





JOB KILLER

April 13, 2023

TO: Members, Assembly Insurance Committee

**SUBJECT: AB 1156 (BONTA) WORKERS' COMPENSATION: HOSPITAL EMPLOYEES
OPPOSE/JOB KILLER – AS INTRODUCED FEBRUARY 16, 2023**

The California Chamber of Commerce and the organizations listed below respectfully **OPPOSE AB 1156 (Bonta)** which has been labeled a **JOB KILLER**. **AB 1156** will impose an astronomical financial burden on employers in the healthcare industry that continues to grapple with the effects of the COVID-19 pandemic. It also creates a troubling precedent for the workers' compensation system in general by creating a legal presumption that blood-borne infectious disease, tuberculosis, meningitis, methicillin-resistant *Staphylococcus aureus* (MRSA), COVID-19, cancer, musculoskeletal injury, post-traumatic stress disorder, or respiratory disease are presumptively workplace injuries **for up to 10 years for all hospital employees that provide direct care**.

Injuries occurring within the course and scope of employment are automatically covered by workers' compensation insurance, regardless of fault. **AB 1156** would require that hospital employees do not need to demonstrate work causation for specified injuries or illnesses in any circumstance. Instead, these injuries and illnesses are presumed under the law to be work related. Presumptions of industrial causation for specific employees and injury types are simply not needed and create a tiered system of benefits that treats employees differently based on occupation and undermines the credibility and consistency of our workers' compensation system. **The Legislature has consistently rejected all eight versions of this bill, including narrower versions, over the last fourteen years.**

Presumptions and the Workers' Compensation System:

AB 1156 creates a presumption of industrial causation for **all** hospital employees that provide direct patient care who manifest a blood-borne infectious disease, tuberculosis, meningitis, methicillin-resistant *Staphylococcus aureus* (MRSA), COVID-19, cancer, musculoskeletal injury, post-traumatic stress disorder, or respiratory disease during their employment, and for a time period *after* employment. The practical impact of creating a presumption of industrial causation is that hospitals will have a higher burden of proof when attempting to contest a claim that they believe is non-industrial.

Workers' compensation insurance is a "no fault" system that is intentionally constructed in a way that leads to the vast majority of claims being accepted. In fact, when determining compensability, a Workers' Compensation Appeals Board administrative law judge is required to interpret the facts liberally in favor of injured workers.

Labor Code Section 3202: "This division and Division 5 (commencing with Section 6300) shall be liberally construed by the courts with the purpose of extending their benefits for the protection of persons injured in the course of their employment."

California's no-fault system of workers' compensation insurance that must be "liberally construed" with the purpose of extending benefits to injured workers does not create many obstacles for employees who believe that they have been injured at work. The creation of a presumption for employees, absent some significant justification, serves only to make it nearly impossible for an employer to contest any claim for benefits, which will unnecessarily increase costs for employers.

In 2019, SB 567 (Caballero) included presumptions for a very similar, more narrow list of illnesses and injuries. The Senate Committee on Labor, Public Employment and Retirement issued an analysis concluding that there was no evidence supporting the need for this presumption. It also warned that “the creation of presumptive injuries is an exceptional deviation that uncomfortably exists within the space of the normal operation of the California workers’ compensation system,” and to not limit them “would essentially consume and undermine the entire system”.

The Presumption Is Extended for Up to 10 Years After Termination of Employment:

Not only does this special standard for accepting claims apply to hospital workers while employed, but also it continues for up to **3, 5, or 10 years** (depending on the injury) after leaving employment. Generally, there is a one-year statute of limitations for workers’ compensation claims. By requiring claims to be filed within one year from the date of injury, existing law ensures claims will be resolved while evidence and witnesses are still available. Stale claims, faded memories, and unavailable witnesses not only impede an employer’s ability to defend against a claim, but also impedes the ability of the workers’ compensation system to properly evaluate a claim.

However, per **AB 1156**, a former employee could come back and file a claim based on this presumption for up to **10 years** after employment had ended and the employer would be virtually powerless to question the compensability of the claim. This presents a number of problems, not the least of which is that there is no rationale for basing the duration of an employee’s post-employment presumption on the length of their service with a specific employer. Section 6 of the bill underscores how problematic this bill is by including a presumption that a healthcare worker’s COVID-19 diagnosis **10 years** after their employment ended is covered by the workers’ compensation system.

AB 1156 Creates a Troubling Precedent and is Broader Than The COVID-19 Presumption Under SB 1159:

Although there is a long history of legal presumptions being applied to public safety employees in the workers’ compensation system, there has never been a presumption applied to private sector employees outside of the COVID-19 pandemic. In 2020, the Legislature passed **SB 1159 (Hill)**, which established a rebuttable presumption that certain employees who contracted COVID-19 were covered under workers’ compensation. The pandemic presented a unique moment in history when millions of Californians were contracting COVID-19 and the virus was spreading quickly. Even in this exceptional circumstance, **SB 1159** was limited in both time and scope. The bill has a sunset date of January 1, 2023¹ and most employees outside of a few industries can only fall under the presumption if four or four percent of other workers at the worksite also contracted COVID-19 within a short time frame.

AB 1156 reaches far beyond SB 1159 without justification by making a permanent presumption that can apply up to **10 years** after an employee has stopped working. Workers’ compensation is designed to apply a consistent, objective set of rules to determine eligibility, medical needs and disability payments for all injured workers in California. We do not believe that the Legislature should take on the role of trying to identify likely injuries for every occupation in the state with the goal of creating special rules for those employees. This is an unrealistic expectation in an insurance system that covers thousands of types of employees and employers.

There Is No Evidence Supporting the Presumption Proposed by AB 1156:

Supporters of **AB 1156** have argued that healthcare workers are more likely to contact blood-borne infectious disease, tuberculosis, meningitis, Methicillin-resistant Staphylococcus aureus (MRSA), cancer, musculoskeletal injury, post-traumatic stress disorder, and respiratory disease. The Senate Committee on Labor, Public Employment and Retirement has consistently explained in analyses of prior versions of this bill that there is no evidence to support that argument. Even if there were, all employees, in every type of occupation, face risks inherent to their employment. This is anticipated by current labor law, which requires every employer to evaluate the specific risks faced by their employees and develop an “Injury and Illness Prevention Plan” that mitigates those risks. It is also anticipated by California’s workers’ compensation system, under which **more than 90% of**

¹ This sunset was extended only one more year to January 1, 2024 in AB 1751 (Daly) (2022). AB 1751 originally would have extended the sunset two years to January 1, 2025, but it was subsequently amended.

all workers' compensations claims and requests for medical treatment are approved, including claims filed by healthcare workers.

There is no evidence that hospital workers should be entitled to a separate legal standard for certain injuries and illnesses. In fact, it logically follows that the most obvious types of occupational injuries and illnesses for any given occupation would be far more likely to be accepted as industrial by employers and less in need of a legal presumption to obtain benefits.

Moreover, there is no demonstrated need for hospital workers to have special legal status in the workers' compensation system. There has been no statistical evidence presented that would indicate, in any way, that workers' compensation claims by hospital employees for exposure to blood-borne infectious disease, tuberculosis, meningitis, Methicillin-resistant Staphylococcus aureus (MRSA), COVID-19, cancer, musculoskeletal injury, post-traumatic stress disorder, and respiratory disease are being inappropriately delayed or denied by employers or insurers. In addition, there has been no demonstration that hospital employees are uniquely impacted in a negative way by the current legal standard for determining compensability of industrial injuries.

All Prior Versions of this Presumption Have Failed:

Both similar and much narrower versions of this bill have all failed passage with many of them not making it out of committee or failing on the Senate Floor. Two of the most recent iterations of this bill, **SB 893** (Caballero) and **SB 567** (Caballero) received 0 and 1 Aye votes in committee, respectively. **SB 213** (Cortese) did not receive a motion in Assembly Insurance last year.

In 2014, **AB 2616** (Skinner), the only version to make it to the Governor's desk, was vetoed by Governor Edmund G. Brown, Jr. In his veto message he stated, "This bill would create a first of its kind private employer workers' compensation presumption for a specific staph infection -- methicillin-resistant Staphylococcus aureus (MRSA) -- for certain hospital employees. California's no-fault system of worker's compensation insurance requires that claims must be 'liberally construed' to extend benefits to injured workers whenever possible. The determination that an illness is work-related should be decided by the rules of that system and on the specific facts of each employee's situation. While I am aware that statutory presumptions have steadily expanded for certain public employees, I am not inclined to further this trend or to introduce it into the private sector."

Notably, **AB 2616** was limited to only MRSA and the post-employment presumption only extended for 60 days, yet the bill was still vetoed. Here, **AB 1156** extends the presumption to laundry list of illnesses and injuries including cancer where the post-employment presumption is **10 years**.

Such a drastic shift in the law will create an astronomical financial burden on healthcare employers and the system, creating an appreciable impact on the cost of healthcare at a time when we are trying to make healthcare more affordable.

For these reasons, we respectfully **OPPOSE** your **AB 1156** as a **JOB KILLER**.

Sincerely,



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Policy Advocate
California Chamber of Commerce

Acclamation Insurance Management Services
Alameda Chamber & Economic Alliance
Alameda Chamber of Commerce
Alhambra Chamber of Commerce
Allied Managed Care
American Property Casualty Insurance Association
Anaheim Chamber of Commerce

Antelope Valley Chambers of Commerce
Association of Claims Professionals
Beverly Hills Chamber of Commerce
Brea Chamber of Commerce
California Association of Joint Powers Authorities
California Business Properties Association (CBPA)
California Chamber of Commerce
California Coalition on Workers' Compensation
California League of Food Producers
California Retailers Association
California Special Districts Association
California State Association of Counties
Carlsbad Chamber of Commerce
Chino Valley Chamber of Commerce
Citrus Heights Chamber of Commerce
Coalition of California Chambers – Orange County
Corona Chamber of Commerce
Escondido Chamber of Commerce
Folsom Chamber of Commerce
Fontana Chamber of Commerce
Fountain Valley Chamber of Commerce
Fremont Chamber of Commerce
Fresno Chamber of Commerce
Garden Grove Chamber of Commerce
Gilroy Chamber of Commerce
Glendora Chamber of Commerce
Greater Arden Chamber of Commerce
Greater Coachella Valley Chamber of Commerce
Greater High Desert Chamber of Commerce
Greater Riverside Chambers of Commerce
Greater San Fernando Valley Chamber of Commerce
Hollywood Chamber of Commerce
Imperial Valley Regional Chamber of Commerce
Industry Business Council
La Cañada Flintridge Chamber of Commerce
La Verne Chamber of Commerce
Lake Elsinore Valley Chamber of Commerce
Livermore Valley Chamber of Commerce
Lodi Chamber of Commerce
Lomita Chamber of Commerce
Lompoc Valley Chamber of Commerce & Visitors Bureau
Long Beach Area Chamber of Commerce
Los Angeles Chamber of Commerce
Mammoth Lakes Chamber of Commerce
Mission Viejo Chamber of Commerce
Modesto Chamber of Commerce
Morgan Hill Chamber of Commerce
Murrieta/Wildomar Chamber of Commerce
National Federation of Independent Business (NFIB)
Newport Beach Chamber of Commerce
North Orange County Chamber
North San Diego Business Chamber
Oceanside Chamber of Commerce
Orange County Business Council
Palos Verdes Peninsula Chamber of Commerce
Paso Robles Chamber of Commerce
Pleasanton Chamber of Commerce
Public Risk Innovation, Solutions, and Management

Rancho Cordova Area Chamber of Commerce
Rancho Mirage Chamber of Commerce
Redondo Beach Chamber of Commerce
Roseville Area Chamber of Commerce
Rural County Representatives of California
San Diego Regional Chamber of Commerce
San Gabriel Valley Economic Partnership
San Juan Capistrano Chamber of Commerce
San Marcos Chamber of Commerce
Santa Barbara South Coast Chamber of Commerce
Santa Clarita Valley Chamber of Commerce
Santa Maria Valley Chamber of Commerce
Santee Chamber of Commerce
Silicon Valley Leadership Group
Simi Valley Chamber of Commerce
South Bay Association of Chambers of Commerce
South County Chambers of Commerce
South Orange County Economic Coalition
Southern California Black Chamber of Commerce
Southwest California Legislative Council
Special District Risk Management Authority
Templeton Chamber of Commerce
Torrance Area Chamber of Commerce
Tri County Chamber
Tulare Chamber of Commerce
United Chambers of Commerce
Urban Counties of California
Vacaville Chamber of Commerce
Valley Industry & Commerce Association
Vista Chamber of Commerce
Walnut Creek Chamber of Commerce
West Ventura County Business Alliance
Whittier Area Chamber of Commerce
Yorba Linda Chamber of Commerce

cc: Legislative Affairs, Office of the Governor
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AH:am