

3010

2013-2014 Regular Sessions

I N   S E N A T E

January 28, 2013

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Introduced by Sen. GALLIVAN -- read twice and ordered printed, and when printed to be committed to the Committee on Labor

AN ACT to amend the workers' compensation law, in relation to applicable average weekly wage

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. Subdivision 16 of section 2 of the workers' compensation  
2     law, as added by chapter 6 of the laws of 2007 and as further amended by  
3     section 104 of part A of chapter 62 of the laws of 2011, is amended to  
4     read as follows:

5     16. "[New York state] APPLICABLE average weekly wage" shall mean THE  
6     LESSER OF: (I) the average weekly wage of the state of New York for the  
7     previous calendar year as reported by the commissioner of labor to the  
8     superintendent of financial services on March thirty-first; OR (II) THE  
9     AVERAGE WEEKLY WAGE OF THE ECONOMIC DEVELOPMENT REGION, PURSUANT TO  
10    SECTION TWO HUNDRED THIRTY OF THE ECONOMIC DEVELOPMENT LAW, IN WHICH THE  
11    EMPLOYEE RESIDES AS REPORTED BY THE COMMISSIONER OF LABOR TO THE SUPER-  
12    INTENDENT OF FINANCIAL SERVICES ON MARCH THIRTY-FIRST. PROVIDED, HOWEV-  
13    ER, THAT THE APPLICABLE AVERAGE WEEKLY WAGE SHALL NOT BE LESS THAN SEVEN  
14    HUNDRED NINETY-TWO DOLLARS.

15    S 2. Paragraph (a) of subdivision 6 of section 15 of the workers'  
16    compensation law, as amended by chapter 689 of the laws of 2007, is  
17    amended to read as follows:

18    (a) Compensation for permanent or temporary total disability due to an  
19    accident or disablement resulting from an occupational disease that  
20    occurs, (1) on or after January first, nineteen hundred seventy-eight,  
21    shall not exceed one hundred twenty-five dollars per week, that occurs  
22    (2) on or after July first, nineteen hundred seventy-eight, shall not  
23    exceed one hundred eighty dollars per week, that occurs (3) on or after  
24    January first, nineteen hundred seventy-nine, shall not exceed two  
25    hundred fifteen dollars per week, that occurs (4) on or after July

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

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1 first, nineteen hundred eighty-three, shall not exceed two hundred  
2 fifty-five dollars per week, that occurs (5) on or after July first,  
3 nineteen hundred eighty-four, shall not exceed two hundred seventy-five  
4 dollars per week, that occurs (6) on or after July first, nineteen  
5 hundred eighty-five, shall not exceed three hundred dollars per week,  
6 that occurs (7) on or after July first, nineteen hundred ninety, shall  
7 not exceed three hundred forty dollars per week; and in the case of  
8 temporary total disability shall not be less than thirty dollars per  
9 week and in the case of permanent total disability shall not be less  
10 than twenty dollars per week except that if the employee's wages at the  
11 time of injury are less than thirty or twenty dollars per week respec-  
12 tively, he or she shall receive his or her full weekly wages. Compen-  
13 sation for permanent or temporary partial disability due to an accident  
14 or disablement resulting from an occupational disease that occurs (1) on  
15 or after January first, nineteen hundred seventy-eight, shall not exceed  
16 one hundred five dollars per week, that occurs (2) on or after July  
17 first, nineteen hundred eighty-three, shall not exceed one hundred twen-  
18 ty-five dollars per week, that occurs (3) on or after July first, nine-  
19 teen hundred eighty-four, shall not exceed one hundred thirty-five  
20 dollars per week, that occurs (4) on or after July first, nineteen  
21 hundred eighty-five, shall not exceed one hundred fifty dollars per  
22 week, that occurs (5) on or after July first, nineteen hundred ninety,  
23 shall not exceed two hundred eighty dollars per week; nor be less than  
24 twenty dollars per week; except that if the employee's wages at the time  
25 of injury are less than twenty dollars per week, he or she shall receive  
26 his or her full weekly wages. In no event shall compensation when  
27 combined with decreased earnings or earning capacity exceed the amount  
28 of wages which the employee was receiving at the time the injury  
29 occurred. Compensation for permanent or temporary partial disability, or  
30 for permanent or temporary total disability due to an accident or disa-  
31 blement resulting from an occupational disease that occurs (1) on or  
32 after July first, nineteen hundred ninety-one and prior to July first,  
33 nineteen hundred ninety-two, shall not exceed three hundred fifty  
34 dollars per week; (2) on or after July first, nineteen hundred ninety-  
35 two, shall not exceed four hundred dollars per week; nor be less than  
36 forty dollars per week except that if the employee's wages at the time  
37 of injury are less than forty dollars per week, the employee shall  
38 receive his or her full wages. Compensation for permanent or temporary  
39 partial disability, or for permanent or temporary total disability due  
40 to an accident or disablement resulting from an occupational disease  
41 that occurs (1) on or after July first, two thousand seven shall not  
42 exceed five hundred dollars per week, (2) on or after July first, two  
43 thousand eight shall not exceed five hundred fifty dollars per week, (3)  
44 on or after July first, two thousand nine shall not exceed six hundred  
45 dollars per week, and (4) on or after July first, two thousand ten, and  
46 on or after July first of each succeeding year, shall not exceed two-  
47 thirds of the [New York state] APPLICABLE average weekly wage for the  
48 year in which it is reported. Compensation for permanent or temporary  
49 partial disability, or for permanent or temporary total disability due  
50 to an accident or disablement resulting from an occupational disease  
51 that occurs on or after July first, two thousand seven shall not be less  
52 than one hundred dollars per week except that if the employee's wages at  
53 the time of injury are less than one hundred dollars per week, the  
54 employee shall receive his or her full wages. In no event shall compen-  
55 sation when combined with decreased earnings or earning capacity exceed  
56 the amount of wages the employee was receiving at the time the injury

1 occurred. Compensation for permanent or temporary partial disability, or  
2 for permanent or temporary total disability due to an accident or disa-  
3 blement resulting from an occupational disease or injury that occurred  
4 as a result of World Trade Center rescue activity by an employee of a  
5 private voluntary hospital, who passed a physical examination upon  
6 employment as a rescue worker that failed to reveal evidence of a condi-  
7 tion that was the proximate cause of disablement or occupational disease  
8 or injury, shall not exceed three-quarters of a claimant's wage on  
9 September eleventh, two thousand one. In no event shall compensation  
10 when combined with decreased earnings or earning capacity exceed the  
11 amount of wages the employee was receiving on September eleventh, two  
12 thousand one.

13 S 3. Subdivision 5 of section 52 of the workers' compensation law, as  
14 amended by chapter 139 of the laws of 2008, is amended to read as  
15 follows:

16 5. The chair, upon finding that an employer has failed for a period of  
17 not less than ten consecutive days to make the provision for payment of  
18 compensation required by section fifty of this article, may impose upon  
19 such employer, in addition to all other penalties, fines or assessments  
20 provided for in this chapter, a penalty of two thousand dollars for each  
21 ten day period of non-compliance or a sum not in excess of two times the  
22 cost of compensation for its payroll for the period of such failure,  
23 which sum shall be paid into the uninsured employers' fund created under  
24 section twenty-six-a of this chapter. When an employer fails to provide  
25 business records sufficient to enable the chair to determine the employ-  
26 er's payroll for the period requested for the calculation of the penalty  
27 provided in this section, the imputed weekly payroll for each employee,  
28 corporate officer, sole proprietor, or partner shall be the [New York  
29 state] APPLICABLE average weekly wage, multiplied by 1.5. Where the  
30 employer is a corporation, the president, secretary and treasurer there-  
31 of shall be liable for the penalty. If the employer shall within thirty  
32 days after notice of the imposition of a penalty by the chair pursuant  
33 to this subdivision make an application in affidavit form for a redeter-  
34 mination review of such penalty the chairman shall make a decision in  
35 writing on the issues raised on such application.

36 S 4. This act shall take effect immediately.