

LEGISLATIVE BILL 320

Approved by the Governor May 20, 1971

Introduced by Fred W. Carstens, 30th District

AN ACT to amend section 48-121, Revised Statutes Supplement, 1969, and section 48-122, Revised Statutes Supplement, 1969, as amended by section 1, Legislative Bill 499, Eighty-second Legislature, First Session, 1971, relating to workmen's compensation; to provide for increases in minimum and maximum compensation; and to repeal the original sections.

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

Section 1. That section 48-121, Revised Statutes Supplement, 1969, be amended to read as follows:

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

(1) For the first three hundred weeks of total disability, the compensation shall be sixty-six and two-thirds per cent of the wages received at the time of injury, but such compensation shall not be more than ~~fifty-five~~ ~~sixty-two~~ dollars per week, nor less than ~~thirty-five~~ ~~forty~~ dollars per week; Provided, that if at the time of injury the employee receives wages of less than ~~thirty-five~~ ~~forty~~ dollars per week, then he shall receive the full amount of such wages per week as compensation. After the first three hundred weeks of total disability, for the remainder of the life of the employee, he shall receive forty-five per cent of the wages received at the time of injury, but the compensation shall not be more than ~~forty-one~~ ~~forty-seven~~ dollars per week nor less than ~~thirty-one~~ ~~thirty-six~~ dollars per week; Provided, that if at the time of the injury the employee receives wages of less than ~~thirty-one~~ ~~thirty-six~~ dollars per week, then he shall receive the full amount of such wages as compensation. Nothing in this subdivision shall require payment of compensation after disability shall cease. Should partial disability be followed by total 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 partial disability.

(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 per cent 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 ~~fifty-five~~ sixty-two dollars per week. 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 following classes, the compensation shall be in addition to the amount paid for temporary disability; Provided, the compensation for temporary disability shall cease as soon as the extent of the permanent disability is ascertainable, viz: For the loss of a thumb, sixty-six and two-thirds per cent of daily wages during sixty weeks. For the loss of a first finger, commonly called the index finger, sixty-six and two-thirds per cent of daily wages during thirty-five weeks. For the loss of a second finger, sixty-six and two-thirds per cent of daily wages during thirty weeks. For the loss of a third finger, sixty-six and two-thirds per cent of daily wages during twenty weeks. For the loss of a fourth finger, commonly called the little finger, sixty-six and two-thirds per cent 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; Provided, 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 per cent of daily wages during thirty weeks. For the loss of one of the toes other than the great toe, sixty-six and two-thirds per cent 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 per cent of daily wages during one hundred seventy-five weeks. For the loss of an arm, sixty-six and two-thirds per cent of daily wages during two hundred twenty-five weeks. For the loss of a foot, sixty-six and two-thirds per cent of daily wages during one hundred fifty weeks. For the loss of a leg, sixty-six and two-thirds per cent of daily wages during two hundred fifteen weeks. For the loss of an eye, sixty-six and two-thirds per cent of daily wages during one hundred twenty-five weeks. For the loss of an ear, sixty-six and two-thirds per cent of daily wages during twenty-five weeks. For the loss of hearing in one ear, sixty-six and two-thirds per cent of daily wages during fifty weeks. For the loss of hearing in both ears, sixty-six and two-thirds per cent of daily wages during one hundred weeks. For the loss of the nose, sixty-six and two-thirds per cent of daily wages during fifty weeks. The loss of both hands, or both arms, or both feet, or both legs, or both eyes, or of any two thereof, shall constitute total and permanent disability and be compensated for according to the provisions of subdivision (1) of this section. 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 said subdivision as the disabilities bear to those produced by the injuries named therein. Should the employer and the employee be 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 the provisions of sections 48-173 to 48-185. Compensation under this subdivision shall not be more than fifty-five sixty-two dollars per week, nor less than thirty-five forty dollars per week; Provided, that if at the time of the injury the employee received wages of less than thirty-five forty dollars per week, then he 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 work week of a minimum of five days, if the wages are paid by the day, or upon the basis of a work week of a minimum of forty hours, if the wages are paid by the hour, or upon the basis of a work week 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.

(5) In determining earning power or the loss of earning power or in determining disability, any increase in earning power or earning capacity or any decrease in disability which is the result of vocational rehabilitation undertaken under the provisions of this act shall be taken into consideration and given effect. The employee shall be entitled to compensation for temporary disability while undergoing rehabilitation.

Sec. 2. That section 48-122, Revised Statutes Supplement, 1969, as amended by section 1, Legislative Bill 499, Eighty-second Legislature, First Session, 1971, be amended to read as follows:

48-122. (1) If death results from injuries and the deceased employee leaves one or more dependents wholly dependent upon his earnings for support at the time of the accident causing the injury, the compensation, subject to the provisions of section 48-123, shall be sixty-six and two-thirds per cent of the wages received at the time of the injury, but the compensation shall not be more than ~~fifty-five~~ sixty-two dollars per week nor less than ~~thirty-five~~ forty dollars per week; Provided, that if at the time of injury the employee receives wages of less than ~~thirty-five~~ forty dollars per week, then the compensation shall be the full amount of such wages per week. This compensation shall be paid during dependency, not exceeding three hundred twenty-five weeks except when such dependent is the widow of the deceased employee, in which case compensation shall be paid for the remainder of the life of such widow, or until she remarries, and the compensation shall cease upon her remarriage.

(2) When death results from injuries suffered in employment, 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 work week of a minimum of five days, if the wages are paid by the day, or upon the basis of a work week of a minimum of forty hours, if the wages are paid by the hour, or upon the

basis of a work week 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.

(3) If at the time of the accident, which resulted in his death, the deceased employee leaves no persons wholly dependent, but leaves persons partially dependent upon his earnings for support, compensation shall be paid on account of the benefits provided in subsection (1) of this section for persons wholly dependent, in the proportion that the average amount regularly contributed by the deceased from his wages for a reasonable time immediately prior to the accident, to such persons who were partially dependent, bears to the total wages of the deceased during the time; Provided, that for the purpose of this subsection, the wages shall not in any case be considered to exceed the maximum compensation rate for total disability.

(4) Upon the death of an employee, resulting through personal injuries as herein defined, whether or not there be dependents entitled to compensation, the reasonable expenses of burial, not exceeding one thousand dollars, without deduction of any amount previously paid or to be paid for compensation or for medical expenses, shall be paid to his dependents, or if there be no dependents, then to his personal representative.

(5) Compensation under this act to alien dependents, widows, children, and parents who are not residents of the United States, shall be the same in amount as is provided in each case for residents, except that at any time within one year after the death of the injured employee the employer may at his option commute all future installments of compensation to be paid to such alien dependents by paying to them two-thirds of the total amount of such future installments of compensation. Alien widowers, brothers, and sisters not residents of the United States shall not be entitled to any compensation.

(6) The consul-general, consul, vice-consul-general, or vice-consul of the nation of which the employee, whose injury results in death, is a citizen, or the representative of such consul-general, consul, vice-consul-general, or vice-consul residing within the State of Nebraska shall be regarded as the sole legal representative of any alien dependents of the employee residing outside of the United States and representing the nationality of the employee. Such consular officer, or his representative, residing in the

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State of Nebraska, shall have in behalf of such nonresident dependents, the exclusive right to adjust and settle all claims for compensation provided by this act, and to receive the distribution to such nonresident alien dependents of all compensation arising thereunder.

Sec. 3. That original section 48-121, Revised Statutes Supplement, 1969, and section 48-122, Revised Statutes Supplement, 1969, as amended by section 1, Legislative Bill 499, Eighty-second Legislature, First Session, 1971, are repealed.