STATE OF NEW YORK

6602

2017-2018 Regular Sessions

IN ASSEMBLY

March 9, 2017

Introduced by M. of A. WOERNER -- read once and referred to the Committee on Labor

AN ACT to amend the workers' compensation law, in relation to the schedule of compensation in case of disability

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Paragraph w of subdivision 3 of section 15 of the workers' compensation law, as amended by chapter 6 of the laws of 2007, is amended to read as follows:

w. Other cases. In all other cases of permanent partial disability, the compensation shall be sixty-six and two-thirds percent of the difference between the injured employee's average weekly wages and his or her wage-earning capacity thereafter in the same employment or otherwise. Compensation under this paragraph shall be payable during the continuance of such permanent partial disability, but subject to reconsideration of the degree of such impairment by the board on its own motion or upon application of any party in interest however, all compensation payable under this paragraph shall not exceed (i) five hundred twenty-five weeks**, beginning at the date of injury,** in cases in which the loss of wage-earning capacity is greater than ninety-five percent; (ii) five hundred weeks**, beginning at the date of injury,** in cases in which the loss of wage-earning capacity is greater than ninety percent but not more than ninety-five percent; (iii) four hundred seventy-five weeks**, beginning at the date of injury,** in cases in which the loss of wage-earning capacity is greater than eighty-five percent but not more than ninety percent; (iv) four hundred fifty weeks**, beginning at the date of injury,** in cases in which the loss of wage-earning capacity is greater than eighty percent but not more than eighty-five percent; (v) four hundred twenty-five weeks**, beginning at the date of injury,** in cases in which the loss of wage-earning capacity is greater than seventy-five percent but not more than eighty percent; (vi) four hundred

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

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weeks, beginning at the date of injury, in cases in which the loss of wage-earning capacity is greater than seventy percent but not more than seventy-five percent; (vii) three hundred seventy-five weeks, beginning at the date of injury, in cases in which the loss of wage-earning capacity is greater than sixty percent but not more than seventy percent; (viii) three hundred fifty weeks, beginning at the date of injury, in cases in which the loss of wage-earning capacity is greater than fifty percent but not more than sixty percent; (ix) three hundred weeks, beginning at the date of injury, in cases in which the loss of wage-earning capacity is greater than forty percent but not more than fifty percent; (x) two hundred seventy-five weeks, beginning at the date of injury, in cases in which the loss of wage-earning capacity is greater than thirty percent but not more than forty percent; (xi) two hundred fifty weeks, beginning at the date of injury, in cases in which the loss of wage-earning capacity is greater than fifteen percent but not more than thirty percent; and (xii) two hundred twenty-five weeks, beginning at the date of injury, in cases in which the loss of wage-earning capacity is fifteen percent or less. For those claimants classified as permanently partially disabled who no longer receive indemnity payments because they have surpassed their number of maximum benefit weeks, the following provisions will apply:

(1) There will be a presumption that medical services shall continue notwithstanding the completion of the time period for compensation set forth in this section and the burden of going forward and the burden of proof will lie with the carrier, self-insured employer or state insurance fund in any application before the board to discontinue or suspend such services. Medical services will continue during the pendency of any such application and any appeals thereto.

(2) The board is directed to promulgate regulations that establish an independent review and appeal by an outside agent or entity of the board's choosing of any administrative law judge's determination to discontinue or suspend medical services before a final determination of the board.

(3) Any difference in compensation rate paid during a period of temporary disability and the rate of payment after classification of permanent disability shall be paid by the employer or credited to the employer in weekly installments during the continuance of payments for such permanent partial disability.

§ 2. This act shall take effect immediately.