

2018 Regular Session

SENATE BILL NO. 536

BY SENATOR LUNEAU

WORKERS' COMPENSATION. Provides relative to workers' compensation. (8/1/18)

1 AN ACT

2 To amend and reenact R.S. 23:1124, the introductory paragraph of 1201.1(A), (I)(1), and
3 (K), and 1226(B)(3)(c), relative to workers' compensation; to provide for medical
4 examinations; to provide for suspension of workers' compensation benefits; to
5 provide for procedures; to provide for hearings; to provide for the reinstatement of
6 benefits; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 23:1124, the introductory paragraph of 1201.1(A), (I)(1), and (K),
9 and 1226(B)(3)(c) are hereby amended and reenacted to read as follows:

10 §1124. Refusal to submit to an additional medical opinion regarding an
11 examination; effect on right to compensation

12 A. If the employee refuses to submit himself to an additional medical opinion
13 regarding a medical examination at the behest of the employer or an examination
14 conducted pursuant to R.S. 23:1123, or in anywise obstructs the same, his right to
15 compensation and to take or prosecute any further proceedings under this Chapter
16 may be suspended by the employer or payor until the examination takes place. Such
17 suspension of benefits by the employer or payor shall ~~be made in accordance with~~

1 ~~the provisions of R.S. 23:1201.1(A)(4) and (5) occur only after a hearing has been~~
2 ~~conducted as provided in Subsection B of this Section.~~ When the employee has
3 filed a disputed claim, the employer or payor may move for an order to compel the
4 employee to appear for an additional medical opinion regarding an examination. The
5 employee shall receive at least fourteen days written notice prior to the additional
6 medical opinion regarding an examination. When a right to compensation is
7 suspended no compensation shall be payable in respect to the period of suspension.

8 B.(1) An employer or insurer who seeks to compel an employee's
9 compliance with a medical examination shall be granted an expedited hearing.
10 The workers' compensation judge shall set a hearing date for the matter within
11 three days of receiving the employer's or insurer's motion. The hearing shall
12 be held not less than ten nor more than thirty days after the employee, or his
13 attorney, receives notice, delivered by certified or registered mail, of the
14 employer's or insurer's motion. The workers' compensation judge shall provide
15 notice of the hearing date to the employer and insurer at the same time, and in
16 the same manner, that notice of the hearing date is provided to the employee or
17 his attorney. For the purposes of this Section, an employer or insurer need not
18 submit the dispute on the medical examination to mediation, nor go through a
19 pretrial conference, before obtaining a hearing. The hearing shall be conducted
20 as a rule to show cause. Unless the employee can show good cause for his
21 refusal or obstruction of the medical examination, the workers' compensation
22 judge shall suspend the employee's compensation and prosecution rights
23 according to Subsection A of this Section.

24 (2) If the workers' compensation judge orders the employee to submit
25 to a medical examination and the employee submits to the examination as
26 ordered by the judge, the employee's workers' compensation benefits shall be
27 reinstated within ten days after the examination takes place.

28 * * *

29 §1201.1. Controversion of compensation and medical benefits

1 any penalty or attorney fees arising out of the original notice which was the subject
2 of the preliminary hearing.

3 ~~(3) Any employer or payor who accepts and complies with the workers'~~
4 ~~compensation judge's determination, but who disagrees with such preliminary~~
5 ~~determination, shall notify the court within ten days of receipt of the preliminary~~
6 ~~determination of his desire to proceed to a trial on the merits of the matters that were~~
7 ~~the subject of the preliminary hearing.~~

8 (4) Any employer or payor who does not accept the workers' compensation
9 judge's determination or fails to comply with the determination within ten calendar
10 days, may, at the trial on the merits, be subject to penalties and attorney fees
11 pursuant to R.S. 23:1201, arising out of the issues raised in the original notice of
12 payment, modification, suspension, termination, or controversion of benefits, which
13 was the subject of the preliminary hearing.

14 ~~(5)~~**(4)** Any injured employee who disagrees with the preliminary
15 determination shall notify the court within ten days of the receipt of such preliminary
16 determination of his desire to proceed to a trial on the merits of the matters that were
17 the subject of the preliminary hearing. If the employer or payor has accepted and
18 complied with the preliminary hearing determination, the employer or payor shall
19 also be entitled to litigate all issues including those issues presented at the
20 preliminary determination hearing.

21 ~~(6) Any employer or payor who accepts and complies with the determination~~
22 ~~of the workers' compensation judge, and who does not request to proceed to trial on~~
23 ~~the merits of the matters that were the subject of the preliminary hearing, shall retain~~
24 ~~the right to further controvert future matters. The workers' compensation judge's~~
25 ~~determination shall not be considered an order concerning benefits due requiring~~
26 ~~modification, nor shall the determination be considered res judicata of any matters~~
27 ~~which were the subject of the preliminary hearing. The acceptance of the preliminary~~
28 ~~determination by the employer or payor shall not be considered an admission.~~

29 ~~(7)~~**(5)** In matters where the employee has filed a disputed claim and the

1 employer or payor is not entitled to a preliminary determination, the matter shall
2 proceed to trial on the merits.

3 ~~(8)(6)~~(a) Upon motion of either party, whether or not the employer or payor
4 is entitled to a preliminary determination, the workers' compensation judge's ruling
5 in a hearing shall be conducted as an expedited summary proceeding and shall be
6 considered an order of the court and not requiring a further trial on the merits, if it
7 concerns any of the following matters:

8 (i) The employee has sought choice of physician pursuant to R.S.
9 23:1121(B)(1).

10 (ii) The employee has filed a claim pursuant to R.S. 23:1226(B)(3)(a).

11 (iii) The employer or payor seeks to compel the employee to sign the choice
12 of physician form pursuant to R.S. 23:1121(B)(5).

13 (iv) The employer or payor seeks to compel the employee's submission to a
14 medical examination pursuant to R.S. 23:1124.

15 (v) The employer seeks to require the employee to return form LWC-1025
16 or LWC-1020.

17 (vi) The employee seeks to have a suspension of benefits for failure to
18 comply with R.S. 23:1121(B)(1) lifted.

19 ~~(vii) The employee seeks to have a suspension of benefits for failure to~~
20 ~~submit to a medical examination lifted.~~

21 ~~(viii)~~ The employee seeks to have a suspension of benefits for failure to
22 comply with R.S. 23:1208(H) lifted.

23 ~~(ix)(viii)~~ The ~~employee~~ **employer** seeks ~~to have~~ a reduction in benefits for
24 failure to cooperate with vocational rehabilitation ~~lifted~~.

25 (b)(i) The workers' compensation judge shall set the expedited summary
26 proceeding hearing date pursuant to Items (a)(iii), (iv), and (v) of this Paragraph
27 within three days of receiving the employer's motion for the expedited hearing. The
28 hearing shall be held not less than ten nor more than thirty days after the motion has
29 been filed.

1 (ii) The workers' compensation judge shall provide the notice of the hearing
2 date to the employee or his attorney at the same time and in the same manner that the
3 notice of the hearing date is provided to the employer or payor.

4 (iii) For the purposes of this Section, the party seeking an expedited hearing
5 shall not be required to submit the dispute to mediation or go through a pretrial
6 conference before obtaining a hearing. The hearing shall be conducted as a rule to
7 show cause.

8 (c) The workers' compensation judge shall order the employee to sign the
9 choice of physician form, ~~enforce the employee's submission to the medical~~
10 ~~examination~~, or provide the LWC-1020 or LWC-1025 form as applicable unless the
11 employee can show good cause for his refusal.

12 (d) If the employee seeking relief pursuant to this Paragraph can show good
13 cause for his refusal, the workers' compensation judge shall order the suspension or
14 reduction in benefits lifted and the payment of any arrearage due. If the employee
15 fails to show good cause for refusal, the workers' compensation judge shall order the
16 suspension or reduction in benefits to continue until the employee complies.

17 (e) An employer or payor who is entitled to a preliminary determination and
18 who complies with an order of the court issued pursuant to a hearing held in
19 accordance with this Paragraph within ten calendar days shall not be subject to any
20 penalty or attorney fees arising out of the original notice which was the subject of the
21 hearing.

22 * * *

23 §1226. Rehabilitation of injured employees

24 * * *

25 B. * * *

26 (3) * * *

27 (c) Upon refusal by the employee to cooperate with vocational
28 rehabilitation, the employer or payor may file a motion in accordance with R.S.
29 23:1201(K)(6)(a)(viii) to reduce weekly compensation, including supplemental

1 earnings benefits pursuant to R.S. 23:1221(3), by fifty percent for each week of the
 2 period of refusal. Reduction of benefits by the employer or payor shall be ~~made in~~
 3 ~~accordance with the provisions of R.S. 23:1201.1(A) through (E)~~ **ordered by the**
 4 **court upon finding that the employee has unreasonably refused to cooperate**
 5 **with vocational rehabilitation.**

6 * * *

The original instrument and the following digest, which constitutes no part
 of the legislative instrument, were prepared by Carla S. Roberts.

DIGEST

SB 536 Original

2018 Regular Session

Luneau

Present law provides for the examination of an injured employee. Present law requires an injured employee to be examined by a qualified medical practitioner as soon after the accident as demanded. Present law further provides that the examination will be paid for by the employer.

Present law provides that, if the employee refuses to submit himself to an additional medical opinion via a medical examination at the behest of the employer, the injured worker's right to compensation and to prosecute his claim under present law may be suspended by the employer or payor until the medical examination takes place.

Proposed law provides that an employee's benefit may only be terminated by order of the workers' compensation judge after an expedited hearing is set and heard.

Proposed law provides that an employer or insurer who seeks to compel an employee's compliance with a medical examination will be granted an expedited hearing.

Proposed law provides that the workers' compensation judge will set a hearing date for the matter within three days of receiving the employer's or insurer's motion. Proposed law provides that the hearing will be held not less than 10 nor more than 30 days after the employee, or his attorney, receives notice, delivered by certified or registered mail, of the employer's or insurer's motion.

Proposed law provides that the workers' compensation judge will provide notice of the hearing date to the employer and insurer at the same time, and in the same manner, that notice of the hearing date is provided to the employee or his attorney.

Proposed law provides that an employer or insurer need not submit the dispute on the medical examination to mediation, nor go through a pretrial conference, before obtaining a hearing. Proposed law provides that the hearing will be conducted as a rule to show cause.

Proposed law provides that, unless the employee can show good cause for his refusal or obstruction of the medical examination, the workers' compensation judge shall suspend the employee's compensation and prosecution rights pursuant to present law. Proposed law provides that, if the workers' compensation judge orders the employee to submit to a medical examination and the employee submits to the examination as ordered by the judge, the employee's workers' compensation benefits shall be reinstated within 10 days after the examination takes place.

Present law provides that, upon the first payment of compensation or upon any modification,

suspension, termination, or controversion of compensation or medical benefits for any reason, including but not limited to issues of medical causation, compensability of the claim, or issues arising out of medical examinations, refusal to submit to an examination, or misrepresentation concerning benefit payment, or rehabilitation of injured employees, the employer or payor who has been notified of the claim, will do all of the following:

- (1) Prepare a "Notice of Modification, Suspension, Termination, or Controversion of Compensation and/or Medical Benefits".
- (2) Send the notice of the initial indemnity payment to the injured employee on the same day as the first payment of compensation is made by the payor after the payor has received notice of the claim from the employer.
- (3) Send a copy of the notice of the initial payment of indemnity to the office within ten days from the date the original notice was sent to the injured employee or by facsimile to the injured employee's representative.
- (4) Send the "Notice of Payment, Modification, Suspension, Termination, or Controversion of Compensation and/or Medical Benefits" to the injured employee by certified mail, to the address at which the employee is receiving payments of compensation, on or before the effective date of a modification, suspension, termination, or controversion.
- (5) Send a copy of the "Notice of Payment, Modification, Suspension, Termination, or Controversion of Compensation and/or Medical Benefits" to the office on the same business day as sent to the employee or to his representative.

Proposed law retains present law but eliminates the procedure in present law related to issues arising out of medical examinations or refusal to submit to an examination and adds to the procedure in present law those issues related to disability status and earning capacity.

Present law provides that an employer or payor who has not complied with the requirements set forth in present law or has not initially accepted the claim as compensable, will not be entitled to a preliminary determination. An employer or payor who is not entitled to a preliminary determination or who is so entitled but fails to request a preliminary determination may be subject to penalties and attorney fees pursuant to present law at a trial on the merits or hearing held pursuant to present law.

Proposed law retains present law but does not allow an employer who approves the claim subject to further investigation and subsequent controversion to be entitled to a preliminary determination.

Present law provides that any employer or payor who accepts and complies with the determination of the workers' compensation judge, and who does not request to proceed to trial on the merits of the matters that were the subject of the preliminary hearing, will retain the right to further controvert future matters. Further provides that the workers' compensation judge's determination will not be considered an order concerning benefits due requiring modification, nor will the determination be considered res judicata of any matters which were the subject of the preliminary hearing. Provides that the acceptance of the preliminary determination by the employer or payor will not be considered an admission.

Proposed law deletes present law.

Present law provides that relative to whether the employer is entitled to a preliminary determination, the workers' compensation judge's ruling in a hearing shall be conducted as an expedited summary proceeding and shall be considered an order of the court and not requiring a further trial on the merits if it concerns certain matters, including if the employee seeks to have a suspension of benefits for failure to submit to a medical examination lifted.

Proposed law retains present law but deletes this issue. An additional matter is if the employee seeks to have lifted a reduction in benefits for failure to cooperate with vocational rehabilitation. Proposed law changes this to if the employer seeks a reduction in benefits for failure to cooperate with vocational rehabilitation.

Present law provides that upon refusal by the employee to cooperate with vocation rehabilitation, the employer or payor may reduce weekly compensation by 50% for each week of the period of refusal. Proposed law requires the employer or payor to file a motion to reduce the compensation and further provides that reduction of benefits may be made only by court order.

Effective August 1, 2018.

(Amends R.S. 23:1124, 1201.1(A)(intro para), (I)(1), and (K), and 1226(B)(3)(c))