

**Fifty-seventh Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 9, 2001**

HOUSE BILL NO. 1153
(Industry, Business and Labor Committee)
(At the request of the Workers Compensation Bureau)

AN ACT to create and enact a new section to chapter 65-05 of the North Dakota Century Code, relating to establishing incentives for employers to hire workers who have previously sustained a work injury; to amend and reenact subsection 19 of section 65-01-02 and sections 65-05-08 and 65-05-32 of the North Dakota Century Code, relating to the definition of fee schedule for workers' compensation purposes, prohibiting employers from requiring injured workers to use sick or annual leave benefits, the confidentiality and use of workers' compensation claim file information; to provide a penalty; to provide a continuing appropriation; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 19 of section 65-01-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

19. "Fee schedule" means the ~~relative value scale, conversion factors, fee schedules, and medical aid rules adopted by~~ payment formulas established in the bureau publication entitled "Medical and Hospital Fees".

SECTION 2. AMENDMENT. Section 65-05-08 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-05-08. Disability benefits - Not paid unless period of disability is of five days' duration or more - Application required - Suspended during confinement - Duty to report wages. No benefits may be paid for disability, the duration of which is less than five consecutive calendar days. An employer may not require an employee to use sick leave or annual leave, or other employer-paid time off work, before applying for benefits under this section, in lieu of receiving benefits under this section, or in conjunction with benefits provided under this section, but may allow an employee to use sick leave or annual leave to make up the difference between the employee's wage-loss benefits and the employee's regular pay. If the period of disability is five consecutive calendar days' duration or longer, benefits must be paid for the period of disability provided that:

1. When disability benefits are discontinued, the bureau may not begin payment again unless the injured employee files a reapplication for disability benefits on a form supplied by the bureau. In case of reapplication, the award may commence no more than thirty days before the date of reapplication. Disability benefits must be reinstated upon proof by the injured employee that:
 - a. The employee has sustained a significant change in the compensable medical condition;
 - b. The employee has sustained an actual wage loss caused by the significant change in the compensable medical condition; and
 - c. The employee has not retired or voluntarily withdrawn from the job market as defined in section 65-05-09.3.
2. All payments of disability and rehabilitation benefits must be suspended during the period of confinement in excess of seventy-two consecutive hours of any employee who is eligible for, or receiving, benefits under this title who is confined in a penitentiary, jail, youth correctional facility, or any other penal institution. After discharge from the institution, the

bureau shall pay subsequent disability or rehabilitation benefits as the employee otherwise would be entitled under this title.

3. Any employee who is eligible for, or receiving disability or rehabilitation benefits under this title shall report any wages earned, from part-time or full-time work from any source. If an employee fails to report wages earned, the employee shall refund to the bureau any disability or vocational rehabilitation benefits overpaid by the bureau for that time period. To facilitate recovery of those benefits, the bureau may offset future benefits payable, under section 65-05-29. If the employee willfully fails to report wages earned, the employee is subject to the penalties in section 65-05-33. An employee shall report whether the employee has performed work or received wages. The bureau periodically shall provide a form to all injured employees receiving disability or rehabilitation benefits which the injured employee must complete to retain eligibility for further disability or rehabilitation benefits, regardless of the date of injury or claim filing. The form will advise the injured employee of the possible penalties for failure to report any work or activities as required by this section. An injured employee who is receiving disability or vocational rehabilitation benefits must report any work activities to the bureau whether or not the injured employee receives any wages. An injured employee who is receiving disability or vocational rehabilitation benefits also must report any other activity if the injured employee receives any money, including prize winnings, from undertaking that activity, regardless of expenses or whether there is a net profit. For purposes of this subsection, "work" does not include routine daily activities of self-care or family care, or routine maintenance of the home and yard, and "activities" does not include recreational gaming or passive investment endeavors.
4. An employee shall request disability benefits on a claim form furnished by the bureau. Disability benefits may not commence more than one year prior to the date of filing of the initial claim for disability benefits.
5. The provisions of this section apply to any disability claim asserted against the fund on or after July 1, 1991, irrespective of injury date.
6. It is the burden of the employee to show that the inability to obtain employment or to earn as much as the employee earned at the time of injury is due to physical limitation related to the injury, and that any wage loss claimed is the result of the compensable injury.
7. If the employee voluntarily limits income or refuses to accept employment suitable to the employee's capacity, offered to or procured for the employee, the employee is not entitled to any disability or vocational rehabilitation benefits during the limitation of income or refusal to accept employment unless the bureau determines the limitation or refusal is justified.
8. The bureau may not pay disability benefits unless the loss of earning capacity exceeds ten percent. The injured employee may earn up to ten percent of the employee's preinjury average gross weekly earnings with no reduction in total disability benefits. The employee must report any earnings to the bureau for a determination of whether the employee is within the limit set in this subsection.
9. Upon securing suitable employment, the injured employee shall notify the bureau of the name and address of the employer, the date the employment began, and the amount of wages being received. If the injured employee is receiving disability benefits, the injured employee shall notify the bureau whenever there is a change in work status or wages received.
10. The bureau shall pay to an employee receiving disability benefits a dependency allowance for each child of the employee at the rate of ten dollars per week per child. Effective July 1, 1989, this rate must be paid to each eligible employee regardless of the date of injury.

11. Dependency allowance for the children may be made directly to either parent or guardian at the discretion of the bureau.

SECTION 3. AMENDMENT. Section 65-05-32 of the North Dakota Century Code is amended and reenacted as follows:

65-05-32. Privacy of records and hearings - Penalty. Information contained in the claim files and records of injured employees is confidential and is not open to public inspection, other than to bureau employees or agents in the performance of their official duties. Providing further that:

1. Representatives of a claimant, whether an individual or an organization, may review a claim file or receive specific information from the file upon the presentation of the signed authorization of the claimant. However, reserve information may not be made available to the claimant or the claimant's representatives. Availability of this information to employers is subject to the sole discretion of the bureau.
2. Employers or their duly authorized representatives who are required to have access to an injured worker's claim file for the performance of their duties may review and have access to any files of their own injured workers. An employer or an employer's duly authorized representative who willfully communicates information contained in an employee's claim file to any person who does not need the information in the performance of that person's duties is guilty of a class B misdemeanor.
3. Physicians or health care providers treating or examining workers claiming benefits under this title, or physicians giving medical advice to the bureau regarding any claim may, at the discretion of the bureau, inspect the claim files and records of injured workers.
4. Other persons may have access to and make inspections of the files, if such persons are rendering assistance to the bureau at any stage of the proceedings on any matter pertaining to the administration of this title.
5. The claimant's name; ~~social security number~~; date of birth; injury date; employer name; type of injury; whether the claim is accepted, denied, or pending; and whether the claim is in active or inactive pay status will be available to the public. This information may not be released in aggregate form, except to those persons contracting with the bureau for exchange of information pertaining to the administration of this title or except upon written authorization by the claimant for a specified purpose.
6. At the request of a claimant, the bureau may close the medical portion of a hearing to the public.

SECTION 4. A new section to chapter 65-05 of the North Dakota Century Code is created and enacted as follows:

Preferred worker program - Continuing appropriation. For purposes of this section, "preferred worker" means a worker who has incurred a compensable injury that resulted in a disability that poses a substantial obstacle to employment. The bureau may provide assistance as determined appropriate to employers who employ a preferred worker. In addition, employers who apply for and are approved as a preferred worker employer may not be assessed premiums on a preferred worker's salary for three years from the date of hiring. The bureau may not charge claims costs incurred as a result of an injury sustained by a preferred worker against the preferred worker's employer's account during the first three years after the worker is hired. The bureau shall charge those claims costs to the general fund. The bureau may adopt rules to regulate and manage the preferred worker program authorized by this section. An employer may not appeal a bureau decision not to provide assistance to that employer under this section. Money in the workers' compensation fund is appropriated on a continuing basis to provide the assistance authorized under this section.

SECTION 5. EFFECTIVE DATE. Sections 2 and 3 of this Act are effective July 1, 2001, for all claims regardless of the date of injury.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-seventh Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1153.

House Vote: Yeas 91 Nays 4 Absent 3

Senate Vote: Yeas 46 Nays 0 Absent 3

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2001.

Approved at _____ M. on _____, 2001.

Governor

Filed in this office this _____ day of _____, 2001,

at _____ o'clock _____ M.

Secretary of State