Unofficial Copy 2000 Regular Session
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By: **Delegate Love**
Introduced and read first time: February 11, 2000
Assigned to: Economic Matters

A BILL ENTITLED

AN ACT concerning

Workers' Compensation - Calculation of Hearing Loss

FOR the purpose of requiring the calculation of hearing loss for workers' compensation to be measured by certain criteria; requiring the measurements to be conducted in a sound room that meets certain criteria; increasing the threshold of hearing for certain frequencies; requiring the Maryland Academy of Audiology to develop certain materials for certain businesses to promote their awareness of legislative changes; and generally relating to the calculation of hearing loss in workers' compensation.

BY repealing and reenacting, with amendments,
Article - Labor and Employment
Section 9-650
Annotated Code of Maryland
(1999 Replacement Volume)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article - Labor and Employment

9-650.

(a) (1) Hearing loss shall be measured by [pure tone air conduction audiometric instruments approved by nationally recognized authorities in the field of hearing loss.] AN AUDIOLOGIST UTILIZING AUDIOMETRIC INSTRUMENTATION THAT MEETS THE FOLLOWING CRITERIA:

(I) ANSI 3.6-1996;

(II) ANSI S3.43-1992; AND

(III) ANSI 3.39-1987 OR ANY ANSI STANDARD THAT SUPERSEDES THE PREVIOUS CALIBRATION OR MEASUREMENT CRITERIA.

(2) MEASUREMENTS SHALL BE CONDUCTED IN A SOUND ROOM THAT MEETS THE ANSI 3.1-1991 CRITERIA FOR MAXIMUM PERMISSIBLE AMBIENT NOISE FOR AUDIOMETRIC TEST ROOMS.

(3) BEHAVIORAL PSYCHOACOUSTIC MEASUREMENTS WILL BE OBTAINED WITH INSTRUMENTATION THAT UTILIZES INSERT EARPHONES, AS REFERENCED IN ANSI 3.6-1996.

(4) AN AUDIOLOGIST MAY OBTAIN ELECTRODIAGNOSTIC MEASUREMENTS SUCH AS AUDITORY EVOKED POTENTIALS, ACOUSTIC EMITTANCE MEASUREMENTS, OR DISTORTION PRODUCT OTOACOUSTIC EMISSIONS TO DETERMINE THE NATURE AND EXTENT OF WORKPLACE HEARING LOSS.

(5) AN AUDIOLOGIST OR PHYSICIAN SHALL USE AUDIOLOGIC RESULTS IN CONJUNCTION WITH OTHER INFORMATION TO EVALUATE A CLAIMANT'S COMPENSABLE HEARING LOSS.

(b) (1) The percentage of hearing loss for purposes of compensation for occupational deafness shall be determined by calculating the average, in decibels, of the thresholds of hearing for the frequencies of 500, 1,000, [and] 2,000, AND 3,000 HERTZ [cycles per second] in accordance with [paragraphs] PARAGRAPH (2) [and (3)] of this subsection.

(2) The average of the thresholds in hearing shall be calculated by:

(i) adding together the lowest measured losses in each of the [3] 4 frequencies; and

(ii) dividing the total by [3] 4.

[(3) To allow for the average amount of hearing loss from nonoccupational causes found in the population at any given age, there shall be deducted from the total average decibel loss determined under paragraphs (1) and (2) of this subsection one-half of a decibel for each year of the covered employee's age over 40 at the time of the last exposure to industrial noise.]

(c) (1) If the average hearing loss in the [3] 4 frequencies determined under subsection (b) of this section is [15] 25 decibels or less, the covered employee does not have a compensable hearing loss.

(2) If the average hearing loss in the [3] 4 frequencies determined under subsection (b) of this section is [82] 91.7 decibels or more, the covered employee has a 100% compensable hearing loss.

(3) For every decibel that the average hearing loss exceeds [15] 25 decibels, the covered employee shall be allowed 1.5% of the compensable hearing loss, up to a maximum of 100% compensable hearing loss at [82] 91.7 decibels.

(d) The binaural percentage of hearing loss shall be determined by:

(1) multiplying the percentage of hearing loss in the better ear by 5;

(2) adding that product to the percentage of hearing loss in the poorer ear; and

(3) dividing that sum by 6.

(e) (1) In determining the percentage of hearing loss under this section, consideration may not be given to whether the use of [a hearing aid] AN AMPLIFICATION DEVICE improves the ability of a covered employee to understand speech OR ENHANCE BEHAVIORAL HEARING THRESHOLDS.

(2) (I) IN DETERMINING A WORKERS' COMPENSATION COMPLAINT FOR NOISE-RELATED HEARING LOSS, AUDIOLOGIC DATA SHALL USE BOTH BONE CONDUCTION AND AIR CONDUCTION RESULTS.

(II) IF A CONDUCTIVE LOSS IS PRESENT, THE BONE CONDUCTION THRESHOLDS FOR EACH EAR, RATHER THAN THE AIR CONDUCTION LEVELS, SHALL BE USED TO CALCULATE A CLAIMANT'S AVERAGE HEARING LOSS.

SECTION 2. AND BE IT FURTHER ENACTED, That, in conjunction with interested business entities, the Maryland Academy of Audiology shall develop a plan to reach the small business community and encourage the initiation of hearing conservation programs which include early employment hearing assessments and other currently available preventive measures. The Maryland Academy of Audiology will participate in developing educational materials to be disseminated to these businesses in order to promote their awareness of the legislative changes.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2000.