

MAINE STATE LEGISLATURE

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119th MAINE LEGISLATURE

FIRST REGULAR SESSION-1999

Legislative Document

No. 1067

S.P. 364

In Senate, February 9, 1999

An Act to Amend the Workers' Compensation Laws.

Reported by Senator DOUGLASS of Androscoggin for the Workers' Compensation Board pursuant to the Maine Revised Statutes, Title 39-A, section 152.

Reference to the Committee on Labor suggested and ordered printed pursuant to Joint Rule 218.

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

JOY J. O'BRIEN
Secretary of the Senate

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

2
3 **Sec. 1. 2 MRSA §6-E, sub-§5**, as enacted by PL 1993, c. 145,
4 §1, is amended to read:

5 **5. Deputy directors.** The salary of the deputy directors is
6 within ~~the following~~ salary ranges: range 85.

7
8 ~~A. Deputy director of medical and rehabilitation, salary~~
9 ~~range 82;~~

10
11 ~~B. Deputy director of business services, salary range 82;~~

12
13 ~~C. Deputy director of benefits administration, salary range~~
14 ~~82; and~~

15
16 ~~D. Deputy director of dispute resolution, salary range 82.~~

17
18 **Sec. 2. 39-A MRSA §102, sub-§8, ¶C**, as enacted by PL 1991, c.
19 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

20
21 C. A child, including an adopted child or a stepchild,
22 under ~~the age of~~ 18 years of age, or under ~~the age of~~ 23
23 years of age if a student or over the age of 18 years but
24 physically or mentally incapacitated from earning, who is
25 dependent upon the parent with whom the dependent is living
26 or upon whom the dependent is actually dependent in any way
27 at the time of the injury to the parent, there being no
28 surviving dependent parent. For the purposes of this
29 paragraph, "child" includes any dependent posthumous child
30 whose mother is not living. If there is more than one child
31 dependent, the compensation must be divided equally among
32 them.

33
34 For the purposes of this paragraph, the term "student" means
35 a person regularly pursuing a full-time course of study or
36 training at an institution that is:

37
38 (1) A school, college or university operated or
39 directly supported by the United States or by any state
40 or local government or political subdivision thereof;

41
42 (2) A school, college or university that has been
43 accredited by a state or by a state-recognized or
44 nationally recognized accrediting agency or body;

45
46 (3) A school, college or university not accredited
47 pursuant to subparagraph (2) but whose credits are
48 accepted, on transfer, for credit on the same basis as
49 if transferred from an accredited institution by not
50

2 fewer than 3 institutions accredited pursuant to
subparagraph (2); or

4 (4) An additional type of educational or training
6 institution as defined by the board, but not after the
dependent reaches ~~the age of~~ 23 years of age or has
8 completed 4 years of education beyond the high school
level, except that, when the dependent's 23rd birthday
10 occurs during a semester or other enrollment period,
the dependent continues to be considered a student
12 until the end of the semester or other enrollment
period. A child is not deemed to have ceased to be a
14 student during any interim between school years if the
interim does not exceed 5 months and if the dependent
16 shows to the satisfaction of the board that the
dependent has a bona fide intention of continuing to
18 pursue a full-time course of education or training
during the semester or other enrollment period
20 immediately following the interim or during periods of
reasonable duration during which, in the judgment of
22 the board, the dependent is prevented by factors beyond
the dependent's control from pursuing the dependent's
24 education. A child is not deemed to be a student under
this Act during a period of service in the Armed Forces
26 of the United States.

28 In all other cases, questions of total or partial dependency must
be determined in accordance with the fact as the fact was at the
time of the injury. If there is more than one person wholly
30 dependent, the compensation must be divided equally among them
and persons partly dependent, if any, are not entitled to a part
32 of the compensation during the period in which compensation is
paid to persons wholly dependent. If there is no one wholly
34 dependent and more than one person who is partly dependent, the
compensation must be divided among them according to the relative
36 extent of their dependency. ~~If a dependent is an alien residing
outside the United States or outside the Dominion of Canada, the
38 compensation paid to any such dependent is 1/2 that provided in
the case of the death of an employee.~~

40 **Sec. 3. 39-A MRSA §153, sub-§9**, as enacted by PL 1997, c. 486,
42 §3, is amended to read:

44 **9. Audit and enforcement.** The executive director shall
establish an audit, enforcement and monitoring program by July 1,
46 1998, to ensure that all obligations under this Act are met,
including the requirements of section 359. The functions of the
48 audit and enforcement program include, but are not limited to,
auditing timeliness of payments and claims handling practices of
50 insurers, self-insurers and 3rd-party administrators; determining

2 whether insurers, self-insurers and 3rd-party administrators are
3 unreasonably contesting claims; and ensuring that all reporting
4 requirements to the board are met. The program must be
5 coordinated with the abuse investigation unit established by
6 section 153, subsection 5 as appropriate. The program must
7 monitor activity and conduct audits pursuant to a schedule
8 developed by the deputy director of benefits administration.
9 Audit working papers are confidential and may not be disclosed to
10 any person outside of the board except the audited entity. For
11 purposes of this subsection "audit working papers" means all
12 documentary and other information acquired, prepared or
13 maintained by the board during the conduct of an audit or
14 investigation, including all intra-agency and interagency
15 communications relating to an audit or investigation and draft
16 reports or any portion of a draft report. The final audit report
17 is not confidential. At the end of each calendar quarter, the
18 executive director shall prepare a compliance report summarizing
19 the results of the audits and reviews conducted pursuant to this
20 subsection. The executive director shall submit the quarterly
21 compliance reports to the board, the Bureau of Insurance and the
22 Director of the Bureau of Labor Standards within the Department
23 of Labor. An annual summary must be provided to the Governor and
24 to the joint standing committees of the Legislature having
25 jurisdiction over labor and banking and insurance matters by
26 February 15th of each year. The quarterly compliance reports and
27 the annual summaries must be made available to the public
28 following distribution.

29 **Sec. 4. 39-A MRSA §205, sub-§8**, as enacted by PL 1991, c. 885,
30 Pt. A, §8 and affected by §§9 to 11, is repealed and the
31 following enacted in its place:

32 **8. Information.** Information regarding wages must be
33 reported as provided in section 303.

34 **Sec. 5. 39-A MRSA §205, sub-§9, ¶D**, as enacted by PL 1991, c.
35 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

36 D. The board, within 21 days after the employee filed a
37 petition for review, may enter an order providing for the
38 continuation or reinstatement of benefits pending a hearing
39 on the petition. The order must be based upon the
40 information submitted by both the employer, insurer or group
41 self-insurer and the employee under this subsection. Once a
42 request for an order has been ruled upon, the matter may not
43 be referred to mediation, but must be set for hearing.

44 **Sec. 6. 39-A MRSA §303**, as enacted by PL 1991, c. 885, Pt. A,
45 §8 and affected by §§9 to 11, is amended to read:

2 **§303. Reports to board**

4 When any employee has reported to an employer under this Act
6 any injury arising out of and in the course of the employee's
8 employment that has caused the employee to lose a day's work, or
10 when the employer has knowledge of any such injury, the employer
12 shall report the injury to the board within 7 days after the
14 employer receives notice or has knowledge of the injury. The
16 employer shall also report the average weekly wages or earnings
18 of the employee, as defined in section 102, subsection 4,
20 together with any other information required by the board, within
22 30 days after the employer receives notice or has knowledge of a
24 claim for compensation under section 212, 213 or 215, unless a
26 wage statement has previously been filed with the board. A copy
 of the wage information must be mailed to the employee. The
 employer shall report when the injured employee resumes the
 employee's employment and the amount of the employee's wages or
 earnings at that time. The employer shall complete a first
 report of injury form for any injury that has required the
 services of a health care provider within 7 days after the
 employer receives notice or has knowledge of the injury. The
 employer shall provide a copy of the form to the injured employee
 and retain a copy for the employer's records but is not obligated
 to submit the form to the board unless the injury later causes
 the employee to lose a day's work.

28 **Sec. 7. 39-A MRSA §306**, as enacted by PL 1991, c. 885, Pt. A,
30 §8 and affected by §§9 to 11, is repealed and the following
 enacted in its place:

32 **§306. Time for filing petitions**

34 **1. Statute of limitations.** Except as provided in this
36 section, a petition brought under this Act is barred unless filed
38 within 2 years after the date of injury or the date the
 employee's employer files a first report of injury as required by
 section 303.

40 **2. Payment of benefits.** If an employer or insurer pays
42 benefits under this Act, either with or without prejudice, within
44 the period provided in subsection 1, the period during which an
 employee or other interested party may file a petition is 6 years
 from the date of the most recent payment.

46 **3. Establishment of injury.** If the occurrence of a
48 work-related injury is established by board decree, mediation
 report or agreement of the parties without the payment of
 benefits as provided in subsection 2, the period during which an

2 employee or other interested party may file a petition is 6 years
3 from the date of that decree, report or agreement.

4 4. Physical or mental incapacity. If an employee is unable
5 to file a petition because of physical or mental incapacity, the
6 period of that incapacity is not included in the limitations
7 periods provided in this section.

8
9 5. Mistake of fact. If an employee fails to file a
10 petition within the limitations periods provided in this section
11 because of mistake of fact as to the cause or nature of the
12 injury, the employee may file a petition within a reasonable time.

13 6. Death of employee. If an employee dies, the limitations
14 periods provided in this section are extended by one year from
15 the date of that death.

16
17 **Sec. 8. 39-A MRSA §313, sub-§1, as enacted by PL 1991, c. 885,**
18 **Pt. A, §8 and affected by §§9 to 11, is amended to read:**

19
20 **1. Procedure. Upon Except as provided in section 205,**
21 **subsection 9, paragraph D, upon filing of notice of controversy**
22 **or other indication of controversy, the matter must be referred**
23 **by the board to mediation.**

24
25 **Sec. 9. 39-A MRSA §324, sub-§3, ¶B, as enacted by PL 1991, c.**
26 **885, Pt. A, §8 and affected by §§9 to 11, is amended to read:**

27
28 **B. The employer is liable to pay a civil penalty of up to**
29 **\$10,000, or an amount equal to 108% of the premium,**
30 **calculated using Maine Employers' Mutual Insurance Company's**
31 **standard discounted standard premium, that should have been**
32 **paid during the period the employer failed to secure**
33 **coverage, whichever is larger, payable to the Employment**
34 **Rehabilitation Fund.**

35
36 **Sec. 10. 39-A MRSA §354, sub-§3, as enacted by PL 1991, c.**
37 **885, Pt. A, §8 and affected by §§9 to 11, is amended to read:**

38
39 **3. Subrogation. Any insurer determined to be liable for**
40 **benefits under subsection 2 must be subrogated to the employee's**
41 **rights under this Act for all benefits the insurer has paid and**
42 **for which another insurer may be liable. ~~Any such insurer may, in~~**
43 **~~accordance with rules adopted by the Superintendent of Insurance,~~**
44 **~~file a request for appointment of an arbitrator to determine~~**
45 **~~apportionment of liability among the responsible insurers. The~~**
46 **~~arbitrator's decision is limited to a choice between the~~**
47 **~~submissions of the parties and may not be calculated by~~**
48 **~~averaging. Within 30 days of the request, the Superintendent of~~**
49 **~~Insurance shall appoint a neutral arbitrator who shall decide, in~~**
50

2 accordance--with--the--rules--adopted--by--the--Superintendent--of
Insurance,--respective--liability--among--or--between--insurers.
4 Arbitration--pursuant--to--this--subsection--is--the--exclusive--means
for--resolving--apportionment--disputes--among--insurers--and--the
6 decision--of--the--arbitrator--is--conclusive--and--binding--among--all
parties--involved. Apportionment decisions made under this
8 this Act. The board has jurisdiction over proceedings to
determine the apportionment of liability among responsible
10 insurers.

12

SUMMARY

14

16 The bill implements the recommendation contained in the
fiscal year 2000-01 budget to increase the salaries of the deputy
18 directors from range 82 to 85. It also removes the job titles
currently contained in the Maine Revised Statutes, Title 2.

20

22 This bill also amends Title 39-A, section 102, subsection 8
to provide that dependents who are aliens residing outside the
United States or outside the Dominion of Canada are entitled to
24 the full amount of compensation payable in the case of the death
of an employee. The bill also defines audit working papers and
provides that they are confidential.

26

28 The bill requires the filing of a wage statement within 30
days after an employer has notice or knowledge of a claim for
incapacity benefits pursuant to Title 39-A, section 212, 213 or
30 215, unless a wage statement has previously been filed.

32

34 This bill provides that cases in which a request for an
order has been ruled upon may not be referred to mediation, but
must remain with the hearing officer to be scheduled for a
hearing.

36

38 The bill provides a basic 2-year statute of limitations and
also provides that the payment of benefits, either with or
without prejudice, extends the statute of limitations for 6
40 years. It also provides a 6-year statute of limitations in cases
when the occurrence of a work-related injury is established by
42 board decree, mediation report or agreement of the parties, even
if no benefits are paid.

44

46 The bill increases the fine for not securing required
workers' compensation coverage to ensure that it is more
expensive to be fined for not having coverage than it is to
48 secure workers' compensation coverage.

50

This bill eliminates Bureau of Insurance arbitration
proceedings and places jurisdiction over apportionment issues

2 with the Workers' Compensation Board, thus allowing hearing officers to decide these issues.