



93RD GENERAL ASSEMBLY
State of Illinois
2003 and 2004

Introduced 02/09/04, by Jay C. Hoffman

SYNOPSIS AS INTRODUCED:

820 ILCS 305/7

from Ch. 48, par. 138.7

Amends provisions of the Workers' Compensation Act imposing penalties if an employer fails to pay the proper amounts into the Second Injury Fund or the Rate Adjustment Fund. Deletes language requiring that the failure must be willful and knowing in order for penalties to be imposed. Effective immediately.

LRB093 19312 WGH 45048 b

1 AN ACT concerning employment.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Workers' Compensation Act is amended by
5 changing Section 7 as follows:

6 (820 ILCS 305/7) (from Ch. 48, par. 138.7)

7 Sec. 7. The amount of compensation which shall be paid for
8 an accidental injury to the employee resulting in death is:

9 (a) If the employee leaves surviving a widow, widower,
10 child or children, the applicable weekly compensation rate
11 computed in accordance with subparagraph 2 of paragraph (b) of
12 Section 8, shall be payable during the life of the widow or
13 widower and if any surviving child or children shall not be
14 physically or mentally incapacitated then until the death of
15 the widow or widower or until the youngest child shall reach
16 the age of 18, whichever shall come later; provided that if
17 such child or children shall be enrolled as a full time student
18 in any accredited educational institution, the payments shall
19 continue until such child has attained the age of 25. In the
20 event any surviving child or children shall be physically or
21 mentally incapacitated, the payments shall continue for the
22 duration of such incapacity.

23 The term "child" means a child whom the deceased employee
24 left surviving, including a posthumous child, a child legally
25 adopted, a child whom the deceased employee was legally
26 obligated to support or a child to whom the deceased employee
27 stood in loco parentis. The term "children" means the plural of
28 "child".

29 The term "physically or mentally incapacitated child or
30 children" means a child or children incapable of engaging in
31 regular and substantial gainful employment.

32 In the event of the remarriage of a widow or widower, where

1 the decedent did not leave surviving any child or children who,
2 at the time of such remarriage, are entitled to compensation
3 benefits under this Act, the surviving spouse shall be paid a
4 lump sum equal to 2 years compensation benefits and all further
5 rights of such widow or widower shall be extinguished.

6 If the employee leaves surviving any child or children
7 under 18 years of age who at the time of death shall be
8 entitled to compensation under this paragraph (a) of this
9 Section, the weekly compensation payments herein provided for
10 such child or children shall in any event continue for a period
11 of not less than 6 years.

12 Any beneficiary entitled to compensation under this
13 paragraph (a) of this Section shall receive from the special
14 fund provided in paragraph (f) of this Section, in addition to
15 the compensation herein provided, supplemental benefits in
16 accordance with paragraph (g) of Section 8.

17 (b) If no compensation is payable under paragraph (a) of
18 this Section and the employee leaves surviving a parent or
19 parents who at the time of the accident were totally dependent
20 upon the earnings of the employee then weekly payments equal to
21 the compensation rate payable in the case where the employee
22 leaves surviving a widow or widower, shall be paid to such
23 parent or parents for the duration of their lives, and in the
24 event of the death of either, for the life of the survivor.

25 (c) If no compensation is payable under paragraphs (a) or
26 (b) of this Section and the employee leaves surviving any child
27 or children who are not entitled to compensation under the
28 foregoing paragraph (a) but who at the time of the accident
29 were nevertheless in any manner dependent upon the earnings of
30 the employee, or leaves surviving a parent or parents who at
31 the time of the accident were partially dependent upon the
32 earnings of the employee, then there shall be paid to such
33 dependent or dependents for a period of 8 years weekly
34 compensation payments at such proportion of the applicable rate
35 if the employee had left surviving a widow or widower as such
36 dependency bears to total dependency. In the event of the death

1 of any such beneficiary the share of such beneficiary shall be
2 divided equally among the surviving beneficiaries and in the
3 event of the death of the last such beneficiary all the rights
4 under this paragraph shall be extinguished.

5 (d) If no compensation is payable under paragraphs (a), (b)
6 or (c) of this Section and the employee leaves surviving any
7 grandparent, grandparents, grandchild or grandchildren or
8 collateral heirs dependent upon the employee's earnings to the
9 extent of 50% or more of total dependency, then there shall be
10 paid to such dependent or dependents for a period of 5 years
11 weekly compensation payments at such proportion of the
12 applicable rate if the employee had left surviving a widow or
13 widower as such dependency bears to total dependency. In the
14 event of the death of any such beneficiary the share of such
15 beneficiary shall be divided equally among the surviving
16 beneficiaries and in the event of the death of the last such
17 beneficiary all rights hereunder shall be extinguished.

18 (e) The compensation to be paid for accidental injury which
19 results in death, as provided in this Section, shall be paid to
20 the persons who form the basis for determining the amount of
21 compensation to be paid by the employer, the respective shares
22 to be in the proportion of their respective dependency at the
23 time of the accident on the earnings of the deceased. The
24 Commission or an Arbitrator thereof may, in its or his
25 discretion, order or award the payment to the parent or
26 grandparent of a child for the latter's support the amount of
27 compensation which but for such order or award would have been
28 paid to such child as its share of the compensation payable,
29 which order or award may be modified from time to time by the
30 Commission in its discretion with respect to the person to whom
31 shall be paid the amount of the order or award remaining unpaid
32 at the time of the modification.

33 The payments of compensation by the employer in accordance
34 with the order or award of the Commission discharges such
35 employer from all further obligation as to such compensation.

36 (f) The sum of \$4200 for burial expenses shall be paid by

1 the employer to the widow or widower, other dependent, next of
2 kin or to the person or persons incurring the expense of
3 burial.

4 In the event the employer failed to provide necessary first
5 aid, medical, surgical or hospital service, he shall pay the
6 cost thereof to the person or persons entitled to compensation
7 under paragraphs (a), (b), (c) or (d) of this Section, or to
8 the person or persons incurring the obligation therefore, or
9 providing the same.

10 On January 15 and July 15, 1981, and on January 15 and July
11 15 of each year thereafter the employer shall within 60 days
12 pay a sum equal to 1/8 of 1% of all compensation payments made
13 by him after July 1, 1980, either under this Act or the
14 Workers' Occupational Diseases Act, whether by lump sum
15 settlement or weekly compensation payments, but not including
16 hospital, surgical or rehabilitation payments, made during the
17 first 6 months and during the second 6 months respectively of
18 the fiscal year next preceding the date of the payments, into a
19 special fund which shall be designated the "Second Injury
20 Fund", of which the State Treasurer is ex-officio custodian,
21 such special fund to be held and disbursed for the purposes
22 hereinafter stated in paragraphs (f) and (g) of Section 8,
23 either upon the order of the Commission or of a competent
24 court. Said special fund shall be deposited the same as are
25 State funds and any interest accruing thereon shall be added
26 thereto every 6 months. It is subject to audit the same as
27 State funds and accounts and is protected by the General bond
28 given by the State Treasurer. It is considered always
29 appropriated for the purposes of disbursements as provided in
30 Section 8, paragraph (f), of this Act, and shall be paid out
31 and disbursed as therein provided and shall not at any time be
32 appropriated or diverted to any other use or purpose.

33 On January 15, 1991, the employer shall further pay a sum
34 equal to one half of 1% of all compensation payments made by
35 him from January 1, 1990 through June 30, 1990 either under
36 this Act or under the Workers' Occupational Diseases Act,

1 whether by lump sum settlement or weekly compensation payments,
2 but not including hospital, surgical or rehabilitation
3 payments, into an additional Special Fund which shall be
4 designated as the "Rate Adjustment Fund". On March 15, 1991,
5 the employer shall pay into the Rate Adjustment Fund a sum
6 equal to one half of 1% of all such compensation payments made
7 from July 1, 1990 through December 31, 1990. Within 60 days
8 after July 15, 1991, the employer shall pay into the Rate
9 Adjustment Fund a sum equal to one half of 1% of all such
10 compensation payments made from January 1, 1991 through June
11 30, 1991. Within 60 days after January 15 of 1992 and each
12 subsequent year through 1996, the employer shall pay into the
13 Rate Adjustment Fund a sum equal to one half of 1% of all such
14 compensation payments made in the last 6 months of the
15 preceding calendar year. Within 60 days after July 15 of 1992
16 and each subsequent year through 1995, the employer shall pay
17 into the Rate Adjustment Fund a sum equal to one half of 1% of
18 all such compensation payments made in the first 6 months of
19 the same calendar year. Within 60 days after January 15 of 1997
20 and each subsequent year, the employer shall pay into the Rate
21 Adjustment Fund a sum equal to three-fourths of 1% of all such
22 compensation payments made in the last 6 months of the
23 preceding calendar year. Within 60 days after July 15 of 1996
24 and each subsequent year, the employer shall pay into the Rate
25 Adjustment Fund a sum equal to three-fourths of 1% of all such
26 compensation payments made in the first 6 months of the same
27 calendar year. The administrative costs of collecting
28 assessments from employers for the Rate Adjustment Fund shall
29 be paid from the Rate Adjustment Fund. The cost of an actuarial
30 audit of the Fund shall be paid from the Rate Adjustment Fund
31 and the audit shall be completed no later than July 1, 1997.
32 The State Treasurer is ex officio custodian of such Special
33 Fund and the same shall be held and disbursed for the purposes
34 hereinafter stated in paragraphs (f) and (g) of Section 8 upon
35 the order of the Commission or of a competent court. The Rate
36 Adjustment Fund shall be deposited the same as are State funds

1 and any interest accruing thereon shall be added thereto every
2 6 months. It shall be subject to audit the same as State funds
3 and accounts and shall be protected by the general bond given
4 by the State Treasurer. It is considered always appropriated
5 for the purposes of disbursements as provided in paragraphs (f)
6 and (g) of Section 8 of this Act and shall be paid out and
7 disbursed as therein provided and shall not at any time be
8 appropriated or diverted to any other use or purpose. Within 5
9 days after the effective date of this amendatory Act of 1990,
10 the Comptroller and the State Treasurer shall transfer
11 \$1,000,000 from the General Revenue Fund to the Rate Adjustment
12 Fund. By February 15, 1991, the Comptroller and the State
13 Treasurer shall transfer \$1,000,000 from the Rate Adjustment
14 Fund to the General Revenue Fund. The Comptroller and Treasurer
15 are authorized to make transfers at the request of the Chairman
16 up to a total of \$15,000,000 from the Second Injury Fund, the
17 General Revenue Fund, and the Workers' Compensation Benefit
18 Trust Fund to the Rate Adjustment Fund to the extent that there
19 is insufficient money in the Rate Adjustment Fund to pay claims
20 and obligations. Amounts may be transferred from the General
21 Revenue Fund only if the funds in the Second Injury Fund or the
22 Workers' Compensation Benefit Trust Fund are insufficient to
23 pay claims and obligations of the Rate Adjustment Fund. All
24 amounts transferred from the Second Injury Fund, the General
25 Revenue Fund, and the Workers' Compensation Benefit Trust Fund
26 shall be repaid from the Rate Adjustment Fund within 270 days
27 of a transfer, together with interest at the rate earned by
28 moneys on deposit in the Fund or Funds from which the moneys
29 were transferred.

30 Upon a finding by the Commission, after reasonable notice
31 and hearing, that any employer has ~~willfully and knowingly~~
32 failed to pay the proper amounts into the Second Injury Fund or
33 the Rate Adjustment Fund required by this Section or if such
34 payments are not made within the time periods prescribed by
35 this Section, the employer shall, in addition to such payments,
36 pay a penalty of 20% of the amount required to be paid or

1 \$2,500, whichever is greater, for each year or part thereof of
2 such failure to pay. This penalty shall only apply to
3 obligations of an employer to the Second Injury Fund or the
4 Rate Adjustment Fund accruing after the effective date of this
5 amendatory Act of 1989. All or part of such a penalty may be
6 waived by the Commission for good cause shown.

7 Any obligations of an employer to the Second Injury Fund
8 and Rate Adjustment Fund accruing prior to the effective date
9 of this amendatory Act of 1989 shall be paid in full by such
10 employer within 5 years of the effective date of this
11 amendatory Act of 1989, with at least one-fifth of such
12 obligation to be paid during each year following the effective
13 date of this amendatory Act of 1989. If the Commission finds,
14 following reasonable notice and hearing, that an employer has
15 failed to make timely payment of any obligation accruing under
16 the preceding sentence, the employer shall, in addition to all
17 other payments required by this Section, be liable for a
18 penalty equal to 20% of the overdue obligation or \$2,500,
19 whichever is greater, for each year or part thereof that
20 obligation is overdue. All or part of such a penalty may be
21 waived by the Commission for good cause shown.

22 The Chairman of the Industrial Commission shall, annually,
23 furnish to the Director of the Department of Insurance a list
24 of the amounts paid into the Second Injury Fund and the Rate
25 Adjustment Fund by each insurance company on behalf of their
26 insured employers. The Director shall verify to the Chairman
27 that the amounts paid by each insurance company are accurate as
28 best as the Director can determine from the records available
29 to the Director. The Chairman shall verify that the amounts
30 paid by each self-insurer are accurate as best as the Chairman
31 can determine from records available to the Chairman. The
32 Chairman may require each self-insurer to provide information
33 concerning the total compensation payments made upon which
34 contributions to the Second Injury Fund and the Rate Adjustment
35 Fund are predicated and any additional information
36 establishing that such payments have been made into these

1 funds. Any deficiencies in payments noted by the Director or
2 Chairman shall be subject to the penalty provisions of this
3 Act.

4 The State Treasurer, or his duly authorized
5 representative, shall be named as a party to all proceedings in
6 all cases involving claim for the loss of, or the permanent and
7 complete loss of the use of one eye, one foot, one leg, one arm
8 or one hand.

9 The State Treasurer or his duly authorized agent shall have
10 the same rights as any other party to the proceeding, including
11 the right to petition for review of any award. The reasonable
12 expenses of litigation, such as medical examinations,
13 testimony, and transcript of evidence, incurred by the State
14 Treasurer or his duly authorized representative, shall be borne
15 by the Second Injury Fund.

16 If the award is not paid within 30 days after the date the
17 award has become final, the Commission shall proceed to take
18 judgment thereon in its own name as is provided for other
19 awards by paragraph (g) of Section 19 of this Act and take the
20 necessary steps to collect the award.

21 Any person, corporation or organization who has paid or
22 become liable for the payment of burial expenses of the
23 deceased employee may in his or its own name institute
24 proceedings before the Commission for the collection thereof.

25 For the purpose of administration, receipts and
26 disbursements, the Special Fund provided for in paragraph (f)
27 of this Section shall be administered jointly with the Special
28 Fund provided for in Section 7, paragraph (f) of the Workers'
29 Occupational Diseases Act.

30 (g) All compensation, except for burial expenses provided
31 in this Section to be paid in case accident results in death,
32 shall be paid in installments equal to the percentage of the
33 average earnings as provided for in Section 8, paragraph (b) of
34 this Act, at the same intervals at which the wages or earnings
35 of the employees were paid. If this is not feasible, then the
36 installments shall be paid weekly. Such compensation may be

1 paid in a lump sum upon petition as provided in Section 9 of
2 this Act. However, in addition to the benefits provided by
3 Section 9 of this Act where compensation for death is payable
4 to the deceased's widow, widower or to the deceased's widow,
5 widower and one or more children, and where a partial lump sum
6 is applied for by such beneficiary or beneficiaries within 18
7 months after the deceased's death, the Commission may, in its
8 discretion, grant a partial lump sum of not to exceed 100 weeks
9 of the compensation capitalized at their present value upon the
10 basis of interest calculated at 3% per annum with annual rests,
11 upon a showing that such partial lump sum is for the best
12 interest of such beneficiary or beneficiaries.

13 (h) In case the injured employee is under 16 years of age
14 at the time of the accident and is illegally employed, the
15 amount of compensation payable under paragraphs (a), (b), (c),
16 (d) and (f) of this Section shall be increased 50%.

17 Nothing herein contained repeals or amends the provisions
18 of the Child Labor Law relating to the employment of minors
19 under the age of 16 years.

20 However, where an employer has on file an employment
21 certificate issued pursuant to the Child Labor Law or work
22 permit issued pursuant to the Federal Fair Labor Standards Act,
23 as amended, or a birth certificate properly and duly issued,
24 such certificate, permit or birth certificate is conclusive
25 evidence as to the age of the injured minor employee for the
26 purposes of this Section only.

27 (i) Whenever the dependents of a deceased employee are
28 aliens not residing in the United States, Mexico or Canada, the
29 amount of compensation payable is limited to the beneficiaries
30 described in paragraphs (a), (b) and (c) of this Section and is
31 50% of the compensation provided in paragraphs (a), (b) and (c)
32 of this Section, except as otherwise provided by treaty.

33 In a case where any of the persons who would be entitled to
34 compensation is living at any place outside of the United
35 States, then payment shall be made to the personal
36 representative of the deceased employee. The distribution by

1 such personal representative to the persons entitled shall be
2 made to such persons and in such manner as the Commission
3 orders.

4 (Source: P.A. 92-714, eff. 1-1-03.)

5 Section 99. Effective date. This Act takes effect upon
6 becoming law.