

BULLETIN

August 28, 2009

Contact: Ziv Kimmel, Director Actuarial Research
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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

MA/jg
Encl.

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
Boylard	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
Brodsky	Y	Destito	Y	Hayes	NO	Lope VJ	ER	Peoples	Y	Schimmi	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 chose 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.

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Page display time = 0.0246 sec



Friday, August 28, 2009

Text - A02021

[Back](#) | [New York State Bill Search](#) | [Assembly Home](#)

[See Summary](#)

S T A T E O F N E W Y O R K

2021--B

2009-2010 Regular Sessions

I N A S S E M B L Y

January 15, 2009

Introduced by M. of A. JOHN -- read once and referred to the
Committee

on Labor -- committee discharged, bill amended, ordered reprinted as
amended and recommitted to said committee-- reported and referred to
the Committee on Ways and Means -- committee discharged, bill amended,
ordered reprinted as amended and recommitted to said committee

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 ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. Paragraph (b) of subdivision 1 of section 25 of the work-
2 ers' compensation law, as amended by chapter 635 of the laws of 1996, is
3 amended to read as follows:
4 (b) The first payment of compensation shall become due on the four-
5 teenth day of disability on which date or within four days thereafter
6 all compensation then due shall be paid, and the compensation payable
7 bi-weekly thereafter; but the board may determine that any payments may
8 be made monthly or at any other period, as it may deem advisable.

AN
9 AWARD OF COMPENSATION PAYABLE FOR PERMANENT PARTIAL DISABILITY UNDER
10 PARAGRAPHS A THROUGH T, INCLUSIVE, OF SUBDIVISION THREE OF SECTION
11 FIFTEEN OF THIS ARTICLE, SHALL BE PAYABLE IN ONE LUMP SUM, WITHOUT
12 COMMUTATION TO PRESENT VALUE UPON THE REQUEST OF THE INJURED EMPLOYEE.

13 S 2. Paragraph u of subdivision 3 of section 15 of the workers'
14 compensation law, as added by chapter 301 of the laws of 1929,
is
15 amended to read as follows:
16 u. Total or partial loss or loss of use of more than one member
or
17 parts of members. In any case in which there shall be a loss or loss
of
18 use of more than one member or parts of more than one member set
forth
19 in paragraphs a [to] THROUGH t, [both] inclusive, of this subdivision,
20 but not amounting to permanent total disability, the board shall award
21 compensation for the loss or loss of use of each such member or
part
22 thereof, which awards [shall run consecutively] SHALL BE FULLY PAYABLE
23 IN ONE LUMP SUM UPON THE REQUEST OF THE INJURED EMPLOYEE.
24 S 3. This act shall take effect immediately.

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

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9

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