

Senate, March 12, 1998. The Committee on Labor and Public Employees reported through SEN. PRAGUE, 19th DIST., Chairman of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING THE REINSTATEMENT OF INJURED EMPLOYEES.

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

1 Section 31-313 of the general statutes is
2 repealed and the following is substituted in lieu
3 thereof:

4 (a) AS USED IN SUBSECTIONS (b) AND (c) OF
5 THIS SECTION, "EMPLOYEE" MEANS ANY PERSON ENGAGED
6 IN SERVICE TO AN EMPLOYER WITH LESS THAN
7 TWENTY-FIVE EMPLOYEES. AS USED IN SUBSECTION (d)
8 OF THIS SECTION, "EMPLOYEE" MEANS ANY PERSON
9 ENGAGED IN SERVICE TO AN EMPLOYER WITH TWENTY-FIVE
10 OR MORE EMPLOYEES.

11 (b) (1) Where an employee has suffered a
12 compensable injury which disables him from
13 performing his customary or most recent work, his
14 employer at the time of such injury shall transfer
15 him to full-time work suitable to his physical
16 condition where such work is available, during the
17 time that the employee is subjected to medical
18 treatment or rehabilitation or both and until such
19 treatment is discontinued on the advice of the
20 physician conducting the same or of the therapist
21 in charge of the rehabilitation program or until
22 the employee has reached the maximum level of

23 rehabilitation for such worker in the judgment of
24 the commissioner under all of the circumstances,
25 whichever period is the longest. (2) The
26 commissioner shall conduct a hearing upon the
27 request of an employee who claims his employer has
28 not transferred him to such available suitable
29 work. Whenever the commissioner finds that the
30 employee is so disabled, and that the employer has
31 failed to transfer the employee to such available
32 suitable work, he shall order the employer to
33 transfer the employee to such work.

34 [(b)] (c) The commissioner shall conduct a
35 hearing upon the request of an employee claiming
36 to be unable to perform his customary or most
37 recent work because of physical incapacity
38 resulting from an injury or disease. Whenever the
39 commissioner finds that the employee has such a
40 physical incapacity, he shall order that the
41 injured worker be removed from work detrimental to
42 his health or which cannot be performed by a
43 person so disabled and be assigned to other
44 suitable full-time work in the employer's
45 establishment, if available; provided the exercise
46 of this authority shall not conflict with any
47 provision of a collective bargaining agreement
48 between such employer and a labor organization
49 which is the collective bargaining representative
50 of the unit of which the injured worker is a part.

51 (d) (1) AN EMPLOYEE WHO HAS SUFFERED A
52 COMPENSABLE INJURY SHALL BE REINSTATED BY HIS
53 EMPLOYER TO THE EMPLOYEE'S FORMER POSITION OF
54 EMPLOYMENT UPON DEMAND FOR REINSTATEMENT, IF THE
55 POSITION EXISTS AND IS AVAILABLE AND THE EMPLOYEE
56 IS ABLE TO PERFORM THE DUTIES OF SUCH POSITION. AN
57 EMPLOYEE'S FORMER POSITION IS "AVAILABLE" FOR
58 PURPOSES OF THIS SUBSECTION EVEN IF THAT POSITION
59 HAS BEEN FILLED BY A REPLACEMENT WHILE THE INJURED
60 EMPLOYEE WAS ABSENT AS A RESULT OF A COMPENSABLE
61 INJURY. IF THE FORMER POSITION IS NOT AVAILABLE OR
62 IS NOT SUITABLE TO THE PHYSICAL CONDITION OF THE
63 EMPLOYEE, THE EMPLOYEE SHALL BE REINSTATED TO ANY
64 OTHER EXISTING POSITION WHICH IS VACANT AND
65 SUITABLE AT THE TIME THE EMPLOYEE CLAIMS
66 REINSTATEMENT, PROVIDED THE EMPLOYEE CLAIMS
67 REINSTATEMENT WITHIN ONE YEAR OF THE DATE OF THE
68 COMPENSABLE INJURY. A CERTIFICATE BY THE
69 EMPLOYEE'S ATTENDING PHYSICIAN THAT THE PHYSICIAN
70 APPROVES THE EMPLOYEE'S RETURN TO HIS FORMER

23 rehabilitation for such worker in the judgment of
24 the commissioner under all of the circumstances,
25 whichever period is the longest. (2) The
26 commissioner shall conduct a hearing upon the
27 request of an employee who claims his employer has
28 not transferred him to such available suitable
29 work. Whenever the commissioner finds that the
30 employee is so disabled, and that the employer has
31 failed to transfer the employee to such available
32 suitable work, he shall order the employer to
33 transfer the employee to such work.

34 [(b)] (c) The commissioner shall conduct a
35 hearing upon the request of an employee claiming
36 to be unable to perform his customary or most
37 recent work because of physical incapacity
38 resulting from an injury or disease. Whenever the
39 commissioner finds that the employee has such a
40 physical incapacity, he shall order that the
41 injured worker be removed from work detrimental to
42 his health or which cannot be performed by a
43 person so disabled and be assigned to other
44 suitable full-time work in the employer's
45 establishment, if available; provided the exercise
46 of this authority shall not conflict with any
47 provision of a collective bargaining agreement
48 between such employer and a labor organization
49 which is the collective bargaining representative
50 of the unit of which the injured worker is a part.

51 (d) (1) AN EMPLOYEE WHO HAS SUFFERED A
52 COMPENSABLE INJURY SHALL BE REINSTATED BY HIS
53 EMPLOYER TO THE EMPLOYEE'S FORMER POSITION OF
54 EMPLOYMENT UPON DEMAND FOR REINSTATEMENT, IF THE
55 POSITION EXISTS AND IS AVAILABLE AND THE EMPLOYEE
56 IS ABLE TO PERFORM THE DUTIES OF SUCH POSITION. AN
57 EMPLOYEE'S FORMER POSITION IS "AVAILABLE" FOR
58 PURPOSES OF THIS SUBSECTION EVEN IF THAT POSITION
59 HAS BEEN FILLED BY A REPLACEMENT WHILE THE INJURED
60 EMPLOYEE WAS ABSENT AS A RESULT OF A COMPENSABLE
61 INJURY. IF THE FORMER POSITION IS NOT AVAILABLE OR
62 IS NOT SUITABLE TO THE PHYSICAL CONDITION OF THE
63 EMPLOYEE, THE EMPLOYEE SHALL BE REINSTATED TO ANY
64 OTHER EXISTING POSITION WHICH IS VACANT AND
65 SUITABLE AT THE TIME THE EMPLOYEE CLAIMS
66 REINSTATEMENT, PROVIDED THE EMPLOYEE CLAIMS
67 REINSTATEMENT WITHIN ONE YEAR OF THE DATE OF THE
68 COMPENSABLE INJURY. A CERTIFICATE BY THE
69 EMPLOYEE'S ATTENDING PHYSICIAN THAT THE PHYSICIAN
70 APPROVES THE EMPLOYEE'S RETURN TO HIS FORMER

71 POSITION OR OTHER POSITION SUITABLE TO HIS
72 PHYSICAL CONDITION SHALL BE PRIMA FACIE EVIDENCE
73 THAT THE EMPLOYEE IS ABLE TO PERFORM SUCH A
74 POSITION. (2) IF AN EMPLOYEE APPLIES FOR
75 REINSTATEMENT UNDER THIS SUBSECTION AND THE
76 EMPLOYER REFUSES TO REINSTATE THE EMPLOYEE, THE
77 COMMISSIONER SHALL HOLD A HEARING AT THE REQUEST
78 OF THE EMPLOYEE. WHENEVER THE COMMISSIONER FINDS
79 THAT THE EMPLOYER HAS VIOLATED THIS SUBSECTION,
80 THE COMMISSIONER SHALL ORDER THE EMPLOYER TO
81 REINSTATE THE EMPLOYEE TO A SUITABLE POSITION WITH
82 THE EMPLOYER AND ORDER THE EMPLOYER TO PAY THE
83 EMPLOYEE BACK PAY AND THE COST OF ANY FRINGE
84 BENEFITS LOST DURING THE PERIOD, AS APPROPRIATE.
85 THE COMMISSIONER SHALL ALSO ORDER THE EMPLOYER TO
86 REIMBURSE THE INSURER FOR ANY TEMPORARY PARTIAL
87 BENEFITS PAID TO THE EMPLOYEE DURING THE PERIOD OF
88 THE VIOLATION AT AN APPROPRIATE RATE TO BE
89 DETERMINED BY THE COMMISSIONER. THE COMMISSIONER
90 SHALL ALSO AWARD ATTORNEY'S FEES TO ANY EMPLOYEE
91 WHO PREVAILS AFTER A HEARING HELD PURSUANT TO THIS
92 SUBSECTION. (3) THE COMMISSIONER'S EXERCISE OF
93 AUTHORITY UNDER THIS SUBSECTION SHALL NOT CONFLICT
94 WITH ANY PROVISION OF A COLLECTIVE BARGAINING
95 AGREEMENT BETWEEN AN EMPLOYER AND A LABOR
96 ORGANIZATION WHICH IS THE COLLECTIVE BARGAINING
97 REPRESENTATIVE OF THE UNIT OF WHICH THE INJURED
98 WORKER IS A PART.

99 (e) NOTHING IN THIS SECTION SHALL EXEMPT ANY
100 EMPLOYER FROM OR EXCUSE FULL COMPLIANCE WITH ANY
101 APPLICABLE PROVISIONS OF CHAPTER 814c OR THE
102 AMERICANS WITH DISABILITIES ACT, 42 USC SECTIONS
103 12101 TO 12213, INCLUSIVE.

104 [(c)] (f) Whenever the commissioner finds
105 that an employer has failed to comply with the
106 transfer requirements of subdivision (1) of
107 subsection [(a)] (b) of this section, or has
108 failed to comply with any [transfer] order issued
109 by him pursuant to this section, he may assess a
110 civil penalty of not more than five hundred
111 dollars against the employer. Any appeal of a
112 penalty assessed pursuant to this subsection shall
113 be taken in accordance with the provisions of
114 section 31-301. Any penalties collected under the
115 provisions of this subsection shall be paid over
116 to the Second Injury Fund or its successor.

117 LAB COMMITTEE VOTE: YEA 9 NAY 1 JFS

* * * * *

"THE FOLLOWING FISCAL IMPACT STATEMENT AND BILL ANALYSIS ARE PREPARED FOR THE BENEFIT OF MEMBERS OF THE GENERAL ASSEMBLY, SOLELY FOR PURPOSES OF INFORMATION, SUMMARIZATION AND EXPLANATION AND DO NOT REPRESENT THE INTENT OF THE GENERAL ASSEMBLY OR EITHER HOUSE THEREOF FOR ANY PURPOSE."

* * * * *

FISCAL IMPACT STATEMENT - BILL NUMBER sSB 210

STATE IMPACT	Potential Indeterminate Cost (Workers' Compensation Fund and All Funds), see explanation below
MUNICIPAL IMPACT	Potential Indeterminate Cost, see explanation below
STATE AGENCY(S)	Workers' Compensation Commission, Various State Agencies

EXPLANATION OF ESTIMATES:

STATE AND MUNICIPAL IMPACT: The passage of this bill could result in additional costs to the Workers' Compensation Commission (Workers' Compensation Fund) that cannot be determined at this time. The bill could also result in increased costs to the State and municipalities as employers. The bill increases the responsibilities of employers with 25 or more employees to return to work individuals who have been injured on the job. It requires the Workers' Compensation Commissioners to order violators to reimburse employees for more expenses than are currently permitted. This could result in an increase in the number of cases brought before the Workers' Compensation Commission, and in an increase in the costs for the State and municipalities as employers. The magnitude of the potential costs cannot be determined at this time.

* * * * *

A

OLR BILL ANALYSIS

SSB 210

AN ACT CONCERNING THE REINSTATEMENT OF INJURED EMPLOYEES

SUMMARY: This bill both increases and decreases the duty of employers with 25 or more employees to return to work individuals who have been injured on the job. It (1) adds the requirement that larger employers reinstate an employee to his former job upon request at any time if the position exists and he is able to do the work, even if someone else has been put in the job during his absence; (2) requires employers to accept a treating physician's certification as proof of an employee's fitness to return to work; (3) eliminates the requirement that larger employers automatically transfer an injured employee to suitable available work during the time that he is receiving treatment; and (4) puts a one-year time limit, running from the date of injury, on an employee's right to request reinstatement to other suitable available work if his original position no longer exists or he is unable to perform its physical requirements.

It also requires the workers' compensation commissioner to order violators to reimburse employees for lost pay, benefits and attorneys' fees, and to repay workers' compensation carriers for temporary partial benefits paid during the time the employee should have been returned to work. Under current law, remedies are limited to transfer and a possible fine of not more than \$500.

The bill does not affect employers with fewer than 25 employees.

EFFECTIVE DATE: October 1, 1998

FURTHER EXPLANATION**Violations**

The bill requires the workers' compensation commissioner to hold a hearing at the request of an employee who has been denied reinstatement. He must

order violators to pay the employee's lost wages and benefits as well as attorney's fees, in addition to the current law's provision for transfer and a discretionary penalty of not more than \$500. Violators must also repay the workers' compensation carrier, at a rate determined by the commissioner, for temporary partial benefits that the employee collected during the time that the employer should have allowed him to return to work.

Smaller Employers

This bill does not change existing law for employers with 24 or fewer employees. They are not required to return an injured employee to his former position. By law, they must transfer him to suitable available full-time work while he is receiving treatment for a job-related injury. Once treatment ends or the workers' compensation commissioner finds that the employee has reached the maximum level of improvement, they are required to transfer him to suitable available work if the commissioner finds, after a hearing, that his physical condition prevents him from doing his usual job.

The penalty which the commissioner can assess against smaller employers is limited to an order of transfer and a possible fine of up to \$500.

Other Employer Obligations

The bill does not change any employer's obligations under union contracts covering the injured employee, nor affect its duty to obey state and federal laws that protect employees with physical disabilities.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable Substitute
Yea 9 Nay 1