

## CHAPTER 184

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**LABOR AND INDUSTRY**


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**SENATE BILL 09-168**

BY SENATOR(S) Tochtrop, Boyd, Carroll M., Hudak, Romer;  
also REPRESENTATIVE(S) Soper, Casso, Labuda, Merrifield, Ryden, Schafer S.

**AN ACT****CONCERNING WORKERS' COMPENSATION PROCEDURES.**

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

**SECTION 1.** 8-42-107.2 (3), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

**8-42-107.2. Selection of independent medical examiner - procedure - time - applicability.** (3) (d) THE IME SHALL NEITHER CONTACT ANY OF THE AUTHORIZED TREATING PHYSICIANS NOR ANY EXAMINING OR REVIEWING PHYSICIAN, NOR REQUEST A CLAIMANT TO UNDERGO REPEAT TESTING WHEN THE TESTING RESULTS WERE VALID AND THE IME HAS RESOLVED ANY DISPARITY IN TESTING RESULTS.

**SECTION 2.** 8-42-113.5 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

**8-42-113.5. Recovery of overpayments - notice required.** (1) If a claimant has received an award for the payment of disability benefits or a death benefit under articles 40 to 47 of this title and also receives any payment, award, or entitlement to benefits under the federal old-age, survivors, and disability insurance act, an employer-paid retirement benefit plan, or any other plan, program, or source for which the original disability benefits or death benefit is required to be reduced pursuant to said articles, but which were not reflected in the calculation of such disability benefits or death benefit:

(b.5) AFTER THE FILING OF A FINAL ADMISSION OF LIABILITY, EXCEPT IN CASES OF FRAUD, ANY ATTEMPT TO RECOVER AN OVERPAYMENT SHALL BE ASSERTED WITHIN ONE YEAR AFTER THE TIME THE REQUESTOR KNEW OF THE EXISTENCE OF THE OVERPAYMENT.

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*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 3.** 8-43-201, Colorado Revised Statutes, is amended to read:

**8-43-201. Disputes arising under "Workers' Compensation Act of Colorado".** The director and administrative law judges employed by the office of administrative courts in the department of personnel shall have original jurisdiction to hear and decide all matters arising under articles 40 to 47 of this title; except that the following principles shall apply: A claimant in a workers' compensation claim shall have the burden of proving entitlement to benefits by a preponderance of the evidence; the facts in a workers' compensation case shall not be interpreted liberally in favor of either the rights of the injured worker or the rights of the employer; ~~and~~ a workers' compensation case shall be decided on its merits; AND A PARTY SEEKING TO MODIFY AN ISSUE DETERMINED BY A GENERAL OR FINAL ADMISSION, A SUMMARY ORDER, OR A FULL ORDER, SHALL BEAR THE BURDEN OF PROOF FOR ANY SUCH MODIFICATION.

**SECTION 4.** 8-43-203 (2) (b) (II), Colorado Revised Statutes, is amended to read:

**8-43-203. Notice concerning liability - notice to claimant - rules.**  
(2) (b) (II) An admission of liability for final payment of compensation shall include a statement that this is the final admission by the workers' compensation insurance carrier in the case, that the claimant may contest this admission if the claimant feels entitled to more compensation, to whom the claimant should provide written objection, and notice to the claimant that the case will be automatically closed as to the issues admitted in the final admission if the claimant does not, within thirty days after the date of the final admission, contest the final admission in writing and request a hearing on any disputed issues that are ripe for hearing, including the selection of an independent medical examiner pursuant to section 8-42-107.2 if an independent medical examination has not already been conducted. If an independent medical examination is requested pursuant to section 8-42-107.2, the claimant is not required to file a request for hearing on disputed issues that are ripe for hearing until ~~after completion of~~ the division's independent medical examination PROCESS IS TERMINATED FOR ANY REASON. ANY ISSUE FOR WHICH A HEARING OR AN APPLICATION FOR A HEARING IS PENDING AT THE TIME THAT THE FINAL ADMISSION OF LIABILITY IS FILED SHALL PROCEED TO THE HEARING WITHOUT THE NEED FOR THE APPLICANT TO REFILE AN APPLICATION FOR HEARING ON THE ISSUE. This information shall also be included in the admission of liability for final payment of compensation. The respondents shall have thirty days after the date of mailing of the report from the division's independent medical examiner to file a revised final admission or to file an application for hearing. The claimant shall have thirty days after the date respondents file the revised final admission or application for hearing to file an application for hearing, or a response to the respondents' application for hearing, as applicable, on any disputed issues that are ripe for hearing. The revised final admission shall contain the statement required by this subparagraph (II) and the provisions relating to contesting the revised final admission shall apply. When the final admission is predicated upon medical reports, such reports shall accompany the final admission.

**SECTION 5.** 8-43-404 (2), Colorado Revised Statutes, is amended to read:

**8-43-404. Examination - refusal - personal responsibility - physicians to testify and furnish results - definitions - rules.** (2) The employee shall be entitled to have a physician, provided and paid for by the employee, present at any such examination. If an employee is examined by a chiropractor at the request of the employer, the employee shall be entitled to have a chiropractor provided and paid for by the employee present at any such examination. AFTER ANY EXAMINATION CONDUCTED UNDER THIS SECTION, THE EXAMINER SHALL PREPARE A WRITTEN REPORT GIVING A DESCRIPTION OF THE EXAMINATION PERFORMED, THE WRITTEN DOCUMENTS OR ANY OTHER MATERIALS REVIEWED, AND ALL FINDINGS OR CONCLUSIONS OF THE EXAMINER. The employee shall ~~also~~ be entitled to receive from the examining physician or chiropractor a copy of any report ~~which said~~ THAT THE physician or chiropractor makes to the employer, insurer, or division upon ~~said~~ THE examination, ~~said~~ AND THE copy ~~to~~ SHALL be furnished to the employee at the same time it is furnished to the employer, insurer, or division. The employee shall also be entitled to receive reports from any physician selected by the employer to treat ~~said~~ THE employee upon the same terms and conditions and at the same time the reports are furnished by the physician to the employer. ALL SUCH EXAMINATIONS SHALL BE RECORDED IN AUDIO IN THEIR ENTIRETY AND RETAINED BY THE EXAMINING PHYSICIAN UNTIL REQUESTED BY ANY PARTY. PRIOR TO COMMENCING THE AUDIO RECORDING, THE EXAMINING PHYSICIAN SHALL DISCLOSE TO THE EMPLOYEE THE FACT THAT THE EXAM IS BEING RECORDED. IF REQUESTED, AN EXACT COPY OF THE RECORDING SHALL BE PROVIDED TO THE PARTIES. NOTHING IN THIS SUBSECTION (2) SHALL BE CONSTRUED TO PREVENT ANY PARTY TO THE CLAIM FROM MAKING AN AUDIO RECORDING OF THE EXAMINATION. THE DIVISION SHALL PROMULGATE RULES REGARDING SUCH RECORDINGS THAT SHALL INCLUDE PROVISIONS FOR THE PROTECTION OF THE AUDIO RECORDINGS AND THE PRIVACY OF INFORMATION CONTAINED IN SUCH RECORDINGS. The employer shall be entitled to receive reports from any physician or chiropractor selected by the employee to treat or examine ~~said~~ THE employee in connection with such injury upon the same terms and at the same time the reports are furnished by the physician or chiropractor to the employee.

**SECTION 6. Act subject to petition - effective date - applicability.** (1) This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution, (August 5, 2009, if adjournment sine die is on May 6, 2009); except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

(2) The provisions of this act shall apply to workers' compensation claims filed on or after the applicable effective date of this act.

Approved: April 22, 2009