

1 H.631

2 Introduced by Representative Hill of Wolcott

3 Referred to Committee on

4 Date:

5 Subject: Labor; workers' compensation; temporary partial disability; cost of
6 living adjustment; appeals

7 Statement of purpose of bill as introduced: This bill proposes to specify when
8 an employer may require an employee who has been medically cleared to
9 return to work to engage in a work search, to amend the formula for
10 determining the amount of compensation that is due to an employee with a
11 temporary partial disability, to clarify the requirements for providing
12 dependency benefits and cost of living adjustments to compensation paid to an
13 employee with a temporary partial disability, and to permit the Commissioner
14 to award the necessary costs of a proceeding to a claimant if he or she prevails.

15 An act relating to miscellaneous workers' compensation amendments

1 It is hereby enacted by the General Assembly of the State of Vermont:

2 Sec. 1. 21 V.S.A. § 643d is added to read:

3 § 643d. WORK SEARCH; REQUIREMENTS; EXCEPTIONS

4 (a) An employer may require an employee who is receiving temporary
5 disability benefits pursuant to section 646 of this chapter to engage in a good
6 faith search for suitable work if:

7 (1) the injured employee is medically released to return to work, either
8 with or without limitations;

9 (2) the employer has provided the injured employee with written
10 notification that he or she is medically released to return to work and the
11 notification describes any applicable limitations; and

12 (3) the employer can not offer the injured employee work that he or she
13 is able to do in light of his or her limitations.

14 (b) An injured employee shall not be required to engage in a good faith
15 search for suitable work if he or she:

16 (1) is already employed;

17 (2) has been referred for or is scheduled to undergo one or more surgical
18 procedures;

19 (3) has been referred for or is engaging in a work hardening program, a
20 functional restorative program, or regular weekly therapy;

1 (4) has three or more related medical appointments scheduled within the
2 next 30 days;

3 (5) has only a sedentary work capacity but has no sedentary work
4 experience within the last 15 years;

5 (6) is limited to working not more than 50 percent of the hours he or she
6 worked prior to sustaining the work-related injury;

7 (7) is unable to use his or her dominant upper extremity on either a
8 frequent or repetitive basis, or both; or

9 (8) is approved for vocational rehabilitation benefits pursuant to section
10 641 of this section and has a proposed or approved return to work plan that
11 does not currently require him or her to perform a work search.

12 (c) An employer shall not require an injured employee to contact more than
13 three employers per week as part of a good faith work search performed
14 pursuant to this section.

15 Sec. 2. 21 V.S.A. § 646 is amended to read:

16 § 646. TEMPORARY PARTIAL DISABILITY BENEFITS

17 (a)(1) Where the disability for work resulting from an injury is partial,
18 ~~during the disability and~~ beginning on the eighth day thereof of the period of
19 disability, the employer shall pay the injured employee a weekly compensation
20 equal to the greater of:

1 (A) two-thirds of the difference between his or her average weekly
2 wage before the injury and the average weekly wage ~~which~~ that he or she is
3 able to earn ~~thereafter~~ during the period of disability; or

4 (B) the difference between the wage the injured employee is able to
5 earn during the period of disability and the amount the employee would be
6 eligible to receive pursuant to section 642 of this chapter, including any
7 applicable cost of living adjustment or dependency benefits that would be due.

8 (2) Compensation paid pursuant to this subsection shall be adjusted
9 following the receipt of 26 weeks of benefits, and annually on each subsequent
10 July 1, so that the compensation continues to bear the same percentage
11 relationship to the average weekly wage in the State as it did at the time of
12 injury.

13 (b)(1) In addition to the amount paid pursuant to subsection (a), the
14 employer shall pay the injured employee during the disability \$10.00 per week
15 for each dependent child of the employee who is unmarried and under 21 years
16 of age, provided that no other injured worker is receiving the same benefits on
17 behalf of the dependent child or children.

18 (2) The amount allowed for dependent children shall be adjusted weekly
19 to reflect the number of dependent children during each week of payment.

20 (c)(1)(A) For an injured employee who continues to work for the employer
21 from whom he or she is claiming workers' compensation, payment of

1 compensation pursuant to this section shall be mailed or deposited into the
2 injured employee's bank account within not more than seven days after the
3 injured employee's wages are paid.

4 (B) The employer shall be responsible for providing the injured
5 employee's wage information to the insurance carrier.

6 (2) For an injured employee who is working for a different employer
7 from the employer from whom he or she is claiming workers' compensation,
8 payment of compensation pursuant to this section shall be mailed or deposited
9 into the injured employee's bank account within not more than three days after
10 the injured employee submits his or her wage information to the insurance
11 carrier.

12 Sec. 3. 21 V.S.A. § 642 is amended to read:

13 § 642. TEMPORARY TOTAL DISABILITY BENEFITS

14 (a)(1) Where the injury causes total disability for work, during such the
15 disability, but not including the first three days; with the day of the accident to
16 be counted as the first day; unless the employee received full wages for that
17 day, the employer shall pay the injured employee a weekly compensation equal
18 to two-thirds of the employee's average weekly wages; ~~but,~~

19 (2) The weekly compensation shall be in an amount that is not more
20 than the maximum nor less than the minimum weekly compensation.

1 (3) Compensation paid pursuant to this subsection shall be adjusted on
2 the first July 1 following the receipt of 26 weeks of benefits and annually on
3 each subsequent July 1, so that the compensation continues to bear the same
4 percentage relationship to the average weekly wage in the State as it did at the
5 time of injury.

6 ~~(b)(1) In addition, the injured employee, during the disability period shall~~
7 ~~receive~~ to the amount paid pursuant to subsection (a) of this section, the
8 employer shall pay the injured employee during the disability \$10.00 a per
9 week for each dependent child who is unmarried and under ~~the age of~~ 21 years
10 of age, provided that no other injured worker is receiving the same benefits on
11 behalf of the dependent child or children.

12 (2) The amount allowed for the dependent children shall be adjusted
13 weekly to reflect the number of dependent children during each week of
14 payment.

15 ~~(c) However, in no event shall~~ Notwithstanding any provision of subsection
16 (a) or (b) of this section to the contrary:

17 (1) ~~an~~ An employee's total weekly wage replacement benefits, including
18 any payments for a dependent child, shall not exceed 90 percent of the
19 employee's average weekly wage prior to applying any applicable cost of
20 living adjustment. ~~The amount allowed for dependent children shall be~~

1 ~~increased or decreased weekly to reflect the number of dependent children~~
2 ~~extant during the week of payment.~~

3 (2) If the total disability continues after the third day for a period of
4 seven consecutive calendar days or more, compensation shall be paid for the
5 whole period of the total disability.

6 Sec. 4. 21 V.S.A. § 650 is amended to read:

7 § 650. PAYMENT; AVERAGE WAGE; COMPUTATION

8 * * *

9 (d) Compensation computed pursuant to this section shall be adjusted
10 annually on July 1, so that ~~such~~ the compensation continues to bear the same
11 percentage relationship to the average weekly wage in the State ~~as computed~~
12 ~~under this chapter~~ as it did at the time of injury. ~~Temporary total or temporary~~
13 ~~partial compensation shall first be adjusted on the first July 1 following the~~
14 ~~receipt of 26 weeks of benefits.~~

15 * * *

16 Sec. 5 21 V.S.A. § 678 is amended to read:

17 § 678. COSTS; ATTORNEY'S FEES

18 (a) ~~Necessary costs of proceedings under this chapter, including deposition~~
19 ~~expenses, subpoena fees, and expert witness fees, shall be assessed by the~~
20 ~~Commissioner against the employer or its workers' compensation carrier when~~
21 ~~the claimant prevails. The Commissioner may allow the claimant to recover~~

1 ~~reasonable attorney's fees when the claimant prevails.~~ Costs shall not be taxed
2 or allowed either party except as provided in this section.

3 (b)(1) When a claimant prevails in either a formal or informal proceeding
4 under this chapter, the Commissioner shall award the claimant necessary costs
5 incurred in relation to the proceeding, including deposition expenses, subpoena
6 fees, and expert witness fees.

7 (2) The Commissioner may allow a claimant to recover reasonable
8 attorney's fees when the claimant prevails.

9 (3) In cases for which a formal hearing is requested and the case is
10 resolved prior to formal hearing:

11 (A) the Commissioner may award reasonable attorney's fees if the
12 claimant retained an attorney in response to an actual or effective denial of a
13 claim and payments were made to the claimant as a result of the attorney's
14 efforts; and

15 (B) the Commissioner shall award necessary costs if the claimant
16 incurred the costs in response to an actual or effective denial of a claim and
17 payments were made to the claimant as a result of the costs incurred.

18 (c)(1) In appeals to the Superior or Supreme Court, if the claimant prevails,
19 he or she shall be entitled to reasonable attorney's fees as approved by the
20 court, necessary costs, including deposition expenses, subpoena fees, and

1 expert witness fees, and interest at the rate of 12 percent per annum on that
2 portion of any award the payment of which is contested.

3 (2) Interest shall be computed from the date of the award of the
4 Commissioner.

5 ~~(e)~~(d) By January 1, 1999, and at least every five years thereafter, the
6 Commissioner shall amend existing rules regarding reasonable attorney's fees
7 awarded under subsection (a) of this section. In amending these rules, the
8 Commissioner shall consider accessibility to legal services, appropriate
9 inflation factors, and any other related factors consistent with the purposes of
10 this chapter. In the event the Commissioner proposes no change in the rules in
11 any five-year period, the Commissioner shall provide a written report to the
12 Legislative Committee on Administrative Rules of the General Assembly
13 explaining the reasons for not changing the rules.

14 ~~(d) In cases for which a formal hearing is requested and the case is resolved~~
15 ~~prior to formal hearing, the Commissioner may award reasonable attorney's~~
16 ~~fees if the claimant retained an attorney in response to an actual or effective~~
17 ~~denial of a claim and thereafter payments were made to the claimant as a result~~
18 ~~of the attorney's efforts.~~

19 * * *

1 Sec. 6. ADOPTION OF RULES

2 The Commissioner of Labor shall, on or before July 1, 2021, adopt rules
3 as necessary to implement the provisions of this act.

4 Sec. 7. EFFECTIVE DATE

5 This act shall take effect on July 1, 2020.