

LABOR PERSPECTIVE ON WORKERS' COMPENSATION IN CALIFORNIA

March 10, 2023

- ▶ State of the System
- ▶ Recent Legislation
- ▶ Need for Reform

CALIFORNIA LABOR PERSPECTIVE ON WORKERS' COMPENSATION—2023

▶ State of the System

- ▶ COVID continues to dominate
- ▶ Difficulties in securing medical care
- ▶ Rising fear of retaliation

CALIFORNIA LABOR PERSPECTIVE ON
WORKERS' COMPENSATION—2023

▶ State of the System

- ▶ Costs continue to decline, following AB 857 (2012, de Leon)
- ▶ What is generating the savings?

CALIFORNIA LABOR PERSPECTIVE ON
WORKERS' COMPENSATION—2023

▶ Recent Legislation

- ▶ SB 1159 (Hill, 2020)—COVID presumption
 - ▶ Created first responder presumption
 - ▶ Created outbreak presumption
 - ▶ Sunsetting on 1/1/2023

CALIFORNIA LABOR PERSPECTIVE ON
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▶ Recent Legislation

- ▶ AB 1751 (Daly, 2022)—COVID presumption extension
 - ▶ Extended first responder presumption
 - ▶ Didn't address fundamental issues w/outbreak presumption
 - ▶ Only extended for one year

CALIFORNIA LABOR PERSPECTIVE ON
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▶ Recent Legislation

- ▶ AB 2148 (Calderon, 2022)—prepaid debit cards
 - ▶ Allows indemnity benefits to be paid on prepaid debit cards
 - ▶ Sunsets on 1/1/2024
 - ▶ Possible extension this year

CALIFORNIA LABOR PERSPECTIVE ON
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▶ Recent Legislation

- ▶ SB 1127 (Atkins, 2022)—First responder presumptions
 - ▶ Denial timeframe: 90 days to 75 days
 - ▶ 104 weeks to 240 for cancer claims
 - ▶ Increased penalties for unreasonable delays

CALIFORNIA LABOR PERSPECTIVE ON
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▶ Recent Legislation

- ▶ AB 5 (Gonzalez, 2019)—First responder presumptions
 - ▶ Codified and clarified the Dynamex decision
 - ▶ Greatly limited employers' ability to misclassify for workers' compensation purposes

CALIFORNIA LABOR PERSPECTIVE ON
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▶ Recent Legislation

- ▶ Proposition 22 (Uber/Lyft, 2020)—Attack on workers' comp for gig economy workers
 - ▶ Sought to specifically undo workers' compensation for gig workers
 - ▶ Courts have so far rejected it, specifically because of this provision

CALIFORNIA LABOR PERSPECTIVE ON
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- ▶ Need for Reform

- ▶ Indemnity

- ▶ Temporary disability rates acceptable

- ▶ Permanent disability rates unacceptable

CALIFORNIA LABOR PERSPECTIVE ON
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▶ Need for Reform

▶ Medical

- ▶ Highest priority for workers
- ▶ Primary concern = delays in securing medical care

CALIFORNIA LABOR PERSPECTIVE ON
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▶ Need for Reform

- ▶ Causality disputes
- ▶ Enforcement hurdles
- ▶ Request for Authorization/Independent Medical Review denials
- ▶ Medical Provider Network issues

CALIFORNIA LABOR PERSPECTIVE ON
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▶ Need for Reform

- ▶ Too few doctors, too few Qualified Medical Evaluators
- ▶ Uninsured Employers Benefits Trust Fund—hard to timely secure benefits

CALIFORNIA LABOR PERSPECTIVE ON
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▶ Need for Reform

- ▶ Medical delays harm recovery and increase costs
- ▶ Attacks on cumulative trauma should refocus as attacks on fraud
- ▶ Prevention should always be the goal—for workers, employers, and insurers

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