
California Coalition on Workers' Compensation
CalChamber
California Chamber of Commerce
American Property Casualty Insurance Association
Insuring America
apci.org
PRISM
Public Risk Innovation, Solutions, and Management
CAJPA
California Association of Joint Powers Authorities
Monterey County California 1850
League of California Cities
California JPIA
IIABCal
Independent Insurance Agents & Brokers of California
Liberty Mutual
BETA Healthcare Group
ACHD
Association of California Healthcare Districts
California Food Producers
CPSA
California Pool & Spa Association
NFIB
CSAC
California Association CAHF of Health Facilities
acp
association of claims professionals
Agricultural Council of California
AIMS
Acclamation Insurance
Coalition of Small & Disabled Veteran Businesses
Flasher Barricade Assn.
Allied Managed Care Incorporated
County of Santa Barbara California
SDRMA
California Association of Winegrape Growers
California Schools JPA
Risk Management | Employee Benefits
cga
CSIA
California Self-Insurers Association
California Hospital Association
Leadership in Health Policy and Advocacy
CFLCA
California Farm Labor Contractor Assn.
CAWP
autocare Association
Independence drives us.
NAMIC
National Association of Mutual Insurance Companies
Shaping our Mutual Future
Western Growers
Fresh produce from our families to yours
FB California Farm Bureau
California Retailers Association
Consumers Economy Jobs
RCRC
California Self-Insurers' Security Fund
CSDA
CRMBC
California Restaurant Mutual Benefit Corporation
California Contractors Network
Urban Counties of California
CMTA
California Manufacturers & Technology Association
breckpoint
California Agricultural Products
California Livestock Producers
Antelope Valley Chambers of Commerce
California Farm Management
Oceanside Chamber of Commerce
Advancing Oceanside
Oxnard Chamber of Commerce
PIPS
San Gabriel Valley Economic Partnership
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nocc
North Orange County Chamber
Greater Riverside Chambers of Commerce
South Bay Association of Chambers of Commerce
Laguna Niguel Chamber of Commerce
We mean business
redondo Beach
Chamber of Commerce & Visitors Bureau
Garden Grove
Chamber of Commerce
BREA Chamber
Catalyst. Convener. Champion.
Celebrating 75 Years
Pleasanton Chamber of Commerce
1946 - 2021
Serving Chino & Chino Hills
Chino Valley Chamber of Commerce
Over 100 Years of Service
Since 1913
Santa Barbara South Coast Chamber of Commerce
From Goleta to Carpinteria

June 4, 2021

The Honorable Tom Daly
Chair, Assembly Insurance Committee
State Capitol, Room 3120
Sacramento, CA 95814

Subject: SB 335 (Cortese) Workers' Compensation Liability
OPPOSE

Dear Assembly Member Daly,

The undersigned organizations are OPPOSED to SB 335, which fundamentally alters longstanding rules and timeframes for determining eligibility for workers' compensation claims and moves California outside of the mainstream when compared to other states. SB 335 substantially cuts the amount of time available to California employers to review whether claimed workplace injuries are, in fact, related to work. This is fundamentally unfair to employers, who deserve a fair opportunity to complete an investigation and make a thoughtful determination about the validity of a claimed injury. We are unaware of any data or studies showing that the existing rules and timeframes are unfair or have created any systemic problems for injured workers. In contrast, these new deadlines will ultimately lead to additional denials because investigations cannot be completed and questions as to compensability are likely to remain at the expiration of the statutory timeframe.

SB 335 can be broken down into three basic components:

1. Reduces the period of time that employers are allowed to investigate a claim for benefits prior to making a coverage decision. For most claims the investigation period is reduced from 90 to 45 days. For claims covered by legal presumptions the investigation period is reduced even further to 30 days.

2. Increases amount of mandated employer-funded medical care that must be provided to injured workers – from $10,000 to $17,000 – during the period of time a claim is being investigated, even if the claim is ultimately denied.

3. Imposes unprecedented and unwarranted penalties on employers that would result in massive and repeated benefit expansions for workers covered by certain legal presumptions. This provision is applied retroactively.

## SHORTENING THE INVESTIGATION PERIOD

Our coalition is opposed to shortening the investigation period from 90 to 45 days for claims generally, and we also oppose the additional shortening of this period to 30 days for claims covered by special legal presumptions that, by their very nature, already increase the burden of proof for an employer asserting that an injury or illness did not actually occur at work. Presumption claims are predominately taxpayer funded and merit thoughtful review.

What happens when a claim is not immediately accepted?

When an employee claims a work-related injury or illness their employer must decide whether to accept liability, which happens within the first month in the vast majority of cases, or to wait to issue a decision for up to 90 days in order to conduct an investigation. Employers will conduct an investigation where the employer or their insurer has information that would lead them to believe that the claimed injury or illness is not work related, and further discovery is warranted.

During the investigation period an employer or their insurer needs to talk to witnesses, obtain related medical records, schedule a medical evaluation and receive a written report from the doctor, and potentially identify and recover additional records that might be relevant to the claimed injury.

It should be noted that during the investigation period, the injured worker is receiving medical care to cure or relieve their injury. Medical care is provided during the investigation period for treatment rendered up to $10,000. Additional medical treatment is not covered once a claim is denied, therefore shortening this timeframe may negatively impact the injured workers' ability to seek medical care.

If/when a medical evaluation is needed to make a compensability determination, all parties may utilize the Qualified Medical Evaluation process. Based on the statutory timeframes provided for this process (which is 90-120 days during the pandemic), it is impossible to complete this process within the proposed investigatory proposed timeframes, thus putting an undo strain on the Division of Workers' Compensation (DWC).

What is the likely result of this change?

The most probable outcome from the proposed changes in SB 335is a higher number of denials of coverage as a result of not being able to complete the initial discovery process. This is because employers will not be able to identify, acquire, and evaluate the records and information necessary to make a fair determination. They certainly will not have time to identify a medical evaluator, set an appointment, deliver appropriate records, and obtain a high-quality medical report to determine causation and inform their decision making.

SB 335 all but guarantees that the investigation of workers' compensation claims in California will be, as a matter of law, cumbersome and ineffective. Employers across the state will be deprived of the opportunity to adequately investigate questionable workers' compensation claims. SB 335 ultimately punishes the injured worker by shortening the length of time whereby medical care can be provided, at no cost to the employee, during the discovery phase of a claim.

Even shorter investigation period for presumption claims

Over the continuous objections of public sector employers across California, the legislature has granted special benefits to various powerful public employee unions. Their legal presumptions make it all but impossible for cities, counties, special districts, school districts and other public entities to refute questionable claims for complex disease processes that are not unique to their employment.

SB 335 proposes to reduce the period of time that public employers have to investigate these claims from 90 to 30 days, a full 66% reduction. The combination of the legal presumption and a 30-day investigation period create an unworkable combination of barriers to effectively investigating questionable claims. This is a fundamental violation of the foundations of the workers' compensation system where employers agree to pay for all work-related injuries, regardless of fault, but do not have liability for injuries not caused by work.

Undermines prior negotiations around SB 1159 (Hill):

Last year, the Governor signed SB 1159, a time-limited COVID-19 presumption for all of California's workers. As the bill went through the legislative process, employers worked with both the author's office and the supporters of the bill on several provisions, including the 45-day investigation period. This concession was part of a larger negotiation that permitted several of the signatories of the letter to be neutral on the legislation.

Yet today, less than a year later and without a material change in circumstances, SB 335 undoes this negotiated concession, reducing the investigatory period to 30 days. Simply put, this change is profound breach of legislative norms and shakes the confidence of employers that workers' compensation negotiations will be handled in good faith.

## TREATMENT DURING THE REVIEW PERIOD

California law requires employers to provide $10,000 worth of medical care to an injured worker during the period that an employer delays their claim to investigate. SB 335would increase the amount from $10,000 to $17,000, but there is no objective justification for this change. Workers receiving treatment during the investigation period don't, on average, come close to spending the full $10,000 provided to them under current law. The average amount of medical treatment paid during the investigation period is well below $5,000. We struggle to understand the need for this provision. In the event of a serious injury exceeding $10,000 in medical care in which compensability is being determined, existing law allows an employer to provide such care and benefits without admitting liability pursuant to Labor Code Section 4909.

Also, we would note the unfortunate interplay between this portion of the bill and the reduced timeframe for investigations. With only 30 and 45 days to investigate before a final decision, it is very likely that injured workers will receive even less care during the investigation period instead of more.

## ESPECIALLY UNWORKABLE FOR PRESUMPTION CLAIMS

The laws of the State of California already provide for a fair and equitable system for all workers. Our workers' compensation system is "no fault", meaning that employers pay for benefits even if there was no specific negligence. Injuries and illnesses are covered by workers' compensation so long as the injury occurred while the worker was in the course and scope of their job duties. Additionally, state law requires the workers' compensation appeals board judges to "liberally construe" the laws of the state toward the provision of benefits. These two statutory requirements make our workers' compensation system extremely accessible.

California has also established a series of legal presumptions for cancer, heart, pulmonary, infectious disease, and other types of injuries for public safety personnel (police and fire). These presumptions eliminate any burden of proof for an injured worker claiming industrial injury and dramatically increase the amount of evidence that is necessary for an employer to demonstrate that an injury or illness is not related to work, and therefore not covered by the workers' compensation system. The burden placed on employers is frankly unfair as it stands, but SB 335 would make it even more so. By allowing only 30 days to investigate the most complex types of injuries and overcome a nearly impossible burden of proof, SB 335 will make it functionally impossible for public sector employers to refute fraudulent claims for which a claimant is receiving their full salary, tax-free for each alleged workplace injury.

## CONCLUSION

SB 335 is out of touch with the policies that dictate most workers' compensation systems in the United States. The proposed changes would fundamentally undermine the ability of employers to demonstrate that a proposed claim for injury did not occur at the workplace. For public agencies, the changes are even more troubling because they exacerbate an already costly and unworkable situation.

Acclamation Insurance Management Services
Agricultural Council of California
Allied Managed Care
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Association of California Healthcare Districts
Association of California School Administrators
Association of Claims Professionals
Auto Care Association
BETA Healthcare Group
Brea Chamber of Commerce
Breckpoint Inc.
California Agricultural Products
California Assisted Living Association
California Association of Health Facilities
California Association of Joint Powers Authorities
California Association of Winegrape Growers
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California Contractors Network
California Farm Bureau
California Farm Labor Contractors Association
California Farm Management
California Food Producers
California Grocers Association
California Hospital Association
California Joint Powers Insurance Authority
California Livestock Producers
California Manufacturers & Technology Association
California Pool & Spa Association
California Restaurant Mutual Benefit Corporation
California Retailers Association
California Schools JPA

California Self-Insurers Association
California Self-Insurers' Security Fund
California Special Districts Association
California State Association of Counties
California Thoroughbred Trainers
CAWA – Representing the Automotive Parts Industry
Chino Valley Chamber of Commerce
Coalition of Small and Disabled Veteran Businesses
County of Monterey
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Del Mar Thoroughbred Club
Flasher Barricade Association
Fresno Chamber of Commerce
Garden Grove Chamber of Commerce
Golden Gate Fields
Greater High Desert Chamber of Commerce
Greater Riverside Chambers of Commerce
Household Industry of Self-Insured Group
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The Redondo Beach Chamber of Commerce
Thoroughbred Owners of California
Tulare Chamber of Commerce
Urban Counties of California
Western Growers Association
Yorba Linda Chamber of Commerce

cc: Senator Cortese
Members and Consultants, Assembly Insurance Committee