CHAPTER 7

PROCEDURES

SUBCHAPTER 1

BOARD PROCEEDINGS

§301. Notice of injury within 90 days

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 and prior to January 1, 2020, 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. For claims for which the date of injury is on or after January 1, 2020, proceedings for compensation under this Act, except as provided, may not be maintained unless a notice of the injury is given within 60 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. [PL 2019, c. 344, §13 (AMD).]

The notice must be given to the employer, or to one employer if there are more employers than one; or, if the employer is a corporation, to any official of the corporation; or to any employee designated by the employer as one to whom reports of accidents to employees should be made. It may be given to the general superintendent or to the supervisor in charge of the particular work being done by the employee at the time of the injury. Notice may be given to any doctor, nurse or other emergency medical personnel employed by the employer for the treatment of employee injuries and on duty at the work site. If the employee is self-employed, notice must be given to the insurance carrier or to the insurance carrier's agent or agency with which the employer normally does business. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

SECTION HISTORY

PL 1991, c. 885, §A8 (NEW). PL 1991, c. 885, §§A9-11 (AFF). PL 2011, c. 647, §16 (AMD). PL 2019, c. 344, §13 (AMD).

§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 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. [PL 2011, c. 647, §17 (AMD).]

SECTION HISTORY

PL 1991, c. 885, §A8 (NEW). PL 1991, c. 885, §§A9-11 (AFF). PL 2011, c. 647, §17 (AMD).

§303. Reports to board

When any employee has reported to an employer under this Act any injury arising out of and in the course of the employee's employment that has caused the employee to lose a day's work, or when the employer has knowledge of any such injury, the employer shall report the injury to the board within 7 days after the employer receives notice or has knowledge of the injury. The employer shall also report the average weekly wages or earnings of the employee, as defined in section 102, subsection 4, together with any other information required by the board, within 30 days after the employer receives notice or has knowledge of a claim for compensation under section 212, 213 or 215, unless a wage statement has previously been filed with the board. The wage statement must report the earnings or wages of the employee on a weekly basis, unless the employee is paid on other than a weekly basis, in which case the employer may report the earnings or wages in the same manner as earnings or wages are paid. A copy of the wage information must be mailed to the employee. The employer shall report when the injured employee resumes the employee's employment and the amount of the employee's wages or earnings at that time. The employer shall complete a first report of injury form for any injury that has required the services of a health care provider within 7 days after the employer receives notice or has knowledge of the injury. The employer shall provide a copy of the form to the injured employee and retain a copy for the employer's records but is not obligated to submit the form to the board unless the injury later causes the employee to lose a day's work. The employer is also required to submit the form to the board if the board has finally adopted a major substantive rule pursuant to Title 5, chapter 375, subchapter 2-A to require the form to be filed electronically. [PL 2023, c. 205, §6 (AMD).]

If an employee has had an incapacity beyond the 14-day period established in section 204 and subsequently returns to work and attends medical appointments related to the injury, the employer is not required to report the lost time for such appointments to the board if the employee did not lose wages for attending such appointments. [PL 2015, c. 297, §9 (NEW).]

SECTION HISTORY

PL 1991, c. 885, §A8 (NEW). PL 1991, c. 885, §§A9-11 (AFF). PL 1999, c. 354, §5 (AMD). PL 2003, c. 471, §1 (AMD). PL 2013, c. 63, §8 (AMD). PL 2015, c. 297, §9 (AMD). PL 2023, c. 205, §6 (AMD).

§304. Board notice

1. Inform employee. Immediately upon receipt of the employer's report of injury required by section 303, the board shall contact the employee and provide information explaining the compensation system and the employee's rights. The board shall advise the employee how to contact the board for further assistance and shall provide that assistance.
[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

2. Notice to employer. The board shall notify the employer when a mediation or formal hearing is scheduled, when a notice of settlement is filed and when any other proceeding regarding a claim of an employee of that employer is scheduled.
[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

3. Notice by board. Within 15 days of receipt of an employer's report of injury, as required by section 303, unless it has received a petition for award of compensation relating to the injured employee, the board shall take reasonable steps to notify the employee that, unless the employer disputes the claim, the employer is required to pay compensation within the time limits established in section 205; that a petition for award may be filed; and that rights under this Act may not be protected unless a petition of award or memorandum of payment is on file with the board within 2 years of the injury.
[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

SECTION HISTORY

PL 1991, c. 885, §A8 (NEW). PL 1991, c. 885, §§A9-11 (AFF).

§305. Petition for award; protective decree

In the event of a controversy as to the responsibility of an employer for the payment of compensation, any party in interest may file in the office of the board a petition for award of compensation setting forth the names and residences of the parties, the facts relating to the employment at the time of the injury, the knowledge of the employer or notice of the occurrence of the injury, the character and extent of the injury and the claims of the petitioner with reference to the injury, together with such other facts as may be necessary and proper for the determination of the rights of the petitioner. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

If, following an injury that causes no incapacity for work, the employer and employee reach an agreement that the employee has received a personal injury arising out of and in the course of employment, a memorandum of such an agreement signed by the parties may be filed in the office of the board. The memorandum must set forth the names and residences of the parties, the facts relating to the employment at the time of the injury, the time, place and cause of the injury, and the nature and extent of the injury. Any member of the board is empowered, without the necessity of the filing of a petition for award, to render a protective decree based on that memorandum. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

SECTION HISTORY

PL 1991, c. 885, §A8 (NEW). PL 1991, c. 885, §§A9-11 (AFF).

§306. Time for filing petitions

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 if required in section 303, whichever is later.
[PL 2011, c. 647, §18 (AMD).]

2. Payment of benefits. If an employer or insurer pays benefits under this Act, with or without prejudice, within the period provided in subsection 1, the period during which an employee or other interested party must file a petition is 6 years from the date of the most recent payment.

A. The provision of medical care for an injury or illness by or under the supervision of a health care provider employed by, or under contract with, the employer is a payment of benefits with respect to that injury or illness if:

(1) Care was provided for that injury or illness on 6 or more occasions in the 12-month period after the initial treatment; and

(2) The employer or the health care provider knew or should have known that the injury or illness was work-related.

For the purposes of this paragraph, "health care provider" has the same meaning as provided in rules of the board. [PL 2001, c. 435, §1 (NEW); PL 2001, c. 435, §2 (AFF).]
[PL 2001, c. 435, §1 (AMD); PL 2001, c. 435, §2 (AFF).]

3. Establishment of injury. If the occurrence of a work-related injury is established by board decree, mediation report or agreement of the parties without the payment of benefits as provided in subsection 2, the period during which an employee or other interested party may file a petition is 6 years from the date of that decree, report or agreement.
[PL 1999, c. 354, §6 (NEW); PL 1999, c. 354, §10 (AFF).]

4. Physical or mental incapacity. If an employee is unable to file a petition because of physical or mental incapacity, the period of that incapacity is not included in the limitation period provided in subsection 1.
[PL 1999, c. 354, §6 (NEW); PL 1999, c. 354, §10 (AFF).]

5. Mistake of fact. If an employee fails to file a petition within the limitation period provided in subsection 1 because of mistake of fact as to the cause or nature of the injury, the employee may file a petition within a reasonable time, subject to the 6-year limitation provided in subsection 2.
[PL 1999, c. 354, §6 (NEW); PL 1999, c. 354, §10 (AFF).]

6. Death of employee. If an employee dies as a result of a work-related injury, a petition is barred unless filed within one year after the death or 2 years from the date of injury, whichever is later, but in any event not later than 6 years from the date of last payment.
[PL 1999, c. 354, §6 (NEW); PL 1999, c. 354, §10 (AFF).]

SECTION HISTORY

PL 1991, c. 885, §A8 (NEW). PL 1991, c. 885, §§A9-11 (AFF). PL 1999, c. 354, §6 (RPR). PL 1999, c. 354, §10 (AFF). PL 2001, c. 435, §1 (AMD). PL 2001, c. 435, §2 (AFF). PL 2011, c. 647, §18 (AMD).

§307. Procedure for filing petitions; no response required; mediation

1. Petition. Any interested party may seek a determination of rights under this Act by filing with the board any petition authorized under this Act.
[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

2. Service upon responding party. Copies of all petitions filed under this Act must be served by certified mail, return receipt requested, to the other parties named in the petition. In the case of a petition by an employee, a copy of the petition must be served upon the employer, employer's insurer or group self-insurer.
[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

3. No response required. No response to a petition filed under this section is required.
[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

4. Procedure. A petition filed under this section must be referred by the board to mediation.
[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

5. Mediation. Mediation must be held in accordance with section 313, subsections 2 to 5.
[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

SECTION HISTORY

PL 1991, c. 885, §A8 (NEW). PL 1991, c. 885, §§A9-11 (AFF).

§308. Employment

1. Return to employment. Any person receiving compensation under this Act who returns to employment or engages in new employment after that person's injury shall file a written report of that employment with the board and that person's previous employer within 7 days of that person's return to work. This report must include the identity of the employee, the employee's employer and the amount of weekly wages or earnings received or to be received by the employee. The board shall send the employee notice of the employee's responsibility to notify the board and the employer when the employee returns to work and the employee's responsibility to submit the reports required under this section.
[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

2. Employment status reports. At the previous employer's request, any person receiving compensation under this Act who has not returned to that person's previous employment must submit quarterly employment status reports to that employer. The report is due 90 days after the date of injury, or after the filing of the report under subsection 1, and every 90 days thereafter. The report must be in a form prescribed by the board and must indicate whether the employee has been employed, changed employment or performed any services for compensation during the previous 90 days, the nature of the

employment or services, the name and address of the employer or person for whom the services were performed and any other information that the board by rule may require. Any employer requesting a quarterly report under this subsection must provide the employee with the prescribed form at least 15 days prior to the date on which it is due.
[PL 2023, c. 405, Pt. A, §144 (AMD).]

SECTION HISTORY

PL 1991, c. 885, §A8 (NEW). PL 1991, c. 885, §§A9-11 (AFF). PL 2023, c. 405, Pt. A, §144 (AMD).

§309. Subpoenas; evidence; discovery

1. Subpoenas. Any board member or designee of the board may administer oaths and any board member or designee of the board may issue subpoenas for witnesses and subpoenas duces tecum to compel the production of books, papers and photographs relating to any questions in dispute before the board, any matters involved in a hearing or an audit conducted pursuant to section 359. Witness fees in all proceedings under this Act are the same as for witnesses before the Superior Court. When a witness, subpoenaed and obliged to attend before the board or any member or designee of the board, fails to do so without reasonable excuse, the Superior Court or any Justice of the Superior Court may, on application of the Attorney General made at the written request of a member of the board, compel obedience by attachment proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from that court or a refusal to testify in the court.
[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

2. Evidence. The board or its designee need not observe the rules of evidence observed by courts, but shall observe the rules of privilege recognized by law. The board or its designee shall admit evidence if it is the kind of evidence on which reasonable persons are accustomed to relying in the conduct of serious affairs. The board or its designee may exclude irrelevant or unduly repetitious evidence.
[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

3. Witnesses; discovery. All witnesses must be sworn. Sworn written evidence may not be admitted unless the author is available for cross-examination or subject to subpoena; except that sworn statements by a medical doctor or osteopathic physician relating to medical questions, by a psychologist relating to psychological questions, by a chiropractor relating to chiropractic questions, by a certified nurse practitioner who qualifies as an advanced practice registered nurse relating to advanced practice registered nursing questions or by a physician's assistant relating to physician assistance questions are admissible in workers' compensation hearings only if notice of the testimony to be used is given and service of a copy of the letter or report is made on the opposing counsel 14 days before the scheduled hearing.

Depositions or subpoenas of health care practitioners who have submitted sworn written evidence are permitted only if the administrative law judge finds that the testimony is sufficiently important to outweigh the delay in the proceeding.

The board may establish procedures for the prefiling of summaries of the testimony of any witness in written form. In all proceedings before the board or its designee, discovery beyond that specified in this section is available only upon application to the board, which may approve the application in the exercise of its discretion.
[PL 2015, c. 297, §10 (AMD).]

4. Contempts before board. A person may not, in proceedings before the board disobey or resist any lawful order, process or writ; misbehave during a hearing or so near the place of hearing as to obstruct the hearing; neglect to produce, after having been ordered to do so, any pertinent document;

or refuse to appear after having been subpoenaed or, upon appearing, refuse to be examined according to law.

If any person violates this subsection, the board shall certify the facts to a Justice of the Superior Court in the county where the alleged offense occurred and the justice may serve or cause to be served on that person an order requiring that person to appear before the justice on a day certain to show cause why the person should not be adjudged in contempt by reason of the facts so certified. The justice shall, upon the appearance of that person, in a summary manner, hear the evidence as to the acts complained of and, if it is such as to warrant doing so, punish that person in the same manner and to the same extent as for a contempt committed before the justice, or commit that person on the same conditions as if the doing of the forbidden act had occurred with reference to the process of the Superior Court or in the presence of the justice.
[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

SECTION HISTORY

PL 1991, c. 885, §A8 (NEW). PL 1991, c. 885, §§A9-11 (AFF). PL 2005, c. 99, §1 (AMD). PL 2015, c. 297, §10 (AMD).

§310. Protection

Except for statements made in proceedings before the board, a statement to any investigator or employer's representative, of any kind, oral or written, recorded or unrecorded, made by the injured employee is not admissible in evidence or considered in any way in any proceeding under this Act, except in accordance with this section. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

1. Admissible statements. A statement made to any investigator or employer's representative, of any kind, oral or written, recorded or unrecorded, made by the injured employee is admissible in evidence or may be considered in proceedings only if:

A. It is in writing; [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

B. A true copy of the statement is delivered to the employee by certified mail; and [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

C. The employee has been previously advised in writing of the following:

(1) That the statement may be used against the employee;

(2) That the employer or insurance carrier may have pecuniary interest adverse to the employee;

(3) That the employee may consult with counsel prior to making any statements;

(4) That the employee may decline to make any statement; and

(5) That the employer may not discriminate against the employee in any manner for refusing to make such a statement or exercising in any way the employee's rights under this Act. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

2. Exception. This section does not apply to agreements for the payment of compensation made pursuant to this Act or to the admissibility of statements to show compliance with the notice requirements of sections 301 and 302.
[RR 1993, c. 1, §139 (COR).]

3. Application. This section applies only to employees injured prior to June 30, 1985.
[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

SECTION HISTORY

PL 1991, c. 885, §A8 (NEW). PL 1991, c. 885, §§A9-11 (AFF). RR 1993, c. 1, §139 (COR).

§311. Inadmissible statements

No statement of any kind made by the injured employee to any investigator, employer or employer's representative, whether oral or written, recorded or unrecorded, may be admitted into evidence or considered in any way in any proceeding under this Act if it was obtained by means of duress on the part of the investigator, employer or employer's representative. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

1. Duress defined. For the purpose of this section, "duress" is not limited to its common law definition, but includes:

A. Implied or expressed threats relating to the employment of the employee or the employment of a relative of the employee; [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

B. Implied or expressed threats of extensive litigation and appeals of the employee's claim; [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

C. Misleading, false or incomplete statements of law or any misleading, false or incomplete legal opinion given to the employee relating to the employee's eligibility for benefits under this Act; [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

D. Misleading, false or incomplete statements of fact knowingly made to the employee; [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

E. The taking of unfair advantage of an employee's physical, mental or economic problems or shortcomings; and [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

F. Interrogations or investigations conducted under such circumstances as to be severely intimidating to the employee. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

2. Exception. This section does not apply to agreements for the payment of compensation made under this Act or to the admissibility of statements to show compliance with the notice requirements of sections 301 and 302.

[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

3. Application. This section applies only to employees injured on or after June 30, 1985.

[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

SECTION HISTORY

PL 1991, c. 885, §A8 (NEW). PL 1991, c. 885, §§A9-11 (AFF).

§312. Independent medical examiners

1. Examiner system. The board shall develop and implement an independent medical examiner system consistent with the requirements of this section. As part of this system, the board shall, in the exercise of its discretion, create, maintain and periodically validate a list of not more than 50 health care providers that it finds to be the most qualified and to be highly experienced and competent in their specific fields of expertise and in the treatment of work-related injuries to serve as independent medical examiners from each of the health care specialties that the board finds most commonly used by injured employees. An independent medical examiner must be certified in the field of practice that treats the type of injury complained of by the employee. For an independent medical examiner who is a doctor of chiropractic, certification must be by a board recognized by the American Chiropractic Association or its successor organization. For an independent medical examiner who is a doctor of podiatric medicine, certification must be by a board recognized by the American Podiatric Medical Association

or its successor organization. For an independent medical examiner who is a psychologist, licensure by the State Board of Examiners of Psychologists satisfies the certification requirement of this section. For all other medical examiners, certification must be by a board recognized by the American Board of Medical Specialties or the American Osteopathic Association or their successor organizations. The board shall establish a fee schedule for services rendered by independent medical examiners and adopt any rules considered necessary to effectuate the purposes of this section.
[PL 2013, c. 63, §9 (AMD).]

2. Duties. An independent medical examiner shall render medical findings on the medical condition of an employee and related issues as specified under this section. The independent medical examiner in a case may not be the employee's treating health care provider and may not have treated the employee with respect to the injury for which the claim is being made or the benefits are being paid. Nothing in this subsection precludes the selection of a provider authorized to receive reimbursement under section 206 to serve in the capacity of an independent medical examiner. Unless agreed upon by the parties or no other physician is reasonably available, a physician is not eligible to be assigned as an independent medical examiner if the physician has examined the employee at the request of an insurance company, employer or employee in accordance with section 207 or has been closely affiliated with the insurance company at any time during the previous 52 weeks. An independent medical examiner selected and paid for by an employer to examine an employee in accordance with section 207 is limited to 12 such examinations per calendar year and shall notify the board of the name of the employee, the employer or the insurance company that requested the examination and the date of the examination within 10 days of the date of the examination.
[PL 2011, c. 215, §2 (AMD).]

3. Appointment. If the parties to a dispute can not agree on an independent medical examiner of their own choosing, the board shall assign an independent medical examiner from the list of qualified examiners to render medical findings in any dispute relating to the medical condition of a claimant, including but not limited to disputes that involve the employee's medical condition, improvement or treatment, degree of impairment or ability to return to work.
[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

4. Rules. The board may adopt rules pertaining to the procedures before the independent medical examiner, including the parties' ability to propound questions relating to the medical condition of the employee to be submitted to the independent medical examiner. The parties shall submit any medical records or other pertinent information to the independent medical examiner. In addition to the review of records and information submitted by the parties, the independent medical examiner may examine the employee as often as the examiner determines necessary to render medical findings on the questions propounded by the parties.
[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

5. Medical findings; fees. The independent medical examiner shall submit a written report to the board, the employer and the employee stating the examiner's medical findings on the issues raised by that case and providing a description of findings sufficient to explain the basis of those findings. It is presumed that the employer and employee received the report 3 working days after mailing. The fee for the examination and report must be paid by the employer.
[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

6. Subsequent medical evidence. All subsequent medical evidence from the treating health care provider must be forwarded to the independent medical examiner no later than 14 days prior to the hearing. The independent medical examiner must be notified of the hearing and shall make a supplemental report if the subsequent medical evidence affects the medical findings of the independent medical examiner. If the independent medical examiner prepares a supplemental report, the report must be submitted to the board and the parties at least 3 days prior to the hearing.
[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

7. Weight. The board shall adopt the medical findings of the independent medical examiner unless there is clear and convincing evidence to the contrary in the record that does not support the medical findings. Contrary evidence does not include medical evidence not considered by the independent medical examiner. The board shall state in writing the reasons for not accepting the medical findings of the independent medical examiner.
[PL 2005, c. 24, §2 (AMD).]

8. Immunity. Any health care provider acting without malice and within the scope of the provider's duties as an independent medical examiner is immune from civil liability for making any report or other information available to the board or for assisting in the origination, investigation or preparation of the report or other information so provided.
[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

9. Annual review. The board shall create a review process to oversee on an annual basis the quality of performance and the timeliness of the submission of medical findings by the independent medical examiners and shall develop rules in relation to timeliness and procedures applicable to this section.
[PL 2015, c. 297, §11 (AMD).]

SECTION HISTORY

PL 1991, c. 885, §A8 (NEW). PL 1991, c. 885, §§A9-11 (AFF). PL 2005, c. 24, §§1,2 (AMD). PL 2011, c. 215, §§1, 2 (AMD). PL 2013, c. 63, §9 (AMD). PL 2015, c. 297, §11 (AMD).

§313. Procedure upon notice of controversy or other indication of controversy; mediation

1. Procedure. Except as provided in section 205, subsection 9, paragraph D, upon filing of notice of controversy or other indication of controversy, the matter must be referred by the board to mediation.
[PL 1999, c. 354, §7 (AMD).]

2. Mediation. The mediator shall by informal means, which may include telephone contact, determine the nature and extent of the controversy and attempt to resolve it. The mediator is not bound by the rules of evidence or procedure, but shall make inquiry in the manner best calculated to ascertain the substantial rights of the parties and carry out the spirit of this Act. The mediator may require that the parties appear and submit relevant information.
[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

3. Conclusion. At the conclusion of mediation, the mediator shall file a written report with the board stating the information required by section 305, 2nd paragraph and the legal issues in dispute. If an agreement is reached, the report must state the terms of the agreement and must be signed by the parties and the mediator. If a full agreement is not reached, the report must state the information required by section 305, 2nd paragraph, any terms that are agreed on by the parties and any facts and legal issues in dispute and the report must be signed by the parties and the mediator.
[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

4. Cooperation; sanctions. The parties shall cooperate with the mediator assigned to the case. The assigned mediator shall report to the board the failure of a party to cooperate or to produce requested material. The board may impose sanctions against a party who does not cooperate or produce requested materials, including the following:

A. Assessment of costs and attorney's fees; [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

B. Reductions of attorney's fees; or [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

C. If the party is the moving party, suspension of proceedings until the party has cooperated or produced the requested material. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

For purposes of this subsection, "party" includes the Maine Insurance Guaranty Association under Title 24-A, chapter 57, subchapter 3.
[PL 2009, c. 129, §7 (AMD); PL 2009, c. 129, §13 (AFF).]

5. Duties of employer or representative of the employee, employer or insurer. The employer or representative of the employee, employer or insurer who participates in mediation must be familiar with the employee's claim and has authority to make decisions regarding the claim. The board may assess a forfeiture in the amount of $100 against any employer or representative of the employee, employer or insurer who participates in mediation without full authority to make decisions regarding the claim. If a representative of the employer, insurer or employee participates in mediation or any other proceeding of the board, the representative shall notify the employer, insurer or employee of all actions by the representative on behalf of the employer, insurer or employee and any other actions at the proceeding.

For purposes of this subsection, "employer or representative of the employee, employer or insurer" includes the Maine Insurance Guaranty Association under Title 24-A, chapter 57, subchapter 3.
[PL 2009, c. 129, §8 (AMD); PL 2009, c. 129, §13 (AFF).]

SECTION HISTORY

PL 1991, c. 885, §A8 (NEW). PL 1991, c. 885, §§A9-11 (AFF). PL 1999, c. 354, §7 (AMD). PL 2009, c. 129, §§7, 8 (AMD). PL 2009, c. 129, §13 (AFF).

§314. Arbitration

Any case for which an application for a hearing has been filed may be heard by an arbitrator mutually agreed upon in writing by the parties. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

1. Evidence. An arbitrator shall admit evidence in accordance with section 309, subsection 2.
[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

2. Testimony. Testimony must be taken under oath and a record of the arbitration must be made. Any party, at that party's expense, may provide for a written transcript of the proceedings. The cost of any transcription ordered by the arbitrator for the arbitrator's own use must be paid for by the board.
[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

3. Location of arbitration. The arbitrator shall conduct the hearing in the county in which the injury occurred or at a place agreed upon by all of the parties.
[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

4. Arbitration decision. The arbitrator shall render the arbitration decision within 30 days after the close of the arbitration or the receipt of briefs, if required. The decision must be in writing, signed by the arbitrator and include a written opinion stating the arbitrator's findings of fact and conclusions of law. The decision must be filed with the board within 3 days of entry of the decision by the arbitrator.
[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

5. Record. The decision is part of the record of the arbitration proceeding under this section.
[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

6. Finality. The findings of fact made by the arbitrator acting within the arbitrator's powers, in the absence of fraud, are conclusive. If the arbitrator expressly finds that any party has or has not sustained the party's burden of proof, that finding is considered a conclusion of law and is reviewable in accordance with section 322. Any party may appeal the decision of the arbitrator to the Law Court pursuant to section 322 within 20 days of receipt of notice of the filing of the decision by the arbitrator.

[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

7. Fee; rules. The board shall by rule provide for the amount of the fee to be paid to the arbitrator by the board and establish administrative processes to review, adopt and monitor arbitration plans. [PL 1995, c. 105, §1 (AMD).]

SECTION HISTORY

PL 1991, c. 885, §A8 (NEW). PL 1991, c. 885, §§A9-11 (AFF). PL 1995, c. 105, §1 (AMD).

§315. Time and place of formal hearing

Upon filing of the mediator's report indicating that mediation has not resolved all issues in dispute, the matter must be referred to the board, which shall fix a time for hearing upon at least a 5-day notice given to all the parties or to the attorney of record of each party. All hearings must be held before an administrative law judge employed by the board at such towns and cities geographically distributed throughout the State as the board designates. If the designated place of hearing is more than 10 miles from the place where the injury occurred, the employer shall provide transportation or reimburse the employee for reasonable mileage in traveling within the State to and from the hearing. The amount allowed for travel is determined by the board and awarded separately in the decree. [PL 2015, c. 297, §12 (AMD).]

The board shall provide for an expedited process for the scheduling and hearing of matters involving medical care or the right to benefits for total incapacity. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

SECTION HISTORY

PL 1991, c. 885, §A8 (NEW). PL 1991, c. 885, §§A9-11 (AFF). PL 2015, c. 297, §12 (AMD).

§316. Guardians and other representatives for minors and incompetents

If an injured employee is a minor or is mentally incompetent or, when death results from the injury, if any of the employee's dependents entitled to compensation are minors or mentally incompetent at the time when any right, privilege or election accrues under this Act, the parent, guardian or next friend of the minor or incompetent, or some disinterested person designated by the board, may claim and exercise that right, privilege or election, or file any petition or answer, on behalf of the minor or incompetent. No limitation of time provided in this Act may run as long as the minor or incompetent has no parent living or guardian. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

If the board has reasonable grounds for believing that compensation paid under this Act, either in weekly installments or in a lump sum, will be squandered or wasted by the injured employee or the employee's dependents, the board may designate in writing some disinterested person to act as trustee for the injured employee or the dependents. The trustee shall file an account at least once a year with the board showing the amounts of receipts and expenditures in behalf of the injured employee or the dependents. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

SECTION HISTORY

PL 1991, c. 885, §A8 (NEW). PL 1991, c. 885, §§A9-11 (AFF).

§317. Appearance by authorized officer, employee or advocate

The appearance before the board of an authorized officer, employee, advocate or representative of a party in any hearing, action or proceeding in which the party is participating or desires to participate is not an unauthorized practice of law and is not subject to any criminal sanction. If the appearance of such an officer, employee, advocate or representative prevents the efficient processing of any proceeding, the board, in its discretion, may remove that person from representation of the party. [PL 1997, c. 486, §6 (AMD).]

SECTION HISTORY

PL 1991, c. 885, §A8 (NEW). PL 1991, c. 885, §§A9-11 (AFF). PL 1997, c. 486, §6 (AMD).

§318. Hearing and decision

The administrative law judge shall hear those witnesses as may be presented or, by agreement, the claims of both parties as to the facts may be presented by affidavits. If the facts are not in dispute, the parties may file with the administrative law judge an agreed statement of facts for a ruling on the applicable law. From the evidence or statements furnished, the administrative law judge shall in a summary manner decide the merits of the controversy. The administrative law judge's decision must be filed in the office of the board and a copy, attested by the clerk of the board, mailed promptly to all parties interested or to the attorney of record of each party. The administrative law judge's decision, in the absence of fraud, on all questions of fact is final; but if the administrative law judge expressly finds that any party has or has not sustained the party's burden of proof, that finding is considered a conclusion of law and is reviewable in accordance with section 322. [PL 2015, c. 297, §13 (AMD).]

The administrative law judge, upon motion by the petitioning party, may include a finding in the decree that the employer's refusal to pay the benefits at issue was not based on any rational grounds developed between the claim and formal hearing. Upon such a finding, the employer shall pay interest to the employee under section 205, subsection 6 at a rate of 25% per annum from the date each payment was due, instead of 10% per annum. [PL 2015, c. 297, §13 (AMD).]

The administrative law judge, upon the motion of a party made within 20 days after notice of the decision or upon its own motion, may find the facts specially and state separately the conclusions of law and file the appropriate decision if it differs from the decision filed before the request was made. Those findings and conclusions and the revised decision must be filed in the office of the board and a copy, attested by the clerk of the board, must be mailed promptly to all parties interested. The running of the time for appeal is terminated by a timely motion made pursuant to this section and the full time for appeal commences to run from the filing of those findings and conclusions and the revised decision. [PL 2015, c. 297, §13 (AMD).]

Clerical mistakes in decrees, orders or other parts of the record and errors arising from oversight or omission may be corrected by the board at any time of its own initiative, at the request of the administrative law judge or on the motion of any party and after notice to the parties. During the pendency of an appeal, these mistakes may be corrected before the appeal is filed with the division and thereafter, while the appeal is pending, may be corrected with leave of the division. [PL 2015, c. 297, §13 (AMD).]

SECTION HISTORY

PL 1991, c. 885, §A8 (NEW). PL 1991, c. 885, §§A9-11 (AFF). PL 1999, c. 410, §2 (AMD). PL 2013, c. 63, §10 (AMD). PL 2013, c. 63, §16 (AFF). PL 2015, c. 297, §13 (AMD).

§319. Petition for reopening

Upon the petition of either party, the board may reopen and review any compensation payment scheme, award or decree on the grounds of newly discovered evidence that by due diligence could not have been discovered prior to the time the payment scheme was initiated or prior to the hearing on which the award or decree was based. The petition must be filed within 30 days of the payment scheme, award or decree. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

SECTION HISTORY

PL 1991, c. 885, §A8 (NEW). PL 1991, c. 885, §§A9-11 (AFF).

§320. Review by full board

An administrative law judge may request that the full board review a decision of the administrative law judge if the decision involves an issue that is of significance to the operation of the workers' compensation system. Except when a motion is filed to find the facts specially and state separately the conclusions of law, the request must be made within 25 days of the issuance of a decision. If a motion is filed to find the facts specially and state separately the conclusions of law, the request must be made within 5 days of the issuance of a decision on the motion. There may be no such review of findings of fact made by an administrative law judge. [PL 2015, c. 297, §14 (AMD).]

If an administrative law judge asks for review, the time for appeal 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 an administrative law judge, any appeal must be from the decision of the board and must be made to the Law Court in accordance with section 322. 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. [PL 2015, c. 297, §14 (AMD).]

The board shall vote on whether to review the decision. If a majority of the board's membership fails to vote to grant review or the board fails to act within 60 days after receiving the initial request for review, the decision of the administrative law judge stands, and any appeal must be made to the division in accordance with section 321-B. If the board votes to review the decision, the board may delegate responsibility for reviewing the decision of the administrative law judge under this section to panels of board members consisting of equal numbers of representatives of labor and management. Review must be on the record and on written briefs only. Upon a vote of a majority of the board's membership, the board shall issue a written decision affirming, remanding, vacating or modifying the administrative law judge's decision. The written decision of the board must be filed with the board and mailed to the parties or their counsel. If the board fails to adopt a decision by majority vote, the decision of the administrative law judge stands and is subject to direct appellate review in the same manner as if the board had not voted to review the decision. [PL 2015, c. 297, §14 (AMD).]

SECTION HISTORY

PL 1991, c. 885, §A8 (NEW). PL 1991, c. 885, §§A9-11 (AFF). PL 2003, c. 608, §13 (AMD). PL 2005, c. 25, §1 (AMD). PL 2011, c. 647, §19 (AMD). PL 2013, c. 63, §§11, 12 (AMD). PL 2013, c. 63, §16 (AFF). PL 2015, c. 297, §14 (AMD).

§321. Reopening for mistake of fact or fraud

1. Agreements. Upon the petition of either party at any time, the board may annul any agreement that has been approved by the board if it finds that the agreement has been entered into through mistake of fact by the petitioner or through fraud. Except in the case of fraud on the part of the employee, an employee is not barred by any time limit from filing a petition to have the matters covered by the agreement determined in accordance with this Act as though the agreement had not been approved. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

2. Compensation payment scheme. A party may petition the board, within one year of initiation of a payment scheme, award or decree, to reopen any case in which fraud on the part of the opposing party is alleged. If the board finds that the petitioning party exercised due diligence in investigating the initial claim and further finds that fraud occurred, the board may reopen the case as to any issue that may have been affected by the fraudulent act and the board may terminate or modify an employer's obligation to make payment upon a finding that fraud on the part of a party affected the employer's obligation to make payment.

Except in the case of fraud on the part of the employee, an employee is not barred by any time limit from filing a petition to have any issues determined in accordance with this Act as though the payment scheme had not been initiated.
[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

SECTION HISTORY

PL 1991, c. 885, §A8 (NEW). PL 1991, c. 885, §§A9-11 (AFF).

§321-A. Appellate Division

1. Establishment. There is established within the board the Appellate Division, referred to in this subchapter as "the division."
[PL 2011, c. 647, §20 (NEW).]

2. Composition. The division is composed of full-time administrative law judges 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 administrative law judges to serve as members of a panel. An administrative law judge may not serve as a member of a panel that reviews a decision of that administrative law judge. An administrative law judge may be a member of more than one panel at the discretion of the executive director of the board.
[PL 2015, c. 297, §15 (AMD).]

3. Rules. The board shall adopt rules of procedure designed to provide a prompt and inexpensive review of a decision by an administrative law judge. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.
[PL 2015, c. 297, §15 (AMD).]

SECTION HISTORY

PL 2011, c. 647, §20 (NEW). PL 2015, c. 297, §15 (AMD).

§321-B. Appeal from administrative law judge decision

1. Procedure. An appeal of a decision by an administrative law judge 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 an administrative law judge pursuant to section 318 within 20 days after receipt of notice of the filing of the decision by the administrative law judge. [PL 2015, c. 297, §16 (AMD).]

B. At the time of filing an appeal under this section, the appellant shall file with the division a copy of the decision appealed. The failure of an appellant who timely files an appeal in accordance with paragraph A to provide a copy of the decision does not affect the jurisdiction of the division to determine the appeal on its merits unless the appellee shows substantial prejudice from that failure. [PL 2013, c. 63, §13 (AMD); PL 2013, c. 63, §16 (AFF).]
[PL 2015, c. 297, §16 (AMD).]

2. Basis. A finding of fact by an administrative law judge is not subject to appeal under this section.
[PL 2015, c. 297, §16 (AMD).]

3. Action. The division, after due consideration, may affirm, vacate, remand or modify a decree of an administrative law judge 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.
[PL 2015, c. 297, §16 (AMD).]

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.
[PL 2011, c. 647, §20 (NEW).]

SECTION HISTORY

PL 2011, c. 647, §20 (NEW). PL 2013, c. 63, §§13, 14 (AMD). PL 2013, c. 63, §16 (AFF). PL 2015, c. 297, §16 (AMD).

§322. Appeal from decision of appellate division or board

1. Appeals. Any party in interest may present a copy of the decision of the division or 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 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. For purposes of an appeal from a decision issued pursuant to section 321-B, subsection 3, only a decision of the division may be reviewed on appeal.
[PL 2015, c. 469, §2 (AMD).]

2. Procedures. The Law Court shall establish and publish procedures for the review of petitions for appellate review of decisions of the board.
[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

3. Discretionary appeal; action. Upon the approval of 3 or more members of a panel consisting of no fewer than 5 Justices of the Law Court, the petition for appellate review may be granted. If the petition for appellate review is denied, the decision of the board is final. The petition must be considered on written briefs only.

If the petition for appellate review is granted, the clerk of the Law Court shall notify the parties of the briefing schedule consistent with the Maine Rules of Civil Procedure and in all respects the appeal before the Law Court must be treated as an appeal in an action in which equitable relief has been sought, except that there may be no appeal upon findings of fact. The Law Court may, after due consideration, reverse, modify or affirm any decision of the board.
[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

SECTION HISTORY

PL 1991, c. 885, §A8 (NEW). PL 1991, c. 885, §§A9-11 (AFF). PL 2011, c. 647, §21 (AMD). PL 2015, c. 297, §17 (AMD). PL 2015, c. 469, §2 (AMD).

§323. Enforcement of board decision

Any decision of the board is enforceable by the Superior Court by any suitable process, including execution against goods, chattel and real estate and proceedings for contempt for willful failure or neglect to obey the orders or decrees of the court or in any other manner that decrees for equitable relief are enforced. Any party in interest may present copies, certified by the clerk of the board, of any order or decision of the board or of any memorandum of agreement approved by the board to the clerk of courts for the county in which the injury occurred or, if the injury occurred outside the State, to the clerk of courts for Kennebec County. Any Justice of the Superior Court shall then render a pro forma decision in accordance with the order, decision or memorandum and cause all interested parties to be notified. The decision has the same effect and all proceedings in relation to the decision are the same as though rendered in an action in which equitable relief is sought, duly heard and determined by the court. The decision must be for enforcement of a board decision, order or agreement. Appeals from a board decision, order or agreement must be in accordance with section 322. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

SECTION HISTORY

PL 1991, c. 885, §A8 (NEW). PL 1991, c. 885, §§A9-11 (AFF).

§324. Compensation payments; penalty

1. Order or decision. The employer or insurance carrier shall make compensation payments within 10 days after the receipt of notice of an approved agreement for payment of compensation or within 10 days after any order or decision of the board awarding compensation. If the board enters a decision awarding compensation, and a motion for findings of fact and conclusions of law is filed with the administrative law judge or an appeal is filed with the division pursuant to section 321-B or the Law Court pursuant to section 322, payments may not be suspended while the motion for findings of fact and conclusions of law or appeal is pending. The employer or insurer may recover from an employee payments made pending a motion for findings of fact and conclusions of law or appeal to the division or the Law Court if and to the extent that the administrative law judge, division or the Law Court has decided that the employee was not entitled to the compensation paid. The board has full jurisdiction to determine the amount of overpayment, if any, and the amount and schedule of repayment, if any. The board, in determining whether or not repayment should be made and the extent and schedule of repayment, shall consider the financial situation of the employee and the employee's family and may not order repayment that would work hardship or injustice. The board shall notify the Commissioner of Health and Human Services within 10 days after the receipt of notice of an approved agreement for payment of compensation or within 10 days after any order or decision of the board awarding compensation identifying the employee who is to receive the compensation. For purposes of this subsection, "employer or insurance carrier" includes the Maine Insurance Guaranty Association under Title 24-A, chapter 57, subchapter 3.
[PL 2015, c. 297, §18 (AMD).]

2. Failure to pay within time limits. An employer or insurance carrier who fails to pay compensation, as provided in this section, is penalized as follows. For purposes of this subsection, "employer or insurance carrier" includes the Maine Insurance Guaranty Association under Title 24-A, chapter 57, subchapter 3.

A. Except as otherwise provided by section 205, if an employer or insurance carrier fails to pay compensation as provided in this section, the board may assess against the employer or insurance carrier a fine of up to $200 for each day of noncompliance. If the board finds that the employer or insurance carrier was prevented from complying with this section because of circumstances beyond its control, a fine may not be assessed.

(1) The fine for each day of noncompliance must be divided as follows: Of each day's fine amount, the first $50 is paid to the employee to whom compensation is due and the remainder must be paid to the board and be credited to the Workers' Compensation Board Administrative Fund.

(2) If a fine is assessed against any employer or insurance carrier under this subsection on petition by an employee, the employer or insurance carrier shall pay reasonable costs and attorney's fees related to the fine, as determined by the board, to the employee.

(3) Fines assessed under this subsection may be enforced by the Superior Court in the same manner as provided in section 323. [PL 2007, c. 265, §1 (AMD).]

B. Payment of a fine assessed under this subsection is not considered an element of loss for the purpose of establishing rates for workers' compensation insurance. [PL 2007, c. 265, §1 (AMD).]
[PL 2009, c. 129, §10 (AMD); PL 2009, c. 129, §13 (AFF).]

3. Failure to secure payment. If any employer who is required to secure the payment to that employer's employees of the compensation provided for by this Act fails to do so, the employer is subject to the penalties set out in paragraphs A, B and C. The failure of any employer to procure insurance coverage for the payment of compensation and other benefits to the employer's employees in compliance with sections 401 and 403 constitutes a failure to secure payment of compensation within the meaning of this subsection.

A. The employer is guilty of a Class D crime. This paragraph applies only to cases in which the employer has committed a knowing violation. [PL 2015, c. 469, §3 (AMD).]

B. The employer is liable to pay a civil penalty of up to $10,000 or up to an amount equal to 108% of the premium, calculated using Maine Employers' Mutual Insurance Company's standard discounted standard premium, that should have been paid during the period the employer failed to secure coverage, whichever is larger, payable to the Employment Rehabilitation Fund. In determining the amount of the penalty to be assessed under this paragraph, the board shall take into consideration the employer's effort to comply with sections 401 and 403. [PL 2015, c. 469, §3 (AMD).]

C. The employer, if organized as a corporation, is subject to administrative dissolution as provided in Title 13-C, section 1421 or revocation of its authority to do business in this State as provided in Title 13-C, section 1532. The employer, if organized as a limited liability company, is subject to administrative dissolution as provided in Title 31, section 1592. The employer, if licensed, certified, registered or regulated by any board authorized by Title 5, section 12004-A or whose license may be revoked or suspended by proceedings in the District Court or by the Secretary of State, is subject to revocation or suspension of the license, certification or registration. This paragraph applies only to cases in which the employer has committed a knowing violation, has failed to pay a penalty assessed pursuant to this subsection or continues to operate without required coverage after a penalty has been assessed pursuant to this subsection. [PL 2015, c. 469, §3 (AMD).]

For purposes of this subsection, a violation is considered a knowing violation if the employer has previously obtained workers' compensation insurance and that insurance has been cancelled or that insurance has not been continued or renewed, unless the cancellation, failure to continue or nonrenewal is due to a substantial change in the employer's operations that is unrelated to the classification of individuals as employees or independent contractors; the employer has been notified in writing by the board of the need for workers' compensation insurance; the employer has had one or more previous violations of the requirement to secure the payment of the compensation provided for by this Act; or the employer misclassifies an employee as an independent contractor despite a contrary determination by the board.

Prosecution under paragraph A does not preclude action under paragraph B or C.

If the employer is a corporation, partnership, limited liability company, professional corporation or any other legal business entity recognized under the laws of the State, any agent of the corporation or legal business entity having primary responsibility for obtaining insurance coverage is liable for punishment under this section. Criminal liability must be determined in conformity with Title 17-A, sections 60 and 61.
[PL 2015, c. 469, §3 (AMD).]

4. Certificate. Notwithstanding any other provision of law or rule of evidence, the certificate of the executive director, under seal of the board, must be received in any court in this State as prima facie evidence of facts pertaining to insurance coverage records contained in the certificate or within the documents attached to the certificate.
[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

SECTION HISTORY

PL 1991, c. 885, §A8 (NEW). PL 1991, c. 885, §§A9-11 (AFF). PL 1999, c. 354, §8 (AMD). PL 1999, c. 547, §B78 (AMD). PL 1999, c. 547, §B80 (AFF). PL 2003, c. 344, §D28 (AMD). PL 2007, c. 240, Pt. JJJ, §6 (AMD). PL 2007, c. 265, §1 (AMD). PL 2007, c. 311, §3 (AMD). PL 2009, c. 129, §§9, 10 (AMD). PL 2009, c. 129, §13 (AFF). PL 2009, c. 520, §2 (AMD). PL 2011, c. 113, Pt. B, §20 (AMD). PL 2011, c. 361, §1 (AMD). PL 2013, c. 63, §15 (AMD). PL 2015, c. 297, §18 (AMD). PL 2015, c. 469, §3 (AMD).

§325. Costs; attorney's fees allowable

1. Costs and attorney's fees. Except as otherwise provided by law, by the Maine Rules of Civil Procedure or by rule of court, each party is responsible for the payment of the party's own costs and attorney's fees. In the event of a disagreement as to those costs or fees, an interested party may apply to the board for a hearing.
[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

2. Restriction on attorney's fees. An attorney representing an employee in a proceeding under this Act may receive a fee from that client for an activity pursuant to the Act only as provided in this section. The fees and payment of fees to all attorneys for services provided to employees under this Act are subject to the approval of the board. The board may approve the payment of attorney's fees by the employee for services provided to the employee pursuant to this Act. Any attorney who violates this section must forfeit any fee in the case and is liable in a court suit to pay damages to the client equal to 2 times the fee charged to that client.
[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

3. Rules. The board shall adopt rules to prescribe maximum attorney's fees and the manner in which the amount is determined and paid by the employee. The maximum attorney's fees prescribed by the board in a case tried to completion may not exceed 30% of the benefits accrued, after deducting reasonable expenses incurred on behalf of the employee, or be based on a weekly benefit amount after coordination that is higher than 2/3 of the state average weekly wage at the time of injury. The board may by rule allow attorney's fees to be increased above or decreased below the amount specified in the rule when in the discretion of the board that action is determined to be appropriate.
[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

4. Attorney's fees for lump-sum settlements. Attorney's fees for lump-sum settlements pursuant to section 352 must be determined as follows:

A. Before computing the fee, reasonable expenses incurred on the employee's behalf must be deducted from the total settlement, including:

(1) Medical examination fee and witness fee;

(2) Any other medical witness fee, including cost of subpoena;

(3) Cost of court reporter service; and

(4) Appeal costs; and [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

B. The computation of the fee, based on the amount resulting after deductions according to paragraph A, may not exceed:

(1) Ten percent of the first $50,000 of the settlement;

(2) Nine percent of the first $10,000 over $50,000 of the settlement;

(3) Eight percent of the next $10,000 over $50,000 of the settlement;

(4) Seven percent of the next $10,000 over $50,000 of the settlement;

(5) Six percent of the next $10,000 over $50,000 of the settlement; and

(6) Five percent of any amount over $90,000 of the settlement. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]
[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

5. Attorney's fees in cases in which the injury occurred prior to January 1, 1993. In cases in which the injury to the employee occurred prior to January 1, 1993, the amount of the attorney's fees is determined by the law in effect at the date of the injury and is payable by the employer. If the employee

attended a mediation pursuant to section 313 after January 1, 1993 and was represented by an attorney, the attorney's fees may include compensation from the date of the mediation session.
[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

6. Attorney's fees for lump-sum settlement in cases in which the injury occurred on or after January 1, 2020. In cases in which the injury to the employee occurred on or after January 1, 2020, attorney's fees for lump-sum settlements must be determined as follows.

A. Before computing the fee, reasonable expenses incurred on the employee's behalf must be deducted from the total settlement, including:

(1) Medical examination fee and witness fee;

(2) Any other medical witness fee, including cost of subpoena;

(3) Cost of court reporter service; and

(4) Appeal costs. [PL 2019, c. 344, §14 (NEW).]

B. The computation of the fee, based on the amount resulting after deductions according to paragraph A, may not exceed 10%. [PL 2019, c. 344, §14 (NEW).]

C. If a lump-sum settlement includes any amount that is allocated for past due benefits, the administrative law judge shall review the allocation to make sure that it is not for an amount that is greater than what the employee is claiming. [PL 2019, c. 344, §14 (NEW).]
[PL 2019, c. 344, §14 (NEW).]

SECTION HISTORY

PL 1991, c. 885, §A8 (NEW). PL 1991, c. 885, §§A9-11 (AFF). PL 2019, c. 344, §14 (AMD).

§326. Death of petitioner

No proceedings under this Act abate because of the death of the petitioner, but may be prosecuted by the employee's legal representatives or by any person entitled to compensation by reason of the death under this Act. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

SECTION HISTORY

PL 1991, c. 885, §A8 (NEW). PL 1991, c. 885, §§A9-11 (AFF).

§327. When employee killed or unable to testify

In any claim for compensation, when the employee has been killed or is physically or mentally unable to testify, there is a rebuttable presumption that the employee received a personal injury arising out of and in the course of employment, that sufficient notice of the injury has been given and that the injury or death was not occasioned by the willful intention of the employee to injure or kill the employee or another. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

SECTION HISTORY

PL 1991, c. 885, §A8 (NEW). PL 1991, c. 885, §§A9-11 (AFF).

§328. Cardiovascular injury or disease and pulmonary disease suffered by a firefighter or resulting in a firefighter's death

Cardiovascular injury or disease and pulmonary disease suffered by a firefighter or resulting in a firefighter's death are governed by this section. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

1. Firefighter defined. For the purposes of this section, "firefighter" means an active member of a municipal fire department or of a volunteer firefighters association if that person is a member of a municipal fire department or volunteer firefighters association and if that person aids in the

extinguishment of fires, regardless of whether or not that person has administrative duties or other duties as a member of the municipal fire department or volunteer firefighters association.
[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

2. Presumption. There is a rebuttable presumption that a firefighter received the injury or contracted the disease arising out of and in the course of employment, that sufficient notice of the injury or disease has been given and that the injury or disease was not occasioned by the willful intention of the firefighter to cause self-injury or injury to another if the firefighter has been an active member of a municipal fire department or a volunteer firefighters association, as defined in Title 30-A, section 3151, for at least 2 years prior to a cardiovascular injury or the onset of a cardiovascular disease or pulmonary disease and if:

A. The disease has developed or the injury has occurred within 6 months of having participated in fire fighting, or training or drill that actually involves fire fighting; or [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

B. The firefighter had developed the disease or had suffered the injury that resulted in death within 6 months of having participated in fire fighting, or training or drill that actually involved fire fighting. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

SECTION HISTORY

PL 1991, c. 885, §A8 (NEW). PL 1991, c. 885, §§A9-11 (AFF).

§328-A. Communicable disease contracted by emergency rescue or public safety worker

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Body fluids" means blood and body fluids containing visible blood and other potentially infectious materials, as defined in a regulation of the Occupational Safety and Health Administration, 29 Code of Federal Regulations, 1910.1030 (2001). For purposes of potential transmission of meningococcal meningitis or tuberculosis, "body fluids" includes respiratory, salivary and sinus fluids, including droplets, sputum and saliva, mucus and other fluids through which infectious airborne organisms can be transmitted between persons. [PL 2001, c. 663, §1 (NEW).]

B. "Corrections officer" has the same meaning as in Title 25, section 2801-A, subsection 2. [PL 2001, c. 663, §1 (NEW).]

C. "Emergency medical services person" means a person licensed as an emergency medical services person under Title 32, chapter 2-B who is employed by, or provides voluntary service to, an ambulance service as defined in Title 32, section 83 or a nontransporting emergency medical service as defined in Title 32, section 83. [PL 2001, c. 663, §1 (NEW).]

D. "Emergency rescue or public safety worker" means a person who:

(1) Is a firefighter, emergency medical services person, law enforcement officer or corrections officer; and

(2) In the course of employment, runs a high risk of occupational exposure to hepatitis, meningococcal meningitis or tuberculosis. [PL 2001, c. 663, §1 (NEW).]

E. "Employer" includes an entity for which a person provides volunteer services. [PL 2001, c. 663, §1 (NEW).]

F. "Firefighter" means an active member of a municipal fire department or a volunteer fire association as defined in Title 30-A, section 3151. [PL 2001, c. 663, §1 (NEW).]

G. "Hepatitis" means hepatitis A, hepatitis B, hepatitis C or any other strain of hepatitis generally recognized by the medical community. [PL 2001, c. 663, §1 (NEW).]

H. "High risk of occupational exposure" means a risk that is incurred because a person subject to the provisions of this section, in performing the basic duties associated with that person's employment:

(1) Provides emergency medical treatment in a nonhealth-care setting where there is a potential for the transfer of body fluids between persons;

(2) At the site of an accident, fire or other rescue or public safety operation, or in an emergency rescue or public safety vehicle, handles body fluids in or out of containers or works with or otherwise handles needles or other sharp instruments exposed to body fluids;

(3) Engages in the pursuit, apprehension and arrest of persons suspected of violating the law and, in performing such duties, risks exposure to body fluids; or

(4) Is responsible for the custody and physical restraint, when necessary, of prisoners or inmates within a prison, jail or other criminal detention facility or while on work detail outside the facility or while being transported and, in performing such a duty, risks exposure to body fluids. [PL 2001, c. 663, §1 (NEW).]

I. "Law enforcement officer" has the same meaning as in Title 25, section 2801-A, subsection 5. [PL 2001, c. 663, §1 (NEW).]

J. "Occupational exposure," in the case of hepatitis, meningococcal meningitis or tuberculosis, means an exposure that occurs during the performance of job duties that may place a worker at risk of infection. [PL 2001, c. 663, §1 (NEW).]

[PL 2001, c. 663, §1 (NEW).]

2. Presumption. There is a rebuttable presumption that an emergency rescue or public safety worker who contracts hepatitis, meningococcal meningitis or tuberculosis has a disease arising out of and in the course of employment, that sufficient notice of the disease has been given and that the disease was not occasioned by the willful intention of the emergency rescue or public safety worker to cause self-injury or injury to another if the emergency rescue or public safety worker complies with the requirements of subsections 3 to 5.

[PL 2001, c. 663, §1 (NEW).]

3. Written verification. In order to qualify for the presumption set forth in subsection 2, an emergency rescue or public safety worker must sign a written affidavit declaring that, to the best of the person's knowledge and belief:

A. In the case of a medical condition caused by hepatitis, the person has not:

(1) Been exposed, through transfer of body fluids, to any person known to have sickness or medical conditions derived from hepatitis outside the scope of the person's employment as an emergency rescue or public safety worker;

(2) Had a transfusion of blood or blood components, other than a transfusion arising out of an accident or injury happening in connection with the person's employment as an emergency rescue or public safety worker, or received any blood products for the treatment of a coagulation disorder;

(3) Engaged in unsafe sexual practices or other high-risk behavior, as identified by the Centers for Disease Control and Prevention or the Surgeon General of the United States, or had sexual relations with a person known by the emergency rescue or public safety worker to have engaged in such unsafe sexual practices or other high-risk behavior; or

(4) Used intravenous drugs not prescribed by a physician. [PL 2001, c. 663, §1 (NEW).]

B. In the case of meningococcal meningitis, in the 10 days immediately preceding diagnosis the person was not exposed outside the scope of the person's employment as an emergency rescue or public safety worker to any person known to have meningococcal meningitis or known to be an asymptomatic carrier of the disease. [PL 2001, c. 663, §1 (NEW).]

C. In the case of tuberculosis, the person has not been exposed, outside the scope of the person's employment as an emergency rescue or public safety worker, to any person known by the emergency rescue or public safety worker to have tuberculosis. [PL 2001, c. 663, §1 (NEW).]

A person who has tested negative for hepatitis or tuberculosis at the time of employment or during employment as an emergency rescue or public safety worker may satisfy the affidavit requirement in paragraph A, subparagraph (2) or paragraph C by making the required declaration with respect to the period of time since the person's last negative test for hepatitis or tuberculosis, respectively.
[PL 2001, c. 663, §1 (NEW).]

4. Required medical tests; preemployment physical. In order to be entitled to the presumption set forth in subsection 2:

A. An emergency rescue or public safety worker, at the time of or during employment as an emergency rescue or public safety worker and prior to diagnosis, must have undergone standard, medically acceptable tests for evidence of the disease for which the presumption is sought or evidence of the medical conditions derived from the disease, which tests failed to indicate the presence of infection. This paragraph does not apply in the case of meningococcal meningitis and does not apply to an emergency rescue or public safety worker employed or serving in that capacity on the effective date of this section; and [PL 2001, c. 663, §1 (NEW).]

B. On or after the effective date of this section, the emergency rescue or public safety worker has undergone a preemployment physical examination that tested for and failed to reveal any evidence of hepatitis or tuberculosis if the person's employer requires such preemployment physical examination and tests. [PL 2001, c. 663, §1 (NEW).]
[PL 2001, c. 663, §1 (NEW).]

5. Immunization. Whenever any standard, medically recognized vaccine or other form of immunization or other prophylaxis exists for the prevention of a communicable disease for which a presumption is granted under this section, if medically indicated in the given circumstances pursuant to immunization policies established by the Advisory Committee on Immunization Practices for the Centers for Disease Control and Prevention, an emergency rescue or public safety worker may be required by the worker's employer to undergo the immunization or other prophylaxis unless the worker's physician determines in writing that the immunization or other prophylaxis would pose a significant risk to the worker's health. Absent such written declaration, failure or refusal by an emergency rescue or public safety worker to undergo such immunization or other prophylaxis disqualifies the worker from the benefits of the presumption.
[PL 2001, c. 663, §1 (NEW).]

6. Record of exposures. To the extent required by any state or federal law or regulation:

A. An employer shall maintain a record of any known or reasonably suspected exposure of an emergency rescue or public safety worker in its employ to the diseases described in this section and shall immediately notify the employee of that exposure; and [PL 2001, c. 663, §1 (NEW).]

B. An emergency rescue or public safety worker shall file an incident or accident report with the worker's employer of each instance of known or suspected occupational exposure to hepatitis, meningococcal meningitis or tuberculosis. [PL 2001, c. 663, §1 (NEW).]
[PL 2001, c. 663, §1 (NEW).]

7. Liability if services performed for more than one employer. If an emergency rescue or public safety worker was employed by more than one employer, the employer in whose employ the

person was last injuriously exposed to the risk of the disease contracted and the insurer on the risk at the time of that last exposure, if any, are the only entities liable for the disease.
[PL 2001, c. 663, §1 (NEW).]

8. Effect of presumption on life and disability insurance coverage. The presumption set forth in subsection 2 does not apply in determining eligibility for life or disability benefits unless otherwise provided in the insurance contract.
[PL 2001, c. 663, §1 (NEW).]

9. Effect of presumption on disability retirement. The presumption set forth in subsection 2 is effective for purposes of determining whether a disability is work-related for purposes of determining eligibility for disability retirement in the Maine Public Employees Retirement System. This presumption does not affect any eligibility requirement other than the requirement that the disability be work-related.
[PL 2001, c. 663, §1 (NEW); PL 2007, c. 58, §3 (REV).]

SECTION HISTORY

PL 2001, c. 663, §1 (NEW). PL 2007, c. 58, §3 (REV).

§328-B. Cancer suffered by a firefighter

Cancer suffered by a firefighter is governed by this section. [PL 2009, c. 408, §1 (NEW).]

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Cancer" means kidney cancer, non-Hodgkin's lymphoma, colon cancer, leukemia, brain cancer, bladder cancer, multiple myeloma, prostate cancer, testicular cancer, breast cancer or gynecologic cancer. [PL 2021, c. 325, §1 (AMD).]

B. "Employed" means to be employed as an active duty firefighter or by the Office of the State Fire Marshal or by the forest protection unit within the Department of Agriculture, Conservation and Forestry, Bureau of Forestry or to be an active member of a volunteer fire association with no compensation other than injury and death benefits. [PL 2021, c. 678, §1 (AMD).]

C. "Firefighter" means a member of a municipal fire department or volunteer fire association whose duties include the extinguishment of fires, an investigator or sergeant in the Office of the State Fire Marshal or an employee in the forest protection unit within the Department of Agriculture, Conservation and Forestry, Bureau of Forestry whose duties include the extinguishment or investigation of fires. [PL 2021, c. 678, §2 (AMD).]
[PL 2021, c. 678, §§1, 2 (AMD).]

2. Presumption. If a firefighter who contracts cancer has met the requirements of subsections 3, 6 and 7, there is a rebuttable presumption that the firefighter contracted the cancer in the course of employment as a firefighter and as a result of that employment, that sufficient notice of the cancer has been given and that the disease was not occasioned by any willful act of the firefighter to cause the disease.
[PL 2009, c. 408, §1 (NEW).]

3. Medical tests. In order to be entitled to the presumption in subsection 2, during the time of employment as a firefighter, the firefighter must have undergone a standard, medically acceptable test for evidence of the cancer for which the presumption is sought or evidence of the medical conditions derived from the disease, which test failed to indicate the presence or condition of cancer.
[PL 2009, c. 408, §1 (NEW).]

4. Liability if services performed for more than one employer. If a firefighter who contracts cancer was employed as a firefighter by more than one employer and qualifies for the presumption

under subsection 2, and that presumption has not been rebutted, the employer and insurer at the time of the last substantial exposure to the risk of the cancer are liable under this Part.
[PL 2009, c. 408, §1 (NEW).]

5. Retired firefighter. This section applies to a firefighter who is diagnosed with cancer within 10 years of the firefighter's last active employment as a firefighter or prior to attaining 70 years of age, whichever occurs first.
[PL 2009, c. 408, §1 (NEW).]

6. Length of service. In order to qualify for the presumption under subsection 2, the firefighter must have been employed as a firefighter for 5 years and, except for an investigator or sergeant in the Office of the State Fire Marshal or an employee in the forest protection unit within the Department of Agriculture, Conservation and Forestry, Bureau of Forestry, regularly responded to firefighting or emergency calls.
[PL 2021, c. 678, §3 (AMD).]

7. Written verification. In order to qualify for the presumption under subsection 2, a firefighter must sign a written affidavit declaring, to the best of the firefighter's knowledge and belief, that the firefighter's diagnosed cancer is not prevalent among the firefighter's blood-related parents, grandparents or siblings and that the firefighter has no substantial lifetime exposures to carcinogens that are associated with the firefighter's diagnosed cancer other than exposure through firefighting.
[PL 2009, c. 408, §1 (NEW).]

8. Safety equipment for investigators and sergeants in the Office of the State Fire Marshal. In order to qualify for the presumption under subsection 2, an investigator or sergeant in the Office of the State Fire Marshal must represent that the investigator or sergeant used protective equipment in compliance with the policies of the Office of the State Fire Marshal in effect during the course of the investigator's or sergeant's employment.
[PL 2015, c. 373, §3 (NEW).]

SECTION HISTORY

PL 2009, c. 408, §1 (NEW). PL 2015, c. 373, §§1-3 (AMD). PL 2021, c. 325, §1 (AMD). PL 2021, c. 678, §§1-3 (AMD).

§328-C. Heart disease or hypertension suffered by certain employees

There is a rebuttable presumption that an employee of the State whose regular or incidental duties require the care, supervision or custody of a person confined in a prison or state correctional facility pursuant to an order of a court or as a result of an arrest and who contracts heart disease or hypertension has contracted the heart disease or hypertension in the course of employment and as a result of that employment, that sufficient notice of the heart disease or hypertension has been given and that the heart disease or hypertension was not occasioned by any willful act of that employee to cause the heart disease or hypertension, as long as the employee successfully passed a physical examination upon entry into that employment or during the time of that employment that failed to reveal any evidence of heart disease or hypertension. [PL 2021, c. 730, §1 (NEW).]

SECTION HISTORY

PL 2021, c. 730, §1 (NEW).

§328-D. Cardiovascular injury or disease and pulmonary disease suffered by a law enforcement officer or resulting in a law enforcement officer's death

Cardiovascular injury or disease and pulmonary disease suffered by a law enforcement officer or resulting in a law enforcement officer's death are governed by this section. [PL 2023, c. 445, §1 (NEW).]

1. Law enforcement officer defined. For the purposes of this section, "law enforcement officer" means an active member of a law enforcement agency, as defined in Title 5, section 4651, if the person is vested by law with the power to make arrests for crimes or serve criminal process, whether that power extends to all crimes or is limited to specific crimes and if the person holds a current and valid certificate issued by the Board of Trustees of the Maine Criminal Justice Academy pursuant to Title 25, section 2803-A.
[PL 2023, c. 445, §1 (NEW).]

2. Presumption. There is a rebuttable presumption that a law enforcement officer received the injury or contracted the disease arising out of and in the course of employment, that sufficient notice of the injury or disease has been given and that the injury or disease was not occasioned by the willful intention of the law enforcement officer to cause self-injury or injury to another if the law enforcement officer has been an active member of a law enforcement agency, as defined in Title 5, section 4651, for at least 2 years prior to a cardiovascular injury or the onset of a cardiovascular disease or pulmonary disease and if:

A. The disease has developed or the injury has occurred within 6 months of having participated in law enforcement activities or in a training or drill that involved law enforcement activities; or [PL 2023, c. 445, §1 (NEW).]

B. The law enforcement officer had developed the disease or had suffered the injury that resulted in death within 6 months of having participated in law enforcement activities or in a training or drill that involved law enforcement activities. [PL 2023, c. 445, §1 (NEW).]

[PL 2023, c. 445, §1 (NEW).]

SECTION HISTORY

PL 2023, c. 445, §1 (NEW).

§329. Interpreter required

An employee whose native language is not English and who does not understand the English language to the degree necessary to reasonably understand and participate in proceedings that affect the employee's rights is entitled to have an interpreter present at all proceedings before the board or an administrative law judge relating to that employee's rights. The board shall provide and pay the cost of the interpreter. To the extent possible, the board shall seek advice from the Department of Labor in locating appropriate interpreters to meet the needs of employees in the workers' compensation system. [PL 2015, c. 297, §19 (AMD).]

SECTION HISTORY

PL 1999, c. 202, §1 (NEW). PL 2015, c. 297, §19 (AMD).

SUBCHAPTER 2

MISCELLANEOUS

§351. Nonresidents

If an employee receiving weekly payments under this Act ceases to reside in the State or if the employee's residence at the time of the injury is in another state, the board upon application of either party may, in its discretion, having regard to the welfare of the employee and the convenience of the employer, authorize payments to be made monthly or quarterly instead of weekly. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

SECTION HISTORY

PL 1991, c. 885, §A8 (NEW). PL 1991, c. 885, §§A9-11 (AFF).

§352. Lump-sum settlements

1. Agreement. An insurer, self-insurer or self-insured group and an employer and employee may by agreement discharge any liability for compensation, in whole or in part, by the employer's payment of an amount to the employee if:

A. The insurer, the employer, the employee or the employee's dependents petition the board for an order commuting all payments for future benefits to a lump sum; [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

B. Six months' time has elapsed from the date of an injury; and [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

C. The provisions of this section have been met and the agreement has been approved by the board. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

2. Policy. The board shall by rule adopt policies establishing the circumstances under which lump-sum payments may be approved under this section. The circumstances must be at least as restrictive as those set forth in this section.

[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

3. Review. Before approving any lump-sum settlement, the board shall review the following factors with the employee:

A. The employee's rights under this Act and the effect a lump-sum settlement would have on those rights, including, if applicable, the effect of the release of an employer's liability for future medical expenses; [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

B. The purpose for which the settlement is requested; [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

C. The employee's post-injury earnings and prospects, considering all means of support, including the projected income and financial security resulting from proposed employment, self-employment or any business venture or investment and the prudence of consulting with a financial or other expert to review the likelihood of success of these projects; [PL 1997, c. 654, §2 (AMD).]

D. Any other information, including the age of the employee and of the employee's dependents, that would bear upon whether the settlement is in the best interest of the claimant; and [PL 1997, c. 654, §2 (AMD).]

E. The existence of a child support debt of which notification has been sent pursuant to Title 19-A, section 2360-A. [PL 1997, c. 654, §3 (NEW).]

[PL 1997, c. 654, §§2, 3 (AMD).]

4. Procedure. The board shall initiate the review within 14 days of receipt of a request for a settlement review. An employer is considered a party for the purposes of this section.

[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

5. Approval. The board may not approve any lump-sum settlement unless there is an agreement pursuant to subsection 1 or, in the event the employer refuses to agree to the settlement, the board has reviewed the proposed agreement and finds it to be in the best interests of the parties, and unless:

A. The employee has fully participated in the review process, except in circumstances amounting to good cause; [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

B. The board finds the settlement to be in the employee's best interest in light of the factors reviewed with the employee under subsection 3; and [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

C. In the case of a lump-sum settlement that requires the release of an employer's liability for future medical expenses of the employee, the board finds that the parties would be unlikely to reach agreement on the amount of the lump-sum payment without the release of liability for future medical expenses. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]
[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

6. Monitoring of lump-sum settlement recipients. The board shall establish and maintain a program to monitor the postsettlement employment experience of employees who settle their claims pursuant to this section to help develop future policy. The Department of Labor shall cooperate with the board in the establishment and operation of this monitoring program.
[PL 1995, c. 560, Pt. G, §25 (AMD).]

SECTION HISTORY

PL 1991, c. 885, §A8 (NEW). PL 1991, c. 885, §§A9-11 (AFF). PL 1995, c. 560, §G25 (AMD). PL 1997, c. 654, §§2,3 (AMD).

§353. Discrimination

An employee may not be discriminated against by any employer in any way for testifying or asserting any claim under this Act. Any employee who is so discriminated against may file a petition alleging a violation of this section. The matter must be referred to an administrative law judge for a formal hearing under section 315, but any administrative law judge who has previously rendered any decision concerning the claim must be excluded. If the employee prevails at this hearing, the administrative law judge may award the employee reinstatement to the employee's previous job, payment of back wages, reestablishment of employee benefits and reasonable attorney's fees. [PL 2015, c. 297, §20 (AMD).]

This section applies only to an employer against whom the employee has testified or asserted a claim under this Act. Discrimination by an employer who is not the same employer against whom the employee has testified or asserted a claim under this Act is governed by Title 5, section 4572, subsection 1, paragraph A. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

SECTION HISTORY

PL 1991, c. 885, §A8 (NEW). PL 1991, c. 885, §§A9-11 (AFF). PL 2015, c. 297, §20 (AMD).

§354. Multiple injuries; apportionment of liability

1. Applicability. When 2 or more occupational injuries occur, during either a single employment or successive employments, that combine to produce a single incapacitating condition and more than one insurer is responsible for that condition, liability is governed by this section.
[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

2. Liability to employee. If an employee has sustained more than one injury while employed by different employers, or if an employee has sustained more than one injury while employed by the same employer and that employer was insured by one insurer when the first injury occurred and insured by another insurer when the subsequent injury or injuries occurred, the insurer providing coverage at the time of the last injury shall initially be responsible to the employee for all benefits payable under this Act.
[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

3. Subrogation. Any insurer determined to be liable for benefits under subsection 2 must be subrogated to the employee's rights under this Act for all benefits the insurer has paid and for which another insurer may be liable. Apportionment decisions made under this subsection may not affect an

employee's rights and benefits under this Act. There may be no reduction of an employee's entitlement to any benefits under this Act payable by an insurer based on a prior work-related injury that was the subject of a lump sum settlement approved by the board prior to the date of the injury for which the insurer is responsible. The board has jurisdiction over proceedings to determine the apportionment of liability among responsible insurers.
[PL 2009, c. 301, §1 (AMD); PL 2009, c. 301, §2 (AFF).]

4. Consolidation. The board may consolidate some or all proceedings arising out of multiple injuries.
[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

SECTION HISTORY

PL 1991, c. 885, §A8 (NEW). PL 1991, c. 885, §§A9-11 (AFF). PL 1999, c. 354, §9 (AMD). PL 2009, c. 301, §1 (AMD). PL 2009, c. 301, §2 (AFF).

§355. Employment Rehabilitation Fund

If an employee who has completed a rehabilitation program under section 217, whether implementation is approved or ordered by the board, subsequently sustains a personal injury arising out of and in the course of employment and that injury, in combination with the prior injury, results in a reduction in earning capacity that is substantially greater in duration or degree, or both, than that which would have resulted from the subsequent injury alone, taking into account the age, education, employment opportunities and other factors related to the employee, the employer at the time of the subsequent injury is entitled to reimbursement from the Employment Rehabilitation Fund, referred to in this section as the "fund," as provided in this section. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

1. Fund administration and contributions. There is established a special fund, known as the Employment Rehabilitation Fund, for the sole purpose of making payments in accordance with this Act. The fund is administered by the board. The Treasurer of State is the custodian of the fund. All money and securities in the fund must be held in trust by the Treasurer of State for the purpose of making payments under this Act and are not money or property for the general use of the State. The fund does not lapse.

The Treasurer of State may disburse money from the fund only upon written order of the board. The Treasurer of State shall invest the money of the fund in accordance with law. Interest, income and dividends from the investments must be credited to the fund.
[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

2. Limitations. An employer is not entitled to reimbursement from the fund in the event of subsequent injury if an injured employee returns to the employee's preinjury job with the same employer without the provision of significant rehabilitation services or significant modification of the workplace.
[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

3. Reimbursement. The employer must be reimbursed at least quarterly from the fund for any weekly wage replacement benefits for which the employer is liable under section 212, 213 or 215 and that are paid by that employer.

A. An employer entitled to reimbursement under this section remains liable to the employee for all payments otherwise required from the employer by this Act and remains responsible for carrying out the rehabilitation efforts required by this Act as a result of the subsequent injury. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

B. The board shall order a reduction, suspension or termination of reimbursement of an employer under this section if the board finds that the employer has not made a bona fide effort to return the

employee to continuing suitable employment. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

4. Apportionment. Reimbursement under this section must be reduced by the amount of any contribution paid to the employer by any other employer for wage replacement benefits on the basis of apportioned liability under section 354.

A. If insurers disagree on the apportionment of liability in a case under this section, the matter must be considered by the board before an insurer may file a petition under section 354. The board shall encourage agreement between the insurers and, if agreement can not be achieved, shall make a recommendation on the apportionment of liability. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

5. Employer knowledge. An employer otherwise entitled to reimbursement under this section is entitled to that reimbursement regardless of whether the employer has knowledge at any time that the employee had completed an approved rehabilitation plan.

[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

6. Hiring incentive; wage credit. If an employer hires an employee after the employee has completed a rehabilitation program under section 217, that subsequent employer may apply for a wage credit under this subsection. For the purposes of this subsection, the term "employer" does not include the insurer of a subsequent employer or the same employer for whom an employee worked when the employee sustained the injury for which the employee received rehabilitation.

A. The subsequent employer must file an application for a wage credit by providing the board, within 2 weeks after the close of the first 90 days of employment of the employee, with a statement of the total direct wages, earnings or salary the employer paid to the employee for the first 90 days of employment along with such verification as may be required by rule of the board. Within 2 weeks after the close of the first 180 days of employment, the subsequent employer must provide to the board a supplemental report of the direct wages, earnings and salary for the 2nd 90-day period, along with the required verification. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

B. The board shall compute the wage credit, which consists of a sum equal to 50% of the average weekly direct wages, earnings or salary for the 90-day period listed in the subsequent employer's application or statement, but may not exceed the amount of workers' compensation benefits that the employee did not receive because of the employment but would have been entitled to for the wage credit period, based on the average weekly workers' compensation benefits during the most recent 60-day period in which the employee did receive benefits preceding the employee's hiring by the employer.

(1) On adequate verification of the application or statement, the board shall pay the amount for each 90-day period in a lump sum to the subsequent employer within 30 days of receiving the application or statement.

(2) The board shall bill these sums to the insurer or self-insurer that was responsible for payment of the compensation received by the employee immediately before the employee's hiring by the subsequent employer. When the sum is received from the insurer or self-insurer, the board shall deposit it in the fund. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

C. If the employment with the subsequent employer is terminated by the employer without good cause before the completion of 12 consecutive months of employment, the subsequent employer shall return to the board all wage credits received by the employer for that employee and all sums

paid into the fund by the insurer or self-insurer must be returned to that insurer or self-insurer. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

D. When the wage credit is paid from the fund to an employer, the insurer or self-insurer who paid the sum into the fund has no further obligation to pay any sums into the fund for any future reemployment of that employee, except as provided in paragraph E.

(1) Total wage credit payments under a plan may not exceed a period of 180 days, not including periods subject to refunds under paragraph C.

(2) The board shall inform subsequent employers of the number of days of wage credits available, if it is less than 180 days. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

E. Wage credit payments are not dependent on the receipt by the fund of payments from an insurer or self-insurer. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

7. Plan implementation costs; payment; reimbursement. The actual and direct costs of implementing plans ordered by the board under section 217, subsection 2 must be paid from the fund. Payments must be made directly to the rehabilitation providers or other persons who provide services under the plan. Upon an order of recovery of plan implementation costs under section 217, subsection 3, the board shall assess the employer who refused to agree to implement the plan under section 217 an amount equal to 180% of the costs paid from the fund under this subsection. An employer may appeal the imposition or amount of this assessment to the board. The employee may not be a party to this appeal.

[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

8. Jurisdiction. The board has jurisdiction over all claims brought against the fund.

A. The fund is not bound as to any question of law or fact by reason of any award or any adjudication to which the fund was not a party or in relation to which the fund was not notified, at least 21 days prior to the award or adjudication, that the fund might be subject to liability for the injury or death of an employee. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

B. An employer shall notify the board of any possible claim for subsequent injury reimbursement against the fund as soon as practicable, but in no event later than one year after the injury or death of an employee. Failure to provide timely notice bars the claim. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

9. Legal representation. The Attorney General shall provide legal representation for any claim made under this section, including the enforcement of an assessment made under subsection 7 or the defense of an employer's appeal of that assessment.

A. The reasonable expense of prosecution or defense by the Attorney General of assessments to or claims against the fund, subject to the approval of the board, are payable out of the fund. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

B. The Attorney General may not prosecute an assessment against the State or defend the fund against any claim brought by the State. The board may hire, using money from the fund, private counsel for this purpose. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

10. Effect on obligations of prior employers. The availability of reimbursement under this section does not limit or reduce the obligation of any previous employer to provide benefits under this Act to the employee.
[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

11. Freedom from liability. The State is not liable for any claim against the fund that is in excess of the fund's current ability to pay. If any claim against the fund is denied due to an inadequate fund balance, that claim is entitled to priority over later claims when an adequate balance is restored.
[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

12. Applicability. Reimbursement under this section is available solely with respect to employees who are injured and rehabilitated after November 20, 1987.
[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

13. Reimbursement.

[PL 2001, c. 448, §3 (RP).]

14. Funding; assessments. This subsection governs funding of the Employment Rehabilitation Fund.

A. The board may levy an assessment when the balance in the fund is insufficient to meet obligations of the fund under this section. The assessment must be levied on each insurer based on its actual paid losses during the previous calendar year. [PL 2001, c. 448, §4 (NEW).]

B. Every insurer shall keep as permanent records a record of the amount and date of each loss paid. The records must be open for inspection at all times. Every insurer shall, on or before the 60th day following the end of a calendar quarter, render a report to the State Tax Assessor stating the amount of losses paid by the insurer during the preceding calendar quarter. That report must contain any further information the board prescribes by rule. [PL 2001, c. 448, §4 (NEW).]

C. The State Tax Assessor shall pay daily all receipts from any assessment and any receipts received under paragraph F to the Treasurer of State. The Treasurer of State shall deposit all receipts as received in the fund. [PL 2001, c. 448, §4 (NEW).]

D. The State Tax Assessor or the State Tax Assessor's duly authorized agent or the board, for the purpose of determining the truth or falsity of any statement or return made by the insurer, may:

(1) Enter any place of business of an insurer to inspect any books or records of the insurer;

(2) Notwithstanding any other provision of law, inspect any records or reports filed by an insurer with the Superintendent of Insurance; and

(3) Delegate these powers to the Superintendent of Insurance or the superintendent's deputies, agents or employees. [PL 2001, c. 448, §4 (NEW).]

E. Whenever any insurer fails to pay any assessment due under this subsection within the time specified by the board, the Attorney General shall enforce payment by civil action against that insurer for the amount of the assessment in the Superior Court in and for the county or the District Court in the division in which that insurer has the insurer's place of business, or in the Superior Court of Kennebec County. [PL 2001, c. 448, §4 (NEW).]

F. In every case of the death of any employee when there is no person entitled to compensation, the employer shall pay to the Treasurer of State a sum equal to 100 times the average weekly wage in the State as computed by the Department of Labor to be credited to the fund. [PL 2001, c. 448, §4 (NEW).]

G. For the purposes of this subsection, "insurer" means an insurance company or association that does business or collects premiums for workers' compensation insurance in this State or an

individual or group self-insurer under this Act, including the State and any other public or governmental authority. [PL 2001, c. 448, §4 (NEW).]

[PL 2001, c. 448, §4 (NEW).]

SECTION HISTORY

PL 1991, c. 885, §A8 (NEW). PL 1991, c. 885, §§A9-11 (AFF). PL 2001, c. 448, §§3,4 (AMD).

§355-A. Supplemental Benefits Fund

1. Creation of fund. The Supplemental Benefits Fund, referred to in this section and sections 355-B to 356 as the "fund," is created to reimburse insurers and self-insurers for their payments of compensation to employees under section 213, subsections 3 and 4.

[PL 2001, c. 448, §5 (NEW).]

2. Administration of fund. The Supplemental Benefits Fund is administered by the Supplemental Benefits Oversight Committee in accordance with this section and sections 355-B to 356. The Treasurer of State is the custodian of the fund. All money and securities in the fund must be held in trust by the Treasurer of State for the purpose of making payments under this Act and are not money or property for the general use of the State. The fund does not lapse. Investment decisions regarding the fund are made by the Supplemental Benefits Oversight Committee or the service agent, as provided in section 355-B, subsection 10. Interest, income and dividends from investments must be credited to the fund. The Treasurer of State may disburse money from the fund only upon written order of the Supplemental Benefits Oversight Committee or the committee's duly appointed service agent.

[PL 2001, c. 448, §5 (NEW).]

3. Freedom from liability. The State, members of the Supplemental Benefits Oversight Committee, service agents and subcontractors of a service agent are not liable for any claim against the fund that is in excess of the fund's ability to pay. If any claim against the fund is denied due to an inadequate fund balance, that claim has priority over later claims when an adequate balance is restored.

[PL 2001, c. 448, §5 (NEW).]

SECTION HISTORY

PL 2001, c. 448, §5 (NEW).

§355-B. Supplemental Benefits Oversight Committee

The Supplemental Benefits Oversight Committee, referred to in this section and sections 355-C and 356 as the "committee," is created and charged with the duty to monitor, facilitate and provide general oversight in the administration of reimbursement of workers' compensation benefit obligations of the fund pursuant to section 213, subsections 3 and 4. [PL 2001, c. 448, §5 (NEW).]

1. Members. The committee consists of 5 members, appointed by the Governor as follows:

A. Two members must represent employers. One must be appointed from the list provided by the Maine State Chamber of Commerce or its successor organization. One must be an approved self-insured employer, appointed from the list provided by the Maine Council of Self-insurers or its successor organization; [PL 2001, c. 448, §5 (NEW).]

B. One member must represent insurers and must be appointed from the list provided by the Superintendent of Insurance; [PL 2001, c. 448, §5 (NEW).]

C. One member must represent labor interests and must be appointed from the list provided by the Maine AFL-CIO or its successor organization; and [PL 2001, c. 448, §5 (NEW).]

D. One member must be an at-large member who possesses skills and experience suited to the functions of the committee. [PL 2001, c. 448, §5 (NEW).]

[PL 2001, c. 448, §5 (NEW).]

2. Terms. Except for members of the initial committee, members are appointed for terms of 3 years. Committee members may serve multiple terms. Of the initial committee member appointments, one member must be appointed for a term of one year, 2 must be appointed for terms of 2 years and 2 must be appointed for terms of 3 years, at the discretion of the Governor. The committee is not authorized to begin transacting business until the Governor has made all 5 initial committee appointments.

A. The Governor may remove a member for cause. [PL 2001, c. 448, §5 (NEW).]

B. If a vacancy occurs on the committee after initial appointments are made, the committee may select an alternate member representing the same entity represented by the vacant position to serve until the Governor makes a new appointment. The Governor shall make appointments to fill vacancies in the same manner in which the member whose leaving caused the vacancy was appointed. [PL 2001, c. 448, §5 (NEW).]

[PL 2001, c. 448, §5 (NEW).]

3. Alternate members. The Governor shall appoint 3 alternate members for each member appointed under subsection 1. An alternate for a member appointed under subsection 1, paragraphs A to C must be named from the alternate member list provided by the same entity that provided the list for appointment of the member. An alternate member may serve on the committee in the event of a vacancy pursuant to subsection 2, paragraph B or when a member has a conflict of interest pursuant to subsection 5. An alternate member is entitled to the same compensation and protections from liability as a member when serving on the committee.

[PL 2001, c. 448, §5 (NEW).]

4. Voting; quorum. A quorum consists of 4 members of the committee. Each member has one vote that must be exercised. A decision may not be made by the committee without at least 3 affirmative votes. A member who does not vote is considered to have voted in the negative.

[PL 2001, c. 448, §5 (NEW).]

5. Conflict of interest. A member may not participate in any matter in which that member has an actual or potential conflict of interest. A member may not participate in deliberations on such a matter and may not vote on that matter. A conflict of interest exists if the member, the person that employs that member or the person that the member represents is financially interested in the matter. If a member is unable to participate in a matter pursuant to this subsection, the committee shall select an alternate member representing the same interest from the alternate members appointed pursuant to subsection 3. The alternate member serves under this subsection for the limited purpose of deciding the financial responsibility, if any, of the fund to an insurer or self-insurer regarding a reimbursement request concerning which a member of the committee is precluded from participating pursuant to this subsection.

[PL 2001, c. 448, §5 (NEW).]

6. Compensation. A member of the committee receives a per diem of $100 per day and reimbursement of actual and necessary expenses while attending to the business of the fund. Per diem and expenses are paid from the fund.

[PL 2001, c. 448, §5 (NEW).]

7. Liability. A member of the committee is not liable in a civil action for any act performed in good faith in the execution of duties as a member of the committee. The fund must indemnify a member against judgments, fines, amounts paid in settlement, reasonable costs and expenses, including attorney's fees, and any other liabilities that may be incurred as a result of legal actions or threatened legal actions, except in relation to matters in which the member is adjudged to be liable by reason of willful misconduct in the performance of duties or obligations to the committee.

[PL 2001, c. 448, §5 (NEW).]

8. Legal representation. The committee, directly or through a service agent, may seek the advice and counsel of the Attorney General or retain private counsel through service contracts. The Attorney General may not prosecute an assessment against the State or defend the fund against any claims brought by the State. Reasonable costs of legal representation by the Attorney General or attorneys contractually retained by the committee or its service agent are chargeable to the fund.
[PL 2001, c. 448, §5 (NEW).]

9. Board proceedings. Neither the fund nor the committee has standing or authority to participate directly or indirectly in any proceeding before the board regarding the level or duration of benefits payable to an employee.
[PL 2001, c. 448, §5 (NEW).]

10. Fund management; fiduciary duty. Each member of the committee is held to account as a fiduciary in the administration of the fund's assets. Management and investment of the assets of the account by the committee or a service agent must conform to prudent investor standards. The committee shall maintain complete and accurate records of investments, money and other assets comprising the corpus of the fund. The committee shall provide to the board on the first business day of January, April, July and October each year an accounting respecting the fund's assets and transactions relating to activities of the committee. The board shall promptly notify the joint standing committee of the Legislature having jurisdiction over labor matters of any concerns raised by those reports.
[PL 2001, c. 448, §5 (NEW).]

11. Records and proceedings of committee. For the purposes of Title 1, chapter 13, subchapter I:

A. Records in the possession of the committee that relate to individual workers' compensation claims, claims for reimbursement by insurers and self-insurers under section 213, subsection 3 or 4 or claims settlement activities are not public records; and [PL 2001, c. 448, §5 (NEW).]

B. Proceedings of the committee relating to individual workers' compensation claims, claims for reimbursement by insurers and self-insurers under section 213, subsection 3 or 4 or claims settlement activities are not public proceedings. [PL 2001, c. 448, §5 (NEW).]
[PL 2001, c. 448, §5 (NEW).]

12. Rulemaking. The committee may adopt procedural rules in accordance with Title 5, chapter 375 as necessary to facilitate timely and proper administration of the affairs of the fund. These rules are major substantive rules as defined in Title 5, chapter 375, subchapter II-A.
[PL 2001, c. 448, §5 (NEW).]

SECTION HISTORY

PL 2001, c. 448, §5 (NEW).

§355-C. Powers and duties of committee; reimbursement

The committee shall review and evaluate requests for reimbursement of workers' compensation benefits paid or payable under section 213, subsections 3 and 4. [PL 2001, c. 448, §5 (NEW).]

1. Power to bind fund. The committee has power to bind the fund with respect to the monetary value of each settlement reimbursable from the fund.
[PL 2001, c. 448, §5 (NEW).]

2. Request for reimbursement; information required. A request for reimbursement from the fund must include:

A. If the claim for reimbursement is made pursuant to section 213, subsection 3, evidence that the claimant employee's date of injury is on or after January 1, 1993 and before January 1, 1998. If the claim for reimbursement is made under section 213, subsection 4, evidence that the claimant

employee's date of injury is on or after January 1, 1993 and before January 1, 2000; [PL 2001, c. 448, §5 (NEW).]

B. Complete medical reports, agreements or orders relating to the employee's permanent impairment; [PL 2001, c. 448, §5 (NEW).]

C. Evidence that the insurer or self-insurer has paid or is liable for payment of 260 weeks of indemnity benefits pursuant to section 212 or 213; [PL 2001, c. 448, §5 (NEW).]

D. Evidence that the benefit payments for which reimbursement is requested were paid or are payable under section 213; [PL 2001, c. 448, §5 (NEW).]

E. Verification that the insurer or self-insurer has adjusted and is adjusting the claim for which reimbursement is requested in a manner that is consistent with usual and customary claims service provided by the insurer or self-insurer for claims that are not subject to reimbursement under section 213. At a minimum, verification must include evidence that the insurer or self-insurer has monitored the claimant employee's medical condition and investigated return-to-work options applicable in the circumstance; and [PL 2001, c. 448, §5 (NEW).]

F. Such other information or requirements as the committee may prescribe. [PL 2001, c. 448, §5 (NEW).]

[PL 2001, c. 448, §5 (NEW).]

3. Determinations. The committee shall review requests for reimbursement within 14 days of receipt of the request or within a longer period of time if mutually acceptable to the parties. The committee shall issue a final determination, designated as such, to each insurer or self-insurer that has requested reimbursement. An insurer or self-insurer may petition the board for a hearing before an administrative law judge within 30 days of notice of the determination. Review by the board is limited to errors of law and abuse of discretion.

[PL 2015, c. 297, §21 (AMD).]

4. Effect of board decrees. The fund and the committee are bound to the same extent as the employee and insurer or self-insurer by decrees of the board.

[PL 2001, c. 448, §5 (NEW).]

5. Effect of mediation agreement or consent decree. The fund is bound as to any question of law or fact by reason of a mediation agreement under section 313 or a consent decree, provided the committee was given notice of the terms of the agreement or decree at least 21 days before the effective date of the agreement or decree and did not object. The fund is not bound by the agreement or decree if the committee provides a written objection to the proposed terms of the agreement or decree to the insurer or self-insurer.

[PL 2001, c. 448, §5 (NEW).]

6. Effect of independent medical examiner's report . The fund is bound to the same extent as the employee and the insurer or self-insurer by findings contained in an independent medical examiner's report provided pursuant to section 312.

[PL 2001, c. 448, §5 (NEW).]

7. Service agent. The committee, by contract, may delegate day-to-day business operations of the fund and duties and powers of the committee regarding reimbursement requests or assessments to a service agent qualified under this subsection. Pursuant to the contract, a service agent retained under this subsection must be held to account as a fiduciary in the administration of the assets of the fund and in the conduct of the business affairs of the fund.

A. The committee shall enter into written contracts with persons or entities qualified by good business reputation, training, education and experience to perform day-to-day duties in administering the fund's responsibilities set forth in section 213, subsections 3 and 4. Such a person

is referred to in this section and sections 355-A, 355-B and 356 as the "service agent." A service agent must hold all licenses, registrations and permits required to engage in activities or undertake responsibilities delegated pursuant to the contract. [PL 2001, c. 448, §5 (NEW).]

B. A service agent may subcontract with attorneys acceptable to the committee to advise or represent the fund in legal actions as necessary. Expenses of the service agent and attorneys retained by the service agent, upon approval by the committee, are paid from the fund. [PL 2001, c. 448, §5 (NEW).]

C. A service agent shall acknowledge and reimburse claims of insurers and self-insurers consistent with terms of any proposed or executed settlement among parties to the settlement, provided that the service agent has been accorded notice and opportunity to participate regarding the terms and conditions of the settlement and that the commitment to reimburse the insurer or self-insurer is in the best interest of the fund. [PL 2001, c. 448, §5 (NEW).]

D. A service agent may be empowered, by contract, to levy assessment in the name of the fund, institute assessment collection procedures, including legal action if necessary, process requests for reimbursement from the fund in a timely manner, deposit money in the fund with the Treasurer of State if such funds are not needed to meet immediate cash flow demands and commit the fund to agreed levels of insurer or self-insurer reimbursement based upon review and assessment of prospects of consensual settlements. [PL 2001, c. 448, §5 (NEW).]

E. A service agent shall make recommendations to the committee regarding rule-making standards considered necessary to the proper administration of the fund. [PL 2001, c. 448, §5 (NEW).]

[PL 2001, c. 448, §5 (NEW).]

SECTION HISTORY

PL 2001, c. 448, §5 (NEW). PL 2015, c. 297, §21 (AMD).

§356. Funding of Supplemental Benefits Fund

1. Assessment.

[PL 2001, c. 448, §6 (RP).]

1-A. Assessment. The committee may levy an assessment against insurers to provide funds to meet the obligations of the fund for reimbursement pursuant to section 213, subsections 3 and 4. The committee may also delegate its duties and powers under this section to a service agent pursuant to section 355-C, subsection 7.

A. To the extent practicable, the committee shall make an assessment on June 1st of each year in which the fund is obligated to make reimbursement. The amount of the assessment must be an amount estimated to be sufficient to reimburse qualified insurers during the next 12 months. Supplementary assessments may be levied during the 12-month period if exigent conditions arise and the balance in the fund is inadequate to discharge reimbursements in a timely manner. No more than 2 supplementary assessments may be levied in any 12-month period. [PL 2001, c. 448, §6 (NEW).]

B. The assessment must be distributed between insurance carriers and self-insured employers in direct proportion to the pro rata share of disabling cases attributable to each of the payor classifications for the most recent calendar year for which data are available. The distribution of the assessment must be determined on a basis consistent with the information reported by the Department of Labor, Bureau of Labor Standards, Research and Statistics Division in its annual "Characteristics of Work-Related Injuries and Illnesses in Maine" publication. Any segment of the market identified in the publication as "not insured" must be excluded from the calculation of proportionate shares.

(1) In consultation with the Director of the Bureau of Labor Standards, the committee shall determine a date prior to the required assessment to establish a distribution. On or before May 1st of each year, the Department of Professional and Financial Regulation, Bureau of Insurance shall provide to the committee the amounts of gross direct workers' compensation premiums written by each licensed insurance carrier and the amount of aggregate benefits paid by each individual and group self-insurer for the preceding calendar year. [PL 2001, c. 448, §6 (NEW).]

C. An assessment against insurers must be based on premiums charged to employers pursuant to section 154, subsection 3, paragraph B-1. The assessment must be stated as a percentage of each employer's premium base. Insurers shall apply the percentage to premiums collected beginning on July 1st. If a supplementary assessment is levied, the committee shall notify insurers of the new percentage and the insurers shall apply the new percentage to premiums written beginning on the 31st day following notification.

(1) The total value of assessments collected from insurers pursuant to this section must be credited to the fund. Each insurer that collects workers' compensation premiums or assessments shall file with the committee on a form prescribed by the committee a return certified by the insurer's chief financial officer specifying assessment collections relating to the calendar quarter next preceding the 15th day of April, July, October and January of each year in which an assessment is applicable. Affiliated insurers may consolidate payments made to the fund if each carrier is licensed and premium reports respecting that insurer are individually reported within the consolidated return. Payment of amounts collected pursuant to this section must be remitted to the fund at the time the premium return is filed with the committee.

(2) The Department of Professional and Financial Regulation, Bureau of Insurance shall report to the board, the committee and any service agent all newly authorized workers' compensation carriers in order to facilitate notification to those carriers of their obligation under this section.

(3) Any insurance carrier subject to this section that willfully fails to pay an assessment in accordance with this section commits a civil violation for which a forfeiture of not more than $500 may be adjudged for each day following the due date for which the payment is not made. [PL 2001, c. 448, §6 (NEW).]

D. Except for newly approved workers' compensation self-insurers, each self-insurer must be assessed a dollar amount based on the proportion that the self-insurer's aggregate benefits paid as reported pursuant to section 154, subsection 5 bears to the aggregate benefits paid by all self-insurers as so reported. If a supplementary assessment is levied, the committee shall notify self-insurers 30 days prior to the date upon which the assessment is due.

(1) The total value of assessments collected from self-insured employers under this section must be credited to the fund. Each self-insurer shall file with the committee on a form prescribed by the committee a return certified by the self-insurer's chief financial officer attesting to the accuracy of the amount owed to the fund. Payment of the assessment must be remitted to the fund at the time the return is filed with the committee. The form and payment are due on the later of July 1st and 30 days after the committee levies the assessment.

(2) The Department of Professional and Financial Regulation, Bureau of Insurance shall report to the board, the committee and any service agent all newly approved workers' compensation self-insurers in order to facilitate notification to those self-insurers of their obligation under this section. A newly approved self-insurer that has historically purchased a policy or policies of workers' compensation covering workers' compensation exposures in this State shall pay assessment to the fund based on the assessment percentage applicable to insurers until the self-insurer has paid benefits for 12 months.

(3) A self-insurer subject to this section that willfully fails to pay an assessment in accordance with this section commits a civil violation for which a forfeiture of not more than $500 may be adjudged for each day following the due date for which the payment is not made. [PL 2001, c. 448, §6 (NEW).]

E. Rates and premiums charged for workers' compensation policies may not be considered excessive if a surcharge calculated pursuant to this section is made to recoup assessments paid to the fund. Any surcharge so made must be specifically identified upon the policies or other evidence of coverage. Such surcharges are not subject to premium taxes. [PL 2001, c. 448, §6 (NEW).]

[PL 2001, c. 448, §6 (NEW).]

2. Death of an employee.

[PL 2001, c. 448, §6 (RP).]

3. Records and reports.

[PL 2001, c. 448, §6 (RP).]

4. Appropriation of money received.

[PL 2001, c. 448, §6 (RP).]

5. Inspections.

[PL 2001, c. 448, §6 (RP).]

6. Civil action. Whenever any insurer fails to pay any assessment due under this section within the time limit, the Attorney General shall enforce payment by civil action against that insurer for the amount of the assessment in the Superior Court in and for the county or the District Court in the division in which that insurer has the insurer's place of business, or in the Superior Court of Kennebec County.
[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

7. Insurer defined. For the purposes of this section, "insurer" means an insurance company or association that does business or collects premiums for workers' compensation insurance in this State or an individual or group self-insurer under this Act, including the State and other public or governmental authority.
[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

SECTION HISTORY

PL 1991, c. 885, §A8 (NEW). PL 1991, c. 885, §§A9-11 (AFF). PL 1995, c. 560, §G26 (AMD). PL 2001, c. 448, §6 (AMD).

§357. Information from insurance companies

1. Completion of forms. Every insurance company insuring employers under this Act shall fill out any blanks and answer all questions submitted that may relate to policies, premiums, amount of compensation paid and such other information as the board or the Superintendent of Insurance may determine important, either for the proper administration of this Act or for statistical purposes.
[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

2. Explanation of reserving policy. Every insurance company subject to Title 24-A, chapter 25, subchapter II-B shall, not later than 30 days after filing its annual statement, file with the Superintendent of Insurance a detailed explanation of its reserve policy in regard to claims under this Act, including specific reserve guidelines.
[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

SECTION HISTORY

PL 1991, c. 885, §A8 (NEW). PL 1991, c. 885, §§A9-11 (AFF).

§358. Reports and data collection

(REPEALED)

SECTION HISTORY

PL 1991, c. 885, §A8 (NEW). PL 1991, c. 885, §§A9-11 (AFF). RR 1993, c. 1, §140 (COR). PL 1997, c. 486, §7 (RP).

§358-A. Reports and data collection

1. Workers' compensation system annual report. The board, in consultation with the Superintendent of Insurance and the Director of the Bureau of Labor Standards within the Department of Labor, shall submit an annual report to the Governor and the joint standing committees of the Legislature having jurisdiction over labor and banking and insurance matters by February 15th of each year regarding the status of the workers' compensation system. At a minimum, the report must include an assessment of the board's implementation of the following provisions:

A. The number of individual cases monitored to ensure the provision of benefits in accordance with law, pursuant to section 152, subsection 10; [PL 1997, c. 486, §8 (NEW).]

B. The number of cases monitored to ensure the payments are initiated within the time limits of sections 205 and 324 and the adequacy of compensation provided pursuant to section 153, subsection 1; [PL 1997, c. 486, §8 (NEW).]

C. The number of investigations performed pursuant to section 153, subsection 7; [PL 1997, c. 486, §8 (NEW).]

D. The number of lump-sum settlements cases monitored and a summary of postsettlement employment experience pursuant to section 352, subsection 6; [PL 1997, c. 486, §8 (NEW).]

E. The number of audits performed and an assessment of compliance with this Act based on audit results pursuant to section 359, subsection 1; [PL 1997, c. 486, §8 (NEW).]

F. The number of penalties assessed and the reasons for the assessments pursuant to section 205, subsection 3; section 313, subsection 4; section 324, subsections 2 and 3; section 359, subsection 2; and section 360; [PL 2015, c. 297, §22 (AMD).]

G. The results of the monitoring program giving side-by-side information compilations for the past 5 years pursuant to section 359, subsection 3; and [PL 2015, c. 297, §22 (AMD).]

H. The timeliness of examinations conducted pursuant to section 312 and any other data regarding independent medical examiners and examinations. [PL 2015, c. 297, §23 (NEW).]

The report must contain specific data regarding compliance, including benchmarks measuring individual insurer's, self-insurer's, or 3rd-party administrator's compliance with the provisions of this Act and any penalties assessed. Benchmarks must be developed by the board with input from insurers, self-insurers and 3rd-party administrators and other parties the board considers appropriate. The board shall also report on the utilization of troubleshooters, advocates and retained legal counsel, with correlating outcomes.
[PL 2015, c. 297, §§22, 23 (AMD).]

2. Data collection and interpretation. The Director of the Bureau of Labor Standards within the Department of Labor, the Superintendent of Insurance and the board's executive director shall meet at least 3 times a year with appropriate staff and other state agencies to review the areas of data collection pertaining to the workers' compensation system, as well as to interpret and coordinate appropriate data collection programs to carry out the purposes of this Act. The Director of the Bureau of Labor Standards shall chair this group.

The Director of the Bureau of Labor Standards, the Superintendent of Insurance and the board's executive director shall provide jointly or individually any further occasional reports that they consider necessary to the improved function and administration of this Act and the occupational disease laws.
[PL 1997, c. 486, §8 (NEW).]

3. Occupational injuries and illnesses. The Director of the Bureau of Labor Standards within the Department of Labor shall provide an annual report concerning the number and character of occupational injuries and illnesses and their effects, as required under Title 26, section 42.

The board's executive director shall assist the Director of the Bureau of Labor Standards to ensure that necessary information regarding the administrative processes, costs and other factors related to this Act and the occupational disease laws are included in the report. The Commissioner of Health and Human Services and the Director of the Bureau of Health shall provide the Director of the Bureau of Labor Standards with any information in their possession related to occupational injuries and illnesses.
[PL 1997, c. 486, §8 (NEW); PL 2003, c. 689, Pt. B, §7 (REV).]

4. Loss costs data.

[PL 2013, c. 52, §1 (RP).]

5. Rehabilitation data. The board shall develop a system for collecting rehabilitation data and provide any reports considered necessary for the improved function and administration of rehabilitation under this Act.
[PL 1997, c. 649, §1 (NEW).]

SECTION HISTORY

PL 1997, c. 486, §8 (NEW). PL 1997, c. 649, §1 (AMD). PL 2003, c. 689, §B7 (REV). PL 2013, c. 52, §1 (AMD). PL 2015, c. 297, §§22, 23 (AMD).

§359. Audits; penalty; monitoring

1. Audits. The board shall audit claims, including insurer, self-insurer, Maine Insurance Guaranty Association and 3rd-party administrator claim files, on an ongoing basis to determine whether insurers, self-insured employers, the Maine Insurance Guaranty Association and 3rd-party administrators have met their obligations under this Act and to identify the disputes that arose, the reasons for the disputes, the method and manner of their resolution, the costs incurred, the reasons for attorney involvement and the services rendered by the attorneys.

If as a result of an examination and after providing the opportunity for a hearing the board determines that any compensation, interest, penalty or other obligation is due and unpaid to an employee, dependent, service provider or any other entity, the board shall issue a notice of assessment detailing the amounts due and unpaid in each case and shall order the amounts paid to the unpaid party or parties.
[PL 2009, c. 129, §11 (AMD); PL 2009, c. 129, §13 (AFF).]

2. Penalty. In addition to any other penalty assessment permitted under this Act, the board may assess civil penalties not to exceed $25,000 upon finding, after hearing, that an employer, insurer or 3rd-party administrator for an employer has engaged in a pattern of questionable claims-handling techniques or repeated unreasonably contested claims. The board shall certify its findings to the Superintendent of Insurance, who shall take appropriate action so as to bring any such practices to a halt. This certification by the board is exempt from the provisions of the Maine Administrative Procedure Act. The amount of any penalty assessed pursuant to this subsection must be directly related to the severity of the pattern of questionable claims-handling techniques or repeated unreasonably contested claims. All penalties collected pursuant to this subsection must be deposited in the General Fund. An insurance carrier's payment of any penalty assessed under this section may not be considered an element of loss for the purpose of establishing rates for workers' compensation insurance.
[PL 2007, c. 265, §2 (AMD).]

3. Monitoring. No later than July 1, 1993 the board shall implement a monitoring program to evaluate and compare the cost, utilization and performance of the workers' compensation system for each calendar year beginning with 1988. The information compiled must include the number of injuries occurring and claims filed as compared to employment levels, the type and cost of the benefits provided, attorney involvement and litigation levels, and the long-term, postinjury economic status of injured workers, as well as any other data that is actuarially valid and can be utilized to accomplish the purposes of this Act, including rulemaking and recommending legislation.
[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

SECTION HISTORY

PL 1991, c. 885, §A8 (NEW). PL 1991, c. 885, §§A9-11 (AFF). PL 2005, c. 603, §4 (AMD). PL 2007, c. 265, §2 (AMD). PL 2009, c. 129, §11 (AMD). PL 2009, c. 129, §13 (AFF).

§360. Penalties

1. Reporting violations. The board may assess a civil penalty not to exceed $100 for each violation on any person:

A. Who fails to file or complete any report or form required by this Act or rules adopted under this Act; or [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

B. Who fails to file or complete such a report or form within the time limits specified in this Act or rules adopted under this Act. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

An insured employer may be required to reimburse the insurer for any penalty under this subsection that is due as a result of the insured employer's failure to give timely notice or information to its insurer.
[PL 2023, c. 205, §7 (AMD).]

2. General authority. The board may assess, after hearing, a civil penalty in an amount not to exceed $1,000 for an individual and $10,000 for a corporation, partnership or other legal entity for any willful violation of this Act, fraud or intentional misrepresentation. The board may also require that person to repay any compensation received through a violation of this Act, fraud or intentional misrepresentation or to pay any compensation withheld through a violation of this Act, fraud or misrepresentation, with interest at the rate of 10% per year.
[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

3. Appeal. A decision of the board under this section is deemed to be final agency action subject to appeal to the Superior Court, as provided in Title 5, chapter 375, subchapter 7. Notwithstanding Title 5, section 11004, execution of a penalty assessed under this section is stayed during the pendency of any appeal under this subsection. The Attorney General shall represent the board in any appeal under this subsection or the board may retain private counsel for that purpose.
[PL 2007, c. 78, §1 (AMD).]

4. Enforcement and collection. Penalties assessed under this section are in addition to any other remedies available under this Act and are enforceable by the Superior Court under section 323.

A. The Attorney General shall prosecute any action necessary to recover penalties assessed under this section or the board may retain private counsel for that purpose. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

B. If any person fails to pay any penalty assessed under this section and enforcement by the Superior Court is necessary:

(1) That person shall pay the costs of prosecuting the action in Superior Court, including reasonable attorney's fees; and

(2) If the failure to pay was without due cause, any penalty assessed on that person under this section must be doubled. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

C. All penalties assessed under this section are payable to the General Fund. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

5. Not an element of loss. An insurance carrier's payment of any penalty assessed under this section may not be considered an element of loss for the purpose of establishing rates for workers' compensation insurance.

[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

6. Maine Insurance Guaranty Association. The provisions of this section apply to the Maine Insurance Guaranty Association under Title 24-A, chapter 57, subchapter 3.

[PL 2009, c. 129, §12 (NEW); PL 2009, c. 129, §13 (AFF).]

SECTION HISTORY

PL 1991, c. 885, §A8 (NEW). PL 1991, c. 885, §§A9-11 (AFF). PL 2007, c. 78, §1 (AMD). PL 2009, c. 129, §12 (AMD). PL 2009, c. 129, §13 (AFF). PL 2023, c. 205, §7 (AMD).

§361. Payment to the Workers' Compensation Board Administrative Fund; enforcement

1. Payment. All penalties assessed under this Act are payable to the Workers' Compensation Board Administrative Fund, unless otherwise provided by law. Upon certification by the board that certain amounts in the Workers' Compensation Board Administrative Fund attributable to penalties assessed pursuant to this Act are not required to support the activities of the board, the Treasurer of State shall transfer funds in the amount certified by the board to the General Fund.

[PL 2007, c. 26, §1 (NEW).]

2. Enforcement and collection. All penalties assessed under this Act are enforceable by the Superior Court under section 323.

A. The Attorney General shall prosecute any action necessary to recover penalties payable to the Workers' Compensation Board Administrative Fund, Employment Rehabilitation Fund or General Fund, or the board may retain private counsel for that purpose. [PL 2007, c. 26, §1 (NEW).]

B. If a person fails to pay a penalty assessed under this Act that is payable to the Workers' Compensation Board Administrative Fund, Employment Rehabilitation Fund or General Fund and enforcement by the Superior Court is necessary:

(1) That person shall pay the costs of prosecuting the action in Superior Court, including reasonable attorney's fees; and

(2) If the failure to pay was without due cause, any penalty assessed on that person under this Act must be doubled. [PL 2007, c. 26, §1 (NEW).]

[PL 2007, c. 26, §1 (NEW).]

SECTION HISTORY

PL 1993, c. 145, §6 (NEW). PL 2007, c. 26, §1 (RPR).

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