

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

FIRST REGULAR SESSION-1997

Legislative Document

No. 1493

S.P. 485

In Senate, March 12, 1997

**An Act to Adopt an Orderly Procedure for Determining the End of
Entitlement to Partial Workers' Compensation Benefits.**

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:

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4 **Sec. 1. 39-A MRSA §213, sub-§1**, as enacted by PL 1991, c. 885,
Pt. A, §8 and affected by §§9 to 11, is amended to read:

6 **1. Benefit.** While the incapacity for work is partial, the
7 employer shall pay the injured employee a weekly compensation
8 equal to 80% of the difference between the injured employee's
9 after-tax average weekly wage before the personal injury and the
10 after-tax average weekly wage that the injured employee is able
11 to earn after the injury, but not more than the maximum benefit
12 under section 211. Compensation must be paid for the duration of
13 the disability if the employee's permanent impairment, determined
14 according to the impairment guidelines adopted by the board
15 pursuant to section 153, subsection 8 resulting from the personal
16 injury is in excess of 15% to the body. ~~In~~ Except as provided in
17 subsection 1-A, in all other cases an employee is not eligible to
18 receive compensation under this section after the employee has
19 received 260 weeks of compensation under section 212, subsection
20 1, this section or both. The board may in the exercise of its
21 discretion extend the duration of benefit entitlement beyond 260
22 weeks in cases involving extreme financial hardship due to
23 inability to return to gainful employment. This authority may
24 not be delegated to a hearing officer and such decisions must be
25 made expeditiously.

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28 **Sec. 2. 39-A MRSA §213, sub-§1-A** is enacted to read:

29 1-A. Review. In cases other than those covered by
30 paragraph A, after an employee has received 260 weeks of benefits
31 under section 212, subsection 1, this section or both, the board
32 shall conduct a review of the employee's case and thereafter
33 terminate the employee's benefits unless the employee can
34 demonstrate to the satisfaction of a hearing officer that:

35 A. The injury is serious;

36 B. The injury continues to cause a significant level of
37 ongoing disability;

38 C. The injury reduces the employee's earning capacity to a
39 significant degree;

40 D. The employee is not able to find gainful employment
41 within or around the employee's community;

42 E. Rehabilitation has failed through no fault of the
43 employee; or

2 F. Rehabilitation is not likely to restore the employee's
3 earning capacity to a significant level.

4 **Sec. 3. 39-A MRSA §213, sub-§4**, as enacted by PL 1991, c. 885,
5 Pt. A, §8 and affected by §§9 to 11, is amended to read:

6 **4. Extension of 260-week limitation.** Effective January 1,
7 1998 and every January 1st thereafter, the 260-week limitation
8 contained in subsection 1 or 1-A must be extended 52 weeks for
9 every year the board finds that the frequency of such cases
10 involving the payment of benefits under section 212 or 213 is no
11 greater than the national average based on frequency from the
12 latest unit statistical plan aggregate data for Maine and on a
13 nationwide basis, adjusted to a unified industry mix. The
14 260-week limitation contained in subsection 1 or 1-A may not be
15 extended under this subsection to more than 520 weeks.
16 Reimbursement to the employer, insurer or group self-insurer for
17 the payment of all benefits for additional weeks payable pursuant
18 to this subsection must be made from the Employment
19 Rehabilitation Fund.

20 **Sec. 4. Effective date.** This Act takes effect October 1, 1997.

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SUMMARY

27 This bill requires that, for injuries occurring on or after
28 October 1, 1997, after an employee has received 260 weeks of
29 benefits for partial incapacity, the Workers' Compensation Board
30 terminate benefits unless the employee demonstrates certain facts
31 about the injury, the employee's prospects for employment or the
32 employee's rehabilitation.