

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

HOUSE BILL NO. 1101
(Industry, Business and Labor Committee)
(At the request of Workforce Safety and Insurance)

AN ACT to amend and reenact subsection 10 of section 65-05-08, sections 65-05-08.2, 65-05-09, and 65-05-10, subsection 4 of section 65-05-15, and sections 65-05-17 and 65-05-26 of the North Dakota Century Code, relating to workers' compensation dependency allowances, preacceptance disability benefits, maximum disability benefits, travel and other reimbursement, death benefits, and burial expenses; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 10 of section 65-05-08 of the North Dakota Century Code is amended and reenacted as follows:

10. The organization shall pay to an employee receiving disability benefits a dependency allowance for each child of the employee at the rate of ten fifteen dollars per week per child. ~~Effective July 1, 1989, this rate must be paid to each eligible employee regardless of the date of injury.~~

SECTION 2. AMENDMENT. Section 65-05-08.2 of the North Dakota Century Code is amended and reenacted as follows:

65-05-08.2. Preacceptance disability benefits. If, after receiving a claim for benefits, the organization determines that more information is needed to process the claim, but that the information in the file indicates the injured employee is more likely than not entitled to disability benefits, the organization may pay preacceptance disability benefits equal to the ~~minimum~~ weekly disability benefit allowed under section 65-05-09. The organization may continue to pay preacceptance disability benefits to the employee during the period the claim is pending, unless the injured employee is not cooperating with requests from the organization for additional information needed to process the claim. The organization may not pay more than sixty days of preacceptance benefits. The organization may only recover a payment made to an injured employee under this section if that recovery is allowed under section 65-05-33. There is no appeal from an organization decision not to pay preacceptance disability benefits.

SECTION 3. 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~~ twenty-five 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 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 4. AMENDMENT. Section 65-05-10 of the North Dakota Century Code is amended and reenacted as follows:

65-05-10. Partial disability - Weekly benefit. If the injury causes temporary partial disability resulting in decrease of earning capacity, the 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 the injury in the same or another employment. Partial disability benefits are subject to a maximum of one hundred ~~ten~~ twenty-five percent of the average weekly wage in the state. The combined partial disability benefits, dependency allowance, and postinjury wage-earning capacity may not exceed the preinjury weekly wage of the employee after deductions for social security and federal income tax.

1. The benefits provided by this section are available to any otherwise eligible worker, providing the loss of earning capacity occurs after July 1, 1989. Partial loss of earning capacity occurring prior to July 1, 1989, must be paid at a rate to be fixed by the organization.
2. Benefits must be paid during the continuance of partial disability, not to exceed a period of five years. The organization may waive the five-year limit on the duration of partial disability benefits in cases of catastrophic injury as defined in section 65-05.1-06.1 or when the injured worker is working and has long-term restrictions verified by clear and convincing objective medical and vocational evidence that limits the injured worker to working less than twenty-eight hours per week because of the compensable work injury. This subsection is effective for partial loss of earnings capacity occurring after June 30, 1991.
3. The employee's earnings capacity may be established by expert vocational evidence of a capacity to earn in the statewide job pool where the worker lives. Actual postinjury earnings are presumptive evidence of earnings capacity if the job employs the employee to full work capacity in terms of hours worked per week, and if the job is in a field related to the employee's transferable skills. The presumption may be rebutted by competent evidence from a vocational expert that the employee's actual earnings do not fairly reflect the employee's earnings capacity in the statewide job pool, considering the employee's capabilities, education, experience, and skills.

SECTION 5. AMENDMENT. Subsection 4 of section 65-05-15 of the North Dakota Century Code is amended and reenacted as follows:

4. When an injured worker is entitled to benefits on an aggravation basis, the organization shall still pay costs of vocational rehabilitation, burial expenses under section 65-05-26, travel, other personal reimbursement for seeking and obtaining medical care under section 65-05-28, and dependency allowance on a one hundred percent basis.

SECTION 6. AMENDMENT. Section 65-05-17 of the North Dakota Century Code is amended and reenacted as follows:

65-05-17. Weekly compensation allowances for death claims. If death results from an injury under the conditions specified in section 65-05-16, the fund shall pay to the following persons, for the periods specified:

1. To the decedent's spouse or to the guardian of the children of the decedent, an amount equal to the benefit rate for total disability under section 65-05-09. All recipients of benefits under this subsection are eligible for benefits at the rate provided in this section, regardless of the date of death of the deceased employee. These benefits continue until the death of the decedent's spouse; or, if the surviving children of the decedent are under the care of a guardian, until those children no longer meet the definition of "child" in this title. If there is more than one guardian for the children who survive the decedent, the organization shall divide the death benefits equally among the children and shall pay benefits to the children's guardians. Total death benefits, including supplementary benefits, paid on any one claim may not exceed ~~two~~ three hundred ~~fifty~~ thousand dollars.
2. To each child of the deceased employee, the amount of ~~ten~~ fifteen dollars per week. This rate must be paid to each eligible child regardless of the date of death. The organization may pay the benefit directly to the child of the deceased employee or to the surviving parent or guardian of the child. Dependency allowance may not be reduced by the percentage of aggravation.
3. In addition to the payments provided under subsections 1 and 2, a payment in the sum of ~~twelve~~ two thousand five hundred dollars to the decedent's spouse or the guardian of the children of the decedent and ~~four~~ eight hundred dollars for each dependent child. If there is more than one guardian of the decedent's surviving children, the ~~twelve~~ two thousand five hundred dollars must be divided equally among the children and paid to the children's guardians.

SECTION 7. AMENDMENT. Section 65-05-26 of the North Dakota Century Code is amended and reenacted as follows:

65-05-26. Burial expenses. If death benefits are payable under section 65-05-16, the fund shall pay to the facility handling the funeral arrangements of the deceased employee burial expenses not to exceed ~~six~~ ten thousand ~~five hundred~~ dollars.

SECTION 8. APPLICATION. The increase in section 1 of this Act applies to employees eligible for a dependency allowance on or after the effective date of this Act and applies only to dependency allowance payments made on or after the effective date of this Act. The amendment in section 2 of this Act applies to employees who have incurred claimed injuries on or after the effective date of this Act. The increases in the maximums in section 3 and section 4 of this Act apply to employees who have incurred compensable injuries on or after the effective date of this Act. The amendment in section 5 of this Act applies to expenses incurred by employees on or after the effective date of this Act. The increases in section 6 and section 7 of this Act apply to employee deaths resulting from injuries that occur on or after the effective date of this Act.

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. 1101.

House Vote: Yeas 94 Nays 0 Absent 0

Senate Vote: Yeas 47 Nays 0 Absent 0

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.

Secretary of State