

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND AND TWELVE

—
H.P. 1417 - L.D. 1913

An Act To Review and Restructure the Workers' Compensation System

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 39-A MRSA §153, sub-§10 is enacted to read:

10. Annual report to Legislature. The board shall collect and analyze data from Maine cases on permanent impairment ratings and costs to employers associated with the compensation for partial incapacity pursuant to section 213. The board shall provide annually by January 31st a report to the joint standing committee of the Legislature having jurisdiction over labor matters regarding the data collected.

Sec. 2. 39-A MRSA §205, sub-§9, ¶B, as amended by PL 2009, c. 280, §1 and affected by §2, is further amended to read:

B. In all circumstances other than the return to work or increase in pay of the employee under paragraph A, if the employer, insurer or group self-insurer determines that the employee is not eligible for compensation under this Act, the employer, insurer or group self-insurer may discontinue or reduce benefits only in accordance with this paragraph.

(1) If no order or award of compensation or compensation scheme has been entered, the employer, insurer or group self-insurer may discontinue or reduce benefits by sending a certificate by certified mail to the employee and to the board, together with any information on which the employer, insurer or group self-insurer relied to support the discontinuance or reduction. The employer may discontinue or reduce benefits no earlier than 21 days from the date the certificate was mailed to the employee, except that benefits paid pursuant to section 212, subsection 1 or section 213, subsection 1 may be discontinued or reduced based on the amount of actual documented earnings paid to the employee during the 21-day period if the employer files with the board the documentation or evidence that substantiates the earnings and the employer only reduces or discontinues benefits for any week for which it possesses evidence of such earning. The certificate must advise the employee of the date when the employee's benefits

will be discontinued or reduced, as well as other information as prescribed by the board, including the employee's appeal rights.

(2) If an order or award of compensation or compensation scheme has been entered, the employer, insurer or group self-insurer shall petition the board for an order to reduce or discontinue benefits and may not reduce or discontinue benefits until the matter has been ~~finally resolved through the dispute resolution procedures of this Act, any appeal proceedings have been completed and an order of reduction or discontinuance has been entered by the board~~ by a decree issued by a hearing officer. The employer, insurer or group self-insurer may reduce or discontinue benefits pursuant to such a decree pending a motion for findings of fact and conclusions of law or pending an appeal from that decree. Upon the filing of a petition, the employer may discontinue or reduce the weekly benefits being paid pursuant to section 212, subsection 1 or section 213, subsection 1 based on the amount of actual documented earnings paid to the employee after filing the petition. The employer shall file with the board the documentation or evidence that substantiates the earnings and the employer may discontinue or reduce weekly benefits only for weeks for which the employer possesses evidence of such earnings.

Sec. 3. 39-A MRSA §211, as amended by PL 1995, c. 560, Pt. G, §22, is further amended to read:

§211. Maximum benefit levels

Effective January 1, 1993, the maximum weekly benefit payable under section 212, 213 or 215 is \$441 or 90% of state average weekly wage, whichever is higher. Beginning on July 1, 1994, the maximum benefit level is ~~the higher of~~ \$441 or 90% of the state average weekly wage as adjusted annually utilizing the state average weekly wage as determined by the Department of Labor, whichever is higher. If the injured employee's date of injury is on or after January 1, 2013, the maximum benefit level is \$441 or 100% of the state average weekly wage as adjusted annually utilizing the state average weekly wage as determined by the Department of Labor, whichever is higher.

Sec. 4. 39-A MRSA §212, sub-§1, as enacted by PL 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

1. Total incapacity; date of injury prior to January 1, 2013. ~~While~~ If the injured employee's date of injury is prior to January 1, 2013, while the incapacity for work resulting from the injury is total, the employer shall pay the injured employee a weekly compensation equal to 80% of the employee's after-tax average weekly wage, but not more than the maximum benefit under section 211. Compensation must be paid for the duration of the incapacity.

Any employee who is able to perform full-time remunerative work in the ordinary competitive labor market in the State, regardless of the availability of such work in and around that employee's community, is not eligible for compensation under this section, but may be eligible for compensation under section 213.

Sec. 5. 39-A MRSA §212, sub-§1-A is enacted to read:

1-A. Total incapacity; date of injury on or after January 1, 2013. If the injured employee's date of injury is on or after January 1, 2013, while the incapacity for work resulting from the injury is total, the employer shall pay the injured employee a weekly compensation equal to $\frac{2}{3}$ of the employee's gross average weekly wages, earnings or salary, but not more than the maximum benefit under section 211. Compensation must be paid for the duration of the incapacity.

Any employee who is able to perform full-time remunerative work in the ordinary competitive labor market in the State, regardless of the availability of such work in and around that employee's community, is not eligible for compensation under this section, but may be eligible for compensation under section 213.

Sec. 6. 39-A MRSA §212, sub-§3, as enacted by PL 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

3. Specific loss benefits. In cases included in the following schedule, the incapacity is considered to continue for the period specified, and the compensation due is ~~80% of the after tax average weekly wage~~ calculated based on the date of injury subject to the maximum benefit set in section 211. Compensation under this subsection is available only for the actual loss of the following:

- A. Thumb, 65 weeks;
- B. First finger, 38 weeks;
- C. Second finger, 33 weeks;
- D. Third finger, 22 weeks;
- E. Fourth finger, 16 weeks;
- F. The loss of the first phalange of the thumb, or of any finger, is considered to be equal to the loss of $\frac{1}{2}$ of that thumb or finger, and compensation is $\frac{1}{2}$ of the amounts specified in paragraphs A to E. The loss of more than one phalange is considered as the loss of the entire finger or thumb. The amount received for more than one finger may not exceed the amount provided in this schedule for the loss of a hand;
- G. Great toe, 33 weeks;
- H. A toe other than the great toe, 11 weeks. The loss of the first phalange of any toe is considered to be equal to the loss of $\frac{1}{2}$ of that toe, and compensation is $\frac{1}{2}$ of the amounts specified in paragraphs F and G. The loss of more than one phalange is considered the loss of the entire toe;
- I. Hand, 215 weeks. An amputation between the elbow and wrist that is 6 or more inches below the elbow is considered a hand;
- J. Arm, 269 weeks. An amputation above the point specified in paragraph I is considered an arm;
- K. Foot, 162 weeks. An amputation between the knee and the foot 7 or more inches below the tibial table, or plateau, is considered a foot;

L. Leg, 215 weeks. An amputation above the point specified in paragraph K is considered a leg; and

M. Eye, 162 weeks. Eighty percent loss of vision of one eye constitutes the total loss of that eye.

Sec. 7. 39-A MRSA §213, sub-§1, as amended by PL 2003, c. 52, §1, is repealed and the following enacted in its place:

1. Benefit and duration. While the incapacity for work is partial, the employer shall pay the injured employee a weekly compensation as follows.

A. If the injured employee's date of injury is prior to January 1, 2013, the weekly compensation is equal to 80% of the difference between the injured employee's after-tax average weekly wage before the personal injury and the after-tax average weekly wage that the injured employee is able to earn after the injury, but not more than the maximum benefit under section 211. Compensation must be paid for the duration of the disability if the employee's permanent impairment, determined according to subsection 1-A and the impairment guidelines adopted by the board pursuant to section 153, subsection 8, resulting from the personal injury is in excess of 15% to the body. In all other cases an employee is not eligible to receive compensation under this paragraph after the employee has received a total of 260 weeks of compensation under section 212, subsection 1, this paragraph or both. The board may in the exercise of its discretion extend the duration of benefit entitlement beyond 260 weeks in cases involving extreme financial hardship due to inability to return to gainful employment. This authority may be delegated by the board, on a case-by-case basis, to a hearing officer or a panel of 3 hearing officers. Decisions made under this paragraph must be made expeditiously. A decision under this paragraph made by a hearing officer or a panel of 3 hearing officers may not be appealed to the board under section 320, but may be appealed pursuant to section 322.

B. If the injured employee's date of injury is on or after January 1, 2013, the weekly compensation is equal to 2/3 of the difference, due to the injury, between the employee's average gross weekly wages, earnings or salary before the injury and the average gross weekly wages, earnings or salary that the employee is able to earn after the injury, but not more than the maximum benefit under section 211. An employee is not eligible to receive compensation under this paragraph after the employee has received a total of 520 weeks of compensation under section 212, subsection 1-A, this paragraph or both. The board may in the exercise of its discretion extend the duration of benefit entitlement beyond 520 weeks in cases involving extreme financial hardship due to inability to return to gainful employment. This authority may be delegated by the board, on a case-by-case basis, to a hearing officer or a panel of 3 hearing officers. The board, hearing officer or panel shall make a decision under this paragraph expeditiously. A decision under this paragraph made by a hearing officer or a panel of 3 hearing officers may not be appealed to the board under section 320, but may be appealed pursuant to section 321-A.

Orders extending benefits beyond 520 weeks are not subject to review more often than every 2 years from the date of the board order or request allowing an extension.

Sec. 8. 39-A MRSA §213, sub-§1-B is enacted to read:

1-B. Long-term partial incapacity; date of injury on or after January 1, 2013.

After the exhaustion of benefits under subsection 1, paragraph B if the whole person permanent impairment resulting from the injury is in excess of 18% and if the employee is working and the employee's earnings, as measured by average weekly earnings over the most recent 26-week period documented by payroll records or tax returns, is 65% or less of the preinjury average weekly wage, the employer shall pay weekly compensation equal to 2/3 of the difference between the employee's average weekly wage at the time of the injury and the employee's postinjury wage, but not more than the maximum benefit under section 211. In order for the employee to qualify for benefits under this subsection, the employee's actual earnings must be commensurate with the employee's earning capacity, which includes consideration of the employee's physical and psychological work capacity as determined by an independent examiner under section 312. In addition, in order for the employee to qualify for benefits under this subsection, the employee must have earnings from employment for a period of not less than 12 months within a 24-month period prior to the expiration of the 520-week durational limit under subsection 1, paragraph B. Compensation under this subsection must be paid at a fixed rate.

While the employee is claiming or receiving extended partial incapacity benefits under this subsection, the employee shall complete and provide quarterly employment status reports and provide copies of current tax returns as early as practicable after the return is filed.

The employee's entitlement to extended partial incapacity benefits under this subsection is determined based upon the facts that exist at the time of expiration of 520 weeks of benefits under subsection 1, paragraph B. If the employee is not entitled to extended partial incapacity benefits upon the expiration of 520 weeks of benefits under subsection 1, paragraph B, the employee's entitlement to partial incapacity benefits expires. If the employee is entitled to extended partial incapacity benefits under this subsection, once the employee's earnings, as measured by average weekly earnings over the most recent 26-week period, are equal to or greater than the preinjury average weekly wage, the employee's entitlement to extended partial incapacity benefits under this subsection terminates permanently.

Sec. 9. 39-A MRSA §213, sub-§3-A is enacted to read:

3-A. Dates of injury on or after January 1, 2006 and before January 1, 2013. If the injured employee's date of injury is on or after January 1, 2006 and before January 1, 2013, the permanent impairment threshold is adjusted to a whole person impairment in excess of 12%.

Sec. 10. 39-A MRSA §214, sub-§1, ¶B, as enacted by PL 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

B. If an injured employee's date of injury is prior to January 1, 2013 and the employee is employed at any job and the average weekly wage of the employee is less than that which the employee received before the date of injury, the employee is entitled to receive weekly benefits under this Act equal to 80% of the difference between the injured employee's after-tax weekly wage before the date of injury and

the after-tax weekly wage that the injured employee is able to earn after the date of injury, but not more than the maximum weekly rate of compensation, as determined under section 211.

Sec. 11. 39-A MRSA §214, sub-§1, ¶B-1 is enacted to read:

B-1. If an injured employee's date of injury is on or after January 1, 2013 and the employee is employed at any job and the average weekly wage of the employee is less than that which the employee received before the date of injury, the employee is entitled to receive weekly benefits under this Act equal to 2/3 of the difference, due to the injury, between the employee's average gross weekly wages, earnings or salary before the injury and the average gross weekly wages, earnings or salary that the employee is able to earn after the injury, but not more than the maximum weekly rate of compensation, as determined under section 211.

Sec. 12. 39-A MRSA §215, sub-§1, as amended by PL 2007, c. 361, §1 and affected by §2, is further amended to read:

1. Death of employee; date of injury prior to January 1, 2013. If an injured employee's date of injury is prior to January 1, 2013 and if death results from the injury of ~~an~~ the employee, the employer shall pay or cause to be paid to the dependents of the employee who were wholly dependent upon the employee's earnings for support at the time of the injury; a weekly payment equal to 80% of the employee's after-tax average weekly wage, but not more than the maximum benefit under section 211, for a period of 500 weeks from the date of death. If the employee leaves dependents only partially dependent upon the employee's earnings for support at the time of injury, the employer shall pay weekly compensation equal to the same proportion of the weekly payments for the benefit of persons wholly dependent, as 80% of the amount contributed by the employee to such partial dependents bears to the annual earnings of the deceased at the time of injury. If, at the expiration of the 500-week period, any wholly or partially dependent person is less than 18 years of age, the employer shall continue to pay or cause to be paid the weekly compensation until that person reaches the age of 18.

If a dependent spouse dies or becomes a dependent of another person, the payments must cease upon the payment to the spouse of the balance of the compensation to which the spouse would otherwise have been entitled but in no event to exceed the sum of \$500.00. The remaining weeks of compensation, if any, are payable to those persons either wholly or partially dependent upon the employee for support at the employee's death. When, at the expiration of the 500-week period, any wholly or partially dependent person is less than 18 years of age, the employer shall continue to pay or cause to be paid the weekly compensation, until that person reaches the age of 18. The payment of compensation to any dependent child after the expiration of the 500-week period ceases when the child reaches the age of 18 years, if at the age of 18 years the child is neither physically nor mentally incapacitated from earning, or when the child reaches the age of 16 years and thereafter is self-supporting for 6 months. If the child ceases to be self-supporting thereafter, the dependency must be reinstated. As long as any of the 500 weeks of compensation remain, that compensation is payable to the person either wholly or partially dependent upon the deceased employee for support at the time of the employee's death, with the exception of a dependent spouse who becomes a dependent of another. If

a wholly dependent or partially dependent child who reaches 18 years of age is either physically or mentally incapacitated so as to be unable to earn a living as determined by the board, the payments must continue until such time as the child either dies or is no longer physically or mentally incapacitated from earning.

Sec. 13. 39-A MRSA §215, sub-§1-A is enacted to read:

1-A. Death of employee; date of injury on or after January 1, 2013. If an injured employee's date of injury is on or after January 1, 2013 and if death results from the injury of the employee, the employer shall pay or cause to be paid to the dependents of the employee who were wholly dependent upon the employee's earnings for support at the time of the injury a weekly payment equal to 2/3 of the employee's gross average weekly wages, earnings or salary, but not more than the maximum benefit under section 211, for a period of 500 weeks from the date of death. If the employee leaves dependents only partially dependent upon the employee's earnings for support at the time of injury, the employer shall pay weekly compensation equal to the same proportion of the weekly payments for the benefit of persons wholly dependent, as 2/3 of the amount contributed by the employee to such partial dependents bears to the annual earnings of the deceased at the time of injury. If, at the expiration of the 500-week period, any wholly or partially dependent person is less than 18 years of age, the employer shall continue to pay or cause to be paid the weekly compensation until that person reaches the age of 18.

If a dependent spouse dies or becomes a dependent of another person, the payments must cease upon the payment to the spouse of the balance of the compensation to which the spouse would otherwise have been entitled but in no event to exceed the sum of \$500.00. The remaining weeks of compensation, if any, are payable to those persons either wholly or partially dependent upon the employee for support at the employee's death. When, at the expiration of the 500-week period, any wholly or partially dependent person is less than 18 years of age, the employer shall continue to pay or cause to be paid the weekly compensation, until that person reaches the age of 18. The payment of compensation to any dependent child after the expiration of the 500-week period ceases when the child reaches the age of 18 years, if at the age of 18 years the child is neither physically nor mentally incapacitated from earning, or when the child reaches the age of 16 years and thereafter is self-supporting for 6 months. If the child ceases to be self-supporting thereafter, the dependency must be reinstated. As long as any of the 500 weeks of compensation remain, that compensation is payable to the person either wholly or partially dependent upon the deceased employee for support at the time of the employee's death, with the exception of a dependent spouse who becomes a dependent of another. If a wholly dependent or partially dependent child who reaches 18 years of age is either physically or mentally incapacitated so as to be unable to earn a living as determined by the board, the payments must continue until such time as the child either dies or is no longer physically or mentally incapacitated from earning.

Sec. 14. 39-A MRSA §217, sub-§8 is enacted to read:

8. Presumption. If an employee is participating in a rehabilitation plan ordered pursuant to subsection 2, there is a presumption that work is unavailable to the employee for as long as the employee continues to participate in employment rehabilitation.

Sec. 15. 39-A MRSA §221, sub-§2, ¶A, as enacted by PL 2009, c. 521, §1 and affected by §2, is repealed and the following enacted in its place:

A. "After-tax amount" means:

(1) For benefits paid on claims for which the date of injury is prior to January 1, 2013, the gross amount of any benefit under subsection 3, paragraph A, subparagraph (2), (3), (4) or (5) reduced by the prorated weekly amount that would have been paid, if any, under the Federal Insurance Contributions Act, 26 United States Code, Sections 3101 to 3126, state income tax and federal income tax, calculated on an annual basis using as the number of exemptions the disabled employee's dependents plus the employee, and without excess itemized deductions. In determining the after-tax amount the tables provided for in section 102, subsection 1 must be used. The gross amount of any benefit under subsection 3, paragraph A, subparagraph (2), (3), (4) or (5) is presumed to be the same as the average weekly wage for purposes of the table. The applicable 80% of after-tax amount as provided in the table, multiplied by 1.25, is conclusive for determining the after-tax amount of benefits under subsection 3, paragraph A, subparagraph (2), (3), (4) or (5); and

(2) For benefits paid on claims for which the date of injury is on or after January 1, 2013, the net weekly amount of any old-age insurance benefit or benefit under an employee benefit plan, reduced by the prorated weekly amount that would have been paid, if any, under the Federal Insurance Contributions Act, 26 United States Code, Sections 3101 to 3126, federal income and state income taxes, calculated on an annual basis. The after-tax amount of any benefit subject to income taxes must be determined by using the maximum number of dependents' allowances to which the employee is entitled and the standard deduction or zero bracket amount applicable to the employee's filing status.

Sec. 16. 39-A MRSA §301, first ¶, as enacted by PL 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

Proceedings For claims for which the date of injury is prior to January 1, 2013, proceedings for compensation under this Act, except as provided, may not be maintained unless a notice of the injury is given within 90 days after the date of injury. For claims for which the date of injury is on or after January 1, 2013, proceedings for compensation under this Act, except as provided, may not be maintained unless a notice of the injury is given within 30 days after the date of injury. The notice must include the time, place, cause and nature of the injury, together with the name and address of the injured employee. The notice must be given by the injured employee or by a person in the employee's behalf, or, in the event of the employee's death, by the employee's legal representatives, or by a dependent or by a person in behalf of either.

Sec. 17. 39-A MRSA §302, as enacted by PL 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

§302. Sufficiency of notice; knowledge of employer; extension of time for notice

A notice given under section 301 may not be held invalid or insufficient by reason of any inaccuracy in stating any of the facts required for proper notice, unless it is shown that it was the intention to mislead and that the employer was in fact misled by the notice. Want of notice is not a bar to proceedings under this Act if it is shown that the employer or the employer's agent had knowledge of the injury. Any time during which the employee is unable by reason of physical or mental incapacity to give the notice, or fails to do so on account of mistake of fact, may not be included in the 90-day period specified computation of proper notice. In case of the death of the employee within that period, there is allowed for giving the notice 3 months after the death.

Sec. 18. 39-A MRSA §306, sub-§1, as enacted by PL 1999, c. 354, §6 and affected by §10, is amended to read:

1. Statute of limitations. Except as provided in this section, a petition brought under this Act is barred unless filed within 2 years after the date of injury or the date the employee's employer files a required first report of injury as if required in section 303, whichever is later.

Sec. 19. 39-A MRSA §320, 2nd ¶, as amended by PL 2003, c. 608, §13, is further amended to read:

If a hearing officer asks for review, the time for appeal to the Law Court Appellate Division pursuant to section ~~322~~ 321-B is stayed and no further action may be taken until a decision of the board has been made. If the board reviews a decision of a hearing officer, any appeal must be from the decision of the board. The time for appeal begins upon the board's issuance of a written decision on the merits of the case or written notice that the board denies review.

Sec. 20. 39-A MRSA §§321-A and 321-B are enacted to read:

§321-A. Appellate Division

1. Establishment. There is established within the board the Appellate Division, referred to in this subchapter as "the division."

2. Composition. The division is composed of full-time hearing officers who are appointed by the executive director of the board to serve on panels to review decisions under section 318. The executive director of the board shall appoint no fewer than 3 full-time hearing officers to serve as members of a panel. A hearing officer may not serve as a member of a panel that reviews a decision of that hearing officer. A hearing officer may be a member of more than one panel at the discretion of the executive director of the board.

3. Rules. The board shall adopt rules of procedure designed to provide a prompt and inexpensive review of a decision by a hearing officer. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

§321-B. Appeal from hearing officer decision

1. Procedure. An appeal of a decision by a hearing officer pursuant to section 318 to the division must be conducted pursuant to this subsection.

A. A party in interest may file with the division a notice of intent to appeal a decision by a hearing officer pursuant to section 318 within 20 days after receipt of notice of the filing of the decision by the hearing officer.

B. At the time of filing an appeal under this section, the appellant shall file with the division a copy of the decision, order or agreement appealed. The failure of an appellant who timely files an appeal in accordance with paragraph A to provide a copy of the decision, order or agreement does not affect the jurisdiction of the division to determine the appeal on its merits unless the appellee shows substantial prejudice from that failure.

2. Basis. A finding of fact by a hearing officer is not subject to appeal under this section.

3. Action. The division, after due consideration, may reverse or modify a decree of a hearing officer and shall issue a written decision. The written decision of the division must be filed with the board and mailed to the parties or their counsel.

4. Publication of decisions. The division shall publish the decisions issued under subsection 3 and make them available to the public at such cost as is required to pay for suitable publication. The division shall distribute copies of all written decisions to the State Law Library and the county law libraries.

Sec. 21. 39-A MRSA §322, sub-§1, as enacted by PL 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

1. Appeals. Any party in interest may present a copy of the decision of ~~a hearing officer~~ the division or a decision of the board, if the board has reviewed a decision pursuant to section 320, to the clerk of the Law Court within 20 days after receipt of notice of the filing of the decision by the ~~hearing officer~~ division or the board. Within 20 days after the copy is filed with the Law Court, the party seeking review by the Law Court shall file a petition seeking appellate review with the Law Court that sets forth a brief statement of the facts, the error or errors of law that are alleged to exist and the legal authority supporting the position of the appellant.

In House of Representatives, 2012

Read twice and passed to be enacted.

..... Speaker

In Senate, 2012

Read twice and passed to be enacted.

..... President

Approved 2012

..... Governor