



## The Worker's Compensation Subsequent Injuries Benefit Trust Fund:

As usage and costs explode, is it still serving its intended purpose or a new target for abuse?

### Purpose

California created the Subsequent Injuries Benefit Trust Fund (SIBTF) in 1945 to help encourage hiring of job applicants with physical disabilities, such as disabled veterans entering the workforce after World War II. When a worker with “previous and serious permanent disabilities or physical impairments” suffers a subsequent workplace injury that results in an impairment of 35% or greater and a total combined disability of 70% or greater, the portion attributable to the previous impairment will be paid by the SIBTF.<sup>1</sup> Through the SIBTF, workers receive benefits commensurate with their total disability while the employer is not individually liable for the level of impairment unrelated to the workplace injury. SIBTF benefits are paid through assessments on all California employers.

#### SIBTF Eligibility

1. Workplace injury that results in permanent partial disability (PPD)
2. Pre-existing disability that was labor-disabling at time of injury
3. Combined disability is greater than 70%
4. Workplace injury alone results in PPD of at least 35% or 5% and impacts an “opposite and corresponding” body part, such as the opposite arm to one that had pre-existing disability

At times, 47 states have had subsequent injury funds. Such funds were common after WWII and prior to the enactment of equal employment laws and disability benefit programs at the state and federal level, such as the California Fair Employment and Housing Act, federal American with Disabilities Act, and Social Security Disability Insurance program. Since enactment of these laws and programs, the number of states with subsequent injury funds has decreased to 29.

### SIBTF Usage and Costs Explode

For decades, SIBTF claims were uncommon. But between 2013/14 and 2024/25, annual SIBTF applications quintupled from **1,011 to 5,378**. During the same period, the average amount paid per SIBTF application increased from **\$13,700 to \$80,814** and total SIBTF payments increased from **\$28 million to \$326 million**. According to the Commission on Health and Safety and Workers' Compensation, worker benefits between 2010 and 2022 increased from \$6 million to \$127 million and payments to attorneys and other vendors increased from \$2 million to \$79 million. During the period, total payments were \$975 million, with \$345 million going to vendors and attorneys.<sup>2</sup> Meanwhile, long-term SIBTF liabilities on these claims have reached an estimated \$7.9 billion. To address the significant increase in annual costs and long-term liabilities, the employer assessments used to fund the SIBTF have increased dramatically from \$106 million to \$859 million over the past decade.

#### SIBTF Trends 2014-2025

- Annual applications +5X
- Average amount paid +6X
- Aggregate annual paid +12X
- Annual benefits paid +21X
- Annual vendor costs +40X
- SIBTF assessments +8X

<sup>1</sup> Minus any credits applied for other forms of disability compensation

<sup>2</sup> Medical-legal report payments constituted the majority of non-benefit payments between 2010 and 2022, totaling \$191 million out of \$345 million in total non-benefit payments for cases in our study population. Attorney fees were the second-largest category of non-benefit payments, totaling \$105 million over 2010–2022. Copy service fees totaled \$23 million, and vocational rehabilitation (VR) report payments totaled \$17 million.

## State Evaluates SIBTF Trends, Causes and Options

In 2024, the California Department of Industrial Relations (which oversees the Division of Workers' Compensation) published an analysis<sup>3</sup> of the SIBTF conducted by RAND's Division of Social and Economic Well-Being. The study's purpose was to, "provide a foundation for informed deliberation over policy options in response to the SIBTF's recent growth." RAND found that of the 29 states that still have subsequent injury funds, only five saw increases during the study period and California's was the largest, by far.

RAND identified four factors contributing to growth in SIBTF applications and costs:

- Vague governing statutes that have not been updated since 1959 and wide parameters that have motivated claimants, attorneys and vendors to make more frequent claims that, in the past, would have resulted in smaller or no benefits
- The *Todd v. SIBTF* decision (2020) which changed the formula for calculating multiple disabilities,<sup>4</sup> resulting in more cases qualifying for SIBTF benefits and cases that result in 100% permanent total disability<sup>5</sup>
- Growth in both the frequency and amount of SIBTF applications
- Growth in vendor costs, specifically the cost and frequency of medical-legal reports
- Shift from lump sum settlements to lifetime benefit payments.
- Increase in chronic conditions *that are common health conditions or chronic diseases frequently found in an aging population* as the basis for the prior disability in a SIBTF application, which increased from 29% to 55% of cases. Gastroesophageal reflux disease (GERD) and hypertension were two of the top five prior disabilities for a SIBTF claim, even though they rarely result in disability in a typical workers' compensation claim.

RAND offered several policy considerations to address the growth in SIBTF liabilities, including:

- Repeal the SIBTF (as other states have) in recognition of state and federal laws that now incentivize hiring of disabled workers or provide disability benefits
- Clarify what prior disabilities are eligible and are labor-disabling
- Address the *Todd* decision to return to use of Combined Values Chart
- Extend medical expert (QME) reforms that apply to other workers' comp cases to SIBTF cases to reduce "doctor shopping" for evaluators who deliver higher ratings
- Raise the threshold for the work-caused disability and don't include the future earning capacity modifier (the same way that age and occupation are not included)
- Adopt a statute of limitations for SIBTF case filings
- Limit benefits or increase funding

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<sup>3</sup> California's Subsequent Injuries Benefits Trust Fund, Recent Trends and Policy Considerations, RAND, June 2024

<sup>4</sup> *Todd* replaced the use of a Combined Values Chart that recognized overlapping nature of multiple disabilities to calculating multiple disabilities using simple addition

<sup>5</sup> According to RAND, benefit value quadruples from a 99% disability rating to a 100% disability rating. The proportion of SIBTF applicants that reached 100% rating increased from 60% in 2010-19 to 82% in 2020-22.