

Assembly Bill No. 206—Assemblymen Pierce, Manendo, Giunchigliani, Chowning, Leslie, Arberry, Atkinson, Buckley, Claborn, Conklin, Goldwater, Hardy, Horne, Koivisto, Mabey, McClain, McCleary, Ocegüera, Ohrenschall, Parks, Sherer and Weber

CHAPTER.....

AN ACT relating to industrial insurance; revising provisions governing deductions from compensation for a permanent total disability; prohibiting the recovery by an insurer of more than the actual amount of a lump sum paid to an employee for a permanent partial disability when the employee is compensated for a permanent total disability; authorizing an employee to repay in a single payment the actual amount of a lump sum paid to an employee for a permanent partial disability; requiring insurers to refund to certain employees the amounts the employees overpaid when repaying lump sums for permanent partial disabilities; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 616C.440 is hereby amended to read as follows:

616C.440 1. Except as otherwise provided in this section and NRS 616C.175, every employee in the employ of an employer, within the provisions of chapters 616A to 616D, inclusive, of NRS, who is injured by accident arising out of and in the course of employment, or his dependents as defined in chapters 616A to 616D, inclusive, of NRS, is entitled to receive the following compensation for permanent total disability:

(a) In cases of total disability adjudged to be permanent, compensation per month of $66\frac{2}{3}$ percent of the average monthly wage.

(b) If there is a previous disability, as the loss of one eye, one hand, one foot or any other previous permanent disability, the percentage of disability for a subsequent injury must be determined by computing the percentage of the entire disability and deducting therefrom the percentage of the previous disability as it existed at the time of the subsequent injury, but such a deduction for a previous award for permanent partial disability must be made in a reasonable manner and must not be more than the total amount which was paid for the previous award for permanent partial disability. *The total amount of the allowable deduction includes, without limitation, compensation for a permanent partial disability that was deducted from:*

(1) Any compensation the employee received for a temporary total disability; or

(2) Any other compensation received by the employee.

(c) If the character of the injury is such as to render the employee so physically helpless as to require the service of a constant attendant, an additional allowance may be made so long as such requirements continue, but the allowance may not be made while the employee is receiving benefits for care in a hospital or facility for intermediate care pursuant to the provisions of NRS 616C.265.

2. Except as otherwise provided in NRS 616B.028 and 616B.029, an injured employee or his dependents are not entitled to accrue or be paid any benefits for a permanent total disability during the time the injured employee is incarcerated. The injured employee or his dependents are entitled to receive ~~[such]~~ *those* benefits when the injured employee is released from incarceration if he is certified as permanently totally disabled by a physician or chiropractor.

3. An employee is entitled to receive compensation for a permanent total disability only so long as the permanent total disability continues to exist. The insurer has the burden of proving that the permanent total disability no longer exists.

4. If an employee who has received compensation in a lump sum for a permanent partial disability pursuant to NRS 616C.495 is subsequently determined to be permanently and totally disabled, the ~~[compensation for the permanent total disability must be reduced as follows:~~

~~—(a) If the employee has not received a minimum lump sum, the insurer of the employee's employer shall deduct from the compensation for the permanent total disability an amount equal to the monthly installment rate for awards for permanent partial disability until the insurer has deducted an amount that equals the amount it has already paid out as a lump sum; or~~

~~—(b) If the employee received a minimum lump sum, the]~~ insurer of the employee's employer shall *recover pursuant to this subsection the actual amount of the lump sum paid to the employee for the permanent partial disability. The insurer shall not recover from the employee, whether by deductions or single payment, or a combination of both, more than the actual amount of the lump sum paid to the employee. To recover the actual amount of the lump sum, the insurer shall:*

(a) Unless the employee submits a request described in paragraph (b), deduct from the compensation for the permanent total disability an amount ~~[of]~~ that is not more than 10 percent of the rate of compensation for a permanent total disability until the actual amount of the lump sum paid to the employee for the permanent partial disability is recovered ~~[-~~

~~The provisions of this subsection are retroactive for all claims for compensation for a permanent total disability remaining open on January 1, 2000.]; or~~

(b) Upon the request of the employee, accept in a single payment from the employee an amount that is equal to the actual amount of the lump sum paid to the employee for the permanent partial disability, less the actual amount of all deductions made to date by the insurer from the employee for repayment of the lump sum.

Sec. 2. 1. Each insurer who, pursuant to subsection 4 of NRS 616C.440, made a deduction from any compensation paid for a permanent total disability on a claim that was open on or after January 1, 2000, and before July 1, 2003, shall, as soon as practicable on or after July 1, 2003, recalculate the amount of the lump sum required to be repaid by the employee pursuant to the amendatory provisions of subsection 4 of section 1 of this act. In making the recalculation, the insurer shall determine the total of all of the actual amounts of all deductions made from the compensation paid to the employee pursuant to subsection 1 or 4 of NRS 616C.440 for the permanent total disability and subtract that amount from the actual amount of the lump sum paid to the employee for the permanent partial disability. The resulting amount is the maximum amount that the insurer may require the employee to repay for the lump sum for the permanent partial disability. Upon completing the recalculation required pursuant to this subsection, the insurer shall notify each employee for whom a recalculation was made of the results of the recalculation, including, without limitation, the actual amounts of all deductions and lump sums and the method or manner of recalculation.

2. If, after making a recalculation pursuant to subsection 1, an insurer determines that an employee has repaid an amount that is more than the actual amount of the lump sum paid to the employee for the permanent partial disability, the insurer shall immediately refund the amount of the overpayment to the employee.

3. If an insurer determines that an employee is entitled to a refund pursuant to subsection 2, and if the employee's claim is closed on or before the date the insurer makes the determination, the insurer shall:

(a) To the greatest extent practicable, locate the employee or, if the employee is deceased, the administrator or executor of the estate of the employee, if any; and

(b) Deliver the refund to the employee, administrator or executor.

4. If an insurer is unable to deliver a refund pursuant to subsection 3, the insurer shall submit a written notice to the Division of Industrial Relations of the Department of Business and Industry.

The written notice must be submitted within 10 days after the insurer determines it is unable to deliver the refund and must include, without limitation:

- (a) The name of the employee; and
- (b) A statement indicating that:
 - (1) The employee is entitled to a refund pursuant to subsection 2; and
 - (2) The insurer was unable to deliver the refund pursuant to subsection 3.

Sec. 3. This act becomes effective on July 1, 2003.