

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 605

S. P. 218

In Senate, February 4, 1981

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

MAY M. ROSS, Secretary of the Senate

Presented by Senator Sutton of Oxford.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

AN ACT to Establish a Direct Payment System under the Workers' Compensation Law.

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

Sec. 1. **39 MRSA § 56-B** is enacted to read:

§ 56-B. Payment of compensation

1. **Prompt and direct payment.** Compensation under this Act shall be paid promptly and directly to the person entitled thereto, without an award, except where the claim to compensation is controverted by the employer.

2. **First payment due.** The first payment of compensation, other than compensation for impairment under sections 56 and 56-A, shall become due within 15 days after the employer has notice or knowledge of the injury or death, on which date all compensation then due shall be paid.

3. **Compensation for impairment.** Compensation for impairment under sections 56 and 56-A shall not be payable prior to the date on which the injured employee reaches the stage of maximum medical improvement. It shall become due and payable within 20 days after the employer has notice that maximum medical improvement has been attained. For the purpose of this subsection, maximum medical improvement means the date after which further recovery and further restoration of function can no longer be reasonably anticipated based upon reasonable medical probability.

4. Notification of payment. Upon making the first payment of compensation or upon making a payment of compensation for impairment, the employer shall immediately notify the commission that compensation has been paid.

5. Notice of controversy. If the employer controverts the claim to compensation, it shall file with the commission, within 21 days after the employer has notice or knowledge of the injury or death, a notice of controversy in a form prescribed by the commission. The notice shall indicate the name of the claimant, the name of the employer, the date of the alleged injury or death and the grounds upon which the claim to compensation is controverted. The employer shall promptly furnish the employee with a copy of the notice.

6. Notice of controversy payments made without award. If payments have been made without an award, and the employer then elects to controvert, a notice of controversy shall be filed with the commission.

7. Election to controvert after payment of compensation. If, after the payment of compensation without an award, the employer elects to controvert the claim to compensation, the payment of compensation shall not be considered to be an acceptance of the claim or an admission of liability. The acceptance of compensation by the injured employee or his dependents shall not be considered an admission as to the nature and scope of the employer's liability or a waiver of the right to question the amount of compensation.

8. Commission to take action upon notice of controversy. Upon receipt of information from any person entitled to compensation, or from the employer, that the claim to compensation is controverted, or that payment of compensation has been suspended or reduced, the commission shall, whether or not a petition for award has been filed, promptly take any action it considers necessary to protect the rights of all parties including, without limitation, investigating the circumstances surrounding the claim, requiring medical examinations, holding hearings and making determinations and awards. Notwithstanding the absence of a dispute between the parties, in any case in which payments are being made without an award, the commission may, upon its own initiative and at any time, take any of the actions described in this subsection.

9. Penalty for nonpayment. If a claim to compensation has not been controverted and any payment of compensation payable without an award is not paid within 7 days after it becomes due, the commission shall assess a penalty equal to 10% of the amount due. If a claim of compensation has been controverted and a notice of controversy is not filed within the time prescribed within subsection 5, the commission shall assess a penalty of \$25 for each day of noncompliance. The penalties provided in this subsection shall be assessed against either the employer or insurer, depending on who was at fault in causing the delay. They shall be paid directly to the person entitled to compensation. No penalty under this subsection may be assessed where it is shown to the commission that the delay in payment of filing resulting from conditions over which the employer or insurer had no control. No penalty assessed against an

insurer under this subsection may be recovered by any insurer or self-insurer in the rate base, premium or in any rate filing. No insurer or self-insurer under the terms of a workers' compensation policy or self-insurance agreement, may be required to pay a penalty which is assessed against an employer under this subsection. This subsection shall be enforced by the Superintendent of Insurance.

Sec. 2. 39 MRSA § 68, 2nd ¶, first sentence, as repealed and replaced by PL 1969, c. 84, is amended to read:

If the injured employee elects to claim compensation and benefits under this Act, any employer having paid such compensation or benefits or having become liable therefor under any decree ~~or approved agreement~~ shall have a lien for the value of compensation paid on any damages subsequently recovered against the third person liable for the injury.

Sec. 3. 39 MRSA § 69 is amended to read:

§ 69. Preference of claims

A claim for compensation under this Act, and any decree ~~or approved agreement~~ therefor, shall be entitled to a preference over the unsecured debts of the employer to the same amount as the wages of labor are preferred by the laws of this State. Nothing herein shall be construed as impairing any lien which the employee may have acquired.

Sec. 4. 39 MRSA § 71, 2nd ¶ is amended to read:

Upon payment of any lump sum approved by the commission, the employer shall be discharged from all further liability on account of ~~said~~ the injury or death and be entitled to a duly executed release; upon filing which, or other due proof of payment, the liability of such employer under ~~any agreement, award or decree~~ **this Act** shall be discharged of record, and the employee accepting the lump sum settlement shall receive no further compensation or other benefits on account of ~~said~~ the injury or death under this Act.

Sec. 5. 39 MRSA § 92, as amended by PL 1979, c. 548, § 6, is further amended by adding at the end a new paragraph to read:

The commission shall assume an active and forceful role in the administration of this Act to ensure that the system operates efficiently and with maximum benefit to both employers and employees. It shall prescribe rules and notices to ensure that both employers and employees are fully informed as to their rights and responsibilities under this Act. It shall continually monitor individual compensation cases to ensure that injured employees or their dependents receive the full amount of compensation to which they are entitled under this Act.

Sec. 6. 39 MRSA § 94, first ¶, as last amended by PL 1977, c. 709, § 3, is repealed and the following enacted in its place:

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

commission 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 thereof, the character and extent of the injury and the claims of the petitioner with reference thereto; together with such other facts as may be necessary and proper for the determination of the rights of the petitioner.

Sec. 6-A. 39 MRSA § 94 as last amended by PL 1977, c. 709, § 3, is further amended by adding after the first paragraph a new paragraph to read:

No petition for award which is filed on behalf of a party represented by an attorney is valid unless there exists, at the time of its filing, a controversy determinable by the commission. Any petition which is not in compliance with this paragraph shall be subject to dismissal upon motion of the commission or any interested party.

Sec. 7. 39 MRSA § 95, first sentence, as last amended by PL 1975, c. 372, is further amended to read:

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 injury, or, if the employee is paid by the employer or the insurer, without the filing of any petition or agreement, within 2 years of any payment by such employer or insurer for benefits otherwise required by this Act.

Sec. 8. 39 MRSA § 100, first sentence, as repealed and replaced by PL 1965, c. 408, § 10, is amended to read:

While compensation is being paid or vocational rehabilitation is being provided under ~~any agreement, award or decree~~ this Act, 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.

Sec. 9. 39 MRSA § 100, as last amended by PL 1971, c. 420, is further amended by adding, after the first sentence, a new sentence to read:

In any case in which compensation is being paid without an award under section 56-B, any petition for review of incapacity filed by the employer shall be heard within 30 days after receipt of the petition by the commission.

Sec. 10. 39 MRSA § 100, 2nd sentence, as amended by PL 1969, c. 309, is further amended to read:

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 for reasons other than

returning to his permanent residence at the time of injury or that his present whereabouts are unknown, or that he has resumed work.

Sec. 11. **39 MRSA § 101**, as last amended by PL 1977, c. 709, § 4, is repealed and the following enacted in its place:

§ 101. Agreements; decree as affected by subsequent agreement

If after any petition, except for lump sum settlement under section 71, has been filed the parties themselves reach an agreement as to payment of compensation or medical benefits under section 52, the memorandum of which is approved by the commission, the commission shall dismiss the pending petition and enter an award or decree in accordance with the approved memorandum. The weekly rate of compensation payable for actual incapacity under any decree may be modified at any time by an approved agreement between the parties as to any subsequent period of incapacity. Upon approval of the agreement, the commission shall enter a decree in accordance with the agreement.

Sec. 12. **39 MRSA § 104-A, sub-§ 1, first sentence**, as repealed and replaced by PL 1977, c. 333, is repealed and the following enacted in its place:

Within 10 days after any order or decision of the commission awarding compensation.

Sec. 13. **39 MRSA § 106, 2nd ¶**, is amended to read:

Whenever any settlement is made with an injured employee, either by the employer or insurance company, for compensation covering any specified period under ~~an approved agreement~~ or a decree, or covering any period of incapacity, total or partial, that has ended, a duplicate copy of the settlement receipt or agreement signed by ~~said~~ the employee showing the total amount of money paid to him for such period or periods shall be filed with the commission, but shall not be binding without its approval.

Sec. 14. **39 MRSA § 106-A**, as amended by PL 1979, c. 541, Pt. A, § 283, is amended to read:

§ 106-A. Notice by the commission

Within ~~90~~ 15 days of receipt of an employer's notice of injury, as required by section 106, unless it has received a petition for award ~~or approved an agreement~~ ~~for~~ of compensation relating to the injured employee, the commission shall take reasonable steps to notify the employee that ~~unless the employer disputes the claim, he is required to pay compensation within 15 days after notice of the injury; that a petition for award may be filed; that section 110 of the Act provides for the payment of attorney's fees under certain circumstances; and that rights under the Act may not be protected unless a petition of award ~~or approved agreement~~~~ is on file with the commission within 2 years of the injury.

STATEMENT OF FACT

The purpose of this bill is to substitute a direct payment system for the agreement system which presently exists under the Workers' Compensation Act.

The basic feature of a direct payment system is that an employer, in undisputed cases, is required to pay compensation within a certain period of time and is subject to statutory penalties for late payments. Under this bill, an employer would be required to pay compensation within 14 days unless he elected to dispute the case. This should be contrasted with the present system under which an employee does not receive any compensation until after the employer agrees to pay it or until the employee prevails in filing a petition for award.

Most states have abandoned agreement systems in favor of direct payment systems. In those states, 2 principal advantages have been observed. First, the delays typically associated with agreements have been eliminated resulting in much more rapid payments of compensation to injured employees. Secondly, there has been a substantial decrease in unnecessary controversy and a corresponding decrease in unnecessary litigation. Employers in those states, therefore, have realized appreciable savings in legal expenses.