

Regular Session, 2012

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

BY SENATORS DONAHUE AND LAFLEUR

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)(introductory paragraph) and (H), 1210(A),

3 1221(3)(a) and (4)(s)(i), 1224 and the heading of 1314, and to enact R.S. 23:1020.1

4 and 1314(D) and (E), relative to workers' compensation; to provide for legislative

5 purpose; to provide for legislative intent; to provide for construction; to provide with

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

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

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

9 to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 23:1201(F)(introductory paragraph) and (H), 1210(A), 1221(3)(a)

12 and (4)(s)(i), 1224 and the heading of 1314 are hereby amended and reenacted and R.S.

13 23:1020.1 and 1314(D) and (E) 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' compensation 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 * * *

24 H. (1) Upon making the first payment of compensation and upon
 25 modification or suspension of payment for any cause, the employer or insurer shall
 26 immediately send a notice to the office, in the manner prescribed by the rules of the
 27 director, that payment of compensation has begun or has been suspended, as the case
 28 may be. A payor, which shall mean that entity which is responsible by law or
 29 contract for the payment of benefits or medical expenses incurred by the

1 claimant as a result of an injury covered by this Chapter, shall do all of the
2 following:

3 (a) Prepare a notice of payment. The form for the notice of payment
4 shall be promulgated by the office pursuant to the Administrative Procedure
5 Act.

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

8 (c) Send the notice of payment to the injured employee, or the
9 employee's representative, within ten days of a suspension or modification to
10 compensation for any cause or within ten days of the suspension or modification
11 of the supplemental earnings benefit.

12 (d) Send a copy of the notice of payment to the office within ten days
13 from the date that the original notice of payment was sent to the injured
14 employee or the employee's representative.

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

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

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

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

27 (c) The preliminary determination shall be performed by the director's
28 designee, who shall be a workers' compensation judge specifically assigned to
29 handle preliminary determinations. Such preliminary determination hearing

1 shall occur within fifteen days of the filing of a request.

2 (d) The injured employee, the employee's representative, the payor and
3 the employer, which includes the direct employer of a statutory employee
4 pursuant to R.S. 23:1061, shall participate in a preliminary determination
5 hearing by phone. The workers' compensation judge may require any of these
6 parties to produce relevant records necessary for the determination of
7 compensation provided for in the notice of payment. No later than thirty days
8 from the filing of the request for a preliminary determination, the workers'
9 compensation judge shall provide, in writing, a recommended amount of
10 compensation.

11 (e) The payor shall, within ten calendar days of the mailing of the
12 recommendation from the workers' compensation judge, either mail to the
13 injured employee or the employee's representative a revised notice of payment
14 with the recommended amount if such recommended amount is different from
15 that which was previously provided on the initial notice of payment, or notify
16 the injured worker or the employee's representative in writing that the payor
17 does not accept the recommendation. No disputed claim for compensation
18 regarding the amount of compensation due shall be filed until the provisions of
19 this Subsection have been exhausted unless such a disputed claim is in regard
20 to a payor's failure to provide a notice of payment as required by this
21 Subsection. A payor who provides the compensation amounts due as
22 recommended by the workers' compensation judge shall not be subject to any
23 penalty and attorney fees regarding such calculation of the compensation due
24 and payment provided with the revised notice of payment.

25 (f) A payor who provides the compensation amounts due as
26 recommended by the workers' compensation judge's preliminary
27 recommendation and who disagrees with such preliminary recommendation
28 shall file a disputed claim for compensation within fifteen days of mailing the
29 revised notice of payment and compensation amount due.

1 not an occupation for which the employee at the time of the injury was particularly
2 fitted by reason of education, training, and experience, such comparison to be made
3 on a monthly basis. Average monthly wages shall be computed by multiplying his
4 "wages" by fifty-two and then dividing the ~~quotient~~ **product** by twelve.

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

10 * * *

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

13 * * *

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

23 * * *

24 §1224. Payments not recoverable for first week; exceptions

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

29 * * *

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 earning 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)(intro para) 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))

Summary of Amendments Adopted by Senate

Senate Floor Amendments to engrossed bill

1. Makes Legislative Bureau technical changes.