

AMENDMENTS TO LB953

Introduced by Business and Labor.

1 1. Strike the original sections and insert the following new
2 sections:

3 Section 1. Section 48-139, Revised Statutes Cumulative Supplement,
4 2016, is amended to read:

5 48-139 (1)(a) Whenever an injured employee or his or her dependents
6 and the employer agree that the amounts of compensation due as periodic
7 payments for death, permanent disability, or claimed permanent disability
8 under the Nebraska Workers' Compensation Act shall be commuted to one or
9 more lump-sum payments, such settlement shall be submitted to the
10 Nebraska Workers' Compensation Court for approval as provided in
11 subsection (2) of this section if:

12 (i) The employee is not represented by counsel;

13 (ii) The employee, at the time the settlement is executed, is
14 eligible for medicare, is a medicare beneficiary, or has a reasonable
15 expectation of becoming eligible for medicare within thirty months after
16 the date the settlement is executed;

17 (iii) Medical, surgical, or hospital expenses incurred for treatment
18 of the injury have been paid by medicaid and medicaid will not be
19 reimbursed as part of the settlement;

20 (iv) Medical, surgical, or hospital expenses incurred for treatment
21 of the injury will not be fully paid as part of the settlement; or

22 (v) The settlement seeks to commute amounts of compensation due to
23 dependents of the employee.

24 (b) If such lump-sum settlement is not required to be submitted for
25 approval by the compensation court, a release shall be filed with the
26 compensation court as provided in subsection (3) of this section. Nothing
27 in this section shall be construed to increase the compensation court's

1 duties or authority with respect to the approval of lump-sum settlements
2 under the act.

3 (2)(a) An application for an order approving a lump-sum settlement,
4 signed and verified by both parties, shall be filed with the clerk of the
5 compensation court and shall be entitled the same as an action by such
6 employee or dependents against such employer. The application shall
7 contain a concise statement of the terms of the settlement or agreement
8 sought to be approved with a brief statement of the facts concerning the
9 injury, the nature thereof, the wages received by the injured employee
10 prior thereto, the nature of the employment, and such other matters as
11 may be required by the compensation court. The application may provide
12 for payment of future medical, surgical, or hospital expenses incurred by
13 the employee. The compensation court may, on its own motion, and shall,
14 on a motion by one of the parties, hold a hearing on the application at a
15 time and place selected by the compensation court, and proof may be
16 adduced and witnesses subpoenaed and examined the same as in an action in
17 equity.

18 (b)(i) ~~(b)~~ If the compensation court finds such lump-sum settlement
19 is made in conformity with the compensation schedule and for the best
20 interests of the employee or his or her dependents under all the
21 circumstances, the compensation court shall make an order approving the
22 same.

23 (ii) If medical, surgical, or hospital services provided to the
24 employee are not paid by the employer, or if any person, other than
25 medicaid, who has made any payment to the supplier of medical, surgical,
26 or hospital services provided to the employee, is not reimbursed by the
27 employer, it shall be conclusively presumed that the resolution of
28 payment of disputed medical, surgical, or hospital services set forth in
29 the application for approval of a lump-sum settlement is in conformity
30 with the compensation schedule and for the best interests of the employee
31 or his or her dependents, if the employee's attorney elects to affirm in

1 the application that the resolution of payment of disputed medical,
2 surgical, or hospital services is in conformity with the compensation
3 schedule and for the best interests of the employee or his or her
4 dependents under all the circumstances.

5 (iii) If the employee, at the time the settlement is executed, is
6 eligible for medicare, is a medicare beneficiary, or has a reasonable
7 expectation of becoming eligible for medicare within thirty months after
8 the date the settlement is executed, and if the employee's attorney
9 elects to affirm in the application for an order approving the settlement
10 that the parties' agreement relating to consideration of medicare's
11 interests set forth in such lump-sum settlement is in conformity with the
12 compensation schedule and for the best interests of the employee or his
13 or her dependents under all the circumstances, it shall be conclusively
14 presumed that the parties' agreement relating to consideration of
15 medicare's interests set forth in the application for approval of a lump-
16 sum settlement is in conformity with the compensation schedule and for
17 the best interests of the employee or his or her dependents.

18 (iv) If such settlement is not approved, the compensation court may
19 dismiss the application at the cost of the employer or continue the
20 hearing, in the discretion of the compensation court.

21 (c) Every such lump-sum settlement approved by order of the
22 compensation court shall be final and conclusive unless procured by
23 fraud. Upon paying the amount approved by the compensation court, the
24 employer ~~(i)~~ shall be discharged from further liability on account of the
25 injury or death, other than liability for the payment of future medical,
26 surgical, or hospital expenses if such liability is approved by the
27 compensation court on the application of the parties, ~~and (ii) shall be~~
28 ~~entitled to a duly executed release. Upon filing the release, the~~
29 ~~liability of the employer under any agreement, award, finding, or decree~~
30 ~~shall be discharged of record.~~

31 (3) If such lump-sum settlement is not required to be submitted for

1 approval by the compensation court, a release shall be filed with the
2 compensation court in accordance with this subsection that is signed and
3 verified by the employee and the employee's attorney. The release shall
4 be made on a form approved by the compensation court and shall contain a
5 statement signed and verified by the employee that:

6 (a) The employee understands and waives all rights under the
7 Nebraska Workers' Compensation Act, including, but not limited to:

8 (i) The right to receive weekly disability benefits, both temporary
9 and permanent;

10 (ii) The right to receive vocational rehabilitation services;

11 (iii) The right to receive future medical, surgical, and hospital
12 services as provided in section 48-120, unless such services are
13 specifically excluded from the release; and

14 (iv) The right to ask a judge of the compensation court to decide
15 the parties' rights and obligations;

16 (b) The employee is not eligible for medicare, is not a current
17 medicare beneficiary, and does not have a reasonable expectation of
18 becoming eligible for medicare within thirty months after the date the
19 settlement is executed;

20 (c) There are no medical, surgical, or hospital expenses incurred
21 for treatment of the injury which have been paid by medicaid and not
22 reimbursed to medicaid by the employer as part of the settlement; and

23 (d) There are no medical, surgical, or hospital expenses incurred
24 for treatment of the injury that will remain unpaid after the settlement.

25 (4) Upon the entry of an order of dismissal with prejudice, a A
26 release filed with the compensation court in accordance with subsection
27 (3) of this section shall be final and conclusive as to all rights waived
28 in the release unless procured by fraud. Amounts to be paid by the
29 employer to the employee pursuant to such release shall be paid within
30 thirty days of filing the release with the compensation court. Fifty
31 percent shall be added for payments owed to the employee if made after

1 thirty days after the date the release is filed with the compensation
2 court. Upon making payment owed by the employer as set forth in the
3 release and upon the entry of an order of dismissal with prejudice, as to
4 all rights waived in the release, such release shall be a full and
5 complete discharge from further liability for the employer on account of
6 the injury, including future medical, surgical, or hospital expenses,
7 unless such expenses are specifically excluded from the release, ~~and the~~
8 ~~court shall enter an order of dismissal with prejudice as to all rights~~
9 ~~waived in the release.~~

10 (5) The fees of the clerk of the compensation court for filing,
11 docketing, and indexing an application for an order approving a lump-sum
12 settlement or filing a release as provided in this section shall be
13 fifteen dollars. The fees shall be remitted by the clerk to the State
14 Treasurer for credit to the Compensation Court Cash Fund.

15 Sec. 2. Original section 48-139, Revised Statutes Cumulative
16 Supplement, 2016, is repealed.