R.C.  2214

To:  The Members of the Board

Re:  New York Workers Compensation  
Enactment of Legislative Bill A 2021-B/S 2776-B

Please be advised that Legislative Bill A 2021-B /S 2776-B has been signed into law on August 26, 2009 by Governor David Patterson. The new law requires that payments for schedule permanent partial disability be made in a lump sum without commutation to present value if requested as such by the injured worker. The NYCIRB’s analysis of the new law is available on our website at: http://www.nycirb.org/2007/depts/actuary/S2776B.pdf.

The new law (a copy of which is attached) is effective immediately.

Very truly yours,

Monte Almer

President
A02021 Summary:

BILL NO: A02021B
SAME AS: Same as S 2776-B
SPONSOR: John
COSPNSR: Perry
MLTSPNSR: Amd SS25 & 15, Work Comp L

Provides that certain workers' compensation payments be made in one lump sum without commutation to a present value amount.

A02021 Actions:

BILL NO: A02021B
01/15/2009 referred to labor
05/27/2009 amend and recommit to labor
05/27/2009 print number 2021a
06/02/2009 reported referred to ways and means
06/02/2009 amend and recommit to ways and means
06/02/2009 print number 2021b
06/15/2009 reported referred to rules
06/15/2009 reported
06/15/2009 rules report cal.311
06/15/2009 ordered to third reading rules cal.311
06/17/2009 passed assembly
06/17/2009 delivered to senate
06/18/2009 REFERRED TO RULES
07/16/2009 SUBSTITUTED FOR S2776B
07/16/2009 3RD READING CAL.512
07/16/2009 PASSED SENATE
07/16/2009 RETURNED TO ASSEMBLY
08/14/2009 delivered to governor

A02021 Votes:

BILL: A02021B DATE: 06/17/2009 MOTION: YEA/NAY: 134/010
Abbate Y Cahill Y Englebr Y Hooper Y Maisel Y Powell Y Skartad Y
Alessi Y Calhoun Y Errigo Y Hoyt Y Markey Y Pretlow Y Spano Y
Alfano Y Camara Y Espaill Y Hyer-Sp Y Mayerso Y Quinn Y Stirpe Y
Amedore Y Canestr Y Farrell Y Jacobs Y McDonou Y Rabbitt Y Sweeney Y
Arroyo Y Carrozz ER Fields Y Jaffee Y McEneny Y Raia Y Tedisco Y
Aubry Y Castro Y Finch Y Jeffrie Y McKevit Y Ramos Y Thiele NO
Bacalle Y Christie Y Fitzpat NO John Y Meng Y Rellich Y Titone Y
Ball Y Clark Y Gabrysz Y Jordan NO Miller Y Reilly Y Titus Y
Barclay NO Colton Y Galey Y Kavanag Y Millman Y Rive J Y Tobacco Y
Barra NO Conte Y Gantt Y Kellner Y Molinar NO Rive N Y Townsen Y
Barron ER Cook Y Gianari Y Kolb NO Morelle Y Rive PM Y Townsen Y
Bills

Benedet Y  Corwin NO Gibson Y  Koon Y  Nolan Y  Robinso Y  Walker Y
Benjami Y  Crespo Y  Giglio Y  Lancman Y  Oaks NO Rosenth Y  Weinste Y
Bing Y  Crouch Y  Glick Y  Latimer Y  O'Donne Y  Russell ER Weisenb Y
Boyland ER Cusick Y  Gordon Y  Lavine Y  O'Mara NO Saladin Y  Weprin Y
Boyle Y  Cymbrow Y  Gottfri Y  Lentol Y  Ortiz Y  Sayward Y  Wright Y
Bradley Y  DelMont Y  Gunther Y  Lifton Y  Parment Y  Scarbor Y  Zebrows Y
Brennan Y  DenDekk Y  Hawley Y  Lope PD ER Paulin Y  Schimel Y  Mr Spkr Y
Brook K Y  Dinowit Y  Heastie Y  Lupardo Y  Peralta Y  Schroed Y
Burling Y  Duprey Y  Hevesi Y  Magee Y  Perry Y  Scozzaf Y
Butler Y  Eddingt Y  Hikind Y  Magnare Y  Pheffer Y  Seminer Y

A02021 Memo:

BILL NUMBER:A2021B

TITLE OF BILL: An act to amend the workers' compensation law, in relation to the payment of compensation

PURPOSE OR GENERAL IDEA OF BILL: This bill would change the payment structure to injured workers for permanent partial disability from incremental payments to one lump sum.

Section 1 of the bill amends section 25(1)(b) of the Workers' Compensation Law to require that an award of compensation for permanent partial disability may be payable in one lump sum if requested by the worker.

Section 2 of the bill amends section 15(3)(u) of the Workers' Compensation Law to require that a total or partial loss of use of more than one member or parts of members may be fully payable in one lump sum if requested by the worker.

JUSTIFICATION: Injured workers who suffer permanent functional limitations to extremities or certain other body parts are typically compensated for such losses by a schedule loss of use award. Such awards, calculated after deducting the amount of lost time benefits paid to the claimant, provide the injured worker with a cushion against the diminished future earning capacity caused by his or her permanent functional impairment.

The Workers' Compensation Board has recognized that it is entirely consistent with the economic and humanitarian objects of the Workers' Compensation Law to pay such schedule loss of use awards to the injured worker in one lump sum, rather than periodically over time. In Lacroix v. Syracuse Executive Air Service 25 A.D. 3d 967 (2006), the Appellate Division, Third Department affirmed the Workers' Compensation Board's approval of the lump sum payment of schedule loss of use awards. That decision, however, was reversed by the New York Court of Appeals in LaCroix v. Syracuse Executive Air Service, 8 N.Y.3d 348(2007). While recognizing that a schedule loss of use award seeks to compensate the injured worker for loss of earning power, the Court of Appeals ruled that the Board's policy contravened the language of the Worker's Compensation Law and that any departure from the periodic method of payment of schedule loss of use awards must come from the Legislature.

Lump sum payments allow injured workers to invest their award if they choose and better prepare for the adverse financial and emotional effects of their resulting diminished earning capacity.

PRIOR LEGISLATIVE HISTORY: 2008: A.10879 Reported to Ways and Means

FISCAL IMPLICATIONS: To be determined.

EFFECTIVE DATE: The act would take effect immediately.
AN ACT to amend the workers' compensation law, in relation to the payment of compensation

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1. Section 1. Paragraph (b) of subdivision 1 of section 25 of the workers' compensation law, as amended by chapter 635 of the laws of 1996, is amended to read as follows:

(b) The first payment of compensation shall become due on the fourteenth day of disability on which date or within four days thereafter all compensation then due shall be paid, and the compensation payable bi-weekly thereafter; but the board may determine that any payments may be made monthly or at any other period, as it may deem advisable.

2. Paragraph u of subdivision 3 of section 15 of the workers' compensation law, as added by chapter 301 of the laws of 1929, is amended to read as follows:

u. Total or partial loss or loss of use of more than one member or parts of members. In any case in which there shall be a loss or loss of use of more than one member or parts of members. In any case in which there shall be a loss or loss of use of more than one member or parts of members, the board shall award compensation for the loss or loss of use of each such member or part thereof, which awards shall run consecutively shall be fully payable in one lump sum upon the request of the injured employee.

3. This act shall take effect immediately.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.