
DIGEST

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Cromer

HB No. 728

Abstract: Provides with respect to workers' compensation.

Present law (R.S. 23:1121) provides for the examination of an injured employee.

Present law requires an injured employee to be examined by a qualified medical practitioner as soon after the accident as demanded.

Present law further provides that the examination shall be paid for by the employer.

Proposed law retains present law.

Present law provides the employee with the right to select one treating physician in any field or specialty.

Proposed law retains present law.

Present law (R.S. 23:1124) provides that an employer or insurer who seeks to compel an employee's compliance with a medical examination shall be granted an expedited hearing.

Proposed law deletes present law and provides that an employee shall have a right to an expedited hearing when denied his right to an initial physician of choice.

Proposed law (R.S. 23:1121) provides that the workers' compensation judge shall set a hearing date within 3 days of receiving the employee's motion, and that the hearing shall be held between 10 and 30 days after the employee files the motion.

Proposed law requires that the judge notify all parties of the hearing date in the same manner and at the same time.

Proposed law requires the authorization of the employee's choice of physician unless good cause is shown as to why it should not be authorized.

Proposed law defines "payor" to mean the entity responsible, whether by law or contract, for the payment of benefits incurred by a claimant as a result of a work related injury.

Proposed law requires the payor to send notice to the office, the employee, and the employee's

representative upon making the 1st payment of compensation, and upon any modification, suspension, termination, or controversion of compensation or medical benefits.

Proposed law does not apply in cases of medical necessity as defined by present law (R.S. 23:1203.1).

Proposed law requires the employer or payor to prepare a "Notice of Modification, Suspension, Termination, or Controversion of Compensation and/or Medical Benefits".

Proposed law further requires the employer or payor to send a copy of the notice of the 1st payment of compensation to the office within 10 days of the date original notice was sent to the injured employee.

Proposed law requires the director to make the notice available upon request of the employee.

Proposed law requires the employer or payor to send a copy of the "Notice of Modification, Suspension, Termination, or Controversion of Compensation and/or Medical Benefits" to the office on the same day as it was sent to the employee.

Proposed law provides that if an injured employee disagrees with any information on the notice form, he shall notify the employer or payor of the basis for disagreement by returning the form to the employer or payor, or by letter of amicable demand, and provide any amounts of compensation he believes appropriate.

Proposed law provides that if the employer or payor provides the benefits that the employee claims he is due, including any arrearage, within 7 days of the demand, he shall not be subject to any penalties or attorney fees.

Proposed law provides that if the employer or payor does not provide the benefits that the employee claims is due, the employee may file a disputed claim for benefits.

Proposed law provides that only the employer or payor who initially sent the notice as required and has complied with the provisions of proposed law, who wishes to have a preliminary determination hearing shall request the hearing in his answer to the disputed claim arising from the notice.

Proposed law provides that an employer or payor who does not comply may be subject to penalties and attorney fees.

Proposed law provides that upon the filing of the request for a preliminary determination hearing, the workers' compensation judge shall initiate a telephone status conference to schedule the discovery deadlines and to facilitate the exchange of documents. The discovery will be limited to the issues raised in the disputed payment, suspension, modification, termination, or controversion of benefits.

Proposed law provides that the preliminary determination hearing shall be a contradictory hearing at which all parties may introduce evidence.

Proposed law allows the testimony of physicians by certified records or deposition, or, when the parties agree, uncertified medical records and physician reports may be introduced into evidence.

Proposed law allows witnesses to testify or offer testimony by deposition.

Proposed law requires the preliminary determination hearing to be held no later than 90 days from the scheduling conference, unless a 30 day extension is allowed for good cause.

Proposed law requires that any employer or payor who requests a preliminary hearing must produce all documentation he relied upon in calculating the employee's benefits.

Proposed law requires the employer to, within 10 calendar days, either accept and comply with the preliminary determination of the workers' compensation judge and mail a revised notice to the injured employee or notify the injured employee that he does not accept the determination.

Proposed law provides that if the injured employee who disagrees with the preliminary determination, he shall notify the court within 10 days of his desire to proceed to a trial on the merits.

Proposed law reserves the right of the employer or payor who does comply with the determination, to further controvert future matters. The acceptance of the preliminary determination by the employer or payor shall not be considered an admission.

Present law (R.S. 23:1226) provides that the employer shall be responsible for the selection of a licensed professional rehabilitation counselor to evaluate and assist the employee in his job placement or vocational training.

Proposed law retains present law.

Present law provides that if the employer refuses to provide the services of a vocational rehabilitation counselor, the employee may file a claim to review the need for the services.

Proposed law provides that disputes shall be heard in an expedited hearing.

Proposed law requires the workers' compensation judge to set a hearing date within 3 days of receiving the motion, and that the hearing shall take place between 10 and 30 days after the employee receives the notice of the motion.

Proposed law requires the workers' compensation judge to provide the notice and the hearing date to the employer or the payor at the same time and in the same manner as it is provided to the injured employee and his representative.

Proposed law does not require an employee to submit the dispute on the medical examination to mediation or go through pretrial conference before obtaining a hearing.

Proposed law provides that the hearing shall be conducted as a rule to show cause.

Present law (R.S. 23:1310.8) provides for jurisdiction of the workers' compensation judge in claim resolution.

Present law provides that upon the application of any party of interest, on the ground of a change in conditions, the workers' compensation judge may review any award and may make an award ending, diminishing, or increasing the compensation subject to the maximum or minimum provided in the present law.

Proposed law changes "application" to "motion" of any party of interest, but otherwise retains present law.

Present law (R.S. 23:1314) allows an employer to file a disputed claim to controvert benefits or concerning any other dispute in present law.

Proposed law provides that the employer or payor may file a disputed claim against an employee, his dependent, or his beneficiary only when the employer or payor alleges the employee has committed fraud.

Proposed law shall be remedial, curative, and procedural and shall be applied retroactively. (Amends R.S. 23:1121(B)(1) and (5), 1124, 1226(B)(3), 1310.8, and 1314; Adds R.S. 23:1021(13) and 1201.1)