

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 532

H.P. 398 House of Representatives, February 24, 1987
Reference to the Committee on Labor suggested and ordered
printed.

EDWIN H. PERT, Clerk

Presented by Representative HIGGINS of Scarborough.

Cosponsored by Representatives WILLEY of Hampden and
BEGLEY of Waldoboro.

STATE OF MAINE

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

1 AN ACT Providing for the Use of Spendable
2 Earnings as a Basis for Calculating
3 Workers' Compensation Benefits.
4

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

7 Sec. 1. 39 MRSA §2, sub-§13 is enacted to read:

8 13. Spendable earnings. "Spendable earnings"
9 means the employee's gross average weekly wages,
10 earnings or salary reduced by the amount which would
11 have been withheld from his wages, earnings or salary
12 under federal and state income tax laws and the
13 United States Social Security Act. The amount of in-
14 come tax withholding shall be determined by using the
15 maximum number of dependents' allowances to which the
16 employee is entitled and the standard deduction or

1 zero bracket amount applicable to the employee's fil-
2 ing status. The chairman of the commission shall, by
3 rule, adopt and publish tables governing the determi-
4 nation of withholding amounts under this section.

5 Sec. 2. 39 MRSA §54-A, first and 2nd ¶¶, as en-
6 acted by PL 1985, c. 372, Pt. A, §17, are amended to
7 read:

8 While the incapacity for work resulting from the
9 injury is total, the employer shall pay the injured
10 employee a weekly compensation equal to 2/3 his aver-
11 age gross weekly wages, earnings or salary or 80% of
12 his spendable earnings, whichever is less, but not
13 more than the maximum benefit under section 53-A, nor
14 less than \$25 weekly. This weekly compensation shall
15 be adjusted annually so that it continues to bear the
16 same percentage relationship to the state average
17 weekly wage, as computed by the Maine Unemployment
18 Insurance Commission, as it did at the time of the
19 injury, but in no case may the annual adjustment ex-
20 ceed the lesser of 5% or the actual percentage in-
21 crease in the state average weekly wage for the pre-
22 vious year.

23 In the following cases it shall, for the purpose
24 of this Act, be conclusively presumed that the injury
25 resulted in permanent total incapacity: The total and
26 irrevocable loss of sight of both eyes; the loss of
27 both hands at or above the wrist; the loss of both
28 feet at or above the ankle; the loss of one hand and
29 one foot; an injury to the spine resulting in perma-
30 nent and complete paralysis of the arms or legs; or
31 an injury to the skull resulting in incurable
32 inebility or insanity. In the event of such perma-
33 nent total incapacity, the employer shall pay the em-
34 ployee a weekly compensation equal to 2/3 his average
35 gross weekly wages, earnings or salary or 80% of his
36 spendable earnings, whichever is less, but not more
37 than the maximum benefit under section 53-A, nor less
38 than \$25 weekly. This weekly compensation shall be
39 adjusted annually so that it continues to bear the
40 same percentage relationship to the state average
41 weekly wage, as computed by the Maine Unemployment
42 Insurance Commission, as it did at the time of the
43 injury, but in no case may the annual adjustment ex-
44 ceed the lesser of 5% or the actual percentage in-

1 crease in the state average weekly wage for the pre-
2 vious year. If the totally incapacitated employee
3 dies, as a result of this injury, leaving dependents
4 who were dependent upon his earnings at the time of
5 his injury, then payments shall be made to the depen-
6 dents in accordance with section 58-A.

7 **Sec. 3. 39 MRSA §55-A, first ¶, as enacted by PL**
8 1985, c. 372, Pt. A, §19, is amended to read:

9 While the incapacity for work resulting from the
10 injury is partial, the employer shall pay the injured
11 employee a weekly compensation equal to 2/3 the dif-
12 ference, due to the injury, between his average gross
13 weekly wages, earnings or salary before the injury
14 and the weekly wages, earnings or salary which he is
15 able to earn after the injury, but not more than the
16 maximum benefit under section 53-A. In no case may
17 the employee's compensation exceed 80% of the differ-
18 ence, due to the injury, between his spendable earn-
19 ings before the injury and the spendable earnings
20 which he is able to earn after the injury. This
21 weekly compensation shall be adjusted annually so
22 that it continues to bear the same percentage rela-
23 tionship to the state average weekly wage, as com-
24 puted by the Maine Unemployment Insurance Commission,
25 as it did at the time of the injury, but in no case
26 may the annual adjustment exceed the lesser of 5% or
27 the actual percentage increase in the state average
28 weekly wage for the previous year. The annual ad-
29 justment required by this section shall be made on
30 the anniversary date of the injury, except that where
31 the effect of the maximum under section 53-A is to
32 reduce the amount of compensation to which the claim-
33 ant would otherwise be entitled, the adjustment shall
34 be made annually on July 1st.

35 **Sec. 4. Effective date.** This Act shall apply
36 only as to injuries occurring on or after its effec-
37 tive date.

1

STATEMENT OF FACT

2 This bill provides for basing workers' compensa-
3 tion benefits on a worker's prior spendable earnings
4 or take-home pay rather than on prior gross earnings
5 as is currently done. The purpose is to prevent a
6 worker from receiving more in compensation after the
7 injury than he received in wages prior to the injury.
8 This is now possible because a worker is entitled to
9 receive compensation equal to 2/3 of his prior gross
10 earnings. Yet this compensation is tax free. In
11 many cases, this results in a level of compensation
12 which exceeds the worker's prior take-home pay, his
13 net pay after taxes. In addition to generating un-
14 necessary costs, this system is also inequitable.
15 Lower paid workers with little potential tax liability
16 receive compensation which is close to 2/3 of
17 their prior take-home pay. Higher paid workers, on
18 the other hand, may receive compensation which is
19 equal to or more than their prior take-home pay.

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