

**WORKERS' COMPENSATION ACT - SCHEDULE OF COMPENSATION,
COMPUTATION OF BENEFITS AND PHYSICAL EXAMINATION OR EXPERT
INTERVIEW**

Act of Oct. 24, 2018, P.L. 714, No. 111

Cl. 77

Session of 2018

No. 2018-111

HB 1840

AN ACT

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

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

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 Section 306(a.2) of the act of June 2, 1915 (P.L.736, No.338), known as the Workers' Compensation Act, is repealed and the section is amended by adding a clause to read:

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

* * *

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

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

(3) Unless otherwise adjudicated or agreed to based upon a determination of earning power under clause (b)(2), the amount

of compensation shall not be affected as a result of the change in disability status and shall remain the same. An insurer or employe may, at any time prior to or during the five hundred-week period of partial disability, show that the employe's earning power has changed.

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

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

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

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

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

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

(a.3) (1) When an employe has received total disability compensation pursuant to clause (a) for a period of one hundred and four weeks, unless otherwise agreed to, the employe shall be required to submit to a medical examination which shall be requested by the insurer within sixty days upon the expiration of the one hundred and four weeks to determine the degree of impairment due to the compensable injury, if any. The degree of impairment shall be determined based upon an evaluation by a physician who is licensed in this Commonwealth, who is certified by an American Board of Medical Specialties-approved board or its osteopathic equivalent and who is active in clinical practice for at least twenty hours per week, chosen by agreement of the parties, or as designated by the department, pursuant to the American Medical Association "Guides to the Evaluation of Permanent Impairment," 6th edition (second printing April 2009).

(2) If such determination results in an impairment rating that meets a threshold impairment rating that is equal to or greater than thirty-five per centum impairment under the American Medical Association "Guides to the Evaluation of Permanent Impairment," 6th edition (second printing April 2009), the employe shall be presumed to be totally disabled and shall continue to receive total disability compensation benefits under clause (a). If such determination results in an impairment rating less than thirty-five per centum impairment under the American Medical Association "Guides to the Evaluation of Permanent Impairment," 6th edition (second printing April 2009), the employe shall then receive partial disability benefits under clause (b): Provided, however, That no reduction shall be made until sixty days' notice of modification is given.

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

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

(5) Total disability shall continue until it is adjudicated or agreed under clause (b) that total disability has ceased or the employe's condition improves to an impairment rating that is less than thirty-five per centum of the degree of impairment defined under the American Medical Association "Guides to the Evaluation of Permanent Impairment," 6th edition (second printing April 2009).

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

(7) In no event shall the total number of weeks of partial disability exceed five hundred weeks for any injury or recurrence thereof, regardless of the changes in status in disability that may occur. In no event shall the total number of weeks of total disability exceed one hundred and four weeks for any employe who does not meet a threshold impairment rating that is equal to or greater than thirty-five per centum impairment under the American Medical Association "Guides to the Evaluation of Permanent Impairment," 6th edition (second printing April 2009), for any injury or recurrence thereof.

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

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

compensable injury and not for any preexisting work-related or nonwork-related impairment.

* * *

Section 2. Sections 307(7) and 314(b) of the act are amended to read:

Section 307. In case of death, compensation shall be computed on the following basis, and distributed to the following persons: Provided, That in no case shall the wages of the deceased be taken to be less than fifty per centum of the Statewide average weekly wage for purposes of this section:

* * *

(7) Whether or not there be dependents as aforesaid, the reasonable expense of burial, not exceeding [three thousand dollars (\$3,000)] **seven thousand dollars (\$7,000)**, which shall be paid by the employer or insurer directly to the undertaker (without deduction of any amounts theretofore paid for compensation or for medical expenses).

* * *

Section 314. * * *

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

Section 3. The following shall apply:

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

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

(3) Within 90 days following the effective date of the addition of section 306(a.3) of the act, the Pennsylvania Compensation Rating Bureau shall calculate the savings achieved through the implementation of that subsection. Immediately following this calculation, the amount of savings shall be used to provide an immediate reduction in rates, equal to the savings, applicable to employers' workers' compensation policies.

Section 4. This act shall take effect immediately.

APPROVED--The 24th day of October, A.D. 2018.

TOM WOLF