

2020 Regular Session

HOUSE BILL NO. 661

BY REPRESENTATIVE HODGES

WORKERS COMPENSATION: Provides for vocational rehabilitation for injured employees

1 AN ACT

2 To amend and reenact R.S. 23:1226(A),(B)(1) and (3)(a) and (c), (E), and (G), relative to
3 worker's compensation; to provide for vocational rehabilitation services; to provide
4 for assessments and goals for rehabilitation services; to provide for training and
5 education programs; to provide for procedures for the refusal of vocational
6 rehabilitation services; to provide for summary proceedings; and to provide for
7 related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 23:1226(A),(B)(1) and (3)(a) and (c), (E), and (G) are hereby
10 amended and reenacted to read as follows:

11 §1226. Rehabilitation of injured employees

12 A.(1) When an employee has suffered an injury covered by this Chapter
13 which precludes the employee from earning wages equal to wages earned prior to the
14 injury, the employee shall be entitled to prompt rehabilitation services. A vocational
15 rehabilitation assessment, as described in R.S. 37:3443(3)(c), shall be scheduled
16 within thirty days of the request by either party, regardless of whether the employee
17 has reached maximum medical improvement or has been released to restricted duty.

18 (2) Vocational rehabilitation services shall be provided by a licensed
19 professional vocational rehabilitation counselor, and all such services provided shall

1 be compliant with the Code of Professional Ethics for Licensed Rehabilitation
2 Counselors as established by R.S. 37:3441 et seq.

3 B.(1)(a) The goal of rehabilitation services is to return a worker with a
4 disability to work; suited to his education and marketable skills, through job
5 placement, or on-the-job training or a training program as determined through a
6 vocational rehabilitation assessment provided by a licensed rehabilitation counselor.
7 ~~with a minimum of retraining, as soon as possible after an injury occurs. The first~~
8 ~~appropriate option among the following must be chosen for the worker:~~

9 ~~(a) Return to the same position.~~

10 ~~(b) Return to a modified position.~~

11 ~~(c) Return to a related occupation suited to the claimant's education and~~
12 ~~marketable skills.~~

13 ~~(d) On-the-job training.~~

14 ~~(e) Short-term retraining program (less than twenty-six weeks).~~

15 ~~(f) Long-term retraining program (more than twenty-six weeks but not more~~
16 ~~than one year).~~

17 ~~(g) Self-employment.~~

18 (b) If a licensed rehabilitation counselor believes that additional education
19 or training is required to enable the employee to earn at least ninety percent of his
20 previous average weekly wage, he may recommend a training or education program
21 with a duration of up to fifty-two weeks. Additional time for training or education
22 may be granted at the discretion of the carrier or by order of the court upon a
23 showing of good cause.

24 * * *

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, or a dispute arises concerning the work of the vocational counselor,
29 the employee may file a claim with the office to review the need for such services

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

13 * * *

14 (c)(i) Upon refusal by the employee to participate in vocational rehabilitation
15 services, the employer or payor may reduce weekly compensation, including
16 supplemental earnings benefits pursuant to R.S. 23:1221(3), by fifty percent for each
17 week of the period of refusal by requesting a hearing. ~~Reduction of benefits by the~~
18 ~~employer or payor shall be made in accordance with the provisions of R.S.~~
19 ~~23:1201.1(A) through (E).~~

20 (ii) The employer shall have a right to an expedited summary proceeding
21 pursuant to R.S. 23:1201.1(K)(8). The workers' compensation judge shall set a
22 hearing date within three days of receiving the motion. The hearing shall be
23 conducted as a rule to show cause and shall be held not less than ten, nor more than
24 thirty days after the employee receives notice, delivered by certified or registered
25 mail, of the employer's motion. The workers' compensation judge shall provide
26 notice of the hearing date to the employee or his representative at the same time and
27 in the same manner that notice of the hearing date is provided to the employer or
28 payor.

(iii) For the purposes of this Section, an employer shall not be required to submit the dispute on the issue of reduction of weekly benefits to mediation or go through a pretrial conference before obtaining a hearing. An employer's motion to reduce benefits pursuant to the provisions of this Section shall not be considered premature pursuant to R.S. 23:1314.

* * *

E. When it appears that a retraining program is necessary and desirable to restore the injured employee to suitable gainful employment, the employee shall be entitled to a reasonable and proper retraining program ~~for a period not to exceed twenty-six weeks, which period may be extended for an additional period not to exceed twenty-six additional weeks if such extended period is determined to be necessary and proper by the workers' compensation judge.~~ However, no employer or insurer shall be precluded from continuing such retraining beyond such period on a voluntary basis. An injured employee must request and begin retraining within two years from the date of the termination of temporary total disability as determined by the treating physician. If a retraining program requires residence at or near the facility or institution and away from the employee's customary residence, reasonable cost of board, lodging, or travel shall be borne by the employer or insurer. A retraining program shall be performed at facilities within the state when such facilities are available.

* * *

22 G. The permanency of the employee's total disability under R.S. 23:1221(2)
23 cannot be established, determined, or adjudicated while the employee is employed
24 pursuant to an on-the-job training or a retraining program as provided in Subsections
25 ~~B and~~ Subsection E of this Section.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 661 Original

2020 Regular Session

Hodges

Abstract: Provides relative to vocational rehabilitation education and training programs for injured employees.

Present law provides that when an employee has suffered an injury that precludes the employee from earning wages that would have received prior to his injury, the employee is entitled to prompt rehabilitation services.

Proposed law retains present law and further provides that a vocational rehabilitation assessment shall be scheduled within 30 days of the request by either party, regardless if the employee has reached maximum medical improvement or has been released to restricted duty.

Present law provides that the goal of rehabilitation services is to return a worker with a disability to work, with a minimum of retraining, as soon as possible after an injury occurs.

Proposed law provides that the goal of rehabilitation services is to return a worker with a disability to work suited to his education and marketable skills, through job placement, or an on-the-job training or a training program as determined through a vocational rehabilitation assessment provided by a licensed rehabilitation counselor

Proposed law provides that if a licensed rehabilitation counselor believes that additional education or training is required to enable the employee to earn at least 90% of his previous average weekly wage, the counselor may recommend a training or education program for up to 52 weeks. Proposed law further provides that additional time for training or education may be granted at the discretion of the carrier or upon order of the court.

Present law provides that the employer shall be responsible for selecting the licensed professional vocational rehabilitation counselor to evaluate and assist the employee in job placement or vocational training. 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 the services being provided.

Proposed law retains present law and further allows the employee to choose a vocational rehabilitation counselor.

Present law provides that upon refusal by the employee, the employer or payor can request a hearing and have the weekly compensation reduce by 50% for each week during the period of refusal.

Proposed law provides that when the employee refuses to participate in vocational rehabilitation services, the employer or payor can request a hearing and have the weekly compensation reduce by 50% for each week during the period of refusal.

Proposed law provides that the employer shall have a right to an expedited summary proceeding. Further, the workers' compensation judge shall set a hearing date within three days of receiving the motion. Moreover, the hearing shall be conducted as a rule to show cause and it shall not be held no less than 10 and no more than 30 days after the employee receives notice, by certified or registered mail, of the employer's motion. Proposed law

further provides that the workers' compensation judge will provide notice of the hearing date to the employee or his representative at the same time and manner that the notice of the hearing date is provided to the employer or payor.

Proposed law provides that an employer shall not be required to submit a dispute concerning reduction of weekly benefits to mediation or be required to go through a pretrial conference before obtaining a hearing.

Present law provides that when a retraining program is necessary and desirable to restore the injured employee to suitable gainful employment, the employee shall be entitled to a reasonable and proper training program for a period not to exceed 26 weeks. Present law further provides that no employer or insurer shall be precluded from continuing such retraining beyond such a period on a voluntary basis.

Proposed law provides that when a retraining program is necessary and desirable to restore the injured employee to suitable gainful employment, the employee shall be entitled to a reasonable and proper training program. Proposed law further provides that no employer or insurer shall be precluded from retraining on a voluntary basis.

Present law provides that an injured employee must request and being retraining within two years from the date of termination of temporary total disability as determined by a treating physician. If a retraining program requires residence at or near the facility or institution and away from the employee's customary residence then the employer or insurer shall borne reasonable costs for board, lodging, or travel. Present law further provides that a retraining program shall be performed at facilities within the state, if such facilities are available.

Proposed law retains present law.

(Amends R.S. 23:1226(A),(B)(1) and (3)(a) and (c), (E), and (G))