

**Sixty-first Legislative Assembly of North Dakota  
In Regular Session Commencing Tuesday, January 6, 2009**

HOUSE BILL NO. 1062  
(Legislative Council)  
(Workers' Compensation Review Committee)

AN ACT to create and enact a new section to chapter 65-05.1 of the North Dakota Century Code, relating to workers' compensation rehabilitation services pilot programs; to amend and reenact section 65-05.1-06.1 of the North Dakota Century Code, relating to expansion of workers' compensation rehabilitation services; and to provide for a report to the legislative council.

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

**SECTION 1. AMENDMENT.** Section 65-05.1-06.1 of the North Dakota Century Code is amended and reenacted as follows:

**65-05.1-06.1. Rehabilitation award.**

1. Within sixty days of receiving the final vocational consultant's report, the organization shall issue an administrative order under chapter 28-32 detailing the employee's entitlement to disability and vocational rehabilitation services.
2. If the appropriate priority option is short-term or long-term training, the vocational rehabilitation award must be within the following terms:
  - a. For the employee's lost time, and in lieu of further disability benefits, the organization shall award a rehabilitation allowance. The rehabilitation allowance must be limited to the amount and purpose specified in the award, and must be equal to the disability and dependent benefits the employee was receiving, or was entitled to receive, prior to the award.
  - b. The rehabilitation allowance must include an additional twenty-five percent when it is necessary for the employee to maintain two households, when it is necessary for the employee to maintain two households and the employee elects to commute to and from school on a daily basis rather than maintain a second household and the distance from the employee's residence to the school or training institution is at least thirty miles, or when the employee meets other criteria established by the organization by rule.
  - c. The rehabilitation allowance must be limited to one hundred four weeks except in cases of catastrophic injury, in which case additional rehabilitation benefits may be awarded in the discretion of the organization. Catastrophic injury includes:
    - (1) Paraplegia; quadriplegia; severe closed head injury; total blindness in both eyes; or amputation of an arm proximal to the wrist or a leg proximal to the ankle, caused by the compensable injury, which renders an employee permanently and totally disabled without further vocational retraining assistance; or
    - (2) Those employees the organization so designates, in its sole discretion, provided that the organization finds the employee to be permanently and totally disabled without further vocational retraining assistance. There is no appeal from an organization decision to designate, or fail to designate, an employee as catastrophically injured under this subsection.

- d. Notwithstanding the one hundred four-week limit of subdivision c to facilitate the completion of a retraining program, the organization may award a rehabilitation extension allowance that may not exceed twenty weeks.
- e. The rehabilitation award must include the cost of books, tuition, fees, and equipment, tools, or supplies required by the educational institution. The award may not exceed the cost of attending a public college or university in the state in which the employee resides, provided an equivalent program exists in the public college or university.
- ~~e.~~ f. If the employee successfully concludes the rehabilitation program, the organization may make, in its sole discretion, additional awards for actual relocation expenses to move the household to the locale where the claimant has actually located work.
- ~~f.~~ g. If the employee successfully concludes the rehabilitation program, the organization may make, in its sole discretion, an additional award, not to exceed two months' disability benefit, to assist the employee with work search.
- ~~g.~~ h. If the employee successfully concludes the rehabilitation program, the employee is not eligible for further vocational retraining or total disability benefits unless the employee establishes a significant change in medical condition attributable to the work injury which precludes the employee from performing the work for which the employee was trained, or any other work for which the employee is suited. The organization may waive this section in cases of catastrophic injury defined by subdivision c.
- ~~h.~~ i. If the employee successfully concludes the rehabilitation program, the employee remains eligible to receive partial disability benefits, as follows:
  - (1) Beginning the date at which the employee completes retraining, until the employee acquires and performs substantial gainful employment, the partial disability benefit is sixty-six and two-thirds percent of the difference between the injured employee's average weekly wages before the injury, and the employee's wage-earning capacity after retraining, as measured by the average wage in the employee's occupation, according to criteria established by job service North Dakota in its statewide labor market survey, or such other criteria the organization, in its sole discretion, deems appropriate. The average weekly wage must be determined on the date the employee completes retraining. The benefit continues until the employee acquires substantial gainful employment.
  - (2) Beginning the date at which the employee acquires substantial gainful employment, the partial disability benefit is sixty-six and two-thirds percent of the difference between the injured employee's weekly wages before the injury, and the employee's wage-earning capacity after retraining, as determined under paragraph 1, or the employee's actual postinjury wage earnings, whichever is higher.
  - (3) The partial disability benefit payable under paragraphs 1 and 2 may not exceed the limitation on partial disability benefits contained in section 65-05-10.
  - (4) The partial disability benefits paid under paragraphs 1 and 2 may not together exceed one year's duration.
  - (5) For purposes of paragraphs 1 and 2, "substantial gainful employment" means full-time bona fide work, for a remuneration, other than make-work. "Full-time work" means employment for twenty-eight or more hours per week, on average.

- (6) The organization may waive the one-year limit on the duration of partial disability benefits, in cases of catastrophic injury under subdivision c.
3. If the appropriate priority option is return to the same or modified position, or to a related position, the organization shall determine whether the employee is eligible to receive partial disability benefits pursuant to section 65-05-10. In addition, the organization, when appropriate, shall make an additional award for actual relocation expenses to move the household to the locale where the claimant has actually located work.
4. If the appropriate priority option is subdivision e or f of subsection 4 of section 65-05.1-01 or subsection 6 of section 65-05.1-01, to assist with work search the organization may award an additional award. The additional award under this subsection is awarded at the organization's sole discretion and may not exceed an amount equal to two months of the employee's total disability benefits calculated under section 65-05-09.

**SECTION 2.** A new section to chapter 65-05.1 of the North Dakota Century Code is created and enacted as follows:

**Rehabilitation services pilot programs - Reports - Data collection.**

1. The organization shall implement a system of pilot programs to allow the organization to assess alternative methods of providing rehabilitation services. A pilot program may address one or more of the organization's comprehensive rehabilitation services, including vocational, medical, psychological, economic, and social rehabilitation services. The goal of a pilot program must be to improve the outcome of the rehabilitation services offered by the organization to assist the employee in making adjustments necessitated from the employee's injury and to improve the effectiveness of vocational rehabilitation services in returning an employee to substantial gainful employment. Notwithstanding laws to the contrary, a pilot program may address a broad range of approaches, including collaborative efforts between the organization and the employee through which there are variances from the rehabilitation services hierarchy; return-to-work trial periods during which cash benefits are suspended; intensive job search assistance; recognition of and focused services for injured employees who are at risk; and coordination of services of public and private entities. If a pilot program utilizes coordination of services of other state agencies, such as job service North Dakota, department of human services, North Dakota university system, or department of public instruction, the organization shall consult with the state agency in establishing the relevant portions of the pilot program and the state agency shall cooperate with the organization in implementing the pilot program.
2. Each pilot program must include a cost-benefit analysis; a strengths, weaknesses, opportunities, and threats analysis; and employer and employee satisfaction information. The organization shall include in its annual report to the workers' compensation review committee under section 54-35-22:
  - a. Preliminary reports on future pilot programs;
  - b. Status reports on current pilot programs; and
  - c. Final reports on completed pilot programs, including recommendations and proposed legislative changes necessary to implement recommendations.
3. The organization shall collect data regarding the status of claims that receive rehabilitation services. The data must include:
  - a. The stage of rehabilitation services at which closure occurs;
  - b. The reason for the closure; and

- c. Followup data to determine the effectiveness of job searches and returns to work, including postinjury earnings.

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Speaker of the House

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President of the Senate

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Chief Clerk of the House

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Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-first Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1062.

House Vote:      Yeas    94      Nays    0      Absent    0

Senate Vote:    Yeas    44      Nays    0      Absent    3

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Chief Clerk of the House

Received by the Governor at \_\_\_\_\_ M. on \_\_\_\_\_, 2009.

Approved at \_\_\_\_\_ M. on \_\_\_\_\_, 2009.

\_\_\_\_\_  
Governor

Filed in this office this \_\_\_\_\_ day of \_\_\_\_\_, 2009,  
at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

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Secretary of State