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LABOR AND INDUSTRIAL RELATIONS

Workers' Compensation: Amend Certain Provisions

CODE SECTIONS: O.C.G.A. §§ 34-9-13, -15, -201, -203, -221, -261, -262, -265 (amended)

BILL NUMBER: HB 1184

ACT NUMBER: 823

GEORGIA LAWS: 2000 Ga. Laws 1321

SUMMARY: The Act changes various provisions of Georgia's workers' compensation law. In particular, the Act redefines those who are presumed to be totally dependent upon an employee who dies as the result of an on-the-job accident. Further, it authorizes no-liability stipulated settlements between parties, to be approved by the Board of Workers' Compensation. The Act also authorizes agreements for lump sum settlements that are prorated over the life expectancy of the injured employee. The Act increases various statutory maximum and minimum workers' compensation payments. It also provides electronic fund transfer as an option for paying benefits.

EFFECTIVE DATE: July 1, 2000

History

In 1920, the Georgia General Assembly established the State Board of Workers' Compensation.¹ The General Assembly created workers' compensation laws "to encourage safety and assure benefits for injured employees."² The workers

1. See Georgia State Board of Workers' Compensation, *About Workers' Compensation* (visited June 20, 2000) <<http://www.ganet.org/sbwc/about/>> [hereinafter *About Workers' Compensation*].

2. See *id.* The mission of the Georgia State Board of Workers' Compensation is "[t]o provide superior access to the Georgia Workers' Compensation program for injured

compensation system “provides for specific benefits to be paid to employees for injuries arising out of and in the course of employment, without regard to negligence or fault, and at the same time, provides the employer with limited liability.”³ An employee covered by the law who is injured while on the job “may become eligible for replacement of a portion of lost wages, medical payments, vocational rehabilitation services, and other benefits.”⁴ However, an employee cannot pursue other legal remedies against an employer for work-related injuries.⁵ The law applies to all non-exempt employers that have a minimum of three part-time or full-time employees, including nonprofit organizations and public employers.⁶ Employers in Georgia acquire workers’ compensation coverage by creating self-insurance programs or through private insurers.⁷ In addition, administration of the workers’ compensation law is handled by a three-member board that is appointed by the Governor for a four-year term.⁸ Over 187,000 employers and 3,380,724 workers are served by the State Board of Workers’ Compensation.⁹

The workers’ compensation law is amended annually by the General Assembly to keep its provisions current; the changes are considered “general housekeeping” legislation.¹⁰

As is customary, discussions on proposed changes to workers’ compensation law began well before the General Assembly convened for its 2000 session.¹¹ An advisory committee comprised of employers, insurance companies, and claimants’

workers and employers in a manner that is sensitive, responsive, and effective . . . to ensure efficient processing and swift resolution of claims . . . while encouraging workplace safety and return to work . . . and protecting the employer from tort liability.” *Id.* In addition to protecting employees who are injured on the job, the General Assembly established the workers’ compensation system to “protect employers from large tort damages.” *Review of Selected 1998 Georgia Legislation*, 15 GA. ST. U. L. REV. 185, 186 (1998) [hereinafter *Selected 1998 Legislation*].

3. *About Workers’ Compensation*, *supra* note 1.

4. *Id.*

5. *See id.*

6. *See id.*

7. *See id.*

8. *See id.*

9. *See id.*

10. *See Selected 1998 Legislation*, *supra* note 2, at 186; Telephone Interview with Rep. Larry Smith, House District No. 109 (June 23, 2000) [hereinafter Smith Interview].

11. *See* Telephone Interview with Rep. Nan Grogan Orrock, House District No. 56 (June 23, 2000) [hereinafter Orrock Interview]; Smith Interview, *supra* note 10.

attorneys meets each year to suggest revisions to the current workers' compensation law.¹² This advisory committee is appointed by the chairperson of the Workers' Compensation Board.¹³ The advisory committee discusses any contentious issues.¹⁴ Each proposed change to the existing workers' compensation law must have the support of all advisory committee members to go forward.¹⁵ Thus, by the time such housekeeping legislation is brought before the General Assembly, the legislation has been fully developed and can move quickly through the House and the Senate without going to committee.¹⁶

HB 1184

Representatives Nan Grogan Orrock, Larry Smith, Jim Martin, Henry Howard, Tom Bordeaux, and Harold Mann, of the 56th, 109th, 47th, 118th, 151st, and 5th Districts, respectively, sponsored HB 1184,¹⁷ which was introduced on January 14, 2000.¹⁸ The bill was favorably reported in the House on February 3, 2000.¹⁹ On February 8, 2000, the House passed HB 1184.²⁰ HB 1184 was introduced in the Senate on February 9, 2000.²¹ The Senate favorably reported HB 1184 on February 23, 2000.²² On March 9, 2000, the Senate unanimously passed the bill, unchanged from the original version introduced in the House.²³ The bill was not sent to a committee in either the

12. See *Lawmakers 2000* (GPTV broadcast, Feb. 8, 2000) (on file with the *Georgia State University Law Review*). The advisory committee consists of thirteen members who are "attorneys for the claimants' bar, attorneys from the Board, defense attorneys representing employers, labor representatives, and a medical doctor." *Selected 1999 Legislation*, *supra* note 2, at 186-87.

13. See *Selected 1999 Legislation*, *supra* note 2, at 186-87.

14. See Orrock Interview, *supra* note 11; Smith Interview, *supra* note 10.

15. See *Selected 1999 Legislation*, *supra* note 2, at 187.

16. See Orrock Interview, *supra* note 11; Smith Interview, *supra* note 10.

17. See HB 1184, as introduced, 2000 Ga. Gen. Assem.

18. See State of Georgia Final Composite Status Sheet, Mar. 22, 2000.

19. See *id.*

20. See Georgia House of Representatives Voting Record, HB 1184 (Feb. 8, 2000). The vote was 138 to 24. See *id.*

21. See State of Georgia Final Composite Status Sheet, Mar. 22, 2000.

22. See *id.*

23. See Georgia Senate Voting Record, HB 1184 (Mar. 9, 2000). Compare HB 1184, as introduced, 2000 Ga. Gen. Assem., with HB 1184, as passed, 2000 Ga. Gen. Assem.

House or the Senate.²⁴ Governor Roy Barnes signed HB 1184 into law on May 1, 2000.²⁵

The Act

Section 1: Redefining a Deceased Employee's Dependents

The Act amends Code section 34-9-13 by redefining when a spouse is presumed to be wholly dependent upon a deceased employee for support.²⁶ The former version of the Code section provided that a spouse was presumed dependent unless he or she had voluntarily abandoned the deceased prior to the accident.²⁷ Further, it provided that if the surviving spouse had been working for ninety days prior to the accident, his or her eligibility as a dependent was rebuttable.²⁸ The amended Code section eliminates both of these provisions, instead providing that a spouse is deemed an eligible dependent of the deceased employee unless he or she was living separately from the decedent ninety days prior to the decedent's accidental death.²⁹ If such a separation occurred, the spouse's dependency is rebuttable.³⁰

Section 2: Amending the Settlement Provisions

The Act amends Code section 34-9-15, relating to settlement of workers' compensation claims, by adding two new provisions.³¹ The first provision authorizes the Workers' Compensation Board to approve a no-liability settlement stipulated by the parties.³² The Board may assess a penalty of

24. See State of Georgia Final Composite Status Sheet, Mar. 22, 2000.

25. See 2000 Ga. Laws 1321, § 8, at 1325.

26. Compare 1985 Ga. Laws 727, § 1, at 728 (formerly found at O.C.G.A. § 34-9-13(b)(1) (1998)), with O.C.G.A. § 34-9-13(b)(1) (Supp. 2000).

27. See 1985 Ga. Laws 727, § 1, at 728 (formerly found at O.C.G.A. § 34-9-13(b)(1) (1998)).

28. See *id.*

29. Compare 1985 Ga. Laws 727, § 1, at 728 (formerly found at O.C.G.A. § 34-9-13(b)(1) (1998)), with O.C.G.A. § 34-9-13(b)(1) (Supp. 2000).

30. See O.C.G.A. § 34-9-13(b)(1) (Supp. 2000).

31. Compare 1992 Ga. Laws 1942, § 3, at 1945-46 (formerly found at O.C.G.A. § 34-9-15 (1998)), with O.C.G.A. § 34-9-15 (Supp. 2000).

32. See O.C.G.A. § 34-9-15(b) (Supp. 2000). The Board had already been approving such no-fault settlements, and the change codified that practice. See Audio Recording of House Proceedings, Feb. 8, 2000 (remarks by Rep. Nan Grogan Orrock)

twenty percent to parties of such settlement agreements who do not begin making payments within twenty days.³³ Further, once the Board approves a settlement agreement, that agreement represents the final disposition of all claims.³⁴ The settlement cannot thereafter be altered in any way, nor can it be reviewed by the Board.³⁵

The second new provision added to Code section 34-9-15 is retroactive in effect.³⁶ The provision allows the parties to agree to, and the Board to approve, workers' compensation settlements prorated over the injured worker's life expectancy.³⁷ Once a lump sum settlement has been approved, neither the weekly compensation rate that had been paid during the case nor the statutory weekly compensation rate will apply.³⁸ The prorated lump sum settlement amount cannot exceed the maximum statutory weekly rate as of the date of injury.³⁹ Further, the prorated lump sum settlement amount becomes the rate for that case.⁴⁰

Section 3: Physician Selection at the Employer's Expense

Code section 34-9-201 addresses the employee's selection of a physician at the employer's expense.⁴¹ Prior to the Act, this Code section required an employer to pay for services rendered by a physician selected by the employee if the employer failed to adhere to the physician selection criteria as provided in Code section 34-9-201(b).⁴² The Act changes this reference from subsection (b) to subsection (c).⁴³

<<http://www.ganet.org/services/leg/audio/2000archive.html>>.

33. See O.C.G.A. § 34-9-15(b) (Supp. 2000).

34. See *id.*

35. See *id.*

36. See *id.* § 34-9-15(c). Representative Carl Rogers of the 20th House District questioned its retroactivity. See *Lawmakers, supra* note 12 (remarks by Rep. Carl Rogers). Representative Orrock indicated that this portion of the Act was made retroactive to adhere to a court ruling. See *id.* (remarks by Rep. Nan Grogan Orrock).

37. See O.C.G.A. § 34-9-15(c) (Supp. 2000).

38. See *id.*

39. See *id.*

40. See *id.*

41. See *id.* § 34-9-201(f).

42. See 1994 Ga. Laws 887, § 11, at 898 (formerly found at O.C.G.A. § 34-9-201(f) (1993)).

43. Compare 1994 Ga. Laws 887, § 11, at 898 (formerly found at O.C.G.A. § 34-9-201(f) (1993)), with O.C.G.A. § 34-9-201(f) (Supp. 2000).

Section 4: Assessing a Penalty to Employers for Unpaid Medical Charges

The Act amends Code section 34-9-203 by shortening the time allowed for an employer or its insurer to pay medical providers.⁴⁴ The period of time from the date charges are received to the date payment is made is now thirty days instead of sixty.⁴⁵ This section of the Act was an initiative to keep good medical providers involved in workers' compensation cases.⁴⁶ Employers and insurers who do not comply with the law may be assessed a penalty of up to twenty percent of reasonable medical charges not paid on time.⁴⁷

Section 5: Electronic Funds Transfer of Income Benefits

The Act amends two provisions of Code section 34-9-221.⁴⁸ First, the Act adds a method of payment for income benefits to the claimant.⁴⁹ In addition to payments by cash or negotiable instrument, the Act provides that, with agreement between the parties, payment may be made by electronic funds transfer.⁵⁰ Second, the Act adds another determination of the date on which weekly payments may be regarded as paid.⁵¹ The Act provides that, in case of electronic fund transfers, benefits are

44. Compare 1995 Ga. Laws 643, § 10, at 648 (formerly found at O.C.G.A. § 34-9-203(c) (1998)), with O.C.G.A. § 34-9-203(c) (Supp. 2000).

45. Compare 1995 Ga. Laws 643, § 10, at 648 (formerly found at O.C.G.A. § 34-9-203(c) (1998)), with O.C.G.A. § 34-9-203(c) (Supp. 2000).

46. See *Lawmakers*, supra note 12 (remarks of Rep. Nan Grogan Orrock). Representative Orrock stated that the Merit System and Medicaid have only a fifteen-day window for payment. See *id.* She also commented that it would be much easier to move the money by electronic transfer. See *id.*

47. See O.C.G.A. § 34-9-203(c) (Supp. 2000).

48. Compare 1999 Ga. Laws 817, § 4, at 819 (formerly found at O.C.G.A. § 34-9-221(a) (Supp. 1999)), and 1992 Ga. Laws 1942, § 19, at 1960 (formerly found at O.C.G.A. § 34-9-221(b) (1998)), with O.C.G.A. § 34-9-221(a)-(b) (Supp. 2000).

49. Compare 1999 Ga. Laws 817, § 4, at 819 (formerly found at O.C.G.A. § 34-9-221(a) (Supp. 1999)), with O.C.G.A. § 34-9-221(a) (Supp. 2000).

50. See O.C.G.A. § 34-9-221(a) (Supp. 2000).

51. Compare 1992 Ga. Laws 1942, § 19, at 1960 (formerly found at O.C.G.A. § 34-9-221(b) (1998)), with O.C.G.A. § 34-9-221(b) (Supp. 2000).

deemed paid when transferred to an account specified by the employee.⁵²

Section 6: Increasing Compensation for Total Disability and Temporary Partial Disability

The Act amends Code section 34-9-261 by increasing the maximum workers' compensation benefits paid to totally disabled employee.⁵³ The Act increases an employee's maximum average weekly wage from \$350 to \$375 per week.⁵⁴ It also increases the employee's minimum average weekly wage from \$35.00 to \$37.50 per week.⁵⁵ Further, the Act amends Code section 34-9-262 by increasing the maximum workers' compensation benefits paid to a temporarily or partially disabled employee.⁵⁶ The Act increases the maximum paid in such a case from \$233.33 per week to \$250.00 per week.⁵⁷

Section 7: Increasing Death Benefits Paid to Surviving Spouses

Finally, the Act amends Code Section 34-9-265, which provides the total compensation payable upon the death of an employee from on-the-job injuries and other causes.⁵⁸ The Act

52. See O.C.G.A. § 34-9-221(b) (Supp. 2000).

53. Compare 1999 Ga. Laws 817, § 7, at 820-21 (formerly found at O.C.G.A. § 34-9-261 (Supp. 1999)), with O.C.G.A. § 34-9-261 (Supp. 2000).

54. Compare 1999 Ga. Laws 817, § 7, at 820-21 (formerly found at O.C.G.A. § 34-9-261 (Supp. 1999)), with O.C.G.A. § 34-9-261 (Supp. 2000). Speaking on behalf of the bill, Senator Tim Golden of the 8th District pointed out that even with a \$25 increase, Georgia's workers' compensation payments are still the lowest in the nation. See Audio Recording of Senate Proceedings, Mar. 9, 2000 (remarks by Sen. Tim Golden) <<http://www.ganet.org/services/leg/audio/2000archive.html>>.

55. Compare 1999 Ga. Laws 817, § 7, at 820-21 (formerly found at O.C.G.A. § 34-9-261 (Supp. 1999)), with O.C.G.A. § 34-9-261 (Supp. 2000).

56. Compare 1999 Ga. Laws 817, § 8, at 821 (formerly found at O.C.G.A. § 34-9-262 (Supp. 1999)), with O.C.G.A. § 34-9-262 (Supp. 2000).

57. Compare 1999 Ga. Laws 817, § 8, at 821 (formerly found at O.C.G.A. § 34-9-262 (Supp. 1999)), with O.C.G.A. § 34-9-262 (Supp. 2000).

58. Compare 1995 Ga. Laws 642, § 11, at 649 (formerly found at O.C.G.A. § 34-9-265(d) (1998)), with O.C.G.A. § 34-9-265(d) (Supp. 2000).

provides that a person who is the decedent's surviving spouse and the decedent's sole dependent is entitled to a maximum payment of \$125,000; this amount was previously \$100,000.⁵⁹

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59. Compare 1995 Ga. Laws 642, § 11, at 649 (formerly found at O.C.G.A. § 34-9-265(d) (1998)), with O.C.G.A. § 34-9-265(d) (Supp. 2000).

60. The author wishes to express her thanks to Representatives Nan Grogan Orrock and Larry Smith for their invaluable assistance with this *Peach Sheet*.