

PROTECTING AND PUTTING NORTH CAROLINA BACK TO WORK ACT - 2011

The North Carolina General Assembly recently passed important reform legislation to the state workers' compensation law which will go into effect on or about October 1, 2011. The bill contains a number of key provisions that significantly change the state of workers' compensation law as it has developed over the last 25 years.

A topical summary to the current law follows.

ATTENDANT CARE

Attendant care must now be prescribed by a health care provider.

SUITABLE EMPLOYMENT

The bill contains a statutory definition of "suitable employment," which applies to both pre-and post-employment. The bill also requires that the employment offered be within a 50-mile radius of the employee's residence at the time of injury. Once an employee reaches MMI, suitable employment is defined as employment which the employee is capable of performing considering the employee's:

1. Pre-existing and injury-related physical and mental limitations
2. Vocational skills

3. Education
4. Experience

No one factor is to be considered exclusively.

WILLFUL MISREPRESENTATION IN APPLYING FOR EMPLOYMENT

No compensation shall be allowed under the Act for an injury by accident or occupational disease if the employer is able to prove that, at the time of hire, at the time of receiving notice of the removal of conditions from a conditional offer of employment, or during the course of a post-offer medical examination:

1. The employee knowingly and willfully made a false representation as to the employee's physical condition
2. The employer relied upon one or more false representations by the employee and said reliance was a substantial factor in the employer's decision to hire the employee
3. There was a causal connection between the false representation and the employee's injury or occupational disease

This issue of *You Should Know* is one in a series of brief articles designed to keep our clients abreast of significant breaking news in the claim and loss control areas that could affect their operations or exposures. Additional information about this and other topics can be obtained from your Regional Strategic Outcomes Practice Associate.

RESIGNATION AND EMPLOYMENT RELEASE

This section codifies that parties can agree to resignation and releases of employment in conjunction with the settlement of the workers' compensation claim.

REASONABLE ACCESS TO MEDICAL INFORMATION

The Act provides greater access to medical information for employers. It states they shall have reasonable access to all relevant medical information, including any medical record, report or information that is restricted to the particular evaluation, diagnosis or treatment of the injury/occupational disease for which medical or wage compensation is sought; or reasonably related to the injury/occupational disease for which the employee claims compensation; or related to an assessment of employee's ability to return to work as a result of the injury/occupational disease. Records can be obtained without the express permission of the employee in accepted claims, as long as a copy is sent to the injured worker. A request can be made for the following information not already contained in the medical records.

- Diagnosis of the condition
- Appropriate course of treatment
- Anticipated time out of work
- Relationship, if any, between the condition and the employment
- Specific work restrictions and anticipated time that restriction will last
- Kind of work for which employee would be eligible
- Any permanent impairment due to the condition

INDEPENDENT MEDICAL EXAMINATIONS (IME)

Employer can require employee to attend an IME so long as employee claims compensation.

SECOND OPINION EXAMINATIONS FOR PERMANENT PARTIAL DISABILITY (PPD) RATING

The Industrial Commission must either disregard or give less weight to the extraneous opinions of a physician providing an employee with his or her statutory second opinion regarding a permanent partial impairment rating.

500-WEEK CAP ON TEMPORARY TOTAL DISABILITY BENEFITS

Temporary total disability compensation is capped at 500 weeks from the date of first disability unless the employee qualifies for extended compensation, to be proven as follows:

Employee must wait a minimum of 425 weeks since the date of first disability to apply for extended compensation and shall prove by preponderance of the evidence that he has sustained a total loss of wage earning capacity. Unless agreed to by the parties, a full evidentiary hearing shall take place before the North Carolina Industrial Commission (NCIC) on this issue. The employer can ask the NCIC to review an award of extended benefits beyond 500 weeks and, for a reversal, must prove by a preponderance of the evidence that the employee no longer has a total loss of wage earning capacity. When an employee is receiving Social Security retirement benefits, the employer may take a credit of 100% of Social Security retirement benefits against ongoing temporary total disability benefits owed.

PERMANENT AND TOTAL DISABILITY (PTD)

Employee can establish PTD only if he has significant physical or mental limitations, such as:

- Loss of both hands, both arms, both feet, both legs, both eyes or any two thereof per N.C.G.S. § 97-31 (17)
- Spinal injury involving severe paralysis of both arms, both legs or the trunk

- Severe brain or closed head injury resulting in severe and permanent sensory or motor disturbances, communication disturbances, complex integrated disturbances and cerebral function, or neurological disorders
- Second or third degree burns to 33% or more of total body surface

500-WEEK CAP ON TEMPORARY PARTIAL DISABILITY (TPD) BENEFITS

Increases the period of TPD benefits from 300 weeks to 500 weeks. The 500-week period includes any time during which the employee received indemnity benefits.

VOCATIONAL REHABILITATION

Employer may utilize vocational rehabilitation services regardless of whether employee has reached MMI. The *Employee may request* vocational rehabilitation, including education and retraining in North Carolina community college or university systems *if he has not returned to work or has returned to work earning less than 75% of his average weekly wage and is receiving TPD benefits*, provided the education and retraining are reasonably likely to substantially increase employee's wage earning capacity following completion of said education or retraining programs.

DEATH BENEFITS

Payments to the decedent's beneficiaries would increase from 400 weeks to 500 weeks, again to conform to other changes in disability benefits. The bill also increases burial expenses from \$3,500.00 to \$10,000.00 when death results proximately from the compensable injury. Applies to all claims arising on or after 06/24/2011.

JUDICIAL CONDUCT

The code of judicial conduct for judges and the procedures for discipline for judges will now apply to deputy commissioners and full commissioners.

APPOINTMENT OF COMMISSIONERS

The bill decreases the number of Commissioners from seven to six. The Commissioners would be appointed for terms of six years and no Commissioner could serve more than two terms. Three Commissioners would be identified as having an affiliation with employers and three Commissioners would be identified as having an affiliation with employees. The appointment of Commissioners would be subject to confirmation by both houses of the General Assembly

For full text of the NC HB 709 legislation [click here](#).

CONTACT

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