



BILL SUMMARY

Workers' Compensation HF 518

Status of Bill: House Floor
Committee: Commerce (passed Committee 14-9)
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March 7, 2017

Summary

House File 518 makes numerous changes regarding Iowa's workers' compensation laws. An opponent say the bill cuts benefits available to injured Iowa workers, reduces the employers' liability to provide benefits to workers injured on the job, and further tilts the claims procedures in favor of employers avoiding payment of benefits. Supporters say the bill brings a balance to the bill and will help fight rising workers' compensation rate premiums.

Specifically, the bill changes:

- Limits the amount a time a person can receive benefits.
- A shoulder injury is moved from a whole body injury to a scheduled injury.
- Requires employers to take into account pre-existing conditions and past injuries in determining benefits.
- No longer incentivizes employers to pay compensation benefits to injured employees on time.

Willful Injury – Intoxication – Section 1

The bill adds language relating to an injury caused by intoxication. For the purpose of disallowing compensation, both of the following must apply:

- If the employer can show that the employee at the time of the injury, or immediately following the injury that the employee had a positive test result for intoxication, then it is presumed that the employee was intoxicated and it was the prominent factor in causing the injury.
- Once the employer has shown that the employee was intoxicated, then the burden of proof is on the employee to overcome this presumption, or that it was not the predominant factor in causing the injury.

As a result of this change, when a worker tests positive for drugs or alcohol, intoxication is presumed to be the cause of the injury.

Contract to Relieve Not Operative – Section 2

Language is added so that this code section does not create a private cause of action. As a result, this could threaten the ability of workers to sue for retaliatory discharge, and the stricken code holds employers accountable for terminating workers simply because they have been injured.

Notice of Injury – Failure to Give, and Limitation of Actions – Who May Maintain Action. - Sections 3 & 4

Current law requires a worker to notify an employer of an injury within 90 days of the occurrence of the injury. The bill adds a definition for the term in current code, **date of the occurrence of the injury**. It is defined as the date that the employee knew or should have known that the injury was work-related. As a result, this forces an injured worker to file a claim right away before having time to fully consider the severity of the injury and the necessity of the claim.

Temporary Total and Temporary Partial Disability – Section 5

Current law states that if the employee refuses to accept the suitable work with the same employer, the employee cannot be compensated with temporary partial, temporary total, or healing period benefits during the period of the refusal. New language is inserted so that if the employer offers the employee suitable work and the employee refuses to accept the suitable work offered by the employer, then the employee cannot be compensated with temporary partial, temporary total, or healing period benefits during the period of the refusal. In addition, work offered at the employer's main place of business or established place of operation where the employee has previously worked is presumed to be geographically suitable for an employee whose duties involve travel away from the employer's main place of business or established place of operation more than 50% of the time.

The employer is required to offer temporary work to the employee in writing, including details of lodging, meals, and transportation, and must inform the employee that, if the employee refuses the offer of temporary work, then the employee must inform the employer of the refusal and the reason for the refusal to the employer in writing, and during the period of the refusal, the employee will not be compensated with temporary partial, temporary total, or healing period benefits, unless the work refused is not suitable. If the employee refuses the offer of temporary work on the grounds that the work is not suitable, then the employee must inform the employer of the refusal, along with the reason for the refusal, in writing at the time the offer of work is refused. If the refusal does not include the reason for the refusal and it is not in writing, it then excludes the employee from using the suitability of the work as the reason for the refusal until the reason for the refusal is given in writing to the employer.

As a result, employers are allowed to force injured workers to move to the company headquarters for "light duty" work or face termination.

Permanent Partial Disabilities – Sections 6 & 8

Current law states that compensation for permanent partial disability must begin at the end of the healing period as provided in Iowa Code. This language is amended so that compensation for permanent partial disability must begin when it is medically indicated that maximum medical improvement from the injury has been reached and that the extent of loss or percentage of permanent impairment can be determined by use of the guides to the evaluation of permanent injury, published by the American Medical Association, and adopted by the Workers' Compensation Commissioner. As a result of this change, this will lead to an increase in delayed claims payments to injured workers, and the bill pushes back the start date for payments to workers with a permanent partial disability, sometimes for years.

Compensation for permanent partial disability for an injury must end on the date when compensation for permanent total disability for any injury begins. An employee cannot receive compensation for permanent partial disability if the employee is receiving compensation for permanent total disability.

Shoulder Injury – Section 7

In addition, current law states the loss of two-thirds of that part of an arm between the shoulder joint and the elbow joint must equal the loss of an arm and the compensation as a result must be weekly compensation during 250 weeks. The new requirement is the loss of that part of an arm, including the shoulder joint to the elbow joint, must equal the loss of an arm and the compensation as a result must be weekly compensation during 250 weeks. This change drastically reduces benefits for workers who suffer a shoulder injury. Currently, shoulder injuries are treated as an injury to the body as a whole. This section requires that shoulder injuries be compensated on a one-size-fits-all scheduled member basis.

Earning Capacity

New language is inserted so that when determining the reduction in the employee's earning capacity caused by the disability, it is required to take into account the permanent partial disability of the employee and the number of years in the future it was reasonably anticipated that the employee would work at the time of the injury. In addition, if an employee who is eligible for compensation due to permanent partial disability returns to work,

or is offered work for which the employee receives, or would receive the same or greater salary, wages, or earnings than the employee received at the time of the injury, then the employee must be compensated based only upon the employee's functional disability resulting from the injury, and not in relation to the employee's earning capacity.

If an employee sustains an injury compensable due to permanent partial disability after reaching the age of sixty-seven, then compensation must be paid to the employee based on the employee's resulting loss of earning capacity not to exceed an amount equal to 150 weeks of compensation. As a result, older lowans suffering an injury would see their benefits cut off at age sixty-seven, or after just a few years.

Lay Testimony - Section 8

For nearly all cases of permanent partial disability and when determining functional disability, and not loss of earning capacity, the extent of loss or percentage of permanent impairment must be determined solely by utilizing the guides to the evaluation of permanent impairment, published by the American Medical Association, and adopted by the Workers' Compensation Commissioner. Lay testimony or agency expertise cannot be used in determining loss or percentage of permanent impairment for permanent partial disability and when determining functional disability and not loss of earning capacity.

Permanent Total Disability – Section 9

For permanent, total disability, current law states the weekly compensation is payable during the period of the employee's disability. This language is removed and replaced to say the weekly compensation is payable until the employee is no longer permanently and totally disabled or until the employee reaches sixty-seven years old, whichever occurs first. If an employee sustains an injury that is compensable after reaching sixty-seven years old, then compensation benefits must be paid to the employee, as long as the employee remains permanently and totally disabled, for no more than 150 weeks. As a result, older lowans suffering body as a whole injury would see their benefits cut off at age sixty-seven, or after just a few years.

Current law states that if compensation has been paid to any person as part of Chapter 85 (Workers' Compensation), Chapter 85A (Occupational Disease Compensation), or Chapter 85B (Occupational Hearing Loss) for the same injury producing a total permanent disability, then any amounts paid out must be deducted from the total amount of compensation payable for the permanent total disability.

Changes are made so that if compensation has been paid to any person as part of Chapter 85, Chapter 85A, or Chapter 85B for an injury producing a permanent disability, then any amounts paid out must be deducted from the total amount of compensation payable for permanent total disability. In addition, an employee is prohibited from receiving compensation for permanent partial disability if the employee is receiving compensation for permanent total disability.

Forfeiture of Pay due to Secondary Payment Source - Section 10

An employee is not entitled to compensation for a permanent total disability while the employee is receiving unemployment benefits, Chapter 96. In addition, new language is added so that an employee forfeits the employee's weekly compensation for a permanent total disability for a week when the employee is receiving a payment equal to or greater than 50% of the statewide average weekly wage from any of the following sources:

- Gross earnings from any employer.
- Payment for services from any source.

Credits for Excess Payments and Recovery of Employee Overpayment – Section 11

Under current Code, when an employer overpays a workers' compensation benefit, a credit is established for that employer to recover that overpayment against a subsequent injury. Code language is changed so that an employer can receive credit for excess payments of temporary total disability, healing period, or temporary partial disability to an employee against the liability of the employer for any future weekly benefits due for an injury to the employee.

Language is changed so that an employer can receive credit for excess payments of any weekly benefits paid to an employee against the liability of the employer for any future weekly benefits for permanent partial disability that is due for any current or subsequent injury to the same employee. In addition, requirements limiting the establishment of an overpayment and the availability of credit are stricken.

Successive Disabilities – Sections 12 & 13

Currently, employers are considered fully responsible for a workers' injury, regardless of previous injuries. If a worker seeks new employment following a prior workplace injury that worker gets a "fresh start," meaning their new employer will fully cover any future injuries. The bill proposes that an employer is only liable for that portion of an employee's disability that relates to the injury, which serves as the basis for the employee's claim for workers' compensation. An employer is not liable for compensating an employee's preexisting disability that arose out of and in the course of employment with the employer to the extent that the preexisting disability has already been compensated. Coordinating language relating to compensation of preexisting or combined disabilities and successor employers are also stricken.

Examination of Injured Employees – Section 14

The bill amends the Code so that the refusal of an employee to submit to an examination requested by the employer forfeits the employee's right to any compensation for the period of the refusal. In addition, the bill amends the Code so that if the injury for which the employee is being examined is found to be compensable under workers' compensation law, then an employer is only liable to reimburse an employee for a medical examination requested by the employee. An employer is not liable for the cost of the examination if the injury for which the employee is being examined is determined not to be a compensable injury. An employer is liable to pay a reasonable fee for an examination requested by the employee with reasonableness to be determined based on the typical fee charged by a medical provider to perform an impairment rating in the local area where the examination is conducted.

As a result, the change would force the employee to forfeit all benefits during that time period if the employer determines that the employee did not have a good reason for refusing the exam, and it creates an environment where injured workers are less likely to seek independent medical exams removes one of the most important safeguards against fraud and abuse by employers.

Commutation – Sections 15 & 16

The bill requires that future payments may be commuted only upon a party applying to the Workers' Compensation Commissioner and upon written consent of all parties to the proposed commutation or partial commutation.

New language is inserted so that the parties to any commutation or partial commutation of future compensation payments agreed to and ordered may also agree that the employee has the right to benefits under the terms and conditions as agreed to by the parties for a specified period of time after the commutation or partial commutation agreement has been ordered by the Workers' Compensation Commissioner. During that time period, the Commissioner has jurisdiction of the commutation or partial commutation agreement for the purpose of adjudicating the employee's entitlement to benefits as stated in the agreement. These changes target the subset of injured workers who need the system the most.

Definitions – Section 17

The bill amends the definition of **personal injury arising out of and in the course of the employment** so that it only applies if the injuries are found to be the predominant factor in causing the disability for which compensation is claimed. In addition, the bill states that for this definition, an injury is the predominant factor in causing a disability if more than 50% of the disability is attributable to the injury. As a result, this allows more employers to blame a worker's weight, age, or prior health conditions rather than take responsibility for the injury.

Extraterritorial Injuries and Benefit Claims – Injuries Out-of-State – Section 18

Code language is tightened for out-of-state injuries. As a result, Iowa law is only applicable if the employer has a place of business in Iowa and the employee regularly works at or from that place of business. The bill strikes language for when the employer has a place of business in Iowa and the employee is based in Iowa.

Division of Workers' Compensation - Judicial Review – Section 19 & 21

Current law allows judicial review of decisions or orders of the Workers' Compensation Commissioner in District Court. New language is inserted so that if the party seeking judicial review posts a bond securing any compensation awarded per the decision or order with the District Court within 30 days of filing the petition, then a timely petition for judicial review filed per Iowa Code must delay the execution or enforcement of a decision or order of the Workers' Compensation Commissioner in a reasonable amount as determined and approved by the Court.

Unless either party posting the bond files an objection with the court within 20 days from the date that the bond is determined and approved by the Court that the amount of the bond is not reasonable; or the party whose interests are protected by the bond files an objection with the court within 20 days from the date that the amount of the bond is determined and approved by the Court that the amount of the bond is not reasonable or adequate, then the amount of the bond must be deemed reasonable and adequate. If, upon objection, the District Court orders the amount of the bond posted to be modified, the party seeking judicial review is required to repost the bond in the amount ordered within 20 days of the date of the order modifying the bond in order to continue the stay of execution or enforcement of the decision or order of the Workers' Compensation Commissioner. Lastly, conforming changes are made to include the provisions relating to Judicial Review.

These changes will cause more injured workers to wait as long as three years or more to obtain an award of benefits

Fees- Approval – Section 20

New language is added that an attorney cannot recover fees for legal services based on the amount of compensation voluntarily paid or agreed to be paid to an employee for temporary or permanent disability. An attorney can only recover a fee based on the amount of compensation that the attorney demonstrates would not have been paid to the employee but for the efforts of the attorney. Any disputes over the attorney fees must be resolved by the Workers' Compensation Commissioner.

The change results in requiring attorneys to show that the fees they charged were for benefits that would not have been paid, but for the efforts of the attorney.

Monies and Interest - Interest on Judgements and Decrees – Section 22

Chapter 353, relating to interest due on unpaid weekly workers' compensation payments, is amended so that instead of a 10% per year interest rate, interest must accrue from the date each compensation payment is due at an annual rate equal to the one-year treasury constant maturity published by the Federal Reserve in the most recent H15 Report settled prior to the date each compensation payment is due, plus 2%.

This change rewards insurance carriers that violate the law that specifies when work comp benefits are due. In addition, timely payment of weekly workers' compensation benefits ensures a modest level of economic security not only the worker, but also the worker's family and children.

Effective Date and Applicability – Sections 23 and 24

The bill takes effect upon enactment and applies to any injuries occurring and any applications for commutations filed on or after the effective date of the bill.