

HOUSE BILL No. 4512

March 22, 2001, Introduced by Rep. Kuipers and referred to the Committee on Employment Relations, Training and Safety.

A bill to amend 1969 PA 317, entitled
"Worker's disability compensation act of 1969,"
by amending section 301 (MCL 418.301), as amended by 1987 PA 28.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 301. (1) An employee — who receives a personal
2 injury arising out of and in the course of employment by an
3 employer who is subject to this act at the time of the injury —
4 shall be paid compensation as provided in this act. In the case
5 of death resulting from the personal injury to the employee, com-
6 pensation shall be paid to the employee's dependents as provided
7 in this act. Time of injury or date of injury as used in this
8 act in the case of a disease or in the case of an injury not
9 attributable to a single event shall be the last day of work in
10 the employment in which the employee was last subjected to the
11 conditions that resulted in the employee's disability or death.

1 (2) Mental disabilities and conditions of the aging process,
2 including but not limited to heart and cardiovascular conditions,
3 shall be compensable if contributed to or aggravated or acceler-
4 ated by the employment in a significant manner. Mental disabili-
5 ties shall be compensable when arising out of actual events of
6 employment, not unfounded perceptions thereof. ACTUAL EVENTS OF
7 EMPLOYMENT DOES NOT INCLUDE REASONABLE JOB PERFORMANCE EVALU-
8 ATIONS, REGULAR SUPERVISORY ACTS DIRECTLY RELATED TO EMPLOYMENT,
9 OR DISCIPLINARY, SUSPENSION, OR TERMINATION PROCEEDINGS FROM
10 EMPLOYMENT.

11 (3) An employee going to or from his or her work, while on
12 the premises where the employee's work is to be performed, and
13 within a reasonable time before and after his or her working
14 hours, is presumed to be in the course of his or her employment.
15 Notwithstanding this presumption, an injury incurred in the pur-
16 suit of an activity the major purpose of which is social or rec-
17 reational is not covered under this act. Any cause of action
18 brought for such an injury is not subject to section 131.

19 (4) As used in this chapter, "disability" means a limitation
20 of an employee's wage earning capacity in work suitable to his or
21 her qualifications and training resulting from a personal injury
22 or work related disease. The establishment of disability does
23 not create a presumption of wage loss.

24 (5) If disability is established pursuant to subsection (4),
25 entitlement to weekly wage loss benefits shall be determined pur-
26 suant to this section and as follows:

1 (a) If an employee receives a bona fide offer of reasonable
2 employment from the previous employer, another employer, or
3 through the Michigan employment security commission and the
4 employee refuses that employment without good and reasonable
5 cause, the employee shall be considered to have voluntarily
6 removed himself or herself from the work force and is no longer
7 entitled to any wage loss benefits under this act during the
8 period of such refusal. A REFUSAL SHALL BE CONSIDERED PERMANENT
9 AFTER THE PASSAGE OF A REASONABLE PERIOD OF TIME. ANY EMPLOYEE
10 WHO VOLUNTARILY QUILTS EMPLOYMENT FOR ANY REASON OR WHO IS TERMI-
11 NATED FOR JUST CAUSE SHALL NOT BE ENTITLED TO FURTHER WAGE LOSS
12 BENEFITS FROM THE EMPLOYER WHERE THE INJURY OCCURRED.

13 (b) If an employee is employed and the average weekly wage
14 of the employee is less than that which the employee received
15 before the date of injury, the employee shall receive weekly ben-
16 efits under this act equal to 80% of the difference between the
17 injured employee's after-tax weekly wage before the date of
18 injury and the after-tax weekly wage which the injured employee
19 is able to earn after the date of injury, but not more than the
20 maximum weekly rate of compensation, as determined under section
21 355.

22 (c) If an employee is employed and the average weekly wage
23 of the employee is equal to or more than the average weekly wage
24 the employee received before the date of injury, the employee is
25 not entitled to any wage loss benefits under this act for the
26 duration of such employment.

1 (d) If the employee, after having been employed pursuant to
2 this subsection for 100 weeks or more loses his or her job
3 through no fault of the employee, the employee shall receive com-
4 pensation under this act pursuant to the following:

5 (i) If after exhaustion of unemployment benefit eligibility
6 of an employee, a worker's compensation magistrate ~~or hearing~~
7 ~~referee, as applicable,~~ determines for any employee covered
8 under this subdivision, that the employments since the time of
9 injury have not established a new wage earning capacity, the
10 employee shall receive compensation based upon his or her wage at
11 the original date of injury. There is a presumption of wage
12 earning capacity established for employments totalling 250 weeks
13 or more.

14 (ii) The employee must still be disabled as determined pur-
15 suant to subsection (4). If the employee is still disabled, he
16 or she shall be entitled to wage loss benefits based on the dif-
17 ference between the normal and customary wages paid to those per-
18 sons performing the same or similar employment, as determined at
19 the time of termination of the employment of the employee, and
20 the wages paid at the time of the injury.

21 (iii) If the employee becomes reemployed and the employee is
22 still disabled, he or she shall then receive wage loss benefits
23 as provided in subdivision (b).

24 (e) If the employee, after having been employed pursuant to
25 this subsection for less than 100 weeks loses his or her job ~~for~~
26 ~~whatever reason~~ THROUGH NO FAULT OF THE EMPLOYEE, the employee

1 shall receive compensation based upon his or her wage at the
2 original date of injury.

3 (6) A carrier shall notify the Michigan employment security
4 commission of the name of any injured employee who is unemployed
5 and to which the carrier is paying benefits under this act.

6 (7) The Michigan employment security commission shall give
7 priority to finding employment for those persons whose names are
8 supplied to the commission under subsection (6).

9 (8) The Michigan employment security commission shall notify
10 the bureau in writing of the name of any employee who refuses any
11 bona fide offer of reasonable employment. Upon notification to
12 the bureau, the bureau shall notify the carrier who shall termi-
13 nate the benefits of the employee pursuant to subsection (5)(a).

14 (9) "Reasonable employment", as used in this section, means
15 work that is within the employee's capacity to perform that poses
16 no clear and proximate threat to that employee's health and
17 safety, and that is within a reasonable distance from that
18 employee's residence. The employee's capacity to perform shall
19 not be limited to jobs in work suitable to his or her qualifica-
20 tions and training.

21 (10) Weekly benefits shall not be payable during the period
22 of confinement to a person who is incarcerated in a penal insti-
23 tution for violation of the criminal laws of this state or who is
24 confined in a mental institution pending trial for a violation of
25 the criminal laws of this state, if the violation or reason for
26 the confinement occurred while at work and is directly related to
27 the claim.

1 (11) A person shall not discharge an employee or in any
2 manner discriminate against an employee because the employee
3 filed a complaint or instituted or caused to be instituted a pro-
4 ceeding under this act or because of the exercise by the employee
5 on behalf of himself or herself or others of a right afforded by
6 this act.

7 (12) This section shall apply to personal injuries and work
8 related diseases occurring on or after June 30, 1985.