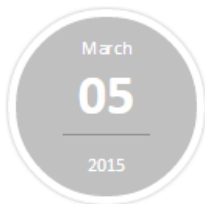


Workers Comp **ZONE**



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[GENDER BIAS AND AB 305](#)

Gender bias has no place in California workers' comp.

That's the premise of AB 305, a bill being sponsored by Assemblywoman Lorena Gonzalez of San Diego.

At a press conference yesterday Gonzalez spoke about her bill, flanked by Christine Pelosi, Chair of the Democratic Party Women's Caucus, Catherine Cobb of Teamsters Local 2010 and members of the California Applicants Attorneys Association Women's Caucus.

The goal of AB 305 is to prohibit gender discrimination under the guise of apportionment .

AB 305 (Gonzalez) would amend Labor Code 4663(c) by adding to the apportionment statute language that *"Apportionment in cases of physical injury may not be based on any of the following conditions: pregnancy, breast cancer, menopause, or osteoporosis. Apportionment in cases of psychiatric injury may not be based on psychiatric disability or impairment caused by sexual harassment, or caused by any of the conditions listed above. "*

"Workers' compensation insurers often treat being female as a 'pre-existing condition' that allows them to reduce permanent disability compensation for women injured on their jobs," said Assembly member Gonzalez, principal author of the bill. "It's time to outlaw penalties against injured working women based on their gender."

CAAA issued a press release citing various specific examples of gender bias in workers' compensation:

*“Doctor stated there will be deduction of permanent disability compensation for licensed vocational nurse with lower back, shoulder and hand injuries due to **“generally accepted conditions, such as gender.”***

*Doctor deducts half of the permanent disability compensation from a woman with carpal tunnel syndrome due to **“nonindustrial predisposing factors such as female gender, age, postmenopausal status.”** Permanent disability rating for bilateral carpal tunnel syndrome: **0%.**“*

*A San Francisco firefighter was diagnosed in 2012 with early stage triple-negative breast cancer, an aggressive cancer that is difficult to treat. She underwent a double mastectomy and chemotherapy, and has returned to work. **The insurer has denied that she is due ANY permanent disability compensation for the effects of her work-related injury.***

Housekeeper loses 98% of her permanent disability compensation – based on having had three children.

An Orange County hotel housekeeper injured herself picking up a bed. She felt pain in her lower abdomen, as if it had been ripped or torn. Her uterus dropped as a result of the injury. Prior to the work injury there had been no symptoms of any problems. However, an Agreed Medical Evaluator (AME) “apportioned” 98% of her permanent disability to the fact that she had given birth to three children and is overweight.

“... these conditions are related to child birth, obesity, age and naturally occurring events. Many women are predisposed to these problems and a combination of events can cause symptoms.”

The housekeeper was left with a 2% compensation for a 100% permanent disability that left her unable to work again.

Police Officer with double breast mastectomy gets 0% disability rating

Breast cancer does not have a disability rating in the AMA Guides, the legally required rating source. Yet, removal of the male prostate due to cancer does have a 16% disability rating.”

If enacted and signed into law, this bill would be the first major change to the apportionment statute put in place under Governor Schwarzenegger.

There will likely be vigorous opposition by employer groups, and the position of the Brown administration and its DWC administrators on this is unknown.

As an attorney representing injured workers it is my experience that there are some doctors who blatantly use gender related terminology in formulating an apportionment determination. So the bill is elegantly simple in prohibiting gender based apportionment.

If opponents think it is a big deal and gin up a lot of opposition, that might tell us either that opponents believe that apportionment on gender is justified or that it results in significant cost savings.. After all, if they don't think it is a significant problem, then why oppose the proposed amendment to the statute?

So it will be interesting to see how opposition to this lines up.

With powerful labor unions and prominent legislators on board, this might just be an issue that the Governor will support.

Governor Brown has repeatedly made it clear that he is not going to buy into wholesale workers' comp changes til SB 863 settles in a bit more, but AB 305 does not alter any of Brown's reforms.

Here is the article that appeared on the front page of the San Francisco Chronicle:

www.sfgate.com/politics/article/Gender-bias-rampant-in-workers-comp-cases-6113269.php

Stay tuned.

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