April 3, 2024

The Honorable Lola Smallwood-Cuevas, Chair
Senate Labor, Public Employment and Retirement Committee
1021 N. Street, Room 6740
Sacramento, CA 95814

RE: SB 1205 (Laird) – Expansion of Temporary Disability Benefits
OPPOSE

Dear Chair Smallwood-Cuevas,

The undersigned organizations are respectfully **OPPOSED** to **SB 1205 (Laird)**, which would increase costs and administrative friction in California's workers' compensation system by broadly expanding the payment of temporary disability benefits in a way that fundamentally undermines its purpose, which is to be available as wage replacement in situations where the worker is temporarily disabled and unable to work while recovering from an industrial injury. Once the employee's condition stabilizes or reaches maximal medical improvement, they are no longer entitled to temporary disability. While the author and sponsors contend that the bill is needed to allow injured workers to effectively access medical treatment, they have provided no objective information indicating that injured workers are struggling to access care for this reason, or that SB 1205 appropriate solution. SB 1205 would be a costly expansion of temporary disability benefits that would lead to extraordinary frictional costs to employers while providing no significant new benefit to employees.

Workers' Compensation Background

It is important to note that California's workers' compensation system is based on a compromise between workers and their employers, and that balance is important to proper system operation. Prior to the creation of the workers' compensation system, an injured employee would need to provide for their own medical care, go without wage replacement when disabled, and then sue their employer in civil court and prove negligence to recover their financial loss. In situations where the employer was not at fault there would be no recovery and the worker would bear the entire burden of the injury. The workers' compensation system replaced the traditional tort system by promising to cover all injuries that occur while workers are within the course and scope of their work duties, whether the employer is at fault or not. Employees hurt at work are provided employer-funded medical care, temporary disability to replace lost wages, and permanent disability to compensate for lasting impairment even if the employer is not responsible for the injury in a traditional tort sense. If a third party is responsible for the injury, the employer is required to pay workers' compensation benefits to the injured worker and then separately pursue recovery from the third party. Thus, reasonable protections are afforded to both employers and employees by this grand bargain, and both are required to participate in the compromise.

For California's workers' compensation system to remain functional, the balance of this compromise must be maintained. California already has one of the most progressive systems in the nation, covering an expansive scope of injuries and illnesses and providing more medical and indemnity benefits when compared to other states. According to a recent analysis by the California Workers' Compensation Institute (CWCI) California represents only 11.9% of nationwide jobs but pays 20.7% of the nation's workers' compensation benefits. The history of California's workers' compensation system is littered with examples where the legislature expanded benefits substantially without caution (e.g. studying the problem being asserted and the proposed solutions) and the system was knocked painfully out of balance, ultimately harming both employers and injured workers.

SB 1205 Undermines the Purpose of Temporary Disability Benefits

California currently limits temporary disability to 104 weeks of aggregate benefits, payable within five years of the date of injury. This limitation was established because most workplace injuries will resolve (an injured worker will either recover fully or reach a plateau in their recovery) within those timeframes. Temporary disability is intended to assist with wage replacement while an employee is recovering from an injury, and it should be preserved for that purpose. If SB 1205 were to become law, it is not clear how much temporary disability would be used, on average, per claim. It is also unclear how this would impact the availability of temporary disability benefits when an injured worker is medically disabled and needs wage replacement benefits. Studies suggest that only a very small percentage of injured workers (fewer than 1%) need or use all 104 weeks of temporary disability benefits. However, if injured workers start to deplete their available temporary disability benefits while not disabled, as would be allowed under SB 1205, it is likely that more injured workers may have insufficient benefits when disability prevents them from working.

SB 1205 also departs significantly from current law by requiring that temporary disability benefits be paid after the worker's condition is permanent and stationary, which means that they've reached their maximum level of medical improvement. Current law and extensive precedent hold that once an employee's work-related medical condition plateaus, they are not entitled to temporary disability benefits, hence the title of the benefit as "temporary." Instead, once a worker's condition is permanent and stationary they are started on permanent disability benefits if there is a reasonable expectation that they will have permanent impairment, and the worker is typically back at work in either a normal or permanently modified capacity. From our perspective, this fundamental feature of California's workers' compensation system is a key part of the compromise – it helps bring injuries to a timely conclusion and return workers to their employment, which has repeatedly been shown to reduce the negative economic impact of a workplace injury for both employees and employers.

No Evidence SB 1205 is Necessary

When evaluating various types of employees who participate in the workers' compensation system, there is no evidence of an unaddressed need. Salaried exempt employees who need to receive treatment in the middle of a shift will be paid for their full day of work in most cases. All employees, whether part- or full-time, are allowed under Labor Code Section 246.5 to use sick days for "diagnosis, care, or treatment of an existing health condition". The Legislature just increased the number of hours that can be used annually to 40 hours[1], which does not include any other time off that may be offered by the employer. Further, workers are also entitled to up to 12 weeks of leave if they have a medical condition, which can be used intermittently, under the California Family Rights Act (CFRA) Finally, part-time workers and many full-time workers have work schedules that leave plenty of time to schedule medical treatment while not working. The author's fact sheet proclaims that injured workers are "being forced to forego essential medical care" under the status quo, but we are unaware of any credible finding by the myriad state and private entities who routinely evaluate the California workers' compensation system that substantiate this assertion.

The author's fact sheet also makes frequent reference to "retaliation" by employers for receiving care during work hours, despite extensive protections for such conduct in current law. Labor Code Section 132(a) prohibits

[1] Some local ordinances mandate sick leave in excess of 40 hours.

discrimination “in any manner” against any employee for pursuing a workers’ compensation claim and would clearly prohibit the type of retaliation alleged by proponents. Employers who fail to allow proper use of sick leave are prohibited from retaliation under Labor Code Section 246.5, which is enforceable outside of the workers’ compensation system via the California Private Attorney Generals Act, or PAGA.

Administrative Hassle and Friction

California’s workers’ compensation system is known for its complexity, and claims administrators are responsible for collecting, processing, and appropriately accounting for vast amounts of factual, medical, and other pieces of information in the execution of their duties. Administrators then must use that information to make critical decisions about care and benefits.

SB 1205 would substantially complicate the administration of claims by requiring workers and claims administrators to accurately track the dates of medical appointments, the specific amount of time an injured worker missed work for each appointment, and the details necessary to inform decisions about reasonable travel and meal expenses required by the bill. According to the Commission on Health and Safety and Workers’ Compensation’s (CHSWC) 2022 Annual Report, there were 683,500 workers’ compensation claims in 2021. This means SB 1205 will result in millions of unique fact-intensive coverage decisions and calculations that need to be tracked and documented. Implementing SB 1205 would be burdensome and would create a new point of friction between employers and injured workers, resulting in additional litigation further clogging the workers’ compensation appeals board (WCAB). Implementation will be especially frictional in situations where there are ongoing disputes over industrial causation of the injury or the coverage of specific medical treatment.

Additional ambiguities in the drafting of SB 1205 are also likely to cause disputes and necessitate involvement by the WCAB. The bill requires the payment of “reasonable” costs of transportation, meals, and lodging that are “incident to receiving treatment”. The bill gives little guidance to claims administrators who will be tasked with complying, leaving these disputes to be adjudicated by the WCAB.

Finally, this bill does not address the requirement that employers send a written notice to injured workers every time temporary disability benefits are started or stopped. As drafted, SB 1205 would require multiple notices every time benefits were paid for a medical appointment. Current law also requires employers to start permanent disability benefits within 14 days of ending temporary disability benefits, and SB 1205 does nothing to blunt the application of this requirement to this new scenario. Moreover, time spent by claims administrators on these notices would prevent them from spending time on the claims of more seriously injured workers who are still in the acute recovery phase of their injuries.

The Sponsor Could Collectively Bargain For This Benefit

California law allows unions to collectively bargain a “carve out” to the statutorily mandated workers’ compensation system. Unions and employers are provided wide latitude in negotiating the benefit levels, benefit delivery, and dispute resolution processes, but agreements must be approved by the Administrative Director of the Division of Workers’ Compensation (DWC). In fact, there are dozens of carve outs that have been negotiated between unions and their employers. While there is no evidence that there is a statewide problem, any problems experienced in a specific workplace could be resolved through this process.

No Evaluation of Cost

California’s workers’ compensation system is expensive but stable. According to the State of Oregon’s biannual study of workers’ compensation insurance rates by state, California is the third most expensive state in the country at 178% of the median cost. This high cost works as a tax on employment in the private sector, and significantly depletes public sector budgets while diverting limited resources away from public benefits. SB 1205 represents a significant policy change, yet there has been no study of the cost impact to businesses and public entities. The state of California is facing a significant budget deficit and SB 1205 would unquestionably increase costs to the general fund and divert funds from needed services and programs. The additional benefits, increased cost of

administration, printing, and postage for new benefit notices, and increased frictional litigation would all add significant costs to the system.

For these reasons and more, the undersigned organizations are respectfully opposed to SB 1205 (Laird) and urge you to vote “no” when the bill comes before your committee.

Sincerely,

American Property Casualty Insurance Association
Association of California Health Care Districts
California Association of Joint Powers Authorities
California Chamber of Commerce
California Coalition on Workers’ Compensation
California Grocers Association
California Joint Powers Insurance Authority
California Manufacturers & Technology Association
California State Association of Counties (CSAC)
Public Risk, Innovation, Solutions, and Management (PRISM)