

ASSEMBLY BILL

No. 211

Introduced by Assembly Member Cedillo

January 31, 2011

An act to amend Sections 4658.5 and 4658.6 of, and to add Section 4658.7 to, the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

AB 211, as introduced, Cedillo. Workers' compensation: permanent disability benefits.

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, for injuries that cause permanent partial disability and occur on or after January 1, 2004, provides supplemental job displacement benefits in the form of a nontransferable voucher for education-related retraining or skill enhancement for an injured employee who does not return to work for the employer within 60 days of the termination of temporary disability, in accordance with a prescribed schedule based on the percentage of an injured employee's disability. Existing law provides an exception for employers who meet specified criteria.

This bill would provide that the above provisions shall apply to injuries occurring on or after January 1, 2004, and before January 1, 2012.

This bill would provide, for injuries that cause permanent partial disability and occur on or after January 1, 2012, for a supplemental job displacement benefit in the form of a voucher for up to \$6,000 to cover various reeducation and skill enhancement expenses, as specified, which

would expire 2 years after the date the voucher is furnished to the employee or 5 years after the date of injury, whichever is later. The bill would exempt employers who make an offer of reemployment or continued employment, as specified, from providing vouchers.

The bill would require the administrative director to adopt regulations implementing the program.

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 4658.5 of the Labor Code is amended to
 2 read:
 3 4658.5. (a) Except as provided in Section 4658.6, if the injury
 4 causes permanent partial disability and the injured employee does
 5 not return to work for the employer within 60 days of the
 6 termination of temporary disability, the injured employee shall be
 7 eligible for a supplemental job displacement benefit in the form
 8 of a nontransferable voucher for education-related retraining or
 9 skill enhancement, or both, at state-approved or accredited schools,
 10 as follows:
 11 (1) Up to four thousand dollars (\$4,000) for permanent partial
 12 disability awards of less than 15 percent.
 13 (2) Up to six thousand dollars (\$6,000) for permanent partial
 14 disability awards between 15 and 25 percent.
 15 (3) Up to eight thousand dollars (\$8,000) for permanent partial
 16 disability awards between 26 and 49 percent.
 17 (4) Up to ten thousand dollars (\$10,000) for permanent partial
 18 disability awards between 50 and 99 percent.
 19 (b) The voucher may be used for payment of tuition, fees, books,
 20 and other expenses required by the school for retraining or skill
 21 enhancement. No more than 10 percent of the voucher moneys
 22 may be used for vocational or return-to-work counseling. The
 23 administrative director shall adopt regulations governing the form
 24 of payment, direct reimbursement to the injured employee upon
 25 presentation to the employer of appropriate documentation and
 26 receipts, and other matters necessary to the proper administration
 27 of the supplemental job displacement benefit.
 28 (c) Within 10 days of the last payment of temporary disability,
 29 the employer shall provide to the employee, in the form and manner

1 prescribed by the administrative director, information that provides
2 notice of rights under this section. ~~This notice shall be sent by~~
3 ~~certified mail.~~

4 (d) This section shall apply to injuries occurring on or after
5 January 1, 2004, and before January 1, 2012.

6 SEC. 2. Section 4658.6 of the Labor Code is amended to read:

7 4658.6. The employer shall not be liable for the supplemental
8 job displacement benefit pursuant to Section 4658.5 if the employer
9 meets either of the following conditions:

10 (a) Within 30 days of the termination of temporary disability
11 indemnity payments, the employer offers, and the employee rejects,
12 or fails to accept, in the form and manner prescribed by the
13 administrative director, modified work, accommodating the
14 employee's work restrictions, lasting at least 12 months.

15 (b) Within 30 days of the termination of temporary disability
16 indemnity payments, the employer offers, and the employee rejects,
17 or fails to accept, in the form and manner prescribed by the
18 administrative director, alternative work meeting all of the
19 following conditions:

20 (1) The employee has the ability to perform the essential
21 functions of the job provided.

22 (2) The job provided is in a regular position lasting at least 12
23 months.

24 (3) The job provided offers wages and compensation that are
25 within 15 percent of those paid to the employee at the time of
26 injury.

27 (4) The job is located within reasonable commuting distance of
28 the employee's residence at the time of injury.

29 SEC. 3. Section 4658.7 is added to the Labor Code, to read:

30 4658.7. (a) This section shall apply to injuries occurring on
31 or after January 1, 2012.

32 (b) If the injury causes permanent partial disability, the injured
33 employee shall be entitled to a supplemental job displacement
34 benefit as provided in this section unless the employer makes an
35 offer of reemployment or continued employment meeting both of
36 the following criteria:

37 (1) The offer of reemployment or continued employment is
38 made no later than 60 days after the receipt by the claims
39 administrator of the first admissible report received from either
40 the primary treating physician, an agreed medical evaluator, or a

1 qualified medical evaluator, in the form prescribed by the
2 administrative director, finding that the disability from all
3 conditions for which compensation is claimed has become
4 permanent and stationary and that the injury has caused permanent
5 partial disability.

6 (A) The claims administrator shall forward the form prescribed
7 by paragraph (2) of subdivision (h) to the employer for the purpose
8 of fully informing the employer of work limitations resulting from
9 the injury which are relevant to potential regular work, modified
10 work, or alternative work.

11 (B) If the employer or claims administrator has provided the
12 physician with a job description for the employee's regular work,
13 proposed modified work, or proposed alternative work, the
14 physician shall evaluate whether the work limitations are
15 compatible with the physical requirements set forth in that job
16 description.

17 (2) The offer of reemployment or continued employment is for
18 regular work, modified work, or alternative work in a position
19 expected to last for at least 12 months.

20 (c) The supplemental job displacement benefit shall be furnished
21 to the employee within 20 days after the expiration of the time for
22 determining the employee's entitlement pursuant to paragraph (1)
23 of subdivision (b).

24 (d) The supplemental job displacement benefit shall be furnished
25 in the form of a voucher redeemable as provided in this section up
26 to an aggregate of six thousand dollars (\$6,000).

27 (e) The voucher may be applied to any of the following expenses
28 at the choice of the injured employee:

29 (1) Payment for education-related retraining or skill
30 enhancement, or both, at state-approved or accredited schools,
31 including payment of tuition, fees, books, and other expenses
32 required by the school for retraining or skill enhancement.

33 (2) Payment for occupational licensing or professional
34 certification fees, related examination fees, and examination
35 preparation course fees.

36 (3) Payment for the services of licensed placement agencies,
37 vocational or return-to-work counseling, and resume preparation,
38 all up to a combined limit of 10 percent of the amount of the
39 voucher.

1 (4) Purchase of tools required by a training or educational
2 program in which the employee is enrolled.

3 (5) Purchase of computer equipment, up to one thousand dollars
4 (\$1,000).

5 (6) Up to five hundred dollars (\$500) as a miscellaneous expense
6 reimbursement or advance, payable upon request and without need
7 for itemized documentation or accounting. The employee shall not
8 be entitled to any other voucher payment for transportation, travel
9 expenses, telephone or internet access, clothing or uniforms, or
10 incidental expenses.

11 (f) The voucher shall expire two years after the date the voucher
12 is furnished to the employee or five years after the date of injury,
13 whichever is later. The employee shall not be entitled to payment
14 or reimbursement of any expenses that have not been incurred and
15 appropriately submitted to the employer prior to the expiration
16 date.

17 (g) An agreement to settle or release a claim for the
18 supplemental job displacement benefit shall be valid and
19 enforceable only if approved by a worker's compensation
20 administrative law judge.

21 (h) The administrative director shall adopt regulations for the
22 administration of this section, including, but not limited to:

23 (1) The time, manner, and content of notices of rights under this
24 section.

25 (2) The form of a mandatory attachment to a medical report to
26 be forwarded to the employer pursuant to paragraph (1) of
27 subdivision (b) for the purpose of fully informing the employer of
28 work limitations resulting from the injury which are relevant to
29 potential regular work, modified work, or alternative work.