

STATE OF NEW YORK

6074

2023-2024 Regular Sessions

IN SENATE

March 28, 2023

Introduced by Sen. BAILEY -- 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 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-
25 earning capacity is greater than seventy-five percent but not more than

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

LBD10381-01-3

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