

Council Meeting of  
August 1, 2006

Honorable Mayor and Members  
of the City Council  
City Hall  
Torrance, California

Members of the Council:

**SUBJECT:** Human Resources Director's recommendation to oppose AB 1368 which allows for disability payments for non-employment related medical conditions.

### **RECOMMENDATION**

It is the recommendation of the Human Resources Director that your honorable body concur with staff's recommendation to oppose AB 1368 and direct staff to forward a letter of opposition to State Legislators.

### **BACKGROUND**

Until early 2004, excessive workers compensation costs have been a long standing economic concern for employers throughout the State. In April 2004, emergency worker's compensation legislation, via SB 899, was enacted by the Governor. The intent of SB 899 was to provide economic relief from the burdensome and sometimes unreasonable costs of workers' compensation to California employers.

The majority of workers' compensation costs relate to the following benefits: medical, temporary disability, permanent disability, and rehabilitation.

Prior to the passage of the reform legislation (SB 899), employers paid excessive workers' compensation costs for cases in which permanent disability awards were granted. These excessive costs were due to the fact that employers were required to pay for the total cost of the permanent disability benefit regardless of whether a *portion* of the injury/illness was caused by factors *not* related to employment.

In order to reduce permanent disability costs, SB899 reform mandates that physicians make a determination on medical apportionment - *the percentage of permanent disability related to medical conditions that existed separate from the work related injury*. By addressing the issue of apportionment, the employers' liability is limited to the percentage of permanent disability directly caused by the employment. [Apportionment does not apply to temporary disability benefits (compensation from lost time from work) or medical benefits.]

## ANALYSIS

Assembly Member Tom Umberg has introduced Assembly Bill 1368 which proposes to amend Labor Code Section 4663 to **exempt** police officers and firefighters from apportionment for medical conditions belonging to a specific class of injuries known as *presumptive* injuries.

Presumptive injuries are defined in the Labor Code and have been determined to have been caused by employment. The following are considered presumptive injuries if they develop or manifest themselves during a safety member's employment: hernia, heart trouble, pneumonia, tuberculosis, blood borne infectious disease, exposure to biochemical substances, meningitis, low back conditions, cancer and leukemia. The presumption extends up to 60 months after the member leaves service or retires. Police and Fire are the only occupations requiring employers to take into consideration presumptive injuries when considering workers' compensation claims.

Before workers' compensation reform, presumptive injuries could not be attributed to any medical condition which existed prior to the injury and/or illness. SB899 reversed this ruling, thus allowing for presumptive work injuries to be apportioned. In contrast, AB1368, the Umberg bill, proposes to **exempt** presumptive injuries from the apportionment rule. This would result in public agencies going back to the pre-SB 899 reform and paying permanent disability benefits for medical conditions not related to employment.

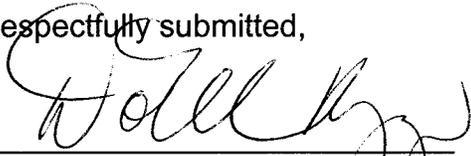
For example, under SB899 reform if a police officer/firefighter with heart trouble also has high cholesterol, diabetes, is overweight with a family history of heart disease, the physician would have to determine what percentage of the permanent disability is not work related. Thus, if the physician found that 20% of the overall permanent disability was attributed to lifestyle and genetics, the permanent disability award would be impacted as follows:

- 60% (\$73,200) of the permanent disability award would be reduced to a 48% (\$54,350) permanent disability award.
- Under the Umberg bill (AB 1368), there would be no apportionment and the safety member would receive a 60% (\$73,200) award.

In May 2005, staff brought forward to the Council a recommendation regarding a similar bill authored by Assembly Member Umberg - AB 1331. That bill also proposed the same exemption as AB 1368. At that time, Council did not agree with Staff's recommendation to oppose AB1331 as they felt the bill was favorable to police and fire and did not want to negatively impact them. Staff's recommendation was not adopted and ultimately, AB 1331 died in committee.

Based on an analysis of AB 1368, the Human Resources Department has determined that the passage of this bill would have a negative impact on public agencies by requiring the payment of permanent disability benefits for medical conditions that are not directly related to employment.

Respectfully submitted,



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Donna M. Rizzo-Administrator  
Workers Compensation Program

CONCUR:



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Elaine M. Winer  
Human Resources Director

CONCUR:



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LeRoy J. Jackson  
City Manager

Attachment-A Assembly Bill 1368 amended in Senate June 15, 2006

BILL NUMBER: AB 1368 AMENDED  
BILL TEXT

AMENDED IN SENATE JUNE 15, 2006  
AMENDED IN SENATE JUNE 20, 2005  
AMENDED IN ASSEMBLY JUNE 1, 2005

INTRODUCED BY Assembly Member Umberg

FEBRUARY 22, 2005

An act to amend ~~Sections 4663 and 4664~~  
Section 4663 of the Labor Code, relating to workers'  
compensation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1368, as amended, Umberg Workers' compensation:  
apportionment: presumptions.

Existing workers' compensation law generally requires employers to secure the payment of workers' compensation, including medical treatment, for injuries incurred by their employees that arise out of, or in the course of, employment.

Existing law provides that, in the case of certain state and local public safety members, the term "injury" includes hernia, heart trouble, and pneumonia that developed or manifested itself during a period while the person is in that service. Existing law further establishes a disputable presumption in this regard and prohibits these medical conditions from being attributed to any disease existing prior to the development or manifestation of that medical condition.

Existing law requires any physician who prepares a report addressing the issue of permanent disability due to a claimed industrial injury to address the issue of causation of the permanent disability ~~and limits the employer's liability to the percentage of permanent disability directly caused by the injury~~.

This bill would exempt the above medical conditions for certain public safety members and employees from the application of this requirement ~~and limitation~~.

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

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 4663 of the Labor Code is amended to read:  
4663. (a) Apportionment of permanent disability shall be based on causation.  
(b) Any physician who prepares a report addressing the issue of permanent disability due to a claimed industrial injury shall in that report address the issue of causation of the permanent disability.  
(c) In order for a physician's report to be considered complete on the issue of permanent disability, it must include an apportionment determination. A physician shall make an apportionment determination by finding what approximate percentage of the permanent disability

## AB 1368 Assembly Bill - AMENDED

was caused by the direct result of injury arising out of and occurring in the course of employment and what approximate percentage of the permanent disability was caused by other factors both before and subsequent to the industrial injury, including prior industrial injuries. If the physician is unable to include an apportionment determination in his or her report, the physician shall state the specific reasons why the physician could not make a determination of the effect of that prior condition on the permanent disability arising from the injury. The physician shall then consult with other physicians or refer the employee to another physician from whom the employee is authorized to seek treatment or evaluation in accordance with this division in order to make the final determination.

(d) An employee who claims an industrial injury shall, upon request, disclose all previous permanent disabilities or physical impairments.

(e) Subdivisions (a), (b), and (c) shall not apply to injuries or illnesses covered under Sections 3212, 3212.1, 3212.2, 3212.3, 3212.4, 3212.5, 3212.6, 3212.7, 3212.8, 3212.85, 3212.9, 3212.10, 3212.11, 3212.12, 3213, and 3213.2.

~~SEC. 2 Section 4664 of the Labor Code is amended to read:~~

~~4664. (a) The employer shall only be liable for the percentage of permanent disability directly caused by the injury arising out of and occurring in the course of employment.~~

~~(b) If the applicant has received a prior award of permanent disability, it shall be conclusively presumed that the prior permanent disability exists at the time of any subsequent industrial injury. This presumption is a presumption affecting the burden of proof.~~

~~(c) (1) The accumulation of all permanent disability awards issued with respect to any one region of the body in favor of one individual employee shall not exceed 100 percent over the employee's lifetime unless the employee's injury or illness is conclusively presumed to be total in character pursuant to Section 4662. As used in this section, the regions of the body are the following:~~

~~(A) Hearing.~~

~~(B) Vision.~~

~~(C) Mental and behavioral disorders.~~

~~(D) The spine.~~

~~(E) The upper extremities, including the shoulders.~~

~~(F) The lower extremities, including the hip joints.~~

~~(G) The head, face, cardiovascular system, respiratory system, and all other systems or regions of the body not listed in subparagraphs (A) to (F), inclusive.~~

~~(2) Nothing in this section shall be construed to permit the permanent disability rating for each individual injury sustained by an employee arising from the same industrial accident, when added together, from exceeding 100 percent.~~

~~(d) Subdivision (a) shall not apply to injuries or illnesses covered under Sections 3212, 3212.1, 3212.2, 3212.3, 3212.4, 3212.5, 3212.6, 3212.7, 3212.8, 3212.85, 3212.9, 3212.10, 3212.11, 3212.12, 3213, and 3213.2. When it has been established that an employee has a preexisting injury or illness, apportionment may be made for any permanent disability that would exist in the absence of a compensable injury or illness.~~

~~SEC. 3 SEC. 2.~~ It is the intent of the Legislature that this act be construed as declaratory of existing law.