2 Summary of California Law (10th), Workers' Compensation

I. WORKERS' COMPENSATION SYSTEM
   A. §§1 Nature of System.
   B. Constitutional Enabling Provision.
      1. §§2 Enlargement of Legislative Power.
      2. §§3 No Limitation on Legislative Power.
   C. Workers' Compensation Act.
      1. §§4 Original Act and Revisions.
      3. Liberal Construction.
         (a) §§6 In General.
         (b) §§7 Rule Applied in Favor of Claimant.
         (c) §§8 Rule Invoked To Deny Tort Action.
      4. §§9 Prospective Construction.
   D. Division of Workers' Compensation.
      1. §§10 In General.
      2. §§11 Administrative Director.
      3. §§12 Court Administrator.
      4. Appeals Board.
         (a) §§13 In General.
         (b) §§14 Powers.
         (c) §§15 Exclusive Jurisdiction.
         (d) §§16 Limitations on Jurisdiction.
   E. Discrimination Against Injured Workers.
      1. §§17 Nature and Purpose of Statute.
      2. §§18 Sanctions for Violation.
      3. Scope of Statute.
         (a) §§19 Liberal Construction.
         (b) §§20 Limitations.
         (c) §§21 Successor and Agency Liability.
      4. §§22 Justification for Not Reinstating Worker.
   F. §§23 Prevention of Fraud and Abuse.

II. EXCLUSIVE REMEDY
   A. In General.
      1. §§24 Statutory Exclusive Remedy Rules.
      2. §§25 Statutory Exceptions.
      3. §§26 Pleading To Negate or Uphold Jurisdiction.
   B. Consequences of Exclusive Remedy Rules.
         (a) §§27 In General.
         (b) §§28 Wrongful Termination.
         (c) §§29 Constructive Discharge.
      2. §§30 Noncompensable Injury.
      3. §§31 Wrongful Refusal To Pay Compensation Award.
      4. §§32 Employer's Wilful Misconduct.
5. §33 Employer's Fraud.
6. §34 Failure To Render Medical Care.
7. §35 Insurer's Negligent Safety Inspection.
8. §36 Insurer’s Negligent Investigation.
9. §37 Insurer's Negligent Spoliation of Evidence.
10. §38 Acts of Independent Claims Administrator.
11. §39 Involuntary Manslaughter.
12. §40 Criminal Assault by Third Party.
13. §41 Peculiar Risk Doctrine Is Unavailable.
14. §42 Other Consequences.

III. EXCEPTIONS, DISTINCTIONS, AND PERMISSIBLE ACTIONS
A. Actions Against Employer.
      (a) §43 Physical Assault.
      (b) Fraudulent Concealment Aggravating Disease or Injury.
         (1) §44 In General.
         (2) §45 What Constitutes Fraudulent Concealment.
      (c) §46 Fair Employment and Housing Act.
      (d) §47 Whistleblower Protection Statute.
      (e) §48 Products Liability.
      (f) Failure To Provide Guard on Power Press.
         (1) §49 In General.
         (2) §50 Elements of Cause of Action.
         (3) §51 Definitions.
      (g) Uninsured Employer.
         (1) §52 Cumulative Remedies Are Authorized.
         (2) §53 Special Rules Governing Action.
   2. Conditions of Compensation Not Met.
      (a) §54 In General.
      (b) §55 Spoliation of Evidence.
   3. Conduct Outside Compensation Bargain.
      (a) §56 Basis for Liability.
      (b) §57 Wrongful Termination in Violation of Public Policy.
      (c) §58 False Imprisonment.
      (d) §59 Discrimination in Workplace.
      (e) §60 Defamation.
      (f) §61 Invasion of Privacy.
   4. Employer in Dual Capacity.
      (a) §62 Nature of Doctrine.
      (b) §63 Legislative Curtailment.
   5. Other Authorized Actions.
      (a) §64 Employer's Extrinsic Fraud.
      (b) §65 Fetal Injury in Workplace.
      (c) §66 Excluded Employment.
B. Action Against Other Employee.
   1. §67 Wilful Act or Intoxication.
2. §68 Employee Outside Scope of Employment.

C. Action Against Third-Party Tortfeasor.

1. §69 In General.

2. Employee's Unilateral Release.
   (a) §70 Statutory Authorization.
   (b) §71 Notice.

3. Action or Settlement by Employee Alone.
   (a) §72 Employer's Lien on Employee's Judgment.
   (b) Employer's Credit on Employee's Award.
      (1) §73 In General.
      (2) §74 No Credit in MICRA Action.
      (3) §75 Credit on Award After Judgment.
   (c) Employee's Expenses and Attorneys' Fees.
      (1) §76 Nature of Problem and Former Law.
      (2) §77 Apportionment of Fee.
      (3) §78 Procedure for Apportionment.
      (4) Priority of Attorney's Claim.
         (aa) §79 In General.
         (bb) §80 After Judgment.
         (cc) §81 After Settlement.

4. Action, Settlement, or Joinder by Employer.
   (a) Action or Settlement by Employer Alone.
      (1) §82 In General.
      (2) §83 Statute of Limitations.
      (3) §84 Reimbursement.
   (b) Action by Both Parties.
      (1) §85 Action by Employer: Intervention by Employee.
      (2) §86 Action by Employee: Joinder or Intervention by Employer.
      (3) §87 Action by Employer and Employee: Reimbursement.
   (c) Settlement by Both Parties: Reimbursement.
      (1) §88 In General.
      (2) §89 Apportionment.
      (3) §90 Allocation on Recovery From Fewer Than All Defendants.
   (d) §91 Proof of Causation.

5. Employer's Contributory Negligence.
   (a) §92 In General.
   (b) Comparative Fault.
      (1) §93 Comparative Negligence Doctrine Extended.
      (2) §94 Effect of Employee's Negligence.
   (c) §95 Employer Is Party.
   (d) §96 Affirmative Defense.
   (e) §97 Employee May Not Raise Issue.
   (f) Subsequent Proceeding Before Board.
      (1) §98 Where Employer's Negligence Is Judicially Determined.

(g) §100] Distinction: Employer's Waiver of Subrogation.
(h) §101] Determination Without Employer.
(i) §102] No Right of Contribution Against Employer.

6. §103] Lien of Public Employees' Retirement System.

D. Other Permissible Actions.

2. §105] Action Against Insurer for Intentional Tort.


IV. CONFLICT OF LAWS: EXTRATERRITORIAL OPERATION

A. General Principles.


1. Rights of Employees.
   (a) §111] Development of Rule.
   (b) Making of Contract in California.
       (1) §112] Earlier Decisions.
       (2) §113] Later Decisions.

2. §114] Rights Between Insurers.

C. Injury in California, Employment Contract Outside.

1. §115] In General.


V. FEDERAL JURISDICTION


1. §118] In General.
3. §120] Relation of Duties to Interstate Commerce.
4. §121] Liability Based on Negligence.
5. §122] Occupational Disease.


D. Admiralty Jurisdiction.

1. §126] Nature of Admiralty Jurisdiction.
2. Remedies of Seaman.
   (a) §127] Maintenance and Cure.
   (b) Breach of Warranty of Seaworthiness.
       (1) §128] Nature of Remedy.
       (2) §129] Scope of Warranty.
       (3) §130] Persons Covered.
(c) Jones Act.
   (1) [§131] In General.
   (2) [§132] Seaman Status.
   (3) [§133] Employment Relationship.
   (4) [§134] Liability Based on Negligence.

   (a) [§135] In General.
   (b) [§136] Employees Covered.
   (c) [§137] Injuries Covered.
   (d) Employee's Action Against Third Party.
      (1) [§138] In General.
      (2) [§139] Action Against Shipowner.
      (3) [§140] Shipowner's Duty of Care.
   (e) [§141] No Right of Indemnity in Shipowner.

   (a) [§142] In General.
   (b) [§143] Crediting Payments.
   (c) [§144] Workers' Compensation for Injury on Land.
   (d) [§145] Federal Maritime Action in Death Case.

VI. WORKERS' COMPENSATION INSURANCE
   A. Nature of Requirement.
      1. [§146] In General.
      2. [§147] Insurers.
   B. [§149] Effect of Compliance.
   C. Effect of Failure To Comply.
      1. [§150] In General.
      2. [§151] Increase of Award.
      3. [§152] Enforcement of Award.
      4. Payment From Uninsured Employers Benefits Trust Fund.
         (a) [§153] In General.
         (b) [§154] Notice to Employer.
         (c) [§155] Recovery From Employer.
         (d) [§156] Recovery From Third Person.
   D. [§157] Scope and Interpretation of Policies.
   E. [§158] Nondisclosure of Medical Information.

VII. THE EMPLOYMENT RELATIONSHIP
   A. Who Are Employers.
      1. [§159] In General.
      3. Multiple Employment.
         (a) Liabilities of Employers.
            (1) General and Special Employment.
               (aa) [§161] Test: Right of Control.
               (bb) [§162] No Transfer of Right of Control.
(2) [§164] Concurrent or Joint Employment.
(3) [§165] Public Emergency Service.
(4) [§166] Licensed Contractor and Temporary Agency.
(b) [§167] Rights Between Insurers.
(c) Disability From Progressive Disease.
(1) [§168] Liability of Last Insurer.
(2) Apportionment Among Multiple Employers.
   (aa) [§169] In General.
   (bb) [§170] Employers Who Are Liable.
   (cc) [§171] Procedure.

B. Who Are Employees.
   1. Nature of Classification.
      (a) [§172] In General.
      (b) [§173] Compensation.
      (c) [§174] Unlawful Employment.
      (d) [§175] Preemployment Tryout.
   2. Public Employees.
      (a) [§176] Broad Application.
      (b) [§177] Firefighters and Other Emergency Personnel.
      (c) [§178] Law Enforcement Personnel.
      (d) [§179] Miscellaneous Employees.
   3. Prisoners.
      (a) [§180] State Prison Inmate.
      (b) [§181] County Inmate.
      (c) [§182] Jail Inmate Lent to Third Party.
      (d) [§183] Nonincarcerated Convicted Person.
   4. Other Categories.
      (a) [§184] Working Member of Partnership or Limited Liability Company.
      (b) [§185] Worker Receiving Welfare Assistance.
      (c) [§186] Agricultural Workers.
      (d) [§187] Domestic Employees.
      (e) [§188] Author of Work Made for Hire.

C. Excluded Employments and Relationships.
   1. Independent Contractors.
      (a) [§189] Determining Status.
      (b) [§190] Exception: Unlicensed Construction Contractor.
   2. [§191] Statutory Exclusions.

VIII. WHEN INJURIES ARE COMPENSABLE
B. Injury in Course of Employment.
   1. In General.
      (a) [§194] Nature of Requirement.
      (b) [§195] Activity Outside Course.
      (c) [§196] Injury After Regular Hours.
(d) [§197] Work Outside Regular Duties.
(e) [§198] Injury While Going to Physician's Office.
(f) [§199] Return for Tools After Discharge.
(g) [§200] Violation of Instructions.

2. Going and Coming Rule.
   (a) [§201] General Rule Denying Compensation.
   (b) [§202] Nature of Exceptions.
   (c) Special Mission for Employer.
      (1) [§203] Compensation Allowed.
      (2) [§204] Compensation Denied.
   (d) [§205] Wages Paid During Period.
   (e) Approach to Premises Under Employer's Control.
      (1) [§206] In General.
      (2) [§207] Parking.
      (3) Special Risk to Employee.
         (aa) [§208] Compensation Denied.
         (bb) [§209] Compensation Allowed.
      (4) [§210] Waiting for Admission to Workplace.
   (f) Bunkhouse Rule.
      (1) [§211] In General.
      (2) [§212] Tenant Employee.
   (g) [§213] Unlimited Territory or Hours of Work.
   (h) Special Transportation Requirements.
      (1) [§214] Transportation Furnished by Employer.
      (2) [§215] Transportation Allowance.
      (3) [§216] Employee's Car Required by Employer.
      (4) [§217] Transportation Advantageous to Job.

   (a) [§218] General Rule Denying Compensation.
   (b) Exceptions.
      (2) [§220] Efforts To Prevent Theft of Employer's Property.
      (3) [§221] Human Response to Situation.
      (5) [§223] Coffee and Lunch Breaks.

4. Recreational Activity Related to Employment.
   (a) [§224] Judicial Rule.
   (b) Statutory Rule.
      (1) [§225] In General.
      (2) [§226] Compensation Allowed.
      (3) [§227] Compensation Denied.

5. [§228] Promotional Examination.
6. [§229] Educational Program.

C. Injury Arising Out of Employment.
1. In General.
   (a) [§230] Zone of Danger.
(b) §231 Burden of Proof.
(c) §232 Death From Unknown Cause.

2. Exposure to Particular Danger.
   (a) Risks of Street or Premises.
      (1) §233 In General.
      (2) §234 Physical Violence Against Employee.
   (b) §235 Injury From Seizure and Fall.
   (c) §236 Disease and Climatic Conditions.

3. Injury Aggravating Preexisting Disease.
   (a) §237 In General.
   (b) §238 Heart Attack Caused by Strain or Exertion.
   (c) Law Enforcement Officers and Firefighters.
      (1) §239 Statutory Presumptions.
      (2) §240 Scope and Effect of Presumptions.
      (3) §241 Constitutionality of Statutes.
      (4) §242 What Constitutes Heart Trouble.

4. §243 Treatment Aggravating Preexisting Disease.

5. Psychiatric Injury.
   (a) §244 In General.
   (b) §245 Higher Threshold Requirement.
   (c) §246 Time Restrictions.
   (d) §247 Posttermination Claims.

6. §248 Skylarking or Horseplay.

7. Altercation Between Employees.
   (a) §249 Innocent Claimant.
   (b) §250 Aggressor Claimant.
   (c) §251 Condoned Horseplay.
   (d) §252 Exchange of Blows Without Animosity.

8. §253 Altercation With Employer.

D. Contributory Fault of Employee.
   1. §254 In General.
   2. §255 Immoral Personal Object.
   3. §256 Criminal Act.
   4. §257 Discipline for Noncriminal Act.
   5. §258 Undertaking Excessive Workload.

IX. THE AWARD
A. Nature and Elements of Award.
   1. In General.
      (a) §259 Purpose and Components.
      (b) §260 Installsments or Lump Sum.

2. Medical Treatment and Expense.
   (a) §261 In General.
   (b) §262 Medical Provider Network.
   (c) §263 Utilization Review.
      (c-1) §263A (New) Rescission or Modification of Treatment.
      (c-2) (New) Independent Medical Review.
(1) §263B (New) In General.
(2) §263C (New) Procedure for Review and Determination.
(d) §264 Reimbursement for Examination Expenses.
(e) §265 Injury to Orthotic and Prosthetic Devices.
(f) Kinds of Treatment.
   (1) §266 In General.
   (2) §267 Cosmetic Surgery.
(g) Selection of Physician.
   (1) §268 In General.
   (2) §269 Selection by Employee.
   (3) §270 Change of Physician.
(h) §271 Neglect or Refusal To Furnish Treatment.
(i) §272 Offer by Employer After Refusal.
(j) (New) Payment for Medical Treatment and Services.
   (1) §272A (New) In General.
   (2) §272B (New) Explanation of Review.
   (3) §272C (New) Independent Bill Review.

   (a) §273 Reimbursable Expenses.
   (b) §274 Conditions for Reimbursement.

4. Indemnity for Disability.
   (a) §275 In General.
   (b) §276 Distinct Functions of Temporary and Permanent Disability Indemnity.
   (c) §277 Waiting Period and Exceptions.
   (d) §278 Payment Reduction Incentive.

   (a) §279 Nature of Award.
   (b) §280 Maximum Amounts.
   (c) §281 Determination of Partial Dependency.

6. Rehabilitation Benefits.
   (a) §282 Vocational Rehabilitation.
   (b) §283 Supplemental Job Displacement Benefit.

B. Determination of Disability.

1. Temporary Disability.
   (a) §284 In General.
   (b) §285 Temporary Total Disability.
   (c) §286 Temporary Partial Disability.

2. Permanent Disability.
   (a) §287 In General.
   (b) §288 Determination of Percentage of Permanent Disability.
   (b-1) §288A (New) Application of 2005 Rating Schedule.
   (c) §289 Overlapping Disabilities.
   (d) §290 Progressive Occupational Disease.
   (e) §291 Dispute Involving Permanent Disability.

3. §292 Specific and Cumulative Injuries.
4. Prior Disability or Disease and Subsequent Injury.
   (a) Former Law.
      (1) §293 In General.
      (2) §294 Aggravation Cases.
      (3) §295 Preexisting Disability and Subsequent Nonindustrial
      Injury Cases.
   (b) §296 Apportionment Based on Causation.
   (c) Compensation From Subsequent Injuries Benefits Trust Fund.
      (1) §297 Nature of Legislation.
      (2) §298 Death of Employee Without Dependents.
      (3) §299 Basic Provisions for Compensation.
      (4) §300 No Double Recovery.
      (5) §301 Application and Award.
      (6) §302 Statute of Limitations.

C. Determination of Average Earnings.
   1. §303 Basic Factor in Compensation Award.
      (a) §304 In General.
      (b) §305 Particular Employees.
      (c) §306 Date at Which Amount Is Measured.
   3. Earning Capacity.
      (a) §307 In General.
      (b) §308 Wage Increase Following Injury.
      (c) §309 Effect of Retirement.
   4. §310 Intermittent Employment.
   5. §311 Effect of Previous Disability.

D. Dependents.
   1. §312 Conclusive Presumptions.
   2. §313 Proof of Actual Dependency.
   3. §314 Nonmarital Relationship.
   4. §315 Allocation of Award.

E. Misconduct of Employer.
   1. §316 Nature of Increased Award.
   2. §317 Calculation of Award.
      (a) Test of Knowledge.
         (1) §318 Early Development.
         (2) §319 Contemporary Approach.
      (b) Violation of Statute or Safety Order.
         (1) §320 In General.
         (2) §321 Findings Required for Safety Order Violation.
      (c) §322 Other Acts or Omissions.
      (a) §323 Types of Responsible Officers.
      (b) §324 Failure To Point Out Responsible Officer.

F. Misconduct of Employee.
1. [§325] Intoxication.
2. [§326] Self-Inflicted Injury.
3. [§327] Suicide.
4. [§328] Refusal To Submit to Examination.
5. Refusal To Submit to Treatment.
   (a) [§329] Treatment Offered by Employer.
   (b) [§330] Treatment Not Offered by Employer.
6. [§331] Serious and Wilful Misconduct.

G. Receipt of Other Benefits.
1. [§332] Wages or Other Earnings.
2. Public Pension or Retirement Benefits.
   (a) [§333] Ordinary Public Employees.
   (b) Law Enforcement Officers and Firefighters.
      (1) [§334] Local Officers.
      (2) [§335] Employer's Offset for Self-Employment Earnings.
      (3) [§336] Health Benefits For Surviving Spouse.
   (c) Credit Authorized by Municipal Charter.
      (1) [§337] In General.
      (2) [§338] Partial Credit.
      (3) [§339] Credit for Present Value of Future Payments.
      (4) [§340] No Credit for Payments to Third Persons.
   (a) [§341] In General.
   (b) [§342] Lien on Award.
4. Benefits Under Health Care Plan or Insurance.
   (a) [§343] In General.
   (b) [§344] Lien for Benefit Payments.

X. PROCEDURE
   A. In General.
      1. [§345] Statutes and Rules.
      2. [§346] Venue.
      3. [§347] Pleading Requirements.
      5. Parties.
         (a) [§349] Employee, Dependent, Employer, and Insurer.
         (b) [§350] Physician.
         (c) [§351] Medical or Medical-Legal Lien Claimant.
         (d) [§352] Joinder of Parties and Claims.
      6. Attorneys and Other Representatives.
         (a) [§353] Appearance and Representation.
         (b) Attorneys' Fees.
            (1) Amount Fixed by Board.
               (aa) [§354] In General.
               (cc) [§356] Illustrations.
            (2) [§357] Fee for Resisting Petition.
7. Release or Compromise.
   (a) §§361 Authority To Compromise.
   (b) §§362 Board's Power To Disapprove.
   (c) §§363 Form and Content.
   (d) §§364 Claim for Death Benefits.
   (e) §§365 Claims Outside Workers' Compensation Law.

B. Statute of Limitations.
   1. §§366 In General.
   2. Claim for Disability.
      (a) §§367 In General.
      (b) §§368 Occupational Disease.
      (c) Cumulative Injuries.
         (1) §§369 Governing Statute.
         (2) §§370 Knowledge and Lack of Diligence.
      (d) §§371 No Merger of Prior Injuries.
      (a) §§372 In General.
      (b) §§373 Dependent's Ignorance of Progressive Disease.
   4. Suspension or Tolling of Statute.
      (a) §§374 Minors and Incompetents.
      (b) Compensation or Benefits.
         (1) §§375 In General.
         (2) §§376 No Tolling After Disclaimer.
         (3) §§377 Wages or Disability Payments.
         (4) §§378 Effect of Tolling.
      (c) §§379 Estoppel To Plead Statute.
      (d) Employer's Failure To Notify of Right.
         (1) §§380 Judicial Rule.
         (2) §§381 Statutory Rule.
         (3) §§382 Application of Medical Lien Claimant.
      (e) New and Further Disability.
         (2) §§384 Extension by Nonprofessional Medical Aid.

C. Steps in Obtaining Award.
   1. §§385 Notice of Injury.
   2. §§386 Claim Form and Notice of Rights.
   3. Pleadings or Stipulation.
      (a) §§387 Application.
      (b) §§388 Service by Board.
      (c) §§389 Answer.
      (d) §§389 Other Pleadings, Motions, and Appearance.
      (e) §§391 Stipulation.
   4. Alternative Dispute Resolution.
5. Hearing.
   (a) [§394] Nature of Hearing.
   (b) [§395] Workers' Compensation Judge.
   (c) [§396] Procedure.
   (d) [§397] Contempt in Hearing.
   (e) [§398] Rules of Evidence Are Not Binding.
   (f) [§399] Medical and Scientific Reports and Records.
   (g) [§400] Evidence Developed by Board.
   (h) [§401] Evidence Fraudulently Obtained.
   (i) [§402] Evidence of Sexual Conduct.

6. Award or Order.
   (a) [§403] In General.
   (b) [§404] Findings.
   (c) Liens Against Award.
      (1) [§405] In General.
      (2) [§406] Permissible Liens.
      (3) [§407] Award of Attorneys' Fees Out of Lien Claim.
      (4) [§408] Procedure.
      (5) [§409] Involuntary Reduction of Lien To Effect Settlement.
   (d) Judgment and Enforcement.
      (1) [§410] In General.
      (2) [§411] Interest on Award.
   (e) Penalties for Delay or Refusal To Pay.
      (1) [§412] Former Law.
      (2) [§413] Nature of Penalties.
   (f) [§414] Penalty for Bad Faith Action.
   (g) Award as Res Judicata.
      (3) [§417] Collateral Estoppel.

D. Reconsideration by Board.
   4. Grant of Petition.
      (a) [§421] Statement of Evidence and Reasons.
      (b) [§422] Procedure After Granting.
   5. Denial of Petition.
      (a) [§423] Statement of Evidence and Reasons.
      (b) [§424] Judge's Report Is Not Essential.
   6. [§425] Reconsideration on Own Motion.

E. Continuing Jurisdiction of Board.
   1. Reopening Case for Good Cause.
      (a) [§426] Nature of Jurisdiction and Five-Year Limitation.
(b) Grounds for Reopening Case.
   (1) [§427] Equitable Grounds.
   (2) [§428] Error of Law.
   (3) [§429] Insufficient Grounds.

2. Award for New and Further Disability.
   (a) [§430] Nature of Jurisdiction.
   (b) [§431] Effect of Original Award.

3. [§432] Procedure in Reopening Case.


F. Judicial Review.

1. In General.
   (a) [§434] Writ of Review in Court of Appeal.
   (b) [§435] No Superior Court Jurisdiction.
   (c) [§436] Appellate District.
   (d) [§437] Review of Reconsideration Order.

2. Procedure.
   (a) [§438] Petition, Answer, and Reply.
   (b) [§439] Writ, Hearing, and Judgment.
   (c) [§440] Rehearing and Review in Supreme Court.

3. Scope of Review.
   (a) [§441] In General.
   (b) [§442] Substantial Evidence Rule.
   (c) [§443] Conclusiveness of Findings.
   (d) [§444] Decision Without Examination of Record.

4. Annulment of Award.
   (a) [§445] Lack of Substantial Evidence.
   (b) [§446] Curtailment of Evidence or Cross-Examination.
   (c) [§447] Reliance on Undisclosed Evidence.
   (d) [§448] Other Examples.

5. Annulment of Order Denying or Limiting Award.
   (a) [§449] Lack of Substantial Evidence.
   (b) [§450] Curtailment of Evidence.

6. [§451] Effect of Annulment of Award or Order.