



114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

Legislative Document

No. 1406

H.P. 1008

House of Representatives, May 1, 1989

Reference to the Committee on Labor suggested and ordered printed.

(Pert

EDWIN H. PERT, Clerk

Presented by Representative PRIEST of Brunswick. Cosponsored by Representative McHENRY of Madawaska, Representative CONLEY of Portland and Representative RAND of Portland.

STATE OF MAINE

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

An Act Relating to Compensation for Hearing Losses Under the Workers' Compensation Act.

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

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

§56-C. Occupational loss of hearing

In case of loss of hearing resulting in whole or in part from occupational exposure to noise, the following provisions apply in determining eligibility for compensation and the period during which compensation is payable.

1. Definitions. As used in this chapter, "occupational hearing loss" means a sensorineural loss of hearing in one or both ears due to prolonged exposure to injurious noise in employment. "Injurious noise" means sound capable of producing occupational hearing loss.

2. Limitations on sound frequencies. Losses of hearing due to industrial noise for compensation purposes shall be confined to the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second. Loss of hearing ability for frequency tones above 3,000 21 cycles per second are not to be considered as constituting disability for hearing.

25 3. Determination of hearing loss. The percent of hearing loss, for purposes of the determination of compensation claims 27 for occupational deafness, shall be calculated as the average, in decibels, of the thresholds of hearing for the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second. Hearing levels 29 shall be measured by means of pure tone air conduction 31 audiometric instruments calibrated in accordance with the American National Standards Institute standards, S3.6-1969-R, 1973 and S3.13-1972, American National Standards Institute, or 33 American Standards Association Standard Z24.5, 1951, American 35 Standards Association, and in an area with ambient noise level within the limits specified in American National Standards Institute Criteria for Background Noise and Audiometric Room 37 Standard S3.1, 1960-R 1977. If the losses of hearing average 20 39 decibels or less, American National Standards Institute, or 12 decibels or less, American Standards Association, in the 4 41 frequencies, such losses of hearing shall not then constitute any compensable hearing disability. If the losses of hearing average 43 92 decibels or more, American National Standards Institute, or 82 decibels or more, American Standards Association, in the 4 45 frequencies, then the same shall constitute and be total or 100% compensable hearing loss.

47

1

3

5

7

9

11

13

15

17

19

23

Compensation payable. There shall be payable as 4. permanent partial disability for total occupational deafness, 50 49 weeks of compensation; for total occupational deafness of both 51 ears, 200 weeks of compensation; and for partial occupational deafness in one or both ears, compensation shall be paid for such

Page 1-LR1491(1)

periods as proportionate to the relation which the hearing loss bears to the amount provided in this subsection for total loss of hearing in one or both ears, as the case may be. The amount of hearing loss shall be reduced by the average amount of hearing loss from nonoccupational causes found in the population at any given age according to the provisions set forth.

1

3

5

7

23

5. Measurement of hearing impairment. In measuring hearing
9 impairment, the lowest measured losses in each of the 4 frequencies shall be added together and divided by 4 to determine
11 the average decibel loss. For every decibel of loss exceeding 12 decibels, American Standards Association, or 20 decibels,
13 American National Standards Institute, an allowance of 1.5% shall be made up to the maximum of 100% which has reached 82 decibels,
15 American National Standards Institute.

17 6. Binaural hearing impairment. In determining the binaural, both ears, percentage of loss, the percentage of
19 impairment in the better ear shall be multiplied by 5. The resulting figure shall be added to the percentage of impairment
21 in the poor ear and the sum of the 2 divided by 6. The final percentage shall represent the binaural hearing impairment.

7. Presbycusis. Before determining the percentage of
hearing impairment, in order to allow for the average amount of
hearing loss from nonoccupational causes found in the population
at any given age, there shall be deducted from the total average
decibel loss a figure to be determined by the Workers'
Compensation Commission on an annual basis, based on statistics
available to the parties from audiological studies, by age, of
the general population.

 8. Filing of claims. The requirements of this section regarding notice and the period within which to file a claim for
occupational hearing loss shall run from the date the employee has been advised by a competent medical or audiological authority
that the employee's hearing loss is occupational in nature. The date will be taken as the "date of injury" for procedural
purposes.

9. Employer's limit of liability. An employer shall become 41 liable for the entire occupational deafness to which the employee's employment has contributed, except that the employer 43 shall not be liable for any loss for which compensation has 45 previously been paid or awarded. No employer may be liable for the payment of compensation for occupational deafness, unless the 47 employee claiming benefits has worked for the employer and employment exposes the employee to harmful noise for a total 49 period of at least 90 days. No consideration may be given to the questions of whether or not the ability of an employee to 51 understand speech is improved by the use of a hearing aid.

1 10. Compensation and medical protection available. In addition to the compensation payable under subsection 4, any employee who is temporarily disabled due to exposure to injurious 3 noise, including injurious noise which results in the condition known as tinnitus, shall be entitled to compensation payments 5 available for like injuries under this section. Those employees 7 who have incurred occupational loss of hearing which does not rise to the level necessary for compensation under subsection 4, but is occupational in nature, shall be afforded the protection 9 of this section with regard to reasonable and necessary medical 11 and audiological care.

13

15

Sec. 2. 39 MRSA §193, as amended by PL 1983, c.496, §§1 and 2, is repealed.

STATEMENT OF FACT

17 19

The need for new occupational hearing loss laws has become 21 apparent since the Maine Revised Statutes, Title 39, section 193, was last amended in 1983. The procedural requirements of the State's occupational disease law have acted as to bar most 23 claims of occupational hearing loss. It has become necessary to remove "occupational loss of hearing" from the occupational 25 disease law and reenact an amended version as part of the Workers' Compensation Act covering "injuries." The nature of 27 occupational hearing loss, arising as it does from repeated microtrauma to the ear, more closely resembles an injury than a 29 disease. Advances in audiological testing and diagnostic 31 procedures have rendered the present law inadequate as to appropriate compensation payable for that loss. Hearing loss 33 currently pending before the Workers' Compensation claims Commission are embroiled in legal disputes as to issues such as 35 medical protection being available for those without a measurable loss in the compensable range and the availability of wage loss due to disability resulting from occupational hearing loss. This 37 proposed new law seeks to protect and compensate those employees who have suffered a bonafide occupational hearing loss arising 39 out of and in the course of their employment and to protect 41 employers from claims for occupational hearing losses that can be shown to be the result of solely nonoccupational factors. In 43 order to correct mistakes existent in the prior law, the Legislature specifically finds that this new law should apply 45 retroactively to pending claims filed with theWorkers' Compensation Commission subsequent to Title 39, section 193, as 47 amended.

Page 3-LR1491(1)

and the second secon