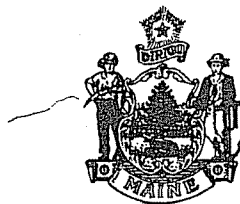


MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

FIRST REGULAR SESSION-1991

Legislative Document

No. 1554

H.P. 1065

House of Representatives, April 16, 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 HASTINGS of Fryeburg.
Cosponsored by Senator BRAWN of Knox.

STATE OF MAINE

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

**An Act to Provide That Workers' Compensation Claims Are Work
Related.**

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

2
4 Sec. 1. 39 MRSA §51, sub-§1, as enacted by PL 1981, c. 200, is amended to read:

6 1. Entitlement. If an employee who has not given notice of
8 his the employee's claim of common law or statutory rights of
10 action, or who has given the notice and has waived the same, as
12 provided in section 28 receives a personal injury by an accident
14 arising out of and in the course of his the employee's employment
16 or is disabled by occupational disease, he shall the employee is
18 entitled to be paid compensation and furnished medical and other
20 services by the employer who has assented to become subject to
22 this Act. The personal injury must be established and proven by
24 objective medical evidence supported by a medical practitioner's
26 findings. Entitlement is also conditioned as follows.

18 A. Ordinary diseases of life to which the public is
20 generally exposed outside of employment are not compensable.

22 B. Conditions of the aging process, including but not
24 limited to heart and cardiovascular conditions may be
26 compensable, but only if the employment is the predominant
28 cause of the condition.

26 C. A sprain or strain may be compensable but must be proven
28 to be recent in origin and have been reported to the
30 employer within 48 hours of the sprain or strain.

30 Sec. 2. 39 MRSA §51-B, sub-§3, as amended by PL 1987, c. 560,
32 §2, is further amended to read:

34 3. Compensation for incapacity. The first payment of
36 compensation for incapacity under section 54-B or 55-B is due and
38 payable within 14 days after the employer has notice or knowledge
40 of the injury accident or death. In cases where the employee did
42 not lose time from work within 5 scheduled work days following
44 the injury accident, compensation for incapacity under section
46 54-B or 55-B is due and payable within 14 days of the date the
48 employee asserts to the employer that that lost time is related
50 to the injury accident. Subsequent incapacity compensation
benefit payments shall must be made weekly and in a timely
fashion.

46 Sec. 3. 39 MRSA §51-B, sub-§5, ¶B, as enacted by PL 1983, c.
48 479, §7, is amended to read:

48 B. The date of the injury accident:

50 Sec. 4. 39 MRSA §52, first ¶, as amended by PL 1981, c. 93, is
further amended to read:

2 An employee sustaining a personal injury by an accident
arising out of and in the course of his the employee's employment
4 or is disabled by occupational disease ~~shall-be~~ is entitled to
reasonable and proper medical, surgical and hospital services,
6 nursing, medicines, and mechanical, surgical aids, as needed,
paid for by the employer. An injured employee ~~shall-have~~ has the
8 right to make his-own the selection of a physician or surgeon
authorized to practice as-such under the laws of the State.

10 Sec. 5. 39 MRSA §52, 2nd ¶, as repealed and replaced by PL
12 1983, c. 158, is amended to read:

14 Any employee sustaining a personal injury by an accident
arising out of and in the course of his the employee's
16 employment, provided the injury relates to the scope of a
chiropractor's practice, as defined and regulated by statute,
18 ~~shall-be~~ is entitled to chiropractic services as provided by
Title 32, chapter 9. A duly licensed chiropractor ~~shall-be~~
20 ~~considered~~ is competent to testify before the Workers'
Compensation Commission.

22 Sec. 6. 39 MRSA §52, 3rd ¶, as enacted by PL 1979, c. 93, is
24 amended to read:

26 An employee sustaining personal injury by an accident
arising out of and in the course of his the employee's
28 employment, provided the injury relates to the foot, ~~shall-be~~ is
entitled to an examination, diagnosis and treatment ~~therefor~~ from
30 a podiatrist who is licensed in the State of Maine and who has
been granted the degree of Doctor of Podiatric Medicine by an
32 accredited school of podiatry recognized by the Council of
Education of the American Podiatry Association. This examination
34 may include diagnostic x-rays. Such a podiatrist is competent to
testify before the Workers' Compensation Commission.

36 Sec. 7. 39 MRSA §104-C is enacted to read:

38 §104-C. Apportionment between work-related and nonwork-related
40 injuries or diseases

42 When one or more work-related injuries or conditions combine
with one or more nonwork-related injuries or conditions to
44 produce an incapacity or need for medical treatment, the
liability of the employer is governed by this section. The
46 employer is liable only if the work-related injury is and
continues to be the predominant cause of the incapacity or need
48 for medical treatment. If the work-related injury is the
predominant cause, liability for the incapacity or treatment must
50 be apportioned and the employer is liable only for that portion
of the incapacity or treatment caused by the work-related

2 injury. If liability can not be apportioned because the degree
3 of causation can not be established with reasonable medical
4 probability, liability must be apportioned pro rata among all
5 injuries or conditions contributing to the incapacity or need for
6 medical treatment.

7 Sec. 8. 39 MRSA §182, as amended by PL 1977, c. 696, §410, is
8 further amended to read:

10 **§182. Application**

12 Except as otherwise specifically provided, incapacity to
13 work or death of an employee arising out of and in the course of
14 the employment, and resulting from an occupational disease, shall
15 must be treated as the happening of a personal injury by an
16 accident arising out of and in the course of the employment,
17 within the meaning of the Workers' Compensation Act, and all the
18 provisions of that Act shall apply to such occupational
19 diseases. This law shall ~~apply~~ applies only to cases in which
20 the last exposure to an occupational disease in an occupation
21 subject to the hazards of such disease occurred in this State and
22 subsequent ~~to~~ after January 1, 1946.

24 Sec. 9. 39 MRSA §183, as amended by PL 1975, c. 480, §11, is
25 further amended to read:

26 **§183. Occupational disease defined**

28 Whenever used in this law, the term "occupational disease"
29 ~~shall be construed to mean~~ means only a disease which that is due
30 to causes and conditions ~~which are~~ characteristic of a particular
31 trade, occupation, process or employment and ~~which arises~~ out of
32 and in the course of employment. Ordinary diseases of life to
33 which the public is generally exposed outside of employment are
34 not compensable.

36 Sec. 10. Applicability. Section 7 of this Act applies to
37 work-related and nonwork-related injuries and diseases occurring
38 on or after the effective date of this Act. Sections 1 to 6, 8
39 and 9 apply to injuries occurring on or after the effective date
40 of this Act.

42
44 **STATEMENT OF FACT**

46 Sections 1 to 6 amend the definition of compensability under
47 the Workers' Compensation Act to return the meaning that existed
48 prior to 1975. Sections 8 and 9 make technical changes required
49 by this definitional change. In addition, these sections provide
50 that the Workers' Compensation Act is intended to provide
51 compensability for work-related accidents and not to be used as
52 an all-purpose insurance mechanism.

2 Section 7 addresses a recurring problem in the workers'
3 compensation system when an employee's medical disability is
4 caused partly by a work-related injury and partly by a
5 nonwork-related injury or condition. Recent court decisions,
6 including Brackett v. A.C. Lawrence Leather Co., et al., 559 A.2d
7 776 (1989) provide for an all or nothing system under which
8 workers' compensation either pays 100% of the benefits, as if the
9 medical disability was entirely caused by the work-related
10 injury, or pays nothing, as if the medical disability was
11 unrelated to the work-related injury. Section 7 requires the
12 Workers' Compensation Commission to apportion liability in such
13 cases and hold the employer responsible for only that portion of
14 the condition caused by the work-related injury.