

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

FIRST REGULAR SESSION-1997

Legislative Document

No. 1474

S.P. 472

In Senate, March 11, 1997

**An Act to Provide for Limited Payment of Attorney's Fees for Injured
Workers Who Prevail on Meritorious Claims.**

Reference to the Committee on Labor suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator MILLS of Somerset.

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

2
3 **Sec. 1. 39-A MRSA §325**, as enacted by PL 1991, c. 885, Pt. A,
4 §8 and affected by §§9 to 11, is repealed.

6 **Sec. 2. 39-A MRSA §325-A** is enacted to read:

8 **§325-A. Legal expenses and standards for legal representatives**

10 **1. Costs.** An employee may recover from the employer the
12 following costs and expenses relating to the assertion of a claim
14 or to the protection of rights under this Act as long as the
16 employee has asserted the claim or sought to protect those rights
in good faith and upon reasonable grounds. The costs are subject
to standards and maximum charges established in this section and
supplemented by such rules as the board may adopt.

18 Factors to be included in determining costs and expenses are the
20 following:

22 A. The amount paid for copies of relevant medical and
personnel records;

24 B. Medical fees for the preparation of reports on issues
26 relating to the employee's claim;

28 C. Travel expenses for the employee and the employee's
30 necessary witnesses to attend hearings, conferences and
mediations at the mileage rate that is customarily allowed
to state employees in carrying out their duties;

32 D. The cost of a copy of the transcript of any hearing,
34 deposition or proceeding for which the employer obtained a
transcript; and

36 E. The cost of legal service assistance to answer the
38 employer's written interrogatories, to attend depositions
requested by the employer and to prepare written responses
40 to discovery required by the board or initiated by the
employer. If the employee does not prevail on the issue to
42 which the services relate, the aggregate fee for the
services in any one case may not exceed the amount of the
44 State's average weekly wage prevailing at the time of the
employee's injury.

46 **2. Attorney's fees.** When an employee prevails in a
48 controverted proceeding under this Act, the employee's attorney
may recover from the employer a reasonable fee for those legal
50 services that were necessary to resolve the controversy on which
the employee prevailed. When the employee prevailed on one or

2 more issues but not on all, the portion of the fee to be paid by
3 the employer must be equitably prorated among the issues in
4 dispute.

5 **3. Limitations.** The employer may not be assessed under
6 subsection 2 for employee legal services rendered before the date
7 of mediation if the issue is one for which mediation is required
8 and promptly held. The employer must pay for those services
9 under subsection 2 that are rendered from the date when the
10 controversy is initiated by either party.

11 **4. Standards.** An attorney for any party may not be
12 compensated for services that do not contribute to the prompt,
13 just and expedient resolution of claims under this Act. Upon
14 petition by the employer, the employee, an attorney or any other
15 interested party, a legal cost incurred by any party may be
16 reviewed by the board and confirmed, adjusted or denied. Among
17 the factors that determine the reasonableness of legal charges
18 are the following:

19 A. The efficiency and expediency with which counsel brought
20 the controversy to resolution;

21 B. The time and labor that was necessary for proper
22 management of the dispute;

23 C. The difficulty or complexity of the issues presented;

24 D. The skill required to perform the service properly;

25 E. The experience and ability of the attorney performing
26 the service;

27 F. The level of responsibility assumed;

28 G. The severity of the injury and disability;

29 H. The amount in controversy;

30 I. The significance of the personal, medical and vocational
31 issues at stake for the employee and the employee's
32 dependents;

33 J. The comparative time and effort expended by the opponent;

34 K. The end result achieved; and

35 L. Other factors determined significant by the hearing
36 officer.

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2 5. Maximum rates. For legal fees that are based on an
hourly charge, the rate per hour may not exceed the rate
4 established by the board by rule.

6 6. Penalties. If any legal representative has overcharged
for services rendered under this Act, the board may order
8 deletion and, as necessary, repayment of the amount overcharged.
10 In addition, the board may order that a penalty be paid to the
party overcharged in an amount up to twice the amount of the
overcharge.

12 If an attorney or a representative for a party impedes the
efficient, expedient or just resolution of a dispute under this
14 Act, the board may assess against that person a civil penalty in
an amount not to exceed \$1,000 payable to the board and
16 collectible by civil action. The board may prohibit the person
from appearing in proceedings before the board and may take such
18 other action as is authorized by section 309, subsection 4;
section 313, subsection 4; and sections 317, 323 and 324.

20 7. Settlements. If an attorney negotiates the final
22 resolution of a claim in the best interests of the employee, the
attorney may collect from the settlement proceeds a fee based on
24 a percentage of the net amount recovered. After first deducting
any out-of-pocket costs that are chargeable to the employee, the
26 percentage may not exceed 10% of the net present value of the
settlement up to 150 times the State's average weekly wage
28 prevailing at the time of the employee's injury plus 5% of the
remaining net value of the settlement.

30 8. Definitions. For purposes of this section:

32 A. A "controversy" is initiated on the date when a
34 petition, a notice of controversy or a certificate under
section 205, subsection 9 is mailed, served or filed; and

36 B. "Prevail" means to obtain or retain more compensation or
38 benefits under this Act than were offered to the employee by
the employer in writing before the proceeding was
40 initiated. If no offer was made, "prevail" means to obtain
or retain compensation or benefits under this Act.

42 9. Application. This section applies to all cases in which
44 the date of injury falls after June 30, 1985, subject to the
following.

46 A. Provisions relating to costs under subsection 1 apply
48 only to those costs incurred after the effective date of
this section.

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2 B. Provisions relating to controversies do not apply to any
4 controversy initiated before March 1, 1997 or to any
6 resolved prior to the effective date of this section.

8 C. Provisions relating to settlements apply only to
10 injuries on or after October 17, 1991 and only to those
12 settlements that are approved after the effective date of
14 this section.

16 Unless otherwise governed by this section, the amount of the
18 attorney's fee is determined by the law in effect at the time the
20 employee's injury occurred.

22 SUMMARY

24 This bill makes changes to the laws governing workers'
26 compensation. In addition to reinstating a limited prevail rule,
28 this bill imposes a uniform set of standards for payment of
30 counsel fees in cases with dates of injury on or after June 30,
32 1985, the date when the "prevail rule" was first initiated.

34 When an employee has maintained a claim or defended the
36 employee's rights in good faith and upon reasonable grounds, the
38 employer has a limited obligation to reimburse the employee for
40 travel expenses, for costs of transcript copies, for medical
42 records and reports and for legal assistance necessary to respond
44 to discovery request required by the board or by the employer.

46 The bill sets out maximum rates to be charged for hourly
48 legal work and ties them to a percentage of the State's average
50 weekly wage to adjust for inflation. The percentage allowed for
legal fees is limited to 10% on smaller claims and to 5% of those
portions of larger settlements that exceed 150 times the State's
average weekly wage.

The bill expressly prohibits overcharging or charging for
any services that do not contribute to the prompt, just and
expedient resolution of claims under the Maine Workers'
Compensation Act of 1992. The bill sets out a series of
standards to be applied in determining the reasonableness of a
legal fee and entitles any party in interest to obtain a review
and adjustments from the board. Penalties may be awarded for
overcharging or for conduct by any representative that impedes
the efficient, expedient or just resolution of a dispute.

The bill applies procedurally only to controversies and
settlements that are resolved after the effective date of this

2 bill; but, once effective, the bill will apply retroactively to
all pending cases in which the date of injury falls after June
30, 1985. The one exception is for settlement fees in cases
4 arising prior to October 17, 1991. Settlement of such cases will
be governed by the law in effect at the time of injury.
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