

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1840 Session of 2017

INTRODUCED BY KAUFFMAN, EVERETT, PICKETT, BLOOM, ROTHMAN, MILLARD, MACKENZIE, GREINER, TURZAI, COX, IRVIN, MAHER, RYAN, WARD, WHEELAND, FEE, RADER, METCALFE, KEEFER, MCGINNIS, TOPPER, DELOZIER, MUSTIO, DUSH, NELSON, F. KELLER, SAYLOR, PHILLIPS-HILL AND KNOWLES, OCTOBER 2, 2017

REFERRED TO COMMITTEE ON LABOR AND INDUSTRY, OCTOBER 2, 2017

AN ACT

1 Amending the act of June 2, 1915 (P.L.736, No.338), entitled "An
 2 act defining the liability of an employer to pay damages for
 3 injuries received by an employe in the course of employment;
 4 establishing an elective schedule of compensation; providing
 5 procedure for the determination of liability and compensation
 6 thereunder; and prescribing penalties," in liability and
 7 compensation, further providing for schedule of compensation
 8 and for physical examination or expert interview.

9 The General Assembly of the Commonwealth of Pennsylvania

10 hereby enacts as follows:

11 Section 1. Section 306(a.2) of the act of June 2, 1915
 12 (P.L.736, No.338), known as the Workers' Compensation Act, is
 13 repealed and the section is amended by adding a clause to read:

14 Section 306. The following schedule of compensation is
 15 hereby established:* * *

16 [(a.2) (1) When an employe has received total disability
 17 compensation pursuant to clause (a) for a period of one hundred
 18 four weeks, unless otherwise agreed to, the employe shall be
 19 required to submit to a medical examination which shall be

1 requested by the insurer within sixty days upon the expiration
2 of the one hundred four weeks to determine the degree of
3 impairment due to the compensable injury, if any. The degree of
4 impairment shall be determined based upon an evaluation by a
5 physician who is licensed in this Commonwealth, who is certified
6 by an American Board of Medical Specialties approved board or
7 its osteopathic equivalent and who is active in clinical
8 practice for at least twenty hours per week, chosen by agreement
9 of the parties, or as designated by the department, pursuant to
10 the most recent edition of the American Medical Association
11 "Guides to the Evaluation of Permanent Impairment."

12 (2) If such determination results in an impairment rating
13 that meets a threshold impairment rating that is equal to or
14 greater than fifty per centum impairment under the most recent
15 edition of the American Medical Association "Guides to the
16 Evaluation of Permanent Impairment," the employe shall be
17 presumed to be totally disabled and shall continue to receive
18 total disability compensation benefits under clause (a). If such
19 determination results in an impairment rating less than fifty
20 per centum impairment under the most recent edition of the
21 American Medical Association "Guides to the Evaluation of
22 Permanent Impairment," the employe shall then receive partial
23 disability benefits under clause (b): Provided, however, That no
24 reduction shall be made until sixty days' notice of modification
25 is given.

26 (3) Unless otherwise adjudicated or agreed to based upon a
27 determination of earning power under clause (b) (2), the amount
28 of compensation shall not be affected as a result of the change
29 in disability status and shall remain the same. An insurer or
30 employe may, at any time prior to or during the five hundred-

1 week period of partial disability, show that the employe's
2 earning power has changed.

3 (4) An employe may appeal the change to partial disability
4 at any time during the five hundred-week period of partial
5 disability; Provided, That there is a determination that the
6 employe meets the threshold impairment rating that is equal to
7 or greater than fifty per centum impairment under the most
8 recent edition of the American Medical Association "Guides to
9 the Evaluation of Permanent Impairment."

10 (5) Total disability shall continue until it is adjudicated
11 or agreed under clause (b) that total disability has ceased or
12 the employe's condition improves to an impairment rating that is
13 less than fifty per centum of the degree of impairment defined
14 under the most recent edition of the American Medical
15 Association "Guides to the Evaluation of Permanent Impairment."

16 (6) Upon request of the insurer, the employe shall submit to
17 an independent medical examination in accordance with the
18 provisions of section 314 to determine the status of impairment:
19 Provided, however, That for purposes of this clause, the employe
20 shall not be required to submit to more than two independent
21 medical examinations under this clause during a twelve-month
22 period.

23 (7) In no event shall the total number of weeks of partial
24 disability exceed five hundred weeks for any injury or
25 recurrence thereof, regardless of the changes in status in
26 disability that may occur. In no event shall the total number of
27 weeks of total disability exceed one hundred four weeks for any
28 employe who does not meet a threshold impairment rating that is
29 equal to or greater than fifty per centum impairment under the
30 most recent edition of the American Medical Association "Guides

1 to the Evaluation of Permanent Impairment" for any injury or
2 recurrence thereof.

3 (8) (i) For purposes of this clause, the term "impairment"
4 shall mean an anatomic or functional abnormality or loss that
5 results from the compensable injury and is reasonably presumed
6 to be permanent.

7 (ii) For purposes of this clause, the term "impairment
8 rating" shall mean the percentage of permanent impairment of the
9 whole body resulting from the compensable injury. The percentage
10 rating for impairment under this clause shall represent only
11 that impairment that is the result of the compensable injury and
12 not for any preexisting work-related or nonwork-related
13 impairment.]

14 (a.3) (1) When an employe has received total disability
15 compensation pursuant to clause (a) for a period of one hundred
16 four weeks, unless otherwise agreed to, the employe shall be
17 required to submit to a medical examination which shall be
18 requested by the insurer within sixty days upon the expiration
19 of the one hundred four weeks to determine the degree of
20 impairment due to the compensable injury, if any. The degree of
21 impairment shall be determined based upon an evaluation by a
22 physician who is licensed in this Commonwealth, who is certified
23 by an American Board of Medical Specialties approved board or
24 its osteopathic equivalent and who is active in clinical
25 practice for at least twenty hours per week, chosen by agreement
26 of the parties, or as designated by the department, pursuant to
27 the sixth edition of the American Medical Association "Guides to
28 the Evaluation of Permanent Impairment."

29 (2) If such determination results in an impairment rating
30 that meets a threshold impairment rating that is equal to or

1 greater than fifty per centum impairment under the sixth edition
2 of the American Medical Association "Guides to the Evaluation of
3 Permanent Impairment," the employe shall be presumed to be
4 totally disabled and shall continue to receive total disability
5 compensation benefits under clause (a). If such determination
6 results in an impairment rating less than fifty per centum
7 impairment under the sixth edition of the American Medical
8 Association "Guides to the Evaluation of Permanent Impairment,"
9 the employe shall then receive partial disability benefits under
10 clause (b): Provided, however, That no reduction shall be made
11 until sixty days' notice of modification is given.

12 (3) Unless otherwise adjudicated or agreed to based upon a
13 determination of earning power under clause (b) (2), the amount
14 of compensation shall not be affected as a result of the change
15 in disability status and shall remain the same. An insurer or
16 employe may, at any time prior to or during the five hundred-
17 week period of partial disability, show that the employe's
18 earning power has changed.

19 (4) An employe may appeal the change to partial disability
20 at any time during the five hundred-week period of partial
21 disability; Provided, That there is a determination that the
22 employe meets the threshold impairment rating that is equal to
23 or greater than fifty per centum impairment under the sixth
24 edition of the American Medical Association "Guides to the
25 Evaluation of Permanent Impairment."

26 (5) Total disability shall continue until it is adjudicated
27 or agreed under clause (b) that total disability has ceased or
28 the employe's condition improves to an impairment rating that is
29 less than fifty per centum of the degree of impairment defined
30 under the sixth edition of the American Medical Association

1 "Guides to the Evaluation of Permanent Impairment."

2 (6) Upon request of the insurer, the employe shall submit to
3 an independent medical examination in accordance with the
4 provisions of section 314 to determine the status of impairment:
5 Provided, however, That for purposes of this clause, the employe
6 shall not be required to submit to more than two independent
7 medical examinations under this clause during a twelve-month
8 period.

9 (7) In no event shall the total number of weeks of partial
10 disability exceed five hundred weeks for any injury or
11 recurrence thereof, regardless of the changes in status in
12 disability that may occur. In no event shall the total number of
13 weeks of total disability exceed one hundred four weeks for any
14 employe who does not meet a threshold impairment rating that is
15 equal to or greater than fifty per centum impairment under the
16 sixth edition of the American Medical Association "Guides to the
17 Evaluation of Permanent Impairment" for any injury or recurrence
18 thereof. In determining the number of weeks payable under this
19 section, the insurer shall be credited for all weeks paid prior
20 to the effective date of this section for the injury or
21 recurrence regardless of the date of the injury or recurrence.

22 (8) (i) For purposes of this clause, the term "impairment"
23 shall mean an anatomic or functional abnormality or loss that
24 results from the compensable injury and is reasonably presumed
25 to be permanent.

26 (ii) For purposes of this clause, the term "impairment
27 rating" shall mean the percentage of permanent impairment of the
28 whole body resulting from the compensable injury. The percentage
29 rating for impairment under this clause shall represent only
30 that impairment that is the result of the compensable injury and

1 not for any preexisting work-related or nonwork-related
2 impairment.

3 * * *

4 Section 2. Section 314(b) of the act is amended to read:

5 Section 314. * * *

6 (b) In the case of a physical examination, the employe shall
7 be entitled to have a health care provider of his own selection,
8 to be paid by him, participate in such examination requested by
9 his employer or ordered by the workers' compensation judge. In
10 instances where an examination is requested in relation to
11 section [306(a.2)(1)] 306(a.3)(1), such examination shall be
12 performed by a physician who is licensed in this Commonwealth,
13 who is certified by an American Board of Medical Specialties
14 approved board or its osteopathic equivalent and who is in
15 active clinical practice for at least twenty (20) hours per
16 week.

17 Section 3. This act shall take effect immediately.