

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

An Act Regarding Workers' Compensation Liens

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

Sec. 1. 39-A MRSA §107, 2nd ¶, as enacted by PL 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

If the injured employee elects to claim compensation and benefits under this Act, any employer having paid the compensation or benefits or having become liable for compensation or benefits under any compensation payment scheme has a lien for the value of compensation paid on any damages subsequently recovered against the 3rd person liable for the injury, except that the value of the lien may not exceed the value of damages received by or on behalf of the employee that are attributable to compensation for past or future medical treatment and loss of income or earning capacity. If the employee or the employee's beneficiary fails to pursue the remedy against the 3rd ~~party~~person within 30 days after written demand by the employer, the employer is subrogated to the rights of the injured employee and is entitled to enforce liability in its own name or in the name of the injured party, the accounting for the proceeds to be made on the basis provided.

Sec. 2. 39-A MRSA §107, last ¶, as enacted by PL 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

If the employer recovers from a 3rd person damages in excess of the compensation and benefits paid, or for which the employer has become liable, that are attributable to compensation for past or future medical treatment and loss of income or earning capacity, then any excess must be paid to the injured employee, less a proportionate share of the expenses and cost of actions or collection, including reasonable attorney's fees. Settlement of any such subrogation claims and the distribution of the proceeds therefrom must have the approval of the court in which the subrogation action is pending or to which it is returnable; or if not in suit, of the board. When the court in which the subrogation action is pending or to which it is returnable is in vacation, the judge of the court, or, if the action is pending in or returnable to the Superior Court, any Justice of the Superior Court has the power to approve the settlement of the action and the distribution of the proceeds therefrom. The beneficiary is entitled to reasonable notice and the opportunity to be present in person or by counsel at the approval proceeding.

SUMMARY

When a worker suffers an injury or death that is eligible for workers' compensation benefits under the Maine Workers' Compensation Act of 1992 and that is sustained under circumstances that create legal liability for a 3rd person, the injured employee may either claim workers' compensation benefits or seek damages in a civil suit against that 3rd person to recover damages. Under current law, if the injured employee chooses to claim workers' compensation benefits from the employer, the employer has a lien on any damages subsequently recovered against that 3rd person in the civil action for the value of workers' compensation benefits paid.

This bill limits the amount of the lien of the employer of the injured or deceased employee to only the value of damages received by or on behalf of the injured or deceased employee that are attributable to compensation for past or future medical treatment and loss of income or earning capacity.