



California Applicants Attorneys Association
Affiliated with the International Brotherhood of Teamsters

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**SEN. LABOR COMM. PASSES BAN ON BIAS IN
PERMANENT DISABILITY COMPENSATION:
Alejo Bill Prohibits Insurers from Penalizing Ethnic
Minorities, Women, Older Workers**

SACRAMENTO - The Senate Labor and Industrial Relations Committee today passed AB 1155 (Alejo), which bans race, gender and age discrimination in awarding disability compensation to workers injured on the job by a 5 to 1 vote. The measure now goes to the full Senate for a vote. California Applicants' Attorneys Association (CAAA) is sponsoring AB 1155 because SB 899, former Governor Schwarzenegger's workers' compensation measure, is being interpreted to permit discrimination against California workers based on their age, race and gender. Insurers contend that SB 889 allows them to reduce permanent disability compensation based on those factors.

Existing workers' compensation law allows an injured worker's permanent disability rating, and permanent disability compensation based on that rating, to be reduced based on factors that lead directly to various forms of unfair and inappropriate discrimination. Compensation to disabled workers has been cut by millions each year due to this discrimination. Schwarzenegger as governor twice vetoed similar measures. The measure will now go to the Senate floor.

While reducing an injured worker's permanent disability compensation due to prior injuries or actual existing disabilities is legal and appropriate, reducing disability compensation based on "risk factors" associated with race, gender or age should not be permitted.

The Commission on Health and Safety and Workers' Compensation (CHSWC) reported that based on more than 10,000 summary cases (where there is no attorney involved) about 10.5% of disability evaluations include an apportionment component. Apportionment is reducing disability ratings in those cases by about 40% on average, according to CHSWC.

“If a disability exists prior to an industrial injury, under AB 1155 this would still be apportionable, and it should still be apportionable. The doctors in the workers' compensation community are still apportioning to ‘risk factors,’ such as race, age and gender,” said Marc Marcus, CAAA Legislative Committee member. CAAA members represent those injured at work. “There should not be apportionment to any of these immutable characteristics, when there is no prior disability. You should not have your permanent disability compensation cut just because you fall into one of these classes. AB 1155 would eliminate that discriminatory apportionment.”

Example of the impermissible application of discrimination in applying Labor Code §4663.

Example: San Diego Costco worker loses HALF of permanent disability compensation due to genetic predisposition (African-American racial heritage) to hypertension.

An African-American male was injured after exposure to cleaning chemicals while working for Costco in San Diego. The doctor determined he had a work injury with permanent disabilities due to hypertension and chronic asthma. The doctor deducted 50% of the permanent disability compensation due to non-industrial “risk factors.” These “risk factors” included *genetic predisposition, and family history*. *The worker had no history of hypertension before the industrial toxic chemical exposure.*

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