

February 3, 2010

Ms. Carrie Nevans
Administrative Director
Division of Workers' Compensation
Department of Industrial Relations
1515 Clay Street, 17th floor
Oakland, CA 94612-1402

Dear Director Nevans,

We are writing this letter to express our profound disappointment with the Division's recent decision to not update the Permanent Disability Ratings Schedule. This decision is a flagrant violation of law and legislative intent. We are aware that a substantial amount of work has already been completed in the process of developing an updated schedule. We ask that you immediately proceed with updating the Permanent Disability Ratings Schedule in order to bring relief to California's injured workers.

As you know, Labor Code 4660, subdivision (c), states the following:

(c) The Administrative Director **shall** amend the schedule for the determination of the percentage of permanent disability in accordance with this section at least once every five years. This schedule shall be available for public inspection and, without formal introduction in evidence, shall be prima facie evidence of the percentage of permanent disability to be attributed to each injury covered by the schedule. (Emphasis added)

This statute is neither vague nor unclear. It clearly requires the Division to update the Permanent Disability Ratings Schedule at least once every five years. No exemptions or latitude for this requirement were provided by the Legislature. As the Permanent Disability Ratings Schedule was last updated in January of 2005, we felt confident that the schedule would be updated by January of 2010, as the law requires. Indeed, throughout the Fall of 2009, John Duncan, Director of the Department of Industrial Relations, consistently expressed confidence that the Division would be able to adopt these amendments to its regulations in time.

Therefore, we were quite surprised to discover from media reports in late December that the Division did not intend to update the Permanent Disability Ratings Schedule due to a belief that the Legislature may amend the statutory language underpinning the schedule. While the Legislature is empowered to change the statute, and reserves the right to do so, such specious speculation is not a replacement or stand-in for statutorily required action.

What further concerns us is the disparate impact this delay will have on California's permanently disabled workers, one of the most vulnerable populations in our workforce. As multiple studies conducted by the Commission on Health and Safety, and Workers' Compensation have shown, the current Permanent Disability Ratings Schedule has slashed awards of objectively injured workers by more than half when compared to the pre-2005 Permanent Disability Ratings Schedule. This outcome is unacceptable, and continuing to utilize the current schedule in direct conflict with law is unconscionable.

Therefore, we request a prompt response to our letter where you outline the following:

- 1) A response explaining the Division's delay on the implementation of a new Permanent Disability Ratings Schedule and how the Division intends to return to compliance with their statutory requirements;
- 2) A detailed timeline on when the Division plans to fully implement the new Permanent Disability Ratings Schedule; and
- 3) The regulatory and, if necessary, statutory actions the Division intends to pursue to make whole the permanently disabled workers who were adversely impacted by the delay in the implantation of a new Permanent Disability Ratings Schedule.

We look forward to your timely response.

Sincerely,

Darrell Steinberg
President Pro Tempore
California State Senate

Karen Bass
Speaker
California State Assembly

Mark DeSaulnier, Chair
Senate Committee on Labor and
Industrial Relations

Jose Solorio, Chair
Assembly Committee on
Insurance

cc: Ms. Victoria Bradshaw, Acting-Secretary of the Labor and Workforce
Development Agency
Mr. John Duncan, Director of the Department of Industrial Relations

