STATE OF NEW YORK

8950

IN ASSEMBLY

January 30, 2024

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

AN ACT to amend the workers' compensation law, in relation to providing the carrier or employer a credit against permanent partial disability benefits for temporary partial disability payments made in excess of 130 weeks

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 section 1 of subpart A of part NNN of chapter 59 of the laws of 2017, 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, without the necessity for the claimant who is entitled to benefits at the time of classification to demonstrate ongoing attachment to the labor market, 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 in cases in which the loss of wage-earning capacity is greater than ninety-five percent; (ii) five hundred weeks 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 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 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 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 weeks in cases in which the loss of wage-earning capacity is greater than seventy percent but not

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

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more than seventy-five percent; (vii) three hundred seventy-five weeks 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 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 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 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 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 in cases in which the loss of wage-earning capacity is fifteen percent or less. For a claimant with a date of accident or disablement after the effective date of the chapter of the laws of two thousand [~~seventeen~~] **twenty-three** that amended this subdivision, where the carrier or employer has [~~provided~~] **paid one hundred thirty weeks of** compensation pursuant to subdivision five of this section [~~beyond one hundred thirty weeks from the date of accident or disablement~~], all subsequent weeks in which compensation was paid **solely pursuant to subdivision five** shall be considered to be benefit weeks for purposes of this section, with the carrier or employer receiving credit for all such subsequent weeks against the amount of maximum benefit weeks when permanent partial disability under this section is determined. In the event of payment for intermittent temporary partial disability paid after one hundred thirty weeks from the date of accident or disablement, such time shall be reduced to a number of weeks, for which the carrier will receive a credit against the maximum benefit weeks. For a claimant with a date of accident or disablement after the effective date of the chapter of the laws of two thousand [~~seventeen~~] **twenty-three** that amended this subdivision, when permanency is at issue, and a claimant has submitted medical evidence that he or she is not at maximum medical improvement, [~~and the carrier has produced or has had a reasonable opportunity to produce an independent medical examination concerning maximum medical improvement,~~] and the board has determined that the claimant is not yet at maximum medical improvement, the carrier shall not receive a credit for benefit weeks prior to a finding that the claimant has reached maximum medical improvement[~~, at which time the carrier shall receive credit for any weeks of temporary disability paid to claimant after such finding against the maximum benefit weeks awarded under this subdivision~~]. 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.

§ 2. This act shall take effect immediately.