

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 310

Introduced by Bolz, 29.

Read first time January 17, 2013

Committee: Business and Labor

A BILL

1 FOR AN ACT relating to the Nebraska Workers' Compensation Act; to
2 amend section 48-121, Reissue Revised Statutes of
3 Nebraska; to clarify compensation for shoulder injuries;
4 and 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
2 Nebraska, is amended to read:

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

5 (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
8 more than the maximum weekly income benefit specified in section
9 48-121.01 nor less than the minimum weekly income benefit specified
10 in section 48-121.01, except that if at the time of injury the
11 employee receives wages of less than the minimum weekly income
12 benefit specified in section 48-121.01, then he or she shall receive
13 the full amount of such wages per week as compensation. Nothing in
14 this subdivision shall require payment of compensation after
15 disability shall cease;

16 (2) For disability partial in character, except the
17 particular cases mentioned in subdivision (3) of this section, the
18 compensation shall be sixty-six and two-thirds percent of the
19 difference between the wages received at the time of the injury and
20 the earning power of the employee thereafter, but such compensation
21 shall not be more than the maximum weekly income benefit specified in
22 section 48-121.01. This compensation shall be paid during the period
23 of such partial disability but not beyond three hundred weeks. Should
24 total disability be followed by partial disability, the period of
25 three hundred weeks mentioned in this subdivision shall be reduced by

1 the number of weeks during which compensation was paid for such total
2 disability;

3 (3) For disability resulting from permanent injury of the
4 classes listed in this subdivision, the compensation shall be in
5 addition to the amount paid for temporary disability, except that the
6 compensation for temporary disability shall cease as soon as the
7 extent of the permanent disability is ascertainable. For disability
8 resulting from permanent injury of the following classes,
9 compensation shall be: For the loss of a thumb, sixty-six and two-
10 thirds percent of daily wages during sixty weeks. For the loss of a
11 first finger, commonly called the index finger, sixty-six and two-
12 thirds percent of daily wages during thirty-five weeks. For the loss
13 of a second finger, sixty-six and two-thirds percent of daily wages
14 during thirty weeks. For the loss of a third finger, sixty-six and
15 two-thirds percent of daily wages during twenty weeks. For the loss
16 of a fourth finger, commonly called the little finger, sixty-six and
17 two-thirds percent of daily wages during fifteen weeks. The loss of
18 the first phalange of the thumb or of any finger shall be considered
19 to be equal to the loss of one-half of such thumb or finger and
20 compensation shall be for one-half of the periods of time above
21 specified, and the compensation for the loss of one-half of the first
22 phalange shall be for one-fourth of the periods of time above
23 specified. The loss of more than one phalange shall be considered as
24 the loss of the entire finger or thumb, except that in no case shall
25 the amount received for more than one finger exceed the amount

1 provided in this schedule for the loss of a hand. For the loss of a
2 great toe, sixty-six and two-thirds percent of daily wages during
3 thirty weeks. For the loss of one of the toes other than the great
4 toe, sixty-six and two-thirds percent of daily wages during ten
5 weeks. The loss of the first phalange of any toe shall be considered
6 equal to the loss of one-half of such toe, and compensation shall be
7 for one-half of the periods of time above specified. The loss of more
8 than one phalange shall be considered as the loss of the entire toe.
9 For the loss of a hand, sixty-six and two-thirds percent of daily
10 wages during one hundred seventy-five weeks. For the loss of an arm,
11 sixty-six and two-thirds percent of daily wages during two hundred
12 twenty-five weeks. For the loss of a foot, sixty-six and two-thirds
13 percent of daily wages during one hundred fifty weeks. For the loss
14 of a leg, sixty-six and two-thirds percent of daily wages during two
15 hundred fifteen weeks. For the loss of an eye, sixty-six and two-
16 thirds percent of daily wages during one hundred twenty-five weeks.
17 For the loss of an ear, sixty-six and two-thirds percent of daily
18 wages during twenty-five weeks. For the loss of hearing in one ear,
19 sixty-six and two-thirds percent of daily wages during fifty weeks.
20 For the loss of the nose, sixty-six and two-thirds percent of daily
21 wages during fifty weeks.

22 In any case in which there is a loss or loss of use of
23 more than one member or parts of more than one member set forth in
24 this subdivision, but not amounting to total and permanent
25 disability, compensation benefits shall be paid for the loss or loss

1 of use of each such member or part thereof, with the periods of
2 benefits to run consecutively. The total loss or permanent total loss
3 of use of both hands, or both arms, or both feet, or both legs, or
4 both eyes, or hearing in both ears, or of any two thereof, in one
5 accident, shall constitute total and permanent disability and be
6 compensated for according to subdivision (1) of this section. In all
7 other cases involving a loss or loss of use of both hands, both arms,
8 both feet, both legs, both eyes, or hearing in both ears, or of any
9 two thereof, total and permanent disability shall be determined in
10 accordance with the facts. Loss of an arm does not include injuries
11 to the shoulder regardless of the location of residual impairment,
12 and therefor injuries to the shoulder shall be compensated pursuant
13 to subdivisions (1) and (2) of this section. Amputation between the
14 elbow and the wrist shall be considered as the equivalent of the loss
15 of a hand, and amputation between the knee and the ankle shall be
16 considered as the equivalent of the loss of a foot. Amputation at or
17 above the elbow shall be considered as the loss of an arm, and
18 amputation at or above the knee shall be considered as the loss of a
19 leg. Permanent total loss of the use of a finger, hand, arm, foot,
20 leg, or eye shall be considered as the equivalent of the loss of such
21 finger, hand, arm, foot, leg, or eye. In all cases involving a
22 permanent partial loss of the use or function of any of the members
23 mentioned in this subdivision, the compensation shall bear such
24 relation to the amounts named in such subdivision as the disabilities
25 bear to those produced by the injuries named therein.

1 If, in the compensation court's discretion, compensation
2 benefits payable for a loss or loss of use of more than one member or
3 parts of more than one member set forth in this subdivision,
4 resulting from the same accident or illness, do not adequately
5 compensate the employee for such loss or loss of use and such loss or
6 loss of use results in at least a thirty percent loss of earning
7 capacity, the compensation court shall, upon request of the employee,
8 determine the employee's loss of earning capacity consistent with the
9 process for such determination under subdivision (1) or (2) of this
10 section, and in such a case the employee shall not be entitled to
11 compensation under this subdivision.

12 If the employer and the employee are unable to agree upon
13 the amount of compensation to be paid in cases not covered by the
14 schedule, the amount of compensation shall be settled according to
15 sections 48-173 to 48-185. Compensation under this subdivision shall
16 not be more than the maximum weekly income benefit specified in
17 section 48-121.01 nor less than the minimum weekly income benefit
18 specified in section 48-121.01, except that if at the time of the
19 injury the employee received wages of less than the minimum weekly
20 income benefit specified in section 48-121.01, then he or she shall
21 receive the full amount of such wages per week as compensation;

22 (4) For disability resulting from permanent disability,
23 if immediately prior to the accident the rate of wages was fixed by
24 the day or hour, or by the output of the employee, the weekly wages
25 shall be taken to be computed upon the basis of a workweek of a

1 minimum of five days, if the wages are paid by the day, or upon the
2 basis of a workweek of a minimum of forty hours, if the wages are
3 paid by the hour, or upon the basis of a workweek of a minimum of
4 five days or forty hours, whichever results in the higher weekly
5 wage, if the wages are based on the output of the employee; and

6 (5) The employee shall be entitled to compensation from
7 his or her employer for temporary disability while undergoing
8 physical or medical rehabilitation and while undergoing vocational
9 rehabilitation whether such vocational rehabilitation is voluntarily
10 offered by the employer and accepted by the employee or is ordered by
11 the Nebraska Workers' Compensation Court or any judge of the
12 compensation court.

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