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Workers' Compensation HB 154

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LABOR AND INDUSTRIAL RELATIONS

Workers' Compensation: Amend Chapter 9 of Title 34 of the Official Code of Georgia Annotated, Relating to Workers' Compensation, so as to Change Certain Provisions Relating to Awards and Benefits of Workers' Compensation; Provide for a Limitation Period on Medical Benefits; Provide for Changes Related to Reimbursement of Mileage Charges; Provide for Changes Related to Interest on Lump Sum Payments of Compensation; Provide for Changes Related to Benefits for Attempting Work; Increase the Compensation Benefits for Total Disability and Temporary Partial Disability; Provide for Related Matters; Repeal Conflicting Laws; and for Other Purposes

CODE SECTIONS:	O.C.G.A. § 34-9-200, -203, -222, -240, -261, -262 (amended)
BILL NUMBER:	HB 154
ACT NUMBER:	203
GEORGIA LAWS:	2013 Ga. Laws 651
SUMMARY:	The Act makes a number of minor changes to Georgia's workers' compensation system, including a new 400-week cap on medical benefits for non-catastrophic injuries, a minimum length of time a claimant must attempt a suitable job during return-to-work trial periods, a reduction in the interest rate on lump sum advances, quicker medical mileage reimbursement, and an increase in the weekly maximum benefit paid to claimants. These changes were unanimously recommended by the Legislative Committee of the Workers' Compensation Advisory Council made up of representatives from the business, medical, and legal communities.
EFFECTIVE DATE:	July 1, 2013

History

Georgia's workers' compensation system is a statutory system that provides benefits to workers injured on the job while protecting their employers from large tort awards.[1] The system is a complex one, and has been gradually refined by the General Assembly.[2]

Every year, a twenty-six member Workers' Compensation Advisory Council recommends a "clean-up bill" to the legislature.[3] The Advisory Council brings together the major stakeholders in workers' compensation including claimants' lawyers, businesses, doctors and insurance companies.[4] Each stakeholder proposes changes, and then all sides negotiate a consensus package to submit to the legislature.[5]

Because of the annual nature of the Advisory Council's recommendations, there was no specific controversy driving the Act.[6] In recent years, the economic downturn has placed pressure on the Council members to contain costs, and benefits had not been increased for five years—a longer than normal gap between increases.[7] Overall, most of the negotiations occur between Council members, and the legislature's main role is to either ratify or reject whatever compromise the Council reaches.[8]

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1. Meri K. Christensen, *Labor and Industrial Relations Workers' Compensation*, 15 GA. ST. U. L. REV. 185 (1998).

2. John R. Mccown, *Labor and Industrial Relations Workers' Compensation*, 13 GA. ST. U. L. REV. 233 (1996).

3. Video Recording of House Proceedings, Feb. 11, 2013 at 36 sec. (remarks by Rep. Mark Hamilton (R-24th)), http://www.gpb.org/lawmakers/2013/day-15.

4. *See* STATE BOARD OF WORKERS COMPENSATION ADVISORY COUNCIL'S 2012–13 DIRECTORY 1 (2012), *available at* http://www.gsia.net/downloads/2012-13_AdvisoryCouncil.pdf.

5. Telephone Interview with Steve Garner, Member, Georgia State Board of Workers' Compensation Advisory Council (Apr. 13, 2013) [hereinafter Garner Interview].

6. *Id.*

7. *Id.*

8. *See generally* Video Recording of House Industry and Labor Committee Proceedings, Feb. 6, 2013 at 5 min., 48 sec. (remarks by Rep. Mark Hamilton (R-24th)), http://media.legis.ga.gov/hav/13_14/2013/committees/indust/indust020613EDITED.wmv. [hereinafter House Committee Video] ("[T]he last thing I feel like that we want to be doing is debating on the floor workers' compensation legislation[,] [b]ecause it is . . . very technical.").

Bill Tracking of HB 154

Consideration and Passage by the House

Representatives Mark Hamilton (R-24th), Jimmy Pruett (R-149th), Tom Kirby (R-114th), Edward Lindsey (R-54th), Barry Fleming (R-121st), and Chad Nimmer (R-178th) sponsored the bill.[9] The House read the bill for the first time on January 31, 2013.[10] The House read the bill for the second time on February 1, 2013.[11] Speaker of the House David Ralston (R-7th) assigned it to the House Committee on Industry and Labor, which favorably reported the bill as introduced, with no changes, on February 7, 2013.[12] The House read the bill for the third time on February 11, 2013.[13] The bill was adopted as introduced to the House by a vote of 165 to 0.[14]

Consideration and Passage by the Senate

Senator Tim Golden (R-8th) sponsored HB 154 in the Senate, and the bill was first read on February 12, 2011.[15] Lieutenant Governor Casey Cagle (R) assigned it to the Senate Insurance and Labor Committee, which favorably reported the bill to the Senate with no changes on February 22, 2013.[16] The bill was read in the Senate a second time on February 25, 2013.[17] On March 12, 2013, the bill was read a third time, and the Senate passed the bill by a vote of 45 to 0.[18] The House sent the bill to Governor Nathan Deal on April 1, 2013.[19] The Governor signed the bill on May 6, 2013.[20]

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9. State of Georgia Final Composite Status Sheet, HB 154, May 9, 2013.
10. *Id.*
11. *Id.*
12. *Id.*
13. *Id.*
14. Georgia House of Representatives Voting Record, HB 154 (Feb. 11, 2013).
15. Video Recording of Senate Proceedings, Mar. 12, 2013 at 1 min., 24 sec. (remarks by Sen. Tim Golden (R-8th)), http://www.gpb.org/lawmakers/2013/day-32.
16. State of Georgia Final Composite Status Sheet, HB 154, May 9, 2013.
17. *Id.*
18. *Id.*; Georgia Senate Voting Record, HB 154 (Mar. 12, 2013).
19. State of Georgia Final Composite Status Sheet, HB 154, May 9, 2013.
20. *Id.*

The Act

The Act amends Title 34 of the Georgia Code Annotated with the purpose of updating Georgia's workers' compensation system.[21]

Section 1 of the Act amends Code section 34-9-200 by capping the benefits period for medical care, treatment, and supplies at 400 weeks, or approximately eight years, for employees suffering from non-catastrophic injuries.[22] The provision previously made no distinction between catastrophic and non-catastrophic injuries, and employers were required to pay benefits to injured employees as long as the Board determined it would "cure, give relief, or restore the employee to suitable employment," no matter the type of injury sustained.[23] The Act does not alter the entitlement to benefits for employees suffering from catastrophic injuries.[24] These amendments apply only to injuries occurring on or after July 1, 2013.[25]

Section 2 of the Act amends Code section 34-9-203 by providing additional reimbursements to the employee for mileage charges incurred.[26] The Act requires mileage reimbursement to be paid by the employer or insurer directly to the employee within fifteen days after receiving the charges and required documentation for mileage incurred by the employee.[27] The reimbursement period for medical goods and services remains unchanged at thirty days and is to be paid to the provider of the goods or services.[28] The Act further requires the employee to include documentation along with the charges incurred for medical goods and services received.[29] The provision previously required only that the charges incurred for goods and services be provided to the employer or insurer.[30]

The Board may determine that it is in the claimant's best interest to receive a single lump sum payment equal to the sum of all or part of the future payments rather than wait until those payments are paid to

21. O.C.G.A. §§ 34-9-200(a), 34-9-203(c), 34-9-222, 34-9-240, 34-9-261, 34-9-262 (Supp. 2013).
22. *Compare* O.C.G.A. § 34-9-200(a)(2) (Supp. 2013), *with* O.C.G.A. § 34-9-200(a) (2008).
23. O.C.G.A. § 34-9-200(a) (2008).
24. *Compare* O.C.G.A. § 34-9-200(a)(1) (Supp. 2013), *with* O.C.G.A. § 34-9-200(a) (2008).
25. O.C.G.A. § 34-9-200(a) (Supp. 2013).
26. *Compare* O.C.G.A. § 34-9-203(c) (Supp. 2013), *with* O.C.G.A. § 34-9-203(c) (2008).
27. O.C.G.A. § 34-9-203(c)(1) (Supp. 2013).
28. *Compare* O.C.G.A. § 34-9-203(c)(1) (Supp. 2013), *with* O.C.G.A. § 34-9-203(c)(1) (2008).
29. O.C.G.A. § 34-9-203(c)(1) (Supp. 2013).
30. O.C.G.A. § 34-9-203(c)(1) (2008).

the injured worker. Section 3 of the Act amends Code section 34-9-222 by reducing the interest rate at which the future payments are applied to a lump sum payment from 7% to 5%.[31]

Section 4 of the Act amends Code section 34-9-240 by specifying a minimum length of time the worker must attempt a suitable job provided by the employer in order to continue receiving compensation for an injury.[32] The Act sets the minimum work period at either eight cumulative hours or one scheduled workday, whichever is greater.[33]

Section 5 of the Act amends Code section 34-9-261 by increasing the maximum weekly benefit paid to the injured employee from $500.00 to $525.00 in cases of temporary total disability.[34] Section 6 of the Act amends Code section 34-9-262 by increasing the maximum weekly benefit paid to the injured employee from $334.00 to $350.00 in cases of temporary partial disability.[35]

Analysis

Georgia's workers' compensation system receives excellent ratings nationally,[36] and the Act did not substantially change the system.[37] While individual provisions favor the interests of one side over the other, all parties supported the compromise the Act embodied.[38]

The Act's first section—a 400-week cap on benefits for non-catastrophic injuries—may appear to be a major change on the surface because under current law, an injured worker is entitled to medical benefits as long as treatment remains necessary.[39] Injuries requiring more than 400 weeks of benefits, however, are typically catastrophic—thus, exempt from the cap—so Council members do

31. *Compare* O.C.G.A. § 34-9-222 (Supp. 2013), *with* O.C.G.A. § 34-9-222 (2008).
32. *Compare* O.C.G.A. § 34-9-240(b) (Supp. 2013), *with* O.C.G.A. § 34-9-240(b) (2008).
33. O.C.G.A. § 34-9-240(b) (Supp. 2013).
34. *Compare* O.C.G.A. § 34-9-261 (Supp. 2013), *with* O.C.G.A. § 34-9-261 (2008).
35. *Compare* O.C.G.A. § 34-9-262 (Supp. 2013), *with* O.C.G.A. § 34-9-262 (2008).
36. House Committee Video, *supra* note 8, at 18 min., 24 sec. (remarks by Mr. William T. Clark, Director of Political Affairs, Georgia Trial Lawyers Association).
37. House Committee Video, *supra* note 8, at 9 min., 48 sec. (remarks by Rep. Mark Hamilton (R-24th)) ("[W]e have a pretty straightforward bill, with a little give and take.").
38. House Committee Video, *supra* note 8, at 5 min., 48 sec. (remarks by Rep. Mark Hamilton (R-24th)) ("[N]ot a single person has come to my office or called me with concerns over this bill.").
39. House Committee Video, *supra* note 8, at 16 min., 51 sec. (remarks by Mr. Robert R. Potter, Partner, Swift, Currie, McGhee & Hiers, LLP).

not expect the provision to affect many cases.[40] The major benefit of the change is that it reduces uncertainty for businesses and insurers because it allows them to more reliably forecast the cost of a non-catastrophically injured worker's care.[41]

Similarly, section 4—which requires injured workers attempting a good faith return to work to work eight hours or a full work day—was not meant to fundamentally change the workers' compensation system, but is essentially a fraud prevention measure.[42] The Council was concerned that instead of a true good faith effort, some workers "would come back for five or ten minutes and then leave," and they required a full work day to stop that abuse from occurring.[43]

The remaining changes were an incremental increase in benefits, an adjustment to commutation rates reflecting the current economy's low interest rates, and faster reimbursement for mileage costs—none of which fundamentally change the way the system functions.[44] Georgia's new maximum weekly benefit of $525 is substantially lower than the state's average weekly wage of $890,[45] however, recipients can still draw benefits longer than in most states.[46]

The Council did discuss larger changes, but ultimately rejected them.[47] The Advisory Council system encourages consensus, and it makes it unlikely that Georgia will experience sudden swings in workers' compensation policy like those that occasionally take place in other states.[48]

Bryan Baird & Joshua Kahn

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40. Garner Interview, *supra* note 5.
41. *Id.*
42. House Committee Video, *supra* note 8, at 12 min., 12 sec. (remarks by Mr. Potter).
43. *Id.*
44. *Id.*
45. *Compare* O.C.G.A. § 34-9-261 (Supp. 2013), *with* GEORGIA DEPARTMENT OF LABOR, GEORGIA EMPLOYMENT & WAGES 2012 AVERAGES 6 (2013), *available at* http://explorer.dol.state.ga.us/mis/Current/ewcurrent.pdf.
46. Garner Interview, *supra* note 5.
47. House Committee Video, *supra* note 8, at 17 min., 42 sec. (remarks by Mr. Potter). For example, the Council debated "maximum medical improvement," commonly known as MMI, at length and rejected it. *Id.*
48. Garner Interview, *supra* note 5.