

MAINE STATE LEGISLATURE

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129th MAINE LEGISLATURE

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Legislative Document

No. 1205

H.P. 869

House of Representatives, March 12, 2019

**An Act To Allow Full Retirement Benefits under the Maine
Workers' Compensation Act of 1992**

Reference to the Committee on Labor and Housing suggested and ordered printed.

Robert B. Hunt
ROBERT B. HUNT
Clerk

Presented by Representative SYLVESTER of Portland.

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

2 **Sec. 1. 39-A MRSA §221, 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. Application.** This section applies when either weekly or lump sum payments are
5 made to an employee as a result of liability pursuant to section 212 or 213 with respect to
6 the same time period for which the employee is also receiving or has received payments
7 for:

8 ~~A. Old-age insurance benefit payments under the United States Social Security Act,
9 42 United States Code, Sections 301 to 1397f;~~

10 B. Payments under a self-insurance plan, a wage continuation plan or a disability
11 insurance policy provided by the employer; ~~or.~~

12 ~~C. Pension or retirement payments pursuant to a plan or program established or
13 maintained by the employer.~~

14 This section does not apply to payments made to an employee as a result of liability
15 pursuant to section 212, subsection 2 or 3 for the specific loss period set forth by law. It
16 is the intent of the Legislature that, because benefits under section 212, subsections 2 and
17 3 are benefits that recognize human factors substantially in addition to the wage loss
18 concept, coordination of benefits should not apply to such benefits.

19 **Sec. 2. 39-A MRSA §221, sub-§2, ¶A**, as repealed and replaced by PL 2011, c.
20 647, §15, is amended to read:

21 A. "After-tax amount" means:

22 (1) For benefits paid on claims for which the date of injury is prior to January 1,
23 2013, the gross amount of any benefit under subsection 3, paragraph A,
24 subparagraph (2); or (3); ~~(4) or (5)~~ reduced by the prorated weekly amount that
25 would have been paid, if any, under the Federal Insurance Contributions Act, 26
26 United States Code, Sections 3101 to 3126, state income tax and federal income
27 tax, calculated on an annual basis using as the number of exemptions the disabled
28 employee's dependents plus the employee, and without excess itemized
29 deductions. In determining the after-tax amount the tables provided for in section
30 102, subsection 1 must be used. The gross amount of any benefit under
31 subsection 3, paragraph A, subparagraph (2); or (3); ~~(4) or (5)~~ is presumed to be
32 the same as the average weekly wage for purposes of the table. The applicable
33 80% of after-tax amount as provided in the table, multiplied by 1.25, is
34 conclusive for determining the after-tax amount of benefits under subsection 3,
35 paragraph A, subparagraph (2); or (3); ~~(4) or (5)~~; and

36 (2) For benefits paid on claims for which the date of injury is on or after January
37 1, 2013, the net weekly amount of any old-age insurance benefit or benefit under
38 an employee benefit plan, reduced by the prorated weekly amount that would
39 have been paid, if any, under the Federal Insurance Contributions Act, 26 United
40 States Code, Sections 3101 to 3126, federal income and state income taxes,
41 calculated on an annual basis. The after-tax amount of any benefit subject to

1 income taxes must be determined by using the maximum number of dependents'
2 allowances to which the employee is entitled and the standard deduction or zero
3 bracket amount applicable to the employee's filing status.

4 **Sec. 3. 39-A MRSA §221, sub-§3, ¶A**, as amended by PL 2013, c. 152, §1, is
5 further amended to read:

6 A. The employer's obligation to pay or cause to be paid weekly benefits other than
7 benefits under section 212, subsection 2 or 3 is reduced by the following amounts:

8 ~~(1) Fifty percent of the amount of the old-age insurance benefits received or~~
9 ~~being received under the United States Social Security Act. For injuries~~
10 ~~occurring on or after October 1, 1995, such a reduction may not be made if the~~
11 ~~old-age insurance benefits had started prior to the date of injury or if the benefits~~
12 ~~are spouse's benefits;~~

13 (2) The after-tax amount of the payments received or being received under a
14 self-insurance plan or a wage continuation plan or under a disability insurance
15 policy provided by the same employer from whom benefits under section 212 or
16 213 are received if the employee did not contribute directly to the plan or to the
17 payment of premiums regarding the disability insurance policy. If the self-
18 insurance plans, wage continuation plans or disability insurance policies are
19 entitled to repayment in the event of a workers' compensation benefit recovery,
20 the insurance carrier shall satisfy the repayment out of funds the insurance carrier
21 has received through the coordination of benefits provided for under this section;
22 and

23 (3) The proportional amount, based on the ratio of the employer's contributions
24 to the total insurance premiums for the policy period involved, of the after-tax
25 amount of the payments received or being received by the employee pursuant to a
26 disability insurance policy provided by the same employer from whom benefits
27 under section 212 or 213 are received, if the employee did contribute directly to
28 the payment of premiums regarding the disability insurance policy;

29 ~~(5) The proportional amount, based on the ratio of that employer's contributions~~
30 ~~to the total contributions to the plan or program, of the after-tax amount of the~~
31 ~~pension or retirement payments received or being received by the employee~~
32 ~~pursuant to a plan or program established or maintained by the same employer~~
33 ~~from whom benefits under section 212 or 213 are received, regardless of whether~~
34 ~~the employee contributed directly to the pension or retirement plan or program;~~
35 ~~and~~

36 ~~(6) For those employers who do not provide a pension plan, the proportional~~
37 ~~amount, based on the ratio of the employer's contributions to the total~~
38 ~~contributions made to a qualified profit sharing plan under the United States~~
39 ~~Internal Revenue Code, Section 401(a) or any successor to the United States~~
40 ~~Internal Revenue Code, Section 401(a) covering a profit sharing plan that~~
41 ~~provides for the payment of benefits only upon retirement, disability, death, or~~
42 ~~other separation of employment to the extent that benefits are vested under the~~
43 ~~plan.~~

1 **Sec. 4. 39-A MRSA §221, sub-§3, ¶C**, as enacted by PL 1991, c. 885, Pt. A, §8
2 and affected by §§9 to 11, is repealed.

3 **Sec. 5. 39-A MRSA §221, sub-§3, ¶E**, as enacted by PL 1991, c. 885, Pt. A, §8
4 and affected by §§9 to 11, is amended to read:

5 E. Disability insurance benefit payments under the Social Security Act are
6 considered payments from funds provided by the employer and are considered
7 primary payments on the employer's obligation under section 212 or 213 ~~as old-age~~
8 ~~benefit payments under the Social Security Act are considered pursuant to this~~
9 ~~section~~. However, social security disability insurance benefits may only be so
10 considered if section 224 of the Social Security Act, 42 United States Code, Section
11 424a, is revised so that a reduction of social security disability insurance benefits is
12 not made because of the receipt of workers' compensation benefits by the employee.
13 The coordination of social security disability benefits commences on the date of the
14 award certificate of the social security disability benefits. Any accrued social security
15 disability benefits may not be coordinated.

16 **Sec. 6. 39-A MRSA §221, sub-§3, ¶H** is enacted to read:

17 H. An employer may not take a credit against ongoing payments to an employee due
18 to the employee's receipt of payments that are eligible for coordination of benefits
19 and that were received during a previous time period.

20 **Sec. 7. 39-A MRSA §221, sub-§§4 and 5**, as enacted by PL 1991, c. 885, Pt. A,
21 §8 and affected by §§9 to 11, are amended to read:

22 **4. Notification and release of social security benefit information.** The board shall
23 adopt rules to provide for notification by an employer to an employee of possible
24 eligibility for social security benefits and the requirements for establishing proof of
25 application for those benefits. Notification must be promptly mailed to the employee
26 after the date on which by reason of age disability the employee may be entitled to social
27 security benefits. A copy of the notification of possible eligibility must be filed with the
28 board by the employer. Within 30 days after receipt of the notification of possible
29 employee eligibility the employee shall:

- 30 A. Make application for social security benefits;
- 31 B. Provide the employer or carrier with proof of that application; and
- 32 C. Provide the employer or carrier with an authority for release of information which
33 may be used by the employer to obtain necessary benefit entitlement and amount
34 information from the social security administration.

35 The authority for release of information is effective for one year.

36 **5. Release of benefit information.** Within 30 days after either the date of first
37 payment of compensation benefits under section 212 or 213 or 30 days after the date of
38 application for any benefit under subsection 3, paragraph A, subparagraph (2), or (3), (4)
39 ~~or (5)~~, whichever is later, the employee shall provide the employer with a properly
40 executed authority for release of information which may be used by the employer to

1 obtain necessary benefit entitlement and amount information from the appropriate source.
2 The authority for release of information is effective for one year.

3 **Sec. 8. 39-A MRSA §221, sub-§8**, as enacted by PL 1991, c. 885, Pt. A, §8 and
4 affected by §§9 to 11, is repealed.

5 **SUMMARY**

6 This bill strikes the provisions of law that require an employer to offset an
7 individual's workers' compensation benefits based on retirement or pension benefits being
8 received by that individual. It also clarifies the law to avoid the interpretation of the
9 Maine Supreme Court in Urrutia v. Interstate Brands International, 2018 ME 24, 179
10 A.3d 312, which allowed an employer to take a credit for past overpayments, due to the
11 employer's failure to take an allowable offset of benefits, by reducing the employer's
12 ongoing payments of workers' compensation benefits.