

SB 224-FN – AS INTRODUCED

2014 SESSION

14-2638
01/04

SENATE BILL **224-FN**

AN ACT relative to diminished earnings capacity and protections for certain wage earners
and relative to independent medical examinations.

SPONSORS: Sen. D'Allesandro, Dist 20

COMMITTEE: Commerce

ANALYSIS

This bill establishes diminished earning capacity rates for certain injured workers under workers' compensation law. The bill also changes the mile radius for independent medical examinations from a 50 mile radius from the injured worker's residence to a 75 mile radius.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears [~~in brackets and struck through.~~]
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Fourteen

AN ACT relative to diminished earnings capacity and protections for certain wage earners
and relative to independent medical examinations.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 New Sections; Diminished Earnings Capacity Rate; Protection for Certain Wage Earners.
2 Amend RSA 281-A by inserting after section 31 the following new sections:

3 281-A:31-b Diminished Earnings Capacity Rate. Pursuant to RSA 281-A:48, in the absence of
4 work opportunity and on the basis of medical and other evidence, the earning capacity of a partially
5 disabled person shall be 60 percent of the difference between 80 percent of the statutory minimum
6 wage under RSA 279 in effect on the date of injury using the average number of hours per week the
7 claimant worked and the claimant’s established average weekly wage at the time of the injury.
8 Payment shall not continue after the disability ends, nor longer than 262 weeks and if the partial
9 disability begins after a period of total disability, the period of total disability shall be deducted from
10 such total period of 262 weeks.

11 281-A:31-c Protection for Certain Wage Earners. Pursuant to RSA 281-A:48, in the absence of a
12 work opportunity, if a partially disabled person’s average weekly wage is 30 percent or less of the
13 state’s average weekly wage and the person’s benefit is to be calculated according to RSA 281-A:31-b,
14 the temporary partial weekly compensation shall be set at 75 percent of the average weekly wage.
15 This section shall not affect the wage calculation under RSA 281-A:31.

16 2 Workers’ Compensation; Medical Examinations. Amend RSA 281-A:38, II to read as follows:

17 II. Any health care provider conducting independent medical examinations under this
18 chapter shall be certified by the appropriate specialty board as recognized by the American Board of
19 Medical Specialties or obtain the approval of the commissioner for those specialties not recognized by
20 such board. The health care provider shall maintain a current practice in that area of specialty. The
21 independent medical examination shall take place within a ~~50~~ 75-mile radius of the residence of the
22 injured employee, unless, within the discretion of the commissioner, examination outside the ~~50~~ 75-
23 mile radius is necessary to obtain the services of a provider who specializes in the evaluation and
24 treatment specific to the nature and extent of the employee’s injury. If an employer or insurance
25 carrier provides written notice to the injured employee regarding its request for an independent
26 medical examination, such notice shall be given 10 days before the examination and shall include the
27 following: “This medical examination is at the request of either the employer or insurance carrier.
28 The examination is not for the purpose of treatment or advice about treatment but for a medical
29 opinion about the employee’s claim.” The injured employee shall not be required to submit to more
30 than 2 independent medical examinations per year, unless within the discretion of the commissioner,

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1 more than 2 examinations are necessary. An injured employee shall have the right to have a witness
2 present during such examination. In the event that a witness is present, including but not limited to
3 a witness taking notes or observing, on behalf of the injured employee, the witness shall not interfere
4 in the examination in any way. The injured employee shall be required to sign an authorization, as
5 prepared by the commissioner, to the effect that he or she understands that his or her medical
6 history and condition or conditions will be discussed during said examination and that he or she
7 waives any right to privacy that he or she may have under the circumstances of voluntarily allowing
8 a witness to be present on his or her behalf.

9 3 Effective Date. This act shall take effect January 1, 2015.

LBAO
14-2638
11/05/13

SB 224-FN - FISCAL NOTE

AN ACT relative to diminished earnings capacity and protections for certain wage earners
and relative to independent medical examinations.

FISCAL IMPACT:

The Department of Labor states this bill, as introduced, may increase state, county and local expenditures by an indeterminable amount in FY 2015 and each year thereafter. There is no fiscal impact on state, county and local revenue.

METHODOLOGY:

The Department of Labor states this bill establishes diminished earning capacity rates for certain injured workers under workers' compensation law. The Department states this bill could result in additional payouts in workers' compensation benefits for local, county and state governments in their role as employers. The Department is not able to predict how many injured employees would be classified as having diminished earning capacity to determine the increase in state, county and local expenditures.