

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 1033

S. P. 358

In Senate, February 26, 1981

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

MAY M. ROSS, Secretary of the Senate

Presented by Senator C. Sewall of Lincoln.

STATE OF MAINE

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

AN ACT to Revise Workers' Compensation Disability Payments.

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

Sec. 1. 39 MRSA § 2, sub-§§ 11, 12 and 13 are enacted to read:

11. **Date of maximum medical improvement.** The phrase "date of maximum medical improvement" means the date after which further recovery from, or lasting improvement to, an injury or disease can no longer reasonably be anticipated based upon reasonable medical probability.

12. **Disability.** "Disability" means incapacity because of the injury to earn, in the same or any other employment, the wages which the employee was receiving at the time of the injury.

13. **State average weekly wage or average weekly wage in the State.** "State average weekly wage" or "average weekly wage in the State" means, during the period of the state's fiscal year, the average weekly wage in the State as computed by the Employment Security Commission as of the first day of the fiscal year.

Sec. 2. 39 MRSA § 53, as last amended by PL 1973, c. 557, § 1, is further amended to read:

§ 53. **Waiting period; when compensation payable**

No compensation for ~~incapacity to work~~ disability shall may be payable for the

first 3 days of ~~incapacity~~ disability, except that firemen shall receive compensation from the date of ~~incapacity~~ disability. In case ~~incapacity~~ disability continues for more than 14 days, compensation shall be allowed from the date of ~~incapacity~~ disability.

Sec. 3. 39 MRSA § 54, as last amended by PL 1977, c. 278, § 3, is repealed and the following enacted in its place:

§ 54. Compensation for total disability

Compensation for disability shall be paid to the injured employee, subject to the waiting period requirements of section 53, as follows.

1. **Permanent total disability.** Compensation for permanent total disability shall be paid as follows:

A. In case of total disability resulting from injury and adjudged to be permanent, a weekly compensation equal to $66 \frac{2}{3}\%$ of his average weekly wages, earnings or salary, but not more than 200% of the state average weekly wage during the continuance of such total disability;

B. Loss of both hands, both arms, both feet, both legs, both eyes, or any 2 thereof, or paraplegia or quadriplegia shall, in the absence of conclusive proof of a substantial earning capacity, constitute permanent total disability. In all other cases, permanent total disability shall be determined in accordance with the facts. In such other cases, no compensation may be payable under paragraph A if the employee is engaged in, or is physically capable of engaging in, gainful employment, and the burden shall be upon the employee to establish that he is not able to do even light work due to physical limitation; and

C. If an employee who is being paid compensation for permanent total disability becomes rehabilitated to the extent that he establishes a work capacity, or otherwise regains or acquires a work capacity, he shall be paid, instead of the compensation provided in paragraph A, benefits pursuant to section 55.

2. **Temporary total disability.** Compensation for temporary total disability shall be paid as follows:

A. In case of disability total in character but temporary in quality, a weekly compensation equal to $66 \frac{2}{3}\%$ of his average weekly wages, earnings or salary, but not more than 200% of the state average weekly wage during the continuance thereof, not to exceed 250 weeks.

3. **Compensation adjustment.** Compensation payable pursuant to this section shall be adjusted each year as of the first day of the state's fiscal year so that it continues to bear the same percentage relationship to the state average weekly wage as it did at the time of injury; provided that no adjustment in any one year may exceed 5%.

Sec. 4. 39 MRSA § 55, as amended by PL 1975, c. 493, § 2, is repealed and the following enacted in its place:

§ 55. Partial disability

1. **Entitlement.** Each injured employee who experiences a decrease in wages caused by a compensable injury, but is not eligible for benefits pursuant to section 54, may be entitled to wage-loss benefits under this subsection. These benefits shall be based on actual wage loss and shall be equal to 66 2/3% of the difference between the employee's average weekly wages, earnings or salary, and the salary, wage and other remuneration the employee receives or is able to earn after the injury, as compared on a weekly basis; provided that the weekly wage-loss benefits shall not exceed an amount equal to 66 2/3% of the employee's average weekly wages, earnings or salary at the time of injury or 200% of the state average weekly wage, whichever is lower.

2. **Determination of wage loss.** The amount determined to be the salary, wages and other remunerations the employee is able to earn after the injury shall in no case be less than the sum actually being earned by the employee, including earnings from sheltered employment. In the event the employee voluntarily limits his income, or fails to accept employment commensurate with his ability, the salary, wages and other remunerations the employee is able to earn after the injury shall be deemed to be the amount which would have been earned if the employee did not limit his income or accepted appropriate employment. Whenever a wage-loss benefit as set forth in subsection 1 may be payable, the burden shall be on the employee to establish that any wage loss claimed is the result of the compensable injury.

3. **Termination of benefits.** The right to wage-loss benefits shall terminate:

A. As of the end of any 2-year period commencing at any time subsequent to the month when the injured employee reaches the date of maximum medical improvement, unless during such 2-year period wage-loss benefits shall have been payable during at least 3 consecutive months;

B. Five hundred weeks after the injured employee reaches the date of maximum medical improvement; or

C. When the injured employee reaches age 65 and is eligible for the benefits under the United States Code Title 42, Sections 402 and 405, whichever comes first.

4. **Social Security benefits.** When the injured employee reaches age 62, wage-loss benefits shall be reduced by the total amount of Social Security retirement benefits which the employee is receiving, not to exceed 50% of the employee's wage-loss benefits.

5. **Annual adjustment.** Compensation payable pursuant to this section shall be adjusted each year as of the first day of the state's fiscal year so that it continues to bear the same percentage relationship to the state average weekly wage as it

did at the time of injury; provided that no adjustment in any one year may exceed 5%.

6. Subsequent injury. If an employee receiving wage-loss benefits pursuant to this section suffers a subsequent injury compensable pursuant to this Act, which subsequent injury causes a further decrease in wages, wage-loss benefits for both such injuries shall be payable, provided that the total wage-loss benefits payable do not exceed the maximum benefits level allowed pursuant to subsection 1. For purposes of determining wage-loss benefits payable for subsequent injuries under this subsection, the phrase "average weekly wage" in subsection 1 is deemed to include wage-loss benefits then being paid for the prior injury.

Sec. 5. 39 MRSA § 100, first ¶, first sentence, is amended to read:

While compensation is being paid or vocational rehabilitation is being provided under any agreement, award or decree, the ~~incapacity~~ **disability** 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 commission upon the petition of either party upon the grounds that such ~~incapacity~~ **disability** has subsequently increased, diminished or ended or that the need of the continuation of vocational rehabilitation has ended.

Sec. 6. 39 MRSA § 100, 2nd ¶, 2nd sentence, is amended to read:

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~~ **disability**, 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.

Sec. 7. 39 MRSA § 104-A, sub-§ 1, last sentence, as repealed and replaced by PL 1977, c. 333, is amended to read:

If the commission, after a review of ~~incapacity~~ **disability** under section 100, issues an order or decision denying compensation to an employee, compensation shall be suspended from the date of the commission's order or decision, notwithstanding any appeal of that order or decision to the law court as provided in section 103.

Sec. 8. 39 MRSA § 106, first ¶, 2nd sentence, is amended to read:

If at the end of a period of 6 months following the date of injury or the date of amputation of any member, or the date of loss of one or both eyes or the loss of hearing in one or both ears, the employee is still ~~incapacitated~~ **disabled**, every such employer shall make a report thereof to the commission, on such form as the commission shall prescribe, giving full information as to the date and nature of the original injury and a description of the physical handicap resulting from such injury.

Sec. 9. 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~~ **disability**, total or partial, that has ended, a duplicate copy of the settlement receipt or agreement signed by said 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.

STATEMENT OF FACT

This bill is patterned initially after similar legislations enacted in Florida and is an attempt to reduce some of the costs of workers' compensation without specifically reducing weekly benefits to those who truly qualify.

One of the problems with Maine's Workers' Compensation Law is the fact that benefits are adjusted upward each year in accordance with the state average weekly wage. As a result and specifically because there is no cap on such adjustment, insurance accounting requires large reserves. Similarly, in the case of temporary total disability and partial disability, because there is no long-range time limit insurance, accounting again requires substantial reserves. This bill attempts to retain existing weekly benefit amounts, but places a cap on the annual adjustment of 5% and provides for a long-term limitation of temporary disability benefits to 250 weeks.

In the case of partial disability payments, the bill would impose a cap of almost 10 years after the injured employee reaches the date of maximum medical improvement. In addition, the right to wage loss benefits in cases of partial disability would terminate: 1. At the end of any 2-year period after the date of maximum medical improvement, if no such benefits have been paid during 3 consecutive months during that 2-year period; and 2. When the injured employee reaches the age of 65 and is eligible for Social Security benefits. In addition, such benefits will be reduced when the employee reaches age 62 by the total amount of Social Security retirement benefits which the employee is then receiving, but not to exceed 50% of his wage-loss benefits.

Section 3 of the bill defines the terms "date of maximum medical improvement," "disability" and "state average weekly wage."

Sections 2, 5, 6 and 7 are housekeeping changes in light of the additional definitions.