~~for requesting assignment of a panel of qualified medical~~
9 ~~evaluators, unless the employee is represented by an attorney. If~~
10 ~~the employer determines permanent disability indemnity is payable,~~
11 ~~the employer shall advise the employee of the amount determined~~
12 ~~payable and the basis on which the determination was made and~~
13 ~~whether there is need for continuing medical care.~~

14 (2) Notice that permanent disability indemnity may be or is
15 payable, but that the amount cannot be determined because the
16 employee's medical condition is not yet permanent and stationary.
17 The notice shall advise the employee that his or her medical
18 condition will be monitored until it is permanent and stationary,
19 at which time the necessary evaluation will be performed to
20 determine the existence and extent of permanent impairment and
21 limitations for the purpose of rating permanent disability and to
22 determine the need for continuing medical care, or at which time
23 the employer will advise the employee of the amount of permanent
24 disability indemnity the employer has determined to be payable.
25 ~~If an employee is provided notice pursuant to this paragraph and~~
26 ~~the employer later takes the position that the employee has no~~
27 ~~permanent impairment or limitations resulting from the injury, or~~
28 ~~later determines permanent disability indemnity is payable, the~~
29 ~~employer shall in either event, within 14 days of the determination~~
30 ~~to take either position, provide the employee with the notice~~
31 ~~specified in paragraph (1).~~

32 (b) ~~Each notice required by subdivision (a) shall describe the~~
33 ~~administrative procedures available to the injured employee and~~
34 ~~advise the employee of his or her right to consult an information~~
35 ~~and assistance officer or an attorney. It shall contain the following~~
36 ~~language:~~

37 ~~“Should you decide to be represented by an attorney, you may~~
38 ~~or may not receive a larger award, but, unless you are determined~~
39 ~~to be ineligible for an award, the attorney's fee will be deducted~~
40 ~~from any award you might receive for disability benefits. The~~

1 ~~decision to be represented by an attorney is yours to make, but it~~
2 ~~is voluntary and may not be necessary for you to receive your~~
3 ~~benefits.”~~

4 (e)

5 (b) ~~If the parties do not agree to a permanent disability rating~~
6 ~~based on the treating physician’s evaluation, and either the~~
7 ~~employee or employer objects to a medical determination made~~
8 ~~by the treating physician concerning the existence or extent of~~
9 ~~permanent impairment and limitations or the need for continuing~~
10 ~~medical care, and the employee is represented by an attorney, a~~
11 ~~medical evaluation to determine permanent disability shall be~~
12 ~~obtained as provided in Section 4062.2.~~

13 (d)

14 (c) ~~If the parties do not agree to a permanent disability rating~~
15 ~~based on the treating physician’s evaluation, and either the~~
16 ~~employee or employer objects to a medical determination made~~
17 ~~by the treating physician concerning the existence or extent of~~
18 ~~permanent impairment and limitations or the need for continuing~~
19 ~~medical care, and if the employee is not represented by an attorney,~~
20 ~~the employer shall immediately provide the employee with a form~~
21 ~~prescribed by the medical director with which to request~~
22 ~~assignment of a panel of three qualified medical evaluators. Either~~
23 ~~party may request a comprehensive medical evaluation to determine~~
24 ~~permanent disability or the need for continuing medical care, and~~
25 ~~the evaluation shall be obtained only by the procedure provided~~
26 ~~in Section 4062.1.~~

27 (e)

28 (d) The qualified medical evaluator who has evaluated an
29 unrepresented employee shall serve the comprehensive medical
30 evaluation and the summary form on the employee, employer, and
31 the administrative director. The unrepresented employee or the
32 employer may submit the treating physician’s evaluation for the
33 calculation of a permanent disability rating. Within 20 days of
34 receipt of the comprehensive medical evaluation, the administrative
35 director shall calculate the permanent disability rating according
36 to Section 4660 and serve the rating on the employee and employer.

37 (f)

38 (e) Any comprehensive medical evaluation concerning an
39 unrepresented employee which indicates that part or all of an
40 employee’s permanent impairment or limitations may be subject

1 to apportionment pursuant to Sections 4663 and 4664 shall first
2 be submitted by the administrative director to a workers'
3 compensation judge who may refer the report back to the qualified
4 medical evaluator for correction or clarification if the judge
5 determines the proposed apportionment is inconsistent with the
6 law.

7 ~~(g)~~

8 (f) Within 30 days of receipt of the rating, if the employee is
9 unrepresented, the employee or employer may request that the
10 administrative director reconsider the recommended rating or
11 obtain additional information from the treating physician or medical
12 evaluator to address issues not addressed or not completely
13 addressed in the original comprehensive medical evaluation or not
14 prepared in accord with the procedures promulgated under
15 paragraph (2) or (3) of subdivision (j) of Section 139.2. This
16 request shall be in writing, shall specify the reasons the rating
17 should be reconsidered, and shall be served on the other party. If
18 the administrative director finds the comprehensive medical
19 evaluation is not complete or not in compliance with the required
20 procedures, the administrative director shall return the report to
21 the treating physician or qualified medical evaluator for appropriate
22 action as the administrative director instructs. Upon receipt of the
23 treating physician's or qualified medical evaluator's final
24 comprehensive medical evaluation and summary form, the
25 administrative director shall recalculate the permanent disability
26 rating according to Section 4660 and serve the rating, the
27 comprehensive medical evaluation, and the summary form on the
28 employee and employer.

29 ~~(h)~~

30 (g) (1) If a comprehensive medical evaluation from the treating
31 physician or an agreed medical evaluator or a qualified medical
32 evaluator selected from a three-member panel resolves any issue
33 so as to require an employer to provide compensation, the employer
34 shall commence the payment of compensation or promptly
35 commence proceedings before the appeals board to resolve the
36 dispute.

37 (2) If the employee and employer agree to a stipulated findings
38 and award as provided under Section 5702 or to compromise and
39 release the claim under Chapter 2 (commencing with Section 5000)
40 of Part 3, or if the employee wishes to commute the award under

1 Chapter 3 (commencing with Section 5100) of Part 3, the appeals
2 board shall first determine whether the agreement or commutation
3 is in the best interests of the employee and whether the proper
4 procedures have been followed in determining the permanent
5 disability rating. The administrative director shall promulgate a
6 form to notify the employee, at the time of service of any rating
7 under this section, of the options specified in this subdivision, the
8 potential advantages and disadvantages of each option, and the
9 procedure for disputing the rating.

10 (i)

11 (h) No issue relating to the existence or extent of permanent
12 impairment and limitations resulting from the injury may be the
13 subject of a declaration of readiness to proceed unless there has
14 first been a medical evaluation by a treating physician or an agreed
15 or qualified medical evaluator. With the exception of an evaluation
16 or evaluations prepared by the treating physician or physicians,
17 no evaluation of permanent impairment and limitations resulting
18 from the injury shall be obtained, except in accordance with Section
19 4062.1 or 4062.2. Evaluations obtained in violation of this
20 prohibition shall not be admissible in any proceeding before the
21 appeals board.

22 SEC. 5. Section 4658.5 of the Labor Code is amended to read:

23 4658.5. (a) Except as provided in Section 4658.6, if the injury
24 causes permanent partial disability and the injured employee does
25 not return to work for the employer within 60 days of the
26 termination of temporary disability, the injured employee shall be
27 eligible for a supplemental job displacement benefit in the form
28 of a nontransferable voucher for education-related retraining or
29 skill enhancement, or both, at state-approved or accredited schools,
30 as follows:

31 (1) Up to four thousand dollars (\$4,000) for permanent partial
32 disability awards of less than 15 percent.

33 (2) Up to six thousand dollars (\$6,000) for permanent partial
34 disability awards between 15 and 25 percent.

35 (3) Up to eight thousand dollars (\$8,000) for permanent partial
36 disability awards between 26 and 49 percent.

37 (4) Up to ten thousand dollars (\$10,000) for permanent partial
38 disability awards between 50 and 99 percent.

39 (b) The voucher may be used for payment of tuition, fees, books,
40 and other expenses required by the school for retraining or skill

1 enhancement. No more than 10 percent of the voucher moneys
2 may be used for vocational or return-to-work counseling. The
3 administrative director shall adopt regulations governing the form
4 of payment, direct reimbursement to the injured employee upon
5 presentation to the employer of appropriate documentation and
6 receipts, and other matters necessary to the proper administration
7 of the supplemental job displacement benefit.

8 ~~(e) Within 10 days of the last payment of temporary disability,~~
9 ~~the employer shall provide to the employee, in the form and manner~~
10 ~~prescribed by the administrative director, information that provides~~
11 ~~notice of rights under this section. This notice shall be sent by~~
12 ~~certified mail.~~

13 ~~(d)~~

14 (c) This section shall apply to injuries occurring on or after
15 January 1, 2004.

16 SEC. 6. Section 5401 of the Labor Code is amended to read:

17 5401. (a) Within one working day of receiving notice or
18 knowledge of injury under Section 5400 or 5402, which injury
19 results in lost time beyond the employee's work shift at the time
20 of injury or which results in medical treatment beyond first aid,
21 the employer shall provide, personally or by first-class mail, a
22 claim form and a notice of potential eligibility for benefits under
23 this division to the injured employee, or in the case of death, to
24 his or her dependents. As used in this subdivision, "first aid" means
25 any one-time treatment, and any followup visit for the purpose of
26 observation of minor scratches, cuts, burns, splinters, or other
27 minor industrial injury, which do not ordinarily require medical
28 care. This one-time treatment, and followup visit for the purpose
29 of observation, is considered first aid even though provided by a
30 physician or registered professional personnel. "Minor industrial
31 injury" shall not include serious exposure to a hazardous substance
32 as defined in subdivision (i) of Section 6302. The claim form shall
33 request the injured employee's name and address, social security
34 number, the time and address where the injury occurred, and the
35 nature of and part of the body affected by the injury. Claim forms
36 shall be available at district offices of the Employment
37 Development Department and the division. Claim forms may be
38 made available to the employee from any other source.

39 (b) Insofar as practicable, the notice of potential eligibility for
40 benefits required by this section and the claim form shall be a

1 single document and shall instruct the injured employee to fully
2 read the notice of potential eligibility. The form and content of the
3 notice and claim form shall be prescribed by the administrative
4 director after consultation with the Commission on Health and
5 Safety and Workers' Compensation. The notice shall be easily
6 understandable and available in both English and Spanish. The
7 content shall include, but not be limited to, the following:

8 (1) The procedure to be used to commence proceedings for the
9 collection of compensation for the purposes of this chapter.

10 (2) A description of the different types of workers' compensation
11 benefits.

12 (3) What happens to the claim form after it is filed.

13 (4) From whom the employee can obtain medical care for the
14 injury.

15 (5) The role and function of the primary treating physician.

16 (6) The rights of an employee to select and change the treating
17 physician pursuant to subdivision (e) of Section 3550 and Section
18 4600.

19 (7) How to get medical care while the claim is pending.

20 (8) The protections against discrimination provided pursuant to
21 Section 132a.

22 (9) The following written statements:

23 (A) You have a right to disagree with decisions affecting your
24 claim.

25 (B) ~~You can obtain free information from~~ *To obtain important*
26 *information about the workers' compensation claims process and*
27 *your rights and obligations, go to [applicable Internet Web site(s)],*
28 *or contact an information and assistance (I&A) officer of the state*
29 *Division of Workers' Compensation, or you can Compensation.*
30 *You can also* hear recorded information and a list of local I&A
31 offices by calling [applicable information and assistance telephone
32 number(s)].

33 (C) You can consult an attorney. Most attorneys offer one free
34 consultation. If you decide to hire an attorney, his or her fee will
35 be taken out of some of your benefits. For names of workers'
36 compensation attorneys, call the State Bar of California at
37 [telephone number of the State Bar of California's legal
38 specialization program, or its equivalent].

39 (c) The completed claim form shall be filed with the employer
40 by the injured employee, or, in the case of death, by a dependent

1 of the injured employee, or by an agent of the employee or
2 dependent. Except as provided in subdivision (d), a claim form is
3 deemed filed when it is personally delivered to the employer or
4 received by the employer by first-class or certified mail. A dated
5 copy of the completed form shall be provided by the employer to
6 the employer’s insurer and to the employee, dependent, or agent
7 who filed the claim form.

8 (d) The claim form shall be filed with the employer prior to the
9 injured employee’s entitlement to late payment supplements under
10 subdivision (d) of Section 4650, or prior to the injured employee’s
11 request for a medical evaluation under Section 4060, 4061, or
12 4062. Filing of the claim form with the employer shall toll, for
13 injuries occurring on or after January 1, 1994, the time limitations
14 set forth in Sections 5405 and 5406 until the claim is denied by
15 the employer or the injury becomes presumptively compensable
16 pursuant to Section 5402. For purposes of this subdivision, a claim
17 form is deemed filed when it is personally delivered to the
18 employer or mailed to the employer by first-class or certified mail.