



Workers' Compensation

Riverside County California

HR.BLR.com: Business & Legal Reports **Workers' Comp Victory for Employers**

In an important new ruling, the California Supreme Court has saved employers and their insurers millions in workers' compensation benefits. The case, *Brodie v. Workers' Compensation Appeals Board*, Calif. Supreme Court, No. S147030 (2007), considered the proper formula for determining the workers' compensation benefits for a permanent disability where a previous injury—industrial or not—contributed to the permanent disability. The process of weeding out prior or nonindustrial causes of the disability is known as "apportionment."

As background, under California workers' compensation law, employers are only required to compensate injured workers for the portion of a permanent disability that is attributable to the current work-related injury, but not for any portion caused by other injuries. But determining the percentage of employer liability hasn't been so easy. That's because benefits rise exponentially depending on the disability rating. So, for example, while an employee with a 10 percent disability would receive 3 weeks of benefits for each percentage point of disability (30.25 weeks of benefits), an employee with a 90 percent disability would receive 6 weeks of benefits for each percent of disability (541.25 weeks).

Prior to the workers' compensation reforms of 2004, courts adopted "Formula A" to determine an employer's liability: Subtract the old rating from the new rating, and then consult the benefits table for the award. Following the reforms, however, employees argued that new language in the workers' compensation statutes required a different formula: Subtract the benefits award that would apply to the previous disability from the award for the resulting disability.

These two approaches yield very different results. Take, for example, an employee who is already 10 percent disabled but winds up 90 percent disabled after the new injury. Under Formula A, the 10 percent would be subtracted from the 90 percent to arrive at an 80 percent disability rating. The benefits table specifies 461.25 weeks for an 80 percent disability. On the other hand, under the employees' preferred formula, the 30.25 weeks of benefits specified for a 10 percent disability would be subtracted from the 541.25 weeks specified for a 90 percent disability, for 511 weeks of benefits.

The California Supreme Court has now ruled that Formula A remains the correct way to apportion liability and determine benefits when there are multiple causes of disability. The Court rejected the approach suggested by the employee-plaintiffs in this case, on the grounds that an employer should not be required to pay more for a disability than it otherwise would simply because of a preexisting disability. The Court noted that the differences between the two approaches could be huge. For example, one of the employees, firefighter Stan Brodie, was awarded about \$20,000 under Formula A, while the other formula would have netted him \$114,000.

California State Websites

[California Commission on Health and Safety and Workers' Compensation](#)

[Division of Workers' Compensation](#)

[California Department of Industrial Relations](#)

[Workers' Compensation Information](#)

[California Department of Insurance](#)

[California Employment Development Department](#)

[California Unemployment Insurance Appeals Board](#)

The California Unemployment Insurance Appeals Board (CUIAB) conducts hearings of cases concerning claims for unemployment and disability benefits.

[Labor Occupational Health Program](#)

University of California, Berkeley Projects: workers' compensation

Additional Websites

[California Chamber of Commerce](#)

[California Applicants' Attorneys Association](#)

"Serving California Injured Workers since 1966"

[California Coalition on Workers' Compensation](#)

A statewide coalition of public and private employers who advocate for the repair of California's workers' compensation system.

[California Workers' Compensation Institute](#)

Incorporated in 1964 as a private, nonprofit organization of insurers and self-insured employers conducting and communication research and analysis to improve the operation of the California workers' compensation system.

[Continuing Education of the Bar](#)

Internet Resources: Labor and Employment

[John Burton's Workers' Compensation Resources](#)

Contains links to state legislation and *Workers' Compensation Policy Review*.

[Rand Corporation, Institute for Civil Justice](#)

Workers' compensation links.

[Upjohn Institute for Employment Research](#)

Disability and workers' compensation "Research Hub"

[Workers' Compensation Action Network](#)

Group of employers and employer groups established to inform Californians "about exorbitant workers' comp costs" and to provide information and tools for constructive solutions.

[Workers' Compensation Insurance Rating Bureau of California](#)

"Has been the premier provider of sound statistical data for insurers, agents and brokers, regulators, employers and others within the insurance community and has served as the designated statistical agent of the insurance commissioner for over half a century."