

2024 Regular Session

SENATE BILL NO. 315

BY SENATOR SEABAUGH

WORKERS' COMPENSATION. Provides relative to benefits and period of disability.
(8/1/24)

1 AN ACT

2 To amend and reenact R.S. 23:1123, 1210, 1221(1)(a) and (d), (3)(a) through (f), 1226(A)

3 and (B)(3)(a) and (c), and 1231(B)(2) and (3) and to enact R.S. 23:1221(2)(f),

4 1223(C) and 1226(H), relative to workers' compensation; to provide additional

5 medical opinions for medical examinations; to provide for burial expenses; to

6 provide for temporary partial disability; to provide for benefits for temporary total

7 disability; to provide for vocational rehabilitation; to provide for payment to

8 dependents or a parent of a decedent; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1.R.S. 23:1123, 1210, 1221(1)(a) and (d), (3)(a) through (f), 1226(A) and

11 (B)(3)(a) and (c), and 1231(B)(2) and (3) are hereby amended and reenacted and R.S.

12 23:1221(2)(f), 1223(C) and 1226(H) are hereby enacted to read as follows:

13 §1123. Disputes as to condition or capacity to work; additional medical opinion

14 regarding an examination under supervision of the assistant secretary

15 If any dispute arises as to the condition of the employee, **diagnosis or**

16 **causation of the injury or occupational disease, work restrictions, physical**

17 **limitations, degree of disability,** or the employee's capacity to work, the assistant

1 secretary, upon application of any party, shall order an additional medical opinion
 2 regarding an examination of the employee to be made by a medical practitioner
 3 selected and appointed by the assistant secretary. The medical examiner shall report
 4 his conclusions from the examination to the assistant secretary and to the parties and
 5 such report shall be prima facie evidence of the facts therein stated in any subsequent
 6 proceedings under this Chapter.

7 * * *

8 §1210. Burial expenses; duty to furnish

9 A. In every case of death, the employer shall pay or cause to be paid, in
 10 addition to any other benefits allowable under the provisions of this Part, reasonable
 11 expenses of the burial of the employee, not to exceed ~~eight~~ **twelve** thousand five
 12 hundred dollars.

13 B. If the reasonable expenses for the burial of an employee are less than
 14 ~~seven~~ **twelve** thousand five hundred dollars, the difference between such reasonable
 15 expenses and ~~seven~~ **twelve** thousand five hundred dollars shall be paid or caused to
 16 be paid by the employer to the heirs of the deceased employee and such payment
 17 shall be in addition to any other benefits paid by the employer or his insurer on
 18 behalf of the deceased employee.

19 * * *

20 §1221. Temporary total disability; permanent total disability; ~~supplemental earnings~~

21 ~~benefits~~ **temporary partial disability**; permanent partial disability;
 22 schedule of payments

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

25 (1) Temporary total.

26 (a) For any injury producing temporary total disability of an employee to
 27 engage in any self-employment or occupation for wages, whether or not the same or
 28 a similar occupation as that in which the employee was customarily engaged when
 29 injured, and whether or not an occupation for which the employee at the time of

1 injury was particularly fitted by reason of education, training, or experience, sixty-
2 six and two-thirds percent of wages during the period of such disability, **subject to**
3 **Subparagraph (d) of this Paragraph.**

4 * * *

5 (d) ~~An award of benefits based on temporary total disability shall cease when~~
6 ~~the physical condition of the employee has resolved itself to the point that a~~
7 ~~reasonably reliable determination of the extent of disability of the employee may be~~
8 ~~made and the employee's physical condition has improved to the point that~~
9 ~~continued, regular treatment by a physician is not required.~~ **Benefits based on**
10 **temporary total disability shall cease under any of the following circumstances:**

11 **(i) The employee is engaged or has the capacity to engage in any self-**
12 **employment or occupation for wages.**

13 **(ii) The employee has reached maximum medical improvement. For the**
14 **purpose of this Section, "maximum medical improvement" means the physical**
15 **condition of the employee has stabilized and is unlikely to improve or worsen**
16 **substantially in the next year, with or without treatment.**

17 **(iii) Twenty-six weeks following the work accident, provided that**
18 **temporary total disability may be extended beyond twenty-six weeks where the**
19 **treating physician provides documentation of the employee's specific work**
20 **restrictions to the employer or its representative no less frequently than**
21 **monthly, and a preponderance of the medical evidence shows that the employee**
22 **will remain temporarily totally disabled and is unable to engage in any self-**
23 **employment or occupation for wages as provided for in Subparagraph (1)(a) of**
24 **this Paragraph. Notwithstanding the provisions of this Subparagraph, in no**
25 **event shall benefits be paid pursuant to R.S. 23:1221(1), (3), or (4) for more than**
26 **a total of three hundred fifty weeks following the work accident.**

27 (2) Permanent total.

28 * * *

29 **(f) Notwithstanding any other provision in this Chapter, the right to**

1 permanent total disability shall in no event exceed a maximum of four hundred
2 fifty weeks.

3 (3) Supplemental earnings benefits Temporary partial disability.

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

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

22 (b) For purposes of Subparagraph (3)(a), of this Paragraph, the amount
23 determined to be the wages the employee is able to earn in any month shall in no
24 case be less than the sums actually received by the employee, including, but not
25 limited to, earnings from odd-lot employment, sheltered employment, and
26 employment while working in any pain.

27 (c)(i) Notwithstanding the provisions of Subparagraph (b) of this Paragraph,
28 for purposes of Subparagraph (a) of this Paragraph, if the employee is not engaged
29 in any employment or self-employment, as described in Subparagraph (b) of this

1 Paragraph, or is earning wages less than the employee is able to earn, the amount
 2 determined to be the wages the employee is able to earn in any month shall in no
 3 case be less than the sum the employee would have earned in any employment or
 4 self-employment, as described in Subparagraph (b) of this Paragraph, which he was
 5 physically able to perform, and (1) which he was offered or tendered by the
 6 employer or any other employer, or (2) which is proven available to the employee
 7 in the employee's or employer's community or reasonable geographic region.

8 ~~(ii) For purposes of Subsubparagraph (i) of this Subparagraph, if the~~
 9 ~~employee establishes by clear and convincing evidence, unaided by any presumption~~
 10 ~~of disability, that solely as a consequence of substantial pain, the employee cannot~~
 11 ~~perform employment offered, tendered, or otherwise proven to be available to him,~~
 12 ~~the employee shall be deemed incapable of performing such employment.~~

13 (d) The right to supplemental earnings benefits **temporary partial disability**
 14 pursuant to this Paragraph shall in no event exceed a maximum of ~~five hundred~~
 15 ~~twenty~~ **three hundred fifty** weeks, but shall terminate when any of the following
 16 occur:

17 **(i) When the employee is earning or has the capacity to earn wages equal**
 18 **to ninety percent or more of wages at time of injury.**

19 ~~(ii)~~ As of the end of any two-year period commencing after termination of
 20 temporary total disability, unless during such two-year period supplemental earnings
 21 benefits have been payable during at least thirteen consecutive weeks; ~~or.~~

22 ~~(iii)~~ After receipt of a maximum of ~~five hundred twenty~~ **three hundred**
 23 **fifty cumulative** weeks of benefits **under R.S. 23:1221(1), (3), or (4).** provided that
 24 for any week during which the employee is paid any compensation **for temporary**
 25 **partial disability** under this Paragraph, the employer shall be entitled to a reduction
 26 of one full week of compensation against the maximum number of weeks for which
 27 compensation is payable under this Paragraph; however, for any week during which
 28 the employee is paid no ~~supplemental earnings benefits~~ **temporary partial**
 29 **disability**, the employer shall not be entitled to a reduction against the maximum

1 number of weeks payable under this Paragraph; ~~or~~.

2 (~~iii~~**iv**) When the employee retires; however, the period during which
3 ~~supplemental earnings benefits~~ **temporary partial disability** may be payable shall
4 not be less than one hundred four weeks. **Where the employee has reached the age**
5 **of seventy years and is receiving regular retirement income benefits from any**
6 **source, there shall be a rebuttable presumption that the employee has retired**
7 **from the workforce.**

8 (e)(i) The fact that an employee has suffered previous disability, impairment,
9 or disease, or received compensation therefor, shall not preclude him from receiving
10 benefits for a subsequent injury or preclude benefits for death resulting therefrom.
11 **However, with regard to such previous or pre-existing conditions, the employee**
12 **shall only be entitled to benefits under this Chapter to the extent and for the**
13 **period that the accident objectively aggravates or increases the pre-existing**
14 **disability, impairment, or disease.**

15 (ii) If an employee receiving ~~supplemental earnings benefits~~ **temporary**
16 **partial disability** suffers a subsequent injury causing the payment of temporary total
17 disability, permanent total disability, or ~~supplemental earnings benefits~~ **temporary**
18 **partial disability**, the combined benefits payable shall not exceed the maximum
19 compensation rate in effect for temporary total disability at the time of the
20 subsequent injury. Any reduction in benefits due to such limit shall be applied first
21 to the ~~supplemental earnings benefits~~ **temporary partial disability** payable as a
22 result of the prior injury.

23 (f) Any compensable ~~supplemental earnings benefits~~ **temporary partial**
24 **disability** loss shall be reported by the employee to the insurer or self-insured
25 employer within thirty days after the termination of the week for which such loss is
26 claimed. The assistant secretary shall provide by rule for the reporting of
27 ~~supplemental earnings benefits~~ **temporary partial disability** loss by the injured
28 worker and for the reporting of ~~supplemental earnings benefits~~ and payment of
29 ~~supplemental earnings benefits~~ **temporary partial disability** by the employer or

1 insurer to the office and may prescribe forms for such reporting. The office, upon
2 request by the employer or insurer, shall provide verification through unemployment
3 compensation records under the Louisiana Employment Security Law of any claimed
4 ~~supplemental earnings benefits~~ **temporary partial disability** loss and shall obtain
5 such verification from other states, if applicable.

6 * * *

7 §1223. Deductions from benefits

8 * * *

9 **C. Except as provided in R.S. 23:1221(4)(s), in no event shall**
10 **compensation paid under R.S. 23:1221 exceed a cumulative total of four**
11 **hundred fifty weeks.**

12 * * *

13 §1226. Rehabilitation of injured employees

14 A. When an employee has suffered an injury covered by this Chapter which
15 precludes the employee from earning wages equal to wages earned prior to the
16 injury, **upon written request from the employee or the employer, the employer**
17 **shall provide and** the employee ~~shall be entitled to prompt~~ **cooperate with**
18 **vocational** rehabilitation services **provided for the purpose of returning the**
19 **employee to any self-employment or occupation for wages and establishing his**
20 **wage earning capacity.** Vocational rehabilitation services shall be provided by a
21 licensed professional vocational rehabilitation counselor, and all such services
22 provided shall be compliant with the Code of Professional Ethics for Licensed
23 Rehabilitation Counselors as established by R.S. 37:3441 et seq.

24 B. * * *

25 (3)(a) The employer shall be responsible for the selection of a licensed
26 professional vocational rehabilitation counselor to evaluate and assist the employee
27 in his job placement or vocational training. Should the employer refuse to provide
28 these services, **the employee fails to cooperate with vocational rehabilitation,** or
29 a dispute arises concerning the work of the vocational counselor, the employee **or**

1 the employer may file a claim with the office to review the need for such services
 2 or the quality of services being provided. The employee and the employer shall
 3 have a right to an expedited summary proceeding pursuant to R.S. 23:1201.1(K)(8).
 4 The workers' compensation judge shall set a hearing date within three days of
 5 receiving the motion. The hearing shall be held not less than ten, nor more than thirty
 6 days, after the employee, employer, or payor receives notice, delivered by certified
 7 or registered mail, of the ~~employee's~~ motion. The workers' compensation judge shall
 8 provide notice of the hearing date ~~to the employer and payor at the same time and in~~
 9 ~~the same manner that notice of the hearing date is provided to the employee or his~~
 10 ~~attorney~~ as required by law. For the purposes of this Section, ~~an employee~~ the
 11 parties shall not be required to submit the dispute on the issue of vocational services
 12 to mediation or go through a pretrial conference before obtaining a hearing. The
 13 hearing shall be conducted as a rule to show cause.

14 * * *

15 (c) Upon refusal by the employee to cooperate with vocational
 16 rehabilitation as required by this Section, the employer or payor may reduce
 17 weekly compensation, including ~~supplemental earnings benefits~~ temporary partial
 18 disability pursuant to R.S. 23:1221(3), by fifty percent for each week of the period
 19 of refusal. Reduction of benefits by the employer or payor shall be made in
 20 accordance with the provisions of R.S. 23:1201.1(A) through (E).

21 * * *

22 H. Jobs identified by a licensed professional vocational rehabilitation
 23 counselor retained pursuant to this Section shall be presumed to be available
 24 and suitable for purposes of establishing the employee's wage earning capacity,
 25 in the absence of clear and convincing evidence to the contrary.

26 * * *

27 §1231. Death of employee; payment to dependents; surviving parents

28 * * *

29 B.

* * *

1 (2) If the employee leaves no legal dependents, whether biological or
2 adopted, entitled to benefits under any state or federal compensation system, one
3 lump sum payment of ~~seventy-five~~ **one hundred** thousand dollars shall be paid to
4 the employee's surviving biological and adopted children who are over the age of
5 majority, to be divided equally among them, which shall constitute the sole and
6 exclusive compensation in such cases.

7 (3) If the employee leaves no dependents entitled to benefits under Paragraph
8 (2) of this Subsection, one lump sum of ~~seventy-five~~ **one hundred** thousand dollars
9 shall be paid to the surviving biological and adopted children of the employee to be
10 divided equally among them, which shall constitute the sole and exclusive
11 compensation in such cases. If the employee leaves no legal dependents and no
12 biological or adopted children entitled to benefits under any state or federal
13 compensation system, the sum of ~~seventy-five~~ **one hundred** thousand dollars shall
14 be paid to each surviving parent of the deceased employee, in a lump sum, which
15 shall constitute the sole and exclusive compensation in such cases.

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Yoursheka D. Butler.

DIGEST

SB 315 Original

2024 Regular Session

Seabaugh

Present law requires, upon application of any party, the assistant secretary, if there is a dispute concerning the condition of the employee or the employee's capacity to work, to order an additional medical opinion regarding an exam of the employee. Present law further requires that the assistant secretary to select and appoint the medical practitioner to conduct the exam.

Proposed law adds disputes concerning diagnosis or causation of the injury or occupational disease, work restrictions, physical limitations, degree of disability to the criteria that can be subjected to an additional medical opinion.

Proposed law otherwise retains present law.

Present law requires, in every case that results in a death, an employer to pay or cause to pay, in addition to any other benefits allowed under present law, reasonable burial expenses, not to exceed \$8,500.

Proposed law increases the maximum burial expenses amount from \$8,500 to 12,500 and otherwise retains present law.

Present law provides that if the burial expenses are less than \$7,000, the employer is required to paid the difference to the deceased employee's heirs.

Proposed law changes the amount from \$7,500 to 12,500 and otherwise retains present law.

Present law provides that an award of benefits based on temporary total disability ceases when the physical condition of the employee has resolved itself to the point that a reasonably reliable determination of the extent of disability of the employee may be made and the employee's physical condition has improved to the point that continued, regular treatment by a physician is not required.

Proposed law repeals present law.

Proposed law provides that benefits based on temporary total disability shall cease when any of the following circumstances have been reached:

- (1) The employee is engaged or has the capacity to engage in any self-employment or occupation for wages.
- (2) The employee has reached maximum medical improvement, which is defined as the physical condition of the employee, which has stabilized and is unlikely to improve or worsen substantially in the next year, with or without treatment.
- (3) 26 weeks following the work accident, provided that temporary total disability may be extended beyond 26 weeks where the preponderance of the medical evidence shows that the employee remains temporarily totally disabled and he is unable to engage in any self-employment or occupation for wages. In no event will benefits be paid pursuant to present law and proposed law for more than a total of 350 weeks following the work accident.

Present law provides that if an employee is not engaged in any employment or self-employment, or is earning wages less than the employee is able to earn, the amount determined to be the wages the employee is able to earn in any month will in no case be less than the sum the employee would have earned in any employment or self-employment.

Proposed law retains present law.

Present law provides that if the employee establishes by clear and convincing evidence, unaided by any presumption of disability, that solely as a consequence of substantial pain, the employee cannot perform employment offered, tendered, or otherwise proven to be available to him the employee will be deemed incapable of performing such employment.

Proposed law repeals present law.

Present law provides that any compensable supplemental earning benefits loss will be reported by the employee to the insurer or self-insured employer within 30 days after the termination of the week for which such loss is claim. Present law further provides that the assistant secretary will provide by rule for the reporting of supplemental earning benefits loss by the injured worker and for the reporting of supplemental earnings benefit and payment of supplemental earnings benefits by the employer or insurer.

Proposed law replaces "supplemental earnings benefits" in provisions of present law with "temporary partial disability" and otherwise retains present law.

Present law requires the employer to select a licensed professional vocational 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 these services, or a dispute arises concerning the work of the vocational counselor, the employee may file a claim with the office to review the need for such services or the quality of services being provided.

Proposed law adds an additional criteria for when an employee or employer may file a claim with the office to review the need for job placement or vocational training and otherwise retains present law.

Present law provides that the employee is not required to submit the dispute on the issue of vocational services to mediation or go through a pretrial conference before obtaining a hearing. Present law further provides that the hearing will be conducted as a rule to show cause.

Proposed law instead provides that all parties are not required to submit the dispute on the issue of vocational services. Proposed law otherwise retains present law.

Present law provides that if the employee leaves no legal dependents, whether biological or adopted, entitled to benefits, then one lump sum payment of \$75,000 will be paid to the employee's surviving biological and adopted children who are over the age of majority.

Proposed law increases the lump sum amount from \$75,000 to \$100,000 and otherwise retains present law.

Present law provides that if the employee leaves no legal dependents and no biological or adopted children, then one lump sum payment of \$75,000 will be paid to the employee's surviving parent.

Proposed law increases the lump sum amount from \$75,000 to \$100,000 and otherwise retains present law.

Effective August 1, 2024.

(Amends R.S. 23:1123, 1210, 1221(1)(a) and (d), (3)(a) through (f), 1226 (A) and (B)(3)(a) and (c), and 1231(B)(2) and (3); adds R.S. 23:1221(2)(f), 1223(C), and 1226(H))