
SENATE COMMITTEE ON LABOR AND INDUSTRIAL RELATIONS

Senator Steven Bradford, Chair

2017 - 2018 Regular

Bill No:	AB 553	Hearing Date:	July 12, 2017
Author:	Daly		
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Urgency:	No	Fiscal:	Yes
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Subject: Workers' compensation: return-to-work program

KEY ISSUE

Should the Legislature require that, in the event that the Return to Work Fund has not fully expended all of its funds to injured workers, that all remaining funds be distributed to workers as a second benefit, not to exceed \$25,000?

ANALYSIS

Existing law:

- 1) Establishes a workers' compensation system that provides benefits to an employee who suffers from an injury or illness that arises out of and in the course of employment, irrespective of fault. This system requires all employers to secure payment of benefits by either securing the consent of the Department of Industrial Relations to self-insure or by securing insurance against liability from an insurance company duly authorized by the state.
- 2) Requires that, if an employer does not make an offer of regular, modified, alternative work to a permanently injured worker, the employer must provide the injured worker with a supplemental job displacement benefit (SJDB) of \$6,000 for job retraining. (Labor Code §4658.7)
- 3) Creates a \$120 million return-to-work (RTW) program annually derived from the Workers' Compensation Administration Revolving Fund for making supplemental payments to workers whose permanent disability benefits are disproportionately low in comparison to their earnings loss. (Labor Code §139.48)
- 4) Requires that the eligibility for the RTW program must be determined through regulations by the Administrative Director, based on findings from studies conducted by the Commission on Health and Safety and Workers' Compensation (CHSWC). *The primary study was completed in 2014.* (Labor Code §139.48)
- 5) Requires the CHSWC conduct a study to compare average loss of earnings for employees who sustained work-related injuries with permanent disability ratings under the schedule. *This study was completed in 2016.* (Labor Code §4660.1)

This Bill would require that the Director of Industrial Relations annually distribute the entire \$120 million from the RTW fund, unless distributing maximum payments would result in payments under \$5,000 per eligible injured workers. This bill would also:

- 1) Require that, commencing with the end of calendar year 2017, the director shall distribute any funds not yet paid out, on a pro rata basis, to claimants who have already qualified for the \$5,000 payment.
- 2) Caps at \$25,000 the maximum amount any one claimant may receive.
- 3) Provides that the director shall make this pro rata distribution by April 1 of each calendar year.
- 4) Provides that a person, including an attorney, may not collect a fee or commission for providing assistance to a worker to apply for benefits from the RTW Fund.

COMMENTS

1. A Brief History of the Return to Work Program

In 2012, the Legislature passed SB 863 (DeLeon), one of the most audaciously successful reform measures passed in recent memory. SB 863 has succeeded in what formerly seemed impossible: reducing fraud, speeding up medical benefit delivery, increasing permanent disability benefits, AND reducing costs throughout the system. Nearly 5 years out, SB 863 stands as one of the seminal legislative efforts to further the cause of justice for injured workers and employers.

As a part of the 2012 reform, SB 863 breathed new life into the Return to Work Program, creating a \$120 million Return to Work Fund to give injured workers who suffered disproportionate earnings loss additional benefits. Additionally, the Program was completely administrative: no attorney needed to be hired by the injured worker for the additional benefits. Drawing from the 2013 RAND report on identifying workers with disproportionate earnings loss, the Department of Industrial Relations (DIR) tied eligibility for the RTW benefit to the injured worker receiving the supplemental job displacement benefit (SJDB), as the workers which were unable to return to work immediately after the accident suffered disproportionately high wage losses. Using the report to extrapolate to the universe of injured workers who fell into this category, the benefit was set at \$5,000.

The fund, however, was not without some controversy. Specifically, it was initially unclear if Labor Code §139.48 required DIR to assess employers for \$120 million each year, or if the assessment should be adjusted down if the fund is not fully expended. In 2015, a leaked Legislative Counsel opinion argued that a court would likely side with DIR, which argued that the assessment should be adjusted if the RTW Fund has not been fully expended. While the leak was likely designed to push for further legislation in this area, no legislation was introduced on this topic.

The second area of controversy was that some injured workers who were eligible for the RTW benefit were not applying for the benefit, and therefore not receiving it. To understand the scale of the problem, Senator Mendoza, who at the time was the Chair of the Senate Labor Committee, sent a letter to CHSWC to request that they study the issue. In their response to Senator Bradford of March 22, 2017, the Commission reported that the gap had fallen from a 50% gap at the beginning of the program to a **14% gap** in the final quarter of 2015. The trend line suggests that the gap will continue to shrink, although the pool of data remains limited, as the RTW Program is relatively new.

2. Staff Comments:

Progressivity of Wage Replacement and the RTW Fund

In their 2016 report, RAND noted that the RTW Fund has a significantly positive impact on the progressivity in wage replacement rates, which in term RAND used to denote “*the extent to which wage replacement rates for low-wage workers are higher than replacement rates for higher-wage workers.*” This is important because, generally speaking, the more one makes, the more an injured worker will receive in permanent disability benefits. However, for low wage workers with disproportionately high wage loss, the RTW benefit stands as a progressive benefit that ensures that they have resources for themselves and their family. The Committee may wish to consider the wisdom of any changes to the RTW Fund that would lower progressivity in the workers’ compensation system.

Fraud and the RTW Fund

As was discussed above, the ability to qualify for the RTW Fund is dependent on a worker receiving a SJDB. Here, we have some anecdotal evidence of fraud. Specifically, the grand jury testimony by Sean O’Keefe, Esq. against Carlos Arguello noted he owned a copy service, and it was a major source of revenue for him. It’s likely that the revenue from that wasn’t solely in the form of copies – he may very well have been selling information to vendors who provide SJDB training. As such, it is possible that further arrests and indictments will reveal fraudulent claims against the RTW Fund, which will necessitate a review on the part of the Legislature and DIR.

One important note is that AB 553 prohibits attorney’s fees (which were already prohibited) AND fees charges by anyone else. As the “anyone else” could include SJDB vendors, this is a significant step towards preventing fraud.

3. Proponent Arguments:

Proponents argue that, at the beginning of the Return to Work Program’s creation, there were several problems with disbursing the funds, as the proper forms were not widely available and not all workers were made aware of their rights. While most of these problems have been addressed, proponents note that the fund does not distribute the full \$120 million every year. Noting that permanently injured workers face huge hurdles in making ends meet and being appropriately retrained, proponents argue that every effort needs to be made to ensure that every dollar reaches struggling workers.

4. Opponent Arguments:

None on file.

5. Prior Legislation:

SB 863 (DeLeon), Chapter 363, Statutes of 2012, was discussed above.

SUPPORT

California Conference Board of the Amalgamated Transit Union
California Conference of Machinists
California Labor Federation, AFL-CIO
California Teamsters Public Affairs Council
Engineers & Scientists of California, IFPTE Local 20, AFL-CIO
International Longshore and Warehouse Union
Professional & Technical Engineers, IFPTE Local 21, AFL-CIO
UNITE-HERE, AFL-CIO
Utility Workers Union of America

OPPOSITION

None on file.

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