

HOUSE BILL NO. 359

INTRODUCED BY G. VANCE, J. READ

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING WORKERS' COMPENSATION LAW PERTAINING TO SETTLEMENTS AND LUMP-SUM PAYMENTS; AMENDING SECTIONS 39-71-703, 39-71-721, AND 39-71-741, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-71-703, MCA, is amended to read:

"39-71-703. Compensation for permanent partial disability. (1) If an injured worker suffers a permanent partial disability and is no longer entitled to temporary total or permanent total disability benefits, the worker is entitled to a permanent partial disability award if that worker:

- (a) has an actual wage loss as a result of the injury; and
- (b) has a permanent impairment rating that:
 - (i) is not based exclusively on complaints of pain;
 - (ii) is established by objective medical findings; and
 - (iii) is more than zero as determined by the latest edition of the American medical association Guides to the Evaluation of Permanent Impairment.

(2) When a worker receives an impairment rating as the result of a compensable injury and has no actual wage loss as a result of the injury, the worker is eligible for an impairment award only.

(3) The permanent partial disability award must be arrived at by multiplying the percentage arrived at through the calculation provided in subsection (5) by 375 weeks.

(4) A permanent partial disability award granted an injured worker may not exceed a permanent partial disability rating of 100%.

(5) The percentage to be used in subsection (4) must be determined by adding all of the following applicable percentages to the impairment rating:

- (a) if the claimant is 40 years of age or younger at the time of injury, 0%; if the claimant is over 40 years of age at the time of injury, 1%;
- (b) for a worker who has completed less than 12 years of education, 1%; for a worker who has

1 completed 12 years or more of education or who has received a graduate equivalency diploma, 0%;

2 (c) if a worker has no actual wage loss as a result of the industrial injury, 0%; if a worker has an actual
3 wage loss of \$2 or less an hour as a result of the industrial injury, 10%; if a worker has an actual wage loss of
4 more than \$2 an hour as a result of the industrial injury, 20%. Wage loss benefits must be based on the difference
5 between the actual wages received at the time of injury and the wages that the worker earns or is qualified to earn
6 after the worker reaches maximum healing.

7 (d) if a worker, at the time of the injury, was performing heavy labor activity and after the injury the worker
8 can perform only light or sedentary labor activity, 5%; if a worker, at the time of injury, was performing heavy labor
9 activity and after the injury the worker can perform only medium labor activity, 3%; if a worker was performing
10 medium labor activity at the time of the injury and after the injury the worker can perform only light or sedentary
11 labor activity, 2%.

12 (6) The weekly benefit rate for permanent partial disability is $66 \frac{2}{3}\%$ of the wages received at the time
13 of injury, but the rate may not exceed one-half the state's average weekly wage. The weekly benefit amount
14 established for an injured worker may not be changed by a subsequent adjustment in the state's average weekly
15 wage for future fiscal years.

16 (7) An undisputed impairment award may be paid biweekly or in a lump sum at the discretion of the
17 worker. Lump sums paid for impairments are not subject to the requirements of 39-71-741, except that lump-sum
18 conversions for benefits not accrued may be reduced to present value at the rate established by the department
19 pursuant to 39-71-741~~(3)~~(5).

20 (8) If a worker suffers a subsequent compensable injury or injuries to the same part of the body, the
21 award payable for the subsequent injury may not duplicate any amounts paid for the previous injury or injuries.

22 (9) If a worker is eligible for a rehabilitation plan, permanent partial disability benefits payable under this
23 section must be calculated based on the wages that the worker earns or would be qualified to earn following the
24 completion of the rehabilitation plan.

25 (10) As used in this section:

26 (a) "heavy labor activity" means the ability to lift over 50 pounds occasionally or up to 50 pounds
27 frequently;

28 (b) "medium labor activity" means the ability to lift up to 50 pounds occasionally or up to 25 pounds
29 frequently;

30 (c) "light labor activity" means the ability to lift up to 20 pounds occasionally or up to 10 pounds

1 frequently; and

2 (d) "sedentary labor activity" means the ability to lift up to 10 pounds occasionally or up to 5 pounds
3 frequently."

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5 **Section 2.** Section 39-71-721, MCA, is amended to read:

6 **"39-71-721. Compensation for injury causing death -- limitation.** (1) (a) If an injured employee dies
7 and the injury was the proximate cause of the death, the beneficiary of the deceased is entitled to the same
8 compensation as though the death occurred immediately following the injury. A beneficiary's eligibility for benefits
9 commences after the date of death, and the benefit level is established as set forth in subsection (2).

10 (b) The insurer is entitled to recover any overpayments or compensation paid in a lump sum to a worker
11 prior to death but not yet recouped. The insurer shall recover the payments from the beneficiary's biweekly
12 payments as provided in 39-71-741~~(3)~~(5).

13 (2) To beneficiaries as defined in 39-71-116(4)(a) through (4)(d), weekly compensation benefits for an
14 injury causing death are 66 2/3% of the decedent's wages. The maximum weekly compensation benefit may not
15 exceed the state's average weekly wage at the time of injury. The minimum weekly compensation benefit is 50%
16 of the state's average weekly wage, but in no event may it exceed the decedent's actual wages at the time of
17 death.

18 (3) To beneficiaries as defined in 39-71-116(4)(e) and (4)(f), weekly benefits must be paid to the extent
19 of the dependency at the time of the injury, subject to a maximum of 66 2/3% of the decedent's wages. The
20 maximum weekly compensation may not exceed the state's average weekly wage at the time of injury.

21 (4) If the decedent leaves no beneficiary, a lump-sum payment of \$3,000 must be paid to the decedent's
22 surviving parent or parents.

23 (5) If any beneficiary of a deceased employee dies, the right of the beneficiary to compensation under
24 this chapter ceases. Death benefits must be paid to a surviving spouse for 500 weeks subsequent to the date
25 of the deceased employee's death or until the spouse's remarriage, whichever occurs first. After benefit payments
26 cease to a surviving spouse, death benefits must be paid to beneficiaries, if any, as defined in 39-71-116(4)(b)
27 through (4)(d).

28 (6) In all cases, benefits must be paid to beneficiaries.

29 (7) Benefits paid under this section may not be adjusted for cost of living as provided in 39-71-702."
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1 **Section 3.** Section 39-71-741, MCA, is amended to read:

2 "**39-71-741. ~~Compromise settlements~~ Settlements and lump-sum payments.** (1) By written
3 agreement, a claimant and an insurer may convert benefits under this chapter ~~may be converted~~ in whole or in
4 part into a lump sum. An agreement that settles a claim for any type of benefit is subject to department approval
5 as provided in subsection (2). Lump-sum advances and payment of accrued benefits in a lump sum, except
6 permanent total disability benefits under subsection ~~(1)(c)~~ (2)(c), are not subject to department approval. If the
7 department fails to approve or disapprove the agreement in writing within 14 days of the filing with the
8 department, the agreement is approved.

9 (2) The department shall directly notify a claimant of a department order approving or disapproving a
10 claimant's ~~compromise settlement~~ settlement or lump-sum payment. Upon approval, the agreement constitutes a
11 compromise and release settlement and may not be reopened by the department. The department may approve
12 ~~an a settlement~~ agreement to convert the following benefits to a lump sum only under the following conditions:

13 (a) all benefits if a claimant and an insurer dispute the initial compensability of an injury and there is a
14 reasonable dispute over compensability;

15 (b) permanent partial disability benefits if an insurer has accepted initial liability for an injury. The total
16 of any ~~permanent partial lump-sum conversion payment~~ payment in part that is awarded to a claimant prior to the
17 claimant's final award may not exceed the anticipated award under 39-71-703. The department may disapprove
18 an agreement under this subsection ~~(1)(b)~~ (2)(b) only if the department determines that the lump-sum ~~conversion~~
19 payment amount is inadequate.

20 (c) permanent total disability benefits if the total of all lump-sum conversions in part that are awarded
21 to a claimant do not exceed \$20,000. The approval or award of a lump-sum permanent total disability payment
22 in whole or in part by the department or court ~~must be~~ is the exception. It may be given only if the worker has
23 demonstrated financial need that:

24 (i) relates to:

25 (A) the necessities of life;

26 (B) an accumulation of debt incurred prior to the injury; or

27 (C) a self-employment venture that is considered feasible under criteria set forth by the department; or

28 (ii) arises subsequent to the date of injury or arises because of reduced income as a result of the injury.

29 (d) except as otherwise provided in this chapter, all other ~~compromise~~ settlements and lump-sum
30 payments agreed to by a claimant and insurer; ~~or~~

1 (e) medical benefits on an accepted claim if an insurer disputes the insurer's continued liability for
 2 medical benefits and there is a reasonable dispute over the medical treatment or medical compensability; or

3 (f) medical benefits on an accepted claim if the claimant has reached maximum medical improvement
 4 and the following applicable conditions are met:

5 (i) the insurer and claimant mutually agree to a settlement of all or a portion of medical benefits; and

6 (ii) a settlement is in the best interest of the parties to the settlement.

7 (3) The parties to a medical settlement agreement shall set out the rationale that is the basis for the
 8 settlement, and the claimant shall indicate by a signed acknowledgment an understanding of what medical
 9 benefits will terminate because of the settlement.

10 ~~(2)(4)~~ Any lump-sum conversion of benefits under this section must be converted to present value using
 11 the rate prescribed under subsection ~~(3)(b)~~ (5)(b).

12 ~~(3)(5)~~ (a) An insurer may recoup any lump-sum payment amortized at the rate established by the
 13 department, prorated biweekly over the projected duration of the compensation period.

14 (b) The rate adopted by the department must be based on the average rate for United States 10-year
 15 treasury bills in the previous calendar year.

16 (c) If the projected compensation period is the claimant's lifetime, the life expectancy must be determined
 17 by using the most recent table of life expectancy as published by the United States national center for health
 18 statistics.

19 ~~(4)(6)~~ A dispute between a claimant and an insurer regarding the conversion of biweekly payments into
 20 a lump sum is considered a dispute for which a mediator and the workers' compensation court have jurisdiction
 21 to make a determination.

22 (7) If an insurer and a claimant agree to a ~~compromise and release~~ settlement or a lump-sum payment
 23 but the department disapproves the agreement, the parties may request the workers' compensation court to
 24 review the department's decision without requesting mediation.

25 (8) The legislature does not intend to allow settlement of undisputed medical claims under subsection
 26 (2)(f) unless all parties willingly agree to the settlement. The failure of the parties to willingly agree to a settlement
 27 does not constitute a dispute concerning benefits."

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29 NEW SECTION. Section 4. Effective date. [This act] is effective on passage and approval.

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