Review of Pennsylvania Legislation 1939 - Workmen's Compensation

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(3) In determining the efficiency rank of professional employes and temporary professional employes it is provided by the 1939 Act that a rating system shall be established and the ratings recorded on forms to be prepared by the Department of Public Instruction in co-operation with a committee representing teachers, school directors and school administrators. This rating of a teacher is necessary to determine whether a professional employe is subject to dismissal for incompetency as set forth in Section 1205 (a) of the School Code and to properly bring about suspensions of teachers under clause (b) of that section. By the establishment of the rating system teachers are given an efficiency rank and are subject to suspension according to their efficiency standing. For the school year 1939-1940 suspensions are based entirely upon seniority rights, but thereafter efficiency rank controls. In the event there is no substantial difference in efficiency rank, seniority privileges then prevail. It is important to note that no teacher may be dismissed for incompetency unless rating records have been kept on file by the board of school directors.

(4) A most important change is provided in clause (j) of Section 1205 relating to appeals from a decision of a board of school directors by which a professional employe may have been aggrieved. Under the Act of 1937 an appeal from the decision of the board was taken directly to the court of common pleas of the county in which the school district was located. Under the Act of 1939 the appeal is required to be taken to the Superintendent of Public Instruction from whose decision an appeal is permissible by either the board of school directors or the professional employe to the court of common pleas, provided the same is taken within thirty days after receipt by registered mail of the written notice of the decision or order of the Superintendent of Public Instruction.

HARRISBURG, PA. 

XIV. WORKMEN'S COMPENSATION

The Pennsylvania Legislature in 1939 passed certain laws relating to Workmen's Compensation with the view of correcting certain previous provisions which had been passed upon unfavorably by our Supreme Court and certain provisions which were thought to be unreasonable from the standpoint of employers. The Acts passed were Act Number 281,\(^1\) known as the Pennsylvania Workmen's Compensation Act, re-enacting and amending the Act of 1915,\(^2\) (hereinafter referred to as the Act of 1939); Act Number 284,\(^3\) known as the Pennsylvania Occupa-

\(^1\)June 21, 1939, P. L. 520, 77 PURD. STATS. (Pa.) § 1, \textit{et seq.}
\(^3\)June 21, 1939, P. L. 566, 77 PURD. STATS. (Pa.) § 1201 \textit{et seq.}
tional Disease Act (hereinafter referred to as the Occupational Disease Act of 1939); Act Number 282,\(^4\) affecting agricultural or domestic services, being a supplement to the Act of 1915, (hereinafter referred to as the Agricultural Act of 1939); Act Number 283,\(^5\) affecting volunteer firemen, being a supplement to the Act of 1915, (hereinafter referred to as the Volunteer Fireman Act of 1939). For further discussion of this subject, we will refer to the Act of 1915 and its amendments as the "Old Act," and the Compensation Act of 1937,\(^6\) and its Occupational Disease Act supplement\(^7\) as the "Act of 1937" and "The Occupational Disease Act of 1937" respectively. To fully understand the provisions of the Acts of 1939 and the changes made by them, we will consider these acts in the following order: The Compensation Act, the Occupational Disease Act, the Volunteer Fireman Act, and the Agricultural and Domestic Service Act.

The Act of 1939 has made some very important changes over the Old Act and particularly over the Act of 1937. The purpose of this discussion is merely to show the changes made and not to discuss at great length all of the provisions of the Act. The Old Act provided that compensation for total disability should be paid for a period of 500 weeks after the seventh day of total disability at the rate of 65% of the wages not to exceed $15.00 per week nor less than $7.00 per week not exceeding, in the aggregate, the sum of $6500.00. If the wages at the time of the injury were less than $7.00 then the employee should receive the full amount of such wages per week as compensation. The Act of 1937 required in cases of total disability the payment for a period of 500 weeks after the 7th day of total disability 65% of the wages not to exceed $18.00 per week nor less than $12.00 per week, and if total disability persisted for a period of four weeks or more, the employee was entitled to receive compensation for the first seven days of total disability. Under this Act the employee was paid for the full period of 500 weeks at a maximum rate of $18.00 per week and thereafter at $30.00 per month as long as such permanent total disability persisted. The Act of 1939\(^8\) changed both the Old Act and the Act of 1937 so that now a claimant will receive compensation for total disability for 500 weeks after the seventh day of total disability 66\(\frac{2}{3}\)% of the wages not to exceed $18.00 per week nor less than $9.00 per week and not to exceed the aggregate of $7500.00. It will be noted that this section increased the percentage from 65% to 66\(\frac{2}{3}\)% and the aggregate for the period of 500 weeks from $6500.00 under the Old Act to $7500.00 and eliminated from the Act of 1937 the life feature of $30.00 per month after the 500 weeks. This section further provides that if, at the time of the injury, the employee receives wages of less than $9.00 per week, he shall receive the full amount of such wages per week as compensation and in no event less than $5.00 per week.

\(^7\)Act of July 2, 1937, P. L. 2714.
\(^8\)Section 306 (a).
The Old Act provided that in cases of partial disability compensation should be at the rate of 65% of the difference between the wages of the injured employee and the earning power of the employee thereafter, not to exceed, however, $15.00 per week and to be paid for a period of 300 weeks after the seventh day of such partial disability. The Act of 1937 provided that for partial disability, claimants should receive 65% of the difference between the wages of the injured employee and the earning power thereafter, not to exceed $18.00 per week and this should be paid for a period of 400 weeks. If the partial disability should continue for a period of four weeks or more the employee should then receive compensation for the first seven days. The Act of 1939 increases the percentage to 66 2/3% of the difference between the wages of injured employees and the earning power thereafter, but such compensation shall not be more than $15.00 per week and shall be payable only for a period of 300 weeks. This section therefore re-enacts the law as it was under the Old Act with the exceptions that the percentage of the wages has been increased from 65% to 66 2/3%.

There is, however, one very important change made in the section of the Act of 1939 dealing with partial disability. That change has to do with the definition of earning power. The Old Act stated that an employee was entitled to 65% of the difference between the wages of the injured employee and the earning power thereafter. For example, if an injured claimant became partially disabled and returned to work, the question very often arose as to whether he would be entitled to receive compensation for partial disability, if upon his return to work he received the same or a higher wage than he received at the time of his injury. The courts have uniformly held that there is a difference between wages received and earning power so that in many cases it has been held that even though a claimant returned to work and received the same or a higher wage, he might still be entitled to receive in addition thereto compensation for partial disability, one of the leading cases being Plum v. Hotel Washington. The Act of 1937, following the court decisions on this question, defined earning power as follows:

"In cases of partial disability, the actual earnings of an employee, after the date of injury, may, along with other evidence, be received as evidence of the extent of his earning power, but if such employee has no such earnings, the referee may, in the interests of justice, fix such earning power as shall be reasonable, having due regard to the character of his previous employment and the nature of his injury and his partial disability."

This section did not change the law as expressed by our courts on the question of earning power, and a claimant would still be entitled to compensation for partial disability notwithstanding that he returned to work and received the same or

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9Section 306 (b).
higher wages than he earned prior to his injury. The Act of 1939, however, states "The term 'earning power' as used in this section shall in no case be less than the weekly amount which the employee receives after the accident." Under this definition it would seem clear that since earning power shall in no case be less than the weekly amount which the employee receives after the accident, a claimant is no longer entitled to compensation for partial disability when he returns to work and receives the same or a higher wage than he received at the time of the injury. In consequence of the Act of 1939, the decisions which hold that claimant may be entitled to compensation for partial disability even though he returned to work and received the same or a higher wage would seem to be no longer the law, on accidents occurring since July 1, 1939.

Compensation for specific losses, such as the loss of an eye or an arm, under the Act of 1937 was increased so that a claimant received a greater number of weeks for the specific loss in question. The percentage of wages remained the same. The Old Act provided that in cases of specific losses such as the loss of an eye or an arm, the compensation should be 65% of the wages for a given number of weeks. The Act of 1937 merely increased the number of weeks to be paid for such losses and in addition thereto added the payment of compensation for the loss of hearing in one or both ears.

This Act also provided and set up a method of payment out of an account known as the Second Injury Reserve Account for payment of compensation in cases where an employee, having had a previous major injury such as, for example, the loss of an eye, should suffer the loss of the other eye by another injury. In such case the employee would be paid as for total disability. This section was intended to cure a situation which arose in the case of Lente v. Luci, in which it was held that where an employee had lost the vision of one eye and then because of a second injury suffered the loss of vision of the other eye, he would only be entitled to receive compensation for the loss of vision of the second eye. The Act of 1939 changed the Old Act so that the percentage of wages was increased from 65% to 66 2/3% and the number of weeks remained the same as under the Old Act. This Act also eliminated the provision relating to the loss of hearing and also the provision relating to the previous major injury so that the ruling in Lente v. Luci is again the law.

The Old Act provided that the employer was required to furnish reasonable medical and surgical services during the first thirty days after disability began, not to exceed the sum of $100.00 and hospitalization for the same period not to exceed the prevailing charge in the hospital for like services to other individuals. The Act of 1937 made considerable changes with reference to medical services and hospitalization. It provided that the employer must furnish such services for the first three months after the date of the injury and during such further period as

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11Section 306 (b).
12Section 306 (c).
the Board may order. The amount during the first three months should not exceed $200.00 for medical treatment exclusive of the cost of hospital treatment and artificial appliances. The item of artificial appliances was not included in the Old Act. The Act of 1939\(^{14}\) eliminates the item of artificial appliances, changes the period from three months to sixty days after disability begins, and limits the amount of medical treatment to $150.00, retaining the provisions of the Old Act as to the reasonableness of the hospital costs. The Act of 1939 eliminates the power of the Board to grant further treatment after the sixty days.

The Old Act provided compensation for hernia. It was, however, considered as a physical weakness or ailment and was not compensable unless conclusive proof was offered that the hernia was immediately precipitated by such sudden effort or severe strain that, first, the descent of the hernia immediately followed the cause; second, that there was actual pain in the hernial region; third, that the above manifestations were of such severity that the same were immediately noticed by the claimant and communicated to the employer or a representative of the employer within forty-eight hours after the occurrence of the accident. The Act of 1937 eliminated the provision with regard to hernia and it therefore became necessary to consider all hernias as ordinary accidents and compensable as such. The Act of 1939\(^{15}\) re-adopts the hernia provision and provides that it shall not be compensable unless uncontroversable proof is offered that the hernia was precipitated by sudden effort or severe strain and that, first, the descent of the hernia followed the cause without intervening time; second, there was actual pain in the hernial region at the time of the descent; third, the above manifestations were of such severity that they were noticed at once by the claimant, necessitating immediate cessation of work, and communicated to the employer or a representative of the employer within forty-eight hours after the occurrence of the accident.

In compensation for death the Act of 1939\(^{16}\) has made serious changes. The Old Act provided compensation to the widow, children, father and mother, and brothers and sisters if under the age of sixteen. The father and mother and brothers and sisters would be entitled to compensation only if there were no widow or children. Brothers and sisters would not be entitled to compensation unless there were no widow, children, father or mother. The Act of 1937 included the same dependents but also added that if those who were entitled to compensation did not receive the maximum compensation payable under the Act then the other dependents who might be the father, mother, brothers or sisters, would receive a certain percentage of the wages not in excess of a certain amount, not, however, to exceed the maximum allowed under the Act, to wit, $18.00. Under this Act, therefore, two or three dependents might be receiving compensation at the same time, whereas under the Old Act if the widow and children were entitled to compensation no others would be. The Act of 1939 re-enacts the provisions of the Old Act with

\(^{14}\) Section 306 (f).

\(^{15}\) Section 306 (h).

\(^{16}\) Section 307.
the exception that the compensation payable to the various dependents has been slightly increased over that of the Old Act. The Old Act provided that this compensation should be payable for a period of 300 weeks and that the 300 weeks should be reduced by the number of weeks paid to the deceased during his lifetime. Children and brothers and sisters were paid until the age of sixteen. The Act of 1937 required payment for a period of 500 weeks with no reduction for the compensation paid to the decedent during his lifetime and, in the case of a widow, at the end of the 500 week period, $5.00 per week so long as she remained unmarried. Children, brothers and sisters were paid until the age of eighteen. The Act of 1939 re-enacts the provisions of the Old Act, so that now the widow is paid 300 weeks, less the number of weeks paid to the deceased during his lifetime, and the children and brothers and sisters are paid until they are sixteen.

The Old Act provided that in case of re-marriage of a widow, the compensation should continue as provided for one-third of the period during which compensation remained payable. The Act of 1937 increased this to two years from the date of such re-marriage. The Act of 1939 returns to the provisions of the Old Act.

The Old Act provided that the wages upon which death compensation should be based should not in any case be taken to exceed $24.00 per week nor less than $12.00 per week. The Act of 1937 provided that wages upon which death compensation should be based should not in any case be less than $18.50 per week. The Act of 1939 provides that the wages shall not in any case be taken to exceed $27.00 per week nor less than $15.00 per week.

The liability for the employer for funeral expenses in cases of death was not to exceed $150.00 under the Old Act. Under the Act of 1937 this was increased to $200.00. The Act of 1939 has retained the $200.00 limit.

The next important change made by the Act of 1939 relates to computation of wages. The Old Act provided a method of computing wages in continuous employments and in seasonal occupations. In Romig v. Champion Blower and Forge Company, the court held that in continuous employment the wages are to be computed on the basis of five and one-half days per week even though the employee at the time be working a lesser number of days and even though the compensation may be greater than the wages received at the time of the injury. The Act of 1937 did not change the provisions of the Old Act regarding the computation of wages in continuous employments. The Act of 1939 has, however, changed the computation of wages in continuous employments and by this change the famous Romig decision is now no longer the law. The Act provides that the year shall be divided into four periods of thirteen consecutive weeks each, and the

17Section 307 (7).
18Id.
19Id.
20Id.
21Pa. 97, 172 Atl. 293 (1934).
22Section 309.
employe may select the most favorable period during such employment in computing his wage for the purpose of determining the compensation due.

Under the Old Act alien dependent widows and children not residents of the United States were entitled to two-thirds of the amount provided for residents. Alien widowers, parents, brothers and sisters not residents of the United States were not entitled to compensation. The Act of 1937 made no change with regard to compensation payable to aliens. The Act of 1939, however, changes both the Old Act and the Act of 1937 in that alien widows, children, widowers, parents, brothers and sisters, not residents of the United States, shall not be entitled to any compensation.

With regard to the notice of injury to the employer, the Old Act provided that notice should be given within fourteen days after the accident or no compensation should be payable until such notice was given or knowledge obtained, unless a mistake or physical impairment were shown for failure to give such notice and unless such notice were given or knowledge obtained within ninety days after the occurrence of the injury, no compensation was allowed. The Act of 1937 required notice within thirty days after the accident, and no compensation was payable until such notice was given or knowledge obtained unless the employe showed that the delay was due to some mistake, but at no time would the employe be entirely deprived of compensation. The ninety day limitation was entirely removed. The Act of 1939 re-enacts the provision of the Old Act with regard to the notice within fourteen days and forfeiture of compensation unless notice be given within ninety days, with no provision to show cause of delay in not giving such notice within the fourteen days.

The Old Act provided that in cases of personal injury or death a claim would be forever barred unless within one year an agreement was entered into or a petition properly filed. The Act of 1937 increased this to two years. The Act of 1939 re-instates the one year provision.

The Old Act as well as the Act of 1937 permitted commutation of future payments of compensation disregarding the probability of the beneficiary's death. This has been interpreted to mean that the Board cannot require an indemnity bond to insure against overpayment in the event of the beneficiary's death. An indemnity bond might have been required at the discretion of the Workmen's Compensation Board only in the event of the re-marriage of the widow. The Act of 1939 has changed both the Old Act and the Act of 1937 so that unless the employer agrees to make such commutation, the Board shall require the employe or the dependents of a deceased employe to furnish proper indemnity, safeguarding the employer's rights.

The Old Act and the Act of 1937 provided that where a minor was illegally

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28Section 310.
24Section 311.
26Section 315.
28Section 316.
employed, he would be entitled to receive from the employer the same amount of compensation that he was entitled to receive from the insurance carrier. This was known as additional compensation. The Act of 1939\textsuperscript{27} changes this to the extent that the compensation payable in cases of employments in violation of law shall be 110% of the amount that would be payable if such minors were legally employed. The 10% shall be payable by the employer as additional compensation.

The Act of 1939 has made some important changes on the subject of procedure with particular reference to review, modification or setting aside of an original or supplemental agreement and the setting aside of final receipts. The Old Act provided that an original or supplemental agreement could be reviewed and modified or set aside at any time if founded upon mistake of law or fact. "At any time" has been interpreted by our courts to mean any time within 500 weeks if the claim be one for total disability and at any time within 300 weeks if the claim be one for partial disability. The same thing applies in the case of final receipts. Under the Old Act a petition to modify, re-instate, suspend or terminate had to be filed within the life of the agreement if the award were for a definite period and within one year from the date of last payment in all other cases except in eye injuries, which were governed by the 500 or 300 weeks, depending on the disability claimed, upon proof that the disability increased, decreased, or recurred. The Act of 1937 re-instated the provisions contained in the Old Act except that in cases of increase, decrease or recurrence of disability a petition had to be filed in all cases except eye injuries within one year from the date of last payment of compensation and in the case of final receipts a petition could be filed any time within 600 weeks.

The grounds for setting aside a final receipt were also changed by the Act of 1937 so that the receipt could be set aside upon proof that the injured employe was not in fact able to return to work. The Act of 1939\textsuperscript{28} requires that except in case of eye injuries an original or supplemental agreement cannot be reviewed, modified, or set aside upon proof that it was entered into through a mistake of law or fact, unless the petition was filed within one year after the date of the most recent payment of compensation made prior to the filing of such a petition. This leaves the limitation within which to file a petition in the case of eye injuries the same as it was under the Old Act but changes the limitation in all other cases from 500 or 300 weeks depending on disability to one year. As to modification, re-instatement, suspension or termination, upon proof of increase, decrease or recurrence of disability, the Act of 1939\textsuperscript{29} practically restates the provisions of the Old Act except that the petition must be filed within one year after the date of the most recent payment of compensation made prior to the filing of such petition.

As to the setting aside of final receipts, the Act of 1939\textsuperscript{30} has changed the
provisions of the Old Act which allowed 500 or 300 weeks, depending on dis-
ability, and the Act of 1937, which allowed 600 weeks, so that now a petition to
set aside a final receipt must be filed within two years from the date to which pay-
ment is made as evidenced by such final receipt. The grounds for setting aside such
final receipt are the same under this Act as they were under the Old Act.

Prior to 1937 the State of Pennsylvania did not provide for the payment of
compensation for Occupational Diseases. The Occupational Disease Act of 1937
was passed and went into effect January 1, 1938. The Occupational Disease Act
of 1937 was passed as a supplement to the old Compensation Act. Being a sup-
plement to the Old Act its provision had to be accepted by an employer if he wished
to enjoy the benefits of the Workmen's Compensation Act. In other words, he
could not accept the provisions of the Workmen's Compensation Act and reject
the provisions of the Occupational Disease Act. He was required to accept both
or reject both. The Occupational Disease Act of 1939 was passed as a separate
act having its own schedule of compensation and other provisions relating to
disability resulting from occupational diseases, which are practically the same as
the provisions of the Workmen's Compensation Act, the important difference,
however, being that since it is a separate Act, it has separate provisions with regard
to rejection or acceptance. Under the 1939 legislation, an employer
has the right to reject the provisions of the Occupational Disease Act and accept
those of the Compensation Act or vice versa. He can accept both or reject both.
The same privilege is given to an employee. In both acts the occupational diseases
mentioned are the same and are compensable as ordinary accidents, except silicosis,
anthracosilicosis and asbestosis. These last mentioned diseases are treated sepa-
rately in two respects. First, they are compensable only for total disability and
the amount payable for such disability or death is limited to $3600.00. In both
Acts the Commonwealth, through a set-up known as the Second Injury Reserve
Account, under the Act of 1937, and the Occupational Disease Fund, under the
Act of 1939, assists in the payment of the compensation due for diseases requiring
an exposure of five or more years.

Under the Act of 1937 in all cases arising the first year that the Act became
effective, the Commonwealth through the Second Injury Reserve Account would
pay nine-tenths while the employer would pay one-tenth. This amount would be
increased in the following years by 10% each year on the part of the employer
and decreased 10% on the part of the Commonwealth. The Act of 193932
changes the portions payable by the employer and the Commonwealth, so that now
if disability begins between October 1, 1939 and September 30, 1941, both dates
inclusive, the employer shall be liable for and pay 50% and the Occupational Dis-
ease Fund 50%. Thereafter, depending upon the date when disability begins,
the proportions of compensation for which the employer and the Occupational

31Section 301 (2).
32Section 308 (a).
Disease Fund shall respectively become liable shall be: If disability begins between October 1, 1941 and September 30, 1943, the employer 60% and the Occupational Disease Fund 40%; if between October 1, 1943 and September 30, 1945, the employer 70% and the Occupational Disease Fund 30%; if between October 1, 1945 and September 30, 1947, the employer 80% and the Occupational Disease Fund 20%; if between October 1, 1947 and September 30, 1949, the employer 90% and the Occupational Disease Fund 10%. The employer shall pay the full amount of compensation provided where disability begins on or after October 1, 1949.

In both Acts the Legislature appropriated $100,000.00 to the State Workmen's Insurance Board for payment into the State Workmen's Insurance Fund for the purpose of paying on such occupational diseases as developed to a point of disablement after an exposure of five or more years. The other provisions of the Occupational Disease Act of 1939 are in all respects the same as the provisions of the Compensation Act of 1939 which differ as above stated from the Act of 1937 and the Old Act.

The Act of 1925 made volunteer firemen employes within the meaning of the Workmen's Compensation Act and provided compensation for those firemen killed or injured while going to, returning from, or attending fires in a municipality or territory adjacent thereto. The Act of 1937 included in its definition of term "employe," members of a volunteer fire company, declaring them to be employes and entitled to compensation for injuries received in accidents occurring while actually engaged as firemen or while going to and returning from any fire which the fire companies of which they were members should have attended or while performing any other duties of such companies. It will be noted, therefore, that the Old Act made only such injuries compensable as were sustained while returning from or attending fires in municipalities or territory adjacent thereto, while the Act of 1937 held such injuries compensable when occurring while the employe was actually engaged as a fireman, while going to or from a fire, or while performing any other duties of such companies. Act Number 283, passed in 1939, re-adopts the language of the Act of 1925 with the exception that it leaves out the words "territory adjacent thereto." Under this Act, therefore, a volunteer fireman is entitled to compensation if he is injured while actually engaged as a fireman or while going to or returning from any fire which the fire companies of which they are members shall have attended.

The Act of 1915, which was a supplement to the Old Act, provides that the provisions of the Workmen's Compensation Act of 1915 should not apply to or in any way affect any person who at the time of injury was engaged in domestic service or agriculture. The Act of 1935 amended this Act and provided that where the employer of any such person should have prior to such injury, by appli-
cation to the Workmen's Compensation Board, approved by the Board, elected to come within the provisions of the Workmen's Compensation Act, then such employe would be entitled to the provisions of the Workmen's Compensation Act. In other words, it permitted an employer of agricultural or domestic services to be covered by the Workmen's Compensation Act if he elected to do so. The Act of 1937 specifically repealed the Act of 1915 and its amendments so that subsequent to January 1, 1938, the employer no longer had the election of bringing within the Act agricultural or domestic servants. In 1939 the Legislature passed a supplement to the Act of 1915, Act Number 282,\(^7\) which re-instates the provisions of the Act of 1935, so that an employer of agricultural or domestic servants again has the election of bringing such employes within the provisions of the Workmen's Compensation Act upon application to the Workmen's Compensation Board.

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