

**§214. Determination of partial incapacity**

**1. Benefit determination.** While the incapacity is partial, the employer shall pay the injured employee benefits as follows.

A. If an employee receives a bona fide offer of reasonable employment from the previous employer or another employer or through the Bureau of Employment Services and the employee refuses that employment without good and reasonable cause, the employee is considered to have voluntarily withdrawn from the work force and is no longer entitled to any wage loss benefits under this Act during the period of the refusal. [PL 1995, c. 560, Pt. G, §23 (AMD); PL 1995, c. 560, Pt. G, §29 (AFF).]

B. If an injured employee's date of injury is prior to January 1, 2013 and the employee is employed at any job and the average weekly wage of the employee is less than that which the employee received before the date of injury, the employee is entitled to receive weekly benefits under this Act equal to 80% of the difference between the injured employee's after-tax weekly wage before the date of injury and the after-tax weekly wage that the injured employee is able to earn after the date of injury, but not more than the maximum weekly rate of compensation, as determined under section 211. [PL 2011, c. 647, §10 (AMD).]

B-1. If an injured employee's date of injury is on or after January 1, 2013 and the employee is employed at any job and the average weekly wage of the employee is less than that which the employee received before the date of injury, the employee is entitled to receive weekly benefits under this Act equal to 2/3 of the difference, due to the injury, between the employee's average gross weekly wages, earnings or salary before the injury and the average gross weekly wages, earnings or salary that the employee is able to earn after the injury, but not more than the maximum weekly rate of compensation, as determined under section 211. [PL 2011, c. 647, §11 (NEW).]

C. If an employee is employed at any job and the average weekly wage of the employee is equal to or more than the average weekly wage the employee received before the date of injury, the employee is not entitled to any wage loss benefits under this Act for the duration of the employment. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

D. If the employee, after having been employed at any job pursuant to this subsection for 100 weeks or more, loses that job through no fault of the employee, the employee is entitled to receive compensation under this Act pursuant to the following.

(1) If, after exhaustion of unemployment benefit eligibility of an employee, the employment since the time of injury has not established a new wage earning capacity, the employee is entitled to receive compensation based upon the employee's wage at the original date of injury.

(2) If the employee has established a new wage earning capacity, the employee is entitled to wage loss benefits based on the difference between the normal and customary wages paid to those persons performing the same or similar employment, as determined at the time of termination of the employment of the employee, and the wages paid at the time of the injury. There is a presumption of wage earning capacity established for any employments totaling 250 weeks or more.

(3) If the employee becomes reemployed at any employment, the employee is then entitled to receive partial disability benefits as provided in paragraph B. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

E. If the employee, after having been employed at any job following the injury for less than 100 weeks, loses the job through no fault of the employee, the employee is entitled to receive compensation based upon the employee's wage at the original date of injury. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

[PL 2011, c. 647, §§10, 11 (AMD).]

**2. Notice to Bureau of Employment Services.** An insurance carrier or self-insurer shall notify the Bureau of Employment Services of the name of any injured employee who is unemployed and to whom the insurance carrier or self-insurer is paying benefits under this Act.

[PL 1995, c. 560, Pt. G, §24 (AMD); PL 1995, c. 560, Pt. G, §29 (AFF).]

**3. Priority.** The Bureau of Employment Services shall give priority to finding employment for those persons whose names are supplied under subsection 2.

[PL 1995, c. 560, Pt. G, §24 (AMD); PL 1995, c. 560, Pt. G, §29 (AFF).]

**4. Notice of refusal; termination of benefits.** The Bureau of Employment Services shall notify the board in writing of the name of any employee who refuses any bona fide offer of reasonable employment. Upon notification to the board, the board shall notify the insurance carrier or self-insurer who shall terminate the benefits of the employee pursuant to subsection 1, paragraph A.

[PL 1995, c. 560, Pt. G, §24 (AMD); PL 1995, c. 560, Pt. G, §29 (AFF).]

**5. Reasonable employment defined.** "Reasonable employment," as used in this section, means any work that is within the employee's capacity to perform that poses no clear and proximate threat to the employee's health and safety and that is within a reasonable distance from that employee's residence. The employee's capacity to perform may not be limited to jobs in work suitable to the employee's qualification and training.

[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

#### SECTION HISTORY

PL 1991, c. 885, §A8 (NEW). PL 1991, c. 885, §§A9-11 (AFF). PL 1995, c. 560, §§G23,24 (AMD). PL 1995, c. 560, §G29 (AFF). PL 2011, c. 647, §§10, 11 (AMD).

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