

HOUSE BILL NO. 923

INTRODUCED BY D. HARVEY

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING WORKERS' COMPENSATION INSURANCE LAWS TO INCREASE THE COVERAGE FOR WORKERS' COMPENSATION BENEFITS; INCREASING THE PERCENTAGE OF WORKERS' COMPENSATION BENEFITS; AND AMENDING SECTIONS 39-71-701, 39-71-702, 39-71-703, AND 39-71-721, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-71-701, MCA, is amended to read:

"39-71-701. Compensation for temporary total disability -- exception. (1) Subject to the limitation in 39-71-736 and subsection (4) of this section, a worker is eligible for temporary total disability benefits:

- (a) when the worker suffers a total loss of wages as a result of an injury and until the worker reaches maximum healing; or
- (b) until the worker has been released to return to the employment in which the worker was engaged at the time of the injury or to employment with similar physical requirements.

(2) The determination of temporary total disability must be supported by a preponderance of objective medical findings.

(3) Weekly compensation benefits for injury producing temporary total disability are ~~66 2/3%~~ 100% of the wages received at the time of the injury. The maximum weekly compensation benefits may not exceed the state's average weekly wage at the time of injury. Temporary total disability benefits must be paid for the duration of the worker's temporary disability. The weekly benefit amount may not be adjusted for cost of living as provided in 39-71-702(5).

(4) If the treating physician releases a worker to return to the same, a modified, or an alternative position that the individual is able and qualified to perform with the same employer at an equivalent or higher wage than the individual received at the time of injury, the worker is no longer eligible for temporary total disability benefits even though the worker has not reached maximum healing. A worker requalifies for

1 temporary total disability benefits if the modified or alternative position is no longer available to the worker for
2 any reason except for the worker's incarceration as provided for in 39-71-744, resignation, or termination for
3 disciplinary reasons caused by a violation of the employer's policies that provide for termination of employment
4 and if the worker continues to be temporarily totally disabled, as defined in 39-71-116.

5 (5) In cases in which it is determined that periodic disability benefits granted by the Social Security
6 Act are payable because of the injury, the weekly benefits payable under this section are reduced, but not
7 below zero, by an amount equal, as nearly as practical, to one-half the federal periodic benefits for the week,
8 which amount is to be calculated from the date of the disability social security entitlement.

9 (6) If the claimant is awarded social security benefits, the insurer may, upon notification of the
10 claimant's receipt of social security benefits, suspend biweekly compensation benefits for a period sufficient to
11 recover any resulting overpayment of benefits. This subsection does not prevent a claimant and insurer from
12 agreeing to a repayment plan.

13 (7) A worker may not receive both wages and temporary total disability benefits without the written
14 consent of the insurer. A worker who receives both wages and temporary total disability benefits without written
15 consent of the insurer is guilty of theft and may be prosecuted under 45-6-301."

16

17 **Section 2.** Section 39-71-702, MCA, is amended to read:

18 **"39-71-702. Compensation for permanent total disability.** (1) If a worker is no longer temporarily
19 totally disabled and is permanently totally disabled, as defined in 39-71-116, the worker is eligible for
20 permanent total disability benefits. Permanent total disability benefits must be paid for the duration of the
21 worker's permanent total disability, subject to 39-71-710.

22 (2) The determination of permanent total disability must be supported by a preponderance of
23 objective medical findings.

24 (3) Weekly compensation benefits for an injury resulting in permanent total disability are ~~66-2/3%~~
25 100% of the wages received at the time of the injury. The maximum weekly compensation benefits may not
26 exceed the state's average weekly wage at the time of injury.

27 (4) In cases in which it is determined that periodic disability benefits granted by the Social Security
28 Act are payable because of the injury, the weekly benefits payable under this section are reduced, but not

1 below zero, by an amount equal, as nearly as practical, to one-half the federal periodic benefits for the week,
2 which amount is to be calculated from the date of the disability social security entitlement.

3 (5) A worker's benefit amount must be adjusted for a cost-of-living increase on the next July 1 after
4 104 weeks of permanent total disability benefits have been paid and on each succeeding July 1. The
5 adjustment must be the percentage increase, if any, in the state's average weekly wage as adopted by the
6 department over the state's average weekly wage adopted for the previous year.

7 (6) A worker may not receive both wages and permanent total disability benefits without the written
8 consent of the insurer. A worker who receives both wages and permanent total disability benefits without written
9 consent of the insurer is guilty of theft and may be prosecuted under 45-6-301.

10 (7) If the claimant is awarded social security benefits, the insurer may, upon notification of the
11 claimant's receipt of social security benefits, suspend biweekly compensation benefits for a period sufficient to
12 recover any resulting overpayment of benefits. This subsection does not prevent a claimant and insurer from
13 agreeing to a repayment plan."
14

15 **Section 3.** Section 39-71-703, MCA, is amended to read:

16 **"39-71-703. Compensation for permanent partial disability.** (1) If an injured worker suffers a
17 permanent partial disability and is no longer entitled to temporary total or permanent total disability benefits, the
18 worker is entitled to a permanent partial disability award if that worker:

- 19 (a) has an actual wage loss as a result of the injury; and
- 20 (b) has a permanent impairment rating as determined by the sixth edition of the American medical
21 association Guides to the Evaluation of Permanent Impairment for the ratable condition. The ratable condition
22 must be a direct result of the compensable injury or occupational disease that:

- 23 (i) is not based exclusively on complaints of pain;
- 24 (ii) is established by objective medical findings; and
- 25 (iii) is more than zero.

26 (2) When a worker receives a Class 2 or greater class of impairment as converted to the whole
27 person, as determined by the sixth edition of the American medical association Guides to the Evaluation of
28 Permanent Impairment for the ratable condition, and has no actual wage loss as a result of the compensable

1 injury or occupational disease, the worker is eligible to receive payment for an impairment award only.

2 (3) The permanent partial disability award must be arrived at by multiplying the percentage arrived
3 at through the calculation provided in subsection (5) by 400 weeks.

4 (4) A permanent partial disability award granted an injured worker may not exceed a permanent
5 partial disability rating of 100%.

6 (5) The percentage to be used in subsection (4) must be determined by adding all of the following
7 applicable percentages to the whole person impairment rating:

8 (a) if the claimant is 40 years of age or younger at the time of injury, 0%; if the claimant is over 40
9 years of age at the time of injury, 1%;

10 (b) for a worker who has completed less than 12 years of education, 1%; for a worker who has
11 completed 12 years or more of education or who has received a high school equivalency diploma, 0%;

12 (c) if a worker has no actual wage loss as a result of the industrial injury, 0%; if a worker has an
13 actual wage loss of \$2 or less an hour as a result of the industrial injury, 10%; if a worker has an actual wage
14 loss of more than \$2 an hour as a result of the industrial injury, 20%. Wage loss benefits must be based on the
15 difference between the actual wages received at the time of injury and the wages that the worker earns or is
16 qualified to earn after the worker reaches maximum healing.

17 (d) if a worker, at the time of the injury, was performing heavy labor activity and after the injury the
18 worker can perform only light or sedentary labor activity, 5%; if a worker, at the time of injury, was performing
19 heavy labor activity and after the injury the worker can perform only medium labor activity, 3%; if a worker was
20 performing medium labor activity at the time of the injury and after the injury the worker can perform only light or
21 sedentary labor activity, 2%.

22 (6) The weekly benefit rate for permanent partial disability is ~~66-2/3%~~ 100% of the wages received
23 at the time of injury, but the rate may not exceed one-half the state's average weekly wage. The weekly benefit
24 amount established for an injured worker may not be changed by a subsequent adjustment in the state's
25 average weekly wage for future fiscal years.

26 (7) An undisputed impairment award may be paid biweekly or in a lump sum at the discretion of
27 the worker. Lump sums paid for impairments are not subject to the requirements of 39-71-741, except that
28 lump-sum payments for benefits not accrued may be reduced to present value at the rate established by the

1 department pursuant to 39-71-741(5).

2 (8) If a worker suffers a subsequent compensable injury or injuries to the same part of the body,
3 the award payable for the subsequent injury may not duplicate any amounts paid for the previous injury or
4 injuries.

5 (9) If a worker is eligible for a rehabilitation plan, permanent partial disability benefits payable
6 under this section must be calculated based on the wages that the worker earns or would be qualified to earn
7 following the completion of the rehabilitation plan.

8 (10) As used in this section:

9 (a) "heavy labor activity" means the ability to lift over 50 pounds occasionally or up to 50 pounds
10 frequently;

11 (b) "medium labor activity" means the ability to lift up to 50 pounds occasionally or up to 25 pounds
12 frequently;

13 (c) "light labor activity" means the ability to lift up to 20 pounds occasionally or up to 10 pounds
14 frequently; and

15 (d) "sedentary labor activity" means the ability to lift up to 10 pounds occasionally or up to 5
16 pounds frequently."

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18 **Section 4.** Section 39-71-721, MCA, is amended to read:

19 **"39-71-721. Compensation for injury causing death -- limitation.** (1) (a) If an injured employee
20 dies and the injury was the proximate cause of the death, the beneficiary of the deceased is entitled to the
21 same compensation as though the death occurred immediately following the injury. A beneficiary's eligibility for
22 benefits commences after the date of death, and the benefit level is established as set forth in subsection (2).

23 (b) The insurer is entitled to recover any overpayments or compensation paid in a lump sum to a
24 worker prior to death but not yet recouped. The insurer shall recover the payments from the beneficiary's
25 biweekly payments as provided in 39-71-741(5).

26 (2) To beneficiaries as defined in 39-71-116(4)(a) through (4)(d), weekly compensation benefits for
27 an injury causing death are ~~66 2/3%~~ 100% of the decedent's wages. The maximum weekly compensation
28 benefit may not exceed the state's average weekly wage at the time of injury. The minimum weekly

1 compensation benefit is 50% of the state's average weekly wage, but in no event may it exceed the decedent's
2 actual wages at the time of death.

3 (3) To beneficiaries as defined in 39-71-116(4)(e) and (4)(f), weekly benefits must be paid to the
4 extent of the dependency at the time of the injury, subject to a maximum of ~~66 2/3%~~ 100% of the decedent's
5 wages. The maximum weekly compensation may not exceed the state's average weekly wage at the time of
6 injury.

7 (4) If the decedent leaves no beneficiary, a lump-sum payment of \$3,000 must be paid to the
8 decedent's surviving parent or parents.

9 (5) If any beneficiary of a deceased employee dies, the right of the beneficiary to compensation
10 under this chapter ceases. Death benefits must be paid to a surviving spouse for 500 weeks subsequent to the
11 date of the deceased employee's death or until the spouse's remarriage, whichever occurs first. After benefit
12 payments cease to a surviving spouse, death benefits must be paid to beneficiaries, if any, as defined in 39-71-
13 116(4)(b) through (4)(d).

14 (6) In all cases, benefits must be paid to beneficiaries.

15 (7) Benefits paid under this section may not be adjusted for cost of living as provided in 39-71-
16 702."

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