

3010--A

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 -- recommitted to the Committee on Labor in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 section 7-a of part GG of chapter 57 of  
17    the laws of 2013, is 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

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

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

1 employee shall receive his or her full wages. Compensation for perma-  
2 nent or temporary partial disability, or for permanent or temporary  
3 total disability due to an accident or disablement resulting from an  
4 occupational disease that occurs on or after May first, two thousand  
5 thirteen shall not be less than one hundred fifty dollars per week  
6 except that if the employee's wages at the time of injury are less than  
7 one hundred fifty dollars per week, the employee shall receive his or  
8 her full wages. In no event shall compensation when combined with  
9 decreased earnings or earning capacity exceed the amount of wages the  
10 employee was receiving at the time the injury occurred. Compensation for  
11 permanent or temporary partial disability, or for permanent or temporary  
12 total disability due to an accident or disablement resulting from an  
13 occupational disease or injury that occurred as a result of World Trade  
14 Center rescue activity by an employee of a private voluntary hospital,  
15 who passed a physical examination upon employment as a rescue worker  
16 that failed to reveal evidence of a condition that was the proximate  
17 cause of disablement or occupational disease or injury, shall not exceed  
18 three-quarters of a claimant's wage on September eleventh, two thousand  
19 one. In no event shall compensation when combined with decreased earn-  
20 ings or earning capacity exceed the amount of wages the employee was  
21 receiving on September eleventh, two thousand one.

22 S 3. Subdivision 5 of section 52 of the workers' compensation law, as  
23 amended by section 19 of part GG of chapter 57 of the laws of 2013, is  
24 amended to read as follows:

25 5. The chair, upon finding that an employer has failed for a period of  
26 not less than ten consecutive days to make the provision for payment of  
27 compensation required by section fifty of this article, may impose upon  
28 such employer, in addition to all other penalties, fines or assessments  
29 provided for in this chapter, a penalty of up to two thousand dollars  
30 for each ten day period of non-compliance or a sum not in excess of two  
31 times the cost of compensation for its payroll for the period of such  
32 failure, which sum shall be paid into the uninsured employers' fund  
33 created under section twenty-six-a of this chapter. When an employer  
34 fails to provide business records sufficient to enable the chair to  
35 determine the employer's payroll for the period requested for the calcu-  
36 lation of the penalty provided in this section, the imputed weekly  
37 payroll for each employee, corporate officer, sole proprietor, or part-  
38 ner shall be the [New York state] APPLICABLE average weekly wage, multi-  
39 plied by 1.5. Where the employer is a corporation, the president, secre-  
40 tary and treasurer thereof shall be liable for the penalty. If the  
41 employer shall within thirty days after notice of the imposition of a  
42 penalty by the chair pursuant to this subdivision make an application in  
43 affidavit form for a redetermination review of such penalty the chair  
44 shall make a decision in writing on the issues raised on such applica-  
45 tion.

46 S 4. This act shall take effect immediately.