

2024 Regular Session

HOUSE BILL NO. 668

BY REPRESENTATIVES MELERINE, MIKE JOHNSON, HORTON, MCFARLAND,
AND BEAULLIEU

WORKERS COMPENSATION: Provides relative to benefits and period of disability

1 AN ACT

2 To amend and reenact R.S. 23:1123, 1210, 1221(1)(a) and (d), (3)(a) through (f), 1226(A)
3 and (B)(3)(a) and (c), and 1231(B)(2) and (3) and to enact R.S. 23:1221(2)(f),
4 1223(C), and 1226(H), relative workers' compensation; to provide for when
5 additional medical opinions for medical examinations can be requested; to provide
6 for burial expenses; to provide for temporary partial disability; to provide for
7 benefits for temporary total disability; to provide for vocational rehabilitation; to
8 provide for payment to dependents or a parent to a decedent; and to provide for
9 related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 23:1123, 1210, 1221(1)(a) and (d), (3)(a) through (f), 1226(A) and
12 (B)(3)(a) and (c), and 1231(B)(2) and (3) are hereby amended and reenacted and R.S.
13 23:1221(2)(f), 1223(C), and 1226(H) are enacted to read as follows:

14 §1123. Disputes as to condition or capacity to work; additional medical opinion
15 regarding an examination under supervision of the secretary

16 If any dispute arises as to the condition of the employee, diagnosis or
17 causation of the injury or occupational disease, work restrictions, physical
18 limitations, degree of disability, or the employee's capacity to work, the assistant
19 secretary, upon application of any party, shall order an additional medical opinion
20 regarding an examination of the employee to be made by a medical practitioner

1 selected and appointed by the assistant secretary. The medical examiner shall report
2 his conclusions from the examination to the assistant secretary and to the parties and
3 such report shall be prima facie evidence of the facts therein stated in any subsequent
4 proceedings under this Chapter.

5 * * *

6 §1210. Burial expenses; duty to furnish

7 A. In every case of death, the employer shall pay or cause to be paid, in
8 addition to any other benefits allowable under the provisions of this Part, reasonable
9 expenses of the burial of the employee, not to exceed ~~eight~~ twelve thousand five
10 hundred dollars.

11 B. If the reasonable expenses for the burial of an employee are less than
12 ~~seven~~ twelve thousand five hundred dollars, the difference between such reasonable
13 expenses and ~~seven~~ twelve thousand five hundred dollars shall be paid or caused to
14 be paid by the employer to the heirs of the deceased employee and such payment
15 shall be in addition to any other benefits paid by the employer or his insurer on
16 behalf of the deceased employee.

17 * * *

18 §1221. Temporary total disability; permanent total disability; ~~supplemental earnings~~
19 ~~benefits~~ temporary partial disability; permanent partial disability; schedule
20 of payments

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

23 (1) Temporary total.

24 (a) For any injury producing temporary total disability of an employee to
25 engage in any self-employment or occupation for wages, whether or not the same or
26 a similar occupation as that in which the employee was customarily engaged when
27 injured, and whether or not an occupation for which the employee at the time of
28 injury was particularly fitted by reason of education, training, or experience, sixty-

1 six and two-thirds percent of wages during the period of such disability, subject
2 Subparagraph (d) of this Paragraph.

3 * * *

4 (d) ~~An award of benefits based on temporary total disability shall cease when~~
5 ~~the physical condition of the employee has resolved itself to the point that a~~
6 ~~reasonably reliable determination of the extent of disability of the employee may be~~
7 ~~made and the employee's physical condition has improved to the point that~~
8 ~~continued, regular treatment by a physician is not required.~~ Benefits based on
9 temporary total disability shall cease when any of the following circumstances have
10 been reached:

11 (i) The employee is engaged or has the capacity to engage in any self-
12 employment or occupation for wages.

13 (ii) The employee has reached maximum medical improvement. For the
14 purposes of this Paragraph, "maximum medical improvement" means the physical
15 condition of the employee has stabilized and is unlikely to improve or worsen
16 substantially in the next year, with or without treatment.

17 (iii) Twenty-six weeks following the work accident, provided that temporary
18 total disability may be extended beyond twenty-six weeks where the treating
19 physician provides documentation of the employee's specific work restrictions to the
20 employer or its representative no less frequently than monthly, and a preponderance
21 of the medical evidence shows that the employee will remain temporarily totally
22 disabled and is unable to engage in any self-employment or occupation for wages as
23 provided for in Subparagraph (1)(a) of this Section. Notwithstanding the provisions
24 of this Subparagraph, in no event shall benefits be paid pursuant to Paragraphs (1),
25 (3), and (4) of this Section for more than a total of three hundred fifty weeks
26 following the work accident.

27 (2) Permanent total.

1 (f) Notwithstanding any other provision in this Chapter, the right to
2 permanent total disability shall in no event exceed a maximum of for hundred fifty
3 weeks.

4 (3) ~~Supplemental earnings benefits~~ Temporary partial disability.

5 (a)(i) For injury resulting in the employee's inability to earn wages equal to
6 ninety percent or more of wages at time of injury, ~~supplemental earnings benefits~~
7 temporary partial disability, payable monthly, equal to sixty-six and two-thirds
8 percent of the difference between the average monthly wages at time of injury and
9 average monthly wages earned or average monthly wages the employee is able to
10 earn in any month thereafter in any employment or self-employment, whether or not
11 the same or a similar occupation as that in which the employee was customarily
12 engaged when injured and whether or not an occupation for which the employee at
13 the time of the injury was particularly fitted by reason of education, training, and
14 experience, such comparison to be made on a monthly basis. Average monthly wages
15 shall be computed by multiplying his wages by fifty-two and then dividing the
16 product by twelve.

17 (ii) When the employee is entitled to monthly ~~supplemental earnings benefits~~
18 temporary partial disability pursuant to this Subsection, but is not receiving any
19 income from employment or self-employment and the employer has not established
20 earning capacity pursuant to R.S. 23:1226, payments of ~~supplemental earning~~
21 ~~benefits~~ temporary partial disability shall be made in the manner provided for in R.S.
22 23:1201(A)(1).

23 (b) For purposes of Subparagraph (3)(a), of this Paragraph, the amount
24 determined to be the wages the employee is able to earn in any month shall in no
25 case be less than the sums actually received by the employee, including, but not
26 limited to, earnings from odd-lot employment, sheltered employment, and
27 employment while working in any pain.

28 (c)(i) Notwithstanding the provisions of Subparagraph (b) of this Paragraph,
29 for purposes of Subparagraph (a) of this Paragraph, if the employee is not engaged

1 in any employment or self-employment, as described in Subparagraph (b) of this
 2 Paragraph, or is earning wages less than the employee is able to earn, the amount
 3 determined to be the wages the employee is able to earn in any month shall in no
 4 case be less than the sum the employee would have earned in any employment or
 5 self-employment, as described in Subparagraph (b) of this Paragraph, which he was
 6 physically able to perform, and (1) which he was offered or tendered by the
 7 employer or any other employer, or (2) which is proven available to the employee
 8 in the employee's or employer's community or reasonable geographic region.

9 ~~(ii) For purposes of Subsubparagraph (i) of this Subparagraph, if the~~
 10 ~~employee establishes by clear and convincing evidence, unaided by any presumption~~
 11 ~~of disability, that solely as a consequence of substantial pain, the employee cannot~~
 12 ~~perform employment offered, tendered, or otherwise proven to be available to him,~~
 13 ~~the employee shall be deemed incapable of performing such employment.~~

14 (d) The right to ~~supplemental earnings benefits~~ temporary partial disability
 15 pursuant to this Paragraph shall in no event exceed a maximum of ~~five hundred~~
 16 ~~twenty~~ three hundred fifty weeks, but shall terminate when either of the following
 17 occurs:

18 (i) When the employee is earning or has the capacity to earn wages equal to
 19 ninety percent or more of wages at time of injury.

20 ~~(i)(ii)~~ (ii) As of the end of any two-year period commencing after termination
 21 of temporary total disability, unless during such two-year period supplemental
 22 earnings benefits have been payable during at least thirteen consecutive weeks; ~~or.~~

23 ~~(ii)(iii)~~ (iii) After receipt of a maximum of ~~five hundred twenty~~ three hundred
 24 fifty cumulative weeks of benefits Pursuant to Paragraphs (1), (3), or (4) of this
 25 Section, provided that for any week during which the employee is paid any
 26 compensation for temporary partial disability under this Paragraph, the employer
 27 shall be entitled to a reduction of one full week of compensation against the
 28 maximum number of weeks for which compensation is payable under this Paragraph;
 29 however, for any week during which the employee is paid no ~~supplemental earnings~~

1 ~~benefits~~ temporary partial disability, the employer shall not be entitled to a reduction
2 against the maximum number of weeks payable under this Paragraph; ~~or~~.

3 (iii)~~(iv)~~ When the employee retires; however, the period during which
4 ~~supplemental earnings benefits~~ temporary partial disability may be payable shall not
5 be less than one hundred four weeks. Where the employee has reached the age of
6 seventy years and is receiving regular retirement income benefits from any source,
7 there shall be a rebuttable presumption that the employee has retired from the
8 workforce.

9 (e)(i) The fact that an employee has suffered previous disability, impairment,
10 or disease, or received compensation therefor, shall not preclude him from receiving
11 benefits for a subsequent injury or preclude benefits for death resulting therefrom.
12 However, with regard to such previous or pre-existing conditions, the employee shall
13 only be entitled to benefits under this Chapter to the extent and for the period that the
14 accident objectively aggravates or increases the pre-existing disability, impairment,
15 or disease.

16 (ii) If an employee receiving ~~supplemental earnings benefits~~ temporary
17 partial disability suffers a subsequent injury causing the payment of temporary total
18 disability, permanent total disability, or ~~supplemental earnings benefits~~ temporary
19 partial disability, the combined benefits payable shall not exceed the maximum
20 compensation rate in effect for temporary total disability at the time of the
21 subsequent injury. Any reduction in benefits due to such limit shall be applied first
22 to the ~~supplemental earnings benefits~~ temporary partial disability payable as a result
23 of the prior injury.

24 (f) Any compensable ~~supplemental earnings benefits~~ temporary partial
25 disability loss shall be reported by the employee to the insurer or self-insured
26 employer within thirty days after the termination of the week for which such loss is
27 claimed. The assistant secretary shall provide by rule for the reporting of
28 ~~supplemental earnings benefits~~ temporary partial disability loss by the injured
29 worker and for the reporting of ~~supplemental earnings benefits~~ and payment of

1 ~~supplemental earnings benefits~~ temporary partial disability by the employer or
2 insurer to the office and may prescribe forms for such reporting. The office, upon
3 request by the employer or insurer, shall provide verification through unemployment
4 compensation records under the Louisiana Employment Security Law of any claimed
5 ~~supplemental earnings benefits~~ temporary partial disability loss and shall obtain such
6 verification from other states, if applicable.

7 * * *

8 §1223. Deductions from benefits

9 * * *

10 C. Except as provided in R.S. 23:1221(4)(s), in no event shall compensation
11 paid in accordance with R.S. 23:1221 exceed a cumulative total of four hundred fifty
12 weeks.

13 * * *

14 §1226. Rehabilitation of injured employees

15 A. When an employee has suffered an injury covered by this Chapter which
16 precludes the employee from earning wages equal to wages earned prior to the
17 injury, upon written request from the employee or the employer, the employer shall
18 provide and the employee shall be entitled to prompt cooperate with vocational
19 rehabilitation services provided for the purpose of returning the employee to any
20 self-employment or occupation for wages and establishing his wage earning
21 capacity. Vocational rehabilitation services shall be provided by a licensed
22 professional vocational rehabilitation counselor, and all such services provided shall
23 be compliant with the Code of Professional Ethics for Licensed Rehabilitation
24 Counselors as established by R.S. 37:3441 et seq.

25 B.

26 * * *

27 (3)(a) The employer shall be responsible for the selection of a licensed
28 professional vocational rehabilitation counselor to evaluate and assist the employee
29 in his job placement or vocational training. ~~Should~~ If the employer ~~refuse~~ refuses

1 to provide these services, the employee fails to cooperate with vocational
 2 rehabilitation or a dispute arises concerning the work of the vocational counselor, the
 3 employee or the employer may file a claim with the office to review the need for
 4 such services or the quality of services being provided. The employee and the
 5 employer shall have a right to an expedited summary proceeding pursuant to R.S.
 6 23:1201.1(K)(8). The workers' compensation judge shall set a hearing date within
 7 three days of receiving the motion. The hearing shall be held not less than ten, nor
 8 more than thirty days, after the employee, employer or payor receives notice,
 9 delivered by certified or registered mail, of the ~~employee's~~ motion. The workers'
 10 compensation judge shall provide notice of the hearing date ~~to the employer and~~
 11 ~~payor at the same time and in the same manner that notice of the hearing date is~~
 12 ~~provided to the employee or his attorney as required by law.~~ For the purposes of this
 13 Section, ~~an employee~~ the parties shall not be required to submit the dispute on the
 14 issue of vocational services to mediation or go through a pretrial conference before
 15 obtaining a hearing. The hearing shall be conducted as a rule to show cause.

* * *

17 (c) Upon refusal by the employee to cooperate with vocational rehabilitation
 18 as required by this Section, the employer or payor may reduce weekly compensation,
 19 including ~~supplemental earnings benefits~~ temporary partial disability pursuant to
 20 R.S. 23:1221(3), by fifty percent for each week of the period of refusal. Reduction
 21 of benefits by the employer or payor shall be made in accordance with the provisions
 22 of R.S. 23:1201.1(A) through (E).

* * *

24 H. Jobs identified by a licensed professional vocational rehabilitation
 25 counselor retained pursuant to this Section shall be presumed to be available and
 26 suitable for purposes of establishing the employee's wage earning capacity, in the
 27 absence of clear and convincing evidence to the contrary.

* * *

1 §1231. Death of employee; payment to dependents; surviving parents

2 * * *

3 B.

4 * * *

5 (2) If the employee leaves no legal dependents, whether biological or
6 adopted, entitled to benefits under any state or federal compensation system, one
7 lump sum payment of ~~seventy-five~~ one hundred thousand dollars shall be paid to the
8 employee's surviving biological and adopted children who are over the age of
9 majority, to be divided equally among them, which shall constitute the sole and
10 exclusive compensation in such cases.

11 (3) If the employee leaves no dependents entitled to benefits under Paragraph
12 (2) of this Subsection, one lump sum of ~~seventy-five~~ one hundred thousand dollars
13 shall be paid to the surviving biological and adopted children of the employee to be
14 divided equally among them, which shall constitute the sole and exclusive
15 compensation in such cases. If the employee leaves no legal dependents and no
16 biological or adopted children entitled to benefits under any state or federal
17 compensation system, the sum of ~~seventy-five~~ one hundred thousand dollars shall be
18 paid to each surviving parent of the deceased employee, in a lump sum, which shall
19 constitute the sole and exclusive compensation in such cases.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 668 Original

2024 Regular Session

Melerine

Abstract: Provides relative to temporary total and partial disability benefits.

Present law requires, upon application of any party, the assistant secretary, if there is a dispute concerning the condition of the employee or the employee's capacity to work, to order an additional medical opinion regarding an exam of the employee. Present law further requires the assistant secretary to select and appoint the medical practitioner to conduct the exam.

Proposed law adds disputes concerning the diagnosis or causation of the injury or occupational disease, work restrictions, physical limitations, and degree of disability to the

aforementioned criteria that can be subjected to an additional medical opinion. Proposed law otherwise retains present law.

Present law requires the medical examiner to report his conclusions to the assistant secretary and to the parties and that the report will serve as prima facie evidence. Proposed law otherwise retains present law.

Present law requires, in every case that results in a death, an employer to pay or cause to pay, in addition to any other benefits allowed under present law, reasonable burial expenses, not to exceed \$8,500.

Proposed law increases the maximum burial expenses amount from \$8,500 to \$12,500.

Proposed law otherwise retains present law.

Present law provides that if the burial expenses are less than \$7,000, the employer is required to be paid the difference to the deceased employee's heirs.

Proposed law changes the amount from \$7,500 to \$12,500. Proposed law otherwise retains present law.

Present law provides that an award of benefits based on temporary total disability shall cease when the physical condition of the employee has resolved itself to the point that a reasonably reliable determination of the extent of disability of the employee may be made and the employee's physical condition has improved to the point that continued, regular treatment by a physician is not required.

Proposed law repeals present law.

Proposed law provides that benefits based on temporary total disability shall cease when any of the following circumstances have been reached:

- (1) The employee is engaged or has the capacity to engage in any self-employment or occupation for wages.
- (2) The employee has reached maximum medical improvement, which is defined as the physical condition of the employee, which has stabilized and is unlikely to improve or worsen substantially in the next year, with or without treatment.
- (3) 26 weeks following the work accident, provided that temporary total disability may be extended beyond 26 weeks where the preponderance of the medical evidence shows that the employee remains temporarily totally disabled and he is unable to engage in any self-employment or occupation for wages. In no event shall benefits be paid pursuant to present law and proposed law for more than a total of 350 weeks following the work accident.

Present law provides that if an employee is not engaged in any employment or self-employment, or is earning wages less than the employee is able to earn, the amount determined to be the wages the employee is able to earn in any month shall in no case be less than the sum the employee would have earned in any employment or self-employment.

Proposed law retains present law.

Present law provides that if the employee establishes by clear and convincing evidence, unaided by any presumption of disability, that solely as a consequence of substantial pain, the employee cannot perform employment offered, tendered, or otherwise proven to be available to him.

Proposed law repeals present law.

Present law provides that any compensable supplemental earning benefits loss shall be reported by the employee to the insurer or self-insured employer within 30 days after the termination of the week for which such loss is claimed. Present law further provides that the assistant secretary shall provide by rule for the reporting of supplemental earnings benefits loss by the injured worker and for the reporting of supplemental earnings benefits and payment of supplemental earnings benefits by the employer or insurer.

Proposed law replaces supplemental earnings benefits in provisions of present law with temporary partial disability. Proposed law otherwise retains present law.

Present law requires the employer to select a licensed professional vocational rehabilitation counselor to evaluate and assist the employee in his job placement or vocational training. Proposed law retains present law.

Present law provides that if the employer refuses to provide these services, or a dispute arises concerning the work of the vocational counselor, the employee may file a claim with the office to review the need for such services or the quality of services being provided.

Proposed law adds an additional criterion for when an employee or employer may file a claim with the office to review the need for job placement or vocational training. Proposed law otherwise retains present law.

Present law provides that the employee shall not be required to submit the dispute on the issue of vocational services to mediation or go through a pretrial conference before obtaining a hearing. Present law further provides that the hearing shall be conducted as a rule to show cause.

Proposed law instead provides that all parties shall not be required to submit the dispute on the issue of vocational services. Proposed law otherwise retains present law.

Present law provides that if the employee leaves no legal dependents, whether biological or adopted, entitled to benefits, then one lump sum payment of \$75,000 shall be paid to the employee's surviving biological and adopted children who are over the age of majority.

Proposed law increases the lump sum amount from \$75,000 to \$100,000. Proposed law otherwise retains present law.

Present law provides that if the employee leaves no legal dependents and no biological or adopted children, then one lump sum payment of \$75,000 shall be paid to the employee's surviving parent.

Proposed law increases the lump sum amount from \$75,000 to \$100,000. Proposed law otherwise retains present law.

(Amends R.S. 23:1123, 1210, 1221(1)(a) and (d), (3)(a) through (f), 1226(A) and (B)(3)(a) and (c), and 1231(B)(2) and (3); Adds R.S. 23:1221(2)(f), 1223(C), and 1226(H))