

MAINE STATE LEGISLATURE

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L.D. 1630

(Filing No. H-586)

STATE OF MAINE
HOUSE OF REPRESENTATIVES
114TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "^A" to H.P. 1176, L.D. 1630, Bill, "An Act to Strengthen an Injured Employee's Right to Rehabilitation and to Improve the Workers' Compensation Rehabilitation System"

Amend the bill in section 4 in subsection 6-A in the 9th and 10th lines (page 4, lines 5 and 6 in L.D.) by striking out the following: "2 times" and inserting in its place the following: '180% of'

Further amend the bill by striking out all of section 6.

Further amend the bill in section 7 by striking out all of paragraph B and inserting in its place the following:

'B. The administrator shall:

(1) Monitor the rehabilitation system established under this subchapter;

(2) Monitor individual cases where appropriate;

(3) Monitor all services provided to injured workers as provided in section 84-A;

(4) Encourage agreement and attempt to conciliate differences on rehabilitation issues; and

(5) Recommend to the chair that penalties be assessed in appropriate instances as provided under section 113.'

Further amend the bill in section 10 in subsection 2 in paragraph D in subparagraph (1) in the first line (page 6, line 33 in L.D.) by striking out the following: "is willing" and inserting in its place the following: 'does not refuse'

1
3 Further amend the bill in section 10 in subsection 2 in
paragraph D in subparagraph (2) in the 2nd line (page 6, line 37
in L.D.) by striking out the following: "final"

5
7 Further amend the bill in section 10 in subsection 2 in
paragraph D in subparagraph (3) in the 3rd line (page 6, line 42
in L.D.) by inserting after the underlined word "position" the
9 following: 'without rehabilitation services'

11 Further amend the bill in section 10 in subsection 3 in
13 paragraph B in subparagraph (1) in the first line (page 7, line
23 in L.D.) by inserting after the underlined word "history" the
following: ', including the employee's prior earnings history'

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17 Further amend the bill in section 10 in subsection 4 in
paragraph A by striking out all of the 2nd paragraph (page 8,
lines 20 to 27 in L.D.) and inserting in its place the following:

19
21 'If the parties still do not agree on a plan at the informal
23 conference held under this paragraph, either party may
25 request that the administrator continue the informal
27 conference to a date certain within 20 days. If the
29 employer refuses to agree to the implementation of a plan at
the conclusion of this informal conference, the employee may
request that the administrator order the implementation of
the plan as provided in section 85, subsection 2-A. This
request must be made within 5 days of the informal
conference.'

31 Further amend the bill in section 12 in that part designated
33 "85." by striking out all of subsection 2-A (page 9, lines 12 to
45 in L.D.) and inserting in its place the following:

35 '2-A. Order of plan implementation. The administrator
37 shall order the implementation of a rehabilitation plan only as
provided in this subsection.

39 A. Upon receiving an employee's request for an order of
41 plan implementation under section 83, subsection 4,
43 paragraph A, the administrator shall determine whether the
proposed plan complies with this subchapter and whether the
plan is likely to return the injured employee to suitable
employment at a reasonable cost of implementation.

45
47 (1) The chair shall adopt rules subject to section 92,
subsection 1, providing standards for determinations
made under this paragraph.

49
51 (2) In making a determination under this paragraph,
the administrator shall consider the comments,

1 arguments and evidence offered by both parties at the
2 informal conference.

3
4 (3) The administrator may request that a
5 rehabilitation provider provide the administrator with
6 additional information necessary to make a
7 determination under this paragraph. The rehabilitation
8 provider's costs for these services are deemed to be
9 plan implementation costs under paragraph C and are
10 recoverable upon the order of the administrator under
11 subsection 4-A.

12
13 B. If the administrator finds that the proposed plan
14 otherwise complies with this subchapter and that the
15 implementation of the proposed plan is likely to return the
16 injured employee to suitable employment at a reasonable
17 cost, the administrator shall order the implementation of
18 the plan.

19
20 C. Implementation costs of a plan ordered under this
21 subsection shall be paid from the Employment Rehabilitation
22 Fund as provided in section 57-B, subsection 6-A.

23
24 D. The administrator's determination under this subsection
25 is final. Neither party may appeal the determination of the
26 administrator under this subsection. Notwithstanding Title
27 5, section 8003, the Maine Administrative Procedure Act,
28 Title 5, chapter 375, does not apply to determinations made
29 by the administrator under this subsection.

30
31 E. A petition for review brought during the pendency of a
32 request for an order of plan implementation under section
33 83, subsection 4, paragraph A, is subject to section 100,
34 subsection 3-A.

35
36 F. The administrator may order a trial work period as part
37 of the implementation of any plan ordered under this
38 subsection. If ordered by the administrator, the employer
39 or insurer liable for payment of the employee's benefits or
40 compensation under this Act is deemed to have agreed to a
41 trial work period under section 100-A for the first 3 months
42 of that employment.'

43
44 Further amend the bill in section 12 in that part designated
45 "85." in subsection 4-A by striking out all of paragraph A (page
46 10, lines 32 to 37 in L.D.) and inserting in its place the
47 following:

48 'A. As used in this subsection, "return to suitable
49 employment" means that:

50

1 (1) The employee obtained employment in a position
3 contemplated by the rehabilitation plan within 6 months
 after completing the rehabilitation program under this
 subchapter;

5 (2) The employee has been employed in a position or
7 positions contemplated by the rehabilitation plan for
 at least 6 months out of the 12 months immediately
9 following the employee's hiring; and

11 (3) Any period of unemployment during the 12-month
13 period provided in subparagraph (2) was due to the
 discharge or layoff of the employee without good cause
 related to the employee's work performance.'

15 Further amend the bill in section 12 in that part designated
17 "85." in subsection 5, in paragraph C in the last line (page 11,
 line 8 in L.D.) by inserting after the following: "parties." the
19 following: 'This paragraph does not apply to an order of plan
 implementation issued under subsection 2-A.'

21 Further amend the bill in section 12 in that part designated
23 "85." in subsection 5, in paragraph D in the last line (page 11,
 line 14 in L.D.) by inserting after the following: "order." the
25 following: 'This paragraph does not apply to an order of plan
 implementation issued under subsection 2-A.'

27 Further amend the bill by inserting after section 16 the
29 following:

31 'Sec. 17. 39 MRSA §88, sub-§1, as enacted by PL 1985, c. 372,
 Pt. A, §29, is amended to read:

33 1. Procedure. An Except as provided in section 85,
35 subsection 2-A, an appeal may be taken from an order of the
 administrator by filing a copy of the order, together with any
37 papers in connection therewith with the order required by rule of
 the commission, with a single commissioner within 20 days after
39 receipt of notice of the filing of the order. The failure of an
 appellant who timely notifies the commission of his the desire to
41 appeal to provide a copy of the order appealed from does not
 affect the jurisdiction of the division commissioner to determine
43 the appeal on its merits, unless the appellee shows substantial
 prejudice from that failure.'

45 Further amend the bill in section 17 by striking out all of
47 subsection 4 and inserting in its place the following:

49 '4. Costs. Costs of appeal shall be allowed, including the
 record and reasonable attorneys' attorney's fees as provided for
51 in section 110, except that an employee's costs of representation
 during a request for an order of plan implementation under

1 section 83, subsection 4, paragraph A, are deemed to be costs of
2 plan implementation for any employee whose request is granted by
3 the administrator. These costs shall be paid from the Employment
4 Rehabilitation Fund and are recoverable upon the order of the
5 administrator under section 85, subsection 4-A. No attorney who
6 represents an employee who prevails before the commission may
7 recover any fee from that client for that representation if the
8 attorney receives compensation for the representation from any
9 other source as provided in this Act. Any attorney who violates
10 this subsection shall lose his the attorney's fee and is liable
11 in a court suit to pay damages to the client equal to 2 times the
12 fee charged that client.'

13 Further amend the bill by inserting after section 19 the
14 following:

15 'Sec. 20. 39 MRSA §100-A, sub-§1, as enacted by PL 1985, c.
16 372, Pt. A, §39, is amended to read:

17 1. Restoration of benefits. That suspension shall cease
18 and weekly compensation shall be restored in the amount being
19 paid prior to the commencement of the trial work period
20 immediately upon:

21 A. Termination of employment during the first trial work
22 period; or

23 B. With the second or subsequent trial work period, the
24 filing of a petition by the employee stating that he the
25 employee has attempted a trial work period and was unable to
26 adequately perform during the period.

27 ~~The provisions on restoration also apply to a trial work period~~
28 ~~under section 83. A trial work period ordered under section 85,~~
29 ~~subsection 2-A, paragraph F, is deemed to be a first trial work~~
30 ~~period for the purposes of this subsection.'~~

31 Further amend the bill in section 20 in the 2nd line (page
32 13, line 2 in L.D.) by inserting after the figure "1986" the
33 following: ', who have not had a rehabilitation plan developed
34 under the Maine Revised Statutes, Title 39, section 83,
35 subsection 3, as of the effective date of this Act.'

36 Further amend the bill by inserting at the end before the
37 statement of fact the following:

38 'Sec. 21. Appropriation. The following funds are appropriated
39 from the General Fund to carry out the purposes of this Act.

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	1989-90	1990-91
WORKERS' COMPENSATION COMMISSION		
Office of Employment Rehabilitation		
Positions	(3)	(3)
Personal Services	\$42,044	\$65,623
All Other	3,375	4,500
Capital Expenditures	5,512	
Provides funds for an Accountant I, Account Clerk II and a Clerk Typist II and related expenses to perform the auditing, payment, record keeping and accounting functions associated with rehabilitation bills.		
WORKERS' COMPENSATION COMMISSION TOTAL	<u>\$50,931</u>	<u>\$70,123</u>

FISCAL NOTE

The Attorney General may require an additional attorney to provide legal representation. This bill provides that the reasonable expense of prosecution or defense by the Attorney General, subject to approval of the Workers' Compensation Commission, will be payable from the Employment Rehabilitation Fund. The bill will not significantly affect the cost of workers' compensation for State Government as an employer.'

Further amend the bill by renumbering the sections to read consecutively.

STATEMENT OF FACT

This amendment makes the following changes in the original bill.

1. The amendment reduces the amount that an employer must pay to the Employment Rehabilitation Fund when the employer refuses to agree to a rehabilitation plan which is then implemented by order of the rehabilitation administrator and results in the successful return to suitable employment of the injured employee. The bill required the employer to pay twice the implementation costs of the plan. The amendment reduces that to 180% of those costs.

2. The amendment deletes that portion of the bill that would have extended an injured employee's right to reemployment

1 with a former employer from one to 3 years. This issue has been
addressed by other legislation.

3

3. The amendment clarifies the rehabilitation
5 administrator's enforcement duties by requiring the administrator
to recommend that the chair of the Workers' Compensation
7 Commission assess penalties in suitable instances of abuse and
violations.

9

4. The amendment clarifies the language used to describe
11 the criteria under which an injured employee's suitability for
rehabilitation will be evaluated under the bill. This evaluation
13 continues to be conducted by a rehabilitation provider selected
by the injured employee. No attempt is made to change the
15 selection procedure under current law in which the employee has
the exclusive right to choose a rehabilitation provider.

17

5. The amendment clarifies that an injured employee's prior
19 earning history is a factor to be considered in the development
of a rehabilitation plan designed to return the employee to
21 suitable employment. This provision is intended to ensure that a
rehabilitation plan is designed to return the injured employee to
23 employment that is suitable in terms of wages earned in that
employment in conjunction with other factors.

25

6. The amendment clarifies the procedure to be followed in
27 requesting an order of plan implementation from the
rehabilitation administrator. If no agreement is reached
29 regarding the proposed rehabilitation plan at the informal
conference held by the rehabilitation administrator, either party
31 may request that the informal conference be continued at a later
date. If the insurer still refuses to agree to the
33 implementation of the proposed rehabilitation plan after the
continuation, the employee may request that the administrator
35 order implementation of the plan. The amendment clarifies that
this procedure is informal and further clarifies that the
37 employer as well as the employee may present arguments and
evidence to the rehabilitation administrator before a decision is
39 reached regarding the implementation of the plan.

41

7. In order to reduce interference with the rehabilitation
43 process and to maintain equity for both parties, the amendment
prevents any appeal of the administrator's decision regarding
45 plan implementation. Although both parties may present their
arguments and evidence to the administrator at the informal
47 conference, neither party may appeal the administrator's final
decision. Although an appeal is not allowed, an employee's costs
49 of representation in making a request for plan implementation at
the conclusion of the informal conference are paid from the
Employment Rehabilitation Fund and may be recovered from the
51 employer if the plan is ordered by the administrator and
successfully returns the employee to suitable employment. The

COMMITTEE AMENDMENT "A" to H.P. 1176, L.D. 1630

1 amendment also clarifies that, before ordering the implementation
of a rehabilitation plan, the administrator must find that the
3 plan complies with the general requirements applicable to all
rehabilitation plans under the Workers' Compensation Act,
5 including the schedule of priorities under the Maine Revised
Statutes, Title 39, section 86, and consideration of the
7 aptitudes, interests and work history of the employee under Title
39, section 83, subsection 3.

9
11 8. The amendment authorizes the rehabilitation
administrator to order a 3-month trial work period as a part of
the rehabilitation plan implemented by order of the administrator.

13
15 9. The amendment increases from 6 to 12 months the time for
which an employee must be employed in suitable employment as a
result of a rehabilitation plan before the employer is required
17 to pay reimbursement to the Employment Rehabilitation Fund. An
exception is made for any time in which the employee is
19 unemployed through no fault of the employee, provided that the
employee has been employed for at least 6 months out of the
21 12-month period.

23 10. The amendment restricts the application of the bill to
employees who were injured on or after November 20, 1987, but who
25 have not had a rehabilitation plan developed as of the effective
date of the bill. This limits the number of previously injured
27 employees who are able to request orders for plan implementation
under the bill.

29
31 11. Finally, the amendment adds an appropriation section
and fiscal note to the bill.

Reported by the Committee on Labor
Reproduced and distributed under the direction of the Clerk of the
House
6/16/89

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