

Regular Session, 2012

SENATE BILL NO. 295

BY SENATOR MURRAY

WORKERS' COMPENSATION. Provides for temporary total disability, permanent total disability, and supplemental earnings benefits. (gov sig)

1 AN ACT

2 To amend and reenact R.S. 23:1221(1)(a), (2)(a) and (c), and (3)(a) and (d), relative to
3 workers' compensation; to provide for temporary total disability, permanent total
4 disability, and supplemental earnings benefits; and to provide for related matters.

5 Be it enacted by the Legislature of Louisiana:

6 Section 1. R.S. 23:1221(1)(a), (2)(a) and (c), and (3)(a) and (d) are hereby amended
7 and reenacted to read as follows:

8 §1221. Temporary total disability; permanent total disability; supplemental earnings
9 benefits; permanent partial disability; schedule of payments

10 Compensation shall be paid under this Chapter in accordance with the
11 following schedule of payments:

12 (1) Temporary total.

13 (a) For any injury producing temporary total disability of an employee to
14 engage in any self-employment or occupation for wages, whether or not the same or
15 a similar occupation as that in which the employee was customarily engaged when
16 injured, and whether or not an occupation for which the employee at the time of
17 injury was particularly fitted by reason of education, training, or experience, ~~sixty=~~

1 ~~six and two-thirds~~ **seventy-five** percent of wages during the period of such disability.

2 * * *

3 (2) Permanent total.

4 (a) For any injury producing permanent total disability of an employee to
5 engage in any self-employment or occupation for wages, whether or not the same or
6 a similar occupation as that in which the employee was customarily engaged when
7 injured, and whether or not an occupation for which the employee at the time of
8 injury was particularly fitted by reason of education, training, and experience, ~~sixty-~~
9 ~~six and two-thirds~~ **seventy-five** percent of wages during the period of such disability.

10 * * *

11 (c)**(i)** For purposes of Subparagraph (2)(a) of this Paragraph, whenever the
12 employee is not engaged in any employment or self-employment as described in
13 Subparagraph (2)(b) of this Paragraph, compensation for permanent total disability
14 shall be awarded only if the employee proves by clear and convincing evidence,
15 ~~unaided by any presumption of disability,~~ that the employee is physically unable to
16 engage in any employment or self-employment, regardless of the nature or character
17 of the employment or self-employment, ~~including, but not limited to, any and all~~
18 ~~odd-lot employment, sheltered employment, or employment while working in any~~
19 ~~plant, notwithstanding the location or availability of any such employment or self-~~
20 ~~employment.~~

21 **(ii) Notwithstanding the provisions of Item (i) of this Subparagraph, for**
22 **purposes of Subparagraph (2)(a) of this Paragraph, proof that an employee has**
23 **been found by the Social Security Administration to be entitled to and is**
24 **receiving benefits pursuant to 42 U.S.C. §423 shall be prima facie evidence of**
25 **total and permanent disability.**

26 * * *

27 (3) Supplemental earnings benefits.

28 (a) For injury resulting in the employee's inability to earn wages equal to
29 ninety percent or more of wages at time of injury, supplemental earnings benefits

1 equal to ~~sixty-six and two-thirds~~ **seventy-five** percent of the difference between the
 2 average monthly wages at time of injury and average monthly wages earned or
 3 average monthly wages the employee is able to earn in any month thereafter in any
 4 employment or self-employment, whether or not the same or a similar occupation as
 5 that in which the employee was customarily engaged when injured and whether or
 6 not an occupation for which the employee at the time of the injury was particularly
 7 fitted by reason of education, training, and experience, such comparison to be made
 8 on a monthly basis. Average monthly wages shall be computed by multiplying his
 9 "wages" by fifty-two and then dividing the quotient by twelve.

10 * * *

11 (d) The right to supplemental earnings benefits pursuant to this Paragraph
 12 shall in no event exceed a maximum of ~~five hundred twenty~~ **six hundred fifty**
 13 weeks, but shall terminate:

14 (i) As of the end of any two-year period commencing after termination of
 15 temporary total disability, unless during such two-year period supplemental earnings
 16 benefits have been payable ~~during at least thirteen consecutive weeks~~; or

17 (ii) After receipt of a maximum of ~~five hundred twenty~~ **six hundred fifty**
 18 weeks of benefits, provided that for any week during which the employee is paid any
 19 compensation under this Paragraph, the employer shall be entitled to a reduction of
 20 one full week of compensation against the maximum number of weeks for which
 21 compensation is payable under this Paragraph; however, for any week during which
 22 the employee is paid no supplemental earnings benefits, the employer shall not be
 23 entitled to a reduction against the maximum number of weeks payable under this
 24 Paragraph; or

25 (iii) When the employee retires; however, the period during which
 26 supplemental earnings benefits may be payable shall not be less than ~~one hundred~~
 27 ~~four weeks~~ **two hundred eight weeks**.

28 Section 2. This Act shall become effective upon signature by the governor or, if not
 29 signed by the governor, upon expiration of the time for bills to become law without signature

1 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
2 vetoed by the governor and subsequently approved by the legislature, this Act shall become
3 effective on the day following such approval.

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Carla S. Roberts.

DIGEST

Present law, relative to workers' compensation benefits, provides for the calculation of temporary total disability to be at 66-2/3% of wages during the period of disability.

Proposed law changes the calculation to 75%.

Present law provides for permanent total disability to be calculated at 66-2/3% of wages during the period of disability.

Proposed law changes the calculation to 75%.

Proposed law provides that proof an employee is receiving Social Security disability benefits shall be prima facie evidence of total and permanent disability.

Present law provides for supplemental earnings benefits to be calculated 66-2/3% of the difference between the average monthly wages at time of injury and average monthly wages the employee is able to earn in any month thereafter.

Proposed law changes the calculation to 75%.

Present law restricts supplemental earnings to a maximum of 520 weeks. Proposed law increases the number of weeks to 650.

Present law provides for the termination of supplemental earnings at the end of any two-year period commencing after the end of temporary total disability, unless during the two-year period supplemental earnings have been payable during at least 13 consecutive weeks. Proposed law eliminates the 13 consecutive week requirement.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends R.S. 23:1221(1)(a), (2)(a) and (c), and (3)(a) and (d))