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# California Legislature

## Senate Committee

on

## Labor and Industrial Relations

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December 7, 2016

Eduardo Enz, Executive Director  
California Commission on Health and Safety and Workers Compensation  
1515 Clay Street, 17<sup>th</sup> Floor  
Oakland, CA 94612

Dear Mr. Enz,

As you are no doubt aware, the Commission on Health and Safety and Workers Compensation (CHSWC) played a vital role in creating the statistical and analytical foundation for the seminal 2012 workers' compensation reform, SB 863 (DeLeon). Prior to the enactment of SB 863, delays of medical treatment for injured workers were common, as treatment decisions were made at the Workers Compensation Appeals Board (WCAB), rather than by doctors. Medical costs continued to rise, and the flood of workers' compensation liens undermined the healthy operation of the entire system. The potential of a system wide breakdown comparable to the travails of the early 2000s seemed to be a real and present fear.

Today, due to the passage of SB 863 and the efforts of the Division of Workers' Compensation, these fears did not come to pass. Instead, workers' compensation premiums are heading in a downward direction, providing necessary relief to California's small employers. Additionally, injured workers are receiving appropriate medical treatment in a timely manner. With the creation of a workers' compensation formulary, it is likely that medical disputes will decrease dramatically, leading to faster and less expensive medical treatment, improving the system for both injured workers and employers.

One of the key provisions of SB 863 was the Return to Work Fund, created under Labor Code Section 139.48. The \$120 million fund is created to make supplemental payments to injured workers who are the worst off – those with disproportionately low permanent disability ratings when compared to their wage losses. As noted in the recently-released RAND study on injured worker wage loss, the Return to Work Fund is a highly progressive benefit that greatly assists low-wage workers.



However, both the RAND report and some stakeholders have raised the concern that workers that are eligible for supplemental payments from the Return to Work Fund are not applying for these payments. Specifically, some stakeholders report that there is a gap between the number of workers who receive a Supplemental Job Displacement Benefit (SJDB) due to the loss of their job and the number of injured workers who apply for and receive the Return to Work Fund supplemental payments. As an injured worker needs to receive a SJDB in order to be eligible for the Return to Work Fund, one would expect both groups of workers to be nearly identical in size.

Currently, I am unaware of any data which shows if such a gap exists. However, if such a gap exists, then this suggests that some of the most vulnerable injured workers are not receiving all of the benefits that they are lawfully due. Not only does this undermine the workers' compensation system, it may also lead to cost shifts into other benefit systems. Both outcomes are wholly unacceptable.

Therefore, as Chair of the Senate Committee on Labor and Industrial Relations, I respectfully request that CHSWC conduct a review of the Return to Work Fund. Specifically, I request that the review determine if there is a gap between the number of workers who were awarded Supplemental Job Displacement Benefits (SJDB) and the number of workers who applied for the RTW Fund, and if such a gap exists, if the gap is growing or shrinking over time.

Thank you in advance for your attention to this review. Please feel free to reach out to me or my staff if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Tony Mendoza". The signature is written in black ink and is positioned below the word "Sincerely,".

TONY MENDOZA  
Chair, Senate Committee on Labor and Industrial Relations