Civil Processes Under the WC Umbrella 132(a) Discrimination & S&W Quasi Crime Claims Crossover: RTW, Layoff, Performance Issues

Peter V. Fitzpatrick, Esq. & Sherri M. Dozier, Director of Client Development Relations, Large Loss, & State Audit Consultant

Law Offices of Bradford & Barthel, LLP







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Peter V. Fitzpatrick, Esq. Partner

Employment Law, General Civil Litigation, LC 132(a), S&W, Subrogation, Work Comp defense, ADR/Collective Bargaining Work Comp Programs B&B Ontario Office Office (909) 476-0052 pfitzpatrick@bradfordbarthel.com

Sherri M. Dozier, Certified Specialist, WCCP, SIP, Large Loss, State Audit Consultant **B&B** Director Client Relations & Development Cellular: (909) 224-4658 sdozier@bradfordbarthel.com

Donald R. Barthel, Esq. Founding Partner Cell: (916) 996-1263 dbarthel@bradfordbarthel.com





Fariba M. Jafary, Esq. Equity Partner Chief Diversity Officer, Managing Partner, Recruitment,

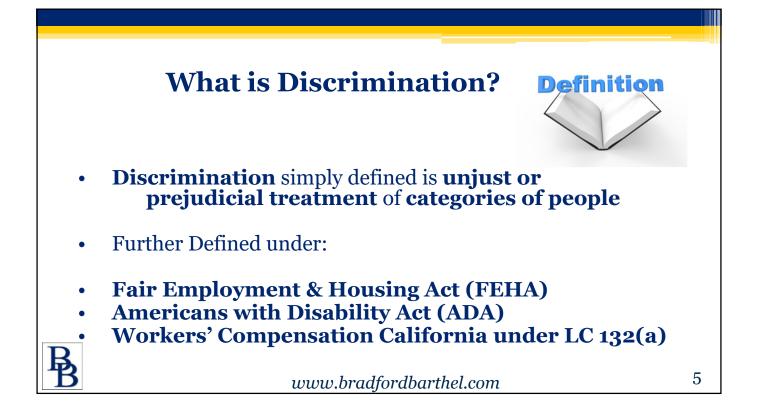
Jan D. Metheny, Esq. Equity Partner Executive Managing Partner, Attorney Training, Development & jmetheny@bradfordbarthel.com

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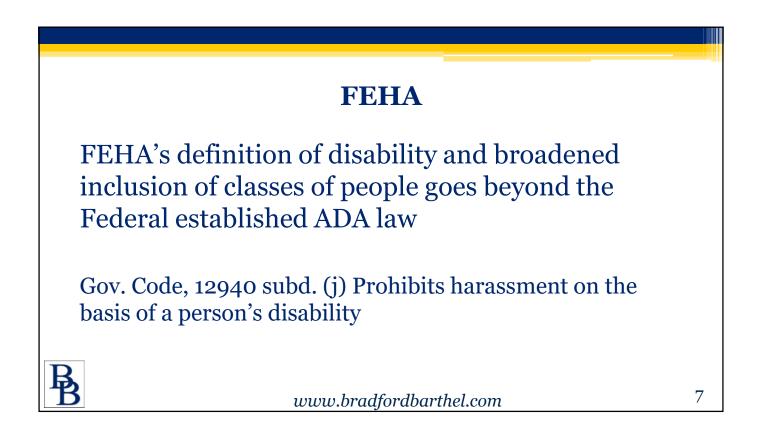


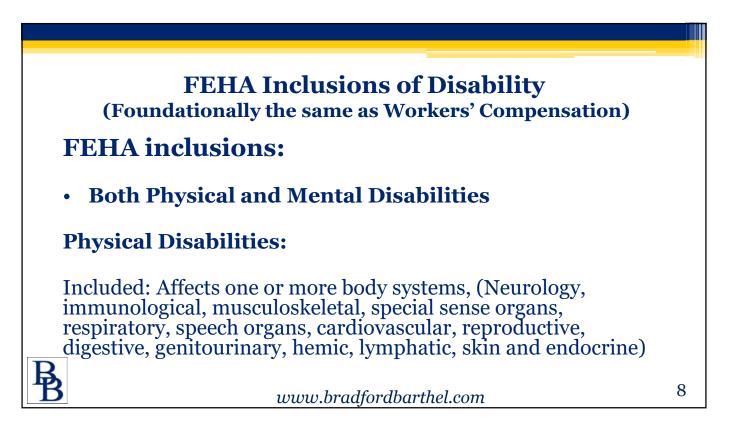


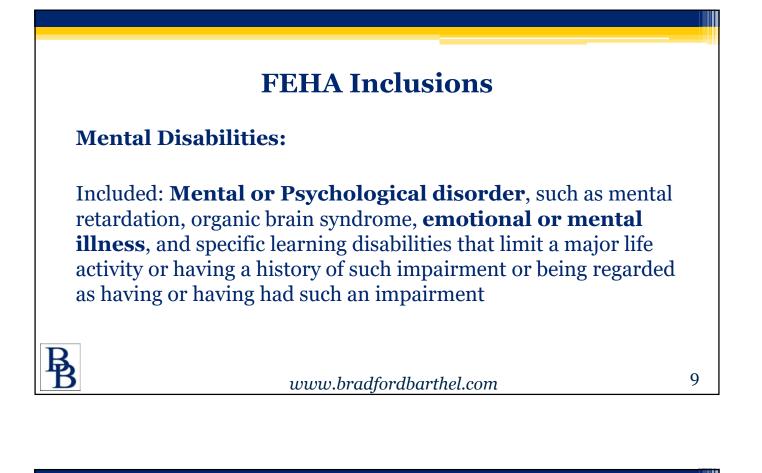










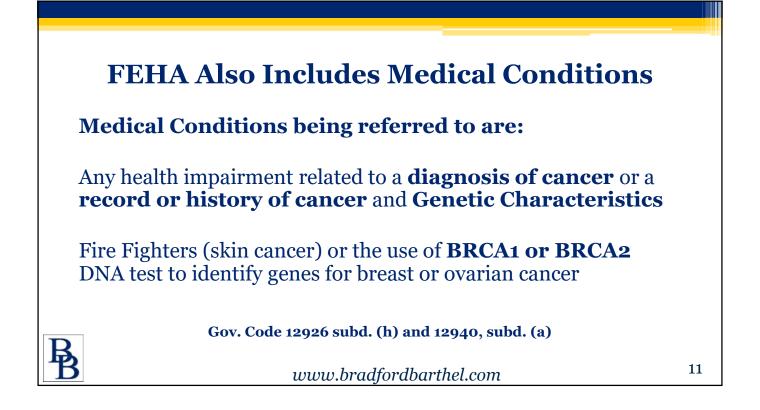




Limits a major life activity (ADL) without regard to mitigating measures, such as medications, assistive devices, prosthetics, or Reasonable Accommodations (RTW)

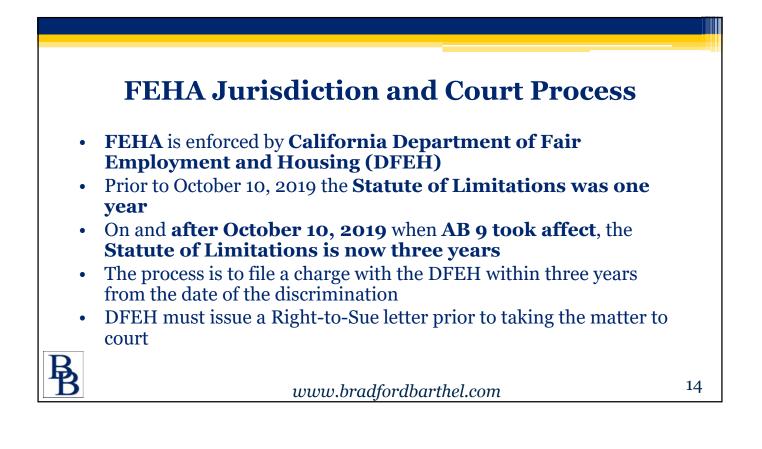
BINGO!!!

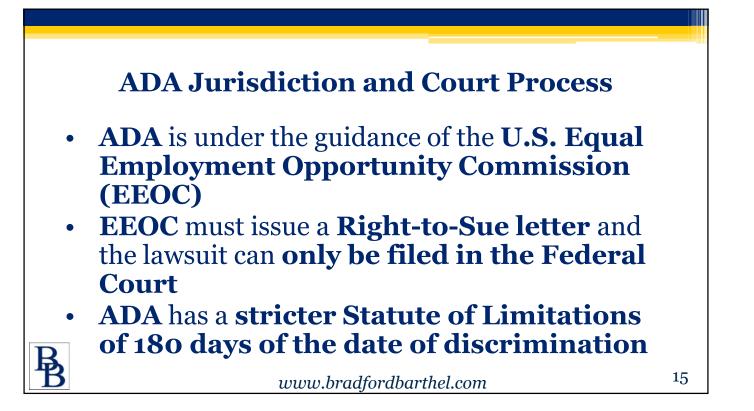




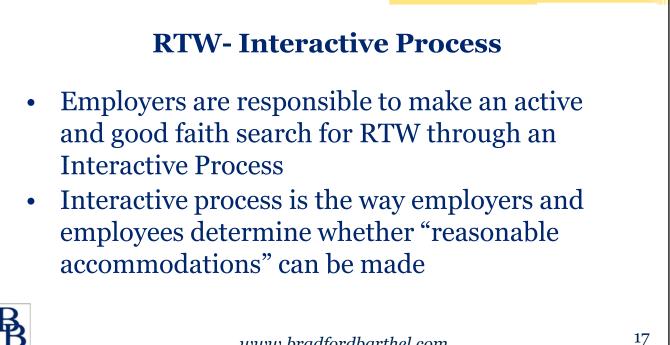








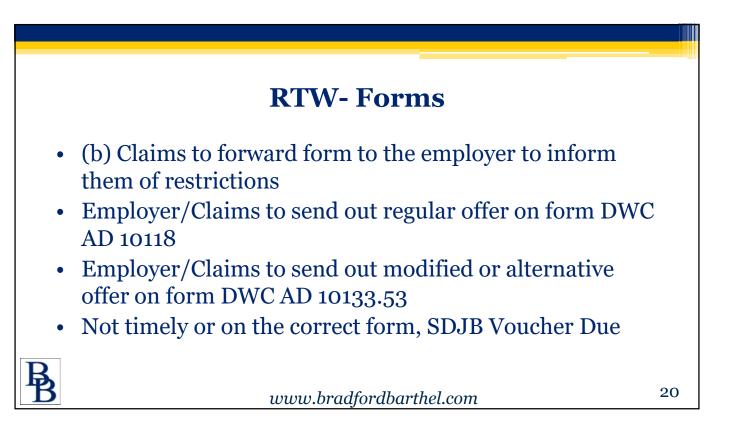




RTW- Interactive Process	
RETURN TO WORK PLAN	 Interactive process steps Recognizing an Accommodation Request Gathering Information Exploring Accommodation Options Choosing an Accommodation Implementing the Accommodation Monitoring the Accommodation
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RTW- SJDB is Due Unless Timely Offer

- LC 4658.7 on or after January 2013 SJDB of \$6,000 due 20 days after the expiration of time for making an offer unless:
- Offer for regular, modified, or alternative work within 60 days after claims receipt of the MMI of PTP, QME, or AME.
- (a) Claims needs to provide the reporting doctor with a job description of regular work, proposed modified work or alternative, the physician will report on appropriateness of proposed job (form 10133.36 physicians return-to-work & voucher report)



Layoff-Rules Your Employer May Not Know

- Cal-WARN Act
- LC 1400-1408- Generally, an employer may not order a mass layoff, relocation, or termination unless, 60 days before the order takes affect, they give written notice of the order to the employees and EDD
- There are substantial penalties for failure to give this written notification
- If your employer gives notice and the employee
- files a claim, is that post termination?



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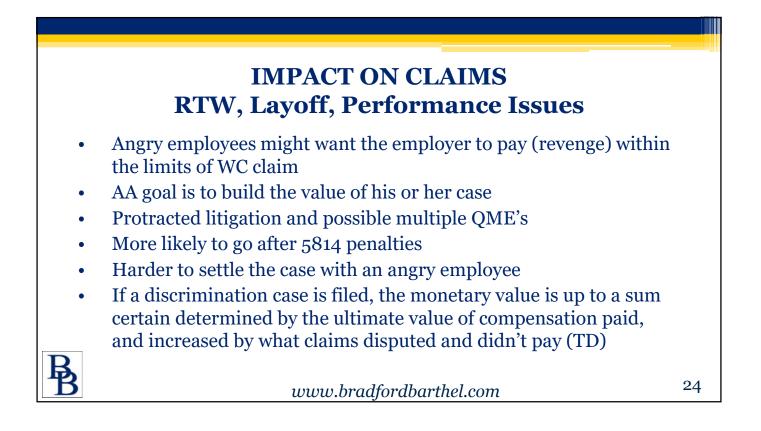




Performance Issues-Termination

- More likely to start seeking treatment from private health care if they have it, and mentioning harassment by employer, or injury and body parts (Building a case) (Overcoming post term defense and CT issues)
- If terminated more likely to file retaliatory post term cases, (likely multiple cases)
- Create the picture of employer is out to get me so every turn of the corner is thought to be discrimination and Vulnerable to filing a 132(a), along with FEHA or ADA cases



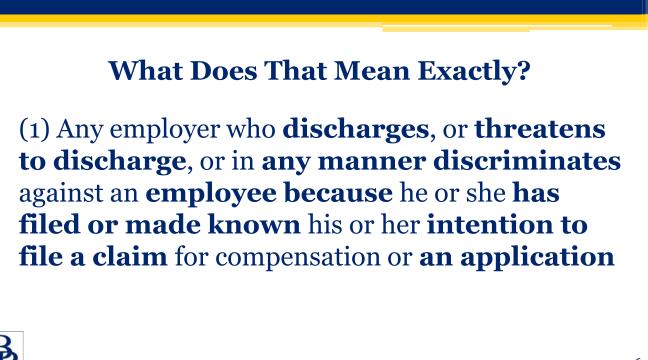


In the Workers' Compensation Arena 132(a) Discrimination

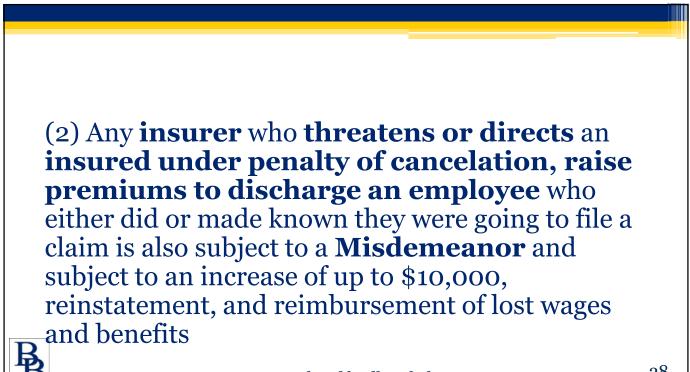
LC 132(a)

 A Declared policy in California that there should not be discrimination against workers who are injured in the course and scope of their employment

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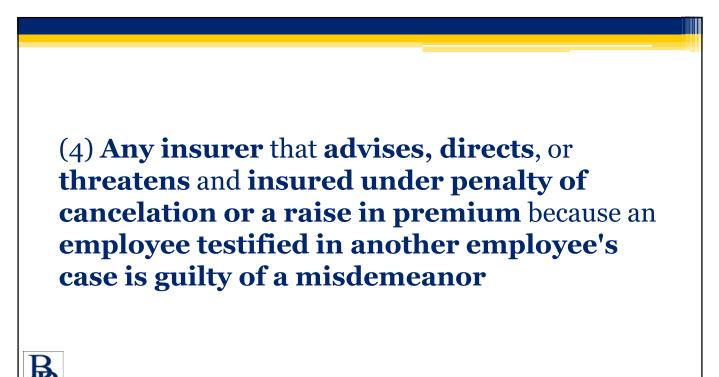
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(3) Any **employer** who **discharges**, or **threatens to discharge**, or in **any manner** to **discriminate against** an **employee who intends to testify in another employee's case**, is **guilty of a misdemeanor**



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Penalties for 132(a)

Penalties include:

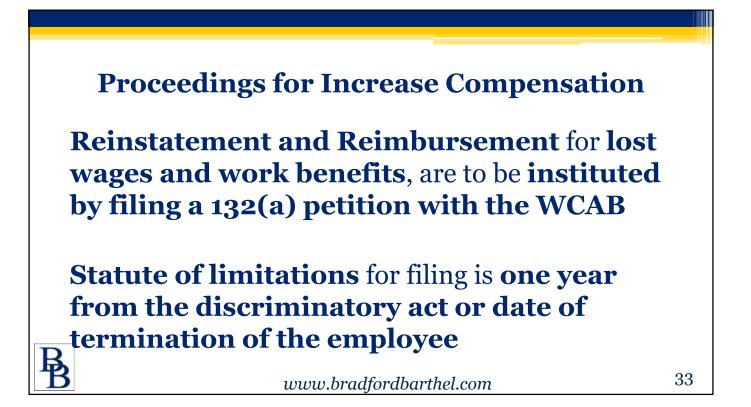
Increase of the employee's compensation by one-

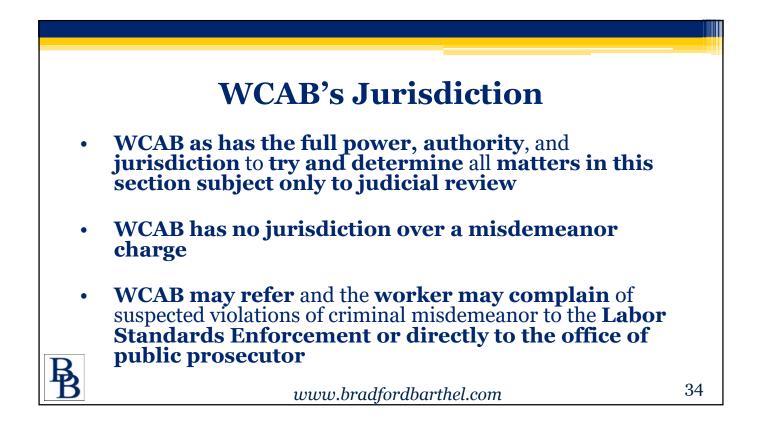
half, but in no more than **\$10,000**, plus Costs and expenses

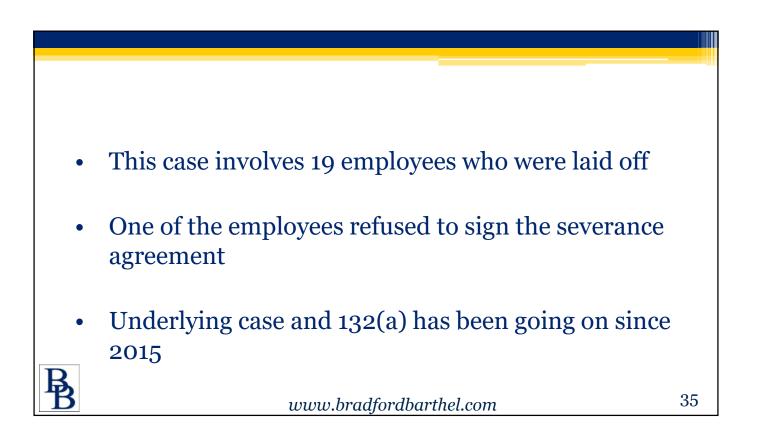
not in excess of \$250





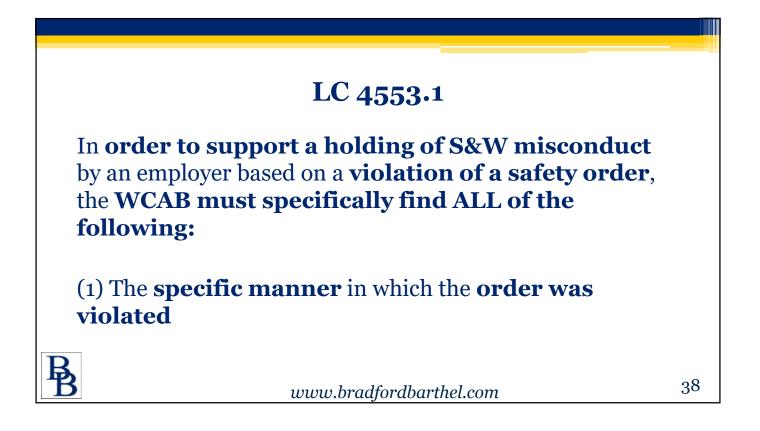












LC 4553.1

(2) That the **violation of the safety order** did **proximately cause the injury or death**, and the **specific manner** in which the **violation constituted the proximate cause**



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LC 4553.1

(3) That the **safety order**, and the **conditions making the safety order applicable**, were **KNOWN** to, and **violated by**, a particular named person, either the **employer**, or a representative designated by Section 4553, or that the **condition making the safety order applicable** was **OBVIOUS**, created a **probability of serious injury**, and that the **failure of the employer**, or a representative designated by Section 4553, to **correct the condition constituted a reckless disregard for the probable consequences**

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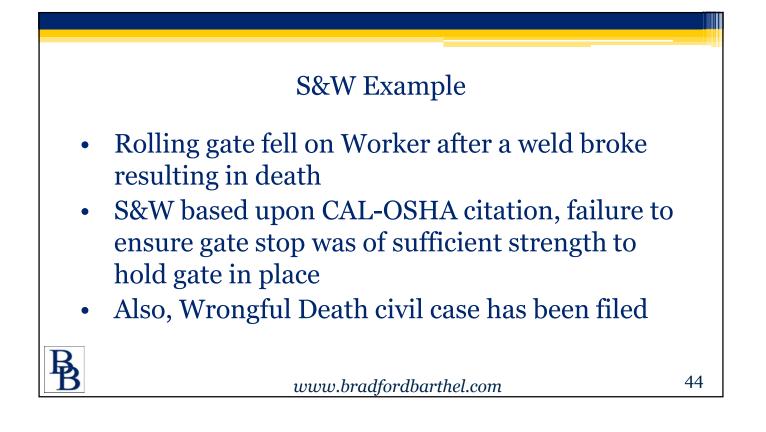




LC 4553 S&W Misconduct by a Named Person

(c) If the **employer is a corporation**, on the **part of an executive**, **managing officer**, or **general superintendent**







"Willful Misconduct of injured employee"



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Peter V. Fitzpatrick, Esq. Partner Employment Law, General Civil Litigation, J.C. 109(a). S&W. Subrocation. Work Comm.

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Fariba M. Jafary, Esq. Equity Partner Chief Diversity Officer, Managing Partner, Recruitment, Hiring & Development, Managing Attorney Ontario Office (909)476-0552 Infary/e braulfordbarthel.com

Jan D. Metheny, Esq. Equity Partner Executive Managing Partner, Attorney Training, Development & Procedures Managing Attorney Anaheim Office (714)526-9120 jmetheny@bradfordbarthel.com

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