

NJ Workers' Compensation: Senate Bill 2998

On June 3, 2021, the New Jersey State Senate is scheduled to vote on a significant piece of legislation that involves a change in the workers' compensation statute, and, perhaps, employment law in general. The change involves individuals who sustain a work-related injury and are rendered disabled from returning to work at the position in which they were previously employed.

S2998, as sponsored by Senators Joseph Lagana and Vin Gopal, would require employers with at least 50 employees to provide a hiring preference to any employee who sustained a work-related injury and is found to be at maximum medical improvement but is unable to return to the position at which the employee was previously employed. This proposed legislation has already passed the state assembly under the companion bill A2617, by a vote of 76-0. As such, it appears that there is enough support for this legislation to bring it to the governor's desk.

The language of this bill would essentially codify under the Workers' Compensation Act certain employment protections that are already outlined under the state's Laws Against Discrimination (LAD). That is, an employer is required to provide reasonable accommodation to an employee under certain circumstances when the individual suffers from a permanently disabling condition. This proposed legislation does not require the employer to create a new position to accommodate an employee who cannot return to the former position held following a work-related injury, nor does it require the employer to remove another employee from an existing position that would be suitable for the injured employee.

Although this bill does not provide the protections and enforcement powers afforded by such anti-discrimination laws as the LAD, and federal ADA laws, it will require employers of 50 or more employees to essentially give such injured workers greater preference for other open positions in the company that happen to be available at the time the worker reaches maximum medical improvement. It would also represent one more layer of consideration for employers who are in the process of filling open positions within the company.

While this legislation appears to be noble on its face in those unfortunate circumstances when an employee sustains a work-related injury and is left with a permanent restriction, one must question whether such legislation is necessary. As already noted, there are protections already in the law against discriminatory hiring practices for individuals with disabilities. Furthermore, the preferential hiring that must be afforded to the injured worker under this legislation could have a negative impact against other prospective job applicants ready, willing, and perhaps, more able to work in the accommodated position under consideration.

The Workers' Compensation Act already includes statutory language that prohibits an employer from discriminating against an individual who is hurt on the job and files a workers' compensation claim. As such, this preferential treatment toward the injured worker becomes just one more layer of bureaucracy that an employer must address in the hiring process. Furthermore, there is no provision in this proposed legislation that provides any time frame for how long this preference remains in effect. Instead, it simply states that the preference is triggered when the individual reaches maximum medical improvement, which can be several months, if not years after a work accident. Perhaps the focus of this legislation should be on the encouragement to return to work to have the desired effect.

Comment: At this time, it is unclear whether this legislation will be supported by the governor if it does pass in the Senate. Perhaps the Senate should reconsider this legislation before enacting a law that is already in the books for the protection of all individuals with disabilities and focus the attention on getting the injured

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worker back to work.