

2024 Regular Session

HOUSE BILL NO. 437

BY REPRESENTATIVE MCMAKIN

WORKERS COMPENSATION: Provides relative to an employee's refusal to submit to a medical examination and vocational rehabilitation services

1 AN ACT

2 To amend and reenact R.S. 23:1124 and 1226(B)(3)(c) and to enact R.S. 23:1226(B)(3)(d),
3 relative to workers' compensation; to provide for an employee's refusal to submit to
4 a medical examination and a vocational rehabilitation services under certain
5 circumstances; to require a burden of proof; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 23:1124 and 1226(B)(3)(c) are hereby amended and reenacted and
8 R.S. 23:1226(B)(3)(d) is hereby enacted to read as follows:

9 §1124. Refusal to submit to an additional medical opinion regarding an examination;
10 effect on right to compensation

11 A. If the employee refuses to submit himself to an additional medical
12 opinion regarding a medical examination at the behest of the employer or an
13 examination conducted pursuant to R.S. 23:1123, or in ~~anywise~~ any way obstructs
14 the same, his right to compensation and to take or prosecute any further proceedings
15 ~~under~~ in accordance with this Chapter may be suspended by the employer or payer
16 until the examination takes place. Such suspension of benefits by the employer or
17 payer shall be made in accordance with the provisions of R.S. 23:1201.1(A)(4) and
18 (5). When the employee has filed a disputed claim, the employer or payer may move
19 for an order to compel the employee to appear for an additional medical opinion
20 regarding an examination. The employee shall receive at least fourteen days written

1 notice prior to the additional medical opinion regarding an examination. When a
2 right to compensation, is suspended no compensation shall be payable in respect to
3 the period of suspension.

4 B. An employee shall not be considered to have refused or in any way
5 obstruct a medical examination at the behest of the employer or an examination
6 conducted pursuant to R.S. 23:1123 without an affirmative showing the employee
7 both consciously desired the examination not to take place and took specific actions
8 with the intended purpose of preventing the examination from taking place. The
9 burden shall rest on the employer to make such a showing through a preponderance
10 of the evidence.

11 * * *

12 §1226. Rehabilitation of injured employees

13 * * *

14 B.

15 * * *

16 (3)

17 * * *

18 (c) Upon refusal by the employee to cooperate with vocational rehabilitation
19 services, the employer or payer may reduce weekly compensation, including
20 supplemental earnings benefits pursuant to R.S. 23:1221(3), by fifty percent for each
21 week of the period of refusal. Reduction of benefits by the employer or payer shall
22 be made in accordance with the provisions of R.S. 23:1201.1(A) through (E).

23 (d) An employee shall not be considered to have refused to cooperate with
24 vocational rehabilitation services without an affirmative showing the employee both
25 consciously desired the vocational rehabilitation not to take place and took specific
26 actions with the intended purpose of preventing the vocational rehabilitation from
27 taking place. The burden shall rest on the employer to make such a showing through
28 a preponderance of the evidence.

29 * * *

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 437 Original

2024 Regular Session

McMakin

Abstract: Provides relative to an employee's refusal to submit to a medical examination and vocational rehabilitation service.

Present law provides that if an employee refuses to submit himself to a medical examination at the behest of the employer or an examination, or in anyway obstructs the same, his right to compensation and to take or prosecute any further proceedings under present law may be suspended by the employer or payer until the examination takes place.

Proposed law retains present law.

Present law provides that when the employee has filed a disputed claim, the employer or payer may move for an order to compel the employee to appear for an examination. Present law further provides that the employee must receive at least 14 days written notice prior to the examination.

Proposed law retains present law.

Proposed law provides that an employee shall not be considered to have refused or in any way obstructed a medical exam at the behest of the employer or an exam conducted pursuant to present law (R.S. 23:1123) without an affirmative showing the employee both consciously desired the examination not to take place and took specific actions with the intended purpose of preventing the exam from taking place. Proposed law further provides that the burden of proof, which shall be met through a preponderance of the evidence, rests on the employer.

Present law provides that upon refusal by the employee, the employer or payer may reduce weekly compensation, including supplemental earnings benefits pursuant to present law (R.S. 23:1221(3)), by 50% for each week of the period of refusal. Present law further provides that the reduction of benefits by the employer or payer shall be made in accordance with the provisions of present law (R.S. 23:1201.1(A)-(E)).

Proposed law instead provides that upon refusal by the employee to cooperate with vocational rehabilitation services, the employer or payer may reduce weekly compensation, including supplemental earnings benefits pursuant to present law (R.S. 23:1221(3)), by 50% for each week of the period of refusal. Proposed law otherwise retains present law.

Proposed law provides that an employee shall not be considered to have refused to cooperate with vocational rehabilitation services without an affirmative showing the employee both consciously desired the rehabilitation not to take place and took specific actions with the intended purpose of preventing the rehabilitation from taking place. Proposed law further provides that the burden of proof, which shall be met through a preponderance of the evidence, rests on the employer.

(Amends R.S. 23:1124 and 1226(B)(3)(c); Adds R.S. 23:1226(B)(3)(d))