

Regular Session, 2012

SENATE BILL NO. 763 (Substitute of Senate Bill No. 560 by Senator Donahue)

BY SENATOR DONAHUE

WORKERS' COMPENSATION. Provides relative to the workers' compensation law.  
(8/1/12)

1 AN ACT

2 To amend and reenact R.S. 23:1201(F) and (H), 1210(A), 1221(3)(a) and (4)(s)(i), 1224 and

3 the heading of 1314, and to enact R.S. 23:1020.1 and 1314(D) and (E), relative to

4 workers' compensation; to provide for legislative purpose; to provide for legislative

5 intent; to provide for construction; to provide with respect to nonpayment of

6 benefits; to provide with respect to burial benefits; to provide with respect to

7 supplemental earnings benefits; to provide with respect to benefits for catastrophic

8 injury; to provide with respect to prematurity of actions; and to provide for related

9 matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 23:1201(F) and (H), 1210(A), 1221(3)(a) and (4)(s)(i), 1224 and the

12 heading of 1314 are hereby amended and reenacted and R.S. 23:1020.1 and 1314(D) and (E)

13 are hereby enacted to read as follows:

- 14 **§1020.1. Citation, purpose; legislative intent; construction**
- 15 **A. Citation. This Chapter shall be cited as the "Louisiana Workers'**
- 16 **Compensation Law"**.
- 17 **B. Purpose. The legislature declares that the purpose of this Chapter is**

1 **all of the following:**

2 **(1) To provide for the timely payment of temporary and permanent**  
3 **disability benefits to all injured workers who suffer an injury or disease arising**  
4 **out of and in the course and scope of their employment as is provided in this**  
5 **Chapter.**

6 **(2) To pay the medical expenses that are due to all injured workers**  
7 **pursuant to this Chapter.**

8 **(3) To return such workers who have received benefits pursuant to this**  
9 **Chapter to the work force.**

10 **C. Legislative intent. The legislature finds all of the following:**

11 **(1) That the Louisiana Workers' Compensation Law is to be interpreted**  
12 **so as to assure the delivery of benefits to an injured employee in accordance**  
13 **with this Chapter.**

14 **(2) To facilitate injured workers' return to employment at a reasonable**  
15 **cost to the employer.**

16 **D. Construction. The Louisiana Workers' Compensation Law shall be**  
17 **construed as follows:**

18 **(1) The provisions of this Chapter are based on the mutual renunciation**  
19 **of legal rights and defenses by employers and employees alike; therefore, it is**  
20 **the specific intent of the legislature that workers' compensation cases shall be**  
21 **decided on their merits.**

22 **(2) Disputes concerning the facts in workers' compensations cases shall**  
23 **not be given a broad, liberal construction in favor of either employees or**  
24 **employers; the laws pertaining to workers' compensation shall be construed in**  
25 **accordance with the basic principles of statutory construction and not in favor**  
26 **of either employer or employee.**

27 **(3) According to Article III, Section 1 of the Constitution of Louisiana,**  
28 **the legislative powers of the state are vested solely in the legislature; therefore,**  
29 **when the workers' compensation statutes of this state are to be amended, the**

1 legislature acknowledges its responsibility to do so. If the workers'  
2 compensation statutes are to be liberalized, broadened, or narrowed, such  
3 actions shall be the exclusive purview of the legislature.

4 \* \* \*

5 §1201. Time and place of payment; failure to pay timely; failure to authorize;  
6 penalties and attorney fees

7 \* \* \*

8 F. Failure Except as otherwise provided in this Chapter, failure to  
9 provide payment in accordance with this Section or failure to consent to the  
10 employee's request to select a treating physician or change physicians when such  
11 consent is required by R.S. 23:1121 shall result in the assessment of a penalty in an  
12 amount up to the greater of twelve percent of any unpaid compensation or medical  
13 benefits, or fifty dollars per calendar day for each day in which any and all  
14 compensation or medical benefits remain unpaid or such consent is withheld,  
15 together with reasonable attorney fees for each disputed claim; however, the fifty  
16 dollars per calendar day penalty shall not exceed a maximum of two thousand dollars  
17 in the aggregate for any claim. The maximum amount of penalties which may be  
18 imposed at a hearing on the merits regardless of the number of penalties which might  
19 be imposed under this Section is eight thousand dollars. An award of penalties and  
20 attorney fees at any hearing on the merits shall be res judicata as to any and all  
21 claims for which penalties may be imposed under this Section which precedes the  
22 date of the hearing. Penalties shall be assessed in the following manner:

23 (1) Such penalty and attorney fees shall be assessed against either the  
24 employer or the insurer, depending upon fault. No workers' compensation insurance  
25 policy shall provide that these sums shall be paid by the insurer if the workers'  
26 compensation judge determines that the penalty and attorney fees are to be paid by  
27 the employer rather than the insurer.

28 (2) This Subsection shall not apply if the claim is reasonably controverted  
29 or if such nonpayment results from conditions over which the employer or insurer

1 had no control.

2 (3) Except as provided in Paragraph (4) of this Subsection, any additional  
3 compensation paid by the employer or insurer pursuant to this Section shall be paid  
4 directly to the employee.

5 (4) In the event that the health care provider prevails on a claim for payment  
6 of his fee, penalties as provided in this Section and reasonable attorney fees based  
7 upon actual hours worked may be awarded and paid directly to the health care  
8 provider. This Subsection shall not be construed to provide for recovery of more than  
9 one penalty or attorney fee.

10 \* \* \*

11 H. (1) Upon making the first payment of compensation and upon  
12 modification or suspension of payment for any cause, the employer or insurer shall  
13 immediately send a notice to the office, in the manner prescribed by the rules of the  
14 director, that payment of compensation has begun or has been suspended, as the case  
15 may be. **A payor, which shall mean that entity which is responsible by law or**  
16 **contract for the payment of benefits or medical expenses incurred by the**  
17 **claimant as a result of an injury covered by this Chapter, shall do all of the**  
18 **following:**

19 (a) **Prepare a notice of payment. The form for the notice of payment**  
20 **shall be promulgated by the office pursuant to the Administrative Procedure**  
21 **Act.**

22 (b) **Send the notice of payment to the injured employee, or the**  
23 **employee's representative, with the first payment of compensation.**

24 (c) **Send the notice of payment to the injured employee, or the**  
25 **employee's representative, within ten days of a suspension or modification to**  
26 **compensation for any cause or within ten days of the suspension or modification**  
27 **of the supplemental earnings benefit.**

28 (d) **Send a copy of the notice of payment to the office within ten days**  
29 **from the date that the original notice of payment was sent to the injured**

1           employee or the employee's representative.

2           (2)(a) The injured employee or the employee's representative who  
3           disagrees with any information provided on the notice of payment shall, in  
4           writing, notify the payor of the basis for disagreement and provide the amounts  
5           believed appropriate.

6           (b) The payor, within five business days of receipt of the notice of  
7           disagreement, shall do one of the following:

8           (i) Send a revised notice of payment along with a revised payment in  
9           accordance therewith to the injured employee or the employee's representative.

10          (ii) If the payor believes that the amount determined in the original  
11          notice of payment was correct, then the payor shall file a request for  
12          preliminary determination, on a form to be promulgated by the office, and shall  
13          provide a copy to the injured employee or the employee's representative.

14          (c) The preliminary determination shall be performed by the director's  
15          designee, who shall be a workers' compensation judge specifically assigned to  
16          handle preliminary determinations. Such preliminary determination hearing  
17          shall occur within fifteen days of the filing of a request.

18          (d) The injured employee, the employee's representative, the payor and  
19          the employer, which includes the direct employer of a statutory employee  
20          pursuant to R.S. 23:1061, shall participate in a preliminary determination  
21          hearing by phone. The workers' compensation judge may require any of these  
22          parties to produce relevant records necessary for the determination of  
23          compensation provided for in the notice of payment. No later than thirty days  
24          from the filing of the request for a preliminary determination, the workers'  
25          compensation judge shall provide, in writing, a recommended amount of  
26          compensation.

27          (e) The payor shall, within ten calendar days of the mailing of the  
28          recommendation from the workers' compensation judge, either mail to the  
29          injured employee or the employee's representative a revised notice of payment



1 expenses of the burial of the employee, not to exceed ~~seven~~ **eight** thousand five  
2 hundred dollars.

3 \* \* \*

4 §1221. Temporary total disability; permanent total disability; supplemental earnings  
5 benefits; permanent partial disability; schedule of payments

6 Compensation shall be paid under this Chapter in accordance with the  
7 following schedule of payments:

8 \* \* \*

9 (3) Supplemental earnings benefits.

10 (a)(i) For injury resulting in the employee's inability to earn wages equal to  
11 ninety percent or more of wages at time of injury, supplemental earnings benefits,  
12 **payable monthly**, equal to sixty-six and two-thirds percent of the difference between  
13 the average monthly wages at time of injury and average monthly wages earned or  
14 average monthly wages the employee is able to earn in any month thereafter in any  
15 employment or self-employment, whether or not the same or a similar occupation as  
16 that in which the employee was customarily engaged when injured and whether or  
17 not an occupation for which the employee at the time of the injury was particularly  
18 fitted by reason of education, training, and experience, such comparison to be made  
19 on a monthly basis. Average monthly wages shall be computed by multiplying his  
20 "wages" by fifty-two and then dividing the quotient by twelve.

21 **(ii) When the employee is entitled to monthly supplemental earnings**  
22 **benefits pursuant to this Subsection, but is not receiving any income from**  
23 **employment or self-employment and the employer has not established earning**  
24 **capacity pursuant to R.S. 23:1226, payments of supplemental earning benefits**  
25 **shall be made in the manner provided for in R.S. 23:1201(A)(1).**

26 \* \* \*

27 (4) Permanent partial disability. In the following cases, compensation shall  
28 be solely for anatomical loss of use or amputation and shall be as follows:

29 \* \* \*

1 (s)(i) In addition to any other benefits to which an injured employee may be  
 2 entitled under this Chapter, any employee suffering an injury as a result of an  
 3 accident arising out of and in the course and scope of his employment shall be  
 4 entitled to a sum of ~~thirty~~ **fifty** thousand dollars, payable within one year after the  
 5 date of the injury. Interest on such payment shall not commence to accrue until after  
 6 it becomes payable. Such payment shall not be subject to any offset for payment of  
 7 any other benefit under this Chapter. Such payment shall not be subject to a claim  
 8 for attorney fees; however, attorney fees may be awarded in a claim to collect such  
 9 payment pursuant to R.S. 23:1201.2.

10 \* \* \*

11 §1224. Payments not recoverable for first week; exceptions

12 No compensation shall be paid for the first week after the injury is received;  
 13 provided, that in cases where disability from injury continues for ~~six~~ **two** weeks or  
 14 longer after date of the accident, compensation for the first week shall be paid after  
 15 the first ~~six~~ **two** weeks have elapsed.

16 \* \* \*

17 §1314. Necessary allegations; dismissal of premature petition; **dispute of benefits**

18 \* \* \*

19 **D. Disputes over medical treatment pursuant to the medical treatment**  
 20 **schedule shall be premature unless a decision of the medical director has been**  
 21 **obtained in accordance with R.S. 23:1203.1(J).**

22 **E. Notwithstanding any other provisions of this Section, the employer**  
 23 **shall be permitted to file a disputed claim to controvert benefits or concerning**  
 24 **any other dispute arising under this Chapter.**

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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 the office of workers' compensation shall oversee the payments and benefits regarding workers' compensation.

Proposed law maintains present law and provides that the law be cited as the "Louisiana



Workers' Compensation Law."

Proposed law provides legislative purpose as follows:

1. To provide for the payment of timely, temporary and permanent disability benefits to all injured workers who suffer an injury or disease arising out of and in the course and scope of their employment as is required by workers' compensation laws.
2. To pay the medical expenses that are due to all injured workers who are covered under the workers' compensation laws.
3. To return such workers, who have received workers' compensation benefits to the work force.

Proposed law provides legislative intent as follows:

1. That the Louisiana Workers' Compensation Law is to be interpreted so as to assure the delivery of benefits to an injured employee in accordance with the law.
2. To facilitate injured workers' return to employment at a reasonable cost to the employer.

Proposed law provides that the Act shall be construed as follows:

1. The provisions of the Act are to be based on the mutual renunciation of legal rights and defenses by employers and employees alike; therefore, it is the specific intent of the legislature that workers' compensation cases shall be decided on their merits.
2. Disputes concerning the facts in workers' compensations cases shall not be given a broad, liberal construction in favor of either employees or employers; therefore, the laws pertaining to workers' compensation shall be construed in accordance with the basic principles of statutory construction and not in favor of either employer or employee.
3. According to the La. Constitution Art. III, Sec. 1, the legislative powers of the state are vested solely in the legislature; therefore, when the workers' compensation statutes of this state are to be amended, the legislature acknowledges its responsibility to do so. Proposed law further provides that if the workers' compensation statutes are to be liberalized, broadened, or narrowed, such actions shall be the exclusive purview of the legislature.

Present law provides that, when an employer fails to timely pay a covered employee the accurate amount of monetary benefits due or fails to provide the required medical or vocational services, the employer shall be required to pay certain penalties and attorney fees.

Proposed law provides that a payor means that entity which is responsible for the payment of benefits or medical expenses incurred by the claimant as a result of an injury covered by the workers' compensation law.

Proposed law provides that a payor will do all of the following:

1. Prepare a notice of payment. The form for the notice of payment shall be promulgated by the office of workers' compensation pursuant to the A.P.A.
2. Send the notice of payment to the injured employee, or the employee's representative, with the first payment of compensation.
3. Send the notice of payment to the injured employee, or the employee's

representative, within 10 days of a suspension or modification to compensation for any cause or within 10 days of the suspension or modification of the supplemental earnings benefit.

4. Send a copy of the notice of payment to the office within 10 days of the original notice of payment being sent to the injured employee or the employee's representative.

Proposed law provides that the injured employee who disagrees with any information provided on the notice of payment is to notify, in writing, the payor of the basis for disagreement and provide the amounts believed appropriate.

Proposed law provides that a payor, within five business days of receipt of the notice of disagreement, shall do one of the following:

1. Send a revised notice of payment along with a revised payment in accordance therewith to the injured employee or the employee's representative.
2. If the payor believes that the amount determined in the original notice of payment was correct, then the payor shall file a request for preliminary determination, on a form to be promulgated by the office, and shall provide a copy to the injured employee or the employee's representative.

Proposed law provides that the preliminary determination shall be performed by the designee of the director of the office of workers' compensation. Proposed law further provides that the designee shall be a workers' compensation judge specifically assigned to handle preliminary determinations.

Proposed law provides that the preliminary determination hearing will occur within 15 days of the filing of a request.

Proposed law provides that the injured employee, the employee's representative, the payor and the employer, which includes the direct employer of a statutory employee pursuant to R.S. 23:1061, shall participate in a preliminary determination hearing by phone. Proposed law provides that the workers' compensation judge may require any of these parties to produce relevant records necessary for the determination of compensation provided for in the notice of payment.

Proposed law provides that no later than 30 days from the filing of the request for a preliminary determination, the workers' compensation judge will provide a recommended amount of compensation.

Proposed law provides that the payor shall, within 10 calendar days of the mailing of the recommendation from the workers' compensation judge, either mail to the injured employee or the employee's representative a revised notice of payment with the recommended amount if such recommended amount is different from that which was previously provided on the initial notice of payment, or notify the injured worker or the employee's representative in writing that the payor does not accept the recommendation.

Proposed law provides that no disputed claim for compensation, regarding the amount of compensation due shall be filed until the provisions of this preliminary determination has been exhausted unless such a disputed claim is in regard to a payor's failure to provide a notice of payment. Proposed law further provides that a payor who provides the compensation amounts due as recommended by the workers' compensation judge shall not be subject to any penalty and attorney fees regarding such calculation of the compensation due and payment provided with the revised notice of payment.

Proposed law provides that the payor who provides the compensation amounts due as

recommended by the workers' compensation judge's preliminary recommendation, and who disagrees with such preliminary recommendation shall file a disputed claim for compensation within 15 days of mailing the revised notice of payment and compensation amount due.

Present law provides that an employer will pay reasonable expenses of the burial of the covered employee, who dies as a result of a work related injury, in an amount not to exceed \$7,500. Proposed law increases the amount from \$7,500 to \$8,500.

Present law provides that for injury resulting in the employee's inability to earn wages equal to ninety percent or more of wages at time of injury, supplemental earnings benefits, equal to 66 2/3% of the difference between the average monthly wages at time of injury and average monthly wages earned or average monthly wages the employee is able to earn in any month thereafter in any employment or self-employment.

Proposed law retains present law and provides that supplemental earnings benefits shall be paid monthly.

Present law provides that payments of compensation will be paid as near as may be possible, at the same time and place as wages were payable to the employee before the accident; however, when the employee is not living at the place where the wages were paid, or is absent therefrom, such payments shall be made by mail, upon the employee giving to the employer a sufficient mailing address. Present law further provides that a longer interval, not to exceed one month, may be substituted by agreement without approval of the director. An interval of more than one month must be approved by the director.

Proposed law retains present law but provides that, when the employee is entitled to monthly supplemental earnings benefits but is not receiving any income from employment or self-employment and the employer has not established earning capacity, supplemental earnings benefits shall be made in the manner as present law.

Present law provides that, in addition to any other benefits to which an injured employee may be entitled, any employee suffering an injury as a result of an accident arising out of and in the course and scope of his employment shall be entitled to a sum of \$30,000, payable within one year after the date of the injury. Proposed law increases the amount from \$30,000 to \$50,000.

Present law provides that when an injured employee seeks medical treatment and a dispute arises with the payor over the necessity of such treatment, the injured employee may seek review of the denial of medical treatment with the medical director with the office of workers' compensation.

Present law provides that no compensation shall be paid for the first week after the injury is received provided that the disability from the injury continues for six weeks or longer after the date of the accident, compensation for the first week shall be paid after the first six weeks.

Proposed law changes the number of weeks from six to two in both instances.

Proposed law provides that disputes over medical treatment pursuant to the medical treatment schedule shall be premature unless a decision of the medical director has been obtained.

Present law clarifies that the employer shall be permitted to file a disputed claim to controvert benefits or concerning any other dispute arising under workers' compensation law.

Effective August 1, 2012.

(Amends R.S. 23:1201(F) and (H), 1210(A), 1221(3)(a) and (4)(s)(i), 1224, and the heading of 1314; adds R.S. 23:1020.1 and 1314(D) and (E))