

S.128

An act relating to workers' compensation benefits and misclassification

It is hereby enacted by the General Assembly of the State of Vermont:

* * * Termination of Temporary Total Disability Benefits * * *

Sec. 1. 21 V.S.A. § 643a is amended to read:

§ 643a. DISCONTINUANCE OF BENEFITS

Unless an injured worker has successfully returned to work, an employer shall notify both the commissioner and the employee prior to terminating benefits under either section 642 or 646 of this title. The notice of intention to discontinue payments shall be filed on forms prescribed by the commissioner and shall include the date of the proposed discontinuance and the reasons for it. The employer shall notify the claimant of the proposed discontinuance at least five days before notifying the commissioner. The liability for the payments shall continue for seven days after the notice is received by the commissioner ~~and the employee~~. Those payments shall be made without prejudice to the employer and may be deducted from any amounts due pursuant to section 648 of this title if the commissioner determines that the discontinuance is warranted or if otherwise ordered by the commissioner. Every notice shall be reviewed by the commissioner to determine the sufficiency of the basis for the proposed discontinuance. If, upon review, the commissioner finds that the evidence,

including information from the treating health care provider in the employer's possession, does not reasonably support the proposed discontinuance, as these words are defined in subdivision 601(24) of this title, the commissioner shall order that payments continue until a hearing is held and a decision is rendered. If the commissioner's decision, after a hearing, is that the employee was not entitled to any or all benefits paid between the discontinuance and the final decision, upon request of the employer, the commissioner may order that the employee repay all benefits to which the employee was not entitled. The employer may enforce ~~such~~ a repayment order in any court of law having jurisdiction of the amount involved.

* * * Penalty for Late Payment of Benefits * * *

Sec. 2. 21 V.S.A. § 650(e) is amended to read:

(e) If weekly compensation benefits or weekly accrued benefits are not paid within 21 days after becoming due and payable pursuant to an order of the commissioner, or in cases in which the overdue benefit is not in dispute, a late fee of \$150.00 or ten percent of the overdue amount, whichever is larger, shall be added and paid to the employee, in addition to interest and any other penalties. In the case of an initial claim, benefits are due and payable upon entering into an agreement pursuant to subsection 662(a) of this title, upon issuance of an order of the commissioner pursuant to subsection 662(b) of this title, or if the employer has not denied the claim within 21 days after the claim

is filed. Benefits are in dispute if the claimant has been provided actual written notice of the dispute within 21 days of the benefit being due and payable and the evidence reasonably supports the denial. Interest shall accrue and be paid on benefits that are found to be compensable during the period of nonpayment. The commissioner shall promptly review requests for payment under this section and, consistent with the criteria in department rule 10.13, shall allow for the recovery of reasonable attorney fees associated with an employee's successful request for payment under this subsection.

* * * Increased Penalties for Misclassification * * *

Sec. 3. 8 V.S.A. § 3661(c) is added to read:

(c) An employer who makes a false statement or representation that results in a lower workers' compensation premium, after notice and opportunity for hearing before the commissioner, may be assessed an administrative penalty of not more than \$20,000.00 in addition to any other appropriate penalty.

Sec. 4. 21 V.S.A. § 708(b) is amended to read:

~~(b) Action by the commissioner of banking, insurance, securities, and health care administration. An employer who willfully makes a false statement or representation for the purpose of obtaining a lower workers' compensation premium, after notice and opportunity for hearing before the commissioner of banking, insurance, securities, and health care administration may be assessed an administrative penalty of not more than \$5,000.00 in addition to any other~~

~~appropriate penalty. In addition to any other remedy provided by law, the commissioner of banking, insurance, securities, and health care administration may pursue the collection of the administrative penalty imposed by this section in Washington superior court.~~ When the department of labor has sufficient reason to believe that an employer has made a false statement or representation for the purpose of obtaining a lower workers' compensation premium, the department shall refer the alleged violation to the commissioner of banking, insurance, securities, and health care administration for ~~the commissioner's consideration~~ of enforcement pursuant to 8 V.S.A. § 3661(c).

* * * Investigation and Enforcement of Classification Requirements * * *

Sec. 5. 21 V.S.A. § 711(a) is amended to read:

(a) A workers' compensation administration fund is created pursuant to subchapter 5 of chapter 7 of Title 32 to be expended by the commissioner for the administration of the worker's compensation and occupational disease programs. The fund shall consist of contributions from employers made at a rate of ~~0.81~~ 0.96 percent of the direct calendar year premium for workers' compensation insurance, one percent of self-insured workers' compensation losses, and one percent of worker's compensation losses of corporations approved under the chapter 9 of this title. Disbursements from the fund shall be on warrants drawn by the commissioner of finance and management in anticipation of receipts authorized by this section.

Sec. 6. WORKERS' COMPENSATION FUND SURCHARGE; POSITIONS
AUTHORIZED

(a) In fiscal year 2010, in addition to the fee charged to employers pursuant to 21 V.S.A. § 711(a), there shall be an additional 0.10 percent charged to each employer. This 0.10 percent shall be used to fund two new positions authorized in subsection (b) of this section.

(b) The following positions are authorized for the department of labor: two full-time exempt investigator positions. These two investigators shall primarily investigate classification compliance with the reporting requirement for job classification and employment status information for determining workers' compensation premiums.

* * * Compliance Statements * * *

Sec. 7. 21 V.S.A. § 690 is amended to read:

§ 690. CERTIFICATE, FORM; COPY OF POLICY

(a) An employer subject to the provisions of this chapter who has workers' compensation insurance coverage pursuant to section 687 or 689 of this title shall file with the commissioner a certificate of the insurance in a form prescribed by the commissioner. The certificate shall include the policy number, effective date, date of expiration, operations covered and such other information the commissioner requests. The certificate shall be signed by a duly authorized representative of the insurance or guarantee company that

issued the insurance coverage. Upon request, the insurance or guarantee company shall file with the commissioner a copy of the contract or policy of insurance issued.

(b)(1) In addition to any other authority provided to the commissioner pursuant to this chapter, the commissioner may issue a written request to a ~~contractor engaged in the business of nonresidential building or construction~~ an employer subject to the provisions of this chapter to provide a workers' compensation compliance statement on a form provided by the commissioner. For the purposes of this subsection, ~~a contractor~~ an employer includes subcontractors and independent contractors. The form shall require all the following information sorted by job site:

(A) The number of employees employed during the entire current workers' compensation policy term or the previous year if no policy was in effect or partially in effect prior to the request and the effective dates of the term of any policies in effect.

(B) The total number of hours for which compensation was paid.

(C) ~~Designation of the hours that were the basis of the appropriate~~ National Council on Compensation Insurance (NCCI) classification code A list of all subcontractors and 1099 workers and their function on the job site for the period in question.

(D) The name of the workers' compensation insurance carrier, the policy number, and the agent, if any.

(E) As an attachment, the insurance policy declaration pages, including how much payroll the policy is covering and a designation of the hours that provide the basis of the appropriate National Council on Compensation Insurance classification code.

(2) Any ~~contractor~~ employer who fails to comply with this subsection or falsifies information on the compliance statement may be assessed an administrative penalty of not more than \$5,000.00 for each week during which the noncompliance or falsification occurred and any costs and attorney fees required to enforce this subsection. The commissioner may also seek injunctive relief in Washington superior court.

(3) A compliance statement shall be a public record, and the commissioner shall provide a copy of a compliance statement to any person on request. An insurance company provided with a compliance statement may investigate the information in the statement. Based on evidence that a ~~contractor~~ an employer is not in compliance with this chapter, the commissioner shall request a compliance statement or an amended compliance statement from the ~~contractor~~ employer, investigate further, and take appropriate enforcement action. ~~No contractor shall be required to provide~~

~~more than one workers' compensation compliance statement per year, unless the commissioner explains the need for each additional statement.~~

(4) In the event the commissioner receives a request for an employer to provide a compliance statement but finds no evidence of noncompliance with this chapter, the commissioner shall provide timely notification of the findings to the requesting party.

* * * Unemployment Insurance Trust Fund Solvency * * *

Sec. 8. SOLVENCY OF UNEMPLOYMENT INSURANCE TRUST FUND

The general assembly committees of jurisdiction shall consider appropriate adjustments to both expenses and income to address unemployment insurance trust fund solvency.

* * * Workers' Compensation Vocational Rehabilitation Referrals * * *

Sec. 9. WORKERS' COMPENSATION VOCATIONAL REHABILITATION
BENEFITS; DEPARTMENT OF LABOR; DEPARTMENT OF
BANKING, INSURANCE, SECURITIES, AND HEALTH CARE
ADMINISTRATION; DEPARTMENT OF DISABILITIES, AGING,
AND INDEPENDENT LIVING

The departments of labor; of banking, insurance, securities, and health care administration; and of disabilities, aging, and independent living shall develop and implement procedures to assure that all workers who receive temporary total disability benefits for at least 90 consecutive days shall be screened by the

department of disabilities, aging, and independent living no later than 30 days after the date that the worker receives 90 consecutive days of temporary total disability benefits, unless the injured worker has affirmatively declined vocational rehabilitation services.

Sec. 10. Sec. 15 of No. 208 of the Acts of 2008 is amended to read:

Sec. 15. VOCATIONAL REHABILITATION; DEPARTMENT OF LABOR

(a) The commissioner of labor shall consult with the department of labor advisory council established in 21 V.S.A. § 1306 to review current practices and activities in the following areas:

~~(1) Insurance carriers providing timely notification to the department of labor of all claimants who have been out of work for 90 consecutive days and requiring the department to provide immediate administrative enforcement for any failure to provide that notification.~~

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Sec. 11. EFFECTIVE DATE

This act shall take effect on passage.