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DELAWARE STATE SENATE

142nd GENERAL ASSEMBLY

SENATE BILL NO. 159

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO WORKERS COMPENSATION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend §2302, Title 19 of the Delaware Code, by deleting subparagraph (b) in its entirety and
2 inserting in lieu thereof the following:

3 “(b) The rate of wages shall be determined by computing the total wages paid to the worker during the twenty-
4 six weeks immediately preceding the date of injury and dividing by twenty-six, provided that:

5 (1) If the worker worked less than twenty-six weeks in the employment in which the worker was
6 injured, the average weekly wage shall be based upon the total wage earned by the worker in the
7 employment in which the worker was injured, divided by the total number of weeks actually
8 worked in that employment;

9 (2) If a worker sustains a compensable injury before completing his first work week, the average
10 weekly wage shall be calculated as follows:

11 (a) If the contract was based on hours worked, be determining the number of hours for each
12 week contracted for by the worker multiplied by the worker’s hourly rate;

13 (b) If the contract was based on a weekly wage, by determining the weekly salary contracted
14 for by the worker; or

15 (c) If the contract was based on a monthly salary, by multiplying the monthly salary by twelve
16 and dividing that figure by fifty-two; and

17 (3) If the hourly rate of earnings of the worker cannot be ascertained, or if the pay has not been
18 designated for the work required, the average weekly wage, for the purpose of calculating compensation, shall be

19 taken to be the average weekly wage for similar services performed by other workers in like employment for the
20 past twenty-six weeks;

21 Section 2. Amend §2322(a), Title 19, of the Delaware Code, by inserting at the end of subparagraph (a) the
22 following:

23 “A fee for services shall not exceed amounts specified in the fee schedules adopted pursuant to section
24 2322.A.”

25 Section 3. Amend §2377(c), Title 19 of the Delaware Code, by deleting the words require the employer to
26 furnish additional services, medicines and supplies of the kind mentioned in subsection (a) of this subsection, as and when
27 needed, for such further period as it shall deem right and proper. The charges for such additional services, medicines and
28 supplies shall not exceed the rates regularly charged to other individuals for like services and supplies, provided, however,
29 that the Board shall at all times have jurisdiction to determine and shall determine the character of services and supplies to
30 be furnished and by inserting in lieu thereof the following:

31 “ amounts specified in the fee schedules adopted pursuant to section 2322.5

32 Section 4. Amend §2322.5 Chapter 23, Title 19 of the Delaware Code by adding a new §2322A to read as
33 follows:

34 “§2322A. Maximum Fees and Reimbursement Rates.

35 No later than January 1, 2003, the board shall adopt a schedule of maximum fees for medical treatment that shall
36 not exceed 113 percent of fees prescribed in the most current medicare resource based relative value scale system
37 applicable to Delaware as prepared by the united states department of health and human services. The board shall also
38 adopt a hospital fee schedule setting maximum hospital reimbursement rates at 113 percent of the most current medicare
39 reimbursement rates for Delaware. the board shall update these maximum fee schedules on each succeeding January 1 to
40 incorporate the most recent medicare reimbursement formulas.”

41 Section 5. Amend §2323, Title 19 of the Delaware Code, by deleting that section in its entirety and replacing in
42 lieu thereof the following:

43 “Section 2323. Selection of physician, surgeon, dentist, optometrist or chiropractor.

44 Any employee who alleges an industrial injury shall have the right to employ a physician, surgeon, dentist,
45 optometrist or chiropractor of the employee’s own choosing from a list supplied by the employer of at least five
46 physicians or other duly licensed practitioners of the healing arts authorized to treat under this chapter. Notice of the

employee's intention to employ medical aid as aforesaid shall be given to the employee's employer or its insurance carrier and to the Board. Notice that medical aid was employed as aforesaid shall be given within 30 days thereafter to the employer or its insurance carrier in writing. If the alleged injury is subsequently held to be compensable, the employer shall be liable for the reasonable cost of the services of any physician, surgeon, dentist, optometrist or chiropractor whose employment was utilized by the employee subject to the limits in section 2322 provided notice of said employment was given to the employer or its insurance carrier."

Section 6. Amend §2326(a), Title 19 of the Delaware Code, by inserting at the end of subparagraph (a) the following:

"Except for injuries subject to (e), loss resulting from injuries to the entire spine shall receive 66 2/3 percent of wages for a period not to exceed a total of 300 weeks."

Section 7. Amend §2327, Title 19 of the Delaware Code by adding a new subparagraph (c) to read as follows:

"(c) No petition for payment regarding a subsequent permanent injury shall be accepted by the workers' compensation fund on or after the enactment of this subsection.

Section 8. Amend § 2343.5 Chapter 23, Title 19 of the Delaware Code by adding a new section 2343A to read as follows:

"2343A Physician form.

The board shall adopt a form to accompany any submission from the treating physician regarding disability. The form shall require the treating physician to report specific physical restrictions and remaining physical capabilities."

Section 9. Amend §2344, Title 19 of the Delaware Code, by adding a new (c) to read as follows.

"(c) Prior to acceptance of a claim or the reaching of an agreement, an employer may notify the employee and board that it will make provisional payment while it determines whether to accept or deny the claim. notice shall be provided on a form adopted by the board. provisional payment shall be without prejudice and shall not be an admission of liability."

Provisional payment shall commence within 15 days of the issuance of the notice and may continue for up to 90 days. the employer shall on a form adopted by the board notify the employee and board within 5 days of terminating provisional payment

The notice shall specify whether termination of provisional payment is because the employer is denying the claim, accepting the claim or because agreement has been reached."

75 Section 10. Amend §2346, Title 19 of the Delaware Code, by inserting between the words “necessary” and “,
76 provided” the following:

77 “ subject to the fee schedule maximums,”.

78 Section 11. Amend §2347 Title 19 of the Delaware Code, by deleting that section and replacing it with the
79 following:

80 “On the application of any party in interest on the ground that the incapacity of the injured employee has
81 subsequently terminated, increased, diminished or recurred or that the status of the dependent has changed, the Board may
82 at any time, but not oftener than once in 6 months, review any agreement or award.

83 On such review, the Board may make an award ending, diminishing, increasing or renewing the compensation
84 previously agreed upon or awarded, and designating the persons entitled thereto, subject to this chapter, and shall state its
85 conclusions of facts and rulings of law. The Department shall immediately send to the parties a copy of the award by
86 personal delivery or by registered mail.

87 This section shall not apply to payments under §2358 of this title.

88 Compensation payable to an employee, under this chapter, may be suspended, terminated or modified by the
89 employer upon the filing of a petition alleging that the employee is able to return to work and is capable of earning any
90 wages. Such petition must be accompanied by the supporting affidavit of a physician, on a form prescribed by the
91 Department, based on an examination made within fifteen days of the filing of the petition. If the employee disagrees
92 with the proposed suspension, termination or modification, the employee must give written notice of the disagreement to
93 the Department and the employer within seven days after receipt of the notice of intent to suspend, terminate or modify
94 benefits. If the Department and employer do not receive a notice of disagreement, compensation shall be suspended,
95 terminated or modified, as the case may be. Upon receipt of the notice of disagreement, the Department shall
96 immediately notify the parties by telephone or other means, and attempt to resolve the disagreement. If the Department is
97 unable to resolve the disagreement within ten days of the receipt of the notice of disagreement, the matter shall be set for
98 hearing. An employer shall not be required to continue payment of benefits in accordance with the notice of
99 compensation payable for more than thirty days following its original notice to the employee of its intent to suspend,
100 terminate or modify the notice of compensation payable.”

101 Section 12. Amend §2350 Title 19 of the Delaware Code, by inserting between the words “appeals” and “The
102 Court” the following:

103 (a) “ Every appeal shall specify those portions of the decision being appealed with specific references to the
104 findings of fact and conclusions of law being appealed.”

105 Section 13. Amend §2357, Title 19 of the Delaware Code, by deleting that section in its entirety and replacing in
106 lieu thereof the following:

107 “§2357 Collection of Payments in Default.

108 If default is made by the employer for 30 days in benefits for lost wages or permanency and the employer has no
109 reasonable basis to believe that benefits are not due, the board shall order the benefits paid and may award a civil penalty
110 not to exceed 20 percent of the benefits in default.”

111 Section 14. Amend §23258, Title 19 of the Delaware Code by deleting the Title and replacing it with the
112 following:

113 “§2356 Commutation of compensation and compromise and release.”

114 Section 15. Amend §2358, Title 19 of the Delaware Code, by inserting a new subsection (B) to read as follows:

115 “(B) Nothing in this act shall impair the right of the parties in interest to compromise and release any and all
116 liability which is claimed to exist under this act on account of injury or death. the employer or insurer shall
117 submit the proposed compromise and release by stipulation signed by both parties to the board for approval. the
118 board shall consider the proposed agreement and shall render a decision. the board shall not approve any
119 compromise and release agreement unless it first determines that the claimant understands the full legal
120 significance of the agreement.”

121 Section 16. Amend §2362, Title 19 of the Delaware Code, by deleting subparagraph (b) in its entirety and
122 replacing it with the following:

123 “(b) All medical expenses shall be paid within 30 days after bills and all documentation and records relating to
124 said expenses are received by the employer or its insurance carrier for payment, unless the carrier or self-insured
125 employer notifies claimant or his or her attorney in writing that said expenses are contested or that further verification is
126 required. Notification of the health care provider shall be deemed notice to the claimant.

SYNOPSIS

Similar to national conditions, economic conditions have deteriorated in Delaware in the last several years. Last year, the State revenue decreased \$200 million. Due to further revenue decreases, the Governor expects the gap between projected revenues and expenditures in Fiscal Year 2004 to be around \$300 million. Most of these shortfalls are attributable to increases in medical costs, school aid and growing prison costs.

The private sector has experienced similar conditions. Business revenues are down and costs are increasing. Because of increased costs, companies have reduced hirings, or, in some cases, have simply moved out of state. Between December 2001 and December 2002, Delaware lost 9,500 non-farm jobs. The manufacturing sector topped the list, losing close to 3,000 jobs in that same time period. At the same time, living costs in Delaware have increased. In particular, medical care has increased an average of 8.7% in 2001 according to the Centers for Medicare and Medicaid Services. Other groups report that medical care costs are expected to continue to increase significantly over the next decade. Every month more Delawareans lose medical insurance coverage or lose their jobs that provide medical coverage.

A part of the reason for the high cost of doing business in Delaware is the cost of Workers Compensation. In 2001, workers compensation rates increased 16% and in 2002 they increased over 6%. The Delaware Compensation Rating Bureau cited medical costs as a significant contributing factor to the recent increase in workers compensation rates.

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