

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

BY SENATORS DONAHUE AND LAFLEUR

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**
18 **all of the following:**

19 **(1) To provide for the timely payment of temporary and permanent**
20 **disability benefits to all injured workers who suffer an injury or disease arising**
21 **out of and in the course and scope of their employment as is provided in this**
22 **Chapter.**

23 **(2) To pay the medical expenses that are due to all injured workers**
24 **pursuant to this Chapter.**

25 **(3) To return such workers who have received benefits pursuant to this**
26 **Chapter to the work force.**

27 **C. Legislative intent. The legislature finds all of the following:**

(1) That the Louisiana Workers' Compensation Law is to be interpreted so as to assure the delivery of benefits to an injured employee in accordance with this Chapter.

(2) To facilitate injured workers' return to employment at a reasonable cost to the employer.

D. Construction. The Louisiana Workers' Compensation Law shall be construed as follows:

(1) The provisions of this Chapter are based on the mutual renunciation of legal rights and defenses by employers and employees alike; therefore, it is the specific intent of the legislature that workers' compensation cases shall be decided on their merits.

(2) Disputes concerning the facts in workers' compensation cases shall not be given a broad, liberal construction in favor of either employees or employers; the 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 Article III, Section 1 of the Constitution of Louisiana, 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. If the workers' compensation statutes are to be liberalized, broadened, or narrowed, such actions shall be the exclusive purview of the legislature.

* * *

§1201. Time and place of payment; failure to pay timely; failure to authorize; penalties and attorney fees

* * *

F. Failure Except as otherwise provided in this Chapter, failure to provide payment in accordance with this Section or failure to consent to the employee's request to select a treating physician or change physicians when such consent is required by R.S. 23:1121 shall result in the assessment of a penalty in an

1 amount up to the greater of twelve percent of any unpaid compensation or medical
2 benefits, or fifty dollars per calendar day for each day in which any and all
3 compensation or medical benefits remain unpaid or such consent is withheld,
4 together with reasonable attorney fees for each disputed claim; however, the fifty
5 dollars per calendar day penalty shall not exceed a maximum of two thousand dollars
6 in the aggregate for any claim. The maximum amount of penalties which may be
7 imposed at a hearing on the merits regardless of the number of penalties which might
8 be imposed under this Section is eight thousand dollars. An award of penalties and
9 attorney fees at any hearing on the merits shall be res judicata as to any and all
10 claims for which penalties may be imposed under this Section which precedes the
11 date of the hearing. Penalties shall be assessed in the following manner:

12 * * *

13 H. (1) Upon making the first payment of compensation and upon
14 modification or suspension of payment for any cause, the employer or insurer shall
15 immediately send a notice to the office, in the manner prescribed by the rules of the
16 director, that payment of compensation has begun or has been suspended, as the case
17 may be. After February 1, 2013, a payor, which shall mean that entity which is
18 responsible by law or contract for the payment of benefits or medical expenses
19 incurred by the claimant as a result of an injury covered by this Chapter, shall
20 do all of the following:

21 (a) Prepare a notice of payment. The form for the notice of payment
22 shall be promulgated by the office pursuant to the Administrative Procedure
23 Act.

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

26 (c) Send the notice of payment to the injured employee, or the
27 employee's representative, within ten days of a suspension or modification to
28 compensation for any cause or within ten days of the suspension or modification
29 of the supplemental earnings benefit.

30 (d) Send a copy of the notice of payment to the office within ten days

1 from the date that the original notice of payment was sent to the injured
2 employee or the employee's representative.

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

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

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

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

15 (c) The preliminary determination shall be performed by the director's
16 designee, who shall be a workers' compensation judge specifically assigned to
17 handle preliminary determinations. Such preliminary determination hearing
18 shall occur within fifteen days of the filing of a request.

19 (d) The injured employee, the employee's representative, the payor and
20 the employer, which includes the direct employer of a statutory employee
21 pursuant to R.S. 23:1061, shall participate in a preliminary determination
22 hearing by phone. The workers' compensation judge may require any of these
23 parties to produce relevant records necessary for the determination of
24 compensation provided for in the notice of payment. No later than thirty days
25 from the filing of the request for a preliminary determination, the workers'
26 compensation judge shall provide, in writing, a recommended amount of
27 compensation.

28 (e) The payor shall, within ten calendar days of the mailing of the
29 recommendation from the workers' compensation judge, either mail to the
30 injured employee or the employee's representative a revised notice of payment

1 with the recommended amount if such recommended amount is different from
2 that which was previously provided on the initial notice of payment, or notify
3 the injured worker or the employee's representative in writing that the payor
4 does not accept the recommendation. No disputed claim for compensation
5 regarding the amount of compensation due shall be filed until the provisions of
6 this Subsection have been exhausted unless such a disputed claim is in regard
7 to a payor's failure to provide a notice of payment as required by this
8 Subsection. A payor who provides the compensation amounts due as
9 recommended by the workers' compensation judge shall not be subject to any
10 penalty and attorney fees regarding such calculation of the compensation due
11 and payment provided with the revised notice of payment.

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

17 (3) Within fourteen days after the final payment of compensation has been
18 made, the employer or insurer shall send a notice to the office, in the manner
19 prescribed by the rules of the director, stating:

20 ~~(1)~~(a) The name of the injured employee or any other person to whom
21 compensation has been paid, or both.

22 ~~(2)~~(b) The date of injury or death.

23 ~~(3)~~(c) The dates on which compensation has been paid.

24 ~~(4)~~(d) The total amount of compensation paid.

25 ~~(5)~~(e) The fact that final payment has been made.

26 * * *

27 §1210. Burial expenses; duty to furnish

28 A. In every case of death, the employer shall pay or cause to be paid, in
29 addition to any other benefits allowable under the provisions of this Part, reasonable
30 expenses of the burial of the employee, not to exceed ~~seven~~ eight thousand five

hundred dollars.

* * *

§1221. Temporary total disability; permanent total disability; supplemental earnings benefits; permanent partial disability; schedule of payments

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

* * *

(3) Supplemental earnings benefits.

(a)(i) 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, **payable monthly**, equal to sixty-six and two-thirds percent 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, whether or not the same or a similar occupation as that in which the employee was customarily engaged when injured and whether or not an occupation for which the employee at the time of the injury was particularly fitted by reason of education, training, and experience, such comparison to be made on a monthly basis. Average monthly wages shall be computed by multiplying his "wages" by fifty-two and then dividing the ~~quotient~~ **product** by twelve.

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

* * *

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

* * *

(s)(i) In addition to any other benefits to which an injured employee may be entitled under this Chapter, any employee suffering an injury as a result of an

1 accident arising out of and in the course and scope of his employment shall be
 2 entitled to a sum of ~~thirty~~ **fifty** thousand dollars, payable within one year after the
 3 date of the injury. Interest on such payment shall not commence to accrue until after
 4 it becomes payable. Such payment shall not be subject to any offset for payment of
 5 any other benefit under this Chapter. Such payment shall not be subject to a claim
 6 for attorney fees; however, attorney fees may be awarded in a claim to collect such
 7 payment pursuant to R.S. 23:1201.2.

8 * * *

9 §1224. Payments not recoverable for first week; exceptions

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

14 * * *

15 §1314. Necessary allegations; dismissal of premature petition; **dispute of benefits**

16 * * *

17 **D. Disputes over medical treatment pursuant to the medical treatment**
 18 **schedule shall be premature unless a decision of the medical director has been**
 19 **obtained in accordance with R.S. 23:1203.1(J).**

20 **E. Notwithstanding any other provisions of this Section, the employer**
 21 **shall be permitted to file a disputed claim to controvert benefits or concerning**
 22 **any other dispute arising under this Chapter.**

 PRESIDENT OF THE SENATE

 SPEAKER OF THE HOUSE OF REPRESENTATIVES

 GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____