

4660

SEC ____ . Section 4660 of the Labor Code is amended to read:

4660. (a) In determining the percentages of permanent disability, there shall be ~~a calculation of the~~ an evaluation of the physical impairment caused by the industrial injury, ~~account shall be taken of the nature of the physical injury or disfigurement, the occupation of the injured employee, and his or her age at the time of the injury, consideration being~~ and consideration shall be given to an employee's diminished future earning capacity, the occupation of the injured employee, and his or her age at the time of the injury.

(b) (1) For purposes of this section, the ~~nature of the physical injury or disfigurement shall incorporate~~ calculation of the evaluation of the physical impairment caused by the industrial injury shall mean the descriptions and measurements of physical impairments and the corresponding percentages of impairments published in the American Medical Association (AMA) Guides to the Evaluation of Permanent Impairment (5th Edition). ~~The literal-express methodology of the calculation of impairments found in the Guides shall~~ always be applied. The examples applying the methodologies found within the Guides shall be the only source used to address ambiguities.

(2) For purposes of this section, an employee's diminished future earning capacity shall be a numeric formula determined by the administrative director based on empirical data and findings that aggregate the average percentage of long-term loss of income resulting from each type of injury for similarly situated employees. The administrative director shall formulate the adjusted rating schedule based on empirical data and findings from the Evaluation of California's Permanent Disability Rating Schedule, Interim Report (December 2003), prepared by the RAND Institute for Civil Justice, and upon data from additional empirical studies. "Similarly situated employees" shall mean employees with impairments to the same body part or organ system. In no case shall an employee's diminished future earning capacity be determined by an individual analysis of the employee's past or projected earnings, whether with or without comparison to other employees.

(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. The schedule for rating permanent disabilities adopted by the administrative director pursuant to this section, including any amendments to that 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. The schedule may be controverted only by empirical evidence establishing that the numeric values in any factor~~ are outdated ~~is erroneous or does not apply to the type of injury for which permanent disability is claimed.~~

(d) The administrative director shall amend the schedule for the determination of the percentage of permanent disability in accordance with this section not later than January 1, 2015 and thereafter at least once

every five years. If the administrative director determines that the schedule does not apply to a type of injury that causes permanent disability, the administrative director shall amend the schedule to establish a method of evaluation of the disability caused by that type of injury. The schedule shall promote consistency, uniformity, and objectivity. The schedule and any amendment thereto or revision thereof shall apply prospectively and shall apply to and govern only those permanent disabilities that result from compensable injuries received or occurring on and after the effective date of the adoption of the schedule, amendment or revision, as the fact may be. For compensable claims arising before January 1, 2005, the schedule as revised pursuant to changes made in legislation enacted during the 2003-04 Regular and Extraordinary Sessions shall apply to the determination of permanent disabilities when there has been either no comprehensive medical-legal report or no report by a treating physician indicating the existence of permanent disability, or when the employer is not required to provide the notice required by Section 4061 to the injured worker.

~~(e) On or before January 1, 2005, the administrative director shall adopt regulations to implement the changes made to this section by the act that added this subdivision.~~

| (e) Amendments to ~~this~~ subdivisions (a), (b) and (c) made by the Act adding this subdivision are declarative of existing law, except for the date of the next required revision of the schedule. It is the intent of the Legislature in enacting these amendments to abrogate the February 3, 2009 holdings of the appeals board in Mario Almaraz v. Environmental Recovery Services (aka Enviroserve) and State Compensation Insurance Fund, Case No. ADJ1078163, Joyce Guzman v. Milpitas Unified School District, Permissibly Self-Insured and Keenan & Associates, Case No. ADJ3341185, and Wanda Ogilvie v. City and County of San Francisco, Permissibly Self-Insured, Case No. ADJ1177048.