

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 963 Session of 2017

INTRODUCED BY WARD, GORDNER, EICHELBERGER, MENSCH, RAFFERTY, HUTCHINSON, FOLMER, BAKER, VULAKOVICH, DiSANTO AND STEFANO, NOVEMBER 29, 2017

REFERRED TO LABOR AND INDUSTRY, NOVEMBER 29, 2017

AN ACT

1 Amending the act of June 2, 1915 (P.L.736, No.338), entitled "An
 2 act defining the liability of an employer to pay damages for
 3 injuries received by an employe in the course of employment;
 4 establishing an elective schedule of compensation; providing
 5 procedure for the determination of liability and compensation
 6 thereunder; and prescribing penalties," in liability and
 7 compensation, further providing for schedule of compensation
 8 and for physical examination or expert interview.

9 The General Assembly of the Commonwealth of Pennsylvania

10 hereby enacts as follows:

11 Section 1. Section 306(a.2) of the act of June 2, 1915
 12 (P.L.736, No.338), known as the Workers' Compensation Act, is
 13 repealed and the section is amended by adding a clause to read:

14 Section 306. The following schedule of compensation is
 15 hereby established:* * *

16 [(a.2) (1) When an employe has received total disability
 17 compensation pursuant to clause (a) for a period of one hundred
 18 four weeks, unless otherwise agreed to, the employe shall be
 19 required to submit to a medical examination which shall be
 20 requested by the insurer within sixty days upon the expiration

1 of the one hundred four weeks to determine the degree of
2 impairment due to the compensable injury, if any. The degree of
3 impairment shall be determined based upon an evaluation by a
4 physician who is licensed in this Commonwealth, who is certified
5 by an American Board of Medical Specialties approved board or
6 its osteopathic equivalent and who is active in clinical
7 practice for at least twenty hours per week, chosen by agreement
8 of the parties, or as designated by the department, pursuant to
9 the most recent edition of the American Medical Association
10 "Guides to the Evaluation of Permanent Impairment."

11 (2) If such determination results in an impairment rating
12 that meets a threshold impairment rating that is equal to or
13 greater than fifty per centum impairment under the most recent
14 edition of the American Medical Association "Guides to the
15 Evaluation of Permanent Impairment," the employe shall be
16 presumed to be totally disabled and shall continue to receive
17 total disability compensation benefits under clause (a). If such
18 determination results in an impairment rating less than fifty
19 per centum impairment under the most recent edition of the
20 American Medical Association "Guides to the Evaluation of
21 Permanent Impairment," the employe shall then receive partial
22 disability benefits under clause (b): Provided, however, That no
23 reduction shall be made until sixty days' notice of modification
24 is given.

25 (3) Unless otherwise adjudicated or agreed to based upon a
26 determination of earning power under clause (b) (2), the amount
27 of compensation shall not be affected as a result of the change
28 in disability status and shall remain the same. An insurer or
29 employe may, at any time prior to or during the five hundred-
30 week period of partial disability, show that the employe's

1 earning power has changed.

2 (4) An employe may appeal the change to partial disability
3 at any time during the five hundred-week period of partial
4 disability; Provided, That there is a determination that the
5 employe meets the threshold impairment rating that is equal to
6 or greater than fifty per centum impairment under the most
7 recent edition of the American Medical Association "Guides to
8 the Evaluation of Permanent Impairment."

9 (5) Total disability shall continue until it is adjudicated
10 or agreed under clause (b) that total disability has ceased or
11 the employe's condition improves to an impairment rating that is
12 less than fifty per centum of the degree of impairment defined
13 under the most recent edition of the American Medical
14 Association "Guides to the Evaluation of Permanent Impairment."

15 (6) Upon request of the insurer, the employe shall submit to
16 an independent medical examination in accordance with the
17 provisions of section 314 to determine the status of impairment:
18 Provided, however, That for purposes of this clause, the employe
19 shall not be required to submit to more than two independent
20 medical examinations under this clause during a twelve-month
21 period.

22 (7) In no event shall the total number of weeks of partial
23 disability exceed five hundred weeks for any injury or
24 recurrence thereof, regardless of the changes in status in
25 disability that may occur. In no event shall the total number of
26 weeks of total disability exceed one hundred four weeks for any
27 employe who does not meet a threshold impairment rating that is
28 equal to or greater than fifty per centum impairment under the
29 most recent edition of the American Medical Association "Guides
30 to the Evaluation of Permanent Impairment" for any injury or

1 recurrence thereof.

2 (8) (i) For purposes of this clause, the term "impairment"
3 shall mean an anatomic or functional abnormality or loss that
4 results from the compensable injury and is reasonably presumed
5 to be permanent.

6 (ii) For purposes of this clause, the term "impairment
7 rating" shall mean the percentage of permanent impairment of the
8 whole body resulting from the compensable injury. The percentage
9 rating for impairment under this clause shall represent only
10 that impairment that is the result of the compensable injury and
11 not for any preexisting work-related or nonwork-related
12 impairment.]

13 (a.3) (1) When an employe has received total disability
14 compensation pursuant to clause (a) for a period of one hundred
15 four weeks, unless otherwise agreed to, the employe shall be
16 required to submit to a medical examination which shall be
17 requested by the insurer within sixty days upon the expiration
18 of the one hundred four weeks to determine the degree of
19 impairment due to the compensable injury, if any. The degree of
20 impairment shall be determined based upon an evaluation by a
21 physician who is licensed in this Commonwealth, who is certified
22 by an American Board of Medical Specialties approved board or
23 its osteopathic equivalent and who is active in clinical
24 practice for at least twenty hours per week, chosen by agreement
25 of the parties, or as designated by the department, pursuant to
26 the sixth edition of the American Medical Association "Guides to
27 the Evaluation of Permanent Impairment."

28 (2) If such determination results in an impairment rating
29 that meets a threshold impairment rating that is equal to or
30 greater than fifty per centum impairment under the sixth edition

1 of the American Medical Association "Guides to the Evaluation of
2 Permanent Impairment," the employe shall be presumed to be
3 totally disabled and shall continue to receive total disability
4 compensation benefits under clause (a). If such determination
5 results in an impairment rating less than fifty per centum
6 impairment under the sixth edition of the American Medical
7 Association "Guides to the Evaluation of Permanent Impairment,"
8 the employe shall then receive partial disability benefits under
9 clause (b): Provided, however, That no reduction shall be made
10 until sixty days' notice of modification is given.

11 (3) Unless otherwise adjudicated or agreed to based upon a
12 determination of earning power under clause (b) (2), the amount
13 of compensation shall not be affected as a result of the change
14 in disability status and shall remain the same. An insurer or
15 employe may, at any time prior to or during the five hundred-
16 week period of partial disability, show that the employe's
17 earning power has changed.

18 (4) An employe may appeal the change to partial disability
19 at any time during the five hundred-week period of partial
20 disability; Provided, That there is a determination that the
21 employe meets the threshold impairment rating that is equal to
22 or greater than fifty per centum impairment under the sixth
23 edition of the American Medical Association "Guides to the
24 Evaluation of Permanent Impairment."

25 (5) Total disability shall continue until it is adjudicated
26 or agreed under clause (b) that total disability has ceased or
27 the employe's condition improves to an impairment rating that is
28 less than fifty per centum of the degree of impairment defined
29 under the sixth edition of the American Medical Association
30 "Guides to the Evaluation of Permanent Impairment."

1 (6) Upon request of the insurer, the employe shall submit to
2 an independent medical examination in accordance with the
3 provisions of section 314 to determine the status of impairment:
4 Provided, however, That for purposes of this clause, the employe
5 shall not be required to submit to more than two independent
6 medical examinations under this clause during a twelve-month
7 period.

8 (7) In no event shall the total number of weeks of partial
9 disability exceed five hundred weeks for any injury or
10 recurrence thereof, regardless of the changes in status in
11 disability that may occur. In no event shall the total number of
12 weeks of total disability exceed one hundred four weeks for any
13 employe who does not meet a threshold impairment rating that is
14 equal to or greater than fifty per centum impairment under the
15 sixth edition of the American Medical Association "Guides to the
16 Evaluation of Permanent Impairment" for any injury or recurrence
17 thereof. In determining the number of weeks payable under this
18 section, the insurer shall be credited for all weeks paid prior
19 to the effective date of this section for the injury or
20 recurrence regardless of the date of the injury or recurrence.

21 (8) (i) For purposes of this clause, the term "impairment"
22 shall mean an anatomic or functional abnormality or loss that
23 results from the compensable injury and is reasonably presumed
24 to be permanent.

25 (ii) For purposes of this clause, the term "impairment
26 rating" shall mean the percentage of permanent impairment of the
27 whole body resulting from the compensable injury. The percentage
28 rating for impairment under this clause shall represent only
29 that impairment that is the result of the compensable injury and
30 not for any preexisting work-related or nonwork-related

1 impairment.

2 * * *

3 Section 2. Section 314(b) of the act is amended to read:

4 Section 314. * * *

5 (b) In the case of a physical examination, the employe shall
6 be entitled to have a health care provider of his own selection,
7 to be paid by him, participate in such examination requested by
8 his employer or ordered by the workers' compensation judge. In
9 instances where an examination is requested in relation to
10 section [306(a.2)(1)] 306(a.3)(1), such examination shall be
11 performed by a physician who is licensed in this Commonwealth,
12 who is certified by an American Board of Medical Specialties
13 approved board or its osteopathic equivalent and who is in
14 active clinical practice for at least twenty (20) hours per
15 week.

16 Section 3. This act shall take effect immediately.