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Chapter 52: Ensuring the Prompt Payment of Disability Funds to Injured Workers

Jill D. Wright

Code Sections Affected

Unemployment Insurance Code §3260.5 (new); §§ 2610, 3254, 3255, 3260, 3261, 3262, 3263 (amended).
SB 467 (Scott); 2002 STAT. Ch. 52.

I. INTRODUCTION

Richard Jackson, a fifteen-year veteran of Pacific Gas & Electric (PG&E), was forced to sell his home last year after filing for disability leave in April 2001.¹ After being exposed to an industrial chemical on the job, Jackson enrolled in a private industry voluntary disability plan through PG&E as an alternative to the state disability program.² Both programs offer partial wage replacement to employees who are unable to work due to injury or illness.³ Employees often enroll in the voluntary plan because it offers more compensation in the event of an injury than the state program.⁴

The Employment Development Department (EDD) approved PG&E's request for an alternative voluntary plan in 1949.⁵ In order to maintain the plan, PG&E was required to provide greater benefits to employees than state disability insurance and assume all liability for enrolled employees' disability benefits.⁶ PG&E was also restricted by the requirement that employee wage deductions could not be higher than the deductions taken by the state disability insurance (SDI) program.⁷ So, when the EDD reduced the amount workers could be charged for disability plans and subsequently increased the weekly payouts to SDI members, PG&E was forced to do the same, causing a strain on their funds.⁸ PG&E's program ran out of money in April 2001, "leaving about \$1.6 million in unpaid claims."⁹ The EDD was unable to pay Mr. Jackson's benefits, along with

1. David Lazarus, *Corporate Casualties*, S.F. CHRON., July 3, 2001, at B1.

2. *Id.*

3. See SENATE COMMITTEE ON LABOR AND INDUSTRIAL RELATIONS, COMMITTEE ANALYSIS OF SB 467, at 1 (Jan. 23, 2002) (describing current disability programs).

4. See Melanie Payne, *Disabled Utility Workers Seek Appeal to California Board for Benefit Payment*, SACRAMENTO BEE, July 18, 2001, at D1 (quoting another PG&E worker when stating his reasons for choosing PG&E's voluntary disability plan).

5. Lazarus, *supra* note 1.

6. SENATE COMMITTEE ON LABOR AND INDUSTRIAL RELATIONS, COMMITTEE ANALYSIS OF SB 467, at 1 (Jan. 23, 2002).

7. *Id.*

8. Lazarus, *supra* note 1.

9. Payne, *supra* note 4.

his co-workers' benefits, because the current law required an appeal to be filed and the decision of the appeals board entered before payments could be made.¹⁰ Mr. Jackson, along with about 230 of his fellow PG&E co-workers, was left without disability payments for three months due to this process, leaving many families in desperate situations.¹¹ By allowing the EDD to terminate voluntary plans that cannot meet their commitments, the authors of Chapter 52 hope to protect vulnerable employees, like Mr. Jackson and his family, from enduring financial hardships.¹²

II. EXISTING LAW

Current law allows the Director of the EDD to "withdraw his approval" of any voluntary plan if the plan is in danger of running out of funds.¹³ The Director is required to give notice of his intention and the reason for withdrawing approval to the employer.¹⁴ The employer is then given a ten-day period in which to appeal the decision to an appeals board, who will determine if the plan should be terminated and if the EDD should take over the benefit payments.¹⁵ The appeals board will decide to take over the benefit payments if it is shown that the company is going out of business, filing for bankruptcy, or running at a deficit.¹⁶ The appeals process can be extremely long, especially to persons relying on disability compensation to support their families.¹⁷ If the appeals board decides that the EDD should take over the benefit compensation, payments can be made within days of the ruling.¹⁸ The employer is then required to remit any funds relating to the voluntary plan to the EDD to be deposited in the Disability Fund.¹⁹

If the employer fails to remit any such funds, the director of the EDD will assess the amount against the employer.²⁰ The EDD will estimate the amount owed based on the information in its possession regarding the amount of employee wages paid into the voluntary plan for the period in question.²¹ The director will then compute and assess the amounts of worker and employer contributions owed

10. ASSEMBLY COMMITTEE ON INSURANCE, COMMITTEE ANALYSIS OF SB 467, at 4 (May 8, 2002).

11. *Id.*

12. Press Release, Jack Scott, Scott's Disability Insurance Bill Signed By the Governor (June 6, 2002) [hereinafter Scott Press Release] (on file with the *McGeorge Law Review*).

13. CAL. UNEMP. INS. CODE § 3262 (West 1986).

14. *Id.*

15. *Id.*

16. *Id.*

17. See Scott Press Release, *supra* note 12 (stating that the appeals process delayed PG&E workers' benefits for four months).

18. Lazarus, *supra* note 1.

19. See CAL. UNEMP. INS. CODE § 3260 (West 1986) (dictating penalties for an employer's failure to comply).

20. *Id.*

21. See *id.* § 1126 (West 1986) (providing the method of calculation).

by the employer upon the basis of this estimate.²² The EDD will then provide the employer with notice of the assessment and the date the employer is required to pay.²³ If the employer does not meet these requirements the assessment will become a state tax lien, giving the State an interest in the employer's property until his debt is satisfied.²⁴ This process can be difficult, however, because under existing law the employer is required to keep the plan funds in trust, but not in a trust fund, which would forbid any commingling of the funds with the employer's other assets.²⁵ Where the company is claiming bankruptcy the payments owed by the employer are given priority over most other creditors.²⁶ However, if the employer has commingled plan funds with other assets, the EDD may not receive enough money to reimburse the state disability program after it has paid all of the outstanding claims that the plan owed.²⁷ In an attempt to remedy the difficulties encountered under existing law, Chapter 52 requires employers to keep plan funds in a separate trust fund and authorizes the EDD to terminate voluntary plans and pay benefits from the State Disability Fund without the delay of the appeals process.²⁸

III. CHAPTER 52

The authors of Chapter 52 introduced the "bill to protect employees covered by private [v]oluntary [d]isability [p]lans."²⁹ Hoping to insulate the funds that covered employees pay into the voluntary plans, Chapter 52 gives the EDD more latitude in controlling and monitoring independent voluntary plans.³⁰ The authors of Chapter 52 believe that it will allow the EDD to more thoroughly protect employees by making several changes to California's existing Unemployment Insurance Code.³¹

22. *Id.*

23. *Id.* § 1131 (West 1986).

24. *Id.* § 1703 (West 1986).

25. CAL. UNEMP. INS. CODE § 3261 (West 1986); see SENATE COMMITTEE ON LABOR AND INDUSTRIAL RELATIONS, COMMITTEE ANALYSIS OF SB 467 (Jan. 23, 2002) at 1 (stating that Chapter 52 requires voluntary plan money to be in a trust fund and maintained separately so as not to become a part of the employer's assets).

26. CAL. UNEMP. INS. CODE § 1701 (West 1986).

27. See generally SENATE COMMITTEE ON LABOR AND INDUSTRIAL RELATIONS, COMMITTEE ANALYSIS OF SB 467, at 1 (Jan. 23, 2002) (emphasizing that under existing law, plan funds are only held in trust and not in a trust fund).

28. CAL. UNEMP. INS. CODE § 3262 (amended by Chapter 52); SENATE COMMITTEE ON LABOR AND INDUSTRIAL RELATIONS, COMMITTEE ANALYSIS OF SB 467, at 1 (Jan. 23, 2002).

29. Scott Press Release, *supra* note 12.

30. See *id.* (stating that employees' payroll deductions, used to finance the voluntary programs, should be protected); see also Letter from Bob Choate, Assistant Business Manager, International Brotherhood of Electrical Workers, Local Union 1245, to Gray Davis, Governor of California (May 28, 2002) [hereinafter Choate Letter] (on file with the *McGeorge Law Review*) (stating that the EDD will protect employee's with "the authority to monitor and to terminate voluntary plans for good cause.").

31. Scott Press Release, *supra* note 12.

A. Termination of Voluntary Plans

Chapter 52 allows the EDD to terminate voluntary plans when the plan appears to be unable to fulfill its obligations to its claimants.³² If a company is having trouble meeting its plan's needs, the EDD can directly intervene and terminate the plan rather than simply withdrawing its approval.³³ Once the EDD terminates a plan, the Director can immediately begin paying eligible claimants through the SDI program.³⁴ This allows the EDD to circumvent the appeals process and protect those employees that rely on these benefits when they are unable to work.³⁵

B. Separate Accounts for Voluntary Plans

Once the EDD terminates a voluntary plan, the employer must remit any money related to the plan to the EDD.³⁶ In the event that the employer fails to do so, the EDD may then pursue the employer to recover payments made to employees under the State Disability Fund.³⁷ The EDD will make an assessment against the employer equal to the amount of money that was given to employees out of the SDI.³⁸ This assessment is based on the EDD's information with regard to the amount of employee contributions paid into the plan.³⁹ Employers are now required to keep any wage deductions and funds relating to a voluntary plan in separately maintained trusts.⁴⁰ These trusts must be completely independent, and any commingling with the employer's own assets is strictly forbidden.⁴¹ Because trusts are maintained separately, when an employer is or appears to be going bankrupt, the EDD can terminate the plan and begin paying eligible employees without the delays of the appeals process.⁴² Because the voluntary plan funds are not part of the employer's assets, they will not be subject to creditor's claims in a bankruptcy proceeding.⁴³ The authors of Chapter 52 hope that in the event of employer bankruptcy, these separately maintained accounts will provide reimbursement for SDI.⁴⁴

32. CAL. UNEMP. INS. CODE § 3262(a) (amended by Chapter 52).

33. *Id.*

34. *Id.* § 3263(b) (amended by Chapter 52); *see also* Letter from Tom Rankin, President, California Labor Federation, AFL-CIO, to Gray Davis, Governor of California (May 28, 2002) [hereinafter Rankin Letter] (on file with the *McGeorge Law Review*) (stating that "[o]nce a voluntary plan is terminated, otherwise eligible SDI claimants would be paid through the worker-financed SDI program.").

35. CAL. UNEMP. INS. CODE § 3262(f) (amended by Chapter 52); *see also* Scott Press Release, *supra* note 12 (stating that the people that rely on these benefits will no longer "have to worry about whether or not their check is in the mail.").

36. CAL. UNEMP. INS. CODE § 3262(b) (amended by Chapter 52).

37. *Id.* § 3262(c) (amended by Chapter 52).

38. *Id.*

39. *Id.* § 1126 (West 1986).

40. *Id.* § 3261 (amended by Chapter 52).

41. *Id.*

42. *Id.*; *id.* § 3262 (amended by Chapter 52).

43. *Id.* § 3261 (amended by Chapter 52).

44. *See* ASSEMBLY COMMITTEE ON INSURANCE, COMMITTEE ANALYSIS OF SB 467, at 4 (May 8, 2002)

IV. ANALYSIS

Chapter 52 will provide much-needed protection to employees that are enrolled in a voluntary disability plan.⁴⁵ By allowing the director of the EDD to terminate voluntary plans that are not meeting their commitments, rather than just withdrawing his approval, Chapter 52 allows California workers to receive payments from the State without enduring a long period of financial hardship.⁴⁶ By continuing to allow the employer to appeal the termination of the voluntary program, Chapter 52 protects employers as well.⁴⁷ However, terminating the voluntary program allows the EDD to begin paying eligible employees immediately and does not allow the appeals process to suspend any disability payments.⁴⁸

Although the fiscal impact of Chapter 52 is unknown,⁴⁹ taxpayers will be protected due to the ability of the EDD to pursue an employer that does not remit the plan funds that are owed.⁵⁰ Because plan funds are to be kept in separately identifiable trust funds, rather than simply in trust, the EDD should be able to recoup the money paid to employees out of the SDI.⁵¹ Chapter 52 had “near unanimous support in . . . the Legislature because it “guarantee[s] that injured [employees] have the most expeditious access to their benefits.”⁵²

V. CONCLUSION

Chapter 52 protects California employees that are injured and can no longer support their families.⁵³ By providing the EDD with the tools necessary “to monitor and to terminate voluntary [disability] plans for good cause,” the authors and proponents of Chapter 52 hope to avoid delays like those experienced by PG&E employees.⁵⁴ Chapter 52 is exactly what California employees need in

(stating that once a voluntary plan is terminated, the EDD can recoup payments directly from the voluntary plan trust).

45. Rankin Letter, *supra* note 34.

46. See ASSEMBLY COMMITTEE ON INSURANCE, COMMITTEE ANALYSIS OF SB 467, at 3-4 (May 8, 2002) (explaining the PG&E situation and how SB 467 rectifies it).

47. See CAL. UNEMP. INS. CODE § 3262(e) (amended by Chapter 52) (providing guidelines by which an employer can appeal a notice of termination of a voluntary plan).

48. *Id.* § 3262(f) (amended by Chapter 52).

49. ASSEMBLY COMMITTEE ON INSURANCE, COMMITTEE ANALYSIS OF SB 467, at 3 (May 8, 2002).

50. Scott Press Release, *supra* note 12.

51. See SENATE COMMITTEE ON LABOR AND INDUSTRIAL RELATIONS, COMMITTEE ANALYSIS OF SB 467, at 3 (Jan. 23, 2002) (stating that funds are required to be held in separately maintained trust funds and not just in trust, which was required under prior law).

52. Rankin Letter, *supra* note 34.

53. Scott Press Release, *supra* note 12.

54. Choate Letter, *supra* note 30.

order to protect the funds that they have deposited into their disability programs.⁵⁵

55. Rankin Letter, *supra* note 34.