NORWOOD & ASSOCIATES
This Week in Sacramento

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California Links

State Senate

State Assembly

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One more week until legislators take a summer break from work in the Capitol. There is a myriad of bills that require passage before next Friday's fiscal deadline, including a major carbon emission cap and trade vote that is expected Monday. In the meantime, there is a fair amount of information to pass on regarding events of this week.

Legislature Takes Up Measures That Impact Workers Compensation System

The California Senate and Assembly each passed bills that would impact the state's workers' compensation system. The Senate Labor Committee and the Assembly Insurance Committee held hearings on Wednesday on 11 bills.

The Senate Labor Committee considered five workers' compensation bills that have passed the Assembly. The bills on this side range from prohibiting apportionment of permanent disability based on pregnancy (or conditions related to pregnancy or childbirth) to expanding presumption to school district police officers to providing employees advocacy services after a domestic terrorist act. There has been a lot of lien discussion in California and the Committee looked at a bill to continue a stay on any liens filed by medical providers who have criminal charges against them (closing a loophole). The final bill required the Division of Workers Compensation to distribute all the return-to-work program's supplemental funds ($120 million) to eligible injured workers. The following provides more specifics on these measures.

AB 44 (Reyes, Dem-Colton) Terrorist Attack Victim Workers Compensation
Senate Labor Committee Vote: Passed 5-0. Referred to Senate Appropriations Committee
This bill requires employers to provide immediately accessible advocacy services to employees, including first responders, injured in the course of employment by an act of domestic terrorism and requires employer-appointed advocates to assist employees and others to obtain approval for medical treatments. The bill also establishes a disputable presumption that physician-requested treatment is appropriate, sets parameters for approving or denying treatment, and creates processes for when treatment is denied. The

legislation applies retroactively to employees and first responders injured in an act of domestic terrorism before January 1, 2018.

AB 553 (Daly, Dem-Anaheim) Workers Compensation Return To Work Program
Senate Labor Committee Vote: Passed 4-1. Referred to Senate Appropriations Committee
Current law funds the return-to-work program with $120 million per year derived from the Workers Compensation Administration Revolving Fund. Current law also requires the Director of the Division of Workers Compensation (DWC) to determine eligibility for payments and the amount of payments. This bill requires the Director to have the program distribute the $120 million annually to eligible workers and requires commencing with the end of the 2017 calendar year, that any remaining program funds available after the above-described supplemental payments are distributed pro rata to those eligible workers, subject to a $25,000 limit per calendar year.

AB 570 (Gonzalez-Fletcher, Dem-San Diego) Workers Compensation Disability Apportionment
Senate Labor Committee Vote: Passed 4-1. Referred to Senate Appropriations Committee
Current law requires apportionment of permanent disability to be based on causation, and a physician who prepares a report addressing the issue of permanent disability due to a claimed industrial injury is required to address the issue of causation of the permanent disability. Current law also requires the physician to make an apportionment determination by finding the approximate percentage of the permanent disability that was caused by the direct result of injury arising out of and occurring in the course of employment, and the approximate percentage of the permanent disability that was caused by other factors both before and subsequent to the industrial injury, including prior industrial injuries. This bill prohibits apportionment, in the case of a physical injury occurring on or after January 1, 2018, from being based on pregnancy, childbirth, or other medical conditions related to pregnancy or childbirth.

AB 1422 (Daly) Workers Compensation Insurance Fraud
Senate Labor Committee Vote: Passed 5-0. Referred to Senate Appropriations Committee
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. Existing law makes the stay effective from the time of the filing of the charges until the disposition of the criminal proceedings. This bill, in the event the criminal proceeding resulted in a conviction, additionally require the stay to remain in effect from the date of the conviction until the adjudication procedures described above have been completed.

Moving on to Assembly Insurance Committee action, this panel considered several workers' compensation bills that have passed the Senate. The bills range from changing the length of time an emergency physician will be allowed to submit a claims of services (going from 30 days to 180 days) to allowing corporate officers who own at least 10% of the business to elect to exempt themselves from workers' compensation coverage (down from 15%). Some of the other bills authorize the State Compensation Insurance Fund's Board of Directors to add additional executive and management positions; allow the California Insurance Guarantee Association to purchase reinsurance for its workers' compensation fund; and, require insurers to report additional diversity factors in their Insurer Supplier Diversity Survey. The last bill allows the DWC to reach out to medical providers to understand the percentage workers' compensation cases and the disputes among those providers and employers and insurers.

SB 189 (Bradford, Dem-Gardena) Workers Compensation Employee Definition
Assembly Insurance Committee Vote: Passed 12-0. Referred to Assembly Appropriations Committee

Current law defines an employee, for purposes of the laws governing workers' compensation, to include, among other persons, officers and members of boards of directors of quasi-public or private corporations while rendering actual service for the corporations for pay. Existing law excludes from that definition an officer or member of the board of directors of a quasi-public or private corporation who owns at least 15% of the issued and outstanding stock and executes a written waiver of his or her rights under the laws governing workers' compensation, stating under penalty of perjury that he or she is a qualifying officer or director. This bill expands the scope of the exception described above 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 and executes a written waiver, as above.

SB 430 (Insurance Committee) California Insurance Guarantee Association Reinsurance
Assembly Insurance Committee Vote: Passed 12-0. Referred to Assembly Appropriations Committee

The California Insurance Guarantee Association (CIGA), a Norwood Associates client and sponsor of this legislation, is authorized to fulfill its duties either directly by itself or through a servicing facility or through a contract for reinsurance and assumption of liabilities by one or more member insurers or through a contract with the liquidator, upon terms satisfactory to CIGA and to the liquidator, under which payments on covered claims would be made by the liquidator using funds provided by CIGA.

This bill authorizes CIGA, with the Insurance Commissioner's express approval, to reinsure with, or transfer liabilities to, a California admitted and authorized reinsurer or other

reinsurer approved by the Commissioner in order to limit or eliminate adverse development, to stabilize or limit the need for assessments, or to reduce its potential ultimate liability for covered claims, provided certain conditions are met.

SB 488 (Bradford) Insurer Diversity Procurement & Board Of Directors Diversity Reporting

Assembly Insurance Committee Vote: Passed 8-0. Referred to Assembly Appropriations Committee

Current law requires each admitted insurer with premiums written equal to or in excess of $100 million to periodically submit to the Insurance Commissioner a report on its minority, women, and disabled veteran business enterprise procurement efforts and subjects an insurer to a civil penalty if the insurer fails to file the report. Current law also requires the Department of Insurance website to have a link that provides public access to the contents of each report. This bill adds veteran and lesbian, gay, bisexual, and transgender business enterprises to the entities for which the reporting described above is required. Lastly, the measure requires insurers to voluntarily report the sexual orientation of their board of directors.

SB 788 (Lara, Dem-Bell Gardens) Insurance Agent Licensing Requirement

Assembly Insurance Committee Vote: Passed 9-0. Referred to Assembly Appropriations Committee

Current law requires the Insurance Commissioner, upon request of the Franchise Tax Board (FTB), to furnish specified information with respect to every licensee, including, but not limited to, the federal employer identification number if the entity is a partnership or the owner's name and social security number for all others. Current law exempts the required information from the California Public Records Act. On July 1, 2018 the Commissioner is required to require either a social security number or an individual taxpayer identification number if the insurance agent license applicant or licensee is an individual applying for or renewing a production license, and requires the Commissioner to furnish to the FTB either a social security number or an individual taxpayer identification number for individuals who are production agency licensees.

Labor Legislation Considered Before Today's Legislative Deadline

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

Senate Judiciary Committee Vote: Passed 5-2. Referred to Senate Appropriations Committee

AB 450 imposes various requirements on public and private employers with regard to federal immigration agency immigration worksite enforcement actions. Except as otherwise required by federal law, the bill prohibits an employer from providing a federal immigration enforcement agent access to nonpublic areas of a place of labor without a warrant and, except as otherwise provided by federal law, prohibits an employer from providing voluntary

access to a federal government immigration enforcement agent to the employer's employee records without a subpoena.

AB 569 (Gonzalez-Fletcher) Reproductive Health Discrimination
Senate Judiciary Committee Vote: Passed 5-2. Referred to Senate Appropriations Committee
AB 569 amends provisions of labor law relating to the obligations of an employer to prohibit an employer from taking any adverse employment action against an employee based on his or her reproductive healthcare decisions, methods, or the use of any drug, device, or medical service related to reproductive health by an employee or employee's dependent. The bill also prohibits requiring an employee to sign a code of conduct or similar document that purports to deny any employee the right to make his or her own reproductive healthcare decisions, including the use of a particular drug, device, or medical service.

AB 1008 (McCarty, Dem-Sacramento) Job Candidate Prior Criminal History Inquiry
Senate Judiciary Committee Vote: Passed 5-1. Referred to Senate Appropriations Committee
Existing law, the California Fair Employment and Housing Act (FEHA), prohibits an employer from engaging in various defined forms of discriminatory employment practices. This bill repeals the prohibition on a state or local agency from asking an applicant for employment to disclose information regarding a criminal conviction, as described above. The bill, instead, provides that it is an unlawful employment practice under FEHA for an employer to include on any application for employment any question that seeks the disclosure of an applicant's criminal history, to inquire into or consider the conviction history of an applicant until that applicant has received a conditional offer, and, when conducting a conviction history background check, to consider, distribute, or disseminate specified information related to prior criminal convictions.

Employer Public Shaming Bill Continues To Move Forward Despite Heavy Industry Resistance

A California Chamber of Commerce-opposed bill that could publicly shame employers and expose them to costly litigation for alleged wage disparity where no violation of the equal pay law exists passed the Senate Labor Committee this week on a party line vote. AB 1209 (Gonzalez Fletcher; D-San Diego) is the disasterpiece legislation. It imposes a mandate on California employers to collect data on the mean and median salaries paid to men and women under the same job title or description without also considering any bona fide reason for differences in compensation.

- It requires the Secretary of State (SOS) to collect the employer's data and then categorize it in a manner consistent with California's Equal Pay Law; and,

- Exposes employers to significant litigation costs to defend against meritless claims. It also creates a privacy concern for employees and the disclosure of their wages.

In its bill letter, CalChamber explains that wage disparities do not automatically equate to wage discrimination or a violation of law. The California Labor Code recognizes numerous, lawful, bona fide factors as to why wage disparities may exist between employees performing substantially similar work, such as: (1) different educational or training backgrounds amongst employees; (2) different career experience; (3) varying levels of seniority or longevity with the employer; (4) objective, merit-based system of the employer; (5) a compensation system that measures earning by quantity or quality of production; (6) geographical differences that impact the cost of living and job market; and, (7) shift differentials.

Recent amendments appear to add another burden and costs onto SOS. AB 1209 states that an employer shall submit data on the mean and median salaries of men and women in the same job title or job classification to the SOS. Thereafter, the data must be categorized in a manner consistent with Labor Code, which suggests that it is the SOS, not the employer, that is responsible for categorizing the data. It is unclear how the SOS would categorize the data. First, the Labor Code requires employers to pay equal wages to employees who perform "substantially similar" work. Job titles and descriptions are not determinative of whether two jobs are the same for purpose of equal pay under SB 358 (the gender equity pay act enacted in 2015) or the federal Equal Pay Law.

Second, the Labor Code provides that an employer may pay an employee performing "substantially similar work" different wages if it is based upon a bona fide factor. The SOS would have to determine if any wage disparities reported are based upon a bona fide factor. Again, it is unclear how the SOS would make this determination in order to categorize the information correctly. Assuming the SOS could make these factual determinations for every employer to whom this bill applies, it also is unclear how this information would be utilized in litigation.

If AB 1209 requires an employer to categorize information consistent with the Labor Code, meaning the employer now has to identify employees under the same job title and description and those performing "substantially similar" work, AB 1209 is forcing the employer to establish the employee's case. There is absolutely no need for the Legislature to ease the burden on a plaintiff to file a lawsuit against an employer by forcing the employer to establish the plaintiff's burden of proof.

Recent amendments include: (1) increasing the number of employees an applicable employer must have from 250 to 500; (2) removing the requirement that employers publish the

information collected on a website that is available to the public; and, (3) delaying the effective date to July 1, 2019.

AB 1209 will next be heard in the Senate Appropriations Committee. This bill is now contingent upon SOS receiving sufficient funding to implement. The cost score on the bill is unknown at this time, but hopefully it is too expensive to get out of the Senate Appropriations Committee. The CalChamber Employment Coalition has determined a high cost to be the most likely avenue to stop.

Earthquake Early Warning System Passes Funding Vote

This week the House of Representatives Appropriations Committee subcommittee that oversees the Department of the Interior approved continued funding for an earthquake early warning system for the West Coast. The committee decided that the program run by the U.S. Geological Survey should continue to receive the $10.2 million that it had been given in the previous year's budget, going against the budget proposed by President Trump that would have eliminated the program. The decision to fund the warning system passed with bipartisan support, with the chair of the subcommittee Rep. Ken Calvert (R-Corona) stating that he has been a longtime supporter of the system and helped increase the funding for it in the past. "I was the one that put it in the first place," Calvert said. "We have made too much progress on the earthquake warning system to stop now. And it's certainly important to my state."

A system to warn residents of Western states about upcoming earthquakes has been in development for many years, and early testing along with recent large earthquakes such as the Napa quake in 2014 showed that earthquakes could be detected early with warnings going out soon after. Those warnings are most crucial for emergency services, hospitals, and transportation systems, but the full scale of the warning system would include text message and other warnings for civilians to prepare themselves. It is expected that the system could begin limited public operation next year if it continues to receive funding, a question that was put in doubt when President Trump's proposed budget cut funding earlier this year. However it appears that while the system still needs to be voted on by the full Appropriations Committee, it appears that the funding for the system has backing from both parties that are willing to oppose any efforts to cut the program.

Border Adjustment Tax Would Increase California Insurance Costs

A proposal for federal tax reform would result in an additional $1.9 billion in higher insurance costs for Californians according to a study released by the R Street Institute and the Pacific Research Institute this week. Included in the proposed tax reform is a border adjustment tax that would tax imports to the United States and exempt exports in an effort to ensure that

the tax plan is “revenue-neutral.” This would help expand the federal tax base since the United States has a trade deficit and would help to offset the lower tax revenues that would come with the reductions that are included in the rest of the proposal. However a consequence of instituting this border adjustment tax would hit the insurance industry especially hard in California, resulting in higher premiums for property owners throughout the state.

The affordability of property insurance in California despite the many natural disasters that occur throughout the state is in large part due to insurers purchasing international reinsurance to spread the risk of those policies. There are several countries that exempt financial services from their value added tax programs, and this in addition to the fact that insurance companies are able to write off the costs of their international reinsurance helps keep the price of policies in risky states like California affordable for consumers. However if financial transactions and services are not exempted from the border adjustment tax by Congress as they enact tax reform, the study released by the R Street Institute and the Pacific Research Institute has concluded that insurers will no longer be able to use international reinsurance to spread the risk of their insurance policies.

The result of no longer being able to use international reinsurance would be that all of the risk of their policies would be concentrated in the United States, and especially in California where natural disasters such as earthquakes and wildfires multiply the risk substantially. Premiums would rise as a result of this less competitive market, resulting in $1.9 billion more in costs for Californians under the proposal for tax reforms. Dr. Wayne Winegarden, a Senior Fellow with the Pacific Research Institute, stated that “Whatever road Washington takes on tax reform, it must act carefully and avoid the unintended consequences of a proposal like a border adjustment tax. Adopting tax reform that has the effect of increasing the insurance rates of all Californians, or worse, devastating our state’s insurance market, is the wrong approach.”

Although there has been much talk of tax reform in Washington in recent months, the proposal for a border adjustment tax is just one of many that has been discussed. So far these talks are still just in the beginning phases, and no one specific plan has been put forward by either the White House or Congress. Stay tuned for more updates as this develops.