

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

HOUSE BILL NO. 1064  
(Legislative Council)  
(Workers' Compensation Review Committee)

AN ACT to amend and reenact sections 65-05-09, 65-05.2-01, and 65-05.2-02 of the North Dakota Century Code, relating to cost-of-living adjustments for workers' compensation total disability benefits; to provide for application; to provide an effective date; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 65-05-09 of the North Dakota Century Code is amended and reenacted as follows:

**65-05-09. Temporary total or permanent total disability - Weekly and aggregate benefit.** If an injury causes temporary total or permanent total disability, the fund shall pay to the disabled employee during that disability a weekly benefit equal to sixty-six and two-thirds percent of the gross weekly wage of the employee, subject to a minimum of sixty percent and a maximum of one hundred ten percent of the average weekly wage in the state. If an employee is disabled due to an injury, that employee's benefits will be based upon the employee's wage and the organization benefit rates in effect on the date of first disability.

1. If an employee suffers disability but is able to return to employment for a period of ~~twelve~~ three consecutive calendar months or more, that employee's benefits will be based upon the wage in effect at the time of the recurrence of the disability or upon the wage that employee received prior to the injury, whichever is higher. The organization benefit rates are those in effect at the time of that recurrence.
2. The disability benefit or the combined disability benefit and dependency award may not exceed the weekly wage of the employee after deductions for social security and federal income tax.
3. When an employee is permanently and totally disabled, must be maintained in a nursing home or similar facility, and has no dependent parent, spouse, or children, as much of that employee's weekly benefit as is necessary may be used by the organization to help defray the cost of the nursing home care.

**SECTION 2. AMENDMENT.** Section 65-05.2-01 of the North Dakota Century Code is amended and reenacted as follows:

**65-05.2-01. Eligibility for supplementary benefits.**

1. For claims filed before January 1, 2006, a workforce safety and insurance claimant who is receiving temporary total disability benefits, permanent total disability benefits, or death benefits, and who has been receiving disability or death benefits for a period of ~~seven~~ three consecutive years is eligible for supplementary benefits. Eligibility for supplementary benefits under this subsection lasts as long as the claimant is entitled to temporary total disability benefits, permanent total disability benefits, or death benefits.
2. For claims filed after December 31, 2005, a workforce safety and insurance claimant who is receiving permanent total disability benefits or death benefits and who has been receiving disability or death benefits for a period of at least three consecutive years is eligible for supplementary benefits. Eligibility for supplementary benefits under this

subsection lasts as long as the claimant is entitled to permanent total disability benefits or death benefits.

**SECTION 3. AMENDMENT.** Section 65-05.2-02 of the North Dakota Century Code is amended and reenacted as follows:

**65-05.2-02. Supplementary benefits - Amount.**

1. A claimant whose weekly benefit rate is less than sixty percent of the state's average weekly wage, who is eligible for supplementary benefits and who is receiving temporary total disability benefits, permanent total disability benefits, or death benefits regardless of the date of death, is entitled to receive a weekly supplementary benefit that, when added to the weekly temporary total disability benefit, permanent total disability benefit, or death benefit, equals the ratio of that claimant's weekly benefit to the state's average weekly wage on the date of the claimant's first disability, times the state's average weekly wage in effect at the date eligibility for supplementary benefits is achieved. The organization shall determine on an annual basis, for a claimant who receives a supplementary benefit under this subsection, supplementary benefit increases equal to a percentage of that claimant's combined weekly benefit. That percentage is equal to the annual percentage change in the state's average weekly wage. For purposes of this section, combined weekly benefit means the weekly benefit for which the claimant is eligible before any applicable social security offset plus the amount of weekly supplementary benefits for which the claimant is eligible.
2. A claimant whose weekly benefit rate is greater than or equal to sixty percent of the state's average weekly wage, who is eligible for supplementary benefits and who is receiving temporary total disability benefits, permanent total disability benefits, or death benefits regardless of the date of death, is entitled to receive a weekly supplementary benefit equal to a percentage of that claimant's weekly benefit. That percentage is equal to the annual percentage change in the state's average weekly wage. The organization shall determine on an annual basis, for that claimant, supplementary benefit increases equal to a percentage of that claimant's combined weekly benefit. That percentage is equal to the annual percentage change in the state's average weekly wage.
3. An annual recalculation of supplementary benefits may not result in a rate less than the previous rate. If a claim has been accepted on an aggravation basis under section 65-05-15 and the claimant is eligible for supplementary benefits, the claimant's supplementary benefit must be proportionally calculated.

**SECTION 4. APPLICATION.** Sections 2 and 3 of this Act apply to temporary total disability recipients or permanent total disability recipients who filed a claim before January 1, 2006, and whose first date of eligibility for supplementary benefits under this Act occurs after June 30, 2009.

**SECTION 5. EFFECTIVE DATE.** This Act becomes effective on July 1, 2009.

**SECTION 6. EMERGENCY.** This Act is declared to be an emergency measure.

\_\_\_\_\_  
Speaker of the House

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Chief Clerk of the House

\_\_\_\_\_  
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. 1064 and that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote:      Yeas          94              Nays          0              Absent      0

\_\_\_\_\_  
Speaker of the House

\_\_\_\_\_  
Chief Clerk of the House

This certifies that two-thirds of the members-elect of the Senate voted in favor of said law.

Vote:      Yeas          47              Nays          0              Absent      0

\_\_\_\_\_  
President of the Senate

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Secretary of the Senate

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.

\_\_\_\_\_  
Secretary of State