

STATE OF NEW YORK

6074--A

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 -- 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-
25 earning capacity is greater than seventy-five percent but not more than
26 eighty percent; (vi) four hundred weeks in cases in which the loss of

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

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

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

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

54 § 3. This act shall take effect immediately.