

The following sections shall apply to all claims pending on or after June 24, 2011.

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MG&C created this synopsis to serve as an alert and quick reference guide to the pertinent statutory changes.

For a more detailed analysis of the entire Protecting and Putting NC Back to Work Act, visit [mgclaw.com/legalupdates](http://mgclaw.com/legalupdates).

**RESIGNATION AND RELEASE OF EMPLOYMENT [§97-17(e)]**

Parties can reach separate contemporaneous agreements resolving issues not covered by the Act.

**REINSTATEMENT OF COMPENSATION [§97-18(k)]**

In a compensable claim, the employee may move for reinstatement of compensation. If the defendants contest the request, the matter will be set for hearing. This section does not apply to a request for review of an award on the grounds of a change in condition pursuant to G.S. §97-47.

**MEDICAL TREATMENT [§97-25]**

The employee may make a written request for a second opinion examination with a physician. If the employer denies the request or the parties cannot agree on a physician within 14 calendar days of the written request, the employee may request that the NCIC order a second opinion examination to be paid for by the employer.

An employee may select his own physician to assume his care subject to the approval of the NCIC. The employee must show by a preponderance of the evidence that the change is reasonably necessary. The NCIC may disregard or give less weight to the opinions of a physician who provided unauthorized medical treatment.

An employee's refusal to accept medical compensation when ordered by the NCIC is grounds for a suspension of benefits, unless the employee's refusal was justified. Any order suspending compensation pursuant to G.S. 97-18.1 shall specify what action the employee should take to end the suspension and reinstate benefits.

**INDEPENDENT MEDICAL EVALUATIONS (IME) [97-27(a)]**

An employee must be present for an IME if requested by the employer or ordered by the NCIC, even in denied cases. The employee must be given a copy of the IME report within 10 business days from receiving the report. An employer may communicate, either orally or in writing, with an IME physician chosen by the employer regardless of whether the physician examined the employee. No facts learned by the physician are privileged.

If the employee unjustifiably refuses to submit for the IME, his right to compensation and to prosecute his claim may be suspended while such refusal persists. When seeking to suspend compensation on this basis, an employer does not need to first obtain an order compelling the employee's attendance at said evaluation.

**EXTRANEOUS OPINIONS OF SECOND OPINION PHYSICIANS [97-27(b)]**

The NCIC must disregard or give less weight to extraneous opinions of a physician providing an employee with his statutory second opinion on his permanent partial impairment rating.

**ACCESS TO MEDICAL INFORMATION [§97-25.6]**

Employers are not required to obtain a HIPAA release or other authorization to obtain the medical records of an employee as long as the records are related to the claim. When the medical treatment is denied, the employer shall provide the employee with contemporaneous written notice of the request for records. The employer must provide a copy of any records received to the employee within 30 days of receipt.

The employer may communicate with the employee's authorized physician in writing, without the express authorization of the employee, to obtain relevant information not available in the employee's medical records. The employee must be provided with contemporaneous written notice of the written communication. The employee must be given a copy of the physician's response within 10 business days after receiving the response. The employer may request the following information:

- the diagnosis of the employee's condition;
- the appropriate course of treatment;
- the anticipated time that the employee will be out of work;
- the relationship, if any, of the employee's condition to the employment;
- work restrictions resulting from the condition;
- the kind of work for which the employee may be eligible;
- the anticipated time the employee will be restricted; and
- any permanent impairment resulting from the condition.

An employer may communicate orally with the authorized physician to obtain relevant medical information not contained in the employee's medical records, not available through written communication and not otherwise available to the employer. The employer must provide the employee with notice of the oral communication and provide the employee with an opportunity to participate at a mutually convenient time. The employer must provide the employee with a written summary of the oral communication within 10 business days if the employee does not participate.

Notwithstanding the above, an employer may submit additional relevant medical information not already contained in the employee's medical records to the authorized physician and may communicate in writing with the physician in accordance with the following procedure:

1. The employer notifies employee in writing of the intended communication and provides a copy of the proposed communication.
2. The employee has 10 business days from postmark or email/fax verification to consent or object.
3. If the employee either consents or does not timely object, the employer may submit information directly to the physician.
4. With a timely objection, the employee may request a protective order to halt the communication until the Commission enters a ruling.

The following sections shall apply to all claims arising on or after June 24, 2011.

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### SUITABLE EMPLOYMENT [§97-32; 97-2(22)]

Pre-MMI: Suitable employment includes any available employment within the claimant's work restrictions.

Post-MMI: Suitable employment is employment that the employee is capable of performing considering the employee's:

1. pre-existing and injury-related physical and mental limitations,
2. vocational skills,
3. education,
4. experience, and
5. within a 50-mile radius of the employee's residence at the time of injury or the employee's current residence if the employee had a legitimate reason to relocate.

The new definition of suitable employment no longer considers an employee's pre-injury wages.

### MEDICAL COMPENSATION [§97-2(19)]

The statutory definition of "medical compensation" now includes attendant care services and vocational rehabilitation.

### WILLFUL MISREPRESENTATION IN APPLYING FOR EMPLOYMENT [§ 97-12.1]

A claim can be successfully denied if the employer is able to prove that in the course of entering into the employment relationship:

1. the employee knowingly and willfully made a false representation about his physical condition;
2. the employer relied upon the false representation(s) by the employee and the reliance was a substantial factor in the employer's decision to hire the employee; and
3. there was a causal connection between the false representation and the injury or occupational disease.

### 500-WEEK CAP ON TEMPORARY TOTAL DISABILITY BENEFITS (TTD) [§97-29]

TTD is capped at 500 weeks from the date of first disability. An employee may qualify for extended compensation in excess of the 500-week limitation only if, at the time of his application, 425 weeks have elapsed since the date of first disability, and the employee proves by a preponderance of the evidence that he has sustained a total loss of wage-earning capacity. When an employee is receiving full Social Security retirement benefits, the employer may reduce the extended compensation by 100% of the employee's retirement benefits.

### PERMANENT AND TOTAL DISABILITY (PTD) [§97-29]

An employee may qualify for permanent and total disability only if he has one or more of the following physical or mental limitations resulting from the injury:

1. the loss of both hands, both arms, both feet, both legs, both eyes, or any two thereof as provided by G.S. 97-31(17)
2. a spinal injury involving severe paralysis of both arms, both legs, or the trunk
3. a severe brain or closed head injury as evidenced by severe and permanent sensory or motor disturbances; communication disturbances; complex integrated disturbances of cerebral function; or neurological disorders
4. second-degree or third-degree burns to 33% or more of the total body surface

An employee who qualifies for permanent and total disability shall be entitled to compensation during his lifetime, unless the employer can show by a preponderance of the evidence that the employee is capable of returning to suitable employment. However, an employee who qualifies for permanent and total disability under subsection (1) is entitled to lifetime compensation, including medical compensation, regardless of whether or not the employee has returned to work in any capacity.

### 500-WEEK CAP ON TEMPORARY PARTIAL DISABILITY BENEFITS (TPD) [§97-30]

TPD shall not exceed 500 weeks. The 500-week period includes any time during which the employee received TTD benefits.

### VOCATIONAL REHABILITATION [§97-32.2]

In compensable claims, an employer may assign vocational rehabilitation at any point. If an employee has not returned to work or has returned to work earning less than 75% of his average weekly wage and is receiving TPD, the employee may request vocational rehabilitation services so long as the education and retraining is reasonably likely to substantially increase the employee's wage earning capacity.

Vocational rehabilitation may be terminated by (1) the employer if at any point the vocational professional determines the employee will not benefit from vocational services, (2) agreement, or (3) order of the NCIC.

### INCREASE IN DEATH BENEFITS [§97-38]

Burial expenses shall not exceed \$10,000.00. Compensation due on account of death shall be paid for 500 weeks. However, if the surviving widow or widower was disabled at the time of employee's death, compensation payments shall continue during her or his lifetime or until remarriage.