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SB-788 Workers' compensation: risk factors. (2021-2022)



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AMENDED IN ASSEMBLY JUNE 17, 2021

CALIFORNIA LEGISLATURE— 2021-2022 REGULAR SESSION

SENATE BILL

NO. 788

Introduced by Senator Bradford

February 19, 2021

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

LEGISLATIVE COUNSEL'S DIGEST

SB 788, as amended, Bradford. Workers' compensation: risk factors.

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 employment. Existing law requires a physician who prepares a report addressing the issue of permanent disability due to an industrial injury to address the cause of the permanent disability in the report, including what approximate percentage of the permanent disability was caused by other factors before and after the industrial injury, if the physician is able to make an apportionment determination.

This bill would prohibit consideration of race, religious creed, color, national origin, ~~age~~, gender, marital status, sex, sexual identity, ~~sexual orientation~~, ~~of genetic characteristics~~ or *sexual orientation* to determine the approximate percentage of the permanent disability caused by other factors. The bill would also express the Legislature's intent to eliminate bias and discrimination in the workers' compensation system.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

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

SECTION 1. It is the intent of the Legislature to eliminate bias and discrimination in the workers' compensation system. This act will ensure that risk factors and characteristics of race, religious creed, color, national origin, ~~age~~, gender, marital status, sex, sexual identity, ~~sexual orientation~~, ~~of genetics~~ or *sexual orientation* are not used to deny an injured worker a full disability benefit.

SEC. 2. Section 4663 of the Labor Code is amended to read:

4663. (a) Apportionment of permanent disability shall be based on causation.

ADDRESSING RACIAL BIAS IN WORKERS' COMPENSATION AND OURSELVES (/?PG=LATESTNEWS&BLACTION=SHOWENTRY&BLOGENTRY=60211)

Posted on: Feb 22, 2021

February is Black History Month, and while we honor the accomplishments of courageous leaders of the past, we must acknowledge present inequities and continue the work to purge racial bias from our workers' compensation system and from ourselves.

To address a small piece of the inequities in our system, CAAA has focused legislative efforts on correcting the injustice of using race and other genetic factors in apportionment of disability, and we'll be bringing that to the forefront again in 2021.

After being put aside last year in light of the COVID-19 pandemic, Senator Steven Bradford (D-Gardena) has again agreed to carry a bill that would prohibit consideration of race, religious creed, color, national origin, age, gender, marital status, sex, sexual identity, sexual orientation, or genetic characteristics to determine the approximate percentage of the permanent disability caused by other factors "before and after the industrial injury.

Similar legislation (https://201861.nehrn.jp7f=001rmtatae22NpJHA3L_Oobhivw.gLjH-APXHWUkFynAwZnP5C-ZQERkg4mVnCCQZ_MbBBWvFh4k49o4kTYUvY_-LUngvYA10jwNkWRiVHGouQcK_rpsCC-xAL5q10JrnIu3Uy7F6kK4EuyXx-5pyUj06yqz10C13hnrR01z7Q4-&c=nhovtaz2R8qntMsrPm1pDpFg_8N9WDB8f8aUuRSOQnUTXgIKNFQ==&ch=7Lhp10w9T7Z5GalEseuarR8pcRaz5sIRq9N1NESCOLApKd610CCYA=#) has made it through the legislature in the past, only to be vetoed by the governor at the time. We're hoping for a different outcome this year.

As we look at making fixes to the system, we must also look at addressing inherent biases in ourselves.

The 21-day Racial Equity Habit Building Challenge (https://201861.nehrn.jp7f=001rmtatae22NpJHA3L_Oobhivw.gLjH-APXHWUkFynAwZnP5C-ZQERkg4mVnCCQZ_MbBBWvFh4k49o4kTYUvY_-LUngvYA10jwNkWRiVHGouQcK_rpsCC-xAL5q10JrnIu3Uy7F6kK4EuyXx-5pyUj06yqz10C13hnrR01z7Q4-&c=nhovtaz2R8qntMsrPm1pDpFg_8N9WDB8f8aUuRSOQnUTXgIKNFQ==&ch=7Lhp10w9T7Z5GalEseuarR8pcRaz5sIRq9N1NESCOLApKd610CCYA=#) is a good habit. https://201861.nehrn.jp7f=001rmtatae22NpJHA3L_Oobhivw.gLjH-APXHWUkFynAwZnP5C-ZQERkg4mVnCCQZ_MbBBWvFh4k49o4kTYUvY_-LUngvYA10jwNkWRiVHGouQcK_rpsCC-xAL5q10JrnIu3Uy7F6kK4EuyXx-5pyUj06yqz10C13hnrR01z7Q4-&c=nhovtaz2R8qntMsrPm1pDpFg_8N9WDB8f8aUuRSOQnUTXgIKNFQ==&ch=7Lhp10w9T7Z5GalEseuarR8pcRaz5sIRq9N1NESCOLApKd610CCYA=#) is a good habit. Several sections of the American Bar Association (http://201861.nehrn.jp7f=001rmtatae22NpJHA3L_Oobhivw.gLjH-APXHWUkFynAwZnP5C-ZQERkg4mVnCCQZ_MbBBWvFh4k49o4kTYUvY_-LUngvYA10jwNkWRiVHGouQcK_rpsCC-xAL5q10JrnIu3Uy7F6kK4EuyXx-5pyUj06yqz10C13hnrR01z7Q4-&c=nhovtaz2R8qntMsrPm1pDpFg_8N9WDB8f8aUuRSOQnUTXgIKNFQ==&ch=7Lhp10w9T7Z5GalEseuarR8pcRaz5sIRq9N1NESCOLApKd610CCYA=#) have advocated for their members to participate in variations of the challenge over the last year. As members of the workers' compensation community, we encourage you to take the challenge as well, whether in 21 days or over the course of several months, however long it might take to complete.

Borne of an economy flush with systemic racism, people of color are often forced into more dangerous lower-wage jobs, and therefore, are more likely to be injured on the job.

As attorneys who represent these injured workers, it's imperative to address racial bias in the workers' compensation system and ourselves to help make the ideal of equal justice under the law a reality.