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SENATE BILL NO. 889

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Labor and Commerce
on February 15, 1995)

(Patron Prior to Substitute—Senator Reasor)

A BILL to amend the Code of Virginia by adding a section numbered 65.2-520.1, relating to payment of temporary workers' compensation benefits.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 65.2-520.1 as follows:

§ 65.2-520.1. Temporary compensation benefits.

A. In any instance where an employer is uncertain whether a claim is compensable under this Act or is uncertain of the extent of its liability under this Act, the employer may initiate compensation payments as prescribed in Chapter 5 (§ 65.2-500 et seq.) of this title without prejudice and without admitting liability pursuant to a notice of temporary compensation payable on a form prescribed by the Commission.

B. The notice of temporary compensation payable shall be sent by the employer when the employer is self-insured, or by the insurer in all other cases, to the claimant and a copy filed with the Commission and shall advise the claimant that the payment of temporary compensation is not an admission of liability of the employer with respect to the injury which is the subject of the notice of temporary compensation payable, and that he must file a claim in a timely fashion to ensure continuation of compensation benefits after the six-week period described in subsection D concludes. The Commission shall, upon receipt of the notice of temporary compensation payable, send a notice to the claimant informing the claimant that:

1. The payment of temporary compensation and the claimant's acceptance of that compensation does not mean that the claimant's employer is accepting liability or responsibility for the injury or that a workers' compensation claim has been filed;

2. The payment of temporary compensation entitles the claimant to a maximum of six weeks of compensation; and

3. The claimant must file a claim for benefits in a timely fashion or enter into an agreement with the employer to ensure continuation of compensation payments.

C. The employer shall be entitled to a credit against the award subsequently entered for all temporary compensation paid; however, there shall be no right to recover temporary compensation if an award granting benefits is not entered.

D. Payments of temporary compensation may continue until such time as the employer decides to contest the claim or six weeks from the date the employer has notice or knowledge of the employee's disability, whichever shall first occur.

E. 1. If the employer ceases making payments pursuant to a notice of temporary compensation payable, a notice in the form prescribed by the Commission shall be sent by the employer when the employer is self-insured, or by the insurer in all other cases, to the claimant and a copy filed with the Commission, but in no event shall this notice be sent or filed later than five days after the last payment.

2. This notice shall advise the claimant that if the employer is ceasing payment of temporary compensation that the payment of temporary compensation was not an admission of liability of the employer with respect to the injury subject to the notice of temporary compensation payable, and the employee must file a claim to establish the liability of the employer.

3. If the employer ceases making payment pursuant to a notice of temporary compensation payable, the employer and employee retain all the rights, defenses, and obligations with regard to the claim subject to the notice of temporary compensation payable, and no portion of any payment of temporary compensation may be used to support a claim for compensation, assessment of fees under § 65.2-713, or be admitted into evidence or considered part of a hearing record, except for purposes of the credit provided in subsection C of this section.

4. Payment of temporary compensation hereunder shall toll the limitations periods for filing a claim under §§ 65.2-601 or 65.2-708 for the duration of such payment.