

**INFORMATIONAL HEARING:
Establishing the Evidence Based Value of
Women's Breasts in California's Workers' Compensation**

Tuesday, February 23, 2016
9:00 a.m. - 11:00 a.m.
California State Capitol, Room 127

PRE-HEARING BACKGROUND

In California there is a constitutional right to an expeditious and inexpensive workers' compensation system to obtain compensation if you are injured on the job. Every Californian has the right to medical treatment to cure or relieve their work injuries, and to be financially compensated if they cannot work or go back to the job they had due to disability. Unfortunately, the law does not apply equally to all people. When female workers are injured on the job, they may get less compensation than their male counterparts for the same injuries. California law needs to eliminate the remnants of gender bias in the workplace, including workers' compensation.

Workers' Compensation in California

Almost every worker in the state is covered by workers' compensation because employers are required to purchase and maintain coverage for their employees. In exchange for having this coverage, workers do not have the right to sue their employer in civil court for injuries from their job. When a worker is injured on the job their employer is required to file a report and send the worker for immediate medical care. In California, the employer selects the doctor that the injured worker sees for his or her care, unless the worker designates their own doctor to treat them. The course of treatment for the worker is decided by the doctor and sent to the workers' compensation insurance carrier or self-insured administrator for approval. In most cases, the carrier or self-insured administrator will refer the request to a doctor for an additional opinion to decide whether the proposed medical care is consistent with state regulations and medical guidelines.

California uses the Medical Treatment Utilization Schedule to describe the appropriate treatments for injured workers. Based on an assessment of this schedule, the reviewing doctor can approve, deny, delay or modify the treatment proposal by the worker's primary treating physician. When a treatment is denied, a worker's only recourse is to seek an Independent Medical Review (IMR) by Maximus, an entity hired by the state of California. An anonymous doctor provided by Maximus performs a second review but does not see the injured worker, and can only approve or deny the proposed treatment. If the worker is

denied or not satisfied with the outcome of the IMR, they may file an appeal with the California Workers' Compensation Appeals Board, but if the judge disagrees with the IMR doctor, they cannot order that the treatment be approved – they can only send the matter back to Maximus for another review. If the worker does not file an appeal for an IMR decision, they need to wait 12 months to file another request for that medical treatment unless there has been a proven change of circumstances.

Temporary and Permanent Disability

When a worker is injured, they are potentially eligible for two kinds of financial compensation. One type of compensation is temporary disability, which a worker can use for up to 104 weeks in a five-year period if they cannot work. It offers weekly benefits based on a percentage of the workers' salary. The second type of compensation is permanent disability for workers who suffer a permanent work impairment based on an examination and doctor's report utilizing the American Medical Association's *Guides to the Evaluation of Permanent Impairment* (AMA Guides).

Permanent Disability Ratings in Workers' Compensation

Doctors determine the percent of disability suffered by an injured worker. It is in this realm that the issues of gender bias occur. The Guides are intended for the purpose of determining levels of whole body impairment, non-specific to employment. But doctors use the AMA Guides to determine disability in workers. This policy was implemented under Governor Schwarzenegger. The AMA Guides have always been fraught with subjective determinations unrelated to medical science and early editions of the Guides were full of references to gender differences. While some changes have been made over the years, gender bias issues still remain. One example is the issue of breast removal. In the AMA Guides a woman who gets breast cancer as the result of a work exposure to chemicals and has a double mastectomy is only eligible for a maximum disability rating of 5 percent if she is within her childbearing years. If she is not in child bearing years, she receives a 0 percent disability rating. In other words, she receives no compensation because the State of California requires the use of the AMA Guides, which provides no value to a woman's loss of her breasts. The AMA Guides do not recognize the severe physical impact the loss of breasts has on a female body, and only recognizes a minimal impact if she is of childbearing age and may need to breast feed. By contrast, a man who suffered the same work place exposure, was diagnosed with prostate cancer and as a result had to have his prostate removed is entitled to a rating between 16-20 percent under the AMA Guides.

California cannot and should not accept a system of care for injured workers' that produces such dramatically different results. We must not tolerate outcomes that leave women substantially less whole than their male counterparts. We must stop ignoring the suffering of women who have mastectomies and have a lifetime of physical and mental pain. Our state has been faced with many gender bias challenges and we have been at the forefront of making changes that have become an example for the entire country. The state can make the workers' compensation rules equal for women and men who suffer workplace injuries. We can amend California's use of the AMA Guides to eliminate gender bias and apply the law in a fair and equitable manner.