



129th MAINE LEGISLATURE

FIRST REGULAR SESSION-2019

Legislative Document

No. 1204

H.P. 868

House of Representatives, March 12, 2019

**An Act To Eliminate the Cap on Weekly Benefits in Workers'
Compensation Cases**

Reference to the Committee on Labor and Housing suggested and ordered printed.

Robert B. Hunt
ROBERT B. HUNT
Clerk

Presented by Representative SYLVESTER of Portland.

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

2 **Sec. 1. 39-A MRSA §211**, as amended by PL 2011, c. 647, §3, is repealed.

3 **Sec. 2. 39-A MRSA §212, sub-§1**, as amended by PL 2011, c. 647, §4, is further
4 amended to read:

5 **1. Total incapacity; date of injury prior to January 1, 2013.** If the injured
6 employee's date of injury is prior to January 1, 2013, while the incapacity for work
7 resulting from the injury is total, the employer shall pay the injured employee a weekly
8 compensation equal to 80% of the employee's after-tax average weekly wage, ~~but not~~
9 ~~more than the maximum benefit under section 211.~~ Compensation must be paid for the
10 duration of the incapacity.

11 Any employee who is able to perform full-time remunerative work in the ordinary
12 competitive labor market in the State, regardless of the availability of such work in and
13 around that employee's community, is not eligible for compensation under this section,
14 but may be eligible for compensation under section 213.

15 **Sec. 3. 39-A MRSA §212, sub-§1-A**, as enacted by PL 2011, c. 647, §5, is
16 amended to read:

17 **1-A. Total incapacity; date of injury on or after January 1, 2013.** If the injured
18 employee's date of injury is on or after January 1, 2013, while the incapacity for work
19 resulting from the injury is total, the employer shall pay the injured employee a weekly
20 compensation equal to 2/3 of the employee's gross average weekly wages, earnings or
21 salary, ~~but not more than the maximum benefit under section 211.~~ Compensation must be
22 paid for the duration of the incapacity.

23 Any employee who is able to perform full-time remunerative work in the ordinary
24 competitive labor market in the State, regardless of the availability of such work in and
25 around that employee's community, is not eligible for compensation under this section,
26 but may be eligible for compensation under section 213.

27 **Sec. 4. 39-A MRSA §212, sub-§3**, as amended by PL 2011, c. 647, §6, is further
28 amended to read:

29 **3. Specific loss benefits.** In cases included in the following schedule, the incapacity
30 is considered to continue for the period specified, and the compensation due is calculated
31 based on the date of injury ~~subject to the maximum benefit set in section 211.~~
32 Compensation under this subsection is available only for the actual loss of the following:

- 33 A. Thumb, 65 weeks;
- 34 B. First finger, 38 weeks;
- 35 C. Second finger, 33 weeks;
- 36 D. Third finger, 22 weeks;
- 37 E. Fourth finger, 16 weeks;

1 F. The loss of the first phalange of the thumb, or of any finger, is considered to be
2 equal to the loss of 1/2 of that thumb or finger, and compensation is 1/2 of the
3 amounts specified in paragraphs A to E. The loss of more than one phalange is
4 considered as the loss of the entire finger or thumb. The amount received for more
5 than one finger may not exceed the amount provided in this schedule for the loss of a
6 hand;

7 G. Great toe, 33 weeks;

8 H. A toe other than the great toe, 11 weeks. The loss of the first phalange of any toe
9 is considered to be equal to the loss of 1/2 of that toe, and compensation is 1/2 of the
10 amounts specified in paragraphs F and G. The loss of more than one phalange is
11 considered the loss of the entire toe;

12 I. Hand, 215 weeks. An amputation between the elbow and wrist that is 6 or more
13 inches below the elbow is considered a hand;

14 J. Arm, 269 weeks. An amputation above the point specified in paragraph I is
15 considered an arm;

16 K. Foot, 162 weeks. An amputation between the knee and the foot 7 or more inches
17 below the tibial table, or plateau, is considered a foot;

18 L. Leg, 215 weeks. An amputation above the point specified in paragraph K is
19 considered a leg; and

20 M. Eye, 162 weeks. Eighty percent loss of vision of one eye constitutes the total loss
21 of that eye.

22 **Sec. 5. 39-A MRSA §213, sub-§1**, as amended by PL 2015, c. 297, §8, is further
23 amended to read:

24 **1. Benefit and duration.** While the incapacity for work is partial, the employer
25 shall pay the injured employee a weekly compensation as follows.

26 A. If the injured employee's date of injury is prior to January 1, 2013, the weekly
27 compensation is equal to 80% of the difference between the injured employee's after-
28 tax average weekly wage before the personal injury and the after-tax average weekly
29 wage that the injured employee is able to earn after the injury, ~~but not more than the~~
30 ~~maximum benefit under section 211.~~ Compensation must be paid for the duration of
31 the disability if the employee's permanent impairment, determined according to
32 subsection 1-A and the impairment guidelines adopted by the board pursuant to
33 section 153, subsection 8, resulting from the personal injury is in excess of 15% to
34 the body. In all other cases an employee is not eligible to receive compensation
35 under this paragraph after the employee has received a total of 260 weeks of
36 compensation under section 212, subsection 1, this paragraph or both. The board
37 may in the exercise of its discretion extend the duration of benefit entitlement beyond
38 260 weeks in cases involving extreme financial hardship due to inability to return to
39 gainful employment. This authority may be delegated by the board, on a case-by-
40 case basis, to an administrative law judge or a panel of 3 administrative law judges.
41 Decisions made under this paragraph must be made expeditiously. A decision under
42 this paragraph made by an administrative law judge or a panel of 3 administrative law

1 judges may not be appealed to the board under section 320, but may be appealed
2 pursuant to section 322.

3 B. If the injured employee's date of injury is on or after January 1, 2013, the weekly
4 compensation is equal to 2/3 of the difference, due to the injury, between the
5 employee's average gross weekly wages, earnings or salary before the injury and the
6 average gross weekly wages, earnings or salary that the employee is able to earn after
7 the injury, ~~but not more than the maximum benefit under section 214~~. An employee
8 is not eligible to receive compensation under this paragraph after the employee has
9 received a total of 520 weeks of compensation under section 212, subsection 1-A, this
10 paragraph or both. The board may in the exercise of its discretion extend the duration
11 of benefit entitlement beyond 520 weeks in cases involving extreme financial
12 hardship due to inability to return to gainful employment. This authority may be
13 delegated by the board, on a case-by-case basis, to an administrative law judge or a
14 panel of 3 administrative law judges. The board, administrative law judge or panel
15 shall make a decision under this paragraph expeditiously. A decision under this
16 paragraph made by an administrative law judge or a panel of 3 administrative law
17 judges may not be appealed to the board under section 320, but may be appealed
18 pursuant to section 321-A.

19 Orders extending benefits beyond 520 weeks are not subject to review more often
20 than every 2 years from the date of the board order or request allowing an extension.

21 **Sec. 6. 39-A MRSA §213, sub-§1-B**, as enacted by PL 2011, c. 647, §8, is
22 amended to read:

23 **1-B. Long-term partial incapacity; date of injury on or after January 1, 2013.**
24 After the exhaustion of benefits under subsection 1, paragraph B if the whole person
25 permanent impairment resulting from the injury is in excess of 18% and if the employee
26 is working and the employee's earnings, as measured by average weekly earnings over the
27 most recent 26-week period documented by payroll records or tax returns, is 65% or less
28 of the preinjury average weekly wage, the employer shall pay weekly compensation equal
29 to 2/3 of the difference between the employee's average weekly wage at the time of the
30 injury and the employee's postinjury wage, ~~but not more than the maximum benefit under~~
31 ~~section 214~~. In order for the employee to qualify for benefits under this subsection, the
32 employee's actual earnings must be commensurate with the employee's earning capacity,
33 which includes consideration of the employee's physical and psychological work capacity
34 as determined by an independent examiner under section 312. In addition, in order for
35 the employee to qualify for benefits under this subsection, the employee must have
36 earnings from employment for a period of not less than 12 months within a 24-month
37 period prior to the expiration of the 520-week durational limit under subsection 1,
38 paragraph B. Compensation under this subsection must be paid at a fixed rate.

39 While the employee is claiming or receiving extended partial incapacity benefits under
40 this subsection, the employee shall complete and provide quarterly employment status
41 reports and provide copies of current tax returns as early as practicable after the return is
42 filed.

43 The employee's entitlement to extended partial incapacity benefits under this subsection
44 is determined based upon the facts that exist at the time of expiration of 520 weeks of

1 benefits under subsection 1, paragraph B. If the employee is not entitled to extended
2 partial incapacity benefits upon the expiration of 520 weeks of benefits under subsection
3 1, paragraph B, the employee's entitlement to partial incapacity benefits expires. If the
4 employee is entitled to extended partial incapacity benefits under this subsection, once
5 the employee's earnings, as measured by average weekly earnings over the most recent
6 26-week period, are equal to or greater than the preinjury average weekly wage, the
7 employee's entitlement to extended partial incapacity benefits under this subsection
8 terminates permanently.

9 **Sec. 7. 39-A MRSA §214, sub-§1, ¶B,** as amended by PL 2011, c. 647, §10, is
10 further amended to read:

11 B. If an injured employee's date of injury is prior to January 1, 2013 and the
12 employee is employed at any job and the average weekly wage of the employee is
13 less than that which the employee received before the date of injury, the employee is
14 entitled to receive weekly benefits under this Act equal to 80% of the difference
15 between the injured employee's after-tax weekly wage before the date of injury and
16 the after-tax weekly wage that the injured employee is able to earn after the date of
17 injury, ~~but not more than the maximum weekly rate of compensation, as determined~~
18 ~~under section 211.~~

19 **Sec. 8. 39-A MRSA §214, sub-§1, ¶B-1,** as enacted by PL 2011, c. 647, §11, is
20 amended to read:

21 B-1. If an injured employee's date of injury is on or after January 1, 2013 and the
22 employee is employed at any job and the average weekly wage of the employee is
23 less than that which the employee received before the date of injury, the employee is
24 entitled to receive weekly benefits under this Act equal to 2/3 of the difference, due
25 to the injury, between the employee's average gross weekly wages, earnings or salary
26 before the injury and the average gross weekly wages, earnings or salary that the
27 employee is able to earn after the injury, ~~but not more than the maximum weekly rate~~
28 ~~of compensation, as determined under section 211.~~

29 **Sec. 9. 39-A MRSA §215, sub-§1,** as amended by PL 2011, c. 647, §12, is
30 further amended to read:

31 **1. Death of employee; date of injury prior to January 1, 2013.** If an injured
32 employee's date of injury is prior to January 1, 2013 and if death results from the injury of
33 the employee, the employer shall pay or cause to be paid to the dependents of the
34 employee who were wholly dependent upon the employee's earnings for support at the
35 time of the injury a weekly payment equal to 80% of the employee's after-tax average
36 weekly wage, ~~but not more than the maximum benefit under section 211,~~ for a period of
37 500 weeks from the date of death. If the employee leaves dependents only partially
38 dependent upon the employee's earnings for support at the time of injury, the employer
39 shall pay weekly compensation equal to the same proportion of the weekly payments for
40 the benefit of persons wholly dependent, as 80% of the amount contributed by the
41 employee to such partial dependents bears to the annual earnings of the deceased at the
42 time of injury. If, at the expiration of the 500-week period, any wholly or partially

1 dependent person is less than 18 years of age, the employer shall continue to pay or cause
2 to be paid the weekly compensation until that person reaches the age of 18.

3 If a dependent spouse dies or becomes a dependent of another person, the payments must
4 cease upon the payment to the spouse of the balance of the compensation to which the
5 spouse would otherwise have been entitled but in no event to exceed the sum of \$500.00.
6 The remaining weeks of compensation, if any, are payable to those persons either wholly
7 or partially dependent upon the employee for support at the employee's death. When, at
8 the expiration of the 500-week period, any wholly or partially dependent person is less
9 than 18 years of age, the employer shall continue to pay or cause to be paid the weekly
10 compensation, until that person reaches the age of 18. The payment of compensation to
11 any dependent child after the expiration of the 500-week period ceases when the child
12 reaches the age of 18 years, if at the age of 18 years the child is neither physically nor
13 mentally incapacitated from earning, or when the child reaches the age of 16 years and
14 thereafter is self-supporting for 6 months. If the child ceases to be self-supporting
15 thereafter, the dependency must be reinstated. As long as any of the 500 weeks of
16 compensation remain, that compensation is payable to the person either wholly or
17 partially dependent upon the deceased employee for support at the time of the employee's
18 death, with the exception of a dependent spouse who becomes a dependent of another. If
19 a wholly dependent or partially dependent child who reaches 18 years of age is either
20 physically or mentally incapacitated so as to be unable to earn a living as determined by
21 the board, the payments must continue until such time as the child either dies or is no
22 longer physically or mentally incapacitated from earning.

23 **Sec. 10. 39-A MRSA §215, sub-§1-A**, as enacted by PL 2011, c. 647, §13, is
24 amended to read:

25 **1-A. Death of employee; date of injury on or after January 1, 2013.** If an injured
26 employee's date of injury is on or after January 1, 2013 and if death results from the
27 injury of the employee, the employer shall pay or cause to be paid to the dependents of
28 the employee who were wholly dependent upon the employee's earnings for support at
29 the time of the injury a weekly payment equal to 2/3 of the employee's gross average
30 weekly wages, earnings or salary, ~~but not more than the maximum benefit under section~~
31 ~~211~~, for a period of 500 weeks from the date of death. If the employee leaves dependents
32 only partially dependent upon the employee's earnings for support at the time of injury,
33 the employer shall pay weekly compensation equal to the same proportion of the weekly
34 payments for the benefit of persons wholly dependent, as 2/3 of the amount contributed
35 by the employee to such partial dependents bears to the annual earnings of the deceased
36 at the time of injury. If, at the expiration of the 500-week period, any wholly or partially
37 dependent person is less than 18 years of age, the employer shall continue to pay or cause
38 to be paid the weekly compensation until that person reaches the age of 18.

39 If a dependent spouse dies or becomes a dependent of another person, the payments must
40 cease upon the payment to the spouse of the balance of the compensation to which the
41 spouse would otherwise have been entitled but in no event to exceed the sum of \$500.00.
42 The remaining weeks of compensation, if any, are payable to those persons either wholly
43 or partially dependent upon the employee for support at the employee's death. When, at
44 the expiration of the 500-week period, any wholly or partially dependent person is less
45 than 18 years of age, the employer shall continue to pay or cause to be paid the weekly

1 compensation, until that person reaches the age of 18. The payment of compensation to
2 any dependent child after the expiration of the 500-week period ceases when the child
3 reaches the age of 18 years, if at the age of 18 years the child is neither physically nor
4 mentally incapacitated from earning, or when the child reaches the age of 16 years and
5 thereafter is self-supporting for 6 months. If the child ceases to be self-supporting
6 thereafter, the dependency must be reinstated. As long as any of the 500 weeks of
7 compensation remain, that compensation is payable to the person either wholly or
8 partially dependent upon the deceased employee for support at the time of the employee's
9 death, with the exception of a dependent spouse who becomes a dependent of another. If
10 a wholly dependent or partially dependent child who reaches 18 years of age is either
11 physically or mentally incapacitated so as to be unable to earn a living as determined by
12 the board, the payments must continue until such time as the child either dies or is no
13 longer physically or mentally incapacitated from earning.

14

SUMMARY

15 Current law caps the weekly benefit payable under the laws governing workers'
16 compensation to a maximum amount set in statute or a percentage of the state average
17 weekly wage, whichever is higher. This bill eliminates the cap on the weekly benefits.