

WORKER'S DISABILITY COMPENSATION ACT OF 1969 (EXCERPT)

Act 317 of 1969

Chapter 4

OCCUPATIONAL DISEASES AND DISABLEMENTS

418.401 Definitions; determination of entitlement to weekly wage lost benefits; notice of employee refusing offer of employment; termination of benefits; "reasonable employment" defined; personal injuries or work related diseases to which section applicable.

Sec. 401.

(1) As used in this chapter, "disability" means a limitation of an employee's wage earning capacity in work suitable to his or her qualifications and training resulting from a personal injury or work related disease. A limitation of wage earning capacity occurs only if a personal injury covered under this act results in the employee's being unable to perform all jobs paying the maximum wages in work suitable to that employee's qualifications and training, which includes work that may be performed using the employee's transferable work skills. A disability is total if the employee is unable to earn in any job paying maximum wages in work suitable to the employee's qualifications and training. A disability is partial if the employee retains a wage earning capacity at a pay level less than his or her maximum wages in work suitable to his or her qualifications and training. The establishment of disability does not create a presumption of wage loss.

(2) As used in this chapter:

(a) "Disablement" means the event of becoming so disabled.

(b) "Personal injury" includes a disease or disability that is due to causes and conditions that are characteristic of and peculiar to the business of the employer and that arises out of and in the course of the employment. An ordinary disease of life to which the public is generally exposed outside of the employment is not compensable. A personal injury under this act is compensable if work causes, contributes to, or aggravates pathology in a manner so as to create a pathology that is medically distinguishable from any pathology that existed prior to the injury. Mental disabilities and conditions of the aging process, including but not limited to heart and cardiovascular conditions, and degenerative arthritis shall be compensable if contributed to or aggravated or accelerated by the employment in a significant manner. Mental disabilities shall be compensable when arising out of actual events of employment, not unfounded perceptions thereof, and if the employee's perception of the actual events is reasonably grounded in fact or reality. A hernia to be compensable must be clearly recent in origin and result from a strain arising out of and in the course of the employment and be promptly reported to the employer.

(c) Except as provided in section 302, "wage earning capacity" means the wages the employee earns or is capable of earning at a job reasonably available to that employee, whether or not actually earned. For the purposes of establishing wage earning capacity, an employee has an affirmative duty to seek work reasonably available to that employee, taking into consideration the limitations from the work-related personal injury or disease. A magistrate may consider good-faith job search efforts to determine whether jobs are reasonably available.

(d) "Wage loss" means the amount of wages lost due to a disability. The employee shall establish a connection between the disability and reduced wages in establishing the wage loss. Wage loss may be established, among other methods, by demonstrating the employee's good-faith effort to procure work within his or her wage earning capacity. A partially disabled employee who establishes a good-faith effort to procure work but cannot obtain work within his or her wage earning capacity is entitled to weekly benefits under subsection (5) as if totally disabled.

(3) To establish an initial showing of disability, an employee shall do all of the following:

(a) Disclose his or her qualifications and training, including education, skills, and experience, whether or not they are relevant to the job the employee was performing at the time of the injury.

(b) Provide evidence as to the jobs, if any, he or she is qualified and trained to perform within the same salary range as his or her maximum wage earning capacity at the time of the injury.

(c) Demonstrate that the work-related injury prevents the employee from performing jobs identified as within his or her qualifications and training that pay maximum wages.

(d) If the employee is capable of performing any of the jobs identified in subdivision (c), show that he or she cannot obtain any of those jobs. The evidence shall include a showing of a good-faith attempt to procure postinjury employment if there are jobs at the employee's maximum wage earning capacity at the time of the injury.

(4) Once an employee establishes an initial showing of a disability under subsection (3), the employer bears the burden of production of evidence to refute the employee's showing. In satisfying its burden of production of evidence, the employer has a right to discovery if necessary for the employer to sustain its burden and present a meaningful defense. The employee may present additional evidence to challenge the evidence submitted by the employer.

(5) If a personal injury arising out of the course of employment causes total disability and wage loss and the employee is entitled to wage loss benefits, the employer shall pay or cause to be paid to the injured employee as

provided in this section weekly compensation equal to 80% of the employee's after-tax average weekly wage, but not more than the maximum weekly rate determined under section 355. Compensation shall be paid for the duration of the disability.

(6) If a personal injury arising out of the course of employment causes partial disability and wage loss and the employee is entitled to wage loss benefits, the employer shall pay or cause to be paid to the injured employee as provided in this section weekly compensation equal to 80% of the difference between the injured employee's after-tax average weekly wage before the personal injury and the employee's wage earning capacity after the personal injury, but not more than the maximum weekly rate determined under section 355. Compensation shall be paid for the duration of the disability.

(7) If disability and wage loss are established, entitlement to weekly wage loss benefits shall be determined as applicable pursuant to this section and as follows:

(a) If an employee receives a bona fide offer of reasonable employment from the previous employer, another employer, or through the Michigan unemployment insurance agency and the employee refuses that employment without good and reasonable cause, the employee shall be considered to have voluntarily removed himself or herself from the work force and is no longer entitled to any wage loss benefits under this act during the period of refusal.

(b) If an employee is terminated from reasonable employment for fault of the employee, the employee is considered to have voluntarily removed himself or herself from the work force and is not entitled to any wage loss benefits under this act.

(c) If an employee is employed and the average weekly wage of the employee is less than that which the employee received before the date of injury, the employee shall receive weekly benefits under this act equal to 80% of the difference between the injured employee's after-tax weekly wage before the date of injury and the after-tax weekly wage that the injured employee earns after the date of injury, but not more than the maximum weekly rate of compensation, as determined under section 355.

(d) If an employee is employed and the average weekly wage of the employee is equal to or more than the average weekly wage the employee received before the date of injury, the employee is not entitled to any wage loss benefits under this act for the duration of that employment.

(e) If the employee, after having been employed pursuant to this subsection, loses his or her job through no fault of the employee and the employee is still disabled, the employee shall receive compensation under this act as follows:

(i) If the employee was employed for less than 100 weeks, the employee shall receive compensation based upon his or her wage at the time of the original injury.

(ii) If the employee was employed for 100 weeks or more but less than 250 weeks, then after the employee exhausts unemployment benefit eligibility, a worker's compensation magistrate may determine that the employment since the time of the injury has not established a new wage earning capacity and, if the magistrate makes that determination, benefits shall be based on the employee's wage at the original date of injury. If the magistrate does not make that determination, the employee is presumed to have established a post-injury wage earning capacity and benefits shall not be paid based on the wage at the original date of injury.

(iii) If the employee was employed for 250 weeks or more, the employee is presumed to have established a post-injury wage earning capacity.

(8) The Michigan unemployment insurance agency shall notify the agency in writing of the name of any employee who refuses any bona fide offer of reasonable employment. Upon notification to the agency, the agency shall notify the carrier who shall terminate the benefits of the employee pursuant to subsection (7)(a).

(9) As used in this section, "reasonable employment" means work that is within the employee's capacity to perform that poses no clear and proximate threat to that employee's health and safety, and that is within a reasonable distance from that employee's residence. The employee's capacity to perform shall not be limited to work suitable to his or her qualifications and training.

(10) This section shall apply to personal injuries or work related diseases occurring on or after June 30, 1985.

History: Add. 1985, Act 103, Imd. Eff. July 30, 1985 ;-- Am. 1986, Act 314, Imd. Eff. Dec. 23, 1986 ;-- Am. 1987, Act 28, Imd. Eff. May 14, 1987 ;-- Am. 2011, Act 266, Imd. Eff. Dec. 19, 2011

Compiler's Notes: For legislative intent as to severability, see Compiler's note to MCL 418.213. Former MCL 418.401, which pertained to definitions, was repealed by Act 103 of 1985, Imd. Eff. July 30, 1985. Enacting section 2 of Act 266 of 2011 provides: "Enacting section 2. This amendatory act applies to injuries incurred on or after its effective date."

Popular Name: Act 317

418.405 Fire or police department members, county sheriff and deputies, state police, conservation officer, motor carrier officer, forest fire officer, and fire/crash rescue officer; "personal injury" as including

respiratory and heart diseases or resulting illnesses; presumption; claim against Christopher R. Slezak first responder presumed coverage fund for certain cancers; suspension of claim against employer; application for pension benefits as condition precedent; determination denying pension benefits; medical expenses not provided by pension program; first responder presumed coverage fund; creation; duties of state treasurer; director as administrator; notice to legislature of insufficient funds; operation and management of fund; report; rights.

Sec. 405.

(1) For a member of a fully paid fire department of an airport operated by a county, public airport authority, or state university or college; a member of a fully paid fire or police department of a city, township, or village employed and compensated upon a full-time basis; a member of a fully paid public fire authority employed and compensated upon a full-time basis; a county sheriff and the deputies of the county sheriff; a member of the state police; a conservation officer; or an officer of the motor carrier enforcement division of the department of state police, "personal injury" includes respiratory and heart diseases, or illnesses resulting therefrom, that develop or manifest themselves during a period while the member of the department is in the active service of the department and that result from the performance of duties for the department.

(2) A full-time member, and, beginning January 1, 2022 for a cancer described in this subsection diagnosed on or after January 1, 2022, a part-time, paid on-call, or volunteer member, of a fire department or public fire authority, and, beginning January 1, 2022 for a cancer described in this subsection diagnosed on or after January 1, 2022, a former member who was a full-time, part-time, paid on-call, or volunteer member of a fire department or public fire authority, who has or had 60 months or more active service in the department or public fire authority at the time the cancer manifests itself, and who is or was exposed to the hazards incidental to fire suppression, rescue, or emergency medical services in the performance of his or her work-related duties with the department or authority shall suspend a claim he or she may have against his or her employer under this act and may claim like benefits from the Christopher R. Slezak first responder presumed coverage fund created under subsection (6) for any respiratory tract, bladder, skin, brain, kidney, blood, thyroid, testicular, prostate, lymphatic, ovarian, breast, or non-HPV cervical cancer. Beginning January 1, 2022 for a cancer described in this subsection diagnosed on or after January 1, 2022, a full-time, part-time, paid on-call, volunteer, or former forest fire officer or fire/crash rescue officer who has or had 60 months or more active service at the time the cancer manifests itself, and who is or was exposed to the hazards incidental to fire suppression, rescue, or emergency medical services in the performance of his or her work-related duties shall suspend a claim he or she may have against his or her employer under this act and may claim like benefits from the Christopher R. Slezak first responder presumed coverage fund created under subsection (6) for any respiratory tract, bladder, skin, brain, kidney, blood, thyroid, testicular, prostate, or lymphatic, ovarian, breast, or non-HPV cervical cancer. The cancers described in this subsection are presumed to arise out of and in the course of employment only with respect to a claim against the fund and in the absence of non-work-related causation or specific incidents that establish a cause independent of the employment. Neither mere evidence that the condition was preexisting, nor an abstract medical opinion that the employment was not the cause of the disease or condition, is sufficient to overcome the presumption for purposes of a claim against the Christopher R. Slezak first responder presumed coverage fund. The presumption under this subsection may be rebutted by scientific evidence that the member or former member of the fire department or public fire authority was a substantial and consistent user of cigarettes or other tobacco products within the 10 years immediately preceding the date of injury, and that this use was a significant factor in the cause, aggravation, or progression of the cancer. The suspension of the member's or former member's claim against his or her employer under this subsection is in effect only during the period the member receives like benefits from the Christopher R. Slezak first responder presumed coverage fund. If a redemption agreement between the Christopher R. Slezak first responder presumed coverage fund and the claimant is approved, the suspension of a claim against an employer under this subsection continues indefinitely. A claimant may not receive benefits covering the same time period from both the Christopher R. Slezak first responder presumed coverage fund and the employer. The presumption created in this subsection applies only to a claim for like benefits against the Christopher R. Slezak first responder presumed coverage fund. For purposes of a claim against the Christopher R. Slezak first responder presumed coverage fund created under subsection (6), a fire department or public fire authority is considered the employer of a volunteer member.

(3) Respiratory and heart diseases or illnesses resulting therefrom as described in subsection (1) are presumed to arise out of and in the course of employment in the absence of evidence to the contrary.

(4) As a condition precedent to filing an application for benefits, a claimant described in subsection (1) or a claimant under subsection (2) must first apply for and do all things necessary to qualify for any pension benefits to which he or she, or his or her decedent, may be entitled or must demonstrate that he or she, or his or her decedent, is ineligible for any pension benefits. If a final determination is made that pension benefits will not be awarded or that the claimant or his or her decedent is ineligible for any pension benefits, then the designation of "personal injury" as provided in subsection (1) or the presumption under subsection (2) applies. The employer, employee, or former member described in subsection (2) may request 2 copies of the determination denying pension benefits, 1

copy of which must be filed with the workers' compensation agency upon request.

(5) If an employee described in subsection (1) or (2) or a former member described in subsection (2) is eligible for any pension benefits, that eligibility does not prohibit the employee or dependents of that employee from receiving benefits under section 315 for the medical expenses or portion of medical expenses that are not provided for by the pension program.

(6) The Christopher R. Slezak first responder presumed coverage fund is created as a separate fund in the state treasury. The state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments. The director shall be the administrator of the fund for auditing purposes. The director shall expend money from the fund only for the purpose of paying claims authorized under subsection (2) and costs of administration. The department of treasury shall cause to be paid from the Christopher R. Slezak first responder presumed coverage fund those amounts and at those times as are prescribed by the director to pay claims under subsection (2) pursuant to this subsection and subsection (7). Money in the fund at the close of the fiscal year remains in the fund and does not lapse to the general fund. If there is insufficient money in the fund to pay claims authorized under subsection (2), claims that are approved but not paid must be paid if fund revenues become available, and those claims must be paid before subsequently approved claims. The director shall develop and implement a process to notify the legislature that money in the Christopher R. Slezak first responder presumed coverage fund may be insufficient to cover future claims when the director reasonably believes that within 60 days the money in the fund will be insufficient to pay claims. The process must, at a minimum, do all of the following:

- (a) Identify a specific date by which the money in the fund will become insufficient to pay claims.
- (b) Outline a clear process indicating the order in which claims pending with the fund will be paid.
- (c) Outline a clear process indicating the order in which claims that were pending with the fund when money became insufficient will be paid, if money subsequently becomes available.

(7) The director shall develop the application, approval, and compliance process necessary to operate and manage the Christopher R. Slezak first responder presumed coverage fund. The director shall develop and implement the use of an application form to be used by a claimant for benefits payable by the fund under subsection (2). When a claim under subsection (2) is received, the director shall notify the employer against whom a claim is suspended or the carrier. The employer or carrier may access all information the agency receives respecting the claim and may request that the agency obtain specific additional information. The fund standards, guidelines, templates, and any other forms used by the director to implement the Christopher R. Slezak first responder presumed coverage fund must be posted and maintained on the department's website. The director shall review and consider claims in the order in which they are received and shall approve or deny a claim within 30 days after receipt of the claim.

(8) The director shall submit an annual report to the state budget director and the senate and house of representatives standing committees on appropriations not later than April 1 of each year that includes, but is not limited to, all of the following:

- (a) The total number of claims received under the Christopher R. Slezak first responder presumed coverage fund in the immediately preceding calendar year.
- (b) The number of claims approved and the total dollar amount of claims paid by the Christopher R. Slezak first responder presumed coverage fund in the immediately preceding calendar year.
- (c) The costs of administering the Christopher R. Slezak first responder presumed coverage fund in the immediately preceding calendar year.

(9) By March 31 of each year, the worker's compensation agency shall report to the chairs of the appropriations committees of the senate and the house of representatives the estimated amount of both of the following:

- (a) The anticipated cost of benefits in the next fiscal year for claims authorized under subsection (2) and payable by the Christopher R. Slezak first responder presumed coverage fund.
- (b) The amount of any anticipated shortfall in the Christopher R. Slezak first responder presumed coverage fund that would prevent payment of claims under subsection (6) for the current fiscal year.

(10) The Christopher R. Slezak first responder presumed coverage fund has the same rights under this act as an employer or carrier.

History: 1969, Act 317, Imd. Eff. Dec. 31, 1969 ;-- Am. 1971, Act 17, Imd. Eff. May 5, 1971 ;-- Am. 1971, Act 188, Imd. Eff. Dec. 20, 1971 ;-- Am. 1980, Act 457, Imd. Eff. Jan. 15, 1981 ;-- Am. 2014, Act 515, Imd. Eff. Jan. 14, 2015 ;-- Am. 2021, Act 117, Imd. Eff. Nov. 30, 2021 ;-- Am. 2021, Act 129, Imd. Eff. Dec. 17, 2021

Popular Name: Act 317

418.411 Disablement treated as personal injury.

Sec. 411.

The disablement of an employee resulting from such disease or disability shall be treated as the happening of a personal injury within the meaning of this act and the procedure and practice provided in this act shall apply to all proceedings under this chapter, except where specifically otherwise provided herein.

History: 1969, Act 317, Eff. Dec. 31, 1969

Popular Name: Act 317

418.415 Death or disablement compensation.

Sec. 415.

If an employee is disabled or dies and his disability or death is caused by a disease and the disease is due to the nature of the employment in which such employee was engaged and was contracted therein, he or his dependents shall be entitled to compensation and other benefits for his death or for his disablement, all as provided in this act.

History: 1969, Act 317, Eff. Dec. 31, 1969

Popular Name: Act 317

418.425 Date of disablement.

Sec. 425.

For the purposes of this chapter the date of disablement shall be the date the hearing referee or worker's compensation magistrate, as applicable, may determine on hearing of the claim.

History: 1969, Act 317, Eff. Dec. 31, 1969 ;-- Am. 1985, Act 103, Imd. Eff. July 30, 1985

Compiler's Notes: For legislative intent as to severability, see Compiler's note to MCL 418.213.

Popular Name: Act 317

418.431 Employer's liability; conditions exempting and limiting.

Sec. 431.

No compensation shall be payable for an occupational disease if the employee at the time of entering into the employment of the employer by whom the compensation would otherwise be payable, or thereafter, wilfully and falsely represents in writing that he has not previously suffered from the disease which is the cause of the disability or death. Where an occupational disease is aggravated by any other disease or infirmity, not itself compensable, or where disability or death from any other cause, not itself compensable, is aggravated, prolonged, accelerated or in any way contributed to by an occupational disease, the compensation payable shall be a proportion only of the compensation that would be payable if the occupational disease were the sole cause of the disability or death as such occupational disease, as a causative factor, bearing to all the causes of such disability or death, such reduction in compensation to be effected by reducing the number of weekly payments or the amounts of such payments, as under the circumstances of the particular case may be for the best interest of the claimant or claimants.

History: 1969, Act 317, Eff. Dec. 31, 1969

Popular Name: Act 317

418.435 Employer from whom total compensation recoverable; effect of dispute or controversy.

Sec. 435.

The total compensation due shall be recoverable from the employer who last employed the employee in the employment to the nature of which the disease was due and in which it was contracted. If any dispute or controversy arises as to the payment of compensation or as to liability for the compensation, the employee shall make claim upon the last employer only and apply for a hearing against the last employer only.

History: 1969, Act 317, Eff. Dec. 31, 1969 ;-- Am. 1972, Act 337, Imd. Eff. Jan. 4, 1973 ;-- Am. 1980, Act 357, Eff. Jan. 1, 1981

Popular Name: Act 317

418.441 Claim for occupational disease and death resulting from occupational disease; requirements; commencement; time limit.

Sec. 441.

(1) The requirements of claim for occupational disease and death resulting from an occupational disease and the requirements as to the bringing of proceedings for compensation for disability or death resulting from the occupational disease are the same as required in chapter 3, except that the claim of occupational disease or death resulting from an occupational disease shall commence from the date the employee or a deceased employee's dependents had knowledge, or a reasonable belief, or through ordinary diligence could have discovered, that the occupational disease or death was work related.

(2) A claim shall not be valid or effectual for any purpose under this chapter unless made within 2 years after the date the employee or dependents of a deceased employee had knowledge, or a reasonable belief, or through ordinary diligence could have discovered that the occupational disease or death was work related.

History: 1969, Act 317, Eff. Dec. 31, 1969 ;-- Am. 1980, Act 357, Eff. Jan. 1, 1982

Popular Name: Act 317