

**Department of State Hospitals
2019 Proposed Trailer Bill**

Title: State Hospital Vocational Services and Patient Minimum Wage

Section 3208.3 of the Labor Code is amended to read:

(a) A psychiatric injury shall be compensable if it is a mental disorder which causes disability or need for medical treatment, and it is diagnosed pursuant to procedures promulgated under paragraph (4) of subdivision (j) of Section 139.2 or, until these procedures are promulgated, it is diagnosed using the terminology and criteria of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Third Edition-Revised, or the terminology and diagnostic criteria of other psychiatric diagnostic manuals generally approved and accepted nationally by practitioners in the field of psychiatric medicine.

(b) (1) In order to establish that a psychiatric injury is compensable, an employee shall demonstrate by a preponderance of the evidence that actual events of employment were predominant as to all causes combined of the psychiatric injury.

(2) Notwithstanding paragraph (1), in the case of employees whose injuries resulted from being a victim of a violent act or from direct exposure to a significant violent act, the employee shall be required to demonstrate by a preponderance of the evidence that actual events of employment were a substantial cause of the injury.

(3) For the purposes of this section, "substantial cause" means at least 35 to 40 percent of the causation from all sources combined.

(c) It is the intent of the Legislature in enacting this section to establish a new and higher threshold of compensability for psychiatric injury under this division.

(d) Notwithstanding any other provision of this division, no compensation shall be paid pursuant to this division for a psychiatric injury related to a claim against an employer unless the employee has been employed by that employer for at least six months. The six months of employment need not be continuous. This subdivision shall not apply if the psychiatric injury is caused by a sudden and extraordinary employment condition. Nothing in this subdivision shall be construed to authorize an employee, or his or her dependents, to bring an action at law or equity for damages against the employer for a psychiatric injury, where those rights would not exist pursuant to the exclusive remedy doctrine set forth in Section 3602 in the absence of the amendment of this section by the act adding this subdivision.

(e) Where the claim for compensation is filed after notice of termination of employment or layoff, including voluntary layoff, and the claim is for an injury occurring prior to the time of notice of termination or layoff, no compensation shall be paid unless the employee demonstrates by a preponderance of the evidence that actual events of employment were predominant as to all causes combined of the psychiatric injury and one or more of the following conditions exist:

(1) Sudden and extraordinary events of employment were the cause of the injury.

(2) The employer has notice of the psychiatric injury under Chapter 2 (commencing with Section 5400) prior to the notice of termination or layoff.

(3) The employee's medical records existing prior to notice of termination or layoff contain evidence of treatment of the psychiatric injury.

(4) Upon a finding of sexual or racial harassment by any trier of fact, whether contractual, administrative, regulatory, or judicial.

(5) Evidence that the date of injury, as specified in Section 5411 or 5412, is subsequent to the date of the notice of termination or layoff, but prior to the effective date of the termination or layoff.

(f) For purposes of this section, an employee provided notice pursuant to Sections 44948.5, 44949, 44951, 44955, 44955.6, 72411, 87740, and 87743 of the Education Code shall be considered to have been provided a notice of termination or layoff only upon a district's final decision not to reemploy that person.

(g) A notice of termination or layoff that is not followed within 60 days by that termination or layoff shall not be subject to the provisions of this subdivision, and this subdivision shall not apply until receipt of a later notice of termination or layoff. The issuance of frequent notices of termination or layoff to an employee shall be considered a bad faith personnel action and shall make this subdivision inapplicable to the employee.

(h) No compensation under this division shall be paid by an employer for a psychiatric injury if the injury was substantially caused by a lawful, nondiscriminatory, good faith personnel action. The burden of proof shall rest with the party asserting the issue.

(i) When a psychiatric injury claim is filed against an employer, and an application for adjudication of claim is filed by an employer or employee, the division shall provide the employer with information concerning psychiatric injury prevention programs.

(j) An employee who is an inmate, as defined in subdivision (e) of Section 3351, or his or her family on behalf of an inmate, shall not be entitled to compensation for a psychiatric injury except as provided in subdivision (d) of Section 3370.

(k) An employee who is a patient, as defined in subdivision (h) of Section 3351, or his or her family on behalf of an inmate, shall not be entitled to compensation for a psychiatric injury except as provided in subdivision (d) of Section 3370.

An act to add Section 3370.1 and 3371.1 of the Labor Code.

Labor Code 3370.1

(a) Each patient in a Department of State Hospital facility shall be entitled to the workers' compensation benefits provided by this division for injury arising out of and in the course of a vocational rehabilitation, including a sheltered workshop, work assignment and for the death of the patient if the injury proximately causes death, subject to all of the following conditions:

(1) The patient was not injured as the result of an assault in which the patient was the initial aggressor, or as the result of the intentional act of the patient injuring himself or herself.

(2) The patient shall not be entitled to any temporary disability indemnity benefits while committed in a state hospital facility or reincarcerated in a city or county jail, or state penal or correctional institution.

(3) No benefits shall be paid to a patient while he or she is committed in a state hospital. The period of benefit payment shall instead commence upon release from a state hospital. If a patient who has been released from a state hospital, and has been receiving benefits under this section, is recommitted to a state hospital, a Jail-Based Competency Treatment program, an Admission, Evaluation, and Stabilization Unit, or another such program considered to be a facility of the Department of State Hospitals under Welfare and Institutions Code section 4100, or if the patient is reincarcerated in a city or county jail, or state penal or correctional institution, the benefits shall cease immediately upon the patient's recommitment or reincarceration and shall not be paid for the duration of the recommitment or reincarceration.

(4) This section shall not be construed to provide for the payment to a patient, upon release from a state hospital, a Jail-Based Competency Treatment program, an Admission, Evaluation, and Stabilization Unit, or another such program considered to be a facility of the Department of State Hospitals under Welfare and Institutions Code section 4100, or upon release from incarceration, of temporary disability benefits which were not paid due to the prohibition of paragraph (2).

(5) In determining temporary and permanent disability indemnity benefits for the patient, the average weekly earnings shall be taken at not more than the minimum amount set forth in Section 4453.

(6) Where a dispute exists respecting a patient's right to the workers' compensation benefits provided herein, the patient may file an application with the worker's compensation appeals board to resolve the dispute. The application may be filed at any time during the patient's commitment at a state hospital.

(7) After release or discharge from a state hospital, the former patient shall have one year in which to file an original application with the appeals board, unless the time of injury is such that it would allow more time under Section 5804 of the Labor Code.

(8) The percentage of disability to total disability shall be determined as for the occupation of a laborer of like age by applying the schedule for the determination of the percentages of permanent disabilities prepared and adopted by the administrative director.

(9) This division shall be the exclusive remedy against the state for injuries occurring while engaged in a vocational rehabilitation program. Nothing in this division shall affect any other right or remedy of an injured patient resulting from injuries not compensated by this division.

(b) The Department of State Hospitals shall present to each patient worker, prior to his or her first vocational rehabilitation assignment, a printed statement of his or her rights under this division, and a description of procedures to be followed in filing for benefits under this section. The statement shall be approved by the executive director or his or her designee and shall be posted in various conspicuous locations where patients work or reside.

(c) Notwithstanding any other provision of this division, the Department of State Hospitals shall provide medical care for its patients, which may include medical services at an outside facility.

(d) Paragraphs (2), (3), and (4) of subdivision (a) shall also be applicable to a patient who would otherwise be entitled to receive workers' compensation benefits based on an injury sustained prior to his or her commitment to a state hospital. However, temporary and permanent disability benefits which, except for this subdivision, would otherwise be payable to a patient based on an injury sustained prior to commitment to a state hospital, a Jail-Based Competency Treatment Program, an Admission, Evaluation, and Stabilization Unit or another such program considered to be a facility of the Department of State Hospitals under Welfare and Institutions Code section 4100, shall be paid to the dependents of the patient. If the patient has no dependents, the temporary disability benefits which, except for this subdivision, would otherwise be payable during the patient's commitment shall be paid to the State Treasury to the credit of the Uninsured Employers Fund, and the permanent disability benefits which would otherwise be payable during the patient's commitment shall be held in trust for the patient by the Department of State Hospitals during the period of commitment.

For purposes of this subdivision, "dependents" means the patient's spouse or children, including a patient's former spouse due to divorce and the patient's children from that marriage.

(e) Notwithstanding any other provision of this division, a patient who is an employee as defined in subdivision (h) of Section 3351 is eligible for supplemental job displacement benefit as defined in Section 4658.7.

Section 3371.1 of the Labor Code is added to read:

If the issues are complex or if the patient applicant requests, the Department of State Hospitals shall furnish a list of qualified workers' compensation attorneys to permit the patient applicant to choose an attorney to represent him or her before the appeals board, with costs to be paid by the Department of State Hospitals.

Section 3551 of the Labor Code is amended to read:

"Employee" means every person in the service of an employer under any appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed, and includes:

(a) Aliens and minors.

(b) All elected and appointed paid public officers.

(c) All officers and members of boards of directors of quasi-public or private corporations while rendering actual service for the corporations for pay. An officer or member of a board of directors may elect to be excluded from coverage in accordance with paragraph (16), (18), or (19) of subdivision (a) of Section 3352.

(d) Except as provided in paragraph (8) of subdivision (a) of Section 3352, any person employed by the owner or occupant of a residential dwelling whose duties are incidental to the ownership, maintenance, or use of the dwelling, including the care and supervision of children, or whose duties are personal and not in the course of the trade, business, profession, or occupation of the owner or occupant.

(e) All persons incarcerated in a state penal or correctional institution while engaged in assigned work or employment as defined in paragraph (1) of subdivision (a) of Section 10021 of Title 8 of the California Code of Regulations, or engaged in work performed under contract.

(f) All working members of a partnership or limited liability company receiving wages irrespective of profits from the partnership or limited liability company. A general partner of a partnership or a managing member of a limited liability company may elect to be excluded from coverage in accordance with paragraph (17) of subdivision (a) of Section 3352.

(g) A person who holds the power to revoke a trust, with respect to shares of a private corporation held in trust or general partnership or limited liability company interests held in trust. To the extent that this person is deemed to be an employee described in subdivision (c) or (f), as applicable, the person may also elect to be excluded from coverage as described in subdivision (c) or (f), as applicable, if that person otherwise meets the criteria for exclusion, as described in Section 3352.

(h) A person committed to a state hospital facility under the Department of State Hospitals as defined in Welfare and Institutions Code section 4100 while engaged in and assigned work in a vocational rehabilitation program, including a sheltered workshop.

~~(h) This section shall become operative on July 1, 2018.~~

Section 4316 of the Welfare and Institutions Code is amended to read:

Subject to rules and regulations adopted by the department, the hospital director may establish a sheltered workshop at a state hospital to provide patients with remunerative work performed in a setting which simulates that of industry and is performed in such a manner as to meet standards of industrial quality. The workshop shall be so operated as to provide the treatment staff with a realistic atmosphere for assessing patients' capabilities in work settings, and to provide opportunities to strengthen and expand patient interests and aptitudes. **Notwithstanding any payment schedule approved by the State Department of State Hospitals, except for state hospital patients participating in sheltered workshop programs, state hospital patients are not "employees" within the meaning of Government Code sections 18526, 18529, and Labor Code sections 1182.12, 1191.5, and 2750**

Section 4317.5 of the Welfare and Institutions Code is added to read:

The hospital director, subject to rules and regulations adopted by the department, may in addition to establishing a sheltered workshop, provide other vocational rehabilitation programs for state hospital patients. Notwithstanding any payment

schedule approved by the State Department of State Hospitals, state hospital patients who participate in any vocational rehabilitation program, not including sheltered workshops, are not "employees" within the meaning of Government Code sections 18526, 18529, and Labor Code sections 1182.12, 1191.5, and 2750.