

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)



115th MAINE LEGISLATURE

FIRST REGULAR SESSION-1991

Legislative Document

No. 1446

H.P. 997

House of Representatives, April 8, 1991

Reference to the Committee on Labor suggested and ordered printed.

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

Presented by Representative AIKMAN of Poland.
Cosponsored by Senator CARPENTER of York.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY-ONE

An Act to Reduce the Caseload of the Workers' Compensation
Commission.



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

2
4 Sec. 1. 39 MRSA §51-B, sub-§4, as repealed and replaced by PL
1989, c. 256, §1, is amended to read:

6 4. **Compensation for impairment; compensation for medical**
7 **expenses.** Compensation for impairment under section 56-B shall
8 may not be paid before the date on which the injured employee
10 reaches the stage of maximum medical improvement. That
12 compensation is due and payable within 90 days after the employer
14 has notice that maximum medical improvement has been attained.
16 Compensation for medical expenses, aids and other services under
18 section 52 is due and payable within 75 days from the date that a
request for payment of these expenses is received. A request for
payment must be submitted on a form approved by the commission
and contain all medical information as required by the commission
to permit the evaluation of the reasonableness and compensability
of the services provided.

20 Sec. 2. 39 MRSA §51-B, sub-§7, as amended by PL 1989, c. 502,
Pt. D, §22, is further amended to read:

22 7. **Notice of controversy.** If the employer, prior to making
24 payments under subsection 3, controverts the claim to
26 compensation, the employer shall file with the commission, within
28 14 days after an event which that gives rise to an obligation to
30 make payments under subsection 3, a notice of controversy in a
32 form prescribed by the commission. If the employer, prior to
34 making payments under subsection 4, controverts the claim to
36 compensation, the employer shall file with the commission, within
38 75 or 90 days, as applicable, after an event which that gives
rise to an obligation to make payments under subsection 4, a
notice of controversy in a form prescribed by the commission.
The notice shall must 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.

40 If, at the end of the 14-day period in subsection 3 or the 90-day
42 or 75-day periods in subsection 4, the employer has not filed the
44 notice required by this subsection, the employer shall begin
46 payments as required under those subsections. In the case of
48 compensation for incapacity under subsection 3, the employer may
cease payments and file with the commission a notice of
controversy, only as provided in this subsection, no later than
44 45 days after an ~~event which gives rise to an obligation to~~
~~make payments under subsection 3~~ receipt by the employer of
medical records, as required by the commission, concerning the
50 injury that are necessary to make a determination of whether to
pay or controvert the claim. Failure to file the required notice
52 of controversy prior to the expiration of ~~the 44-day~~ that 45-day

2 period, in the case of compensation under subsection 3,
3 constitutes acceptance by the employer of the compensability of
4 the injury or death. Failure to file the required notice of
5 controversy does not constitute such an acceptance by the
6 employer when it is shown that the failure was due to employee
7 fraud or excusable neglect by the employer, except when payment
8 has been made and a notice of controversy is not filed within 44
9 45 days of that payment the receipt of the necessary medical
10 records. Failure to file the required notice of controversy
11 prior to the expiration of the 90-day period under subsection 4
12 constitutes acceptance by the employer of the extent of
13 impairment claimed. Failure to file the required notice of
14 controversy prior to the expiration of the 75-day period under
15 subsection 4 for compensation for medical expenses, aids or other
16 services pursuant to section 52 constitutes acceptance by the
17 employer of the reasonableness and propriety of the specific
18 medical services for which compensation is claimed and requires
19 payment for those services, but does not constitute acceptance of
20 the compensability of the injury or death.

21 If, at the end of the 44-day 45-day period the employer has not
22 filed a notice of controversy, or if, pursuant to a proceeding
23 before the commission, the employer is required to make payments,
24 the payments may not be decreased or suspended, except as
25 provided in section 100. This paragraph does not apply to any
26 payments made without prejudice pursuant to section 94-B.

27 **Sec. 3. 39 MRSA §51-B, sub-§8,** as amended by PL 1983, c. 682,
28 §6, is further amended to read:

29 **8. Effect of payment.** If, within the 44-day 45-day period
30 established in subsection 7 and after the payment of compensation
31 for incapacity without an award, the employer elects to
32 controvert the claim to compensation for incapacity, the payment
33 of compensation shall may not be considered to be an acceptance
34 of the claim or an admission of liability. Notwithstanding the
35 provisions of section 99-C, the acceptance of compensation in any
36 case, except by decision or agreement, by the injured employee or
37 his the employee's dependents shall may not be considered an
38 admission by the employee or his the employee's dependents as to
39 the nature and scope of the employer's liability or a waiver of
40 the right to question the amount of compensation or the duration
41 of the same or the nature of the injury and its consequences.

42 **Sec. 4. 39 MRSA §52, 9th ¶,** as enacted by PL 1989, c. 434, §8,
43 is amended to read:

44 The Superintendent of Insurance shall prescribe medical and
45 health care expense forms for the purpose of collecting
46 information as required by Title 24-A, section 2371. These forms
47 also serve the purpose of transmitting information as required by
48 section 51-B and all other medical reports required by this Act.

2 The superintendent may consult with the chair of the commission
4 in the development of these forms. An insurer or self-insurer
6 may withhold payment of medical and health care fees to any
8 provider who fails to complete and submit the prescribed form. In
10 the event the provider fails to properly complete and submit the
prescribed form or to follow any fee schedule approved by the
commission, the insurer or self-insurer is not required to file a
notice of controversy but may simply notify the provider of the
failure. In the case of a dispute, any interested party may
petition the commission to resolve the dispute.

12 Sec. 5. 39 MRSA §53, as amended by PL 1973, c. 557, §1, is
14 further amended to read:

16 **§53. Waiting period; when compensation payable**

18 No compensation for incapacity to work shall ~~may~~ be payable
20 for the first ~~3~~ 5 days of incapacity, except that ~~firemen shall~~
22 ~~receive a firefighter receives~~ compensation from the date of
incapacity. ~~In case~~ If incapacity continues for more than 14
days, compensation shall ~~must~~ be allowed from the date of
incapacity.

24 Sec. 6. 39 MRSA §94-B, sub-§2, as enacted by PL 1983, c. 479,
26 §19, is amended to read:

28 2. **Conference procedure.** The commissioner shall make every
30 effort to resolve any controversies or misunderstandings and
32 shall render an advisory opinion at the conference. The
34 commissioner is not bound by the ordinary common law or statutory
36 rules of evidence or procedure, but shall make inquiry in such
manner as is best calculated to ascertain the substantial rights
of the parties and carry out the spirit of this Act. The
commissioner shall require the employee to timely provide all
necessary medical reports, if not already provided, prior to the
informal conference in order to facilitate settlement.

38 Notwithstanding section 51-B, the employer may with permission of
40 a commissioner make payments without prejudice to the claimant.
42 The employer may discontinue, suspend or reduce those payments at
44 an agreed-upon date when reasons for discontinuance, suspension
or reduction are present or upon the employer's filing of a
notice of controversy.

46 If any employer is making payments without prejudice, the
48 employee may file a notice of controversy but must prove an
entitlement to benefits greater than that level in order to be
deemed to have prevailed. If a claimant does not prevail, the
50 claimant's attorney is not entitled to fees from the employer.
If payments without prejudice are being made and the employee
files the notice of controversy, those payments must continue

2 until resolution of the matter or one of the factors in this
3 subsection is present.

4 **Sec. 7. 39 MRSA §106, sub-§1**, as repealed and replaced by PL
5 1987, c. 559, Pt. B, §46, is amended to read:

6
7 **1. Injuries.** Whenever any employee has reported to an
8 employer under the Act any injury arising out of and in the
9 course of his the employee's employment which that has caused the
10 employee to lose a day's work or has required the services of a
11 physician, or whenever the employer has knowledge of any such
12 injury, the employer shall keep a record of the injury alleged by
13 the employee. If the injury results in incapacity to work for a
14 period greater than 5 days, the employer shall report the injury
15 to the commission within 7 12 days after he the employer receives
16 notice or has knowledge of the injury resulting in incapacity of
17 greater than 5 days. The For such reports the employer shall
18 also report the average weekly wages or earnings of the employee,
19 together with any other information required by the commission.
20 The employer shall report whenever the injured employee resumes
21 his employment and the amount of his the employee's wages or
22 earnings at that time.

24 **Sec. 8. 39 MRSA §110, sub-§2, ¶A**, as enacted by PL 1985, c.
25 372, Pt. A, §43, is amended to read:

26
27 **A.** For the purposes of this subsection, "prevail" means to
28 obtain or retain more compensation or benefits under the Act
29 than were offered to the employee by the employer in writing
30 before the proceeding was instituted or paid by the employer
31 pursuant to section 94-B. If no such offer or payment was
32 made, "prevail" means to obtain or retain compensation or
33 benefits under the Act.
34

36 STATEMENT OF FACT

37
38 This bill makes changes intended to significantly reduce the
39 number of notices of controversy filed in response to medical
40 payment requests.
41

42
43 The bill modifies the 44-day rule by adding a day and
44 eliminating the current artificial deadline. That deadline
45 results in unnecessary notices of controversy solely because of
46 inadequate medical information being provided by the employee's
47 treating physician. Under this bill, the deadline for filing a
48 notice of controversy will be triggered by the receipt of the
49 necessary medical information. The commission will be
50 responsible for adopting rules detailing what the required
51 medical information will be.
52

2 The bill permits an employer to begin the payment of
3 benefits made without prejudice at the informal conference with
4 the permission of a commissioner. This will reduce the number of
5 controverted claims from requiring further hearings. Due to this
6 change, the bill amends the definition of "prevail."

7 The bill also modifies the reporting and payment initiation
8 requirement of accidents resulting in lost time.