

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SECOND LEGISLATURE

Legislative Document

No. 1570

H. P. 1146

House of Representatives, May 20, 1965

Reported by a Majority of the Committee on Labor. Printed under Joint Rules No. 10.

JEROME G. PLANTE, Clerk

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-FIVE

AN ACT to Revise the Workmen's Compensation Law.

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

Sec. 1. R. S., T. 39, § 52, amended. The first 2 paragraphs of section 52 of Title 39 of the Revised Statutes are repealed and the following enacted in place thereof:

'An employee injured out of and in the course of his employment shall be entitled to reasonable and proper medical, surgical and hospital services, nursing, medicines, and mechanical, surgical aids, as needed, paid for by the employer. An injured employee shall have the right to make his own selection of a physician or surgeon authorized to practice as such under the laws of the State from a panel of physicians and surgeons selected by the Industrial Accident Commission, for the services set forth.

In every case where any of said services or aids are procured by the employee, it shall be his duty to see that the employer is given prompt notice thereof. The employer shall then make prompt payment for same provided said costs were necessary and adequate, and the charges therefor reasonable. The commission in its discretion may require the employer to furnish artificial limbs, eyes, teeth, orthopedic appliances and physical aids made necessary by such injury, and to replace and renew the same when deemed necessary from wear and tear or physical change of the injured employee. In case artificial limbs, eyes and teeth, in use by an employee at the time of the accident as substitutes for natural parts of the body, are themselves injured or destroyed, they shall be repaired or replaced by the employer.'

Sec. 2. R. S., T. 39, § 53, amended. The last sentence of section 53 of Title 39 of the Revised Statutes is amended to read as follows:

'In case incapacity continues for more than ~~27~~ 14 days, compensation shall be allowed from the date of incapacity.'

Sec. 3. R. S., T. 39, § 54, amended. The first paragraph of section 54 of Title 39 of the Revised Statutes is repealed and the following enacted in place thereof:

'While the incapacity for work resulting from the injury is total, the employer shall pay the injured employee a weekly compensation equal to $\frac{2}{3}$ his average weekly wages, earnings or salary, but not more than $\frac{2}{3}$ of the average weekly wage in the State of Maine as computed by the Employment Security Commission. In the following cases it shall, for the purposes of this Act, be conclusively presumed that the injury resulted in permanent total incapacity; the total and irrevocable loss of sight of both eyes, the loss of both hands at or above the wrist, the loss of both feet at or above the ankle, the loss of one hand and one foot, an injury to the spine resulting in permanent and complete paralysis of the arms and legs and an injury to the skull resulting in incurable imbecility or insanity. In the event of such permanent total incapacity, the employer shall pay the employee a weekly compensation equal to $\frac{2}{3}$ his average weekly wage, earnings or salary but not more than $\frac{2}{3}$ of the average weekly wage in the State of Maine as computed by the Employment Security Commission. If the said totally incapacitated employee dies, leaving dependents who were dependent upon his earnings at the time of his accident, then payments shall be made to said dependents in accordance with the procedures established by section 58.'

Sec. 4. R. S., T. 39, § 55, amended. Section 55 of Title 39 of the Revised Statutes is amended to read as follows

'§ 55. Compensation for partial incapacity

While the incapacity for work resulting from the injury is partial, the employer shall pay the injured employee a weekly compensation equal to $\frac{2}{3}$ the difference, due to said injury, between his average weekly wages, earnings or salary before the accident and the weekly wages, earnings or salary which he is able to earn thereafter but not more than \$42 a week; and in no case shall the period covered by such compensation be greater than 300 weeks from the date of the accident except for vocational rehabilitation services provided under sections 52 and 54.'

Sec. 5. R. S., T. 39, § 56, amended. The first paragraph of section 56 of Title 39 of the Revised Statutes is repealed and the following enacted in place thereof:

'In addition to the benefits provided for in sections 54 and 55, when an employee sustains an injury which is included in the following schedule, the incapacity in each case shall be deemed to be total for the period specified and the injured employee shall receive a lump sum payment for said injury which shall be determined by multiplying the average weekly wage, as determined by section 2, subsection 2, by the period of presumed total incapacity hereinafter set forth. The specific periods of presumed total incapacity because of injuries hereinafter specified shall be as follows:'

Sec. 6. R. S., T. 39, § 58, repealed and replaced. Section 58 of Title 39 of the Revised Statutes is repealed and the following enacted in place thereof:

§ 58. Death benefit; apportionment

If death results from the injury, the employer shall pay the dependents of the employee, dependent upon his earnings for support at the time of his accident, a weekly payment equal to $\frac{2}{3}$ his average weekly wages, earnings or salary, but not more than $\frac{2}{3}$ of the average weekly wage in the State of Maine as computed by the Employment Security Commission, from the date of death, until such time as provided for in the following paragraph.

If the dependent of the employee to whom compensation will be payable upon his death is the widow of such employee, upon her death or remarriage compensation to her shall cease and the compensation to which she would have been entitled thereafter, but for such death or remarriage, shall be paid to the child or children, if any, of the deceased employee, including adopted and stepchildren, under the age of 18 years, or over said age but physically or mentally incapacitated from earning, who are dependent upon the widow at the time of her death or remarriage. If the dependent is the widower, upon his death, the remainder of the compensation which would otherwise have been payable to him shall be payable to the children above specified, if any, who at the time thereof are dependent upon him. In case there is more than one child thus dependent, the compensation shall be divided equally among them. Except in the case of dependents who are physically or mentally incapacitated from earning, compensation payable to any dependent child under the age of 18 years shall cease upon such child's reaching the age of 18 years or upon marriage.

If the employee leaves dependents only partly dependent upon his earnings for support at the time of his accident, the employer shall pay such dependents a weekly compensation equal to the same proportion of the weekly payments herein provided for the benefit of persons dependent, as the total amount contributed by the employee to such partial dependents for their support during the year prior to his accident, bears to the earnings of the employee during said period.'

Sec. 7. R. S., T. 39, § 64-A, additional. Title 39 of the Revised Statutes is amended by adding a new section 64-A, to read as follows:

‘§ 64-A. When employee killed or unable to testify

In any claim for compensation, where the employee has been killed, or is physically or mentally unable to testify, there shall be a rebuttable presumption that the employee received a personal injury by accident arising out of and in the course of his 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 himself or another.'

Sec. 8. R. S., T. 39, § 65, repealed and replaced. Section 65 of Title 39 of the Revised Statutes is repealed and the following enacted in place thereof:

‘§ 65. Medical examinations of employees; acceptance of treatment or vocational rehabilitation

Every employee shall after an injury, at all reasonable times during the continuance of his disability if so requested by his employer, submit himself to an examination by a physician or surgeon authorized to practice as such under the

laws of this State, to be selected and paid by the employer. The employer shall have the right to have a physician or surgeon of his own selection present at such examination, whose costs shall be paid by the employer. The employer shall give the employee notice of said right at the time he requests such examination.

The commission or any commissioner may at any time after the injury appoint a competent and impartial physician or surgeon to act as medical examiner, the reasonable fees of whom shall be fixed by the commission. Such medical examiner, after being furnished with such information in regard to the matter as may be deemed essential for the purpose, shall thereupon and as often as the commission or the said commissioner may direct, examine such injured employee in order to determine the nature, extent and probable duration of the injury, or the percentage of permanent impairment. He shall file in the office of the commission a report of every such examination, and a copy thereof shall be sent to each of the interested parties, who upon request therefor shall be given the opportunity at a hearing, before decree is rendered, to question said impartial examiner as to any matter included in such report.

If any employee refuses or neglects to submit himself to any reasonable examination provided for in this Act, or in any way obstructs any such examination, or if he declines a service which the employer is required to provide under this Act, then, upon petition of said employer and hearing before the commission, such employee's rights to compensation shall be forfeited during the period of said infractions if the commission finds that there is adequate cause to do so.'

Sec. 9. R. S., T. 39, § 95, repealed and replaced. Section 95 of Title 39 of the Revised Statutes is repealed and the following enacted in place thereof:

‘§ 95. Time for filing petitions

Any employee's claim for compensation under this Act shall be barred unless an agreement or a petition as provided in section 94 shall be filed within 2 years after the date of the accident. Any time during which the employee is unable by reason of physical or mental incapacity to file said petition shall not be included in the period aforesaid. If the employee fails to file said petition within said period because of mistake of fact as to the cause and nature of the injury, he may file said petition within a reasonable time. In case of the death of the employee, there shall be allowed for filing said petition one year after such death. No petition of any kind may be filed more than 10 years following an accident.'

Sec. 10. R. S., T. 39, § 100, repealed and replaced. Section 100 of Title 39 of the Revised Statutes is repealed and the following enacted in place thereof:

‘§ 100. Petition for review of incapacity

While compensation is being paid or vocational rehabilitation is being provided under any agreement, award or decree, the incapacity of the injured employee due to the injury, the need or progress of the vocational rehabilitation may from time to time be reviewed by a single commissioner upon the petition of either party upon the grounds that such incapacity has subsequently increased, diminished or ended or that the need of the continuation of vocational rehabilitation has ended. Pending a hearing and final decision upon such petition for review, and except in such cases as the employer and employee may reach a new

agreement under section 94, the payment of compensation shall not be decreased or suspended unless and until a certificate of the employer or his insurance carrier is filed with the commission stating that the employee has left the State or that his present whereabouts are unknown, or that he has resumed work. Upon the request of the petitioner, the commission shall order the employee to submit to examination by an impartial physician or surgeon designated by the commission from the geographical area where the employee resides. If the employee refuses to submit to such examination, or if after examination such physician or surgeon certifies to the commission that in his opinion the employee is able to resume work, the payment of compensation may be decreased or suspended pending final decision on the petition for review. The fee for such impartial examination shall be paid by the petitioner.

Upon such review the commissioner may increase, diminish or discontinue such compensation or vocational rehabilitation in accordance with the facts, as the justice of the case may require. If after compensation or vocational rehabilitation has been discontinued, by decree or approved settlement receipt as provided by section 106, additional compensation or further vocational rehabilitation is claimed by an employee for further period of incapacity, he may file with the commission a petition for further compensation or vocational rehabilitation setting forth his claim therefor, hearing upon which shall be held by a single commissioner. The provisions of sections 96 to 99 as to procedure shall apply to the petitions authorized by this section and by section 65; and said provisions shall apply to the petitions authorized by sections 52, 56, 71 and 102, except that such petitions shall be heard by the commission.'

Sec. 11. R. S., T. 39, § 110, additional. Title 39 of the Revised Statutes is amended by adding a new section 110, to read as follows:

‘§ 110. Witness and attorney’s fees allowable

When the commission or commissioner finds that an employee has instituted proceedings under this chapter on reasonable grounds and in good faith, the said commission or commissioner may assess the employer costs of witness fees and a reasonable attorney’s fee, when in the commission’s or commissioner’s judgment the said witnesses and the services of the said attorney were necessary to the proper and expeditious disposition of the case.’

Sec. 12. Effective date. This Act shall become effective on November 30, 1965.