

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from electronic originals  
(may include minor formatting differences from printed original)



STATE OF MAINE  
**WORKERS' COMPENSATION BOARD**  
OFFICE OF EXECUTIVE DIRECTOR/CHAIR  
442 CIVIC CENTER DRIVE, SUITE 100  
27 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0027

JANETT T. MILLS  
GOVERNOR

JOHN C. ROHDE  
EXECUTIVE DIRECTOR

January 29, 2021

Senator Joseph Rafferty, Chair  
Representative Michael Sylvester, Chair  
Joint Standing Committee on Labor and Housing  
100 State House Station  
Augusta, ME 04333-0100

**Re: Annual Report to the Labor and Housing Committee on Permanent Impairment Ratings Pursuant to 39-A M.R.S.A. § 153(10).**

Dear Senator Rafferty and Representative Sylvester:

Pursuant to 39-A M.R.S.A. § 153(10), the Workers' Compensation Board ("Board") must collect and analyze permanent impairment ratings and costs to employers pursuant to 39-A M.R.S.A. § 213 and send a report about that data to the legislature each January. The Board is transmitting this report to the legislature pursuant to that mandate.

Permanent impairment "means any anatomic or functional abnormality or loss existing after the date of maximum medical improvement that results from [a work-related] injury." 39-A M.R.S.A. § 102(16). Maximum medical improvement "means the date after which further recovery and further restoration of function can no longer be reasonably anticipated, based upon reasonable medical probability." 39-A M.R.S.A. § 102(15).

Years ago, the percentage of an injured workers' permanent impairment was important because workers who were injured before January 1, 2013 were entitled to partial incapacity benefits after 520 weeks if their percentage of permanent impairment exceeded the applicable threshold. The applicable permanent impairment threshold depended on the injured worker's date of injury.

When the current Workers' Compensation Act took effect on January 1, 1993, the permanent impairment threshold was "in excess of 15% to the body." The purpose of the threshold was to limit lost wage benefits for 75% of partially incapacitated workers while allowing the remaining 25% of partially disabled workers, whose injuries were thought to be more serious, to receive benefits for the duration of their disability. In order to maintain this

split, the Board was required to adjust the permanent impairment threshold every other year beginning in 1998. The adjustments had to be “based on actuarially sound data and methodology.” 39-A M.R.S.A. § 213.

The Board adjusted the permanent impairment threshold three times between 1998 and 2012 as reflected in WCB Rule ch. 2 § 1. The adjustments were as follows:

- For cases with dates of injury on or after January 1, 1993 and before January 1, 2002, [the permanent impairment threshold] is in excess of 11.8%.
- For cases with dates of injury on or after January 1, 2002 and before January 1, 2004, [the permanent impairment threshold] is in excess of 13.2%.
- For cases with dates of injury on or after January 1, 2004 and before January 1, 2006, [the permanent impairment threshold] is in excess of 13.4%.

In order to gather more permanent impairment data, the Board adopted a rule in 2008 that required parties to report permanent impairment ratings at lump sum settlement hearings. Pursuant to P.L. 2011, c. 647, the permanent impairment threshold for dates of injury from January 1, 2006 until December 31, 2012 was changed to “a whole person impairment in excess of 12%.” 39-A M.R.S.A. § 213(3-A).

P.L. 2011, c. 647 also changed the threshold for injuries occurring after December 31, 2012 and before January 1, 2020, to in excess of 18%. The legislature added additional requirements for receipt of benefits beyond the 520-week limit. 39-A M.R.S.A. § 213 (1-B). The threshold adjustment language was taken out. Although permanent impairment data that had been collected for threshold adjustments in previous years was no longer needed for injuries occurring after January 1, 2013, the Board continued to gather data at settlement hearings.

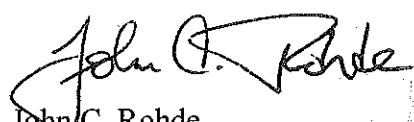
With the passage of P.L. 2019, c. 344, the legislature amended the Act to create a blanket 624-week benefit period for partially incapacitated employees injured on and after January 1, 2020. 39-A M.R.S.A. §213 (1) (C). The permanent impairment threshold adjustment that applied to injuries before January 1, 2013 was not reinstated.

From 2008 through 2018, virtually all permanent impairment ratings collected by the Board came from lump sum settlements. Prior to each settlement hearing, the employer/insurer was required to pay for a permanent impairment rating if one had not already been done. Permanent impairment data gathered for claimants who settled was not necessarily representative of permanent impairment suffered by the universe of Maine’s injured workers. The distribution of permanent impairment suffered by non-settling claimants may have been different, perhaps very different. Further, given the statutory repeal of the permanent impairment threshold, permanent impairment data is no longer required for receipt of long-term partial incapacity benefits.

The cost of obtaining permanent impairment ratings was set by Board rule at \$450.00. WCB Rule ch. 5 § 1.12 (2). Assuming the employer paid this fee in each case that settled from 2008 through 2018, the total cost for permanent impairment ratings would have been \$2,444,850, or, \$222,259 per year. Representatives of employees and employers complained that the lump sum settlement reporting rule resulted in unnecessary costs and delays. The Board repealed the rule effective September 1, 2018. Because of the rule change, the number of ratings collected by the Board has been drastically reduced.

As a result, the Board has no new permanent impairment data and no cost information to transmit in this 2021 report to the committee. I am available to answer any questions you may have regarding this report.

Sincerely,



John C. Rohde  
Executive Director  
Workers' Compensation Board

Cc: Senator Stacey Guerin  
Senator David Miramant  
Representative Richard Bradstreet  
Representative Scott Cuddy  
Representative Gary Drinkwater  
Representative Traci Gere  
Representative Joshua Morris  
Representative Sarah Pebworth  
Representative Dwayne Prescott  
Representative Amy Roeder  
Representative Sophia Warren  
Rachel Tremblay - OFPR Analyst  
Steven Langlin - OPLA Analyst  
Lucia Nixon - OPLA Analyst  
Alyssa Thompson - Committee Clerk