

Chapter 23

AN ACT TO AMEND THE WORKERS' COMPENSATION ACT

(Assented to November 7, 2019)

The Commissioner of Nunavut, by and with the advice and consent of the Legislative Assembly, enacts as follows:

1. This Act amends the *Workers' Compensation Act*.

2. (1) Subsection 1(1) is amended by this section.

(2) The definition of "disability" is repealed and replaced by the following:

"disability" means the condition of having temporarily reduced physical, functional, mental or psychological abilities caused by the worker's personal injury or disease, that results in a loss of earning capacity; (*incapacité*)

(3) The following definition is added in alphabetical order:

"impairment" means the condition of having a permanent physical, functional, mental or psychological abnormality or loss, caused by the worker's personal injury or disease; (*déficience*)

(4) Paragraph (c) of the definition of "medical aid" is amended by replacing "his or her disability" with "the worker's disability or impairment".

(5) The definition of "pension" is amended by replacing "permanent disability or death" with "impairment or death".

3. The following is added after subsection 4(1):

Exception

(1.1) Despite subsection (1), a person is not considered to be a worker for the purposes of this Act if the person

- (a) is employed by a person or entity that meets the exception referred to in subsection 8(1.1); and
- (b) is entitled to workers' compensation or a similar remedy under the law of another jurisdiction that extends to events that occur in Nunavut.

4. The following is added after subsection 8(1):

Exception

(1.1) Despite subsection (1), a person or entity is not considered to be an employer for the purposes of this Act if all of the following criteria apply:

- (a) the chief place of business of the person or entity is outside Nunavut;

- (b) the person or entity does not employ persons who are ordinarily resident in Nunavut;
- (c) the person or entity only employs persons whose usual place of employment is outside Nunavut;
- (d) the person or entity carries on business in Nunavut for a total of 10 or fewer days per year;
- (e) the person or entity has workers' compensation coverage or other similar coverage under the law of another jurisdiction that extends to events that occur in Nunavut.

Training or probationary work

(1.2) For greater certainty, a reference to employing persons in subsection (1.1) includes engaging persons to conduct any of the activities described in subsection 4(1) for the person or entity.

5. (1) The following is added after paragraph 11(1)(a):

- (a.1) in accordance with section 49, a person who assumes full or shared responsibility for the child of the worker;

(2) Paragraph 11(1)(d) is amended by replacing "physically or mentally incapable" with "physically, functionally, mentally or psychologically incapable".

6. Paragraph 12(c) is amended by replacing "if neither death nor serious disability results from it" with "if the injury or disease does not result in serious disability, serious impairment or death".

7. Subsection 13(3) is amended

- (a) **in that portion preceding paragraph (a), by replacing "a worker disabled by" with "a worker disabled or impaired"; and**
- (b) **in paragraph (a), by replacing "the worker is disabled" with "the worker is disabled or impaired".**

8. Subsection 14(5) is amended

- (a) **in paragraph (a), by replacing "the worker is disabled" with "the worker is disabled or impaired"; and**
- (b) **in paragraph (c), by replacing "preceding the disability" with "preceding the disability or impairment".**

9. (1) Paragraph 14.1(2)(a) is amended by replacing "the worker is disabled" with "the worker is disabled or impaired".

(2) Subsection 14.1(3) is amended by replacing "the date of the disability" with "the date of the disability or impairment".

10. Section 15 is repealed and replaced by the following:

Definition: "eligible compensation"

15. (1) For the purposes of this section, "eligible compensation" means compensation payable under any of the following provisions, but does not include any other payment or benefit provided under this Act:

- (a) section 38;
- (b) section 39;
- (c) section 41;
- (d) section 42;
- (e) paragraph 48(1)(a);
- (f) paragraph 48(1)(b).

No attachment

(2) Subject to subsection (3), no compensation may be assigned, charged or attached, except where a court, by order, makes the compensation subject to execution to the extent that wages and salary are subject to execution under the *Exemptions Act*.

Exceptions

(3) Eligible compensation may be assigned, charged or attached if

- (a) the Commission gives its approval in writing; or
- (b) the Commission is served with a payment order under subsection 15(1) of the *Family Support Orders Enforcement Act*.

11. Section 17 is repealed and replaced by the following:

Report by worker

17. A worker who experiences any of the following events arising out of and during the course of the worker's employment shall report the event to the worker's employer and to the Commission as soon as is practicable:

- (a) a personal injury or disease;
- (b) exposure to toxic, noxious or other hazardous substances that could possibly cause personal injury, disease or death in the future.

12. Subsections 18(1) and (2) are repealed and replaced by the following:

Report by employer

18. (1) An employer who has reason to believe that a worker in its employ has experienced any of the following events arising out of and during the course of the worker's employment shall send a written report describing the event to the Commission:

- (a) a personal injury, disease or death;
- (b) exposure to toxic, noxious or other hazardous substances that could possibly cause personal injury, disease or death in the future.

Time of report

(2) The report must be sent within three days after the employer first has reason to believe the event has occurred.

13. (1) Subsection 23(1) is repealed and replaced by the following:

Election if dual compensation

23. (1) If a person is entitled to both workers' compensation under this Act and workers' compensation or a similar remedy under the law of another jurisdiction where the personal injury, disease or death occurred, the person must elect whether

- (a) to claim compensation under this Act; or
- (b) to claim workers' compensation or the similar remedy under the law of that other jurisdiction.

(2) The following provisions are amended by replacing "another place" with "another jurisdiction":

- (a) subsection 23(5);**
- (b) paragraph 23(6)(a);**
- (c) paragraph 23(6)(b);**
- (d) paragraph 23(6)(c).**

14. Deleted: 5th Legislative Assembly, October 23, 2019.

15. (1) Subsection 33(2) is repealed.

(2) Subsection 33(3) is amended by replacing "The primary health care provider" with "A worker's health care provider".

(3) Subsection 33(4) is repealed and replaced by the following:

Changing health care provider

(4) The Commission may require the worker to use a different health care provider, if the Commission considers that the provider used by the worker may not assist in, or may impede, the process of the worker's recovery.

16. Subsection 34(2) is repealed and replaced by the following:

Duration of medical aid

(2) The medical aid must be provided to the worker from the time the worker suffers the personal injury or disease and

- (a) if the worker is disabled by the injury or disease, during the period of the disability; or
- (b) if the worker is impaired by the injury or disease, for as long as the worker lives.

17. Subsection 35(1) is amended

- (a) in that portion preceding paragraph (a), by replacing "for a disability other than a permanent total disability" with "for a disability or impairment"; and**

- (b) **in paragraph (a), by replacing "mitigate the disability" with "mitigate the disability or impairment".**

18. Subsection 38(1) is repealed and replaced by the following:

Compensation for total disability

38. (1) The compensation for a worker who is totally disabled is a monthly payment equal to 90% of the worker's net monthly remuneration, payable for the period of the total disability.

19. The English version of subsection 39(1) is amended by replacing "temporarily and partially disabled" with "partially disabled".

20. The following provisions are amended by deleting "temporary", wherever it appears:

- (a) **subsection 39(1);**
- (b) **subsection 39(2);**
- (c) **subsection 40(1);**
- (d) **subsection 40(2);**
- (e) **subsection 44(1);**
- (f) **subsection 44(2);**
- (g) **that portion of subsection 44(3) preceding paragraph (a);**
- (h) **paragraph 44(3)(b);**
- (i) **paragraph 46(d).**

21. The following heading is added immediately preceding section 41:

Impairment Compensation

22. (1) Subsection 41(1) is repealed and replaced by the following:

Compensation for total impairment

41. (1) The compensation for a worker who is totally impaired is a monthly pension equal to 90% of the worker's net monthly remuneration, payable for as long as the worker lives.

(2) Subsection 41(3) is repealed and replaced by the following:

Other treatment or services

(3) The Commission shall, in addition to the pension, provide a worker who is totally impaired with such other treatment or services as it considers necessary as a result of the personal injury or disease.

(3) That portion of subsection 41(4) preceding paragraph (a) is repealed and replaced by the following:

Deemed total impairment

(4) A worker is deemed to be totally impaired if the worker suffers

23. (1) Subsection 42(1) is repealed and replaced by the following:

Compensation for partial impairment

42. (1) The compensation for a worker who is partially impaired is a monthly pension, payable for as long as the worker lives, equal to 90% of the worker's net monthly remuneration multiplied by the percentage of the worker's impairment, determined in accordance with an impairment rating schedule established by the Commission.

(2) Subsection 42(2) is amended by replacing "permanently and partially disabled" with "partially impaired".

24. Paragraph 43(a) is repealed and replaced by the following:

- (a) the worker continues to experience a loss of earning capacity caused by the worker's personal injury or disease that is greater than the impairment compensation the worker is entitled to under section 42 or 43, as the case may be; or

25. Subsection 44(1) is amended by replacing "permanent partial disability", wherever it appears, with "partial impairment".

26. Section 45 is repealed and replaced by the following:

Multiple injuries or diseases

45. If a worker receiving a pension for a partial impairment later becomes entitled to compensation for a subsequent disability or impairment because of a different personal injury or disease, the worker is entitled to receive the compensation payable for the subsequent disability or impairment in addition to the amount of the pension already being paid for the partial impairment.

27. The following provisions are each amended by replacing "physically or mentally incapable" with "physically, functionally, mentally or psychologically incapable":

- (a) **paragraph 48(1)(c);**
- (b) **subsection 50(2).**

28. (1) That portion of subsection 49(1) preceding paragraph (a) is repealed and replaced by the following:

49. (1) Subject to subsections (3) and (4), the Commission shall pay compensation, in an amount equivalent to the compensation payable to a surviving dependent spouse under paragraph 48(1)(b), divided proportionately in respect of each child of the deceased worker, to any person who assumes full or shared responsibility for a child of the deceased worker, if

(2) Subsection 49(3) is repealed and replaced by the following:

Division amongst children

(3) If there is more than one child of the deceased worker eligible for compensation under this section, and the children are not maintained by the same person, the Commission may pay the person or persons maintaining a child the proportionate share in respect of that child.

(3) The following is added after subsection 49(3):

Proportional responsibility

(4) If more than one person is entitled to compensation under subsection (1) with respect to the same child, the Commission may divide the compensation payable under that subsection proportionately between those persons according to their share of responsibility for the child.

29. Paragraph 56(3)(b) is repealed and replaced by the following:

- (b) the worker's personal injury or disease results in an impairment rating of no more than 10%, determined in accordance with an impairment rating schedule established by the Commission; and

30. (1) Subsection 57(2) is amended by

- (a) deleting "and" at the end of the English version of paragraph (a);
- (b) deleting the period at the end of paragraph (b) and replacing it with "; and"; and
- (c) adding the following after paragraph (b):
 - (c) benefits akin to wages received by the worker under the *Employment Insurance Act* (Canada).

(2) Subsection 57(3) is repealed and replaced by the following:

Excluded amounts

(3) For greater certainty, a worker's remuneration does not include the value of clothing, materials, transportation, board or lodging provided to the worker, either in kind or as an expense payment, due to the remote nature or location of the employment.

31. Subsection 66(1) is amended by replacing "that he or she may have in a place outside Nunavut" with "that the claimant may have in a jurisdiction outside Nunavut".

32. (1) The following is added after paragraph 91(2)(c):

- (c.1) whether an impairment exists because of a personal injury or disease, and the degree of the impairment;

(2) Paragraph 91(2)(d) is repealed and replaced by the following:

- (d) whether there has been a loss of earning capacity as a result of a personal injury or disease, and the percentage loss of the earning capacity;

33. Section 95 is repealed and replaced by the following:

Information sharing agreements with public bodies

95. (1) For the purpose of ensuring the proper administration of this Act and any other legislation administered by the Commission, the Commission may enter into agreements with the Government of Canada, a government of a province or another territory, an Aboriginal government, or with a ministry, board, commission or agency of such a government, under which

- (a) the government, ministry, board, commission or agency may be permitted to access information obtained by the Commission under this Act; and
- (b) the government, ministry, board, commission or agency may permit the Commission to have access to information obtained by the government, ministry, board, commission or agency.

Prohibition

(2) Despite subsection (1), the Commission shall not permit direct access by an entity other than the Commission to databases containing information obtained by the Commission under this Act.

34. Deleted: 5th Legislative Assembly, October 23, 2019.

35. Subsection 134(1) is amended by replacing "For the purpose of ensuring compliance with any provision of this Act" with "Subject to section 134.1, for the purpose of ensuring compliance with any provision of this Act".

35. 1. The following is added after section 134:

Inspection of health care facility

134.1. (1) Despite section 134, an inspector may only enter and inspect any health care facility in accordance with this section.

Types of records

- (2) An inspector and any person assisting the inspector may, at any reasonable time,
 - (a) enter a health care facility where medical aid was provided to a worker; and
 - (b) inspect and audit any records of the health care facility in respect of
 - (i) scheduled appointments for treatments or services for a worker, or
 - (ii) accounting records in respect of treatments or services rendered to a worker.

Purpose of inspection

(3) An inspector and any person assisting the inspector shall not inspect or audit any record under subsection (2) except for the purpose of enabling the Commission, with respect to its obligations under subsection 34(3), to

- (a) determine or verify the eligibility of the individual to whom the records relate to be provided with medical aid by, or at the cost of, the Commission under this Act;
- (b) determine or provide payment for medical aid provided or paid for by the Commission under this Act; or
- (c) process, monitor, verify or reimburse claims for payment for medical aid provided or paid for by the Commission under this Act.

Personal health information

(4) Subject to subsection (2), nothing in this section authorizes an inspector or any person assisting the inspector to access any records containing the following information in any form that identifies an individual, or in respect of which it is reasonably foreseeable in the circumstances that the information could be used, either alone or with other information, to identify an individual:

- (a) information about the health and health care history of an individual;
- (b) information respecting health services provided to an individual;
- (c) information about eligibility or registration of an individual for a health service or related product or benefit;
- (d) information about the payment for a health service for an individual;
- (e) information that is collected in the course of, or incidental to, the provision of health services to an individual;
- (f) information in respect of the examination or testing of an individual by, or on referral from, a health care professional;
- (g) information in respect of an individual's receipt, donation or transfusion of cellular material, an organ, tissue, blood or a blood product;
- (h) an identifying number, symbol or other particular assigned to an individual in respect of health services or health information.

Application

(5) This section only applies to a health care facility in respect of the provision of treatments or services to a worker, and does not apply to a health care facility in respect of its activities as an employer.

36. The following is added after section 161:

Notice of workplace accident or incident

161.1. (1) For the purpose of providing notice of a workplace accident or incident to officials responsible for ensuring compliance with other legislation administered by the Commission, the Commission may disclose the information specified in subsection (2) to the following officials:

- (a) the Inspector appointed under the *Explosives Use Act*;
- (b) the Chief Inspector appointed under the *Mine Health and Safety Act*;
- (c) the Chief Safety Officer appointed under the *Safety Act*.

Information disclosed

(2) The Commission may disclose any of the following information obtained by it under this Act:

- (a) that the accident or incident has occurred;
- (b) the name of the employer;
- (c) the date and place of the accident or incident;
- (d) the nature of the accident or incident;
- (e) the name of any worker who suffered a personal injury, disease or death as a result of the accident or incident, or who could possibly be expected to suffer such an injury, disease or death in the future;
- (f) the severity of any injury or disease suffered by the worker.

Consequential amendments

Senior Citizens and Disabled Persons Property Tax Relief Act

37. Section 1 of the *Senior Citizens and Disabled Persons Property Tax Relief Act* is amended by replacing "a total disability or a partial disability" in subparagraph (a)(i) of the definition "disabled person" with "a total disability or impairment or a partial disability or impairment".

Coming into force

38. This Act or any provision of this Act comes into force on a day or days to be fixed by order of the Commissioner.