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:

Section 1. The opening paragraph of 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:

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

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

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wage-earning capacity is greater than seventy percent but not 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 that amended this subdivision, where the carrier or employer has provided 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 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~~] **subpart A of part NNN of** chapter **fifty-nine** of the laws of two thousand seventeen [~~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:

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

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

§ 3. This act shall take effect immediately.