

ASSEMBLY BILL NO. 207—ASSEMBLYMAN OCEGUERA

FEBRUARY 27, 2007

Referred to Committee on Commerce and Labor

SUMMARY—Provides for the payment of a cash benefit to certain injured workers unable to return to the positions that they held at the time of injury. (BDR 53-546)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets [omitted-material] is material to be omitted.

AN ACT relating to industrial insurance; repealing provisions which require that vocational rehabilitation services be provided to eligible injured workers; providing for the payment of a cash benefit to certain injured workers who are unable to return to the position they held before the injury; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Existing law provides for the provision of vocational rehabilitation services to
2 injured employees who are unable to return to the positions that they held at the
3 time of the injury. Existing law also authorizes the payment of a lump-sum cash
4 benefit to an injured employee in lieu of the provision of vocational rehabilitation
5 services. (NRS 616C.530-616C.600) **Sections 1-6, 8 and 9** of this bill eliminate the
6 provisions which require that vocational rehabilitation services be provided to
7 injured employees who are unable to return to the positions that they held at the
8 time of the injury. **Section 7** of this bill provides for the payment of a lump-sum
9 cash benefit to an injured employee who is unable to return to the position that he
10 held at the time of the injury. **Section 7** establishes the rate for determining the
11 amount of the cash benefit and establishes minimum and maximum amounts for the
12 cash benefit. **Section 10** of this bill provides for the applicability of the eliminated
13 provisions to injured workers who entered programs for vocation rehabilitation
14 services before July 1, 2007.



* A B 2 0 7 *

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

Section 1. NRS 616A.025 is hereby amended to read as follows:

616A.025 As used in chapters 616A to 616D, inclusive, of NRS, unless the context otherwise requires, the words and terms defined in NRS 616A.030 to ~~616A.360,~~ **616A.355**, inclusive, have the meanings ascribed to them in those sections.

Sec. 2. NRS 616B.215 is hereby amended to read as follows:

616B.215 1. Except as otherwise provided in subsection 2 ~~1~~ ~~—(a) A~~, a principal contractor or an owner of property acting as a principal contractor aggrieved by a letter issued pursuant to NRS 616B.645 ~~1; or~~

~~—(b) An employer aggrieved by a determination made pursuant to NRS 616C.585,~~

~~1~~ may appeal from the letter or determination by filing a notice of appeal with the Administrator within 30 days after the date of the letter or determination.

2. An employer shall not seek to remove costs that have been charged to his account by appealing to the Administrator any issue that relates to a claim for compensation if the issue was raised or could have been raised before a hearing officer or an appeals officer pursuant to NRS 616C.315 or 616C.345.

3. The decision of the Administrator is the final and binding administrative determination of an appeal filed pursuant to this section, and the whole record consists of all evidence taken at the hearing before the Administrator and any findings based thereon.

Sec. 3. NRS 616C.390 is hereby amended to read as follows:

616C.390 Except as otherwise provided in NRS 616C.392:

1. If an application to reopen a claim to increase or rearrange compensation is made in writing more than 1 year after the date on which the claim was closed, the insurer shall reopen the claim if:

(a) A change of circumstances warrants an increase or rearrangement of compensation during the life of the claimant;

(b) The primary cause of the change of circumstances is the injury for which the claim was originally made; and

(c) The application is accompanied by the certificate of a physician or a chiropractor showing a change of circumstances which would warrant an increase or rearrangement of compensation.

2. After a claim has been closed, the insurer, upon receiving an application and for good cause shown, may authorize the reopening of the claim for medical investigation only. The application must be accompanied by a written request for treatment from the physician or chiropractor treating the claimant, certifying that the treatment is



1 indicated by a change in circumstances and is related to the
2 industrial injury sustained by the claimant.

3 3. If a claimant applies for a claim to be reopened pursuant to
4 subsection 1 or 2 and a final determination denying the reopening is
5 issued, the claimant shall not reapply to reopen the claim until at
6 least 1 year after the date on which the final determination is issued.

7 4. Except as otherwise provided in subsection 5, if an
8 application to reopen a claim is made in writing within 1 year after
9 the date on which the claim was closed, the insurer shall reopen the
10 claim only if:

11 (a) The application is supported by medical evidence
12 demonstrating an objective change in the medical condition of the
13 claimant; and

14 (b) There is clear and convincing evidence that the primary
15 cause of the change of circumstances is the injury for which the
16 claim was originally made.

17 5. An application to reopen a claim must be made in writing
18 within 1 year after the date on which the claim was closed if:

19 (a) The claimant was not off work as a result of the injury; and

20 (b) The claimant did not receive benefits for a permanent partial
21 disability.

22 ➔ If an application to reopen a claim to increase or rearrange
23 compensation is made pursuant to this subsection, the insurer shall
24 reopen the claim if the requirements set forth in paragraphs (a), (b)
25 and (c) of subsection 1 are met.

26 6. If an employee's claim is reopened pursuant to this section,
27 he is not entitled to ~~vocational rehabilitation services or~~ benefits
28 for a temporary total disability if, before his claim was reopened, he:

29 (a) Retired; or

30 (b) Otherwise voluntarily removed himself from the workforce,
31 ➔ for reasons unrelated to the injury for which the claim was
32 originally made.

33 7. One year after the date on which the claim was closed, an
34 insurer may dispose of the file of a claim authorized to be reopened
35 pursuant to subsection 5, unless an application to reopen the claim
36 has been filed pursuant to that subsection.

37 8. An increase or rearrangement of compensation is not
38 effective before an application for reopening a claim is made unless
39 good cause is shown. The insurer shall, upon good cause shown,
40 allow the cost of emergency treatment the necessity for which has
41 been certified by a physician or a chiropractor.

42 9. A claim that closes pursuant to subsection 2 of NRS
43 616C.235 and is not appealed or is unsuccessfully appealed pursuant
44 to the provisions of NRS 616C.305 and 616C.315 to 616C.385,
45 inclusive, may not be reopened pursuant to this section.



10. The provisions of this section apply to any claim for which an application to reopen the claim or to increase or rearrange compensation is made pursuant to this section, regardless of the date of the injury or accident to the claimant. If a claim is reopened pursuant to this section, the amount of any compensation or benefits provided must be determined in accordance with the provisions of NRS 616C.425.

Sec. 4. NRS 616C.410 is hereby amended to read as follows:

616C.410 Except as otherwise provided by NRS 616C.380, 616C.495, 616C.505 ~~[, 616C.580 and 616C.595,]~~ and 616C.590, the insurer shall not make or allow any lump-sum settlements.

Sec. 5. NRS 616C.475 is hereby amended to read as follows:

616C.475 1. Except as otherwise provided in this section, NRS 616C.175 and 616C.390, 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, is entitled to receive for the period of temporary total disability, 66 2/3 percent of the average monthly wage.

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 temporary total disability during the time the injured employee is incarcerated. The injured employee or his dependents are entitled to receive such benefits when the injured employee is released from incarceration if he is certified as temporarily totally disabled by a physician or chiropractor.

3. If a claim for the period of temporary total disability is allowed, the first payment pursuant to this section must be issued by the insurer within 14 working days after receipt of the initial certification of disability and regularly thereafter.

4. Any increase in compensation and benefits effected by the amendment of subsection 1 is not retroactive.

5. Payments for a temporary total disability must cease when:

(a) A physician or chiropractor determines that the employee is physically capable of any gainful employment for which the employee is suited, after giving consideration to the employee's education, training and experience;

(b) The employer offers the employee light-duty employment or employment that is modified according to the limitations or restrictions imposed by a physician or chiropractor pursuant to subsection 7; or

(c) Except as otherwise provided in NRS 616B.028 and 616B.029, the employee is incarcerated.

6. Each insurer may, with each check that it issues to an injured employee for a temporary total disability, include a form approved



1 by the Division for the injured employee to request continued
2 compensation for the temporary total disability.

3 7. A certification of disability issued by a physician or
4 chiropractor must:

5 (a) Include the period of disability and a description of any
6 physical limitations or restrictions imposed upon the work of the
7 employee;

8 (b) Specify whether the limitations or restrictions are permanent
9 or temporary; and

10 (c) Be signed by the treating physician or chiropractor
11 authorized pursuant to NRS 616B.527 or appropriately chosen
12 pursuant to subsection 3 of NRS 616C.090.

13 8. If the certification of disability specifies that the physical
14 limitations or restrictions are temporary, the employer of the
15 employee at the time of his accident may offer temporary, light-duty
16 employment to the employee. If the employer makes such an offer,
17 the employer shall confirm the offer in writing within 10 days after
18 making the offer. The making, acceptance or rejection of an offer of
19 temporary, light-duty employment pursuant to this subsection does
20 not affect the eligibility of the employee to receive ~~[vocational~~
21 ~~rehabilitation services, including compensation,]~~ **compensation**
22 **pursuant to NRS 616C.590** and does not exempt the employer from
23 complying with NRS 616C.545 ~~[to 616C.575, inclusive,]~~ and
24 616C.590. ~~[for the regulations adopted by the Division governing~~
25 ~~vocational rehabilitation services.]~~ Any offer of temporary, light-
26 duty employment made by the employer must specify a position
27 that:

28 (a) Is substantially similar to the employee's position at the time
29 of his injury in relation to the location of the employment and the
30 hours he is required to work;

31 (b) Provides a gross wage that is:

32 (1) If the position is in the same classification of
33 employment, equal to the gross wage the employee was earning at
34 the time of his injury; or

35 (2) If the position is not in the same classification of
36 employment, substantially similar to the gross wage the employee
37 was earning at the time of his injury; and

38 (c) Has the same employment benefits as the position of the
39 employee at the time of his injury.

40 **Sec. 6.** NRS 616C.530 is hereby amended to read as follows:

41 616C.530 An insurer shall adhere to the following priorities in
42 returning an injured employee to work:

43 1. Return the injured employee to the job he had before his
44 injury.



2. Return the injured employee to a job with the employer he worked for before his accident that accommodates any limitation imposed by his injury.

3. Return the injured employee to employment with another employer in a job that uses his existing skills.

4. Provide ~~training for the injured employee while he is working in another vocation.~~

~~5. Provide formal training or education for the injured employee in another vocation.]~~ *payment to the injured employee pursuant to NRS 616C.590.*

Sec. 7. NRS 616C.590 is hereby amended to read as follows:

616C.590 1. ~~[Except as otherwise provided in this section,]~~ *In addition to any other benefits an injured employee is entitled to receive pursuant to chapters 616A to 617, inclusive, of NRS, an injured employee is [not eligible for vocational rehabilitation services, unless:] entitled to receive compensation for being unable to return to the position that he held at the time of the injury if:*

(a) The treating physician or chiropractor approves the return of the injured employee to work but imposes permanent restrictions that prevent the injured employee from returning to the position that he held at the time of his injury;

(b) The injured employee's employer does not offer employment that:

(1) The employee is eligible for considering the restrictions imposed pursuant to paragraph (a);

(2) Provides a gross wage that is equal to or greater than 80 percent of the gross wage that the employee was earning at the time of his injury; and

(3) Has the same employment benefits as the position of the employee at the time of his injury; and

(c) The injured employee is unable to return to gainful employment with any other employer at a gross wage that is equal to or greater than 80 percent of the gross wage that the employee was earning at the time of his injury.

2. If the treating physician or chiropractor imposes permanent restrictions on the injured employee for the purposes of paragraph (a) of subsection 1, he shall specify in writing:

(a) The medically objective findings upon which his determination is based; and

(b) A detailed description of the restrictions.

➔ The treating physician or chiropractor shall deliver a copy of the findings and the description of the restrictions to the insurer.

3. ~~[If there is a question as to whether the restrictions imposed upon the injured employee are permanent, the employee may~~



1 ~~receive vocational rehabilitation services until a final determination~~
2 ~~concerning the duration of the restrictions is made.~~

3 ~~—4. Vocational rehabilitation services must cease as soon as the~~
4 ~~injured employee is no longer eligible for the services pursuant to~~
5 ~~subsection 1.~~

6 ~~—5.]~~ An injured employee is not entitled to ~~[vocational~~
7 ~~rehabilitation services]~~ *compensation pursuant to this section*
8 solely because the position that he held at the time of his injury is no
9 longer available.

10 ~~[6. An injured employee or his dependents are not entitled to~~
11 ~~accrue or be paid any money for vocational rehabilitation services~~
12 ~~during the time the injured employee is incarcerated.~~

13 ~~—7. Any injured employee eligible for compensation other than~~
14 ~~accident benefits may not be paid those benefits if he refuses~~
15 ~~counseling, training or other vocational rehabilitation services~~
16 ~~offered by the insurer. Except as otherwise provided in NRS~~
17 ~~616B.028 and 616B.029, an injured employee shall be deemed to~~
18 ~~have refused counseling, training and other vocational rehabilitation~~
19 ~~services while he is incarcerated.~~

20 ~~—8.]~~ 4. If an insurer cannot locate an injured employee for
21 whom it has ordered ~~[vocational rehabilitation services,]~~
22 *compensation pursuant to this section*, the insurer may close his
23 claim 21 days after the insurer determines that the employee cannot
24 be located. The insurer shall make a reasonable effort to locate the
25 employee.

26 ~~[9.]~~ 5. The reappearance of the injured employee after his
27 claim has been closed does not automatically reinstate his eligibility
28 for ~~[vocational rehabilitation benefits.]~~ *compensation pursuant to*
29 *this section*. If the employee wishes to reestablish his eligibility for
30 ~~[those benefits,]~~ *compensation pursuant to this section*, he must
31 file a written application with the insurer to reinstate his claim. The
32 insurer shall reinstate the employee's claim if good cause is shown
33 for the employee's absence.

34 6. *Except as otherwise provided in subsection 7, an injured*
35 *employee entitled to compensation pursuant to this section must be*
36 *paid \$4,000 for each 1 percent of impairment of the whole man as*
37 *determined pursuant to NRS 616C.490.*

38 7. *Compensation paid to an injured employee pursuant to this*
39 *section must be at least \$10,000 but not more than \$40,000.*

40 **Sec. 8.** NRS 616C.600 is hereby amended to read as follows:

41 616C.600 1. A hearing officer or appeals officer shall not
42 order self-employment for an injured employee . ~~[for the payment of~~
43 ~~compensation in a lump sum for vocational rehabilitation.]~~

44 2. An insurer, an employer and an injured employee may
45 execute an agreement concerning self-employment.



1 **Sec. 9.** NRS 616A.080, 616A.360, 616C.540, 616C.542,
2 616C.547, 616C.550, 616C.555, 616C.560, 616C.570, 616C.575,
3 616C.580, 616C.585 and 616C.595 are hereby repealed.

4 **Sec. 10.** If an injured employee began participating in a
5 program of vocational rehabilitation pursuant to NRS 616C.540 to
6 616C.590, inclusive, before July 1, 2007, the amendatory provisions
7 of this act do not apply to the employee with respect to that injury.

8 **Sec. 11.** This act becomes effective on July 1, 2007.

LEADLINES OF REPEALED SECTIONS

616A.080 “Certified vocational rehabilitation counselor”
defined.

616A.360 “Vocational rehabilitation services” defined.

616C.540 Supervision, ratio and review of uncertified
counselors; knowledge of labor market required.

616C.542 Prohibiting vocational rehabilitation counselor
employed by entity administering injured employee’s case from
providing services to injured employee without provision of
certain written disclosures; right of injured employee to be
assigned alternate counselor.

616C.547 General duties of vocational rehabilitation
counselor.

616C.550 Written assessment of injured employee.

616C.555 Plan for program of vocational rehabilitation.

616C.560 Extension of program for vocational
rehabilitation.

616C.570 On-the-job training as component of plan for
program of vocational rehabilitation.

616C.575 Payment of vocational rehabilitation
maintenance.

616C.580 Provision of services outside of State; limited
lump-sum payment in lieu of services.

616C.585 Limit on goods and services which may be
provided; exceptions.

616C.595 Agreements for payment of compensation in
lump sum in lieu of provision of vocational rehabilitation
services.

