

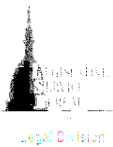
# HOUSE BILL NO. 5786

May 19, 2020, Introduced by Reps. Berman, Mueller, Yaroch, Wozniak, Chirkun and Garrett and referred to the Committee on Commerce and Tourism.

A bill to amend 1969 PA 317, entitled "Worker's disability compensation act of 1969," by amending sections 301, 321, 355, 361, and 401 (MCL 418.301, 418.321, 418.355, 418.361, and 418.401), sections 301, 361, and 401 as amended by 2011 PA 266, section 321 as amended by 1994 PA 271, and section 355 as amended by 1982 PA 32.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

- 1           Sec. 301. (1) An employee, who receives a personal injury
- 2 arising out of and in the course of employment by an employer who



1 is subject to this act at the time of the injury, shall be paid  
2 compensation as provided in this act. A personal injury under this  
3 act is compensable if work causes, contributes to, or aggravates  
4 pathology in a manner so as to create a pathology that is medically  
5 distinguishable from any pathology that existed prior to the  
6 injury. In the case of death resulting from the personal injury to  
7 the employee, compensation shall be paid to the employee's  
8 dependents as provided in this act. Time of injury or date of  
9 injury as used in this act in the case of a disease or in the case  
10 of an injury not attributable to a single event is the last day of  
11 work in the employment in which the employee was last subjected to  
12 the conditions that resulted in the employee's disability or death.

13 (2) Mental disabilities and conditions of the aging process,  
14 including but not limited to heart and cardiovascular conditions  
15 and degenerative arthritis, are compensable if contributed to or  
16 aggravated or accelerated by the employment in a significant  
17 manner. Mental disabilities are compensable if arising out of  
18 actual events of employment, not unfounded perceptions thereof, and  
19 if the employee's perception of the actual events is reasonably  
20 grounded in fact or reality.

21 (3) An employee going to or from his or her work, while on the  
22 premises where the employee's work is to be performed, and within a  
23 reasonable time before and after his or her working hours, is  
24 presumed to be in the course of his or her employment.  
25 Notwithstanding this presumption, an injury incurred in the pursuit  
26 of an activity the major purpose of which is social or recreational  
27 is not covered under this act. Any cause of action brought for such  
28 an injury is not subject to section 131.

29 (4) As used in this chapter:



1 (a) "Disability" means a limitation of an employee's wage  
2 earning capacity in work suitable to his or her qualifications and  
3 training resulting from a personal injury or work-related disease.  
4 A limitation of wage earning capacity occurs only if a personal  
5 injury covered under this act results in the employee's being  
6 unable to perform all jobs paying the maximum wages in work  
7 suitable to that employee's qualifications and training, which  
8 includes work that may be performed using the employee's  
9 transferable work skills. A disability is total if the employee is  
10 unable to earn in any job paying maximum wages in work suitable to  
11 the employee's qualifications and training. A disability is partial  
12 if the employee retains a wage earning capacity at a pay level less  
13 than his or her maximum wages in work suitable to his or her  
14 qualifications and training. The establishment of disability does  
15 not create a presumption of wage loss.

16 (b) Except as provided in section 302, "wage earning capacity"  
17 means the wages the employee earns or is capable of earning at a  
18 job reasonably available to that employee, whether or not wages are  
19 actually earned. For the purposes of establishing a limitation of  
20 wage earning capacity, an employee has an affirmative duty to seek  
21 work reasonably available to that employee, taking into  
22 consideration the limitations from the work-related personal injury  
23 or disease. A magistrate may consider good-faith job search efforts  
24 to determine whether jobs are reasonably available.

25 (c) "Wage loss" means the amount of wages lost due to a  
26 disability. The employee shall establish a connection between the  
27 disability and reduced wages in establishing the wage loss. Wage  
28 loss may be established, among other methods, by demonstrating the  
29 employee's good-faith effort to procure work within his or her wage



1 earning capacity. A partially disabled employee who establishes a  
2 good-faith effort to procure work but cannot obtain work within his  
3 or her wage earning capacity is entitled to weekly benefits under  
4 subsection (7) as if totally disabled.

5 (5) To establish an initial showing of disability, an employee  
6 shall do all of the following:

7 (a) Disclose his or her qualifications and training, including  
8 education, skills, and experience, whether or not they are relevant  
9 to the job the employee was performing at the time of the injury.

10 (b) Provide evidence as to the jobs, if any, he or she is  
11 qualified and trained to perform within the same salary range as  
12 his or her maximum wage earning capacity at the time of the injury.

13 (c) Demonstrate that the work-related injury prevents the  
14 employee from performing jobs identified as within his or her  
15 qualifications and training that pay maximum wages.

16 (d) If the employee is capable of performing any of the jobs  
17 identified in subdivision (c), show that he or she cannot obtain  
18 any of those jobs. The evidence shall include a showing of a good-  
19 faith attempt to procure post-injury employment if there are jobs  
20 at the employee's maximum wage earning capacity at the time of the  
21 injury.

22 (6) Once an employee establishes an initial showing of a  
23 disability under subsection (5), the employer bears the burden of  
24 production of evidence to refute the employee's showing. In  
25 satisfying its burden of production of evidence, the employer has a  
26 right to discovery if necessary for the employer to sustain its  
27 burden and present a meaningful defense. The employee may present  
28 additional evidence to challenge the evidence submitted by the  
29 employer.



1           (7) ~~If~~**Except as otherwise provided in this subsection, if a**  
 2 personal injury arising out of the course of employment causes  
 3 total disability and wage loss and the employee is entitled to wage  
 4 loss benefits, the employer shall pay or cause to be paid to the  
 5 injured employee as provided in this section weekly compensation  
 6 equal to 80% of the employee's after-tax average weekly wage, but  
 7 not more than the maximum weekly rate determined under section 355.  
 8 **If a personal injury arising out of the course of employment causes**  
 9 **total disability and wage loss and the employee is entitled to wage**  
 10 **loss benefits, the employer shall pay or cause to be paid to the**  
 11 **injured employee as provided in this section weekly compensation**  
 12 **equal to the employee's after-tax average weekly wage if the**  
 13 **employee was at the time of the injury a full-time law enforcement**  
 14 **officer or a full-time firefighter.** Compensation shall be paid for  
 15 the duration of the disability.

16           (8) ~~If~~**Except as otherwise provided in this subsection, if a**  
 17 personal injury arising out of the course of employment causes  
 18 partial disability and wage loss and the employee is entitled to  
 19 wage loss benefits, the employer shall pay or cause to be paid to  
 20 the injured employee as provided in this section weekly  
 21 compensation equal to 80% of the difference between the injured  
 22 employee's after-tax average weekly wage before the personal injury  
 23 and the employee's wage earning capacity after the personal injury,  
 24 but not more than the maximum weekly rate determined under section  
 25 355. **If a personal injury arising out of the course of employment**  
 26 **causes partial disability and wage loss and the employee is**  
 27 **entitled to wage loss benefits, the employer shall pay or cause to**  
 28 **be paid to the injured employee as provided in this section weekly**  
 29 **compensation equal to the difference between the injured employee's**



1 after-tax average weekly wage before the personal injury and the  
2 employee's wage earning capacity after the personal injury if the  
3 employee was at the time of the injury a full-time law enforcement  
4 officer or a full-time firefighter. Compensation shall be paid for  
5 the duration of the disability.

6 (9) If disability and wage loss are established, entitlement  
7 to weekly wage loss benefits shall be determined as applicable  
8 pursuant to this section and as follows:

9 (a) If an employee receives a bona fide offer of reasonable  
10 employment from the previous employer, another employer, or through  
11 the Michigan unemployment insurance agency and the employee refuses  
12 that employment without good and reasonable cause, the employee  
13 shall be considered to have voluntarily removed himself or herself  
14 from the work force and is not entitled to any wage loss benefits  
15 under this act during the period of refusal.

16 (b) If an employee is terminated from reasonable employment  
17 for fault of the employee, the employee is considered to have  
18 voluntarily removed himself or herself from the work force and is  
19 not entitled to any wage loss benefits under this act.

20 (c) ~~If~~ **Except as otherwise provided in this subdivision, if** an  
21 employee is employed and the weekly wage of the employee is less  
22 than that which the employee received before the date of injury,  
23 the employee shall receive weekly benefits under this act equal to  
24 80% of the difference between the injured employee's after-tax  
25 weekly wage before the date of injury and the after-tax weekly wage  
26 that the injured employee earns after the date of injury, but not  
27 more than the maximum weekly rate of compensation, as determined  
28 under section 355. **If an employee is employed and the weekly wage**  
29 **of the employee is less than that which the employee received**



1 before the date of the injury, the employee shall receive weekly  
2 benefits under this act equal to the difference between the injured  
3 employee's after-tax weekly wage before the date of injury and the  
4 after-tax weekly wage that the injured employee earns after the  
5 date of injury if the employee was at the time of the injury a  
6 full-time law enforcement officer or a full-time firefighter.

7 (d) If an employee is employed and the average weekly wage of  
8 the employee is equal to or more than the average weekly wage the  
9 employee received before the date of injury, the employee is not  
10 entitled to any wage loss benefits under this act for the duration  
11 of that employment.

12 (e) If the employee, after having been employed pursuant to  
13 this subsection loses his or her job through no fault of the  
14 employee and the employee is still disabled, the employee shall  
15 receive compensation under this act as follows:

16 (i) If the employee was employed for less than 100 weeks, the  
17 employee shall receive compensation based upon his or her average  
18 weekly wage at the time of the original injury.

19 (ii) If the employee was employed for 100 weeks or more but  
20 less than 250 weeks, then after exhausting unemployment benefit  
21 eligibility, a worker's compensation magistrate may determine that  
22 the employment since the time of the injury has not established a  
23 new wage earning capacity and, if the magistrate makes that  
24 determination, benefits shall be based on his or her average weekly  
25 wage at the original date of injury. If the magistrate does not  
26 make that determination, the employee is presumed to have  
27 established a post-injury wage earning capacity and benefits shall  
28 not be paid based on the wage at the original date of injury.

29 (iii) If the employee was employed for 250 weeks or more, the



1 employee is presumed to have established a post-injury wage earning  
2 capacity.

3 (10) The Michigan unemployment insurance agency shall notify  
4 the agency in writing of the name of any employee who refuses any  
5 bona fide offer of reasonable employment. Upon notification to the  
6 agency, the agency shall notify the carrier who shall terminate the  
7 benefits of the employee pursuant to subsection (9)(a).

8 (11) "Reasonable employment", as used in this section, means  
9 work that is within the employee's capacity to perform that poses  
10 no clear and proximate threat to that employee's health and safety,  
11 and that is within a reasonable distance from that employee's  
12 residence. The employee's capacity to perform shall not be limited  
13 to jobs in work suitable to his or her qualifications and training.

14 (12) Weekly benefits are not payable during the period of  
15 confinement to a person who is incarcerated in a penal institution  
16 for violation of the criminal laws of this state or who is confined  
17 in a mental institution pending trial for a violation of the  
18 criminal laws of this state, if the violation or reason for the  
19 confinement occurred while at work and is directly related to the  
20 claim.

21 (13) A person shall not discharge an employee or in any manner  
22 discriminate against an employee because the employee filed a  
23 complaint or instituted or caused to be instituted a proceeding  
24 under this act or because of the exercise by the employee on behalf  
25 of himself or herself or others of a right afforded by this act.

26 (14) This section applies to personal injuries and work  
27 related diseases occurring on or after June 30, 1985.

28 Sec. 321. (1) ~~If~~ **Except as otherwise provided in subsection**  
29 **(2), if** death results from the personal injury of an employee, the





1 employer shall pay, or cause to be paid, subject to section 375, in  
2 1 of the methods provided in this section, to the dependents of the  
3 employee who were wholly dependent upon the employee's earnings for  
4 support at the time of the injury, a weekly payment equal to 80% of  
5 the employee's after-tax average weekly wage, subject to the  
6 maximum and minimum rates of compensation under this act, for a  
7 period of 500 weeks from the date of death. If at the expiration of  
8 the 500-week period any such wholly or partially dependent person  
9 is less than 21 years of age, a worker's compensation magistrate  
10 may order the employer to continue to pay the weekly compensation  
11 or some portion thereof until the wholly or partially dependent  
12 person reaches the age of 21. If the employee leaves dependents  
13 only partially dependent upon his or her earnings for support at  
14 the time of injury, the weekly compensation to be paid shall be  
15 equal to the same proportion of the weekly payments for the benefit  
16 of persons wholly dependent as 80% of the amount contributed by the  
17 employee to the partial dependents bears to the annual earnings of  
18 the deceased at the time of injury.

19       **(2) This subsection applies to an employee who at the time of**  
20 **the injury was a full-time law enforcement officer or a full-time**  
21 **firefighter. If death results from the personal injury of an**  
22 **employee, the employer shall pay, or cause to be paid, subject to**  
23 **section 375, in 1 of the methods provided in this section, to the**  
24 **dependents of the employee who were wholly dependent upon the**  
25 **employee's earnings for support at the time of the injury, a weekly**  
26 **payment equal to the employee's after-tax average weekly wage,**  
27 **subject to the minimum rates of compensation under this act, for a**  
28 **period of 500 weeks from the date of death. If at the expiration of**  
29 **the 500-week period any such wholly or partially dependent person**



1 is less than 21 years of age, a worker's compensation magistrate  
2 may order the employer to continue to pay the weekly compensation  
3 or some portion thereof until the wholly or partially dependent  
4 person reaches the age of 21. If the employee leaves dependents  
5 only partially dependent upon his or her earnings for support at  
6 the time of injury, the weekly compensation to be paid shall be  
7 equal to the same proportion of the weekly payments for the benefit  
8 of persons wholly dependent as equal to the amount contributed by  
9 the employee to the partial dependents bears to the annual earnings  
10 of the deceased at the time of injury.

11 Sec. 355. (1) The maximum weekly rate shall be adjusted once  
12 each year in accordance with the increase or decrease in the  
13 average weekly wage in covered employment, as determined by the  
14 Michigan employment security commission.

15 (2) Effective January 1, 1982, and each January 1 thereafter,  
16 the maximum weekly rate of compensation for injuries occurring  
17 within that year shall be established as 90% of the state average  
18 weekly wage as of the prior June 30, adjusted to the next higher  
19 multiple of \$1.00.

20 (3) For the purpose of computing the supplemental benefit  
21 under section 352, the state average weekly wage for any injury  
22 year shall be the average weekly wage in covered employment  
23 determined by the Michigan employment security commission for the  
24 12 months ending June 30 of the preceding year.

25 (4) **The maximum weekly rate established under this section**  
26 **does not apply to an employee who was at the time of the personal**  
27 **injury a full-time law enforcement officer or a full-time**  
28 **firefighter.**

29 Sec. 361. (1) An employer is not liable for compensation under



1 section 301(7) or (8), 351, 371(1), or 401(5) or (6) for periods of  
2 time that the employee is unable to obtain or perform work because  
3 of imprisonment or commission of a crime.

4 (2) In cases included in the following schedule, the  
5 disability in each case shall be considered to continue for the  
6 period specified, and **except as otherwise provided in this**  
7 **subsection**, the compensation paid for the personal injury shall be  
8 80% of the after-tax average weekly wage subject to the maximum and  
9 minimum rates of compensation under this act. **The compensation paid**  
10 **for the personal injury shall be equal to the after-tax average**  
11 **weekly wage if the employee was at the time of the injury a full-**  
12 **time law enforcement officer or a full-time firefighter.** The effect  
13 of any internal joint replacement surgery, internal implant, or  
14 other similar medical procedure shall be considered in determining  
15 whether a specific loss has occurred. The specific loss period for  
16 the loss shall be considered as follows:

- 17 (a) Thumb, 65 weeks.  
18 (b) First finger, 38 weeks.  
19 (c) Second finger, 33 weeks.  
20 (d) Third finger, 22 weeks.  
21 (e) Fourth finger, 16 weeks.

22 The loss of the first phalange of the thumb, or of any finger,  
23 shall be considered to be equal to the loss of 1/2 of that thumb or  
24 finger, and compensation shall be 1/2 of the amount above  
25 specified.

26 The loss of more than 1 phalange shall be considered as the  
27 loss of the entire finger or thumb. The amount received for more  
28 than 1 finger shall not exceed the amount provided in this schedule  
29 for the loss of a hand.



1 (f) Great toe, 33 weeks.

2 (g) A toe other than the great toe, 11 weeks.

3 The loss of the first phalange of any toe shall be considered  
4 to be equal to the loss of 1/2 of that toe, and compensation shall  
5 be 1/2 of the amount above specified.

6 The loss of more than 1 phalange shall be considered as the  
7 loss of the entire toe.

8 (h) Hand, 215 weeks.

9 (i) Arm, 269 weeks.

10 An amputation between the elbow and wrist that is 6 or more  
11 inches below the elbow shall be considered a hand, and an  
12 amputation above that point shall be considered an arm.

13 (j) Foot, 162 weeks.

14 (k) Leg, 215 weeks.

15 An amputation between the knee and foot 7 or more inches below  
16 the tibial table (plateau) shall be considered a foot, and an  
17 amputation above that point shall be considered a leg.

18 (l) Eye, 162 weeks.

19 Eighty percent loss of vision of 1 eye shall constitute the  
20 total loss of that eye.

21 (3) Total and permanent disability, compensation for which is  
22 provided in section 351 means:

23 (a) Total and permanent loss of sight of both eyes.

24 (b) Loss of both legs or both feet at or above the ankle.

25 (c) Loss of both arms or both hands at or above the wrist.

26 (d) Loss of any 2 of the members or faculties in subdivision  
27 (a), (b), or (c).

28 (e) Permanent and complete paralysis of both legs or both arms  
29 or of 1 leg and 1 arm.



1 (f) Incurable insanity or imbecility.

2 (g) Permanent and total loss of industrial use of both legs or  
3 both hands or both arms or 1 leg and 1 arm; for the purpose of this  
4 subdivision such permanency shall be determined not less than 30  
5 days before the expiration of 500 weeks from the date of injury.

6 (4) The amounts specified in this clause are all subject to  
7 the same limitations as to maximum and minimum as above stated. In  
8 case of the loss of 1 member while compensation is being paid for  
9 the loss of another member, compensation shall be paid for the loss  
10 of the second member for the period provided in this section.  
11 Payments for the loss of a second member shall begin at the  
12 conclusion of the payments for the first member.

13 Sec. 401. (1) As used in this chapter, "disability" means a  
14 limitation of an employee's wage earning capacity in work suitable  
15 to his or her qualifications and training resulting from a personal  
16 injury or work related disease. A limitation of wage earning  
17 capacity occurs only if a personal injury covered under this act  
18 results in the employee's being unable to perform all jobs paying  
19 the maximum wages in work suitable to that employee's  
20 qualifications and training, which includes work that may be  
21 performed using the employee's transferable work skills. A  
22 disability is total if the employee is unable to earn in any job  
23 paying maximum wages in work suitable to the employee's  
24 qualifications and training. A disability is partial if the  
25 employee retains a wage earning capacity at a pay level less than  
26 his or her maximum wages in work suitable to his or her  
27 qualifications and training. The establishment of disability does  
28 not create a presumption of wage loss.

29 (2) As used in this chapter:



1 (a) "Disablement" means the event of becoming so disabled.

2 (b) "Personal injury" includes a disease or disability that is  
3 due to causes and conditions that are characteristic of and  
4 peculiar to the business of the employer and that arises out of and  
5 in the course of the employment. An ordinary disease of life to  
6 which the public is generally exposed outside of the employment is  
7 not compensable. A personal injury under this act is compensable if  
8 work causes, contributes to, or aggravates pathology in a manner so  
9 as to create a pathology that is medically distinguishable from any  
10 pathology that existed prior to the injury. Mental disabilities and  
11 conditions of the aging process, including but not limited to heart  
12 and cardiovascular conditions, and degenerative arthritis shall be  
13 compensable if contributed to or aggravated or accelerated by the  
14 employment in a significant manner. Mental disabilities shall be  
15 compensable when arising out of actual events of employment, not  
16 unfounded perceptions thereof, and if the employee's perception of  
17 the actual events is reasonably grounded in fact or reality. A  
18 hernia to be compensable must be clearly recent in origin and  
19 result from a strain arising out of and in the course of the  
20 employment and be promptly reported to the employer.

21 (c) Except as provided in section 302, "wage earning capacity"  
22 means the wages the employee earns or is capable of earning at a  
23 job reasonably available to that employee, whether or not actually  
24 earned. For the purposes of establishing wage earning capacity, an  
25 employee has an affirmative duty to seek work reasonably available  
26 to that employee, taking into consideration the limitations from  
27 the work-related personal injury or disease. A magistrate may  
28 consider good-faith job search efforts to determine whether jobs  
29 are reasonably available.



1 (d) "Wage loss" means the amount of wages lost due to a  
2 disability. The employee shall establish a connection between the  
3 disability and reduced wages in establishing the wage loss. Wage  
4 loss may be established, among other methods, by demonstrating the  
5 employee's good-faith effort to procure work within his or her wage  
6 earning capacity. A partially disabled employee who establishes a  
7 good-faith effort to procure work but cannot obtain work within his  
8 or her wage earning capacity is entitled to weekly benefits under  
9 subsection (5) as if totally disabled.

10 (3) To establish an initial showing of disability, an employee  
11 shall do all of the following:

12 (a) Disclose his or her qualifications and training, including  
13 education, skills, and experience, whether or not they are relevant  
14 to the job the employee was performing at the time of the injury.

15 (b) Provide evidence as to the jobs, if any, he or she is  
16 qualified and trained to perform within the same salary range as  
17 his or her maximum wage earning capacity at the time of the injury.

18 (c) Demonstrate that the work-related injury prevents the  
19 employee from performing jobs identified as within his or her  
20 qualifications and training that pay maximum wages.

21 (d) If the employee is capable of performing any of the jobs  
22 identified in subdivision (c), show that he or she cannot obtain  
23 any of those jobs. The evidence shall include a showing of a good-  
24 faith attempt to procure postinjury employment if there are jobs at  
25 the employee's maximum wage earning capacity at the time of the  
26 injury.

27 (4) Once an employee establishes an initial showing of a  
28 disability under subsection (3), the employer bears the burden of  
29 production of evidence to refute the employee's showing. In



1 satisfying its burden of production of evidence, the employer has a  
 2 right to discovery if necessary for the employer to sustain its  
 3 burden and present a meaningful defense. The employee may present  
 4 additional evidence to challenge the evidence submitted by the  
 5 employer.

6 (5) ~~If~~ **Except as otherwise provided in this subsection, if a**  
 7 personal injury arising out of the course of employment causes  
 8 total disability and wage loss and the employee is entitled to wage  
 9 loss benefits, the employer shall pay or cause to be paid to the  
 10 injured employee as provided in this section weekly compensation  
 11 equal to 80% of the employee's after-tax average weekly wage, but  
 12 not more than the maximum weekly rate determined under section 355.  
 13 **If a personal injury arising out of the course of employment causes**  
 14 **total disability and wage loss and the employee is entitled to wage**  
 15 **loss benefits, the employer shall pay or cause to be paid to the**  
 16 **injured employee as provided in this section weekly compensation**  
 17 **equal to the employee's after-tax average weekly wage if the**  
 18 **employee was at the time of the injury a full-time law enforcement**  
 19 **officer or a full-time firefighter.** Compensation shall be paid for  
 20 the duration of the disability.

21 (6) ~~If~~ **Except as otherwise provided in this subsection, if a**  
 22 personal injury arising out of the course of employment causes  
 23 partial disability and wage loss and the employee is entitled to  
 24 wage loss benefits, the employer shall pay or cause to be paid to  
 25 the injured employee as provided in this section weekly  
 26 compensation equal to 80% of the difference between the injured  
 27 employee's after-tax average weekly wage before the personal injury  
 28 and the employee's wage earning capacity after the personal injury,  
 29 but not more than the maximum weekly rate determined under section





1 355. If a personal injury arising out of the course of employment  
 2 causes partial disability and wage loss and the employee is  
 3 entitled to wage loss benefits, the employer shall pay or cause to  
 4 be paid to the injured employee as provided in this section weekly  
 5 compensation equal to the difference between the injured employee's  
 6 after-tax average weekly wage before the personal injury and the  
 7 employee's wage earning capacity after the personal injury if the  
 8 employee was at the time of the injury a full-time law enforcement  
 9 officer or a full-time firefighter. Compensation shall be paid for  
 10 the duration of the disability.

11 (7) If disability and wage loss are established, entitlement  
 12 to weekly wage loss benefits shall be determined as applicable  
 13 pursuant to this section and as follows:

14 (a) If an employee receives a bona fide offer of reasonable  
 15 employment from the previous employer, another employer, or through  
 16 the Michigan unemployment insurance agency and the employee refuses  
 17 that employment without good and reasonable cause, the employee  
 18 shall be considered to have voluntarily removed himself or herself  
 19 from the work force and is no longer entitled to any wage loss  
 20 benefits under this act during the period of refusal.

21 (b) If an employee is terminated from reasonable employment  
 22 for fault of the employee, the employee is considered to have  
 23 voluntarily removed himself or herself from the work force and is  
 24 not entitled to any wage loss benefits under this act.

25 (c) ~~If~~ **Except as otherwise provided in this subdivision, if** an  
 26 employee is employed and the average weekly wage of the employee is  
 27 less than that which the employee received before the date of  
 28 injury, the employee shall receive weekly benefits under this act  
 29 equal to 80% of the difference between the injured employee's



1 after-tax weekly wage before the date of injury and the after-tax  
 2 weekly wage that the injured employee earns after the date of  
 3 injury, but not more than the maximum weekly rate of compensation,  
 4 as determined under section 355. **If an employee is employed and the**  
 5 **average weekly wage of the employee is less than that which the**  
 6 **employee received before the date of injury, the employee shall**  
 7 **receive weekly benefits under this act equal to the difference**  
 8 **between the injured employee's after-tax weekly wage before the**  
 9 **date of injury and the after-tax weekly wage that the injured**  
 10 **employee earns after the date of injury if the employee was at the**  
 11 **time of the injury a full-time law enforcement officer or a full-**  
 12 **time firefighter.**

13 (d) If an employee is employed and the average weekly wage of  
 14 the employee is equal to or more than the average weekly wage the  
 15 employee received before the date of injury, the employee is not  
 16 entitled to any wage loss benefits under this act for the duration  
 17 of that employment.

18 (e) If the employee, after having been employed pursuant to  
 19 this subsection, loses his or her job through no fault of the  
 20 employee and the employee is still disabled, the employee shall  
 21 receive compensation under this act as follows:

22 (i) If the employee was employed for less than 100 weeks, the  
 23 employee shall receive compensation based upon his or her wage at  
 24 the time of the original injury.

25 (ii) If the employee was employed for 100 weeks or more but  
 26 less than 250 weeks, then after the employee exhausts unemployment  
 27 benefit eligibility, a worker's compensation magistrate may  
 28 determine that the employment since the time of the injury has not  
 29 established a new wage earning capacity and, if the magistrate



1 makes that determination, benefits shall be based on the employee's  
2 wage at the original date of injury. If the magistrate does not  
3 make that determination, the employee is presumed to have  
4 established a post-injury wage earning capacity and benefits shall  
5 not be paid based on the wage at the original date of injury.

6 (iii) If the employee was employed for 250 weeks or more, the  
7 employee is presumed to have established a post-injury wage earning  
8 capacity.

9 (8) The Michigan unemployment insurance agency shall notify  
10 the agency in writing of the name of any employee who refuses any  
11 bona fide offer of reasonable employment. Upon notification to the  
12 agency, the agency shall notify the carrier who shall terminate the  
13 benefits of the employee pursuant to subsection (7) (a).

14 (9) As used in this section, "reasonable employment" means  
15 work that is within the employee's capacity to perform that poses  
16 no clear and proximate threat to that employee's health and safety,  
17 and that is within a reasonable distance from that employee's  
18 residence. The employee's capacity to perform shall not be limited  
19 to work suitable to his or her qualifications and training.

20 (10) This section shall apply to personal injuries or work  
21 related diseases occurring on or after June 30, 1985.

22 Enacting section 1. This amendatory act is retroactive and  
23 applies to personal injuries that occur after March 9, 2020.

