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

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

§ 643d. WORK SEARCH; REQUIREMENTS; EXCEPTIONS

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

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

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

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

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

(1) is already employed;

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

(3) has been referred for or is engaging in a work hardening program, a functional restorative program, or regular weekly therapy;
(4) has three or more related medical appointments scheduled within the next 30 days;

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

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

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

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

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

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

§ 646. TEMPORARY PARTIAL DISABILITY BENEFITS

(a)(1) Where the disability for work resulting from an injury is partial, during the disability and beginning on the eighth day thereof of the period of disability, the employer shall pay the injured employee a weekly compensation equal to the greater of:
(A) two-thirds of the difference between his or her average weekly wage before the injury and the average weekly wage which he or she is able to earn thereafter during the period of disability; or

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

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

(b)(1) In addition to the amount paid pursuant to subsection (a), the employer shall pay the injured employee during the disability $20.00 per week for each dependent child under 21 years of age of the employee, provided that no other injured worker is receiving the same benefits on behalf of the dependent child or children.

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

(3) The amount of the benefit for each dependent child shall be adjusted following the receipt of 26 weeks of benefits, and annually on each subsequent
July 1, so that the benefit continues to bear the same percentage relationship to
the average weekly wage in the State as it did at the time of injury.

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

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

(2) For an injured employee who is working for a different employer
from the employer from whom he or she is claiming workers’ compensation,
the employer shall be responsible for providing the injured
employee’s wage information to the insurance carrier.

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

§ 642. TEMPORARY TOTAL DISABILITY BENEFITS

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

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

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

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

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

(3) The amount of the benefit for each dependent child shall be adjusted
following the receipt of 26 weeks of benefits, and annually on each subsequent
July 1, so that the benefit continues to bear the same percentage relationship to
the average weekly wage in the State as it did at the time of injury.

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

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

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

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

§ 650. PAYMENT; AVERAGE WAGE; COMPUTATION

* * *

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

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

§ 678. COSTS; ATTORNEY’S FEES

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

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

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

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

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

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

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

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

(e)(d) By January 1, 1999, and at least every five years thereafter, the Commissioner shall amend existing rules regarding reasonable attorney’s fees awarded under subsection (a) of this section. In amending these rules, the Commissioner shall consider accessibility to legal services, appropriate inflation factors, and any other related factors consistent with the purposes of this chapter. In the event the Commissioner proposes no change in the rules in any five-year period, the Commissioner shall provide a written report to the Legislative Committee on Administrative Rules of the General Assembly explaining the reasons for not changing the rules.
(d) In cases for which a formal hearing is requested and the case is resolved prior to formal hearing, the Commissioner may award reasonable attorney’s fees if the claimant retained an attorney in response to an actual or effective denial of a claim and thereafter payments were made to the claimant as a result of the attorney’s efforts.

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

§ 601. DEFINITIONS

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

* * *

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

(32) “Medical case manager” means an individual who satisfies the requirements of section 655b of this chapter and is employed, hired, or retained
by an employer or insurance carrier to provide medical case management services in relation to a worker’s injury.

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

§ 655b. MEDICAL CASE MANAGERS; REQUIREMENTS

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

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

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

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

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

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

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

§ 655c. MEDICAL CASE MANAGEMENT; NOTICE TO CLAIMANTS; REQUIREMENTS
(a) Upon commencing work on an injured worker’s claim, a medical case
manager shall provide the injured worker with written notice that includes the
following information:

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

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

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

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

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

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

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

(8) the injured worker is not required to:
(A) sign any authorization that the medical case manager requests the worker to sign;

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

or

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

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

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

(2) A medical case manager shall, upon request, provide an injured worker with a copy of any record made pursuant to subdivision (1) of this subsection and copies of all written communications, reports, and notes related to the injured worker’s claim.
Sec. 9. ADOPTION OF RULES

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

Sec. 10. EFFECTIVE DATE

This act shall take effect on July 1, 2021.