

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1840 Session of 2017

INTRODUCED BY KAUFFMAN, EVERETT, PICKETT, BLOOM, ROTHMAN, MILLARD, MACKENZIE, GREINER, TURZAI, COX, IRVIN, MAHER, RYAN, WARD, WHEELAND, FEE, RADER, METCALFE, KEEFER, MCGINNIS, TOPPER, DELOZIER, MUSTIO, DUSH, NELSON, F. KELLER, SAYLOR, PHILLIPS-HILL, KNOWLES AND GROVE, OCTOBER 2, 2017

AS REPORTED FROM COMMITTEE ON LABOR AND INDUSTRY, HOUSE OF REPRESENTATIVES, AS AMENDED, JUNE 4, 2018

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13 repealed and the section is amended by adding a clause to read: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 * * *

17 [(a.2) (1) When an employe has received total disability
18 compensation pursuant to clause (a) for a period of one hundred
19 four weeks, unless otherwise agreed to, the employe shall be

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

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

27 (3) Unless otherwise adjudicated or agreed to based upon a
28 determination of earning power under clause (b) (2), the amount
29 of compensation shall not be affected as a result of the change
30 in disability status and shall remain the same. An insurer or

1 employe may, at any time prior to or during the five hundred-
2 week period of partial disability, show that the employe's
3 earning power has changed.

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

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

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

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

1 most recent edition of the American Medical Association "Guides
2 to the Evaluation of Permanent Impairment" for any injury or
3 recurrence thereof.

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

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

15 (a.3) (1) When an employe has received total disability
16 compensation pursuant to clause (a) for a period of one hundred
17 four weeks, unless otherwise agreed to, the employe shall be
18 required to submit to a medical examination which shall be
19 requested by the insurer within sixty days upon the expiration
20 of the one hundred four weeks to determine the degree of
21 impairment due to the compensable injury, if any. The degree of
22 impairment shall be determined based upon an evaluation by a
23 physician who is licensed in this Commonwealth, who is certified
24 by an American Board of Medical Specialties approved board or
25 its osteopathic equivalent and who is active in clinical
26 practice for at least twenty hours per week, chosen by agreement
27 of the parties, or as designated by the department, pursuant to
28 the sixth edition of the American Medical Association "Guides to <--
29 the Evaluation of Permanent Impairment." IMPAIRMENT," 6TH <--
30 EDITION (SECOND PRINTING APRIL 2009).

1 (2) If such determination results in an impairment rating
2 that meets a threshold impairment rating that is equal to or
3 greater than fifty per centum impairment under the sixth edition <--
4 of the American Medical Association "Guides to the Evaluation of
5 Permanent Impairment," 6TH EDITION (SECOND PRINTING APRIL 2009), <--
6 the employe shall be presumed to be totally disabled and shall
7 continue to receive total disability compensation benefits under
8 clause (a). If such determination results in an impairment
9 rating less than fifty per centum impairment under the sixth <--
10 edition of the American Medical Association "Guides to the
11 Evaluation of Permanent Impairment," 6TH EDITION (SECOND <--
12 PRINTING APRIL 2009), the employe shall then receive partial
13 disability benefits under clause (b): Provided, however, That no
14 reduction shall be made until sixty days' notice of modification
15 is given.

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

23 (4) An employe may appeal the change to partial disability
24 at any time during the five hundred-week period of partial
25 disability; Provided, That there is a determination that the
26 employe meets the threshold impairment rating that is equal to
27 or greater than fifty per centum impairment under the sixth <--
28 edition of the American Medical Association "Guides to the
29 Evaluation of Permanent Impairment." IMPAIRMENT," 6TH EDITION <--
30 (SECOND PRINTING APRIL 2009).

1 (5) Total disability shall continue until it is adjudicated
2 or agreed under clause (b) that total disability has ceased or
3 the employe's condition improves to an impairment rating that is
4 less than fifty per centum of the degree of impairment defined
5 under the ~~sixth edition of the~~ American Medical Association <--
6 "Guides to the Evaluation of Permanent Impairment." IMPAIRMENT," <--
7 6TH EDITION (SECOND PRINTING APRIL 2009).

8 (6) Upon request of the insurer, the employe shall submit to
9 an independent medical examination in accordance with the
10 provisions of section 314 to determine the status of impairment:
11 Provided, however, That for purposes of this clause, the employe
12 shall not be required to submit to more than two independent
13 medical examinations under this clause during a twelve-month
14 period.

15 (7) In no event shall the total number of weeks of partial
16 disability exceed five hundred weeks for any injury or
17 recurrence thereof, regardless of the changes in status in
18 disability that may occur. In no event shall the total number of
19 weeks of total disability exceed one hundred four weeks for any
20 employe who does not meet a threshold impairment rating that is
21 equal to or greater than fifty per centum impairment under the
22 ~~sixth edition of the~~ American Medical Association "Guides to the <--
23 Evaluation of Permanent Impairment" IMPAIRMENT," 6TH EDITION <--
24 (SECOND PRINTING APRIL 2009), for any injury or recurrence
25 thereof. In determining the number of weeks payable under this <--
26 section, the insurer shall be credited for all weeks paid prior
27 to the effective date of this section for the injury or
28 recurrence regardless of the date of the injury or recurrence.

29 (8) (i) For purposes of this clause, the term "impairment"
30 shall mean an anatomic or functional abnormality or loss that

1 results from the compensable injury and is reasonably presumed
2 to be permanent.

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

10 * * *

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

12 Section 314. * * *

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

24 SECTION 3. THE FOLLOWING SHALL APPLY:

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25 (1) FOR THE PURPOSES OF DETERMINING WHETHER AN EMPLOYEE
26 SHALL SUBMIT TO A MEDICAL EXAMINATION TO DETERMINE THE DEGREE
27 OF IMPAIRMENT AND WHETHER AN EMPLOYEE HAS RECEIVED TOTAL
28 DISABILITY COMPENSATION FOR THE PERIOD OF 104 WEEKS UNDER
29 SECTION 306(A.3) (1) OF THE ACT, AN INSURER SHALL BE GIVEN
30 CREDIT FOR WEEKS OF TOTAL DISABILITY COMPENSATION PAID PRIOR

1 TO THE EFFECTIVE DATE OF THIS PARAGRAPH. THIS SECTION SHALL
2 NOT BE CONSTRUED TO ALTER THE REQUIREMENTS OF SECTION
3 306(A.3) OF THE ACT.

4 (2) FOR THE PURPOSES OF DETERMINING THE TOTAL NUMBER OF
5 WEEKS OF PARTIAL DISABILITY COMPENSATION PAYABLE UNDER
6 SECTION 306(A.3) (7) OF THE ACT, AN INSURER SHALL BE GIVEN
7 CREDIT FOR WEEKS OF PARTIAL DISABILITY COMPENSATION PAID
8 PRIOR TO THE EFFECTIVE DATE OF THIS PARAGRAPH.

9 Section ~~3~~ 4. This act shall take effect immediately.

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