

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(2)(f), relative to workers'  
4 compensation; to provide for a cost-of-living adjustment for injured employees  
5 receiving permanent total disability benefits; to provide the formula to compute the  
6 cost-of-living adjustment; to provide relative to employee qualifications; to provide  
7 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 **permanent total disability benefits to all injured workers who suffer an injury**

1 or disease arising out of and in the course and scope of their employment as is  
2 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(2)(f) is 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                            \*       \*       \*

14            (2) Permanent Total.

15                            \*       \*       \*

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

27            **(i) Determine the percentage of the injured employee's average weekly**  
28 **wage at the time of the injury to the state's average weekly wage as established**  
29 **by the Louisiana Workforce Commission - Office of Workers' Compensation**

1        Administration for the same corresponding year. This amount shall be  
 2        computed to the nearest multiple of one dollar. In no event shall the percentage  
 3        exceed sixty-six and two-thirds percent of the state's average weekly wage.

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

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

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

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

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

24                                \*        \*        \*

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The original instrument and the following digest, which constitutes no part  
of the legislative instrument, were prepared by Yoursheka Butler.

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Present law provides that compensation will be paid to an employee for any injury that produces his or her temporary total or permanent total disability to engage in any self-employment or occupation for wages. Present law provides that compensation for temporary

disability will not be awarded if the employee is engaged in any employment or self-employment while working in any pain. Present law requires an employee to prove by clear and convincing evidence, unaided by any presumption of disability, that the employee is physically unable to engage in any employment or self-employment before he or she receives compensation.

Proposed law retains present law.

Proposed law entitles employees with compensable injuries that occur on or after August 1, 2022, for which permanent total disability continues, to a cost of living adjustment in their weekly compensation rate effective August 1, 2022.

Proposed law provides the formula to compute the percentage, adjusted weekly wage, and revised weekly wage calculations.

Proposed law defines "Consumer Price Index", "cost-of-living adjustment", and "inflation".

Proposed law requires insurance carriers or self-insured employers to report each compensable injury to the secretary of the La. Workforce Commission if permanent total disability benefits are expected to continue for six months after the date of injury.

Effective August 1, 2022.

(Amends R.S. 23:1020.1(B)(2) and (3) and 1021(4)-(13); adds R.S. 23:1020.1(B)(4), 1021(14)-(16), and 1221(2)(f))

#### Summary of Amendments Adopted by Senate

##### Committee Amendments Proposed by Senate Committee on Labor and Industrial Relations to the original bill

1. Removes cost-of-living adjustment for work-related injuries that result in temporary total disability.