

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 743

Introduced by Hansen, 26.

Read first time January 06, 2016

Committee:

- 1 A BILL FOR AN ACT relating to the Nebraska Workers' Compensation Act; to
- 2 amend section 48-121, Reissue Revised Statutes of Nebraska; to
- 3 clarify compensation for shoulder injuries; and to repeal the
- 4 original section.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 48-121, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 48-121 The following schedule of compensation is hereby established
4 for injuries resulting in disability:

5 (1) For total disability, the compensation during such disability
6 shall be sixty-six and two-thirds percent of the wages received at the
7 time of injury, but such compensation shall not be more than the maximum
8 weekly income benefit specified in section 48-121.01 nor less than the
9 minimum weekly income benefit specified in section 48-121.01, except that
10 if at the time of injury the employee receives wages of less than the
11 minimum weekly income benefit specified in section 48-121.01, then he or
12 she shall receive the full amount of such wages per week as compensation.
13 Nothing in this subdivision shall require payment of compensation after
14 disability shall cease;

15 (2) For disability partial in character, except the particular cases
16 mentioned in subdivision (3) of this section, the compensation shall be
17 sixty-six and two-thirds percent of the difference between the wages
18 received at the time of the injury and the earning power of the employee
19 thereafter, but such compensation shall not be more than the maximum
20 weekly income benefit specified in section 48-121.01. This compensation
21 shall be paid during the period of such partial disability but not beyond
22 three hundred weeks. Should total disability be followed by partial
23 disability, the period of three hundred weeks mentioned in this
24 subdivision shall be reduced by the number of weeks during which
25 compensation was paid for such total disability;

26 (3) For disability resulting from permanent injury of the classes
27 listed in this subdivision, the compensation shall be in addition to the
28 amount paid for temporary disability, except that the compensation for
29 temporary disability shall cease as soon as the extent of the permanent
30 disability is ascertainable. For disability resulting from permanent
31 injury of the following classes, compensation shall be: For the loss of a

1 thumb, sixty-six and two-thirds percent of daily wages during sixty
2 weeks. For the loss of a first finger, commonly called the index finger,
3 sixty-six and two-thirds percent of daily wages during thirty-five weeks.
4 For the loss of a second finger, sixty-six and two-thirds percent of
5 daily wages during thirty weeks. For the loss of a third finger, sixty-
6 six and two-thirds percent of daily wages during twenty weeks. For the
7 loss of a fourth finger, commonly called the little finger, sixty-six and
8 two-thirds percent of daily wages during fifteen weeks. The loss of the
9 first phalange of the thumb or of any finger shall be considered to be
10 equal to the loss of one-half of such thumb or finger and compensation
11 shall be for one-half of the periods of time above specified, and the
12 compensation for the loss of one-half of the first phalange shall be for
13 one-fourth of the periods of time above specified. The loss of more than
14 one phalange shall be considered as the loss of the entire finger or
15 thumb, except that in no case shall the amount received for more than one
16 finger exceed the amount provided in this schedule for the loss of a
17 hand. For the loss of a great toe, sixty-six and two-thirds percent of
18 daily wages during thirty weeks. For the loss of one of the toes other
19 than the great toe, sixty-six and two-thirds percent of daily wages
20 during ten weeks. The loss of the first phalange of any toe shall be
21 considered equal to the loss of one-half of such toe, and compensation
22 shall be for one-half of the periods of time above specified. The loss of
23 more than one phalange shall be considered as the loss of the entire toe.
24 For the loss of a hand, sixty-six and two-thirds percent of daily wages
25 during one hundred seventy-five weeks. For the loss of an arm, sixty-six
26 and two-thirds percent of daily wages during two hundred twenty-five
27 weeks. For the loss of a foot, sixty-six and two-thirds percent of daily
28 wages during one hundred fifty weeks. For the loss of a leg, sixty-six
29 and two-thirds percent of daily wages during two hundred fifteen weeks.
30 For the loss of an eye, sixty-six and two-thirds percent of daily wages
31 during one hundred twenty-five weeks. For the loss of an ear, sixty-six

1 and two-thirds percent of daily wages during twenty-five weeks. For the
2 loss of hearing in one ear, sixty-six and two-thirds percent of daily
3 wages during fifty weeks. For the loss of the nose, sixty-six and two-
4 thirds percent of daily wages during fifty weeks.

5 In any case in which there is a loss or loss of use of more than one
6 member or parts of more than one member set forth in this subdivision,
7 but not amounting to total and permanent disability, compensation
8 benefits shall be paid for the loss or loss of use of each such member or
9 part thereof, with the periods of benefits to run consecutively. The
10 total loss or permanent total loss of use of both hands, or both arms, or
11 both feet, or both legs, or both eyes, or hearing in both ears, or of any
12 two thereof, in one accident, shall constitute total and permanent
13 disability and be compensated for according to subdivision (1) of this
14 section. In all other cases involving a loss or loss of use of both
15 hands, both arms, both feet, both legs, both eyes, or hearing in both
16 ears, or of any two thereof, total and permanent disability shall be
17 determined in accordance with the facts. Loss or loss of use of an arm
18 does not include injuries to the shoulder regardless of the location of
19 residual impairment, and therefore injuries to the shoulder shall be
20 compensated pursuant to subdivisions (1) and (2) of this section.
21 Amputation between the elbow and the wrist shall be considered as the
22 equivalent of the loss of a hand, and amputation between the knee and the
23 ankle shall be considered as the equivalent of the loss of a foot.
24 Amputation at or above the elbow shall be considered as the loss of an
25 arm, and amputation at or above the knee shall be considered as the loss
26 of a leg. Permanent total loss of the use of a finger, hand, arm, foot,
27 leg, or eye shall be considered as the equivalent of the loss of such
28 finger, hand, arm, foot, leg, or eye. In all cases involving a permanent
29 partial loss of the use or function of any of the members mentioned in
30 this subdivision, the compensation shall bear such relation to the
31 amounts named in such subdivision as the disabilities bear to those

1 produced by the injuries named therein.

2 If, in the compensation court's discretion, compensation benefits
3 payable for a loss or loss of use of more than one member or parts of
4 more than one member set forth in this subdivision, resulting from the
5 same accident or illness, do not adequately compensate the employee for
6 such loss or loss of use and such loss or loss of use results in at least
7 a thirty percent loss of earning capacity, the compensation court shall,
8 upon request of the employee, determine the employee's loss of earning
9 capacity consistent with the process for such determination under
10 subdivision (1) or (2) of this section, and in such a case the employee
11 shall not be entitled to compensation under this subdivision.

12 If the employer and the employee are unable to agree upon the amount
13 of compensation to be paid in cases not covered by the schedule, the
14 amount of compensation shall be settled according to sections 48-173 to
15 48-185. Compensation under this subdivision shall not be more than the
16 maximum weekly income benefit specified in section 48-121.01 nor less
17 than the minimum weekly income benefit specified in section 48-121.01,
18 except that if at the time of the injury the employee received wages of
19 less than the minimum weekly income benefit specified in section
20 48-121.01, then he or she shall receive the full amount of such wages per
21 week as compensation;

22 (4) For disability resulting from permanent disability, if
23 immediately prior to the accident the rate of wages was fixed by the day
24 or hour, or by the output of the employee, the weekly wages shall be
25 taken to be computed upon the basis of a workweek of a minimum of five
26 days, if the wages are paid by the day, or upon the basis of a workweek
27 of a minimum of forty hours, if the wages are paid by the hour, or upon
28 the basis of a workweek of a minimum of five days or forty hours,
29 whichever results in the higher weekly wage, if the wages are based on
30 the output of the employee; and

31 (5) The employee shall be entitled to compensation from his or her

1 employer for temporary disability while undergoing physical or medical
2 rehabilitation and while undergoing vocational rehabilitation whether
3 such vocational rehabilitation is voluntarily offered by the employer and
4 accepted by the employee or is ordered by the Nebraska Workers'
5 Compensation Court or any judge of the compensation court.

6 Sec. 2. Original section 48-121, Reissue Revised Statutes of
7 Nebraska, is repealed.