

MAINE STATE LEGISLATURE

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1 (After Deadline)
2 SECOND REGULAR SESSION
3

4 ONE HUNDRED AND TENTH LEGISLATURE
5

6 **Legislative Document**

No. 1988

7
8 H. P. 2029 House of Representatives, February 17, 1982
Filed by the Chairman of the Workers' Compensation Commission
pursuant to Joint Order H. P. 1618.
Approved for introduction by a Majority of the Legislative Council
9 pursuant to Joint Rule 27.
Presented by Representative Martin of Eagle Lake.
Cosponsor: Senator Sewall of Penobscot.

EDWIN H. PERT, Clerk

10
11 **STATE OF MAINE**
12

13 **IN THE YEAR OF OUR LORD**
14 **NINETEEN HUNDRED AND EIGHTY-TWO**
15

16 **AN ACT Relating to the Provision of**
17 **Rehabilitation as Part of the Workers'**
18 **Compensation Law.**
19

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

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

22 **Sec. 1. 5 MRSA §711, sub-§2, ¶A, sub-¶ 18 is enacted**
23 **to read:**

24 **(18) Workers' Compensation Commission:**

25 **(a) Director, Rehabilitation Division.**

26 **Sec. 2. 39 MRSA §52, 6th ¶, as last amended by PL 1977,**
27 **c. 278, §1, is repealed and the following enacted in its**
28 **place:**

1 The commission shall determine the rights and liabilities
2 of the parties under this section in like manner and
3 with like effect as it does other issues under the Workers'
4 Compensation Act. Whenever there is any disagreement as to
5 the proper costs of the services or aids, or the periods
6 during which they shall be furnished, or as to the apportionment
7 thereof among the parties, any interested person
8 may file a petition with the commission for the determination
9 thereof.

10 **Sec. 3.** 39 MRSA §52, last ¶, as amended by PL 1977, c.
11 278, §2, is repealed.

12 **Sec. 4.** 39 MRSA §54, 2nd ¶, as amended by PL 1977, c.
13 278, §3, is repealed.

14 **Sec. 5.** 39 MRSA § 73 is enacted to read:

15 §73. Rehabilitation

16 1. Scope. Rehabilitation shall seek to prepare an
17 employee so he may be returned to a job related to his
18 former employment or to a job in another work area which
19 produces an economic status as close as possible to that he
20 would have enjoyed without the incapacity. Rehabilitation
21 to a job with a higher economic status than would have
22 occurred without the injury is permitted only if it can be
23 demonstrated that this rehabilitation is necessary to
24 increase the likelihood of reemployment. Economic status is
25 to be measured not only by opportunity for immediate income
26 but also by opportunity for future income.

27 2. Rehabilitation plan. Whenever an employee has suf-
28 fered an injury covered under this Act, and the incapacity
29 or the condition of the employee following the injury is
30 such that it will preclude the employee from earning wages
31 substantially close to the wages he earned prior to the
32 injury, the employer shall provide prompt rehabilitation
33 services according to an approved rehabilitation plan. Re-
34 habilitation services shall include such evaluation, physi-
35 cal rehabilitation, counseling, necessary training, voca-
36 tional rehabilitation and placement as will significantly
37 reduce or eliminate the employee's decreased employability.
38 If the employer and employee reach an agreement in regard to
39 a rehabilitation plan a memorandum of that plan, signed by
40 the parties, shall be filed with the Workers' Compensation
41 Commission. The commission shall approve or reject all such
42 voluntary plans. If a rehabilitation plan is not voluntar-
43 ily offered or accepted, or if a voluntary plan is rejected

1 by the commission, the employee, employer or insurer, or the
2 commission, may request an informal conference before the
3 commission. At the informal conference neither the Maine
4 Rules of Civil Procedure nor the Maine Rules of Evidence
5 shall apply and parties shall be permitted to appear without
6 counsel. At the request of either party the commission may
7 order a rehabilitation consultation. The commission may, in
8 the absence of such a request, order a rehabilitation con-
9 sultation. This consultation shall be done by any public or
10 private individual approved under this section. If the con-
11 sultant determines that rehabilitation would significantly
12 reduce or eliminate the decreased employability he shall
13 submit a written rehabilitation plan and recommendation to
14 the commission, the employee, and the employer and insurer.
15 In developing any plan consideration shall be given to the
16 employee's age, education, work history, interests, skills
17 and the likelihood of reemployment. The commission, after
18 consideration of the consultant's rehabilitation plan and
19 recommendations, may order the employer or insurer to pro-
20 vide the recommended plan of services, or such other plan of
21 services as will significantly decrease or eliminate the
22 decreased employability. The rehabilitation consultant's
23 report shall be admissible in evidence. Any party aggrieved
24 by the order of the commission may appeal that decision to
25 the Appellate Division pursuant to section 103-B.

26 If the employee refuses to submit to any reasonable examina-
27 tions and evaluative procedures to determine the need for
28 and the details of a plan of rehabilitation, the amount of
29 compensation may be reduced or the right to compensation may
30 be suspended by order of the commission.

31 3. Rehabilitation consultants. The chairman shall
32 approve rehabilitation consultants who may propose, monitor
33 or implement rehabilitation plans. The chairman shall main-
34 tain a register of persons engaged in providing rehabilita-
35 tion consultation services.

36 4. Rehabilitation Division. There is hereby estab-
37 lished a rehabilitation division within the Workers' Com-
38 pensation Commission. The division shall be administered by
39 a full-time salaried director who shall be appointed by and
40 shall serve at the pleasure of the chairman. The director
41 of the rehabilitation division shall, subject to the
42 approval of the chairman, appoint and direct such profes-
43 sional and clerical assistants as may be necessary to carry
44 out the purposes of this section.

1 5. Plan review or modification. Upon request of the
2 employee, the employer or insurer, or the commission,
3 reports of an employee's progress under the plan shall be
4 made by the provider of rehabilitation services to all the
5 parties and the commission. The commission, upon request of
6 any party, may order the suspension, termination or modifi-
7 cation of the plan upon a showing of good cause therefore,
8 including, but not limited to:

9 A. A changed physical condition which does not allow
10 the employee to continue pursuing the rehabilitation
11 plan;

12 B. The employee's performance level indicates he can-
13 not complete the plan level successfully; or

14 C. An employee does not cooperate with a plan.

15 6. Plan costs. The employee shall be entitled to:

16 A. Reasonable and proper rehabilitation service for a
17 period not exceeding 52 weeks, which period may be
18 extended for a further period, not to exceed another 52
19 weeks, if that extended period is found to be necessary
20 and proper by any member of the commission. The 2nd
21 52-week period may be extended for another further
22 period, not to exceed an additional 52 weeks, if the
23 further extended period is found to be necessary and
24 proper by any member of the commission and if the
25 employee is carrying on the same or substantially the
26 same program as in the prior 52 weeks of rehabilitation
27 service;

28 B. Reasonable rehabilitation diagnosis and plan pre-
29 paration;

30 C. Physical rehabilitation, counseling and other ser-
31 vices and supplies necessary for the implementation of
32 the plan; and

33 D. Tuition, book and travel, and in addition, reason-
34 able board and lodging when rehabilitation required
35 residence away from the employee's customary residence.

36 7. Compensation during rehabilitation. An employee
37 shall be entitled to compensation for total incapacity
38 during the course of a rehabilitation plan.

1 examined the vocational rehabilitation provisions of the
2 Workers' Compensation Act and concluded that substantial
3 changes would promote the cause of rehabilitation, contrib-
4 ute to an earlier return to work effort on the part of the
5 employee and thereby help reduce to some extent those costs
6 attributable to long-term benefits in the form of weekly
7 wage replacement. This is the proposed statutory amendment
8 to the Workers' Compensation Act which the chairman submit-
9 ted to the Legislative Council in response to the Legis-
10 lative Order.

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