

MAINE STATE LEGISLATURE

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131st MAINE LEGISLATURE

FIRST SPECIAL SESSION-2023

Legislative Document

No. 1803

S.P. 728

In Senate, April 25, 2023

An Act to Improve the Maine Workers' Compensation Act of 1992

Submitted by the Workers' Compensation Board pursuant to Joint Rule 204.
Reference to the Committee on Labor and Housing suggested and ordered printed.

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

DAREK M. GRANT
Secretary of the Senate

Presented by Senator TIPPING of Penobscot.
Cosponsored by Representative ROEDER of Bangor.

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

2 **Sec. 1. 39-A MRSA §105**, as amended by PL 2015, c. 297, §2, is further amended
3 to read:

4 **§105. ~~Predetermination of independent~~ Independent contractor and construction**
5 **subcontractor status**

6 **1. ~~Predetermination permitted~~ Independent contractor status.** A worker,~~an~~
7 employer or a workers' compensation insurance carrier, or any together, may apply to the
8 board for a predetermination of whether the status of an individual worker, group of
9 workers or a job classification associated with the employer is that of an employee or an
10 independent contractor may file with the board, on forms approved by the board, a
11 statement that the worker performs work as an independent contractor.

12 A. ~~The predetermination by the board~~ statement creates a rebuttable presumption, valid
13 for one year from the date the statement is received by the board, that the ~~determination~~
14 ~~is correct~~ worker is an independent contractor in any later claim for benefits under this
15 Act.

16 B. Nothing in this subsection requires a worker,~~an employer or a workers'~~
17 ~~compensation insurance carrier~~ to request predetermination to file a statement with the
18 board.

19 **1-A. ~~Predetermination permitted for construction subcontractors~~ Construction**
20 **subcontractor status.** A person, as defined in section 105-A, subsection 1, paragraph E,
21 may apply to the board for a predetermination file with the board, on forms approved by
22 the board, a statement that the person performs construction work in a manner that would
23 not make the person an employee of a hiring agent, as defined in section 105-A, subsection
24 1, paragraph D.

25 A. ~~The predetermination issued by the board pursuant to this subsection is~~ statement
26 creates a rebuttable presumption, valid for one year ~~and creates a rebuttable~~
27 ~~presumption that the determination is correct~~ from the date the statement is received
28 by the board, that the person is a construction subcontractor in any later claim for
29 benefits under this Act.

30 B. Nothing in this subsection requires a person, as defined in section 105-A, subsection
31 1, paragraph E, ~~a worker, an employer or a workers' compensation insurance carrier~~ to
32 request predetermination to file a statement with the board.

33 **2. Premium adjustment.** ~~If it is determined that a predetermination a statement filed~~
34 ~~with the board pursuant to this section does not withstand board or judicial scrutiny when~~
35 ~~raised in a subsequent workers' compensation claim, then, depending on the final outcome~~
36 ~~of that subsequent proceeding, either the workers' compensation insurance carrier shall~~
37 ~~return excess premium collected or the employer shall remit premium subsequently due in~~
38 ~~order to put the parties in the same position as if the final outcome under the contested~~
39 ~~claim were predetermined correctly.~~

40 **3. ~~Predetermination submission~~ Independent contractor and construction**
41 **subcontractor information.** A party may submit, on forms approved by the ~~The~~ board, ~~a~~
42 ~~request for predetermination regarding the status of a person or job description as an~~
43 ~~employee, construction subcontractor,~~ shall post, on its publicly accessible website,

1 information pertaining to a worker or person, as defined in section 105-A, subsection 1,
2 paragraph B, or independent contractor. The request is deemed to have been approved if
3 the board does not deny or take other appropriate action on the submission within 30 days
4 E, who has filed a statement pursuant to this section.

5 ~~**4. Hearing.** A hearing, if requested by a party within 10 days of the board's decision~~
6 ~~on a petition, must be conducted under the Maine Administrative Procedure Act. A ruling~~
7 ~~by the board or administrative law judge under this section is final and not subject to review~~
8 ~~by the Superior Court.~~

9 ~~**5. Certificate.** The board shall provide the petitioning party a certified copy of the~~
10 ~~decision regarding predetermination that is to be used as evidence at a later hearing on~~
11 ~~benefits.~~

12 **6. Rulemaking.** The board is authorized to adopt reasonable rules pursuant to the
13 Maine Administrative Procedure Act to implement the intent of this section, which is to
14 afford speedy and equitable ~~predetermination~~ determination of ~~employee,~~ construction
15 subcontractor, as defined in section 105-A, subsection 1, paragraph B, and independent
16 contractor status.

17 **Sec. 2. 39-A MRSA §153, sub-§10,** as enacted by PL 2011, c. 647, §1, is repealed.

18 **Sec. 3. 39-A MRSA §209-A, sub-§4,** as enacted by PL 2011, c. 338, §4, is
19 amended to read:

20 **4. Reimbursement rate if medical fee schedule not established or updated.** If the
21 board fails to adopt rules that establish a medical fee schedule in accordance with
22 subsection 2 by December 31, 2011 or the executive director fails to annually update the
23 medical fee schedule in accordance with subsection 3, the reimbursement rate for medical
24 services is ~~105% of the private 3rd-party payor average payment rate for the provider or~~
25 ~~the amount agreed to in writing by the provider and the insurance company or self-insured~~
26 ~~employer prior to the rendering of service by the provider. For purposes of this subsection,~~
27 ~~"reimbursement rate for medical services" means the total payment allowed for the medical~~
28 ~~and ancillary services and products, including any amount to be paid by a 3rd-party payor~~
29 ~~and the amount to be paid by the patient to satisfy a copayment, deductible or coinsurance~~
30 ~~obligation the amount established by the medical fee schedule in effect on the date the~~
31 ~~update is due.~~

32 **Sec. 4. 39-A MRSA §210, sub-§1,** as enacted by PL 1991, c. 885, Pt. A, §8 and
33 affected by §§9 to 11, is amended to read:

34 **1. Rules.** ~~The board, in consultation with the appropriate professional organization~~
35 ~~representing the health care specialty involved, shall may adopt rules establishing specific~~
36 ~~protocols pertaining to the extent and duration of treatment for specific injuries and~~
37 ~~illnesses to implement this section. Rules adopted pursuant to this subsection are routine~~
38 ~~technical rules as defined in Title 5, chapter 375, subchapter 2-A.~~

39 **Sec. 5. 39-A MRSA §221, sub-§2, ¶A,** as repealed and replaced by PL 2011, c.
40 647, §15, is amended by amending subparagraph (2) to read:

41 (2) For benefits paid on claims for which the date of injury is on or after January
42 1, 2013, ~~the net weekly amount of any old-age insurance benefit or benefit under~~
43 ~~an employee benefit plan, reduced by the prorated weekly amount that would have~~

1 been paid, if any, under the Federal Insurance Contributions Act, 26 United States
2 Code, Sections 3101 to 3126, federal income and state income taxes, calculated on
3 an annual basis. The after-tax amount of any benefit subject to income taxes must
4 be determined by using the maximum number of dependents' allowances to which
5 the employee is entitled and the standard deduction or zero bracket amount
6 applicable to the employee's filing status 2/3 of the gross weekly old-age insurance
7 benefit or benefit under an employee benefit plan multiplied by 1.25.

8 **Sec. 6. 39-A MRSA §303, first ¶**, as amended by PL 2015, c. 297, §9, is further
9 amended to read:

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

34 **Sec. 7. 39-A MRSA §360, sub-§1**, as enacted by PL 1991, c. 885, Pt. A, §8 and
35 affected by §§9 to 11, is amended by enacting at the end a new blocked paragraph to read:

36 An insured employer may be required to reimburse the insurer for any penalty under this
37 subsection that is due as a result of the insured employer's failure to give timely notice or
38 information to its insurer.

39 **Sec. 8. 39-A MRSA §401, sub-§4**, as amended by PL 2011, c. 643, §12 and
40 affected by §14, is further amended by amending the first blocked paragraph to read:

41 A landowner is not liable for compensation if at the time the landowner enters into the
42 contract with the contractor, the landowner applies for and receives a predetermination of
43 the independent status of the contractor as set forth in ~~section 105 subsection 4-A~~, the
44 landowner requests and receives a certificate of independent status, issued by the board on
45 an annual basis to a contractor, certifying that the contractor harvests forest products in a

1 manner that would not make the contractor an employee of the landowner or the landowner
2 requests and receives a certificate of insurance, issued by the contractor's insurance carrier,
3 certifying that the contractor has obtained the required coverage and indicating the effective
4 dates of the policy, and if the landowner requests and receives at least annually similar
5 certificates indicating continuing coverage during the performance of the work. A
6 landowner who receives a predetermination of the contractor's status as independent
7 contractor or a certificate of independent status is only relieved of liability under this
8 paragraph if the contract for wood harvesting expressly states that the independent
9 contractor will not hire any employees to assist in the wood harvesting without first
10 providing the required certificate of insurance to the landowner.

11 **Sec. 9. 39-A MRSA §401, sub-§4**, as amended by PL 2011, c. 643, §12 and
12 affected by §14, is further amended by amending the 2nd blocked paragraph to read:

13 ~~Notwithstanding section 105, subsection 1, paragraph A, a A predetermination under~~
14 ~~section 105 subsection 4-A related only to a person engaged in harvesting forest products~~
15 ~~is a conclusive presumption that the determination is correct and section 105, subsection 2~~
16 ~~does not apply to that determination.~~ Each party involved in or affected by the
17 predetermination must be provided information on the workers' compensation laws and the
18 effect of independent contractor status in relation to those laws. A predetermination under
19 ~~section 105 subsection 4-A~~ related to a person engaged in harvesting forest products is
20 effective for one calendar year or the duration of the contract, whichever is shorter.

21 **Sec. 10. 39-A MRSA §401, sub-§4-A** is enacted to read:

22 **4-A. Predetermination of independent contractor status.** A landowner and a
23 contractor may submit to the board, on forms approved by the board, a request for
24 predetermination of the status of the contractor as an independent contractor.

25 A. A request under this subsection is deemed to have been approved if the board does
26 not deny or take other appropriate action on the submission within 30 days.

27 B. A hearing, if requested by a party within 10 days of the board's decision on a
28 petition, must be conducted under the Maine Administrative Procedure Act. A ruling
29 by the board or administrative law judge under this paragraph is final and not subject
30 to review by the Superior Court.

31 C. The board shall provide to each party a certified copy of the decision regarding
32 predetermination that is to be used as evidence at a later hearing on benefits.

33 D. The board is authorized to adopt rules to implement this subsection. Rules adopted
34 pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375,
35 subchapter 2-A.

36 SUMMARY

37 This bill amends the Maine Workers' Compensation Act of 1992 as follows.

38 1. It streamlines the process for individuals to obtain a predetermination they are an
39 independent contractor.

40 2. It repeals the reporting requirement regarding levels of permanent impairment.

1 3. It establishes that, if the board fails to adjust rates or update the medical fee schedule,
2 the reimbursement rates for medical services will be the amount established by the medical
3 fee schedule in effect on the date the update is due.

4 4. It eliminates the requirement that the board adopt treatment protocols for specific
5 injuries as part of a utilization review program.

6 5. It simplifies the calculation of the after-tax benefit owed during an incapacity period
7 when an employee also receives certain pension and disability benefits.

8 6. It eliminates the provision stating that the insurer may seek reimbursement from an
9 employer of a fine for a tardy filing of a first report of injury when the report was late
10 because the employer did not give the insurer timely notice of the injury.

11 7. It clarifies that an insurer may seek reimbursement from its insured employer whose
12 failure to provide information to the insurer is the cause of the insurer's failure to file or
13 complete a form as required by law.

14 8. It consolidates the predetermination of independent contractor process for
15 landowners and wood harvesters.