

PUBLICATION UPDATE

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California Law of Employee Injuries and Workers' Compensation

Publication 270

Release 95

April 2022

HIGHLIGHTS

2021 Legislation

- Amendments to provisions exempting specified employment from application of *Dynamex's* "ABC" test have been added.

Regulatory Changes

- New and revised WCAB rules eff. 1-1-2022 addressing remote hearings and electronic filing and service have been added.

Cases

- Two California Supreme Court cases addressing *Privette*, and a case clarifying the derivative injury doctrine are among the cases added.

Forms

- The forms in Appendix D

have been updated throughout.

Tables and Schedules

- Tables 14 and 17 have been updated.

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2021 LEGISLATION.

Worker Classification; Application of “ABC” Test; Exemptions.

The legislature has amended Lab. Code §§ 2778, 2781, 2782 and 2783, provisions exempting specified employment from the “ABC” test codified in Lab. Code § 2775, to extend the timeframe for application of the exemption to licensed manicurists, to newspaper distributors and carriers, and to the relationship between contractors and certain subcontractors performing construction work. The amendments also expand the exemption to apply to insurance claims adjusters and third-party administrators and revise provisions affecting data aggregators. [See Ch. 3, § 3.03.]

COVID-19 Disability Retirement Presumption. The legislature added new sections 7523–7523.2 to the Government Code, creating a rebuttable presumption applicable to specified members of certain public retirement systems who retire for disability on the basis of a COVID-19-related illness, that the disability arose out of and in the course of employment. The presumption applies to members employed in specified firefighter, public safety officer, and health care job classifications, or their functional equivalents, and to members in other job classifications who test positive for COVID-19 during an outbreak of the disease at their places of employment. [See Ch. 4, § 4.138[4][r].]

Workers’ Compensation Insurance Policies; Notice of Cancellation or Nonrenewal. The legislature has revised provisions in Ins. Code §§ 676.8 and 678 relating to the notice requirements for cancellation of a workers’ compensation policy and to insurance policy non-renewals. [See Ch. 2, § 2.61[2].]

Antifraud Legislation. The legislature added Ins. Code § 1871.10, making it a crime to knowingly make false or fraudulent statements or representations for the purpose of obtaining or amending an insurance policy and imposing specified penalties for violation of this provision. [See Ch. 2, § 2.03[5].]

Port Drayage Motor Carriers; Customer Liability. The legislature has amended Lab. Code § 2810.4 to expand the liability of customers who use a port drayage motor carrier that is listed by the Division of Labor Standards Enforcement to perform port drayage services on the customers’ behalf, to include liability to the state. [See Ch. 3, § 3.145.]

REGULATORY CHANGES.

Electronic/Remote Hearings, Filing and Service. The WCAB adopted three new Rules of Practice and Procedure (8 Cal. Code Reg. §§ 10300 et seq.) and amended existing rules, effective January 1, 2022, to formalize the process for remote hearings, appearances and testimony in light of the ongoing nature of the COVID-19 pandemic. Rules regarding filing and service were also revised to provide for expanded electronic filing and service. New

definitions were added to clarify and facilitate the remote hearing process. The new and revised rules are as follow:

W.C.A.B. Rules § 10305 Definitions [See Ch. 20, § 20.04[1], Ch. 25, 25.41[2], Ch. 26, 26.01[3][a], Ch. 30, 30.22[2]]

W.C.A.B. Rules § 10400 Attorney Representatives [See Ch. 20, § 20.01[1][b]]

W.C.A.B. Rules § 10401 Non-Attorney Representative [See Ch. 20, § 20.01[1][c]]

W.C.A.B. Rules § 10610 Filing and Service of Documents [See Ch. 22, § 22.08[4][a], Ch. 23, § 23.14[2][b], Ch. 25, § 25.06[1]]

W.C.A.B. Rules § 10615 Filing of Documents [See Ch. 23, §§ 23.12[2][a], [c], [h], 23.14[2][g], Ch. 25, §§ 25.06A[2], [5], 25.07[1], Ch. 26, § 26.06[12][a], [b][iii]]

W.C.A.B. Rules § 10625 Service by Parties [See Ch. 23, § 23.14[2][a], Ch. 25, § 25.06[1], Ch. 30, §§ 30.04[8][c], 30.20[4]]

W.C.A.B. Rules § 10628 Service by WCAB [See Ch. 23, § 23.14[1][a]]

W.C.A.B. Rules § 10635 Duty to Serve Documents [See Ch. 5, § 5.07[10][d], Ch. 22, § 22.08[4][a], Ch. 23, § 23.12[2][d], Ch. 25, § 25.06A[3], Ch. 30, §§ 30.04[7][a], 30.20[4], 30.22[7]]

W.C.A.B. Rules § 10670 Documentary Evidence [See Ch. 22, § 22.08[4][e], Ch. 23, § 23.12[2][d], Ch. 26, §§ 26.06[9][c],

26.06[12][b][iv]]

W.C.A.B. Rules § 10745 Setting the Case [See Ch. 25, § 25.08[1], Ch. 32, § 32.05[6][c][i]]

W.C.A.B. Rules § 10750 Notice of Hearing [See Ch. 20, § 20.04[1], Ch. 23, § 23.14[1][c], Ch. 24, § 24.11[1][b], Ch. 30, § 30.22[1][b], [3]]

W.C.A.B. Rules § 10752 Appearances Required [See Ch. 20, § 20.04[1], Ch. 26, § 26.01[3][a], Ch. 30, §§ 30.04[6][b], 30.22[1][b], [5][a]]

W.C.A.B. Rules § 10755 Failure to Appear at Mandatory Settlement Conference in Case-in-Chief [See Ch. 26, § 26.04[2]]

W.C.A.B. Rules § 10756 Failure to Appear at Trial in Case-in-Chief [See Ch. 26, § 26.01[3][a]]

New W.C.A.B. Rules § 10815 Electronic Hearings Before the WCAB [See Ch. 26, § 26.02[5], Ch. 30, § 30.22[1][b]]

New W.C.A.B. Rules § 10816 Electronic Appearances [See Ch. 26, §§ 26.01[3][a], 26.02[5], Ch. 30, § 30.22[1][b]]

New W.C.A.B. Rules § 10817 Electronic Testimony [See Ch. 25, § 25.10[2][a], Ch. 26, §§ 26.02[5], 26.05[3], Ch. 30, § 30.22[1][b]]

Mandatory Settlement Conferences. The WCAB amended W.C.A.B. Rules § 10759 to require parties to meet and confer before a mandatory settlement conference, and to specify that a joint pretrial conference statement must be filed by

the end of the conference. [See Ch. 26, § 26.04[2].]

Recording of Proceedings. The WCAB amended W.C.A.B. Rules § 10818 to simply the procedure for recording proceedings, to clarify when a recording may be made for personal use, and to state that a violation of the rule may be the basis for sanctions or citation for contempt. [See Ch. 26§ 26.02[4].]

Telehealth and Electronic Service. Emergency regulations setting forth a protocol for telehealth QME evaluations and electronic service of medical-legal reports and other documents, effective May 14, 2020, were renewed periodically since their effective date but expired by operation of law on January 11, 2022. However, a new emergency regulation addressing telehealth was issued, effective January 18, 2022. [See Ch. 22, § 22.11[5], [12], [14].]

Medical Treatment Guidelines. The Administrative Director ordered evidence-based updates to the MTUS/ACOEM contained in 8 Cal. Code Reg., §§ 9792.24.6 and 9792.24.7, effective October 26, 2020 and June 28, 2021, respectively, addressing antiemetic drugs and Coronavirus (COVID-19). [See Ch. 5, § 5.02[1].]

Medical-Legal Expenses. The Administrative Director amended regulations addressing medical-legal expenses to increase the relative value of payments for medical-legal fees, implement a new system based on flat fees for medical-legal services, and eliminate the use of com-

plexity factors and most hourly billing. The amendments are effective April 1, 2021. [See Ch. 5, § 5.08[2][b], Ch. 22, §§ 22.06[1][d], 22.09[3], Ch. 23, § 23.13[2][b], Ch. 30, § 30.05[4][a].]

CASE LAW DEVELOPMENTS. The following cases have been added:

California Supreme Court

Privette Doctrine; Known Hazardous Conditions. The Supreme Court in *Gonzalez v. Mathis* (2021) 12 Cal. 5th 29, held that the hirer of an independent contractor will not be liable to the contractor or its workers for an injury resulting from a known hazard on the hirer's premises, unless the hirer retains control over some part of the contractor's work and negligently exercises that control in a manner that affirmatively contributes to the injury. The Supreme Court reasoned that to find otherwise would be fundamentally inconsistent with the *Privette* doctrine. [See Ch. 3, § 3.133.]

Privette Doctrine; Application of Exceptions to Privette. The Supreme Court in *Sandoval v. Qualcomm, Inc.* (2021) 12 Cal. 5th 256, held that the hirer of a contractor had no liability for injuries incurred by the contractor's worker after the contractor negligently removed a protective cover on a live electrical circuit during its inspection of electrical equipment on the hirer's premises, notwithstanding the hirer's performance of a partial "power-down" process that preceded the contractor's work and resulted in the presence of the live electrical

circuit. The Supreme Court found that by giving the contractor control of the worksite per *Privette*, the hirer presumptively delegated any preexisting duties it otherwise owed plaintiff, and that neither the “concealed hazards” nor the “retained control” exceptions to *Privette*’s general bar to hirer liability applied. [See Ch. 3, § 3.133.]

Court of Appeal—Published Cases

Workers’ Compensation Exclusivity; Derivative Injury Doctrine; COVID-19. The Court of Appeal in *See’s Candies, Inc. v. Superior Court* (2021) 73 Cal. App. 5th 66, held that the derivative injury doctrine did not apply to extend workers’ compensation exclusivity under Labor Code Sections 3600–3602 to a wrongful death action brought by the family of an employee who purportedly contracted COVID-19 at work and subsequently infected her husband who later died from the virus, because the claim did not seek damages for losses arising from a disabling or lethal injury to the employee. [See Ch. 11, § 11.01[6].]

Illegal Patient Referrals; Physician’s Office Exception. The Court of Appeal in *Banerjee v. Superior Court* (2021) 69 Cal. App. 5th 1093, the first published case to interpret Labor Code Sections 139.3 and 139.31, held that doctors are permitted to render services to patients through separate legal entities, including entities in which the doctor has a financial interest, provided the services are rendered within the same

“physician’s office” or the office of a group practice. Consequently, a physician could not be charged with perjury based on his alleged violations of the prohibition on self-referrals by rendering services to patients through two separate legal entities he owned, though he could be prosecuted for insurance fraud for billing the insurance company higher rates for services provided through his other entities. [See § 22.14.]

Subrogation; Standing to Seek Disqualification of Attorneys. The Court of Appeal in *Moreci v. Scaffold Solutions, Inc.* (2021) 70 Cal. App. 5th 425, held that a workers’ compensation carrier had no standing to disqualify an employee’s attorneys from defending a third-party defendant against the carrier’s subrogation claim after the employee settled his personal injury lawsuit against the defendant, because the carrier had no attorney-client relationship with the attorneys, which is generally a prerequisite to seeking disqualification, nor did it establish a “manifest and glaring” ethical breach by the attorneys to trigger an exception to the necessity of an attorney-client relationship, leaving the carrier with no right to seek disqualification. [See § 11.42[4][a].]

Jurisdiction; Uninsured Employers. The Court of Appeal in *Hollingsworth v. Heavy Transport, Inc.* (2021) 66 Cal. App. 5th 1157, held that while a jury may determine questions relevant to workers’ compensation exclusivity where the issue is raised as an affirmative defense to

common law claims, jurisdiction under Labor Code Section 3706 is a question of law for the court, not a jury, to decide. [See §§ 2.60[1], 11.01[5], 21.05[2].]

Employment Relationships; Application of *Borello*; Criminal Proceedings. The Court of Appeal in *People v. Czirban* (2021) 67 Cal. App. 5th 1073, upheld an employer's convictions for tax evasion and failure to secure workers' compensation insurance, crimes for which conviction was dependent on the existence of an employment relationship, when the Court of Appeal concluded that bulldozer drivers hired by the defendant to assist at wildfires were the defendant's employees, not independent contractors, based on the "right of control" test in *S.G. Borello & Sons, Inc. v. Dept. of Industrial Relations* (1989) 48 Cal. 3d 341. [See § 3.06[2].]

Newspaper Carriers; Application of *Borello*. The Court of Appeal in *Becerra v. The McClatchy Co.* (2021) 69 Cal. App. 5th 913, concluded that the trial court should have applied the standard described *S.G. Borello & Sons*, rather than relying on inapplicable EDD regulations, to determine whether a group of newspaper home delivery carriers were independent contractors or employees in an action alleging violation of the unfair competition law based on the newspaper's failure to reimburse the carriers for mileage expenses. [See § 3.61.]

Home Delivery Drivers/Installers; Application of

***Borello*.** The Court of Appeal in *Bacoka v. Best Buy Stores, L.P.* (2021) 71 Cal. App. 5th 126, held that carriers hired to deliver and install a washing machine on the plaintiffs' property were independent contractors, not employees of the retailer that sold the machine to the plaintiffs, under the standard *S.G. Borello & Sons*, when the retailer contracted with an outside broker to procure delivery/installation services and did not have sufficient control over the manner and means by which these services were performed to create an employment relationship with the drivers/installers. [See § 3.06[2].]

Joint Employers; Right of Control. The Court of Appeal in *Medina v. Equilon Enterprises, LLC* (2021) 68 Cal. App. 5th 868, declined to apply the "ABC" test in the joint employer context, and, applying the broader "suffer or permit to work" standard, found that an individual or entity may be a joint employer even without exercising direct control over an employee if the person or entity exercises sufficient indirect control over wages, hours or working conditions. [See § 3.06[2].]

Third-Party Actions; Attorney's Fees and Litigation Expenses. The Court of Appeal in *Oakes v. Progressive Transportation Services, Inc.* (2021) 71 Cal. App. 5th 486, held that rejection of a valid settlement offer made pursuant to Code of Civil Procedure Section 998 does not preclude a plaintiff from recovering reasonable litigation expenses and attorney's fees under Labor Code Section

3856 after receiving a final third-party judgment less favorable than the settlement offer. However, in such cases the cost-shifting penalties in Code of Civil Procedure Section 998, subjecting the plaintiff to liability for the defendant's post-offer expenses, must be applied to any final judgment in the plaintiff's favor before Labor Code Section 3856 allocations. [See § 11.24[2].]

Court of Appeal—Unpublished Cases

Caution: *The following unpublished entries may not be cited or relied upon, except as specified in California Rules of Court, rule 8.1115.*

Permanent Total Disability; Cost of Living Adjustment. The Court of Appeal in *Town of Los Gatos v. W.C.A.B. (Hart)* (2021) 86 Cal. Comp. Cases 451 (court of appeal opinion not published in official reports), held that under the California Supreme Court's decision in *Baker v. W.C.A.B.* (2011) 52 Cal. 4th 434, an employee who was awarded permanent total disability for a 2003 back injury was entitled to COLAs only after he was declared permanent and stationary and became entitled to permanent total disability indemnity, and after the employer's liability for temporary disability indemnity ceased. [See Ch. 8, § 8.08[2].]

Nonprofit Organization Volunteers. The court of appeal in *Mateel Environmental Justice Foundation v. Ukiah Rifle and Pistol Club* (2021) 86 Cal. Comp. Cases 569 (court of appeal opinion not published in offi-

cial reports), held that the unpaid officers of a nonprofit gun club, and potentially some of the club's members, were employees of the club based on their receipt of membership dues waivers in exchange for their otherwise voluntary services. [See Ch. 3, § 3.82[5].]

Workers' Compensation Insurance Fraud; Victim Restitution.

The court of appeal in *People v. Guillen* (2021) 86 Cal. Comp. Cases 674 (court of appeal opinion not published in official reports), held that an employee convicted of insurance fraud under Insurance Code Section 1871.4(a) was obligated to reimburse his employer for investigation costs but did not have to provide restitution for temporary disability benefits or attorney's fees where there was insufficient evidence regarding the amount of benefits the employee fraudulently obtained. [See Ch. 2, § 2.03[2].]

Superior Court

Workers' Compensation Insurance Fraud; Immigration Applications.

The Ninth Circuit Court of Appeals in *Orellana v. Mayorkas* (9th Cir. 2021) 6 F.4th 1034, held that an employee's naturalization application was properly denied after she pleaded guilty to violating Penal Code Section 550(b)(3) by concealing a material fact relevant to her eligibility for workers' compensation insurance benefits, where the employee's conviction was for an offense that involved fraud or deceit in which loss to the victim (her employer) exceeded \$10,000.00 and,

therefore, constituted an “aggravated felony” precluding naturalization. [See Ch. 2, § 2.03[2].]

U.S. Court of Appeals, Ninth Circuit

Workers’ Compensation Insurance Fraud; Immigration Applications. The Ninth Circuit Court of Appeals in *Orellana v. Mayorkas* (9th Cir. 2021) 6 F.4th 1034, held that an employee’s naturalization application was properly denied after she pleaded guilty to violating Penal Code Section 550(b)(3) by concealing a material fact relevant to her eligibility for workers’ compensation insurance benefits, where the employee’s conviction was for an offense that involved fraud or deceit in which loss to the victim (her employer) exceeded \$10,000.00 and, therefore, constituted an “aggravated felony” precluding naturalization. [See Ch. 2, § 2.03[2].]

App-Based Drivers; Proposition 22. The Ninth Circuit Court of Appeals in *Lawson v. Grubhub, Inc.* (9th Cir. 2021) 13 F.4th 908, held that Proposition 22 does not apply retroactively, but only prospectively, and did not abate a delivery driver’s wage order claims against Grubhub, Inc., under *Dynamex’s* “ABC” test. [See Ch. 3, § 3.03.]

Worker Classification Tests; Constitutionality. The Ninth Circuit Court of Appeals in *American Society of Journalists and Authors, Inc. v. Bonta* (9th Cir. 2021) 15 F.4th 954, upheld the constitutionality of Labor Code Section 2778, finding that the statute, which exempts specified oc-

cupations from application of the “ABC” test, does not violate the First Amendment or the Equal Protection Clause of the U.S. Constitution by using different worker classification tests for different occupations under certain circumstances. [See Ch. 3, § 3.03.]

Federal District Court

Mock Jurors; Data Aggregator Exemption to Application of “ABC” Test. The district court in *Guynn-Neupane v. Magna Legal Services, LLC* (N.D. Cal. 2021) 86 Cal. Comp. Cases 953, held that both the company that recruited a worker to participate as a mock juror in a one-day focus group and the company that conducted the focus group met the criteria in Labor Code Section 2782 to trigger the “data aggregator” exemption to application of the “ABC” and, therefore, the worker’s status as employee or independent contractor was governed by *S.G. Borello & Sons, Inc. v. Dept. of Industrial Relations* (1989) 48 Cal. 3d 341. [See Ch. 3, § 3.03.]

Excess Insurance Policies; No Voluntary Settlement Clauses. The district court in *San Francisco Bay Area Rapid Transit Dist. v. Nat’l Union Fire Ins. Co.* (N.D. Cal. 2021) 87 Cal. Comp. Cases 42, held that a self-insured employer was precluded from pursuing claims to determine the liability of several excess insurance carriers for the employer’s settlement of an employee’s workers’ compensation claim, when the employer settled the claim without obtaining consent from the excess car-

riers, in violation of “no voluntary settlement” clauses in the excess policies. [See Ch. 2, § 2.83.]

WCAB en banc decision

COVID-19 State of Emergency—No. 8; Electronic Service by WCAB. The Appeals Board en banc in *In re: COVID-19 State of Emergency En Banc—No. 8* (2022) 87 Cal. Comp. Cases 59 (Appeals Board en banc opinion), clarified that suspension of W.C.A.B. Rule § 10628, requiring the WCAB to serve documents by mail, applies to the period 3/18/2020 to 1/1/22, the date amended W.C.A.B. Rule § 10628 allowing electronic service became effective. [See Ch. 1, § 1.11[4].]

WCAB decisions denied writ of review

Caution: *The following entries are “writ denied” cases. Practitioners should proceed with caution when citing to these cases and should also verify their subsequent history.*

Discrimination; Labor Code § 132a. The Appeals Board in *Alameda-Contra Costa Transit Dist. v. W.C.A.B. (Jones)* (2021) 86 Cal. Comp. Cases 583 (writ denied), held that an employer discriminated against an industrially injured employee in violation of Labor Code Section 132a, when the employer alleged that it legitimately terminated the employee for violating a company call-in policy applicable to non-industrial sick leave, but the evidence showed the employer terminated the employee due to her workers’ com-

pensation claim and also deviated from its usual procedure for responding to employee injuries. [See Ch. 10 § 10.11[2][b].]

Permanent Disability Rating; Rebuttal of Scheduled Rating. The Appeals Board in *Fresno Unified School District v. W.C.A.B. (Swanson)* (2021) 86 Cal. Comp. Cases 591 (writ denied), held that an employee successfully rebutted the scheduled AMA *Guides* rating and was entitled to an award of permanent total disability based on vocational evidence establishing she was not amenable to vocational rehabilitation and was precluded from gainful employment due solely to her industrial injuries. [See Ch. 8 § 8.02[3].]

Medical Treatment; Utilization Review; Transitional Living Facility. The Appeals Board in *National Cement Company, Inc. v. W.C.A.B. (Rivota)* (2021) 86 Cal. Comp. Cases 595, found that where an employer had provided ongoing authorization for an injured employee to stay in a transitional living facility, the employee was not required to provide ongoing requests for authorization to remain at the facility nor could the employer compel the employee’s discharge through UR without showing a change in his condition. [See Ch. 5 § 5.02[2][a].]

Permanent Disability; Apportionment; Medical Evidence. The Appeals Board in *Brophy v. W.C.A.B.* (2021) 86 Cal. Comp. Cases 706 (writ denied), held that the QME’s reporting was substantial evidence to support a finding that 80 percent of a

truck driver's overall permanent total disability from COPD was due to previously asymptomatic nonindustrial causes, including the employee's long history of heavy smoking and his morbid obesity, and 20 percent was caused by an injury to his pulmonary system from a single exposure to toxic fumes at work. [See Ch. 8 § 8.05[2][a].]

Permanent Disability Rating; Rebuttal of Scheduled Rating. The Appeals Board in *Kiewit Infrastructure West Co. v. W.C.A.B. (Thomas)* (2021) 86 Cal. Comp. Cases 711 (writ denied), held that an employee successfully rebutted the scheduled AMA *Guides* rating and was entitled to an award of permanent total disability based on medical evidence regarding the synergistic effect of his knee and low back impairments, and on the vocational evidence establishing he was not amenable to vocational rehabilitation and was unable to return to work due solely to his industrial injuries. [See Ch. 8 § 8.02[3].]

Collateral Estoppel; Binding Effect of Civil Court Decisions. The Appeals Board in *County of Sacramento Sheriff's Department v. W.C.A.B. (Keillor)* (2021) 86 Cal. Comp. Cases 845 (writ denied), held that the county was collaterally estopped from asserting a deputy sheriff's stroke, pled as a specific injury, was nonindustrial, when the deputy sheriff successfully established industrial causation in her civil suit against the county by showing the stroke resulted from cumulative

stress caused by the county's retaliation, and all the elements for application of collateral estoppel were met. [See Ch. 21 § 21.08[2][d].]

Temporary Total Disability; Unavailability of Work Due to COVID-19. The Appeals Board in *Berkshire Hathaway Homestate Companies v. W.C.A.B. (Mota Perez)* (2021) 86 Cal. Comp. Cases 997 (writ denied), held that an employer was liable for a period of temporary total disability incurred by an employee solely due to the shut-down of the employer's business because of COVID-19 and the resulting unavailability of work. [See Ch. 7 § 7.02[4][c].]

Permanent Disability Rating; Combining Multiple Disabilities. The Appeals Board in *Coalinga-Huron School Dist. v. W.C.A.B. (McGinnis)* (2021) 86 Cal. Comp. Cases 1005, 1008 (writ denied), held that the opinion of the QME in rheumatology supported adding an employee's multiple impairments to reach 100 percent permanent disability rather than utilizing the CVC to combine them, based on the aggregate effect of the symptomatology related to her fibromyalgia, psychiatric condition and orthopedic impairments. [See Ch. 32 § 32.03A[1].]

Permanent Disability; Lifetime Cap on Benefits. The Appeals Board in *Russell v. W.C.A.B.* (2021) 86 Cal. Comp. Cases 1011, 1013–1014 (writ denied), held that an employee was precluded from receiving an award of permanent total disability based on his prior stipulated award of perma-

nent disability for an injury to the same “region of the body” as defined in Labor Code Section 4664(c)(1)(G), even without overlap between his subsequent permanent disability and the permanent disability previously awarded. [See Ch. 8 § 8.06[5][d].]

Death Benefits; Rate of Payment. The Appeals Board in *Mierczynski v. W.C.A.B.* (2021) 86 Cal. Comp. Cases 1036 (writ denied), held that although death benefits awarded to a deceased employee’s dependents more than two years following the employee’s injury are payable based on the maximum rates in effect at the time of payment pursuant to Labor Code Section 4661.5, such payments do not increase beyond the amount supported by the deceased employee’s rate of earnings, nor are they subject to the cost-of-living adjustments applicable to permanent total disability benefits. [See Ch. 9, §§ 9.02[5], 9.03[3].]

Death Benefits; Establishing Total Dependency. The Appeals Board in *Carpet Land Mills/Vartan Avedis-zadehn v. W.C.A.B. (Manzur)* (2021) 86 Cal. Comp. Cases 1113 (writ denied), held that the applicant’s receipt of Pell Grant money for college tuition and living expenses during the school year did not preclude a finding that he was totally dependent on his father at the time of his father’s fatal injury, because dependency status is determined by the *facts existing at the time of the injury* and at that time

the applicant was between college semesters, not receiving Pell Grant money, and solely dependent on his father for financial support. [See Ch. 9, § 9.05[4][c].]

Going and Coming Rule; Required Vehicle Exception. The Appeals Board in *City and County of San Francisco v. W.C.A.B. (Pacatte)* (2021) 86 Cal. Comp. Cases 1116 (writ denied), held that fatal injuries incurred by a firefighter during his commute to work in his personal vehicle were compensable under the “required vehicle” exception to the “going and coming” rule even though the firefighter did not need his vehicle at work on the date of the accident, where the firefighter’s access to a vehicle provided a clear benefit to the employer by allowing the firefighter to travel between fire stations, if ever necessary. [See Ch. 4, § 4.155[2][a].]

RATES.

Temporary Total Disability Rates. Based on the increase in the SAWW, the minimum and maximum weekly temporary total disability rates were increased, effective January 1, 2022, to record highs pursuant to Lab. Code § 4453(a)(10). [See Ch. 6, § 6.01[2].]

Travel Reimbursement. Effective January 1, 2022, injured workers who travel for medical care or evaluation will be reimbursed for their travel at a higher rate. [See Ch. 5, § 5.08[1], Ch. 22, § 22.07[2][a].]

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California Law of Employee Injuries and Workers' Compensation

Publication 270 Release 95

April 2022

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<input type="checkbox"/>	3-51 thru 3-52.3	3-51 thru 3-52.3
<input type="checkbox"/>	3-61 thru 3-62.1.	3-61 thru 3-62.1
<input type="checkbox"/>	3-108.1	3-108.1 thru 3-108.3
<input type="checkbox"/>	3-127.	3-127
<input type="checkbox"/>	4-90.1	4-90.1
<input type="checkbox"/>	4-170.1 thru 4-170.5.	4-170.1 thru 4-170.5
<input type="checkbox"/>	4-197.	4-197 thru 4-198.1
<input type="checkbox"/>	5-7.	5-7 thru 5-8.1
<input type="checkbox"/>	5-21	5-21 thru 5-22.1
<input type="checkbox"/>	5-123 thru 5-133	5-123 thru 5-134.1
<input type="checkbox"/>	6-1 thru 6-5.	6-1 thru 6-6.1
<input type="checkbox"/>	7-23 thru 7-24.1.	7-23 thru 7-24.1
<input type="checkbox"/>	8-16.1 thru 8-21.	8-17 thru 8-22.1
<input type="checkbox"/>	8-39	8-39 thru 8-40.1
<input type="checkbox"/>	8-44.9	8-44.9 thru 8-44.10(1)
<input type="checkbox"/>	8-53	8-53 thru 8-54.1
<input type="checkbox"/>	8-70.7	8-70.7 thru 8-70.9
<input type="checkbox"/>	9-14.1 thru 9-17.	9-15 thru 9-18.3
<input type="checkbox"/>	9-25 thru 9-29	9-25 thru 9-29
<input type="checkbox"/>	10-23 thru 10-35	10-23 thru 10-36.1
<input type="checkbox"/>	11-12.1 thru 11-15.	11-13 thru 11-16.3
<input type="checkbox"/>	11-111	11-111 thru 11-112.1
<input type="checkbox"/>	11-130.1 thru 11-131	11-131 thru 11-132.1

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*Insert New
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VOLUME 2

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	20-3 thru 20-9	20-3 thru 20-10.1
<input type="checkbox"/>	20-37 thru 20-43	20-37 thru 20-43
<input type="checkbox"/>	21-32.1 thru 21-33	21-33 thru 21-34.1
<input type="checkbox"/>	21-49 thru 21-50.1	21-49 thru 21-50.1
<input type="checkbox"/>	21-65.	21-65 thru 21-66.1
<input type="checkbox"/>	22-23 thru 22-25	22-23 thru 22-25
<input type="checkbox"/>	22-67.	22-67 thru 22-68.1
<input type="checkbox"/>	22-87.	22-87 thru 22-88.1
<input type="checkbox"/>	22-97 thru 22-122.7	22-97 thru 22-122.17
<input type="checkbox"/>	22-133 thru 22-135	22-133 thru 22-135
<input type="checkbox"/>	23-1 thru 23-3	23-1 thru 23-3
<input type="checkbox"/>	23-19 thru 23-25	23-19 thru 23-26.1
<input type="checkbox"/>	23-35 thru 23-51	23-35 thru 23-52.1
<input type="checkbox"/>	24-39.	24-39
<input type="checkbox"/>	24-49 thru 24-51	24-49 thru 24-51
<input type="checkbox"/>	25-21 thru 25-31	25-21 thru 25-31
<input type="checkbox"/>	25-39.	25-39 thru 25-40.1
<input type="checkbox"/>	25-61.	25-61
<input type="checkbox"/>	25-81.	25-81 thru 25-82.1
<input type="checkbox"/>	26-1 thru 26-17	26-1 thru 26-17
<input type="checkbox"/>	26-26.1 thru 26-35	26-27 thru 26-36.1
<input type="checkbox"/>	26-47 thru 26-59	26-47 thru 26-59
<input type="checkbox"/>	27-17.	27-17
<input type="checkbox"/>	30-3 thru 30-5	30-3 thru 30-6.1
<input type="checkbox"/>	30-21 thru 30-25	30-21 thru 30-25
<input type="checkbox"/>	30-51 thru 30-61	30-51 thru 30-62.3
<input type="checkbox"/>	30-89 thru 30-117.	30-89 thru 30-117
<input type="checkbox"/>	32-38.1 thru 32-38.7.	32-38.1 thru 32-38.8(1)
<input type="checkbox"/>	32-75.	32-75 thru 32-76.1
<input type="checkbox"/>	34-35 thru 34-41	34-35 thru 34-41

VOLUME 3

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	AppD-1 thru AppD-19.	AppD-1 thru AppD-20.11
<input type="checkbox"/>	AppD-25 thru AppD-73	AppD-25 thru AppD-74.69

Check As Done	<i><u>Remove Old Pages Numbered</u></i>	<i><u>Insert New Pages Numbered</u></i>
<input type="checkbox"/>	AppD-83 thru AppD-101	AppD-83 thru AppD-102.9
<input type="checkbox"/>	AppD-110.2(1)	AppD-110.2(1)
<input type="checkbox"/>	AppD-110.2(13) thru AppD-110.5	AppD-110.3 thru AppD-110.6(39)
<input type="checkbox"/>	AppD-110.16(1) thru AppD-120.3	AppD-111 thru AppD-120.23
<input type="checkbox"/>	AppD-129 thru AppD-165	AppD-129 thru AppD-166.3
<input type="checkbox"/>	AppD-203 thru AppD-263	AppD-203 thru AppD-265
<input type="checkbox"/>	AppE-1.	AppE-1
<input type="checkbox"/>	AppE-79 thru AppE-87	AppE-79 thru AppE-87
<input type="checkbox"/>	TC-1 thru TC-125.	TC-1 thru TC-127
<input type="checkbox"/>	TS-1 thru TS-77	TS-1 thru TS-77
<input type="checkbox"/>	I-1 thru I-115	I-1 thru I-115

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