

**§213. Compensation for partial incapacity**

**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 an administrative law judge or a panel of 3 administrative law judges. Decisions made under this paragraph must be made expeditiously. A decision under this paragraph made by an administrative law judge or a panel of 3 administrative law judges may not be appealed to the board under section 320, but may be appealed pursuant to section 322. [PL 2015, c. 297, §8 (AMD).]

B. If the injured employee's date of injury is on or after January 1, 2013 but before January 1, 2020, 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 an administrative law judge or a panel of 3 administrative law judges. The board, administrative law judge or panel shall make a decision under this paragraph expeditiously. A decision under this paragraph made by an administrative law judge or a panel of 3 administrative law judges 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. [PL 2019, c. 344, §6 (AMD).]

C. If the injured employee's date of injury is on or after January 1, 2020, 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 624 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 624 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 an administrative law judge or a panel of 3 administrative law judges. The board, administrative law judge or panel shall make a decision under this paragraph expeditiously. A decision under this paragraph made by an administrative law judge or a panel of 3 administrative

law judges may not be appealed to the board under section 320, but may be appealed pursuant to section 321-A.

Orders extending benefits beyond 624 weeks are not subject to review more often than every 2 years from the date of the board order or request allowing an extension. [PL 2019, c. 344, §7 (NEW).]

[PL 2019, c. 344, §§6-7 (AMD).]

**1-A. Determination of permanent impairment.** For purposes of this section, "permanent impairment" includes only permanent impairment resulting from:

A. The work injury at issue in the determination and any preexisting physical condition or injury that is aggravated or accelerated by the work injury at issue in the determination; or [PL 2001, c. 712, §2 (NEW); PL 2001, c. 712, §6 (AFF).]

B. For dates of injury on or after January 1, 2002, the work injury at issue in the determination and:

(1) Any prior injury that arose out of and in the course of employment for which a report of injury was completed pursuant to section 303 and the employee received a benefit or compensation under this Title, which has not been denied by the board, and that combines with the work injury at issue in the determination to contribute to the employee's incapacity, except that a prior injury that was the subject of a lump-sum settlement approved pursuant to section 352 that had a finding of permanent impairment equal to or in excess of the then applicable permanent impairment threshold may not be included; or

(2) Any preexisting physical condition or injury that is aggravated or accelerated by the work injury at issue in the determination. [PL 2001, c. 712, §2 (NEW); PL 2001, c. 712, §6 (AFF).]

Except as set forth in this subsection, "permanent impairment" does not include a condition that is not caused, aggravated or accelerated by the work injury.

[PL 2001, c. 712, §2 (NEW); PL 2001, c. 712, §6 (AFF).]

**1-B. Long-term partial incapacity; date of injury on or after January 1, 2013 but before January 1, 2020.** After the exhaustion of benefits under subsection 1, paragraph B for an injury occurring on or after January 1, 2013 but before January 1, 2020, 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. [PL 2019, c. 344, §8 (AMD).]

**2. Threshold adjustment.** Effective January 1, 1998 and every other January 1st thereafter, the board, using an independent actuarial review based upon actuarially sound data and methodology, must adjust the 15% impairment threshold established in subsection 1 so that 25% of all cases with permanent impairment will be expected to exceed the threshold and 75% of all cases with permanent impairment will be expected to be less than the threshold. The actuarial review must include all cases receiving permanent impairment ratings on or after January 1, 1993, irrespective of date of injury, but may utilize a cutoff date of 90 days prior to each adjustment date to permit the collection and analysis of data. The data must be adjusted to reflect ultimate loss development. In order to ensure the accuracy of the data, the board shall require that all cases involving permanent injury, including those settled pursuant to section 352, include an impairment rating performed in accordance with subsection 1-A and the guidelines adopted by the board and either agreed to by the parties or determined by the board. Each adjusted threshold is applicable to all cases with dates of injury on or after the date of adjustment and prior to the date of the next adjustment.

[PL 2001, c. 712, §3 (AMD); PL 2001, c. 712, §6 (AFF).]

**3. Dates of injury between January 1, 1993 and January 1, 1998.** An employee whose date of injury is between January 1, 1993 and January 1, 1998, who has not settled the claim pursuant to section 352 and whose impairment rating is 15% or less to the body but exceeds the adjusted threshold established pursuant to subsection 2 on January 1, 1998 is entitled to compensation for the duration of the disability. Reimbursement to the employer, insurer or group self-insurer for the payment of all benefits payable in excess of 260 weeks of compensation under this subsection must be made from the Supplemental Benefits Fund created in section 355-A.

[PL 2001, c. 448, §1 (AMD).]

**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%.

[PL 2011, c. 647, §9 (NEW).]

**4. Extension of 260-week limitation.** Effective January 1, 1998 and every January 1st thereafter, the 260-week limitation contained in subsection 1 must be extended 52 weeks for every year the board finds that the frequency of such cases involving the payment of benefits under this section or section 212 is no greater than the national average based on frequency from the latest unit statistical plan aggregate data for Maine and on a countrywide basis, adjusted to a unified industry mix. The 260-week limitation contained in subsection 1 may not be extended under this subsection to more than 520 weeks. For payments relating to injuries occurring before January 1, 2000, reimbursement to the employer, insurer or group self-insurer for the payment of all benefits for additional weeks payable pursuant to this subsection must be made from the Supplemental Benefits Fund created in section 355-A.

[PL 2017, c. 288, Pt. A, §50 (AMD).]

## SECTION HISTORY

PL 1991, c. 885, §A8 (NEW). PL 1991, c. 885, §§A9-11 (AFF). PL 1999, c. 404, §1 (AMD). PL 2001, c. 448, §§1,2 (AMD). PL 2001, c. 712, §§1-3 (AMD). PL 2001, c. 712, §6 (AFF). PL

2003, c. 52, §1 (AMD). PL 2011, c. 647, §§7-9 (AMD). PL 2015, c. 297, §8 (AMD). PL 2017, c. 288, Pt. A, §50 (AMD). PL 2019, c. 344, §§6-8 (AMD).

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