

MAINE STATE LEGISLATURE

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STATE OF MAINE
125TH LEGISLATURE
SECOND REGULAR SESSION



Summaries of bills, adopted amendments and laws enacted or finally passed

**JOINT STANDING COMMITTEE ON LABOR, COMMERCE,
RESEARCH AND ECONOMIC DEVELOPMENT**

June 2012

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CAROLYN RUSSO, LEGISLATIVE ANALYST
NATALIE HAYNES, LEGISLATIVE ANALYST
OFFICE OF POLICY AND LEGAL ANALYSIS
13 STATE HOUSE STATION
AUGUSTA, ME 04333
(207) 287-1670

* REPLACED LATE IN THE SESSION BY REP. ANDRE E. CUSHING III

STATE OF MAINE

125TH LEGISLATURE
SECOND REGULAR SESSION



LEGISLATIVE DIGEST OF BILL SUMMARIES AND ENACTED LAWS

This *Legislative Digest of Bill Summaries and Enacted Laws* summarizes all LDs and adopted amendments and all laws enacted or finally passed during the Second Regular Session of the 125th Maine Legislature.

The *Digest* is arranged alphabetically by committee and within each committee by Legislative Document (LD) number. The committee report(s), prime sponsor and lead co-sponsor(s), if designated, are listed below each LD title. All adopted amendments are summarized and listed by paper number. A subject index is included with each committee. The appendices include a summary of relevant session statistics, an index of all bills by LD number and an index of enacted laws by law type and chapter number.

Final action on each LD is noted to the right of the LD title. The following describes the various final actions.

<i>CARRIED OVER</i>	<i>carried over to a subsequent session of the Legislature</i>
<i>CON RES XXX</i>	<i>chapter # of constitutional resolution passed by both houses</i>
<i>CONF CMTE UNABLE TO AGREE</i>	<i>Committee of Conference unable to agree; legislation died</i>
<i>DIED BETWEEN HOUSES</i>	<i>House & Senate disagreed; legislation died</i>
<i>DIED IN CONCURRENCE</i>	<i>defeated in each house, but on different motions; legislation died</i>
<i>DIED ON ADJOURNMENT</i>	<i>action incomplete when session ended; legislation died</i>
<i>EMERGENCY</i>	<i>enacted law takes effect sooner than 90 days after session adjournment</i>
<i>FAILED, EMERGENCY ENACTMENT or FINAL PASSAGE</i>	<i>emergency failed to receive required 2/3 vote</i>
<i>FAILED, ENACTMENT or FINAL PASSAGE</i>	<i>failed to receive final majority vote</i>
<i>FAILED, MANDATE ENACTMENT</i>	<i>legislation proposing local mandate failed required 2/3 vote</i>
<i>HELD BY GOVERNOR</i>	<i>Governor has not signed; final disposition to be determined at subsequent session</i>
<i>LEAVE TO WITHDRAW</i>	<i>sponsor's request to withdraw legislation granted</i>
<i>NOT PROPERLY BEFORE THE BODY</i>	<i>ruled out of order by the presiding officer; legislation died</i>
<i>INDEF PP</i>	<i>indefinitely postponed; legislation died</i>
<i>ONTP, ACCEPTED, MAJORITY, MINORITY or REPORT X</i> ...	<i>ought-not-to-pass report accepted; legislation died</i>
<i>P&S XXX</i>	<i>chapter # of enacted private & special law</i>
<i>PUBLIC XXX</i>	<i>chapter # of enacted public Law</i>
<i>RESOLVE XXX</i>	<i>chapter # of finally passed resolve</i>
<i>VETO SUSTAINED</i>	<i>Legislature failed to override Governor's veto</i>

The effective date for non-emergency legislation enacted in the Second Regular Session of the 125th Legislature is Thursday, August 30, 2012. The effective date for legislation enacted as an emergency measure may be found in the enacted law summary for that legislation.

Joint Standing Committee on Labor, Commerce, Research and Economic Development

LD 1913

An Act To Review and Restructure the Workers' Compensation System

PUBLIC 647

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
	OTP MAJ ONTP MIN	H-941 CUSHING S-564 RECTOR

This bill is reported out by the Joint Standing Committee on Labor, Commerce, Research and Economic Development pursuant to Joint Order 2012, H.P. 1345. It is the majority report of the committee.

The bill makes several changes to the current workers' compensation law. It does the following:

1. Eliminates the requirement that an employer, insurer or group self-insurer continue paying benefits to an employee during an appeal of a hearing officer decree by the employee;
2. Increases the percent of the state weekly average calculation from 90% to 100% for the maximum benefit level computation;
3. Adds a presumption that work is unavailable for a person participating in a rehabilitation plan ordered by the Workers' Compensation Board for as long as the employee continues to participate in vocational rehabilitation;
4. Changes the time from which the statute of limitations for filing a petition begins from 2 years from the date an employer is required to file a first report of injury to the actual date of the injury; and
5. Creates a new Appellate Division that consists of panels of no fewer than 3 full-time hearing officers and gives the board authority to adopt routine technical rules of procedure for any review made by the newly created Appellate Division.

The bill makes several changes for injuries incurred on or after January 1, 2013. It does the following:

1. Changes the calculation for determining the maximum benefit amount for total incapacity from 80% of the employee's net average weekly wages, but not more than the maximum benefit, to 2/3 of the employee's gross average weekly wages, but not more than the maximum benefit;
2. Changes the calculation for determining the maximum benefit amount for partial incapacity from 80% of the employee's net average weekly wages, but not more than the maximum benefit, to 2/3 of the employee's gross average weekly wages, but not more than the maximum benefit;
3. Eliminates the permanent impairment threshold index that is presently calculated from an adjusted impairment threshold, based on an actuarial review of cases receiving permanent impairment ratings in which 25% of all cases with permanent impairment are expected to exceed the threshold and 75% of all cases are expected to be less than the threshold;
4. Establishes 520 weeks as the end date of benefit eligibility for permanently impaired individuals with partial incapacity;
5. Changes the eligibility requirements for extension of benefits for permanently impaired individuals with partial incapacity. In order to qualify for an extension, the following requirements must be met:

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A. The injured employee must have a whole person permanent impairment resulting from an injury in excess of 25% and the employee's earnings over the most recent 26-week period must be 50% or less of the preinjury average weekly wage; if so the employer shall pay weekly compensation equal to 2/3 of the difference between the employee's average weekly wage at the time of the injury and the employee's post injury wage, but not more than the maximum benefit allowable;

B. The employee's actual earnings must be commensurate with the employee's earning capacity as determined by an independent medical examiner; and

C. The employee must have earnings from employment for a period of not less than 24 months prior to the expiration of the 520-week durational limit.

In addition, compensation is at a fixed rate and may be reviewed biennially. While the employee is receiving extended partial incapacity benefits, the employee must complete and provide quarterly employment status reports and tax returns. If an employee's weekly earnings over the most recent 26-week period are equal to or greater than the employee's preinjury week earnings, the extension of benefits is terminated permanently. Finally, if an employee does not qualify for an extension at the end of 520 weeks, the employee's benefits expire;

6. Changes the average weekly benefit for partial incapacity for an employee if the wages were lowered after the injury from 80% of net 2/3 of gross of the difference between the employee's average weekly wages received before the date of injury and average weekly wages received post injury, but not more than the maximum benefit;

7. Changes the death benefit for dependents of an employee who were dependent upon the employee's earnings for support at the time of injury to a weekly payment based on 80% of the net of the employee's average weekly wages to 2/3 of the employee's gross average weekly wages, but not more than the maximum benefit; and

8. Shortens the time in which a notice of injury must be given from 90 to 30 days.

The bill also establishes the calculation for determining an employee's permanent impairment threshold at 12% for individuals with partial incapacity for injuries incurred between January 1, 2006, and January 1, 2012.

House Amendment "A" (H-941)

This amendment makes technical corrections to the bill to correct dates and clarify the process for discontinuance or reduction of payments.

Senate Amendment "D" (S-564)

This amendment makes the following changes to the bill regarding requirements for receiving benefits for long-term partial incapacity:

1. It reduces the percentage of permanent impairment necessary from 25% to 18%;

2. It changes the necessary percentage of the employee's earnings from 50% or less of the preinjury average weekly wage to 65% or less of the preinjury average weekly wage;

3. It requires consideration of an employee's psychological work capacity in assessing the employee's earning capacity; and

4. It changes the necessary period of earnings from employment from not less than 24 months prior to the expiration of the 520-week durational limit to a period of not less than 12 months within a 24-month period prior to the expiration of the 520-week durational limit.

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In addition, this amendment specifies that the statute of limitations bars a petition unless filed within 2 years after the date of injury or the date the employee's employer files a required first report of injury.

Finally, this amendment requires the Workers' Compensation Board report, at least annually, to the Legislature, on costs to employers associated with long-term partial incapacity benefits and permanent impairment rating numbers.

Enacted Law Summary

Public Law 2011, chapter 647 makes several changes to the current workers' compensation law. It does the following:

1. Eliminates the requirement that an employer, insurer or group self-insurer continue paying benefits to an employee during an appeal of a hearing officer decree by the employee;
2. Increases the percent of the state weekly average calculation from 90% to 100% for the maximum benefit level computation;
3. Adds a presumption that work is unavailable for a person participating in a rehabilitation plan ordered by the Workers' Compensation Board for as long as the employee continues to participate in vocational rehabilitation;
4. Specifies the statute of limitations bars a petition unless filed within 2 years after the date of injury or the date the employee's employer files a required first report of injury; and
5. Creates a new Appellate Division that consists of panels of no fewer than 3 full-time hearing officers and gives the board authority to adopt routine technical rules of procedure for any review made by the newly created Appellate Division.

Public Law 2011, chapter 647 makes several changes for injuries incurred on or after January 1, 2013. It does the following:

1. Changes the calculation for determining the maximum benefit amount for total incapacity from 80% of the employee's net average weekly wages, but not more than the maximum benefit, to 2/3 of the employee's gross average weekly wages, but not more than the maximum benefit;
2. Changes the calculation for determining the maximum benefit amount for partial incapacity from 80% of the employee's net average weekly wages, but not more than the maximum benefit, to 2/3 of the employee's gross average weekly wages, but not more than the maximum benefit;
3. Eliminates the permanent impairment threshold index that is presently calculated from an adjusted impairment threshold, based on an actuarial review of cases receiving permanent impairment ratings in which 25% of all cases with permanent impairment are expected to exceed the threshold and 75% of all cases are expected to be less than the threshold;
4. Establishes 520 weeks as the end date of benefit eligibility for permanently impaired individuals with partial incapacity;
5. Changes the eligibility requirements for extension of benefits for permanently impaired individuals with partial incapacity. In order to qualify for an extension, the following requirements must be met:
 - A. The injured employee must have a whole person permanent impairment resulting from an injury in excess of 18% and the employee's earnings over the most recent 26-week period must be 65% or less of the preinjury average weekly wage; if so the employer shall pay weekly compensation equal to 2/3 of the difference between the employee's average weekly wage at the time of the injury and the employees post injury wage, but not more

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than the maximum benefit allowable;

B. The employee's actual earnings must be commensurate with the employee's earning capacity as determined by an independent medical examiner; and

C. The employee must have earnings from employment for a period of not less than 12 months within a 24-month period prior to the expiration of the 520-week durational limit.

In addition, compensation is at a fixed rate and may be reviewed biennially. While the employee is receiving extended partial incapacity benefits, the employee must complete and provide quarterly employment status reports and tax returns. If an employee's weekly earnings over the most recent 26-week period are equal to or greater than the employee's preinjury week earnings, the extension of benefits is terminated permanently. Finally, if an employee does not qualify for an extension at the end of 520 weeks, the employee's benefits expire;

6. Changes the average weekly benefit for partial incapacity for an employee if the wages were lowered after the injury from 80% of net 2/3 of gross of the difference between the employee's average weekly wages received before the date of injury and average weekly wages received post injury, but not more than the maximum benefit;

7. Changes the death benefit for dependents of an employee who were dependent upon the employee's earnings for support at the time of injury to a weekly payment based on 80% of the net of the employee's average weekly wages to 2/3 of the employee's gross average weekly wages, but not more than the maximum benefit; and

8. Shortens the time in which a notice of injury must be given from 90 to 30 days.

Public Law 2011, chapter 647 establishes the calculation for determining an employee's permanent impairment threshold at 12% for individuals with partial incapacity for injuries incurred between January 1, 2006, and January 1, 2012. It also requires the Workers' Compensation Board report, at least annually, to the Legislature, on costs to employers associated with long-term partial incapacity benefits and permanent impairment rating numbers.