

MAINE STATE LEGISLATURE

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ONE HUNDRED AND EIGHTH LEGISLATURE

Legislative Document

No. 820

H. P. 638

House of Representatives, March 8, 1977

Referred to Committee on Labor. Sent up for concurrence and 2,000 ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Higgins of Scarborough.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-SEVEN

AN ACT to Revise and Clarify Portions of the Workmen's Compensation Act.

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

Sec. 1. 19 MRSA § 167-A, as enacted by PL 1967, c. 13, is amended to read:
§ 167-A. Loss of consortium

A married woman may bring a civil action in her own name for loss of consortium of her husband, provided, however, no such action may be maintained against an employer or its insurer for any losses sustained as a result of an injury to the husband which is compensable under Title 39.

Sec. 2. 39 MRSA § 28, as last amended by PL 1973, c. 746, § 9, is further amended by adding after the first paragraph a new paragraph to read:

If an employer secures payment of compensation as required by this Act, the liability of such employer under this Act shall be exclusive and in place of all other liability of such employer to the employee, his legal representative, assigns and successors, spouse, parents, dependents, next of kin, or anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death. The limitation on liability given an employer by this section shall also extend to such employer's carrier and to all employees, supervisors, officers or directors of such employer or carrier, provided the limitation on liability given an employee, supervisor, officer or director of an employer or carrier, shall not apply in any case where the injury or death is proximately caused by the willful and unprovoked physical aggression of such employee, supervisor, officer or director.

Sec. 3. 39 MRSA § 52, 3rd ¶, as last amended by PL 1973, c. 788, § 222, is further amended by adding at the end a new sentence to read:

The employer or his counsel shall serve upon the employer or opposing counsel, within 7 days of the date of receipt by such employee or counsel, complete copies of any medical reports or statements relating to any treatment or examination described in this section.

Sec. 4. 39 MRSA § 71, 1st ¶, last sentence, is repealed.

Sec. 5. 39 MRSA § 91, 4th ¶, is repealed and the following enacted in its place:

The commission shall appoint a clerk and at least two full-time reporters or such part-time reporters and clerical assistance as may be necessary, subject to the Personnel Law.

Sec. 6. 39 MRSA § 93, sub-§ 3, 1st ¶, as last repealed and replaced by PL 1969, c. 386, is amended by adding at the end a new sentence to read:

In all proceedings before the commission, the rules of evidence shall be the same as in civil actions in the Superior Court except as otherwise expressly provided by statute.

Sec. 7. 39 MRSA § 94, 1st ¶, as last amended by PL 1973, c. 788, § 232, is further amended by adding at the end a new sentence to read:

An agreement filed under this paragraph shall be deemed approved by the director unless within 30 days of the date of such filing the director expressly refuses to approve the same.

Sec. 8. 39 MRSA § 94, as last amended by PL 1973, c. 788, § 232, is further amended by adding at the end a new paragraph to read:

If following an injury which 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 agreement signed by the parties may be filed in the office of the commission. Such memorandum shall 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 commission shall be empowered, without the necessity of the filing of a petition for award, to render a protective decree based upon such memorandum.

Sec. 9. 39 MRSA § 97, 1st sentence is amended to read:

Within ~~15~~ 20 days after notice of the filing of such petition all the other parties interested in opposition shall file an answer thereto and furnish a copy thereof for the petitioner, which answer shall state specifically the contentions of the opponents with reference to the claim as disclosed by the petition.

Sec. 10. 39 MRSA § 99-A is enacted to read:

§ 99-A. Reconsideration

Within 10 days after notice of the filing of the commission's decision or decree, either party may petition the commission to reconsider its decision for the purpose of rescinding or altering such decision or decree. The petition

shall set forth specifically the grounds upon which the petitioner considers that decision or decree to be unreasonable, unlawful or erroneous. The commission shall, upon reconsideration, rescind, amend or affirm its decree.

Either party may secure judicial review of the commission's decision on reconsideration in accordance with the procedures specified in section 103.

Clerical mistakes in decisions, orders, decrees or other parts of the record and error arising from oversight or omission may be corrected by the commission at any time of its own initiative or on the motion of any party and after such notice, if any, as the commission orders.

Unless by agreement of the parties or in accordance with the procedures specified in this section for reconsideration, no petition once heard and decree issued thereon shall be opened for rehearing before the commission.

Sec. 11. 39 MRSA § 106, as last amended by PL 1975, c. 293, § 4, is further amended by adding at the end a new paragraph to read:

Any person receiving compensation under this Act who returns to employment or engages in new employment after his injury shall make a written report of such employment to the commission and to his previous employer and within 7 days of such person's return to work. Such report shall include the identity of the employee, his employer and the amount of weekly wages or earnings received or to be received by such person.

Sec. 12. 39 MRSA § 110, as last amended by PL 1965, c. 489, § 9, is further amended by adding at the end a new paragraph to read:

Any fees assessed shall be reasonable commensurate with the actual necessary work performed, and shall take into account the capacity in which the attorney or representative has appeared and the amount of benefits involved. Before assessing such costs or fees, the commission shall require that a statement of services be filed with the commission by the employee or his attorney. Subject to the conditions specified in this section, the commission shall have the authority to assess reasonable costs and fees when a claim is disposed of without the filing of a petition for award.

STATEMENT OF FACT

This bill is intended to clarify some of the procedural aspects of workmen's compensation proceedings. This bill does not diminish any of the benefits now provided to injured employees. On a paragraph by paragraph basis, the bill provides the following clarifications.

Sec. 1 of this bill further reflects the legislative intent that workmen's compensation be an exclusive remedy to an injured employee. This section provides that the wife of an injured employee may not bring a separate civil action against the employer for damages resulting from a compensable injury.

Sec. 2 of the bill makes it clear that the benefits and remedies provided by the Workmen's Compensation Act are exclusive as between an injured employee and his employer. This section reflects the original intent of the Work-

men's Compensation Act that an employer and its employees are not subject to suit by an injured employee under circumstances which provide for workmen's compensation coverage.

Sec. 3 of this bill insures that an employer will receive complete copies of medical reports or statements for which the employer is obliged to pay under the Act. The section does not require the disclosure of all medical reports; rather it requires the disclosure of medical reports rendered as a result of services for which the employer is liable under the Act.

Sec. 4 of the bill deletes the "mandatory" but often ignored formula for the computation of a lump sum settlement. This change does not alter the existing requirements that any lump sum agreement must be approved by the commission. It merely insures that such lump sum agreements, once approved, will not be subject to attack at a later date.

Sec. 5 of the Act requires the appointment of at least two full-time reporters. At the present time, despite the outstanding work of the commission's reporter, the fact that a single reported must cover the entire state results in undue hearing delays.

Sec. 6 of the bill provide that the recently promulgated rules of evidence, applicable to all court proceedings are also applicable to commission proceedings.

Sec. 7 of the bill provides for the automatic approval of compensation agreements which are signed by the employee and employer and are filed with the director for approval.

Sec. 8 of this bill is intended to grant the commission the authority to render protective decrees in cases where an employee has received an injury covered by the Act but where the employee has not lost time from work.

Sec. 9 of the bill is patterned after similar rules of court as set forth in the Maine Rules of Civil Procedure and provides that answers to petitions must be filed within 20 days after notice.

Sec. 10 of the bill provides for a reconsideration procedure by which a commissioner may reconsider decisions in order to correct manifest error. This provision is similar to the analogous rules contained in the Maine Rules of Civil Procedure.

Sec. 11 of this bill provides that an injured employee who returns to gainful employment must make a written report of such employment to the Industrial Accident Commission.

Sec. 12 of the bill pertains to attorney's fees which employers are required to pay under the Act. The section attempts to provide general guidelines for determining the assessment of reasonable attorney's fees. This section requires the filing of a statement of services with the commission. The section also grants to the commission the authority to assess legal costs and fees when a compensation claim is disposed of or settled without the necessity of filing a petition for award.