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State Senate

State Assembly

**Department of
Insurance**

Insurers Increase Diverse Supplier Spending

This week, at the 6th Annual Insurance Diversity Summit, Insurance Commissioner Dave Jones announced California diverse businesses supplied \$1.6 billion in goods and services to insurance companies last year – a \$670 million increase since 2012. Commissioner Jones also announced the 2017 Multistate Insurance Diversity Survey, launched last year as the first ever national survey of the insurance industry around supplier and governing board diversity with insurance commissioners from four states-California, District of Columbia, Oregon, and Washington, found insurers spent \$7.8 billion with diverse suppliers nationwide in 2016.

The Commissioner hosted the summit convening more than 300 insurance company executives, business organizations, chamber representatives, diversity advocates, and leaders from minority, women, LGBT, veteran owned, and disabled veteran owned businesses today at California State University Sacramento. "The California Insurance Diversity Initiative started a conversation among insurers, diverse suppliers, governing board members, advocates, and stakeholders that has translated into action," said the Commissioner. "I am pleased with the progress in California and throughout the nation and I commend those insurers who continue to be leaders by proactively implementing strategies to diversify their boards and expand their outreach to our nation's talented diverse businesses," he added.

The summit hosted its first ever resource exposition with 28 organizations showcasing tools and mentorship programs to diverse suppliers, insurers, and stakeholders to help increase supplier and governing board diversity. The Department of Insurance also conducted the annual matchmaking session where nearly 70 diverse suppliers were paired with over a dozen insurance companies for about 150 matches. The sessions, coordinated in partnership with BrandGov, a women and minority-owned business that facilitates matchmaking, offered California's diverse suppliers the opportunity to present their company's goods and services to insurers, in hopes of competing for upcoming contract bids.

Some Insurance Companies Misinforming Fire Victims

Secretary of State Official Legislative Information

This week, Insurance Commissioner Dave Jones alleged that some insurance companies are giving the wrong information regarding their rights to victims of the Napa fires. Due to the scope of the fires Jones declared an emergency situation on October 13th, allowing insurance companies to bring in additional adjusters from outside California who may not be familiar with the state's laws. In response, the Department of Insurance has issued a formal notice to insurers and public adjusters to ensure that all adjusters are trained on the California Unfair Practices Act and Fair Claims Settlement Practices Regulations.

Some victims have been told that if they opt not to rebuild their homes in the same location they cannot receive full replacement-cost benefits, which is contrary to state law allowing homeowners to rebuild in the same place, build in a new location, or purchase an existing home and still receive full replacement cost. Others have been told that they can only receive additional living expenses for 12 months, when the declaration of a state of emergency allows for additional expenses to be received for up to 24 months or until the dollar limit is reached. Similarly, some have been told that they only have 6 or 12 months to collect the full cost of replacement for their dwelling instead of the 24 months that the state of emergency allows.

While the Department acknowledges that they have only received a handful of complaints relative to the number of people it has helped with their claims, they wanted to acknowledge the problem before it potentially grew worse. Nancy Kincaid, a spokesperson for the Department, stated "The concern is nipping it in the bud now before it becomes a larger problem."

Assembly Member Raul Bocanegra Resigns Following Harassment Claims

On Monday, Assembly Member Raul Bocanegra announced that he was resigning immediately following allegations from multiple women that he sexually assaulted or harassed them. Bocanegra had previously stated that he would not seek re-election after an incident from 2009 resurfaced when he was disciplined for groping a legislative staffer. However he changed his mind and resigned immediately after six more women stepped forward and stated that Bocanegra had committed a variety of inappropriate actions ranging from unwanted messages to assault following the 2009 discipline.

Bocanegra's resignations comes at a time when the Capitol is being roiled by allegations from numerous women regarding the Legislature's culture of harassment. While Bocanegra is the first member to resign, Senator Tony Mendoza is also under investigation regarding inappropriate conduct towards a legislative fellow and has been accused of additional wrongdoings. An independent investigator has been brought in to handle the proceedings, as one of the consistent complaints has been that the Legislature's policies regarding sexual

harassment and self-policing are wildly insufficient. A special Assembly subcommittee convened to address the subject heard testimony from several women that when incidents had been reported to Assembly Rules, the body previously responsible for discipline in these matters, no action was taken and frequently the victims were retaliated against.

It is still unclear what new allegations will be uncovered in the investigation process, and what will be done to change what many call an underlying culture of harassment in the Capitol. Several changes to the reporting process in the Assembly Rules Committee have been proposed, especially once it was disclosed that the Committee does not keep track of allegations or violations of the harassment policy. Other suggestions have included changing sexual harassment training policies, as well as setting up an anonymous hotline for complaints. However it is not yet known what actions can or will be taken against elected officials accused of misconduct.

Legislation Enacted in 2017: New Workers' Compensation Laws

Workers' compensation is always a fertile field for legislation each session as various participants in the system jockey for some change or advantage. This year saw legislation to make day laborers eligible for workers' compensation benefits under a homeowners or renters policy; a bill to exempt certain injuries caused as a result of a terrorist attack exempt from utilization review; legislation limiting the liability of both the employee and employer for medical treatment relative to an occupational disease or cumulative trauma claim; a bill to prohibit apportionment based on pregnancy, child birth or other conditions related to child birth; legislation to provide for an exemption to the limits on temporary disability payments where a medical decision denying care was overturned by independent medical review; and, a bill to extend the time for hospitals and emergency rooms to bill for medical care. Fortunately, at least half of these bills became two year bills to be addressed again in 2018 along with the inevitable new crop of annual workers' compensation measures.

AB 44 (Reyes, Dem-San Bernardino) Workplace Violence Workers' Compensation

AB 44 requires employers to provide immediate support from a nurse case manager to employees injured in the course of employment by an act of domestic terrorism, requires employer-appointed nurse case managers to assist claimants to obtain medically necessary medical treatments, and requires an employer to provide a prescribed notice to claimants. The bill makes its provisions applicable only if the Governor declares a state of emergency, in connection with the act of domestic terrorism. This legislation was introduced in reaction to the 2015 San Bernardino terrorist event.

At its first hearing, Assembly Insurance Committee Chair Tom Daly (D-Anaheim) forced amendments to restrict application of the bill to a Governor-declared terrorist act and

require the employer in those cases to bring in an ombudsman to oversee the evaluation of workplace trauma. The remainder of the original bill was stricken.

Assembly Vote: 78-0

Senate Vote: 40-0

Status: This bill was signed by the Governor. Chapter 736, Statutes of 2017

AB 1422 (Daly, Dem-Anaheim) Workers' Compensation Fraud

Current law governing workers' compensation requires a lien filed by or on behalf of a physician or provider of medical treatment services or medical-legal services, and any accrual of interest related to the lien, to be automatically stayed upon the filing of criminal charges against that physician or provider for an offense involving fraud against the workers' compensation system, medical billing fraud, insurance fraud, or fraud against the Medicare or Medi-Cal programs. Current law also makes the stay effective from the time of the filing of the charges until the disposition of the criminal proceedings.

This bill revises these provisions to require the liens of a physician, practitioner, or provider and the liens of an entity controlled by a physician, practitioner, or provider who has been charged with specified crimes involving the federal Medicare or Medicaid programs, the Medi-Cal program, or the workers' compensation system to be automatically stayed, along with any interest accruing, until disposition of the criminal proceedings.

Assembly Vote: 79-0

Senate Vote: 40-0

Status: This bill was signed by the Governor. Chapter 300, Statutes of 2017

SB 189 (Bradford, Dem-Inglewood) Executive & Professional Corporation Principal Workers' Compensation Exemption

This bill expands the scope of the exception from the definition of an employee, for workers' compensation purposes, to apply to an officer or member of the board of directors of a quasi-public or private corporation who owns at least 10% of the issued and outstanding stock, or one percent of the issued and outstanding stock of the corporation if that officer's or member's parent, grandparent, sibling, spouse, or child owns at least 10% of the issued and outstanding stock of the corporation and that officer or member is covered by a healthcare service plan or a health insurance policy, and executes a written waiver.

SB 189 makes a number of changes in the ownership thresholds that will allow a larger segment of owners to be eligible to file an affidavit to be exempt. This is especially true of professional corporations (PC) and co-ops, where no ownership threshold applies; however, there is a requirement that the PC maintain health insurance on the owners and the co-ops maintain both health and disability insurance on the owners. The legislation also delays the

effective date of the changes in law, with respect to employees eligible to waive workers' compensation coverage, proposed by the bill until July 1, 2018.

This is an attempted clean-up of last year's enacted AB 2883 (Insurance Committee), a workers' compensation anti-fraud bill. Specifically, AB 2883 cracks down on a specific type of workers' compensation premium fraud: employers providing their employees with a de minimus ownership stake in the company or giving the employee a fictional position and title on the company's board of directors to skirt workers' compensation requirements.

Assembly Vote: 78-0

Senate Vote: 40-0

Status: This bill was signed by the Governor. Chapter 770, Statutes of 2017

SB 272 (Mendoza, Dem-Artesia) State Compensation Insurance Fund Executive & Management Appointments

Current law requires the State Compensation Insurance Fund Board of Directors to appoint a president, chief financial officer, chief operating officer, chief information technology officer, chief investment officer, chief risk officer, chief medical officer, chief actuarial officer, chief claims operations officer, chief of internal affairs, and general counsel. This bill authorizes the Board to appoint additional executive and management positions, including a chief underwriting officer and a pricing actuary.

According to the State Fund, the addition of these positions will reduce the organization's dependence on independent contractors, lower expenses, and further expand its ability to attract staff with industry experience and specific expertise to continue its business transformation and respond effectively to market demands and changes.

Assembly Vote: 76-0

Senate Vote: 40-0

Status: This bill was signed by the Governor. Chapter 539, Statutes of 2017

SB 489 (Bradford, Dem-Inglewood) Workers' Compensation Change of Physician

Current workers' compensation law requires every employer to establish a utilization review (UR) process and further requires that requests for payment for treatment be submitted to the employer, or its insurer or claims administrator, within 30 days of the date the service was provided. Current law also establishes an independent medical review process to resolve disputes over a UR review decision. This bill requires that in the case of emergency treatment services requests for payment for treatment be submitted to the employer, or its insurer or claims administrator, within 180 days of the date the service was provided.

Proponents argue that hospitals and emergency room physicians, who are dependent on hospitals to collect and transmit billing information, may not know that an injury is occupational, creating a billing process which will almost always exceed 30 days and can often time take many months. The 180 day requirement in SB 489 is a standard that is already in place for both public and private payers, ensuring that injured workers receive emergency care and providers are appropriately paid for their services.

Assembly Vote: 67-0

Senate Vote: 38-0

Status: This bill was signed by the Governor. Chapter 240, Statutes of 2017

Legislation Enacted In 2017: New Labor & Employment Laws

New labor laws were considered, including prohibitions on employers asking for previous salary history or whether the applicant has a criminal history; bills to extend up to 12 weeks family leave for both private employers and public and charter schools; bills to provide contact information for employees to labor unions for certain industries for organizational purposes; and, a bill to require large employers to publish wage information by gender all passed the Legislature. New employer liabilities addressed include legislation prohibiting employers from providing federal immigration official access to the workplace without a warrant; and, a bill to require large employers to publish salaries by gender, which will open the door to class action lawsuits.

AB 46 (Cooper, Dem-Elk Grove) Employee Wage Discrimination

Current law prohibits an employer from paying any of its employees at wage rates less than the rates paid to employees of the opposite sex for substantially similar work, when viewed as a composite of skill, effort, and responsibility, and performed under similar working conditions, unless the employer demonstrates that one or more specific factors, reasonably applied, account for the entire wage differential. Under current law, an employer or other person who violates or causes a violation of that prohibition, or who reduces the wages of any employee in order to comply with that prohibition, is guilty of a misdemeanor. This bill would define “employer” for those purposes to include public and private employers.

In reality, this bill is about ensuring that the law applies to the Legislature itself. Last year, there was an awkward floor debate during the deliberation on AB 1676 (Campos), a bill which specified that prior salary cannot, by itself, justify any pay disparity. On the Senate Floor, Republicans raised questions about whether the bill applied to the Legislature itself, and even asked the author to amend the bill to specifically do so. Senate Democrats would not do so, which led to grumbling among many Democratic legislators about the Legislature’s willingness to impose certain requirements on businesses but not on itself. AB 46 is aimed

directly at closing that perceived gap by ensuring that the California Equal Pay Act applies to legislative employees as well.

Assembly Vote: 71-2

Senate Vote: 40-0

Status: This bill was signed by the Governor. Chapter 776, Statutes of 2017

AB 168 (Eggman, Dem-Stockton) Job Applicant Salary History Inquiry Prohibition

This legislation prohibits an employer from relying on the salary history information of an applicant for employment as a factor in determining whether to offer an applicant employment or what salary to offer an applicant. The bill also prohibits an employer from seeking salary history information about an applicant for employment and requires an employer, upon reasonable request, to provide the payscale for a position to an applicant for employment. The bill does not prevent an applicant from voluntarily and without prompting disclosing salary history information and does not prohibit an employer from considering or relying on that voluntarily disclosed salary history information in determining salary. This is a Women's Caucus priority. It exposes employers to litigation for inquiring into an applicant's prior salary or failing to provide a payscale upon demand, even though the employee has not suffered any harm or wage loss as a result of the violation.

Assembly Vote: 57-15

Senate Vote: 27-10

Status: This bill was signed by the Governor. Chapter 688, Statutes of 2017

AB 450 (Chiu, Dem-San Francisco) Employer Immigration Worksite Enforcement Responsibility

Except as otherwise required by federal law, the bill prohibits an employer or other person acting on the employer's behalf from providing voluntary consent to an immigration enforcement agent to enter nonpublic areas of a place of labor unless the agent provides a judicial warrant. The bill also prohibits an employer or other person acting on the employer's behalf from providing voluntary consent to an immigration enforcement agent to access, review, or obtain the employer's employee records without a subpoena or court order.

The California Chamber of Commerce removed its opposition to AB 450 because the bill was amended so as not to expose employers to tort action and there is no reporting to the Labor Commissioner.

Assembly Vote: 53-22

Senate Vote: 27-10

Status: This bill was signed by the Governor. Chapter 492, Statutes of 2017

AB 1008 (McCarty, Dem-Sacramento) Job Candidate Prior Conviction History Inquiry Prohibition

This bill provides that it is an unlawful employment practice under the Fair Employment and Housing Act for an employer with five or more employees to include on an application for employment any question that seeks the disclosure of an applicant's conviction history, or to inquire into or consider the conviction history of an applicant until that applicant has received a conditional offer of employment. In addition, when conducting a conviction history background check, it is an unlawful employment practice to consider, distribute, or disseminate information related to prior arrests, diversions, and convictions.

This bill also requires an employer who intends to deny an applicant a position of employment solely or in part because of the applicant's conviction history to provide notification containing specified information of the decision and allow the applicant five days to respond and dispute; plus an additional five days to obtain evidence to support that assertion. Employers who make a final decision to deny employment to the applicant must notify such in writing of specified topics. The bill would exempt specified positions of employment from the provisions of the bill.

Assembly Vote: 42-30

Senate Vote: 27-13

Status: This bill was signed by the Governor. Chapter 789, Statutes of 2017

SB 63 (Jackson, Dem-Santa Barbara) Family Medical Leave Expansion

SB 63 prohibits an employer from refusing to allow an employee with more than 12 months of service with the employer, who has at least 1,250 hours of service with the employer during the previous 12-month period, and who works at a worksite in which the employer employs at least 20 employees within 75 miles, to take up to 12 weeks of parental leave to bond with a new child within one year of the child's birth, adoption, or foster care placement.

Governor Jerry Brown vetoed a similar six-week leave extension bill by the same author last year. At this time, the California Chamber of Commerce is unclear why the Governor approved this measure. The author pursued this bill at the request of the trial lawyers association.

Assembly Vote: 51-15

Senate Vote: 25-13

Status: This bill was signed by the Governor. Chapter 686, Statutes of 2017