

FLOOR ALERT – VOTE “NO on AB 375

Date: August 26, 2011

To: Members, California State Senate

From: Jason Schmelzer , California Coalition on Workers’ Compensation

**RE: AB 375 (Skinner) – Hospital Employee Presumption
OPPOSE**

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.

The California Coalition on Workers’ Compensation is **OPPOSED** to **AB 375 (Skinner)** which would create special rules for certain hospital employees in the workers’ compensation system by creating a legal presumption that any blood-borne infectious disease or MRSA infection is related to employment. Injuries occurring within the course and scope of employment are automatically covered by workers’ compensation insurance, regardless of fault. Presumptions of industrial causation for specific employees and injury types are simply not needed and create a tiered system of benefits that treats employees differently based on occupation and undermines the credibility and consistency of our workers’ compensation system.

What Presumptions Mean

AB 375 creates a presumption of industrial causation for certain hospital workers who contract a blood borne disease or MRSA infection during their employment, and for a time period *after* employment depending on the type of injury. The practical impact of creating a presumption of industrial causation is that hospitals will have a higher burden of proof when attempting to contest a claim that they believe is non-industrial. Workers’ compensation insurance is a “no fault” system that is intentionally constructed in a way that leads to the vast majority of claims being accepted. In fact, when determining compensability a Workers’ Compensation Appeals Board Administrative Law Judge (ALJ) is required to interpret the facts liberally in favor of injured workers.

Labor Code Section 3202: “This division and Division 5 (commencing with Section 6300) shall be liberally construed by the courts with the purpose of extending their benefits for the protection of persons injured in the course of their employment.”

California's no-fault system of workers' compensation insurance that must be "liberally construed" with the purpose of extending benefits to injured workers does not create many obstacles for employees who believe that they have been injured at work. The creation of a presumption for employees, absent some significant justification, serves only to make it nearly impossible for an employer to contest any claim for benefits. Presumptions essentially serve to remove all objectivity from the determination of industrial causation.

Not only does this special standard for accepting claims apply to hospital workers while actually employed by a hospital, but it continues after the employee leaves employment. AB 375 extends the presumptions contained in the bill for varying durations, depending on injury type. The presumption for blood borne infectious diseases extends for 180 days after the termination of employment, and MRSA for 90 days.

No Evidence Supporting Presumption

The fact that hospital employees face specific types of risks in the workplace is not a justification for altering the legal standard for determining what is or is not an industrial injury. All employees, in every type of occupation, face risks inherent to their employment. This is anticipated by current labor law, which requires every employer to evaluate the specific risks faced by their employees and develop an "Injury and Illness Prevention Plan" that mitigates those risks. There is nothing unique about hospital workers that make them deserving of a separate legal standard for certain injuries and illnesses that, for them, are most likely to be industrial.

There is no demonstrated need for hospital workers to have special legal status in the workers' compensation system. There has been no statistical evidence presented that would indicate, in any way, that workers' compensation claims by hospital employees for exposure to MRSA and blood borne illnesses are being inappropriately delayed or denied by employer or insurers. There has been no demonstration that hospital employees are uniquely impacted in a negative way by the current legal standard for determining compensability of industrial injuries.

Troubling Precedent

Although there is a long history of legal presumptions being applied to public safety employees in the workers' compensation system, there has never been a presumption applied to private sector employees. AB 375 would be the first such presumption applied to private sector employees, and it would be based solely on the fact that specific work-related risks exist for hospital workers. This means that any employee with specific industrial risks should be deserving of the same type of change in policy. We don't believe that the legislature should go down the path of trying to identify likely injuries for every occupation in the state with the goal of creating special rules for those employees. This is an unrealistic expectation in an insurance program that covers thousands of types of employees and employers.

For these reasons the California Coalition on Workers' Compensation is **OPPOSED** to **AB 375** and respectfully urges you to vote **NO** when the bill is heard on the Senate Floor.