

HB 90

REVISE WORKERS' COMPENSATION LAWS

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

SPONSOR – REP. ANDREA OLSEN HD 100

BUSINESS & LABOR

EXHIBIT NO. 2
DATE CONTACT 2-12-15
BILL NO. Diana Ferriter HB 90
ERD Administrator
(406) 444-1574
DiFerriter@mt.gov

SUMMARY OF CHANGES OR ACTUAL AMENDMENT LANGUAGE

PAGE LINE

Section 1. Section 39-71-107, MCA, is amended to include the new provision:

- 2 - 26 (d) a written notice advising the claimant when a change is made to the claims examiner handling the
27 claim, including the name and contact information of the new claims examiner. The notice must be sent within
28 14 days of the change in claims examiner.

Section 2. Section 39-71-704, MCA, is amended at subsection (2). The Section sets fee schedules for payment of workers' compensation. Specifically, the amendment removes the current subsection (2)(c), which provides the fee schedule from July 1, 2011, through June 30, 2013. It further amends the date of fee adoption from March 31 for certain fees, and October 1 for others, to a single date of January 1. Finally, it repeals subsection (2)(f) which stated:

- 6 - 24 ~~(f) The rates in effect through June 30, 2013, may not be less than the rates for medical services in effect~~
25 ~~as of December 31, 2010.~~

Section 3. Section 39-71-736, MCA, which defines when wage loss benefits may be paid, is amended at section (4) to read:

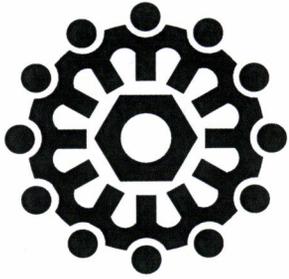
- 8 - 29 (4) Receipt of vacation leave or paid time off leave by a worker may not affect the worker's eligibility for
30 temporary total disability benefits."

Section 4. Section 39-71-915, MCA, is amended to read:

- 9 - 11 (2) The fund must be maintained by assessing each plan No. 1 employer, each employer insured by a
12 plan No. 2 insurer, plan No. 3, the state fund, with respect to claims arising before July 1, 1990, and each
13 employer insured by plan No. 3, the state fund. The assessment amount is the total amount from April 1 of the
14 previous year through March 31 of the current year paid by the fund ~~in the preceding fiscal year and plus~~ the
15 expenses of administration less other realized income that is deposited in the fund. The total assessment amount
16 to be collected must be allocated among plan No. 1 employers, plan No. 2 employers, plan No. 3, the state fund,
17 and plan No. 3 employers, based on a proportionate share of paid losses for the calendar year preceding the year
18 in which the assessment is collected. The board of investments shall invest the money of the fund, and the
19 investment income must be deposited in the fund.

OVERVIEW OF DEPARTMENT'S POSITION

This bill provides general housekeeping necessary for the effective and efficient functioning of the workers' compensation program. Amendment in **Section 1** provides protection to claimants. The amendment ensures that individuals know whom to contact regarding their claims so that they can get back to work as quickly as possible. Amendment in **Section 2** enhances the efficiency and usability of medical rates established under workers' compensation. Specifically, rates will be updated a single time annually, rather than the multiple amendments currently required by the statute. Amendment in **Section 3** reflects a change in leave practices in private employment. Increasingly, employers are providing a more general "paid time off" rather than specified vacation or sick leave. The amendment clarifies that either type of leave may be used for toward the four day waiting period. Amendment in **Section 4** eliminates the significant delay in assessments which fund the subsequent injury fund. Currently, a significant period of time passes between when the Fund makes payment, and when the fund is replenished by assessment. As a result of the current delay, the fund balance has been depleted.



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DETAILED DEPARTMENT POSITION

Section 1: 39-71-105

Require insurers to notify injured workers of changes in claims examiners. It is an objective of the workers' compensation system to return a worker to work as soon as possible after the worker has suffered a work-related injury or disease. In order for that to happen, the injured worker must know who their claims examiner is and have the opportunity to communicate with them. The Claims Assistance Bureau handles inquiries in each of the Medical Regulations, Claims and Mediation Units where the injured worker doesn't know who is adjusting their claim. Requiring written notice to the worker when the claim is accepted or when the claims examiner changes will improve communication between the worker and the claims examiner and increase efficiencies and result in timely decisions and benefits.

Section 2: 39-71-704

Amend 39-71-704(2)(d) to allow only one update to the medical fee schedules per year versus the current requirement for three updates. The various medical coding standards used in our fee schedule are updated by Medicare or other entities several times a year. Our current law requires three different updates. The date of service on a medical bill determines which fee schedule should be used. This requires the Department to archive as many as five or six fee schedules in order for insurers and medical providers to know which reimbursement rate applies. Having only an annual change in the fee schedule will make it more efficient and cost-effective for the department and all stakeholders.

Section 3: 39-71-736

Provide Guidance to Stakeholders How Paid Time Off (PTO) or Personal Leave May Supplement Benefits. Amend 39-71-736(2) and (4) to include paid time off or personal leave in addition to sick leave and vacation leave already in the statute. This change provides guidance when PTO or personal leave may be used for the waiting period and paid in addition to TTD so this type of leave does not differentiate in the law from sick and vacation leave.

Currently, the statute refers to sick and vacation leave only but it is becoming more common that employers do not differentiate between the two and simply refer to it as PTO or personal leave. The statute doesn't address how an employee may use this leave to supplement benefits. The department recommends PTO or personal leave may be used toward the 4-day waiting period similar to sick leave and PTO or personal leave may not affect the worker's eligibility for TTD similar to vacation leave.

Section 4: 39-71-915

Amend the Subsequent Injury Fund (SIF) Assessment – 39-71-915(2). The subsequent injury fund limits the liability of employers/insurers by capping benefits at 104 weeks actually paid by the insurer on subsequent injury claims of injured workers who are certified as vocationally handicapped. After 104 weeks, the Fund reimburses the insurer for all additional benefit payments made on the claim. An assessment billed to employers provides the funding for this fund.

Currently, statute requires that the assessment amount is the total amount paid by the fund in the preceding fiscal year and the expenses of administration. This calculation method results in a significant lag time from when payments are made from the fund to when the funds are ultimately replenished through assessment. This has become an issue in recent years with renewed interest in certifying individuals for SIF and more significant requests for reimbursement from insurance carriers. It has ultimately led to the fund balance being completely depleted.

This change will reduce the length in time between when payments are made from the SIF as a reimbursement to carriers and when the assessment is billed and therefore paid by employers to replenish the SIF. Instead of looking back to the prior fiscal year end for expenditures paid, the department would look back to expenditures paid through March 31st of the current calendar year. This will replenish the fund balance and keep reimbursements more current with expenditures paid.