

State of Arkansas

As Engrossed: S3/5/13 S4/8/13

89th General Assembly

A Bill

Regular Session, 2013

SENATE BILL 515

By: Senators Bledsoe, Hester, Bookout, A. Clark, J. Dismang, J. English, Files, J. Hendren, Hickey, D. Sanders, G. Stubblefield, J. Woods

For An Act To Be Entitled

AN ACT TO RESTORE THE LAW AND CONSISTENCY IN
TEMPORARY TOTAL DISABILITY BENEFIT DETERMINATIONS AND
EMPLOYEE MISCONDUCT AS A BASIS FOR *TERMINATION UNDER
THE WORKERS' COMPENSATION LAW THAT RESULTED FROM
INITIATED MEASURE 4 OF 1948*; AND FOR OTHER PURPOSES.

Subtitle

*TO RESTORE CONSISTENCY IN TEMPORARY TOTAL
DISABILITY BENEFIT AND EMPLOYEE
MISCONDUCT DETERMINATIONS AFTER
TERMINATION UNDER INITIATED MEASURE 4 OF
1948.*

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 11-9-521(a), concerning worker's compensation for total *disability under the Workers' Compensation Law that resulted from Initiated Measure 4 of 1948*, is amended to read as follows:

~~(a) An employee who sustains a permanent compensable injury scheduled in this section shall receive, in addition to compensation for temporary total and temporary partial benefits during the healing period or until the employee returns to work, whichever occurs first, weekly benefits in the amount of the permanent partial disability rate attributable to the injury, for that period of time set out in the following schedule~~

(a)(1) An employee who sustains a compensable injury scheduled in this section is entitled to temporary total benefits, temporary partial benefits,



1 or both during the healing period if the employer does not offer work within
 2 the employee's medical restrictions arising from the injury.

3 (2)(A) When an employee is terminated for misconduct and the
 4 employer has work available within the former employee's medical restrictions
 5 from the workers' compensation injury, the former employee is not entitled to
 6 temporary total or temporary partial disability benefits during the healing
 7 period in which the misconduct occurred.

8 (B) For purposes of subdivision (a)(2)(A), the employer
 9 has the burden of proof by a preponderance of the evidence.

10 (3) An employee who sustains a permanent compensable injury
 11 scheduled in this section is entitled to weekly benefits in the amount of the
 12 permanent partial disability rate attributable to the injury for the time set
 13 out in the following schedule:

14 ~~(1)(A)~~ Arm amputated at the elbow, or between the elbow
 15 and shoulder, ~~two hundred forty-four (244)~~ two hundred fifty-six (256) weeks;

16 ~~(2)(B)~~ Arm amputated between the elbow and wrist, ~~one~~
 17 ~~hundred eighty-three (183)~~ one hundred ninety-two (192) weeks;

18 ~~(3)(C)~~ Leg amputated at the knee, or between the knee and
 19 the hip, ~~one hundred eighty-four (184)~~ one hundred ninety-three (193) weeks;

20 ~~(4)(D)~~ Leg amputated between the knee and the ankle, ~~one~~
 21 ~~hundred thirty-one (131)~~ one hundred thirty-eight (138) weeks;

22 ~~(5)(E)~~ Hand amputated, ~~one hundred eighty-three (183)~~ one
 23 ~~hundred ninety-three (193)~~ weeks;

24 ~~(6)(F)~~ Thumb amputated, ~~seventy-three (73)~~ seventy-seven
 25 ~~(77)~~ weeks;

26 ~~(7)(G)~~ First finger amputated, ~~forty-three (43)~~ forty-five
 27 ~~(45)~~ weeks;

28 ~~(8)(H)~~ Second finger amputated, ~~thirty-seven (37)~~ thirty-
 29 ~~nine (39)~~ weeks;

30 ~~(9)(I)~~ Third finger amputated, ~~twenty-four (24)~~ twenty-
 31 ~~five (25)~~ weeks;

32 ~~(10)(J)~~ Fourth finger amputated, ~~nineteen (19)~~ twenty (20)
 33 ~~weeks;~~

34 ~~(11)(K)~~ Foot amputated, ~~one hundred thirty-one (131)~~ one
 35 ~~hundred thirty-eight (138)~~ weeks;

36 ~~(12)(L)~~ Great toe amputated, ~~thirty-two (32)~~ thirty-four

1 (34) weeks;

2 ~~(13)(M)~~ Toe other than great toe amputated, ~~eleven (11)~~
3 twelve (12) weeks;

4 ~~(14)(N)~~ Eye enucleated, in which there was useful vision,
5 ~~one hundred five (105)~~ one hundred ten (110) weeks;

6 ~~(15)(O)~~ Loss of hearing of one ear, ~~forty-two (42)~~ forty-
7 four (44) weeks;

8 ~~(16)(P)~~ Loss of hearing of both ears, ~~one hundred fifty-~~
9 ~~eight (158)~~ one hundred sixty-six (166) weeks; and

10 ~~(17)(Q)~~ Loss of one testicle, ~~fifty-three (53)~~ fifty-six
11 (56) weeks; loss of both testicles, ~~one hundred fifty-eight (158)~~ one hundred
12 sixty-six (166) weeks.

13
14 *SECTION 3. Arkansas Code § 11-9-526 under the Workers' Compensation*
15 *Law that resulted from Initiated Measure 4 of 1948, is amended to read as*
16 *follows:*

17 11-9-526. Compensation for disability – Refusal of employee to accept
18 employment – Termination for misconduct.

19 ~~If any injured employee refuses employment suitable to his or her~~
20 ~~capacity offered to or procured for him or her, he or she shall not be~~
21 ~~entitled to any compensation during the continuance of the refusal, unless in~~
22 ~~the opinion of the Workers' Compensation Commission, the refusal is~~
23 ~~justifiable~~

24 (a) If an injured employee refuses employment suitable to his or her
25 capacity offered to or procured for him or her, the injured employee is not
26 entitled to compensation during the continuance of the refusal, unless in the
27 opinion of the Workers' Compensation Commission, the refusal is justifiable.

28 (b) If an employee is terminated for cause based on the employee's
29 misconduct and the employer has work available within the former employee's
30 medical restrictions resulting from the workers' compensation injury, the
31 former employee is not entitled to temporary total or temporary partial
32 disability benefits.

33 (c) The purpose and intent of this section is to reverse specifically
34 any case law providing that former employees who are properly terminated for
35 misconduct are entitled to temporary total or temporary partial disability
36 benefits if the employer has work available within the former employee's

1 restrictions, including without limitation, Tyson Poultry, Inc. v. Narvaiz,
2 2012 Ark. 118 (2012); and Superior Industries v. Thomaston, 72 Ark. App. 7,
3 32 S.W.3d 52 (2000).

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