

HF518--Workers' Compensation

Section 1: 85.16 Intoxication Defense

Purpose of change: Better balances the workers' compensation system

What it does: Puts the burden on the employee who tests positive for alcohol or drugs not prescribed to the employee by a medical provider to demonstrate that the injury was not caused by the employee's intoxication in order to be a compensable injury under workers compensation.

Why it is needed: Right now, the burden is on the employer to prove intoxication of the employee is a cause of an on-the-job injury. Under current statute, it is very expensive and difficult for an employer to prove this defense despite an employee being intoxicated at the time of injury, and this more fairly shifts the burden to the employee to prove otherwise when they come to work intoxicated.

Section 2: 85.18 No Private Cause of Action

Purpose of change: Prevent courts from misinterpreting Iowa code and prevent additional litigation

What it does: Makes clear that an employee cannot sue an employer for a work related injury outside of the provisions of this chapter.

Why it is needed: The Iowa Workers' Compensation Act has an exclusivity provision, meaning injured workers sole remedy against an employer is provided for by the Workers' Compensation Commissioner. Plaintiffs' attorneys are attempting to use 85.18 to sue employers in district court by arguing 85.18 creates a private cause of action allowing them to avoid the exclusivity provision. This language will definitively close the door on plaintiff attorneys attempting to go around the workers' compensation system with additional lawsuits.

Sections 3 and 4: 85.23 and 85.26 Date of Injury

Purpose of the changes: Clarify the code after years of confusing court decisions

What they do: Define date of injury as the date the employee knew or should have known that the injury was work related.

Why these are needed: The notice provision in the code has been muddled by years of case law which has led to confusion by everybody on what the correct date of injury should be. Because of this, the date of injury is arbitrarily and inconsistently determined by a Deputy Commissioner, leading to increased costs and frustration for all involved. This can impact which employer/carrier is liable for benefits meaning multiple employers/carriers are involved throughout the entire litigation process until a Deputy makes this determination. Having 'injury date' more clearly defined will eliminate unnecessary costs and bring more certainty to all involved.

Section 5: 85.33 Suitable Work

Purpose of the change: Prevent bad faith lawsuits and retain light duty programs

What it does: Spells out in the code what is considered suitable work, rather than leaving it up to court interpretation. Provides that traveling employees can be offered restricted duty at the principle place of business or other suitable workplace, provided the employer pays for travel, lodging meals etc. Lays out the process for an employee's refusal of suitable work.

Why it is needed: All studies demonstrate that providing an injured worker restricted duty is beneficial to both parties as it allows the injured employee to remain in workforce rather than sitting at home. These changes provide a means for employers with traveling employees to offer restricted duty work at their company or a non-profit or other suitable workplace. The proposed changes are tailored particularly to employers with employees who travel routinely as part of their job, more specifically trucking companies who employ out of state workers who are away from home regularly. The success rate of these trucking companies getting employees back to work

is substantial. Light duty programs have been around for 25 years, and they work. If trucking companies are not allowed to continue their light duty programs, they may pack up and move out of state, because of how big of an impact it would have on their bottom line. In the case of Neal vs Annett Holdings, the Iowa Supreme Court in a split 4/3 decision determined 85.33(3)'s definition of suitable work can take into consideration the geographic location of the work being offered, and further determined the Commissioner's decision that the work offered the claimant was unsuitable because it was 800 miles away. Plaintiff attorneys are now filing bad faith claims against employers who have continued to require their employees to participate in light duty programs that require the employee to travel. Plaintiff attorneys and courts are interpreting Neal as not allowing employers to require employees to travel for light duty despite being accustomed to traveling as part of their job without a pre-employment agreement. There have been two agency decision since Neal that have refused to acknowledge an employer's ability to bring an out of state worker, who travels for a living, back to Iowa temporarily for a light duty position.

Section 6: 85.34 Permanent Disabilities

85.34 (2)-Commencement Date for Permanent Disability

Purpose of the change: Better balance the workers' compensation system

What it does: Changes the commencement date for permanent disability benefits to the date the employee reaches MMI (maximal medical improvement).

Why it is needed: An employer should not be liable for interest on permanent partial disability (PPD) benefits until it is determined that the employee is at MMI and sustained a permanent disability. This change also prevents an employee from collecting temporary and permanent disability at the same time (double payment) for the same injury, which currently occurs.

Section 7 and 18: 85.34 (2)(On)-Shoulder Scheduled Member

Purpose of the change: Bring Iowa benefits in line with other surrounding states

What it does: Puts shoulder on the list of scheduled member injuries, which is in line with bordering states such as Nebraska, South Dakota, Kansas, Missouri and Illinois. Benefit at 400 weeks plus vocational rehab at a community college capped at \$15,000 for tuition, books and supplies.

Why it is needed: Currently, Iowa does not consider the shoulder a scheduled member, so an injury to the shoulder is considered a body of the whole injury. This is not on par with other states and needs to be changed.

Section 8. 85.34 (2)(u) Body as a Whole Injuries

Purpose of the change: Incentivize employers to bring back employees after an injury and to better balance the system

What it does: Provides that when an employer brings an injured employee back to work after Maximal Medical Improvement (or offers employee suitable job) in a job without a reduction in earnings, the employee is compensated for their functional loss only and not a speculative industrial disability award.

Why it is needed: This change will incentivize employers to bring back employees after an injury, promoting the goal of the workers' compensation system. Under the current system, it is often seen as a disincentive to bring an employee back to work when they receive a large industrial disability award.

Section 9: 85.34 (2)(w)-Functional Impairment

Purpose of the change: Restrict agency power to what is in law

What it does: Clarifies that scheduled member injuries should be compensated pursuant to functional impairment under the American Medical Association (AMA) Guidelines.

Why it is needed: The agency has begun unilaterally deviating from the AMA Guidelines it has adopted on scheduled member cases when Deputy Commissioners believe the Guides are not adequate. This deviation

increases litigation and eliminates certainty that the Guides are intended to provide for scheduled member injuries.

Section 9: 85.34 (2)(x) and Section 10: 85.34 (3)(b) – Double Recovery Prohibited

Purpose of the change: Negate a recent Iowa Supreme Court decision and prevent double recovery of benefits

What it does: Reinstates clear code provisions prohibiting double recovery of benefits by making sure an employee cannot concurrently collect both permanent partial disability benefits and permanent total disability benefits.

Why it is needed: The Iowa Supreme Court ruled in December 2016 that the Iowa code no longer prohibits payment of benefits for both permanent partial and total disability. The intent of the law is to fully compensate the employee for injuries sustained. Employees who are permanently totally disabled should be compensated with permanent total disability benefits and employees with permanent partial disability should be compensated with permanent partial disability benefits. Once an injured employee starts receiving permanent total benefits, the permanent partial benefits should cease, otherwise an employee gets double recovery from these concurrent payments. In other words, an employee cannot be more than 100 percent disabled, but overlapping payments would compensate them that way.

Section 10: 85.34 (3)(a) and Section 11: Benefits 85.34 (3)(c) and (d) Permanent Total Disability

Purpose of the change: Better balance the workers' compensation system

What it does: Provide that an employee cannot be adjudicated to be permanently and totally disabled when they remain productively working. Provides an employee cannot both receive compensation for a permanent total disability from certain other sources if he or she makes an amount greater than fifty percent of the statewide average weekly wage or from unemployment compensation.

Why it is needed: Employees who remain gainfully employed or are receiving other benefits should not also receive permanent total disability benefits.

Section 12: 85.34 (4) and 85.34 (5) Credit for Overpayment

Purpose of the changes: Encourage reasonable payment to workers and correct a Supreme Court decision

What they do: Provide that if an employee is inadvertently paid benefits not entitled or owed, the employer can take a credit for such benefits against future workers' compensation payments liable for the same employee.

Why they are needed: The Workers' Compensation Act should encourage employers to voluntarily pay reasonable benefits, but this is not always happening under the current system due to lack of credit if an overpayment is made. This change will give employers an incentive to make such assessments, because a credit will be provided if more benefits are paid than owed.

Section 13 85.34 (7) and Section 14: Successive Disabilities

Purpose of the change: Clarify the law after confusing and detrimental Supreme Court decisions

What it does: Provides that employers are not liable for pre-existing disabilities of an employee and are only liable for the disability caused by the work injury sustained with the current employer.

Why it is needed: Through a series of decisions, the Iowa Supreme Court has developed and adopted a highly confusing rule the so called "fresh start rule" to prevent the double, and sometimes triple, recovery of permanency benefits by an employee experiencing multiple injuries at work. The fresh start rule states that the percentage of industrial loss is the total loss of earning capacity taking into account and including the prior disability that existed before the current work injury. This means that a previously disabled person, before a work injury, can have a high industrial disability loss even though the specific injury in question had little or no impact in reducing the injured worker's earning capacity. This typically results in compensating the worker multiple times for the same disability arising from the earlier injury and disability. Employers who continue to employ workers with prior disabilities are

at risk for paying substantially more under the current law than if they let the injured employee go. This creates barriers for continued employment of disabled employees and is contrary to other areas of law which encourage employers to keep disabled workers employed.

Section 15: 85.39 Examination of Injured Employees

Purpose of the change: Correct a detrimental Supreme Court decision and curb medical costs

What it does: Clarifies that an employee's refusal to attend reasonably scheduled medical appointments results in a forfeiture of benefits rather than mere suspension during the period of refusal. Second, provides employers are only obligated to pay for an Independent Medical Examination (IME) on injuries determined to be work related.

Why it is needed: The current statute provides that an employee is not entitled to weekly indemnity benefits if he or she refuses to attend reasonably scheduled medical appointments. The Supreme Court interpreted the "suspension" language to mean that once the employee later decides to attend, the employer must go back and pay those benefits. This essentially provides no teeth to the statute and takes away the original legislative intent. In addition, this change also provides that employers only have to pay for an IME for injuries that are determined to arise out of and in the course of employment. Currently, if an employee claims anything is work related, he or she is essentially entitled to obtain an IME with a physician of the employee's choice to render an impairment rating even if the condition is found to not be work related. These IMEs are often very expensive and paid for by employers for conditions not even found to be work related.

Section 16: 85.45 Commutations

Purpose of the change: Provide benefits to workers, not benefits to plaintiff attorneys

What it does: Change provides that both parties must consent to full or partial commutation of weekly indemnity benefits.

Why it is needed: Under current interpretation of Chapter 85, the agency and courts allow the injured worker unilaterally to require years of future payments to the worker and his attorney made in one lump sum amount. While this is clearly in the interest of the claimant's attorney who gets a contingency fee up front, providing a lump sum payment creates a risk that this future income replacement is improperly invested, given away or squandered, leaving the injured worker's family to fend for themselves without the guaranteed weekly future payments of the amount awarded. By allowing commutations to occur unilaterally, families of injured workers are not better protected, employer and workers' compensation carriers are unduly burdened and the basic tenant of replacing weekly earnings with workers' compensation benefits is thrown out the window. The only clear winners are the attorneys who are proposing these commutations.

Section 17: 85.45(3) Allowing Commutations with Open Medical

Purpose of the change: Allow an additional settlement option.

What it does: Iowa Code §85.35(6) provides that parties to any settlement under §85.35 may voluntarily agree to include open medicals under §85.27 as a term of the settlement.

Why it is needed: Iowa Code §85.45 allows future indemnity payments due a claimant to be commuted to a lump sum when certain conditions are met. Section 85.45 does not provide an option for parties to both commute indemnity payments and to leave medical open under §85.27. Adding an option to §85.45 allowing parties to combine a commutation of future payments with an option to leave medicals open may facilitate more settlement opportunities for parties.

Section 19: 85.71 Jurisdiction

Purpose of the change: Restrict who can claim Iowa benefits to those who actually work in Iowa

What it does: Provides that in order for Iowa to have jurisdiction over a workers' compensation claim the

employee must regularly work in Iowa.

Why it is needed: Iowa currently has very broad jurisdiction in workers' compensation cases. To receive Iowa benefits, a worker does not even have to work in Iowa. All that is required is that that an injured employee lives in Iowa and the employer has a place of business in Iowa, no matter where the employee was working when he or she was injured. This is contrary to workers' compensation laws in other states, and Iowa incurs expenses and expends resources hearing cases for injuries that occur in another state when the employee is entitled to workers' compensation benefits in another state where they actually work and are injured.

Sections 20 and 22: 86.26 and 86.42 Stay of Judgement

Purpose of the changes: Prevent unfair recovery of benefits by a plaintiff

What they do: Provides that employer can appeal a final agency decision by posting a bond during the course of an appeal.

Why they are needed: In judicial actions outside of workers' compensation, rules provide that a party may appeal a decision and provides a Stay of Judgement if the appealing party posts a bond to secure the judgement.

Currently, there is no such provision for workers' compensation; thus typically requiring an employer to pay an award before the appeal is heard by the district court. This usually makes the appeal meaningless as the employer has no recourse if they prevail in their appeal as the benefits have already been paid. This change provides the same procedure currently provided for in all other judicial proceedings in Iowa.

Section 21: 85.73 Attorney Fees

Purpose of the change: Keep money in the pocket of the worker, not plaintiff attorneys

What it does: Provides that an attorney can only take a fee on benefits they secure for injured worker.

Why it is needed: This is a new provision which provides that an attorney cannot take a fee on benefits that are voluntarily paid by an employer. In order to take a fee, the attorney must demonstrate the benefits were due to their efforts and work and not merely paid after the attorney became involved in the matter. This encourages employers to make a fair assessment of benefits to voluntarily pay which is consistent with the intent of workers' compensation.

Section 23: 535.3 (1) Interest on Judgements

Purpose of the change: Fix an expensive statutory anomaly

What it does: Provides that interest on workers' compensation judgments should be treasury plus two--the same as all other judgements in Iowa.

Why it is needed: Currently workers' compensation benefits receive 10 percent interest on accrued benefits unlike ALL other judgements in Iowa. This change puts workers compensation judgments in line with all other judgements in Iowa.

Section 24: Effective Date and Applicability

What it does: Makes the bill applicable to injuries occurring or commutations filed going forward from the July 1 effective date of the bill.