STATE OF NEW YORK

3384

2017-2018 Regular Sessions

IN SENATE

January 23, 2017

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:

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

16. "[~~New York state~~] **Applicable** average weekly wage" shall mean **the lesser of: (i)** the average weekly wage of the state of New York for the previous calendar year as reported by the commissioner of labor to the superintendent of financial services on March thirty-first**; or (ii) the average weekly wage of the economic development region, pursuant to section two hundred thirty of the economic development law, in which the employee resides as reported by the commissioner of labor to the superintendent of financial services on March thirty-first. Provided, however, that the applicable average weekly wage shall not be less than seven hundred ninety-two dollars**.

§ 2. Paragraph (a) of subdivision 6 of section 15 of the workers' compensation law, as amended by section 7-a of part GG of chapter 57 of the laws of 2013, is amended to read as follows:

(a) Compensation for permanent or temporary total disability due to an accident or disablement resulting from an occupational disease that occurs, (1) on or after January first, nineteen hundred seventy-eight, shall not exceed one hundred twenty-five dollars per week, that occurs (2) on or after July first, nineteen hundred seventy-eight, shall not exceed one hundred eighty dollars per week, that occurs (3) on or after January first, nineteen hundred seventy-nine, shall not exceed two 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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first, nineteen hundred eighty-three, shall not exceed two hundred fifty-five dollars per week, that occurs (5) on or after July first, nineteen hundred eighty-four, shall not exceed two hundred seventy-five dollars per week, that occurs (6) on or after July first, nineteen hundred eighty-five, shall not exceed three hundred dollars per week, that occurs (7) on or after July first, nineteen hundred ninety, shall not exceed three hundred forty dollars per week; and in the case of temporary total disability shall not be less than thirty dollars per week and in the case of permanent total disability shall not be less than twenty dollars per week except that if the employee's wages at the time of injury are less than thirty or twenty dollars per week respectively, he or she shall receive his or her full weekly wages. Compensation for permanent or temporary partial disability due to an accident or disablement resulting from an occupational disease that occurs (1) on or after January first, nineteen hundred seventy-eight, shall not exceed one hundred five dollars per week, that occurs (2) on or after July first, nineteen hundred eighty-three, shall not exceed one hundred twenty-five dollars per week, that occurs (3) on or after July first, nineteen hundred eighty-four, shall not exceed one hundred thirty-five dollars per week, that occurs (4) on or after July first, nineteen hundred eighty-five, shall not exceed one hundred fifty dollars per week, that occurs (5) on or after July first, nineteen hundred ninety, shall not exceed two hundred eighty dollars per week; nor be less than twenty dollars per week; except that if the employee's wages at the time of injury are less than twenty dollars per week, he or she shall receive his or her full weekly wages. In no event shall compensation when combined with decreased earnings or earning capacity exceed the amount of wages which the employee was receiving at the time the injury occurred. Compensation for permanent or temporary partial disability, or for permanent or temporary total disability due to an accident or disablement resulting from an occupational disease that occurs (1) on or after July first, nineteen hundred ninety-one and prior to July first, nineteen hundred ninety-two, shall not exceed three hundred fifty dollars per week; (2) on or after July first, nineteen hundred ninety-two, shall not exceed four hundred dollars per week; nor be less than forty dollars per week except that if the employee's wages at the time of injury are less than forty dollars per week, the employee shall receive his or her full wages. Compensation for permanent or temporary partial disability, or for permanent or temporary total disability due to an accident or disablement resulting from an occupational disease that occurs (1) on or after July first, two thousand seven shall not exceed five hundred dollars per week, (2) on or after July first, two thousand eight shall not exceed five hundred fifty dollars per week, (3) on or after July first, two thousand nine shall not exceed six hundred dollars per week, and (4) on or after July first, two thousand ten, and on or after July first of each succeeding year, shall not exceed two-thirds of the [~~New York state~~] **applicable** average weekly wage for the year in which it is reported. Compensation for permanent or temporary partial disability, or for permanent or temporary total disability due to an accident or disablement resulting from an occupational disease that occurs on or after July first, two thousand seven shall not be less than one hundred dollars per week except that if the employee's wages at the time of injury are less than one hundred dollars per week, the employee shall receive his or her full wages. Compensation for permanent or temporary partial disability, or for permanent or temporary total disability due to an accident or disablement resulting from an

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

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

5. The chair, upon finding that an employer has failed for a period of not less than ten consecutive days to make the provision for payment of compensation required by section fifty of this article, may impose upon such employer, in addition to all other penalties, fines or assessments provided for in this chapter, a penalty of up to two thousand dollars for each ten day period of non-compliance or a sum not in excess of two times the cost of compensation for its payroll for the period of such failure, which sum shall be paid into the uninsured employers' fund created under section twenty-six-a of this chapter. When an employer fails to provide business records sufficient to enable the chair to determine the employer's payroll for the period requested for the calculation of the penalty provided in this section, the imputed weekly payroll for each employee, corporate officer, sole proprietor, or partner shall be the [~~**New York state**~~] **applicable** average weekly wage, multiplied by 1.5. Where the employer is a corporation, the president, secretary and treasurer thereof shall be liable for the penalty. If the employer shall within thirty days after notice of the imposition of a penalty by the chair pursuant to this subdivision make an application in affidavit form for a redetermination review of such penalty the chair shall make a decision in writing on the issues raised on such application.

§ 4. This act shall take effect immediately.