

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 526

Introduced by McDonnell, 5.

Read first time January 22, 2019

Committee: Business and Labor

- 1 A BILL FOR AN ACT relating to the Nebraska Workers' Compensation Act; to
- 2 amend section 48-121, Reissue Revised Statutes of Nebraska; to
- 3 change provisions relating to compensation for temporary disability;
- 4 and to repeal the original section.
- 5 Be it enacted by the people of the State of Nebraska,

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

3 48-121 The following schedule of compensation is hereby established
4 for injuries resulting in disability:

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

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

26 (3) For disability resulting from permanent injury of the classes
27 listed in this subdivision, the compensation shall be in addition to the
28 amount paid for temporary disability, except that the compensation for
29 temporary disability shall continue until the later of (a) any permanent
30 disability, as measured by permanent impairment for a scheduled member
31 injury, has been determined or, in the event of a claim payable under a

1 loss of earning capacity, until a loss of earning capacity evaluation has
2 been issued or (b) thirty days after the employee has been given notice
3 as provided in subdivision (6) of this section cease as soon as the
4 extent of the permanent disability is ascertainable. For disability
5 resulting from permanent injury of the following classes, compensation
6 shall be: For the loss of a thumb, sixty-six and two-thirds percent of
7 daily wages during sixty weeks. For the loss of a first finger, commonly
8 called the index finger, sixty-six and two-thirds percent of daily wages
9 during thirty-five weeks. For the loss of a second finger, sixty-six and
10 two-thirds percent of daily wages during thirty weeks. For the loss of a
11 third finger, sixty-six and two-thirds percent of daily wages during
12 twenty weeks. For the loss of a fourth finger, commonly called the little
13 finger, sixty-six and two-thirds percent of daily wages during fifteen
14 weeks. The loss of the first phalange of the thumb or of any finger shall
15 be considered to be equal to the loss of one-half of such thumb or finger
16 and compensation shall be for one-half of the periods of time above
17 specified, and the compensation for the loss of one-half of the first
18 phalange shall be for one-fourth of the periods of time above specified.
19 The loss of more than one phalange shall be considered as the loss of the
20 entire finger or thumb, except that in no case shall the amount received
21 for more than one finger exceed the amount provided in this schedule for
22 the loss of a hand. For the loss of a great toe, sixty-six and two-thirds
23 percent of daily wages during thirty weeks. For the loss of one of the
24 toes other than the great toe, sixty-six and two-thirds percent of daily
25 wages during ten weeks. The loss of the first phalange of any toe shall
26 be considered equal to the loss of one-half of such toe, and compensation
27 shall be for one-half of the periods of time above specified. The loss of
28 more than one phalange shall be considered as the loss of the entire toe.
29 For the loss of a hand, sixty-six and two-thirds percent of daily wages
30 during one hundred seventy-five weeks. For the loss of an arm, sixty-six
31 and two-thirds percent of daily wages during two hundred twenty-five

1 weeks. For the loss of a foot, sixty-six and two-thirds percent of daily
2 wages during one hundred fifty weeks. For the loss of a leg, sixty-six
3 and two-thirds percent of daily wages during two hundred fifteen weeks.
4 For the loss of an eye, sixty-six and two-thirds percent of daily wages
5 during one hundred twenty-five weeks. For the loss of an ear, sixty-six
6 and two-thirds percent of daily wages during twenty-five weeks. For the
7 loss of hearing in one ear, sixty-six and two-thirds percent of daily
8 wages during fifty weeks. For the loss of the nose, sixty-six and two-
9 thirds percent of daily wages during fifty weeks.

10 In any case in which there is a loss or loss of use of more than one
11 member or parts of more than one member set forth in this subdivision,
12 but not amounting to total and permanent disability, compensation
13 benefits shall be paid for the loss or loss of use of each such member or
14 part thereof, with the periods of benefits to run consecutively. The
15 total loss or permanent total loss of use of both hands, or both arms, or
16 both feet, or both legs, or both eyes, or hearing in both ears, or of any
17 two thereof, in one accident, shall constitute total and permanent
18 disability and be compensated for according to subdivision (1) of this
19 section. In all other cases involving a loss or loss of use of both
20 hands, both arms, both feet, both legs, both eyes, or hearing in both
21 ears, or of any two thereof, total and permanent disability shall be
22 determined in accordance with the facts. Amputation between the elbow and
23 the wrist shall be considered as the equivalent of the loss of a hand,
24 and amputation between the knee and the ankle shall be considered as the
25 equivalent of the loss of a foot. Amputation at or above the elbow shall
26 be considered as the loss of an arm, and amputation at or above the knee
27 shall be considered as the loss of a leg. Permanent total loss of the use
28 of a finger, hand, arm, foot, leg, or eye shall be considered as the
29 equivalent of the loss of such finger, hand, arm, foot, leg, or eye. In
30 all cases involving a permanent partial loss of the use or function of
31 any of the members mentioned in this subdivision, the compensation shall

1 bear such relation to the amounts named in such subdivision as the
2 disabilities bear to those produced by the injuries named therein.

3 If, in the compensation court's discretion, compensation benefits
4 payable for a loss or loss of use of more than one member or parts of
5 more than one member set forth in this subdivision, resulting from the
6 same accident or illness, do not adequately compensate the employee for
7 such loss or loss of use and such loss or loss of use results in at least
8 a thirty percent loss of earning capacity, the compensation court shall,
9 upon request of the employee, determine the employee's loss of earning
10 capacity consistent with the process for such determination under
11 subdivision (1) or (2) of this section, and in such a case the employee
12 shall not be entitled to compensation under this subdivision.

13 If the employer and the employee are unable to agree upon the amount
14 of compensation to be paid in cases not covered by the schedule, the
15 amount of compensation shall be settled according to sections 48-173 to
16 48-185. Compensation under this subdivision shall not be more than the
17 maximum weekly income benefit specified in section 48-121.01 nor less
18 than the minimum weekly income benefit specified in section 48-121.01,
19 except that if at the time of the injury the employee received wages of
20 less than the minimum weekly income benefit specified in section
21 48-121.01, then he or she shall receive the full amount of such wages per
22 week as compensation;

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

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

7 (6) Compensation for temporary disability shall only cease after the
8 employee has been given thirty days' notice. Upon termination of
9 temporary disability benefits, the employer shall provide copies of all
10 evidence which were relied upon in making the determination to cease
11 benefit payments. If the employer relies upon evidence from outside of
12 the treating physicians, the employee shall be entitled to seek a medical
13 finding by an independent medical examiner to be paid for by the
14 employer. Such independent medical examiner shall be chosen by the
15 employee.

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