

Sixty-ninth  
Legislative Assembly  
of North Dakota

**SENATE BILL NO. 2094**

Introduced by

Senator Mathern

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; to repeal sections 65-05-09.4 and 65-05-09.5 of the North  
4 Dakota Century Code, relating to workers' compensation additional benefits payable; and to  
5 provide for application.

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

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

- 9 1. When disability benefits are discontinued, the organization may not begin payment  
10 again unless the injured employee files a reapplication for disability benefits on a form  
11 supplied by the organization. In case of reapplication, the award may commence no  
12 more than thirty days before the date of reapplication. Disability benefits must be  
13 reinstated upon proof by the injured employee that:
- 14 a. The employee has sustained a significant change in the compensable medical  
15 condition; and
  - 16 b. The employee has sustained an actual wage loss caused by the significant  
17 change in the compensable medical condition; and
  - 18 c. ~~The employee has not retired or voluntarily withdrawn from the job market as~~  
19 ~~defined in section 65-05-09.3.~~

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

22 **65-05-09.3. Retirement presumption –~~Termination of benefits upon retirement.~~**

- 23 1. An employee who has retired or voluntarily withdrawn from the labor force ~~and who, at~~  
24 ~~that time, was not eligible to receive temporary total disability, temporary partial~~

1           disability, or permanent total disability benefits or to receive a rehabilitation allowance  
2           from the organization is presumed retired from the labor market and is ineligible for  
3           receipt of disability benefits under this title. The presumption may be rebutted by a  
4           preponderance of the evidence; however, the subjective statement of an employee  
5           that the employee is not retired is not sufficient in itself to rebut objective evidence of  
6           retirement.

7           2. ~~An injured employee who begins receiving social security retirement benefits or other~~  
8           ~~retirement benefits in lieu of social security retirement benefits or who attains~~  
9           ~~retirement age for social security retirement benefits, unless the employee proves the~~  
10          ~~employee is not eligible to receive social security retirement benefits or other benefits~~  
11          ~~in lieu of social security retirement benefits, is considered retired. The organization~~  
12          ~~may not pay any disability benefits, rehabilitation benefits, or supplementary benefits~~  
13          ~~to an employee who is considered retired; however, the employee remains eligible for~~  
14          ~~medical benefits, permanent partial impairment benefits, and the additional benefit~~  
15          ~~payable under section 65-05-09.4.~~

16          3. ~~The organization retains liability for disability benefits, rehabilitation benefits,~~  
17          ~~permanent partial impairment benefits, and medical benefits for an injured employee~~  
18          ~~who is receiving social security retirement benefits or other retirement benefits in lieu~~  
19          ~~of social security retirement benefits or who attains retirement age for social security~~  
20          ~~retirement benefits, unless the employee is not eligible to receive social security~~  
21          ~~retirement benefits or other benefits in lieu of social security retirement benefits, and~~  
22          ~~who is gainfully employed and who suffers an injury arising out of and in the course of~~  
23          ~~that employment. The organization may not pay disability or rehabilitation benefits~~  
24          ~~under this subsection for more than three years, subject to section 65-05-09.2, for~~  
25          ~~injuries occurring after August 1, 1997.~~

26          4. ~~If an employee is injured within the two years preceding the employee's presumed~~  
27          ~~retirement date, the organization shall pay disability benefits, rehabilitation benefits, or~~  
28          ~~a combination of both benefits for no more than two years. If the duration of disability~~  
29          ~~benefits, rehabilitation benefits, or a combination of both benefits extends beyond the~~  
30          ~~presumed retirement date, the organization shall convert the benefit to an additional~~

benefit payable at the date the disability ends or when two years of benefits have been paid, whichever occurs first.

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

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

a. Is actively seeking employment;

b. Is available for gainful employment;

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

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

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

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

**SECTION 4. APPLICATION.** This Act applies to all workers' compensation claims regardless of date of injury.