

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-THIRD LEGISLATURE

FIRST REGULAR SESSION
December 6, 2006 to June 21, 2007

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 20, 2007

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

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Lewiston, Maine
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suspended while the appeal is pending. The employer or insurer may recover from an employee payments made pending appeal to the Law Court if and to the extent that the Law Court has decided that the employee was not entitled to the compensation paid. The board has full jurisdiction to determine the amount of overpayment, if any, and the amount and schedule of repayment, if any. The board, in determining whether or not repayment should be made and the extent and schedule of repayment, shall consider the financial situation of the employee and the employee's family and may not order repayment that would work hardship or injustice. The board shall notify the Commissioner of Health and Human Services within 10 days after the receipt of notice of an approved agreement for payment of compensation or within 10 days after any order or decision of the board awarding compensation identifying the employee who is to receive the compensation.

See title page for effective date.

CHAPTER 312

S.P. 506 - L.D. 1439

An Act To Enhance the Workers' Compensation Board Advocate Program

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

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

2. General counsel. The salary of the general counsel is within salary range ~~86~~ 89.

Sec. 2. 39-A MRSA §153-A, sub-§3, as amended by PL 2003, c. 608, §11, is further amended to read:

3. Advocates and advocate attorneys. The executive director shall hire advocates and advocate attorneys under the authority of section 151, subsection 1-A, subject to the Civil Service Law, who must be qualified by experience and training.

A. The minimum qualifications for employment as an advocate must include at least the following:

- (1) A 6-year combination of appropriate experience, education and training in advocacy or dispute resolution;
- (2) Knowledge of administrative, adjudicatory or workers' compensation laws, rules and procedures;
- (3) Knowledge of legal documents, court procedures and rules of evidence; and

(4) Knowledge of medical and legal terminology and practices with respect to workers' compensation.

A-1. The minimum qualifications for employment as an advocate attorney must include at least admission to the practice of law in the State and current registration with the Board of Overseers of the Bar or eligibility for admission to practice law in the State, as long as the advocate attorney is admitted to practice law in the State and is registered with the Board of Overseers of the Bar within 12 months of the date the advocate attorney was hired.

B. The board shall ensure that advocates and advocate attorneys receive appropriate and ongoing education and training.

C. An advocate or advocate attorney may not represent before the board any insurer, self-insurer or 3rd-party administrator for a period of 2 years after terminating employment with the board.

Sec. 3. 39-A MRSA §153-A, sub-§4, as enacted by PL 1997, c. 486, §4, is amended to read:

4. Duties of advocates and advocate attorneys. Advocates and advocate attorneys have the following duties:

A. Assisting qualified employees in matters regarding workers' compensation claims, including negotiations;

B. Acting as an information resource to qualified employees on laws, decisions, rules, policies and procedures of the board;

C. Assisting and advocating on behalf of qualified employees to obtain appropriate rehabilitation, return to work and employment security services;

D. Meeting with or otherwise communicating with insurers, employers and health care and other authorized providers in order to assist qualified employees;

E. Assisting and advocating on behalf of qualified employees in any mediation or hearing proceeding under the jurisdiction of the board; and

F. Maintaining confidentiality of information and communications with respect to the assistance and representation provided to qualified employees.

Sec. 4. 39-A MRSA §153-A, sub-§5, as enacted by PL 1997, c. 486, §4, is amended to read:

5. Legal advice to advocates and advocate attorneys. The board's general counsel shall assign a staff attorney as necessary to advise advocates and, as necessary, advocate attorneys on the preparation of qualified employees' cases at the formal hearing stage.

Sec. 5. 39-A MRSA §153-A, sub-§6, as enacted by PL 1999, c. 410, §1, is amended to read:

6. Case management authority of advocates and advocate attorneys. An advocate or advocate attorney has the authority to:

A. Manage and prioritize the advocate's or advocate attorney's caseload to efficiently move cases through the board mediation and hearing process and to achieve resolution;

B. With the written approval of the staff attorney, decline cases or cease assistance to an employee when the advocate or advocate attorney after investigation finds:

(1) Timely notice of the injury was not given by the employee to the employer, pursuant to this Act;

(2) The statute of limitations has expired;

(3) The employee's case is based on an argument or issue adversely determined by the Supreme Judicial Court;

(4) The employee's case is based on a claim of discrimination governed by section 353;

(5) There is no record of medical assessment stating that the employee's injury was either caused by, aggravated by or precipitated by the employee's work or, when the issue is aggravation, there is no record of medical assessment stating that the employee's work aggravated a preexisting condition in a significant manner; or

(6) The employee has admitted to a fraudulent act, has been convicted of a fraudulent act by a court of competent jurisdiction or has been found to have committed a fraudulent act by the abuse investigation unit of the board; and

C. With the written approval of the staff attorney, present lump-sum settlements on cases pursuant to section 352.

A qualified employee whose case is declined or whose advocate or advocate attorney assistance ceases pursuant to this subsection may appeal the action to the executive director of the board, within 30 days of the action. The executive director's ruling on the appeal is final and is not subject to judicial review. If the executive director finds assistance by an advocate or advocate attorney should resume, the employee must be assigned to an advocate or advocate attorney other than the advocate or advocate attorney who declined the case or ceased assistance.

Sec. 6. Appropriations and allocations. The following appropriations and allocations are made.

WORKERS' COMPENSATION BOARD

Administration - Workers' Compensation Board 0183

Initiative: Allocates funds to implement a reorganization to enhance the Workers' Compensation Advocate Program by providing a range change from 86 to 89 for one Public Service Executive II (Workers' Compensation Board General Counsel) position, reclassifying one Public Service Manager II (Deputy Senior Staff Attorney) range 29 position to a Public Service Manager II (Senior Staff Attorney) range 33 position, reclassifying one Workers' Compensation Advocate range 24 position to a Public Service Manager II (Deputy Senior Staff Attorney) range 29 position, reclassifying eligible Workers' Compensation Advocate range 24 positions to Workers' Compensation Advocate Attorney range 27 positions, permitting a Workers' Compensation Advocate position that is vacant or may become vacant to be reclassified to a Workers' Compensation Advocate Attorney position, providing a range change from 24 to 27 for all Workers' Compensation Advocate positions and reclassifying 6 Paralegal Assistant range 18 positions to Paralegal range 20 positions.

OTHER SPECIAL REVENUE FUNDS	2007-08	2008-09
Personal Services	\$146,232	\$156,792
All Other	(\$146,232)	(\$156,792)
OTHER SPECIAL	\$0	\$0
REVENUE FUNDS TOTAL		

See title page for effective date.

CHAPTER 313

H.P. 887 - L.D. 1259

An Act To Use the Date of Injury To Calculate the Average Weekly Wage in Occupational Disease Cases

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

Sec. 1. 39-A MRSA §606, as amended by PL 1995, c. 462, Pt. A, §81, is further amended to read:

§606. Date from which compensation is computed; employer liable

The date when an employee becomes incapacitated by an occupational disease from performing the employee's work in the last occupation in which the employee was injuriously exposed to the hazards of the occupational disease is the date of the injury equivalent to the date of injury under the former