

ENROLLED ACT NO. 92, HOUSE OF REPRESENTATIVES

SIXTIETH LEGISLATURE OF THE STATE OF WYOMING
2009 GENERAL SESSION

AN ACT relating to the Wyoming Worker's Compensation Act; providing that the state's subrogation recovery be reduced for recovery fees and costs; authorizing elective coverage for corporate officers, limited liability company members, partners and sole proprietors as specified; revising the criteria for and distribution of employer premium credits; increasing dependent children's, death and permanent impairment benefits; providing a minimum and extending the duration of temporary total disability benefit; extending the maximum duration of vocational rehabilitation benefits; providing a time limit for the recovery of overpayments as specified; providing for redetermination in the case of missed deadlines as specified; providing appropriations; authorizing an additional position to the office of administrative hearings; requiring an investigation of an electronic filing and time management system for the office of administrative hearings as specified; and providing for an effective date.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 27-14-102(a)(vii)(B), 27-14-105(a), 27-14-108(k), 27-14-201(q)(intro) and by creating a new paragraph (iii), 27-14-403(b), (c)(intro), (iv), by creating a new paragraph (v), (e)(iii), (v) and (k)(iii) and by creating a new paragraph (iv), 27-14-404(c)(ii), 27-14-405(g), 27-14-408(e)(ii), 27-14-511, 27-14-601(f) and 27-14-602(d) are amended to read:

27-14-102. Definitions.

(a) As used in this act:

(vii) "Employee" means any person engaged in any extrahazardous employment under any appointment, contract

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of hire or apprenticeship, express or implied, oral or written, and includes legally employed minors, aliens authorized to work by the United States department of justice, office of citizenship and immigration services, and aliens whom the employer reasonably believes, at the date of hire and the date of injury based upon documentation in the employer's possession, to be authorized to work by the United States department of justice, office of citizenship and immigration services. "Employee" does not include:

(B) A sole proprietor or a partner of a business partnership unless coverage is elected pursuant to W.S. 27-14-108(k);

27-14-105. Action against third party; notice; subrogation; legal representation; payment under reservation of rights; actions by department.

(a) If an employee covered by this act receives an injury under circumstances creating a legal liability in some person other than the employer to pay damages, the employee if engaged in work for his employer at the time of the injury is not deprived of any compensation to which he is entitled under this act. He may also pursue his remedy at law against the third party or the coemployee to the extent permitted by W.S. 27-14-104(a). Except as provided by subsections (b), (e) and (f) of this section, if the employee recovers from the third party or the coemployee in any manner including judgment, compromise, settlement or release, the state is entitled to be reimbursed for all payments made, or to be made, to or on behalf of the employee under this act but not to exceed one-third (1/3) of the total proceeds of the recovery without regard to the types of damages alleged in the third-party action. Any recovery by the state shall be reduced pro rata for attorney fees and costs in the same proportion as the

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employee is liable for fees and costs. All money received by the state under this section shall be credited to the worker's compensation account and considered in computing the employer's experience rating.

27-14-108. Extrahazardous industries, employments, occupations; enumeration; definitions; optional coverage.

(k) Any corporation, ~~or~~ limited liability company, ~~employing individuals covered pursuant to subsections (a) or (j) of this section~~ partnership or sole proprietorship may elect to obtain coverage under this act for any or all of its corporate officers, ~~or~~ limited liability company members, partners in a partnership or sole proprietor by ~~electing to cover any or all of its officers or members and notifying the division in writing of its election upon initial registration with the division, or thirty (30) days prior to the beginning of a calendar quarter.~~ Any employer electing coverage pursuant to this subsection shall simultaneously elect coverage for its employees, as provided in subsection (j) of this section, if those employees are not already covered under this act. Notwithstanding subsection (j) of this section, an employer shall not withdraw coverage at any time during the subsequent eight (8) calendar quarters. Application for termination of coverage under this subsection shall be filed in writing with the division. ~~not less than thirty (30) days before any calendar quarter following the initial eight (8) calendar quarters of coverage.~~ Termination of coverage shall be effective the first day of the month following the division's receipt of the notice of termination which shall specify whether the termination is for the officers, members and partners or for the officers, members, partners and all electively covered employees.

27-14-201. Rates and classifications; rate surcharge.

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(q) The division may, in accordance with its rules and regulations, grant a premium credit to rates established under this section ~~in an amount not to exceed fifty percent (50%) of the investment earnings after inflation on reserves for the prior rate year. Of the total amount of premium credit distribution established by the division, fifty percent (50%) shall be distributed to all employers who made premium payments to the fund in the preceding year and fifty percent (50%) shall be distributed to employers whose accident frequency and injury severity in the preceding year was less than that of the industry classification under which the employer is classified. The fifty percent (50%) distribution to all employers who made premium payments shall be made on the basis of each employer's annual premium payment as compared to total premium payments made by all employers in the year preceding the year in which the premium credit was issued.~~ if it is determined by a qualified actuary retained by the division that the fund will remain fully reserved after the premium credit is granted and implemented. If the division determines to grant a premium credit, the percentage of credit allowed for the rate year shall be the same for all employers qualified pursuant to paragraph (iii) of this subsection. The following provisions shall also apply to the premium credit program:

(iii) The premium credit, if granted, shall only be given to those employers who paid premiums during the preceding year and whose accounts are current on all amounts owed under the act, including premiums, case cost liability and penalties.

27-14-403. Awards generally; method of payment.

(b) Notwithstanding the date of death or the date of the determination of permanent total disability, in the case of permanent total disability or death, each child of

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an employee shall be paid ~~one hundred fifty dollars (\$150.00)~~ two hundred fifty dollars (\$250.00) per month for payments made after July 1, ~~2001-2009~~, until the child dies or reaches the age of ~~eighteen (18)~~ twenty-one (21) years, whichever first occurs, or if the child is physically or mentally incapacitated until the child dies ~~or attains the age of twenty-one (21) years, whichever first occurs unless qualified for and receiving benefits under the Medicaid home and community based waiver program.~~ If the child is enrolled or preregistered in ~~an~~ a ~~post secondary educational institution including a post-secondary education institution~~ four-year college, community college or private trade school licensed pursuant to W.S. 21-2-401 through 21-2-407 and providing career, technical or apprenticeship training, the child shall receive the amount provided by this section until the child attains the age of ~~twenty one (21)~~ twenty-five (25) years. The amount awarded under this subsection shall be adjusted for inflation annually by the division, using the consumer price index or its successor index of the United States department of labor, bureau of labor statistics, or three percent (3%), whichever is less.

(c) All awards stated in this section except awards under paragraph (a)(i), subsection (b) and paragraphs (e)(ii), (iv) and (v) and (h)(ii) and subsection (k) of this section shall be paid monthly at the rates prescribed by this subsection. For permanent partial impairment under paragraph (a)(ii) of this section, the award shall be calculated at the rate of two-thirds (2/3) of the statewide average monthly wage for the twelve (12) month period immediately preceding the quarterly period in which the ~~injury occurred~~ benefits are first paid as determined pursuant to W.S. 27-14-802. For temporary total disability under paragraph (a)(i) of this section, the award shall be paid monthly at the rate of thirty percent (30%) of the statewide average monthly wage or two-thirds (2/3) of the

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injured employee's actual monthly earnings at the time of injury, whichever is greater, but shall not ~~to~~ exceed the lesser of one hundred percent (100%) of the injured employee's actual monthly earnings at the time of the injury or the statewide average monthly wage for the twelve (12) month period immediately preceding the quarterly period in which the injury occurred as determined pursuant to W.S. 27-14-802 with one-half (1/2) of the monthly award paid on or about the fifteenth of the month and one-half (1/2) paid on or about the thirtieth of the month. For temporary light duty under paragraph (a)(i) of this section, the award shall be paid monthly at the rate of eighty percent (80%) of the difference between the employee's light duty wage and the employee's actual monthly earnings at the time of injury. For permanent partial and permanent total disability or death under paragraphs (a)(iii), (iv) and (v) of this section, the award shall be paid monthly computed as follows:

(iv) In the case of death due to work related causes, and if the award computed under ~~paragraphs~~ paragraph (i), (ii) or (iii) of this subsection is less than eighty percent (80%) of the statewide average monthly wage, the award shall be adjusted to an amount not less than eighty percent (80%) of the statewide average monthly wage or seventy-five percent (75%) of the injured employee's actual monthly earnings at the time of injury, whichever is greater. In no event shall the award exceed two (2) times the statewide average monthly wage for the twelve (12) month period immediately preceding the quarterly period in which the injury occurred as determined pursuant to W.S. 27-14-802;

(v) Awards for permanent total disability shall be adjusted for inflation annually by the division, using the consumer price index or its successor index of the United States department of labor, bureau of labor

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statistics, for the calendar year before the date of adjustment or three percent (3%), whichever is less. The adjustment provided by this paragraph shall apply to all awards for permanent total disability benefits in effect on or after July 1, 2009 using as the base for calculation the award in effect on that date or the first award, whichever is later. The adjustment shall become effective annually on July 1 and shall be applied to all awards for permanent total disability that were first made at least one (1) year before the effective date of the adjustment.

(e) If an injured employee dies as a result of the work related injury whether or not an award under paragraphs (a)(i) through (iv) of this section has been made:

(iii) The surviving spouse shall receive for ~~fifty four (54)~~ one hundred (100) months a monthly payment as provided by subsection (c) of this section. If the surviving spouse dies before the award is entirely paid or if there is no surviving spouse, the unpaid balance of the award shall be paid to the surviving dependent children of the employee in the manner prescribed by paragraph (d)(ii) of this section. If there are no dependent children, further payments under this paragraph shall cease as of the date of the spouse's death;

(v) If the employee died with no surviving spouse or dependent children but with one (1) surviving parent or two (2) surviving parents of the employee who received substantially all at least one-half (1/2) of his or their financial support from the employee at the time of injury, the surviving parent or parents shall receive six hundred dollars (\$600.00) the first month after the death and one hundred fifty dollars (\$150.00) a monthly payment as provided by subsection (c) of this section for ~~thirty (30)~~ sixty (60) months thereafter or until the parent or

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~~the survivor of them dies., whichever is less. If two (2) remaining parents of the employee who received substantially all of their financial support from the employee at the time of the injury survive the employee and the employee had no surviving spouse or child, they shall receive six hundred dollars (\$600.00) the first month after the death and two hundred dollars (\$200.00) for thirty two (32) months thereafter or until both parents die, whichever is less.~~

(k) Any injured worker who has or is receiving medical services entirely in Wyoming from a Wyoming health care provider shall be eligible if otherwise qualified for temporary total disability payments at the rate of seventy percent (70%) of the injured worker's actual monthly earnings at the time of the injury but not to exceed one hundred and three percent (103%) of the statewide average wage for the twelve (12) month period immediately preceding the quarterly period in which the injury occurred as determined pursuant to W.S. 27-14-802, with the following exceptions:

(iii) An injured worker otherwise qualified for temporary total disability payments shall be eligible to receive temporary total disability payments at the rate provided in this subsection if due to unavailability of medical services in Wyoming, the division provides written authorization, before or after treatment, to the injured worker to obtain the medical services from an out-of-state health care provider and the out-of-state health care provider agreed to accept as full payment the fees paid by the division pursuant to the division's fee schedule. For purposes of this subsection, medical services shall be deemed unavailable in Wyoming if the distance from the injured worker's residence to an in-state health care provider is at least one hundred (100) miles greater than

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the distance from the injured worker's residence to an out-of-state medical provider;

(iv) An injured worker otherwise qualified for temporary total disability payments shall be eligible to receive temporary total disability payments at the rate provided in this subsection if the employer has a contractual agreement with an out-of-state health care provider.

27-14-404. Temporary total disability; benefits; determination of eligibility; exceptions for volunteers or prisoners; period of certification limited; temporary light duty employment.

(c) Payment under subsection (a) of this section shall cease prior to expiration of the twenty-four (24) month maximum period specified under subsection (a) of this section if:

(ii) The employee has an ascertainable loss, and qualifies for benefits under W.S. 27-14-405 or 27-14-406 and the first monthly payment pursuant to either of those sections has been issued to the employee.

27-14-405. Permanent partial disability; benefits; schedule; permanent disfigurement; disputed ratings.

(g) An injured employee's impairment shall be rated by a licensed physician using the most recent edition of the American Medical Association's guide to the evaluation of permanent impairment. The award shall be paid as provided by W.S. 27-14-403 for the number of months determined by multiplying the percentage of impairment by ~~forty-four (44)~~ sixty (60) months.

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27-14-408. Vocational rehabilitation; application; eligibility; plan; limitation; modification, suspension or termination.

(e) The division of vocational rehabilitation shall in cooperation with the injured employee, develop an individualized rehabilitation plan for the employee agreed to by both the division of vocational rehabilitation and employee, that:

(ii) Shall not exceed ~~four (4)~~ five (5) years or a total cost of thirty thousand dollars (\$30,000.00) unless extended or increased for extenuating circumstances as defined by rule and regulation of the division;

27-14-511. Recovery of benefits paid by mistake or fraud.

The attorney general may bring a civil action to recover the value of any benefits or other monies paid under this act due to mistake, misrepresentation or fraud. The attorney general shall be entitled to recover the costs of suit and reasonable attorney fees in cases of misrepresentation or fraud. Nothing in this section shall prohibit a criminal prosecution where appropriate. Any civil action for recovery of overpayment resulting from a mistake by the division shall be commenced within one (1) year after the alleged overpayment and shall be limited to recovery of those mistaken payments made within twelve (12) months before the commencement of the action.

27-14-601. Payment or denial of claim by division; notice; objections; review and settlement of claims; filing fee; preauthorization of hospitalization or surgery.

(f) A health care provider receiving payment erroneously under this act pursuant to a determination by

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the division following review and settlement under subsection (e) of this section or a decision by a hearing examiner is liable for repayment to the worker's compensation account. Except in contested cases, the division may deduct the amount liable from future payments under this act limited to deduction of those mistaken payments made for services provided within twelve (12) months before the deduction. If necessary, the division may recover repayment by civil action as provided in W.S. 27-14-511.

27-14-602. Contested cases generally.

(d) Upon request, the hearing examiner may appoint an attorney to represent the employee or claimants and may allow the appointed attorney a reasonable fee for his services at the conclusion of the proceeding. An appointed attorney shall be paid according to the order of the hearing examiner either from the worker's compensation account, from amounts awarded to the employee or claimants or from the employer. In any contested case where the issue is the compensability of an injury, a prevailing employer's attorney fees shall also be paid according to the order of the hearing examiner from the worker's compensation account, not to affect the employer's experience rating. An award of attorney's fees shall be for a reasonable number of hours and shall not exceed the benefits at issue in the contested case hearing. In all other cases if the employer or division prevails, the attorney's fees allowed an employee's attorney shall not affect the employer's experience rating. Attorney fees allowed shall be at an hourly rate established by the director of the office of administrative hearings and any application for attorney's fees shall be supported by a verified itemization of all services provided. No fee shall be awarded in any case in which the hearing examiner determines the claim or objection to be frivolous and without legal or factual

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justification. If the division or a hearing examiner determines that an injured worker's failure to meet any procedural deadline in this act is through the fault of the worker's attorney, the division shall reconsider its determination or a hearing examiner shall order the contested case returned to the division for redetermination of the contested issues as provided in W.S. 27-14-601(k).

Section 2. There is appropriated fifty-five thousand dollars (\$55,000.00) from the worker's compensation account established by W.S. 27-14-701(a) and forty-five thousand dollars (\$45,000.00) from the highway fund for one (1) full-time position which is authorized to the office of administrative hearings. These appropriations shall be for the period beginning with the effective date of this act and ending June 30, 2010. Notwithstanding any other provision of law, this appropriation shall not be transferred or expended for any other purpose and any unexpended, unobligated funds remaining from this appropriation shall revert as provided by law on June 30, 2010. The position shall be included in the office's 2011-2012 standard biennial budget request and the funding shall be included in the department of employment's and department of transportation's standard biennial budgets.

Section 3. There is appropriated twenty-seven thousand five hundred dollars (\$27,500.00) from the worker's compensation account established by W.S. 27-14-701(a) and twenty-two thousand five hundred dollars (\$22,500.00) from the highway fund for the cost of investigating the acquisition of a case management system capable of accepting and receiving electronic filings and which includes a time management system. No part of this appropriation shall be expended until after the chief information officer has reviewed the proposed expenditure of these funds and the governor has determined the expenditure is appropriate. This appropriation shall not

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be transferred or expended for any other purpose and any unexpended, unobligated funds remaining from this appropriation shall revert as provided by law on June 30, 2010.

Section 4. This act is effective July 1, 2009.

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____

DATE APPROVED: _____

I hereby certify that this act originated in the House.

Chief Clerk