

STATE OF NEW YORK

6192--A

2023-2024 Regular Sessions

IN ASSEMBLY

April 3, 2023

Introduced by M. of A. CRUZ -- read once and referred to the Committee on Labor -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the workers' compensation law, in relation to removing labor market attachment requirements for certain disability cases

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

1 Section 1. The opening paragraph of paragraph w of subdivision 3 of
2 section 15 of the workers' compensation law, as amended by section 1 of
3 subpart A of part NNN of chapter 59 of the laws of 2017, is amended to
4 read as follows:

5 In all other cases of permanent partial disability, the compensation
6 shall be sixty-six and two-thirds percent of the difference between the
7 injured employee's average weekly wages and his or her wage-earning
8 capacity thereafter in the same employment or otherwise. Compensation
9 under this paragraph shall be payable during the continuance of such
10 permanent partial disability, without the necessity for the claimant
11 ~~[who is entitled to benefits at the time of classification]~~ to demon-
12 strate ~~[ongoing]~~ attachment to the labor market, but subject to recon-
13 sideration of the degree of such impairment by the board on its own
14 motion or upon application of any party in interest however, all compen-
15 sation payable under this paragraph shall not exceed (i) five hundred
16 twenty-five weeks in cases in which the loss of wage-earning capacity is
17 greater than ninety-five percent; (ii) five hundred weeks in cases in
18 which the loss of wage-earning capacity is greater than ninety percent
19 but not more than ninety-five percent; (iii) four hundred seventy-five
20 weeks in cases in which the loss of wage-earning capacity is greater
21 than eighty-five percent but not more than ninety percent; (iv) four
22 hundred fifty weeks in cases in which the loss of wage-earning capacity
23 is greater than eighty percent but not more than eighty-five percent;
24 (v) four hundred twenty-five weeks in cases in which the loss of wage-

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

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1 earning capacity is greater than seventy-five percent but not more than
2 eighty percent; (vi) four hundred weeks in cases in which the loss of
3 wage-earning capacity is greater than seventy percent but not more than
4 seventy-five percent; (vii) three hundred seventy-five weeks in cases in
5 which the loss of wage-earning capacity is greater than sixty percent
6 but not more than seventy percent; (viii) three hundred fifty weeks in
7 cases in which the loss of wage-earning capacity is greater than fifty
8 percent but not more than sixty percent; (ix) three hundred weeks in
9 cases in which the loss of wage-earning capacity is greater than forty
10 percent but not more than fifty percent; (x) two hundred seventy-five
11 weeks in cases in which the loss of wage-earning capacity is greater
12 than thirty percent but not more than forty percent; (xi) two hundred
13 fifty weeks in cases in which the loss of wage-earning capacity is
14 greater than fifteen percent but not more than thirty percent; and (xii)
15 two hundred twenty-five weeks in cases in which the loss of wage-earning
16 capacity is fifteen percent or less. For a claimant with a date of acci-
17 dent or disablement after the effective date of the chapter of the laws
18 of two thousand seventeen that amended this subdivision, where the
19 carrier or employer has provided compensation pursuant to subdivision
20 five of this section beyond one hundred thirty weeks from the date of
21 accident or disablement, all subsequent weeks in which compensation was
22 paid shall be considered to be benefit weeks for purposes of this
23 section, with the carrier or employer receiving credit for all such
24 subsequent weeks against the amount of maximum benefit weeks when perma-
25 nent partial disability under this section is determined. In the event
26 of payment for intermittent temporary partial disability paid after one
27 hundred thirty weeks from the date of accident or disablement, such time
28 shall be reduced to a number of weeks, for which the carrier will
29 receive a credit against the maximum benefit weeks. For a claimant with
30 a date of accident or disablement after the effective date of ~~[the]~~
31 subpart A of part NNN of chapter fifty-nine of the laws of two thousand
32 seventeen ~~[that amended this subdivision]~~, when permanency is at issue,
33 and a claimant has submitted medical evidence that he or she is not at
34 maximum medical improvement, and the carrier has produced or has had a
35 reasonable opportunity to produce an independent medical examination
36 concerning maximum medical improvement, and the board has determined
37 that the claimant is not yet at maximum medical improvement, the carrier
38 shall not receive a credit for benefit weeks prior to a finding that the
39 claimant has reached maximum medical improvement, at which time the
40 carrier shall receive credit for any weeks of temporary disability paid
41 to claimant after such finding against the maximum benefit weeks awarded
42 under this subdivision. For those claimants classified as permanently
43 partially disabled who no longer receive indemnity payments because they
44 have surpassed their number of maximum benefit weeks, the following
45 provisions will apply:

46 § 2. Subdivision 5 of section 15 of the workers' compensation law, as
47 amended by chapter 161 of the laws of 1966, is amended to read as
48 follows:

49 5. Temporary partial disability. In case of temporary partial disabili-
50 ty resulting in decrease of earning capacity, the compensation shall be
51 two-thirds of the difference between the injured employee's average
52 weekly wages before the accident and ~~[his]~~ such injured employee's wage
53 earning capacity after the accident in the same or other employment, and
54 compensation under this subdivision shall be payable without the neces-
55 sity for the injured employee to demonstrate labor market attachment.

56 § 3. This act shall take effect immediately.