

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 590 Session of
2005

INTRODUCED BY BARRAR, ARMSTRONG, BELFANTI, BLACKWELL, CURRY,
DeWEESE, GEORGE, JAMES, MILLARD, MUNDY, PHILLIPS, RAYMOND,
ROHRER, RUBLEY, SAINATO, SHANER, SOLOBAY, TANGRETTI,
E. Z. TAYLOR, THOMAS, WALKO AND YOUNGBLOOD, FEBRUARY 16, 2005

REFERRED TO COMMITTEE ON LABOR RELATIONS, FEBRUARY 16, 2005

AN ACT

1 Amending the act of June 2, 1915 (P.L.736, No.338), entitled, as
2 reenacted and amended, "An act defining the liability of an
3 employer to pay damages for injuries received by an employe
4 in the course of employment; establishing an elective
5 schedule of compensation; providing procedure for the
6 determination of liability and compensation thereunder; and
7 prescribing penalties," further providing for periodic
8 payment of compensation, for powers of referees and for
9 regulations.

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

12 Section 1. Section 308 of the act of June 2, 1915 (P.L.736,
13 No.338), known as the Workers' Compensation Act, amended March
14 29, 1972 (P.L.159, No.61), is amended to read:

15 Section 308. (a) Except as hereinafter provided, all
16 compensation payable under this article shall be payable in
17 periodical installments, as the wages of the employe were
18 payable before the injury.

19 (b) It shall be a violation of this section if a payment is
20 not delivered to the claimant within seven days of the

1 recognized payment date for a week, or weeks, of disability,
2 provided that the employer or insurer has not taken an action
3 set forth in section 413(b) which permits suspension or
4 termination of benefits.

5 Section 2. Section 418 of the act, amended February 8, 1972
6 (P.L.25, No.12), is amended to read:

7 Section 418. (a) The referee to whom a petition is assigned
8 for hearing, may subpoena witnesses, order the production of
9 books and other writings, and hear evidence, shall make a record
10 of hearings, and shall make, in writing and as soon as may be
11 after the conclusion of the hearing, such findings of fact,
12 conclusions of law, and award or disallowance of compensation or
13 other order, as the petition and answers and the evidence
14 produced before him and the provisions of this act shall, in his
15 judgment, require. The findings of fact made by a referee to
16 whom a petition has been assigned or any question of fact has
17 been referred under the provisions of section four hundred and
18 nineteen shall be final, unless an appeal is taken as provided
19 in this act.

20 (b) Compensation and medical bills which are determined to
21 be due to a claimant in a referee's final order shall be paid to
22 the claimant within thirty days of the issuance of such order:
23 Provided however, That if such decision is appealed and a
24 supersedeas is requested, such time limitation shall not apply;
25 and Provided further, That if a supersedeas is denied,
26 compensation and medical bills shall be paid within ten days of
27 such denial.

28 Section 3. Section 435 of the act, amended June 24, 1996
29 (P.L.350, No.57), is amended to read:

30 Section 435. (a) The department shall establish and

1 promulgate rules and regulations consistent with this act, which
2 are reasonably calculated to:

- 3 (i) expedite the reporting and processing of injury cases,
- 4 (ii) insure full payment of compensation when due,
- 5 (iii) expedite the hearing and determination of claims for
6 compensation and petitions filed with the department under this
7 act,
- 8 (iv) provide the disabled employee or his dependents with
9 timely notice and information of his or their rights under this
10 act,
- 11 (v) explain and enforce the provisions of this act.

12 (b) If it appears that there has not been compliance with
13 this act or rules and regulations promulgated thereunder the
14 department may, on its own motion give notice to any persons
15 involved in such apparent noncompliance and schedule a hearing
16 for the purpose of determining whether there has been
17 compliance. The notice of hearing shall contain a statement of
18 the matter to be considered.

19 (b.1) The following apply:

20 (i) The department shall provide qualified personnel to
21 assist injured employees with investigation and resolution of
22 alleged violations of sections 306(f.1)(5), 308, 406.1, 413(b),
23 418(b) and 438(b).

24 (ii) The department shall investigate complaints; shall
25 communicate with employers, insurers, third-party
26 administrators, providers and other parties; and shall attempt
27 to resolve alleged violations of sections 306(f.1)(5), 308,
28 406.1, 413(b), 418(b) and 438(b).

29 (iii) Within ten days of the department's receipt of the
30 complaint, if the matter is not resolved, it shall be referred

1 for investigation and determination as to whether the
2 insurer/employer violated this act.

3 (iv) If the department declines to find that the
4 insurer/employer violated this act, the employe may pursue any
5 and all remedies under this section.

6 (v) Appeals of the administrative determinations under this
7 subsection may be made to a hearing officer appointed by the
8 department to hear such matters.

9 (c) The board shall establish rules of procedure, consistent
10 with this act, which are reasonably calculated to expedite the
11 hearing and determination of appeals to the board and to insure
12 full payment of compensation when due.

13 (d) The department, the board, or any court which may hear
14 any proceedings brought under this act shall have the power to
15 impose penalties as provided herein for violations of the
16 provisions of this act or such rules and regulations or rules of
17 procedure:

18 (i) Employers and insurers may be penalized a sum not
19 exceeding ten per centum of the amount awarded and interest
20 accrued and payable: Provided, however, That such penalty may be
21 increased to fifty per centum in cases of unreasonable or
22 excessive delays. Such penalty shall be payable to the same
23 persons to whom the compensation is payable.

24 (ii) Any penalty or interest provided for anywhere in this
25 act shall not be considered as compensation for the purposes of
26 any limitation on the total amount of compensation payable which
27 is set forth in this act.

28 (iii) Claimants shall forfeit any interest that would
29 normally be payable to them with respect to any period of
30 unexcused delay which they have caused.

1 (d.1) In addition to the penalties provided for under
2 subsection (d), the department, the board, or any court which
3 may hear any proceedings brought under this act shall have the
4 power to impose an administrative penalty as provided in this
5 subsection for violations of section 306(f.1)(5), 308, 406.1,
6 413(b), 418(b) or 438(b):

7 (i) Employers and insurers may be penalized a sum of not
8 less than twenty-five dollars nor more than one hundred dollars
9 for each day of violation. Such administrative penalty shall be
10 payable to the department.

11 (ii) The administrative penalty may be imposed if the
12 violation was flagrant, there has been a history of repeat
13 violations on the same claim, the violation was an attempt to
14 pressure a claimant into settlement or where employers or
15 insurers acted in bad faith.

16 (iii) Any administrative penalty imposed under this
17 subsection shall not be considered as compensation for the
18 purpose of any limitation on the total amount of compensation
19 payable which is set forth in this act.

20 (iv) This subsection shall not apply to violations that
21 occur beyond the control of employers or insurers.

22 (v) An employer or insurer may not be subject to both a
23 penalty under this subsection and a penalty under subsection (d)
24 for the same offense.

25 (e) The department shall furnish to persons adversely
26 affected by occupational disease appropriate counseling
27 services, vocational rehabilitation services, and other
28 supportive services designed to promote employability to the
29 extent that such services are available and practical.

30 Section 4. This act shall take effect in 60 days.