

AN ACT TO AMEND ARTICLE 5 OF CHAPTER 2 OF PART 2 OF DIVISION 4 OF THE LABOR CODE AS FOLLOWS:

**Labor Code - LAB**

DIVISION 4. WORKERS' COMPENSATION AND INSURANCE [3200 - 6002] ( Heading of Division 4 amended by Stats. 1979, Ch. 373. )

PART 2. COMPUTATION OF COMPENSATION [4451 - 4856] ( Part 2 enacted by Stats. 1937, Ch. 90. )

CHAPTER 2. Compensation Schedules [4550 - 4856] ( Chapter 2 enacted by Stats. 1937, Ch. 90. )

**ARTICLE 5. Subsequent Injuries Payments [4751 - 4756]** (Article 5 enacted by Stats. 1937, Ch. 90. )

**4751.**

(a) If an employee who is permanently partially disabled in a manner that was actually labor disabling at the time he or she receives a subsequent compensable injury resulting in additional permanent partial disability so that the degree of disability caused by the combination of both disabilities is greater than that which would have resulted from the subsequent injury alone, and the combined effect of the last injury and the previous disability or impairment is a permanent disability equal to 70 percent or more of total, after application of the Multiple Disabilities Table or the Combined Values Chart in the Schedule for Rating Permanent Disabilities applicable to the subsequent compensable injury, taking into account any duplication or overlap of impairments and disabilities, the employee shall be paid, in addition to the compensation due under this code for the permanent partial disability caused by the last injury, compensation for the remainder of the combined permanent disability existing after the last injury as provided in this article; provided, that either:

(1) the previous disability or impairment affected a hand, an arm, a foot, a leg, or an eye, and the permanent disability resulting from the subsequent injury affects the opposite and corresponding member, and such latter permanent disability, when considered alone and without regard to, or adjustment for, diminished future earning capacity, the occupation or age of the employee, or the adjustment factor referenced in subdivision (b) of section 4660.1, is equal to 5 percent or more of total, or

(2) the permanent disability resulting from the subsequent injury, when considered alone and without regard to or adjustment for the diminished future earning capacity, occupation or the age of the employee, or the adjustment factor referenced in subdivision (b) of section 4660.1, is equal to 35 percent or more of total.

(b) For purposes of paragraphs (1) and (2) of subdivision (a) of this section, the term "permanent disability" in relation to subsequent compensable injuries occurring after January 1, 2005 shall mean the whole person impairment rating, also referred to as the impairment standard, as determined in accordance with the American Medical Association (AMA) Guides to the Evaluation of Permanent Impairment, 5th Edition, without adjustment for diminished future earning capacity, occupation or age of the employee, or any other factor, and without multiplication by the adjustment factor referred to in subdivision (b) of section 4660.1.

(c) For purposes of this section, “actually labor disabling” means that the prior permanent partial disability resulted in loss of earnings, or interfered with the employee’s work activity in the occupation or occupations in which the employee was employed, or otherwise had a demonstrable impact on the employee’s ability to perform work activity.

(d) The provisions of subdivision (b) and (c), added by amendment effective [FILL IN DATE], are declarative of existing law.

**4753.**

Such additional compensation is not in addition to but shall be reduced to the extent of any monetary payments received by the employee, from any source whatsoever, for or on account of such preexisting disability or impairment, except as to payments being made to the employee or to which he is entitled as a pension or other compensation for disability incurred in service in the armed forces of the United States, and except as to payments being made to him or to which he is entitled as assistance under the provisions of Chapter 2 (commencing with Section 11200), Chapter 3 (commencing with Section 12000), Chapter 4 (commencing with Section 12500), Chapter 5 (commencing with Section 13000), or Chapter 6 (commencing with Section 13500) of Part 3, or Part 5 (commencing with Section 17000), of Division 9 of the Welfare and Institutions Code, and excluding from such monetary payments received by the employee for or on account of such preexisting disability or impairment a sum equal to all sums reasonably and necessarily expended by the employee for or on account of attorney’s fees, costs and expenses incidental to the recovery of such monetary payments.

~~All cases under this section and under Section 4751 shall be governed by the terms of this section and Section 4751 as in effect on the date of the particular subsequent injury.~~

**4753.5.**

In any hearing, investigation, or proceeding, the state shall be represented by the Attorney General, or the attorneys of the Department of Industrial Relations, as appointed by the ~~d~~Director of the Department of Industrial Relations. Expenses incident to representation, including costs for investigation, medical examinations, other expert reports, fees for witnesses, and other necessary and proper expenses, but excluding the salary of any of the Attorney General’s deputies, shall be reimbursed from the Workers’ Compensation Administration Revolving Fund. No witness fees or fees for medical or medical-legal services shall exceed those fees for the same services prescribed by the appeals board or the Administrative Director ~~for the same services in those cases where the appeals board~~, by rule or regulation. ~~, has prescribed fees.~~ Reimbursement pursuant to this section shall be in addition to, and in augmentation of, any other appropriations made or funds available for the use or support of the legal representation.

**4754.**

(a) The appeals board shall fix and award the amounts of special additional compensation to be paid under this article, and shall direct the *Director of the Department of Industrial Relations, as trustee of the Subsequent Injuries Benefits Trust Fund, State Compensation Insurance Fund* to pay the additional compensation so awarded. ~~Such additional compensation may be paid only from funds appropriated for such purpose. Out of any such appropriation the fund may reimburse itself for the cost of service rendered in payment of compensation awards pursuant to this article and maintenance of accounts and records pertaining thereto, which cost shall not exceed 5 percent of the amount of award paid.~~

(b) For purposes of determining eligibility for and the amount of an award of special additional compensation to be paid under this article, the following shall apply:

(1) The existence of prior permanent partial disability that was actually labor disabling at the time of the subsequent compensable injury shall be determined by substantial evidence in a medical-legal report based only on prior contemporaneous medical records, prior testimony, or other prior contemporaneous documents, that predate the subsequent compensable injury and that evidence the prior disability and demonstrate that it was actually labor disabling. The existence of prior permanent partial disability shall not be determined by retroactive work restrictions or any presumption of disability based solely on a ratable condition. The evidentiary presumption of subdivision (b) of section 4664 shall not apply.

(2) The degree of prior permanent partial disability shall be rated as such disability is determined to have existed on the date of the subsequent compensable injury.

(3) For purposes of determining whether the degree of permanent disability caused by the subsequent compensable injury meets the threshold requirements for an award of additional compensation under this article as set forth in paragraphs (1) and (2) of subdivision (a) of section 4751, whole person impairment ratings for multiple body parts shall not be added, but shall be combined using the Multiple Disabilities Table or the Combined Values Chart in the Schedule for Rating Permanent Disabilities applicable to the subsequent compensable injury.

(4) The amount of special additional compensation shall be determined based on an initial date of entitlement that is the latest date on which the employee is found to have reached permanent and stationary status from the subsequent compensable injury, regardless of when permanent disability payments for the subsequent compensable injury commence pursuant to section 4650 and regardless of whether the maximum period for temporary disability payments pursuant to section 4656 has been reached or exceeded.

(5) (i) Medical-legal evidence in a proceeding filed for compensation pursuant to this article may be obtained only in the manner set forth in article 2 of chapter 7 of Part 1 of this Division; medical legal reports obtained in any other manner shall not be admissible and the costs of such reports shall not be reimbursable. Medical legal evidence from a new evaluator in a field already reported on in the subsequent compensable injury case

shall not be admissible unless the original evaluator is no longer practicing or serving as an evaluator. Vocational rehabilitation reports, or other vocational evidence, obtained solely for a proceeding pursuant to this article that were not obtained for use as evidence in the proceeding for compensation for the subsequent compensable injury are not admissible, and the costs of such reports shall not be reimbursable in proceedings under this article.

(ii) Notwithstanding paragraph (6), the provisions of this paragraph do not apply to claims pending as of the effective date of this subdivision in which discovery had closed and a trial had been scheduled, commenced or completed prior to the effective date of this subdivision, or in which a workers' compensation administrative law judge had entered an order approving a Compromise and Release or Stipulations With Request for Award prior to the effective date of this subdivision.

(iii) Regardless of whether a medical-legal report or vocational rehabilitation report is admissible, and notwithstanding paragraph (6), the provisions of this paragraph do not preclude reimbursement for medical-legal or vocational rehabilitation reports that were completed prior to the effective date of this subdivision.

(6) The provisions of this subdivision, added by amendment effective [FILL IN DATE], are declarative of existing law.

(c) The Director of the Department of Industrial Relations shall have authority to issue regulations as necessary for the implementation and orderly and effective administration of this article.

#### **4754.1.**

For all subsequent compensable injuries occurring on or after January 1, 2019, the limitations period within which an employee may file an application for special additional compensation pursuant to this article shall be five years from the date of the subsequent compensable injury.

#### **4754.5.**

Nothing in this article shall impair the right of the Attorney General or the Department of Industrial Relations to release by compromise any claims brought under the provisions of this article. No such compromise and release agreement is valid unless it is approved by the appeals board; however, the provisions of Sections 5000 to 5004, inclusive, of this code, shall not apply to such compromise and release agreements.

#### **4755.**

(a) The State Compensation Insurance Fund may draw from the State Treasury out of the Subsequent Injuries Benefits Trust Fund for the purposes specified in Section 4751, without at the time presenting vouchers and itemized statements, a sum not to exceed in the aggregate fifty thousand dollars (\$50,000), to be used as a cash revolving fund. The revolving fund shall be deposited in any banks and under any conditions as the Department of Finance determines. The Controller shall draw his or her warrants in favor of the State Compensation Insurance Fund for the amounts so withdrawn and the Treasurer shall pay these warrants.

(b) Expenditures made from the revolving fund in payments on claims for any additional compensation and for adjusting services are exempted from the operation of Section 16003 of the Government Code. Reimbursement of the revolving fund for these expenditures shall be made upon presentation to the Controller of an abstract or statement of the expenditures. The abstract or statement shall be in any form as the Controller requires.

(c) The director shall assign claims adjustment services and legal representation services respecting matters concerning subsequent injuries. The director or his or her representative may make these service assignments within the department, or he or she may contract for these services with the State Compensation Insurance Fund, for a fee in addition to that authorized by Section 4754, except insofar as these matters might conflict with the interests of the State Compensation Insurance Fund. The administrative costs associated with these services shall be reimbursed from the Workers' Compensation Administration Revolving Fund, except when a budget impasse requires advances as provided in subdivision (d) of Section 62.5. To the extent permitted by state law, the director may contract for audits or reports of services under this section.

**4756.**

(a) The Legislature finds and declares that it is in the best interest of the State of California to provide a person, regardless of his or her citizenship or immigration status, with the benefits provided pursuant to this article, and therefore enacts this section pursuant to Section 1621(d) of Title 8 of the United States Code.

(b) A person shall not be prohibited from receiving compensation paid or payable from the Subsequent Injuries Benefits Trust Fund solely because of his or her citizenship or immigration status.

(c) It is the intent of the Legislature to override Section 15740 of Article 1 of Subchapter 2.1.1 of Chapter 8 of Division 1 of Title 8 of the California Code of Regulations.

(d) The provisions of this section are declaratory of existing law.