

STATEMENTS OF POLICY

Title 34—LABOR AND INDUSTRY

DEPARTMENT OF LABOR AND INDUSTRY

[34 PA. CODE CH. 123]

General Provisions of Act 53 of 2003

The Department of Labor and Industry (Department), Bureau of Workers' Compensation (Bureau), adopts § 123.201a (relating to effect of Act 53 of 2003 regarding qualifications of vocational experts—statement of policy) to read as set forth in Annex A. This statement of policy provides guidance regarding the Department's interpretation of the act of December 23, 2003 (P. L. 371, No. 53) (Act 53), which amended the Workers' Compensation Act (act) (77 P. S. §§ 1—2626).

Effective Date

This statement of policy will be effective immediately upon publication in the *Pennsylvania Bulletin*.

Contact Person

Further information regarding this statement of policy may be obtained by contacting John T. Kupchinsky, Director, Bureau of Workers' Compensation, P. O. Box 15121, Harrisburg, PA 17105. This statement of policy is available on the Department's website: www.dli.state.pa.us. In addition, parties wishing to comment on this statement of policy should do so by writing to John T. Kupchinsky, at the previous address.

Statutory Authority

This statement of policy is issued under the authority provided in section 435 of the act (77 P. S. § 991) and section 2205 of The Administrative Code of 1929 (71 P. S. § 565), which authorize the Department to adopt regulations that are reasonably calculated to explain and enforce the provisions of the act. Section 435 of the act charges the Department with promulgating rules and regulations which are reasonably calculated to expedite the reporting and processing of injury cases, insure full payment of compensation when due, expedite the hearing and determination of claims for compensation and provide notice to disabled employees of their rights under the act. In addition, section 306(b)(2) of the act (77 P. S. § 512(2)), as amended by Act 53, specifically authorizes the Department to implement regulations establishing the minimum qualifications for vocational experts.

Purpose of the Statement of Policy

This statement of policy is issued so that all parties will have a clear understanding of their rights and obligations under Act 57 of 1996 (P. L. 350, No. 57) (Act 57) and Act 53. Moreover, the existing regulations established under Act 57 pertaining to qualifications of vocational experts are consistent with Act 53's intent and purpose.

On December 23, 2003, Governor Edward G. Rendell signed Act 53, which became effective on February 21, 2004. Act 53 amended section 306(b)(2) of the act. Prior to its amendment, section 306(b)(2) of the act provided for vocational interviews by "expert[s] approved by the department and selected by the insurer." The Department promulgated §§ 123.201—123.203 (relating to purpose; qualifications; and credibility determinations) implement-

ing section 306(b)(2) of the act, before its amendment, which provided that individuals who met certain minimum qualifications in §§ 123.201—123.203 were approved to conduct vocational interviews.

In *Caso v. Workers' Compensation Appeal Bd. (School District of Philadelphia)*, 790 A.2d 1078 (Pa. Cmwlth. 2002), the Commonwealth Court interpreted section 306(b)(2) of the act and its regulations, as they existed prior to Act 53, in a manner that required experts conducting vocational interviews to be individually and formally recognized by the Department as a prerequisite to conducting interviews. In response to the Commonwealth Court's decision in *Caso*, the Legislature passed Act 53. Act 53 eliminates the requirement that the Department approve vocational evaluators to conduct earning power assessment interviews. Instead, Act 53 permits insurers to select experts that meet "the minimum qualifications established by the department through regulation." See section 306(b)(2) of the act. Subsequent to passage of Act 53, the Pennsylvania Supreme Court reversed the Commonwealth Court's decision. The Court held that individuals who meet the minimum qualifications established in the regulations are properly "approved" by the Department, and that workers' compensation judges may determine whether individuals selected as vocational experts in workers compensation proceedings meet the specified qualifications. *Caso v. Workers' Compensation Appeal Bd. (School District of Philadelphia)*, 839 A.2d 219 (Pa. 2003).

Section 306(b)(2) of the act, before the Act 53 amendments, provided a means for insurers to assess an employee's earning power through an interview "by an expert approved by the department and selected by the insurer." The passage of Act 53 has eliminated the requirement that the Department approve these experts. Instead, insurers are now permitted to select experts "who meet the minimum qualifications established by the department through regulation."

The minimum qualifications in § 123.202 are the minimum qualifications specified in Act 53. Section 123.202 is consistent with Act 53's intent and purpose, and remains effective. To the extent that vocational experts must be "approved by the Department" to conduct vocational evaluations under section 449 of the act (77 P. S. § 1000.5), § 123.202 confers Department approval upon individuals possessing the qualifications expressed in § 123.202.

Force and Effect

This statement of policy provides guidance to Bureau staff, workers' compensation insurance carriers, self-insured employers, employees, workers' compensation practitioners and other interested parties with respect to the implementation and interpretation of the provisions of Act 53. This statement of policy is temporary and the Department intends to promulgate regulations on this issue as soon as possible.

STEPHEN M. SCHMERIN,
Secretary

(Editor's Note: The regulations of the Department are amended by adding a statement of policy in § 123.201a to read as set forth in Annex A.)

Fiscal Note: 12-66. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 34. LABOR AND INDUSTRY

PART VIII. BUREAU OF WORKERS'
COMPENSATIONCHAPTER 123. GENERAL PROVISIONS—PART II
Subchapter C. QUALIFICATIONS FOR
VOCATIONAL EXPERTS APPROVED BY THE
DEPARTMENT**§ 123.201a. Effect of Act 53 of 2003 regarding qualifications of vocational experts—statement of policy.**

(a) The Department adopts this section so that all parties will have a clear understanding of their rights and obligations under section 306(b) of the act (77 P. S. § 512). This does not constitute a rule or regulation and is temporary. The Department intends to promulgate regulations on this topic.

(b) The minimum qualifications in § 123.202 (relating to qualifications) are the minimum qualifications established by the Department for vocational experts as specified in Act 53 of 2003 (P. L. 371, No. 53) (Act 53) which amended section 306(b) of the act, effective December 23, 2003.

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