

**Lien Fee Public Meeting - October 2, 2012**  
**Division of Workers' Compensation**

Excerpts of Senate Bill 863

Labor Code section 4903:

The appeals board may determine, and allow as liens against any sum to be paid as compensation, any amount determined as hereinafter set forth in subdivisions (a) through (i). If more than one lien is allowed, the appeals board may determine the priorities, if any, between the liens allowed. The liens that may be allowed hereunder are as follows:

- (a) A reasonable attorney's fee for legal services pertaining to any claim for compensation either before the appeals board or before any of the appellate courts, and the reasonable disbursements in connection therewith. No fee for legal services shall be awarded to any representative who is not an attorney, except with respect to those claims for compensation for which an application, pursuant to Section 5501, has been filed with the appeals board on or before December 31, 1991, or for which a disclosure form, pursuant to Section 4906, has been sent to the employer, or insurer or third-party administrator, if either is known, on or before December 31, 1991.
- (b) The reasonable expense incurred by or on behalf of the injured employee, as provided by Article 2 (commencing with Section 4600), except those disputes subject to independent medical review or independent bill review.
- (c) The reasonable value of the living expenses of an injured employee or of his or her dependents, subsequent to the injury.
- (d) The reasonable burial expenses of the deceased employee, not to exceed the amount provided for by Section 4701.
- (e) The reasonable living expenses of the spouse or minor children of the injured employee, or both, subsequent to the date of the injury, where the employee has deserted or is neglecting his or her family. These expenses shall be allowed in the proportion that the appeals board deems proper, under application of the spouse, guardian of the minor children, or the assignee, pursuant to subdivision (a) of Section 11477 of the Welfare and Institutions Code, of the spouse, a former spouse, or minor children. A collection received as a result of a lien against a workers' compensation award imposed pursuant to this subdivision for payment of child support ordered by a court shall be credited as provided in Section 695.221 of the Code of Civil Procedure.
- (f) The amount of unemployment compensation disability benefits that have been paid under or pursuant to the Unemployment Insurance Code in those cases where, pending a determination under this division there was uncertainty whether the benefits were payable under the Unemployment Insurance Code or payable hereunder; provided, however, that any lien under this subdivision shall be allowed and paid as provided in Section 4904.
- (g) The amount of unemployment compensation benefits and extended duration benefits paid to the injured employee for the same day or days for which he or she receives, or is entitled to receive, temporary total disability indemnity payments under this division; provided, however, that any lien under this subdivision shall be allowed and paid as provided in Section 4904.
- (h) The amount of family temporary disability insurance benefits that have been paid to the injured employee pursuant to the Unemployment Insurance Code for the same day or days for which that employee receives, or is entitled to receive, temporary total disability indemnity payments under this division, provided, however, that any lien under this subdivision shall be allowed and paid as provided in Section 4904.
- (i) The amount of indemnification granted by the California Victims of Crime Program pursuant to Article 1 (commencing with Section 13959) of Chapter 5 of Part 4 of Division 3 of Title 2 of the Government Code.

**Labor Code section 4903.05:**

(a) Every lien claimant shall file its lien with the appeals board in writing upon a form approved by the appeals board. The lien shall be accompanied by a full statement or itemized voucher supporting the lien and justifying the right to reimbursement and proof of service upon the injured worker or, if deceased, upon the worker's dependents, the employer, the insurer, and the respective attorneys or other agents of record. Medical records shall be filed only if they are relevant to the issues being raised by the lien.

(b) Any lien claim for expenses under subdivision (b) of Section 4903 or for claims of costs shall be filed with the appeals board electronically using the form approved by the appeals board. The lien shall be accompanied by a proof of service and any other documents that may be required by the appeals board. The service requirements for Section 4603.2 are not modified by this section.

(c) All liens filed on or after January 1, 2013, for expenses under subdivision (b) of Section 4903 or for claims of costs shall be subject to a filing fee as provided by this subdivision.

(1) The lien claimant shall pay a filing fee of one hundred fifty dollars (\$150) to the Division of Workers' Compensation prior to filing a lien and shall include proof that the filing fee has been paid. The fee shall be collected through an electronic payment system that accepts major credit cards and any additional forms of electronic payment selected by the administrative director. If the administrative director contracts with a service provider for the processing of electronic payments, any processing fee shall be absorbed by the division and not added to the fee charged to the lien filer.

(2) On or after January 1, 2013, a lien submitted for filing that does not comply with paragraph (1) shall be invalid, even if lodged with the appeals board, and shall not operate to preserve or extend any time limit for filing of the lien.

(3) The claims of two or more providers of goods or services shall not be merged into a single lien.

(4) The filing fee shall be collected by the administrative director. All fees shall be deposited in the Workers' Compensation Administration Revolving Fund and applied for the purposes of that fund.

(5) The administrative director shall adopt reasonable rules and regulations governing the procedure for the collection of the filing fee, including emergency regulations as necessary to implement this section.

(6) Any lien filed for goods or services that are not the proper subject of a lien may be dismissed upon request of a party by verified petition or on the appeals board's own motion. If the lien is dismissed, the lien claimant will not be entitled to reimbursement of the filing fee.

(7) No filing fee shall be required for a lien filed by a health care service plan licensed pursuant to Section 1349 of the Health and Safety Code, a group disability insurer under a policy issued in this state pursuant to the provisions of Section 10270.5 of the Insurance Code, a self-insured employee welfare benefit plan, as defined in Section 10121 of the Insurance Code, that is issued in this state, a Taft-Hartley health and welfare fund, or a publicly funded program providing medical benefits on a nonindustrial basis.

**Labor Code section 4903.06:**

(a) Any lien filed pursuant to subdivision (b) of Section 4903 prior to January 1, 2013, and any cost that was filed as a lien prior to January 1, 2013, shall be subject to a lien activation fee unless the lien claimant provides proof of having paid a filing fee as previously required by former Section 4903.05 as added by Chapter 639 of the Statutes of 2003.

(1) The lien claimant shall pay a lien activation fee of one hundred dollars (\$100) to the Division of Workers' Compensation on or before January 1, 2014. The fee shall be collected through an electronic payment system that

accepts major credit cards and any additional forms of electronic payment selected by the administrative director. If the administrative director contracts with a service provider for the processing of electronic payments, any processing fee shall be absorbed by the division and not added to the fee charged to the lien filer.

(2) The lien claimant shall include proof of payment of the filing fee or lien activation fee with the declaration of readiness to proceed.

(3) The lien activation fee shall be collected by the administrative director. All fees shall be deposited in the Workers' Compensation Administration Revolving Fund and applied for the purposes of that fund. The administrative director shall adopt reasonable rules and regulations governing the procedure for the collection of the lien activation fee and to implement this section, including emergency regulations, as necessary.

(4) All lien claimants that did not file the declaration of readiness to proceed and that remain a lien claimant of record at the time of a lien conference shall submit proof of payment of the activation fee at the lien conference. If the fee has not been paid or no proof of payment is available, the lien shall be dismissed with prejudice.

(5) Any lien filed pursuant to subdivision (b) of Section 4903 prior to January 1, 2013, and any cost that was filed as a lien prior to January 1, 2013, for which the filing fee or lien activation fee has not been paid by January 1, 2014, is dismissed by operation of law.

(b) This section shall not apply to any lien filed by a health care service plan licensed pursuant to Section 1349 of the Health and Safety Code, a group disability insurer under a policy issued in this state pursuant to the provisions of Section 10270.5 of the Insurance Code, a self-insured employee welfare benefit plan, as defined in Section 10121 of the Insurance Code, that is issued in this state, a Taft-Hartley health and welfare fund, or a publicly funded program providing medical benefits on a nonindustrial basis.

#### Labor Code section 4903.07:

(a) A lien claimant shall be entitled to an order or award for reimbursement of a lien filing fee or lien activation fee, together with interest at the rate allowed on civil judgments, only if all of the following conditions are satisfied:

(1) Not less than 30 days before filing the lien for which the filing fee was paid or filing the declaration of readiness for which the lien activation fee was paid, the lien claimant has made written demand for settlement of the lien claim for a clearly stated sum which shall be inclusive of all claims of debt, interest, penalty, or other claims potentially recoverable on the lien.

(2) The defendant fails to accept the settlement demand in writing within 20 days of receipt of the demand for settlement, or within any additional time as may be provide by the written demand.

(3) After submission of the lien dispute to the appeals board or an arbitrator, a final award is made in favor of the lien claimant of a specified sum that is equal to or greater than the amount of the settlement demand. The amount of the interest and filing fee or lien activation fee shall not be considered in determining whether the award is equal to or greater than the demand.

(b) This section shall not preclude an order or award of reimbursement of the filing fee or activation fee pursuant to the express terms of an agreed disposition of a lien dispute.

#### Issues for Discussion

- Exempt v. non- exempt liens
  - All non-exempt liens are filed electronically.
  - All non-exempt lien fees and activation fees get paid electronically.

- All non-exempt liens include a Proof Of Service and other documents required by the WCAB.
- All exempt liens filed in paper must also include an itemized statement of account.
- New liens – post January 1, 2013
  - New medical liens, medical legal liens, and costs filed on or after 1/1/2013 pay a \$150.00 filing fee before they can file (or at the time of filing).
  - New medical liens, medical legal liens, and costs filed on or after 1/1/2013 prove that they paid a filing fee with their DOR.
  - New medical liens, medical legal liens, and costs filed on or after 1/1/2013 that are exempt will file an exemption affidavit with the lien or DOR.
- Existing liens – pre 1/1/2013
  - Existing medical liens, medical legal liens and costs filed on or after 1/1/2013 pay a \$100.00 activation fee before they file their DOR (or at the time that they file their DOR).
  - Existing medical liens, medical legal liens and costs filed pre-1/1/2013 who get to a lien conference on someone else’s DOR pay a \$100.00 activation fee before they get to court.
  - Existing medical liens, medical legal liens and costs filed on or after 1/1/2013 that are exempt or already paid an un-refunded fee in 2004 or 2005 will file an exemption affidavit with the lien or DOR.
  - Existing medical liens, medical legal liens and costs filed pre-1/1/2013 which are not exempt *and* have not paid the \$100.00 activation fee by 1/1/2014 are dismissed by operation of law.
- Orders
  - If a judge orders a filing fee or an activation fee reimbursement based on the specific criteria in the statute, the defendant will reimburse the lien filing fee or activation fee.
  - A false or incomplete affidavit may lead to sanctions.
- Division Considerations
  - For an eform filed lien or DOR, the eform filer pays electronically first and then submits the transaction code or exemption affidavit with their electronic filing.

- For a Jet filed lien or DOR, the Jet filer pays electronically as part of their Jet submission or submits the transaction code or exemption affidavit with their electronic filing.
- For a lien conference appearance, with no lien or DOR filed by that party after the statute, the party will bring that transaction code to the conference for the judge to verify.