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HOUSE BILL NO. 617

Offered January 8, 2020

Prefiled January 6, 2020

A BILL to amend and reenact § 65.2-400 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 65.2-105.1, relating to workers' compensation; injuries caused by repetitive motion.

Patrons—Guzman, Bagby, Carroll Foy, Ward, Aird, Carter, Delaney, Kory, Krizek, Levine, Lopez, Price and Samirah; Senator: Morrissey

Referred to Committee on Labor and Commerce

Be it enacted by the General Assembly of Virginia:

1. That § 65.2-400 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 65.2-105.1 as follows:

§ 65.2-105.1. Injuries caused by repetitive motion.

A. Any physical injury, including the condition of carpal tunnel syndrome, that arises out of and in the course of employment and that results from repetitive motion shall be treated as an injury by accident for purposes of the Virginia Workers' Compensation Act (Act). The right to compensation for injuries resulting from repetitive motion shall be forever barred, unless a claim is filed with the Commission within two years from the first communication to the employee by a physician that he suffers from an injury caused by repetitive motion.

B. Any employee who suffers from a physical injury caused by repetitive motion shall be entitled to the same hospital, medical, and miscellaneous benefits as an employee who has a compensable injury by accident, except that the period during which the employer shall be required to furnish medical attention, including reasonably necessary diagnostic services, shall begin 15 days prior to the first communication of the diagnosis to the employee.

C. When an employee suffers from an injury caused by repetitive motion that is covered by the Act, the employer who shall be liable to pay compensation shall be determined as follows:

1. If the employee is employed in an occupation that exposes him to the hazard of repetitive motion at the time he receives a communication of a diagnosis, that employer shall alone be liable to pay benefits as provided in the Act.

2. If the employee is employed in an occupation that does not expose him to the hazard of repetitive motion at the time he receives a communication of a diagnosis, the employer to last expose the employee to the hazard of repetitive motion shall alone be liable to pay benefits as provided in the Act.

D. If the employer against whom a claim for benefits has been brought asserts as a defense that some other employer is liable to pay benefits as provided herein, the employer shall notify the Commission and the employee in writing of this defense at least 20 days prior to any hearing on the issue of compensability.

§ 65.2-400. "Occupational disease" defined.

A. As used in this title, unless the context clearly indicates otherwise, the term "occupational disease" means a disease arising out of and in the course of employment, but not an ordinary disease of life to which the general public is exposed outside of the employment.

B. A disease shall be deemed to arise out of the employment only if there is apparent to the rational mind, upon consideration of all the circumstances:

1. A direct causal connection between the conditions under which work is performed and the occupational disease;

2. It can be seen to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment;

3. It can be fairly traced to the employment as the proximate cause;

4. It is neither a disease to which an employee may have had substantial exposure outside of the employment, nor any condition of the neck, back or spinal column;

5. It is incidental to the character of the business and not independent of the relation of employer and employee; and

6. It had its origin in a risk connected with the employment and flowed from that source as a natural consequence, though it need not have been foreseen or expected before its contraction.

C. Hearing loss and the condition of carpal tunnel syndrome are not an occupational diseases disease but are is an ordinary diseases disease of life as defined in § 65.2-401.

INTRODUCED

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