



Senate

General Assembly

File No. 651

January Session, 2001

Substitute Senate Bill No. 1273

Senate, May 8, 2001

The Committee on Appropriations reported through SEN. CRISCO of the 17th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING LOST AND REPLACEMENT WAGES FOR INJURED EMPLOYEES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 31-308a of the general statutes is repealed and the
2 following is substituted in lieu thereof:

3 (a) (1) In addition to the compensation benefits provided by section
4 31-308 for specific loss of a member or use of the function of a member
5 of the body, or any personal injury covered by this chapter, the
6 commissioner, after such payments provided by said section 31-308
7 have been paid for the period set forth in said section, may award
8 additional compensation benefits for such partial permanent disability
9 equal to seventy-five per cent of the difference between the wages
10 currently earned by an employee in a position comparable to the
11 position held by such injured employee prior to [his] such employee's
12 injury, after such wages have been reduced by any deduction for
13 federal or state taxes, or both, and for the federal Insurance

14 Contributions Act in accordance with section 31-310, and the weekly
15 amount [which] that such employee will probably be able to earn
16 thereafter, after such amount has been reduced by any deduction for
17 federal or state taxes, or both, and for the federal Insurance
18 Contributions Act in accordance with section 31-310, to be determined
19 by the commissioner based upon the nature and extent of the injury,
20 the training, education and experience of the employee, the availability
21 of work for persons with such physical condition and at the
22 employee's age, but not more than one hundred per cent, raised to the
23 next even dollar, of the average weekly earnings of production and
24 related workers in manufacturing in the state, as determined in
25 accordance with the provisions of section 31-309. If evidence of exact
26 loss of earnings is not available, such loss may be computed from the
27 proportionate loss of physical ability or earning power caused by the
28 injury. The commissioner shall determine the duration of such
29 additional compensation [shall be determined] upon a similar basis,
30 [by the commissioner,] but in no event shall the duration of such
31 additional compensation exceed the [lesser] greater of [(1)] (A) the
32 duration of the employee's permanent partial disability benefits, or [(2)
33 five hundred twenty] (B) two hundred sixty weeks. Additional benefits
34 provided under this section shall be available only to (i) employees
35 who are willing and able to perform work in this state, and (ii)
36 employees who are unable to perform work in this state due to a
37 physical condition documented by a treating physician.

38 (2) If additional compensation is awarded under subdivision (1) of
39 this subsection for a period of time greater than fifty weeks beyond the
40 number of weeks of partial permanent disability, the commissioner
41 shall state with particularity the basis of such award, and such
42 statement shall include an evaluation of the nature and extent of the
43 injury, the training, education and experience of the employee and the
44 availability of work for persons with such physical condition at the
45 employee's age. Any party aggrieved by such an award shall be
46 entitled to an expedited appeal to the Compensation Review Board.

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact: Significant Cost

Affected Agencies: State Treasurer (Second Injury Fund), Various State Agencies, Workers' Compensation Commission

Municipal Impact: Significant Cost: STATE MANDATE

Explanation

State Impact:

This bill results in significant additional costs to both the state and to the State Treasurer's Second Injury Fund. State costs would be in the millions of dollars per year. The bill gives commissioners of the Workers' Compensation Commission (WCC) more discretion in awarding extra wage differential benefits to workers who lose earning power because of job-related permanent partial disabilities. The bill allows commissioners to award such benefits for up to 260 weeks, regardless of the duration of the claimant's permanent partial disability (PPD) benefits. Current law limits the commissioners' award of these benefits to the duration of the claimant's PPD benefits or 520 weeks, whichever is less.

The National Council on Compensation Insurance (NCCI) estimates that this bill could result in additional costs ranging from one-half of one percent (0.5%) to ten percent (10%) of total workers' compensation

costs. OFA's review of the NCCI data and their assumptions narrows the range from a low of 3% to a high of 7%. Costs would most likely be about 5%, and would be determined by the decisions made by the WCC commissioners. In particular, the high end of the NCCI estimate assumes that the WCC commissioners would award the maximum benefits of 260 weeks in most cases. This considered is unlikely.

The bill requires that, for all cases in which the wage differential awards are greater than 50 weeks beyond the number of weeks of partial permanent disability, that the commissioner must specifically indicate the basis of the award. The statement must include an evaluation of the nature and extent of the injury, the training, education and experience of the employee and the availability of work for persons with such physical condition at the employee's age. Any aggrieved party is entitled to an expedited appeal to the Compensation Review Board in the WCC. These requirements are expected to result in minimal additional costs to the WCC that can be absorbed within existing resources.

The bill also allows a claimant who is unable to work in Connecticut due to a documented physical condition to receive wage differential benefits. They would also be eligible for the 75% wage replacement benefits available to other workers. While NCCI raised concerns that this could also contribute to upwards of a 10% annual increase in costs, OFA estimates that this would result in minimal costs. The number of injured workers who cannot work in Connecticut due to a documented physical condition is anticipated to be minimal.

The Department of Administrative Services estimates that state costs would range from \$1.6 million to \$2.8 million per year. This is a range of 3% to 5% of total State of Connecticut workers' compensation costs. OFA estimates that the state's costs could be \$1 million per year more, ranging from \$1.6 million to \$3.9 million.

The Treasurer's Office estimates that the bill would increase the no-

insurance claims, which include stipulated settlements and medical and payroll benefits. They estimate that it could increase costs on concurrent employment cases and on the indemnity portion of uninsured employer claims by 8% to 10%, increasing costs by up to \$200,000 in the first year and by up to \$500,000 in subsequent years.

The increase in the potential amount of wage loss differential benefits could encourage more workers to seek these greater benefits, resulting in fewer settlements between the claimants and insurance companies, and an increase in the number of hearings by the WCC. The increase in the number of cases and administrative costs for the WCC cannot be determined at this time, but it is not expected to be significant.

Municipal Impact:

This bill is also a state mandate on municipalities. Municipal costs are also estimated to increase between 3% and 7% per year, which totals increases of millions of dollars per year for municipalities in the aggregate.

OLR Bill Analysis

sSB 1273

AN ACT CONCERNING LOST AND REPLACEMENT WAGES FOR INJURED EMPLOYEES.**SUMMARY:**

Under current law, a workers' compensation claimant must be willing and able to work in Connecticut to receive wage differential benefits. This bill removes this requirement if a claimant is unable to work in the state due to a physical condition documented by a physician. Benefits for these claimants are, like those for claimants willing and able to work in the state, based on Connecticut wages and subject to a cap.

It also allows certain claimants to receive wage differential benefits for longer periods of time by giving workers' compensation commissioners discretion to award them for up to 260 weeks (five years) or the duration of the claimant's permanent partial disability benefits (PPD) benefits, whichever is greater. Current law allows commissioners to award wage differential benefits only up to the duration of the claimant's PPD benefits.

If a commissioner awards wage differential benefits for more than 50 weeks beyond the duration of a claimant's PPD benefits, the commissioner must specify his reasons. The commissioner's statement must include (1) an evaluation of the nature and extent of the injury; (2) the claimant's training, education, and experience; and (3) the availability of work for people with the claimant's physical condition and at his age. Any party aggrieved by such an award has the right to an expedited appeal to the Compensation Review Board (SEE COMMENT).

EFFECTIVE DATE: July 1, 2001

BACKGROUND

PPD Benefits

A commissioner may award wage differential benefits after a claimant's PPD benefits have ended. PPD benefits are for loss of body parts or reduced functions in a body part. The duration and amount of PPD awards are set in statute. The duration ranges from one week for injury to a tooth to 10 years for permanent disability to the heart or brain.

Wage Differential Benefits

Wage differential benefits compensate claimants for their loss of earning power. They are calculated at 75% of the difference between what the claimant earned in take-home pay before the injury and what he is able to earn in take-home pay after the injury, taking into consideration such things as the extent of the injury and the claimant's education, experience, and age. They cannot exceed the state average weekly production wage (currently \$838).

Compensation Review Board

Workers' compensation commissioner decisions may be appealed within 10 days of the award to the Compensation Review Board (CRB). The CRB is a three-member panel of workers' compensation commissioners. The three members are the Workers' Compensation Commission chairman and two other commissioners selected by the chairman each year. The two commissioners sit on the CRB for one-year terms. The chairman is a permanent member.

COMMENT***Expedited Appeal***

The bill does not identify what constitutes an "expedited appeal" nor does the Worker's Compensation Commission have any such process in place.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable Change of Reference

Yea 8 Nay 5

Appropriations Committee

Joint Favorable Substitute

Yea 24 Nay 20