

Regular Session, 2012

SENATE BILL NO. 607

BY SENATOR PETERSON

WORKERS' COMPENSATION. To provide for the standardization of functional capacity evaluations in workers' compensation claims. (8/1/12)

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AN ACT

To amend and reenact R.S. 23:1226(A), (B), (D), and (E) and to enact R.S. 23:1227, relative to workers' compensation; to provide with respect to vocational rehabilitation; to provide for functional capacity evaluation testing, and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 23:1226(A), (B), (D), and (E), are hereby amended and reenacted and R.S. 23:1227 is hereby enacted to read as follows:

§1226. Rehabilitation of injured employees

A. When an employee has suffered an injury covered by this Chapter which precludes the employee from earning wages equal to wages earned prior to the injury, the employee shall be entitled to prompt rehabilitation services. **Early referral is critical to the vocational rehabilitation process and shall be initiated as soon as possible.** Vocational rehabilitation services shall be provided by a licensed professional vocational rehabilitation counselor, and all such services provided shall be compliant with the Code of Professional Ethics for Licensed Rehabilitation Counselors as established by R.S. 37:3441 et seq.

B.(1) The goal of rehabilitation services is to return a disabled worker to

1 work, with a minimum of retraining, as soon as possible after an injury occurs. ~~The~~  
2 **If the employer or insurer determines that the employee is unable to earn wages**  
3 **equal to wages earned prior to the injury, the** first appropriate option among the  
4 following must be chosen **by the vocational rehabilitation counselor** for the  
5 worker:

6 (a) Return to the same position.

7 (b) Return to a modified position.

8 (c) Return to a related occupation suited to the claimant's education and  
9 ~~marketable~~ **transferable** skills.

10 (d) On-the-job training.

11 (e) Short-term retraining program (~~less than twenty-six weeks~~) **of less than**  
12 **fifty-two weeks.**

13 (f) Long-term retraining program (~~more than twenty-six weeks but not more~~  
14 ~~than one year~~) **of at least fifty-two weeks and not more than two years.**

15 (g) Self-employment.

16 (2) Whenever possible, employment in a worker's local job pool must be  
17 considered and selected prior to consideration of employment in a worker's statewide  
18 job pool.

19 (3)(a) The employer shall be responsible for the selection of a licensed  
20 professional vocational rehabilitation counselor to evaluate and assist the employee  
21 in his job placement or vocational training. **It shall be the responsibility of the**  
22 **licensed professional vocational rehabilitation counselor to meet with the**  
23 **employee as soon as possible after vocational services are requested and to**  
24 **develop an initial rehabilitation plan. Such rehabilitation plan shall be**  
25 **developed with the employee and shall contain all of the following:**

26 **(i) The agreed upon vocational goal of the rehabilitation service.**

27 **(ii) The actual plan to obtain that goal.**

28 **(iii) The cost of any retraining or job modification.**

29 **(iv) The signature of both parties establishing that the plan was**



1 ~~twenty-six weeks, which period may be extended for an additional period not to~~  
2 ~~exceed twenty-six additional weeks if such extended period is determined to be~~  
3 ~~necessary and proper by the workers' compensation judge.~~ **an appropriate period**  
4 **of time pursuant to Subparagraphs (B)(1)(a) and (b) of this Section.** However,  
5 no employer or insurer shall be precluded from continuing such retraining beyond  
6 such period on a voluntary basis. An injured employee must request and begin  
7 retraining within ~~two years~~ **three months** from the date of the termination of  
8 temporary total disability as determined by the treating physician. If a retraining  
9 program requires residence at or near the facility or institution and away from the  
10 employee's customary residence, reasonable cost of board, lodging, or travel shall  
11 be borne by the employer or insurer. A retraining program shall be performed at  
12 facilities within the state when such facilities are available.

13 \* \* \*

14 **§1227. Functional capacity evaluations**

15 **A. For the purposes of this Section, a functional capacity evaluation**  
16 **means a detailed evaluation performed by a qualified examiner to objectively**  
17 **measure an injured worker's level of function within the context of the demands**  
18 **of competitive employment. Measurements of function from a functional**  
19 **capacity evaluation will be used to determine an injured worker's ability to**  
20 **return to work safely to full or part-time employment with or without**  
21 **modification.**

22 **B. (1) A qualified functional capacity evaluation examiner shall be a**  
23 **licensed physical therapist or occupational therapist who meets all requirements**  
24 **to practice in Louisiana and has completed:**

25 **(a) A minimum of two years of clinical experience evaluating and**  
26 **treating adult patients in an outpatient setting.**

27 **(b) A nationally recognized functional capacity evaluation course that**  
28 **has been approved for continuing education by the Louisiana Physical Therapy**  
29 **Board, the Occupational Therapy Advisory Committee, the State Board of**

1        **Medical Advisors, or the Louisiana State Board of Medical Examiners at the**  
2        **time the course was completed.**

3                **(c) A minimum of eight hours of continuing education every two years**  
4        **in work-related courses such as ergonomics, job assessments, functional**  
5        **capacity evaluations, work conditioning, or work hardening which are approved**  
6        **by the Louisiana Physical Therapy Board, the Occupational Therapy Advisory**  
7        **Committee, or the State Board of Medical Advisors as being related and**  
8        **appropriate.**

9                **(2) The authorized examiner shall provide a proof of compliance with**  
10       **Subparagraph (1) of this Paragraph to the employer or insurer.**

11               **C. (1) The authorized examiner shall review pertinent medical records,**  
12       **be cognizant of any physical limitations, perform a detailed history and physical**  
13       **examination, administer the functional assessment, interpret all relevant data,**  
14       **and produce a functional capacity evaluation report including the standardized**  
15       **functional capacity summary form, as promulgated by the Office of Workers'**  
16       **Compensation Administration. An approved functional capacity evaluation**  
17       **shall be evidenced by the scientific rigor of reliability and validity studies, and**  
18       **should be primarily functional or dynamic in nature and mimic the job as much**  
19       **as possible. A Functional capacity evaluation-based primarily computerized**  
20       **testing will not be considered valid.**

21               **(2) Testing shall be conducted in two consecutive days for a minimum of**  
22       **five hours on the first day and a minimum of two hours the second day. The**  
23       **second day of testing can be rescheduled for special circumstances as**  
24       **determined by the examiner, but must be completed within forty-eight business**  
25       **hours of the initial visit. If the functional capacity evaluation is not completed,**  
26       **then the treating physician and claims adjustor shall be notified and the**  
27       **examiner will complete the report as outlined in Subparagraph D with the**  
28       **information on-hand, and the Functional capacity evaluation will be considered**  
29       **valid.**

1           **(3) The employer, insurer, or third-party administrator shall authorize**  
2           **a minimum of twelve hours for the functional capacity evaluation. The**  
3           **examiner may request additional hours from the employer, insurer, or third-**  
4           **party administrator when necessary to perform an accurate functional capacity**  
5           **evaluation for the injured worker.**

6           **(4) When an injured worker attempts to resume employment with his**  
7           **previous employer and has a permanent restrictions or is returning to a**  
8           **modified employment position, a functional job description shall be supplied**  
9           **before the functional capacity evaluation is performed. A four to eight hour**  
10           **modified Functional capacity evaluation can be performed in assessing an**  
11           **employee's capacity to return to a transitional duty with his current employer.**

12           **(5) Nothing in this Section shall prohibit the use of early return-to-work**  
13           **functional capacity evaluations involving efforts to identify the job tasks an**  
14           **injured worker can perform safely when modified temporarily to return to**  
15           **work with his former employer.**

16           **D. The Functional capacity evaluation report, including the**  
17           **standardized "Functional Capacity Summary Form" as promulgated by the**  
18           **Office of Workers' Compensation Administration, shall be completed within**  
19           **seven working days and forwarded to the treating physician. The treating**  
20           **physician shall approve the functional capacity evaluation findings with**  
21           **notations of any suggested modifications.**

22           **E. The vocational rehabilitation counselor shall provide a functional job**  
23           **description quantifying the physical demands of the injured worker's job or**  
24           **proposed alternative employment in terms of postures, functional activities,**  
25           **forces, weights, repetitions, frequency, distances, durations, time frames, and**  
26           **other necessary information concerning physical activity and tasks. If a**  
27           **functional job description is not available for an injured worker's job or**  
28           **proposed position at the time of testing, the vocations rehabilitation counselor**  
29           **or the examiner, if qualified, may be requested to perform a job assessment and**

- 1            **write a functional job description if the examiner has the appropriate training**  
2            **to perform such job assessment.**

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The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Carla S. Roberts.

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#### DIGEST

Present law provides that, when an employee has suffered an injury covered by workers' compensation which precludes the employee from earning wages equal to wages earned prior to the injury, the employee shall be entitled to prompt rehabilitation services. Present law provides that vocational rehabilitation services shall be provided by a licensed professional vocational rehabilitation counselor, and all such services provided shall be compliant with the Code of Professional Ethics for Licensed Rehabilitation Counselors.

Proposed law provides that early referral is critical to the vocational rehabilitation process and shall be initiated as soon as possible.

Present law provides that the goal of rehabilitation services is to return a disabled worker to work, with a minimum of retraining, as soon as possible after an injury occurs. The first appropriate option among the following must be chosen for the worker:

- A. Return to the same position.
- B. Return to a modified position.
- C. Return to a related occupation suited to the claimant's education and marketable skills.
- D. On-the-job training.
- E. Short-term retraining program-which is less than twenty-six weeks.
- F. Long-term retraining program for more than twenty-six weeks but not more than one year.
- G. Self-employment.

Proposed law retains present law but only if the employer or insurer determines that the employee is unable to earn wages equal to wages earned prior to the injury, then the appropriate option for future employment of training must be chosen by the vocational rehabilitation counselor for the worker.

Proposed law retains present law but relative to the related occupation to which the claimant should return changes from "marketable skill" to "transferable skills".

Proposed law retains present law but changes the length of long-term retraining program from more than 26 weeks but not more than one year to at least 52 weeks and not more than two years and changes the length of short-term retraining program from less than 26 weeks to not more than 52 weeks.

Present law provides that the employer shall be responsible for the selection of a licensed professional vocational rehabilitation counselor to evaluate and assist the employee in his job placement or vocational training.

Proposed law retains present law but provides that it shall be the responsibility of the

licensed professional vocational rehabilitation counselor to meet with the employee as soon as possible after vocational services are requested and to develop an initial rehabilitation plan. Such rehabilitation plan shall be developed with the employee and shall contain the all of the following:

- (1) The agreed upon vocational goal of the rehabilitation service.
- (2) The actual plan to obtain that goal.
- (3) The cost of any retraining or job modification.
- (4) The signature of both parties establishing that the plan was approved.

Present law provides that prior to the workers' compensation judge adjudicating an injured employee to be permanently and totally disabled, the workers' compensation judge shall determine whether there is reasonable probability that, with appropriate training or education, the injured employee may be rehabilitated to the extent that such employee can achieve suitable gainful employment and whether it is in the best interest of such individual to undertake such training or education.

Proposed law retains present law but provides that if the workers' compensation judge determines that such training or education is appropriate, the employer or insurer shall be responsible for the costs of the training or education.

Present law provides that when it appears that a retraining program is necessary and desirable to restore the injured employee to suitable gainful employment, the employee shall be entitled to a reasonable and proper retraining program for a period not to exceed twenty-six weeks, which period may be extended for an additional period not to exceed twenty-six additional weeks if such extended period is determined to be necessary and proper by the workers' compensation judge. Proposed law changes the 26 weeks to an appropriate period of time.

Present law provides that an injured employee must request and begin retraining within two years from the date of the termination of temporary total disability as determined by the treating physician.

Proposed law changes this requirement for retraining to within three months.

Proposed law provides that a functional capacity evaluation means a detailed evaluation performed by a qualified examiner to objectively measure an injured worker's level of function within the context of the demands of competitive employment. Proposed law provides that function from a functional capacity evaluation will be used to determine an injured worker's ability to return to work safely to full or part-time employment with or without modification.

Proposed law provides that a qualified functional capacity evaluation examiner shall be a licensed physical therapist or occupational therapist who meets all requirements to practice in Louisiana and has completed:

- A. A minimum of two years of clinical experience evaluating and treating adult patients in an outpatient setting.
- B. A nationally recognized functional capacity evaluation course that has been approved for continuing education by the Louisiana Physical Therapy Board, the Occupational Therapy Advisory Committee, the State Board of Medical Advisors, or the Louisiana State Board of Medical Examiners at the time the course was completed.



- C. A minimum of eight hours of continuing education every two years in work-related courses such as ergonomics, job assessments, functional capacity evaluations, work conditioning, or work hardening which are approved by the Louisiana Physical Therapy Board, the Occupational Therapy Advisory Committee, or the State Board of Medical Advisors as being related and appropriate.

Proposed law provides that the authorized examiner shall review pertinent medical records, be cognizant of any physical limitations, perform a detailed history and physical examination, administer the functional assessment, interpret all relevant data, and produce a functional capacity evaluation report including the standardized functional capacity summary form, as promulgated by the Office of Workers' Compensation Administration.

Proposed law provides that an approved functional capacity evaluation shall be evidenced by the scientific rigor of reliability and validity studies, and should be primarily functional or dynamic in nature and mimic the job as much as possible. A functional capacity evaluation-based primarily computerized testing will not be considered valid.

Proposed law provides that testing shall be conducted in two consecutive days for a minimum of five hours on the first day and a minimum of two hours the second day.

Proposed law provides that the employer, insurer, or third-party administrator shall authorize a minimum of twelve hours for the functional capacity evaluation. Proposed law provides that the examiner may request additional hours from the employer, insurer, or third-party administrator when necessary to perform an accurate functional capacity evaluation for the injured worker.

Proposed law provides that, when an injured worker attempts to resume employment with his previous employer and has permanent restrictions or is returning to a modified employment position, a functional job description shall be supplied before the functional capacity evaluation is performed. Present law provides that four to eight hour modified functional capacity evaluation can be performed in assessing an employee's capacity to return to a transitional duty with his current employer.

Proposed law provides that, nothing in this Section shall prohibit the use of early return-to-work functional capacity evaluations involving efforts to identify the job tasks an injured worker can perform safely when modified temporarily to return to work with his former employer.

Proposed law provides that the functional capacity evaluation report, including the standardized "Functional Capacity Summary Form" as promulgated by the Office of Workers' Compensation Administration, shall be completed within seven working days and forwarded to the treating physician. Proposed law provides that the treating physician shall approve the functional capacity evaluation findings with notations of any suggested modifications.

Proposed law provides that the vocational rehabilitation counselor shall provide a functional job description quantifying the physical demands of the injured worker's job or proposed alternative employment in terms of postures, functional activities, forces, weights, repetitions, frequency, distances, durations, time frames, and other necessary information concerning physical activity and tasks. Proposed law provides that a functional job description is not available for an injured worker's job or proposed position at the time of testing, the vocations rehabilitation counselor or the examiner, if qualified, may be requested to perform a job assessment and write a functional job description if the examiner has the appropriate training to perform such job assessment.

Effective August 1, 2012.

(Amends R.S. 23:1226(A)(B)(D) and(E); adds R.S. 23:1227)