

Regular Session, 2012

HOUSE BILL NO. 903

BY REPRESENTATIVE KATRINA JACKSON

WORKERS COMPENSATION: Provides with respect to vocational rehabilitation for disabled employees

1 AN ACT

2 To amend and reenact R.S. 23:1226(A), (B), (D), and (E) and to enact R.S. 23:1227, relative
3 to workers' compensation; to provide with respect to vocational rehabilitation; to
4 provide for functional capacity evaluation testing; and to provide for related matters.

5 Be it enacted by the Legislature of Louisiana:

6 Section 1. R.S. 23:1226(A), (B), (D), and (E) are hereby amended and reenacted and
7 R.S. 23:1227 is hereby enacted to read as follows:

8 §1226. Rehabilitation of injured employees

9 A. When an employee has suffered an injury covered by this Chapter which
10 precludes the employee from earning wages equal to wages earned prior to the
11 injury, the employee shall be entitled to prompt rehabilitation services. Early referral
12 is critical to the vocational rehabilitation process and shall be initiated as soon as
13 possible. Vocational rehabilitation services shall be provided by a licensed
14 professional vocational rehabilitation counselor, and all such services provided shall
15 be compliant with the Code of Professional Ethics for Licensed Rehabilitation
16 Counselors as established by R.S. 37:3441 et seq.

17 B.(1) The goal of rehabilitation services is to return a disabled worker to
18 work, with a minimum of retraining, as soon as possible after an injury occurs. ~~The~~
19 If the employer or insurer determines that the employee is unable to earn wages
20 equal to wages earned prior to the injury, the first appropriate option among the

1 following ~~must~~ shall be chosen by the vocational rehabilitation counselor for the
2 worker:

3 (a) Return to the same position.

4 (b) Return to a modified position.

5 (c) Return to a related occupation suited to the claimant's education and
6 ~~marketable~~ transferable skills.

7 (d) On-the-job training.

8 (e) Short-term retraining program (less than ~~twenty-six~~ fifty-two weeks).

9 (f) Long-term retraining program (~~more than twenty-six weeks but not more~~
10 ~~than one year~~ of at least fifty-two weeks and not more than two years).

11 (g) Self-employment.

12 (2) Whenever possible, employment in a worker's local job pool ~~must~~ shall
13 be considered and selected prior to consideration of employment in a worker's
14 statewide job pool.

15 (3)(a) The employer shall be responsible for the selection of a licensed
16 professional vocational rehabilitation counselor to evaluate and assist the employee
17 in his job placement or vocational training. It shall be the responsibility of the
18 licensed professional vocational rehabilitation counselor to meet with the employee
19 as soon as possible after vocational services are requested and to develop an initial
20 rehabilitation plan. Such rehabilitation plan shall be developed with the employee
21 and shall contain the following:

22 (i) The agreed upon vocational goal of the rehabilitation service.

23 (ii) The actual plan to obtain that goal.

24 (iii) The cost of any retraining or job modification.

25 (iv) The signature of both parties establishing that the plan was approved.

26 (b) Should the employer refuse to provide these services, or a dispute arises
27 concerning the work of the vocational counselor, the employee may file a claim with
28 the office to review the need for such services or the quality of services being

1 provided. The procedure for hearing such claims shall be expedited as provided in
2 R.S. 23:1124.

3 ~~(b)~~ (c) An employee shall have no right of action against a vocational
4 counselor for tort damages related to the performance of vocational services unless
5 and until he has exhausted the administrative remedy provided for in Subparagraph
6 ~~(a)~~ (b) of this Paragraph. The running of prescription shall be suspended during the
7 pendency of the administrative proceedings provided for in this Paragraph.

8 ~~(c)~~ (d) The expedited procedure shall also be made available to the employer
9 to require the employee's cooperation in the rehabilitation process. Refusal to accept
10 rehabilitation as deemed necessary by the worker's compensation judge shall result
11 in a fifty percent reduction in weekly compensation, including supplemental earnings
12 benefits pursuant to R.S. 23:1221(3), for each week of the period of refusal.

13 * * *

14 D. Prior to the workers' compensation judge adjudicating an injured
15 employee to be permanently and totally disabled, the workers' compensation judge
16 shall determine whether there is reasonable probability that, with appropriate training
17 or education, the injured employee may be rehabilitated to the extent that such
18 employee can achieve suitable gainful employment and whether it is in the best
19 interest of such individual to undertake such training or education. If the workers'
20 compensation judge determines that such training or education is appropriate, the
21 employer or insurer shall be responsible for the costs of the training or education.

22 E. When it appears that a retraining program is necessary and desirable to
23 restore the injured employee to suitable gainful employment, the employee shall be
24 entitled to a reasonable and proper retraining program for ~~a period not to exceed~~
25 ~~twenty-six weeks, which period may be extended for an additional period not to~~
26 ~~exceed twenty-six additional weeks if such extended period is determined to be~~
27 ~~necessary and proper by the workers' compensation judge.~~ an appropriate period of
28 time pursuant to Subparagraphs (B)(1)(a) and (b) of this Section. However, no
29 employer or insurer shall be precluded from continuing such retraining beyond such

1 Louisiana Physical Therapy Board, the Occupational Therapy Advisory Committee,
2 or the State Board of Medical Advisors as being related and appropriate.

3 (2) The authorized examiner shall provide a proof of compliance with
4 Subparagraph (1) of this Paragraph to the employer or insurer.

5 C.(1) The authorized examiner shall review pertinent medical records, be
6 cognizant of any physical limitations, perform a detailed history and a physical
7 examination, administer the functional assessment, interpret all relevant data, and
8 produce a functional capacity evaluation report including the standardized functional
9 capacity summary form, as promulgated by the office of workers' compensation
10 administration. An approved functional capacity evaluation shall be evidenced by
11 the scientific rigor of reliability and validity studies and should be primarily
12 functional/dynamic in nature and mimic the job as much as possible. A functional
13 capacity evaluation based primarily on computerized testing will not be considered
14 valid.

15 (2) Testing shall be conducted in two consecutive days for a minimum of
16 five hours on the first day and a minimum of two hours on the second day. The
17 second day of testing can be rescheduled for special circumstances as determined by
18 the examiner, but shall be completed within forty-eight business hours of the initial
19 visit. If the functional capacity evaluation is not completed, then the treating
20 physician and claims adjustor shall be notified and the examiner will complete the
21 report as outlined in Subparagraph D with the information on hand, and the
22 functional capacity evaluation will be considered valid.

23 (3) The employer, insurer, or third-party administrator shall authorize a
24 minimum of twelve hours for the functional capacity evaluation. The examiner may
25 request additional hours from the employer, insurer, or third-party administrator
26 when necessary to perform an accurate functional capacity evaluation for the injured
27 worker.

28 (4) When an injured worker attempts to resume employment with his
29 previous employer and he is subject to permanent restrictions or he is returning to

1 a modified employment position, a functional job description shall be supplied
2 before the functional capacity evaluation is performed. A four-to-eight hour
3 modified functional capacity evaluation can be performed in assessing an employee's
4 capacity to return to a transitional duty with his current employer.

5 (5) Nothing in this Section shall prohibit the use of early return-to-work
6 functional capacity evaluations involving efforts to identify the job tasks an injured
7 worker can perform safely when modified temporarily to return to work with his
8 former employer.

9 D. The functional capacity evaluation report, including the standardized
10 functional capacity summary form as promulgated by the office of workers'
11 compensation administration shall be completed within seven working days and
12 forwarded to the treating physician. The treating physician shall approve the
13 functional capacity evaluation findings with notations of any suggested
14 modifications.

15 E. The vocational rehabilitation counselor shall provide a functional job
16 description quantifying the physical demands of the injured worker's job or proposed
17 alternative employment in terms of postures, functional activities, forces, weights,
18 repetitions, frequency, distances, durations, time frames, and other necessary
19 information concerning physical activity and tasks. If a functional job description
20 is not available for an injured worker's job or proposed position at the time of testing,
21 the vocational rehabilitation counselor or the examiner, if qualified, may be
22 requested to perform a job assessment and write a functional job description if the
23 examiner has the appropriate training to perform such job assessment.

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)]

Katrina Jackson

HB No. 903

Abstract: Provides for vocational rehabilitation of injured employees in workers' compensation claims.

Present law provides for rehabilitation of injured employees.

Present law requires that vocational rehabilitation services shall be provided by a licensed professional vocational rehabilitation counselor.

Proposed law retains present law and further provides that early referral is critical and that vocational rehabilitation shall begin as soon as possible.

Present law provides that the goal of rehabilitation is to return to work as quickly as possible, in the same position, a modified position, to a related occupation, receive job training, or become self-employed.

Proposed law changes the frequency of short-term retraining from less than 26 weeks to less than 52 weeks.

Proposed law changes the frequency range of long-term retraining from between 26 weeks and a year, to at least 52 weeks, but not more than a year.

Present law requires employers to select a licensed professional vocational rehabilitation counselor to evaluate and assist the employee in job placement and training.

Proposed law retains present law and further provides that it is the responsibility of the counselor to meet with the employee as soon as possible and develop a rehabilitation plan.

Present law provides that a workers' compensation judge shall determine if, after training, the injured worker could be rehabilitated enough to obtain employment.

Proposed law retains present law and further provides that the employer or insurer shall pay for training if the judge determines that it is appropriate.

Present law provides that an injured employee must request and begin a retraining program within two years.

Proposed law changes the time period from two years to three months.

Proposed law defines "functional capacity evaluation" to mean a detailed evaluation performed by a qualified examiner to objectively measure an injured worker's level of function within the context of the demands of competitive employment.

Proposed law provides that measures of function from a functional capacity evaluation will be used to determine an injured worker's ability to safely return to employment, with or without modification.

Proposed law provides for qualifications of functional capacity evaluation counselors.

Proposed law outlines the procedure that the functional capacity evaluation counselor shall use to evaluate the injured worker, and the criteria upon which the worker shall be evaluated and tested.

Proposed law requires that testing shall be conducted in two consecutive days for a minimum of five hours on the first day and a minimum of two hours on the second day.

Proposed law allows the second day of testing to be rescheduled for special circumstances as determined by the examiner, but must be completed within 48 business hours of the initial visit.

Proposed law requires that when the injured employee returns to work, the functional job description must be supplied before the evaluation is formed.

Proposed law does not limit the ability to return to work early.

Proposed law provides that the standardized functional capacity summary form shall be completed within seven working days and forwarded to the treating physician.

Proposed law requires the vocational rehabilitation counselor to provide a functional job description to quantify the physical demands of the injured worker's job or proposed alternative employment.

(Amends R.S. 23:1226(A), (B), (D), and (E); Adds R.S. 23:1227)