

# Legislative Summary: Workers' Compensation



Prepared by North Carolina State AFL-CIO  
James Andrews, President

August 2011  
MaryBe McMillan, Secretary-Treasurer

## Summary of Major Changes in Workers' Compensation Law Made by House Bill 709

*This summary very briefly outlines some of the more important provisions of the compromise workers' compensation bill which passed this last session.*

### **A few preliminary points:**

First, we knew the employer community would introduce a "reform" bill aimed at dramatically reducing benefits and eligibility for benefits. Similar bills have been introduced and passed in other states, with dire results for injured workers. There have been a number of attacks on our workers' compensation system in the last quarter century; in each case, we were able to come out of the process with a stable and workable system that protected those injured in the service of their employers. Our goal this session was to try to do the same, but because of the change in leadership and make up of both chambers of the General Assembly, the legislature was considerably more receptive to employers' interests in this and other areas. We believe that, in total and under the political realities, we accomplished this goal. Indeed, Senator Doug Berger, a former Industrial Commission deputy, and now a lawyer representing injured workers in workers' compensation cases (and the recipient of our "Friend of the Worker" award at our last legislative conference) called the final bill a very fair compromise, under the circumstances, and spoke about it favorably on the floor of the state Senate.

Second, we sometimes take for granted that we not only have a stable system but one that pays relatively generous benefits. Indeed, research by the Workers Compensation Research Institute, an industry-supported research group, claims that, even though employer average premiums are in the mid-range of states, our workers' compensation program pays the most cash benefits in a workers' compensation claim among the 16 state systems it studied including California, Pennsylvania and Illinois. We believe, that even with the compromise, North Carolina continues to have one of the better workers' compensation programs for injured workers.

Finally, the bill originally introduced into the legislature had many, many provisions, but the primary attacks were aimed at three areas: capping benefits; addressing the issue of injured employees who refuse to accept other alternative work; and allowing employers greater access to their employee's medical information. It is important to note that not only was the

onerous language in the original bill greatly modified following the bill's introduction, but also that the compromise includes some important improvements in our current law, discussed below.

This summary first outlines the changes in the three major areas noted above, then outlines some of the other substantive changes in the legislation. Keep in mind that exactly how some parts of the new language will be interpreted is not certain.

### **1. Benefit Cap**

One of the employers' primary goals was to cap the total benefits which an injured worker could receive. Under the prior law, in North Carolina workers who were injured and who were unable to return to their previous work or perform other work because of their injury could receive weekly total disability workers' compensation benefits for their lifetime. In fact, our neighboring states all limit the maximum number of weeks an injured employee can receive benefits. For example, in Virginia an injured employee generally can receive only 500 weekly benefit payments. Under the legislative compromise, for employees injured after June 23, 2011, benefits will be limited to compensation for total disability for 500 weeks from the first date of the employee's disability from the work injury unless he or she can demonstrate a "total loss of wage earning capacity." When there is a "total loss of wage earning capacity," an employee may continue to receive weekly total disability workers' compensation through the balance of his or her lifetime.

This compromise language does not affect the right of employees catastrophically injured, for example, with the loss of both hands or feet, or severe brain injury, to qualify for permanent and total disability and to receive lifetime workers' compensation for total disability.

When an injured employee has received total disability compensation until 500 weeks from the first date of disability, and this total disability compensation continues because there is a "total loss of wage earning capacity," the injured employee's total disability weekly workers' compensation following the 500-week period may be subject to reduction by the amount of their Social Security retirement benefit if the employee has reached full retirement age. This age is now 66 and will increase

to 67 over time under the present Social Security law.

When originally introduced, HB 709 absolutely limited the period of compensation for total disability to 500 weeks from the date of the injury in all cases except for a few categories of catastrophically injured employees. This new “cap,” an important improvement from the language in the original bill, applies only to injuries beginning after June 23, 2011.

## 2. Suitable Work

House Bill 709 also was aimed at the fact that some injured employees choose to stay out of work completely rather than return to a job paying less money and receive the partial compensation benefit contemplated by the workers’ compensation statute in such situations. Polling showed that the overwhelming majority of the public does not think people should be allowed to stay out of work in these circumstances. The compromise bill enacted made important improvements in the language in the original bill.

The weekly workers’ compensation benefit for an injured employee may be suspended by the Industrial Commission if the employee refuses a job offer for “suitable employment,” unless the Industrial Commission is of the opinion that the employee was justified in refusing the employment. Under the compromise, during the time an injured employee’s injury is healing, “suitable employment” which the injured employee is expected to perform includes work within the injured employee’s work restrictions, including rehabilitative employment, must be with the employer with whom the injury occurred, and only when this employment is approved by the injured employee’s physician. After the injury has healed, “suitable employment” which the employee is expected to perform includes employment that the employee is capable of performing considering the employees’ preexisting and injury-related physical and mental limitations, vocational skills, education, and experience. The employment also cannot be more than 50 miles from the employee’s home. No one factor is to be considered exclusively in determining whether the employment is suitable. The significance of a sizeable reduction in the employee’s prior wage in determining whether new employment is suitable is unclear.

An employee who accepts suitable employment at less than their previous average wage is entitled to the statutory supplemental benefits, or partial disability benefits, for two-thirds of the difference between the previous average wage and the reduced wage in the new employment, subject to the statutory maximum benefits. The maximum presently is \$836 per week. These partial wage loss benefits will now be available for 500 weeks of payments (to include payments for total disability) in the case of each injury.

The new compromise legislation for the first time includes a specific provision for vocational rehabilitation services when an injured employee has not returned to work or has returned to work earning less than 75% of his or her previous average wage. These vocational services may include education and re-training in the North Carolina community college or university systems.

The new statutory provisions for suitable work apply only to  
20110811 Legislative Summary - Major Changes in Workers Comp by HB 709

cases in which the injury occurs on and after June 24, 2011.

## 3. Access to Medical Providers

The original bill essentially eliminated most employee privacy in his or her records, and provided almost unlimited access by an employer or the employer’s lawyer or insurance company to the injured employee’s doctor, in writing or by oral communication, without the employee’s permission. The original bill also severely restricted an injured employee’s ability to change doctors from a doctor originally selected by the employer.

Under the extensive language in the compromise legislation, an employer or insurance company cannot speak with an injured employee’s physician unless it notifies and allows the injured employee an opportunity to participate in the conversation. They also cannot transmit medical information to the employee’s doctor and communicate in writing with the doctor about the additional information unless they first notify the employee and allow the employee to object to the communication and ask the Industrial Commission to enter an order prohibiting the communication. Letters from an employer or insurance company to the employee’s treating doctor seeking work restrictions and other routine medical information must be sent to the injured employee at the same time as they are sent to the doctor, and the doctor’s response must be sent to the injured employee as soon as it is received.

The compromise legislation continues to allow, consistent with the prior law, an injured employee to select his or her own doctor subject to the approval of the Industrial Commission. It permits the Commission to grant an employee’s request to change doctors when the Commission finds that the change is reasonably necessary to the employee’s recovery.

The parts of the new law dealing with privacy of employee medical records and provision of medical treatment are effective for all claims whether or not the claims arose before or after the date the new statute was effective on June 24, 2011.

## 4. Other Changes

Some other significant changes enacted by House Bill 709 include:

- A provision that, for injuries occurring on and after June 24, 2011, weekly payments for injured employees who are able to continue to work but have a partial loss of wages because of their injuries increase from 300 to 500 weeks. Under prior law, these benefits for partial wage loss were limited to a period of 300 weeks from the date of injury. Under this new change in the law, a maximum of 500 weekly payments are available and they are not required to be paid in the first 500 weeks from the date of injury. The only limitation is that these weekly benefits for partial wage loss together with total disability weekly benefits paid to the injured employee cannot exceed 500 weeks.
- A provision that clearly states that the employer and injured employee in a workers’ compensation claim may reach a separate side agreement to settle other issues that are not governed by our workers’ compensation law.

These include, for example, release of employment rights and resignation from employment.

- A provision that, for injuries occurring on and after June 24, 2011, the Industrial Commission must schedule as its top priority requests by an injured employee to reinstate benefits after the benefits have been suspended.
- A provision that increases the prior death benefits for an injured employee's widow or widower and family from 400 to 500 weekly payments and increases almost three-fold the entitlement for funeral expenses to \$10,000.
- A provision that, for injuries occurring on and after June 24, 2011, an injured employee will not be entitled to workers' compensation in some circumstances when the injured employee lied at the time of employment concerning his or her physical condition.
- A provision that reduces the number of Industrial Commissioners from seven to six; requires confirmation of gubernatorial appointments; limits each Commissioner to two terms; and requires that three of the Commissioners be classified as employee representatives and three be classified as employer representatives, based on their prior vocations, employment or affiliations.

For more information, contact the NC State AFL-CIO at (919) 833-6678 or [info@aflicionc.org](mailto:info@aflicionc.org). Find us online at [AFLCIONC.org](http://AFLCIONC.org); like us on Facebook at [facebook.com/ncstateaflicio](https://facebook.com/ncstateaflicio); and follow us on Twitter [@ncstateaflicio](https://twitter.com/ncstateaflicio).