

MAINE STATE LEGISLATURE

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WORKERS' COMPENSATION BOARD
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May 31, 2025

Senator Michael Tipping, Chair
Representative Amy Roeder, Chair
Joint Standing Committee on Labor
100 State House Station
Augusta, ME 04333-0100

Re: Resolves 2023, c. 139, May, 2025 Update

I. Introduction

Pursuant to Resolves 2023, c. 139 (the “Resolve”), the Board is required to collect and analyze data and, in doing so, consider “how [lost wage benefits compare] to the current cost of living as determined by the United States Department of Labor, Bureau of Labor Statistics CPI-U for the New England Division; the cost of updating the annual adjustment provision in Title 39-A, section 212; and the cost of implementing a cost-of-living adjustment provision in sections 213 and 215.”

As it considers possible changes to the existing cost-of-living-adjustment (“COLA”) envisioned by the Resolve, the Workers’ Compensation Board (“Board”) will use the framework it has developed during the course of its work on the Resolve. Specifically, the Board will use information it has gathered and will also work with the National Council on Compensation Insurance (“NCCI”) as it analyzes both the costs to employers and the adequacy of benefits for injured workers.

Consideration of costs and adequacy will require definition of at least a few factors, including: Who will be eligible for a cost-of-living-adjustment (COLA); which inflation factor will be used; and, how much time must pass before an injured worker is eligible for a COLA.

II. Eligibility for a Cost of Living Adjustment?

Pursuant to the enactment of LD 756 in 2019, employees receiving total incapacity benefits pursuant to § 212 are eligible for a COLA if they were injured on or after January 1, 2020 and have received 260 weeks of incapacity benefits pursuant to § 212.¹ (39-A M.R.S.A. § 212(4).)

L.D. 1896 (An Act to Index Workers’ Compensation Benefits to the Rate of Inflation) was introduced during the First Regular Session of the 131st Maine Legislature. This proposal would

¹ A discussion of who is and is not eligible for a COLA can be found in the Board’s August 31, 2024 update.

have required an annual adjustment to all lost time benefits based on the increase in the Consumer Price Index compiled by the United States Department of Labor, Bureau of Labor Statistics. In 2023, the Board convened a stakeholder group to identify, discuss and try to reach consensus on issue(s) raised by L.D. 1896. Ultimately, consensus could not be reached.

During the group's meetings, participants discussed the fact that the current COLA provision provides some protection against inflation for injured workers who are receiving total incapacity benefits (pursuant to § 212) and who, based on the length of time they have been receiving lost time benefits, are unlikely to return to the workforce.

To evaluate whether the COLA should cover additional injured workers, the Board will consider: Whether the current COLA is meeting its objective (i.e., is there a meaningful distinction between § 212 and § 213 (100% partial) and § 215 (death benefits)); and, whether injured workers who are receiving partial incapacity benefits (less than 100%) pursuant to § 213 should be eligible for a COLA?

III. Which inflation factor should be used?

The current COLA is tied to changes in the state average weekly wage (SAWW). The COLA proposal discussed relative to LD 1896 was tied to the CPI-U for New England. The following charts show the differences between changes in Maine's SAWW, the U.S. DOL's CPI-U for New England and the U.S. DOL's CPI-U for the Northeast.

The first chart shows the changes from 2000:

	Annual % Change		
Year	CPI-U Northeast	CPI-U New England	Maine State Average Weekly Wage
2000	3.4%		4.02%
2001	2.8%		2.82%
2002	2.1%		4.15%
2003	2.8%		3.07%
2004	3.5%		3.31%
2005	3.6%		3.67%
2006	3.6%		2.39%
2007	2.6%		3.37%
2008	4.0%		3.89%
2009	0.0%		3.41%
2010	2.0%		0.88%
2011	3.0%		1.92%
2012	2.0%		1.77%
2013	1.4%		1.61%
2014	1.4%		1.88%
2015	-0.1%		2.90%
2016	1.1%		3.34%
2017	1.8%		1.91%
2018	2.2%		3.10%
2019	1.6%	1.9%	3.31%
2020	1.3%	0.9%	3.80%
2021	3.9%	3.6%	10.64%
2022	7.0%	7.1%	5.30%
2023	3.5%	2.9%	6.52%
2024	3.4%	3.2%	3.71%
Avg All Years	2.5%		3.5%
Avg 2019 - 2024	3.4%	3.3%	5.5%

The next chart shows the same information except years where the annual change exceeded 5% have been reduced to 5%. Years where that change was made are highlighted.

	Annual % Change (Limit of 5%)		
Year	CPI-U Northeast	CPI-U New England	Maine State Average Weekly Wage
2000	3.4%		4.02%
2001	2.8%		2.82%
2002	2.1%		4.15%
2003	2.8%		3.07%
2004	3.5%		3.31%
2005	3.6%		3.67%
2006	3.6%		2.39%
2007	2.6%		3.37%
2008	4.0%		3.89%
2009	0.0%		3.41%
2010	2.0%		0.88%
2011	3.0%		1.92%
2012	2.0%		1.77%
2013	1.4%		1.61%
2014	1.4%		1.88%
2015	-0.1%		2.90%
2016	1.1%		3.34%
2017	1.8%		1.91%
2018	2.2%		3.10%
2019	1.6%	1.9%	3.31%
2020	1.3%	0.9%	3.80%
2021	3.9%	3.6%	5.00%
2022	5.0%	5.0%	5.00%
2023	3.5%	2.9%	5.00%
2024	3.4%	3.2%	3.71%
Avg All Years	2.5%		3.2%
Avg 2019 - 2024	3.1%	2.9%	4.3%

As these charts show, annual changes for the Northeast and New England are similar and both differ materially from the average change in the SAWW.

IV. How long before the COLA applies?

The COLA provision in § 212(4) applies after an injured worker has received 5 years of benefits pursuant to § 212. During the stakeholder meetings, one rationale presented for the waiting period was related to the likelihood that an injured worker would return to the workforce. The Board will consider whether 5 years is the appropriate period of time with respect to an injured

worker's likelihood of returning to work.² Another consideration is the impact of inflation over time. Similarly, the Board will consider whether 5 years is the appropriate period of time with respect to the impact of inflation.

V. Conclusion

As the Board continues its discussion, it will be weighing the cost to employers alongside the adequacy of benefits for injured workers. The Board will also identify areas where further study, data and/or analysis is necessary.

Submitted by:

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² A related issue the Board will also examine is whether changes can or should be made to encourage stay-at-work and early return-to-work programs.