

CHAPTER 301

LABOR AND INDUSTRY

SENATE BILL 13-285

BY SENATOR(S) Tochtrop, Guzman;
also REPRESENTATIVE(S) Williams, Labuda, Lebsack, Melton, Moreno, Salazar, Schafer, Singer.

AN ACT

CONCERNING THE PROCEDURES IN WORKERS' COMPENSATION CLAIMS FOR THE RESOLUTION OF DISPUTES, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 8-42-101, **add** (6) as follows:

8-42-101. Employer must furnish medical aid - approval of plan - fee schedule - contracting for treatment - no recovery from employee - medical treatment guidelines - accreditation of physicians - rules - repeal. (6) (a) IF AN EMPLOYER RECEIVES NOTICE OF INJURY AND THE EMPLOYER OR, IF INSURED, THE EMPLOYER'S INSURANCE CARRIER, AFTER NOTICE OF THE INJURY, FAILS TO FURNISH REASONABLE AND NECESSARY MEDICAL TREATMENT TO THE INJURED WORKER FOR A CLAIM THAT IS ADMITTED OR FOUND TO BE COMPENSABLE, THE EMPLOYER OR CARRIER SHALL REIMBURSE THE CLAIMANT, OR ANY INSURER OR GOVERNMENTAL PROGRAM THAT PAYS FOR RELATED MEDICAL TREATMENT, FOR THE COSTS OF REASONABLE AND NECESSARY TREATMENT THAT WAS PROVIDED. AN EMPLOYER, INSURER, CARRIER, OR PROVIDER MAY NOT RECOVER THE COST OF CARE FROM A CLAIMANT WHERE THE EMPLOYER OR CARRIER HAS FURNISHED MEDICAL TREATMENT EXCEPT IN THE CASE OF FRAUD.

(b) IF A CLAIMANT HAS PAID FOR MEDICAL TREATMENT THAT IS ADMITTED OR FOUND TO BE COMPENSABLE AND THAT COSTS MORE THAN THE AMOUNT SPECIFIED IN THE WORKERS' COMPENSATION FEE SCHEDULE, THE EMPLOYER OR, IF INSURED, THE EMPLOYER'S INSURANCE CARRIER, SHALL REIMBURSE THE CLAIMANT FOR THE FULL AMOUNT PAID. THE EMPLOYER OR CARRIER IS ENTITLED TO REIMBURSEMENT FROM THE MEDICAL PROVIDERS FOR THE AMOUNT IN EXCESS OF THE AMOUNT SPECIFIED IN THE WORKER'S COMPENSATION FEE SCHEDULE.

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

SECTION 2. In Colorado Revised Statutes, 8-42-103, **add** (2) as follows:

8-42-103. Disability indemnity payable as wages - period of disability.

(2) WITHIN FIFTEEN DAYS AFTER RECEIPT OF WRITTEN NOTICE BY THE EMPLOYER OR, IF INSURED, THE EMPLOYER'S WORKERS' COMPENSATION INSURANCE CARRIER OR THIRD-PARTY ADMINISTRATOR OF THE TERMINATION OF A FRINGE BENEFIT OR ADVANTAGE ENUMERATED IN SECTION 8-40-201 (19) (b), AND THE EFFECTIVE DATE OF THE TERMINATION AND COST OF CONVERSION, THE EMPLOYER OR, IF INSURED, THE EMPLOYER'S WORKERS' COMPENSATION INSURANCE CARRIER OR THIRD-PARTY ADMINISTRATOR SHALL RECALCULATE THE APPLICABLE AVERAGE WEEKLY WAGE AND BEGIN PAYMENT OF BENEFITS IN ACCORDANCE WITH THE RECALCULATION WITH INTEREST BEGINNING ON THE DATE THE BENEFIT WAS TERMINATED.

SECTION 3. In Colorado Revised Statutes, 8-42-106, **amend** (1) as follows:

8-42-106. Temporary partial disability. (1) In case of temporary partial disability, the employee shall receive sixty-six and two-thirds percent of the difference between ~~said~~ THE employee's average weekly wage at the time of the injury and ~~said~~ THE employee's average weekly wage during the continuance of the temporary partial disability, not to exceed a maximum of ninety-one percent of the state average weekly wage per week. TEMPORARY PARTIAL DISABILITY SHALL BE PAID AT LEAST ONCE EVERY TWO WEEKS.

SECTION 4. In Colorado Revised Statutes, 8-43-203, **add** (4) as follows:

8-43-203. Notice concerning liability - notice to claimants - notice of rights and claims process - rules. (4) WITHIN FIFTEEN DAYS AFTER THE MAILING OF A WRITTEN REQUEST FOR A COPY OF THE CLAIM FILE, THE EMPLOYER OR, IF INSURED,

THE EMPLOYER'S INSURANCE CARRIER OR THIRD-PARTY ADMINISTRATOR SHALL PROVIDE TO THE CLAIMANT OR HIS OR HER REPRESENTATIVE A COMPLETE COPY OF THE CLAIM FILE THAT INCLUDES ALL MEDICAL RECORDS, PLEADINGS, CORRESPONDENCE, INVESTIGATION FILES, INVESTIGATION REPORTS, WITNESS STATEMENTS, INFORMATION ADDRESSING DESIGNATION OF THE AUTHORIZED TREATING PHYSICIAN, AND WAGE AND FRINGE BENEFIT INFORMATION FOR THE TWELVE MONTHS LEADING UP TO THE DATE OF INJURY AND THEREAFTER, REGARDLESS OF THE FORMAT. IF A PRIVILEGE OR OTHER PROTECTION IS CLAIMED FOR ANY MATERIALS, THE MATERIALS MUST BE DETAILED IN AN ACCOMPANYING PRIVILEGE LOG.

SECTION 5. In Colorado Revised Statutes, 8-43-211, **amend** (2) (d) as follows:

8-43-211. Notice - request for hearing. (2) Hearings shall be set by the office of administrative courts in the department of personnel within eighty to one hundred days after any of the following occur:

(d) If ~~any person~~ AN ATTORNEY requests a hearing or files a notice to set a hearing on ~~issues which are~~ AN ISSUE THAT IS not ripe for adjudication at the time ~~such~~ THE request or filing is made, ~~such person shall~~ THE ATTORNEY MAY be assessed the reasonable attorney fees and costs of the opposing party in preparing for ~~such~~ THE hearing or setting. THE REQUESTING PARTY MUST PROVE ITS ATTEMPT TO HAVE AN UNRIPE ISSUE STRICKEN BY A PREHEARING ADMINISTRATIVE LAW JUDGE

TO REQUEST FEES OR COSTS. REQUESTED FEES OR COSTS INCURRED AFTER A PREHEARING CONFERENCE MAY ONLY BE AWARDED IF THEY ARE DIRECTLY CAUSED BY THE LISTING OF THE UNRIPE ISSUE.

SECTION 6. In Colorado Revised Statutes, 8-42-107, **amend** (8) (b) (II) (A), (8) (b) (III), and (8) (c) as follows:

8-42-107. Permanent partial disability benefits - schedule - medical impairment benefits - how determined. (8) Medical impairment benefits - determination of MMI for scheduled and nonscheduled injuries. (b) (II) If either party disputes a determination by an authorized treating physician on the question of whether the injured worker has or has not reached maximum medical improvement, an independent medical examiner may be selected in accordance with section 8-42-107.2; except that, if an authorized treating physician has not determined that the employee has reached maximum medical improvement, the employer or insurer may only request the selection of an independent medical examiner if all of the following conditions are met:

(A) At least ~~eighteen~~ TWENTY-FOUR months have passed since the date of injury;

(III) NOTWITHSTANDING PARAGRAPH (c) OF THIS SUBSECTION (8), IF THE INDEPENDENT MEDICAL EXAMINER SELECTED PURSUANT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH (b) FINDS THAT THE INJURED WORKER HAS REACHED MAXIMUM MEDICAL IMPROVEMENT, THE INDEPENDENT MEDICAL EXAMINER SHALL ALSO DETERMINE THE INJURED WORKER'S PERMANENT MEDICAL IMPAIRMENT RATING. The finding REGARDING MAXIMUM MEDICAL IMPROVEMENT AND PERMANENT MEDICAL IMPAIRMENT of an independent medical examiner in a dispute arising under subparagraph (II) of this paragraph (b) ~~shall~~ MAY be overcome only by clear and convincing evidence. A hearing on this matter shall not take place until the finding of the independent medical examiner has been filed with the division.

(c) When the injured employee's date of maximum medical improvement has been determined pursuant to SUBPARAGRAPH (I) OF paragraph (b) of this subsection (8), and there is a determination that permanent medical impairment has resulted from the injury, the authorized treating physician shall determine a medical impairment rating as a percentage of the whole person based on the revised third edition of the "American Medical Association Guides to the Evaluation of Permanent Impairment", in effect as of July 1, 1991. Except for a determination by the authorized treating physician providing primary care that no permanent medical impairment has resulted from the injury, any physician who determines a medical impairment rating shall have received accreditation under the level II accreditation program pursuant to section 8-42-101. For purposes of determining levels of medical impairment, the physician shall not render a medical impairment rating based on chronic pain without anatomic or physiologic correlation. Anatomic correlation must be based on objective findings. If either party disputes the authorized treating physician's finding of medical impairment, including a finding that there is no permanent medical impairment, the parties may select an independent medical examiner in accordance with section 8-42-107.2. The finding of ~~such~~ THE independent medical examiner ~~shall~~ MAY be overcome only by clear and convincing evidence. A hearing on this matter shall not take place until the finding of the independent medical examiner has been filed with the division.

SECTION 7. Appropriation. In addition to any other appropriation, there is hereby appropriated, out of any moneys in the state employee workers' compensation account in the risk management fund created in section 24-30-1510.7 (1) (a), Colorado Revised Statutes, not otherwise appropriated, to the department of personnel, for the fiscal year beginning July 1, 2013, the sum of \$100,000, or so much thereof as may be necessary, for allocation to the division of human resources, risk management services, workers' compensation, workers' compensation claims for claims related to the implementation of this act.

SECTION 8. Effective date - applicability. This act takes effect July 1, 2013, and applies to claims in existence on or after said date.

SECTION 9. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 28, 2013