

VIRGINIA ACTS OF ASSEMBLY -- 1997 SESSION

CHAPTER 511

An Act to amend and reenact §§ 65.2-500, 65.2-502, 65.2-503 and 65.2-518 of the Code of Virginia, relating to workers' compensation; computation of average wage; total incapacity, partial incapacity, permanent loss, limitation upon total compensation.

[H 2753]

Approved March 18, 1997

Be it enacted by the General Assembly of Virginia:

1. That §§ 65.2-500, 65.2-502, 65.2-503 and 65.2-518 of the Code of Virginia are amended and reenacted as follows:

§ 65.2-500. Compensation for total incapacity; computation of average wage.

A. When the incapacity for work resulting from the injury is total, the employer shall pay, or cause to be paid, as hereinafter provided, to the injured employee during such total incapacity, a weekly compensation equal to 66 2/3 percent of his average weekly wages, with a minimum not less than 25 percent and a maximum of not more than 100 percent of the average weekly wage of the Commonwealth as defined herein. In any event, income benefits shall not exceed the average weekly wage of the injured employee. Any farm employer who continues to furnish benefits while the employee is incapacitated shall be given credit for the value of such benefits so furnished when computing the compensation due the employee.

B. For the purpose of this section the average wage in the Commonwealth shall be determined by the Commission as follows: On or before January 1 of each year, the total wages, excluding wages of United States government employees, reported on contribution reports to the Virginia Employment Commission for the twelve-month period ending the preceding June 30 shall be divided by the average monthly number of insured workers (determined by dividing the total insured workers reported for that twelve-month period by twelve). The average annual wage thus obtained shall be divided by fifty-two and the average weekly wage thus determined rounded to the nearest dollar. The average weekly wage as so determined shall be applicable for the full period during which income benefits are payable, when the date of occurrence of injury or of disablement in the case of disease falls within the year commencing with the July 1 following the date of determination.

C. The minimum or the maximum weekly income benefits shall not be changed for any year unless the computation herein provided results in an increase or decrease of two dollars or more, raised to the next even dollar in the level of the minimum or the maximum weekly income benefits.

D. ~~In no case shall the period covered by such compensation be greater than 500 weeks, nor shall the total amount of all compensation exceed the result obtained by multiplying the average weekly wage of the Commonwealth as defined herein for the applicable year by 500, except that The weekly compensation on account of total and permanent incapacity as defined by § 65.2-503 C shall continue for the lifetime of the injured employee without limit as to total amount.~~

§ 65.2-502. Compensation for partial incapacity.

Except as otherwise provided in § 65.2-503 or § 65.2-510, when the incapacity for work resulting from the injury is partial, the employer shall pay, or cause to be paid, as hereinafter provided, to the injured employee during such incapacity a weekly compensation equal to 66 2/3 percent of the difference between his average weekly wages before the injury and the average weekly wages which he is able to earn thereafter, but not more than 100 percent of the average weekly wage of the Commonwealth as defined in § 65.2-500. ~~In no case shall the period covered by such compensation be greater than 500 weeks.~~ In case the partial incapacity begins after a period of total incapacity, the latter period shall be deducted from the maximum period herein allowed for partial incapacity.

§ 65.2-503. Permanent loss.

A. Compensation for permanent partial and permanent total loss and disfigurement shall be awarded as provided in this section.

B. The following losses shall be compensated for the period specified at the rate of 66 2/3 percent of the average weekly wage:

Loss	Compensation Period
1. Thumb	60 weeks.
2. First finger (index finger)	35 weeks.

3. Second finger	30 weeks.
4. Third finger	20 weeks.
5. Fourth finger (little finger)	15 weeks.
6. First phalanx of the thumb or any finger ...	one-half
	compensation for
	loss of entire
	thumb or finger.

The loss of more than one phalanx of a thumb or finger is deemed the loss of the entire thumb or finger. Amounts received for loss of more than one finger shall not exceed compensation provided for the loss of a hand.

7. Great toe	30 weeks.
8. A toe other than a great toe	10 weeks.
9. First phalanx of any toe	one-half
	compensation for
	loss of entire
	toe.

The loss of more than one phalanx of a toe is deemed the loss of the entire toe.

10. Hand	150 weeks.
11. Arm	200 weeks.
12. Foot	125 weeks.
13. Leg	175 weeks.
14. Permanent total loss of the vision of an eye.....	100 weeks.
15. Permanent total loss of hearing of an ear..	50 weeks.
16. Severely marked disfigurement of the body resulting from an injury not otherwise compensated by this section	not exceeding 60 weeks.
17. Pneumoconiosis, including but not limited to silicosis and asbestosis, medically determined to be in the	

a. First stage	50 weeks.
b. Second stage	100 weeks.
c. Third stage	300 weeks.
18. Byssinosis	50 weeks.

C. Compensation shall be awarded pursuant to § 65.2-500 for permanent and total incapacity when there is:

1. Loss of both hands, both arms, both feet, both legs, both eyes, or any two thereof in the same accident;

2. Injury for all practical purposes resulting in total paralysis, as determined by the Commission based on medical evidence; or

3. Injury to the brain which is so severe as to render the employee permanently unemployable in gainful employment.

D. In construing this section, the permanent loss of the use of a member shall be equivalent to the loss of such member, and for the permanent partial loss or loss of use of a member, compensation may be proportionately awarded. Compensation shall also be awarded proportionately for partial loss of vision or hearing.

E. Except as provided in subsection C ~~and subdivision F 2 of this section~~, the weekly compensation payments referred to in this section shall ~~all~~ be subject to the same limitations as to maximum and minimum as set out in § 65.2-500.

~~F. 1. Compensation awarded pursuant to this section shall be in addition to all other compensation and shall be payable after payments for temporary total incapacity pursuant to § 65.2-500.~~

2. Compensation pursuant to this section may be paid simultaneously with payments for partial incapacity pursuant to § 65.2-502. *Where compensation pursuant to this section is paid simultaneously with payments for partial incapacity pursuant to § 65.2-502, each combined payment shall count as two weeks against the total maximum allowable period of 500 weeks.*

§ 65.2-518. Limitation upon total compensation.

The total compensation payable under this title shall in no case *be greater than 500 weeks nor shall it* exceed the result obtained by multiplying the average weekly wage of the Commonwealth as defined in § 65.2-500 for the applicable year by 500, except in cases of ~~total~~ permanent *and total* incapacity as defined in § 65.2-503 *C* and in cases of permanent disability under subdivision A 4 of § 65.2-504 and death from coal worker's pneumoconiosis under § 65.2-513.