

No. 2006-147

AN ACT

HB 2738

Amending the act of June 2, 1915 (P.L.736, No.338), entitled, as reenacted and amended, "An act defining the liability of an employer to pay damages for injuries received by an employe in the course of employment; establishing an elective schedule of compensation; providing procedure for the determination of liability and compensation thereunder; and prescribing penalties," further providing for schedule of compensation, for definitions relating to procedure and for enforcement of standards and processing of claims; providing for the Workers' Compensation Appeal Board; further providing for assignment of claims to referees and for counsel fees; providing for an Uninsured Employers Guaranty Fund; and making a related repeal.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 306(h) of the act of June 2, 1915 (P.L.736, No.338), known as the Workers' Compensation Act, reenacted and amended June 21, 1939 (P.L.520, No.281) and added December 5, 1974 (P.L.782, No.263), is amended to read:

Section 306. The following schedule of compensation is hereby established:

* * *

(h) Any person receiving compensation under [sections] *section* 306(a), 306(b), 306(c)(23), or section] *or (c)(23) or* 307[,] as a result of an [accident] *injury* which occurred prior to [the effective date of the amendatory act of January 17, 1968 (P.L.6, No.4) shall have the compensation rate adjusted to the level they would have received had the injury occurred on the effective date of the amendatory act of January 17, 1968 (P.L.6, No.4) and had the injured employe been earning wages equal to ninety dollars (\$90) per week.] *August 31, 1993, shall, beginning January 1, 2007, receive a minimum amount of one hundred dollars (\$100) per week.* The additional compensation shall be paid by the self-insured employer or insurance carrier making payment and shall be reimbursed in advance by the Commonwealth on a quarterly basis as provided in rules and regulations of the department. The payment of additional compensation shall be made by the carrier or self-insured employer only during those fiscal years for which appropriations are made to cover reimbursement.

Section 2. Section 401 of the act, amended February 8, 1972 (P.L.25, No.12), July 2, 1993 (P.L.190, No.44) and June 24, 1996 (P.L.350, No.57), is amended to read:

Section 401. The term "referee," when used in this act, shall mean a Workers' Compensation Judge of the Department of Labor and Industry, appointed by and subject to the general supervision of the Secretary of Labor

and Industry for the purpose of conducting departmental hearings under this act. The secretary may establish different classes of these judges. Any reference in any statute to a workmen's compensation referee shall be deemed to be a reference to a workers' compensation judge.

The term "board," when used in this article, shall mean the Workers' Compensation Appeal Board, a departmental administrative board as provided in sections 202, 207, 503 and 2208 of the act of April 9, 1929 (P.L.177), known as "The Administrative Code of 1929," exercising its powers and performing its duties as an appellate board independently of the Secretary of Labor and Industry and any other official of the department.

The term "fund," when used in this article, shall mean the State Workmen's Insurance Fund of this Commonwealth, the State-operated insurance carrier from which workmen's compensation insurance policies may be purchased by employers to cover all risks of liability under this act including those declined by private carriers.

The terms "insurer" and "carrier," when used in this article, shall mean the State Workmen's Insurance Fund or other insurance carrier which has insured the employer's liability under this act, or the employer in cases of self-insurance.

The term "employer," when used in this article, shall mean the employer as defined in article one of this act, or his duly authorized agent, or his insurer if such insurer has assumed the employer's liability or the fund if the employer be insured therein.

The term "resolution hearing," when used in this article, shall mean a procedure established by the Office of Adjudication with the sole purpose of providing a venue to present a compromise and release to a workers' compensation judge in an expedited fashion.

The term "mediation," when used in this article, shall mean a conference conducted by a workers' compensation judge, but not necessarily the judge assigned to the actual case involving the parties, and shall require the attendance in person or by teleconference of all parties, including the claimant and employer, and their respective counsel, if any. All parties shall have requisite authority to accept, modify or reject settlement proposals offered at a mediation, either at the mediation or within a reasonable time period after the mediation as established by the workers' compensation judge.

Section 3. Section 401.1 of the act, added February 8, 1972 (P.L.25, No.12), is amended to read:

Section 401.1. The department shall, in fulfillment of its responsibilities under this act, enforce the time standards and other performance standards herein provided for the prompt processing of injury cases and payment of compensation when due by employers and insurers both upon petition by a party or on its own motion. In any case in which compensation has not been timely paid, or in which notice of denial of compensation has been given, the department shall hear and determine all claim petitions for compensation

filed by employes or their dependents. The department shall also hear and determine all petitions by employers or insurers to suspend, terminate, reduce or otherwise modify compensation payments, awards, or agreements and petitions by employes or their dependents to increase, modify or reinstate compensation payments, awards, or agreements. Hearings shall be scheduled forthwith upon receipt of the claim petition or other petition, as the case may be, and determinations thereon shall be made promptly and in conformity with time standards herein or hereunder established. Such hearings shall be conducted by a [referee] *workers' compensation judge* or other hearing officer designated by the secretary.

Each workers' compensation judge assigned to conduct hearings shall set forth a mandatory trial schedule at the first hearing. This trial schedule shall include specific deadlines for the presentation of evidence by the parties and dates for future hearings. Judges shall strictly enforce their schedules, and no party will be excused from honoring the schedule absent good cause shown. Every trial schedule shall include a specific date and time for a mediation conference. Mediations shall take place no later than thirty (30) days prior to the date set for filing proposed findings of fact and conclusions of law or legal briefs or memoranda unless, upon good cause shown, the workers' compensation judge determines mediation would be futile. Within one hundred twenty (120) days of the effective date of this paragraph, the Office of Adjudication shall create a resolution hearing procedure to hear compromise and release agreements in an expedited manner. The hearing shall be held within fourteen (14) business days of notice of a commutation or compromise and release.

The workers' compensation judge conducting a resolution hearing will not be required to have received formal assignment by the Workers' Compensation Bureau of the compromise and release petition prior to conducting the resolution hearing. At the time of hearing, the parties shall submit proof of filing a petition to the workers' compensation judge hearing the compromise and release matter. A workers' compensation judge shall render a decision within five (5) business days of the hearing.

Delays in hearings will be granted according to rules established by the department, and any party who unreasonably delays a hearing will be subject to a penalty as provided in section 435. Subject to the provisions of the act of July 31, 1968 (P.L.769, No.240), known as the "Commonwealth Documents Law," the department shall adopt such rules and regulations as it finds necessary or desirable for the enforcement of this act.

Section 4. The act is amended by adding a section to read:

Section 401.2. (a) The Workers' Compensation Appeal Board shall consist of at least three, and not more than fifteen, members appointed by the Governor, of whom the Governor shall designate one as chairman. An en banc board shall consist of all the appointed members on the board, a majority of which shall constitute a quorum, and no action of the board shall be valid unless it shall have the concurrence of such number of

members and that number constitutes a majority of the votes cast. Where there are more than three appointed members, the board may sit in panels of three, all three members shall constitute a quorum and no action taken by a panel shall be valid unless it shall have the concurrence of a majority of the panel members. When a majority of any such panel has reached a decision, the chair of the panel shall assign the writing of an opinion and order to a panel member. The panel member shall prepare a draft opinion and award and transmit it to the secretary of the board for circulation and review to all members of the Workers' Compensation Appeal Board. Each member of the Workers' Compensation Appeal Board shall be entitled to a period of thirty (30) days from the date a draft opinion on behalf of a majority of a panel is placed in circulation by the secretary of the board in which to concur in, comment on, object to or dissent from the proposed draft opinion and award. Concurrences, comments, objections and dissents shall be transmitted to the chairman of the board, the secretary of the board and the board member responsible for writing the draft opinion. A board member who does not submit a written response to a proposed draft opinion and order circulated shall be deemed to concur in the opinion and order as drafted and initially placed in circulation in conformity with the procedure set forth in subsection (a). If, at the conclusion of the thirty-day period, a majority of the members of the board have failed to concur in the draft opinion and order as circulated, the Chairman of the Workers' Compensation Appeal Board, in consultation with the chair of the panel that heard the case in question, shall reassign the opinion to a board member for the purpose of redrafting and circulating a draft opinion and order in conformity with the procedures articulated in this subsection. A vacancy on the board shall not impair the right of a quorum to exercise all the rights and perform all the duties of the board. The Secretary of Labor and Industry, with the approval of the Governor, shall appoint a secretary to the Workers' Compensation Appeal Board, who shall receive such salary as the Secretary of Labor and Industry, with the approval of the Governor, shall determine.

(b) Members of the board shall be required to annually attend and participate in a minimum of eight (8) hours of workers' compensation-related education approved by the Pennsylvania Supreme Court Continuing Legal Education Board or a similar reputable agency approved by the department.

(c) A member of the Workers' Compensation Appeal Board shall conform to the following code of ethics:

(1) Avoid impropriety and the appearance of impropriety in all activities.

(2) Perform duties impartially and diligently.

(3) Avoid ex parte communications in any contested, on-the-record matter pending before the department.

(4) Abstain from expressing publicly, except in administrative disposition or adjudication, personal views on the merits of an adjudication pending before the department and require similar abstention on the part of department personnel subject to the member's direction and control.

(5) Require staff and personnel subject to the member's direction and control to observe the standards of fidelity and diligence that apply to a member.

(6) Refer to the Secretary of Labor and Industry disciplinary measures against department personnel subject to the member's direction and control for unethical conduct.

(7) Disqualify himself from proceedings in which impartiality may be reasonably questioned.

(8) Keep informed about the personal and fiduciary interests of himself and his immediate family.

(9) Regulate outside activities to minimize the risk of conflict with official duties. A member may speak, write or lecture, and reimbursed expenses, honoraria, royalties or other money received in connection therewith shall be disclosed annually. A disclosure statement shall be filed with the Secretary of Labor and Industry and the State Ethics Commission and shall be open to inspection by the public during the normal business hours of the department and the commission during the tenure of the member.

(10) Refrain from direct or indirect solicitation of funds for political, educational, religious, charitable, fraternal or civic purposes: Provided, however, That a member may be an officer, a director or a trustee of such organizations.

(11) Refrain from financial or business dealings which would tend to reflect adversely on impartiality. A member may hold and manage investments which are not incompatible with the duties of office.

(12) Uphold the integrity and independence of the workers' compensation system.

(d) The secretary shall ensure that there are at least two opinion writers assigned to each member of the board. Opinion writers employed by or on behalf of the board whose duties involve, in whole or in part, the writing or drafting of proposed opinions, decisions or orders for the board or any member of the board shall be required to annually attend and participate in a minimum of eight (8) hours of continuing legal education in the field of workers' compensation practice and procedure in courses approved by the Pennsylvania Supreme Court Continuing Legal Education Board.

Section 5. Section 414 of the act, amended February 8, 1972 (P.L.25, No.12), is amended to read:

Section 414. Whenever a claim petition or other petition is presented to the department, the department shall, by general rules or special order, assign it to a [referee] *workers' compensation judge* for hearing. *When assigning petitions, including those for resolution hearings, the department shall not*

assign to a particular workers' compensation judge more than seventy-five per centum of the petitions from a particular county.

The department shall serve upon each adverse party a copy of the petition, together with a notice that such petition will be heard by the [referee] *workers' compensation judge* to whom it has been assigned (giving his name and address) as the case may be, and[,] shall mail the original petition to such [referee] *workers' compensation judge*, together with copies of the notices served upon the adverse parties.

Section 6. Section 442 of the act, amended June 24, 1996 (P.L.350, No.57), is amended to read:

Section 442. All counsel fees, agreed upon by claimant and his attorneys, for services performed in matters before any workers' compensation judge or the board, whether or not allowed as part of a judgment, shall be approved by the workers' compensation judge or board as the case may be, providing the counsel fees do not exceed twenty per centum of the amount awarded. [The official conducting any hearing, upon cause shown, may allow a reasonable attorney fee exceeding twenty per centum of the amount awarded at the discretion of the hearing official.]

In cases where the efforts of claimant's counsel produce a result favorable to the claimant but where no immediate award of compensation is made, such as in cases of termination or suspension, the hearing official shall allow or award reasonable counsel fees, as agreed upon by claimant and his attorneys, without regard to any per centum. *In the case of compromise and release settlement agreements, no counsel fees shall exceed twenty per centum of the workers' compensation settlement amount.*

Section 7. The act is amended by adding an article to read:

ARTICLE XVI UNINSURED EMPLOYERS GUARANTY FUND

Section 1601. Definitions.

The following words and phrases when used in this article shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Compensation." Benefits paid pursuant to sections 306 and 307.

"Employer." Any employer as defined in section 103. The term does not include a person that qualifies as a self-insured employer under section 305.

"Fund." The Uninsured Employers Guaranty Fund established in section 1602. The fund shall not be considered an insurer and shall not be subject to penalties, unreasonable contest fees or any reporting and liability requirements under section 440.

"Policyholder." A holder of a workers' compensation policy issued by the State Workers' Insurance Fund, or an insurer that is a domestic, foreign or alien mutual association or stock company writing workers' compensation insurance on risks which would be covered by this act.

“Secretary.” The Secretary of Labor and Industry of the Commonwealth.

Section 1602. Fund.

(a) Establishment.—

(1) There is established a special fund to be known as the Uninsured Employers Guaranty Fund.

(2) The fund shall be maintained as a separate fund in the State Treasury subject to the procedures and provisions set forth in this article.

(b) Source.—The sources of the fund are:

(1) Assessments provided for under section 1607.

(2) Reimbursements or restitution.

(3) Interest on money in the fund.

(c) Use.—The administrator shall establish and maintain the fund for the exclusive purpose of paying to any claimant or his dependents workers' compensation benefits due and payable under this act and the act of June 21, 1939 (P.L.566, No.284), known as The Pennsylvania Occupational Disease Act, and any costs specifically associated therewith where the employer liable for the payments failed to insure or self-insure its workers' compensation liability under section 305 at the time the injuries took place.

(d) Administration.—The secretary shall be the administrator of the fund and shall have the power to collect money for and disburse money from the fund.

(e) Status.—The fund shall have all of the same rights, duties, responsibilities and obligations as an insurer.

Section 1603. Claims.

(a) Scope.—This section shall apply to claims for an injury or a death which occurs on or after the effective date of this article.

(b) Time.—An injured worker shall notify the fund within 45 days after the worker knew that the employer was uninsured. The department shall have adequate time to monitor the claim and shall determine the obligations of the employer. No compensation shall be paid from the fund until notice is given and the department determines that the employer failed to voluntarily accept and pay the claim or subsequently defaulted on payments of compensation. No compensation shall be due until notice is given.

(c) Process.—After notice, the fund shall process the claim in accordance with the provisions of this act.

(d) Petitions.—No claim petition may be filed against the fund until at least 21 days after notice of the claim is made to the fund.

Section 1604. Claim petition.

If a claim for compensation is filed under this article and the claim is not voluntarily accepted as compensable, the employee may file a claim petition naming both the employer and the fund as defendants. Failure of

the uninsured employer to answer a claim petition shall not serve as an admission or otherwise bind the fund under section 416.

Section 1605. Department.

(a) Insurance inquiry.—Within ten days of notice of a claim, the fund shall demand from the employer proof of applicable insurance coverage. Within 14 days from the date of the fund's request, the employer must provide proof of insurance. If the employer does not provide proof, there shall be rebuttable presumption of uninsurance.

(b) Reimbursement.—The department shall, on behalf of the fund, exhaust all remedies at law against the uninsured employer in order to collect the amount of a voluntary payment or award, including voluntary payment or award itself and reimbursement of costs, interest, penalties, fees under section 440 and costs of the fund's attorney, which have been paid by the fund. The fund shall also be reimbursed for costs or attorney fees which are incurred in seeking reimbursement under this subsection. The department is authorized to investigate violations of section 305 for prosecution of the uninsured employer pursuant to section 305(b) and shall pursue such prosecutions through coordination with the appropriate prosecuting authority. Any restitution obtained shall be paid to the fund.

(c) Bankruptcy.—The department has the right to appear and represent the fund as a creditor in a bankruptcy proceeding involving the uninsured employer.

(d) Liens.—If payments of any nature have been made by the fund on behalf of an uninsured employer, the fund shall file a certified proof of payment with the prothonotary of a court of common pleas, and the prothonotary shall enter the entire balance as a judgment against the employer. The judgment shall be a statutory lien against property of the employer in the manner set forth in section 308.1 of the act of December 5, 1936 (2nd Sp.Sess., 1937 P.L.2897, No.1), known as the Unemployment Compensation Law, and execution may issue on it. The fund has the right to update the amount of the lien as payments are made.

Section 1606. Other remedies.

Nothing contained in this article shall serve to abrogate the provisions of section 305(d) allowing the claimant or dependents to bring a direct suit for damages at law as provided by Article II. The fund shall be entitled to assert rights to subrogation under section 319 for recovery made from the employer or any other third party.

Section 1607. Assessments.

For the purpose of establishing and maintaining the fund, the sum of \$1,000,000 is hereby transferred from the Administration Fund established under section 446 to the fund for operation of the fund for the period commencing on the effective date of this section through June 30, 2007. The department shall calculate the amount necessary to maintain the fund and shall assess insurers and self-insured employers as is necessary to provide an amount sufficient to pay outstanding and anticipated claims in

the following year in a timely manner and to meet the costs of the department to administer the fund. The fund shall be maintained in the same manner as the Workmen's Compensation Administration Fund under section 446 and the regulations thereunder. In no event shall any annual assessment exceed 0.1% of the total compensation paid by all insurers or self-insured employers during the previous calendar year.

Section 1608. Regulations.

The department may promulgate regulations for the administration and enforcement of this article.

Section 8. Repeals are as follows:

(1) The General Assembly declares that the repeal under paragraph (2) is necessary to effectuate the addition of section 401.2 of the act.

(2) Section 441 of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, is repealed.

Section 9. This act shall take effect as follows:

(1) The amendment of section 401.1 of the act shall take effect immediately.

(2) This section shall take effect immediately.

(3) The remainder of this act shall take effect in 60 days.

APPROVED—The 9th day of November, A.D. 2006.

EDWARD G. RENDELL