



8200 Hampson Street, Suite 302
New Orleans, LA 70118

(504) 266-2024

fwhiteley@whiteley-law.com

Louisiana Workers Compensation

Chapter 13

Credits and Offsets

La. R.S. 23:1225 provides for the following offsets and credits against an employer's obligation to pay workers' compensation benefits:

- (1) the offset for the receipt of social security disability benefits, which is only available in limited situations;
- (2) the credit for the receipt of unemployment benefits; and
- (3) the credit for the receipt of other workers' compensation benefits or disability benefits funded by an employer.

The Louisiana Workers' Compensation Act contains the following other credits and deductions for the benefit of the employer:

- (1) La. R.S. 23:1223 allows the employer to deduct compensation benefits already paid from its obligation to pay supplemental earnings benefits or permanent partial disability benefits;
- (2) La. R.S. 23:1212 provides for a medical expense offset in certain situations.
- (3) La. R.S. 23:1206 provides a credit for the voluntary payment of benefits that were not due and payable when made.

I. SOCIAL SECURITY DISABILITY OFFSET - SECTION 1225(A):

- A. The Social Security Disability Offset is only available in cases where the employee is permanently and totally disabled.
- B. The effective date of the statute that created the Social Security Offset is September 8, 1978. The Social Security Offset is not available in cases that arose before September 8, 1978.
- C. The employer or its insurer must make judicial demand for the social security offset. The employer or its insurer may not take the social security offset unilaterally.
- D. The amount of the offset is determined by the Social Security Administration and can be obtained by filing a LDOL-WC-1004, Request for Social Security Benefits Information, with the Office of Workers' Compensation.

The amount of the employee's average current earnings, and, therefore, the amount of the offset, may be re-determined by the Social Security Administration every three years. This generally results in a reduction of the offset.

The employee's combined benefits cannot be reduced below the amount to which the employee is entitled under workers' compensation law (i.e., the weekly compensation rate). Coleman v. Times-Picayune Pub. Corp., 570 So2d 80 (La App 4th Cir 1990).

The employer's offset is not reduced by any amount that the employee owes to the employee's attorney in attorney's fees. Nitcher v. Northshore Regional Medical Center, 182 So.3d 121 (La. App. 1st Cir. 9/18/15).

An employer who has obtained a judgment recognizing its right to take the Reverse Offset cannot begin to assert the offset until Social Security has been notified of the judicial action AND has removed any offset it is taking. Archbold v. Maxicare health Plans, Inc., 98-531 (La App 5th Cir 12/16/98) 722 So2d 1200.

II. UNEMPLOYMENT COMPENSATION - SECTION 1225(B):

- A. Temporary Total Disability Benefits, Permanent Total Disability Benefits or Supplemental Earnings Benefits are not payable for any week in which the employee receives unemployment benefits.
- B. The employee, however, may receive permanent partial disability benefits as well as unemployment benefits.
- C. The unemployment credit is week to week. The employee is not entitled to TTD, PTD or SEB for any week in which the employee receives unemployment benefits, even if the amount that the employee receives in unemployment benefits is less than the amount that the employee otherwise would have received in compensation benefits.

III. OTHER CREDITS: La. Rev. Stat. 23:1225C

A. Benefits may be reduced:

- 1. To the extent of any other workers' compensation benefits received.
- 2. To the extent that the employee receives benefits under disability plans in the proportion funded by the employer.
 - a. This credit is equal to the full amount of the employer-funded disability benefits to which the employee is entitled, before the disability insurer takes any credit for the receipt of workers' compensation benefits. La. R.S. 23:1225(C)(d)(3).
 - b. If a conflict exists between La. R.S. 23:1225 and an insurance contract, the statute controls. La. R.A. 23:1225(C)(d)(4). In other words, the employer/workers' compensation insurer's statutory credit takes precedence over the disability insurer's contractual credit.

B. Benefits may **not be reduced under La. R.S. 1225(C)(3) for:**

- 1. The receipt of social security old age retirement benefits.

In Wal Mart v. Keel, 817 So.2d 1 (La. 4/3/02), the Louisiana Supreme Court held that a social security retirement credit is unconstitutional because it discriminates on the basis of age. In response to this case, the Louisiana amended 1225(C) to remove the social security retirement credit.

- 2. The receipt of social security disability benefits.

In September 1995 the Louisiana Supreme Court in Garrett v. Seventh Ward General Hospital, No. 95-0017 (La 9/25/95), 660 So2d 841 held that §1225C provided a credit for social security disability benefits as “disability benefits funded by an employer.” On May 18, 1999, the Louisiana Supreme Court reversed the Garrett decision. Al Johnson Construction Company and LIGA v. Pitre, 98-C-2564 (La 5/18/99), 734 So2d 623.

Any final judgment granting a credit for social security disability benefits under La. R.S. 23:1225(C), as recognized in Garrett, remains valid. If the employer took the Garrett credit without the benefit of a judgment, however, the employee is entitled to full benefits retroactive to the date that the benefits were reduced.

Note: The Louisiana Supreme Court’s decision in Al Johnson Construction does not affect the Social Security Offset under La. R.S. 23:1225(A). The Social Security Offset is still available under the conditions discussed in Section I.

C. Amount of Credit under La. R.S. 23:1225(c):

The employer is entitled to a credit to the extent that the total benefits (workers’ compensation benefits plus employer funded disability benefits or other workers’ compensation benefits) exceeds 66-2/3 of the employee’s average weekly wage.

Note: If the employee’s compensation rate is less than the maximum compensation rate, the credit will equal the amount of the employer funded disability benefits or other workers’ compensation benefits. If the employee’s compensation rate is the maximum compensation rate, however, the credit, using the calculation described above, will be less than the amount of the employer funded disability benefits or other workers’ compensation benefits.

IV. DEDUCTIONS FROM BENEFITS - SECTION 1223:

- A. Except for the catastrophic injuries under R.S. 23:1221(4)(s), when compensation has been paid 1221(1)(2) or (3), the number of weeks of compensation paid shall be deducted from 1221(4) (C).
- B. Except for the catastrophic injuries under R.S. 23:1221(4)(s), when compensation has been paid 1221(1)(2) or (4), the number of weeks of compensation paid shall be deducted from any compensation owed under 1221(3) (SEB) (This provision became effective on January 1, 1990).
- C. The Louisiana Supreme Court held that the credit against an award for SEB under §1223(B) is not applied retroactively. Thibodeaux v. Diamond M. Drilling Co., 632 So2d 736 (La 1994). The appellate courts disagreed, however, on the definition of “applied retroactively” in this case. The Fourth Circuit Court of Appeal allowed the employer to take a credit for any TTD benefits paid after January 1, 1990, even if the accident occurred before January 1, 1990. Fallen v. New Orleans Police Department, 97-0022 (La. App. 4th Cir. 7/23/97), 697 So2d 1077. The Third Circuit, on the other hand, has held that the credit could not be applied in any case in which the accident occurred before January 1, 1990. Burge v. LIGA, 819 So.2d 1098 (La. App. 3rd Cir. 5/15/02). In Frith v. Riverwood, Inc., 2004-C-1086 (La. 1/19/05), 877 So2d 123, the Louisiana Supreme Court agreed with the Third Circuit and held that the credit only applies to cases in which the accident occurred after January 1, 1990.
- D. The credit under La. R.S. 23:1223 is taken on a week-to-week basis.

V. MEDICAL EXPENSE OFFSET - SECTION 1212:

- A. Subject to the exceptions and conditions discussed below, payment of a medical bill by another party (i.e., a health insurer) extinguishes the employee's claim against the employer for payment of that medical bill.
- B. Exceptions:
 - 1. A direct payment by the employee, or a relative or friend of the employee, does not extinguish the employer's obligation to pay the medical bill.
 - 2. A payment by Medicaid or other state medical assistance program does not extinguish the employer's obligation to pay the medical bill. [R.S. 23:1212 A as amended 2001 eff. 8/15/01].
 - 3. If the employee or the employee's spouse pays some percentage of the health insurance premium, then the offset only applies in the same percentage that the employee's employer or the employee's spouse's employer paid the health insurance premiums.

Note: La. R.S. 23:1212 went into effect on January 1, 1990, and it is not applied retroactively. Levatino v. Domengeaux and Wright, (La. App. 1st Cir., 1991) 593 So.2d 721, writ denied, 596 So.2d 196, and Strange v. Combustion Engineering, Inc., 94-0215 (La. App. 1st Cir. 12/22/94), 649 So.2d 69.

VI. VOLUNTARY PAYMENTS - SECTION 1206:

Any voluntary payment or unearned wages paid by the employer/insurer which were not due and payable when made, may be deducted from the payments to be made as compensation. This credit applies even when overpayment is due to employer error. Ferrand v. D.H.L. Corp., 614 So. 2d 350 (La. App. 4th Cir. 1993).

One court has held that a judge may order a reduction of benefits, instead of a suspension of benefits, to recoup the overpayment.” Crews v. Alexas Corporation, 731 So.2d 338 (La. App. 5th Cir. 2/10/99).