

GENERAL ASSEMBLY OF NORTH CAROLINA  
1987 SESSION

CHAPTER 729  
SENATE BILL 172

AN ACT TO AMEND THE WORKERS' COMPENSATION ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 97-2(1) reads as rewritten:

"(1) Employment. The term 'employment' includes employment by the State and all political subdivisions thereof, and all public and quasi-public corporations therein and all private employments in which ~~four~~ three or more employees are regularly employed in the same business or establishment or in which one or more employees are employed in activities which involve the use or presence of radiation, except agriculture and domestic services, unless 10 or more full-time nonseasonal agricultural workers are regularly employed by the employer and an individual sawmill and logging operator with less than 10 employees, who saws and logs less than 60 days in any six consecutive months and whose principal business is unrelated to sawmilling or logging."

Sec. 2. G.S. 97-2(18) reads as rewritten:

"(18) Hernia. In all claims for compensation for hernia or rupture, resulting from injury by accident arising out of and in the course of the employee's employment, it must be definitely proven to the satisfaction of the Industrial Commission:

- a. That there was an injury resulting in hernia or rupture.
- b. That the hernia or rupture appeared suddenly.
- c. ~~That it was accompanied by pain.~~
- d. That the hernia or rupture immediately followed an accident. Provided, however, a hernia shall be compensable under this Article if it arises out of and in the course of the employment and is the direct result of a specific traumatic incident of the work assigned.
- e. That the hernia or rupture did not exist prior to the accident for which compensation is claimed.

All hernia or rupture, inguinal, femoral or otherwise, so proven to be the result of an injury by accident arising out of and in the course of employment, shall be treated in a surgical manner by a radical operation. If death results from such operation, the death shall be considered as a result of the injury, and compensation paid in accordance with the provisions of G.S. 97-38. In nonfatal cases, if it is shown by special examination, as provided in G.S. 97-27, that the injured employee has a disability resulting after the operation, compensation for such disability shall be paid in accordance with the provisions of this Article.

In case the injured employee refuses to undergo the radical operation for the cure of said hernia or rupture, no compensation will be allowed during the time such refusal continues. If, however, it is shown that the employee has some chronic disease, or is otherwise in such physical condition that the Commission considers it unsafe for the employee to undergo said operation, the employee shall be paid compensation in accordance with the provisions of this Article."

Sec. 3. G.S. 97-13(b) reads as rewritten:

"(b) Casual Employment, Domestic Servants, Farm Laborers, Federal Government, Employer of Less than ~~Four~~ Three Employees. This Article shall not apply to casual employees, farm laborers when fewer than 10 full-time nonseasonal farm laborers are regularly employed by the same employer, federal government employees in North Carolina, and domestic servants, nor to employees of such persons, nor to any person, firm or private corporation that has regularly in service less than ~~four~~ three employees in the same business within this State, except that any employer without regard to number of employees, including an employer of domestic servants, farm laborers, or one who previously had exempted himself, who has purchased workers' compensation insurance to cover his compensation liability shall be conclusively presumed during life of the policy to have accepted the provisions of this Article from the effective date of said policy and his employees shall be so bound unless waived as provided in this Article; provided however, that this Article shall apply to all employers of one or more employees who are employed in activities which involve the use or presence of radiation."

Sec. 4. G.S. 97-19 reads as rewritten:

**"§ 97-19. Liability of principal contractors; certificate that subcontractor has complied with law; right to recover compensation of those who would have been liable; order of liability.**—Any principal contractor, intermediate contractor, or subcontractor who shall sublet any contract for the performance of any work without requiring from such subcontractor or obtaining from the Industrial Commission a certificate, issued by the Industrial Commission, stating that such subcontractor has complied with G.S. 97-93 hereof, shall be liable, irrespective of whether such subcontractor has regularly in service less than four employees in the same business within this State, to the same extent as such subcontractor would be if he were subject to the provisions of this Article for the payment of compensation and other benefits under this Article on account of the injury or death of any such subcontractor, any principal or partner of such subcontractor or any employee of such subcontractor due to an accident arising out of and in the course of the performance of the work covered by such subcontract. If the principal contractor, intermediate contractor or subcontractor shall obtain such certificate at the time of subletting such contract to subcontractor, he shall not thereafter be held liable to any such subcontractor, any principal or partner of such subcontractor, or any employee of such subcontractor for compensation or other benefits under this Article. The Industrial Commission, upon demand shall furnish such certificate, and may charge therefor the cost thereof, not to exceed twenty-five cents (25¢).

Any principal contractor, intermediate contractor, or subcontractor paying compensation or other benefits under this Article, under the foregoing provisions of this section, may recover the amount so paid from any person, persons, or corporation who independently of such provision, would have been liable for the payment thereof.

Every claim filed with the Industrial Commission under this section shall be instituted against all parties liable for payment, and said Commission, in its award, shall fix the order in which said parties shall be exhausted, beginning with the immediate employer.

The principal or owner may insure any or all of his contractors and their employees in a blanket policy, and when so insured such contractor's employees will be entitled to compensation benefits regardless of whether the relationship of employer and employee exists between the principal and the contractor."

Sec. 5. G.S. 97-28 reads as rewritten:

"§ 97-28. **Seven-day waiting period; exceptions.**—No compensation, as defined in G.S. 97-2(11), shall be allowed for the first seven calendar days of disability resulting from an injury, except the benefits provided for in G.S. 97-25. Provided however, that in the case the injury results in disability of more than ~~28~~21 days, the compensation shall be allowed from the date of the disability. Nothing in this section shall prevent an employer from allowing an employee to use paid sick leave, vacation or annual leave, or disability benefits provided directly by the employer during the first seven calendar days of disability. (1929, c. 120, s. 28; 1983, c. 599.)"

Sec. 6. G.S. 97-29 reads as rewritten:

"§ 97-29. **Compensation rates for total incapacity.**—Except as hereinafter otherwise provided, where the incapacity for work resulting from the injury is total, the employer shall pay or cause to be paid, as hereinafter provided, to the injured employee during such total disability a weekly compensation equal to sixty-six and two-thirds percent (66 2/3%) of his average weekly wages, but not more than the amount established annually to be effective October 1 as provided herein, nor less than thirty dollars (\$30.00) per week.

In cases of total and permanent disability, compensation, including reasonable and necessary nursing services, medicines, sick travel, medical, hospital, and other treatment or care of rehabilitative services shall be paid for by the employer during the lifetime of the injured employee. If death results from the injury then the employer shall pay compensation in accordance with the provisions of G.S. 97-38.

The weekly compensation payment for members of the North Carolina national guard and the North Carolina State guard shall be the maximum amount established annually in accordance with the last paragraph of this section per week as fixed herein. The weekly compensation payment for deputy sheriffs, or those acting in the capacity of deputy sheriffs, who serve upon a fee basis, shall be thirty dollars (\$30.00) a week as fixed herein.

An officer or member of the State Highway Patrol shall not be awarded any weekly compensation under the provisions of this section for the first two years of any incapacity resulting from an injury by accident arising out of and in the course of the performance by him of his official duties if, during such incapacity, he continues to be

an officer or member of the State Highway Patrol, but he shall be awarded any other benefits to which he may be entitled under the provisions of this Article.

Notwithstanding any other provision of this Article, beginning August 1, 1975, and on July 1 of each year thereafter, a maximum weekly benefit amount shall be computed. The amount of this maximum weekly benefit shall be derived by obtaining the average weekly insured wage in accordance with G.S. 96-8(22), by multiplying such average weekly insured wage by 1.10, and by rounding such figure to its nearest multiple of two dollars (\$2.00), and this said maximum weekly benefit shall be applicable to all injuries and claims arising on and after January 1 following such computation. Such maximum weekly benefit shall apply to all provisions of this Chapter effective August 1, 1975, and shall be adjusted July 1 and effective January 1 of each year thereafter as herein provided."

Sec. 7. G.S. 97-31(21) reads as rewritten:

"(21) In case of serious facial or head disfigurement, the Industrial Commission shall award proper and equitable compensation not to exceed ~~ten thousand dollars (\$10,000)~~ twenty thousand dollars (\$20,000). In case of enucleation where an artificial eye cannot be fitted and used, the Industrial Commission may award compensation as for serious facial disfigurement."

Sec. 8. G.S. 97-31(24) reads as rewritten:

"(24) In case of the loss of or permanent injury to any important external or internal organ or part of the body for which no compensation is payable under any other subdivision of this section, the Industrial Commission may award proper and equitable compensation not to exceed ~~ten thousand dollars (\$10,000)~~ twenty thousand dollars (\$20,000)."

Sec. 9. G.S. 97-38 reads as rewritten:

**"§ 97-38. Where death results proximately from the accident compensable injury or occupational disease; dependents; burial expenses; compensation to aliens; election by partial dependents.**—If death results proximately from ~~the accident and within two years thereafter, or while total disability still continues and within six years after the accident, or while total disability still continues and within two years of the final determination of total disability, whichever is later,~~ a compensable injury or occupational disease and within six years thereafter, or within two years of the final determination of disability, whichever is later, the employer shall pay or cause to be paid, subject to the provisions of other sections of this Article, weekly payments of compensation equal to sixty-six and two-thirds percent (66 2/3%) of the average weekly wages of the deceased employee at the time of the accident, but not more than the amount established annually to be effective October 1 as provided in G.S. 97-29, nor less than thirty dollars (\$30.00), per week, and burial expenses not exceeding ~~one thousand dollars (\$1,000)~~ two thousand dollars (\$2,000), to the person or persons entitled thereto as follows:

(1) Persons wholly dependent for support upon the earnings of the deceased employee at the time of the accident shall be entitled to receive the entire compensation payable share and share alike to the exclusion of all other persons. If there be only one

person wholly dependent, then that person shall receive the entire compensation payable.

(2) If there is no person wholly dependent, then any person partially dependent for support upon the earnings of the deceased employee at the time of the accident shall be entitled to receive a weekly payment of compensation computed as hereinabove provided, but such weekly payment shall be the same proportion of the weekly compensation provided for a whole dependent as the amount annually contributed by the deceased employee to the support of such partial dependent bears to the annual earnings of the deceased at the time of the accident.

(3) If there is no person wholly dependent, and the person or all persons partially dependent is or are within the classes of persons defined as 'next of kin' in G.S. 97-40, whether or not such persons or such classes of persons are of kin to the deceased employee in equal degree, and all so elect, he or they may take, share and share alike, the commuted value of the amount provided for whole dependents in (1) above instead of the proportional payment provided for partial dependents in (2) above; provided, that the election herein provided may be exercised on behalf of any infant partial dependent by a duly qualified guardian; provided, further, that the Industrial Commission may, in its discretion, permit a parent or person standing **in loco parentis** to such infant to exercise such option in its behalf, the award to be payable only to a duly qualified guardian except as in this Article otherwise provided; and provided, further, that if such election is exercised by or on behalf of more than one person, then they shall take the commuted amount in equal shares.

When weekly payments have been made to an injured employee before his death, the compensation to dependents shall begin from the date of the last of such payments. Compensation payments due on account of death shall be paid for a period of 400 weeks from the date of the death of the employee; provided, however, after said 400-week period in case of a widow or widower who is unable to support herself or himself because of physical or mental disability as of the date of death of the employee, compensation payments shall continue during her or his lifetime or until remarriage and compensation payments due a dependent child shall be continued until such child reaches the age of 18.

Compensation payable under this Article to aliens not residents (or about to become nonresidents) of the United States or Canada, shall be the same in amount as provided for residents, except that dependents in any foreign country except Canada shall be limited to surviving wife and child or children, or if there be no surviving wife or child or children, to the surviving father or mother whom the employee has supported, either in whole or in part, for a period of one year prior to the date of the injury; provided, that the Commission may, in its discretion, or, upon application of the employer or insurance carrier shall commute all future installments of compensation to be paid to such aliens to their present value and payment of one half of such commuted amount to such aliens shall fully acquit the employer and the insurance carrier.

Sec. 10. G.S. 97-40 reads as rewritten:

**"§ 97-40. Commutation and payment of compensation in absence of dependents; 'next of kin' defined; commutation and distribution of compensation to partially**

**dependent next of kin; payment in absence of both dependents and next of kin.**— Subject to the provisions of G.S. 97-38, if the deceased employee leaves neither whole nor partial dependents, then the compensation which would be payable under G.S. 97-38 to whole dependents shall be commuted to its present value and paid in a lump sum to the next of kin as herein defined. For purposes of this section and G.S. 97-38, 'next of kin' shall include only child, father, mother, brother or sister of the deceased employee, including adult children or adult brothers or adult sisters of the deceased, but excluding a parent who has willfully abandoned the care and maintenance of his or her child and who has not resumed its care and maintenance at least one year prior to the first occurring of the majority or death of the child and continued its care and maintenance until its death or majority. For all such next of kin who are neither wholly nor partially dependent upon the deceased employee and who take under this section, the order of priority among them shall be governed by the general law applicable to the distribution of the personal estate of persons dying intestate. In the event of exclusion of a parent based on abandonment, the claim for compensation benefits shall be treated as though the abandoning parent had predeceased the employee. For all such next of kin who were also partially dependent on the deceased employee but who exercise the election provided for partial dependents by G.S. 97-38, the general law applicable to the distribution of the personal estate of persons dying intestate shall not apply and such person or persons upon the exercise of such election, shall be entitled, share and share alike, to the compensation provided in G.S. 97-38 for whole dependents commuted to its present value and paid in a lump sum.

If the deceased employee leaves neither whole dependents, partial dependents, nor next of kin as hereinabove defined, then no compensation shall be due or payable on account of the death of the deceased employee, except that the employer shall pay or cause to be paid the burial expenses of the deceased employee not exceeding ~~one thousand dollars (\$1,000)~~ two thousand dollars (\$2,000) to the person or persons entitled thereto."

Sec. 11. G.S. 97-53(28)e. reads as rewritten:

"e. In the evaluation of occupational hearing loss, only the hearing levels at the frequencies of 500, 1,000 ~~and 2,000~~, 2,000, and 3,000 cycles per second shall be considered. Hearing losses for frequencies below 500 and above ~~2,000~~ 3,000 cycles per second are not to be considered as constituting compensable hearing disability."

Sec. 12. G.S. 97-53(23)g. reads as rewritten:

"g. The percentage of hearing loss shall be calculated as the average, in decibels, of the thresholds of hearing for the frequencies of ~~500, 1,000 and 2,000~~ 500, 1,000, 2,000, and 3,000 cycles per second. Pure tone air conduction audiometric instruments, properly calibrated according to accepted national standards such as American Standards Association, Inc., (ASA), International Standards Organization (ISO), or American National Standards Institute, Inc., (ANSI), shall be used for measuring hearing loss. If more than one audiogram is taken, the audiogram having the lowest threshold will be used to calculate occupational hearing loss. If the losses of hearing average 15 decibels (26 db if ANSI or ISO) or less in the three frequencies, such losses of hearing shall not constitute any compensable hearing disability. If the losses of hearing average 82

decibels (93 db if ANSI or ISO) or more in the three frequencies, then the same shall constitute and be total or one hundred percent (100%) compensable hearing loss. In measuring hearing impairment, the lowest measured losses in each of the three frequencies shall be added together and divided by three to determine the average decibel loss. For each decibel of loss exceeding 15 decibels (26 db if ANSI or ISO) an allowance of one and one-half percent (1 1/2%) shall be made up to the maximum of one hundred percent (100%) which is reached at 82 decibels (93 db if ANSI or ISO). In determining the binaural percentage of loss, the percentage of impairment in the better ear shall be multiplied by five. The resulting figure shall be added to the percentage of impairment in the poorer ear, and the sum of the two divided by six. The final percentage shall represent the binaural hearing impairment."

Sec. 13. G.S. 97-58 reads as rewritten:

**"§ 97-58. Claims for certain diseases restricted; Time limit for filing claims.**—~~(a) Except as otherwise provided in G.S. 97-61.6, an employer shall not be liable for any compensation for asbestosis unless disablement or death results within 10 years after the last exposure to that disease, or, in case of death, unless death follows continuous disablement from such disease, commencing within the period of 10 years limited herein, and for which compensation has been paid or awarded or timely claim made. An employer shall not be liable for any compensation for lead poisoning unless disablement or death results within two years after the last exposure to that disease, or, in case of death, unless death follows continuous disablement from such disease, commencing within the period of two years limited herein, and for which compensation has been paid or awarded or timely claim made.~~

(b) The report and notice to the employer as required by G.S. 97-22 shall apply in all cases of occupational disease except in case of asbestosis, silicosis, or lead poisoning. The time of notice of an occupational disease shall run from the date that the employee has been advised by competent medical authority that he has same.

(c) The right to compensation for occupational disease shall be barred unless a claim be filed with the Industrial Commission within two years after death, disability, or disablement as the case may be. Provided, however, that the right to compensation for radiation injury, disability or death shall be barred unless a claim is filed within two years after the date upon which the employee first suffered incapacity from the exposure to radiation and either knew or in the exercise of reasonable diligence should have known that the occupational disease was caused by his present or prior employment."

Sec. 14. G.S. 97-66 reads as rewritten:

**"§ 97-66. Claim where benefits are discontinued.**—Where compensation payments have been made and discontinued, and further compensation is claimed, ~~whether for disablement, disability or death from lead poisoning,~~ the claim for further compensation shall be made within two years after the last payment, ~~but in all other cases of occupational disease claims for further compensation shall be made within one year after the last payment,~~ in all cases of occupational disease, provided, that claims for further compensation for asbestosis or silicosis shall be governed by the final award as set forth in G.S. 97-61.6."

Sec. 15. G.S. 97-84 reads as rewritten:

**"§ 97-84. Determination of disputes by Commission or deputy.**—The Commission or any of its members shall hear the parties at issue and their representatives and witnesses, and shall determine the dispute in a summary manner. The award, together with a statement of the findings of fact, rulings of law, and other matters pertinent to the questions at issue shall be filed with the record of the proceedings, within 180 days of the close of the hearing record unless time is extended for good cause by the Commission, and a copy of the award shall immediately be sent to the parties in dispute. The parties may be heard by a deputy, in which event the hearing shall be conducted in the same way and manner prescribed for hearings which are conducted by a member of the Industrial Commission, and said deputy shall proceed to a complete determination of the matters in dispute, file his written opinion within 180 days of the close of the hearing record unless time is extended for good cause by the Commission, and the deputy shall cause to be issued an award pursuant to such determination."

Sec. 16. G.S. 97-86.2 reads as rewritten:

**"§ 97-86.2. Interest on awards after hearing.**—In any workers' compensation case in which an order is issued either granting or denying an award to the employee and where there is an appeal resulting in an ultimate award to the employee, the insurance carrier or employer shall pay interest on the final award or unpaid portion thereof from the date of the ~~original order, which granted or denied the award,~~ initial hearing on the claim, until paid at the legal rate of interest provided in G.S. 24-1. If interest is paid it shall not be a part of, or in any way increase attorneys' fees, but shall be paid in full to the claimant."

Sec. 17. G.S. 97-94 reads as rewritten:

**"§ 97-94. Employers required to give proof within 30 days that they have complied with preceding section; fine for not keeping liability insured; review; liability for compensation; failure to secure payment of compensation a misdemeanor.**—(a) Every employer subject to the compensation provisions of this Article shall, within 30 days, after this Article takes effect, file with the Industrial Commission, in form prescribed by it, and thereafter, annually or as often as may be necessary, evidence of his compliance with the provisions of G.S. 97-93 and all others relating thereto.

(b) Any employer required to secure the payment of compensation under this Article who refuses or neglects to secure such compensation shall be punished by a fine of ~~ten cents (10¢)~~ one dollar (\$1.00) for each employee, but not less than ~~one dollar (\$1.00)~~ fifty dollars (\$50.00) nor more than ~~fifty dollars (\$50.00)~~ one hundred dollars (\$100) for each day of such refusal or neglect, and until the same ceases; and he shall be liable during continuance of such refusal or neglect to an employee either for compensation under this Article or at law ~~in the same manner as provided in G.S. 97-14~~ at the election of the injured employee.

The fine herein provided may be assessed by the ~~Commissioner of Insurance~~ Industrial Commission in an open hearing, with the right of review and appeal as in other cases. Enforcement of the fine shall be made by the Office of the Attorney General.

(c) Any employer required to secure the payment of compensation under this Article who willfully refuses or neglects to secure such compensation shall be guilty of a



misdemeanor and upon conviction shall be fined or imprisoned, or both, in the discretion of the court."

Sec. 18. Sections 1, 3, and 5 of this act shall become effective October 1, 1987. Sections 2, 4, 7, 8, 10, 11, 12, 13, 14, 15, and 17 of this act are effective upon ratification. Section 6 of this act shall become effective August 1, 1987, and shall apply to all accidents occurring on or after January 1, 1988. Section 9 of this act is effective with respect to all death claims arising on or after the date of ratification. Section 16 of this act shall become effective with respect to claims filed on or after the date of ratification.

In the General Assembly read three times and ratified this the 5th day of August, 1987.