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Senate Bill 1079 (as introduced 11-7-24)  
Sponsor: Senator John Cherry  
Committee: Labor

Date Completed: 12-12-24

## **CONTENT**

**The bill would amend Chapter 3 (Compensation) and Chapter 4 (Occupational Diseases and Disablements) of the Worker's Disability Compensation Act to do the following:**

- **Modify standards used to determine entitlement for disability compensation for a personal injury.**
- **Increase the maximum weekly rate for disability compensation from 90% to 100% of the State average weekly wage.**
- **Specify that if an employee's health insurance, dental insurance, or both did not continue during a disability, the value of the insurance would have to be included in the calculation of the employee's average weekly wage, even if the wage exceeded 2/3 of the State average weekly wage at the time of injury.**
- **Add serious and permanent scarring or disfigurement to the face or head to the schedule of personal injuries that would qualify an individual for disability compensation and prescribe a period of 52 weeks of compensation.**
- **Specify that tables published by the Director of the Department of Labor and Economic Opportunity (LEO) for the year in which an employee's injury occurred would have to be used to calculate the injured employee's after-tax average weekly wage, wage loss, or amount of benefits to be coordinated under the Act.**
- **Prohibit an entity from discriminating against an employee for filing a complaint under the Act.**
- **Delete requirements for establishing an initial showing of disability.**
- **Modify definitions related to disability compensation for personal injury and occupational diseases and disablements.**

The bill specifies that its amendments would apply to personal injuries and work-related diseases incurred on or after the bill's effective.

### Standards to Determine Entitlement to Benefits

Under the Act, if disability and wage loss are established, entitlement to weekly wage loss benefits must be determined using the following standards. The bill would modify, delete, and add provisions to these standards as described below.

Currently, if an employee receives a bona fide (genuine) offer of reasonable employment from the employee's employer, another employer, or through the Michigan Unemployment Insurance Agency and the employee refuses that employment without good and reasonable cause, the employee is considered to have voluntarily removed the employee from the workforce and is not entitled to any wage loss benefits under the Act during the period of refusal. The bill would place the burden of proof for establishing that the employee received a bona fide offer of reasonable employment on the employee's employer.

Currently, 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 the Act. The bill would delete this standard.

Currently, if an employee is employed and the weekly wage of the employee is less than that which the employee received before the date of injury, the employee must receive weekly benefits under the 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. The bill would delete this standard.

Currently, if an employee, after having been employed loses his or her job through no fault of the employee and the employee is still disabled, the employee must receive compensation under the Act as follows:

- If the employee was employed for less than 100 weeks, the employee must receive compensation based upon the employee's average weekly wage at the time of the original injury.
- If the employee was employed for 100 weeks or more but less than 250 weeks, then after exhausting 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 must be based on his or her average weekly wage at the original date of injury.
- If the employee was employed for 250 weeks or more, the employee is presumed to have established a post-injury wage earning capacity.

The bill would delete the provisions above. Instead, under the bill, if an employee, after being employed for less than 100 weeks, lost the employee's job, the employee's personal injury would be conclusively presumed to result in disability connected to wage loss, unless the employee's employer established that the employee's willful and serious misconduct resulted in the termination of the employee's employment. If this presumption did not apply and the employee, after being employed, lost the employee's job, proof of work-related disability connected to wage loss would be a question of fact.

#### Increase Maximum State Weekly Average Wage

The Act establishes the maximum weekly rate paid to beneficiaries of disability compensation for injuries. Since 1982, the maximum weekly rate a beneficiary could receive has been 90% of the State average weekly wage as of the prior June 30, and rounded up to the nearest dollar. Under the bill, this provision would apply until the first January 1 after the bill's effective date. After that, and each subsequent January 1, the maximum weekly rate of compensation for injuries occurring within that year would have to be 100% of the State average weekly wage as of the prior June 30, and rounded up to the nearest dollar.

#### Delete Requirements for Initial Showings of Disability

Under the Act, to establish an initial showing of disability, an employee must do all of the following:

- 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.

- 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.
- 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.
- If the employee is capable of performing any of the jobs identified above, show that he or she cannot obtain any of those jobs.

Once an employee establishes an initial showing of a disability, 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.

The bill would delete the above provisions.

#### Insurance Exception to 2/3rds of the State Average Weekly Wage

Under the Act, "average weekly wage" means the weekly wage earned by an employee at the time of the employee's injury in all employment, inclusive of overtime, premium pay, and cost of living adjustment, and exclusive of any fringe or other benefits that continue during the disability.

Currently, any fringe or other benefit that does not continue during the disability is included for purposes of determining an employee's average weekly wage to the extent that the inclusion of the fringe or other benefit will not result in a weekly benefit amount that is greater than 2/3 of the State average weekly wage at the time of injury.

However, under the bill, if an employee's health insurance, dental insurance, or both did not continue during the disability, the value of the health insurance, dental insurance, or both would have to be included in the calculation of the employee's average weekly wage regardless of whether the calculation resulted in an amount that was greater than 2/3 of the State average weekly wage at the time of injury.

#### Prohibition of Discrimination for Filing a Complaint

Under current law, a person must not discharge an employee or in any manner discriminate against an employee because the employee filed a complaint or instituted or caused to be instituted a proceeding under the Act or because of the exercise by the employee on behalf of the employee or others of a right afforded by the Act. Under the bill, an entity also would be prohibited from such discrimination.

#### Schedule of Personal Injuries and Periods of Compensation

The Act provides prescribes periods of compensation for specific disabilities, such as 65 weeks of compensation for the loss of a thumb. Compensation for personal injury in these specific cases is 80% of the after-tax average weekly wage, subject to maximum and minimum rates of compensation under the Act. Under the bill, serious and permanent scarring or disfigurement to the face or head would result in a compensation period of 52 weeks.

In addition, the Act provides a list of personal injuries that qualify as total and permanent disability, such as total and permanent loss of eyesight and incurable insanity or imbecility. The bill would replace incurable insanity or imbecility with severe and permanent impairment

of function not responsive to treatment because of a neurocognitive disorder or a traumatic or stress-related disorder.

#### Specify Use for Tables Used for Average Weekly Wage

Currently, every December 1, the Director of LEO must publish tables of the average weekly wage and 80% of after-tax average weekly wage that are to be in effect on the following January 1. These tables are conclusive for the purpose of converting an average weekly wage into 80% of after-tax average weekly wage.

The bill specifies that tables that were published for the year in which an employee's injury occurred would have to be used to calculate the injured employee's after-tax average weekly wage, wage loss, or amount of benefits to be coordinated under the Act.

#### Specify Lack of Employer Liability for Disability Payments

Currently, the Act specifies that an employer is not liable for certain types of disability payments, including injury payments, for periods of time that the employee is unable to obtain or perform work because of imprisonment or commission of a crime.

The bill would replace "commission of a crime" with "incarceration because of a criminal conviction."

#### Delete Weekly Wage Loss Requirements

The Act states that the weekly loss in wages referred to in the Act must consist of the percentage of the average weekly earnings of the injured employee computed as fairly represents the proportionate extent of the impairment of the employee's earning capacity in the employments covered by the Act in which the employee was working at the time of the personal injury. The weekly loss in wages must be fixed as of the time of the personal injury and determined considering the nature and extent of the personal injury. The bill would delete the above provision.

#### Amended Definitions

Currently, "disability" means a limitation of an employee's wage-earning capacity in work suitable to the employee's 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.

Instead, under the bill, "disability" would mean a limitation of an employee's wage-earning capacity in work suitable to the employee's qualifications and training resulting from a personal injury or work-related disease. A limitation of wage-earning capacity would occur if a personal injury covered under the Act resulted in the employee being unable to perform or obtain one or more jobs in work that the employee performed before or at the time of the personal injury and that was suitable to the employee's qualifications and training.

Currently, "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 wages are actually earned. For the purposes of establishing a limitation of 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. The bill would delete the definition.

Currently, "wage loss" means the amount of wages lost due to a disability. The employee must 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 as if totally disabled.

Instead, under the bill, "wage loss" would mean reduced wages connected to a disability. The employee would have to establish a connection between the disability and wage loss to receive weekly wage loss benefits. If the employee established a connection between disability and wage loss, other factors that contribute to the employee's wage loss would not affect the payment or amount of wage loss benefits due the employee.

### Repeals

The bill would repeal Section 302 and Section 431 of the Act. Section 302 defines "wage earning capacity" for certain public positions. Section 431 prohibits an employer from providing compensation for an occupational disease to an employee if, at the time of the employee being hired, the employee willingly and falsely represents in writing that the employee has not previously suffered from the disease which is the cause of the disability or death.

MCL 418.301 et al.

Legislative Analyst: Alex Krabill

### **FISCAL IMPACT**

The bill would have an indeterminate fiscal impact on the State and on local units of government. Increasing the weekly rate for disability compensation, excluding employee's health insurance and/or dental insurance from the 2/3 of the State average weekly wage cap, and removing of requirements for establishing an initial showing of disability could increase the number of benefit recipients and the average cost per case. It is unknown how many workers' compensation recipients could be affected by the bill, but it is likely to increase the overall average cost per case. The number of claims for lost time over seven days in 2022 totaled 21,563 and the total payouts for that year was \$834.2 million. Total payouts have declined around 23% since 2014 while the number of claims have remained roughly the same. It is unknown how much the overall payouts would increase and if or by how much that would increase the overall premiums on employers.

The bill would have a one-time fiscal impact on LEO. The most significant part of the one-time impact would be updating forms and procedures regarding the changes in the bill. The Workers' Disability Compensation Agency is mostly funded with restricted dollars, which is funded by assessments on the insurance policies and through other fees.

The bill would have an indeterminate negative fiscal impact on the State through increased workers' compensation payments. In Fiscal Year (FY) 2023-24, the State of Michigan paid out \$17.6 million in workers' compensation. Total payments have been declining over the past

three years, from a total of \$20.1 million in FY 2021-22 and \$18.3 million in FY 2022-23. It is currently unknown if the increased payments would be significant enough to reverse this trend and to what extent.

The bill would have an indeterminate negative fiscal impact on local governments. This negative fiscal impact is in the form of increased payments for workers' compensation premiums for local government units.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.