

FOR IMMEDIATE RELEASE:

Wednesday, January 19, 2005

Contact: Steve Hopcraft 916/457-5546;

steve@hopcraft.com

**INJURED WORKERS, ATTORNEYS CHALLENGE
GOVERNOR SCHWARZENEGGER'S
PROPOSAL CUTTING INJURED WORKERS' DISABILITY
COMPENSATION BY TWO-THIRDS**

SACRAMENTO – VotersInjuredatWork.org and attorneys for injured workers filed a lawsuit today challenging the governor's authority to chop injured workers' permanent disability compensation by up to two-thirds. A complaint seeking to block drastic reductions in the already-meager compensation injured workers receive was filed in Sacramento Superior Court. The Complaint charges that the Schwarzenegger Administration's Permanent Disability Ratings Schedule (PDRS) "fails in every critical respect" to comply with the law (SB 899), and will have "dire consequences" for Californians injured on the job. The lawsuit charges that the Administration failed to consider whether the new schedule would provide adequate benefit levels, as guaranteed in the California Constitution. The suit seeks to have the schedule set aside or declared ineffective.

A UC Davis professor's scientific study of the impacts on injured workers of Governor Schwarzenegger's permanent disability compensation schedule was released in December. Conducted by University of California at Davis Professor Dr. J. Paul Leigh, the study of 218 back, shoulder, wrist and knee injuries found that under the governor's disability schedule permanent disability ratings would reduce injured workers' disability ratings by 28%. Workers injured on the job would receive just one-third of the compensation they currently receive.

Mark Hayes, president of VotersInjuredatWork.org, an injured workers' advocacy group, said, "The consequences for injured workers are dire. The ratings fail to replace workers' pre-injury earnings. If these drastic reductions take effect, more Californians will lose their cars, their homes and their good credit. Injured workers will end up on welfare, because there's no way to live if present disability compensation – already too low – is reduced."

Injured workers' advocates and California Applicants' Attorneys Association President David Schwartz said that the Schwarzenegger Administration's "permanent disability ratings schedule is not based on empirical data or studies, and fails to measure diminished future earnings capacity,

as required by the law.” Schwartz said that Schwarzenegger’s Administrative Director, Andrea Hoch, “is the most anti-worker bureaucrat to come along in the past 30 years. Her proposed regulations fly in the face of the Legislature’s intent. There is no legal basis for what she has done, which she calls a ‘policy decision.’ Her own Commission on Health, Safety and Workers Compensation has said her regulations reduce permanent disability compensation by 50%. Nowhere does the law give her authority to make a ‘policy decision’ that severely reduces permanent disability benefits to injured workers. The Administration has refused to follow the statute and the Legislature’s intent.”

Director Hoch testified before the State Senate Committee on Industrial Relations in December that she did not even know how the new PDRS would change overall benefit levels.

Schwartz said that the new cuts set permanent disability levels “lower than they were in 1983. Injured workers will lose up to two-thirds of the meager compensation they get now.” A study by the RAND Institute for Civil Justice (RAND) found that “adequacy” requires replacement of two-thirds of a worker’s pre-injury earnings.

“According to a RAND, California workers received inadequate permanent disability benefits under the pre-SB 899 PDRS because the benefits replaced so little of workers' lost pre-injury earnings. Director Hoch's new regulations take these already-inadequate benefits and slash them deeply, by as much as 50-70 percent below pre-SB 899 levels. These devastating reductions are neither permitted by California's constitutional guarantee of ‘adequate’ benefits, nor were they intended by the Legislature,” said attorney James Harrison, who drafted the Complaint. “California’s employers pay among the highest workers’ compensation insurance rates in the nation, yet injured workers in California receive benefits that are well below other states when measured as a proportion of lost earnings.”

Here are some examples of injured workers who would be harmed by the governor’s proposal:

A carpenter with an injury to both shoulders who cannot lift his arms, or work, above the shoulder, would be rated 46% disabled and receive \$51,550 presently. That same injured carpenter would be rated just 18% disabled and receive only \$16,050 under the Administration’s plan. ***In 1983, this same injured worker would have received \$28,000 (equal to \$52,532 in 2004 dollars), significantly more than under the Administration’s proposal.***

A warehouseman with a leg injury that requires amputation just below the knee, and gets an artificial leg, would receive \$62,000 under the present schedule. Under the governor’s proposal, he would receive just \$36,000. ***(In 1983, this same injured worker would have received \$34,000, which is worth \$64,150 in 2004 dollars. [Consumer Price Index Conversion Factor])***

“The proposed new rating schedule will result in a two-thirds reduction, on average, in permanent disability benefits for injured workers,” said Schwartz. “These new ratings will not provide fair or adequate benefits for injured workers.”

Dr. J. Paul Leigh, a Professor of Health Economics, Center for Health Services research in Primary Care at the UC Davis School of Medicine,. His study examined 218 cases of specific injured workers from across the state with a range of the most frequent and costly work injuries. A doctor who had been agreed upon by the insurance carrier had rated each case under the present disability schedule. The cases were analyzed by independent physicians with expertise applying the American Medical Association Guides. Their findings were then rated by one of California’s most expert disability raters. The average difference between the ratings under the current system and the governor’s proposed schedule was 28 percentage points.

The horrendous impact the governor’s proposed cuts would have on injured workers was made clear by the case of Domenico Argentino, 55, who worked for 28 years at NASSCO’s San Diego shipyard worker, building scaffolding for ship repairs. Over his many years of work at the shipyard, Mr. Argentino sustained injuries to his left lower leg, both knees, and back. He suffers from constant low back pain, and cannot bend without pain. Under the present disability rating schedule, Mr. Argentino is rated as 30% disabled. Mr. Argentino is unable to return to his job, which involved lifting, carrying, climbing, hanging, squatting, twisting and pivoting. Under the governor’s proposed schedule, Mr. Argentino would be rated just 4% disabled.

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