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

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DIGEST

SB 536 Engrossed

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))