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HOUSE BILL NO. 730

Offered January 12, 2022

Prefiled January 11, 2022

A BILL to amend and reenact § 65.2-502 of the Code of Virginia, relating to workers' compensation; partial incapacity; failure to market residual capacity.

Patron—Ward

Referred to Committee on Commerce and Energy

Be it enacted by the General Assembly of Virginia:**1. That § 65.2-502 of the Code of Virginia is amended and reenacted as follows:****§ 65.2-502. Compensation for partial incapacity; exclusion of AmeriCorps members, certain Food Stamp Employment and Training Program participants, and certain Temporary Assistance for Needy Families participants.**

A. Except as otherwise provided in § 65.2-503 or 65.2-510, or as provided in subsections B, C and D, when the incapacity for work resulting from the injury is partial, the employer shall pay, or cause to be paid, as hereinafter provided, to the injured employee during such incapacity a weekly compensation equal to 66 2/3 percent of the difference between his average weekly wages before the injury and the average weekly wages which he is able to earn thereafter, but not more than 100 percent of the average weekly wage of the Commonwealth as defined in § 65.2-500. For purposes of calculating an injured employee's post-injury average weekly wage, the following rules shall apply to commissioned employees, self-employed income, and income derived from an employer in which the injured worker or their immediate family has an ownership interest: if the period of partial incapacity exists for 13 weeks or less, the injured employee's post-injury average weekly wage shall be computed by dividing the employee's total earnings during the first two weeks of partial incapacity by two, subject to retroactive adjustments as provided hereinafter. If the period of partial incapacity exists for more than 13 weeks, the injured employee's post-injury average weekly wage for each 13-week interval shall be computed by dividing the employee's total earnings during the period of partial incapacity by the number of weeks included in such period; however, if an injured employee's period of partial incapacity ends after the close of a 13-week interval but before the close of the next 13-week interval, the injured employee's post-injury average weekly wage for such portion of the subsequent 13-week interval shall be calculated by dividing the employee's total earnings during the period of partial incapacity by the number of weeks included in such period. When an injured employee is under a continuing award of temporary partial benefits, the employer or the employee shall be entitled to seek a retroactive adjustment of the temporary partial rate for the 90 days preceding the application seeking such adjustment of the temporary partial rate computed in accordance with the above method of calculation. Any resulting amount due to the employee shall be paid to the employee. Any resulting credit due to the employer may be offset dollar for dollar against future compensation benefits due the injured employee, subject to the provisions of § 65.2-520. The employee is required pursuant to § 65.2-712 to immediately disclose increases in his earnings. For all other employments, the employee's post-injury average weekly wage may, in the Commission's discretion, be calculated using the preceding formula or a week-to-week calculation. In case the partial incapacity begins after a period of total incapacity, the latter period shall be deducted from the maximum period herein allowed for partial incapacity. However, the employer shall not be required to pay, or cause to be paid, compensation under this section to any injured employee not eligible for lawful employment; nor shall any such injured employee not eligible for lawful employment who is partially incapacitated be entitled during partial incapacity to receive temporary total benefits under § 65.2-500.

B. An employee shall not be barred from receiving benefits under this title due to a failure to market residual work capacity if credible evidence supports that the employee (i) is reasonably unemployable based upon age, education, work history, or medical conditions or (ii) is employable in some capacity and has registered with the Virginia Employment Commission. Nothing in this subsection shall be construed to require an employee to register with the Virginia Employment Commission to receive benefits under this title.

C. AmeriCorps members as defined in subdivision r of § 65.2-101 shall not be eligible to receive weekly compensation for partial incapacity, whether permanent or temporary, regardless of whether the injury results in death.

D. Food Stamp recipients participating in the work experience component of the Food Stamp Employment and Training Program as defined in subdivision s of § 65.2-101 shall not be eligible to

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59 receive weekly compensation for partial incapacity, whether permanent or temporary, regardless of
60 whether the injury results in death.

61 ~~D.~~ E. Temporary Assistance for Needy Families recipients participating in the work experience
62 component of the Virginia Initiative for Education and Work as defined in subdivision t of § 65.2-101
63 shall not be eligible to receive weekly compensation for partial incapacity, whether permanent or
64 temporary, regardless of whether the injury results in death.