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CHAPTER 887

AN ACT to amend the workmen's compensation law, in relation to occupational diseases and in relation to special provisions for compensation for certain injuries to the respiratory tract resulting from the inhalation of harmful dust, and to amend the labor law, in relation to control of harmful dust in public works.

Became a law June 6, 1930, with the approval of the Governor. Passed, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 2,
subd. 2,
par. 28,
amended.

Section 1. Paragraph twenty-eight of subdivision two of section three of chapter eight hundred and sixteen of the laws of nineteen hundred thirteen, entitled "An act in relation to assuring compensation for injuries or death of certain employees in the course of their employment and repealing certain sections of the labor law relating thereto, constituting chapter sixty-seven of the consolidated laws," as re-enacted by chapter forty-one of the laws of nineteen hundred fourteen, such paragraph having been added by chapter two hundred and fifty-four of the laws of nineteen hundred thirty-five, is hereby amended to read as follows:

28. Any and all occupational diseases. 28. Any and all employments enumerated in subdivision one of section three of this chapter.

Occupational
disease
excepted.

Nothing in paragraph twenty-eight of this subdivision shall be construed to apply to any case of occupational disease in which the last injurious exposure to the hazards of the disease occurred prior to September first, nineteen hundred thirty-five; nor to any disability or death due to any disease described, in article four-a of this chapter.

New art. 4-a
added

§ 2. Such chapter is further amended by the insertion therein of a new article, to follow article four, to be article four-a, to read as follows:

ARTICLE 4-A

SILICOSIS, AND OTHER DUST DISEASES

Section 65. Prevention of silicosis and other dust diseases.

66. Compensation payable for disability or death.

67. Liability of employer.

68. Medical treatment and care.

69. Workers, when not entitled.

70. Special medical examiners.

71. Expert consultants.

72. Alternate remedy.

§ 65. Prevention of silicosis and other dust diseases. 1. It is hereby declared to be the policy of the legislature of this state, in

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enacting this article, to prohibit through every lawful means available, any requirement as a pre-requisite to employment which compels an applicant for employment in any occupation coming within the purview of this article to undergo a medical examination.

2. The industrial commissioner and the industrial board are hereby required to add to the industrial code, as provided in sections twenty-eight and twenty-nine of the labor law, effective rules and regulations governing the installation, maintenance and effective operation in all industries and operations wherein silica dust or other harmful dust hazard is present, of approved devices designed to eliminate such harmful dusts and to promulgate such other regulations as will effectively control the incidence of silicosis and similar diseases.

Rules to be added on silicosis, etc.

§ 66. Compensation payable for disability or death. Compensation shall not be payable for partial disability due to silicosis or other dust disease. In the event of temporary or permanent total disability or death from silicosis or other dust disease, notwithstanding any other provision of this chapter, compensation shall be payable under this article to employees in the employments enumerated in section three of this chapter or to their dependents in the following manner and amounts: If disablement or death occur during the first calendar month in which this act becomes effective not exceeding the sum of five hundred dollars; if disablement or death occur during the second calendar month after which this act becomes effective not exceeding the sum of five hundred and fifty dollars; thereafter the total of compensation and benefits payable for disability and death shall increase at the rate of fifty dollars each calendar month. The aggregate amount payable shall be determined by the total amount payable in the month in which disablement or death occurs. In no event shall such compensation exceed an aggregate total of three thousand dollars. The requirement as to payments into the special funds provided for in subdivisions eight and nine of section fifteen for each case of injury causing death in which there are no persons entitled to compensation shall not apply to any claim arising under this article.

No compensation for partial disability; sum payable.

Compensation payable hereunder shall be paid from the eighth day following total disablement at the rate of sixty-six and two-thirds per centum of the average weekly wage to be computed under section fourteen of this chapter; but in no case shall compensation exceed twenty-five dollars per week nor in the event of total disability be less than eight dollars per week; provided, however, that in the event of death from such disease his dependents shall receive, in the manner provided by sections sixteen and seventeen of this chapter, any balance remaining between the amounts paid for disability and the total compensation payable under this article.

When payable.

Notwithstanding the provisions of section twenty-eight of this chapter, all claims for compensation resulting from inhalation of harmful dust, where the last exposure occurred between the effective date of this act and September first, nineteen hundred and thirty-five, shall be barred unless filed within one hundred and eighty days from the day on which this act takes effect.

Claims.



and methods, and a further provision shall be inserted in such contract that if this section is not complied with, the contract shall be void. In the construction of public works performed directly by the state or a public benefit corporation or a municipal corporation or a commission appointed pursuant to law wherein a harmful dust hazard is created for which appliances or methods for the elimination of silica dust or other harmful dust have been approved by the industrial board, the department, board or officer in the state, public benefit corporation, or municipal corporation or commission or board appointed pursuant to law, having jurisdiction over the construction of such work shall provide for the effective use of such approved appliances or methods in connection therewith. A violation of this section shall constitute a misdemeanor and shall be punishable by a fine of not more than five hundred dollars, or by imprisonment for not more than one year, or by both fine and imprisonment.

§ 4. This act shall take effect immediately.

CHAPTER 888

AN ACT to amend the workmen's compensation law, in relation to authorizing the expenditure of moneys from the vocational rehabilitation fund for the purposes of making studies, and of disseminating information on the subject of the control and prevention of diseases caused by the inhalation of harmful dust

Became a law June 6, 1936, with the approval of the Governor. Passed, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision nine of section fifteen of chapter eight hundred and sixteen of the laws of nineteen hundred thirteen, entitled "An act in relation to assuring compensation for injuries or death of certain employees in the course of their employment and repealing certain sections of the labor law relating thereto, constituting chapter sixty-seven of the consolidated laws," as re-enacted by chapter forty-one of the laws of nineteen hundred fourteen, such subdivision having last been amended by chapter one hundred and eighty-three of the laws of nineteen hundred thirty, is hereby amended to read as follows:

9. Expenses for rehabilitating injured employees. An employee, who as a result of injury is or may be expected to be totally or partially incapacitated for a remunerative occupation and who, under the direction of the state department of education is being rendered fit, to engage in a remunerative occupation, shall receive additional compensation necessary for his rehabilitation, not more than ten dollars per week of which shall be expended for maintenance. Such

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expense and such of the administrative expenses of the state department of education as are properly assignable to the expenses of rehabilitating employees entitled to compensation as a result of injuries under this chapter, shall be paid out of a special fund created in the following manner: The employer, or if insured, his insurance carrier, shall pay into the vocational rehabilitation fund for every case of injury causing death, in which there are no persons entitled to compensation, the sum of five hundred dollars. The commissioner of taxation and finance shall be the custodian of this special fund and may invest any surplus moneys thereof in securities which constitute legal investments for savings banks under the laws of this state. He may also sell any of the securities in which such fund is invested if necessary for the proper administration or in the best interests of such fund.

Special fund:
how created.

Custodian.

Disbursements from the vocational rehabilitation fund for the additional compensation provided for by this section shall be paid by the commissioner of taxation and finance upon vouchers signed by the industrial commissioner or deputy industrial commissioner.

Disbursements from the vocational rehabilitation fund for administrative expenses of the state department of education shall be paid by the commissioner of taxation and finance upon vouchers signed by the commissioner of education or the deputy commissioner of education.

Vouchers.

Prior to the first days of January, April, July and October there shall be submitted to the director of the budget by the commissioner of education for his approval an estimated budget of administrative expenses of the state department of education which it is proposed to charge to the vocational rehabilitation fund for the succeeding three months. There may not be expended from the said fund for such administrative expenses, more than the amounts specified in such budget for each item of expenditure, except as authorized by the director of the budget.

Estimated
budget.

There may be expended from such fund annually for a period of five years commencing July first, nineteen hundred thirty-six, and ending June thirtieth, nineteen hundred forty-one, an amount not to exceed fifty thousand dollars in any one year, for the purpose of making such studies as may in the judgment of the industrial commissioner be advisable, of means and methods of eliminating hazards to life and health from dusts and other occupational diseases, and disseminating information on the subject of control and prevention, provided however, that any information obtained in connection with such studies and investigations shall not be admissible as evidence in any action at law or in the adjudication of any claim arising under the workmen's compensation law. Prior to the first days of January, April, July and October beginning June first, nineteen hundred thirty-six, there shall be submitted to the director of the budget by the industrial commissioner for his approval an estimated budget of expenses for the purposes herein set forth, which it is proposed to charge against the vocational rehabilitation fund during the succeeding three months. There

\$50,000
authorized
for all costs
study.

§ 67. **Liability of employer.** An employer shall be liable for the payments prescribed by this article for silicosis or other dust disease when disability of an employee resulting in loss of earnings shall be due to an employment in a hazardous occupation in which he was employed, and such disability results within one year after the last injurious exposure in such employment; or, in case of death resulting from such exposure, if such death occurs within five years following continuous disability from such disease. The provisions of section forty-four of this chapter shall not apply to claims arising under this article.

Lab. lit.

The employer in whose employment the employee was last injuriously exposed in a hazardous occupation and the insurance carrier, if any, which was on the risk at the time of the last injurious exposure in such employment, shall be liable for any payments required by this article; the notice of injury and claim shall be made to such employer.

§ 68. **Medical treatment and care.** Notwithstanding any other provisions of this chapter the medical treatment herein provided for shall be limited in the case of an employee disabled by an occupational disease due to or resulting from the inhalation of harmful dust to a period of ninety days from the date of such disablement, but the requirement for such medical treatment may be extended for an additional period not to exceed ninety days upon the order of the industrial board.

§ 69. **Workers, when not entitled.** If an employee, at the time of his employment, falsely represents in writing that he has not previously been disabled from the disease which is the cause of disability or death or has not received compensation or benefits under this article, no compensation shall be payable.

Division into
5 districts;
in each 2 or
more
medical
examiners.

§ 70. **Special medical examiners.** The industrial commissioner shall divide the state into five districts and in each district may appoint two or more special medical examiners who shall be licensed physicians in good professional standing, each of whom shall have had, at the time of his appointment, and immediately prior thereto, at least five years of practice in the diagnosis, care and treatment of pulmonary diseases. Such examiners shall be employed on a per diem basis as the exigencies of the work may require. Fees of examiners shall be fixed by the industrial commissioner within the limits of the appropriation therefor. Each position of special medical examiner provided herein shall be in the exempt class of civil service.

Examina-
tion.

Whenever a claim is made under this article and an examination of the claimant by an impartial physician is desired by any party in interest, the industrial commissioner shall order such medical examiners to make the necessary medical and x-ray examination of the claimant in an effort to obtain the medical facts in an impartial manner.

For the purposes of adjudication under this chapter, the industrial board shall adopt rules of practice and procedure and shall prescribe methods and standards under which physical examinations, x-rays and other studies shall be conducted.

§ 71. Expert consultants. The industrial commissioner shall appoint as expert consultants on dust diseases three licensed physicians in good professional standing, each of whom shall have had, at the time of his appointment, and immediately prior thereto, at least ten years of practice in the diagnosis, care and treatment of diseases of the pulmonary tract, along with the interpretation of x-ray films thereof. They shall be paid at a salary to be fixed by the industrial commissioner not to exceed seven thousand five hundred dollars per year. Each such position of consultant shall be in the exempt class of civil service.

3 expert consultants; exempt class.

The industrial commissioner or the industrial board shall on their own volition or on the application of either an employee, an employer, or an insurance carrier, direct such expert consultants to make examinations of claimants, to review the findings of special medical examiners, to read and review the files of compensation cases when necessary, and to inform the industrial commissioner and the industrial board of their opinion as to their findings in such cases.

§ 72. Alternative remedy. The liability of an employer prescribed by this article shall be exclusive and in place of any other liability whatsoever, at common law or otherwise, to such employee, his personal representatives, husband, parents, dependents or next of kin, or anyone otherwise entitled to recover damages, at common law, or otherwise on account of any injury, disability, or death, caused by the inhalation of harmful dust, except that if an employer fail to secure the payment of compensation for his injured employees and their dependents as provided in section fifty of this chapter, an injured employee, or his legal representative in case death results from the injury or disease, may, at his option, elect to claim compensation under this chapter, or to maintain an action in the courts for damages on account of such injury or disease; and in such an action it shall not be necessary to plead or prove freedom from contributory negligence nor may the defendant plead as a defense that the injury or disease was caused by the negligence of a fellow servant or that the employee assumed the risk of his employment, nor that the injury or disease was due to the contributory negligence of the employee.

Exclusive remedy except if employer fails to procure insurance.

§ 3. Chapter fifty of the laws of nineteen hundred twenty-one, entitled "An act in relation to labor, constituting chapter thirty-one of the consolidated laws," is hereby amended by inserting therein a new section, to be section two hundred and twenty-two-a, to read as follows:

Ch. 50 amended. New § 222-a added.

§ 222-a. Prevention of dust hazard in public works. In the construction of public works by the state or a public benefit corporation or a municipal corporation or a commission appointed pursuant to law wherein a harmful dust hazard is created for which appliances or methods for the elimination of harmful dust have been approved by the industrial board, a provision shall be inserted in each contract for the construction of such work requiring the installation, maintenance and effective operation of such appliances

Bills on public works projects.