

# Law & Order



## It's The Law

### **AB338 Signed Into Law On 10/15/2007**

The governor's signature on AB 338 by Assemblyman Joe Coto, D-San Jose, puts into law a hard-fought compromise between business and labor. The bill, while still limiting collection of temporary disability benefits to 104 weeks in total, allows injured workers within five years after injury to return to work and cease benefits but take time off later and resume benefits.

### **AB1073 Signed Into Law On 10/15/2007**

Employers and labor also compromised on AB 1073 by Pedro Nava, D-Santa Barbara. As originally introduced, the bill would have lifted the 24-visit cap on chiropractic and physical therapy treatment for patients recovering from surgery.

Schwarzenegger signed an amended version that *lifts the cap for post-surgical patients*, but gives the Division of Workers' Compensation authority to impose limits through its medical treatment guidelines.

## In The News

### **SB936 Vetoed**

Gov. Arnold Schwarzenegger on Friday pushed two major items of unfinished workers' compensation business off his desk: He vetoed a bill that would have doubled permanent disability benefits. The governor's veto of Senate Bill 936 by Sen. Don Perata, D-Oakland, was widely expected; Schwarzenegger vetoed a nearly identical measure by Perata last year.

In his veto message, Schwarzenegger said the bill "substantially increase costs for all permanent disability awards regardless of severity and without relying on empirical data to validate the increase. I cannot support making

such arbitrary changes to the system we worked so hard to reform."

Schwarzenegger instead directed Nevans to start rulemaking as soon as possible on a planned update of the Permanent Disability Rating Schedule. The agency, in fact, has already begun the work.

The DWC revealed last week a proposed revision of the rating schedule that would increase permanent disability awards by at least 10%, on an average. The proposal would re-rate injuries, moving every injury type except knees and spines to higher ratings, the agency said.

The DWC expects to begin rulemaking on a revision of the schedule by the end of October, spokeswoman Susan Gard said Friday.

Permanent disability awards dropped 50%, on average, after the passage of Senate Bill 899. The Legislature, at Schwarzenegger's urging, agreed to introduce the American Medical Association Disability Guides into California's workers' compensation system as a measure of long-term impairment.

Attorneys and injured workers denounced the veto and said that Perata's bill would have lifted benefits that rank among the lowest in the nation.

Susan Borg, president of the California Applicants' Attorneys Association, said the veto "pins disabled workers at the bottom of the pile."

She said that "modest compensation" to Californians injured on the job does not have to increase workers' compensation rates.

## **In the Making**

### **DWC Hopes New PD Awards To Take Effect on Feb 1**

Spinal injuries will receive higher permanent disability awards under a new Permanent Disability Rating Schedule being developed by the Division of Workers' Compensation.

That aligns closely with the findings of a consultant for the state's labor-management advisory panel, who said Thursday that spinal injuries are not adequately compensated, while knee injuries are over-compensated under the current rating schedule.

Lach Taylor, of the Commission on Health and Safety and Workers' Compensation (CHSWC), calculated the uncompensated wage loss of spines vs. knees using data from the three studies by the DWC. He found disparity in how the two body parts are rated for loss of future earnings.

"Knees are way overcompensated compared to spines, or spines are under-compensated compared to knees, and you'd re-arrange the multipliers so

that knee ratings go down, or spine ratings go up, or some combination of the two," Taylor told the commissioners during a CHSWC meeting Thursday in Oakland.

The DWC revealed Wednesday that it intends to change the future earnings capacity (FEC) and age multipliers used in the rating schedule adopted in January 2005. During his presentation to CHSWC on Thursday, Taylor hypothesized what changes the DWC might propose to the rating schedule as a result of a wage-loss study launched last year.

DWC spokeswoman Susan Gard revealed Thursday some of the injury types that will be re-rated when the new schedule is released. The DWC ranks injury types one through eight, with ones assigned multipliers that trigger the lowest awards and eights getting the highest.

Spines, which now rate a five, will move up to an eight, Gard said. Psyche, which is now an eight, will move down to a four. Knees, which rate a two, will slip down to a one, she said.

"Knees and psyche would get lower FECs. Everything else would go higher," Gard said.

She said the proposed rating schedule will increase awards by about 10%, unless the agency decides to adopt a proposal by the California Applicants' Attorney's Association to increase multipliers for all injuries in addition to changing the rankings of different types of injuries. CAAA's proposal would trigger a higher average increase in awards.