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Manufactured in the United States of America

ISBN 0-93781702-3

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The viewpoints expressed in this book are those of the authors, and not necessarily those of the Labor Center, the Institute of Industrial Relations, or the University of California.

CALIFORNIA WORKERS' COMPENSATION

This pamphlet explains the rights of workers under California's workers' compensation program. Most California employees are covered by this system. However, some categories of workers are covered by other compensation systems and a few workers (and volunteers) are not covered at all. See the last section of this pamphlet for a complete list of exclusions.

YOUR EMPLOYER MUST CARRY WORKERS' COMPENSATION

Workers' compensation is a system set up to compensate employees for work-related injuries. A work-related injury is an injury, disease, or other medical condition incurred by an employee in the course of his or her employment and which arises out of the employment; or a pre-existing injury, disease or condition made worse by the employment.

There are three types of work-related injuries:

(1) Specific: occurring from one accident (e.g., breaking a leg from a fall).

(2) Cumulative: injury caused by repetitive activities over a period of time (e.g., bad back, stress-related illness).

(3) Occupational disease: a disease which occurs because of exposure to hazardous substances or conditions on the job (e.g., allergies).

Normally, a work-related injury occurs at the job site. However, you may be covered elsewhere, as well, if the injury occurs as a result of your employment. For example, if your employer requests or encourages you to engage in some special activity—a class, company softball game, or picnic—you may be covered going to and from the activity as well as while there.

All employers in the state of California must carry workers' compensation insurance through a private carrier, or through the state compensation insurance fund, or be self-insured. The employer must cover all employees. The cost of workers' compensation insurance must be paid entirely by the employer, with no contribution from the employee.

REGULATIONS GOVERNING SELF-INSURED EMPLOYERS

In order to self-insure, an employer must post a bond of at least $100,000 and receive the consent of the Director of the Department of Industrial Relations. Self-insurers are carefully audited and regulated. Consent to self-insure may be revoked at any time by the Director of the Department of Industrial Relations for "good cause."

"Good cause" for revocation includes but is not limited to:

(1) financial problems of the employer;

(2) frequent violations of state safety and health orders;

(3) habitually attempting to make employees accept less than the compensation amount due them;

(4) habitually forcing employees to resort to legal proceedings against the employer to receive compensation;

(5) dishonesty in the compensation process; or

(6) other "good cause."

YOUR EMPLOYER MUST POST INFORMATION ABOUT WORKERS' COMPENSATION COVERAGE AND NOTIFY YOU OF BENEFITS

In a conspicuous location frequented by workers, every employer must post (and keep posted) a notice that lists:

(1) the name of the current compensation insurance carrier (or, if certified as self-insured, a notice of self-insurance); and

(2) the name and address of the person responsible for claims adjustment; and

(3) a summary of your rights.

Every employer must give to every new employee a written notice that tells the worker of his or her rights. This notice must be given by the end of the first pay period.

The employer must also give you written notice of your rights within five working days of his/her knowledge of your injury or claim and, if benefits are denied, must give you an explanation of the denial.

This law does not apply to certain in-house domestic servants and child-care attendants, who work in the employer's own residence.

TIME LIMITS FOR FILING CLAIMS

Normally, claims must be filed within one year of the industrial injury (or of the date you became disabled from cumulative stress or disease, or of the date you learned the injury was work-related). This time limit may be extended under certain circumstances.

For example, the time limit may be extended to one year from the time the employer last provided treatment or the compensation carrier last provided benefits. It is always a good idea to report even the most insignificant injury immediately to establish the fact that it occurred on the job, should complications arise. Always give your employer written

notice of an injury within 30 days of its occurrence. Keep a copy of this notice for your records.

The notice should contain:

(1) your name and address;

(2) the time and place the injury occurred; and

(3) the nature of the injury.

YOU HAVE THE RIGHT TO COMPENSATION FOR AN AGGRAVATED INJURY

If you have a pre-existing condition (e.g., a bad back, allergy, nervous condition) which is made worse by the work you do, you may be eligible for some workers' compensation benefits. Your employer may have to pay medical costs and some benefits if your condition worsened as a result of your job.

YOU HAVE THE RIGHT TO SELECT YOUR OWN PHYSICIAN

You have the right to use your own health care provider. You can go to your own doctor or chiropractor (and change from that doctor to a new doctor if you so desire). You do not have to use an employer-selected physician. You do not have to choose your doctor from an employer-approved list.

Your employer must pay for all diagnosis and treatment which is connected with your work-related illness or injury.

This right cannot be limited or waived by any agreement or union contract. You cannot be penalized for choosing your own doctor or other practitioner. If you choose the doctor, then you can make sure that s/he is more interested in curing your problem than in saving money for your employer.

To protect this right, you must file a notice with your employer. This should state that you have a personal physician or chiropractor you intend to see in the event of an industrial injury and should give his/her address. Your employer must provide a form for filing this notice.

Your employer must notify you of this right.

If you did not file a notice with your employer that you intend to see your own doctor before your industrial injury (and your employer did properly notify you of this right), then your rights may be restricted for the first thirty days, and the following rules apply:

(1) You can always be treated by your own doctor, but your employer does not have to pay for it for the first thirty days (when you didn't file the notice before the accident).

(2) If you want your employer to pay, then you must use a doctor named by your employer, for those first thirty days. However, you do not have to use (or you can stop seeing) the first doctor your employer names. If you do

not like that doctor, ask your employer for "change of physician." Within five working days, your employer must name a different doctor. And in any case, after the first thirty days, you can go to your own doctor (and have the employer pay for it).

(3) You do not have to do what the employer-chosen doctor tells you. As with any doctor-patient relationship, you must make the final decisions about your health. In any serious case, your employer must pay for a second "consulting" physician or chiropractor, of your choice, even during those first thirty days.

(4) Once those first thirty days are up, you can choose your own doctor (and change from that doctor if you so desire), and the employer pays for all needed treatments. Either you or your new doctor or chiropractor must immediately notify your employer of the change.

To avoid any problems, it is best to file the notice (about your own doctor) before any injuries or illnesses. If any questions come up, and in any case where you have a serious injury or illness, you should contact an attorney specializing in Workers' Compensation. Any time your employer asks you to see a different physician, it is important to check with your attorney.

If your employer has not posted your rights, then you have the same rights as if you had notified your employer of your personal doctor prior to your injury.

YOU HAVE THE RIGHT TO BE REPRESENTED BY AN ATTORNEY

You have the right to be represented by an attorney in the workers' compensation claim and appeal process.

Often employers contest the legitimate claims of their employees. An employer's insurance costs are based on claims: the more successful the claims, the higher the cost. The workers' compensation system is very complex, and even when employers do not contest claims, a worker may not receive all that s/he is entitled to receive. Therefore, it is always a good idea to be represented by an attorney in the proceedings.

An attorney is not allowed to charge you a fee for a consultation on a workers' compensation problem which does not lead to a claim and settlement. In fact, an attorney can only charge you a fee based on a percentage of the award. The amount of this fee is set by the Workers' Compensation Appeals Board and is normally 9-12% of the final award.

Because workers' compensation is a very specialized area of the law, it is important to retain an attorney who specializes in this area. Consult your union or county Bar Association for recommendations.

IN SOME CASES YOU MAY HAVE THE RIGHT TO SUE

In general, you cannot sue your employer for most industrial injuries. But this rule does not keep you from suing other people. For example, you may have been injured in part because the machinery you used was not safely designed. In that case, you may sue the manufacturer of the machinery. Or you may have been hurt on the job because of someone's negligence. Perhaps someone hit you with his car while you were working. In addition to compensation from your employer, you can sue the person who hit you.

If you do recover extra damages from another person (often called a "third party"), you may have to reimburse the employer for part of his/her payments to you. It is important to discuss with an attorney any conditions which may allow you to sue for extra money.

In some cases you can sue your employer. If your injuries resulted from willful assault; intentional infliction of emotional distress or other intentional acts; fraudulent concealment of injury or risk; or removal of safety device from power press, you may have the right to sue your employer. If your injury or disease (emotional or otherwise) results from the act of termination, you are not covered by workers' compensation; therefore you are free to sue your employer for damages.

YOUR EMPLOYER MUST PAY FOR MEDICAL TESTS IN A CONTESTED CLAIM

You are entitled to reimbursement for all expenses that are reasonable and necessarily incurred for laboratory fees, x-rays, medical examinations, medical records, interpreter's fees, and medical testimony to prove a contested claim. You are entitled to reimbursement whether or not you prevail in proving the claim.

YOUR EMPLOYER IS RESPONSIBLE FOR ALL MEDICAL TREATMENT OF YOUR INDUSTRIAL INJURIES

If you have a genuine workers' compensation claim, your employer is responsible for all treatment, including medical, surgical and chiropractic care, hospitalization, nursing, medicines, medical and surgical supplies, crutches, artificial limbs, etc. You have a right to replacement or repair of artificial members, dentures, hearing aids, medical braces, and eyeglasses injured in a work-related accident. (Eyeglasses and hearing aids are covered only if you are hurt in the accident that broke them.)

In any serious case, you have the right to a second or "consulting" physician or chiropractor of your choice, paid for by your employer.

If referred by your doctor and approved by your employer, you may utilize the services of a marriage or family counselor, child counselor, or clinical social worker.

YOUR EMPLOYER HAS ACCESS TO ALL MEDICAL AND OTHER RECORDS RELATING TO YOUR WORKERS' COMPENSATION CLAIM

Your employer has access to all reports and records of doctors, chiropractors, psychologists, psychiatrists, rehabilitation counselors, or any other health care professional involved in your evaluation, treatment, or rehabilitation. Do not answer wide-ranging questions which do not relate to your injury. Ask your attorney what information is appropriate to provide and what sort of information should be kept confidential.

YOUR EMPLOYER IS RESPONSIBLE FOR THE COST OF MEDICAL TRANSPORTATION

Your employer is responsible for the cost of transportation to and from medical treatments. If you are required to submit to a medical examination at the request of the employer's insurance carrier or the Appeals Board, you are entitled to transportation, meals, and lodging (if necessary) as well.

YOU HAVE TO RIGHT TO RECEIVE DISABILITY PAY

Disability payments normally do not begin until the fourth day after you leave work as the result of a work-related injury. However, if the injury causes

a disability of 21 days or more, you are entitled to coverage from the first day.

If you are hospitalized as a result of a work-related injury, payment begins the first day of the hospitalization.

Your rate of pay for a temporary disability is based on a formula awarding you two-thirds of your weekly pay (within the minimum and maximum set by law). These payments may continue until your condition becomes permanent and stationary, or until your payment period runs out (240 weeks). By that time, you should have recovered fully or have received a permanent disability rating. If you are temporarily disabled, but can do some work, you may be entitled to partial disability payments.

If your workers' compensation claim is being contested and you are not receiving benefits, you are entitled to receive State Disability Insurance benefits (SDI) pending resolution of your workers' compensation claim.

Special higher benefits are available to law enforcement, lifesaving and firefighting personnel.

YOU MAY BE ELIGIBLE FOR PERMANENT DISABILITY BENEFITS

Once your medical condition stabilizes and becomes permanent, you are eligible for permanent disability benefits. The amount of money you are

entitled to is determined by your permanent disability rating. Your rating is determined by the injury, your age and occupation, and your ability to obtain employment.

A rating chart is used to determine the standard rate for a certain type of injury. For example, the loss of an arm would be rated as a 75% loss; the loss of an index finger, 8%. However, a machinist who loses an arm might be rated higher than a teacher with the same injury, because in the latter case loss of an arm may not so severely limit the teacher's job performance.

YOUR SURVIVORS ARE ENTITLED TO DEATH BENEFITS

Over 100,000 workers die each year as the result of industrial injuries or occupational diseases. Death benefits and burial allowances are available to survivors.

Members of the Public Employees Retirement System cannot receive death benefits under workers' compensation if they are entitled to benefits under PERS. If benefits under PERS are less than those paid under workers' compensation, survivors are entitled to the difference. Law enforcement officers may be entitled to additional benefits.

YOU MAY BE ENTITLED TO RETRAINING AND REHABILITATION BENEFITS

Disabled employees who cannot return to their original employment may be entitled to vocational rehabilitation and retraining benefits. Your employer or his/her insurance carrier must give you notice of the right to rehabilitation and retraining benefits in any case where you have been disabled or hospitalized for a total of 28 days or more. This notice must be given in writing.

Retraining and rehabilitation may range from training a righthanded worker to perform job duties with his/her left hand, to education and training for an entirely new career.

As an employee with a work-related disability you are entitled to rehabilitation benefits if:

(1) The disability permanently prevents, or is likely to prevent you from being employed in your usual and customary occupation or the position you occupied at the time of the injury; and

(2) You can be expected to benefit from a rehabilitation program.

While you are in a rehabilitation program, your temporary disability benefits will continue, even beyond the 240 week maximum.

It is your employer's responsibility to pay for vocational rehabilitation services through a qualified

counselor. You have the right to select a counselor to be paid for by your employer. If you and your employer cannot agree on a counselor or on a rehabilitation plan, you may appeal to the Bureau of Rehabilitation. Decisions of the Bureau may be appealed to the Workers' Compensation Appeals Board.

The retraining and rehabilitation plan is voluntary on the part of the injured worker. You cannot be denied workers' compensation benefits, disciplined or discharged merely because you do not wish to participate in a rehabilitation program.

JOB PROTECTIONS FOR WORKERS WITH WORK-RELATED INJURIES OR ILLNESSES

Special protections are given to a worker who suffers a work-related injury or illness. The injured worker can miss time from work without losing her/his job, classification, seniority, or other job rights. These rights are sometimes called "Judson Steel" rights.

These protections apply to the initial time missed from work due to the injury or illness, to long absences, to intermittent absences, to reoccurrences of injury or illness, and to absences for treatment or therapy. These rights apply even when years are lost from work. You have this protection whenever your absence is partially or wholly due to the work-related illness or injury. (Your health care professional can help you determine if your illness or condition

might be connected with, or made worse by, your job). These rights exist even if a union contract or company policy says the opposite or seems to limit the amount (or frequency) of time which can be missed without penalty.

You can lose your job only if your employer has no work that you can do (or may eventually recover enough to do). It is not appropriate for your employer to treat your disability like other disabilities, or your absence like other absences. You cannot be disciplined for your injury or injury-related absences, nor can these count as part of the basis for discipline. No action penalizing you for an injury or injury-related absence is allowed, unless it is required by your employer's "business necessity." These protections exist even if the injury occurred during previous employment.

The only exception is where the injured worker can never return to work. So long as there is a possibility of recovery, the job-injured worker cannot legally be terminated.

If the Workers' Compensation Appeals Board finds your employer in violation of this law, your award may be increased by one half (up to $10,000).

When a worker is finally determined to be forever unable to return to her/his former position, then the laws on "handicap" or "disability" discrimination apply. If s/he may return to work (at the old job

"with reasonable accommodation," or at another position), then the employer has a duty to allow that return.

YOU HAVE ADDITIONAL RIGHTS IF YOUR EMPLOYER IS NOT INSURED

If your employer does not carry workers' compensation insurance, you have several important rights which are described below.

Stop Orders—The Director of the Department of Industrial Relations can serve a stop order upon your employer. Once this is done, your employer cannot legally use any employee labor. S/he cannot legally have anyone work for her/him.

If you are laid off because of a stop order, the employer has to keep paying your full wages. You are entitled to full pay, as if you had kept working, for as long as the stop order shuts your employer down (but only up to 10 days' pay).

Lawsuits—If you are injured on the job, and your employer does not have compensation insurance, you can sue in court. When you do, it is presumed that your injury or illness was caused by your employer's negligence. The employer has the burden of showing the opposite.

Your employer cannot claim that your injury is your own fault (no "contributory negligence"), or is the fault of another worker (no "fellow employee"), or even that you knew about the job's danger (no "assumption of risk").

Even if you signed a contract or agreement giving up these rights, or stating that you are an "independent contractor," that doesn't matter. You still have these rights.

Who to Sue—Who is your employer, so far as job injuries and illnesses are concerned? The definition of "employer" is very broad. There is a presumption that you were the employee of anyone for whom you did work or rendered services.

The "employer" has the burden of proving that you really were not an "employee."

On a given job, you can have more than one "employer." For example, if you work for one person, and s/he has you do work for another, both may be your employer. If both of them control your work (tell you what to do and how to do it), then both are liable for your job injury or illness.

If your employer actually hired you to work for someone else, even though you never even heard of that other person, then both your employer and the other person are liable for your job injury or illness.

Be sure to tell your lawyer about everyone connected with your job.

Uninsured Employers Fund—California has an Uninsured Employers Fund. If you choose to proceed under the Workers' Compensation Appeals Board, instead of filing a lawsuit, this Fund will make sure your benefits are paid.

Usually you can get more money in a lawsuit, but (depending upon your employer) it may be difficult to collect. You need to carefully discuss this issue with your compensation lawyer.

If you use the Uninsured Employers Fund, your employer will be subject to financial and criminal penalties for failing to provide proper coverage.

YOUR COMPENSATION RIGHTS CANNOT BE WAIVED

You have all these rights to workers' compensation even if your employer has made you sign a "waiver," or a "release," or a "contract," or a "settlement" to the contrary. You have these rights, even if your employer has had you agree that you are an "independent contractor." If you "waived" any rights, or if you paid any amount towards compensation insurance, you may sue your employer for damages.

No waiver or release of your compensation rights is any good, unless and until it has been approved

by the Workers' Compensation Appeals Board or a workers' compensation judge.

LAW AND ENFORCEMENT

California's Workers' Compensation laws are found in sections 3200 through 6208 of the California Labor Code.

Most of California's Workers' Compensation laws and protections are enforced through the **Workers' Compensation Appeals Board, 455 Golden Gate Avenue, San Francisco, California 94102.** Be sure to see an attorney who specializes in workers' compensation to help you enforce your rights.

EXCLUSIONS FROM CALIFORNIA'S WORKERS' COMPENSATION COVERAGE

The following workers and volunteers are exempted from coverage under the California Workers' Compensation program:

(1) Any person employed by a parent, spouse, or child.

(2) A domestic worker who was employed for less than 52 hours (or earned less than $100 in wages from the employer) during the 90 days preceding the date of a specific injury or exposure to an occupational disease.

(3) Any person (other than a regular employee) participating in sports or athletics, who receives no compensation except transportation, travel, meals, lodging or other incidental expenses.

(4) Any person (other than a regular employee) officiating at an amateur sporting event sponsored by a public agency or a public or nonprofit school, who receives compensation no greater than the per diem authorized for state employees.

(5) Any student athlete participating in amateur sports sponsored by a public agency or public or private nonprofit school who receives no compensation except travel, meals, lodging, or other incidental expenses or scholarships.

(6) Any person performing services in return for aid or sustenance only, from any religious, charitable, or relief organization. (This exclusion applies to private relief agencies only, not government "workfare" programs. Participants in government programs are covered by workers' compensation.)

(7) Any person performing voluntary services for a public agency, or a private nonprofit organization, who receives no compensation other than meals, transportation, lodging or incidental expenses. (Except that a public agency may choose to cover such volunteers.)

(8) Any person performing voluntary services at or for a recreational camp operated by a non-profit organization of which s/he or a relative is a member, and who receives no compensation except meals, lodging or transportation.

(9) Any person acting as a voluntary ski patrolperson who receives no compensation except meals or lodging or the use of ski tow and lift facilities.

(10) Any person appointed for his/her own convenience as deputy clerk, deputy sheriff, or deputy constable and who receives no compensation from the county or municipal corporation or citizens for service.

(11) Federal employees. (Covered by Federal Employees' Compensation Act.)

(12) Civilian employees on military bases and military exchange posts. (Covered by federal Longshoremen's and Harbor Workers' Compensation Act.)

(13) Employees (other than crew members) working beyond the three-mile limit in offshore development of natural resources. (Covered by Longshoremen's and Harbor Workers' Compensation Act.)

(14) Any person employed as a master, officer, or crew member of any pleasure or commercial vessel, including the special craft

used for oil drilling (even though resting on the ocean floor). (Covered by Jones Act.)

(15) Employees (other than crew members) who work on navigable waters, including any adjoining pier, wharf, dry dock, terminal, building way, marine railway or other adjoining area customarily used by an employer in loading, unloading, repairing or building a vessel. (Covered by Longshoremen's and Harbor Workers' Compensation Act.)

(16) Certain employees of railroads and associated industries. (Covered by Federal Employers' Liability Act.)

ISBN 0-93781702-3