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S.246

Introduced by Senators Hooker, Ram Hinsdale and Sirotkin

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 permit an injured worker to request preauthorization of benefits in addition to medical treatment, 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 the claimant 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. § 640b is amended to read:

3 § 640b. REQUEST FOR PREAUTHORIZATION TO DETERMINE IF
4 ~~PROPOSED TREATMENT IS~~ BENEFITS ARE NECESSARY

5 (a) As used in this section, “benefits” means medical treatment and
6 surgical, medical, and nursing services and supplies, including prescription
7 drugs and durable medical equipment.

8 (b) Within 14 days ~~of~~ after receiving a written request for preauthorization
9 for a proposed ~~medical treatment~~ benefits and medical evidence supporting the
10 requested ~~treatment~~ benefits, a workers’ compensation insurer shall do one of
11 the following, in writing:

12 (1) ~~authorize~~ Authorize the ~~treatment~~ benefits and notify the health care
13 provider, the injured worker, and the Department; ~~or,~~

14 (2)(A) ~~deny~~ Deny the ~~treatment~~ benefits because the entire claim is
15 disputed and the Commissioner has not issued an interim order to pay benefits;
16 ~~or.~~ The insurer shall notify the health care provider, the injured worker, and
17 the Department of the decision to deny benefits.

18 (B)(3) ~~deny~~ Deny the ~~treatment~~ benefits if, based on a preponderance
19 of credible medical evidence specifically addressing the proposed ~~treatment~~
20 benefits, it is the benefits are unreasonable or, unnecessary, or unrelated to the

1 work injury. The insurer shall notify the health care provider, the injured
2 worker, and the Department of the decision to deny ~~treatment~~; or benefits.

3 ~~(3)~~(4) ~~notify~~ Notify the health care provider, the injured worker, and the
4 Department that the insurer has scheduled an examination of the employee
5 pursuant to section 655 of this title or ordered a medical record review
6 pursuant to section ~~655~~ 655a of this title. Based on the examination or review,
7 the insurer shall authorize or deny the ~~treatment~~ benefits and notify the
8 Department and the injured worker of the decision within 45 days ~~of~~ after a
9 request for preauthorization. The Commissioner may, ~~in his or her~~ the
10 Commissioner's sole discretion, grant a 10-day extension to the insurer to
11 authorize or deny ~~treatment~~ benefits, and such an extension shall not be subject
12 to appeal.

13 ~~(b)~~(c) If the insurer fails to authorize or deny the ~~treatment~~ benefits
14 pursuant to subsection (a) of this section within 14 days ~~of~~ after receiving a
15 request, the claimant or health care provider may request that the Department
16 issue an order authorizing ~~treatment~~ benefits. After receipt of the request, the
17 Department shall issue an interim order within five days after notice to the
18 insurer, and five days in which to respond, absent evidence that the entire
19 claim is disputed. Upon request of a party, the Commissioner shall notify the
20 parties that the ~~treatment~~ has benefits have been authorized by operation of
21 law.

1 ~~(e)~~(d) If the insurer denies the preauthorization of the treatment benefits
2 pursuant to subdivision (a)(2) ~~or~~ (3), or (4) of this section, the Commissioner
3 may, ~~on his or her~~ the Commissioner's own initiative or upon a request by the
4 claimant, issue an order authorizing the treatment benefits if ~~he or she~~ the
5 Commissioner finds that the evidence shows that the ~~treatment is~~ benefits are
6 reasonable, necessary, and related to the work injury.

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

8 § 643d. WORK SEARCH; REQUIREMENTS; EXCEPTIONS

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

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

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

17 (3) the employer cannot offer the injured employee work that the
18 employee is medically released to do.

19 (b) An injured employee shall not be required to engage in a good faith
20 search for suitable work if the employee:

21 (1) is already employed;

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

3 (3) is approved for vocational rehabilitation benefits pursuant to
4 section 641 of this title and has a proposed or approved return to work plan that
5 does not currently require the employee to perform a work search.

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

9 Sec. 3. 21 V.S.A. § 646 is amended to read:

10 § 646. TEMPORARY PARTIAL DISABILITY BENEFITS

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

15 (A) two-thirds of the difference between his or her the employee's
16 average weekly wage before the injury and the average weekly wage which he
17 ~~or she~~ that the employee is able to earn thereafter during the period of
18 disability; or

19 (B) the difference between the wage the injured employee is able to
20 earn during the period of disability and the amount the employee would be

1 eligible to receive pursuant to section 642 of this chapter, including any
2 applicable cost of living adjustment or dependency benefits that would be due.

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

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

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

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

19 (c)(1)(A) For an injured employee who continues to work for the employer
20 from whom the employee is claiming workers' compensation, payment of
21 compensation pursuant to this section shall be mailed or deposited into the

1 injured employee's bank account within not more than seven days after the
2 injured employee's wages are paid.

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

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

11 Sec. 4. 21 V.S.A. § 642 is amended to read:

12 § 642. TEMPORARY TOTAL DISABILITY BENEFITS

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

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

20 (3) Compensation paid pursuant to this subsection shall be adjusted on
21 the first July 1 following the receipt of 26 weeks of benefits and annually on

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

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

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

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

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

19 ~~(1) an~~ An employee's total weekly wage replacement benefits, including
20 any payments for a dependent child, shall not exceed 90 percent of the
21 employee's average weekly wage prior to applying any applicable cost of

1 living adjustment. ~~The amount allowed for dependent children shall be~~
2 ~~increased or decreased weekly to reflect the number of dependent children~~
3 ~~extant during the week of payment.~~

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

7 Sec. 5. 21 V.S.A. § 650 is amended to read:

8 § 650. PAYMENT; AVERAGE WAGE; COMPUTATION

9 * * *

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

16 * * *

17 Sec. 6. 21 V.S.A. § 678 is amended to read:

18 § 678. COSTS; ATTORNEY'S FEES

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

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

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

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

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

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

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

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

1 subpoena fees, and expert witness fees; and interest at the rate of 12 percent
2 per annum on that 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. 7. ADOPTION OF RULES

2 The Commissioner of Labor shall, on or before July 1, 2023, adopt rules as
3 necessary to implement the provisions of this act.

4 Sec. 8. EFFECTIVE DATE

5 This act shall take effect on July 1, 2022.