

MAINE STATE LEGISLATURE

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(New Draft of: S.P. 218, L.D. 605)
FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 1627

S.P. 622

In Senate, May 19, 1981

Reported by Four Members from the Committee on Labor and Printed under
Joint Rules No. 2.

MAY M. ROSS, Secretary of the Senate

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, name of the employer, 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. Petition to controvert where payments made without award. If payments have been made without an award and the employer then elects to controvert, a petition to controvert shall be filed with the commission. The commission shall hold a hearing within 60 days after receipt of the petition. Pending a hearing and final decision on the petition, the payment of compensation shall not be decreased or suspended, unless and until a certificate of the employer 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 location is unknown, or that he has resumed work. Upon the request of the employer, 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 the examination, or if after examination the 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 the final decision on the petition. The employer shall pay the fee for impartial examination.

After hearing the petition, the commission may decrease or discontinue compensation in accordance with the facts, as the justice of the case may require. The provisions of sections 96 to 99 as to procedure shall apply to the petitions authorized by this section.

If, following resumption of work by the employee, the employer has paid compensation prior to the time of filing a petition to controvert with a certificate that the employee has resumed work, and after hearing the commissioner orders that compensation cease, any overpayment may be recovered from the employee in a legal action brought by the employer.

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 the insurer or self-insurer, whichever the case may be. 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 or filing resulted from conditions over which the insurer or self-insurer had no control.

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 7. 39 MRSA § 95, first sentence, at last amended by PL 1975, c. 372, is repealed and the following enacted in its place:

An employee's claim for compensation under this Act shall be barred unless a petition, as provided in section 94, is filed within 2 years after the date of the injury, except that, where the employee has been paid compensation under this Act without the filing of any petition, the employee's failure to file a petition within a 2-year period shall not bar a claim for further compensation for incapacity resulting from the same injury for which compensation was initially paid.

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 ~~under any ward~~ or vocational rehabilitation is being provided under any agreement or award ~~or decree~~, the incapacity of the injured employee due to 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, first paragraph, 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. 10. 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. 11. 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. 12. 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. 13. 39 MRSA § 106-A, as amended by PL 1979, c. 541, Pt. A, § 283, is further amended to read:

§ 106-A. Notice by the commission

Within ~~90~~ 30 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.

Sec. 14. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

	1981-82	1982-83
WORKERS' COMPENSATION COMMISSION		
Personal Services	\$104,536	\$139,381
All Other	26,550	35,400
Capital Expenditures	<u>7,067</u>	<u>—</u>
Total:	\$138,153	\$174,781

STATEMENT OF FACT

This new draft ensures that an employee's compensation may not be terminated without a hearing when an employer elects to controvert, except under the limited circumstances where it is permitted under the present law. The language used is based on that found in Title 39, section 100.

It also ensures that there is no reduction in the period of time in which a petition for award of compensation may be filed by an injured employee. In cases where an employer has paid compensation, present law allows an employee to file a petition within 10 years from the date of the last payment. This new draft retains that period of limitation.

No change is made in the period of limitation governing cases where no compensation has been paid. In such a case, a petition must still be filed within 2 years from the date of injury.