

MAINE STATE LEGISLATURE

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126th MAINE LEGISLATURE

FIRST REGULAR SESSION-2013

Legislative Document

No. 1

S.P. 9

In Senate, January 8, 2013

An Act To Amend the Maine Workers' Compensation Act of 1992

Reported by Senator John L. Patrick for the Workers' Compensation Board pursuant to the Maine Revised Statutes, Title 39-A, section 152, subsection 11.

Reference to the Committee on Labor, Commerce, Research and Economic Development suggested and ordered printed pursuant to Joint Rule 218.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

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

2 **Sec. 1. 39-A MRSA §102, sub-§1**, as enacted by PL 1991, c. 885, Pt. A, §8 and
3 affected by §§9 to 11, is amended to read:

4 **1. After-tax average weekly wage.** "After-tax average weekly wage" means
5 average weekly wage, as defined in subsection 4, reduced by the prorated weekly amount
6 that would have been paid under the Federal Insurance Contributions Act, 26 United
7 States Code, Sections 3101 to 3126, state income tax and federal income tax calculated
8 on an annual basis, using as the number of exemptions the disabled employee's
9 dependents plus the employee, and without excess itemized deductions. Effective
10 January 1, 1993 and each January 1st ~~thereafter~~ until and including January 1, 2012, the
11 applicable federal and state laws in effect on the preceding July 1st are used in
12 determining the after-tax weekly wage. Each December 1st until and including
13 December 1, 2011, the board shall publish tables of the average weekly wage and 80% of
14 after-tax average weekly wage that will take effect on the following January 1st. These
15 tables are conclusive for the purpose of converting an average weekly wage into 80% of
16 after-tax average weekly wage.

17 **Sec. 2. 39-A MRSA §102, sub-§8, ¶A**, as enacted by PL 1991, c. 885, Pt. A, §8
18 and affected by §§9 to 11, is repealed and the following enacted in its place:

19 A. A spouse of the deceased employee who was living with the employee at the time
20 of the employee's death, who was living apart from the employee for a justifiable
21 cause or because the spouse had been deserted by the employee or who was actually
22 dependent upon the employee at the time of the injury. A spouse living apart from
23 the employee must produce a court order or other competent evidence as to
24 separation and actual dependency; and

25 **Sec. 3. 39-A MRSA §102, sub-§8, ¶B**, as enacted by PL 1991, c. 885, Pt. A, §8
26 and affected by §§9 to 11, is repealed.

27 **Sec. 4. 39-A MRSA §105, sub-§3**, as amended by PL 2009, c. 569, §1, is further
28 amended to read:

29 **3. Predetermination submission.** A party may submit, on forms approved by the
30 board, a request for predetermination regarding the status of a person or job description as
31 an employee, construction subcontractor, as defined in section 105-A, subsection 1,
32 paragraph B, or independent contractor. ~~The status requested by a party request~~ is
33 deemed to have been approved if the board does not deny or take other appropriate action
34 on the submission within 44 30 days.

35 **Sec. 5. 39-A MRSA §105, sub-§4**, as amended by PL 1993, c. 120, §1 and
36 affected by §6, is further amended to read:

37 **4. Hearing.** A hearing, if requested by a party within 10 days of the board's decision
38 on a petition, must be conducted under the Maine Administrative Procedure Act. The
39 board's ruling under this subsection is final and is not subject to judicial review.

1 **Sec. 6. 39-A MRSA §217, sub-§1**, as enacted by PL 1991, c. 885, Pt. A, §8 and
2 affected by §§9 to 11, is amended to read:

3 **1. Services.** If employment rehabilitation services are not voluntarily offered and
4 accepted, the board on its own motion or upon application of the employee, carrier or
5 employer, after affording the parties an opportunity to be heard, may refer the employee
6 to a board-approved facility for evaluation of the need for and kind of service, treatment
7 or training necessary and appropriate to return the employee to suitable employment. The
8 board's determination under this subsection is final.

9 **Sec. 7. 39-A MRSA §218, sub-§3**, as enacted by PL 1991, c. 885, Pt. A, §8 and
10 affected by §§9 to 11, is amended to read:

11 **3. Time period; discrimination prohibited.** The employer's obligation to reinstate
12 the employee continues until ~~one year~~ 2 years, or 3 years if the employer has over 200
13 employees, after the date of the injury. An employer who reinstates an employee under
14 this section may not subsequently discriminate against that employee in any employment
15 decision, including decisions related to tenure, promotion, transfer or reemployment
16 following a layoff, because of the employee's assertion of a claim or right under this Act.
17 Nothing in this subsection may be construed to limit any protection offered to an
18 employee by section 353.

19 **Sec. 8. 39-A MRSA §303**, as amended by PL 2003, c. 471, §1, is further amended
20 to read:

21 **§303. Reports to board**

22 When any employee has reported to an employer under this Act any injury arising out
23 of and in the course of the employee's employment that has caused the employee to lose a
24 day's work, or when the employer has knowledge of any such injury, the employer shall
25 report the injury to the board within 7 days after the employer receives notice or has
26 knowledge of the injury. An insured employer that has notice or knowledge of any such
27 injury and fails to give timely notice to its insurer shall reimburse the insurer for any
28 penalty that is due as a result of the late filing of the report of injury. The employer shall
29 also report the average weekly wages or earnings of the employee, as defined in section
30 102, subsection 4, together with any other information required by the board, within 30
31 days after the employer receives notice or has knowledge of a claim for compensation
32 under section 212, 213 or 215, unless a wage statement has previously been filed with the
33 board. A copy of the wage information must be mailed to the employee. The employer
34 shall report when the injured employee resumes the employee's employment and the
35 amount of the employee's wages or earnings at that time. The employer shall complete a
36 first report of injury form for any injury that has required the services of a health care
37 provider within 7 days after the employer receives notice or has knowledge of the injury.
38 The employer shall provide a copy of the form to the injured employee and retain a copy
39 for the employer's records but is not obligated to submit the form to the board unless the
40 injury later causes the employee to lose a day's work. The employer is also required to
41 submit the form to the board if the board has finally adopted a major substantive rule
42 pursuant to Title 5, chapter 375, subchapter 2-A to require the form to be filed
43 electronically.

1 **Sec. 9. 39-A MRSA §318, last ¶**, as enacted by PL 1991, c. 885, Pt. A, §8 and
2 affected by §§9 to 11, is amended to read:

3 Clerical mistakes in decrees, orders or other parts of the record and errors arising
4 from oversight or omission may be corrected by the board at any time of its own
5 initiative, at the request of the hearing officer or on the motion of any party and after
6 notice to the parties. During the pendency of an appeal, these mistakes may be corrected
7 before the appeal is ~~docketed in~~ filed with the Law Court division and thereafter, while
8 the appeal is pending, may be corrected with leave of the ~~Law Court~~ division.

9 **Sec. 10. 39-A MRSA §320, 2nd ¶**, as amended by PL 2011, c. 647, §19, is
10 further amended to read:

11 If a hearing officer asks for review, the time for appeal ~~to the Appellate Division~~
12 ~~pursuant to section 321-B~~ is stayed and no further action may be taken until a decision of
13 the board has been made. If the board reviews a decision of a hearing officer, any appeal
14 must be from the decision of the board and must be made to the Law Court in accordance
15 with section 322. The time for appeal begins upon the board's issuance of a written
16 decision on the merits of the case or written notice that the board denies review.

17 **Sec. 11. 39-A MRSA §320, 3rd ¶**, as amended by PL 2003, c. 608, §13, is
18 further amended to read:

19 The board shall vote on whether to review the decision. If a majority of the board's
20 membership fails to vote to grant review or the board fails to act within 60 days after
21 receiving the initial request for review, the decision of the hearing officer stands, and any
22 appeal must be made to the division in accordance with section 321-B. If the board votes
23 to review the decision, the board may delegate responsibility for reviewing the decision
24 of the hearing officer under this section to panels of board members consisting of equal
25 numbers of representatives of labor and management. Review must be on the record and
26 on written briefs only. Upon a vote of a majority of the board's membership, the board
27 shall issue a written decision affirming, ~~reversing~~ remanding, vacating or modifying the
28 hearing officer's decision. The written decision of the board must be filed with the board
29 and mailed to the parties or their counsel. If the board fails to adopt a decision by
30 majority vote, the decision of the hearing officer stands and is subject to direct appellate
31 review in the same manner as if the board had not voted to review the decision.

32 **Sec. 12. 39-A MRSA §321-B, sub-§1, ¶B**, as enacted by PL 2011, c. 647, §20,
33 is amended to read:

34 B. At the time of filing an appeal under this section, the appellant shall file with the
35 division a copy of the decision, ~~order or agreement~~ appealed. The failure of an
36 appellant who timely files an appeal in accordance with paragraph A to provide a
37 copy of the decision, ~~order or agreement~~ does not affect the jurisdiction of the
38 division to determine the appeal on its merits unless the appellee shows substantial
39 prejudice from that failure.

40 **Sec. 13. 39-A MRSA §321-B, sub-§3**, as enacted by PL 2011, c. 647, §20, is
41 amended to read:

- 1 3. Extends the time within which the board must take action on a predetermination
2 request from 14 to 30 days;
- 3 4. Establishes that review of a predetermination request is final within the board;
- 4 5. Establishes that a request for evaluation of the need for employment rehabilitation
5 is not subject to review outside of the agency;
- 6 6. Extends to 2 years the period within which an employee can petition for
7 reinstatement to an employer with 200 or fewer employees;
- 8 7. Establishes that an employer is required to reimburse its insurer if the employer is
9 responsible for the late filing of a first report of injury;
- 10 8. Clarifies procedures relating to the Appellate Division within the Workers'
11 Compensation Board by:
- 12 A. Providing that clerical mistakes in decrees may be corrected when a matter is
13 pending before the Appellate Division;
- 14 B. Specifying that an appellant must file a copy of the hearing officer's decision and
15 not an order or agreement; and
- 16 C. Specifying that the Appellate Division may affirm, vacate or remand a decree of a
17 hearing officer;
- 18 9. Clarifies procedures relating to the review of a decision by the board pursuant to
19 the Maine Revised Statutes, Title 39-A, section 320 by:
- 20 A. Stipulating that appeals of decisions issued by the board pursuant to section 320
21 must be filed with the Law Court, not the Appellate Division;
- 22 B. Providing that a hearing officer decree can be appealed to the Appellate Division
23 if the board declines review; and
- 24 C. Permitting the board to remand a hearing officer decree; and
- 25 10. Clarifies that benefits must be paid while an appeal is pending before the
26 Appellate Division and that benefits paid while a case is pending before the Appellate
27 Division are subject to repayment in the same manner as when the Law Court decides an
28 employee is not entitled to compensation.