

CHAPTER 246.

[H. B. 188.]

INDUSTRIAL INSURANCE—COMPENSATION OF
WORKMEN.

AN ACT relating to Industrial Insurance; providing compensation and remedies of workmen hereafter injured in extra-hazardous employment, and of their dependents, minor children and beneficiaries in case of death, amending section 5, chapter 74, Laws of 1911, as last amended by section 1, chapter 209, Laws of 1941 (sec. 7679, Rem. Rev. Stat.; sec. 705-1, PPC) and regulating fee of attorney for claimant.

Be it enacted by the Legislature of the State of Washington:

SECTION 1. Section 5, chapter 74, Laws of 1911, as last amended by section 1, chapter 209, Laws of 1941 (sec. 7679, Rem. Rev. Stat.; sec. 705-1, PPC) is hereby amended to read as follows:

Section 5. Each workman who shall hereafter be injured in the course of his employment, or his family or dependents in case of death of the workman, shall receive out of the accident fund compensation in accordance with the following schedule, and, except as in this Act otherwise provided, such payment shall be in lieu of any and all rights of action whatsoever against any person whomsoever.

Compensation to be received according to schedule.

COMPENSATION SCHEDULE

(a) Where death results from the injury the expenses of burial not to exceed two hundred dollars (\$200) shall be paid to the undertaker conducting the funeral: *Provided*, That no sum shall be paid an undertaker for the burial expenses where the deceased left a widow or an orphan child or children unless the undertaker shall make and file with the Department an affidavit that no part of the burial expenses have been either directly or indirectly paid by or charged to the widow or orphan child or children.

Compensation schedule.

Burial expenses.

Proviso.

Surviving spouse and children.

(1) If the workman leaves a widow or invalid widower, a monthly payment of seventy-five dollars (\$75) shall be made throughout the life of the surviving spouse, to cease at the end of the month in which remarriage shall occur, and the surviving spouse shall also receive per month for each child of the deceased under the age of eighteen years at the time any monthly payment is due the following payments: For the youngest or only child twenty dollars (\$20), for the next or second youngest child fifteen dollars (\$15), and for each additional child ten dollars (\$10), but the total monthly payments shall not exceed one hundred forty dollars (\$140) and any deficit shall be deducted proportionately among the beneficiaries: *Provided*, That in addition to the monthly payments above provided for, a surviving widow, or parent or parents, if there is no surviving widow of any such deceased workman, shall be forthwith paid the sum of three hundred dollars (\$300).

Parents.

Payment on death.

Remarriage.

Upon remarriage of a widow she shall receive once and for all, a lump sum of one thousand dollars (\$1,000), but the monthly payments for the child or children shall continue as before.

Payment for children to continue.

(2) If the workman leave no wife or husband, but an orphan child or children under the age of eighteen years, a monthly payment of thirty-five dollars (\$35) shall be made to each such child until such child shall reach the age of eighteen years, but the total monthly payment shall not exceed one hundred forty dollars (\$140) and any deficit shall be deducted proportionately among the beneficiaries.

Other dependents.

(3) If the workman leaves no widow, widower or child under the age of eighteen years, but leaves a dependent or dependents, a monthly payment shall be made to each dependent equal to fifty per cent of the average monthly support actually received by such dependent from the workman during the twelve months next preceding the occurrence of

the injury, but the total payment to all dependents in any case shall not exceed fifty dollars (\$50) per month. If any dependent is under the age of eighteen years at the time of the occurrence of the injury, the payment to such dependent shall cease when such dependent shall reach the age of eighteen years. The payment to any dependent shall cease if and when, under the same circumstances, the necessity creating the dependency would have ceased, if the injury had not happened.

Maximum.

If the workman is under the age of twenty-one years and unmarried at the time of his death, the parents or parent of the workman shall receive twenty-five dollars (\$25) per month for each month after his death until the time at which he would have arrived at the age of twenty-one years.

Parents.

(4) In the event a surviving spouse receiving monthly payments shall die, leaving a child or children under the age of eighteen years, such child or children shall receive each the sum of thirty-five dollars (\$35) per month until arriving at the age of eighteen years, but the total monthly payment shall not exceed one hundred forty dollars (\$140) and any deficit shall be deducted proportionately among the beneficiaries.

Minors on death of surviving spouse.

(b) Permanent total disability means loss of both legs, or arms, of one leg and one arm, total loss of eyesight, paralysis or other condition permanently incapacitating the workman from performing any work at any gainful occupation.

Permanent total disability defined.

When permanent total disability results from the injury, the workman shall receive monthly during the period of such disability: (1) If unmarried at the time of the injury, the sum of seventy-five dollars (\$75).

Rate.

(2) If the workman have a wife or invalid husband, but no child under the age of eighteen years, the sum of one hundred dollars (\$100).

Wife or invalid husband.

Husband not
an invalid.

If the husband is not an invalid the monthly payment of one hundred dollars (\$100) shall be reduced to fifty dollars (\$50) as long as they are living together as husband and wife.

Spouse and
children.

(3) If the workman have a wife or husband and a child or children under the age of eighteen years, or being a widow or widower, having any such child or children, the monthly payment in the preceding paragraph shall be increased by twenty dollars (\$20) for the youngest or only child, fifteen dollars (\$15) for the next or second youngest child, and ten dollars (\$10) for each additional child under the age of eighteen years, but the total monthly payments shall not exceed one hundred sixty-five dollars (\$165) and any deficit shall be deducted proportionately among the beneficiaries.

Attendants'
services.

(4) In case of total permanent disability, if the character of the injury is such as to render the workman so physically helpless as to require the services of an attendant, the monthly payment to such workman shall be increased forty-five dollars (\$45) per month as long as such requirement shall continue, but such increases shall not obtain or be operative while the workman is receiving care under or pursuant to any of the provisions of sections 7712 to 7725, inclusive, of this code.

Death of
workman
during
disability.

(c) If the injured workman die, during the period of permanent total disability, whatever the cause of death, leaving a widow, invalid widower or child under the age of eighteen years, the surviving widow or invalid widower shall receive seventy-five dollars (\$75) per month until death or remarriage, to be increased per month for each child of the deceased under the age of eighteen years at the time any monthly payment is due, as follows: For the youngest or only child twenty dollars (\$20), for the next or second youngest child fifteen dollars (\$15), and for each additional child ten dollars

(\$10): *Provided*, That the total monthly payments shall not exceed one hundred forty dollars (\$140) and any deficit shall be deducted proportionately among the beneficiaries; but if such child is or shall be without father or mother, such child shall receive thirty-five dollars (\$35) per month until arriving at the age of eighteen years, but the total monthly payment to such children shall not exceed one hundred forty dollars (\$140), and any deficit shall be deducted proportionately among such children. Upon remarriage the payments on account of the child or children shall continue as before to such child or children.

Maximum.

Remarriage.

An invalid child while being supported and cared for in a state institution shall not receive compensation under this act. If an injured workman, or the surviving spouse of an injured workman shall not have the custody of a minor child for, or on account of, whom payments are required to be made under this section, such payment or payments shall be made to the person having the lawful custody of such minor child.

Children in care of institution or persons other than parents.

(d) (1) When the total disability is only temporary, the schedule of payments contained in paragraphs (1), (2) and (3) of the foregoing subdivision (b) shall apply, so long as the total disability shall continue,

Total disability only temporary.

(2) but if the injured workman have a wife or husband and have no child or have a wife or husband, or being a widow or widower, with one or more children under the age of eighteen years, the compensation for the case during such period of time as the total temporary disability shall continue, shall be per month as follows, to-wit: (a) Injured workman whose husband is not an invalid, fifty dollars (\$50), and for the youngest or only child, ten dollars (\$10), and for each additional child, seven dollars and fifty cents (\$7.50), but the

Rates.

total monthly payments shall not exceed ninety dollars (\$90) and any deficit shall be deducted proportionately among the beneficiaries; (b) injured workman with wife or invalid husband and no child, seventy-five dollars (\$75); injured workman with wife or invalid husband and one child, or being a widow or widower and having one child, ninety-five dollars (\$95); (c) injured workman with a wife or invalid husband and two children, or being a widow or widower and having two children, one hundred ten dollars (\$110), and ten dollars (\$10), for each additional child, but the total monthly payments shall not exceed one hundred forty dollars (\$140) and any deficit shall be deducted proportionately among the beneficiaries.

Continued
payment of
wages.

Should a workman suffer a temporary total disability, and should his employer, at the time of his injury, continue to pay him the wages which he was earning at the time of such injury, such injured workman shall not receive any payment provided in paragraph (d) subdivision (1) from the accident fund during the period his employer shall so pay such wages.

Recovery or
restoration of
earning
power.

(3) As soon as recovery is so complete that the present earning power of the workman, at any kind of work, is restored to that existing at the time of the occurrence of the injury, the payments shall cease. If and so long as the present earning power is only partially restored, the payments shall continue in the proportions which the new earning power shall bear to the old. No compensation shall be payable out of the accident fund unless the loss of earning power shall exceed five per cent.

Partial.

Loss must
exceed five
per cent.

No payment shall be made to or for a natural child of a deceased workman, and at the same time, as the step-child of a deceased workman.

Reserve fund
created.

(e) There is hereby created in the office of the State Treasurer a fund to be known and designated as the reserve fund out of which shall be made the

payments specified in this section for all cases of death or permanent total disability including future payments to be made for the cases of that character which have heretofore arisen. Into the reserve fund there shall be forthwith placed all unexpended funds, in cash or invested, heretofore set aside for cases requiring a reserve. For every case resulting in death or permanent total disability hereafter arising it shall be the duty of the Department to make transfer on their books from the accident fund of the proper class to the reserve fund a sum of money for that case equal to the estimated present cash value of the monthly payments provided for it, to be calculated upon the basis of an annuity covering the payments in this section provided to be made for the case. Such annuities shall be based upon tables to be prepared for that purpose by the State Insurance Commissioner and by him furnished to the State Treasurer, calculated upon standard mortality tables with an interest assumption of three (3) per cent per annum.

Transfers
from acci-
dent fund
to reserve
fund.

Computation
table for
annuities.

The Department shall notify the State Treasurer from time to time of such transfers as a whole and the State Treasurer shall invest the reserve in either State Capitol building bonds issued to take up capitol building warrants now outstanding, or in the class of securities provided by law for the investment of the permanent school fund, and the interest or other earnings of the reserve fund shall become a part of the reserve fund itself. The Department shall, on October 1st of each year, apportion the interest or other earnings of the reserve fund as certified to it by the State Treasurer, to the various class reserve funds according to the average class balance for the preceding year. As soon as possible after October 1st of each year, beginning in the year 1927, the State Insurance Commissioner shall expert [examine] the reserve fund of each class to ascertain its standing as of October 1st, of that year, and the

Investment
of reserve
fund.

Apportion-
ment of
earnings.

Examination
by Insurance
Commissioner.

Surplus.

Temporary
loans to
meet current
demands on
funds.

Definition of
"permanent
partial dis-
ability."

Schedule.

relation of its outstanding annuities at their then value to the cash on hand or at interest belonging to that fund. He shall promptly report the result of his examination to the Department and to the State Treasurer in writing not later than December 31st, following. If the report shows that there was on said October 1st, in the reserve fund of any class in cash or at interest a greater sum than the then annuity value of the outstanding pension obligations of that class, the surplus shall be forthwith turned over to the accident fund of that class, but if the report shows the contrary condition of any class reserve, the deficiency shall be forthwith made good out of the accident fund of that class. The State Treasurer shall keep accurate accounts of the reserve fund and the investment and earnings thereof, to the end that the total reserve funds shall at all times, as near as may be, be properly and fully invested, and to meet current demands for pension or lump sum payments may, if necessary, make temporary loans to the reserve fund out of the accident fund for that class, repaying same from the earnings of that reserve fund or from collections of its investments, or, if necessary, sales of the same.

(f) Permanent partial disability means the loss of either one foot, one leg, one hand, one arm, one eye, one or more fingers, one or more toes, any dislocation where ligaments were severed where repair is not complete, or any other injury known in surgery to be permanent partial disability. For the permanent partial disabilities here specifically described, the injured workman shall receive compensation as follows:

LOSS BY AMPUTATION

		Loss by am- putation.
Of one leg so near the hip that an artificial limb cannot be worn	\$5,000	
Of one leg at or above the knee so that an artificial limb can be worn.....	\$3,425	
Of one leg below the knee.....	\$2,350	
Of great toe with metatarsal bone thereof.....	\$725	
Of great toe at the proximal joint.....	\$450	
Of great toe at the second joint.....	\$165	
Of one other toe other than the great toe with metatarsal bone thereof	\$250	
Of second toe at proximal joint.....	\$115	
Of third toe at proximal joint.....	\$115	
Of fourth toe at proximal joint.....	\$115	
Of fifth toe at proximal joint.....	\$50	
Of metatarsal bone on toe other than great toe.....	\$125	
Of one arm so near the shoulder that an artificial arm cannot be worn.....	\$4,500	
Of the major arm at or above the elbow.....	\$3,750	
Of forearm at upper third.....	\$3,250	
Of the major hand at wrist.....	\$2,900	
Of thumb with metacarpal bone thereof.....	\$1,100	
Of thumb at proximal joint.....	\$725	
Of thumb at second joint.....	\$270	
Of index or first finger at proximal joint.....	\$590	
Of index or first finger at second joint.....	\$500	
Of index or first finger at distal joint.....	\$225	
Of middle or second finger at proximal joint.....	\$450	
Of middle or second finger at second joint.....	\$375	
Of middle or second finger at distal joint.....	\$125	
Of ring or third finger at proximal joint.....	\$410	
Of ring or third finger at second joint.....	\$315	
Of ring or third finger at distal joint.....	\$125	
Of little or fourth finger at proximal joint.....	\$160	
Of little or fourth finger at second joint.....	\$115	
Of little or fourth finger at distal joint.....	\$50	
Of metacarpal bone in finger except thumb.....	\$115	

MISCELLANEOUS

Loss of one eye by enucleation.....	\$2,160	Miscellan- eous.
Loss of sight of one eye.....	\$1,620	
Complete loss of hearing in both ears.....	\$3,420	
Complete loss of hearing in one ear.....	\$950	
Complete broken arch in foot.....	\$950	

Compensation for any other permanent partial disability shall be in the proportion which the extent of such other disability shall bear to that above specified, which most closely resembles and approxi-

Other
permanent
partial dis-
ability.

Maximums.

mates in degree of disability such other disability, but not in any case to exceed the sum of three thousand six hundred dollars (\$3,600): *Provided*, That for disability to a member not involving amputation, not more than three-fourths ($\frac{3}{4}$) of the foregoing respective specified sums shall be paid: *Provided further*, That payment for any injury to minor hand or arm or any part thereof, shall not exceed ninety-five (95) per centum of the amounts hereinbefore enumerated.

Workman under twenty-one years and unmarried.

If the injured workman be under the age of twenty-one years and unmarried, the parents or parent shall also receive a lump sum payment equal to ten per cent of the amount awarded to the minor workman.

Further accidents to injured workman.

(g) Should a further accident occur to a workman who has been previously the recipient of a lump sum payment under this act, his future compensation shall be adjudged according to the other provisions of this section and with regard to the combined effect of his injuries and his past receipt of money under this act.

Injury to part of body already disabled.

Should a workman receive an injury to a member or part of his body already from whatever cause permanently partially disabled, resulting in the amputation thereof or in an aggravation or increase in such permanent partial disability but not resulting in the permanent total disability of such workman, his compensation for such permanent partial disability shall be adjudged with regard to the previous disability of the injured member or part and the degree or extent of the aggravation or increase of disability thereof.

Further accident resulting in permanent total disability.

Should any further accident result in the permanent total disability of such injured workman, he shall receive the pension to which he would be entitled notwithstanding the payment of a lump sum for his prior injury.

(h) If aggravation, diminution, or termination of disability takes place or be discovered after the rate of compensation shall have been established or compensation terminated, in any case the Director of Labor and Industries, through and by means of the Division of Industrial Insurance, may, upon the application of the beneficiary, made within five years after the establishment or termination of such compensation, or upon his own motion, readjust for further application the rate of compensation in accordance with the rules in this section provided for the same, or in a proper case terminate the payment: *Provided*, Any such applicant whose compensation has heretofore been established or terminated shall have five (5) years from the taking effect of this act within which to apply for such readjustment.

Aggravation, diminution or termination of disability.

Readjustment.

Five year limitation.

No act done or ordered to be done by the Director of Labor and Industries, or the Department of Industrial Insurance, prior to the signing and filing in the matter of a written order for such readjustment, shall be ground for such readjustment: *Provided, however*, That if within the time limited for taking an appeal from an order closing a claim, the Department shall order the submission of further evidence or the investigation of any further fact, the time for appeal from such order closing the claim shall be extended until the applicant shall have been advised in writing of the final order of the Department in the matter.

Acts done prior to written order not grounds for readjustment.

Time for appeal extended.

(i) A husband or wife of an injured workman, living in a state of abandonment for more than one year at the time of the injury or subsequently, shall not be a beneficiary under this act. A wife who has lived separate and apart from her husband for the period of two years and who has not, during that time, received, or attempted by process of law to collect, funds for her support or maintenance, shall be deemed living in a state of abandonment.

Beneficiary restrictions by abandonment or separation.

Lump sum settlements for non-resident beneficiaries.

(j) If a beneficiary shall reside or remove out of the state the Department may, in its discretion, with the written consent of the beneficiary, convert any monthly payments provided for such cases into a lump sum payment (not in any case to exceed the value of the annuity then remaining, to be fixed and certified by the State Insurance Commissioner, but in no case to exceed the sum of five thousand dollars (\$5000).

Beginning of payments.

(k) No workman injured after June 30th, 1923, shall receive or be entitled to receive compensation out of the accident fund for or during the day on which injury was received or the three days following the same.

Pre-existing diseases affecting recovery.

(l) If it be determined by the Department of Labor and Industries that an injured workman had, at the time of his injury, a pre-existing disease and that such disease delays or prevents complete recovery from such injury the said Department shall ascertain as nearly as possible, the period over which the injury would have caused disability were it not for the deceased condition and/or the extent of permanent partial disability which the injury would have caused were it not for the disease, and award compensation only therefor.

Act not retroactive.

SEC. 2. The increased benefits and compensation authorized by this act shall not be applicable to a case of death, or injury or aggravation thereof, occurring prior to the effective date of this act.

Attorneys' fees.

SEC. 3. It shall be unlawful for an attorney engaged in the representation of any claimant to charge for services in the Department or on hearing before the joint board, any fee in excess of a reasonable fee, of not less than 10% nor more than 35% of the increase in the award secured by the attorney's services. Such reasonable fee shall be fixed by the Director of Labor and Industries for services performed by an attorney for a claimant

prior to application for a hearing before the joint board. Such reasonable fee for services performed by an attorney for a claimant before the joint board shall be fixed by the board taking into consideration the fee previously allowed by the director, and it may review upon such hearing the fee fixed by the director. It shall be unlawful for any attorney engaged by any claimant in representation before the Department or the joint board to charge or receive directly or indirectly any fee or expenses in excess of that fixed as herein provided.

Passed the House March 9, 1947.

Passed the Senate March 9, 1947.

Approved by the Governor March 19, 1947.

CHAPTER 247.

[H. B. 187.]

INDUSTRIAL INSURANCE—REPORTS BY EMPLOYERS.

AN Act relating to industrial insurance and medical aid, prescribing method of reporting by employers, including certain additional classifications and making certain changes in the schedule of extra-hazardous occupations, and making provision for experience rating for a resuming employer, creating and providing for the use of and making an appropriation for, the use of a fund for extraordinary accidents, and amending section 4, chapter 74, Laws of 1911, as last amended by section 1, chapter 138, Laws of 1939 (section 7676, Remington's Revised Statutes Supplement; Pierce's Perpetual Code 717-1) and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

SECTION 1. Section 4, chapter 74, Laws of 1911, as last amended by section 1, chapter 138, Laws of 1939, is hereby amended and divided into sections to read as follows:

Section 4a. Inasmuch as industry should bear the greater portion of the burden of the cost of its accidents, each employer shall prior to the twenty-