



Justice for the INJURED

The law firm of Gordon, Edelstein, Krepack, Grant, Felton & Goldstein is dedicated to protecting the legal rights of injured people. The firm promises honesty and integrity, and delivers expertise in the areas of Workers' Compensation and Personal Injury law. Our goal is to provide each client with the most responsive service and best resolution of his or her case.

New Law Cuts Deeply Into Injured Workers' Benefits

On April 19, Gov. Arnold Schwarzenegger signed a new Workers' Compensation law that cuts deeply into the muscle and bone of benefits that injured Californians have relied on if they were hurt or became ill on the job.

The list of Draconian cuts goes on and on. Artificial limits have been placed on treatment. Temporary Disability has been capped at two years. The medical evaluation process has been radically revamped. Employees' free choice of treating doctors has essentially been eliminated. Permanent Disability will not fairly reflect an injured worker's loss of ability to compete in the job market. Pain no longer counts.

The changes have already gone into effect and every employee – from teachers and truck drivers to janitors and grocery clerks – is affected. Even worse, employers are trying to make most of these changes retroactive.

The Governor claimed he was targeting Workers' Comp fraud, but the changes clearly strike at injured workers with valid claims. Employees who believe the system will treat them fairly are about to become victims a second time.

The ability to obtain fair compensation for serious injuries has become more difficult at every step of the way. Starting down this rocky road without a legal guide can lead to missteps that can permanently damage the outcome of a claim.

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UTLA, Law Firm Take On Toxic Threat to School

Since 1941, Palace Plating has been in the business of chrome plating – directly across the street from thousands of children and more than 100 teachers at 28th Street Elementary School.



Attorneys Larry Goldstein (center) and Vincent Vallin Bennett (at right) meet with teachers and parents.

The City Attorney recently charged Palace with illegally disposing of chromium, cadmium and zinc, and other environmental violations. The damage, however, is already done. Decades of using chemicals, compounds and heavy metals have set the stage for human tragedy on a broad scale.

On July 7, the law firm's Roger Gordon, Larry Goldstein, David Goldstein and

Vincent Vallin Bennett met with dozens of concerned faculty, staff and parents at a special meeting of United Teachers Los Angeles chaired by UTLA Vice President Bev Cook.

"Given how serious the toxic threat is," Gordon said, "these teachers, students and their families must be tested immediately

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FIGHT BACK!
Let Sacramento know how you feel about the new comp law.

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Gov. Schwarzenegger signed SB-899 into law

Workers' Comp Has Changes

Pre-Designation of Physician

Only an employee covered by a group health plan is allowed to pre-designate a treating physician (MD only) of his or her choice. The doctor must have previously been the worker's primary care physician, and must agree to be pre-designated. A worker can begin treatment immediately after the injury with a pre-designated doctor. This provision is limited to 7% of the workforce and sunsets in three years.

Claim Form / Immediate Medical Treatment

Employer must authorize medical treatment within one working day after employee files a claim form, until the claim is accepted or rejected, to a maximum of \$10,000.

Medical Treatment if no Pre-Designation

As of Jan. 1, 2005, provides for indefinite control by an employer with an approved network of medical providers. No free choice of doctor because an injured worker may only select an alternative doctor from within the network. Provides for 30-day period of control by an employer that does not provide a health network. If an injured worker is in the network, he or she may select an alternate treater only from within the network.

Medical Disputes in Network

Employee may seek opinions of two additional providers within the network if treatment is denied. If disputes still exist, the employee may request an Independent Medical Review (IMR) from the Administrative Director (AD).

Repeal of Treating Physician's Presumption of Correctness

Total repeal for all dates of injury.

Treatment: "Cure and Relieve"

Amends "cure and relieve" to mean treatment consistent with the utilization guidelines adopted last year. For injuries after Jan. 1, 2004, physical therapy, chiropractic care and acupuncture are

limited to a maximum of 24 sessions each per injury.

Permanent Disability, Injury AOE-COE, and other Medical-Legal Disputes.

Employees go through a revised AME/QME process. If a represented employee and the employer can agree to an Agreed Medical Examination, the AME will make the determination. If the employer and employee cannot agree on an AME, the AD will provide a panel of three Qualified Medical Examiners. Each side may strike one panelist, and the remaining doctor will make the determination.

Unrepresented employees must pick from a panel. **Watch out!** If an employee does not choose a doctor from the panel within 10 days, the employer picks the doctor. No other doctor's report can be obtained, even if an attorney is hired later.

Cap on Temporary Disability Benefits

Places a 2-year cap on aggregate TD benefits for most injuries after April 19, 2004, except where a worker has an injury before Jan. 1, 2004, in which case the cap is 240 weeks within five years from the date of injury.

Permanent Disability Schedule

Revises the existing PD schedule for injuries after Jan. 1, 2005, or for injuries before April 30, 2004, without a report indicating the existence of permanent disability before 2005. Incorporates the 5th Edition of the AMA Guidelines and empirical wage loss data from the RAND Institute study. Strikes language pertaining to an employee's "decreased ability to compete on an open labor market" and replaces it with "diminished future earning capacity."

Permanent Disability Ratings

Base PD ratings schedule pursuant to above revision, individually adjusted for age, occupation and whether the injured worker has received a bona fide return to work offer.

Bump-Up/Bump-Down based on Return-to-Work Offer

PD benefits increase 15% for injured

workers not offered a return-to-work by an employer with more than 50 employees. PD benefits decrease 15% for injured workers who are offered a return-to-work for 12 months, regardless of the number of employees. If terminated during those 12 months, the injured worker is entitled to his or her full PD award.

Permanent Disability Increase for Most Severely Disabled

Seven additional weeks per percentage of disability for those rated above 70%.

Permanent Disability Decrease for Least Severely Disabled

One less week per percentage of disability for those rated below 15%.

Apportionment of Permanent Disability

Authorizes employers to apportion for causation. Requires PD reports to address apportionment. Requires injured employees to disclose previous disabilities. Makes employers liable only for the portion of PD caused by the workplace injury. A prior compensable injury is presumed to exist at the time of a subsequent injury. Total awards may not exceed 100% for any one region of the body. In no case shall an injured worker receive cumulative awards that exceed the benefit of a total permanent disability award.

Vocational Rehabilitation

Vocational rehabilitation is available (until January 2009) for injuries before Jan. 1, 2004. Rehab is abolished for injuries after Jan. 1, 2004, except for limited educational vouchers.

Alternative Dispute Resolutions

Alternative Dispute Resolutions (ADRs) are allowed for all employees covered by a collective bargaining agreement. Attorneys are allowed at all stages of the proceeding.

5814 Penalties

These fines are imposed on employers and insurers that unreasonably delay or deny benefits. The existing penalty structure is substantially amended. Penalties are up to 25% with a \$10,000 cap. (This penalty is

April 19 anged!

based on the actual amount unreasonably delayed or denied, rather than the entire class of benefits. For example, the penalty would be imposed on the one late TD payment, rather than all TD benefits.) Late payments to a medical provider would constitute a 5814 penalty if they result in serious harm to the worker (such as not receiving necessary treatment). Employers can "self-correct" errors they discover by making the corrected payment – plus 10% – provided they act before a 5814 complaint was filed. 5814 penalties are now subject to a 2-year statute of limitations, and are presumed resolved when cases are compromised and released. In most cases, penalties are greatly reduced.

Retroactivity

SB 899 takes effect immediately. Unless otherwise indicated, it applies prospectively from the date of enactment – April 19, 2004 – regardless of the date of injury.

Insurance Industry Escapes Regulation

One special-interest group emerged from the most recent Workers' Comp crisis without giving up anything. The insurance industry can still charge employers whatever they want. No surprise. Insurers carry considerable lobbying clout in the Capitol, thanks to ample donations to both parties. During the 2002 election cycle, the industry gave \$9 million to state lawmakers. Since his election last October, Comp underwriters have given Schwarzenegger more than \$550,000.



Tell your legislator how the 2004 Workers' Comp law is punishing injured workers.

The Governor and Legislature hear from big employers and insurers everyday. They need to hear from you about the disasters SB 899 is causing. Not sure who your State Senator or Assemblyperson is? Go to the website below and type in your zip code for contact information. If you don't have internet access, call the law firm at (213) 739-7000 ext 378 for mail and e-mail addresses, and phone numbers.

<http://www.legislature.ca.gov/port-zipsearch.html>

Let Sacramento know:

- Retroactive changes in the new law are unfairly delaying your case!
- Your doctor is not allowed to provide adequate treatment!
- Limiting the treatment you need is not the way to fix the system!
- New laws should solve the real problems – the constant delays in medical treatment and other benefits, and runaway insurance rates!

New Law Cuts Deeply...

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Early representation is now more important than ever. For example, the new law provides two different procedures for deciding the validity of a claim, one for represented employees and another for unrepresented employees. Attorneys for represented employees can negotiate with the employer for a neutral, or "agreed," medical examiner. An unrepresented employee is limited to choosing one doctor from a panel that may also have been chosen by the

employer. This doctor's medical opinion may be the only admissible evidence, even if an attorney is hired later. The results can be disastrous!

Understanding how the new law works can make a huge difference in how an injured worker's rights will be affected. Each of our attorneys, paralegals and staff members is committed to protecting injured workers. If you have been hurt on the job, please call the law firm as soon as possible to schedule a consultation.

Toxic Threat to School...

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to see how widespread a medical crisis we are facing. Meanwhile, we must also explore their legal rights and potential remedies."

The meeting was called after a letter and questionnaire from UTLA President John Perez to union members at 28th

Street drew more than a dozen responses from teachers describing cancers that they, their colleagues or their students had faced.

The problem of toxic contamination is widespread in Los Angeles schools, but city officials have been slow to force metal-plating companies and other major polluters to clean up or shut down.

Five Attorneys Receive High Honors from Legal Peers

The law firm recently received high honors from our peers. A poll of Southern California attorneys named four partners – Personal Injury attorney Roger Gordon and Workers' Comp attorneys Mark Edelstein, Sherry Grant and Larry Goldstein – as "Super Lawyers."

Survey results were published in the February 2004 issue of *Los Angeles* magazine.

Hard on the heels of that distinction was a poll by *American Lawyer* magazine naming Comp attorney Richard Felton a "Best Lawyer."

Training Labor Leaders to Use New Comp Law

Since the new Workers' Comp law went into effect April 19, the law firm has been training union staffs and stewards how to best defend their injured members' rights.

On May 15, Adam Dombchik and Sherry Grant (both standing, at right) meet with SEIU Local 99 stewards. Below, Larry Goldstein, Ellyn Moscovitz and Mark Edelstein speak May 27 at the Building and Construction Trades Council of L.A. and Orange Counties.

To arrange training for your union or organization, please call Steve Weingarten at (213) 739-7000 ext 378.



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SUMMER 2004