

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 AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES,
JUNE 21, 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 FOR COMPUTATION OF BENEFITS and for physical examination or
9 expert interview.

10 The General Assembly of the Commonwealth of Pennsylvania
11 hereby enacts as follows:

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14 repealed and the section is amended by adding a clause to read:

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

17 * * *

18 [(a.2) (1) When an employe has received total disability
19 compensation pursuant to clause (a) for a period of one hundred

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

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

28 (3) Unless otherwise adjudicated or agreed to based upon a
29 determination of earning power under clause (b) (2), the amount
30 of compensation shall not be affected as a result of the change

1 in disability status and shall remain the same. An insurer or
2 employe may, at any time prior to or during the five hundred-
3 week period of partial disability, show that the employe's
4 earning power has changed.

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

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

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

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

1 equal to or greater than fifty per centum impairment under the
2 most recent edition of the American Medical Association "Guides
3 to the Evaluation of Permanent Impairment" for any injury or
4 recurrence thereof.

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

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

16 (a.3) (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
21 of the one hundred four weeks to determine the degree of
22 impairment due to the compensable injury, if any. The degree of
23 impairment shall be determined based upon an evaluation by a
24 physician who is licensed in this Commonwealth, who is certified
25 by an American Board of Medical Specialties approved board or
26 its osteopathic equivalent and who is active in clinical
27 practice for at least twenty hours per week, chosen by agreement
28 of the parties, or as designated by the department, pursuant to
29 the American Medical Association "Guides to the Evaluation of
30 Permanent Impairment," 6th 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~~ THIRTY-FIVE per centum impairment under the <--
4 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~~ THIRTY-FIVE per centum impairment under <--
10 the American Medical Association "Guides to the Evaluation of
11 Permanent Impairment," 6th edition (second printing April 2009),
12 the employe shall then receive partial disability benefits under
13 clause (b): Provided, however, That no reduction shall be made
14 until sixty days' notice of modification is given.

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

22 (4) An employe may appeal the change to partial disability
23 at any time during the five hundred-week period of partial
24 disability; Provided, That there is a determination that the
25 employe meets the threshold impairment rating that is equal to
26 or greater than ~~fifty~~ THIRTY-FIVE per centum impairment under <--
27 the American Medical Association "Guides to the Evaluation of
28 Permanent Impairment," 6th edition (second printing April 2009).

29 (5) Total disability shall continue until it is adjudicated
30 or agreed under clause (b) that total disability has ceased or

1 the employe's condition improves to an impairment rating that is
2 less than ~~fifty~~ THIRTY-FIVE per centum of the degree of <--
3 impairment defined under the American Medical Association
4 "Guides to the Evaluation of Permanent Impairment," 6th edition
5 (second printing April 2009).

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

13 (7) In no event shall the total number of weeks of partial
14 disability exceed five hundred weeks for any injury or
15 recurrence thereof, regardless of the changes in status in
16 disability that may occur. In no event shall the total number of
17 weeks of total disability exceed one hundred four weeks for any
18 employe who does not meet a threshold impairment rating that is
19 equal to or greater than ~~fifty~~ THIRTY-FIVE per centum impairment <--
20 under the American Medical Association "Guides to the Evaluation
21 of Permanent Impairment," 6th edition (second printing April
22 2009), for any injury or recurrence thereof.

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

27 (ii) For purposes of this clause, the term "impairment
28 rating" shall mean the percentage of permanent impairment of the
29 whole body resulting from the compensable injury. The percentage
30 rating for impairment under this clause shall represent only

1 that impairment that is the result of the compensable injury and
2 not for any preexisting work-related or nonwork-related
3 impairment.

4 * * *

5 ~~Section 2. Section 314(b) of the act is amended to read: <--~~

6 SECTION 2. SECTIONS 307(7) AND 314(B) OF THE ACT ARE AMENDED <--
7 TO READ:

8 SECTION 307. IN CASE OF DEATH, COMPENSATION SHALL BE
9 COMPUTED ON THE FOLLOWING BASIS, AND DISTRIBUTED TO THE
10 FOLLOWING PERSONS: PROVIDED, THAT IN NO CASE SHALL THE WAGES OF
11 THE DECEASED BE TAKEN TO BE LESS THAN FIFTY PER CENTUM OF THE
12 STATEWIDE AVERAGE WEEKLY WAGE FOR PURPOSES OF THIS SECTION:

13 * * *

14 (7) WHETHER OR NOT THERE BE DEPENDENTS AS AFORESAID, THE
15 REASONABLE EXPENSE OF BURIAL, NOT EXCEEDING [THREE THOUSAND
16 DOLLARS (\$3,000)] SEVEN THOUSAND DOLLARS (\$7,000), WHICH SHALL
17 BE PAID BY THE EMPLOYER OR INSURER DIRECTLY TO THE UNDERTAKER
18 (WITHOUT DEDUCTION OF ANY AMOUNTS THERETOFORE PAID FOR
19 COMPENSATION OR FOR MEDICAL EXPENSES).

20 * * *

21 Section 314. * * *

22 (b) In the case of a physical examination, the employe shall
23 be entitled to have a health care provider of his own selection,
24 to be paid by him, participate in such examination requested by
25 his employer or ordered by the workers' compensation judge. In
26 instances where an examination is requested in relation to
27 section [306(a.2)(1)] 306(a.3)(1), such examination shall be
28 performed by a physician who is licensed in this Commonwealth,
29 who is certified by an American Board of Medical Specialties
30 approved board or its osteopathic equivalent and who is in

1 active clinical practice for at least twenty (20) hours per
2 week.

3 Section 3. The following shall apply:

4 (1) For the purposes of determining whether an employee
5 shall submit to a medical examination to determine the degree
6 of impairment and whether an employee has received total
7 disability compensation for the period of 104 weeks under
8 section 306(a.3)(1) of the act, an insurer shall be given
9 credit for weeks of total disability compensation paid prior
10 to the effective date of this paragraph. This section shall
11 not be construed to alter the requirements of section
12 306(a.3) of the act.

13 (2) For the purposes of determining the total number of
14 weeks of partial disability compensation payable under
15 section 306(a.3)(7) of the act, an insurer shall be given
16 credit for weeks of partial disability compensation paid
17 prior to the effective date of this paragraph.

18 (3) WITHIN 90 DAYS FOLLOWING THE EFFECTIVE DATE OF THE <--
19 ADDITION OF SECTION 306(A.3) OF THE ACT, THE PENNSYLVANIA
20 COMPENSATION RATING BUREAU SHALL CALCULATE THE SAVINGS
21 ACHIEVED THROUGH THE IMPLEMENTATION OF THAT SUBSECTION.
22 IMMEDIATELY FOLLOWING THIS CALCULATION, THE AMOUNT OF SAVINGS
23 SHALL BE USED TO PROVIDE AN IMMEDIATE REDUCTION IN RATES,
24 EQUAL TO THE SAVINGS, APPLICABLE TO EMPLOYERS' WORKERS'
25 COMPENSATION POLICIES.

26 Section 4. This act shall take effect immediately.