

WORKMEN'S COMPENSATION AND VOCATIONAL REHABILITATION IN CALIFORNIA

Everyone but an idiot knows that the lower classes must be kept poor or they will never be industrious; I do not mean, that the poor of England are to be kept like the poor of *France*, but, the state of the country considered, they must (like all mankind) be in poverty or they will not work.¹

The State of California, industry, and insurance carriers financially preclude the majority of permanently disabled workmen from rehabilitating themselves. Ironically, unrehabilitated workmen are supported as public charges by both the state and federal taxpayer. This paradox exists notwithstanding the fact that the economic costs incurred by the state for rehabilitation services are reimbursed by *rehabilitants* within a three year period.

Unrealistic and inadequate laws, perennially tight budgets, ignorance and the system-created reluctance of the working man to accept rehabilitation services are the chief factors preventing these workmen from reentering the labor force. This article critically explores the California law of workmen's compensation as it relates to vocational rehabilitation and proffers the recommended legislation which would remedy this sad state of affairs.

I.

A SURVEY

The scheme of California's workmen's compensation system is predicated upon the police power of the state to provide for the general security and welfare of its working populace.² The legislative intent is to relieve the employee and his dependents of all expenses incident to an injury or a death of an employee incurred

1. A. YOUNG, *THE FARMER'S TOUR THROUGH THE EAST OF ENGLAND* 361 (1771), cited in E. FURNESS, *THE POSITION OF THE LABORER IN A SYSTEM OF NATIONALISM* 118 (1930). The latter book, particularly chapter two, contains a readable account of the laborer in Mercantilist thought.

2. CAL. CONST. Art. XX, § 21 (1918); CAL. LABOR CODE § 3201.

while engaged in the course and scope of his employment, and without regard to the fault of any party.³

In order to implement this "no-fault" system, the employer is held strictly liable for any injury to his employee while the employee is engaged in the course and scope of employment.⁴

The exclusive remedy of the employee is the coverage afforded by workmen's compensation.⁵ Therefore, the employee may not properly institute a civil action for personal injury against his employer for an injury proximately caused by the negligence of the employer.⁶ In consideration of the tort immunity granted the employer, the "three wicked sisters"⁷ reared by the common law, *viz.*, the fellow-servant doctrine, contributory negligence and assumption of risk, are not to be considered as defenses⁸ when determining the relief to be provided the injured employee, his widow or widower, and his dependents.

To be entitled to receive workmen's compensation benefits, the employee should notify⁹ the employer¹⁰ (or a person with similar

3. CAL.CONST. Art. XX, § 21 (1918); 2 W. HANNA, CALIFORNIA LAW OF EMPLOYEE INJURIES AND WORKMEN'S COMPENSATION 3-3 (2d ed. 1970) [hereinafter cited as HANNA]; S. HERLICK, CALIFORNIA WORKMEN'S COMPENSATION LAW 17 (1970) [hereinafter cited as HERLICK].

4. CAL. LABOR CODE § 3600; *but see* State Comp. Ins. Fund v. Ind. Acc. Comm., 38 Cal. 2d 659, 242 P.2d 311 (1952); Mathews v. W.C.A.B., 17 Cal. App. 3d 1083, 95 Cal. Rptr. 477 (1971); *see* CAL. LABOR CODE § 3706, *as amended*, Cal. Stats. 1971, ch. 1598, § 1 (operative March 4, 1972); CAL. LABOR CODE § 3715, *as amended*, Cal. Stats. 1971, ch. 1598, §§ 2, 3 (operative March 4, 1972); Cal. Stats. 1971, ch. 1598, § 4, *adding* CAL. LABOR CODE § 3716 (operative March 4, 1972); Cal. Stats. 1971, ch. 1598, §§ 2-4, *amending* CAL. LABOR CODE § 3715 *and adding* CAL. LABOR CODE § 3716; *see also* Cal. Stats. 1971, ch. 1598, §§ 5-16, *adding* CAL. LABOR CODE §§ 3717-27.

5. This rule of law is subject to the exception of third party claims. CAL. LABOR CODE §§ 3850 *et seq.*; *but see* CAL. LABOR CODE § 3601, *as amended*, Cal. Stats. 1971, ch. 1751, § 1 (operative March 4, 1972). The amendment to § 3601 eliminates the right of an injured employee to bring a third party civil action against a fellow employee except in the instances where the injury to, or the death of, the employee is due to an intentional or unprovoked act of aggression or intoxication of the fellow employee.

6. CAL. LABOR CODE § 3601, *as amended*, Cal. Stats. 1971, ch. 1751, § 1 (operative March 4, 1972).

7. THE LABOR LAW GROUP, 2 SOCIAL LEGISLATION 173 (1971).

8. CAL. LABOR CODE §§ 2801, 3600.

9. CAL. LABOR CODE § 5400.

10. *Id.*

authority¹¹) of his injury, verbally or in writing, within 30 days of the occurrence of the injury.¹² The employee's notice should specify the time and place of injury as well as the nature of the injury.¹³ If the employee fails to give such notification within 30 days, and the employer is consequently prejudiced by the employee's delay, the employee will be barred from receiving compensation benefits.¹⁴

Upon notification of the employee's injury, the employer must provide for any necessary medical care.¹⁵ If the employer does not provide such care, the employer will be held liable for all reasonable expenses incurred by the employee in the latter's effort to procure necessary medical treatment.¹⁶

The employer (or its insurance carrier) not only has the obligation to provide for medical treatment but also enjoys the diametric right to control¹⁷ the medical treatment of the injured employee.¹⁸ The purpose underlying the employer's right to control medical treatment is to effect immediate treatment of the employee at minimum expense to the employer.¹⁹ The employer may irrevocably forfeit his right of control if he neglects or unreasonably refuses to provide medical treatment.²⁰

Generally, employers post a list of physicians from which the em-

11. CAL. LABOR CODE § 5402.

12. CAL. LABOR CODE §§ 5400, 5402; HERLICK, *supra* note 3, at 71.

13. CAL. LABOR CODE §§ 5401, 5500.5.

14. CAL. LABOR CODE § 5403.

15. CAL. LABOR CODE § 4600, *as amended*, Cal. Stats. 1971, ch. 1404, § 1 (operative March 4, 1972).

16. *Id.*; *Granado v. W.C.A.B.*, 69 Cal. 2d 399, 445 P.2d 294, 71 Cal. Rptr. 678 (1968).

17. *Control* means the right of the employer and/or the insurance carrier to select the physician(s) which will render the appropriate medical treatment. One of the benefits of medical control, for example, is that employer-selected physicians are paid according to an established schedule of fees. These fees are set by the Workmen's Compensation Appeals Board and are "not in harmony with customary fees for individual procedures." REPORT OF THE WORKMEN'S COMPENSATION STUDY COMMISSION OF THE STATE OF CALIFORNIA 100 (1965) [hereinafter referred to as 1965 REPORT].

18. CAL. LABOR CODE § 4600, *as amended*, Cal. Stats. 1971, ch. 1404, § 1 (operative March 4, 1972); CAL. LABOR CODE § 4601, *as amended*, Cal. Stats. 1971, ch. 1755, § 1 (operative March 4, 1972); HERLICK, *supra* note 3, at 77; *but see Gallant v. W.C.A.B.*, 36 Cal. Comp. Cases 492 (1971).

19. *Zeeb v. W.C.A.B.*, 67 Cal. 2d 496, 432 P.2d 361, 62 Cal. Rptr. 765 (1967); *Gallegos v. W.C.A.B.*, 273 Cal. App. 2d 459, 78 Cal. Rptr. 157 (1969).

20. *Zeeb v. W.C.A.B.*, 67 Cal. 2d 496, 432 P.2d 361, 62 Cal. Rptr. 753 (1967); *McCoy v. I.A.C.*, 64 Cal. 2d 82, 410 P.2d 362, 48 Cal. Rptr. 858 (1966).

ployee must select to obtain the appropriate treatment.²¹ The employee must abide by the choice of the employer by initially seeking treatment from the employer-selected physician.²² Otherwise, the employee may risk the forfeiture of his rights to future compensation.²³ Of course, the employee may always contact his own physician but only at his own expense.²⁴ If the injury is sufficiently "serious," however, the employee may contact his own physician and retain him as his consultant at the employer's expense.²⁵ Further, if the employee desires to change his previously employer-selected physician(s), the employer must provide a list of five physicians or four physicians and one chiropractor "competent to provide the form of therapy, treatment, or healing practice" from which the employee may select in attempting physical restoration.²⁶ The employee may only request a change of physicians once, and the employer must respond within 12 days or be deemed to have forfeited his right of medical control.²⁷

The employer is required to pay for 100% of all expenses incurred for medical treatment and care reasonably necessary to restore the injured employee, to the greatest extent feasible, to his former condition.²⁸ The employer's liability includes the costs of medical, hospital and surgical treatment; the costs of medicine, supplies, and services of a physical therapist;²⁹ and the costs of appliances either damaged or necessitated by the injury, *e.g.*, hearing aids,³⁰ glasses, crutches, etc.

The employee is entitled to one day of temporary disability payment "for each day wages are lost in submitting to an examination"

21. CAL. LABOR CODE § 3713.

22. CAL. LABOR CODE §§ 4053, 4054, 4056.

23. *Id.*

24. CAL. LABOR CODE §§ 4052, 4605.

25. CAL. LABOR CODE § 4601, *as amended*, Cal. Stats. 1971, ch. 1755, § 1 (operative March 4, 1972).

26. *Id.*

27. *Id.*

28. CAL. LABOR CODE § 4600, *as amended*, Cal. Stats. 1971, ch. 1404, § 1 (operative March 4, 1972); CAL. LABOR CODE § 3209.5, *as amended*, Cal. Stats. 1971, ch. 1490, § 4 (operative March 4, 1972); HERLICK, *supra* note 3, at 71.

29. Cal. Stats. 1971, ch. 1490, § 4, *amending* CAL. LABOR CODE § 3209.5 (operative March 4, 1972).

30. Cal. Stats. 1971, ch. 1064, § 1, *amending* CAL. LABOR CODE § 3208 (operative March 4, 1972).

requested by the employer or the employer's insurance carrier.³¹ The employee is also entitled to receive, at the time he is notified that he is to submit to such an examination, an allowance of 12¢ per mile, plus bridge tolls, for the round trip from the employee's home to the place of examination.³² If the situation calls for the employee to be away from his home, he is also entitled to all expenses incurred by him for meals and lodging.³³

Unless the employee is hospitalized or is otherwise unable to work for more than 28 days³⁴ after the date of injury, he will not be entitled to receive any temporary disability compensation for the first seven days after the date of injury.³⁵ The averred purpose of the seven day waiting period is to reduce fraudulent claims and to induce the employee's early return to work.

To a degree, the amount of temporary disability payments that an employee will receive is dependent upon the amount he earns.³⁶ The California legislature has currently proclaimed that a worker may now receive a maximum temporary disability payment of \$105 per week.³⁷ The employee is entitled to receive at least \$35 per week.³⁸

When the employee's benefits accrue, temporary disability payment checks must be negotiable³⁹ upon demand as a one week advance on wages⁴⁰ and paid thereafter bi-weekly.⁴¹ Retroactive temporary disability payments for the first seven days after injury become due and owing only after the employee has been incapacitated for a minimum of 28 days or is hospitalized at any time.⁴²

31. CAL. LABOR CODE § 4600, *as amended*, Cal. Stats. 1971, ch. 1404, § 1 (operative March 4, 1972).

32. *Id.*

33. *Id.*

34. Cal. Stats. 1971, ch. 1750, § 4, *amending* CAL. LABOR CODE § 4650 (operative April 1, 1972).

35. *Id.*; 2 HANNA, *supra* note 3, at 13-11.

Oftentimes to the employee's dismay, the first payment does not arrive until 16 days after the date of injury or the report of the injury. D. ZELLMANN, *YOUR WORKMEN'S COMPENSATION BENEFITS* 6 (2d ed. 1972). This booklet is an informative pocket book written for the injured workman.

36. 2 HANNA, *supra* note 3, at 13-11.

37. See CAL. LABOR CODE § 4453, *as amended*, Cal. Stats. 1971, ch. 1750, § 1 (operative April 1, 1972).

38. Cal. Stats. 1972, ch. 1750, § 7, *amending* CAL. LABOR CODE § 4453 (operative April 1, 1972); HERLICK, *supra* note 3, at 96.

39. Cal. Stats. 1971, ch. 569, § 1, *amending* CAL. LABOR CODE § 4651 (operative March 4, 1972).

40. CAL. LABOR CODE § 4453, *as amended*, Cal. Stats. 1971, ch. 1750, § 7 (operative April 1, 1972).

41. CAL. LABOR CODE § 4651, *as amended*, Cal. Stats. 1971, ch. 569, § 1 (operative March 4, 1972).

42. Cal. Stats. 1971, ch. 1750, § 4, *amending* CAL. LABOR CODE § 4650 (operative April 1, 1972).

The employee may receive temporary disability payments for the same injury for a term not exceeding a five year period, such period commencing on the "effective" date of injury.⁴³ Temporary disability payments terminate either when the employee returns to work,⁴⁴ or when the employer-selected physician decides that the employee's disablement is of a permanent nature, *ie.*, incapable of improvement.⁴⁵

Once the physician determines that the injury is permanent, the Workmen's Compensation Appeals Board determines the percentage of disability. A permanent disability is that physical or mental impairment which continues to exist after all feasible medical treatment has been attempted to achieve maximum medical recovery from the effects of the injury.

The amount of benefits for permanent disability compensation is based upon the statutory average weekly earnings of the injured employee.⁴⁶ The maximum and minimum dollar amounts of permanent disability compensation are \$70 and \$10 per week,⁴⁷ respectively. The length of time or the number of weeks that permanent disability indemnity will be paid is dependent upon both the severity of injury and the corresponding rate of disability deemed permanent.⁴⁸ The legislature has extended permanent disability benefits

43. CAL. LABOR CODE §§ 4654-56.

44. 2 HANNA, *supra* note 3, at 13-2.

45. *Id.*

46. Cal. Stats. 1971, ch. 1750, § 7, *amending* CAL. LABOR CODE § 4453 (operative April 1, 1972).

47. *Id.*

48. Cal. Stats. 1971, ch. 1750, § 5, *amending* CAL. LABOR CODE § 4658 (operative April 1, 1972). CAL. LABOR CODE § 4658, *as amended*, provides:

4658. If the injury causes permanent disability, the percentage of disability to total disability shall be determined, and the disability payment computed and allowed, according to subdivision (a). However, in no event shall the disability payment allowed be less than the disability payment computed according to subdivision (b).

(a)

Column 1—Range of percentage of permanent disability incurred:

Under 10 _____	3
10-19.75 _____	4
20-29.75 _____	5
30-49.75 _____	6
50-69.75 _____	7
70 and over _____	8

Column 2—Number of weeks for which 65 percent of average weekly earnings allowed for each 1 percent of permanent disability within percentage range:

for a 100% permanent disability rating to 621.25 weeks from 400 weeks.⁴⁹ Payments for permanent disability should commence and are due and payable on the eighth day following the termination of temporary disability payments.⁵⁰

Should the injury be rated as a 70% or greater permanent disability, 1.5% of the average weekly earnings for each 1% of disability in excess of 60% is to be paid for the rest of the employee's life, commencing only after the maximum number of permanent disability payments have been made.⁵¹

II.

VOCATIONAL REHABILITATION IN CALIFORNIA

[T]he compensation job is not done when the immediate wound has been dressed and healed. There remains the task of restoring the

The number of weeks for which payments shall be allowed set forth in column 2 above based upon the percentage of permanent disability set forth in column 1 above shall be cumulative, and the number of benefit weeks shall increase with the severity of the disability. The following schedule is illustrative of the computation of the number of benefit weeks:

Column 1—Percentage of permanent disability incurred:		Column 2—Cumulative number of benefit weeks:
5		15.00
10		30.25
15		50.25
20		70.50
25		95.50
30		120.75
35		150.75
40		180.75
45		210.75
50		241.00
55		276.00
60		311.00
65		346.00
70		381.25
75		421.25
80		461.25
85		501.25
90		541.25
95		581.25
100		621.25

(b) Sixty-five percent of the average weekly earnings for four weeks for each 1 percent of disability, where, for the purposes of this subdivision, the average weekly earnings shall be taken at not more than eighty dollars and seventy-seven cents (\$80.77).

49. *Id.*

50. CAL. LABOR CODE § 4650, as amended, Cal. Stats. 1971, ch. 1750, § 4 (operative April 1, 1972).

51. Cal. Stats. 1971, ch. 1750, § 5.7, amending CAL. LABOR CODE § 4650 (operative April 1, 1972).

man himself to the maximum usefulness that he can attain under his physical impairment.⁵²

Each year 2.2 million persons are disabled in their job nationally due to the effects of an industrial injury.⁵³ Approximately 90% of these industrial injuries have only a temporary effect and the worker is able to return to work, usually within three weeks of the date of injury.⁵⁴ Although about 10% of the industrially injured could benefit from rehabilitation services, only .5% are rehabilitated.⁵⁵ Presently 3% of the injured employees are receiving the rehabilitation services that are necessary.⁵⁶

In California, for the fiscal year 1968-1969, approximately 1,200,000 employees were injured.⁵⁷ 218,242 of these employees suffered "disabling injuries," *i.e.*, were absent from work one day or more.⁵⁸ Only 8,686 of these injured employees applied for and received rehabilitation benefits from the California Department of Rehabilitation.⁵⁹ During that year, there were 1,223 rehabilitants.⁶⁰

Presently, 11% to 14.275%⁶¹ of the Department's caseload is com-

52. A. LARSON, 3 WORKMAN'S COMPENSATION LAW 88.260 (1971) [hereinafter cited as LARSON].

The following works contain some revolutionary ideas in the field of vocational rehabilitation: R. LAUDER, THE GOAL IS MOBILITY!, NATIONAL CITIZENS' CONFERENCE ON REHABILITATION OF THE DISABLED AND DISADVANTAGED, U.S. DEPT OF HEW, (1970); H. RUSALEM, DELIVERING REHABILITATION SERVICES, NATIONAL CITIZENS CONFERENCE ON REHABILITATION OF THE DISABLED AND DISADVANTAGED, U.S. DEPT. OF HEW, (1970); D. THURSZ, CONSUMER INVOLVEMENT IN REHABILITATION, NATIONAL CITIZENS CONFERENCE ON REHABILITATION OF THE DISABLED AND DISADVANTAGED, U.S. DEPT. OF HEW, (1970).

53. S. REP. NO. 91-1281, 91st Cong., 1st Sess. (1970), U.S. Code Cong. & Adm. News 7313, 7314 (1971).

54. *Id.*

55. 3 LARSON, *supra* note 52, at 88.261.

56. *Id.*

57. State of Cal., Dept. of Industrial Relations, Division of Labor Statistics and Research, CALIFORNIA WORK INJURIES 19 (1969); see Appendix A.

58. *Id.*

59. State of Cal., Department of Rehabilitation, STATUS OF REHABILITATION FOR INDUSTRIALLY INJURED WORKERS IN CALIFORNIA 16 (1971), *citing* testimony before the National Commission on State Workmen's Compensation Laws, San Francisco, California (November 16, 1971) [hereinafter cited as 1971 Status Reports].

60. *Id.*

61. *Id.* at 12, 16. The variation in percentage is attributable to clerical and computer error.

prised of the industrially injured. By comparison, in 1965, it was estimated that 18% or nearly one-fifth of the Department's caseload was comprised of the industrially injured.⁶²

The relative decrease in the number of employees receiving rehabilitation services can be attributed to basically toothless law. The sole provisions for vocational rehabilitation of the injured employee in California can be found in Labor Code Sections 139.5 and 6200 through 6207.

Labor Code Section 139.5

Labor Code Section 139.5 affords the injured employee (both private and public),⁶³ the employer, and the insurance carrier the opportunity to voluntarily enter into an agreement which would provide rehabilitation services to the employee. The employer or the insurance carrier are the only parties who may initiate any rehabilitation plan. If any party at any time wishes to dishonor their agreement to rehabilitate, the plan simply lapses. Once the plan is agreed upon, however, there is a conclusive presumption that it is "necessary and meritorious."

Pursuant to Labor Code Section 139.5, a rehabilitation unit within the Division of Industrial Accidents has been purportedly functioning since 1966.⁶⁴ The rehabilitation unit is responsible for approving and implementing the rehabilitation plan. While the employee is participating in the plan, he may be receiving temporary disability payments as well as an advance on permanent disability at the rate of \$52.50 per week for 26 weeks or longer.⁶⁵ The latter sums advanced are credited against the permanent disability indemnity award subsequently issued by the Workmen's Compensation Appeals Board. Under the 139.5 plan, the rating and the award issues only after the rehabilitation plan has been terminated.⁶⁶

62. 1965 REPORT, *supra* note 17, at 220.

63. *Id.* at 13.

64. 1971 STATUS REPORTS, *supra* note 59, at 7; *see also*, speech by Robert A. McCleod, Special Consultant for Rehabilitation, Division of Industrial Accidents, Department of Industrial Relations, entitled *Aggressive Approach to Rehabilitation*, delivered to the Industrial Claims Association (March 29, 1969) [hereinafter referred to as *Aggressive Approach to Rehabilitation*].

65. Recently an urgency statute, A.B. 771 (Fenton), was introduced to the California State Legislature. It would increase the weekly advance on permanent disability indemnity pursuant to a 139.5 rehabilitation plan from \$52.50 per week to \$70 per week. Los Angeles Daily Journal, March 22, 1972, at 9. There seems to be no reasonable explanation (other than mere oversight) why CAL. LABOR CODE § 139.5 was not amended to reflect the increase in the maximum permanent weekly disability benefit.

66. Interview with Donald W. Zellmann of Brundage, Williams &

Labor Code Sections 6200 through 6207 (Assembly Bill 1291).

Assembly Bill 1291,⁶⁷ operative March 4, 1972, is a half-step in the right direction, *viz.*, vocational rehabilitation services for the injured public wage earner. A.B. 1291 provides that when a public employee has suffered a continuing disability of 28 days or more, the

Zellmann, President, California Applicants' Attorneys Association, in San Diego, California (March, 1972) [hereinafter cited as *Zellmann Interview*].

67. A.B. 1291, Cal. Stats. 1971, ch. 1506 adds the following provisions to the Labor Code:

SECTION 1. Division 4.7 (commencing with Section 6200) is added to the Labor Code, to read:

DIVISION 4.7. RETRAINING AND REHABILITATION

6200. Every public agency, its insurance carrier, and the State Department of Rehabilitation shall jointly formulate procedures for the selection and orderly referral of injured full-time public employees who may be benefited by rehabilitation services and retrained for other positions in public service. The State Department of Rehabilitation shall cooperate in both designing and monitoring results of rehabilitation programs for the disabled employees. The primary purpose of this division is to encourage public agencies to reemploy their injured employees in suitable and gainful employment.

6201. The employer or insurance carrier shall notify the injured employee of the availability of rehabilitation services in those cases where there is continuing disability of 28 days and beyond. Notification shall be made at the time the employee is paid retroactively for the first day of disability (in cases of 28 days of continuing disability or hospitalization) which has previously been uncompensated. A copy of said notification shall be forwarded to the State Department of Rehabilitation.

6202. The initiation of a rehabilitation plan shall be the joint responsibility of the injured employee, and the employer or the insurance carrier.

6203. If rehabilitation requires an injured employee to attend an educational or medical facility away from his home, the injured employee shall be paid a reasonable and necessary subsistence allowance in addition to temporary disability indemnity. The subsistence allowance shall be regarded neither as indemnity nor as replacement for lost earnings, but rather as an amount reasonable and necessary to sustain the employee. The determination of need in a particular case shall be established as part of the rehabilitation plan.

6204. Upon agreement of a rehabilitation plan the injured employee shall cooperate in carrying it out. On his unreasonable refusal, or at any time that those carrying out the rehabilitation plan report his unreasonable refusal, the injured employee's rights to further subsistence shall be suspended until compliance is obtained, except that the payment of temporary or permanent disability indemnity, which would be payable regardless of the rehabilitation plan, shall not be suspended.

6205. The injured employee may agree with his employer or insurance carrier upon a rehabilitation plan without submission of such plan for approval to the State Department of Rehabilita-

employer or insurance carrier must notify the employee that he may be eligible for rehabilitation services.⁶⁸ The employer or its insurance carrier must also notify⁶⁹ the California Department of Rehabilitation⁷⁰ of the employee's continuing disability by sending to the Department a copy of the aforementioned notification.⁷¹ The public employer, its insurance carrier and the California Department of Rehabilitation are to severally formulate rehabilitation plans for qualified injured employees.⁷²

Dependent upon the particular needs of the potential rehabilitant, the employee, the employer or the insurance carrier are to initiate⁷³ and may agree⁷⁴ to the rehabilitation services which are required to restore him to suitable employment.⁷⁵ The Department need not approve the agreement as to the rehabilitation plan.⁷⁶

Once the plan is agreed upon, the injured employee is required to follow through with the plan.⁷⁷ Upon his unreasonable refusal to accept the rehabilitation services, the employee's right to his subsistence allowance⁷⁸ are suspended.⁷⁹ However, notwithstanding

tion. Provision of service under such plans shall be at no cost to the State General Fund.

6206. The injured employee shall receive such medical and vocational rehabilitative services as may be reasonably necessary to restore him to suitable employment.

6207. The injured employee's rehabilitation benefit is an additional benefit and shall not be converted to or replace any workmen's compensation benefit available to him.

68. CAL. LABOR CODE § 6201. The waiting period of 28 days was selected as an administrative convenience for insurance carriers. See 1965 REPORT, *supra* note 17, at 218; see Appendix C, *infra*, for the form of notice sent by the employer or the insurance carrier pursuant to § 6201.

69. A voluntary notification or referral program by which the insurance carrier referred the industrially injured to the Department of Rehabilitation proved ineffective. 1965 REPORT, *supra* note 17, at 218.

70. It is interesting to note that CAL. LABOR CODE § 6202 requires the employer or the insurance carrier to notify the Department of Rehabilitation rather than the rehabilitation unit of the Division of Industrial Accidents.

71. CAL. LABOR CODE § 6201.

72. CAL. LABOR CODE § 6200.

73. CAL. LABOR CODE § 6202.

74. CAL. LABOR CODE § 6205.

75. CAL. LABOR CODE § 6206.

76. CAL. LABOR CODE § 6205. A.B. 1291 does not expressly provide for appellate procedure when a dispute arises as to a rehabilitation plan. See text accompanying note 111, *infra*.

77. CAL. LABOR CODE § 6204.

78. CAL. LABOR CODE § 6203 provides supplemental income if there is need for the employee to be away from his home while participating in a rehabilitation plan. The limiting words "away from his home" purport to restrict the subsistence allowance to lodging and transportation expenses. See, e.g., CAL. LABOR CODE § 4600, as amended, Cal. Stats. 1971, ch. 1404, § 1.

79. CAL. LABOR CODE § 6204.

the employee's unreasonable refusal to participate in the plan, his temporary and/or permanent disability indemnity is unaffected and is continued.⁸⁰

The appropriations for A.B. 1291 were deleted by the governor with the explanation that there were sufficient funds within the Department of Rehabilitation to absorb the costs of public sector rehabilitation.⁸¹ However, to date, there has not been any relative increase in the budget appropriations for the Department of Rehabilitation with respect to a public employee in need of rehabilitation.⁸²

III.

A CRITIQUE

Selection of the Physician

As of 1965, the injured worker is permitted to select his physician in 18 states.⁸³ In California, the employer or carrier presently select the physician for the employee at the time of injury.⁸⁴

The problem presented regarding the selection of the physician as it relates to rehabilitation is that the physicians are too hesitant to commit themselves to an early and/or tentative decision that there is (1) permanent disability and (2) that rehabilitation services will be required.⁸⁵ This non-committal attitude fostered by the present law is pragmatically difficult to avoid since the physician is selected and his services are paid by the insurance carrier in the great majority of cases.

Concomitant with the time lag caused by indecision, the employee may be developing a psychological barrier to rehabilitation,

80. *Id.*

81. CAL. LABOR CODE §§ 6200-07.

82. Interview with Marlys J. Anderson, Program Administrator for the Industrially Injured, Cal. Dept. of Rehabilitation, in Sacramento, California (March, 1972) [hereinafter referred to as *Anderson Interview*]; For a journalistic viewpoint of how party politics play havoc with the workmen's compensation system, see H. Bernstein, *On-Job Injury Benefits Tighter Under Reagan*, Los Angeles Times, Pt. VII at 1 (June 30, 1967).

83. 1965 REPORT, *supra* note 17, at 101.

84. CAL. LABOR CODE § 4601.

85. *Anderson Interview*, *supra* note 82.

thereby increasing the costs of rehabilitation or the risk that the employee will not avail himself of rehabilitation services.⁸⁶

Finally, the employee's personal physician may provide more relevant counseling regarding rehabilitation than an employer-selected physician in light of the patient's known medical history.⁸⁷

For the above reasons, this writer submits that the best interests of the employee are better served if the employee is able to select his physician.⁸⁸

Notification

Those injured employees receiving the Department's services usually applied therefor one to three years after the date of injury.⁸⁹ The chief cause of this time lag has been attributed to the general level of ignorance of all employees as to the nature and availability of rehabilitation services and benefits.⁹⁰ It has been suggested that any attorney representing an employee in a compensation case inform and take an active role in referring clients that may be in need of rehabilitation services to the Department of Rehabilitation.⁹¹

Labor Code Section 139.5, as it relates only to workmen employed in private industry, does not contain any provisions for notification of the employee or the Department of Rehabilitation of the availability of or possible need for rehabilitation services. On the other hand, A.B. 1291 has excellent notification procedures for apprising the employee and the Department of needed services.

The writer recommends that the notification procedure contained in A.B. 1291 should be made applicable to workers employed in the private sector of industry. Further, the Notification of Bene-

86. *Id.*

87. Interview with Donald Cline of Brundage, Williams & Zellmann, President, San Diego Chapter, California Applicants' Attorneys Association, in San Diego, California (February, 1972) [hereinafter cited as *Cline Interview*].

88. See 1965 REPORT, *supra* note 17, at 104.

At the same time, the employer or the insurance carrier need not be required to pay increased medical expenses since physicians could be required, as a condition for accepting a workmen's compensation case, to adhere to an established schedule of fees for services rendered.

89. *Anderson Interview, supra* note 82; *Cline Interview, supra* note 87; Interview with Jake Petrosino, Vice President and Research Director, Public Employee Retirement System, Retirement Betterment Committee, Inc., Anaheim, California (March, 1972) [hereinafter cited as *P.E.R.S. Interview*]; *Zellmann Interview, supra* note 66.

90. *Id.*

91. *Zellmann Interview, supra* note 66.

fits letter⁹² sent to employees a few days after the date of injury, pursuant to Labor Code Section 138.4, should also contain information regarding rehabilitation benefits.

The California Department of Rehabilitation

A.B. 1291 provides that the Department and the employer both take an active part in referring an injured public employee to the Department. In the past, the Department—due to low budget appropriations—could only accept an individual who already had been rated as permanently disabled. The Department did not have any way of knowing those employees who were in need of rehabilitation. It will now be the adopted procedure of the Department to actively pursue the employee at the time of initial contact rather than the employee seeking the Department's services.⁹³

There does not appear to be any reasonable explanation why the Department's role of actively pursuing an A.B. 1291 referral should not be expanded to include injured employees of the private sector of the economy as well.

The rehabilitation unit of the Division of Industrial Accidents has performed unsatisfactorily. Between July 20, 1966 through July 15, 1969, there were a total of 141 injured workers participating in voluntary 139.5 rehabilitation plans adopted and approved by the rehabilitation unit of the Division of Industrial Accidents.⁹⁴

111 of the 141 (78%) employees were referred under the 139.5 plan to the Department of Rehabilitation and the costs of rehabilitation therefor were paid by the Department of Rehabilitation rather than the insurance carrier.⁹⁵

By comparison, the Department of Rehabilitation processed or evaluated an estimated 18,113 injured employees during the same period of time and rehabilitated over 3,000 industrial workers.⁹⁶

As presently constituted, the rehabilitation unit is economically inefficient since the rehabilitation unit duplicates the evaluation procedures of the Department of Rehabilitation. The counselors of the

92. CAL. LABOR CODE §§ 6200, 6201; see Appendix B.

93. *Anderson Interview*, *supra* note 82.

94. AGGRESSIVE APPROACH TO REHABILITATION, *supra* note 64.

95. *Id.*

96. 1971 STATUS REPORTS, *supra* note 59.

Department of Rehabilitation are specialized employees, trained and skilled in the rehabilitation of the industrially injured workmen. Since the employee will be referred to the Department of Rehabilitation once the decision of eligibility has been made by the rehabilitation unit of the Division of Industrial Accidents, the writer recommends that the Division of Industrial Accidents contract with the Department of Rehabilitation to provide the latter's services within the Division of Industrial Accidents itself and thereby replace the existing rehabilitation unit therein. The Department of Rehabilitation could evaluate and thereby finally determine the eligibility of the applicant within the guidelines of the Department of Rehabilitation.

The writer believes that a rehabilitation unit within the Division of Industrial Accidents is desirable due to the specialized needs of the employee who is confronted with a catastrophic change of physical or mental condition *vis-a-vis* an individual harboring a congenital handicap seeking similar services.

Permanent Disability and Rehabilitation

In essence, the employee pays for a 139.5 rehabilitation plan by accepting the advance on his permanent disability award. The employee's payments, however, are utilized to sustain his family and himself during the period of rehabilitation.⁹⁷ In the majority of cases, the actual costs of 139.5 rehabilitation services are borne by the federal and state taxpayer.⁹⁸

The employees are reluctant to accept a 139.5 plan.⁹⁹ These eligible employees are concerned that if they rehabilitate themselves, the permanent disability award will be reduced by either a postponed determination of permanent disability rating subsequent to rehabilitation (with the applicant's condition as a rehabilitant being utilized as the basis for the permanent disability rating) or a later petition to reopen by the employer or the insurance carrier to reduce the permanent disability rating due to rehabilitation.¹⁰⁰ Concomitant with the probable permanent disability indemnity award is the fact that the rehabilitant normally receives less wages than his pre-injury wages.¹⁰¹ Of course, the employee's considera-

97. 1965 REPORT, *supra* note 17.

98. *Aggressive Approach to Rehabilitation*, *supra* note 64.

99. *Cline Interview*, *supra* note 87; *Zellmann Interview*, *supra* note 66.

100. *Id.*

101. *Id.*

tion of lower wages is a relevant factor only if the rehabilitant is hired by someone.¹⁰²

A.B. 1291 provides the proper solution to the employee's dilemma by defining rehabilitation benefits as additional benefits (to Labor Code Section 3207 benefits).¹⁰³ By defining rehabilitation benefits as additional benefits, the intent of the legislature was to ensure that the permanent disability rating will not be affected by the possibility of rehabilitation.¹⁰⁴

The writer reiterates the recommendation that these same benefits afforded public sector employees be extended to the private sector of the labor market.

Maintenance Allowance

Under Labor Code Section 139.5, the employee does not receive assistance from the employer or the insurance carrier. Under A.B. 1291, the employee may receive a subsistence allowance only while away from home.¹⁰⁵

As originally submitted, A.B. 1291 contained a maintenance allowance provision similar to recommendation Number 5 in Part V *infra*.¹⁰⁶ The original intent of the maintenance allowance was to induce the employee to rehabilitate.¹⁰⁷ Clearly, the subsistence allowance provided by A.B. 1291 does not provide any inducement to rehabilitate.

Since the employee receives only 61.5% of his weekly salary during the period of rehabilitation,¹⁰⁸ no documentation seems necessary to assume that most employees are undergoing great financial hardships during the rehabilitation period.¹⁰⁹ Perhaps these financial burdens and the psychological difficulty in adjusting to the employee's handicap are the cause of the many undocumented dissolutions and suicides resulting from severe injuries.¹¹⁰

102. *Id.*; *Aggressive Approach to Rehabilitation*, *supra* note 64.

103. CAL. LABOR CODE § 6207.

104. *Anderson Interview*, *supra* note 92; *P.E.R.S. Interview*, *supra* note 89.

105. CAL. LABOR CODE § 6203.

106. *P.E.R.S. Interview*, *supra* note 89.

107. 1965 REPORT, *supra* note 17, at 123, 124.

108. CAL. LABOR CODE § 4453, *as amended*, Cal. Stats. 1971, ch. 1750, § 7 (operative April 1, 1972).

109. See 1965 REPORT, *supra* note 17, at 220.

110. *Cline Interview*, *supra* note 87.

If one considers that under the current system, the employee is faced with a lower permanent disability award if he rehabilitates; the possibility of not attaining employment as a rehabilitant; and the lower wages due to his status as a rehabilitant—an employee could understandably decline any proffer of rehabilitation. Certainly the fact that the employee is refused supplemental income or a maintenance allowance during rehabilitation expedites such declination. If the system of workmen's compensation and vocational rehabilitation were to be viewed from this perspective, it would certainly be no surprise to discover that the great majority of permanently handicapped employees are public charges.

For the above reasons, both Labor Code Section 139.5 and A.B. 1291 are unsatisfactory and should be amended in light of recommendation Number 5 in Part V, *infra*.

Implementation and Enforcement of Rehabilitation Plans

Apparently, neither A.B. 1291 nor Labor Code Section 139.5 provide for enforcement procedures in the Division of Industrial Accidents or the Workmen's Compensation Appeals Board.¹¹¹

Since A.B. 1291 plans are mandatory,¹¹² jurisdiction over any dispute arising under A.B. 1291 is vested in the Department of Rehabilitation and the Vocational Rehabilitation Appeals Board.¹¹³ The Vocational Rehabilitation Appeals Board seems tailored to adjudicate the claims of the applicants for

A majority of the members of the board shall be disabled persons who have overcome their disabilities, including those who have done so with the assistance of public agencies, and who are independently self-supporting in the regular businesses, professions and occupations of the community.¹¹⁴

The writer submits that the jurisdiction of 139.5 plans should also be vested in the Department of Rehabilitation and the Vocational Rehabilitation Appeals Board.

IV.

THE COSTS AND THE BENEFITS OF VOCATIONAL REHABILITATION

The primary sources of income for the industrially injured workman actually receiving the services of the Department for the fiscal year 1970-1971¹¹⁵ were:

-
111. CAL. LABOR CODE §§ 111, 133, 5300-08.
 112. CAL. LABOR CODE §§ 6200-07.
 113. CAL. WELFARE & INSTITUTIONS CODE §§ 19700-10.
 114. CAL. WELFARE & INSTITUTIONS CODE § 19703.
 115. 1971 STATUS REPORTS, *supra* note 59, at 18.

WORKMEN'S COMPENSATION	_____	24%
FAMILY AND FRIENDS	_____	22%
PUBLIC ASSISTANCE		
(State and Federal)	_____	19%
SOCIAL SECURITY DISABILITY		
(and other forms		
of social insurance)	_____	21%
OTHER	_____	16%

Those injured employees receiving the Department's services usually applied therefor one to three years after the date of injury.¹¹⁶ The explanation proffered for this time lag is two-fold: First, medical restoration takes time; and secondly, the general level of ignorance attributable to the working public with respect to the availability of the Department's services is quite high.¹¹⁷ Perhaps due to this time lag, less than 25% of the primary source of income for injured employees receiving rehabilitation services is derived from workmen's compensation. Or stated another way, the injured employees who are recipients of the Department's services have expended or consumed their permanent disability award prior to or during rehabilitation.¹¹⁸

Total appropriations, both federal and state, to the Department of Rehabilitation for the past three years are as follows:

1971-1972:	\$62,016,000
1970-1971:	51,011,000
1969-1970:	46,309,000. ¹¹⁹

Each California dollar is matched by four federal dollars.¹²⁰ For the fiscal year 1971-1972, no funds have been earmarked or segregated for the specified purpose of rehabilitating injured employees.¹²¹

In 1966, it was estimated that wage earners participating in vocational rehabilitation services across the nation experienced an increase of \$30.50 in their earnings and value of work activity over their working lives for every dollar expended on their vocational re-

116. *Anderson Interview, supra* note 82.
 117. *P.E.R.S. Interview, supra* note 87.
 118. *Anderson Interview, supra* note 82.
 119. STATE OF CALIFORNIA POCKET REFERENCE (1972).
 120. *Anderson Interview, supra* note 82; see Federal Vocational Rehabilitation Act, 29 U.S.C. §§ 31 et seq.
 121. *Anderson Interview, supra* note 82.

habilitation.¹²² In 1950, it was stated that the Federal Government realized \$10 as income taxes paid by rehabilitants for every dollar spent on their rehabilitation.¹²³

The Cost/Benefit Analysis¹²⁴ for fiscal year 1970-1971 for the total number of rehabilitants is as follows:

<i>Cost:</i>	
Number of Rehabilitants: _____	14,430.
Total Annual Cost _____	\$36,732,106.
Cost per Rehabilitant: _____	\$2,546.
Benefits per Rehabilitant: * _____	\$985.
Cost/Benefit Ratio: _____	39%
Annual Wage Earned at Time of Referral: _____	\$16,121,508.
Annual Wages Earned after Rehabilitation: _____	\$71,505,928
Increase in Annual Wages of Rehabilitants: _____	\$55,384,420.
<i>Total Annual Economic Benefit:</i> _____	\$14,215,668:
<i>"Savings" Represented:*</i>	
Welfare and State	
Public Assistance: _____	\$ 2,617,548.
State Institutional Costs: ¹²⁵ _____	1,491,950.
Medical Costs: _____	1,375,488.
Social Security Disability Payments: _____	1,201,200.
Total Increase in Tax Revenue: _____	7,529,482.
Federal Tax: _____	\$ 5,961,831.
State Tax: _____	539,130
State Sales Tax: _____	1,028,521.

It is estimated that for each state dollar expended on vocational rehabilitation, that same dollar is returned to the state within three years after rehabilitation services have been rendered.¹²⁶ This estimate is supported by the Department of Rehabilitation's Cost/Benefit Analysis, *supra* (Cost/Benefit Ratio: 39%).

The conclusions that can be drawn from the above analysis are: (1) The state realizes an annual approximate return of one-third on its investment for rehabilitation services; (2) All rehabilitants in one fiscal year more than *quadrupled* their post-injury earnings within a year; and (3) Rehabilitants receive less state and federal monetary aide than nonrehabilitants.

122. *Summary of the Vocational Rehabilitation Act, Exploratory Cost-Benefit Analysis, Hearings on H.R. 8981 Before the Select Subcomm. on Education of the House Comm. on Education and Labor, 90th Cong., 1st Sess., at 23 (1967).*

123. 3 LARSON, *supra* note 52, at 88,273.

124. STATE OF CALIFORNIA POCKET REFERENCE (1972).

125. *E.g.*, a state mental facility.

126. CAL. DEPT. OF REHABILITATION, REHABILITATION FACTS AT A GLANCE (1971).

V.

SUMMARY AND RECOMMENDATIONS

The goal of rehabilitation as well as the goal of workmen's compensation is the achievement of gainful employment for the industrially injured workman.¹²⁷ As shown, vocational rehabilitation¹²⁸ is an unrealized benefit for California workmen who are eligible to receive such services.

Rehabilitation can and should commence at the time of the accident or the date of injury.¹²⁹ The injured employee, in many instances, need not wait to be medically healed prior to participating in vocational rehabilitation benefits.¹³⁰ Psychologically, the injured worker conditions himself to his predicament and the rehabilitating agency is confronted with the additional task of rehabilitating the recent acquisition of a defeatist attitude.¹³¹

The problem has been outlined by Professor Larson as follows:

From the moment of injury forward, rehabilitation is affected by the character of medical care, the impact of compensation practices on the mental attitudes of employees, the question whether the compensation administrative system is equipped to maintain constant surveillance of the case, the extent to which the act pays for medical expenses, prosthetic devices and the like, the extent to which the act affords extended cash benefits during rehabili-

127. Statement by E. Newman, Commissioner, Rehabilitation Services, Social and Rehabilitation Service, U.S. Dept. of Health, Education & Welfare, *Hearings on H.R. 2310 Before the Subcomm. of the House Comm. on Governmental Operations*, 92nd Cong., 1st Sess., at 31 (1971); see also, REPORT OF THE CAL. ASSEMBLY ON SOCIAL WELFARE, Vol. 19, No. 14 at 29 (1967).

128. *Vocational Rehabilitation* is "any service provided . . . to a disabled individual to compensate for his employment handicap and to enable him to engage in a remunerative occupation." Cal. Stats. 1959, ch. 2 at 806; see CAL. WELFARE & INSTITUTIONS CODE § 19150 (West Supp. 1970).

A handicapped individual is one who is under a physical or mental disability which constitutes a substantial handicap to employment, but which is of such a nature that vocational rehabilitation services may reasonably be expected to render him fit to engage in a gainful occupation. CAL. WELFARE & INSTITUTIONS CODE § 19151 (West Supp. 1970).

An employment handicap is a physical or mental condition which constitutes, contributes to, or if not corrected will probably result in, an impairment of occupational performance. Cal. Stat. 1959, ch. 2 at 805.

129. *Anderson Interview*, *supra* note 82.

130. *Id.*

131. *Id.*

tation, as well as travel, living, and instructional expenses, the convenient availability of vocational rehabilitation and placement services, the extent to which the compensation act provides special funds to finance the costs of rehabilitation, the extent to which the provision, termination, or suspension of benefits provide incentives or disincentives to the rehabilitation process acting upon both the employer and the employee, and the extent to which second injury funds and various compensation decisions affecting hiring incentives encourage or discourage the hiring of handicapped workers.¹³²

If we can accept the philosophical proposition that all workers who are eligible for vocational rehabilitation should be provided such services, the following recommendations should be included in any model workmen's compensation act in order to ensure that theory and practice are united. These recommendations not only illuminate the pitfalls and weaknesses of California's scheme of the injured worker's welfare, but also eliminate the inadequacies of our system (if enacted into law).

1. The employee shall be afforded the opportunity to select his own qualified physician for the purposes of medical care and vocational rehabilitation.¹³³

2. The employer or its insurance carrier shall apprise the employee that rehabilitation services may be available in the proper case. The employee shall be informed at the time the initial notice of benefits letter is sent to him.¹³⁴ The employee shall also be informed of the availability of rehabilitation services once his physician informs the carrier that he has made a tentative decision that the employee may require rehabilitation.

3. The state rehabilitation agency shall be notified of the tentative decision to rehabilitate by the employer or its carrier.

4. The rehabilitation agency, once notified, must seek out, inform and counsel the employee regarding its available services.¹³⁵

5. Supplementary monetary allowance shall be granted the employee who commits himself to a rehabilitation plan.¹³⁶ This allowance shall be calculated to equal the employee's weekly gross wages, less statutory deductions, temporary disability indemnity and/or

132. 3 LARSON, *supra* note 52, at 88.262.

133. Resolution, Executive Board Meeting, Cal. Applicants' Attorneys Association (Oct. 18, 1971), as submitted by Eugene Marias to Comm. on State Workmen's Compensation Laws, *Hearings on State Workmen's Compensation Laws*, San Francisco, California (Nov. 15-17, 1971); see 1965 REPORT, *supra* note 17, at 104.

134. 1965 REPORT, *supra* note 17, at 218.

135. *Id.*; 3 LARSON, *supra* note 52, at 88.271.

136. 1965 REPORT, *supra* note 17, at 224; see also 5 U.S.C. §§ 8104, 8111.

permanent disability indemnity payments, while pursuing the scheduled services. In addition to such an allowance, the employee shall be compensated for the costs of food, lodging, and transportation should the rehabilitation plan necessitate rehabilitation services away from the employee's home.¹³⁷

6. The permanent disability rating shall be determined without regard to the successful rehabilitation of the employee.

7. Rehabilitation benefits or the supplementary allowance shall be additional benefits to the injured employee.

8. The employee, his physician(s) and the rehabilitation agency are to determine the rehabilitation plan best-suited for the employee.

9. Any dispute concerning rehabilitation benefits shall be jurisdictionally vested in the rehabilitation organization.

10. Once the rehabilitation plan has been determined, the employee shall accept and in good faith participate in the rehabilitation plan.¹³⁸

11. Upon the employee's unreasonable refusal to participate in rehabilitating himself, the supplementary allowance shall be suspended for that period of discontinued participation.¹³⁹

12. Upon rehabilitation, the rehabilitating agency shall attempt to place the employee in suitable employment.¹⁴⁰

13. Neither rehabilitation nor any of its incidental benefits may be bargained away by way of compromise and release.¹⁴¹ In order

137. 1965 REPORT, *supra* note 17, at 224.

138. *Id.*

139. *Id.*

140. Employment placement of the rehabilitant need not be considered an impossible task; for example:

A Swedish study utilizing a hypothetical, severely-disabled worker considered for a job in a shoe factory 'showed that, even if he were blind in one eye, color-blind in the other, had curvature of the spine, arrested TB and rheumatic heart disease, had only one leg, a gluteal hernia and could not raise his arms above his shoulders, he could still perform 50% of the jobs in that factory.'

L. Smedley, *The Failure of Workmen's Compensation Laws*, ECONOMIC TRENDS AND OUTLOOK, March, 1966, at 19.

Recently, S.B. 477 (Roberti) was introduced to the California State Legislature. The Bill would provide that discrimination based on a physical handicap would be proscribed as an unfair employment practice. Such discrimination would be subject to the jurisdiction of the Fair Employment Practices Commission. Los Angeles Daily Journal, March 22, 1972 at 9.

141. 1965 REPORT, *supra* note 17, at 223.

to ensure that a compromise and release does not involve an individual who could possibly benefit from rehabilitation services, a compromise and release, in order to be valid, shall be signed by the employee, the employer or its insurance carrier, the physician(s), the Workmen's Compensation Appeals Board and by the Department of Rehabilitation.

VI.

CONCLUSION

If the employee is to be likened to a machine, and if the theory underlying workmen's compensation law is to restore the employee as one repairs or replaces the faulty machine with a new machine, then vocational rehabilitation is an inherent part of workmen's compensation. An effective program of vocational rehabilitation will replace the lopsided wheel with a wheel having all its spokes.¹⁴² Handicapped workers want to return to work and should be accorded every opportunity to do so. The responsibility of returning the worker to the mainstream of the competitive market rests upon society as well as industry and can only benefit both.

The writer concludes not only that vocational rehabilitation pays for itself in the "long run," but that there is no satisfactory rationale, founded upon reason or fact, which can explain why the benefits of vocational rehabilitation have been extended to public employees, but not to the employees of private industry.

KELLY W. BIXBY

142. Recent developments:

S.B. No. 1097 (Bradley) would repeal Division 4.7 of the Labor Code (A.B. 1291, Sections 6200-6207). The text of the bill is as follows:

SECTION 1. Section 139.5 of the Labor Code is repealed.

SEC. 2. Section 4651.2 of the Labor Code is amended to read:

4651.2 No petitions filed under Section 4651.1 shall be granted while the injured workman is pursuing a rehabilitation plan under Section 6200.

SEC. 3. Division 4.7 (commencing with Section 6200) of the Labor Code is repealed.

SEC. 4. Division 4.7 (commencing with Section 6200) is added to the Labor Code, to read:

DIVISION 4.7. RETRAINING AND REHABILITATION

6200. (a) One of the primary purposes of this division shall be restoration of the injured employee to gainful employment. To this end there is hereby created a rehabilitation panel which shall be composed of the administrative director, the medical director, and specialists in medical and vocational rehabilitation to be appointed by the administrative director.

(b) The panel shall continuously study the problems of re-

habilitation, both physical and vocational, and shall investigate and maintain a directory of all rehabilitation facilities, both private and public. The administrative director in consultation with the panel, shall approve as qualified such facilities, institutions and physicians as are capable of rendering competent rehabilitation service to seriously injured employees. No facility or institution shall be considered as qualified unless it is specifically equipped to provide rehabilitation services for persons suffering either from some specialized type of disability or general type of disability within the field of occupational injury and is staffed with trained and qualified personnel, and with respect to physical rehabilitation, unless it is supervised by a physician qualified to render such service. No physician shall be considered qualified unless he has had the experience and training specified by the administrative director.

(c) An employee who has suffered an injury covered by this division shall be entitled to prompt medical rehabilitation services. When as a result of the injury he is unable to perform work for which he has previous training or experience, he shall be entitled to such vocational rehabilitation services, including retraining and job placement, as may be reasonably necessary to restore him to suitable employment. If such services are not voluntarily offered and accepted, the administrative director on his own motion, or upon application of the employee or carrier, after affording the parties an opportunity to be heard by the panel, may refer the employee to a qualified physician or facility for evaluation of the practicability of, need for, and kind of service, treatment or training necessary and appropriate to render him fit for a remunerative occupation. Upon receipt of such report, and after affording the parties an opportunity to be heard by the panel, the administrative director, in consultation with the panel, may order that the services and treatment recommended in the report, or such other rehabilitation treatment or service he may deem necessary be provided at the expense of the employer. Vocational rehabilitation training, treatment or service shall not extend for a period of more than one year except in unusual cases when by special order of the administrative director, after hearing, the period may be extended for an additional reasonable period. The employee shall be entitled to continuing temporary disability indemnity during the period of his rehabilitation.

(d) Where rehabilitation requires residence at or near the facility or institution, away from the employee's customary residence, reasonable cost of his board, lodging or travel shall be paid for by the employer.

(e) Refusal to accept rehabilitation pursuant to an order of the administrative director shall result in loss of compensation for each week of the period of refusal. An employee's right to rehabilitation shall not be converted into cash or other benefits.

(f) The determination of the nature and extent of the employee's permanent disability shall be deferred until his rehabilitation is completed and such determination shall then be made with reference to his age and occupation at the time of completion.

S.B. No. 1069 (Zenovich) amends sections 6203 and 6204 and adds 6208 to the Labor Code. The text of the bill reads as follows:

SECTION 1. Section 6203 of the Labor Code is amended to read:

6203. If a rehabilitation *plan* requires an injured employee to attend an educational or medical facility away from his home, the injured employee shall be paid a reasonable and necessary subsistence allowance in addition to temporary disability indemnity. The

subsistence allowance shall be regarded neither as indemnity nor as replacement for lost earnings, but rather as an amount reasonable and necessary to sustain the employee. The determination of need in a particular case shall be established as part of the rehabilitation plan.

Sec. 2. Section 6204 of the Labor Code is amended to read:

~~6204. Upon agreement of a rehabilitation plan the injured employee~~
An injured employee agreeing to a rehabilitation plan shall cooperate in carrying it out. On his unreasonable refusal, or at any time that there is an unreasonable refusal, the injured employee's rights to further subsistence shall be suspended until compliance is obtained, except that the payment of temporary or permanent disability indemnity, which would be payable regardless of the rehabilitation plan, shall not be suspended.

Sec. 3. Section 6208 is added to the Labor Code, to read:

6208. The initiation and acceptance of a rehabilitation program shall be voluntary and not compulsory upon the employer, the insurance carrier, or the injured employee.

Sec. 4. The State Department of Rehabilitation shall submit a report to the Legislature on or before January 1, 1974, containing its findings and recommendations with respect to the institution, functioning, and effectiveness of rehabilitation plans under Division 4.7 (commencing with Section 6200) of the Labor Code.

Appendix A

DEPARTMENT OF REHABILITATION

FISCAL YEAR	TOTAL CASELOAD	INDUSTRIAL INJURED ONLY						REHABS.
		NUMBER OF INDUSTRIALLY INJURED IN CASELOAD	CLIENTS CLOSED WITHOUT SERVICE*	OPEN CASES PRIOR TO SERVICE	OPEN CASES RECEIVING SERVICE	CLOSED CASES NOT REHAB.		
1970-71	129,779	13,485	6,892	2,392	2,509	565	1,127	
1969-70	109,720	11,086	5,275	2,319	2,319	547	1,174	
1968-69	118,723	8,686	3,675	2,129	2,129	528	1,223	

* Except for Diagnostic Evaluation.

APPENDIX B

**STATE
COMPENSATION
INSURANCE
FUND**

POST OFFICE BOX 20586
SAN DIEGO, CALIFORNIA 92120

**NOTICE ABOUT YOUR
WORKMEN'S COMPENSATION BENEFITS**

1-0905-01	
FUND IDENTIFICATION NUMBER	
FUND FILE NUMBER	
DATE OF INJURY	DATE OF KNOWLEDGE
SOCIAL SECURITY NUMBER	
WCAB CASE NUMBER (IF ANY)	OR PDR NUMBER
EMPLOYER	
STREET ADDRESS	
CITY, STATE, ZIP	

THIS NOTICE IS TO INFORM YOU OF THE PRESENT STATUS OF YOUR BENEFITS
ONLY THE ITEMS COMPLETED BELOW CONCERN YOUR BENEFITS AT THIS TIME

NOTICE OF START OF BENEFITS	<p>1) The enclosed check is our first payment for: _____ Temporary Disability _____ Permanent Disability</p> <p>2) The weekly compensation rate is \$ _____, based on your earnings of \$ _____ per _____</p> <p>3) The first day for which you are receiving compensation is _____</p> <p>4a) Date you were hospitalized _____ 4b) Your first full day of lost time _____</p> <p>5) Date first check issued _____ 6) Other _____</p>
NOTICE OF END OF BENEFITS	<p>7) COMPENSATION PAYMENTS Your compensation payments are being ended because: _____ A. You have returned to work; _____ B. You are able to return to your work; _____ C. You are able to do modified work and it has been provided; _____ D. Informal permanent disability has been paid in full; _____ E. Other _____</p> <p>8) MEDICAL BENEFITS _____ A. Your medical treatment is being ended on _____ _____ B. Other _____</p> <p>9) PERMANENT DISABILITY _____ A. In our opinion your condition will result in permanent disability, but we think your condition will not be stationary before _____, at which time we will arrange another examination. _____ B. Other _____</p>
BENEFITS PAID TO YOU	<p>10) Temporary disability at rate of \$ _____ for _____ weeks and _____ days, from _____ through _____, from _____ through _____, from _____ through _____ TOTAL paid \$ _____</p> <p>11) Permanent disability at rate of \$ _____ for _____ weeks. TOTAL paid \$ _____ Permanent disability rating of _____ %</p>
WHOM TO CONTACT IF YOU HAVE A QUESTION	<p>12) YOUR STATE COMPENSATION INSURANCE FUND ADJUSTER IS _____ You may contact him if you have any questions, at (714) 283-4421, SAN DIEGO</p> <p>Signed _____ Date _____</p> <p>13) OR you may contact the Administrative Director, Division of Industrial Accidents, P.O. Box 429, San Francisco, California 94101, giving him your name, address, Social Security number, date of injury and employer at the time of injury. We are sending the Administrative Director a copy of this notice.</p>

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF INDUSTRIAL ACCIDENTS

Medical nature of injury _____
Part of body involved _____

PLEASE SEE OTHER SIDE

INFORMATION FOR THE INJURED EMPLOYEE

This notice is being sent you as required by Section 138.4 of the Labor Code of the State of California.

TEMPORARY DISABILITY

No compensation is paid for the first seven days you are unable to work as a result of your injury unless you are hospitalized as a bed patient, or you are disabled beyond 49 days, in which event the first seven days of disability compensation is paid.

COMPENSATION RATE

The weekly compensation rate in most cases is based on your average earnings. Overtime and the market value of board, lodging, fuel and other advantages (tips) received by you as part of your remuneration which can be estimated in money are considered. There are maximum and minimum compensation rates.

MEDICAL BENEFITS

You are entitled to receive medical, surgical and hospital services and supplies reasonably required to cure or relieve you from the effects of your injury, including nursing care and such things as crutches and artificial limbs. You may request one change of doctors.

PERMANENT DISABILITY

Some injuries may produce a permanent disability entitling the injured employee to compensation based upon the degree of disability. The degree of disability is rated under the Permanent Disability Rating Schedule adopted by the Administrative Director.

The rating cannot be made until the employee's condition becomes stationary; that is, where his condition will not reasonably change for better or worse. In some cases a stationary condition is not reached for a long period of time. The fact that you return to work does not affect your right to compensation for the disability.

IMPORTANT

The staff of the Division of Industrial Accidents will answer your questions at any of the offices listed below. You may also consult an attorney or representative of your choice. However, the Administrative Director suggests that you first contact the individual named in Item 12 on the other side of this notice.

If you have any questions act immediately. If you wait too long, you may lose your rights to benefits.

In any correspondence about your case be sure to give your name, address, Social Security number, date of injury and employer at time of injury.

DIVISION OF INDUSTRIAL ACCIDENTS OFFICES

San Francisco	Oakland	Santa Rosa	Salt Lake	Santa Barbara	Pomona	Long Beach
Sacramento	San Jose	Eureka	Los Angeles	Santa Ana	Inglewood	Bakersfield
Fresno	Redding	Stockton	San Diego	Van Nuys	Ventura	San Bernardino

CITIES WHERE STATE COMPENSATION INSURANCE FUND OFFICES ARE LOCATED

ARCADIA 601 LAS TUNAS DRIVE ARCADIA, CALIFORNIA 91006 PHONE: (213) 445-4030	INGLEWOOD 333 CENTINELA AVENUE INGLEWOOD, CALIFORNIA 90302 PHONE: (213) 674-2870	SAN DIEGO 4055 CAMINO DEL RIO, SOUTH SAN DIEGO, CALIFORNIA 92120 PHONE: (714) 283-4421	STOCKTON 1401 NORTH HUNTER STREET STOCKTON, CALIFORNIA 95201 PHONE: (209) 466-4242
EUREKA 908 SEVENTH STREET EUREKA, CALIFORNIA 95501 PHONE: (707) 443-9721	OAKLAND 55 SANTA CLARA AVENUE OAKLAND, CALIFORNIA 94604 PHONE: (415) 465-1500	SAN FRANCISCO 525 GOLDEN GATE AVENUE SAN FRANCISCO, CALIFORNIA 94102 PHONE: (415) 861-1022	VAN NUYS 14155 MAGNOLIA BOULEVARD VAN NUYS, CALIFORNIA 91403 PHONE: (213) 981-8600
FRESNO 457 WEST SHAW AVENUE FRESNO, CALIFORNIA 93704 PHONE: (209) 229-3561	REDDING 1880 SHASTA STREET REDDING, CALIFORNIA 96001 PHONE: (916) 243-8400	SAN JOSE 1800 HAMILTON AVENUE SAN JOSE, CALIFORNIA 95125 PHONE: (408) 266-9700	VENTURA 470 EAST THOMPSON BLVD. VENTURA, CALIFORNIA 93001 PHONE: (805) 648-5311
LONG BEACH 2635 ATLANTIC AVENUE LONG BEACH, CALIFORNIA 90807 PHONE: (213) 427-9961	SACRAMENTO 3120 COTTAGE WAY SACRAMENTO, CALIFORNIA 95825 PHONE: (916) 482-9020	SANTA ANA 2100 EAST FOURTH STREET SANTA ANA, CALIFORNIA 92705 PHONE: (714) 541-2631	
LOS ANGELES 600 S. LAFAYETTE PARK PLACE LOS ANGELES, CALIFORNIA 90054 PHONE: (213) 385-1531	SAN BERNARDINO 1500 NORTH WATERMAN AVENUE SAN BERNARDINO, CALIFORNIA 92404 PHONE: (714) 884-7281	SANTA ROSA 625 STEELE LAKE SANTA ROSA, CALIFORNIA 95406 PHONE: (707) 544-6200	

APPENDIX C



NOTICE ABOUT YOUR
WORKMEN'S COMPENSATION BENEFITS

CLAIM NUMBER	_____
DATE OF INJURY	_____
SOCIAL SECURITY NUMBER	_____
OCCUPATION	_____
EMPLOYER	_____
STREET ADDRESS	_____
CITY, STATE, ZIP	_____

REHABILITATION AND RETRAINING

<p>NOTICE OF BENEFITS</p>	<p>LABOR CODE, SECTION 6200-7 PROVIDES FOR THE AVAILABILITY OF REHABILITATION SERVICES TO PUBLIC AGENCY EMPLOYEES WHO ARE DISABLED BEYOND 28 DAYS.</p> <p>THESE SERVICES ARE PROVIDED TO FULL TIME PUBLIC EMPLOYEES WHO MAY BE BENEFITED BY REHABILITATION SERVICES AND RETRAINED FOR SUITABLE AND GAINFUL EMPLOYMENT IN PUBLIC SERVICE.</p> <p>IF YOU WISH FURTHER INFORMATION, PLEASE CALL YOUR ADJUSTER.</p>
<p>WHOM TO CONTACT</p>	<p>YOUR STATE COMPENSATION INSURANCE FUND ADJUSTER IS _____</p> <p>YOU MAY CONTACT HIM IF YOU HAVE ANY QUESTIONS, AT _____</p>