

April 1, 2011

The Honorable Richard Pan  
California State Assembly  
State Capitol, Room 4164  
Sacramento, CA 95814

RE: AB 1068 (Pan) – Vocational Experts: Fee Schedule  
**SUPPORT**

Dear Assemblyman Pan:

The California Coalition on Workers' Compensation (CCWC) is an association of California's public and private sector employers that advocates for a balanced workers' compensation system that provides injured workers with fair benefits, while keeping costs low for employers. Our members include not only businesses of every size, but also cities, counties and other public entities.

CCWC is pleased to support your AB 1068, which would require the Division of Workers' Compensation (DWC) to create a fee schedule for services that are provided by vocational experts in California's workers' compensation system.

#### **Fee Schedules in Workers' Compensation**

Most services provided in the workers' compensation system have maximum allowable fees that are dictated by statute or regulation. For example, the Official Medical Fee Schedule sets reimbursement rates for medical treatment provided to injured workers and several other services have maximum fees.

Fee schedules are necessary in workers' compensation because of the nature of the system. Employers are typically responsible to pay the costs associated with medical treatment and other services necessary to resolve workers' compensation claims. If fees were not capped employers would be required to pay whatever fee is charged by service providers. Some service providers, whether medical, legal, or otherwise, have exploited the absence of an applicable fee schedule and charged inflated fees. Fee schedules have historically been implemented to allow for reasonable reimbursement while protecting employers from unreasonable costs.

#### **Need for Vocational Expert Fee Schedule**

The Workers' Compensation Appeals Board issued a decision in *Ogilvie vs. City and County of San Francisco* in February 2009 and issued a revised decision in September 2009. The case is currently on appeal awaiting a ruling from the First District Court of Appeals. AB 1168 does NOT impact this ongoing litigation in any way.

The Ogilvie case created a pathway for injured workers to rebut the Future Earnings Capacity (FEC) factor contained in the Permanent Disability Rating Schedule (PDRS). This factor is used to translate an injured worker's impairment rating into a disability rating for the purposes of calculating the amount of permanent disability benefits that are payable to a permanently disabled worker. To effectively rebut the FEC factor, which applies uniformly to all PD ratings, the injured worker must establish an "individualized factor" that more accurately reflects their loss of future earnings capacity.

The Ogilvie case has created a demand for vocational counselors to be used as expert witnesses in cases where injured workers are contesting their PD rating per Ogilvie. These expert witnesses charge on an hourly basis and are paid directly by the employer or the employer's insurer. There is currently no cap on the rate charged by these vocational counselors, which is in direct contrast with most other services provided in the workers' compensation system.

Many employers have reported inflated billings related to the use of vocational experts. In fact, some members have reported receiving bills with hourly rates as high as \$250, which is higher than the rate of pay for most attorneys in the system. Because the vocational experts often spend a substantial amount of time reviewing the claim and analyzing the issues, the total bill associated with their services can exceed \$10,000.

#### **Protection Against Inflated Costs**

AB 1168 amends the Labor Code that would require the Administrative Director (AD) for the Division of Workers' Compensation (DWC) to establish a fee schedule that sets maximum fees payable to vocational counselors that serve the workers' compensation system. The proposal is not prescriptive (e.g. hourly rates, maximum total fee, etc.) because the workers' compensation system is in a constant state of evolution and the AD needs to have authority to adjust the fee schedule via regulations as circumstances warrant. The AD is the chief regulator at the DWC and is uniquely qualified to determine a reasonable fee for this service. In addition, the bill requires the AD to adopt the fee schedule *after* providing an opportunity for stakeholder input during public hearings.

The imposition of fee schedules in workers' compensation is an issue of fairness to employers. More importantly, controlling administrative costs in the workers' compensation system ensures that workers' compensation dollars are preserved for injured worker benefits.

For these reasons, CCWC is pleased to support your AB 1168.

Sincerely,

Jason Schmelzer  
Legislative Advocate