

The background of the slide is a light gray gradient with several realistic water droplets of various sizes scattered across it. The droplets have highlights and shadows, giving them a three-dimensional appearance. The main title is centered in a large, bold, black sans-serif font.

# WORKERS COMPENSATION: A PATH TO RECOVERY

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# A BRIEF HISTORY OF WORKERS COMPENSATION LAW

- IN SOME FORM OF EXISTENCE SINCE THE NIPPUR TABLET OF ANCIENT SUMERIAN TEXT AND AGAIN FOUND IN 1750 B.C. IN THE CODE OF HAMMURABI OUTLINING COMPENSATION TABLES WITH PRECISE PAYMENT FOR THE LOSS OF BODY PARTS. GEERTS A, KORNBLITH B, URMSON J. COMPENSATION FOR BODILY HARM. BRUSSELS: FERNAND NATHAN; 1977. PP. 7–211.
- FIRST COMPREHENSIVE WORKERS COMPENSATION LAW PUT INTO PLACE - FIRST BY PRESIDENT TAFT IN 1908 TO COVER WORKERS INVOLVED IN INTERSTATE COMMERCE.
- WISCONSIN WAS FIRST STATE IN 1911 FOLLOWED BY NINE OTHERS TO PASS WORKERS COMPENSATION LEGISLATION WITH THE LAST STATE BEING MISSISSIPPI IN 1948

# “NO FAULT” INSURANCE PROGRAM

- INDUSTRIAL ACCIDENTS ARE A FACT OF LIFE
- SUCH ACCIDENTS REQUIRE AN EXPEDITIOUS SOLUTION FOR DEALING WITH FINANCIAL CONSEQUENCES
- THE DEFINITION OF A COMPENSABLE INJURY HAS EVOLVED OVER THE YEARS. PREVIOUSLY WAS RELEGATED TO A SUDDEN INDUSTRIAL ACCIDENT, HOWEVER IN RECENT YEARS MOST STATES HAVE ADDED LANGUAGE TO INCLUDE OCCUPATIONAL EXPOSURES AND OVERUSE SYNDROMES.
- EMPLOYERS GET TORT RELIEF IN THE FORM OF A DEDICATED FORUM TO DEAL WITH WORK RELATED INJURIES
- INJURED WORKERS (IN THEORY) RECEIVE A RELATIVELY QUICK AND EQUITABLE NO-FAULT COMPENSATION SYSTEM
- WORKERS COMPENSATION PROGRAMS
  - STATE
  - FEDERAL
  - LONGSHORE
  - SUBSEQUENT INJURY FUND (CALIFORNIA)

# MANDATORY EMPLOYER VACCINE POLICIES... WHEN TO FILE A CLAIM?

- WHEN TO FILE?
  - IMMEDIATELY AFTER YOU THINK YOU MAY HAVE BEEN INJURED AT WORK OR AS A RESULT OF EMPLOYMENT
    - REPORT RIGHT AWAY TO HR OR DESIGNATED SUPERVISOR
    - MAKE SURE THERE IS MEDICAL DOCUMENTATION
- NO COST TO FILE OR HIRE AN ATTORNEY – CONTINGENT FEE MODEL- FEES RANGE FROM 15-18% OF THE AWARD
- CAN A WORKERS' COMPENSATION CLAIM BE MADE IF AN EMPLOYEE IS INJURED BY A VACCINE THAT IS PART OF AN EMPLOYERS' MANDATORY VACCINATION POLICY?
  - SHORT ANSWER IS YES
- EMPLOYER HAS MANDATORY VACCINATION POLICY
  - LARSON'S ON WORKERS COMPENSATION LAW HOLDS THAT AN INJURY THROUGH INOCULATION WOULD BE COVERED "IF THERE IS A COMBINATION OF STRONG URGING BY THE EMPLOYER AND SOME ELEMENT OF MUTUAL BENEFIT . . . ." LARSON, WORKERS' COMPENSATION LAW § 27.32 (1978)
    - COERCION, EXCLUSION, DISCRIMINATION – MAY BE SUFFICIENT TO ESTABLISH CAUSATION AOE/COE

## CLAIMS CONTINUED...

- ANY KIND OF INJURY CAN BE A WORK INJURY. THE EMPLOYEE ONLY HAS TO SHOW THAT EMPLOYMENT IS THE MAIN FACTOR THAT EXPOSES HIM OR HER TO THE SITUATION THAT CAUSES THE INJURY - ALICE AZEVEDO V. WCAB (1966) 31 CAL. COMP. CASES 223.
  - CASE LAW HAS ALLOWED FOR “AGGRAVATIONS” OF PRE-EXISTING NON-INDUSTRIAL CONDITIONS
- AOE/COE – INJURY MUST “ARISE OUT OF EMPLOYMENT” AND OCCUR DURING THE “COURSE OF EMPLOYMENT”
- A GENERAL TEST IS:
  - WITHOUT THE EMPLOYMENT WOULD THE INJURY HAVE OCCURRED? - [ALANDER V. VACAVALLEY HOSP. \(1996\) 49 CAL. APP. 4TH 1298, 1303.](#)

# DID AN INJURY OCCUR?

- PREPONDERANCE OF THE EVIDENCE STANDARD (CALIFORNIA) LC 3202.5
  - FACTS LIBERALLY CONSTRUED IN FAVOR OF INJURED WORKER
  - PHYSIOLOGICAL OR EMOTIONAL IMPACT USUALLY REQUIRED
- SPECIFIC INJURY V. CUMULATIVE / REPETITIVE USE INJURY OR ILLNESS (VARIES BY STATE)
- INDUSTRIAL AGGRAVATION OF PRE-EXISTING INJURY / ILLNESS – DEPARTMENT OF INDUSTRIAL RELATIONS V. WCAB (STEWART) (1996) 61 CCC 1471
- FILING AFTER INOCULATION
- COMPENSABLE CONSEQUENCE INJURY FORREST E. WISE V. PACIFIC ELECTRIC RAILWAY COMPANY (1942) 8 CCC 17
  - INJURY IS HELD TO ARISE OUT OF EMPLOYMENT WHEN SUSTAINED AS CONDITION SUBSEQUENT TO EMPLOYMENT AND IN THE ABOVE CASE VACCINATION AS A CONDITION OF EMPLOYMENT
  - APPLICANT FAINTED AFTER VACCINE AND KNOCKED OUT HIS TEETH
  - INJURY FROM VACCINE SHEDDING? SHELTON V. GILLESPIE (1942) 8 CCC 15

# HOW LONG DO I HAVE TO FILE A CLAIM?

- STATUTE OF LIMITATIONS –
  - LIBERALLY CONSTRUED IN FAVOR OF INJURED WORKER
  - NOTICE
- SPECIFIC INJURY
  - 1 YEAR FROM DATE OF INJURY
  - STATUTE TOLLED IF
    - NOT PROVIDED CLAIM FORMS AFTER EMPLOYER KNOWLEDGE
    - FROM LAST DATE OF FURNISHING OF BENEFITS OR TREATMENT BY EMPLOYER
    - FRAUD
- CUMULATIVE INJURY / OCCUPATIONAL DISEASE / EXPOSURE INJURIES
  - CONCURRENCE OF BOTH A DISABILITY AND KNOWLEDGE THAT DISABILITY WAS RELATED TO EMPLOYMENT
  - MAY GIVE RISE TO MULTIPLE CLAIMS / DATES OF INJURY- I.E. ASBESTOS LITIGATION



# HOW DO I FILE A CLAIM?

- ALL 50 STATES HAVE SOME FORM OF WORKERS COMPENSATION REQUIREMENT FOR EMPLOYERS
  - STATE, MUNICIPAL AND FEDERAL EMPLOYEES COVERED AS WELL
  - TEXAS OPTIONAL FOR MANY EMPLOYERS BUT THEN LIABLE FOR INJURIES UNDER GENERAL TORT PRINCIPLES
  - PLEASE CHECK WITH YOUR STATE OR LOCAL GOVERNMENT AGENCY. [HTTPS://WWW.NFIB.COM/CONTENT/LEGAL-COMPLIANCE/LEGAL/WORKERS-COMPENSATION-LAWS-STATE-BY-STATE-COMPARISON-57181/](https://www.nfib.com/content/legal-compliance/legal/workers-compensation-laws-state-by-state-comparison-57181/)
- ATTORNEY LOCATOR
- [HTTPS://WWW.AVVO.COM/WORKERS-COMPENSATION-LAWYER.HTML](https://www.avvo.com/workers-compensation-lawyer.html)
- [HTTPS://LAWYERS.FINDLAW.COM/LAWYER/PRACTICE/WORKERS-COMPENSATION-LAW](https://lawyers.findlaw.com/lawyer/practice/workers-compensation-law)
- [HTTPS://WWW.NOLO.COM/LAWYERS/ALL-LOCATIONS](https://www.nolo.com/lawyers/all-locations)



# CLAIMS IN CALIFORNIA

- CALIFORNIA LAW IS MORE FAVORABLE FOR INJURED WORKERS THAN MANY STATES
  - EX. NO CUMULATIVE / REPETITIVE USE INJURIES IN MANY STATES
- CLAIM FORM DWC-1 [HTTPS://WWW.DIR.CA.GOV/DWC/DWCFORM1.PDF](https://www.dir.ca.gov/dwc/dwcfom1.pdf)
- 90 DAY PERIOD TO INVESTIGATE ONCE CLAIM FORM RECEIVED BY EMPLOYER
- MUST PROVIDE INITIAL TREATMENT UP TO \$10K WHILE INVESTIGATION TAKES PLACE / CLAIM DENIED
- AME / QME PROCESS
  - IF CLAIM IS DENIED - PARTIES SELECT AN (AME) AGREED MEDICAL EVALUATOR OR REQUEST A (PQME) PANEL QUALIFIED MEDICAL EVALUATOR IN PARTICULAR SPECIALTY TO DETERMINE MEDICAL LEGAL CAUSATION
  - CAN INITIATE PQME PROCESS WHILE CLAIM IS ON DELAY
  - SLOW PROCESS - WILL LIKELY TAKE BETWEEN 2-4 MONTHS OR LONGER FROM TIME OF REQUEST OF PQME PANEL TO RECEIVING REPORT (DOCTORS HAVE 35 DAYS TO ISSUE REPORT)
  - AVERAGE CASE IS 1.5-2 YEARS DEPENDING ON SEVERITY OF THE INJURY, NEED FOR TREATMENT, ACCEPTED / DENIED

# BENEFITS AVAILABLE TO INJURED WORKERS (SIMILAR IN MOST STATES)

- IMMEDIATE AND ONGOING MEDICAL TREATMENT TO TREAT AND ALLEVIATE INJURY OR ILLNESS
- TEMPORARY DISABILITY 2/3 OF AVERAGE WEEKLY WAGE PRIOR TO DATE OF INJURY (104 WEEKS TOTAL IN CALIFORNIA)
  - LIMITED EXCEPTIONS
    - AMPUTATIONS; CHRONIC OR SEVERE CONDITIONS; HEP B AND C; SEVERE BURNS; HIV; HIGH VELOCITY EYE INJURIES; CHEMICAL BURNS TO EYES AND PULMONARY FIBROSIS
- PERMANENT DISABILITY - % OF WHOLE PERSON IMPAIRMENT. 70% AND ABOVE QUALIFIES FOR LIFE PENSION
- LIFETIME FUTURE MEDICAL TREATMENT FOR ISSUES RELATED TO INJURY/ILLNESS
- WORKERS COMPENSATION PAYMENTS / BENEFITS ARE TAX FREE
- OTHER AVAILABLE BENEFITS –
  - SSDI
  - STATE DISABILITY
  - EMPLOYER OFFERED STD; LTD; INDUSTRIAL INDEMNITY
  - SUBSEQUENT INJURIES BENEFIT TRUST FUND

# DEATH BENEFITS

- A [WORK-RELATED INJURY OR ILLNESS](#) MUST HAVE CAUSED OR CONTRIBUTED TO ONE'S DEATH
- \$250K DEATH BENEFIT (CALIFORNIA) VARIES BY STATE
- UP TO \$320K IF MULTIPLE DEPENDENTS (CALIFORNIA)
- PAID IN INSTALLMENTS OF 2/3 OF AVERAGE WEEKLY WAGE OR SETTLE FOR LUMP SUM DISCOUNTED TO PRESENT VALUE
- FUNERAL AND BURIAL EXPENSES
- ELIGIBILITY OF DEPENDENTS
  - CHILDREN UNDER 18
  - SOME STATES ALLOW FOR ADULT DEPENDENT CHILDREN OR ADULT DEPENDENTS ACCORDING TO PROOF
  - SPOUSE
  - DOMESTIC PARTNER

# WHAT IS THE “PREP” ACT?

- THE PUBLIC READINESS AND EMERGENCY PREPAREDNESS ACT (PREP ACT) AUTHORIZES THE SECRETARY OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES (SECRETARY) TO ISSUE A PREP ACT DECLARATION.
- THE DECLARATION PROVIDES IMMUNITY FROM LIABILITY (EXCEPT FOR WILLFUL MISCONDUCT) FOR CLAIMS OF LOSS CAUSED, ARISING OUT OF, RELATING TO, OR RESULTING FROM ADMINISTRATION OR USE OF COUNTERMEASURES TO DISEASES SUCH AS COVID-19 VACCINES.

# DOES THE PREP ACT PRECLUDE FILING A WORKMAN'S COMPENSATION CLAIM?

- NO: PREP AND WORKERS COMPENSATION ARE SEPARATE AND PREP DOES NOT PRECLUDE RECOVERING UNDER STATE WORKERS COMPENSATION LAWS.
- “IN GENERAL, THE BENEFITS PAID UNDER THE PROGRAM, ARE SECONDARY TO ANY OBLIGATION OF ANY THIRD-PARTY PAYER TO PROVIDE OR PAY FOR SUCH BENEFITS. THE BENEFITS AVAILABLE UNDER THE CICP USUALLY WILL BE PAID ONLY AFTER THE REQUESTER HAS IN GOOD FAITH ATTEMPTED TO OBTAIN ALL OTHER AVAILABLE COVERAGE FROM ALL THIRD-PARTY PAYERS WITH AN OBLIGATION TO PAY FOR OR PROVIDE SUCH BENEFITS (E.G., MEDICAL INSURANCE FOR MEDICAL SERVICES OR ITEMS, WORKERS' COMPENSATION PROGRAM(S) FOR LOST EMPLOYMENT INCOME).”
- [42 U.S.C. 247D-6E.](#)
- [HTTPS://WWW.ECFR.GOV/CURRENT/TITLE-42/CHAPTER-I/SUBCHAPTER-J/PART-110](https://www.ecfr.gov/current/title-42/chapter-i/subchapter-j/part-110)



# “PREP” CONTINUED

- “THE CICIP OR ”COUNTERMEASURES INJURY COMPENSATION PROGRAM” ([HTTPS://WWW.HRSA.GOV/CICP/](https://www.hrsa.gov/cicp/)) IS PAYER OF LAST RESORT, SO BENEFITS ARE REDUCED BY THE AMOUNTS PAYABLE BY ALL OTHER PUBLIC AND PRIVATE THIRD-PARTY PAYERS (SUCH AS HEALTH INSURANCE AND WORKERS’ COMPENSATION). THE REGULATIONS IMPLEMENTING THE CICIP ARE AT [42 CFR PART 110.](#)”
- [HTTPS://WWW.PHE.GOV/PREPAREDNESS/LEGAL/PREPACT/PAGES/PREPQA.ASPX](https://www.phe.gov/preparedness/legal/prepact/pages/prepqa.aspx)
- “PLEASE NOTE THAT THE CICIP IS THE PAYER OF LAST RESORT AND CAN ONLY REIMBURSE OR PAY FOR MEDICAL SERVICES OR ITEMS, OR LOST EMPLOYMENT INCOME THAT ARE NOT COVERED BY OTHER THIRD-PARTY PAYERS, SUCH AS HEALTH INSURANCE, VETERANS AFFAIRS BENEFITS, OR WORKERS’ COMPENSATION.”
- [HTTPS://WWW.HRSA.GOV/CICP/FAQ/REQUESTERS](https://www.hrsa.gov/cicp/faq/requesters)

# ISSUES TO CONSIDER AND POTENTIAL HURDLES TO RECOVERY

- AWARENESS / EDUCATION OF VACCINE INJURIES AND ABILITY TO FILE A WORKERS COMPENSATION CLAIM
- FEAR OF EMPLOYER RETALIATION TERMINATION
  - LC § 132A / DISCRIMINATION / WRONGFUL TERMINATION / EEOC / FEHA
  - INJURED WORKERS AS A PROTECTED CLASS
- EDUCATING THE DOCS
- ESTABLISHING AN INJURY RELATED TO VACCINATION
- DISCOVERY ISSUES – CAN WE PEEK BEHIND WIZARDS CURTAIN
- OBVIOUS INJURIES FIRST - APPROACH TO SUCCESS



# ADDITIONAL RECOMMENDED READING

- NOTABLY, WORKERS' COMPENSATION IS NOT ABOUT DEALING WITH INTENTIONAL MANDATES OF EMPLOYERS RELATED TO EMPLOYEES' PERSONAL MEDICAL CHOICES. AS SUCH, RELATIVELY LITTLE CASE LAW EXISTS ON THE TOPIC OF "WORK INJURIES RESULTING FROM EXPERIMENTAL MEDICAL TREATMENT MANDATED BY EMPLOYERS AFTER HIRE"—IF ONE WERE TO ACCURATELY FRAME THE ISSUE FOR WHAT IT IS. SEE ADDITIONAL RECOMMENDED READING FOR A TOUCHSTONE 1970S SWINE FLU CASE AND AN INCOMPLETE MULTI-STATE REVIEW ON THE HANDLING OF INOCULATION WORK INJURIES.
- FROM SWINE FLU TO BLOOD DRIVES, THE COMPENSABILITY OF EMPLOYER-SPONSORED INOCULATION OR NEEDLE STICK INJURIES, BOBBY STOKES, DECEMBER 20, 2020.  
[HTTPS://WWW.WCI360.COM/FROM-SWINE-FLU-TO-BLOOD-DRIVES-THE-COMPENSABILITY-OF-EMPLOYER-SPONSORED-INOCULATION-OR-NEEDLE-STICK-INJURIES/](https://www.wci360.com/from-swine-flu-to-blood-drives-the-compensability-of-employer-sponsored-inoculation-or-needle-stick-injuries/).

# ADDITIONAL READING CONT.

- ADVERSE REACTION TO VACCINATIONS: CURRENT ISSUES IN WORKERS' COMPENSATION, JOHN H. GEANEY, DECEMBER 28, 2020. SOURCE:

[HTTPS://NJWORKERSCOMPLOG.COM/ADVERSE-REACTIONS-TO-VACCINATIONS-CURRENT-ISSUES-IN-WORKERS-COMPENSATION/?UTM\\_SOURCE=CAPEHART+SCATCHARD+SUBSCRIBERS&UTM\\_CAMPAIGN=CEE79BDAB7-NEW\\_JERSEY\\_WORKERS\\_COMP\\_BLOG\\_524\\_2016\\_COPY\\_01&UTM\\_MEDIUM=EMAIL&UTM\\_TERM=0\\_880144AB5E-CEE79BDAB7-111866904](https://njworkerscompblog.com/adverse-reactions-to-vaccinations-current-issues-in-workers-compensation/?utm_source=CAPEHART+SCATCHARD+SUBSCRIBERS&utm_campaign=CEE79BDAB7-NEW_JERSEY_WORKERS_COMP_BLOG_524_2016_COPY_01&utm_medium=EMAIL&utm_term=0_880144AB5E-CEE79BDAB7-111866904)