

2020 Regular Session

SENATE BILL NO. 280

BY SENATOR LUNEAU

WORKERS' COMPENSATION. Provides relative to workers' compensation. (8/1/20)

1 AN ACT

2 To amend and reenact R.S. 23:1121(B)(1), 1124, the introductory paragraph of 1201.1(A),
3 1201.1(I)(1) and (K), and 1226(B)(3)(a) and (c), relative to workers' compensation;
4 to provide for medical examinations; to provide for suspension of workers'
5 compensation benefits; to provide for procedures; to provide for hearings; to provide
6 for the reinstatement of benefits; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 23:1121(B)(1), 1124, the introductory paragraph of 1201.1(A),
9 1201.1(I)(1) and (K), and 1226(B)(3)(a) and (c) are hereby amended and reenacted to read
10 as follows:

11 §1121. Examination of injured employee

12 * * *

13 B.(1) The employee shall have the right to select one treating physician in
14 any field or specialty. The employee shall have a right to an expedited summary
15 proceeding pursuant to R.S. ~~23:1201.1(K)(8)~~ **23:1201.1(K)(6)**, when denied his right
16 to an initial physician of choice. The workers' compensation judge shall set the
17 hearing date for the matter within three days of receiving the employee's motion for

1 the expedited hearing. The hearing shall be held not less than ten nor more than thirty
 2 days after the employee or his attorney files the motion for an expedited hearing. The
 3 workers' compensation judge shall provide notice of the hearing date to the employer
 4 and insurer at the same time and in the same manner that notice of the hearing date
 5 is provided to the employee or his attorney. For the purposes of this Section, an
 6 employee shall not be required to submit the dispute on the choice of physician to
 7 mediation nor go through a pretrial conference before obtaining a hearing. The
 8 hearing shall be conducted as a rule to show cause. The workers' compensation judge
 9 shall order the employer or payor to authorize the claimant's choice of physician
 10 unless the employer or payor can show good cause for his refusal. After his initial
 11 choice the employee shall obtain prior consent from the employer or his workers'
 12 compensation carrier for a change of treating physician within that same field or
 13 specialty. The employee, however, is not required to obtain approval for change to
 14 a treating physician in another field or specialty.

15 * * *

16 §1124. Refusal to submit to an additional medical opinion regarding an
 17 examination; effect on right to compensation

18 A. If the employee refuses to submit himself to an additional medical opinion
 19 regarding a medical examination at the behest of the employer or an examination
 20 conducted pursuant to R.S. 23:1123, or in anywise obstructs the same, his right to
 21 compensation and to take or prosecute any further proceedings under this Chapter
 22 may be suspended by the employer or payor until the examination takes place. Such
 23 suspension of benefits by the employer or payor shall be made in accordance with
 24 the provisions of R.S. 23:1201.1(A)(4) and (5). When the employee has filed a
 25 disputed claim, the employer or payor may move for an order to compel the
 26 employee to appear for an additional medical opinion regarding an examination. The
 27 employee shall receive at least fourteen days written notice prior to the additional
 28 medical opinion regarding an examination. When a right to compensation is
 29 suspended no compensation shall be payable in respect to the period of suspension

1 occur only after a hearing has been conducted as provided in Subsection B of
2 this Section.

3 B.(1)(a) Upon motion, an employer or insurer who seeks to compel an
4 employee's compliance with a medical examination shall be granted an
5 expedited hearing. The workers' compensation judge shall set a hearing date for
6 the matter within three days of receiving the employer's or insurer's motion.
7 The hearing shall be held not less than ten nor more than thirty days after the
8 employee, or his attorney, receives notice, delivered by certified or registered
9 mail, of the employer's or insurer's motion. The workers' compensation judge
10 shall provide notice of the hearing date to the employer and insurer at the same
11 time, and in the same manner, that notice of the hearing date is provided to the
12 employee or his attorney.

13 (b) For the purposes of this Section, an employer or insurer shall not be
14 required to submit the dispute on the medical examination to mediation, or go
15 through a pretrial conference, before obtaining a hearing. The hearing shall be
16 conducted as a rule to show cause. Unless the employee can show good cause for
17 his refusal or obstruction of the medical examination, the workers'
18 compensation judge shall suspend the employee's compensation and prosecution
19 rights according to Subsection A of this Section.

20 (2) If the workers' compensation judge orders the employee to submit to
21 a medical examination and the employee submits to such examination as
22 ordered by the judge, the employee's workers' compensation benefits shall be
23 reinstated within ten days after the examination takes place.

24 * * *

25 §1201.1. Controversion of compensation and medical benefits

26 A. Upon the first payment of compensation or upon any modification,
27 suspension, termination, or controversion of compensation or medical benefits ~~for~~
28 ~~any reason, including but not limited~~ with respect to issues of medical causation,
29 compensability of the claim, disability status, earning capacity, or issues arising

1 out of R.S. 23:~~1121, 1124, 1208, and~~ 1226, the employer or payor who has been
2 notified of the claim, shall do all of the following:

3 * * *

4 I.(1) An employer or payor who has not complied with the requirements set
5 forth in ~~Subsection~~ **Subsections** A through E of this Section or has not initially
6 accepted the claim as compensable, ~~subject to further investigation and subsequent~~
7 ~~controversion~~ shall not be entitled to a preliminary determination. An employer or
8 payor who is not entitled to a preliminary determination or who is so entitled but
9 fails to request a preliminary determination may be subject to penalties and attorney
10 fees pursuant to R.S. 23:1201 at a trial on the merits or hearing held pursuant to
11 Paragraph (K)~~(8)~~**(6)** of this Section.

12 * * *

13 K.(1) The employer or payor shall, within ten calendar days of the mailing
14 of the determination from the workers' compensation judge, do either of the
15 following:

16 (a) Accept and comply with preliminary determination of the workers'
17 compensation judge regarding the payment, suspension, modification, termination,
18 or controversion of benefits and mail a revised "Notice of Modification, Suspension,
19 Termination, or Controversion of Compensation and/or Medical Benefits" to the
20 injured employee or employee's representative, along with any payment amount
21 determined, and any arrearage due.

22 (b) Notify the injured employee or his representative in writing that the
23 employer or payor does not accept the determination.

24 (2) Any employer or payor who accepts and complies with the workers'
25 compensation judge's determination within ten calendar days, shall not be subject to
26 any penalty or attorney fees arising out of the original notice which was the subject
27 of the preliminary hearing.

28 ~~(3) Any employer or payor who accepts and complies with the workers'~~
29 ~~compensation judge's determination, but who disagrees with such preliminary~~

1 ~~determination, shall notify the court within ten days of receipt of the preliminary~~
2 ~~determination of his desire to proceed to a trial on the merits of the matters that were~~
3 ~~the subject of the preliminary hearing.~~

4 ~~(4)~~ Any employer or payor who does not accept the workers' compensation
5 judge's determination or fails to comply with the determination within ten calendar
6 days, may, at the trial on the merits, be subject to penalties and attorney fees
7 pursuant to R.S. 23:1201, arising out of the issues raised in the original notice of
8 payment, modification, suspension, termination, or controversion of benefits, which
9 was the subject of the preliminary hearing.

10 ~~(5)~~**(4)** Any injured employee who disagrees with the preliminary
11 determination shall notify the court within ten days of the receipt of such preliminary
12 determination of his desire to proceed to a trial on the merits of the matters that were
13 the subject of the preliminary hearing. If the employer or payor has accepted and
14 complied with the preliminary hearing determination, the employer or payor shall
15 also be entitled to litigate all issues including those issues presented at the
16 preliminary determination hearing.

17 ~~(6)~~ Any employer or payor who accepts and complies with the determination
18 of the workers' compensation judge, and who does not request to proceed to trial on
19 the merits of the matters that were the subject of the preliminary hearing, shall retain
20 the right to further controvert future matters. The workers' compensation judge's
21 determination shall not be considered an order concerning benefits due requiring
22 modification, nor shall the determination be considered res judicata of any matters
23 which were the subject of the preliminary hearing. The acceptance of the preliminary
24 determination by the employer or payor shall not be considered an admission.

25 ~~(7)~~**(5)** In matters where the employee has filed a disputed claim and the
26 employer or payor is not entitled to a preliminary determination, the matter shall
27 proceed to trial on the merits.

28 ~~(8)~~**(6)**(a) Upon motion of either party, whether or not the employer or payor
29 is entitled to a preliminary determination, the workers' compensation judge's ruling

1 in a hearing shall be conducted as an expedited summary proceeding and shall be
2 considered an order of the court and not requiring a further trial on the merits, if it
3 concerns any of the following matters:

4 (i) The employee has sought choice of physician pursuant to R.S.
5 23:1121(B)(1).

6 (ii) The employee has filed a claim pursuant to R.S. 23:1226(B)(3)(a).

7 (iii) The employer or payor seeks to compel the employee to sign the choice
8 of physician form pursuant to R.S. 23:1121(B)(5).

9 (iv) The employer or payor seeks to compel the employee's submission to a
10 medical examination pursuant to R.S. 23:1124.

11 (v) The employer seeks to require the employee to return form LWC-1025
12 or LWC-1020.

13 (vi) The employee seeks to have a suspension of benefits for failure to
14 comply with R.S. 23:1121(B)(1) lifted.

15 ~~(vii) The employee seeks to have a suspension of benefits for failure to~~
16 ~~submit to a medical examination lifted.~~

17 ~~(viii) The employee seeks to have a suspension of benefits for failure to~~
18 ~~comply with R.S. 23:1208(H) lifted.~~

19 ~~(ix)(viii) The **employee employer** seeks to have a reduction in benefits for~~
20 ~~failure to cooperate with vocational rehabilitation lifted.~~

21 (b)(i) The workers' compensation judge shall set the expedited summary
22 proceeding hearing date pursuant to Items (a)(iii), (iv), and (v) of this Paragraph
23 within three days of receiving the employer's motion for the expedited hearing. The
24 hearing shall be held not less than ten nor more than thirty days after the motion has
25 been filed.

26 (ii) The workers' compensation judge shall provide the notice of the hearing
27 date to the employee or his attorney at the same time and in the same manner that the
28 notice of the hearing date is provided to the employer or payor.

29 (iii) For the purposes of this Section, the party seeking an expedited hearing

1 shall not be required to submit the dispute to mediation or go through a pretrial
2 conference before obtaining a hearing. The hearing shall be conducted as a rule to
3 show cause.

4 (c) The workers' compensation judge shall order the employee to sign the
5 choice of physician form, ~~enforce the employee's submission to the medical~~
6 ~~examination~~, or provide the LWC-1020 or LWC-1025 form as applicable unless the
7 employee can show good cause for his refusal.

8 (d) If the employee seeking relief pursuant to this Paragraph can show good
9 cause for his refusal, the workers' compensation judge shall order the suspension or
10 reduction in benefits lifted and the payment of any arrearage due. If the employee
11 fails to show good cause for refusal, the workers' compensation judge shall order the
12 suspension or reduction in benefits to continue until the employee complies.

13 (e) An employer or payor who is entitled to a preliminary determination and
14 who complies with an order of the court issued pursuant to a hearing held in
15 accordance with this Paragraph within ten calendar days shall not be subject to any
16 penalty or attorney fees arising out of the original notice which was the subject of the
17 hearing.

18 * * *

19 §1226. Rehabilitation of injured employees

20 * * *

21 B. * * *

22 (3)(a) The employer shall be responsible for the selection of a licensed
23 professional vocational rehabilitation counselor to evaluate and assist the employee
24 in his job placement or vocational training. Should the employer refuse to provide
25 these services, or a dispute arises concerning the work of the vocational counselor,
26 the employee may file a claim with the office to review the need for such services
27 or the quality of services being provided. The employee shall have a right to an
28 expedited summary proceeding pursuant to R.S. ~~23:1201.1(K)(8)~~ **23:1201(K)(6)**.
29 The workers' compensation judge shall set a hearing date within three days of

1 receiving the motion. The hearing shall be held not less than ten, nor more than thirty
 2 days, after the employer or payor receives notice, delivered by certified or registered
 3 mail, of the employee's motion. The workers' compensation judge shall provide
 4 notice of the hearing date to the employer and payor at the same time and in the same
 5 manner that notice of the hearing date is provided to the employee or his attorney.
 6 For the purposes of this Section, an employee shall not be required to submit the
 7 dispute on the issue of vocational services to mediation or go through a pretrial
 8 conference before obtaining a hearing. The hearing shall be conducted as a rule to
 9 show cause.

* * *

11 (c) Upon refusal by the employee **to cooperate with vocational**
 12 **rehabilitation**, the employer or payor may **file a motion in accordance with R.S.**
 13 **23:1201.1(K)(6)(a)(viii) to** reduce weekly compensation, including supplemental
 14 earnings benefits pursuant to R.S. 23:1221(3), by fifty percent for each week of the
 15 period of refusal. Reduction of benefits by the employer or payor shall be ~~made in~~
 16 ~~accordance with the provisions of R.S. 23:1201.1(A) through (E)~~ **ordered by the**
 17 **court upon finding that the employee has unreasonably refused to cooperate**
 18 **with vocational rehabilitation.**

* * *

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Yoursheka D. George.

DIGEST

SB 280 Original 2020 Regular Session Luneau

Present law provides for the examination of an injured employee and requires an injured employee to be examined by a qualified medical practitioner as soon after the accident as demanded. Present law further provides that the examination will be paid for by the employer.

Present law provides that, if the employee refuses to submit himself to an additional medical opinion via a medical examination at the behest of the employer, the injured worker's right to compensation and to prosecute his claim may be suspended by the employer or payor until the medical examination takes place.

Proposed law provides that suspension of benefits by the employer shall occur only after a hearing is conducted pursuant to proposed law.

Proposed law provides that an employer or insurer who seeks to compel an employee's compliance with a medical examination will be granted an expedited hearing.

Proposed law provides that the workers' compensation judge will set a hearing date for the matter within three days of receiving the employer's or insurer's motion and provides notice to all parties.

Proposed law provides that an employer or insurer is not required to submit the dispute on the medical examination to mediation or go through a pretrial conference, before obtaining a hearing. Proposed law provides that the hearing will be conducted as a rule to show cause.

Proposed law provides that unless the employee can show good cause for his refusal or obstruction of the medical examination, the workers' compensation judge shall suspend the employee's compensation and prosecution rights pursuant to present law.

Proposed law provides that, if the workers' compensation judge orders the employee to submit to a medical examination and the employee submits to the examination as ordered by the judge, the employee's workers' compensation benefits shall be reinstated within 10 days after the examination takes place.

Present law provides that upon the first payment of compensation or upon any modification, suspension, termination, or controversion of compensation or medical benefits for any reason, including but not limited to issues of medical causation, compensability of the claim, or issues arising out of a medical examination, refusal to submit to an examination, or misrepresentation concerning benefit payment, or rehabilitation of an injured employee, the employer or payor who has been notified of the claim will do all of the following:

- (1) Prepare a "Notice of Modification, Suspension, Termination, or Controversion of Compensation and/or Medical Benefits".
- (2) Send the notice of the initial indemnity payment to the injured employee on the same day as the first payment of compensation is made by the payor after the payor has received notice of the claim from the employer.
- (3) Send a copy of the notice of the initial payment of indemnity to the office within 10 days from the date the original notice was sent to the injured employee or by facsimile to the injured employee's representative.
- (4) Send the "Notice of Payment, Modification, Suspension, Termination, or Controversion of Compensation and/or Medical Benefits" to the injured employee by certified mail, to the address at which the employee is receiving payments of compensation, on or before the effective date of a modification, suspension, termination, or controversion.
- (5) Send a copy of the "Notice of Payment, Modification, Suspension, Termination, or Controversion of Compensation and/or Medical Benefits" to the office on the same business day as sent to the employee or to his representative.

Proposed law eliminates the procedure in present law related to issues arising out of medical examinations or refusal to submit to an examination and adds to the procedure in present law those issues related to disability status and earning capacity.

Present law provides that an employer or payor who has not complied with present law requirements or has not initially accepted the claim as compensable, subject to further investigation and subsequent controversion will not be entitled to a preliminary determination. An employer or payor who is not entitled to a preliminary determination or who is so entitled but fails to request a preliminary determination may be subject to penalties and attorney fees at a trial on the merits or hearing held pursuant to present law.

Proposed law provides that an employer or payor who has not initially accepted the claim as compensable shall not be entitled to a preliminary determination.

Present law provides that any employer or payor who accepts and complies with the workers' compensation judge's determination, but who disagrees with such determination, shall notify the court of his desire to proceed to a trial on the merits of the matters that were subject to the preliminary hearing. Provides that an employer or payor who accepts and complies with the determination of the workers' compensation judge, and who doesn't request to proceed to trial on the merits of the matters that were subject to the preliminary hearing, shall retain the right to further controvert future matters.

Proposed law deletes present law.

Present law provides that upon motion of either party, whether or not the employer or payor is entitled to a preliminary determination, the workers' compensation judge's ruling in a hearing shall be conducted as an expedited summary proceeding and shall be considered an order of the court and not requiring a further trial on the merits if it concerns certain matters.

Proposed law removes the provision regarding an employee seeking to have a suspension of benefits for failure to submit to a medical examination lifted from the list of matters subject to an expedited summary proceeding as provided by law.

Present law provides that the list of matters subject to an expedited summary proceeding includes the employee seeking to have a reduction in benefits for failure to cooperate with vocational rehabilitation.

Proposed law removes present law and adds as a matter subject to an expedited summary proceeding, the employer seeking a reduction in benefits for failure to cooperate with vocational rehabilitation.

Present law provides that upon refusal by the employee to cooperate with vocation rehabilitation, the employer or payor may reduce weekly compensation by 50% for each week of the period of refusal.

Proposed law requires the employer or payor to file a motion to reduce the compensation and further provides that reduction of benefits may be made only by court order.

Effective August 1, 2020.

(Amends R.S. 23:1121(B)(1), 1124, 1201.1(A)(intro para), 1201.1(I)(1), and (K), and 1226(B)(3)(a) and (c))