

MAINE STATE LEGISLATURE

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FIRST SPECIAL SESSION

ONE HUNDRED AND SIXTH LEGISLATURE

Legislative Document

No. 2543

H. P. 1994

House of Representatives, February 28, 1974

Referred to Committee on Labor. Sent up for concurrence and ordered printed.

E. LOUISE LINCOLN, Clerk

Presented by Mr. McTeague of Brunswick.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-FOUR

AN ACT to Amend the Workmen's Compensation Law and to Conform with Certain Recommendations of the National Commission on State Workmen's Compensation Laws.

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

Sec. 1. R. S., T. 39, § 2, sub-§ 4, ¶ C, repealed and replaced. Paragraph C of subsection 4 of section 2 of Title 39 of the Revised Statutes is repealed and the following enacted in place thereof:

C. A child or children, including adopted and stepchildren, under the age of 18 years, or under the age of 23 years if a student, or over the age of 18 years but physically or mentally incapacitated from earning, upon the parent with whom he is or they are living, or upon whom he is or they are actually dependent in any way at the time of the injury to said parent, there being no surviving dependent parent. "Child" shall include any posthumous child whose mother is not living and dependent. In case there is more than one child dependent, the compensation shall be divided equally among them.

The term "student" means a person regularly pursuing a full-time course of study or training at an institution which is:

- (1) A school, college or university operated or directly supported by the United States, or by any state or local government or political subdivision thereof;
- (2) A school, college or university which has been accredited by a state or by a state recognized or nationally recognized accrediting agency or body;

(3) A school, college or university not so accredited but whose credits are accepted, on transfer, by not less than 3 institutions which are so accredited, for credit on the same basis as if transferred from an institution;

(4) An additional type of educational or training institution as defined by the commission, but not after he reaches the age of 23 or has completed 4 years of education beyond the high school level, except that, where his 23rd birthday occurs during a semester or other enrollment period, he shall continue to be considered a student until the end of such semester or other enrollment period. A child shall not be deemed to have ceased to be a student during any interim between school years if the interim does not exceed 5 months and if he shows to the satisfaction of the commission that he has a bona fide intention of continuing to pursue a full-time course of education or training during the semester or other enrollment period immediately following the interim or during periods of reasonable duration during which, in the judgment of the commission, he is prevented by factors beyond his control from pursuing his education. A child shall not be deemed to be a student under this Act during a period of service in the Armed Forces of the United States.

Sec. 2. R. S., T. 39, § 52, amended. The 3rd paragraph of section 52 of Title 39 of the Revised Statutes, as repealed and replaced by section 1 of chapter 408 of the public laws of 1965, is repealed and the following enacted in place thereof:

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 employer shall furnish artificial limbs, eyes, teeth, eye glasses, hearing aids, orthopedic devices and other physical aids made necessary by such injury and shall replace or renew the same when necessary from wear and tear or physical change of the employee.

Damage and destruction to artificial limbs, eyes, teeth, eyeglasses, hearing aids, orthopedic devices and other physical aids in the course of and arising out of the employment shall be considered an injury for the purposes of this Act. In case such physical aids in use by the employee at the time of the injury are themselves injured or destroyed, they shall be repaired or replaced by the employer.

Sec. 3. R. S., T. 39, § 52, amended. The 4th paragraph of section 52 of Title 39 of the Revised Statutes, as amended by section 69 of chapter 571 of the public laws of 1973, is amended by adding a new sentence after the first sentence to read as follows:

The 2nd 52-week period may be extended for another further period not to exceed an additional 52 weeks if such further extended period is found to be necessary and proper by any member of the commission and if the employee is carrying on the same or substantially the same program as in the prior 52 weeks of rehabilitation service.

Sec. 4. R. S., T. 39, § 56, repealed and replaced. Section 56 of Title 39 of the Revised Statutes, as amended, is repealed and the following enacted in place thereof:

§ 56. Compensation for particular injuries; permanent impairment

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 injured employee shall receive a lump sum payment for said injury which shall be determined by multiplying the maximum weekly benefit provided for total incapacity at the time of the injury, as determined under section 54, by the appropriate multiplier hereinafter set forth:

For the loss of a thumb, 50;

For the loss of the first finger, commonly called the index finger, 32;

For the loss of the 2nd finger, commonly called the middle finger, 28;

For the loss of the 3rd finger, commonly called the ring finger, 20;

For the loss of the 4th finger, commonly called the little finger, 17;

The loss of the distal (second) phalanx of the thumb or the distal (third) phalanx of any finger shall be considered to be equal to the loss of $\frac{1}{2}$ of said thumb or finger, and the compensation therefor shall be $\frac{1}{2}$ the amount above specified. The loss of more than one phalanx shall be considered as the loss of the entire thumb or finger. In no case shall the amount received for the loss of a thumb and more than one finger of the same hand exceed the amount specified in this schedule for the loss of a hand.

For the loss of the great toe, \$25;

For the loss of one of the toes other than the great toe, 10;

For the loss of the distal (second) phalanx of the great toe or of the distal (third) phalanx of any other toe shall be considered to be equal to the loss of $\frac{1}{2}$ of said great toe or any other toe, and the compensation therefor shall be $\frac{1}{2}$ the amount above specified. The loss of more than one phalanx shall be considered as the loss of the entire toe;

For the loss of a hand, 165;

For the loss of an arm, or any part thereof above the wrist, 200;

For the loss of a foot, 165;

For the loss of a leg, or any part thereof above the ankle, 200;

For the loss of both eyes, or the reduction of the sight of both eyes, with glasses, to $\frac{1}{10}$ of the normal vision, or for diplopia, 300;

For the total and permanent loss of hearing in one ear, 50.

In all other cases of injury to the above-mentioned members, eyes or hearing where the usefulness of any physical function thereof is permanently impaired, the specific multiplier on account thereof shall bear such relation to the multiplier above specified as the percentage of impairment due to the injury to such members, eyes or hearing shall bear to the total loss thereof. The commission, upon petition therefor by either party, shall determine such percentage. A petition for determination of the percentage of permanent hear-

ing impairment due to an injury shall be filed with the commission within 2 years from the date of the injury.

The commission may award proper and equitable compensation for serious facial or head disfigurement not to exceed \$7,500, including a disfigurement continuous in length which is partially in the facial area and also extends into the neck region. The commission, if in its opinion the earning capacity of an employee has been or may in the future be impaired, may award compensation for any serious disfigurement in the region above the sterno clavicular articulations anterior to and including the region of the sterno cleido mastoid muscles on either side, but no award for the total disfigurement as set forth shall, in the aggregate, exceed \$7,500. Notwithstanding any other provision hereof, 2 or more serious disfigurements, not continuous in length, resulting from the same injury, if partially in the facial area and partially in the neck region as described in the preceding sentence, shall be deemed to be a facial disfigurement.

Sec. 5. R. S., T. 39, § 56-A, repealed and replaced. Section 56-A of Title 39 of the Revised Statutes, as enacted by section 1 of chapter 465 of the public laws of 1971, and as amended, is repealed and the following enacted in place thereof:

§ 56-A. Injuries

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 injured employee shall receive a lump sum payment for said injury which shall be determined by multiplying the maximum weekly benefit provided for total incapacity at the time of the injury, as determined under section 54, by the appropriate multiplier hereinafter set forth:

Total loss of function of
 Neck, 100;
 Back, 200;
 Jaw, 40;
 Genito-urinary organs, 100.

In all other cases of injury to the above-mentioned parts of the body where the usefulness of any physical function thereof is permanently impaired, the specific multiplier on account thereof shall bear such relation to the multiplier above specified as the percentage of permanent impairment due to the injury to such parts of the body shall bear to the total loss thereof. The commission, upon petition therefor by either party, shall determine such percentage.

Such determination by the commission shall be based upon reasonably demonstrable medical or clinical findings.

Sec. 6. R. S., T. 39, § 58, amended. The 2nd paragraph of section 58 of Title 39 of the Revised Statutes, as repealed and replaced by section 6 of chapter 408 of the public laws of 1965, is amended to read as follows:

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 under the age of 23 years if a student, as defined in section 2, subsection 4, paragraph C, or over ~~said age~~ the age of 18 years 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 students** or 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.

Sec. 7. R. S., T. 39, § 60, repealed and replaced. Section 60 of Title 39 of the Revised Statutes is repealed and the following enacted in place thereof:

§ 60. Compensation unpaid at death

If the employee shall die before having received the entire amount of compensation to which he is entitled under this Act, the compensation payable to him before his death shall be paid to his dependents, if any; otherwise to his executor or administrator.

Sec. 8. R. S., T. 39, § 93, sub-§ 3, amended. Subsection 3 of section 93 of Title 39 of the Revised Statutes, as repealed and replaced by chapter 386 of the public laws of 1969 and as amended by chapter 319 of the public laws of 1971, is further amended by adding, after the first paragraph, the following 2 new paragraphs:

The scope of discovery shall be sufficient to enable the claimant to ascertain the existence of any possible 3rd-party action, the identity and location of 3rd-party defendants and the identity, location and description of any tangible instrumentality involved in a possible 3rd-party action.

Prior to the award of the 3rd period of up to 52 weeks of vocational rehabilitation as provided by section 52, the employer shall have the right of discovery and subpoena power in regard to all persons, including any private or public agent, to determine the suitability of such employee for such further rehabilitation.

Sec. 9. R. S., T. 39, § 95, amended. Section 95 of Title 39 of the Revised Statutes, as last amended by section 8 of chapter 489 of the public laws of 1965, is further amended to read as follows:

§ 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~~ injury or within 2 years of the

latest payment to or on behalf of the employee by or on behalf of the employer, regardless of whether such payment was made pursuant to an agreement or an award, or without an agreement or an award. 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 ~~aforsaid~~ provided in this section. If the employee fails to file said petition within said period because of mistake of fact as to the cause ~~and~~ or 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 the date of the latest payment made under this Act.

Sec. 10. R. S., T. 29, § 103, amended. The last sentence of section 103 of Title 39 of the Revised Statutes is repealed and the following enacted in place thereof:

In all cases of appeal, the employer shall be liable to the employee for expenses incurred in the proceedings of the appeal, including the record and reasonable attorney's fees, not, however, to include expenses incurred in other proceedings in the case. The Industrial Accident Commission shall determine the amounts to be allowed hereunder on petition and hearing.

Sec. 11. R. S., T. 39, § 104-A, sub-§ 3, amended. Subsection 3 of section 104-A of Title 39 of the Revised Statutes, as enacted by chapter 155 of the public laws of 1971, is amended to read as follows:

3. **Law court decision.** Within 10 days after receipt of notice of the decision of the law court affirming the order or decision of the commission if the employer has obtained a stay of payment order from the commission, as provided in section 104-B;

Sec. 12. R. S., T. 39, § 104-A, amended. Section 104-A of Title 39 of the Revised Statutes, as enacted by chapter 155 of the public laws of 1971, is amended by adding, before the last paragraph, the following new paragraph.

If any compensation, payable under the terms of an award, is not paid within 10 days after it becomes due, there shall be added to such unpaid compensation an amount equal to 20% thereof, which shall be paid at the same time as, but in addition to, such compensation, unless an order staying payment has been issued by the commission as provided in section 104-B.

Sec. 13. R. S., T. 39, § 104-B, additional. Title 39 of the Revised Statutes is amended by adding a new section, 104-B, to read as follows:

§ 104-B. Stay of payments

Upon petition of the employer or insurance carrier within 10 days after an order of the commission, the commission may issue a stay of payment order pending a final decision on an appeal to the Supreme Judicial Court of a pro forma decree of the Superior Court. No stay shall be issued unless irreparable damage would otherwise ensue to the employer or carrier.

STATEMENT OF FACT

This Act responds to certain recommendations of the National Commission on State Workmen's Compensation Laws by:

1. Defining students under the age of 23 years as dependents (section 1, 6);
2. Extending vocational rehabilitation service (section 3);
3. Clarifying the time limit for initiating a claim (section 9).

The Act also:

4. Clarifies payment for physical aids (section 2);
5. Provides uniform payment for permanent impairment (sections 4, 5);
6. Clarifies the statute dealing with compensation unpaid at death to conform with recent changes in the law (section 7);
7. Enlarges the scope of discovery (section 8);
8. Provides that the commission shall determine the expenses to be allowed on appeals to the Law Court;
9. Provides that there shall be a surcharge where compensation is not paid in a timely manner while providing that the State shall be treated as all other employers (section 12); and
10. Provides for a possible stay of payments while an appeal to the Supreme Judicial Court is pending. (Sections 11 and 12).