

LEGISLATIVE BILL 1017

Approved by the Governor April 16, 2024

Introduced by Bosn, 25.

A BILL FOR AN ACT relating to workers' compensation; to amend section 48-121, Reissue Revised Statutes of Nebraska; to change the schedule of compensation for loss or loss of use of more than one specific part of the body from injury or illness resulting in disability as prescribed; and to repeal the original section.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 48-121, Reissue Revised Statutes of Nebraska, is amended to read:

48-121 The following schedule of compensation is hereby established for injuries resulting in disability:

(1) For total disability, the compensation during such disability shall be sixty-six and two-thirds percent of the wages received at the time of injury, but such compensation shall not be more than the maximum weekly income benefit specified in section 48-121.01 nor less than the minimum weekly income benefit specified in section 48-121.01, except that if at the time of injury the employee receives wages of less than the minimum weekly income benefit specified in section 48-121.01, then he or she shall receive the full amount of such wages per week as compensation. Nothing in this subdivision shall require payment of compensation after disability shall cease;

(2) For disability partial in character, except the particular cases mentioned in subdivision (3) of this section, the compensation shall be sixty-six and two-thirds percent of the difference between the wages received at the time of the injury and the earning power of the employee thereafter, but such compensation shall not be more than the maximum weekly income benefit specified in section 48-121.01. This compensation shall be paid during the period of such partial disability but not beyond three hundred weeks. Should total disability be followed by partial disability, the period of three hundred weeks mentioned in this subdivision shall be reduced by the number of weeks during which compensation was paid for such total disability;

(3) For disability resulting from permanent injury of the classes listed in this subdivision, the compensation shall be in addition to the amount paid for temporary disability, except that the compensation for temporary disability shall cease as soon as the extent of the permanent disability is ascertainable. For disability resulting from permanent injury of the following classes, compensation shall be: For the loss of a thumb, sixty-six and two-thirds percent of daily wages during sixty weeks. For the loss of a first finger, commonly called the index finger, sixty-six and two-thirds percent of daily wages during thirty-five weeks. For the loss of a second finger, sixty-six and two-thirds percent of daily wages during thirty weeks. For the loss of a third finger, sixty-six and two-thirds percent of daily wages during twenty weeks. For the loss of a fourth finger, commonly called the little finger, sixty-six and two-thirds percent of daily wages during fifteen weeks. The loss of the first phalange of the thumb or of any finger shall be considered to be equal to the loss of one-half of such thumb or finger and compensation shall be for one-half of the periods of time above specified, and the compensation for the loss of one-half of the first phalange shall be for one-fourth of the periods of time above specified. The loss of more than one phalange shall be considered as the loss of the entire finger or thumb, except that in no case shall the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand. For the loss of a great toe, sixty-six and two-thirds percent of daily wages during thirty weeks. For the loss of one of the toes other than the great toe, sixty-six and two-thirds percent of daily wages during ten weeks. The loss of the first phalange of any toe shall be considered equal to the loss of one-half of such toe, and compensation shall be for one-half of the periods of time above specified. The loss of more than one phalange shall be considered as the loss of the entire toe. For the loss of a hand, sixty-six and two-thirds percent of daily wages during one hundred seventy-five weeks. For the loss of an arm, sixty-six and two-thirds percent of daily wages during two hundred twenty-five weeks. For the loss of a foot, sixty-six and two-thirds percent of daily wages during one hundred fifty weeks. For the loss of a leg, sixty-six and two-thirds percent of daily wages during two hundred fifteen weeks. For the loss of an eye, sixty-six and two-thirds percent of daily wages during one hundred twenty-five weeks. For the loss of an ear, sixty-six and two-thirds percent of daily wages during twenty-five weeks. For the loss of hearing in one ear, sixty-six and two-thirds percent of daily wages during fifty weeks. For the loss of the nose, sixty-six and two-thirds percent of daily wages during fifty weeks.

In any case in which there is a loss or loss of use of more than one member or parts of more than one member set forth in this subdivision, but not amounting to total and permanent disability, compensation benefits shall be paid for the loss or loss of use of each such member or part thereof, with the periods of benefits to run consecutively. The total loss or permanent total

loss of use of both hands, or both arms, or both feet, or both legs, or both eyes, or hearing in both ears, or of any two thereof, in one accident, shall constitute total and permanent disability and be compensated for according to subdivision (1) of this section. In all other cases involving a loss or loss of use of both hands, both arms, both feet, both legs, both eyes, or hearing in both ears, or of any two thereof, total and permanent disability shall be determined in accordance with the facts. Amputation between the elbow and the wrist shall be considered as the equivalent of the loss of a hand, and amputation between the knee and the ankle shall be considered as the equivalent of the loss of a foot. Amputation at or above the elbow shall be considered as the loss of an arm, and amputation at or above the knee shall be considered as the loss of a leg. Permanent total loss of the use of a finger, hand, arm, foot, leg, or eye shall be considered as the equivalent of the loss of such finger, hand, arm, foot, leg, or eye. In all cases involving a permanent partial loss of the use or function of any of the members mentioned in this subdivision, the compensation shall bear such relation to the amounts named in such subdivision as the disabilities bear to those produced by the injuries named therein.

If, in the compensation court's discretion, compensation benefits payable for a loss or loss of use of more than one hand, arm, foot, or leg, or any combination thereof ~~member or parts of more than one member set forth in this subdivision~~, resulting from the same accident or illness, do not adequately compensate the employee for such loss or loss of use and such loss or loss of use results in at least a thirty percent loss of earning capacity, the compensation court shall, upon request of the employee, determine the employee's loss of earning capacity consistent with the process for such determination under subdivision (1) or (2) of this section, and in such a case the employee shall not be entitled to compensation under this subdivision. Loss or loss of use of multiple parts of the same arm, including the hand and fingers, or loss or loss of use of multiple parts of the same leg, including the foot and toes, resulting from the same accident or illness shall not entitle the employee to compensation under subdivision (1) or (2) of this section.

If the employer and the employee are unable to agree upon the amount of compensation to be paid in cases not covered by the schedule, the amount of compensation shall be settled according to sections 48-173 to 48-185. Compensation under this subdivision shall not be more than the maximum weekly income benefit specified in section 48-121.01 nor less than the minimum weekly income benefit specified in section 48-121.01, except that if at the time of the injury the employee received wages of less than the minimum weekly income benefit specified in section 48-121.01, then he or she shall receive the full amount of such wages per week as compensation;

(4) For disability resulting from permanent disability, if immediately prior to the accident the rate of wages was fixed by the day or hour, or by the output of the employee, the weekly wages shall be taken to be computed upon the basis of a workweek of a minimum of five days, if the wages are paid by the day, or upon the basis of a workweek of a minimum of forty hours, if the wages are paid by the hour, or upon the basis of a workweek of a minimum of five days or forty hours, whichever results in the higher weekly wage, if the wages are based on the output of the employee; and

(5) The employee shall be entitled to compensation from his or her employer for temporary disability while undergoing physical or medical rehabilitation and while undergoing vocational rehabilitation whether such vocational rehabilitation is voluntarily offered by the employer and accepted by the employee or is ordered by the Nebraska Workers' Compensation Court or any judge of the compensation court.

Sec. 2. Original section 48-121, Reissue Revised Statutes of Nebraska, is repealed.