

## RESOLUTION 06-01-2023

### TEXT OF RESOLUTION

**RESOLVED** that the Conference of California Bar Associations recommends that legislation be sponsored to amend Labor Code section 4050 and add Labor Code section 4617, to read as follows:

1 § 4050

2 Whenever the right to compensation under this division exists in favor of an employee,  
3 ~~he~~ the employee shall, upon the written request of his employer, submit at reasonable intervals to  
4 examination by a practicing physician, from an approved worker's compensation provider list or  
5 approved provider network ~~provided~~ and paid for by the employer, and shall likewise submit to  
6 examination at reasonable intervals by any physician selected by the administrative director or  
7 appeals board or referee thereof.

8  
9 § 4617

10 (a) The administrative director shall establish a statewide medical provider network to be  
11 called the California Medical Provider Network (CAMPN). The CAMPN shall consist of  
12 physicians, as described in Section 3209.3, throughout the state who are willing and able to  
13 provide medical treatment to injured employees.

14 (b) Notwithstanding any other provision of law, if the employer or insurer has established  
15 a medical provider network (MPN) pursuant to Section 4616, or a health care organization  
16 (HCO) pursuant to Section 4600.3, the injured employee may choose to treat with a physician in  
17 that MPN or HCO, or may choose to transfer treatment to a physician in the CAMPN. If the  
18 employer or insurer has not established an MPN, the employee may choose to treat with a  
19 physician of the employee's choice, as provided in subdivision (c) of Section 4600, or to treat  
20 with a physician in the CAMPN. An employee who is treating with a physician in the CAMPN  
21 may, at any time, change to a different treating physician within the CAMPN. Nothing in this  
22 section shall be construed to limit the right of an employee to treat with their personal physician  
23 as described in subdivision (d) of Section 4600.

24 (c) The number of physicians in the CAMPN shall be sufficient to enable treatment for  
25 injuries or conditions to be provided in a timely manner and shall, to the extent feasible, include  
26 within the CAMPN physicians in all medical specialties. The CAMPN shall include an adequate  
27 number and type of physicians, as described in Section 3209.3, to treat common injuries  
28 experienced by injured employees based on the type of occupation or industry in which the  
29 employee is engaged, and the geographic area where the employees are employed. With respect  
30 to availability and accessibility of treatment, the administrative director shall consider the needs  
31 of rural areas, specifically those in which health facilities are located at least 30 miles apart and  
32 areas in which there is a health care shortage.

33 (d) A physician who possesses the requisite license for practice of their medical specialty  
34 is eligible for inclusion in the CAMPN, if all of the following apply:

35 (1) The physician is in good standing with the Medical Board of California.

36 (2) The physician has not been suspended pursuant to Section 139.21.

37 (3) The physician does not meet any of the criteria specified in paragraph (1) of  
38 subdivision (a) of Section 139.21.

39 (4) The physician agrees to treat injured workers within the scope of their medical  
40 practice.

41 (5) The physician agrees to bill in accord with the official medical fee schedule  
42 established pursuant to Section 5307.1.

43 (6) The physician agrees to practice in accord with rules and regulations applicable to the  
44 workers' compensation system, including preparation of required reports.

45 (e) A physician who meets the criteria in subdivision (d) shall be included in the  
46 CAMPN. In no event shall economic profiling, as defined in subdivision (c) of Section 4616.1,  
47 be a factor to be considered for inclusion in or expulsion from the CAMPN.

48 (f) All treatment within the CAMPN shall be provided in accordance with the medical  
49 treatment utilization schedule established pursuant to Section 5307.27, which remains  
50 presumptively correct.

51 (g) Treatment within the CAMPN shall be subject to utilization review, as described in  
52 Section 4610, and independent medical review, as described in Section 4610.5.

53 (h) Nothing contained herein shall be construed to limit or eliminate utilization review as  
54 described in Section 4610, independent medical review as described in Section 4610.5 or 4610.6,  
55 or the antifraud provisions contained in Sections 139.21 and 4906 of this code, and Section  
56 14123 of the Welfare and Institutions Code.

57 (i) The initial list of CAMPN physicians shall be created by including any physician who  
58 meets the criteria in subdivision (d) and was listed as of January 1, 2024, on any MPN created  
59 pursuant to Section 4616. Within 60 days of the effective date of this section, each employer,  
60 insurer, or private entity, that has established an MPN pursuant to Section 4616, shall file with  
61 the administrative director a list of those physicians in the MPN as of January 1, 2024.

62 (j) The administrative director shall, on or before April 30, 2025, and after public  
63 hearings, establish rules and procedures governing the CAMPN. The administrative director  
64 shall include a continuity of care policy meeting the requirements of Section 4616.2. The  
65 CAMPN shall be implemented no later than June 30, 2025.

66 (k) A physician in the CAMPN may, at any time, leave the CAMPN pursuant to the rules  
67 and procedures created by the administrative director.

(Proposed new language underlined; language to be deleted stricken)

**PROPONENT:** San Diego County Bar Association

## **STATEMENT OF REASONS**

The Problem: Under current law, worker's compensation treatment is performed by physicians paid for by the worker's compensation insurance carriers who routinely strike those physicians who may be perceived as too worker oriented in relation to treatment and treatment recommendations. This leads to a culture of worker's compensation physicians who are incentivized to only provide the minimal, lowest cost, treatment for injured workers, and not necessarily treatment that is best for the long-term health and recovery of injured workers. This problem is compounded by the fact that it is the worker's compensation insurance carriers who choose which physicians will provide assessment and treatment of an injured worker.

The Solution: This resolution amends Labor Code sections 4050 and adds Labor Code section 4717 to provide injured workers with the ability to choose an evaluating and treating physician from a list of approved workers compensation physicians or a physician from an approved provider network, and for the state to create the California Medical Providers Network (CAMPN) of approved worker's compensation physicians. By having the state create the CAMPN, and allowing injured workers the option of choosing from the CAMPN or the employer or insurer provided medical provider network or health care organization, it provides injured workers the ability to choose their own treating physician from networks of approved physicians. In addition, this change would eliminate current incentives on the part of employers and their insurers to eliminate otherwise qualified physicians from their provider networks because those physicians may be perceived as to favorable to injured workers in the care they provide.

**IMPACT STATEMENT**

This resolution does not affect any other law, statute, or rule.

**CURRENT OR PRIOR RELATED LEGISLATION**

Similar to Assembly Bill 1465, as originally introduced. No known prior similar CCBA resolutions.

**AUTHOR AND/OR PERMANENT CONTACT:**

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**RESPONSIBLE FLOOR DELEGATE:** Daniel Mazzella

**RESOLUTION 06-02-2023**

**TEXT OF RESOLUTION**

**RESOLVED** that the Conference of California Bar Associations recommends that legislation be sponsored to amend Labor Code section 1400.5, to read as follows:

1 § 1400.5

2 The definitions set forth in this section shall govern the construction and meaning of the  
3 terms used in this chapter:

4 (a) "Covered establishment" means any industrial or commercial facility or part thereof  
5 that employs, or has employed within the preceding 12 months, 75 or more persons.

6 (b) "Employer" means any person, as defined by Section 18, who directly or indirectly  
7 owns and operates a covered establishment. A parent corporation is an employer as to any  
8 covered establishment directly owned and operated by its corporate subsidiary.

9 (c) "Layoff" means a separation from a position for more than six consecutive months, or  
10 a reduction in hours of work of more than 50 percent during each month of any 6-month period,  
11 for lack of funds or lack of work.

12 (d) "Mass layoff" means a layoff during any 30-day period of 50 or more employees at a  
13 covered establishment.

14 (e) "Relocation" means the removal of all or substantially all of the industrial or  
15 commercial operations in a covered establishment to a different location 100 miles or more  
16 away.

17 (f) "Termination" means the cessation or substantial cessation of industrial or commercial  
18 operations in a covered establishment.

19 (g) (1) This chapter does not apply where the closing or layoff is the result of the  
20 completion of a particular project or undertaking of an employer subject to Wage Order 11,  
21 regulating the Broadcasting Industry, Wage Order 12, regulating the Motion Picture Industry, or  
22 Wage Order 16, regulating Certain On-Site Occupations in the Construction, Drilling, Logging  
23 and Mining Industries, of the Industrial Welfare Commission, and the employees were hired with  
24 the understanding that their employment was limited to the duration of that project or  
25 undertaking.

26 (2) This chapter does not apply to employees who are employed in seasonal employment  
27 where the employees were hired with the understanding that their employment was seasonal and  
28 temporary.

29 (h) "Employee" means a person employed by an employer for at least 6 months of the 12  
30 months preceding the date on which notice is required.

(Proposed new language underlined; language to be deleted stricken)

**PROPONENT:** San Diego County Bar Association

**STATEMENT OF REASONS**

The Problem: Under current state and federal law, generally known as the Worker Adjustment and Training Notification or WARN Acts, employers are required to provide 60-calendar-days

notification to employees in advance of plant closings and mass layoffs. If the required notice is not provided, or not properly provided, an employer can be liable for up to 60 days of pay and benefits, plus civil penalties and attorneys' fees.

Under the federal WARN Act, an "employment loss" that triggers a WARN Act notice includes (1) a layoff exceeding 6 months; or (2) a reduction in hours of work of more than 50% of each month during any 6-month period. (29 U.S.C. § 2101(a)(6); 20 C.F.R. § 639.3(f)(1).) Unlike federal law, Cal/WARN does not explain whether a layoff occurs for California employees who are placed on a temporary furlough (days, weeks or months with no work) or for whom work hours are reduced on a temporary basis due to business needs. The term "layoff" under Cal-WARN is simply defined as a "separation from a position for lack of funds or lack of work." (Labor Code §1400(c), (d).) This has led to confusion and employers generally following federal WARN Act notice requirements, hoping that in doing so they are not inadvertently violating the Cal/WARN Act. Other employers neglect to provide any advance notice when employees' workdays or work hours are temporarily eliminated, causing financial hardship to workers who are caught off guard.

For example, in the case *The International Brotherhood of Boilermakers, et al. v. NASSCO Holdings, Inc.* (2017) 17 Cal.App.5th 1105, the company placed workers on unpaid furlough for three (3) to five (5) weeks without the 60-day notice required under the state law. Workers were told of their immediate layoffs on the same day they showed up at the shipyard for their regular shifts. The workers found themselves suddenly without wages and unable to earn vacation or pension benefits. The appellate court agreed that NASSCO had violated Cal-WARN because "separation from a position" includes a "temporary job loss." The court did not explain what duration of a temporary job loss activates WARN.

The Solution: By adding the exact words of the federal WARN Act to the Cal/WARN definition of "layoff," this resolution would provide in essence that, in event of a temporary furlough or temporary reduction in employees' work hours, a WARN Act notice issued in compliance with the federal WARN Act satisfies the requirements of the Cal/WARN Act. This gives employers certainty as to when to issue WARN Act notices under federal and California law. All other Cal/WARN requirements, including the definition of covered employers, remain unchanged.

## **IMPACT STATEMENT**

This resolution may require additional statutory or regulatory changes.

## **CURRENT OR PRIOR RELATED LEGISLATION**

No known prior or pending similar legislation.

## **AUTHOR AND/OR PERMANENT CONTACT:**

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