

# CALIFORNIA ADVOCATES, INC.



CONFIDENTIAL

September 19, 2011

The Honorable Edmund G. Brown, Jr.  
Governor, State of California  
State Capitol  
Sacramento, California 95814

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**SUBJECT: AB 947 (SOLORIO)--WORKERS' COMPENSATION: TEMPORARY  
DISABILITY BENEFITS: EXPANSION – REQUEST FOR VETO**

The California Association of Joint Powers Authorities (CAJPA) respectfully requests a **VETO** of **AB 947 (Solorio)**, which is currently upon your desk awaiting action, that unreasonably seeks to increase the duration of temporary disability benefits from 104 weeks to 240 weeks for injured workers where “surgery or recovery from surgery” occurs after 104 weeks of benefits have already been paid.

CAJPA is concerned that **AB 947** provisions unnecessarily erode the 104-week TD benefit cap. Moreover, **AB 947** does not define the term “surgery” or what it means to “recover from surgery”. CAJPA believes that any exceptions to the 104-week limit should be evidence-based and clearly defined. Today, the maximum TD benefit is nearly \$52,000 annually at the current benefit level, which is scheduled to increase again in 2012. **AB 947** would more than double the period of time TD benefits could be extended to 240 weeks.

Before proceeding down the path towards extending temporary disability benefits, CAJPA strongly urges that a study be undertaken to determine if there is a real problem, and if found, address the problem based on the facts. Unfortunately, it appears as though the proponents of **AB 947** assume the problem originates with insurers and self-insured employer claim handling. CAJPA believes the facts need to be ascertained before taking such a costly action as proposed in **AB 947**. It is important to note that language in **AB 947** fails to address other causes of delay that may be caused by the parties, including a failure to adhere to MPN or utilization review treatment regulations.

To provide a snapshot of the impact of **AB 947** on public agencies, consider this real example from a small Bay Area municipality with a case of chronic pain. In this case, a public safety officer is injured in July of 2009 and has back surgery in November 2009. The officer exhausted her one year of Labor Code 4850 pay (full pay for one year) and then went on workers' compensation temporary disability (TD), a benefit to which she is entitled for an additional two years.

At one year post-surgery, the city started asking the officer for a decision regarding return to work. The city had been without the officer for over one year, but by law, is unable to fill the position. The employee continued to tell her doctor that she wanted to go back to full duty. The doctor however would not make a decision. Meanwhile, the officer would report improvement in her condition and then report flare ups of her pain that kept her on TD. The employee also missed important doctor appointments needed to determine whether return to work was possible. All of this prolonged her treatment plan and the decision about return to full duty.

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When the city approached the officer's attorney about possible retirement, the officer told the city, quite bluntly, that the officer was "not interested" in a disability retirement because the officer was making more money on TD than she would with an industrial disability retirement, fully intending to exhaust these benefits. The officer recently agreed to retire in June 2011, two years after her injury, only because the doctor finally indicated that her condition was permanent and stationary. By the end of this case, the city paid out \$120,000 in disability (LC 4850 pay and TD combined).

Given that the TD rate is now over \$1000/week as of 2011, public entities believe they will see more cases where TD is more profitable than retiring. If TD is extended in the manner proposed by **AB 947**, CAJPA is concerned that employees will be motivated to remain disabled, and it is not difficult to convince a doctor to extend the treatment plans and disability. CAJPA believes the system should be encouraging return to work, not enabling long-term disability.

CAJPA is an organization of joint powers authorities established by a broad range of local government entities, including cities, counties, school districts, and other special districts. Many of these local government employers use the joint powers mechanism to manage their workers compensation, liability, property and other insurance and loss control-related obligations. The benefits to local governments include better local control over their risk exposures, and efficiencies that enable a greater portion of local government dollars to be devoted to important local programs.

For these reasons, CAJPA respectfully requests a **VETO** of **AB 947 (Solorio)** when it comes before you for action.

Sincerely,



Julianne Broyles  
On Behalf of California Association of Joint Powers Authorities