

MAINE STATE LEGISLATURE

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129th MAINE LEGISLATURE

FIRST REGULAR SESSION-2019

Legislative Document

No. 1623

S.P. 520

In Senate, April 23, 2019

**An Act To Improve Employee Representation under the Maine
Workers' Compensation Act of 1992 by Amending the Laws
Governing Attorney's Fees**

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

A handwritten signature in black ink, appearing to read "D M Grant", is positioned above the printed name of the Secretary of the Senate.

DAREK M. GRANT
Secretary of the Senate

Presented by President JACKSON of Aroostook.

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

2 **Sec. 1. 39-A MRSA §325, 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. Costs and attorney's fees.** Except as provided in subsection 1-A or otherwise
5 provided by law, by the Maine Rules of Civil Procedure or by rule of court, each party is
6 responsible for the payment of the party's own costs and attorney's fees. In the event of a
7 disagreement as to those costs or fees, an interested party may apply to the board for a
8 hearing.

9 **Sec. 2. 39-A MRSA §325, sub-§1-A** is enacted to read:

10 **1-A. Attorney's fees payable by employer.** An employer shall pay the employee's
11 reasonable costs and attorney's fees relating to the assertion of a claim or the protection of
12 rights under this Act as provided in this subsection:

13 A. If the employee prevails on a disputed petition for payment of medical and related
14 expenses filed under section 206, the employer shall pay the reasonable costs and
15 attorney's fees for services rendered from the date upon which the controversy is
16 initiated by either party;

17 B. If the employee prevails in an appeal that is decided by the division, the employer
18 shall pay the reasonable costs and attorney's fees for services rendered from the date
19 upon which a notice of intent to appeal is filed pursuant to section 321-B; and

20 C. If the employee prevails in an appeal that is decided by the Law Court, the
21 employer shall pay the reasonable costs and attorney's fees for services rendered from
22 the date upon which a petition seeking appellate review with the Law Court is filed
23 pursuant to section 322.

24 For purposes of this subsection, "prevail" means to obtain or retain more compensation or
25 benefits under this Act than were offered to the employee in writing before the
26 proceeding was initiated; or, if no such offer was made, "prevail" means to obtain or
27 retain compensation or benefits under this Act.

28 **Sec. 3. 39-A MRSA §325, sub-§4**, as enacted by PL 1991, c. 885, Pt. A, §8 and
29 affected by §§9 to 11, is amended to read:

30 **4. Attorney's fees for lump-sum settlements.** Attorney's fees for lump-sum
31 settlements pursuant to section 352 must be determined as follows:

32 A. Before computing the fee, reasonable expenses incurred on the employee's behalf
33 must be deducted from the total settlement, including:

- 34 (1) Medical examination fee and witness fee;
35 (2) Any other medical witness fee, including cost of subpoena;
36 (3) Cost of court reporter service; and
37 (4) Appeal costs;~~and~~

~~B. The computation of the fee, based on the amount resulting after deductions according to paragraph A, may not exceed:~~

- (1) Ten percent of the first \$50,000 of the settlement;
- (2) Nine percent of the first \$10,000 over \$50,000 of the settlement;
- (3) Eight percent of the next \$10,000 over \$50,000 of the settlement;
- (4) Seven percent of the next \$10,000 over \$50,000 of the settlement;
- (5) Six percent of the next \$10,000 over \$50,000 of the settlement; and
- (6) Five percent of any amount over \$90,000 of the settlement.

SUMMARY

This bill amends the law governing attorney's fees under the Maine Workers' Compensation Act of 1992. The bill:

1. Requires employers to pay reasonable costs and attorney's fees if the employee prevails on a disputed petition for payment of medical and related expenses or if the employee prevails in an appeal that is decided by the Appellate Division or by the Law Court; and
2. Removes language governing the specific computation of attorney's fees for lump-sum settlements.