





July 1, 2021

The Honorable Tom Daly, Chair  
 Assembly Insurance Committee  
 State Capitol, Room 369  
 Sacramento, CA 95814

Subject: SB 335 (Cortese) Workers' Compensation Liability  
**OPPOSE – SET FOR HEARING JULY 13, 2021**

Dear Assembly Member Daly,

The undersigned organizations are **OPPOSED** to **SB 335**, which fundamentally alters longstanding rules and timeframes for determining eligibility for workers' compensation claims and moves California outside of the mainstream when compared to other states. SB 335 substantially cuts the amount of time available to California employers to review whether claimed workplace injuries are, in fact, related to work. This is fundamentally unfair to employers, who deserve a fair opportunity to complete an investigation and make a thoughtful determination about the validity of a claimed injury. We are unaware of any data or studies showing that the existing rules and timeframes are unfair or have created any systemic problems for injured workers. In contrast, these new deadlines will ultimately lead to additional denials because investigations cannot be completed and questions as to compensability are likely to remain at the expiration of the statutory timeframe.

SB 335 can be broken down into three basic components:

1. Reduces the period of time that employers are allowed to investigate a claim for benefits prior to making a coverage decision. For most claims the investigation period is reduced from 90 to 45 days. For claims covered by legal presumptions the investigation period is reduced even further to 30 days.
2. Increases amount of mandated employer-funded medical care that must be provided to injured workers – from \$10,000 to \$17,000 – during the period of time a claim is being investigated, even if the claim is ultimately denied.

3. Imposes unprecedented and unwarranted penalties on employers that would result in massive and repeated benefit expansions for workers covered by certain legal presumptions. This provision is applied retroactively.

### **SHORTENING THE INVESTIGATION PERIOD**

Our coalition is opposed to shortening the investigation period from 90 to 45 days for claims generally, and we also oppose the additional shortening of this period to 30 days for claims covered by special legal presumptions that, by their very nature, already increase the burden of proof for an employer asserting that an injury or illness did not actually occur at work. Presumption claims are predominately taxpayer funded and merit thoughtful review.

#### What happens when a claim is not immediately accepted?

When an employee claims a work-related injury or illness their employer must decide whether to accept liability, which happens within the first month in the vast majority of cases, or to wait to issue a decision for up to 90 days in order to conduct an investigation. Employers will conduct an investigation where the employer or their insurer has information that would lead them to believe that the claimed injury or illness is not work related, and further discovery is warranted.

During the investigation period an employer or their insurer needs to talk to witnesses, obtain related medical records, schedule a medical evaluation and receive a written report from the doctor, and potentially identify and recover additional records that might be relevant to the claimed injury.

It should be noted that during the investigation period, the injured worker is receiving medical care to cure or relieve their injury. Medical care is provided during the investigation period for treatment rendered up to \$10,000. Additional medical treatment is not covered once a claim is denied, therefore shortening this timeframe may negatively impact the injured workers' ability to seek medical care.

If/when a medical evaluation is needed to make a compensability determination, all parties may utilize the Qualified Medical Evaluation process. Based on the statutory timeframes provided for this process (which is 90-120 days during the pandemic), it is impossible to complete this process within the proposed investigatory proposed timeframes, thus putting an undo strain on the Division of Workers' Compensation (DWC).

#### What is the likely result of this change?

The most probable outcome from the proposed changes in SB 335 is a higher number of denials of coverage as a result of not being able to complete the initial discovery process. This is because employers will not be able to identify, acquire, and evaluate the records and information necessary to make a fair determination. They certainly will not have time to identify a medical evaluator, set an appointment, deliver appropriate records, and obtain a high-quality medical report to determine causation and inform their decision making.

SB 335 all but guarantees that the investigation of workers' compensation claims in California will be, as a matter of law, cumbersome and ineffective. Employers across the state will be deprived of the opportunity to adequately investigate questionable workers' compensation claims. SB 335 ultimately punishes the injured worker by shortening the length of time whereby medical care can be provided, at no cost to the employee, during the discovery phase of a claim.

### Even shorter investigation period for presumption claims

Over the continuous objections of public sector employers across California, the legislature has granted special benefits to various powerful public employee unions. Their legal presumptions make it all but impossible for cities, counties, special districts, school districts and other public entities to refute questionable claims for complex disease processes that are not unique to their employment.

SB 335 proposes to reduce the period of time that public employers have to investigate these claims from 90 to 30 days, a full 66% reduction. The combination of the legal presumption and a 30-day investigation period create an unworkable combination of barriers to effectively investigating questionable claims. This is a fundamental violation of the foundations of the workers' compensation system where employers agree to pay for all work-related injuries, regardless of fault, but do not have liability for injuries not caused by work.

### Undermines prior negotiations around SB 1159 (Hill):

Last year, the Governor signed SB 1159, a time-limited COVID-19 presumption for all of California's workers. As the bill went through the legislative process, employers worked with both the author's office and the supporters of the bill on several provisions, including the 45-day investigation period. This concession was part of a larger negotiation that permitted several of the signatories of the letter to be neutral on the legislation.

Yet today, less than a year later and without a material change in circumstances, SB 335 undoes this negotiated concession, reducing the investigatory period to 30 days. Simply put, this change is profound breach of legislative norms and shakes the confidence of employers that workers' compensation negotiations will be handled in good faith.

### **TREATMENT DURING THE REVIEW PERIOD**

California law requires employers to provide \$10,000 worth of medical care to an injured worker during the period that an employer delays their claim to investigate. SB 335 would increase the amount from \$10,000 to \$17,000, but there is no objective justification for this change. Workers receiving treatment during the investigation period don't, on average, come close to spending the full \$10,000 provided to them under current law. The average amount of medical treatment paid during the investigation period is well below \$5,000. We struggle to understand the need for this provision. In the event of a serious injury exceeding \$10,000 in medical care in which compensability is being determined, existing law allows an employer to provide such care and benefits without admitting liability pursuant to Labor Code Section 4909.

Also, we would note the unfortunate interplay between this portion of the bill and the reduced timeframe for investigations. With only 30 and 45 days to investigate before a final decision, it is very likely that injured workers will receive even less care during the investigation period instead of more.

### **ESPECIALLY UNWORKABLE FOR PRESUMPTION CLAIMS**

The laws of the State of California already provide for a fair and equitable system for all workers. Our workers' compensation system is "no fault", meaning that employers pay for benefits even if there was no specific negligence. Injuries and illnesses are covered by workers' compensation so long as the injury occurred while the worker was in the course and scope of their job duties. Additionally, state law requires the workers' compensation appeals board judges to "liberally construe" the laws of the state toward the provision of benefits. These two statutory requirements make our workers' compensation system extremely accessible.

California has also established a series of legal presumptions for cancer, heart, pulmonary, infectious disease, and other types of injuries for public safety personnel (police and fire). These presumptions eliminate any burden of proof for an injured worker claiming industrial injury and dramatically increase the amount of evidence that is necessary for an employer to demonstrate that an injury or illness is not related to work, and therefore not covered by the workers' compensation system. The burden placed on employers is frankly unfair as it stands, but SB 335 would make it even more so. By allowing only 30 days to investigate the most complex types of injuries and overcome a nearly impossible burden of proof, SB 335 will make it functionally impossible for public sector employers to refute fraudulent claims for which a claimant is receiving their full salary, tax-free for each alleged workplace injury.

## **CONCLUSION**

SB 335 is out of touch with the policies that dictate most workers' compensation systems in the United States. The proposed changes would fundamentally undermine the ability of employers to demonstrate that a proposed claim for injury did not occur at the workplace. For public agencies, the changes are even more troubling because they exacerbate an already costly and unworkable situation.

Acclamation Insurance Management Services  
Agricultural Council of California  
Allied Managed Care  
American Property Casualty Insurance Association  
Antelope Valley Chambers of Commerce  
Association of California Healthcare Districts  
Association of California School Administrators  
Association of Claims Professionals  
Auto Care Association  
BETA Healthcare Group  
Brea Chamber of Commerce  
Breckpoint Inc.  
California Agricultural Products  
California Alliance of Self-Insured Groups  
California Assisted Living Association  
California Association of Health Facilities  
California Association of Joint Powers Authorities  
California Association of School Business Officials  
California Association of Winegrape Growers  
California Bankers Association  
California Chamber of Commerce  
California Coalition on Workers Compensation  
California Contractors Network  
California Farm Bureau  
California Farm Labor Contractors Association  
California Farm Management  
California Food Producers  
California Grocers Association  
California Hospital Association  
California Joint Powers Insurance Authority  
California Livestock Producers  
California Manufacturers & Technology Association  
California Pool & Spa Association  
California Restaurant Mutual Benefit Corporation

California Retailers Association  
California School Boards Association  
California Schools JPA  
California Self-Insurers Association  
California Self-Insurers' Security Fund  
California Self Storage Association  
California Special Districts Association  
California State Association of Counties  
California Thoroughbred Trainers  
CAWA – Representing the Automotive Parts Industry  
Chino Valley Chamber of Commerce  
Coalition of Small and Disabled Veteran Businesses  
County of Monterey  
County of Santa Barbara  
Del Mar Thoroughbred Club  
Flasher Barricade Association  
Fresno Chamber of Commerce  
Garden Grove Chamber of Commerce  
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Greater Riverside Chambers of Commerce  
Household Industry of Self-Insured Group  
Independent Insurance Agents & Brokers of California  
Laguna Niguel Chamber of Commerce  
League of California Cities  
Liberty Mutual  
Long Beach Area Chamber of Commerce  
National Association of Mutual Insurance Companies (NAMIC)  
National Federation of Independent Businesses  
North Orange County Chamber  
Oceanside Chamber of Commerce  
Oxnard Chamber of Commerce  
Pleasanton Chamber of Commerce  
Public Risk Innovation, Solutions, and Management (PRISM)  
Rural County Representatives of California (RCRC)  
San Gabriel Valley Economic Partnership  
Santa Anita Park  
Santa Barbara South Coast Chamber of Commerce  
South Bay Association of Chambers of Commerce  
Special District Risk Management Authority  
The Protected Insurance Program for Schools & Community  
Colleges Joint Powers Authority  
The Redondo Beach Chamber of Commerce  
Thoroughbred Owners of California  
Tulare Chamber of Commerce  
Urban Counties of California  
Western Growers Association  
Yorba Linda Chamber of Commerce

Cc: Senator Cortese  
Members & Consultants, Assembly Insurance Committee