

## PUBLICATION UPDATE

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# California Law of Employee Injuries and Workers' Compensation

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Publication 270 Release 71

April 2010

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## HIGHLIGHTS

### Legislation

- Legislative actions affecting workers' compensation have been added

### Administrative Regulations

- Changes made through Register 2009, No. 50 (12/11/2009) have been added.

### Cases and Decisions

- Recent important case law is included.

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**CALIFORNIA STATUTES.** Legislation affecting workers' compensation enacted during the 2009 legislative session, not included in previous releases, have been added, including the following:

#### State Compensation Insurance Fund;

**Sale of Assets.** The legislature has enacted Insurance Code Sections 11885–11886.2, authorizing the state Director of Finance to sell a portion of the State Compensation Insurance Fund's (SCIF's) assets and liabilities. [See Ch. 1, § 1.20, Important Note.]

#### Disaster Service Workers; Liability for Payment of Workers' Compensation.

The legislature has amended Labor Code Section 4352 to provide that, when appropriated funds are temporarily unavailable for disbursement to injured disaster service workers, the State Compensation Insurance Fund may provide compensation to an eligible claimant whose injuries have previously either been accepted or been found to be compensable by the Appeals Board. [See Ch. 3, § 3.117[1].]

#### Compensable Injuries; Employee's Race, Etc.

The legislature has amended Labor Code Section 3600 to provide that no personal relationship or personal connection will be deemed to exist between an

employee and a third party based only on a determination that the third party injured or killed the employee solely because of the third party's personal beliefs relating to his or her perception of the employee's race, religious creed, color, national origin, age, gender, disability, sex, or sexual orientation. [See Ch. 4, § 4.53[1][a].]

**Rating Organizations; Internet Website.** The legislature has enacted Insurance Code Section 11752.75 to provide for the creation of an internet website to enable persons to determine whether an employer was insured for workers' compensation on a given date. [See Ch. 2, § 2.02[2].]

**Salary in Lieu of Temporary Disability Payments.** The legislature has amended Labor Code Section 4850 to remove the requirement that public employees be members of previously specified public employees' retirement systems in order to qualify for benefits pursuant to Labor Code Section 4850. [See Ch. 3, § 3.114[1].]

**Personal Physician; Employee's Pre-designation.** The legislature has amended Labor Code Section 4600 to delete the December 31, 2009, repeal date for those provisions pertaining to an employee's pre-designation of a personal physician. [See Ch. 5, § 5.05[1].]

**Medical Treatment; Authorization.** The legislature has enacted Labor Code Section 4610.3 to provide that an employer that authorizes medical treatment may not rescind or modify that authorization after the medical treatment has been provided for any reason, including, but not limited to, the employer's subsequent determination that the physician who provided the treatment was not eligible to treat that injured employee. [See Ch. 22, § 22.05[6][c][i].]

**Electronic Discovery.** By enacting the Electronic Discovery Act, the legislature

has amended the Code of Civil Procedure to establish procedures for obtaining discovery of electronically stored information. Moreover, the new provisions permit discovery by the means of copying, testing, or sampling. The provisions also set forth various protections for parties from whom discovery of electronically stored information is sought. [See Ch. 25, § 25.45.]

## **CALIFORNIA REGULATIONS.**

**Medical Treatment Utilization Schedule.** Effective July 18, 2009, the Administrative Director has updated 8 Cal. Code Reg. §§ 9792.20–9792.26, the regulations governing the medical treatment utilization schedule. [See Ch. 22, § 22.05[6][a].]

## **CALIFORNIA CASES.**

**Medical Treatment; Attorney's Fees.** The Supreme Court in *Smith v. W.C.A.B.* (2009) 46 Cal. 4th 272, has held that, in light of unambiguous statutory language and legislative history, Labor Code Section 4607 authorizes an award of attorney's fees to only those employees who successfully resist efforts to terminate their award of medical treatment and does not permit an award of fees to employees who successfully challenge a denial of specific treatment requests. [See Ch. 20, § 20.02[2][h].]

**Civil Actions; Statute of Limitations; Tolling.** The court of appeal in *Aguilera v. Heiman* (2009) 174 Cal. App. 4th 590, has held that the plaintiff's action was barred by the one-year statute of limitations under former Code of Civil Procedure Section 340(3) and that the equitable tolling doctrine did not apply to extend the plaintiff's time to file an action against the defendants. [See Ch. 11, § 11.23[3].]

**Third Party Actions; Insurance; Medical Payments; Reimbursement; Attorney's Fees.** The Supreme Court in *21st Century Insurance Co. v. Superior Court of San Diego County*; *Silvia Quintana, Real*

*Party in Interest* (2009) 47 Cal. 4th 511, has held that, although the made-whole rule applies in the medical payments insurance context, and the insured must be made whole as to all damages proximately caused by the injury, liability for attorney's fees is not included under the made-whole rule, but is instead subject to the equitable apportionment rule. [See Ch. 11, § 11.25[3].]

**Third Party Actions; Settlements; Credit; California Insurance Guarantee Association.** The court of appeal in *Baur v. W.C.A.B.* (2009) 176 Cal. App. 4th 1260, has held that, pursuant to Labor Code Section 3861, an employer was entitled to credit against future workers' compensation benefits to be paid to an employee in the amount of the net settlement of the employee's action against a third-party tortfeasor, paid to the employee by CIGA. [See Ch. 2, § 2.84[2]; Ch. 11, § 11.42[5][d].]

**Insurance; Policy Terms.** The court of appeal in *Supervalu, Inc. v. Wexford Underwriting Managers, Inc.* (2009) 175 Cal. App. 4th 64, has held that the word "occurrence" in two excess-insurance policies' phrase "loss arising out of any one occurrence" clearly, explicitly, and unambiguously refers to an accident or a cumulative injury that causes an employee to suffer damage and does not refer to the loss sustained by the employer in the form of a workers' compensation award or compromise and release. [See Ch. 2, § 2.83.]

**Vocational Rehabilitation; Sunsetting.** The court of appeal in *Beverly Hilton Hotel v. W.C.A.B. (Boganim)* (2009) 176 Cal. App. 4th 1597, has held that an October 2008 WCAB decision that affirmed the WCJ's January 2008 award of vocational rehabilitation benefits to an employee was not a "final" decision, so that the employee

lost all rights to vocational rehabilitation benefits as of the January 1, 2009, repeal of Labor Code Section 139.5. [See Ch. 35, Special Alert.]

**Temporary Disability; Credits; Time to Claim.** The court of appeal in *J.C. Penney Co. v. W.C.A.B. (Edwards)* (2009) 175 Cal. App. 4th 818, has held that the employer's claim of credit against permanent disability payments was allowable only for temporary disability payments made after June 2006, which was the last date for which the employee's treating physician reported that he was temporarily disabled, so that any claim of credit for temporary disability payments made prior to that date was foreclosed by Labor Code Section 4062(a). [See Ch. 22, § 22.06[2][a].]

**Employment Relationships; Unemployment Insurance.** The court of appeal in *Messenger Courier Association of the Americas v. California Unemployment Insurance Appeals Board* (2009) 175 Cal. App. 4th 1074, has held that California courts and administrative agencies are all authorized to apply the comprehensive and overlapping tests regarding employment status stated in *S.G. Borello & Sons, Inc. v. Department of Industrial Relations* and that the reasoning of *Borello*, which arose in a workers' compensation context, applied equally to analysis of tax-related issues, such as employer contributions, requiring an employment determination. [See Ch. 3, § 3.06[2].]

**Injury AOE/COE; Going and Coming Rule; Special Mission Exception.** The court of appeal in *Jeewarat v. Warner Brothers Entertainment, Inc.* (2009) 177 Cal. App. 4th 427, has held that the fact that an employee coincidentally passed his office on his return route home from attendance at an out-of-town business confer-

ence that constituted a special mission did not mean that the special mission had terminated, since the employee did not stop at the office and intended to return home from the airport. [See Ch. 4, § 4.157[3].]

**Injury AOE/COE; Compensable Consequence Injuries; Medical Treatment.** The court of appeal in *Esquivel v. W.C.A.B.* (2009) 178 Cal. App. 4th 330, has held that an employee who, upon leaving her mother's home where she had gone to visit, was injured while driving 136 miles to keep a medical appointment for treatment of her industrial injuries, had not suffered new compensable injuries because those injuries were sustained outside the reasonable geographic area of her employer's risk for incurring compensability liability for such injuries. [See Ch. 4, § 4.67.]

**California Insurance Guarantee Association; Covered Claims.** The court of appeal in *Catholic Healthcare West v. California Insurance Guarantee Association* (2009) 178 Cal. App. 4th 15, has held that the Insurance Code Section 1063.1(c)(9)(B) phrase "original claimant under the insurance policy in his or her own name" includes the affiliated corporation into which the employer corporation was merged because the merger was an internal restructuring of a family of corporations and did not expand or otherwise change ownership or control of operations and because the surviving corporation continued the employer corporation's corporate activities as well as its hospital operations. [See Ch. 2, § 2.84[3][b].]

**Death Benefits; Decedent's Estate.** The court of appeal in *City of Los Angeles v. W.C.A.B. (Foster)* (2009) 179 Cal. App. 4th 134, has held that, because the employer had paid a deceased employee's mother/heir death benefits pursuant to Labor Code Section 4702(a)(6)(B), before

ceasing such payments following the decision in *Six Flags, Inc. v. W.C.A.B.* that declared that statute unconstitutional, the Death Without Dependents Unit was not entitled to be paid any death benefit. [See Ch. 9, § 9.02[4][d.2].]

**Discrimination; Labor Code Section 132a.** The court of appeal in *Gelson's Markets v. W.C.A.B. (Fowler)* (2009) 179 Cal. App. 4th 201, has held that an employee did not make a prima facie showing of discrimination in violation of Labor Code Section 132a when the reports and releases to return to work from the treating physician and the agreed medical evaluator received by the employer were unclear and ambiguous regarding the employee's ability to return to his usual and customary duties. [See Ch. 10, § 10.11[2][a].]

## **WCAB EN BANC OPINIONS.**

**Medical Treatment; Utilization Review; Spinal Surgery.** The Appeals Board en banc in *Cervantes v. El Aguila Food Products, Inc.* (2009) 74 Cal. Comp. Cases 1336 (Appeals Board en banc opinion) has elucidated the procedures and timelines governing objections to a treating physician's recommendation for spinal surgery contained in Labor Code Sections 4610 and 4062 and 8 Cal. Code Reg. §§ 9788.1, 9788.11, and 9792.6(o). [See Ch. 22, § 22.06[2][b][ii][A].]

## **UNPUBLISHED COURT OF APPEAL CASES.**

**CAUTION:** *The following court of appeal cases were not certified for publication. Practitioners should proceed with caution when citing to these unpublished cases and should also verify the subsequent history of these cases.*

**Permanent Disability; Apportionment; Wilkinson Rule.** The court of appeal in *Forzetting v. W.C.A.B.* (2009) 74 Cal. Comp. Cases 689 (court of appeal opinion

not published in official reports) has followed *Benson v. Permanente Medical Group* to hold that the rule established by *Wilkinson* is no longer generally applicable because inconsistent with the post-SB 899 requirement that apportionment be based on causation. [See Ch. 8, § 8.07[2][d][ii].]

**Permanent Disability; Apportionment; Wilkinson Rule.** The court of appeal in *LaPlante v. W.C.A.B.* (2009) 74 Cal. Comp. Cases 938 (court of appeal opinion not published in official reports) has followed *Benson v. Permanente Medical Group* to hold that the rule established by *Wilkinson* is no longer generally applicable because inconsistent with the post-SB 899 requirement that apportionment be based on causation. [See Ch. 8, § 8.07[2][d][ii].]

**Permanent Disability; Applicability of 1997 Schedule for Rating Permanent Disabilities.** The court of appeal in *Snedecor v. W.C.A.B.* (2009) 74 Cal. Comp. Cases 944 (court of appeal opinion not published in official reports) has held that the 1997 Schedule provides that spinal permanent disability may be based on such factors as permanent impairment, limitation of motion, or impaired function, that the Appeals Board did not address whether cervical fusion, limited range of motion, and whole person impairment under the AMA Guides indicated the existence of permanent disability under the 1997 Schedule and Labor Code Section 4660(d), and that the Board on remand should determine this issue and whether the 1997 Schedule or the 2005 Schedule applies. [See Ch. 8, § 8.02[4][a].]

**Judicial Review; Discrimination; Labor Code Section 132a.** The court of appeal in *Cantrell v. W.C.A.B.* (2009) 74 Cal. Comp. Cases 819 (court of appeal opinion not published in official reports) has held that it was unable to conduct an

adequate review of the Appeals Board's decision as to whether an employer had discriminated against an employee in violation of Labor Code Section 132a, when the Appeals Board on reconsideration made no finding as to whether the employer's policy of requiring employees to submit to drug testing if involved in an accident or injury at work discriminated against the employee for sustaining an industrial injury. [See Ch. 10, § 10.11[3][c]; Ch. 34, § 34.17[1].]

**Petitions for Writ of Review; Final Orders.** The court of appeal in *State Compensation Insurance Fund v. W.C.A.B. (Sandhagen); Sandhagen v. W.C.A.B.* (2009) 74 Cal. Comp. Cases 835 (court of appeal opinion not published in official reports) has held that the Appeals Board's en banc decision, holding that the employer's failure to comply with the deadlines set forth in Labor Code Section 4610(g)(1) precluded it from using the utilization review process and rendered untimely utilization review medical reports inadmissible, was a final order for purposes of appellate review because it settled an issue critical to the employee's claim. [See Ch. 34, § 34.10[2].]

**Petitions for Writ of Review; Final Orders.** The court of appeal in *Rider v. W.C.A.B.* (2009) 74 Cal. Comp. Cases 1227 (court of appeal opinion not published in official reports) has held that an Appeals Board decision on reconsideration remanding the case to the WCJ for further development of the record was not a final order subject to a petition for writ of review. [See Ch. 34, § 34.10[2].]

**Medical Treatment; Utilization Review; Objections to Medical Determination.** The court of appeal in *State Compensation Insurance Fund v. W.C.A.B. (Sandhagen); Sandhagen v. W.C.A.B.*

(2009) 74 Cal. Comp. Cases 835 (court of appeal opinion not published in official reports) has held that the utilization review process pursuant to Labor Code Section 4610 is required for every medical treatment request, that the employer's failure to comply with the deadlines set forth in Labor Code Section 4610(g)(1) precluded it from using the utilization review process or utilization review medical reports to deny the employee's medical treatment request, and that Labor Code Section 4062 precludes employers from using its provisions to object to employees' treatment requests but permits employees to use its provisions to object to employers' decisions regarding treatment requests. [See Ch. 22, § 22.06[2][a].]

**Injury AOE/COE; Going and Coming Rule; Special Mission Exception.** The court of appeal in *American Home Assurance v. W.C.A.B. (Wuertz)* (2009) 74 Cal. Comp. Cases 1015 (court of appeal opinion not published in official reports) has held that substantial evidence supported the Appeals Board's decision that an employee sustained industrial injuries in a motorcycle accident during his commute to a non-routine meeting at his usual place of business on a day he was not scheduled to work. [See Ch. 4, § 4.157[2].]

## **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 the subsequent history of these cases.*

**Evidence; Expert Opinions.** The Appeals Board in *Bresler v. W.C.A.B.* (2009) 74 Cal. Comp. Cases 637 (writ denied) has held that it was appropriate for the WCJ to rely on the testimony of a claims adjuster, testifying as an expert witness for the

employer, to determine the correct coding for a lien claimant's treatment charges. [See Ch. 26, § 26.06[10].]

**Credit; Third-Party Recovery; Death Benefits.** The Appeals Board in *Colusa Trailer v. W.C.A.B. (Hickey)* (2009) 74 Cal. Comp. Cases 641 (writ denied) has held that, when an injured worker received a third-party settlement and subsequently died as the result of his industrial injury, a credit for the third-party recovery was not allowed against workers' compensation death benefits. [See Ch. 11, § 11.42[5][d].]

**Temporary Disability; 104-Week Limitation; Exceptions.** The Appeals Board in *POM6 XYZZX v. W.C.A.B.* (2009) 74 Cal. Comp. Cases 663 (writ denied) has held that the Labor Code Section 4656(c)(3)(E), human immunodeficiency virus (HIV), exception did not apply to extend the 104-week limitation on an employee's entitlement to temporary disability indemnity for a low back and left shoulder injury, when the employee did not show that his HIV condition was an industrial injury. [See Ch. 7, § 7.02[1].]

**Temporary Disability; 104-Week Limitation; Exceptions.** The Appeals Board in *AA Gonzalez, Inc. v. W.C.A.B. (Morfin)* (2009) 74 Cal. Comp. Cases 760 (writ denied) has held that an employee, who suffered an industrial injury when a hose pumping stucco exploded with great force into his eyes, sustained a "high velocity eye injury" and was entitled to 240 compensable weeks of temporary disability within five years from the date of his injury pursuant to the high velocity eye injury exception to the 104-week limit on temporary disability indemnity. [See Ch. 7, § 7.02[1].]

**Temporary Disability; Two-Year Limitation on Temporary Disability Indemnity.** The Appeals Board in *Morris v.*

*W.C.A.B.* (2009) 74 Cal. Comp. Cases 794 (writ denied) has held that an employer's January 2006 payment of temporary disability indemnity to an injured employee for one day of total temporary disability in December 2005 precluded the employee, by virtue of Labor Code Section 4656(c)(1), from collecting further temporary disability indemnity benefits for a claim of post-surgery temporary total disability arising more than two years after that payment. [See Ch. 7, § 7.02[1].]

**Temporary Disability; Period of Disability.** The Appeals Board in *Owens Illinois v. W.C.A.B. (Stuart)* (2009) 74 Cal. Comp. Cases 975 (writ denied) has upheld the WCJ's finding that an employee with June 19, 2001, injuries suffered temporary disability from January 1, 2005, through January 13, 2005, and determined that the finding of temporary disability was not precluded by the fact that the employee was laid off on December 31, 2004, prior to the period of temporary disability. [See Ch. 7, § 7.02[3][c].]

**Temporary Disability; Appeals Board Jurisdiction; Statutes of Limitations.** The Appeals Board in *New Hope Community Church v. W.C.A.B. (Burke)* (2009) 74 Cal. Comp. Cases 1194 (writ denied) has held that it had jurisdiction to award temporary total disability benefits for a period of time following expiration of the five-year period after the date of injury, because the employee had never received a final adjudication or award of temporary disability or permanent disability benefits, so that the statutes of limitations of Labor Code Sections 5405 and 5410 did not apply. [See Ch. 7, § 7.04[1][b].]

**Attorney's Fees; Application Filed by Employer; Unrepresented Applicants.** The Appeals Board in *Bimbo Bakeries USA v. W.C.A.B. (Shriver)* (2009) 74 Cal. Comp.

Cases 766 (writ denied) has held that an employer who filed an application for adjudication of claim in connection with an employee's cumulative injury, allegedly for discovery purposes, was liable, pursuant to Labor Code Section 4064(c), for \$10,211 in attorney's fees incurred by the employee after the application was filed, including fees incurred through the filing of a stipulated award. [See Ch. 20, § 20.02[2][b]; Ch. 22, § 22.06[6][b].]

**Death Benefits; Time to File Claims.** The Appeals Board in *Leverton v. W.C.A.B.* (2009) 74 Cal. Comp. Cases 874 (writ denied) has held that the phrase "date of injury" as used in Labor Code Section 5406 refers to the decedent's date of injury for purposes of commencing the 240-week period for filing a claim, rather than to the date of injury that dependents suffered by virtue of loss of support, and that the 240-week period is not a statute of limitations subject to being tolled until the surviving dependent discovers that death was industrially related. [See Ch. 9, § 9.01[4].]

**Statute of Limitations; Tolling.** The Appeals Board in *Stephens v. W.C.A.B.* (2009) 74 Cal. Comp. Cases 885 (writ denied) has held that the Labor Code Section 5405(c) one-year statute of limitations barred an employee's attempt to receive further medical treatment for his 1998 hernia injury pursuant to his 2004 Application for Adjudication of Claim, since there was insufficient evidence to show that the employer had paid for medical treatment related to the employee's hernia injury within one year preceding the filing of the Application. [See Ch. 24, § 24.04[3].]

**Statute of Limitations; Tolling.** The Appeals Board in *Stephens v. W.C.A.B.* (2009) 74 Cal. Comp. Cases 885 (writ denied) has held that the statute of limitations for the filing of an application for

adjudication of claim was not tolled, since the employee received all legally required notices from his employer after his hernia injury, and the employer was not required to notify the employee that his hernia claim would be barred if he did not file an application or to provide any notices to the employee beyond those required by law. [See Ch. 24, § 24.04[6].]

**Statute of Limitations; Estoppel.** The Appeals Board in *Pomona College v. W.C.A.B. (Robusto)* (2009) 74 Cal. Comp. Cases 1284 (writ denied) has held that the employee's claim for psychiatric and emotional injuries was not barred by the Labor Code Section 5405 statute of limitations and that his employer/college was estopped to assert the statute of limitations as a defense to his claim, notwithstanding the fact that he filed his Application for Adjudication of Claim more than one year after the date of injury, since the employer had immediate notice of the accident and of the employee's resulting psychological distress, because the employee had relayed his distress to a college administrator and to the college's human resources department. [See Ch. 24, § 24.04[5].]

**Insurance Coverage; Residential Employees.** The Appeals Board in *Wilson v. W.C.A.B. (Levine)* (2009) 74 Cal. Comp. Cases 891 (writ denied) has held that a worker injured while performing carpentry work in a house owned by another was not an "employee" under Labor Code Section 3351(d) for purposes of workers' compensation coverage pursuant to Insurance Code Section 11590, when the house was undergoing major renovations, leaving it without electricity, plumbing, bathroom facilities, heat, and air conditioning. [See Ch. 3, § 3.36[2][b].]

**Penalties; Attorney's Fees; Enforcement of Award.** The Appeals Board in

*Smith v. W.C.A.B.* (2009) 74 Cal. Comp. Cases 984 (writ denied) has held that, notwithstanding that the Board awarded a 25-percent penalty under Labor Code Section 5814 for the employer's unreasonable delay in payment of temporary disability benefits that were based on a valid and enforceable stipulation indicating that the employer paid the employee's temporary disability benefits at an incorrect rate without prompt correction, as reflected in the WCJ's minute order, and although Labor Code Section 5814.5 allows for an award of attorney's fees in addition to an award of Labor Code Section 5814 penalties if the employer delays payment of a prior award of benefits, the Board found that a stipulation regarding the temporary disability rate in the WCJ's minute order did not constitute an "award" or "order" and, therefore, did not trigger the attorney's fee provisions of Labor Code Section 5814.5. [See Ch. 10, § 10.42.]

**Permanent Disability; Time to Commence Payment of Benefits; Increase in Amount of Permanent Disability Indemnity.** The Appeals Board in *Villagio Inn & Spa v. W.C.A.B. (Soto)* (2009) 74 Cal. Comp. Cases 987 (writ denied) has held that, under Labor Code Section 4650(b), the employer was liable for permanent total disability indemnity retroactive to July 18, 2002, the date of the last temporary disability indemnity payment, when, after the parties stipulated on November 25, 2002, that the employee's July 5, 2000, injuries to her right knee and "RSD for right knee, thigh and calf" caused 48-percent permanent disability, the employee suffered new and further disability and was declared permanently totally disabled by the AME on November 7, 2007. [See Ch. 8, § 8.08[4].]

**Cumulative Trauma; Date of Injury.** The Appeals Board in *California Insurance*



*Guarantee Association v. W.C.A.B. (Morodomi)* (2009) 74 Cal. Comp. Cases 1167 (writ denied) has held that the employee first suffered “disability” for purposes of establishing the date of injury under Labor Code Section 5412 on the date when she was first diagnosed with carpal tunnel syndrome, given wrist braces, and provided with work restrictions. [See Ch. 24, § 24.03[7][a].]

**Medical Treatment; Employee’s Refusal of Treatment.** The Appeals Board in *Coca-Cola Enterprises, Inc. v. W.C.A.B. (Bendanillo)* (2009) 74 Cal. Comp. Cases 1180 (writ denied) has held that the employer did not meet its burden of proving that the employee’s delay in undergoing surgery constituted an unreasonable refusal to submit to medical treatment under Labor Code Section 4056 so as to justify denial of temporary total disability indemnity. [See Ch. 5, § 5.05[9][c].]

**Serious and Willful Misconduct by Employer.** The Appeals Board in *Imbimbo Concrete, Inc. v. W.C.A.B. (Imbimbo)* (2009) 74 Cal. Comp. Cases 1185 (writ denied) has held that, when an employee, who was cutting concrete in a small, enclosed room, using a gas-powered cement saw, sustained industrial injury from carbon monoxide poisoning that caused injury to his brain, neurological system, and internal system, and two of the employer’s supervisors knew that using a gas-powered cement saw in such a room could be dangerous, this conduct amounted to reckless disregard of the risk by the employer. [See Ch. 10, § 10.01[4][b].]

**Discrimination; Labor Code Section 132a.** The Appeals Board in *City of Los Angeles v. W.C.A.B. (Tomkies)* (2009) 74 Cal. Comp. Cases 1264 (writ denied) has held that it had jurisdiction over an ex-employee’s claim that his former employer,

City of Los Angeles, violated Labor Code Section 132a by refusing to place him on its “eligible for rehire” list because of his admitted industrial right foot injury, and that jurisdiction over the ex-employee’s claim was not precluded by the fact that the employer’s discriminatory conduct arose after the employee had resigned from his job. [See Ch. 10, § 10.11[2][a].]

**Injury AOE/COE; Injury From Unauthorized Activities.** The Appeals Board in *D. H. Smith Co. v. W.C.A.B. (Martinez)* (2009) 74 Cal. Comp. Cases 1278 (writ denied) has held that the employee sustained injury AOE/COE while driving his employer’s truck to work, even though he was driving without a driver’s license and contrary to his employer’s direction that he travel to work only as a passenger in the company truck with his son driving. [See Ch. 4, § 4.113[2].]

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# California Law of Employee Injuries and Workers' Compensation

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- ☐ 1. Check the Title page in the front of your present Volume 1. It should indicate that your set is filed through Release Number 70. If the set is current, proceed with the filing of this release. If your set is not filed through Release Number 70, DO NOT file this release. Please call Customer Services at 1-800-833-9844 for assistance in bringing your set up to date.
- ☐ 2. Separate this Release Number 71 package into the following groups of material:
  - Pink Special Alert
  - White Revision pages
- ☐ Arrange these groups of material next to each other so that you can take material from each group as required and proceed with the filing of this release.
- ☐ 3. Circulate the "Publication Update" among those individuals interested in the contents of this release.

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*For faster and easier filing, all references are to right-hand pages only.*

## VOLUME 1

### Revision

<input type="checkbox"/>	Title page thru xxix . . . . .	Title page thru xxix
<input type="checkbox"/>	1-64.5 thru 1-69. . . . .	1-65 thru 1-70.1
<input type="checkbox"/>	1-76.7 thru 1-81. . . . .	1-77 thru 1-82.1
<input type="checkbox"/>	2-11 . . . . .	2-11 thru 2-12.1
<input type="checkbox"/>	2-100.1 thru 2-115 . . . . .	2-101 thru 2-116.1
<input type="checkbox"/>	2-125 thru 2-131 . . . . .	2-125 thru 2-131
<input type="checkbox"/>	3-12.1 thru 3-17. . . . .	3-13 thru 3-18.1
<input type="checkbox"/>	3-32.1 thru 3-34.5 . . . . .	3-33 thru 3-34.5
<input type="checkbox"/>	3-99 . . . . .	3-99
<input type="checkbox"/>	3-117. . . . .	3-117
<input type="checkbox"/>	4-69 . . . . .	4-69 thru 4-70.1
<input type="checkbox"/>	4-86.1 thru 4-92.1. . . . .	4-87 thru 4-92.5
<input type="checkbox"/>	4-131 thru 4-136.3 . . . . .	4-131 thru 4-136.3
<input type="checkbox"/>	4-190.1 thru 4-193 . . . . .	4-191 thru 4-197
<input type="checkbox"/>	5-24.1 thru 5-36.1. . . . .	5-25 thru 5-36.1
<input type="checkbox"/>	5-47 thru 5-48.1. . . . .	5-47 thru 5-48.1
<input type="checkbox"/>	7-1 thru 7-32.11. . . . .	7-1 thru 7-32.11
<input type="checkbox"/>	8-9 thru 8-11 . . . . .	8-9 thru 8-12.1
<input type="checkbox"/>	8-26.1 thru 8-26.5. . . . .	8-26.1 thru 8-26.6(1)
<input type="checkbox"/>	8-54.9 thru 8-59. . . . .	8-55 thru 8-75
<input type="checkbox"/>	9-5 thru 9-18.1 . . . . .	9-5 thru 9-18.1
<input type="checkbox"/>	10-15 thru 10-18.1 . . . . .	10-15 thru 10-18.1
<input type="checkbox"/>	10-31 thru 10-38.3 . . . . .	10-31 thru 10-38.3
<input type="checkbox"/>	10-80.9 thru 10-81 . . . . .	10-81 thru 10-82.3
<input type="checkbox"/>	11-92.1 thru 11-92.7. . . . .	11-93 thru 11-94.3
<input type="checkbox"/>	11-102.1 thru 11-107 . . . . .	11-103 thru 11-108.1
<input type="checkbox"/>	11-127 thru 11-128.5 . . . . .	11-127 thru 11-128.6(1)

## VOLUME 2

### Revision

<input type="checkbox"/>	Title page. . . . .	Title page
<input type="checkbox"/>	20-1 thru 20-6.1. . . . .	20-1 thru 20-5
<input type="checkbox"/>	20-17 thru 20-26.3 . . . . .	20-17 thru 20-26.5
<input type="checkbox"/>	21-39 thru 21-40.1 . . . . .	21-39 thru 21-40.1
<input type="checkbox"/>	22-1 . . . . .	22-1
<input type="checkbox"/>	22-29. . . . .	22-29
<input type="checkbox"/>	22-40.1 thru 22-47 . . . . .	22-41 thru 22-48.7
<input type="checkbox"/>	22-67 thru 22-78.3 . . . . .	22-67 thru 22-78.5

<b>Check As Done</b>	<b><u>Remove Old Pages Numbered</u></b>	<b><u>Insert New Pages Numbered</u></b>
<input type="checkbox"/>	22-123 thru 22-127 . . . . .	22-123 thru 22-127
<input type="checkbox"/>	23-29. . . . .	23-29
<input type="checkbox"/>	24-33 thru 24-39 . . . . .	24-33 thru 24-40.9
<input type="checkbox"/>	25-3 thru 25-4.1. . . . .	25-3 thru 25-4.1
<input type="checkbox"/>	25-70.1 thru 25-71 . . . . .	25-71 thru 25-79
<input type="checkbox"/>	26-43. . . . .	26-43
<input type="checkbox"/>	29-21 thru 29-22.3 . . . . .	29-21 thru 29-22.3
<input type="checkbox"/>	30-22.21 . . . . .	30-22.21 thru 30-22.22(1)
<input type="checkbox"/>	32-11 thru 32-16.11 . . . . .	32-11 thru 32-16.11
<input type="checkbox"/>	32-38.1 thru 38-38.5. . . . .	32-38.1 thru 32-38.5
<input type="checkbox"/>	34-9 thru 34-11 . . . . .	34-9 thru 34-12.1
<input type="checkbox"/>	34-24.1 thru 34-31 . . . . .	34-25 thru 34-32.1

### **Special Alert**

<input type="checkbox"/>	Pink Special Alert page SPA-1 . . . . .	Pink Special Alert page SPA-1
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## **VOLUME 3**

### **Revision**

<input type="checkbox"/>	Title page. . . . .	Title page
<input type="checkbox"/>	AppB-3 thru AppB-7 . . . . .	AppB-3 thru AppB-8.1
<input type="checkbox"/>	AppB-22.22.(21) thru AppB-26.2(1) . . . .	AppB-23 thru AppB-26.2(2)(a)
<input type="checkbox"/>	AppB-35 thru AppB-40.10(5) . . . . .	AppB-35 thru AppB-40.10(3)
<input type="checkbox"/>	AppB-40.26(33) thru AppB-40.26(43). . . .	AppB-40.26(33) thru AppB-40.26(44)(w)
<input type="checkbox"/>	AppB-40.26(63) thru AppB-40.26(83). . . .	AppB-40.26(63) thru AppB-40.26(85)
<input type="checkbox"/>	AppB-128.9 thru AppB-128.25 . . . . .	AppB-128.9 thru AppB-128.25
<input type="checkbox"/>	TC-1 thru TC-111 . . . . .	TC-1 thru TC-113
<input type="checkbox"/>	TS-1 thru TS-65 . . . . .	TS-1 thru TS-65
<input type="checkbox"/>	I-1 thru I-109 . . . . .	I-1 thru I-109

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