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HOUSE BILL NO. 565

Offered January 11, 2006

Prefiled January 10, 2006

A BILL to amend and reenact § 65.2-502 of the Code of Virginia, relating to workers' compensation; compensation for partial incapacity.

Patron—Nixon

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:**1. That § 65.2-502 of the Code of Virginia is amended and reenacted as follows:**

§ 65.2-502. Compensation for partial incapacity; exclusion of AmeriCorps members, certain Food Stamp Employment and Training Program participants, and certain Temporary Assistance for Needy Families participants.

A. Except as otherwise provided in § 65.2-503 or 65.2-510, or as provided in subsections B, C and D, 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 that 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. *For purposes of calculating an injured employee's post-injury average weekly wage, if the period of partial incapacity exists for 13 weeks or less, the injured employee's post-injury average weekly wage shall be computed by dividing the employee's total earnings during the period of partial incapacity by the number of weeks included in such period. If the period of partial incapacity exists for more than 13 weeks, the injured employee's post-injury average weekly wage shall be computed in 13-week intervals in accordance with the method of computation set forth herein; however, if an injured employee's period of partial incapacity ends after the close of a 13-week interval but before the close of the next 13-week interval, the injured employee's post-injury average weekly wage for such portion of the 13-week interval shall be calculated as if it were for a period of partial incapacity existing for less than 13 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. However, the employer shall not be required to pay, or cause to be paid, compensation under this section to any injured employee not eligible for lawful employment; nor shall any such injured employee not eligible for lawful employment who is partially incapacitated be entitled during partial incapacity to receive temporary total benefits under § 65.2-500.

B. AmeriCorps members as defined in subdivision r of § 65.2-101 shall not be eligible to receive weekly compensation for partial incapacity, whether permanent or temporary, regardless of whether the injury results in death.

C. Food Stamp recipients participating in the work experience component of the Food Stamp Employment and Training Program as defined in subdivision s of § 65.2-101 shall not be eligible to receive weekly compensation for partial incapacity, whether permanent or temporary, regardless of whether the injury results in death.

D. Temporary Assistance for Needy Families recipients participating in the work experience component of the Virginia Initiative for Employment Not Welfare Program as defined in subdivision t of § 65.2-101 shall not be eligible to receive weekly compensation for partial incapacity, whether permanent or temporary, regardless of whether the injury results in death.

E. *Except as otherwise provided in subdivision A 3 of § 65.2-603, in all cases of partial work incapacity, an employee who is not on an open award for indemnity benefits and has been released to return to work in some capacity by a physician treating him for his accidental injury shall prove a reasonable effort to market his residual work capacity during any period for which he seeks an award of compensation.*

In determining whether an employee has made a reasonable effort to market his residual work capacity, the Commission shall consider (i) the nature and extent of the employee's disability; (ii) the employee's training, age, experience, and education; (iii) the nature and extent of the employee's job search; (iv) the employee's intent in conducting his job search; and (v) the availability of jobs in the area suitable for the employee, considering his disability.

In order to establish a prima facie reasonable effort to market his residual work capacity during the period for which he seeks an award of compensation, an employee shall prove that he (a) registered with the Virginia Employment Commission within a reasonable time after being released to return to

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59 *work and (b) directly contacted at least three potential employers concerning available jobs meeting the*
60 *claimant's residual capacity during each week of partial work incapacity for which he seeks award of*
61 *indemnity benefits.*