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An Act To Authorize the Employer To Adjust Workers' Compensation Benefits When the Employee Returns To Work for Another Employer

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

Sec. 1. 39-A MRSA §102, sub-§15-A is enacted to read:

15-A. Payer. "Payer" means an employer, insurer or group self-insurer responsible for paying benefits to an employee for an injury covered by this Act.

Sec. 2. 39-A MRSA §205, sub-§9, as amended by PL 1999, c. 354, §§3 and 4, is further amended to read:

9. Discontinuance or adjustment of payments. ~~The employer, insurer or group self-insurer~~payer may discontinue or ~~reduce~~adjust benefits according to this subsection.

A. If the employee has returned to work with or has received ~~an increase~~a change in ~~pay~~earnings from an employer that is ~~paying~~responsible for compensation under this Act, ~~that employer or that employer's insurer or group self-insurer~~the payer may discontinue or ~~reduce~~adjust payments to the employee in accordance with section 213, subsection 1.

B. In all circumstances other than the return to work or ~~increase in pay~~change in earnings of the employee under paragraph A, ~~if the employer, insurer or group self-insurer determines that the employee is not eligible for compensation under this Act, the employer, insurer or group self-insurer may discontinue or reduce~~ benefits only must be adjusted in accordance with this paragraph.

(1) If no order or award of compensation or compensation scheme has been entered, the ~~employer, insurer or group self-insurer~~payer may discontinue or reduce benefits by sending a certificate by certified mail to the employee and to the board, together with any information on which the ~~employer, insurer or group self-insurer~~payer relied to support the discontinuance or reduction. The ~~employer~~payer may discontinue or reduce benefits no earlier than 21 days from the date the certificate was mailed to the employee. The certificate must advise the employee of the date when the employee's benefits will be discontinued or reduced, as well as other information as prescribed by the board, including the employee's appeal rights.

(2) If an order or award of compensation or compensation scheme has been entered, the ~~employer, insurer or group self-insurer~~ shall payer may petition the board for an order to reduce or discontinue benefits and may adjust benefits pursuant to section 213, subsection 1 based on reliable evidence of actual earnings received by the employee after the filing of the petition. The payer may not ~~reduce or discontinue~~ benefits until the matter has been finally resolved through the dispute resolution procedures of this Act, any appeal proceedings have been completed and an order of ~~reduction or discontinuance~~ has been entered by the board.

(3) If an order or award of compensation or compensation scheme has been entered placing an employee on a fixed rate of partial compensation based on earnings of the employee that are diminished, the employee may petition the board for an order to increase benefits. The payer shall then adjust benefits pursuant to section 213, subsection 1 based on reliable evidence of actual earnings received by the employee after the filing of the petition.

C. The employee or payer may file a petition for review; ~~contesting the employer's discontinuance or reduction of a change in~~ compensation under this subsection. Regardless of whether the employee files a petition ~~is filed~~ prior to the date of the ~~discontinuance or reduction~~change, benefits may be ~~discontinued or reduced~~changed as described in paragraph A or B.

D. The board, within 21 days after the ~~employee filed~~filing of a petition for review, may enter an order providing for the continuation or reinstatement of benefits pending a hearing on the petition. The order must be based upon the information submitted by both the ~~employer, insurer or group self-insurer~~payer and the employee under this subsection. Once a request for an order has been ruled upon, the matter may not be referred to mediation, but must be set for hearing.

E. In all cases under this subsection, the board shall provide for an expedited procedure that must be available ~~upon request of any~~to either party.

F. If benefits have been discontinued or reduced pursuant to paragraph A or B and the board, after hearing, determines that benefits have been wrongfully withheld, the board shall order payment of all benefits withheld together with interest at the rate of ~~6% a year~~1% a month. The employer shall pay this amount within 10 days of the order.

SUMMARY

This bill permits an employer, insurer or group self-insurer, the payer of benefits, to reduce compensation to an employee pending a hearing when the employee receives an increase in pay from an employer who is not the employer responsible for paying compensation. The bill obligates the payer to increase benefits when an employee on partial compensation sustains a loss of earnings and files a petition for increased benefits. The bill increases the rate of interest payable on withheld benefits from 6% a year to 1% a month.