



Telephone: (517) 373-5383 Fax: (517) 373-1986 TDD: (517) 373-0543

Senate Bill 708 (as introduced 9-28-11) Sponsor: Senator Mark C. Jansen

Committee: Reforms, Restructuring and Reinventing

Date Completed: 11-8-11

CONTENT

The bill would amend the Worker's Disability Compensation Act to do the following:

- -- Require an injury to be "medically distinguishable" from an employee's prior condition in order to be compensable, and provide that an ordinary disease of life to which the public was generally exposed would not be compensable.
- -- Require an employee's perception of actual events to be grounded in reality, for mental disability to be compensable, and limit the compensability of mental disability not caused by physical trauma.
- -- Specify criteria for a hernia to be compensable.
- -- Provide that a limitation of wage earning capacity would occur only if an employee were unable to perform all jobs paying the historical maximum wages in work suitable to his or her qualifications and training.
- -- Include wages an employee earns or is capable of earning in the definition of "wage earning capacity".
- Allow wage loss to be demonstrated by an employee's reasonable, goodfaith effort to find suitable work.
- -- Include respiratory and heart diseases in "personal injury" for certain firefighters, law enforcement officers, conservation officers, and motor carrier inspectors.
- -- Allow an employee to be treated by his or her own physician after 90

- days, rather than 10 days, from the start of medical care.
- Specify that attorney fees related to medical expenses would not be chargeable to an employer or carrier.
- Include pension or retirement payments that an employee was entitled to receive, among amounts that must be deducted from weekly benefits.
- -- Exempt from the Act a professional athlete who was hired under a contract with an out-of-State employer and injured while temporarily in Michigan, if certain conditions were met.
- -- Require the effect of medical treatment to be considered in a determination of whether the loss of a particular body part had occurred.
- -- Revise the calculation of interest on weekly compensation.
- Delete provisions under which a wife is presumed to be dependent on her husband for support.

The bill also would repeal Chapter 4 of the Act (Occupational Diseases and Disablements).

Personal Injury

The Act provides for the payment of compensation to an employee who receives a personal injury arising out of and in the course of employment, by an employer who is subject to the Act at the time of the injury.

Page 1 of 4 sb708/1112

The bill states, "Personal injury includes a disease or disability that is due to causes and conditions that are characteristic of and peculiar to the business of the employer and that arise out of and in the course of employment." A personal injury covered by the Act would be compensable if it caused, contributed to, or aggravated pathology in a manner that was medically distinguishable from the employee's prior condition. An ordinary disease of life to which the public was generally exposed outside of the employment would not be compensable.

Currently, mental disabilities and conditions of the aging process, including heart and cardiovascular conditions, are compensable if contributed to or aggravated by the employment in a significant manner. The bill would include degenerative arthritis as a condition of the aging process.

Currently, mental disabilities are compensable if they arise out of actual events of employment, "not unfounded perceptions thereof". The bill also would require that the employee's perception of the actual events be reasonably grounded in fact or reality. Mental disability not caused by physical trauma would be compensable only if it resulted from greater mental stress and tension than the day-to-day mental stress and tension that all employees experience in similar employment.

A hernia would be compensable only if it were of recent origin, resulted from a strain arising out of and in the course of employment, and were promptly reported to the employer.

Disability

The Act defines "disability" as a limitation of an employee's wage earning capacity in work suitable to his or her qualifications and training resulting from a personal injury or work-related disease.

Under the bill, a limitation of wage earning capacity would occur only if a personal injury covered under the Act resulted in the employee's being unable to perform all jobs paying the historical maximum wages in work suitable to his or her qualifications and training, including work that could be performed using the employee's transferable work skills.

The bill would define "wage earning capacity" as the wages the employee earns or is capable of earning, whether or not actually earned.

A disability would be total if the employee were unable to earn in any job suitable to his or her qualifications and training. A disability would be partial if the employee retained a wage earning capacity at a pay level less than his or her historical maximum wages in work suitable to his or her qualifications and training.

If a personal injury arising out of the course of employment caused total disability and wage loss and the employee were entitled to wage loss benefits, the employer would have to pay or cause to be paid to the employee weekly compensation equal to 80% of his or her after-tax average weekly wage, but not more than the maximum weekly rate determined under the Act.

If the personal injury caused partial disability and wage loss, the employer would have to pay or cause to be paid weekly compensation equal to 80% of the difference between the employee's after-tax average weekly wage before the injury and his or her wage earning capacity after the injury, but not more than the maximum weekly rate.

In the case of total or partial disability, compensation would have to be paid for the duration of the disability.

The bill would define "wage loss" as the amount of wages lost due to a disability. Wage loss could be established, among other methods, by demonstrating the employee's reasonable, good-faith effort to procure work suitable to his or her wage earning capacity.

Entitlement to Weekly Wage Loss Benefits

Under the Act, if disability is established, entitlement to weekly wage loss benefits must be determined according to various factors, including whether an employee receives a bona fide offer of reasonable employment and refuses that employment without good and reasonable cause. If that occurs, the employee must be considered to have voluntarily removed himself or herself from the work force and is no longer entitled to any wage loss benefits during the period of refusal.

Under the bill, this also would apply if an employee were terminated from reasonable employment for his or her fault.

The bill would rewrite provisions concerning the payment of compensation to an employee who has been employed and loses the job through no fault of his or her own, and the determination of whether a new wage earning capacity has been established.

The Act defines "reasonable employment", as used in these provisions, as work that is within the employee's capacity to perform that poses no clear and proximate threat to the employee's health and safety, and that is within a reasonable distance from the employee's residence. The bill would retain that definition but delete a provision under which the employee's capacity to perform is not limited to jobs in work suitable to his or her qualifications and training.

Currently, weekly benefits are not payable during the time a person is incarcerated for a crime or is confined in a mental institution pending trial for a crime, if the violation or reason for the confinement occurred while the employee was at work and is directly related to the claim for compensation. The bill also provides that weekly benefits would not be payable during the period of imprisonment following sentencing for a crime, if the employee were unable to obtain employment or perform work because of that imprisonment.

Firefighter, Police or Conservation Officer

The bill would require "personal injury" to be construed to include respiratory and heart diseases or illnesses resulting from those develop that or manifest themselves while the individual is in active service and that result from performing duties in the course of employment, for the following individuals: a member of a full paid fire department of an airport run by a county road commission in counties of 1.0 million population or more or by a State university or college or of a full paid fire or police department of a city, township, or incorporated village employed compensated on a full-time basis, a county sheriff and the deputies of the county sheriff, members of the State Police, conservation officers, and motor carrier inspectors of the Michigan Public Service Commission.

Respiratory and heart diseases or illnesses resulting from those diseases as described above would be considered to arise out of and in the course of employment in the absence of evidence to the contrary.

As a condition of filing an application for benefits, the claimant would first would have to apply for, and do all things necessary to qualify for, any pension benefits to which he or she, or his or her decedent, could be entitled (subject to a provision in the Act under which an individual is not compelled to apply for early or reduced pension or retirement benefits). If a final determination were made that pension benefits would not be awarded, the presumption of personal injury would apply.

Provision of Medical Care

The Act requires an employer to furnish, or cause to be furnished, reasonable medical, surgical, and hospital services and medicine, as needed, to an employee who receives a personal injury arising out of and in the course of employment.

After 10 days from the start of medical care, an employee may be treated by a physician of his or her own choice. The bill would allow this after 90 days from the start of medical care.

The bill provides that attorney fees related to medical expenses would be chargeable to either the employee or the medical provider, or both, but would not be chargeable to the employer or carrier.

Pension or Retirement Payments

The Act requires an employee's weekly benefits to be reduced by all or a portion of old-age insurance benefits under the Social Security Act, payments under a self-insurance plan, a wage continuation plan, or a disability insurance policy provided by the same employer, or pension or retirement payments under a plan or program of the employer, made for the same time period as the weekly benefits.

For pension or retirement payments received or being received under a plan or program established or maintained by the same employer, the weekly benefits must be reduced by the after-tax amount of those payments. Under the bill, this also would

apply to payments that the employee was *eligible* to receive (subject to the provision under which an individual is not compelled to apply for early or reduced pension or retirement benefits).

Professional Athlete

Under the Act, a person who suffers an injury arising out of and in the course of employment as a professional athlete is entitled to weekly benefits only if his or her average weekly wages, when he or she applies for benefits and subsequently, are less than 200% of the State average weekly wage.

The bill also provides that a professional athlete who was hired under a contract with an employer outside of this State would be excepted from the provisions of the Act if all of the following conditions applied:

- -- The athlete sustained a personal injury arising out of the course of employment while he or she was temporarily in this State.
- -- The employer had obtained worker's compensation insurance coverage under the law of another state that covered the injury in Michigan.
- -- The other state recognized the extraterritorial provisions of the Act and provided a reciprocal exemption for professional athletes whose injuries arose out of employment while temporarily in that state and were covered by the worker's compensation law of Michigan.

Under these conditions, the benefits and other remedies under the worker's compensation law of another state would be the exclusive remedy against the employer.

Loss of a Body Part

The Act requires a person's disability to be considered to continue for a period specified in a schedule, and requires compensation to be 80% of the after-tax average weekly wage subject to the maximum and minimum rates of compensation under the Act. (The schedule sets a number of weeks of disability for a particular finger or toe, or a limb, hand, foot, or eye.)

The bill would require the effect of any joint replacement surgery, implant, or other

medical procedures to be considered in a determination of whether a loss had occurred.

Interest

Currently, when weekly compensation is paid pursuant to an award of a worker's compensation magistrate, an arbitrator, the Board of Magistrates, the Appellate Commission, or a court, interest on the compensation must be paid at the rate of 10% per annum from the date each payment was due.

Instead of that rate, the bill would require interest to be calculated in the same manner as provided for a money judgment in a civil action under the Revised Judicature Act.

MCL 418.301 et al.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill would limit worker's compensation liability in certain ways for employers in Michigan. This limit in liability also would extend to State and local governments as well as public educational institutions. To the extent that the bill would result in fewer worker's compensation claims, these entities could save an indeterminate amount on those costs.

Fiscal Analyst: Josh Sefton

S1112\s708sa.

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.