

occurs, if there is any other reasonable means available to satisfy the ambient air standards. To qualify under the provisions of this subsection the contract must be recorded with the county recorder of the county where the burning facility is located within thirty days after the signing of the contract.

Approved April 29, 1977

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## CHAPTER 50

### STATE EMPLOYEES DISABILITY PLAN

S. F. 268

AN ACT repealing the statutory standing appropriation funding the state employees' disability plan.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Sections seventy-nine point twenty-one (79.21), and seventy-nine point twenty-two (79.22), Code 1977, are repealed.

Approved April 25, 1977

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## CHAPTER 51

### WORKER'S COMPENSATION LAW

S. F. 328

AN ACT to resolve differences in procedures involving provisions of the workers' compensation law and the Iowa administrative procedure Act.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Section eighty-five point three (85.3), subsection two (2), unnumbered paragraph two (2), Code 1977, is amended to read as follows:

Such In addition to those persons authorized to receive personal service as in civil actions as permitted by chapter seventeen A (17A) of the Code, such employer shall be deemed to have appointed the secretary of state of this state as its lawful attorney upon whom may be served or delivered any and all notices authorized or required by the provisions of this chapter, chapters 85A, 86, ~~and~~ 87, and seventeen A (17A)

of the Code, and to agree that any and all such services or deliveries of notice on the secretary of state shall be of the same legal force and validity as if personally served upon or delivered to such nonresident employer in this state.

Sec. 2. Section eighty-five point twenty-six (85.26), Code 1977, is amended by striking the section and inserting in lieu thereof the following:

85.26 LIMITATIONS OF ACTIONS.

1. No original proceedings for benefits under this chapter, chapter eighty-five A (85A) or eighty-six (86) of the Code, shall be maintained in any contested case unless such proceedings shall be commenced within two years from the date of the occurrence of the injury for which benefits are claimed except as provided by section eighty-six point twenty (86.20) of the Code.

2. Any award for payments or agreement for settlement provided by section eighty-six point thirteen (86.13) of the Code for benefits under the workers' compensation or occupational disease law may, where the amount has not been commuted, be reviewed upon commencement of reopening proceedings by the employer or the employee within three years from the date of the last payment of weekly benefits made under such award or agreement. Once an award for payments or agreement for settlement as provided by section eighty-six point thirteen (86.13) of the Code for benefits under the workers' compensation or occupational disease law has been made where the amount has not been commuted, the commissioner may at any time upon proper application make a determination and appropriate order concerning the entitlement of an employee to benefits provided for in section eighty-five point twenty-seven (85.27) of the Code.

3. Notwithstanding the terms of chapter seventeen A (17A) of the Code, the filing with the industrial commissioner of the original notice or petition for an original proceeding or an original notice or petition to reopen an award or agreement of settlement provided by section eighty-six point thirteen (86.13) of the Code, for benefits under the workers' compensation or occupational disease law shall be the only act constituting "commencement" for purposes of this statutory section.

4. No claim or proceedings for benefits shall be maintained by any person other than the injured employee, his or her dependent or his or her legal representative if entitled

to benefits.

Sec. 3. Section eighty-five point thirty-five (85.35), unnumbered paragraph one (1), Code 1977, is amended to read as follows:

~~When no memorandum of agreement has been filed and approved by the industrial commissioner, the~~ The parties to a contested case, or persons who are involved in a dispute which could culminate in a contested case may enter into a settlement of any claim arising under this chapter, ~~or~~ chapter 85A ~~or chapter eighty-six (86) of the Code,~~ providing for final disposition of the claim, provided that no final disposition affecting rights to future benefits may be had when the only dispute is the degree of disability resulting from an injury for which an award for payments or agreement for settlement under section eighty-six point thirteen (86.13) of the Code has been made. The settlement shall be in writing and submitted to the industrial commissioner for approval. The settlement shall not be approved unless evidence of a bona fide dispute exists concerning any of the following:

Sec. 4. Section eighty-five point thirty-five (85.35), subsection three (3), Code 1977, is amended by striking the subsection and inserting in lieu thereof the following:

3. Whether or not the statutes of limitations as provided in section eighty-five point twenty-six (85.26) of the Code have run. When the issue involved is whether or not the statute of limitations of section eighty-five point twenty-six (85.26), subsection two (2) of the Code, has run, the final disposition shall pertain to the right to weekly compensation unless otherwise provided for in subsection seven (7) of section eighty-five point thirty-five (85.35) of the Code.

Sec. 5. Section eighty-five point thirty-five (85.35), subsection seven (7), unnumbered paragraph one (1), Code 1977; is amended to read as follows:

This chapter or chapter 85A, eighty-six (86) or eighty-seven (87) of the Code applies to the party making the claim.

Sec. 6. Section eighty-six point two (86.2), Code 1977, is amended to read as follows:

86.2 APPOINTMENT OF DEPUTIES. The commissioner may appoint ~~four~~ deputy industrial commissioners for whose acts he the commissioner shall be responsible and who shall serve during the pleasure of the commissioner, and all such deputies must be lawyers admitted to practice in this state.

Sec. 7. Section eighty-six point three (86.3), Code 1977, is amended to read as follows:

86.3 DUTIES OF DEPUTIES. ~~In~~ Notwithstanding the provisions of chapter seventeen A (17A) of the Code, in the absence or disability of the industrial commissioner, or when acting under the directions of written delegation of authority to perform specified functions is made by the commissioner, the deputies shall have ~~all-of-the~~ any necessary specified powers and to perform ~~all-of-the~~ any necessary or specified duties of the industrial commissioner pertaining to his or her office. Notwithstanding the definitions and terms of chapter seventeen A (17A) of the Code, pertaining to the issuance of final decisions, when the above circumstances exist a deputy commissioner shall have the power to issue a final decision as if issued by the agency.

Sec. 8. Section eighty-six point eight (86.8), subsection four (4), Code 1977, is amended to read as follows:

4. ~~To keep records of all proceedings and decisions of such boards, issue subpoenas for witnesses, issue subpoenas duces tecum,~~ administer oaths; examine books and records of parties subject to such provisions.

Sec. 9. Section eighty-six point fourteen (86.14), Code 1977, is amended by striking the section and inserting in lieu thereof the following:

86.14 CONTESTED CASES.

1. In an original proceeding, all matters relevant to a dispute are subject to inquiry.

2. In a proceeding to reopen an award for payments or agreement for settlement as provided by section eighty-six point thirteen (86.13) of the Code, inquiry shall be into whether or not the condition of the employee warrants an end to, diminishment of, or increase of compensation so awarded or agreed upon.

Sec. 10. Section eighty-six point seventeen (86.17), Code 1977, is amended by striking the section and inserting in lieu thereof the following:

86.17 HEARINGS--PRESIDING OFFICER--VENUE.

1. A deputy industrial commissioner may preside over any contested case proceeding brought under this chapter, chapter eighty-five (85) or eighty-five A (85A) of the Code in the manner provided by chapter seventeen A (17A) of the Code. The deputy commissioner or the commissioner may make such

inquiries and investigation in contested case proceedings as shall be deemed necessary, consistent with the provisions of section seventeen A point seventeen (17A.17) of the Code.

2. Hearings in contested case proceedings under chapters eighty-five (85), eighty-five A (85A) and eighty-six (86) of the Code shall be held in the judicial district where the injury occurred. By written stipulation of the parties or by the order of a deputy industrial commissioner or the commissioner, a hearing may be held elsewhere. If the injury occurred outside this state, or if the proceeding is not one for benefits resulting from an injury, hearings shall be held in Polk county or as otherwise stipulated by the parties or by order of a deputy industrial commissioner or the industrial commissioner.

Sec. 11. Section eighty-six point eighteen (86.18), Code 1977, is amended by striking the section and inserting in lieu thereof the following:

86.18 HEARINGS--EVIDENCE.

1. Evidence, process and procedure in contested case proceedings or appeal proceedings within the agency under this chapter, chapters eighty-five (85) and eighty-five A (85A) of the Code shall be as summary as practicable consistent with the requirements of chapter seventeen A (17A) of the Code.

2. The deposition of any witness may be taken and used as evidence in any pending proceeding or appeal within the agency.

Sec. 12. Section eighty-six point nineteen (86.19), Code 1977, is amended by striking the section and inserting in lieu thereof the following:

86.19 REPORTING OF PROCEEDINGS.

1. The industrial commissioner, or a deputy commissioner, may appoint or may direct a party to furnish at the party's initial expense a certified shorthand reporter to be present and report, or to furnish mechanical means to record, and if necessary, transcribe proceedings of any contested case under this chapter, chapters eighty-five (85) and eighty-five A (85A) of the Code and fix the reasonable amount of compensation for such service. The charges shall be taxed as costs and the party initially paying the expense of the presence or transcription shall be reimbursed. The reporter shall faithfully and accurately report the proceedings.

2. Notwithstanding the requirements of section seventeen

A point twelve (17A.12), subsection seven (7) of the Code, a certified shorthand reporter, appointed by the presiding officer in a contested case proceeding or by the industrial commissioner in an appeal proceeding, may maintain and thus have the responsibility for the recording or stenographic notes for the period required by section seventeen A point twelve (17A.12), subsection seven (7), of the Code.

Sec. 13. Section eighty-six point twenty (86.20), unnumbered paragraph five (5), Code 1977, is amended to read as follows:

If a memorandum of agreement is filed and approved pursuant to section 86.13 or an award for payments is granted pursuant ~~to section 86.23~~ the employer or insurance carrier shall be entitled to credit for amounts paid under this section.

Sec. 14. Section eighty-six point twenty-four (86.24), Code 1977, is amended by striking the section and inserting in lieu thereof the following:

86.24 APPEALS WITHIN THE AGENCY.

1. Any party aggrieved by a decision, order, ruling, finding or other act of a deputy commissioner in a contested case proceeding arising under this chapter or chapter eighty-five (85) or eighty-five A (85A) of the Code may appeal to the industrial commissioner in the time and manner provided by rule. The hearing on an appeal shall be in Polk county unless the industrial commissioner shall direct the hearing be held elsewhere.

2. In addition to the provisions of section seventeen A point fifteen (17A.15) of the Code, the industrial commissioner may affirm, modify, or reverse the decision of a deputy commissioner or he may remand the decision to the deputy commissioner for further proceedings.

3. In addition to the provisions of section seventeen A point fifteen (17A.15) of the Code, the industrial commissioner, on appeal, may limit the presentation of evidence as provided by rule.

4. A transcript of a contested case proceeding shall be provided by the appealing party at his or her cost and shall be filed with the industrial commissioner within thirty days after the filing of the appeal to the industrial commissioner.

Sec. 15. Section eighty-six point twenty-six (86.26), Code 1977, is amended to read as follows:

86.26 JUDICIAL REVIEW. Judicial review of decisions or orders of the industrial commissioner ~~in a proceeding on re-~~

~~view-of-an-arbitration-decision~~ may be sought in accordance with the terms of ~~the-Iowa-administrative-procedure-Act~~ chapter seventeen A (17A) of the Code. Notwithstanding the terms of ~~the-Iowa-administrative-procedure-Act~~ chapter seventeen A (17A) of the Code, petitions for judicial review may be filed in the district court of the county in which the hearing under section 86.17 was held. Such a review proceeding shall be accorded priority over other matters pending before the district court.

Sec. 16. Section eighty-six point thirty-two (86.32), Code 1977, is amended to read as follows:

86.32 COSTS ON-APPEAL OF JUDICIAL REVIEW. In proceedings for judicial review of compensation cases the clerk shall charge no fee for any service rendered except the filing fee and transcript fees when the transcript of a judgment is required. The taxation of costs ~~in-such-appeals~~ on judicial review shall be in the discretion of the court.

Sec. 17. Section eighty-six point thirty-six (86.36), subsection one (1), Code 1977, is amended by striking the subsection.

Sec. 18. Section eighty-six point thirty-six (86.36), subsection two (2), unnumbered paragraph one (1), Code 1977, is amended to read as follows:

~~Whenever~~ In addition to the manner provided in chapter seventeen A (17A) of the Code, whenever service or delivery of any notice is made on a nonresident employer under the provisions of section 85.3, subsection 2, the same shall be done in the following manner:

Sec. 19. Section eighty-six point thirty-six (86.36), subsections three (3) and four (4), Code 1977, are amended to read as follows:

3. In lieu of mailing said copy of notice to the nonresident employer in a foreign state, plaintiff may cause the same to be personally served or delivered in the foreign state on such employer by any adult person not a party to the proceedings, by delivering said copy of notice to the nonresident employer or by offering to make such delivery in case ~~he~~ delivery is refused ~~to-accept-delivery~~.

4. Proof of the filing of a copy of said notice with the secretary of state and proof of the mailing or personal delivery of the copy to said nonresident employer shall be made by affidavit of the party doing said acts. All affidavits of service or delivery shall be endorsed upon or attached

to the original of the papers to which they relate and all such proofs of service or delivery, including the certified mail return receipt shall be forthwith filed with the original of the papers.

Sec. 20. Section eighty-six point forty-two (86.42), Code 1977, is amended to read as follows:

86.42 JUDGMENT BY DISTRICT COURT ON AWARD. Any party in interest may present a certified copy of an order or decision of the commissioner, from which no timely petition for judicial review has been filed ~~within-the-time-allowed therefor~~ or if judicial review has been filed, which has not had execution or enforcement stayed as provided in section seventeen A point nineteen (17A.19), subsection five (5) of the Code, or an order or decision of a deputy commissioner from which no timely appeal has been taken within the agency and which has become final by the passage of time as provided by rule and section seventeen A point fifteen (17A.15) of the Code, or a memorandum of agreement approved by the commissioner, and all papers in connection therewith, to the district court of-the-county-in-which-the-injury-occurred where judicial review of the agency action may be commenced, whereupon said court shall render a decree or judgment in accordance therewith and cause the clerk to notify the parties. Such decree or judgment, in the absence of a petition for judicial review or if judicial review has been commenced, in the absence of a stay of execution or enforcement of the decision or order of the industrial commissioner, or in the absence of an act of any party which prevents a decision of a deputy industrial commissioner from becoming final, shall have the same effect and in all proceedings in relation thereto shall thereafter be the same as though rendered in a suit duly heard and determined by said court.

Sec. 21. Sections eighty-five point forty-six (85.46), eighty-six point twenty-one (86.21), eighty-six point twenty-two (86.22), eighty-six point twenty-three (86.23), eighty-six point twenty-five (86.25), eighty-six point twenty-eight (86.28), eighty-six point thirty-four (86.34), eighty-six point thirty-five (86.35), and eighty-six point thirty-seven (86.37), Code 1977, are repealed.

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