

**SECTION 31.1.(b)** This section is effective when it becomes law and applies to all claims filed on or after that date.

#### **INDUSTRIAL COMMISSION/BASE BUDGET ADJUSTMENT**

**SECTION 31.2.** The Office of State Budget and Management shall, in conjunction with the North Carolina Industrial Commission, adjust the Commission's base budget for each fiscal year of the 2025-2027 fiscal biennium to use proceeds from the insurance regulatory charge established under G.S. 58-6-25 to reimburse the General Fund for operations of the Commission as authorized by G.S. 58-6-25(d)(11).

#### **INDUSTRIAL COMMISSION/EXTENDED COMPENSATION/CLARIFY MEANING OF "TOTAL LOSS OF WAGE-EARNING CAPACITY"**

**SECTION 31.3.(a)** G.S. 97-29(c) reads as rewritten:

"(c) An employee may qualify for extended compensation in excess of the 500-week limitation on temporary total disability as described in subsection (b) of this section only if (i) at the time the employee makes application to the Commission to exceed the 500-week limitation on temporary total disability as described in subsection (b) of this section, 425 weeks have passed since the date of first disability and (ii) pursuant to the provisions of G.S. 97-84, unless agreed to by the parties, the employee shall prove by a preponderance of the evidence that the employee has sustained a total loss of wage-earning capacity.

For the purposes of this subsection only, the term "total loss of wage-earning capacity" shall mean the complete elimination of the capacity to earn any wages. "Disability" as defined by G.S. 97-2(9) and "suitable employment" as defined by G.S. 97-2(22) shall not apply to this provision. The Commission may consider preexisting and injury-related physical and mental limitations, vocational skills, education, and experience in determining whether the employee has sustained a total loss of wage-earning capacity.

If an employee makes application for extended compensation pursuant to this subsection and is awarded extended compensation by the Commission, the award shall not be stayed pursuant to G.S. 97-85 or G.S. 97-86 until the full Commission or an appellate court determines otherwise. Upon its own motion or upon the application of any party in interest, the Industrial Commission may review an award for extended compensation in excess of the 500-week limitation on temporary total disability described in subsection (b) of this section, and, on such review, may make an award ending or continuing extended compensation. When reviewing a prior award to determine if the employee remains entitled to extended compensation, the Commission shall determine if the employer has proven by a preponderance of the evidence that the employee no longer has a total loss of wage-earning capacity. When an employee is receiving full retirement benefits under section 202(a) of the Social Security Act, after attainment of retirement age, as defined in section 216(l) of the Social Security Act, the employer may reduce the extended compensation by one hundred percent (100%) of the employee's retirement benefit. The reduction shall consist of the employee's primary benefit paid pursuant to section 202(a) of the Social Security Act but shall not include any dependent or auxiliary benefits paid pursuant to any other section of the Social Security Act, if any, or any cost-of-living increases in benefits made pursuant to section 215(i) of the Social Security Act."

**SECTION 31.3.(b)** In enacting subsection (a) of this section, it is the intent of the General Assembly to clarify, in response to *Sturdivant v. N. Carolina Dep't of Pub. Safety*, 887 S.E.2d 85 (N.C. Ct. App. 2023), that an employee has a different standard for establishing the burden of proof for extended compensation pursuant to G.S. 97-29(c) to reflect the intent of the General Assembly when it enacted S.L. 2011-287.

**SECTION 31.3.(c)** This section is effective when it becomes law and applies to claims accrued or pending prior to, on, or after that date.