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An Act To Change the Law Governing Occupational Disease Claims under the Maine Workers' Compensation Act of 1992

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

Sec. 1. 26 MRSA §1192, sub-§5, as amended by PL 1991, c. 885, Pt. E, §39 and affected by §47, is further amended to read:

5. Has earned wages. For each eligible individual establishing a benefit year on or after January 1, 1980, the individual has been paid wages equal to or exceeding 2 times the annual average weekly wage for insured work in each of 2 different quarters in the individual's base period and has been paid total wages equal to or exceeding 6 times the annual average weekly wage in the individual's base period for insured work. The annual average weekly wage amount to be used for purposes of this subsection is that which is applicable at the time the individual files a request for determination of insured status. For the purpose of this subsection, wages are counted as "wages for insured work" for benefit purposes with respect to any benefit year only if such benefit year begins subsequent to the date on which the employer by whom such wages were paid has satisfied the conditions of section 1043, subsection 9, or section 1222, subsection 3, with respect to becoming an employer; provided that no individual may receive benefits in a benefit year, unless, subsequent to the beginning of the next preceding benefit year during which that individual received benefits, that individual performed services and earned remuneration for such service in an amount equal to not less than 8 times that individual's weekly benefit amount in employment by an employer in the benefit year being established. This subsection applies only to any individual requesting determination of insured status on and after January 1, 1972. In determining a claimant's qualification under this subsection, payments pursuant to former Title 39, sections 54 and 55, the Workers' Compensation Act, and former Title 39, sections 188 and 189, and Title 39-A, former sections 608 and 609, the Occupational Disease Law, are considered wages for insured work.

Sec. 2. 39-A MRSA §102, sub-§4, ¶I is enacted to read:

I. If, on the date of incapacity resulting from occupational cumulative trauma or exposure, the employee no longer works in the same occupation in which the employee worked when the employee incurred the last injurious occupational cumulative trauma or exposure, then the amount of the employee's compensation must be determined by using the average weekly wages on the date of injury of comparable employees who are employed full-time in the same occupation as was the employee at the time of the employee's last injurious exposure.

Sec. 3. 39-A MRSA §102, sub-§16-A is enacted to read:

16-A. Personal injury. "Personal injury" includes any condition or disease contributed to by an employee's occupational cumulative trauma or exposure that arises out of and in the course of employment. The employer in whose employment the employee was last injuriously exposed to the

occupational trauma or exposure is fully liable for all incapacity resulting from the occupational trauma or exposure. The date of injury for an occupational cumulative trauma or exposure injury is the date the employee becomes incapacitated from the occupational cumulative trauma or exposure.

Sec. 4. 39-A MRSA §201, sub-§1, as enacted by PL 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

1. Entitlement. If an employee who has not given notice of a claim of common law or statutory rights of action, or who has given the notice and has waived the claim or rights, as provided in section 301, receives a personal injury arising out of and in the course of employment ~~or is disabled by occupational disease~~, the employee must be paid compensation and furnished medical and other services by the employer who has assented to become subject to this Act.

Sec. 5. 39-A MRSA §201, sub-§1-A is enacted to read:

1-A. Occupational cumulative trauma or exposure. With respect to a personal injury that involves a condition or disease contributed to by the employee's occupational cumulative trauma or exposure that arises out of and in the course of employment, the employer in whose employment the employee was last injuriously exposed to the occupational trauma or exposure is fully liable for all incapacity resulting from the occupational trauma or exposure. The date of injury for an occupational cumulative trauma or exposure injury is the date that the employee becomes incapacitated from the cumulative occupational trauma or exposure.

Sec. 6. 39-A MRSA Pt. 2, as amended, is repealed.

SUMMARY

This bill amends the law governing occupational disease claims under the Maine Workers' Compensation Act of 1992. The bill repeals the chapter in the laws governing workers' compensation entitled "Occupational Disease Law" and:

1. Defines "personal injury" under the laws governing workers' compensation to include any condition or disease contributed to by an employee's occupational cumulative trauma or exposure that arises out of and in the course of employment;

2. Specifies that the employer in whose employment the employee was last injuriously exposed to the occupational trauma or exposure is fully liable for all incapacity resulting from the occupational trauma or exposure, and the date of injury for an occupational cumulative trauma or exposure injury is the date that the employee becomes incapacitated from the occupational cumulative trauma or exposure;

3. Provides a method for calculating the amount of the employee's compensation if, on the date of incapacity resulting from occupational cumulative trauma or exposure, the injured employee no longer works in the same occupation in which the employee worked when the employee incurred the last injurious occupational cumulative trauma or exposure;

4. Specifies that, with respect to a personal injury that involves a condition or disease contributed to by the employee's occupational cumulative trauma or exposure that arises out of and in the course of employment, the employer in whose employment the employee was last injuriously exposed to the

occupational trauma or exposure is fully liable for all incapacity resulting from the occupational trauma or exposure; and

5. Establishes that the date of injury for an occupational cumulative trauma or exposure injury is the date that the employee becomes incapacitated from the occupational cumulative trauma or exposure.