

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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HOUSE BILL 991

Short Title: First Responders/WC Benefits Duration. (Public)

Sponsors: Representative Wray.

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary, if favorable, Finance, if favorable, State and Local Government, if favorable, Rules, Calendar, and Operations of the House

April 26, 2019

A BILL TO BE ENTITLED

AN ACT TO AMEND THE WORKERS' COMPENSATION ACT TO REPEAL THE TWO-YEAR SUNSET PROVISION FOR THE BENEFIT OF ALL WORKERS AND TO PROVIDE THAT FIRST RESPONDERS ARE COMPENSATED AT ONE HUNDRED PERCENT OF SALARY WITHOUT A LIMIT ON THE DURATION OF MEDICAL COMPENSATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 95-24(a) reads as rewritten:

"(a) The right to compensation under this Article shall ~~be forever barred unless (i) commence when (i) a claim or memorandum of agreement as provided in G.S. 97-82 is filed with the Commission or the employee is paid compensation as provided under this Article within two years after the accident~~ or (ii) a claim or memorandum of agreement as provided in G.S. 97-82 is filed with the Commission within two years after the last payment of medical compensation when no other compensation has been paid and when the employer's liability has not otherwise been established under this Article. The provisions of this subsection shall not limit the time otherwise allowed for the filing of a claim for compensation for occupational disease in G.S. 97-58, but in no event shall the time for filing a claim for compensation for occupational disease be less than the times provided herein for filing a claim for an injury by accident."

SECTION 2. G.S. 97-25.1 reads as rewritten:

"§ 97-25.1. Limitation of duration of medical compensation.

(a) ~~The~~ Except as provided by subsection (b) of this section, the right to medical compensation shall terminate two years after the employer's last payment of medical or indemnity compensation unless, prior to the expiration of this period, either: (i) the employee files with the Commission an application for additional medical compensation which is thereafter approved by the Commission, or (ii) the Commission on its own motion orders additional medical compensation. If the Commission determines that there is a substantial risk of the necessity of future medical compensation, the Commission shall provide by order for payment of future necessary medical compensation.

(b) The duration of limitation of medical compensation set forth in subsection (a) of this section does not apply to employees receiving benefits under G.S. 97-29(c1)."

SECTION 3. G.S. 97-29 reads as rewritten:

"§ 97-29. Rates and duration of compensation for total incapacity.

(a) ~~When~~ Except as provided by subsection (a1) of this section, when an employee qualifies for total disability, the employer shall pay or cause to be paid, as hereinafter provided



1 by subsections (b) through (d) of this section, to the injured employee a weekly compensation
2 equal to sixty-six and two-thirds percent (662/3%) of his average weekly wages, but not more
3 than the amount established annually to be effective January 1 as provided herein, nor less than
4 thirty dollars (\$30.00) per week.

5 (a1) When an employee who is a first responder qualifies for total disability, the employer
6 shall pay or cause to be paid, as hereinafter provided by subsections (b) through (d) of this section,
7 to the injured employee a weekly compensation equal to one hundred percent (100%) of the first
8 responder's average weekly wages. For the purposes of this section, the term "first responder"
9 means a person with specialized training who is among the first to arrive and provide assistance
10 at the scene of an emergency. The term includes, but is not limited to, paramedics, emergency
11 medical technicians, police officers, firefighters, and rescuers.

12 (b) When a claim is compensable pursuant to G.S. 97-18(b), paid without prejudice
13 pursuant to G.S. 97-18(d), agreed by the parties pursuant to G.S. 97-82, or when a claim has been
14 deemed compensable following a hearing pursuant to G.S. 97-84, the employee qualifies for
15 temporary total disability subject to the limitations noted herein. The employee shall not be
16 entitled to compensation pursuant to this subsection greater than 500 weeks from the date of first
17 disability unless the employee qualifies for extended compensation under subsection (c) of this
18 section.

19 ~~An~~ Except as provided by subsection (c1) of this section, an employee may qualify
20 for extended compensation in excess of the 500-week limitation on temporary total disability as
21 described in subsection (b) of this section only if (i) at the time the employee makes application
22 to the Commission to exceed the 500-week limitation on temporary total disability as described
23 in subsection (b) of this section, 425 weeks have passed since the date of first disability and (ii)
24 pursuant to the provisions of G.S. 97-84, unless agreed to by the parties, the employee shall prove
25 by a preponderance of the evidence that the employee has sustained a total loss of wage-earning
26 capacity. If an employee makes application for extended compensation pursuant to this
27 subsection and is awarded extended compensation by the Commission, the award shall not be
28 stayed pursuant to G.S. 97-85 or G.S. 97-86 until the full Commission or an appellate court
29 determines otherwise. Upon its own motion or upon the application of any party in interest, the
30 Industrial Commission may review an award for extended compensation in excess of the
31 500-week limitation on temporary total disability described in subsection (b) of this section, and,
32 on such review, may make an award ending or continuing extended compensation. When
33 reviewing a prior award to determine if the employee remains entitled to extended compensation,
34 the Commission shall determine if the employer has proven by a preponderance of the evidence
35 that the employee no longer has a total loss of wage-earning capacity. When an employee is
36 receiving full retirement benefits under section 202(a) of the Social Security Act, after attainment
37 of retirement age, as defined in section 216(l) of the Social Security Act, the employer may
38 reduce the extended compensation by one hundred percent (100%) of the employee's retirement
39 benefit. The reduction shall consist of the employee's primary benefit paid pursuant to section
40 202(a) of the Social Security Act but shall not include any dependent or auxiliary benefits paid
41 pursuant to any other section of the Social Security Act, if any, or any cost-of-living increases in
42 benefits made pursuant to section 215(i) of the Social Security Act.

43 (c1) An employee who is a first responder under this section qualifies automatically for
44 extended compensation in excess of the 500-week limitation on temporary total disability as
45 described in subsection (b) of this section if, at the time the employee makes application to the
46 Commission to exceed the 500-week limitation on temporary total disability as described in
47 subsection (b) of this section, 425 weeks have passed since the date of first disability and there
48 is evidence that the employee has sustained a total loss of wage-earning capacity.

49 (d) An injured employee may qualify for permanent total disability only if the employee
50 has one or more of the following physical or mental limitations resulting from the injury:

- 1 (1) The loss of both hands, both arms, both feet, both legs, both eyes, or any two
- 2 thereof, as provided by G.S. 97-31(17).
- 3 (2) Spinal injury involving severe paralysis of both arms, both legs, or the trunk.
- 4 (3) Severe brain or closed head injury as evidenced by severe and permanent:
- 5 a. Sensory or motor disturbances;
- 6 b. Communication disturbances;
- 7 c. Complex integrated disturbances of cerebral function; or
- 8 d. Neurological disorders.
- 9 (4) Second-degree or third-degree burns to thirty-three percent (33%) or more of
- 10 the total body surface.

11 An employee who qualifies for permanent total disability pursuant to this subsection shall be
12 entitled to compensation, including medical compensation, during the lifetime of the injured
13 employee, unless the employer shows by a preponderance of the evidence that the employee is
14 capable of returning to suitable employment as defined in G.S. 97-2(22). Provided, however, the
15 termination or suspension of compensation because the employee is capable of returning to
16 suitable employment as defined in G.S. 97-2(22) does not affect the employee's entitlement to
17 medical compensation. An employee who qualifies for permanent total disability under
18 subdivision (1) of this subsection is entitled to lifetime compensation, including medical
19 compensation, regardless of whether or not the employee has returned to work in any capacity.
20 In no other case shall an employee be eligible for lifetime compensation for permanent total
21 disability.

22 (e) An employee shall not be entitled to benefits under this section or G.S. 97-30 and
23 G.S. 97-31 at the same time.

24 (f) Where an employee can show entitlement to compensation pursuant to this section or
25 G.S. 97-30 and a specific physical impairment pursuant to G.S. 97-31, the employee shall not
26 collect benefits concurrently pursuant to both this section or G.S. 97-30 and G.S. 97-31, but
27 rather is entitled to select the statutory compensation which provides the more favorable remedy.

28 (g) The weekly compensation payment for members of the North Carolina National
29 Guard and the North Carolina State Defense Militia shall be the maximum amount established
30 annually in accordance with subsection (i) of this section per week as fixed herein. The weekly
31 compensation payment for deputy sheriffs, or those acting in the capacity of deputy sheriffs, who
32 serve upon a fee basis, shall be thirty dollars (\$30.00) a week as fixed herein.

33 (h) An officer or member of the State Highway Patrol shall not be awarded any weekly
34 compensation under the provisions of this section for the first two years of any incapacity
35 resulting from an injury by accident arising out of and in the course of the performance by him
36 of his official duties if, during such incapacity, he continues to be an officer or member of the
37 State Highway Patrol, but he shall be awarded any other benefits to which he may be entitled
38 under the provisions of this Article.

39 (i) Notwithstanding any other provision of this Article, on July 1 of each year, a
40 maximum weekly benefit amount shall be computed. The amount of this maximum weekly
41 benefit shall be derived by obtaining the average weekly insured wage, as defined in G.S. 96-1,
42 by multiplying such average weekly insured wage by 1.10, and by rounding such figure to its
43 nearest multiple of two dollars (\$2.00), and this said maximum weekly benefit shall be applicable
44 to all injuries and claims arising on and after January 1 following such computation. Such
45 maximum weekly benefit shall apply to all provisions of this Chapter and shall be adjusted July
46 1 and effective January 1 of each year as herein provided.

47 (j) If death results from the injury or occupational disease, then the employer shall pay
48 compensation in accordance with the provisions of G.S. 97-38."

49 **SECTION 4.** This act is effective when it becomes law.