

CHAPTER 310

LABOR AND INDUSTRY

SENATE BILL 10-187

BY SENATOR(S) Tochtrop, Boyd, Hudak;
also REPRESENTATIVE(S) Riesberg, Apuan, Labuda.

AN ACT

CONCERNING WORKERS' COMPENSATION.

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

SECTION 1. 8-40-201 (19) (b), Colorado Revised Statutes, is amended to read:

8-40-201. Definitions - repeal. As used in articles 40 to 47 of this title, unless the context otherwise requires:

(19) (b) The term "wages" ~~shall include~~ INCLUDES the amount of the employee's cost of continuing the employer's group health insurance plan and, upon termination of the continuation, the employee's cost of conversion to a similar or lesser insurance plan, and gratuities reported to the federal internal revenue service by or for the worker for purposes of filing federal income tax returns and the reasonable value of board, rent, housing, and lodging received from the employer, the reasonable value of which shall be fixed and determined from the facts by the division in each particular case, but ~~shall~~ DOES not include any similar advantage or fringe benefit not specifically enumerated in this subsection (19). If, after the injury, the employer continues to pay any advantage or fringe benefit specifically enumerated in this subsection (19), including the cost of health insurance coverage or the cost of the conversion of ~~such~~ health insurance coverage, ~~such~~ THAT advantage or benefit shall not be included in the determination of the employee's wages so long as the employer continues to make ~~such~~ payment. MEDICAID AND OTHER INDIGENT HEALTH CARE PROGRAMS ARE NOT HEALTH INSURANCE PLANS FOR THE PURPOSES OF THIS SECTION.

SECTION 2. 8-42-101, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

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

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. (5) IF ANY PARTY FILES AN APPLICATION FOR HEARING ON WHETHER THE CLAIMANT IS ENTITLED TO MEDICAL MAINTENANCE BENEFITS RECOMMENDED BY AN AUTHORIZED TREATING PHYSICIAN THAT ARE UNPAID AND CONTESTED, AND ANY REQUESTED MEDICAL MAINTENANCE BENEFIT IS ADMITTED FEWER THAN TWENTY DAYS BEFORE THE HEARING OR ORDERED AFTER APPLICATION FOR HEARING IS FILED, THE COURT SHALL AWARD THE CLAIMANT ALL REASONABLE COSTS INCURRED IN PURSUING THE MEDICAL BENEFIT. SUCH COSTS DO NOT INCLUDE ATTORNEY FEES.

SECTION 3. 8-42-102, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

8-42-102. Basis of compensation - "wages" defined - average weekly wage - "at the time of injury" clarified. (5) (a) THE GENERAL ASSEMBLY HEREBY FINDS THAT THE PHRASE "AT THE TIME OF INJURY" IN SUBSECTION (2) OF THIS SECTION REFERS TO THE DATE OF THE EMPLOYEE'S ACCIDENT. WHEN SUBSECTION (2) OF THIS SECTION IS USED TO DETERMINE A WORKER'S AVERAGE WEEKLY WAGE, THE WAGE ON THE DATE OF THE ACCIDENT SHALL BE USED.

(b) NOTHING IN THIS SUBSECTION (5) ALTERS THE DISCRETION OF THE DIVISION OR THE DIRECTOR TO FAIRLY DETERMINE A WORKER'S AVERAGE WEEKLY WAGE IN ACCORDANCE WITH SUBSECTION (3) OF THIS SECTION.

SECTION 4. The introductory portion to 8-42-103 (1), 8-42-103 (1) (c) (I) and (1) (c) (III), and the introductory portion to 8-42-103 (1) (d) (I), Colorado Revised Statutes, are amended to read:

8-42-103. Disability indemnity payable as wages - period of disability. (1) If the injury or occupational disease causes disability, a disability indemnity shall be payable as wages pursuant to ~~the provisions of~~ section 8-42-105 (2) (a) subject to the following limitations:

(c) (I) In cases where it is determined that periodic disability benefits granted by the federal ~~old-age, survivors, and disability insurance act~~ "OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE AMENDMENTS OF 1965", PUB.L. 89-97, are payable to an individual and ~~said~~ THE individual's dependents, the aggregate benefits payable for temporary total disability, temporary partial disability, ~~permanent partial disability~~, and permanent total disability pursuant to this section shall be reduced, but not below zero, by an amount equal as nearly as practical to one-half ~~such~~ THE federal periodic benefits; but, if ~~provisions of the federal old-age, survivors, and disability insurance act should be~~ "OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE AMENDMENTS OF 1965", PUB.L. 89-97, IS amended to provide for a reduction of an individual's disability benefits thereunder because of compensation benefits payable under articles 40 to 47 of this title, the reduction of compensation benefits provided in said articles shall be decreased by an amount equal to ~~such~~ THE federal reduction. Upon request of the insurer or employer, the employee shall apply for such federal periodic DISABILITY benefits and respond to requests from the insurer or employer as to the status of such application. Failure to comply with this

section ~~shall be~~ CONSTITUTES cause for suspension of benefits.

(III) Notwithstanding ~~the provisions of sub-subparagraph (A) of subparagraph (II) of this paragraph (c), if provisions of the federal old-age, survivors, and disability insurance act should be~~ "OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE AMENDMENTS OF 1965", PUB.L. 89-97, IS amended to provide for a reduction of an individual's periodic benefits thereunder because of compensation benefits payable under articles 40 to 47 of this title, the reduction of compensation benefits provided in said articles shall be decreased by an amount equal to ~~such~~ THE federal reduction. ~~Upon request of the insurer or employer, the employee shall apply for such federal benefits no later than such time as the employee is entitled to a full award of such benefits and shall respond to requests from the insurer or employer as to the status of such application. Failure to comply with this section shall be cause for suspension of benefits.~~

(d)(I) In cases where it is determined that periodic disability benefits are payable to an employee under ~~the provisions of~~ a pension or disability plan financed in whole or in part by the employer, hereinafter called "employer pension or disability plan", the aggregate benefits payable for temporary total disability, temporary partial disability, ~~permanent partial disability~~, and permanent total disability pursuant to this section shall be reduced, but not below zero, by an amount equal as nearly as practical to ~~such~~ THE employer pension or disability plan benefits, with the following limitations:

SECTION 5. 8-42-105 (4), Colorado Revised Statutes, is amended to read:

8-42-105. Temporary total disability. (4) (a) In cases where it is determined that a temporarily disabled employee is responsible for termination of employment, the resulting wage loss shall not be attributable to the on-the-job injury.

(b) THE CLAIMANT'S REFUSAL TO ACCEPT AN OFFER OF MODIFIED EMPLOYMENT UNDER EITHER OF THE FOLLOWING CONDITIONS DOES NOT CONSTITUTE RESPONSIBILITY FOR TERMINATION:

(I) THE OFFER OF MODIFIED EMPLOYMENT WOULD REQUIRE THE CLAIMANT TO TRAVEL A DISTANCE OF GREATER THAN FIFTY MILES ONE WAY MORE THAN THE CLAIMANT'S PRE-INJURY COMMUTE; OR

(II) AN ADMINISTRATIVE LAW JUDGE DETERMINES THAT THE CLAIMANT'S REJECTION OF THE OFFER OF MODIFIED EMPLOYMENT WAS REASONABLE CONSIDERING THE TOTALITY OF THE CLAIMANT'S CIRCUMSTANCES, INCLUDING ACCOUNTING FOR:

(A) THE CONSEQUENCES OF THE INDUSTRIAL INJURY;

(B) THE FINANCIAL HARDSHIP THAT WOULD BE IMPOSED ON THE CLAIMANT IN ORDER TO ACCEPT THE OFFER OF MODIFIED EMPLOYMENT; OR

(C) ANY OTHER REASONS THAT WOULD, IN THE OPINION OF THE ADMINISTRATIVE LAW JUDGE, MAKE IT IMPRACTICABLE FOR THE CLAIMANT TO ACCEPT THE OFFER OF MODIFIED EMPLOYMENT.

(c) THE CIRCUMSTANCES DESCRIBED IN PARAGRAPH (b) OF THIS SUBSECTION (4) ARE NOT EXHAUSTIVE.

SECTION 6. 8-42-107 (2) (ff), Colorado Revised Statutes, is amended to read:

8-42-107. Permanent partial disability benefits - schedule - medical impairment benefits - how determined. (2) **Scheduled injuries.** In case an injury results in a loss set forth in the following schedule, the injured employee, in addition to compensation to be paid for temporary disability, shall receive compensation for the period as specified:

(ff) The loss of ~~an eye by enucleation (including disfigurement resulting therefrom)~~ A TOOTH ~~139 weeks~~ 6 WEEKS

SECTION 7. 8-42-107.5, Colorado Revised Statutes, is amended to read:

8-42-107.5. Limits on temporary disability payments and permanent partial disability payments. No claimant whose impairment rating is twenty-five percent or less may receive more than seventy-five thousand dollars from combined temporary disability payments and permanent partial disability payments. No claimant whose impairment rating is greater than twenty-five percent may receive more than one hundred fifty thousand dollars from combined temporary disability payments and permanent partial disability payments. For the purposes of this section, any mental impairment rating shall be combined with the physical impairment rating to establish a claimant's impairment rating for determining the applicable cap. FOR INJURIES SUSTAINED ON AND AFTER JANUARY 1, 2012, THE DIRECTOR SHALL ADJUST THESE LIMITS ON THE AMOUNT OF COMPENSATION FOR COMBINED TEMPORARY DISABILITY PAYMENTS AND PERMANENT PARTIAL DISABILITY PAYMENTS ON JULY 1, 2011, AND EACH JULY 1 THEREAFTER, BY THE PERCENTAGE OF ADJUSTMENT MADE BY THE DIRECTOR TO THE STATE AVERAGE WEEKLY WAGE PURSUANT TO SECTION 8-47-106.

SECTION 8. 8-43-406 (1), Colorado Revised Statutes, is amended to read:

8-43-406. Compensation in lump sum. (1) At any time after six months have elapsed from the date of injury, the claimant may elect to take all or any part of the compensation awarded in a lump sum by sending written notice of the election and the amount of benefits requested to the carrier or the noninsured or self-insured employer. The carrier or self-insured employer shall file the calculation of the lump sum due and notice that the lump sum has been paid to the claimant within ten days after the election. When the claimant is unrepresented, the director shall calculate amounts to be paid based on the present worth of partial payments, considering interest at four percent per annum, and less a deduction for the contingency of death. The director shall make the method of calculation of lump sums available to all parties at all times, including posting the information on the division's web site. NEITHER THE DIRECTOR NOR AN ADMINISTRATIVE LAW JUDGE SHALL IN ANY WAY ATTEMPT TO CONDITION THE LUMP SUM PAYMENT ON THE CLAIMANT WAIVING THE RIGHT TO PURSUE PERMANENT TOTAL DISABILITY BENEFITS.

SECTION 9. Specified effective date - applicability. (1) Except as otherwise provided in subsection (2) of this section, this act shall take effect July 1, 2010, and

shall apply to injuries sustained on or after said date.

(2) Section 7 of this act shall take effect January 1, 2011, and shall apply to injuries sustained on or after January 1, 2012.

SECTION 10. 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 27, 2010