

1978 BILL 21

Fourth Session, 18th Legislature, 27 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 21

THE WORKERS' COMPENSATION AMENDMENT ACT, 1978

THE MINISTER OF LABOUR

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 21

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1978

THE WORKERS' COMPENSATION AMENDMENT ACT, 1978

(Assented to , 1978)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

1 The Workers' Compensation Act is amended by this Act.

2 Section 1 is amended

(a) in clause 10(i) by striking out "which include the employer where he is self-employed" and substituting "and includes an independent operator to whom the Act has been made applicable under section 10",

(b) in clause 16 by adding "in an industry to which this Act applies" after "as a preliminary to employment", and

(c) by repealing clause 25(i) and (ii).

Explanatory Notes

1 This Bill will amend chapter 87 of the Statutes of Alberta, 1973.

2 Section 1 presently reads in part:

1 In this Act,

10 "employer"

(i) means every person, firm, association, body or corporation having, or deemed by the Board or by this Act to have, in his or its service one or more workers which include the employer where he is self-employed, and

16 "learner" means any person who, although not under contract of service or apprenticeship, becomes subject to the hazards of an industry within the scope of this Act for the purpose of undergoing training or probationary work as a preliminary to employment;

25 "worker" means a person who has entered into or works under a contract of service or apprenticeship, written or oral, express or implied, whether by way of manual labour or otherwise, and includes

(i) any person engaged in training for mine rescue work or who with the knowledge and consent of the management or the person in charge of an authorized mine rescue crew, is doing recovery work after an explosion, accident or catastrophe,

(ii) the employees of a contractor contracting for the performance of mining operations for another person engaged in the industry of mining and also such contractor while actually working,

(iii) a learner, and

(iv) any other person who, under the provisions of this Act or under any direction or order of the Board, is deemed to be a worker;

3 *Section 7 is amended*

(a) *in subsection (1) by striking out “an executive director and such other persons” and substituting “such employees”,*

(b) *by repealing subsections (2) and (3), and*

(c) *in subsection (4) by striking out “Every person appointed” and substituting “Every employee appointed”.*

4 *Section 9(2) is repealed and the following is substituted:*

(2) The Board may, on such terms and conditions as it considers appropriate, by order declare that this Act applies to the following classes of persons:

(a) persons temporarily employed in preventing, combatting or alleviating the effects of any emergency or disaster whether or not remuneration is paid for that employment, and

(b) persons who are engaged on a voluntary basis as firemen, ambulance drivers, ambulance attendants or in similar employment undertaken in the public interest whether or not remuneration is paid for that employment.

5 *Section 10(1) is repealed and the following is substituted:*

10(1) Subject to section 11, compensation is not payable to an independent operator, an employer or a director of a corporation unless an application to have the Act apply to that person has been received and approved by the Board in accordance with the regulations.

6 *Section 11(1)(d) is repealed and the following is substituted:*

(d) is a person to whom compensation is not payable by reason of his being a director of a corporation, or

3 Section 7(1), (2), (3) and (4) presently read:

7(1) The Board may appoint an executive director and such other persons as it considers necessary for carrying out the provisions of this Act and the regulations and may prescribe their duties and fix their remuneration.

(2) The executive director is the chief administrative officer of the Board.

(3) No member of the Board is eligible to be appointed as executive director.

(4) Every person appointed by the Board holds office during pleasure of the Board.

4 Section 9(2) presently reads:

(2) The Board may, on such terms and conditions as it considers appropriate, provide that the Act shall apply to persons temporarily employed in preventing, combatting or alleviating the effects of any emergency or disaster, whether or not remuneration is paid for such employment.

5 Section 10(1) presently reads:

10(1) Subject to section 11, compensation is not payable to an employer, independent operator or a member of the family of an employer or independent operator when such member is employed by him and dwelling with him as a member of his household unless application to have the Act apply to that person has been received and approved by the Board in accordance with the regulations.

6 Section 11(1) presently reads in part:

11(1) Where a person does any work

(a) in an industry to which this Act applies, and

(b) for a person engaged in that industry (in this section called "the principal"),

that person doing that work shall, for all purposes of this Act, be deemed to be a worker of the principal except when the person doing the work

(d) is a person to whom compensation is not payable by reason of his being a member of the family of an employer or of an independent operator and dwelling in his household, or

7 Section 16 is amended

(a) in subsection (10) by striking out “Where a worker dies” and substituting “Subject to subsection (11.1), where a worker dies”,

(b) in subsection (11) by striking out “Where a worker dies” and substituting “Subject to subsection (11.1), where a worker dies”, and

(c) by adding the following after subsection (11):

(11.1) Where a dependant of a deceased worker is barred under section (10) or (11) from receiving compensation by reason only that dependant did not make a claim to the Board within 3 years of the death of that worker, the Board may, notwithstanding the date of the accident, pay compensation to the dependant, if the Board is satisfied that there are justifiable reasons for the dependent not making the claim within the 3-year period.

8 Section 26(1) is amended by striking out “, with the consent of the Board,”.

9 Section 37 is amended

(a) by adding the following after subsection (1):

(1.1) Notwithstanding that compensation has been paid to a widow or widower under subsection (1), the Board may pay to a deceased worker’s dependent child who is not residing with that widow or widower at the time of the worker’s death an amount of compensation not exceeding the amount payable under section 39(1).

(b) in subsection (4) by adding at the end of clause (d) “or” and by adding the following after clause (d):

(e) where the accident occurred on or after July 1, 1978, in the amount of \$463 per month, together with an additional sum of \$95 per month in respect of each child so maintained,

7 Section 16(10) and (11) presently reads:

(10) Where a worker dies after making a claim to the Board, no compensation shall be paid to a dependant unless the dependant makes a claim to the Board within three years after the death of the worker.

(11) Where a worker dies without making a claim to the Board, no compensation shall be paid to a dependant unless

(a) the death occurs within one year of the date of the accident, or

(b) the death occurs within three years of the date of the accident and the conditions contained in subsection (9), clause (a) have been met,

and unless, in either case, the dependant makes a claim to the Board within three years of the death of the worker.

8 Section 26(1) presently reads:

26(1) Upon the written request of the employer or of the worker or his dependant, the Board shall cause the record of the claim for compensation under this Act to be reviewed by a review committee appointed by the Board which may, with the consent of the Board, hear representations on behalf of the employer and the worker or dependant and such review committee may confirm, vary or reverse any decision made in respect of the claim.

9 The new subsection (1.1) permits payment of compensation to a dependant child not living in the widow's or widower's home.

Section 37(4) presently reads:

(4) Where the worker dies as the result of an accident and leaves no dependent widow or widower or the dependent widow or widower subsequently dies and any suitable person acts as foster-parent in keeping up a household and maintaining and taking care of the children entitled to compensation in a manner that the Board considers satisfactory, the foster-parent while so acting is entitled to receive compensation

(a) where the accident occurred on or after January 1, 1974, in the amount of \$225 per month together with an additional sum of \$70 per month in respect of each child so maintained, or

(b) where the accident occurred on or after April 1, 1975, in the amount of \$290 per month together with an additional sum of \$80 per month in respect of each child so maintained, or

(c) where the accident occurred on or after July 1, 1976, in the amount of \$320 per month together with an additional sum of \$90 per month in respect of each child so maintained, or

10 Section 38(1) is repealed and the following is substituted:

38(1) Upon a dependent widow or widower remarrying on or after July 1, 1978, the Board shall

(a) cease paying to that widow or widower periodic amounts as compensation, and

(b) pay to that widow or widower a lump sum termination payment in the amount of \$5 556.

11 Section 40 is amended

(a) by repealing subsections (1), (1.1), (1.2), (2) and (3) and substituting the following:

40(1) A dependent widow or widower or a foster-parent receiving compensation under this Act or any predecessor of this Act in respect of an accident that occurred prior to July 1, 1978 shall be granted an additional payment of compensation sufficient to increase the monthly payment to the dependent widow or widower or to the foster-parent, as the case may be, to the greater of

(a) an amount equal to the monthly payment of compensation that the deceased worker would have been paid under this Act if his injury, rather than resulting in death, had resulted in permanent total disability, or

(b) the amount of pension that person would otherwise receive plus 6% of that amount.

(b) in subsection (4) by striking out "and" at the end of clause (b) and by adding "and" at the end of clause (b.1) and by adding the following after clause (b.1):

(b.2) \$95 per month commencing July 1, 1978,

(d) where the accident occurred on or after July 1, 1977, in the amount of \$345 per month, together with an additional sum of \$90 per month in respect of each child so maintained,

until the child has, subject to section 39, attained the age of 18 years or died before attaining that age.

10 Section 38(1) presently reads:

38(1) If a dependent widow or widower remarries, the payments to that person shall thereupon cease but a lump sum termination payment shall thereafter be paid in an amount of

(a) \$2,700, where the remarriage takes place on or after January 1, 1974, or

(b) \$3,480, where the remarriage takes place on or after April 1, 1975, or

(c) \$3,840 where the remarriage takes place on or after July 1, 1976, or

(d) a sum equal to 12 times the amount of monthly compensation specified under section 40, subsection (2), where the remarriage takes place on or after July 1, 1977.

11 Section 40 presently reads:

40(1) A dependent widow or widower receiving compensation under this Act in respect of an accident occurring on or after January 1, 1974 but prior to April 1, 1975 shall be granted an additional payment of compensation sufficient to increase the monthly payment to the dependent widow or widower to the greater of

(a) \$365 per month, or

(b) the amount of pension that person would otherwise receive plus 11 per cent of that amount.

(1.1) A dependent widow or widower receiving compensation under this Act in respect of an accident occurring on or after January 1, 1974 but prior to July 1, 1976 shall be granted an additional payment of compensation sufficient to increase the monthly payment to the dependent widow or widower to the greater of

(a) \$405 per month, or

(b) the amount of pension that person would otherwise receive plus 10-1/2 per cent of that amount.

(1.2) A dependent widow or widower receiving compensation under this Act in respect of an accident occurring on or after January 1, 1974 but prior to July 1, 1977 shall be granted an additional payment of compensation sufficient to increase the monthly payment to the dependent widow or widower to the greater of

(a) \$436 per month, or

(b) the amount of pension that person would otherwise receive plus 7-1/2 per cent of that amount.

(2) A dependent widow or widower receiving compensation under any predecessor of this Act shall be granted an additional payment of compensation sufficient to increase the monthly payment to the dependent widow or widower to the sum of

12 *The following is added after section 44:*

44.1 Subject to section 49, where

(a) a worker is temporarily disabled for a period exceeding one year, or

(b) more than one year has elapsed from the time a worker received compensation for being temporarily disabled and as a result of the injury for which that compensation was paid that worker once again becomes temporarily disabled,

that worker shall be paid compensation in the same amount that he would be paid if he had been permanently disabled instead of temporarily disabled.

- (a) \$225 per month commencing January 1, 1974,
- (b) \$290 per month commencing April 1, 1975,
- (c) \$320 per month commencing July 1, 1976, and
- (d) \$345 per month commencing July 1, 1977.

(3) A foster-parent receiving compensation under this Act or any predecessor of this Act shall be granted an additional payment of compensation sufficient to increase the monthly payment to the foster-parent to the sum of

- (a) \$225 per month commencing January 1, 1974,
- (b) \$290 per month commencing April 1, 1975,
- (c) \$320 per month commencing July 1, 1976, and
- (d) \$345 per month commencing July 1, 1977.

(4) A dependent child receiving compensation under this Act or any predecessor to this Act shall be granted an additional payment of compensation sufficient to increase the monthly payment to the dependent child to the sum of

- (a) \$70 per month commencing January 1, 1974,
- (b) \$80 per month commencing April 1, 1975, and
- (b.1) \$90 per month commencing July 1, 1976,

and such amounts shall be payable

(c) to a dependent child under the age of 18 years other than a dependent invalid child, until the child attains the age of 18 years or dies before attaining that age, or

(d) to a dependent invalid child, irrespective of the age of the child, for as long as in the opinion of the Board it might reasonably be expected that the worker had he lived would have continued to contribute to the support of the child.

12 Amount of compensation paid to a worker who is temporarily totally disabled.

13 Section 46 is amended

(a) by adding “may” before “award compensation accordingly”, and

(b) by striking out “section 47 or section 49, subsection (1)” and by substituting “section 44.1, 47 or 49(1)”.

14 Section 47(1) is amended by adding “or” at the end of clause (d) and adding the following after clause (d):

(e) \$16 550 per year, where the accident occurred on or after July 1, 1978.

15 Section 48 is repealed.

13 Section 46 presently reads:

46 Where temporary partial disability results from the injury, the Board shall estimate the impairment of earning capacity from the nature and degree of the disability by reason of the injury and award compensation accordingly based on 75 per cent of the worker's average weekly earnings computed in accordance with the provisions of section 47 or section 49, subsection (1), but the compensation is payable only so long as the disability lasts.

14 Section 47(1) presently reads:

47(1) Subject to the regulations, the average weekly earnings of a worker for the purposes of this Act shall be computed in such manner as is best calculated to give the rate per week at which the worker was being remunerated in industries to which the Act applies at the time of the accident, but not so as in any case to exceed

(a) \$10,000 a year, where the accident occurred on or after January 1, 1974, or

(b) \$13,000 a year, where the accident occurred on or after April 1, 1975, or

(c) \$14,500 per year, where the accident occurred on or after July 1, 1976, or

(d) \$15,600 per year, where the accident occurred on or after July 1, 1977.

15 The subject matter of section 48 will now be covered by regulation. Section 48 presently reads:

48(1) In this section, "institution" means

(a) any university, public or private college, institute of technology, agricultural and vocational college, vocational training centre or secondary school;

(b) a correctional institution under The Corrections Act, 1976;

(c) a hospital designated as a facility under The Mental Health Act, 1972.

(2) Where a person has been committed or admitted to an institution, and

(a) he is working inside or outside the institution in any industry to which this Act does not apply, or

(b) is participating in a work training or similar program either inside or outside the institution,

he shall, while so engaged, be considered to be a worker employed by the Government for the purposes of this Act.

(3) Where a person becomes entitled to compensation under subsection (2), the compensation payable to him shall,

(a) in the event of an injury in an industry to which this Act does not apply, be based on

(i) the usual rate of wages payable to a person with similar working experience outside an institution, or

16 Section 50(a) is amended by adding “or” at the end of subclause (iv) and adding the following after subclause (iv):

(v) \$463 per month, where the accident occurred on or after July 1, 1978,

17 Section 53 is amended by adding the following after subsection (1.3):

(1.4) On and after July 1, 1978, an injured person receiving compensation for permanent total disability or permanent partial disability under this Act or any predecessor of this Act shall be granted an additional payment of compensation sufficient to increase the monthly payment to that person to the greater of

(a) \$463 per month in case of permanent total disability or a proportionate monthly amount calculated according to the percentage of disability assessed in case of permanent partial disability, or

(b) the amount of pension that person would otherwise receive pursuant to subsection (1.3) plus 6% of that amount.

(ii) the rate of wages paid to him for the work,

whichever is the greater, or

(b) in the event of injury in a work training or similar program, be based on the usual apprenticeship rate in the trade in which he was training or participating which would be payable to an apprentice with similar working experience outside an institution,

not exceeding in any case the maximum amount of compensation fixed by this Act.

(4) If a person committed or admitted to an institution, a penitentiary or a place of confinement to which the Prisons and Reformatories Act (Canada) applies, is, or subsequently becomes, entitled to compensation under this Act, the compensation otherwise payable to or in respect of the person may, in the discretion of the Board, be paid to the dependent spouse or other dependants of the person.

16 Section 50(a) presently reads:

50 The amount of compensation to which an injured person is entitled under this Act

(a) for permanent total disability shall not be less than

(i) \$275 per month, where the accident occurred on or after January 1, 1974, or

(ii) \$365 per month, where the accident occurred on or after April 1, 1975, or

(iii) \$405 per month, where the accident occurred on or after July 1, 1976, or

(iv) \$436 per month, where the accident occurred on or after July 1, 1977,

17 Additional compensation payments.

18 Section 54 is amended by renumbering it as 54(1) and by adding the following:

(2) The advisory committee shall, in addition to its duties under subsection (1), consider and make recommendations to the Minister on such matters as the Minister may refer to it.

19 Section 66(1) is repealed and the following is substituted:

66(1) Where

(a) an employer engaged in an industry to which this Act applies directs a worker who is working in that industry to do other work that is not in an industry to which this Act applies, and

(b) the worker is injured in the course of that other work,

that other work is deemed to be in an industry to which this Act applies and the Board may, subject to subsection (1.1), require the employer to pay to the Board an additional assessment of an amount that is not greater than the full cost of the claim in respect of the injury.

(1.1) The maximum amount of additional assessment that the Board may require an employer to pay under subsection (1) in respect of a claim shall not exceed \$1000.

20 Section 67 is amended

(a) in subsection (2) by adding “, other than a director of the corporation” after “Every person”,

(b) in subsection (2) by striking out “, whether that person is or is not a member, officer or executive of the corporation”, and

(c) by repealing subsections (3), (4) and (5).

18 Section 54 presently reads:

54 The advisory committee shall review annually the amount of all compensation payments being paid in respect of permanent disability and all compensation payments being paid to dependants and shall make their recommendations in respect thereof to the Minister.

19 Section 66(1) presently reads:

66(1) Where

(a) an employer engaged in an industry to which this Act applies directs a worker who is working in that industry to do other work that is not in an industry to which this Act applies, and

(b) the worker is injured in the course of that other work,

that other work shall be deemed to be in the industry of the employer to which this Act applies and the employer shall pay to the Board in respect of that other work an additional assessment equal to the full cost of the claim in respect of the injury up to a maximum of \$100.

20 Section 67(2), (3), (4) and (5) presently reads:

(2) Every person rendering service to a corporation, wherever and however incorporated or constituted, under a contract of service written or oral, express or implied, whether that person is or is not a member, officer or executive of the corporation, and whether or not the corporation is or is not under legal obligation to pay such person any wages, salary or other remuneration, shall be deemed to be a worker employed by the corporation and shall be included upon the payroll thereof, and in every such case, where the person is not being paid any wages or salary, or is being paid a merely nominal or token remuneration, the Board shall, for the purposes of assessment, fix such sum as in its opinion represents a reasonable wage or salary for the service rendered by the person, having regard to the nature of the employment, but not in any case exceeding in any one year the sum of the current amount of maximum yearly earnings specified by section 47, subsection (1) and the Board shall for the purpose of its assessment add the sum so fixed by it to the amount of the payroll of the corporation.

(3) Within three days after the granting of any building permit involving an expenditure of over \$300 by any city, town, village, municipal district, county or the Minister of Municipal Affairs, notice in writing thereof shall be given to the Board by the person whose duty it is to keep a record of such permits.

21 *Section 78 is amended*

(a) *in subsection (1) by adding “or certified statement” after “certificate”, and*

(b) *by repealing subsection (5) and substituting the following:*

(5) The Board may file

(a) a copy of the certificate issued under subsection (1), certified by the secretary of the Board as being a true copy, or

(b) a certified statement issued under subsection (1),

in the land titles office for the district in which the real property of the employer is situated and thereupon all the real property of the employer situated in that district is bound by the assessment, to the same extent as if it were by a registered judgment or mortgage and any judgment entered with respect to the certificate or statement binds the property from the date of the filing in the land titles office.

22 *Section 84 is amended by renumbering it as 84(1) and by adding the following:*

(2) The Lieutenant Governor in Council may, in respect of persons to whom this Act does not apply, make regulations

(a) authorizing the Board to make orders declaring that the Act applies to any class of those persons;

(b) designating those classes of persons in respect of whom the Board may make an order under a regulation made under clause (a);

(c) prescribing terms and conditions or either of them that must be met by those persons;

(d) prescribing

(4) A person who contravenes subsection (3) is guilty of an offence and liable on summary conviction to a fine of not more than \$25 and on default of payment to imprisonment for a term not exceeding three days.

(5) Any work done or performed under and subsequent to the issue of a building permit referred to in subsection (3) is hereby constituted an employment to which this Act applies and the employment by the permit holder of any worker in or in connection with such work constitutes him an employer within the meaning of this Act and he is subject to all the provisions thereof.

21 Section 78(1) and (5) presently reads:

78(1) Where default is made in the payment of all or any part of an assessment or special assessment or any other moneys due to the Board, the Board may issue its certificate setting out the basis of the payment to be made, the amount remaining unpaid and the person by whom it is payable, and directing the payment of the amount by that person.

(5) A copy of the certificate, certified by the secretary of the Board to be a true copy, may be filed in the land titles office for the district in which the real property is situated and any real property of the employer is bound by the assessment, to the same extent as by a registered judgment or mortgage, from the date of the filing, and any judgment entered with respect to the certificate binds the property from the date of the filing in the land titles office.

22 Permits the Lieutenant Governor in Council by regulation to bring persons not otherwise under this Act under the provisions of The Workers' Compensation Act.

- (i) the amount of compensation payable, or
- (ii) the method of determining the amount of compensation payable,

to those persons.

(3) Where the Board makes an order under a regulation made under subsection (2)(a) declaring that this Act applies to a class of persons, those persons in that class are, for the purposes of this Act, considered to be workers employed by the Government of Alberta.

23 Section 94(2) is amended by striking out “July 1, 1977” and substituting “July 1, 1978”.

24(1) This Act, except sections 5, 6 and 20(a) and (b), comes into force on July 1, 1978.

(2) Sections 5, 6 and 20(a) and (b) come into force on January 1, 1979.

23 Section 94(2) presently reads:

(2) Claims in respect of accidents occurring prior to July 1, 1977 shall be administered under and in accordance with the law in effect at the time the accident occurred.