

**SENATE BILL NO. 2218**

Introduced by

Senator Vedaa

Representatives D. Anderson, Louser, Thomas

1 A BILL ~~for an Act to amend and reenact subsection 1 of section 65-05-08 and section~~  
2 ~~65-05-09.3 of the North Dakota Century Code, relating to the workers' compensation disability~~  
3 ~~benefits and retirement presumption; and to repeal sections 65-05-09.4 and 65-05-09.5 of the~~  
4 ~~North Dakota Century Code, relating to workers' compensation additional benefits payable; and~~  
5 ~~to provide for application.~~ for an Act to provide for a legislative management study regarding  
6 repealing the workers' compensation retirement presumption and additional benefits payable.

7 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

8 ~~SECTION 1. AMENDMENT. Subsection 1 of section 65-05-08 of the North Dakota Century~~  
9 ~~Code is amended and reenacted as follows:~~

10 ~~1. When disability benefits are discontinued, the organization may not begin payment~~  
11 ~~again unless the injured employee files a reapplication for disability benefits on a form~~  
12 ~~supplied by the organization. In case of reapplication, the award may commence no~~  
13 ~~more than thirty days before the date of reapplication. Disability benefits must be~~  
14 ~~reinstated upon proof by the injured employee that:~~

15 ~~a. The employee has sustained a significant change in the compensable medical~~  
16 ~~condition; and~~

17 ~~b. The employee has sustained an actual wage loss caused by the significant~~  
18 ~~change in the compensable medical condition; and~~

19 ~~c. The employee has not retired or voluntarily withdrawn from the job market as~~  
20 ~~defined in section 65-05-09.3.~~

21 ~~SECTION 2. AMENDMENT. Section 65-05-09.3 of the North Dakota Century Code is~~  
22 ~~amended and reenacted as follows:~~

- 1 ~~65-05-09.3. Retirement presumption – Termination of benefits upon retirement.~~
- 2 ~~1. An employee who has retired or voluntarily withdrawn from the labor force and who, at~~
- 3 ~~that time, was not eligible to receive temporary total disability, temporary partial~~
- 4 ~~disability, or permanent total disability benefits or to receive a rehabilitation allowance~~
- 5 ~~from the organization is presumed retired from the labor market and is ineligible for~~
- 6 ~~receipt of disability benefits under this title. The presumption may be rebutted by a~~
- 7 ~~preponderance of the evidence; however, the subjective statement of an employee~~
- 8 ~~that the employee is not retired is not sufficient in itself to rebut objective evidence of~~
- 9 ~~retirement.~~
- 10 ~~2. An injured employee who begins receiving social security retirement benefits or other~~
- 11 ~~retirement benefits in lieu of social security retirement benefits or who attains~~
- 12 ~~retirement age for social security retirement benefits, unless the employee proves the~~
- 13 ~~employee is not eligible to receive social security retirement benefits or other benefits~~
- 14 ~~in lieu of social security retirement benefits, is considered retired. The organization~~
- 15 ~~may not pay any disability benefits, rehabilitation benefits, or supplementary benefits~~
- 16 ~~to an employee who is considered retired; however, the employee remains eligible for~~
- 17 ~~medical benefits, permanent partial impairment benefits, and the additional benefit~~
- 18 ~~payable under section 65-05-09.4.~~
- 19 ~~3. The organization retains liability for disability benefits, rehabilitation benefits,~~
- 20 ~~permanent partial impairment benefits, and medical benefits for an injured employee~~
- 21 ~~who is receiving social security retirement benefits or other retirement benefits in lieu~~
- 22 ~~of social security retirement benefits or who attains retirement age for social security~~
- 23 ~~retirement benefits, unless the employee is not eligible to receive social security~~
- 24 ~~retirement benefits or other benefits in lieu of social security retirement benefits, and~~
- 25 ~~who is gainfully employed and who suffers an injury arising out of and in the course of~~
- 26 ~~that employment. The organization may not pay disability or rehabilitation benefits~~
- 27 ~~under this subsection for more than three years, subject to section 65-05-09.2, for~~
- 28 ~~injuries occurring after August 1, 1997.~~
- 29 ~~4. If an employee is injured within the two years preceding the employee's presumed~~
- 30 ~~retirement date, the organization shall pay disability benefits, rehabilitation benefits, or~~
- 31 ~~a combination of both benefits for no more than two years. If the duration of disability~~

1 ~~benefits, rehabilitation benefits, or a combination of both benefits extends beyond the~~  
2 ~~presumed retirement date, the organization shall convert the benefit to an additional~~  
3 ~~benefit payable at the date the disability ends or when two years of benefits have been~~  
4 ~~paid, whichever occurs first.~~

5 ~~5. This section applies to an individual who begins receiving social security retirement~~  
6 ~~benefits or other retirement benefits in lieu of social security retirement benefits or who~~  
7 ~~attains retirement age for social security retirement benefits unless the employee~~  
8 ~~proves the employee is not eligible to receive social security retirement benefits or~~  
9 ~~other benefits in lieu of social security retirement benefits, after July 31, 1995.~~

10 ~~6. An injured employee who has received disability benefits that have been discontinued~~  
11 ~~before retirement in accordance with this section is eligible to receive disability~~  
12 ~~benefits after retirement if the injured employee meets the reapplication criteria under~~  
13 ~~subsection 1 of section 65-05-08. Disability and rehabilitation benefits received under~~  
14 ~~this subsection may not exceed three years:~~

15 ~~a. Is actively seeking employment;~~

16 ~~b. Is available for gainful employment;~~

17 ~~c. Has not rejected any job offer made by a former employer or any other bona fide~~  
18 ~~job offer made by another employer; and~~

19 ~~d. Has not provided the employer, upon written request, with written notice of a~~  
20 ~~scheduled retirement date.~~

21 ~~2. The presumption under this section does not apply to an employee who is~~  
22 ~~permanently and totally disabled.~~

23 ~~**SECTION 3. REPEAL.** Sections 65-05-09.4 and 65-05-09.5 of the North Dakota Century~~  
24 ~~Code are repealed.~~

25 ~~**SECTION 4. APPLICATION.** This Act applies to all claims regardless of date of injury.~~

26 **SECTION 1. LEGISLATIVE MANAGEMENT STUDY - WORKERS' COMPENSATION**  
27 **RETIREMENT PRESUMPTION AND ADDITIONAL BENEFITS PAYABLE.** During the 2023-24  
28 interim, the legislative management shall study the feasibility and desirability of repealing the  
29 workers' compensation retirement presumption, the additional benefits payable statutes, and  
30 the three-year cap on benefits for individuals injured in their postretirement years. The study  
31 must include an assessment of the impact of repealing the retirement presumption, the

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1 additional benefits payable statutes, and the three-year cap on benefits without retroactive  
2 application; an assessment of the potential fiscal impact of repealing the retirement presumption  
3 with retroactive application; and an examination of the number of individuals impacted by  
4 repealing the retirement presumption retroactively. The study may include input and the  
5 assistance of workforce safety and insurance. The legislative management shall report its  
6 findings and recommendations, together with any legislation necessary to implement the  
7 recommendations, to the sixty-ninth legislative assembly.