

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND TWENTY-THREE

S.P. 728 - L.D. 1803

An Act to Improve 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 §105, as amended by PL 2015, c. 297, §2, is further amended to read:

§105. ~~Predetermination of independent~~ Independent contractor and construction subcontractor status

1. ~~Predetermination permitted~~ Independent contractor status. A worker, ~~an employer or a workers' compensation insurance carrier, or any together,~~ may apply to the board ~~for a predetermination of whether the status of an individual worker, group of workers or a job classification associated with the employer is that of an employee or an independent contractor~~ may file with the board, on forms approved by the board, a statement that the worker performs work as an independent contractor.

A. ~~The predetermination by the board~~ statement creates a rebuttable presumption, valid for one year from the date the statement is received by the board, that the ~~determination is correct~~ worker is an independent contractor in any later claim for benefits under this Act.

B. Nothing in this subsection requires a worker, ~~an employer or a workers' compensation insurance carrier~~ to request predetermination to file a statement with the board.

1-A. ~~Predetermination permitted for construction subcontractors~~ Construction subcontractor status. A person, as defined in section 105-A, subsection 1, paragraph E, ~~may apply to the board for a predetermination~~ file with the board, on forms approved by the board, a statement that the person performs construction work in a manner that would not make the person an employee of a hiring agent, as defined in section 105-A, subsection 1, paragraph D.

A. ~~The predetermination issued by the board pursuant to this subsection is~~ statement creates a rebuttable presumption, valid for one year and creates a rebuttable presumption that the determination is correct from the date the statement is received

by the board, that the person is a construction subcontractor in any later claim for benefits under this Act.

B. Nothing in this subsection requires a person, as defined in section 105-A, subsection 1, paragraph E, a worker, an employer or a workers' compensation insurance carrier to request predetermination to file a statement with the board.

2. Premium adjustment. ~~If it is determined that a predetermination a statement filed with the board pursuant to this section does not withstand board or judicial scrutiny when raised in a subsequent workers' compensation claim, then, depending on the final outcome of that subsequent proceeding, either the workers' compensation insurance carrier shall return excess premium collected or the employer shall remit premium subsequently due in order to put the parties in the same position as if the final outcome under the contested claim were predetermined correctly.~~

3. ~~Predetermination submission~~ Independent contractor and construction subcontractor information. A party may submit, on forms approved by the ~~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 request is deemed to have been approved if the board does not deny or take other appropriate action on the submission within 30 days shall post, on its publicly accessible website, information pertaining to independent contractor and construction subcontractor statements filed pursuant to this section.~~

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 administrative law judge under this section is final and not subject to review by the Superior Court.~~

5. Certificate. ~~The board shall provide the petitioning party a certified copy of the decision regarding predetermination that is to be used as evidence at a later hearing on benefits.~~

6. Rulemaking. The board is authorized to adopt reasonable rules pursuant to the Maine Administrative Procedure Act to implement the intent of this section, which is to afford speedy and equitable ~~predetermination~~ determination of employee, construction subcontractor, as defined in section 105-A, subsection 1, paragraph B, and independent contractor status.

Sec. 2. 39-A MRSA §153, sub-§10, as enacted by PL 2011, c. 647, §1, is repealed.

Sec. 3. 39-A MRSA §209-A, sub-§4, as enacted by PL 2011, c. 338, §4, is amended to read:

4. Reimbursement rate if medical fee schedule not established or updated. If the board fails to adopt rules that establish a medical fee schedule in accordance with subsection 2 by December 31, 2011 or the executive director fails to annually update the medical fee schedule in accordance with subsection 3, the reimbursement rate for medical services is 105% of the private 3rd-party payor average payment rate for the provider or the amount agreed to in writing by the provider and the insurance company or self-insured employer prior to the rendering of service by the provider. For purposes of this subsection, "reimbursement rate for medical services" means the total payment allowed for the medical and ancillary services and products, including any amount to be paid by a 3rd-party payor

~~and the amount to be paid by the patient to satisfy a copayment, deductible or coinsurance obligation the amount established by the medical fee schedule in effect on the date the update is due.~~

Sec. 4. 39-A MRSA §210, sub-§1, as enacted by PL 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

1. Rules. ~~The board, in consultation with the appropriate professional organization representing the health care specialty involved, shall may adopt rules establishing specific protocols pertaining to the extent and duration of treatment for specific injuries and illnesses to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.~~

Sec. 5. 39-A MRSA §221, sub-§2, ¶A, as repealed and replaced by PL 2011, c. 647, §15, is amended by amending subparagraph (2) to read:

(2) ~~For benefits paid on claims for which the date of injury is on or after January 1, 2013, the net weekly amount of any old-age insurance benefit or benefit under an employee benefit plan, reduced by the prorated weekly amount that would have been paid, if any, under the Federal Insurance Contributions Act, 26 United States Code, Sections 3101 to 3126, federal income and state income taxes, calculated on an annual basis. The after-tax amount of any benefit subject to income taxes must be determined by using the maximum number of dependents' allowances to which the employee is entitled and the standard deduction or zero bracket amount applicable to the employee's filing status 2/3 of the gross weekly old-age insurance benefit or benefit under an employee benefit plan multiplied by 1.25.~~

Sec. 6. 39-A MRSA §303, first ¶, as amended by PL 2015, c. 297, §9, is further amended to read:

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. The wage statement must report the earnings or wages of the employee on a weekly basis, unless the employee is paid on other than a weekly basis, in which case the employer may report the earnings or wages in the same manner as earnings or wages are paid. 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. 7. 39-A MRSA §360, sub-§1, as enacted by PL 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, is amended by enacting at the end a new blocked paragraph to read:

An insured employer may be required to reimburse the insurer for any penalty under this subsection that is due as a result of the insured employer's failure to give timely notice or information to its insurer.

Sec. 8. 39-A MRSA §401, sub-§4, as amended by PL 2011, c. 643, §12 and affected by §14, is further amended by amending the first blocked paragraph to read:

A landowner is not liable for compensation if at the time the landowner enters into the contract with the contractor, the landowner applies for and receives a predetermination of the independent status of the contractor as set forth in ~~section 105 subsection 4-A~~, the landowner requests and receives a certificate of independent status, issued by the board on an annual basis to a contractor, certifying that the contractor harvests forest products in a manner that would not make the contractor an employee of the landowner or the landowner requests and receives a certificate of insurance, issued by the contractor's insurance carrier, certifying that the contractor has obtained the required coverage and indicating the effective dates of the policy, and if the landowner requests and receives at least annually similar certificates indicating continuing coverage during the performance of the work. A landowner who receives a predetermination of the contractor's status as independent contractor or a certificate of independent status is only relieved of liability under this paragraph if the contract for wood harvesting expressly states that the independent contractor will not hire any employees to assist in the wood harvesting without first providing the required certificate of insurance to the landowner.

Sec. 9. 39-A MRSA §401, sub-§4, as amended by PL 2011, c. 643, §12 and affected by §14, is further amended by amending the 2nd blocked paragraph to read:

~~Notwithstanding section 105, subsection 1, paragraph A, a~~ A predetermination under ~~section 105 subsection 4-A~~ related only to a person engaged in harvesting forest products is a conclusive presumption that the determination is correct ~~and section 105, subsection 2 does not apply to that determination.~~ Each party involved in or affected by the predetermination must be provided information on the workers' compensation laws and the effect of independent contractor status in relation to those laws. A predetermination under ~~section 105 subsection 4-A~~ related to a person engaged in harvesting forest products is effective for one calendar year or the duration of the contract, whichever is shorter.

Sec. 10. 39-A MRSA §401, sub-§4-A is enacted to read:

4-A. Predetermination of independent contractor status. A landowner and a contractor may submit to the board, on forms approved by the board, a request for predetermination of the status of the contractor as an independent contractor.

A. A request under this subsection is deemed to have been approved if the board does not deny or take other appropriate action on the submission within 30 days.

B. 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 administrative law judge under this paragraph is final and not subject to review by the Superior Court.

C. The board shall provide to each party a certified copy of the decision regarding predetermination that is to be used as evidence at a later hearing on benefits.

D. The board is authorized to adopt rules to implement this subsection. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.