



JOB KILLER UPDATED

January 10, 2020

TO: Members, Senate Committee on Labor, Public Employment and Retirement

SUBJECT: **SB 567 (CABALLERO) WORKERS' COMPENSATION: HOSPITAL EMPLOYEES
OPPOSE – JOB KILLER**

The California Chamber of Commerce and the organizations listed below respectfully **OPPOSE SB 567 (Caballero)**, as amended January 8, 2020, which has been labeled as a **JOB KILLER**, which will impose an astronomical financial burden on employers in the healthcare industry and create a troubling precedent for the workers' compensation system in general by creating a legal presumption that blood-borne infectious diseases, tuberculosis, meningitis, Methicillin-resistant Staphylococcus aureus (MRSA) and musculoskeletal injury are presumptively workplace injuries for **all** hospital employees that provide direct care. The January 8, 2020 amendments do not alleviate these concerns.

Injuries occurring within the course and scope of employment are automatically covered by workers' compensation insurance, regardless of fault. **SB 567** would require that hospital employees do not need to demonstrate work causation for specified injuries or illnesses in any circumstance. Instead, these injuries and illnesses are presumed under the law to be work related. 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.

Presumptions and the Workers' Compensation System:

SB 567 creates a presumption of industrial causation for **all** hospital employees that provide direct patient care who manifest a blood-borne infectious disease, tuberculosis, meningitis, methicillin-resistant Staphylococcus aureus (MRSA) and musculoskeletal injury, during their employment, and for a time period *after* employment. 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 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, which will unnecessarily increase costs for employers.

The Presumption Is Extended for Up to 5 Years After Termination of Employment:

Not only does this special standard for accepting claims apply to hospital workers while employed, but also it continues for up to **5 years** (depending on the injury) after leaving employment. Generally, there is a 1-year statute of limitations for workers' compensation claims. By requiring claims to be filed within one year from the date of injury, existing law ensures claims will be resolved while evidence and witnesses are still available. Stale claims, faded memories, and unavailable witnesses not only impede an employer's ability to defend against a claim, but also impedes the ability of the workers' compensation system to properly evaluate a claim.

However, per **SB 567**, a former employee could come back and file a claim based on this presumption for up to **5 years** after employment had ended and the employer would be virtually powerless to question the compensability of the claim. This presents a number of problems, not the least of which is that there is no rationale for basing the duration of an employee's post-employment presumption on the length of their service with a specific employer.

SB 567 Creates a 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. **SB 567** would be the first such presumption applied to private sector employees. Workers' compensation is designed to apply a consistent, objective set of rules to determine eligibility, medical needs and disability payments for all injured workers in California. We do not believe that the Legislature should take on the role 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 system that covers thousands of types of employees and employers.

There Is No Evidence Supporting the Presumption Proposed by SB 567:

Supporters of **SB 567** have argued that healthcare workers are more likely to contact blood-borne infectious disease, tuberculosis, meningitis, Methicillin-resistant Staphylococcus aureus (MRSA) and musculoskeletal 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 no evidence that hospital workers should be entitled to a separate legal standard for certain injuries and illnesses. In fact, it logically follows that the most obvious types of occupational injuries and illnesses for any given occupation would be far more likely to be accepted as industrial by employers and less in need of a legal presumption to obtain benefits.

Moreover, 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 blood-borne infectious disease, tuberculosis, meningitis, Methicillin-resistant Staphylococcus aureus (MRSA) and musculoskeletal injury are being inappropriately delayed or denied by employers or insurers. In addition, 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.

Narrower Versions of this Presumption Have All Failed:

Much narrower versions of this bill have all failed passage with many of them not making it out of committee or failing on the Assembly or Senate Floor. In 2014, AB 2616 (Skinner), the only version to make it to the Governor's desk, was vetoed by Governor Edmund G. Brown, Jr. In his veto message he stated, "This bill would create a first of its kind private employer workers' compensation presumption for a specific staph infection -- methicillin-resistant Staphylococcus aureus (MRSA) -- for certain hospital employees. California's no-fault system of worker's compensation insurance requires that claims must be 'liberally construed' to extend benefits to injured workers whenever possible. The determination that an illness is work-related should be decided by the rules of that system and on the specific facts of each employee's situation. While I am aware that statutory presumptions have steadily expanded for certain public employees, I am not inclined to further this trend or to introduce it into the private sector."

Notably, AB 2616 was limited to only MRSA and the post-employment presumption only extended for 60 days, yet the bill was still vetoed. Here, **SB 567** extends the presumption to a laundry list of illnesses and injuries where the post-employment presumption is up to **5 years**.

Such a drastic shift in the law will create an astronomical financial burden on healthcare employers and the system, creating an appreciable impact on the cost of healthcare at a time when we are trying to make healthcare more affordable.

For these reasons, we respectfully **OPPOSE SB 567** as a **JOB KILLER**.

Sincerely,



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Policy Advocate
California Chamber of Commerce

Acclamation Insurance Management Services
Allied Managed Care
American Property Casualty Insurance
Association
California Association of Joint Powers Authorities
California Coalition on Workers' Compensation
California Special Districts Association
California State Association of Counties

Chambers of Commerce Alliance of Ventura and
Santa Barbara Counties
CSAC Excess Insurance Authority
Dana Point Chamber of Commerce
Murrieta/Wildomar Chamber of Commerce
North Orange County Chamber
Oxnard Chamber of Commerce
Rural County Representatives of California
Santa Maria Valley Chamber of Commerce

cc: Che Salinas, Office of the Governor
Cory Botts, Senate Republican Caucus
Scott Seekatz, Senate Republican Caucus

LC:ll