

Senate Committee Passes Problematic Workers' Comp Bills

The Senate Committee on Labor, Public Employment & Retirement held a hearing on Wednesday, April 10 in Sacramento to consider a variety of bill proposals, including three workers' compensation bills opposed by CCWC and other employer organizations.

In a vote of 4-1, the committee passed [SB 1205](#) by [Senator John Laird \(D - Santa Cruz\)](#), who argued that injured workers should be paid Temporary Disability (TD) benefits for work missed to attend routine medical appointments associated with their industrial injury. The bill would require the payment of TD benefits, transportation costs, meals and lodging for routine medical appointments associated with a workplace injury. The bill is sponsored by the California Federation of Teachers and backed by little more than anecdotes from members.



CCWC and other employer organizations have argued that SB 1205 would be a costly benefit expansion that would also undermine the purpose of temporary disability benefits and be complicated to implement. The bill would allow an injured worker to deplete their 104 weeks of TD attending medical appointments, which could leave them with insufficient benefits if they later need surgery or can't work because of their injury. The bill ignores that fact that California law mandates that employees be given 40 hours per year of sick time and that current law requires employers to allow employees to use that sick time to seek any kind of medical treatment they need, industrial or otherwise.

SB 1205 also insufficiently considers implementation and integration into the rest of the workers' compensation system. There are no changes to the notice requirements, so each payment of TD benefits for a medical appointment would require a written notice that TD benefits are starting, a written notice that TD benefits are stopping, and a written notice regarding the eligibility of permanent disability (PD) benefits. Claims administration would be complicated by millions of new fact-driven benefit decisions and associated notices, which will lead to more disputes and friction in the system.

The committee also passed [SB 1346](#) by [Senator Maria Elena Durazo \(D - Los Angeles\)](#) with a vote of 4-1. The bill is sponsored by the California Applicant Attorneys Association, and is a reintroduction of last year's [AB 1213](#) by [Assemblymember Liz Ortega \(D - Hayward\)](#), which was opposed by CCWC and [vetoed](#) by Governor Newsom. SB 1346 requires all TD paid between the date of a Utilization Review (UR) denial and the date of Independent Medical Review (IMR) overturn for that same UR denial to be paid outside of the 104-week TD cap.

Employers oppose the bill because there is no significant need with fewer than 1% of injured workers being potentially helped by the bill according to an [analysis](#) done by the California Workers' Compensation Institute. The bill would create an incentive for injured workers and their attorneys to pursue more IMR after UR denials, which is likely to cause more delays, not less. Employers prevailed in IMR determinations at a rate of roughly 90% over the past decade. The unintended consequence of SB 1346 could well be that injured workers experience more delays that deplete their TD benefits, not fewer.

Finally, the committee passed [SB 1299](#) by [Senator Dave Cortese \(D - San Jose\)](#) in a vote of 4-1. This bill establishes a presumption that heat illness is work-related in the agricultural industry under certain conditions. The presumption is only triggered when an employer is out of compliance with heat illness regulations established by CalOSHA, and there is a "resulting heat illness injury."

CCWC and other employers opposing the bill have argued that there isn't any evidence supporting a need for this presumption, pointing to a relatively low number of claims and the lack of evidence that these claims are complicated in the way that requires a presumption.

The bill also takes \$5 million from the Workers' Compensation Revolving Fund and creates a new Farmworker Climate Change Heat Injury Death Fund for purposes of "paying the administrative costs" related to this presumption, although it is unclear what administrative costs are being referenced or why they need a new account.

Both SB 1205 and SB 1346 now head to the Senate Appropriations Committee where they will evaluate the cost to the state for both proposals. This is of course being done in the context of a massive deficit for the state's general fund, which complicates the passage of bills that cost the state money. SB 1299 now moves to the Senate Judiciary Committee for consideration before it also heads to the Senate Appropriations Committee.