

## STATE OF MAINE

IN THE YEAR OF OUR LORD  
TWO THOUSAND AND THIRTEEN

## S.P. 9 - L.D. 1

## An Act To Amend the Maine Workers' Compensation Act of 1992

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

**Sec. 1. 39-A MRSA §102, sub-§1**, as enacted by PL 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

**1. After-tax average weekly wage.** "After-tax average weekly wage" means average weekly wage, as defined in subsection 4, reduced by the prorated weekly amount that would have been paid under the Federal Insurance Contributions Act, 26 United States Code, Sections 3101 to 3126, state income tax and federal income tax calculated on an annual basis, using as the number of exemptions the disabled employee's dependents plus the employee, and without excess itemized deductions. Effective January 1, 1993 and each January 1st ~~thereafter~~ until and including January 1, 2012, the applicable federal and state laws in effect on the preceding July 1st are used in determining the after-tax weekly wage. Each December 1st until and including December 1, 2011, the board shall publish tables of the average weekly wage and 80% of after-tax average weekly wage that will take effect on the following January 1st. These tables are conclusive for the purpose of converting an average weekly wage into 80% of after-tax average weekly wage.

**Sec. 2. 39-A MRSA §102, sub-§8, ¶A**, as enacted by PL 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, is repealed and the following enacted in its place:

A. A spouse of the deceased employee who was living with the employee at the time of the employee's death, who was living apart from the employee for a justifiable cause or because the spouse had been deserted by the employee or who was actually dependent in any way upon the employee at the time of the injury. A spouse living apart from the employee must produce a court order or other competent evidence as to separation and actual dependency; and

**Sec. 3. 39-A MRSA §102, sub-§8, ¶B**, as enacted by PL 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, is repealed.

**Sec. 4. 39-A MRSA §105, sub-§3**, as amended by PL 2009, c. 569, §1, is further amended to read:

**3. Predetermination submission.** A party may submit, on forms approved by the board, a request for predetermination regarding the status of a person or job description as an employee, construction subcontractor, as defined in section 105-A, subsection 1, paragraph B, or independent contractor. ~~The status requested by a party request~~ is deemed to have been approved if the board does not deny or take other appropriate action on the submission within ~~44~~ 30 days.

**Sec. 5. 39-A MRSA §105, sub-§4**, as amended by PL 1993, c. 120, §1 and affected by §6, is further amended to read:

**4. Hearing.** A hearing, if requested by a party within 10 days of the board's decision on a petition, must be conducted under the Maine Administrative Procedure Act. A ruling by the board or hearing officer under this section is final and not subject to review by the Superior Court.

**Sec. 6. 39-A MRSA §217, sub-§1**, as enacted by PL 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

**1. Services.** If employment rehabilitation services are not voluntarily offered and accepted, the board on its own motion or upon application of the employee, carrier or employer, after affording the parties an opportunity to be heard, may refer the employee to a board-approved facility for evaluation of the need for and kind of service, treatment or training necessary and appropriate to return the employee to suitable employment. The board's determination under this subsection is final.

**Sec. 7. 39-A MRSA §218, sub-§3**, as enacted by PL 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

**3. Time period; discrimination prohibited.** The employer's obligation to reinstate the employee continues until ~~one year~~ 2 years, or 3 years if the employer has over 200 employees, after the date of the injury. An employer who reinstates an employee under this section may not subsequently discriminate against that employee in any employment decision, including decisions related to tenure, promotion, transfer or reemployment following a layoff, because of the employee's assertion of a claim or right under this Act. Nothing in this subsection may be construed to limit any protection offered to an employee by section 353.

**Sec. 8. 39-A MRSA §303**, as amended by PL 2003, c. 471, §1, is further amended to read:

### **§303. Reports to board**

When any employee has reported to an employer under this Act any injury arising out of and in the course of the employee's employment that has caused the employee to lose a day's work, or when the employer has knowledge of any such injury, the employer shall report the injury to the board within 7 days after the employer receives notice or has

knowledge of the injury. An insured employer that has notice or knowledge of any such injury and fails to give timely notice to its insurer shall reimburse the insurer for any penalty that is due as a result of the late filing of the report of injury. The employer shall also report the average weekly wages or earnings of the employee, as defined in section 102, subsection 4, together with any other information required by the board, within 30 days after the employer receives notice or has knowledge of a claim for compensation under section 212, 213 or 215, unless a wage statement has previously been filed with the board. A copy of the wage information must be mailed to the employee. The employer shall report when the injured employee resumes the employee's employment and the amount of the employee's wages or earnings at that time. The employer shall complete a first report of injury form for any injury that has required the services of a health care provider within 7 days after the employer receives notice or has knowledge of the injury. The employer shall provide a copy of the form to the injured employee and retain a copy for the employer's records but is not obligated to submit the form to the board unless the injury later causes the employee to lose a day's work. The employer is also required to submit the form to the board if the board has finally adopted a major substantive rule pursuant to Title 5, chapter 375, subchapter 2-A to require the form to be filed electronically.

**Sec. 9. 39-A MRSA §312, sub-§1**, as amended by PL 2011, c. 215, §1, is further amended to read:

**1. Examiner system.** The board shall develop and implement an independent medical examiner system consistent with the requirements of this section. As part of this system, the board shall, in the exercise of its discretion, create, maintain and periodically validate a list of not more than 50 health care providers that it finds to be the most qualified and to be highly experienced and competent in their specific fields of expertise and in the treatment of work-related injuries to serve as independent medical examiners from each of the health care specialties that the board finds most commonly used by injured employees. An independent medical examiner must be certified in the field of practice that treats the type of injury complained of by the employee. ~~Certification must be by a board recognized by the American Board of Medical Specialties or the American Osteopathic Association or their successor organizations.~~ For an independent medical examiner who is a doctor of chiropractic, certification must be by a board recognized by the American Chiropractic Association or its successor organization. For an independent medical examiner who is a doctor of podiatric medicine, certification must be by a board recognized by the American Podiatric Medical Association or its successor organization. For an independent medical examiner who is a psychologist, licensure by the State Board of Examiners of Psychologists satisfies the certification requirement of this section. For all other medical examiners, certification must be by a board recognized by the American Board of Medical Specialties or the American Osteopathic Association or their successor organizations. The board shall establish a fee schedule for services rendered by independent medical examiners and adopt any rules considered necessary to effectuate the purposes of this section.

**Sec. 10. 39-A MRSA §318, last ¶**, as enacted by PL 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

Clerical mistakes in decrees, orders or other parts of the record and errors arising from oversight or omission may be corrected by the board at any time of its own initiative, at the request of the hearing officer or on the motion of any party and after notice to the parties. During the pendency of an appeal, these mistakes may be corrected before the appeal is ~~doeketed in~~ filed with the Law Court division and thereafter, while the appeal is pending, may be corrected with leave of the ~~Law Court~~ division.

**Sec. 11. 39-A MRSA §320, 2nd ¶**, as amended by PL 2011, c. 647, §19, is further amended to read:

If a hearing officer asks for review, the time for appeal ~~to the Appellate Division pursuant to section 321-B~~ is stayed and no further action may be taken until a decision of the board has been made. If the board reviews a decision of a hearing officer, any appeal must be from the decision of the board and must be made to the Law Court in accordance with section 322. The time for appeal begins upon the board's issuance of a written decision on the merits of the case or written notice that the board denies review.

**Sec. 12. 39-A MRSA §320, 3rd ¶**, as amended by PL 2003, c. 608, §13, is further amended to read:

The board shall vote on whether to review the decision. If a majority of the board's membership fails to vote to grant review or the board fails to act within 60 days after receiving the initial request for review, the decision of the hearing officer stands, and any appeal must be made to the division in accordance with section 321-B. If the board votes to review the decision, the board may delegate responsibility for reviewing the decision of the hearing officer under this section to panels of board members consisting of equal numbers of representatives of labor and management. Review must be on the record and on written briefs only. Upon a vote of a majority of the board's membership, the board shall issue a written decision affirming, ~~reversing~~ remanding, vacating or modifying the hearing officer's decision. The written decision of the board must be filed with the board and mailed to the parties or their counsel. If the board fails to adopt a decision by majority vote, the decision of the hearing officer stands and is subject to direct appellate review in the same manner as if the board had not voted to review the decision.

**Sec. 13. 39-A MRSA §321-B, sub-§1, ¶B**, as enacted by PL 2011, c. 647, §20, is amended to read:

B. At the time of filing an appeal under this section, the appellant shall file with the division a copy of the decision, ~~order or agreement~~ appealed. The failure of an appellant who timely files an appeal in accordance with paragraph A to provide a copy of the decision, ~~order or agreement~~ does not affect the jurisdiction of the division to determine the appeal on its merits unless the appellee shows substantial prejudice from that failure.

**Sec. 14. 39-A MRSA §321-B, sub-§3**, as enacted by PL 2011, c. 647, §20, is amended to read:

**3. Action.** The division, after due consideration, may ~~reverse~~ affirm, vacate, remand or modify a decree of a hearing officer and shall issue a written decision. The written

decision of the division must be filed with the board and mailed to the parties or their counsel.

**Sec. 15. 39-A MRSA §324, sub-§1,** as amended by PL 2011, c. 361, §1, is further amended to read:

**1. Order or decision.** The employer or insurance carrier shall make compensation payments within 10 days after the receipt of notice of an approved agreement for payment of compensation or within 10 days after any order or decision of the board awarding compensation. If the board enters a decision awarding compensation, and a motion for findings of fact and conclusions of law is filed with the hearing officer or an appeal is filed with the division pursuant to section 321-B or the Law Court pursuant to section 322, payments may not be suspended while the motion for findings of fact and conclusions of law or appeal is pending. The employer or insurer may recover from an employee payments made pending a motion for findings of fact and conclusions of law or appeal to the division or the Law Court if and to the extent that the hearing officer, division or the Law Court has decided that the employee was not entitled to the compensation paid. The board has full jurisdiction to determine the amount of overpayment, if any, and the amount and schedule of repayment, if any. The board, in determining whether or not repayment should be made and the extent and schedule of repayment, shall consider the financial situation of the employee and the employee's family and may not order repayment that would work hardship or injustice. The board shall notify the Commissioner of Health and Human Services within 10 days after the receipt of notice of an approved agreement for payment of compensation or within 10 days after any order or decision of the board awarding compensation identifying the employee who is to receive the compensation. For purposes of this subsection, "employer or insurance carrier" includes the Maine Insurance Guaranty Association under Title 24-A, chapter 57, subchapter 3.

**Sec. 16. Application.** Notwithstanding the Maine Revised Statutes, Title 1, section 302, those sections of this Act that amend Title 39-A, sections 318, 320 and 321-B apply to actions and proceedings that are pending on the effective date of this Act.