

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 443

Introduced by Albrecht, 17.

Read first time January 13, 2023

Committee: Business and Labor

- 1 A BILL FOR AN ACT relating to the Nebraska Workers' Compensation Act; to
- 2 amend section 48-121, Reissue Revised Statutes of Nebraska; to
- 3 change provisions relating to compensation for total disability; and
- 4 to repeal the original section.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 48-121, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 48-121 The following schedule of compensation is hereby established
4 for injuries resulting in disability:

5 (1)(a) (1) For total disability, the compensation during such
6 disability shall be sixty-six and two-thirds percent of the wages
7 received at the time of injury, but such compensation shall not be more
8 than the maximum weekly income benefit specified in section 48-121.01 nor
9 less than the minimum weekly income benefit specified in section
10 48-121.01, except that if at the time of injury the employee receives
11 wages of less than the minimum weekly income benefit specified in section
12 48-121.01, then he or she shall receive the full amount of such wages per
13 week as compensation. Nothing in this subdivision shall require payment
14 of compensation after disability shall cease. ÷

15 (b) Except as provided in subdivision (1)(c) of this section, for
16 injuries occurring after the effective date of this act, compensation for
17 total disability shall cease at age seventy-two, except that if an
18 employee is injured after age sixty-seven, compensation for total
19 disability shall cease after five years of such compensation having been
20 paid.

21 (c) Subdivision (1)(b) of this section shall not apply to the
22 following injuries:

23 (i) Spinal cord injury involving severe paralysis of an arm, a leg,
24 or the trunk;

25 (ii) Severe brain or closed-head injury as evidenced by:

26 (A) Severe sensory or motor disturbances;

27 (B) Severe communication disturbances;

28 (C) Severe complex integrated disturbances of cerebral function;

29 (D) Severe episodic neurological disorders; or

30 (E) Other severe brain and closed-head injury conditions at least as
31 severe in nature as any condition provided in subdivisions (1)(c)(ii)(A)

1 through (D) of this section; or

2 (iii) Total or industrial blindness;

3 (2) For disability partial in character, except the particular cases
4 mentioned in subdivision (3) of this section, the compensation shall be
5 sixty-six and two-thirds percent of the difference between the wages
6 received at the time of the injury and the earning power of the employee
7 thereafter, but such compensation shall not be more than the maximum
8 weekly income benefit specified in section 48-121.01. This compensation
9 shall be paid during the period of such partial disability but not beyond
10 three hundred weeks. Should total disability be followed by partial
11 disability, the period of three hundred weeks mentioned in this
12 subdivision shall be reduced by the number of weeks during which
13 compensation was paid for such total disability;

14 (3) For disability resulting from permanent injury of the classes
15 listed in this subdivision, the compensation shall be in addition to the
16 amount paid for temporary disability, except that the compensation for
17 temporary disability shall cease as soon as the extent of the permanent
18 disability is ascertainable. For disability resulting from permanent
19 injury of the following classes, compensation shall be: For the loss of a
20 thumb, sixty-six and two-thirds percent of daily wages during sixty
21 weeks. For the loss of a first finger, commonly called the index finger,
22 sixty-six and two-thirds percent of daily wages during thirty-five weeks.
23 For the loss of a second finger, sixty-six and two-thirds percent of
24 daily wages during thirty weeks. For the loss of a third finger, sixty-
25 six and two-thirds percent of daily wages during twenty weeks. For the
26 loss of a fourth finger, commonly called the little finger, sixty-six and
27 two-thirds percent of daily wages during fifteen weeks. The loss of the
28 first phalange of the thumb or of any finger shall be considered to be
29 equal to the loss of one-half of such thumb or finger and compensation
30 shall be for one-half of the periods of time above specified, and the
31 compensation for the loss of one-half of the first phalange shall be for

1 one-fourth of the periods of time above specified. The loss of more than
2 one phalange shall be considered as the loss of the entire finger or
3 thumb, except that in no case shall the amount received for more than one
4 finger exceed the amount provided in this schedule for the loss of a
5 hand. For the loss of a great toe, sixty-six and two-thirds percent of
6 daily wages during thirty weeks. For the loss of one of the toes other
7 than the great toe, sixty-six and two-thirds percent of daily wages
8 during ten weeks. The loss of the first phalange of any toe shall be
9 considered equal to the loss of one-half of such toe, and compensation
10 shall be for one-half of the periods of time above specified. The loss of
11 more than one phalange shall be considered as the loss of the entire toe.
12 For the loss of a hand, sixty-six and two-thirds percent of daily wages
13 during one hundred seventy-five weeks. For the loss of an arm, sixty-six
14 and two-thirds percent of daily wages during two hundred twenty-five
15 weeks. For the loss of a foot, sixty-six and two-thirds percent of daily
16 wages during one hundred fifty weeks. For the loss of a leg, sixty-six
17 and two-thirds percent of daily wages during two hundred fifteen weeks.
18 For the loss of an eye, sixty-six and two-thirds percent of daily wages
19 during one hundred twenty-five weeks. For the loss of an ear, sixty-six
20 and two-thirds percent of daily wages during twenty-five weeks. For the
21 loss of hearing in one ear, sixty-six and two-thirds percent of daily
22 wages during fifty weeks. For the loss of the nose, sixty-six and two-
23 thirds percent of daily wages during fifty weeks.

24 In any case in which there is a loss or loss of use of more than one
25 member or parts of more than one member set forth in this subdivision,
26 but not amounting to total and permanent disability, compensation
27 benefits shall be paid for the loss or loss of use of each such member or
28 part thereof, with the periods of benefits to run consecutively. The
29 total loss or permanent total loss of use of both hands, or both arms, or
30 both feet, or both legs, or both eyes, or hearing in both ears, or of any
31 two thereof, in one accident, shall constitute total and permanent

1 disability and be compensated for according to subdivision (1) of this
2 section. In all other cases involving a loss or loss of use of both
3 hands, both arms, both feet, both legs, both eyes, or hearing in both
4 ears, or of any two thereof, total and permanent disability shall be
5 determined in accordance with the facts. Amputation between the elbow and
6 the wrist shall be considered as the equivalent of the loss of a hand,
7 and amputation between the knee and the ankle shall be considered as the
8 equivalent of the loss of a foot. Amputation at or above the elbow shall
9 be considered as the loss of an arm, and amputation at or above the knee
10 shall be considered as the loss of a leg. Permanent total loss of the use
11 of a finger, hand, arm, foot, leg, or eye shall be considered as the
12 equivalent of the loss of such finger, hand, arm, foot, leg, or eye. In
13 all cases involving a permanent partial loss of the use or function of
14 any of the members mentioned in this subdivision, the compensation shall
15 bear such relation to the amounts named in such subdivision as the
16 disabilities bear to those produced by the injuries named therein.

17 If, in the compensation court's discretion, compensation benefits
18 payable for a loss or loss of use of more than one member or parts of
19 more than one member set forth in this subdivision, resulting from the
20 same accident or illness, do not adequately compensate the employee for
21 such loss or loss of use and such loss or loss of use results in at least
22 a thirty percent loss of earning capacity, the compensation court shall,
23 upon request of the employee, determine the employee's loss of earning
24 capacity consistent with the process for such determination under
25 subdivision (1) or (2) of this section, and in such a case the employee
26 shall not be entitled to compensation under this subdivision.

27 If the employer and the employee are unable to agree upon the amount
28 of compensation to be paid in cases not covered by the schedule, the
29 amount of compensation shall be settled according to sections 48-173 to
30 48-185. Compensation under this subdivision shall not be more than the
31 maximum weekly income benefit specified in section 48-121.01 nor less

1 than the minimum weekly income benefit specified in section 48-121.01,
2 except that if at the time of the injury the employee received wages of
3 less than the minimum weekly income benefit specified in section
4 48-121.01, then he or she shall receive the full amount of such wages per
5 week as compensation;

6 (4) For disability resulting from permanent disability, if
7 immediately prior to the accident the rate of wages was fixed by the day
8 or hour, or by the output of the employee, the weekly wages shall be
9 taken to be computed upon the basis of a workweek of a minimum of five
10 days, if the wages are paid by the day, or upon the basis of a workweek
11 of a minimum of forty hours, if the wages are paid by the hour, or upon
12 the basis of a workweek of a minimum of five days or forty hours,
13 whichever results in the higher weekly wage, if the wages are based on
14 the output of the employee; and

15 (5) The employee shall be entitled to compensation from his or her
16 employer for temporary disability while undergoing physical or medical
17 rehabilitation and while undergoing vocational rehabilitation whether
18 such vocational rehabilitation is voluntarily offered by the employer and
19 accepted by the employee or is ordered by the Nebraska Workers'
20 Compensation Court or any judge of the compensation court.

21 Sec. 2. Original section 48-121, Reissue Revised Statutes of
22 Nebraska, is repealed.