

HOUSE BILL NO. 4753

April 29, 2021, Introduced by Reps. Breen, Sabo, Koleszar, Bolden, Hope, Shannon, Haadsma, Pohutsky, Steckloff, Cavanagh, Stone, Hertel, Brenda Carter, Kuppa, Morse, Thanedar, Rogers, Tyrone Carter, Young, O'Neal, Scott, Brabec, Weiss, Tate and Cynthia Johnson and referred to the Committee on Workforce, Trades, and Talent.

A bill to amend 1969 PA 317, entitled
"Worker's disability compensation act of 1969,"
by amending section 401 (MCL 418.401), as amended by 2011 PA 266.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 401. (1) As used in this chapter, "disability" means a
2 limitation of an employee's wage earning capacity in work suitable
3 to his or her qualifications and training resulting from a personal
4 injury or work related disease. A limitation of wage earning
5 capacity occurs only if a personal injury covered under this act

1 results in the employee's being unable to perform all jobs paying
 2 the maximum wages in work suitable to that employee's
 3 qualifications and training, which includes work that may be
 4 performed using the employee's transferable work skills. A
 5 disability is total if the employee is unable to earn in any job
 6 paying maximum wages in work suitable to the employee's
 7 qualifications and training. A disability is partial if the
 8 employee retains a wage earning capacity at a pay level less than
 9 his or her maximum wages in work suitable to his or her
 10 qualifications and training. The establishment of disability does
 11 not create a presumption of wage loss.

12 (2) As used in this chapter:

13 (a) "Disablement" means the event of becoming ~~so-disabled~~ **as**
 14 **described in subsection (1).**

15 (b) "Personal injury" includes a disease or disability that is
 16 due to causes and conditions that are characteristic of and
 17 peculiar to the business of the employer and that arises out of and
 18 in the course of the employment. An ordinary disease of life to
 19 which the public is generally exposed outside of the employment is
 20 not compensable. A personal injury under this act is compensable if
 21 work causes, contributes to, or aggravates pathology in a manner so
 22 as to create a pathology that is medically distinguishable from any
 23 pathology that existed prior to the injury. Mental disabilities and
 24 conditions of the aging process, including but not limited to heart
 25 and cardiovascular conditions, and degenerative arthritis ~~shall be~~
 26 **are** compensable if contributed to or aggravated or accelerated by
 27 the employment in a significant manner. Mental disabilities ~~shall~~
 28 ~~be-are~~ **are** compensable ~~when-if~~ arising out of actual events of
 29 employment, not unfounded perceptions thereof, and if the

1 employee's perception of the actual events is reasonably grounded
2 in fact or reality. A hernia to be compensable must be clearly
3 recent in origin and result from a strain arising out of and in the
4 course of the employment and be promptly reported to the employer.

5 (c) Except as provided in section 302, "wage earning capacity"
6 means the wages the employee earns or is capable of earning at a
7 job reasonably available to that employee, whether or not actually
8 earned. For the purposes of establishing wage earning capacity, an
9 employee has an affirmative duty to seek work reasonably available
10 to that employee, taking into consideration the limitations from
11 the work-related personal injury or disease. A magistrate may
12 consider good-faith job search efforts to determine whether jobs
13 are reasonably available.

14 (d) "Wage loss" means the amount of wages lost due to a
15 disability. The employee shall establish a connection between the
16 disability and reduced wages in establishing the wage loss. Wage
17 loss may be established, among other methods, by demonstrating the
18 employee's good-faith effort to procure work within his or her wage
19 earning capacity. A partially disabled employee who establishes a
20 good-faith effort to procure work but cannot obtain work within his
21 or her wage earning capacity is entitled to weekly benefits under
22 subsection (5) as if totally disabled.

23 (3) To establish an initial showing of disability, an employee
24 ~~shall~~**must** do all of the following:

25 (a) Disclose his or her qualifications and training, including
26 education, skills, and experience, whether or not they are relevant
27 to the job the employee was performing at the time of the injury.

28 (b) Provide evidence as to the jobs, if any, he or she is
29 qualified and trained to perform within the same salary range as

1 his or her maximum wage earning capacity at the time of the injury.

2 (c) Demonstrate that the work-related injury prevents the
3 employee from performing jobs identified as within his or her
4 qualifications and training that pay maximum wages.

5 (d) If the employee is capable of performing any of the jobs
6 identified in subdivision (c), show that he or she cannot obtain
7 any of those jobs. The evidence ~~shall~~**must** include a showing of a
8 good-faith attempt to procure postinjury employment if there are
9 jobs at the employee's maximum wage earning capacity at the time of
10 the injury.

11 (4) Once an employee establishes an initial showing of a
12 disability under subsection (3), the employer bears the burden of
13 production of evidence to refute the employee's showing. In
14 satisfying its burden of production of evidence, the employer has a
15 right to discovery if necessary for the employer to sustain its
16 burden and present a meaningful defense. The employee may present
17 additional evidence to challenge the evidence submitted by the
18 employer.

19 (5) If a personal injury arising out of the course of
20 employment causes total disability and wage loss and the employee
21 is entitled to wage loss benefits, the employer shall pay or cause
22 to be paid to the injured employee as provided in this section
23 weekly compensation equal to 80% of the employee's after-tax
24 average weekly wage, but not more than the maximum weekly rate
25 determined under section 355. Compensation ~~shall~~**must** be paid for
26 the duration of the disability.

27 (6) If a personal injury arising out of the course of
28 employment causes partial disability and wage loss and the employee
29 is entitled to wage loss benefits, the employer shall pay or cause

1 to be paid to the injured employee as provided in this section
2 weekly compensation equal to 80% of the difference between the
3 injured employee's after-tax average weekly wage before the
4 personal injury and the employee's wage earning capacity after the
5 personal injury, but not more than the maximum weekly rate
6 determined under section 355. Compensation ~~shall~~**must** be paid for
7 the duration of the disability.

8 (7) If disability and wage loss are established, entitlement
9 to weekly wage loss benefits ~~shall~~**must** be determined as applicable
10 pursuant to this section and as follows:

11 (a) If an employee receives a bona fide offer of reasonable
12 employment from the previous employer, another employer, or through
13 the ~~Michigan~~ unemployment insurance agency and the employee refuses
14 that employment without good and reasonable cause, the employee
15 ~~shall be~~**is** considered to have voluntarily removed himself or
16 herself from the work force and is no longer entitled to any wage
17 loss benefits under this act during the period of refusal.

18 (b) If an employee is terminated from reasonable employment
19 for fault of the employee, the employee is considered to have
20 voluntarily removed himself or herself from the work force and is
21 not entitled to any wage loss benefits under this act.

22 (c) If an employee is employed and the average weekly wage of
23 the employee is less than that which the employee received before
24 the date of injury, the employee ~~shall~~**must** receive weekly benefits
25 under this act equal to 80% of the difference between the injured
26 employee's after-tax weekly wage before the date of injury and the
27 after-tax weekly wage that the injured employee earns after the
28 date of injury, but not more than the maximum weekly rate of
29 compensation, as determined under section 355.

1 (d) If an employee is employed and the average weekly wage of
2 the employee is equal to or more than the average weekly wage the
3 employee received before the date of injury, the employee is not
4 entitled to any wage loss benefits under this act for the duration
5 of that employment.

6 (e) If the employee, after having been employed pursuant to
7 this subsection, loses his or her job through no fault of the
8 employee and the employee is still disabled, the employee ~~shall~~
9 **must** receive compensation under this act as follows:

10 (i) If the employee was employed for less than 100 weeks, the
11 employee ~~shall~~**must** receive compensation based upon his or her wage
12 at the time of the original injury.

13 (ii) If the employee was employed for 100 weeks or more but
14 less than 250 weeks, then after the employee exhausts unemployment
15 benefit eligibility, a worker's compensation magistrate may
16 determine that the employment since the time of the injury has not
17 established a new wage earning capacity and, if the magistrate
18 makes that determination, benefits ~~shall~~**must** be based on the
19 employee's wage at the original date of injury. If the magistrate
20 does not make that determination, the employee is presumed to have
21 established a post-injury wage earning capacity and benefits ~~shall~~
22 **must** not be paid based on the wage at the original date of injury.

23 (iii) If the employee was employed for 250 weeks or more, the
24 employee is presumed to have established a post-injury wage earning
25 capacity.

26 (8) The ~~Michigan~~ unemployment insurance agency shall notify
27 the agency in writing of the name of any employee who refuses any
28 bona fide offer of reasonable employment. Upon notification to the
29 agency, the agency shall notify the carrier who shall terminate the

1 benefits of the employee pursuant to subsection (7)(a).

2 (9) As used in this section, "reasonable employment" means
3 work that is within the employee's capacity to perform that poses
4 no clear and proximate threat to that employee's health and safety,
5 and that is within a reasonable distance from that employee's
6 residence. The employee's capacity to perform ~~shall~~**is** not ~~be~~
7 limited to work suitable to his or her qualifications and training.

8 **(10) Illness or disease related to a COVID-19 infection is not**
9 **an ordinary disease of life described in subsection (2)(b). As used**
10 **in this subsection, "COVID-19" means the novel coronavirus**
11 **identified as SARS-CoV-2 or a virus mutating from SARS-CoV-2.**

12 **(11) ~~(10)~~This section ~~shall apply~~**applies** to personal**
13 **injuries or work related diseases occurring on or after June 30,**
14 **1985.**