

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date May 5, 1977

To Richard A. Dieffenbach, Controller Dept. Accounts and Control
 From Kay R. H. Evans, Assistant Dept. Attorney General
 Subject Proposed Change to Biweekly Payment of Workmen's Compensation Benefits

Your memo of March 9, 1977, asks for an opinion as to whether you may, consistent with the provisions of the Workmen's Compensation Act, 39 M.R.S.A. § 1, et seq., revise § 39.33 of the State's Manual of Financial Procedures to provide for biweekly payments of workmen's compensation benefits. We conclude that such a revision would not be inconsistent with the statute.

Sections 54, 55 and 58 of Title 39 provide for payment of compensation in the event of, respectively, total incapacity, partial incapacity, or death. Each of these sections calls for payment of a "weekly compensation" equal to a percentage of prior "average weekly wages, earnings or salary" or, in the case of partial incapacity, equal to a percentage of the difference between pre- and post-incapacity average wages, earnings or salary.

As used in the Act, the term "weekly" gives the basis for computations but not necessarily the basis for actual payments. "Average weekly wages, earnings or salary," as defined in § 2, sub-§ 2, is a measure of pre-incapacity income derived for the purposes of computation which has no necessary relation to the time periods at which such wages, earnings or salary were actually paid. The amount of a post-incapacity benefit is based on the pre-incapacity average weekly wage, earnings or salary. The statutory directive to "pay . . . a weekly compensation" provides administrator, employer and employee with an equivalent measure for computation of benefits and for comparison of benefit with pre-incapacity earnings.

Further, the statute does not say that the employer shall pay weekly. Pre-incapacity "average weekly wages, earnings or salary" may have actually been paid weekly, biweekly, monthly or at some other interval determined primarily for administrative convenience. We see no statutory or policy reason preventing similar determination of the interval for payment of workmen's compensation benefits, as long as payments are made at reasonable intervals.

For all of these reasons, it is our opinion that revision of § 39.33 of the State's Manual of Financial Procedures to provide for biweekly payments of workmen's compensation benefits would not be inconsistent with Title 39.

Kay R. H. Evans
 KAY R. H. EVANS
 Assistant Attorney General

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 cc: Donald Alexander