

Regular Session, 2013

HOUSE BILL NO. 728 (Substitute for House Bill No. 606 by Representative Cromer)

BY REPRESENTATIVE CROMER

WORKERS COMPENSATION: Provides with respect to workers' compensation

1 AN ACT

2 To amend and reenact R.S. 23:1121(B)(1) and (5), 1124, 1226(B)(3), 1310.8, and 1314,
3 and to enact R.S. 23:1021(13) and 1201.1, relative to workers' compensation; to
4 provide with respect to choice of physician; to provide with respect to medical
5 examinations; to provide with respect to the payment of benefits; to provide for
6 hearing procedures; to provide for notice requirements; to provide with respect to the
7 modification, suspension, termination, or controversion of benefits; to provide for
8 procedure; to provide for the payment of benefits for rehabilitation of injured
9 employees; to provide for disputes; and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 23:1121(B)(1) and (5), 1124, 1226(B)(3), 1310.8, and 1314 are
12 hereby amended and reenacted and R.S. 23:1021(13) and 1201.1 are hereby enacted to read
13 as follows:

14 §1021. Terms defined

15 As used in this Chapter, unless the context clearly indicates otherwise, the
16 following terms shall be given the meaning ascribed to them in this Section:

17 * * *

18 (13) "Payor" means the entity responsible, whether by law or contract, for
19 the payment of benefits incurred by a claimant as a result of a work related injury.

20 * * *

1 §1121. Examination of injured employee

2 * * *

3 B.(1) The employee shall have the right to select one treating physician in
4 any field or specialty. The employee shall have a right to ~~the type of an expedited~~
5 summary proceeding ~~provided for in R.S. 23:1124(B)~~, when denied his right to an
6 initial physician of choice. The workers' compensation judge shall set the hearing
7 date for the matter within three days of receiving the employee's motion for the
8 expedited hearing. The hearing shall be held not less than ten nor more than thirty
9 days after the employee or his attorney files the motion for an expedited hearing. The
10 workers' compensation judge shall provide notice of the hearing date to the employer
11 and insurer at the same time and in the same manner that notice of the hearing date
12 is provided to the employee or his attorney. For the purposes of this Section, an
13 employee shall not be required to submit the dispute on the medical examination to
14 mediation nor go through a pretrial conference before obtaining a hearing. The
15 hearing shall be conducted as a rule to show cause. The workers' compensation judge
16 shall order the employer or payor to authorize the claimant's choice of physician
17 unless the employer or payor can show good cause for his refusal. Any claims for
18 penalties and attorneys fees alleged by the employee will be subject to the provisions
19 of R.S. 23:1201.1. After his initial choice the employee shall obtain prior consent
20 from the employer or his workers' compensation carrier for a change of treating
21 physician within that same field or specialty. The employee, however, is not
22 required to obtain approval for change to a treating physician in another field or
23 specialty.

24 * * *

25 (5) If the employee fails or refuses to sign the form as provided in
26 Subparagraph (2)(b) and Paragraph (3) of this Subsection, the employer or his
27 insurer shall be entitled to seek an expedited hearing to be held within ten days, and
28 upon order of the court, may suspend medical benefits until such time as the
29 employee complies with Subparagraph (2)(b) and Paragraph (3) of this Subsection.

1 A. The employer or the payor shall send a notice to the office and to the
2 employee or the employee's representative on the form promulgated by the office in
3 accordance with this Section upon making the first payment of compensation, and
4 upon any subsequent act of modification, suspension, termination, or controversion
5 of compensation or medical benefits or for any reason including subsequent issues
6 of medical relatedness, medical causation, compensability of the claim, or issues
7 arising out of R.S. 23:1121, 1124 and 1226, occurring after the first payment. The
8 provisions of this Section shall not apply to questions of medical necessity as
9 provided by R.S. 23:1203.1.

10 B. The employer or the payor shall do all of the following:

11 (1) Prepare a "Notice of Modification, Suspension, Termination, or
12 Controversion of Compensation and/or Medical Benefits". The form for the notice
13 shall be promulgated by the office.

14 (2) Send the notice of the initial indemnity payment to the injured employee
15 with the first payment of compensation. If the injured employee is represented, the
16 notice may be provided to the employee's representative by facsimile on the date of
17 mailing of the first payment of compensation.

18 (3) Send a copy of the notice of the first payment of compensation to the
19 office within ten days from the date the original notice was sent to the injured
20 employee, or by facsimile to the injured employee's representative. The director
21 shall make the notice available upon request by the employee or the employee's
22 representative.

23 (4) Send the "Notice of Modification, Suspension, Termination, or
24 Controversion of Compensation and/or Medical Benefits" to the injured employee
25 by certified mail, to the address at which the employee is receiving payments of
26 compensation, on or before the effective date of such modification, suspension,
27 termination, or controversion. If the injured employee is represented, the notice may
28 be provided to the employee's representative by facsimile.

1 (5) Send a copy of the "Notice of Modification, Suspension, Termination,
2 or Controversion of Compensation and/or Medical Benefits" to the office on the
3 same business day as sent to the employee or to his representative.

4 C. (1) Any injured employee or his representative who disagrees with any
5 information provided on the notice form sent by the employer or payor, shall notify
6 the employer or payor of the basis for disagreement by returning the form to the
7 employer or payor as provided on the form, or by letter of amicable demand, and
8 provide any amounts of compensation he believes appropriate. No disputed claim
9 shall be filed regarding any such disagreement unless the notice required by this
10 Subparagraph has been sent to the employer or payor who initially sent the notice.

11 (2) If the employer or the payor provides the benefit that the employee
12 claims is due, including any arrearage, on the returned form or letter of amicable
13 demand within seven business days of receipt of the employee's demand, the
14 employer or payor shall not be subject to any claim for any penalties or attorney fees
15 arising from the disputed payment, modification, suspension, termination, or
16 controversion.

17 (3) If the employer or payor does not provide the benefit that the employee
18 claims is due, the employee may file a disputed claim for benefit provided it is filed
19 within the prescriptive period established under R.S. 23:1209. If the prescription
20 date of the claim occurs within the seven-day waiting period, the employee will be
21 allowed to file a disputed claim without waiting the seven business days as provided
22 in R.S. 23:1201.1(2)(b). However, the employer or payor shall still be allowed seven
23 business days to provide the benefit that the employee claims is due, and if the
24 employer does provide the benefit, the disputed claim will be moot regarding the
25 issues arising out of the payment, suspension, modification, termination, or
26 controversion of benefits. All other issues alleged in the disputed claim will be
27 unaffected by the payment.

28 (4) Only the employer or the payor who initially sent the notice and has
29 complied with the procedures established in this Section regarding payment,

1 suspension modification, termination, or controversion of benefits, who wishes to
2 have a preliminary determination hearing shall request the hearing in his answer to
3 the disputed claim arising from the notice of initial payment, modification,
4 suspension, termination or notice of controversion.

5 (5) An employer or payor who has not provided the first payment as required
6 by R.S. 23:1221, or who has not followed the procedures established in this Section
7 regarding modification, suspension, termination, or notice of controversion of
8 compensation, including failure to request a preliminary determination hearing, may
9 be subject to penalties and attorney fees pursuant to R.S. 23:1201.

10 D. (1) Upon the filing of the request for a preliminary determination hearing,
11 the workers' compensation judge shall initiate a telephone status conference with the
12 parties to schedule the discovery deadlines and to facilitate the exchange of
13 documents. The scope of the discovery will be limited to the issues raised in the
14 disputed payment, suspension, modification, termination, or controversion of
15 benefits. The preliminary determination hearing shall be a contradictory hearing at
16 which all parties shall have the opportunity to introduce evidence.

17 (2) The testimony of physicians may be introduced by certified records or
18 deposition. The parties may agree to allow uncertified medical records and
19 physician reports to be introduced into evidence. Witnesses may testify at the
20 hearing or, if agreed on by the parties, may offer testimony by introduction of a
21 deposition.

22 (3) The preliminary determination hearing shall be held no later than ninety
23 days from the scheduling conference. However, upon a showing of good cause, one
24 extension of an additional thirty days is permitted upon approval by the workers'
25 compensation judge. The workers' compensation judge shall issue a preliminary
26 determination no later than thirty days after the hearing.

27 (4) Any employer or payor requesting a preliminary determination hearing
28 shall produce all documentation relied on by the employer or payor in calculating,
29 modifying, suspending, terminating, or controverting the employee's benefits. These

1 documents shall be disclosed to the employee or the employee's representative
2 within ten days of the request for the preliminary determination hearing.

3 E.(1) The employer or payor shall, within ten calendar days of the mailing
4 of the determination from the worker's compensation judge, do either of the
5 following:

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

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

14 (2) Any employer or payor who accepts and complies with the workers'
15 compensation judge's determination within ten calendar days, shall not be subject to
16 any penalty or attorney fees arising out of the original notice of
17 compensation/controversion of compensation and/or medical benefits which was the
18 subject of the preliminary hearing.

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

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

1 of receiving the employer's or payor's motion. The hearing shall be held not less than
 2 ten, nor more than thirty days, after the employee or his representative receives
 3 notice, delivered by certified or registered mail, of the employer's or payor's motion.
 4 The workers' compensation judge shall provide notice of the hearing date to the
 5 employer and payor at the same time and in the same manner that notice of the
 6 hearing date is provided to the employee or his attorney. For the purposes of this
 7 Section, an employee shall not be required to submit the dispute on the medical
 8 examination to mediation or go through a pretrial conference before obtaining a
 9 hearing. The hearing shall be conducted as a rule to show cause. Unless the
 10 employee can show good cause for his refusal to cooperate with the vocational
 11 rehabilitation counselor, the workers' compensation judge may order the reduction
 12 to continue until the employee cooperates with the vocation rehabilitation counselor.
 13 If the employee can show good cause for his refusal to cooperate with the vocational
 14 rehabilitation counselor, the workers' compensation judge shall order the suspension
 15 of the reduction of benefits lifted and the payment of all arrearages due. Any
 16 suspension by the employer or payor shall be made in accordance with the provisions
 17 of R.S. 23:1201.1.

18 (b) An employee shall have no right of action against a vocational counselor
 19 for tort damages related to the performance of vocational services unless and until
 20 he has exhausted the administrative remedy provided for in Subparagraph (a) of this
 21 Paragraph. The running of prescription shall be suspended during the pendency of
 22 the administrative proceedings provided for in this Paragraph.

23 ~~(c) The expedited procedure shall also be made available to the employer to~~
 24 ~~require the employee's cooperation in the rehabilitation process. Refusal to accept~~
 25 ~~rehabilitation as deemed necessary by the worker's compensation judge shall result~~
 26 ~~in a fifty percent reduction in weekly compensation, including supplemental earnings~~
 27 ~~benefits pursuant to R.S. 23:1221(3), for each week of the period of refusal.~~

28 * * *

29 §1310.8. Jurisdiction continuing; determining as to final settlement

1 * * *

2 B. Upon the ~~application~~ motion of any party in interest, on the ground of a
3 change in conditions, the workers' compensation judge may, after a contradictory
4 hearing, review any award, and, on such review, may make an award ending,
5 diminishing, or increasing the compensation previously awarded, subject to the
6 maximum or minimum provided in the Workers' Compensation Act, and shall state
7 his conclusions of fact and rulings of law, and the director shall immediately send
8 to the parties a copy of the award.

9 * * *

10 §1314. Necessary allegations; dismissal of premature petition; dispute of benefits

11 * * *

12 E.(1) Notwithstanding any other provision of this Section, the employer ~~shall~~
13 ~~be permitted to file a disputed claim to controvert benefits or concerning any other~~
14 ~~dispute arising under this Chapter~~ or payor shall be permitted to file a disputed claim
15 against an employee, his dependent, or beneficiary only when the employer or payor
16 alleges the employee has committed fraud as defined by R.S. 23:1208 which caused
17 the employer or payor to pay a benefit which was not due to the employee.

18 (2) Notwithstanding any other provision of this Section, the employer or
19 payor shall be permitted to file a disputed claim against a person or entity other than
20 an injured employee, his dependent, or beneficiary concerning any other dispute
21 arising under this Chapter.

22 Section 2. This Act is declared to be remedial, curative, and procedural and therefore
23 is to be applied retroactively as well as prospectively.

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)]

Cromer

HB No. 728

Abstract: Provides with respect to workers' compensation.

Present law (R.S. 23:1121) 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 shall be paid for by the employer.

Proposed law retains present law.

Present law provides the employee with the right to select one treating physician in any field or specialty.

Proposed law retains present law.

Present law (R.S. 23:1124) provides that an employer or insurer who seeks to compel an employee's compliance with a medical examination shall be granted an expedited hearing.

Proposed law deletes present law and provides that an employee shall have a right to an expedited hearing when denied his right to an initial physician of choice.

Proposed law (R.S. 23:1121) provides that the workers' compensation judge shall set a hearing date within 3 days of receiving the employee's motion, and that the hearing shall be held between 10 and 30 days after the employee files the motion.

Proposed law requires that the judge notify all parties of the hearing date in the same manner and at the same time.

Proposed law requires the authorization of the employee's choice of physician unless good cause is shown as to why it should not be authorized.

Proposed law defines "payor" to mean the entity responsible, whether by law or contract, for the payment of benefits incurred by a claimant as a result of a work related injury.

Proposed law requires the payor to send notice to the office, the employee, and the employee's representative upon making the 1st payment of compensation, and upon any modification, suspension, termination, or controversion of compensation or medical benefits.

Proposed law does not apply in cases of medical necessity as defined by present law (R.S. 23:1203.1).

Proposed law requires the employer or payor to prepare a "Notice of Modification, Suspension, Termination, or Controversion of Compensation and/or Medical Benefits".

Proposed law further requires the employer or payor to send a copy of the notice of the 1st payment of compensation to the office within 10 days of the date original notice was sent to the injured employee.

Proposed law requires the director to make the notice available upon request of the employee.

Proposed law requires the employer or payor to send a copy of the "Notice of Modification, Suspension, Termination, or Controversion of Compensation and/or Medical Benefits" to the office on the same day as it was sent to the employee.

Proposed law provides that if an injured employee disagrees with any information on the notice form, he shall notify the employer or payor of the basis for disagreement by returning the form to the employer or payor, or by letter of amicable demand, and provide any amounts of compensation he believes appropriate.

Proposed law provides that if the employer or payor provides the benefits that the employee claims he is due, including any arrearage, within 7 days of the demand, he shall not be subject to any penalties or attorney fees.

Proposed law provides that if the employer or payor does not provide the benefits that the employee claims is due, the employee may file a disputed claim for benefits.

Proposed law provides that only the employer or payor who initially sent the notice as required and has complied with the provisions of proposed law, who wishes to have a preliminary determination hearing shall request the hearing in his answer to the disputed claim arising from the notice.

Proposed law provides that an employer or payor who does not comply may be subject to penalties and attorney fees.

Proposed law provides that upon the filing of the request for a preliminary determination hearing, the workers' compensation judge shall initiate a telephone status conference to schedule the discovery deadlines and to facilitate the exchange of documents. The discovery will be limited to the issues raised in the disputed payment, suspension, modification, termination, or controversion of benefits.

Proposed law provides that the preliminary determination hearing shall be a contradictory hearing at which all parties may introduce evidence.

Proposed law allows the testimony of physicians by certified records or deposition, or, when the parties agree, uncertified medical records and physician reports may be introduced into evidence.

Proposed law allows witnesses to testify or offer testimony by deposition.

Proposed law requires the preliminary determination hearing to be held no later than 90 days from the scheduling conference, unless a 30 day extension is allowed for good cause.

Proposed law requires that any employer or payor who requests a preliminary hearing must produce all documentation he relied upon in calculating the employee's benefits.

Proposed law requires the employer to, within 10 calendar days, either accept and comply with the preliminary determination of the workers' compensation judge and mail a revised notice to the injured employee or notify the injured employee that he does not accept the determination.

Proposed law provides that if the injured employee who disagrees with the preliminary determination, he shall notify the court within 10 days of his desire to proceed to a trial on the merits.

Proposed law reserves the right of the employer or payor who does comply with the determination, to further controvert future matters. The acceptance of the preliminary determination by the employer or payor shall not be considered an admission.

Present law (R.S. 23:1226) provides that the employer shall be responsible for the selection of a licensed professional 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 the services of a vocational rehabilitation counselor, the employee may file a claim to review the need for the services.

Proposed law provides that disputes shall be heard in an expedited hearing.

Proposed law requires the workers' compensation judge to set a hearing date within 3 days of receiving the motion, and that the hearing shall take place between 10 and 30 days after the employee receives the notice of the motion.

Proposed law requires the workers' compensation judge to provide the notice and the hearing date to the employer or the payor at the same time and in the same manner as it is provided to the injured employee and his representative.

Proposed law does not require an employee to submit the dispute on the medical examination to mediation or go through pretrial conference before obtaining a hearing. Proposed law provides that the hearing shall be conducted as a rule to show cause.

Present law (R.S. 23:1310.8) provides for jurisdiction of the workers' compensation judge in claim resolution.

Present law provides that upon the application of any party of interest, on the ground of a change in conditions, the workers' compensation judge may review any award and may make an award ending, diminishing, or increasing the compensation subject to the maximum or minimum provided in the present law.

Proposed law changes "application" to "motion" of any party of interest, but otherwise retains present law.

Present law (R.S. 23:1314) allows an employer to file a disputed claim to controvert benefits or concerning any other dispute in present law.

Proposed law provides that the employer or payor may file a disputed claim against an employee, his dependent, or his beneficiary only when the employer or payor alleges the employee has committed fraud.

Proposed law shall be remedial, curative, and procedural and shall be applied retroactively.

(Amends R.S. 23:1121(B)(1) and (5), 1124, 1226(B)(3), 1310.8, and 1314; Adds R.S. 23:1021(13) and 1201.1)