

## THE STATE OF WORKER'S COMPENSATION IN 2006

By Mark A. Vickness

### A Brief History of Workers' Compensation in California

In order to understand the state of workers' compensation in 2006, it is helpful to have an overview of the history of the system.

Many people think of workers' comp as a benefit bestowed upon workers by employers. It is not. Workers' compensation arose out of an agreement between employers and employees that was written into the California Constitution in 1917. Prior to 1917, with the arrival of the Industrial Revolution in California, employees were sustaining severe injuries working in California's heavily industrial economy. Their only recourse was to file a civil lawsuit alleging negligence against their employer. If the worker prevailed, the employer faced potentially enormous liability. On the other hand, many of these lawsuits were unsuccessful, either because there was no employer negligence or because the worker could not prove employer negligence. In that case, injured workers were left with serious permanent injuries with no compensation and no means of supporting themselves or their families. To remedy this, the California Constitution was amended to include the right to Workers' Compensation.

### The Compensation Bargain

The essence of the agreement between workers and employers was that all industrially injured workers would promptly be provided medical treatment and compensation without having to first prove employer negligence. In exchange, injured workers gave up the right to sue their employer for work-related injuries, thereby protecting employers from potentially costly lawsuits and large jury verdicts. This agreement - called "the compensation bargain" - is contained in Article Fourteen, §4 of the California Constitution. It is worth quoting some of that language and keeping it in mind when considering the current state of affairs:

"A complete system of workers' compensation includes adequate provisions for the comfort, health and safety and general welfare of any and all workers and those dependent upon them for support to the extent of relieving from the consequences of any injury or death incurred or sustained by workers in the course of their employment."

" . . . full provision for such medical, surgical, hospital and other remedial treatment as is requisite to cure and relieve from the effects of such injury"

" . . . to the end that the administration of such legislation shall accomplish substantial justice in all cases expeditiously, inexpensively, and without encumbrance of any character, all of which matters are expressly declared to be the social public policy of this State, binding upon all departments of the State government."

Although the law of workers' compensation has gone through a number of changes since it was first enacted, until recently, workers injured on the job were generally entitled to receive four types of benefits: 1) medical treatment to cure or relieve from the effects of an injury; 2) temporary disability to compensate for lost wages during the healing process while a worker was unable to work because of the injury; 3) permanent disability to compensate a worker who had permanent pain or restrictions due to the injury which interfered with his or her ability to compete in the open labor market for a job and; 4) vocational rehabilitation to provide the worker with training for a different type of job when the injury prevented the worker from returning to the job. Employers, with some exceptions, were required to have insurance for workers' compensation.

### The Gathering Storm

Prior to 1993, insurance premiums were regulated in California. In 1993, premiums were deregulated. As a result, many insurance companies entered the California workers' compensation market. The increased competition set off a flurry of premium rate cuts as insurance companies vied with each other for a piece of the workers' comp premium pie. Employers enjoyed steep discounts for workers' compensation coverage.

At the same time, the California economy was booming, spearheaded by the phenomenal success of the high tech industry. The stock market took off. The insurance carriers invested money in the stock market and made substantial returns on their investments. These returns offset the lower premiums they were charging employers.

Throughout the 1990's, as the insurance companies jockeyed for position in the California market, health care costs in California skyrocketed. This in turn substantially increased the cost of the average workers' comp case. The stage was now set for the changes to come.

### The "Reform" of Workers' Compensation

In 2000, the stock market bubble burst. The insurance carriers lost a lot of money. At the same time, the average workers' comp claim was costing carriers more due to the increased cost of medical treatment (by far the largest percentage of cost in the system). Caught between declining investment income, lower premium income and higher costs, two things happened: many carriers declared bankruptcy and got out of the market altogether; and for those that stayed in, they were forced to raise premiums in order stay in business. According to the L.A. Times, premiums increased by up to 300%.

Employers, led by the California Chamber of Commerce, commenced a coordinated campaign to do something about their skyrocketing premiums. They bombarded their legislators with calls, faxes and e-mails demanding something be done. Enter the "Terminator."

Arnold Schwarzenegger's close ties with corporate California have been well documented. The president of the California Retailers Association was quoted in the

L.A. Times praising the governor as “the one who protects our business interests.” (12/23/05) Schwarzenegger made workers’ comp reform one of his top priorities in running for governor. That helped him raise money from the business community including the workers’ compensation insurance carriers who saw an opportunity to cut benefits and thus increase their profits. The political storm reached hurricane force. The resulting legislation, Senate Bill 899, was signed into law on April 19, 2004. Many of its provisions took effect immediately.

### The Effect of SB899

SB899 dramatically altered the law of workers’ compensation in California. It is now much more difficult to obtain medical treatment for a work-related injury due to the ability of insurance carriers to control treatment through their medical provider networks (MPNs) and to deny recommended treatment due to the adoption of very conservative treatment guidelines (ACOEM Guidelines). According to a recent report by the California Medical Association, “the overall perspective is a program that is hostile to physicians and often harmful to the patients they serve” (the complete report is available at [www.cmanet.org/reports](http://www.cmanet.org/reports)). Sixty-three percent of the physicians surveyed for the report indicated they intended to reduce or eliminate treatment for injured workers.

For those with permanent restrictions due to a work-related injury, permanent disability benefits have also been drastically reduced. On February 23, 2006, the California Commission on Health and Safety and Workers’ Compensation (part of the Department of Industrial Relations) released the results of a study of the effect of SB899 on permanent disability benefits. It found that permanent disability benefits were reduced by over fifty percent from pre-SB899 levels. Under the new law, many injured workers will now receive no permanent disability.

In essence, under SB899, there is very little of the compensation bargain left for injured workers. Employers, on the other hand, still have a shield against liability for industrial injuries.

### Who has benefited from SB899?

The principal beneficiaries of SB899 are the insurance carriers that contributed to Schwarzenegger’s campaign and Schwarzenegger himself. Although the primary motivation behind the new law was the reduction in workers’ compensation premiums, there was no provision included in the law to limit the premiums charged by California insurance carriers. Although rates have come down somewhat, employers are still paying high premiums. Injured workers and their families have been devastated. The insurance carriers are bringing in record profits. The Governor touts this “reform” as a phenomenal success.

## What Can You Do?

If you are an injured worker, I urge you to join Voters Injured At Work ([www.viaw.org](http://www.viaw.org)). VIAW is a statewide organization comprised of injured workers who are working together to help those injured at work obtain fair benefits and compensation. It is an excellent organization. The more members VIAW has, the more effective it will be.

I also urge you to contact your local state senator and/or assembly member and tell them about your experiences with the workers' compensation system. If you don't know how to contact your representatives in the state legislature, you can go to the link on our links page.

Finally, contact Arnold Schwarzenegger and let him know about your experience. More than any other single individual, he is the one responsible for the injustices injured workers and their families are now experiencing statewide.

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7/1/06