

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15

H.356

Introduced by Representative Mulvaney-Stanak of Burlington

Referred to Committee on

Date:

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

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

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 cannot 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
10 section 641 of this title 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 \$20.00 per week
15 for each dependent child under 21 years of age of the employee, provided that
16 no other injured worker is receiving the same benefits on behalf of the
17 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 (3) The amount of the benefit for each dependent child shall be adjusted
21 following the receipt of 26 weeks of benefits, and annually on each subsequent

1 July 1, so that the benefit continues to bear the same percentage relationship to
2 the average weekly wage in the State as it did at the time of injury.

3 (c)(1)(A) For an injured employee who continues to work for the employer
4 from whom he or she is claiming workers' compensation, payment of
5 compensation pursuant to this section shall be mailed or deposited into the
6 injured employee's bank account within not more than seven days after the
7 injured employee's wages are paid.

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

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

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

17 § 642. TEMPORARY TOTAL DISABILITY BENEFITS

18 (a)(1) Where the injury causes total disability for work, during ~~such~~ the
19 disability, but not including the first three days, with the day of the accident to
20 be counted as the first day, unless the employee received full wages for that

1 day, the employer shall pay the injured employee a weekly compensation equal
2 to two-thirds of the employee's average weekly wages, ~~but~~.

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

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

10 ~~(b)(1) In addition, the injured employee, during the disability period shall~~
11 ~~receive \$10.00 a~~ to the amount paid pursuant to subsection (a) of this section,
12 the employer shall pay the injured employee during the disability \$20.00 per
13 week for each dependent child who is ~~unmarried and~~ under the age of 21 years
14 of age, provided that no other injured worker is receiving the same benefits on
15 behalf of the dependent child or children.

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

19 (3) The amount of the benefit for each dependent child shall be adjusted
20 following the receipt of 26 weeks of benefits, and annually on each subsequent

1 July 1, so that the benefit continues to bear the same percentage relationship to
2 the average weekly wage in the State as it did at the time of injury.

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

5 (1) an An employee's total weekly wage replacement benefits, including
6 any payments for a dependent child, shall not exceed 90 percent of the
7 employee's average weekly wage prior to applying any applicable cost of
8 living adjustment. ~~The amount allowed for dependent children shall be~~
9 ~~increased or decreased weekly to reflect the number of dependent children~~
10 ~~extant during the week of payment.~~

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

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

15 § 650. PAYMENT; AVERAGE WAGE; COMPUTATION

16 * * *

17 (d) Compensation computed pursuant to this section shall be adjusted
18 annually on July 1, so that ~~such~~ the compensation continues to bear the same
19 percentage relationship to the average weekly wage in the State ~~as computed~~
20 ~~under this chapter~~ as it did at the time of injury. ~~Temporary total or temporary~~

1 ~~partial compensation shall first be adjusted on the first July 1 following the~~
2 ~~receipt of 26 weeks of benefits.~~

3 * * *

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

5 § 678. COSTS; ATTORNEY'S FEES

6 (a) ~~Necessary costs of proceedings under this chapter, including deposition~~
7 ~~expenses, subpoena fees, and expert witness fees, shall be assessed by the~~
8 ~~Commissioner against the employer or its workers' compensation carrier when~~
9 ~~the claimant prevails. The Commissioner may allow the claimant to recover~~
10 ~~reasonable attorney's fees when the claimant prevails. Costs shall not be taxed~~
11 ~~or allowed either party except as provided in this section.~~

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

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

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

20 (A) the Commissioner may award reasonable attorney's fees if the
21 claimant retained an attorney in response to an actual or effective denial of a

1 claim and payments were made to the claimant as a result of the attorney's
2 efforts; and

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

6 (c)(1) In appeals to the Superior or Supreme Court, if the claimant prevails,
7 he or she shall be entitled to reasonable attorney's fees as approved by the
8 court, necessary costs, including deposition expenses, subpoena fees, and
9 expert witness fees, and interest at the rate of 12 percent per annum on that
10 portion of any award the payment of which is contested.

11 (2) Interest shall be computed from the date of the award of the
12 Commissioner.

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

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

6 * * *

7 Sec. 6. 21 V.S.A. § 601 is amended to read:

8 § 601. DEFINITIONS

9 ~~Unless the context otherwise requires, words and phrases used in this~~
10 ~~chapter shall be construed as follows As used in this chapter:~~

11 * * *

12 (31) "Medical case management" means the planning and coordination
13 of health care services by a medical case manager in relation to a worker's
14 injury. Medical case management includes activities such as medical case
15 assessment, including interviewing an injured worker; assistance in
16 developing, implementing, and coordinating a medical care plan with health
17 care providers in consultation with an injured worker and his or her family; and
18 evaluating treatment results.

19 (32) "Medical case manager" means an individual who satisfies the
20 requirements of section 655b of this chapter and is employed, hired, or retained

1 by an employer or insurance carrier to provide medical case management
2 services in relation to a worker's injury.

3 Sec. 7. 21 V.S.A. § 655b is added to read:

4 § 655b. MEDICAL CASE MANAGERS; REQUIREMENTS

5 (a) Prior to performing medical case management in relation to a worker's
6 injury, a medical case manager shall:

7 (1) be licensed as a registered nurse by the Vermont State Board of
8 Nursing; and

9 (2) have demonstrated to the satisfaction of the Commissioner that he or
10 she has relevant work experience through either:

11 (A) the completion of an internship under the direct supervision of a
12 medical case manager providing medical case management services in
13 Vermont; or

14 (B) providing evidence of relevant experience providing medical case
15 management services in relation to workers' compensation claims in another
16 state.

17 (b) A medical case manager shall not provide medical care to an injured
18 worker or adjust insurance claims made under the provisions of this chapter.

19 Sec. 8. 21 V.S.A. § 655c is added to read:

20 § 655c. MEDICAL CASE MANAGEMENT; NOTICE TO CLAIMANTS;
21 REQUIREMENTS

1 (a) Upon commencing work on an injured worker's claim, a medical case
2 manager shall provide the injured worker with written notice that includes the
3 following information:

4 (1) the medical case manager is working on behalf of the employer or
5 insurance carrier to medically manage the injured worker's claim;

6 (2) the medical case manager may ask questions or perform tasks that
7 are helpful to the employer or the insurance carrier;

8 (3) the injured worker cannot prevent the medical case manager from
9 being assigned to or performing work in relation to the injured worker's claim;

10 (4) the medical case manager is not permitted to adjust the injured
11 worker's insurance claim or provide medical care or treatment in relation to the
12 injured worker's claim;

13 (5) the injured worker is entitled to medical care and treatment that is
14 reasonable, necessary, and related to their work injury;

15 (6) the injured worker has the right to choose the health care providers
16 who will treat their work injury;

17 (7) the medical case manager may inform the injured worker of
18 reasonable treatment options to ensure that he or she can make an informed
19 choice, but the injured worker has the right to make medical care decisions in
20 consultation with his or her health care provider;

21 (8) the injured worker is not required to:

1 (A) sign any authorization that the medical case manager requests the
2 worker to sign;

3 (B) permit the medical case manager to attend medical appointments;
4 or

5 (C) cooperate or communicate with the medical case manager in any
6 manner; and

7 (9) the injured worker has the right to request that all communications
8 between the medical case manager and the injured worker's health care
9 provider are in writing and that the medical case manager promptly provide the
10 injured worker with a copy of each communication.

11 (b)(1) A medical case manager shall keep a record of all verbal
12 communications made or received in relation to an injured worker's claim, and
13 shall keep copies of any written communications made or received and any
14 notes or reports created by the medical case manager in relation to the injured
15 worker's claim.

16 (2) A medical case manager shall, upon request, provide an injured
17 worker with a copy of any record made pursuant to subdivision (1) of this
18 subsection and copies of all written communications, reports, and notes related
19 to the injured worker's claim.

1 Sec. 9. ADOPTION OF RULES

2 The Commissioner of Labor shall, on or before July 1, 2022, adopt rules as
3 necessary to implement the provisions of this act.

4 Sec. 10. EFFECTIVE DATE

5 This act shall take effect on July 1, 2021.