

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

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

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

29 * * *

1 §1201.1. Controversion of compensation and medical benefits

2 A. Upon the first payment of compensation or upon any modification,
3 suspension, termination, or controversion of compensation or medical benefits ~~for~~
4 ~~any reason, including but not limited~~ **with respect** to issues of medical causation,
5 compensability of the claim, **disability status, earning capacity,** or issues arising
6 out of R.S. 23:~~1121, 1124, 1208,~~ and 1226, the employer or payor who has been
7 notified of the claim, shall do all of the following:

8 * * *

9 I.(1) An employer or payor who has not complied with the requirements set
10 forth in Subsection A through E of this Section or has not initially accepted the claim
11 as compensable, ~~subject to further investigation and subsequent controversion~~ shall
12 not be entitled to a preliminary determination. An employer or payor who is not
13 entitled to a preliminary determination or who is so entitled but fails to request a
14 preliminary determination may be subject to penalties and attorney fees pursuant to
15 R.S. 23:1201 at a trial on the merits or hearing held pursuant to Paragraph (K)(8) of
16 this Section.

17 * * *

18 K.(1) The employer or payor shall, within ten calendar days of the mailing
19 of the determination from the workers' compensation judge, do either of the
20 following:

21 (a) Accept and comply with preliminary determination of the workers'
22 compensation judge regarding the payment, suspension, modification, termination,
23 or controversion of benefits and mail a revised "Notice of Modification, Suspension,
24 Termination, or Controversion of Compensation and/or Medical Benefits" to the
25 injured employee or employee's representative, along with any payment amount
26 determined, and any arrearage due.

27 (b) Notify the injured employee or his representative in writing that the
28 employer or payor does not accept the determination.

29 (2) Any employer or payor who accepts and complies with the workers'

1 compensation judge's determination within ten calendar days, shall not be subject to
2 any penalty or attorney fees arising out of the original notice which was the subject
3 of the preliminary hearing.

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

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

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

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

1 ~~(7)~~**(5)** In matters where the employee has filed a disputed claim and the
2 employer or payor is not entitled to a preliminary determination, the matter shall
3 proceed to trial on the merits.

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

9 (i) The employee has sought choice of physician pursuant to R.S.
10 23:1121(B)(1).

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

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

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

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

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

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

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

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

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

1 been filed.

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

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

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

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

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

23 * * *

24 §1226. Rehabilitation of injured employees

25 * * *

26 B. * * *

27 (3) * * *

28 (c) Upon refusal by the employee **to cooperate with vocational**
29 **rehabilitation**, the employer or payor may **file a motion in accordance with R.S.**

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))