

STATE OF NEW YORK

3542--A

2025-2026 Regular Sessions

IN ASSEMBLY

January 28, 2025

Introduced by M. of A. REYES -- read once and referred to the Committee on Labor -- recommitted to the Committee on Labor in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

1 Section 1. Paragraph w of subdivision 3 of section 15 of the workers'
2 compensation law, as amended by section 1 of subpart A of part NNN of
3 chapter 59 of the laws of 2017, is amended to read as follows:
4 w. Other cases. In all other cases of permanent partial disability,
5 the compensation shall be sixty-six and two-thirds percent of the
6 difference between the injured employee's average weekly wages and [~~his~~
7 ~~or her~~] such employee's wage-earning capacity thereafter in the same
8 employment or otherwise. Compensation under this paragraph shall be
9 payable during the continuance of such permanent partial disability,
10 without the necessity for the claimant who is entitled to benefits at
11 the time of classification to demonstrate ongoing attachment to the
12 labor market, but subject to reconsideration of the degree of such
13 impairment by the board on its own motion or upon application of any
14 party in interest however, all compensation payable under this paragraph
15 shall not exceed (i) five hundred twenty-five weeks in cases in which
16 the loss of wage-earning capacity is greater than ninety-five percent;
17 (ii) five hundred weeks in cases in which the loss of wage-earning
18 capacity is greater than ninety percent but not more than ninety-five
19 percent; (iii) four hundred seventy-five weeks in cases in which the
20 loss of wage-earning capacity is greater than eighty-five percent but
21 not more than ninety percent; (iv) four hundred fifty weeks in cases in

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

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

50 (1) There will be a presumption that medical services shall continue
51 notwithstanding the completion of the time period for compensation set
52 forth in this section and the burden of going forward and the burden of
53 proof will lie with the carrier, self-insured employer or state insur-
54 ance fund in any application before the board to discontinue or suspend
55 such services. Medical services will continue during the pendency of any
56 such application and any appeals thereto.

1 (2) The board is directed to promulgate regulations that establish an
2 independent review and appeal by an outside agent or entity of the
3 board's choosing of any administrative law judge's determination to
4 discontinue or suspend medical services before a final determination of
5 the board.

6 § 2. This act shall take effect immediately.