

2022 Regular Session

SENATE BILL NO. 310

BY SENATOR LUNEAU

WORKERS' COMPENSATION. Provides a cost-of-living adjustment for any injury producing the temporary, total, or permanent total disability of an employee. (8/1/22)

1 AN ACT

2 To amend and reenact R.S. 23:1020.1(B)(2) and (3) and 1021(4) through (13) and to enact
3 R.S. 23:1020.1(B)(4), 1021(14) through (16), and 1221(1)(e) and (2)(f), relative to
4 workers' compensation; to provide for a cost-of-living adjustment for injured
5 employees receiving temporary and permanent total disability benefits; to provide
6 the formula to compute the cost-of-living adjustment; to provide relative to employee
7 qualifications; to provide definitions; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 23:1020.1(B)(2) and (3) are hereby amended and reenacted and R.S.
10 23:1020.1(B)(4) is hereby enacted to read as follows:

11 §1020.1. Citation, purpose; legislative intent; construction

12 * * *

13 B. Purpose. The legislature declares that the purpose of this Chapter is all of
14 the following:

15 * * *

16 **(2) To counteract inflation by providing a cost-of-living adjustment for**
17 **temporary total and permanent total disability benefits to all injured workers**

1 who suffer an injury or disease arising out of and in the course and scope of
2 their employment as is provided in this Chapter.

3 ~~(2)~~**(3)** To pay the medical expenses that are due to all injured workers
4 pursuant to this Chapter.

5 ~~(3)~~**(4)** To return such workers who have received benefits pursuant to this
6 Chapter to the work force.

7 * * *

8 Section 2. R.S. 23:1021(4) through (13) are hereby amended and reenacted and R.S.
9 23:1021(14) through (16) are hereby enacted to read as follows:

10 §1021. Terms defined

11 * * *

12 **(4) "The Consumer Price Index" (CPI) is a measure of the average**
13 **change over time in the prices paid by urban consumers for a market basket of**
14 **consumer goods and services.**

15 **(5) "Cost-of-living adjustment" (COLA) means an adjustment made to**
16 **disability benefits to counteract the effects of inflation in the economy.**

17 ~~(4)~~**(6)** "Dependent" means the person or persons to whom, under the
18 provisions of Part II of this Chapter, compensation shall be paid upon the death of
19 the injured employee.

20 ~~(5)~~**(7)** "Assistant secretary" means the assistant secretary of the office of
21 workers' compensation administration.

22 ~~(6)~~**(8)** "Health care provider" means a hospital, a person, corporation, facility,
23 or institution licensed by the state to provide health care or professional services as
24 a physician, hospital, dentist, registered or licensed practical nurse, pharmacist,
25 optometrist, podiatrist, chiropractor, physical therapist, occupational therapist,
26 psychologist, graduate social worker or licensed clinical social worker, psychiatrist,
27 or licensed professional counselor, and any officer, employee, or agent thereby
28 acting in the course and scope of his employment.

29 ~~(7)~~**(9)** "Independent contractor" means any person who renders service, other

1 than manual labor, for a specified recompense for a specified result either as a unit
2 or as a whole, under the control of his principal as to results of his work only, and not
3 as to the means by which such result is accomplished, and are expressly excluded
4 from the provisions of this Chapter unless a substantial part of the work time of an
5 independent contractor is spent in manual labor by him in carrying out the terms of
6 the contract, in which case the independent contractor is expressly covered by the
7 provisions of this Chapter. The operation of a truck tractor or truck tractor trailer,
8 including fueling, driving, connecting and disconnecting electrical lines and air
9 hoses, hooking and unhooking trailers, and vehicle inspections are not manual labor
10 within the meaning of this Chapter.

11 **(10) "Inflation" means the decline of purchasing power of a given**
12 **currency over time.**

13 ~~(8)~~**(11)**(a) "Injury" and "personal injuries" include only injuries by violence
14 to the physical structure of the body and such disease or infections as naturally result
15 therefrom. These terms shall in no case be construed to include any other form of
16 disease or derangement, however caused or contracted.

17 (b) Mental injury caused by mental stress. Mental injury or illness resulting
18 from work-related stress shall not be considered a personal injury by accident arising
19 out of and in the course of employment and is not compensable pursuant to this
20 Chapter, unless the mental injury was the result of a sudden, unexpected, and
21 extraordinary stress related to the employment and is demonstrated by clear and
22 convincing evidence.

23 (c) Mental injury caused by physical injury. A mental injury or illness caused
24 by a physical injury to the employee's body shall not be considered a personal injury
25 by accident arising out of and in the course of employment and is not compensable
26 pursuant to this Chapter unless it is demonstrated by clear and convincing evidence.

27 (d) No mental injury or illness shall be compensable under either
28 Subparagraph (b) or (c) unless the mental injury or illness is diagnosed by a licensed
29 psychiatrist or psychologist and the diagnosis of the condition meets the criteria as

1 established in the most current issue of the Diagnostic and Statistical Manual of
2 Mental Disorders presented by the American Psychiatric Association.

3 (e) Heart-related or perivascular injuries. A heart-related or perivascular
4 injury, illness, or death shall not be considered a personal injury by accident arising
5 out of and in the course of employment and is not compensable pursuant to this
6 Chapter unless it is demonstrated by clear and convincing evidence that:

7 (i) The physical work stress was extraordinary and unusual in comparison to
8 the stress or exertion experienced by the average employee in that occupation, and

9 (ii) The physical work stress or exertion, and not some other source of stress
10 or preexisting condition, was the predominant and major cause of the heart-related
11 or perivascular injury, illness, or death.

12 ~~(9)~~**(12)** "Office" means the office of workers' compensation administration
13 established pursuant to R.S. 23:1291.

14 ~~(10)~~**(13)** "Owner operator" means a person who provides trucking
15 transportation services under written contract to a common carrier, contract carrier,
16 or exempt haulers which transportation services include the lease of equipment or
17 a driver to the common carrier, contract carrier, or exempt hauler. An owner
18 operator, and the drivers provided by an owner operator, are not employees of any
19 such common carrier or exempt hauler for the purposes of this Chapter if the owner
20 operator has entered into a written agreement with the carrier or hauler that
21 evidences a relationship in which the owner operator identifies itself as an
22 independent contractor. For purposes of this Chapter, owner operator does not
23 include an individual driver who purchases his equipment from the carrier or hauler,
24 and then directly leases the equipment back to the carrier or hauler with the
25 purchasing driver.

26 ~~(11)~~**(14)** "Part-time employee" means an employee who as a condition of his
27 hiring knowingly accepts employment that (a) customarily provides for less than
28 forty hours per work week, and (b) that is classified by the employer as a part-time
29 position.

1 ~~(12)~~**(15)** "Payor" means the entity responsible, whether by law or contract,
2 for the payment of benefits incurred by a claimant as a result of a work related
3 injury.

4 ~~(13)~~**(16)** "Wages" means average weekly wage at the time of the accident.
5 The average weekly wage shall be determined as follows:

6 * * *

7 Section 3. R.S. 23:1221(1)(e) and (2)(f) are hereby enacted to read as follows:

8 §1221. Temporary total disability; permanent total disability; **adjusted total**
9 **disability benefits;** supplemental earnings benefits; permanent
10 partial disability; schedule of payments

11 Compensation shall be paid under this Chapter in accordance with the
12 following schedule of payments:

13 (1) * * *

14 **(e)(i) For purposes of Subparagraph (a) of this Paragraph, any**
15 **compensable injury producing temporary total disability of an employee to**
16 **engage in any self-employment or occupation for wages, whether or not the**
17 **same or a similar occupation as that in which the employee was customarily**
18 **engaged when injured, and whether or not an occupation for which the**
19 **employee at the time of injury was particularly fitted by reason of education,**
20 **training, or experience, occurring on or after August 1, 2022, for which**
21 **temporary total disability continues, except those injuries for which the**
22 **employee is entitled to benefits under the federal Social Security Act, as**
23 **amended, the injured employee shall be entitled to an adjustment in the weekly**
24 **compensation rate effective August 1, 2022, based upon the following formula:**

25 **(ii) Determine the percentage of the injured employee's average weekly**
26 **wage at the time of the injury to the state's average weekly wage as established**
27 **by the Louisiana Workforce Commission - Office of Workers' Compensation**
28 **Administration for the same corresponding year. This amount shall be**
29 **computed to the nearest multiple of one dollar. In no event shall the percentage**

1 exceed sixty-six and two-thirds percent of the state's average weekly wage.

2 (iii) Determine the adjusted average weekly wage of the injured
3 employee by applying the percentage determined in Item (ii) of this
4 Subparagraph against the state's current average weekly wage which is
5 established annually on August first of each year as of the quarter ending on the
6 immediately preceding March thirty-first of each year for the previous calendar
7 year.

8 (iv) Determine the revised weekly rate of compensation by applying the
9 adjusted average weekly wage to the current schedule of benefits under
10 Subparagraph (a) of this Paragraph.

11 (v) The injured employee shall be entitled to an adjustment in the weekly
12 compensation rate at one year intervals on August first in each year with the
13 initial review occurring on or after the third anniversary of the injury.

14 (vi) Every insurance carrier or self-insured employer shall be required
15 to report each compensable injury case to the secretary of the Louisiana
16 Workforce Commission if temporary total disability payments continue or are
17 expected to continue for six months from the date of injury.

18 (vii) Adjustments in weekly benefit rates shall only apply to those
19 injuries deemed to result in temporary total or permanent total disability for
20 the injured employee and shall not be retroactive from the anniversary date of
21 such review, unless an employee entitled to such adjustment did not receive the
22 amount due because of a mistake, misfortune, or lack of knowledge.

23 (2) Permanent Total.

24 * * *

25 (f) For purposes of Subparagraph (a) of this Paragraph, any
26 compensable injury producing permanent total disability of an employee to
27 engage in any self-employment or occupation for wages, whether or not the
28 same or a similar occupation as that in which the employee was customarily
29 engaged when injured, and whether or not an occupation for which the

1 employee at the time of injury was particularly fitted by reason of education,
2 training, or experience, occurring on or after August 1, 2022, for which
3 permanent total disability continues, except those injuries for which the
4 employee is entitled to benefits under the federal Social Security Act, as
5 amended, the injured employee shall be entitled to an adjustment in the weekly
6 compensation rate effective August 1, 2022, based upon the following formula:

7 (i) Determine the percentage of the injured employee's average weekly
8 wage at the time of the injury to the state's average weekly wage as established
9 by the Louisiana Workforce Commission - Office of Workers' Compensation
10 Administration for the same corresponding year. This amount shall be
11 computed to the nearest multiple of one dollar. In no event shall the percentage
12 exceed sixty-six and two-thirds percent of the state's average weekly wage.

13 (ii) Determine the adjusted average weekly wage of the injured employee
14 by applying the percentage determined in Item (i) of this Subparagraph against
15 the state's current average weekly wage which is established annually on August
16 first of each year as of the quarter ending on the immediately preceding March
17 thirty-first of each year for the previous calendar year.

18 (iii) Determine the revised weekly rate of compensation by applying the
19 adjusted average weekly wage to the current schedule of benefits under
20 Subparagraph (a) of this Paragraph.

21 (iv) The injured employee shall be entitled to an adjustment in the
22 weekly compensation rate at one year intervals on August first in each year with
23 the initial review occurring on or after the third anniversary of the injury.

24 (v) Every insurance carrier or self-insured employer shall be required
25 to report each compensable injury case to the secretary of the Louisiana
26 Workforce Commission if permanent total disability payments continue or are
27 expected to continue for six months from the date of injury.

28 (vi) Adjustments in weekly benefit rates shall only apply to those injuries
29 deemed to result in temporary total or permanent total disability for the injured

