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HOUSE . . . . . No. 3849

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

An Act increasing injured workers' access to medical care and workers' compensation benefits.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 6 of chapter 23E of the General Laws, as appearing in the 2014 Official Edition, is hereby amended by striking out, in line 72, the word "or".

SECTION 2. Section 6 of said chapter 23E, as so appearing, is hereby further amended by inserting after the words "fifty-two", in line 73, the following words:-

, or a denial based solely on a dispute over whether the individual is an employee under section 1(4) of chapter 152 of the general laws, or a dispute limited to the determination of the employee's average weekly wages under section 1(1) of said chapter 152.

SECTION 3. Section 1 of chapter 152, as so appearing, is hereby amended by inserting after the word "wages" in line 22, the following words:-

In determining the employee's average weekly wages, all available evidence of the employee's paid wages and hours worked shall be considered, including wages earned and

required to be paid even if not actually received by the employee. Where the injured employee received less than the wages required to be paid under chapter 149, chapter 151, or any other local, state, or federal law, the employee's average weekly wages shall be calculated as if the employee had earned wages in compliance with the law.

SECTION 4. Section 7 of said chapter 152 is hereby amended by inserting after the word "case", in line 17, the following words:-

In determining whether to commence payment of weekly benefits, the insurer, including in cases where the insurer is the Trust Fund or the Commonwealth, shall consider all information and evidence provided by both the employer and the employee. The insurer shall not refuse to commence payment of weekly benefits on grounds that the employer has failed to respond, to provide certain information, or otherwise to participate. Where the employer has failed to respond, to provide information, or otherwise to participate, the insurer shall make its determination based on information provided by and available to the employee including but not limited to time records, deposit slips, affidavits, or other credible substantiation of payment for work; provided, however, that the insurer does not waive any defenses if it commences payment on this basis.

SECTION 5. Said chapter 152 of the General Laws, as so appearing, is hereby amended by inserting after section 11D, the following section:-

Section 11E. Interpretation.

Where the injured employee's primary language is not English, the department shall provide a qualified interpreter for a conciliation held under section 10 of chapter 152, a

conference held under section 10A of chapter 152, a hearing held under section 11 of chapter 152, or an impartial medical exam held under section 11A of chapter 152.

SECTION 6. Section 15A of said chapter 152 is hereby amended by inserting after the word “insurers”, in line 2, the following words:-

including the Trust Fund,

SECTION 7. Said section 15A of said chapter 152 is hereby further amended by striking out, in lines 6 to 7, the words “as may be selected by a single member of the board” and inserting in place thereof the following words:-

, in the absence of a mutual agreement, the Trust Fund,

SECTION 8. Said section 15A of said chapter 152 is hereby further amended by striking out, in lines 12 to 13, the words “selected by the single member as aforesaid” and inserting in place thereof the following words:-

the Trust Fund

SECTION 9. Section 22 of said chapter 152 is hereby amended by striking out, in lines 10 to 12, the words “may be given in the manner therein provided or in such other manner as may be approved by the department” and inserting in place thereof the following words:-

shall be given to employees by providing a printed copy of the notice as approved and issued by the department and by posting a copy of the notice in a visible location utilized by and accessible to all employees of the insured person. The notice shall include information on unlawful employer retaliation, discrimination, and fraud under chapter 152 and shall be prepared in English and in all other languages required under subsection (d)(iii) of section 62A of chapter

151A. The notice shall be provided to the employer by the department and shall be posted in English and in all other primary or preferred languages of current employees and in a conspicuous place in each location where an employee works. At the outset of the policy period and whenever any of the information provided on the notice changes, the insurer shall provide to each insured person

(a) a printed copy of the notice in all languages in which the notice is produced by the department;

(b) a link to the page of the department's website where the notice as approved by the department is posted; and

(c) a summary in writing of the insured person's obligations to provide a printed copy and to post the notice as provided in this section.

SECTION 10. Section 30 of said chapter 152 is hereby amended by striking out, in line 3, the following words:-

together with the expenses necessarily incidental to such services,

SECTION 11. Said section 30 of said chapter 152 is hereby further amended by inserting after the word "hospitalized", in line 5, the following words:-

The insurer further shall furnish the services necessarily incidental to the adequate and reasonable health care services provided to an injured employee, including but not limited to interpretation, transportation, and other services necessary to allow the injured employee to obtain effective and timely health care services. The insurer, including in cases where the insurer is the Trust Fund or the Commonwealth, shall arrange and pay directly for these

necessarily incidental services upon the request of the injured employee or the health care provider, and otherwise shall reimburse expenses for these services. Transportation services shall include door-to-door regulated taxi or comparable transportation services where the injured employee cannot readily obtain private or public transportation.

SECTION 12. Section 34 of said chapter 152 is hereby amended by striking out, in line 7, the word “his” and inserting in place thereof the following words:-

the employee’s

SECTION 13. Section 65 of said chapter 152 is hereby amended by striking out, in line 21, the word “and”.

SECTION 14. Said section 65 of said chapter 152 is hereby further amended by inserting after the words “thirty-seven A”, in line 22, the following words:-

; and (h) payment of compensation under section 15A; provided, however, that the Trust Fund shall recover such payment from any other insurer eventually determined to be liable to pay the compensation

SECTION 15. Said section 65 of said chapter 152 is hereby further amended by inserting after the word “provided”, in line 26, the following words:-

The Trust Fund shall make payment of weekly benefits and adequate and reasonable health care services within 14 days of an initial written claim for weekly benefits on a form prescribed by the department in cases where the dispute or disputes are limited to: (i) whether the individual is an employee under section 1(4) of chapter 152 of the general laws; (ii) a question of which of multiple insurers, including the Trust Fund, are liable; or (iii) a question of whether the

employer is insured; provided, however, that the Trust Fund shall recover such payment from any other insurer eventually determined to be liable for such payments or may recover payment from the employee if such benefits and services eventually are denied.