



S.1024-B (Ramos)

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BILL S.1024-B (Ramos)
SUBJECT Eligibility for Classification as Permanent Total Disability
DATE January 31, 2022
OPPOSE

The Business Council is deeply concerned with several pending legislative proposals that would add significantly expand the state’s workers’ compensation system without consideration of their full impact on the system or employers. In 2007 and again in 2017, when the Legislature acted to amend the workers’ compensation system, it enacted reforms that were fair and balanced and offered a modest savings to employers while expanding access to benefits to the most injured workers. Several current bills ignore the state’s previous approach and would act to not only reverse those modest savings but once again send the workers’ compensation system down the path of spiraling cost increases year after year.

Accordingly, The Business Council opposes S.1024-B (Ramos). This bill proposes to base workers’ compensation eligibility on eligibility determinations for federal social security disability benefits (SSDI). SSDI and the Workers’ Compensation system are two distinct benefit programs with distinct and separate funding sources, eligibility requirements, and administrative bodies. To propose that eligibility to receive one benefit would automatically make one eligible for another benefit removes the oversight responsibility of the Workers’ Compensation Board, adding dramatically to the cost of the NYS Workers’ Compensation system – a system funded not by taxpayers (as is SSDI), but by employers.

The legislation would tilt the state's comp system toward awarding permanent total, rather than permanent partial, disability awards by establishing a legal presumption that any compensation claimant that has been approved for Social Security Disability (SSDI) benefits has a permanent total disability under New York's Workers' Compensation Law.

While both SSDI and workers' compensation have similar definitions of total disability, there is little relevance between findings of social security disability and permanent total disability under workers' compensation law.

Data published by the Department of Financial Services and Workers' Compensation Board shows that while about 25 percent of workers' compensation claimants receive SSDI benefits at some point during their disability, only about 1

percent of comp claimants who do receive SSDI benefits are classified as permanent total disability under workers' compensation.

In a drastic change to current state law, this bill would give a presumption of permanent total disability to the other 99 percent of comp claimants who receive any SSDI benefits, and who in fact do not qualify for permanent total disability benefits under New York's workers' comp law.

The logic behind this proposal is severely flawed. There are major differences between SSDI and workers' compensation that make this approach both inappropriate and unsupportable.

For example:

- SSDI determinations are based on disabilities from any cause, not just workplace injuries, as is the case under workers' compensation. This bill could lead to presumptive comp determination based on non-workplace injuries.
- SSDI determinations can be made within five months of an injury; workers' compensation classifications are made after a claimant reaches maximum medical improvement. (Note that workers' comp claimants are eligible for both medical care and temporary total disability benefits prior to MMI and classification).
- The workers' compensation law already provides for a process to transition claimants from temporary to permanent classifications.
- SSDI determinations, upon which this presumption of permanent workplace-related disability is based, are made in a non-adversarial setting, and provide no opportunity for input by the claimant's employer or its carrier.

This legislation would severely disrupt any attempt to control the costs of New York's comp system by undercutting the most significant program reform included in the 2007 reforms. It would ultimately result in massive program cost increases and an entirely uncompetitive state workers' compensation system.

The entire 2007 reform package, the so-called cost-neutral package agreed upon by the Legislature, was tied to the permanent partial disability landscape that did not include permanent total disability based on SSDI

Employers already burdened by the most expensive workers' compensation system in the country are no position to roll back these reforms and incur the extraordinary increase in costs this bill would produce. Especially as these businesses try to recover from the greatest economic upheaval in the past 90 years.

For these reasons, The Business Council, on behalf of its more than 3,400 members, opposes this bill.