



TOLMAN & WIKER
INSURANCE SERVICES, LLC
INNOVATIVE RISK ADVICE SINCE 1923™

BAKERSFIELD | LOS ANGELES | SALINAS | SANTA MARIA | VENTURA

Interesting but Quiet Year for California Lawmakers on Workers' Comp

By [Don Jergler](#) | October 15, 2013

After the behemoth workers' compensation reform law passed in 2012, state lawmakers this year enacted only a handful of measures that may affect or relate to workers' compensation.

Bills signed by Gov. Jerry Brown included laws on pharmaceutical compounding, preventing out-of-state athletes from filling for workers' comp, funding for the state's prescription drug monitoring program. There were 17 total, according to a list compiled by the California Workers' Compensation Institute (CWCI).

But overall, it was a quiet year in terms of workers' comp laws, as expected.

"For a year or two after a major reform this is typical," said Mark Sektnan, president of the Association of California Insurance Companies. "It's a little bit quieter."

Workers' comp reforms from last year's Senate Bill 863 are continuing to take effect as various aspects of the new law are implemented in stages, and the jury is still out on those reforms that have already been implemented.

Those changes included an immediate boost to payments for injured workers, the implementation of lien filing fees and the creation of new medical and bill review processes.

"Given the scope and scale of Senate Bill 863, everybody has their hands full in just trying to get that bill implemented in the right way," said Jerry Azevedo, a spokesman for the Workers' Compensation Action Network, a group that represents the interests of employers.





TOLMAN & WIKER

INSURANCE SERVICES, LLC

INNOVATIVE RISK ADVICE SINCE 1923™

BAKERSFIELD | LOS ANGELES | SALINAS | SANTA MARIA | VENTURA

Gov. Jerry Brown closed a legal loophole that has let athletes collect workers' comp in California. It was of several workers' comp bills signed this year.

Azevedo noted SB 863 required more than a dozen pieces of regulatory action, much of which has yet to be rolled out.

Those new regulations, and the immediate effects of SB 863, along with dealing with the "bad actors" who work to try and take advantage of the system, have had everyone's hands full, he added.

"We're seeing a lot of the same cost pressures and some new gamesmanship in the system," Azevedo said. "There's really been a laser focus on trying to get those regulations correct so those cost savings do get realized."

Speaking at a recent workers' comp conference in Southern California, [Department of Industrial Relations Director Christine Baker](#) also referred to some gaming going on in the newly reformed system.

"I'm going to assume there's some gaming," she said during the the California Workers' Compensation & Risk Conference in Dana Point in early October. "There's a little bit of evidence of that going on right now."

Azevedo, who agreed with Sektnan that in terms of workers' comp legislation in California "oot was a pretty quiet year," said he agreed with much of the legislation he saw this year, but would have liked to see lawmakers go further on some things

Senate Bill 809, for example, assesses an annual fee on provider and dispenser licenses to fund the Controlled Substance Utilization Review and Evaluation System monitoring program, and require the Medical Board to distribute materials on assessing a patient's risk of abusing or diverting controlled substances and information about CURES to medical providers.

However, Azevedo echoed a complaint by many that more needs to be done to be sure CURES is actually used by prescribing physicians.

"What they need is a greater obligation to actually use the system," he said.

Sektnan said the CURES bill "puts us in the right direction to being able to address the problem of over-prescription of opioids."

Drawing on Centers for Disease Control statistics, Sektnan said more people die from prescription overdoses than combined from overdoses of heroin and cocaine. He added that a workers' return to work from injuries is more than three times longer than an injured worker who is not prescribed opioids.



TOLMAN & WIKER

INSURANCE SERVICES, LLC

INNOVATIVE RISK ADVICE SINCE 1923™

BAKERSFIELD | LOS ANGELES | SALINAS | SANTA MARIA | VENTURA

One of the bills Sektan was most please with seeing passed and signed was Assembly Bill 1309, which restricts workers' comp claims by out-of-state professional athletes.

"It's a big issue," he said.

Also high on ACIC's list was Senate Bill 251, which the group sponsored. The new law enables insurers, including workers' comp carriers, to electronically transmit renewal and coverage offers, and notices of conditional renewal.

"I think it will make everything more efficient," Sektan said.

As for the next session or the next, both workers' comp wonks expect to hear a growing cacophony from the chorus of workers' comp stakeholders as the positive and negative impacts of SB 863 begin to be felt.

Azevedo believes workers' comp legislation will ramp up as lawmakers begin hearing calls for fixing, enhancing or watering down SB 863, and that more noise my come from the judicial system.

"As with previous reforms, judicial enforcement will start to heat up as certain aspects of SB 863 start to see certain challenges," he said.

Sektan advised watching closely what the Workers' Compensation Insurance Rating Bureau does with their next couple of rate increases – WCRIB's governing committee suggested **a hike in California's advisory workers' compensation rates of nearly 7 percent.**

More suggested hikes from WCRIB could indicate more cost control measures are needed down the line, he said.

Looking back at the past year, however, Sektan gave the Legislature and the governor good marks.

"I think the Legislature did some good things," he said. "I'd say on workers' comp, we're pretty happy. He signed some of the bills he should have signed and he vetoed some of the bills he should have vetoed."

Azevedo saw it as a "mixed bag," and said it was a typically quiet year for workers' comp following a reform year – in the Legislature, but it was anything but quiet for those implementing and dealing with the new reforms that began to be rolled out in 2013.

"It was quiet legislatively certainly," Azevedo said. "It was very busy and very noisy in the administrative environment."

The bills enact new laws, change, add to or delete parts of California code. Following is a list detailing what those bills do, which was compiled by CWCI:



TOLMAN & WIKER INSURANCE SERVICES, LLC

INNOVATIVE RISK ADVICE SINCE 1923™

BAKERSFIELD | LOS ANGELES | SALINAS | SANTA MARIA | VENTURA

- **Prevailing Wages for Local Public Works (SB 7, Steinberg):** Prohibits charter cities that allow contractors to pay less than prevailing wages on public works contract from receiving or using state funding or financial assistance for construction projects.
- **Pharmacy Billing (SB 146, Lara):** Eliminates the requirement that copies of prescriptions be sent with requests for payment unless the provider entered into a written agreement to do so. Also enables any entity that was denied payment of a pharmacy bill submitted from Jan. 1 to March 31, 2014 to resubmit the bill if payment was denied for failure to include a copy of the prescription. It allows payers to request copies of prescriptions for a review of records of prescriptions dispensed by a pharmacy.
- **Electronic Transmittal of Policy Info (SB 251, Calderon):** Allows insurers to electronically transmit offers of renewal, notices of conditional renewal and offers of coverage, and sets requirements for doing so.
- **Compounding Pharmacies (SB 294, Emmerson):** Prohibits pharmacies without a California Sterile Compounding Pharmacy License from compounding or dispensing sterile drug products for injection, ocular administration or inhalation, and requires out-of-state pharmacies compounding these products for shipping to California to have such a license as well. Also requires the pharmacies to allow annual inspections and removes the option for accreditation from outside agencies.
- **SB 863 Technical Corrections (SB 375, Senate Labor Committee):** Corrects erroneous cross-references included in Senate Bill 863 – including changing a reference to “administrative hearing” interpreters to “medical examination” interpreters – and making technical, clarifying, and conforming changes with respect to the provisions.
- **OSHA Standards – Meal/Rest/Recovery Periods (SB 435 Padilla):** Applies Cal/OSHA’s heat illness prevention standard and other Cal/OSHA regulations to laws covering meal breaks and rest and recovery periods.
- **Paid Leave of Absence for San Diego Lifeguards (SB 527, Block):** Enables full-time, year-round lifeguards employed by the City of San Diego to be eligible for “4850 leave” following a work injury.
- **Overprescribing Investigations (SB 670, Steinberg):** Bolsters state medical board investigations of doctors suspected of overprescribing. Enables the board during investigations involving the death of a patient to inspect and copy the patient’s medical records by providing a written request declaring that after reasonable efforts, it is unable to locate or contact the patient’s beneficiary or representative. The bill also expands the definition of unprofessional conduct to include a physician’s repeated failure without good cause to be interviewed by investigators and allows an



TOLMAN & WIKER

INSURANCE SERVICES, LLC

INNOVATIVE RISK ADVICE SINCE 1923™

BAKERSFIELD | LOS ANGELES | SALINAS | SANTA MARIA | VENTURA

administrative law judge to issue an interim order limiting the physician's authority to prescribe, furnish, administer or dispense controlled substances.

- **CURES (SB 809, DeSaulnier):** Assesses an annual \$6 fee on provider and dispenser licenses to fund the Controlled Substance Utilization Review and Evaluation System (CURES) monitoring program. The changes also require the state Medical Board to develop and distribute to physicians and acute care hospitals materials on assessing a patient's risk of abusing or diverting controlled substances and information about CURES, and require the state to streamline the application and approval process for medical providers and pharmacists to access CURES.
- **Increase in State Minimum Wage (AB 10, Alejo):** Increases the minimum wage for all industries in California from \$8 to \$9 per hour effective July 1, 2014, and from \$9 to \$10 per hour on Jan. 1, 2016.
- **Domestic Worker Labor Standards (AB 241, Ammiano):** Establishes a Domestic Worker Bill of Rights, which requires that in-home personal caregivers and certain other domestic workers be paid a minimum wage and that in-home caregivers be paid overtime pay for work beyond 9 hours per day or 45 hours a week.
- **Workers' Compensation Death Benefits for Dependent Children (AB 607, Perea):** Enables a deceased employee's totally dependent children to receive workers' comp death benefits irrespective of whether the employee's surviving spouse is totally dependent.
- **Emergency Medical Services (AB 633, Salas):** Prohibits employers from adopting policies that preclude employees from voluntarily offering life-saving medical help such as CPR in a medical emergency.
- **Occupational Safety Standards for Hazardous Drugs (AB 1202, Skinner):** Requires the Occupational Safety and Health Standards Board to establish safety and health standards for health care facilities with employees who work with or near antineoplastic drugs used in chemotherapy, which may cause rashes, infertility, miscarriages, and birth defects, and have been linked to a variety of cancers. The standards must be consistent with, but not exceed, National Institute for Occupational Safety and Health recommendations.
- **Limits on Workers' Comp Claims by Professional Athletes (AB 1309, Perea):** Restricts cumulative trauma and occupational disease claims by professional athletes in five sports (baseball, basketball, football, ice hockey and soccer), especially those who played for out-of-state teams, under specified conditions. According to the bill's author, [the California Insurance Guarantee Association has paid nearly \\$42 million in claims](#) to professional athletes since 2002. An average of 34 new claims are being filed each month.



TOLMAN & WIKER
INSURANCE SERVICES, LLC
INNOVATIVE RISK ADVICE SINCE 1923™

BAKERSFIELD | LOS ANGELES | SALINAS | SANTA MARIA | VENTURA

- **Interpreters (AB 1376, Hernandez):** Delays DWC's workers' comp qualified medical interpreter certification regulations, required by SB 863, from taking effect until March 1, 2014.
- **State Compensation Insurance Fund Executive Appointments (AB 1394, Assembly Ins. Committee):** Allows the State Fund Board of Directors to appoint a chief medical officer, a chief actuarial officer, a chief claims operations officer and a chief of internal affairs.

Source: <http://www.insurancejournal.com/news/west/2013/10/15/308092.htm>