



General Assembly

Substitute Bill No. 6478

January Session, 2021



AN ACT CONCERNING WORKERS' COMPENSATION.

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 Section 31-308a of the general statutes is repealed and the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 (*Effective from passage*):

3 (a) In addition to the compensation benefits provided by section 31-
4 308 for specific loss of a member or use of the function of a member of
5 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 injury, after such
12 wages have been reduced by any deduction for federal or state taxes, or
13 both, and for the federal Insurance Contributions Act in accordance with
14 section 31-310, and the weekly amount which such employee will
15 probably be able to earn thereafter, after such amount has been reduced
16 by any deduction for federal or state taxes, or both, and for the federal
17 Insurance Contributions Act in accordance with section 31-310, to be
18 determined by the commissioner based upon the nature and extent of
19 the injury, the training, education and experience of the employee, the

20 availability of work for persons with such physical condition and at the
21 employee's age, but not more than one hundred per cent, raised to the
22 next even dollar, of the average weekly earnings of production and
23 related workers in manufacturing in the state, as determined in
24 accordance with the provisions of section 31-309. If evidence of exact
25 loss of earnings is not available, such loss may be computed from the
26 proportionate loss of physical ability or earning power caused by the
27 injury. The duration of such additional compensation shall be
28 determined upon a similar basis by the commissioner, but in no event
29 shall the duration of such additional compensation exceed the lesser of
30 (1) [the duration of the employee's permanent partial disability benefits,
31 or (2) five hundred twenty weeks] five times the duration of the
32 employee's permanent partial disability benefits, or (2) seven hundred
33 eighty weeks. The commissioner shall determine whether the
34 employee's disability is substantial enough to allow for the award of
35 such benefits past the original duration of the employee's permanent
36 partial disability benefits. Additional benefits provided under this
37 section shall be available only to employees who are willing and able to
38 perform work in this state.

39 (b) Notwithstanding the provisions of subsection (a) of this section,
40 additional benefits provided under this section shall be available only
41 when the nature of the injury and its effect on the earning capacity of an
42 employee warrant additional compensation.

43 Sec. 2. Section 31-290a of the general statutes is repealed and the
44 following is substituted in lieu thereof (*Effective from passage*):

45 (a) No employer who is subject to the provisions of this chapter shall;
46 [discharge,] (1) Discharge or cause to be discharged, or in any manner
47 discipline or discriminate against any employee because the employee
48 has filed a claim for workers' compensation benefits or otherwise
49 exercised the rights afforded to him pursuant to the provisions of this
50 chapter, or (2) deliberately misinform or otherwise deliberately
51 dissuade an employee from filing a claim for workers' compensation
52 benefits.

53 (b) Any employee who is so discharged, disciplined or discriminated
54 against or who has been deliberately misinformed or dissuaded from
55 filing a claim for workers' compensation benefits may either: (1) Bring a
56 civil action in the superior court for the judicial district where the
57 employer has its principal office for the reinstatement of his previous
58 job, payment of back wages and reestablishment of employee benefits
59 to which he would have otherwise been entitled if he had not been
60 discriminated against or discharged and any other damages caused by
61 such discrimination or discharge. The court may also award punitive
62 damages. Any employee who prevails in such a civil action shall be
63 awarded reasonable attorney's fees and costs to be taxed by the court;
64 or (2) file a complaint with the chairman of the Workers' Compensation
65 Commission alleging violation of the provisions of subsection (a) of this
66 section. Upon receipt of any such complaint, the chairman shall select a
67 commissioner to hear the complaint, provided any commissioner who
68 has previously rendered any decision concerning the claim shall be
69 excluded. The hearing shall be held in the workers' compensation
70 district where the employer has its principal office. After the hearing,
71 the commissioner shall send each party a written copy of his decision.
72 The commissioner may award the employee the reinstatement of his
73 previous job, payment of back wages and reestablishment of employee
74 benefits to which he otherwise would have been eligible if he had not
75 been discriminated against or discharged. Any employee who prevails
76 in such a complaint shall be awarded reasonable attorney's fees. Any
77 party aggrieved by the decision of the commissioner may appeal the
78 decision to the Appellate Court.

79 Sec. 3. (NEW) (*Effective from passage*) (a) For the purposes of
80 adjudication of claims for payment of benefits under the provisions of
81 chapter 568 of the general statutes, when there is a dispute regarding
82 whether a request for medical and surgical aid or hospital and nursing
83 services, including mechanical aids and prescription drugs, is
84 reasonable or necessary, the employer or insurer shall file a notice of
85 controversy. A copy of the notice of controversy shall be sent to the
86 originator of the request. A health care provider, employee or other

87 interested party may request a hearing regarding payment of medical
88 and related services for determination of any such dispute.

89 (b) Payment of a medical bill by an employer or insurer shall not be
90 considered an admission by the employer or the insurer as to the
91 reasonableness of subsequent medical bills. The provisions of this
92 section shall not affect the applicability of any notice provision of section
93 31-294c of the general statutes.

94 Sec. 4. (NEW) (*Effective from passage*) (a) For the purpose of
95 adjudication of claims for payment of benefits under the provisions of
96 chapter 568 of the general statutes, an employee who died or was unable
97 to work as a result of contracting COVID-19, or due to symptoms that
98 were later diagnosed as COVID-19, at any time during (1) the public
99 health and civil preparedness emergencies declared by the Governor on
100 March 10, 2020, or any extension of such declarations, or (2) any new
101 public health and civil preparedness emergencies declared by the
102 Governor as a result of a COVID-19 outbreak in this state, shall be
103 presumed to have contracted COVID-19 as an occupational disease
104 arising out of and in the course of employment, provided (A) the
105 contraction of COVID-19 by such employee is confirmed by a positive
106 laboratory test or, if a laboratory test was not available for the employee,
107 as diagnosed and documented by the employee's licensed physician,
108 licensed physician assistant or licensed advanced practice registered
109 nurse, based on the employee's symptoms, and (B) a copy of the positive
110 laboratory test or the written documentation of the physician's,
111 physician assistant's or advanced practice registered nurse's diagnosis
112 is provided to the employer or insurer. For the purposes of this section,
113 "COVID-19" means the respiratory disease designated by the World
114 Health Organization on February 11, 2020, as coronavirus 2019, and any
115 related mutation thereof recognized by the World Health Organization
116 as a communicable respiratory disease.

117 (b) The provisions of subsection (a) of this section shall not apply to
118 an employee who, during the fourteen consecutive days immediately
119 preceding the date the employee died or was unable to work due to

120 contracting COVID-19 or due to symptoms that were later diagnosed as
121 COVID-19: (1) Was employed in a capacity where he or she worked
122 solely from home and did not have physical interaction with other
123 employees, or (2) was the recipient of an individualized written offer or
124 directive from his or her employer to work solely from home but
125 otherwise chose to work at a work site of the employer.

126 (c) Notwithstanding the definition of "occupational disease" under
127 section 31-396 of the general statutes, COVID-19 shall be considered an
128 occupational disease for any employee who was diagnosed with
129 COVID-19 in accordance with subsection (a) of this section.

130 (d) The presumption under subsection (a) of this section shall only be
131 rebutted if the employer or insurer clearly demonstrates by a
132 preponderance of the evidence that the employment of the individual
133 was not a direct cause of the occupational disease. The employer or the
134 insurer, within ten days of filing a notice to contest an employee's rights
135 to compensation benefits pursuant to section 31-294c of the general
136 statutes, shall provide evidence to rebut the presumption under
137 subsection (a) of this section. If a compensation commissioner finds that
138 such presumption has been rebutted, such commissioner shall decide
139 the claim on its merits, in accordance with established practices of
140 causation. For purposes of this section, an employee's preexisting
141 condition shall have no bearing on the merits of a claim, both with
142 regard to approving a claim and continuing benefits once benefits have
143 been awarded. The reapportionment of the levels of the burden of
144 proofs between the parties is a procedural change intended to apply to
145 all existing and future COVID-19 claims.

146 (e) An employee who has contracted COVID-19 but who is not
147 entitled to the presumption under subsection (a) of this section shall not
148 be precluded from making a claim as provided in chapter 568 of the
149 general statutes.

150 (f) Beginning on July 1, 2021, and ending on January 1, 2023, the
151 Workers' Compensation Commission shall provide a detailed report on

152 the first business day of each month on COVID-19 workers'
153 compensation claims and shall provide such reports to the joint
154 standing committees of the General Assembly having cognizance of
155 matters relating to labor and insurance. Such monthly reports shall
156 contain: (1) The number of total COVID-19 workers' compensation
157 claims filed since May 10, 2020; (2) the number of record-only claims
158 filed by hospitals, nursing homes, municipalities and other employers,
159 listed by employer name; (3) the number of COVID-19 workers'
160 compensation cases filed by state employees in each agency; (4) the
161 number of such claims contested by each individual employer,
162 including state agencies, third-party administrators and insurers, by
163 client; (5) the reasons cited by each employer, including state agencies,
164 third-party administrators and insurers, by client, for contesting such
165 claims; (6) the number of claims that have received a hearing by the
166 Workers' Compensation Commission; (7) the number of: (A) Rulings by
167 the Workers' Compensation Commission regarding such claims that
168 have been appealed, (B) approved voluntary agreements, (C) findings
169 and awards, (D) findings and dismissals, (E) petitions for review, and
170 (F) stipulations; (8) the average time it took to schedule an initial hearing
171 once it has been requested; and (9) the average time it took to adjudicate
172 contested COVID-19 workers' compensation claims. Employers,
173 including state agencies, third-party administrators and insurers shall
174 comply with all requests from the Workers' Compensation Commission
175 for information required to compile the reports.

176 Sec. 5. Subsection (a) of section 31-306 of the general statutes is
177 repealed and the following is substituted in lieu thereof (*Effective from*
178 *passage*):

179 (a) Compensation shall be paid to dependents on account of death
180 resulting from an accident arising out of and in the course of
181 employment or from an occupational disease as follows:

182 (1) Four thousand dollars shall be paid for burial expenses in any case
183 in which the employee died on or after October 1, 1988, and before the
184 effective date of this section, and twenty thousand dollars shall be paid

185 for burial expenses in any case in which the employee died on or after
186 the effective date of this section. On January 1, 2022, and not later than
187 each January first thereafter, the compensation for burial benefits shall
188 be adjusted by the percentage increase between the last complete
189 calendar year and the previous calendar year in the consumer price
190 index for urban wage earners and clerical workers in the northeast, with
191 no seasonal adjustment, as calculated by the United States Department
192 of Labor's Bureau of Labor Statistics. If there is no one wholly or
193 partially dependent upon the deceased employee, the burial expenses
194 [of four thousand dollars] shall be paid to the person who assumes the
195 responsibility of paying the funeral expenses.

196 (2) Twenty thousand dollars shall be paid for burial expenses in any
197 case in which an employee died due to contracting COVID-19 during
198 (A) the public health and civil preparedness emergencies declared by
199 the Governor on March 10, 2020, or any extension of such declarations,
200 or (B) any new public health and civil preparedness emergencies
201 declared by the Governor as a result of a COVID-19 outbreak in this
202 state. For the purposes of this subdivision, "COVID-19" means the
203 respiratory disease designated by the World Health Organization on
204 February 11, 2020, as coronavirus 2019, and any related mutation thereof
205 recognized by the World Health Organization as a communicable
206 respiratory disease.

207 ~~[(2)]~~ (3) To those wholly dependent upon the deceased employee at
208 the date of the deceased employee's injury, a weekly compensation
209 equal to seventy-five per cent of the average weekly earnings of the
210 deceased calculated pursuant to section 31-310, after such earnings have
211 been reduced by any deduction for federal or state taxes, or both, and
212 for the federal Insurance Contributions Act made from such employee's
213 total wages received during the period of calculation of the employee's
214 average weekly wage pursuant to said section 31-310, as of the date of
215 the injury but not more than the maximum weekly compensation rate
216 set forth in section 31-309 for the year in which the injury occurred or
217 less than twenty dollars weekly. (A) The weekly compensation rate of

218 each dependent entitled to receive compensation under this section as a
219 result of death arising from a compensable injury occurring on or after
220 October 1, 1977, shall be adjusted annually as provided in this
221 subdivision as of the following October first, and each subsequent
222 October first, to provide the dependent with a cost-of-living adjustment
223 in the dependent's weekly compensation rate as determined as of the
224 date of the injury under section 31-309. If the maximum weekly
225 compensation rate, as determined under the provisions of said section
226 31-309, to be effective as of any October first following the date of the
227 injury, is greater than the maximum weekly compensation rate
228 prevailing at the date of the injury, the weekly compensation rate which
229 the injured employee was entitled to receive at the date of the injury or
230 October 1, 1990, whichever is later, shall be increased by the percentage
231 of the increase in the maximum weekly compensation rate required by
232 the provisions of said section 31-309 from the date of the injury or
233 October 1, 1990, whichever is later, to such October first. The cost-of-
234 living increases provided under this subdivision shall be paid by the
235 employer without any order or award from the commissioner. The
236 adjustments shall apply to each payment made in the next succeeding
237 twelve-month period commencing with the October first next
238 succeeding the date of the injury. With respect to any dependent
239 receiving benefits on October 1, 1997, with respect to any injury
240 occurring on or after July 1, 1993, and before October 1, 1997, such
241 benefit shall be recalculated to October 1, 1997, as if such benefits had
242 been subject to recalculation annually under this subparagraph. The
243 difference between the amount of any benefits that would have been
244 paid to such dependent if such benefits had been subject to such
245 recalculation and the actual amount of benefits paid during the period
246 between such injury and such recalculation shall be paid to the
247 dependent not later than December 1, 1997, in a lump-sum payment.
248 The employer or its insurer shall be reimbursed by the Second Injury
249 Fund, as provided in section 31-354, for adjustments, including lump-
250 sum payments, payable under this subparagraph for deaths from
251 compensable injuries occurring on or after July 1, 1993, and before
252 October 1, 1997, upon presentation of any vouchers and information

253 that the Treasurer shall require. No claim for payment of retroactive
254 benefits may be made to the Second Injury Fund more than two years
255 after the date on which the employer or its insurer paid such benefits in
256 accordance with this subparagraph. (B) The weekly compensation rate
257 of each dependent entitled to receive compensation under this section
258 as a result of death arising from a compensable injury occurring on or
259 before September 30, 1977, shall be adjusted as of October 1, 1977, and
260 October 1, 1980, and thereafter, as provided in this subdivision to
261 provide the dependent with partial cost-of-living adjustments in the
262 dependent's weekly compensation rate. As of October 1, 1977, the
263 weekly compensation rate paid prior to October 1, 1977, to the
264 dependent shall be increased by twenty-five per cent. The partial cost-
265 of-living adjustment provided under this subdivision shall be paid by
266 the employer without any order or award from the commissioner. In
267 addition, on each October first, the weekly compensation rate of each
268 dependent as of October 1, 1990, shall be increased by the percentage of
269 the increase in the maximum compensation rate over the maximum
270 compensation rate of October 1, 1990, as determined under the
271 provisions of section 31-309 existing on October 1, 1977. The cost of the
272 adjustments shall be paid by the employer or its insurance carrier who
273 shall be reimbursed for such cost from the Second Injury Fund as
274 provided in section 31-354 upon presentation of any vouchers and
275 information that the Treasurer shall require. No claim for payment of
276 retroactive benefits may be made to the Second Injury Fund more than
277 two years after the date on which the employer or its insurance carrier
278 paid such benefits in accordance with this subparagraph.

279 [(3)] (4) If the surviving spouse is the sole presumptive dependent,
280 compensation shall be paid until death or remarriage.

281 [(4)] (5) If there is a presumptive dependent spouse surviving and
282 also one or more presumptive dependent children, all of which children
283 are either children of the surviving spouse or are living with the
284 surviving spouse, the entire compensation shall be paid to the surviving
285 spouse in the same manner and for the same period as if the surviving

286 spouse were the sole dependent. If, however, any of the presumptive
287 dependent children are neither children of the surviving spouse nor
288 living with the surviving spouse, the compensation shall be divided into
289 as many parts as there are presumptive dependents. The shares of any
290 children having a presumptive dependent parent shall be added to the
291 share of the parent and shall be paid to the parent. The share of any
292 dependent child not having a surviving dependent parent shall be paid
293 to the father or mother of the child with whom the child may be living,
294 or to the legal guardian of the child, or to any other person, for the
295 benefit of the child, as the commissioner may direct.

296 ~~[(5)]~~ (6) If the compensation being paid to the surviving presumptive
297 dependent spouse terminates for any reason, or if there is no surviving
298 presumptive dependent spouse at the time of the death of the employee,
299 but there is at either time one or more presumptive dependent children,
300 the compensation shall be paid to the children as a class, each child
301 sharing equally with the others. Each child shall receive compensation
302 until the child reaches the age of eighteen or dies before reaching age
303 eighteen, provided the child shall continue to receive compensation up
304 to the attainment of the age of twenty-two if unmarried and a full-time
305 student, except any child who has attained the age of twenty-two while
306 a full-time student but has not completed the requirements for, or
307 received, a degree from a postsecondary educational institution shall be
308 deemed not to have attained age twenty-two until the first day of the
309 first month following the end of the quarter or semester in which the
310 child is enrolled at the time, or if the child is not enrolled in a quarter or
311 semester system, until the first day of the first month following the
312 completion of the course in which the child is enrolled or until the first
313 day of the third month beginning after such time, whichever occurs first.
314 When a child's participation ceases, such child's share shall be divided
315 among the remaining eligible dependent children, provided if any child,
316 when the child reaches the age of eighteen years, is physically or
317 mentally incapacitated from earning, the child's right to compensation
318 shall not terminate but shall continue for the full period of incapacity.

