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CHAPTER 13

Ionizing Radiation Injury

**SECTION 42‑13‑10.** Definitions.

As used in this chapter:

(1) “Ionizing radiation” means any particulate or electromagnetic radiation capable of producing ions directly or indirectly in its passage through matter.

(2) “Ionizing radiation injury” means any harmful change in the human organism, including damage to or loss of a prosthetic appliance, arising out of and in the course of employment and caused by exposure to ionizing radiation.

(3) “Ionizing radiation disability” means any temporary or permanent, partial or total impairment of natural capability or a decrease in wage‑earning capacity arising out of and in the course of employment and caused by exposure to ionizing radiation.

(4) “Permanent physical impairment” means any permanent condition, whether congenital or due to injury or disease, of such seriousness as to constitute a hindrance or obstacle to obtaining employment or to obtaining reemployment if the employee should become unemployed.

(5) “Death” means death resulting from an ionizing radiation injury.

HISTORY: 1962 Code Section 72‑280; 1969 (56) 685.

**SECTION 42‑13‑20.** Employers and employees subject to chapter.

(a) The following shall constitute employers who shall be subject to the provisions of this chapter:

(1) Every person, partnership firm, association, trust, profit or nonprofit organization, corporation or legal representatives thereof, that has one or more employees in this State and is engaged in activities which involve the use or presence of ionizing radiation. Provided, however, that any employer who employs less than three employees may, at his option, elect not to be subject to the provisions of this chapter.

(2) The State, or any agency thereof, and each political subdivision of the State, or any agency thereof, or public or quasipublic corporation that has one or more employees and is engaged in activities which involve the use or presence of ionizing radiation.

(b) The following shall constitute employees who shall be subject to the provisions of this chapter:

(1) Every person, including a minor, whether lawfully or unlawfully employed, in the service of an employer subject to this chapter under any contract of hire or apprenticeship, express or implied, and all helpers and assistants of employees whether paid by the employer or employee, if employed with the knowledge, actual or constructive, of the employer.

(2) Every person performing service in the course of the trade, business, profession or occupation of an employer at the time of injury or disability, provided such person in relation to this service does not maintain a separate business, does not hold himself out to and render service to the public and is not himself an employer subject to this chapter.

HISTORY: 1962 Code Section 72‑281; 1969 (56) 685.

**SECTION 42‑13‑30.** Effect of injury suffered outside State; effect of injury to employee of nonresident employer; effect of award under law of another state.

(a) If an employee of an employer subject to this chapter, while working outside the territorial limits of this State, suffers an ionizing radiation injury or disability, he, or in the event of his death, his dependents, shall be entitled to the same benefits under this chapter as if the injury or disability had occurred within this State.

(b) If an employee of an employer domiciled or residing outside of this State suffers an ionizing radiation injury or disability while working within the territorial limits of this State, he, or in the event of his death, his dependents, shall be entitled to the same benefits under this chapter as if his employer were domiciled or residing within this State.

(c) The payment or award of benefits under the workers’ compensation provisions of another state to an employee or his dependents otherwise entitled to the benefits of this chapter, on account of an ionizing radiation injury or disability, or death, shall not be a bar to a claim for benefits under this chapter; provided, that such payment or award shall be credited against the benefits to which the employee or his dependents would have been entitled had claim been made solely under this chapter.

HISTORY: 1962 Code Section 72‑282; 1969 (56) 685.

**SECTION 42‑13‑40.** Waiver by employee shall be invalid.

No agreement by an employee to waive his right to compensation shall be valid with regard to ionizing radiation injury or disability.

HISTORY: 1962 Code Section 72‑283; 1969 (56) 685.

**SECTION 42‑13‑50.** Employer who is liable for awards; apportionment of liability.

The employer, in whose employment an employee was last exposed to ionizing radiation, shall be liable for all awards of compensation should such employee suffer an ionizing radiation injury, disability or death. If, however, such ionizing radiation injury, disability or death is attributable in part to exposure to ionizing radiation which such employee received in any previous employment, the employer who is made liable for all awards of compensation as provided by this section may appeal to the Workers’ Compensation Commission which shall apportion such liability among the several employers in whose employ the employee was exposed to ionizing radiation. The method of apportionment shall be determined by the commission.

HISTORY: 1962 Code Section 72‑284; 1969 (56) 685.

**SECTION 42‑13‑60.** Time for filing claims.

(a) In cases involving radiation injury or disability the time for filing claims shall not begin to run until:

(1) the employee sustains such injury or disability; and

(2) the employee knows, or by the exercise of reasonable diligence should know, of the existence of the injury or disability and its possible relationship to his employment.

(b) The time for filing claims for benefits in the event of death shall not begin to run until the person entitled to file such claims knows, or by the exercise of reasonable diligence should know, the possible relationship of the death to the employment.

HISTORY: 1962 Code Section 72‑285; 1969 (56) 685.

**SECTION 42‑13‑70.** Compensability of all forms of injury, disability or death.

All forms of ionizing radiation injury, disability or death shall be compensable under this chapter.

HISTORY: 1962 Code Section 72‑286; 1969 (56) 685.

**SECTION 42‑13‑80.** Employee’s right to medical services, appliances and supplies.

(a) For any ionizing radiation injury or disability, the employee shall be entitled to all medical services, appliances and supplies which are required by the nature of his injury or disability and which will relieve pain and promote and hasten his restoration to health and employment. The employer shall furnish such services, appliances and supplies and necessary replacements or repairs of such appliances unless the need for such replacements or repairs is due to lack of proper care by the employee.

(b) The Workers’ Compensation Commission, on competent medical advice, shall have authority to determine the necessity, character and sufficiency of any medical services or medical rehabilitation furnished or to be furnished, and shall have authority to order a change of physician, hospital or rehabilitation facility when, in its judgment, such change is desirable or necessary.

HISTORY: 1962 Code Section 72‑287; 1969 (56) 685.

**SECTION 42‑13‑90.** Employee’s right to vocational rehabilitation services.

(a) An employee covered by this chapter who, for reasons of injury or medically determined restrictions on radiation exposure, and whose skills are not transferable to equivalent work not involving radiation exposure, shall be entitled to such vocational rehabilitation services, including retraining and job replacement, as may be reasonably necessary to restore him to suitable employment. If such services are not voluntarily offered and accepted, the Workers’ Compensation Commission, on its own motion or upon application of the employee, after affording the parties an opportunity to be heard, may refer the employee to one or more qualified physicians or facilities for evaluation of the practicability of, the need for, and the kind of service, treatment or training necessary for and appropriate to render him fit for a remunerative occupation. Upon receipt and evaluation of such report, the Workers’ Compensation Commission may order that the services and treatment recommended in the report, or such other rehabilitation treatment or service it may deem necessary, be provided at the expense of the employer. Vocational rehabilitation training, treatment or service required pursuant to this section shall not extend for a period of more than fifty‑two weeks, except in unusual cases when by special order of the Workers’ Compensation Commission, after affording the parties an opportunity to be heard, the period may be extended for an additional twenty‑six weeks.

(b) Where rehabilitation services require residence at or near the facility or institution away from the employee’s customary residence, reasonable cost of his board, lodging and travel shall be paid for by the employer.

(c) Refusal to accept rehabilitation services pursuant to order of the Workers’ Compensation Commission shall result in loss of compensation for each week of the period of refusal.

HISTORY: 1962 Code Section 72‑288; 1969 (56) 685.

**SECTION 42‑13‑100.** Certain settlements shall be invalid unless approved by commission.

Any settlement which waives liability for possible subsequently appearing consequences of ionizing radiation injury or disability is invalid unless approved by the Workers’ Compensation Commission.

HISTORY: 1962 Code Section 72‑289; 1969 (56) 685.

**SECTION 42‑13‑110.** Powers of commission.

The Workers’ Compensation Commission is hereby authorized to:

(1) accept and administer loans, grants or other funds or gifts, conditional or otherwise, in furtherance of its function, from the federal government and other sources, public or private; and

(2) require the keeping of radiation exposure records by employers covered under Section 42‑13‑20 of this chapter and the furnishing of such exposure records to the Workers’ Compensation Commission or its successor organizations upon request.

HISTORY: 1962 Code Section 72‑290; 1969 (56) 685.

**SECTION 42‑13‑120.** Application of other provisions.

All the provisions of the Workers’ Compensation Act, Title 42, shall be applicable to this chapter except where they are specifically contrary thereto.

HISTORY: 1962 Code Section 72‑291; 1969 (56) 685.

**SECTION 42‑13‑130.** Rejection of chapter.

Either employer or employee may reject the provisions of this chapter under the same terms and conditions as he may reject other provisions of this title.

HISTORY: 1962 Code Section 72‑292; 1969 (56) 685.