

HOUSE BILL No. 4809

May 23, 2001, Introduced by Reps. Shulman and Gielegthem and referred to the Committee on Insurance and Financial Services.

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

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

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

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

23 (a) If an employee receives a bona fide offer of reasonable
24 employment from the previous employer, another employer, or
25 through the Michigan employment security commission and the
26 employee refuses that employment without good and reasonable
27 cause, the employee shall be considered to have voluntarily

1 removed himself or herself from the work force and is no longer
2 entitled to any wage loss benefits under this act during the
3 period of such refusal. A BONA FIDE OFFER OF REASONABLE EMPLOY-
4 MENT MUST REMAIN AVAILABLE FOR A REASONABLE PERIOD OF TIME.

5 (b) If an employee is employed and the average weekly wage
6 of the employee is less than that which the employee received
7 before the date of injury, the employee shall receive weekly ben-
8 efits under this act equal to 80% of the difference between the
9 injured employee's after-tax weekly wage before the date of
10 injury and the after-tax weekly wage which the injured employee
11 is able to earn after the date of injury, but not more than the
12 maximum weekly rate of compensation, as determined under section
13 355.

14 (c) If an employee is employed and the average weekly wage
15 of the employee is equal to or more than the average weekly wage
16 the employee received before the date of injury, the employee is
17 not entitled to any wage loss benefits under this act for the
18 duration of such employment.

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

23 (i) If after exhaustion of unemployment benefit eligibility
24 of an employee, a worker's compensation magistrate or hearing
25 referee, as applicable, determines for any employee covered under
26 this subdivision, that the employments since the time of injury
27 have not established a new wage earning capacity, the employee

1 shall receive compensation based upon his or her wage at the
2 original date of injury. There is a presumption of wage earning
3 capacity established for employments totalling 250 weeks or
4 more.

5 (ii) The employee must still be disabled as determined pur-
6 suant to subsection (4). If the employee is still disabled, he
7 or she shall be entitled to wage loss benefits based on the dif-
8 ference between the normal and customary wages paid to those per-
9 sons performing the same or similar employment, as determined at
10 the time of termination of the employment of the employee, and
11 the wages paid at the time of the injury.

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

15 (e) If the employee, after having been employed pursuant to
16 this subsection for less than 100 weeks loses his or her job ~~for~~
17 ~~whatever reason~~ THROUGH NO FAULT OF THE EMPLOYEE, the employee
18 shall receive compensation based upon his or her wage at the
19 original date of injury.

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

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

26 (8) The Michigan employment security commission shall notify
27 the bureau in writing of the name of any employee who refuses any

1 bona fide offer of reasonable employment. Upon notification to
2 the bureau, the bureau shall notify the carrier who shall termi-
3 nate the benefits of the employee pursuant to subsection (5)(a).

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

11 (10) Weekly benefits shall not be payable during the period
12 of confinement to a person who is incarcerated in a penal insti-
13 tution for violation of the criminal laws of this state or who is
14 confined in a mental institution pending trial for a violation of
15 the criminal laws of this state, if the violation or reason for
16 the confinement occurred while at work and is directly related to
17 the claim.

18 (11) A person shall not discharge an employee or in any
19 manner discriminate against an employee because the employee
20 filed a complaint or instituted or caused to be instituted a pro-
21 ceeding under this act or because of the exercise by the employee
22 on behalf of himself or herself or others of a right afforded by
23 this act.

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