CHAPTER 15

OCCUPATIONAL DISEASE LAW

§601. Short title

This chapter may be known and cited as the "Occupational Disease Law." [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

SECTION HISTORY

PL 1991, c. 885, §A8 (NEW). PL 1991, c. 885, §§A9-11 (AFF).

§602. Application

Except as otherwise specifically provided, incapacity to work or death of an employee arising out of and in the course of employment and resulting from an occupational disease must be treated as the happening of a personal injury arising out of and in the course of the employment, within the meaning of the former Workers' Compensation Act or the Maine Workers' Compensation Act of 1992, and all the provisions of the applicable Act apply to that occupational disease. This chapter applies only to cases in which the last exposure to an occupational disease in an occupation subject to the hazards of that disease occurred in the State and after January 1, 1946. [PL 1995, c. 462, Pt. A, §80 (AMD).]

SECTION HISTORY

PL 1991, c. 885, §A8 (NEW). PL 1991, c. 885, §§A9-11 (AFF). PL 1995, c. 462, §A80 (AMD).

§603. Occupational disease defined

As used in this chapter, the term "occupational disease" means only a disease that is due to causes and conditions characteristic of a particular trade, occupation, process or employment and that arises out of and in the course of employment. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

SECTION HISTORY

PL 1991, c. 885, §A8 (NEW). PL 1991, c. 885, §§A9-11 (AFF).

§604. False reports

Compensation is not payable for an occupational disease if the employee who was employed on January 1, 1946 or who, at the time of entering into the employment of the employer by whom the compensation would otherwise be payable, falsely represents in writing that the employee has not previously been disabled, laid off or compensated in damages or otherwise because of such disease. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

SECTION HISTORY

PL 1991, c. 885, §A8 (NEW). PL 1991, c. 885, §§A9-11 (AFF).

§605. Aggravation of occupational disease

When an occupational disease is aggravated by any other disease or infirmity not itself compensable, or death or incapacity from any other cause not itself compensable is aggravated, prolonged, accelerated or in any way contributed to by an occupational disease, the compensation payable must be reduced and limited to the proportion only of the compensation that would be payable if the occupational disease were the sole cause of the incapacity or death as the occupational disease, as a causative factor, bears to all the causes of that incapacity or death, the reduction in compensation to be effected by reducing the number of weekly or monthly payments or the amounts of the payments

as, under the circumstances of the particular case, may be for the best interest of the claimant or claimants. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

SECTION HISTORY

PL 1991, c. 885, §A8 (NEW). PL 1991, c. 885, §§A9-11 (AFF).

§606. Date from which compensation is computed; employer liable

The date when an employee becomes incapacitated by an occupational disease from performing the employee's work in the last occupation in which the employee was injuriously exposed to the hazards of the occupational disease is the date of the injury equivalent to the date of injury under the former Workers' Compensation Act or the Maine Workers' Compensation Act of 1992. When compensation is payable for an occupational disease, the employer in whose employment the employee was last injuriously exposed to the hazards of the occupational disease and the insurance carrier, if any, on the risk when the employee was last exposed under that employer, are liable. The amount of the compensation must be based on the average wages of the employee on the date of injury. Notice of injury and claim for compensation must be given to the employer in whose employment the employee was last injuriously exposed to the hazards of the occupational disease. On the date of incapacity, if the employee is no longer working in the same occupation in which the employee incurred the last injurious exposure, then the average wages as of the date of injury of comparable employees employed full-time in the same occupation as the employee at the time of the employee's last injurious exposure must be used to determine the amount of compensation. The only employer and insurance carrier liable are the last employer in whose employment the employee was last injuriously exposed to the hazards of the disease during a period of 60 days or more and the insurance carrier, if any, on the risk when the employee was last so exposed, under that employer. [PL 2007, c. 313, §1 (AMD).]

SECTION HISTORY

PL 1991, c. 885, §A8 (NEW). PL 1991, c. 885, §§A9-11 (AFF). PL 1995, c. 462, §A81 (AMD). PL 2007, c. 313, §1 (AMD).

§607. Notice of incapacity; filing of claim

Sections 301 to 307 with reference to giving notice, making claims and filing petitions apply to cases under this chapter, except that, in cases under this chapter, the date of incapacity defined in section 606 is equal to the date of injury in sections 301 to 307, and the notice under section 301 must include the employee's name and address, the nature of the occupational disease, the date of incapacity, the name of the employer in whose employment the employee was last injuriously exposed for a period of 60 days to the hazards of the disease and the date when employment with that employer ceased. After compensation payments for an occupational disease have been legally discontinued, claim for further compensation for that occupational disease not due to further exposure to an occupational hazard tending to cause that disease are barred if not made within one year after the last previous payment. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

SECTION HISTORY

PL 1991, c. 885, §A8 (NEW). PL 1991, c. 885, §§A9-11 (AFF).

§608. Partial incapacity

Compensation is payable for partial incapacity due to occupational diseases as provided in section 213. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

SECTION HISTORY

PL 1991, c. 885, §A8 (NEW). PL 1991, c. 885, §§A9-11 (AFF).

§609. Compensation limits

Compensation for partial or total incapacity or death from occupational disease is payable as provided in sections 212, 213 and 215. Compensation is not payable for incapacity by reason of occupational diseases unless the incapacity results within 3 years after the last injurious exposure to the occupational disease in the employment. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

The 3-year limitation under this section does not apply to a full-time firefighter who files a claim for an occupationally related cancer under this chapter and whose last injurious exposure to a carcinogen in the employer's employment occurred after January 1, 1985. For the purposes of this section, "full-time firefighter" means a regular full-time member, active or retired, of a municipal fire department if that person has aided in the extinguishment of fires, whether or not that person had administrative duties or other duties as a member of the municipal fire department. [RR 1993, c. 1, §142 (NEW).]

SECTION HISTORY

PL 1991, c. 885, §A8 (NEW). PL 1991, c. 885, §§A9-11 (AFF). RR 1993, c. 1, §142 (COR).

§610. Examination of employees

An employer may request any of the employer's employees or prospective employees to be examined for the purpose of ascertaining if any of them are in any degree affected by an occupational disease or peculiarly susceptible to an occupational disease. Refusal to submit to such an examination bars that employee or prospective employee from compensation or other benefits provided by this chapter resulting from exposure to the hazards of occupational disease subsequent to the employee's refusal and while in the employ of the employer. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

SECTION HISTORY

PL 1991, c. 885, §A8 (NEW). PL 1991, c. 885, §§A9-11 (AFF).

§611. Impartial medical advice

On request of a party or on its own motion the board may in occupational disease cases appoint one or more competent and impartial physicians. Upon order of the board, the fees and expenses of the health care provider or health care providers must be paid by the employer. These appointees shall examine the employee and inspect the industrial conditions under which the employee has worked in order to determine the nature, extent and probable duration of the occupational disease, the likelihood of its origin in the industry and the date of incapacity. Section 207 applies to the filing and subsequent proceedings on the report of the appointees and to examinations and treatments by the employer. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

If a claim is made for death from an occupational disease, an autopsy may be ordered by the board under the supervision of impartial appointees. All proceedings for or payments of compensation to any claimant refusing to permit such an autopsy when ordered are suspended on and during the continuance of such a refusal. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

SECTION HISTORY

PL 1991, c. 885, §A8 (NEW). PL 1991, c. 885, §§A9-11 (AFF).

§612. Occupational loss of hearing

In case of loss of hearing resulting from occupational disease, the following rules are applicable in determining eligibility for compensation and the period during which compensation is payable. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

1. Definition. As used in this chapter, "occupational hearing loss" means a sensorineural loss of hearing in one or both ears due to prolonged exposure to injurious noise in employment. Injurious noise means sound capable of producing occupational hearing loss.
[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

2. Limitations on sound frequencies. Losses of hearing due to industrial noise for compensation purposes is limited to the frequencies of 500, 1,000 and 2,000 cycles per second. Loss of hearing ability for frequency tones above 2,000 cycles per second does not constitute disability for hearing.
[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

3. Determination of hearing loss. The percent of hearing loss, for purposes of the determination of compensation claims for occupational deafness, must be calculated as the average, in decibels, of the thresholds of hearing for the frequencies of 500, 1,000 and 2,000 cycles per second. Hearing levels must be measured by means of pure-tone air-conduction audiometric instruments calibrated in accordance with American National Standards Institute Standards S3.6-1969-R 1973 and S3.13-1972, referred to in this section as the "ANSI standard," or American Standards Association Standard Z24.5, 1951, referred to in this section as the "ASA standard," and in an area with ambient noise level within the limits specified in American National Standards Institute Criteria for Background Noise in Audiometric Room Standard S3.1, 1960-R 1977. If the losses of hearing average 25 decibels or less under the ANSI standard or 15 decibels or less under the ASA standard in the 3 frequencies, the losses of hearing do not constitute a compensable hearing disability. If the losses of hearing average 92 decibels or more under the ANSI standard or 82 decibels or more under the ASA standard in the 3 frequencies, then the losses are deemed a 100% compensable hearing loss.
[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

4. Compensation payable. Permanent partial disability is payable as follows:

A. For total occupational deafness of one ear, 50 weeks of compensation; [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

B. For total occupational deafness of both ears, 200 weeks of compensation; and [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

C. For partial occupational deafness in one or both ears, compensation is payable for those periods as are proportionate to the relation that the hearing loss bears to the amount provided in this subsection for total loss of hearing in one or both ears, as the case may be. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

The amount of hearing loss must be reduced by the average amount of hearing loss from nonoccupational causes found in the population at any given age.
[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

5. Measurement of hearing impairment. In measuring hearing impairment, the lowest measured losses in each of the 3 frequencies must be added together and divided by 3 to determine the average decibel loss. For every decibel of loss exceeding 15 decibels under the ASA standard or 25 decibels under the ANSI standard, an allowance of 1 1/2% must be made up to the maximum of 100%, which is reached at 82 decibels under the ASA standard or 92 decibels under the ANSI standard.
[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

6. Hearing impairment in both ears. In determining the percentage of loss in both ears, the percentage of impairment in the better ear is multiplied by 5. The resulting figure is added to the percentage of impairment in the poorer ear, and the sum of the 2 divided by 6. The final percentage represents the hearing impairment for both ears.
[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

7. Deductions by age. Before determining the percentage of hearing impairment, in order to allow for the average amount of hearing loss from nonoccupational causes found in the population at any

given age, 1/2 decibel for each year of the employee's age over 40 at the time of last exposure to industrial noise must be deducted from the total average decibel loss.
[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

8. Filing of claims. A claim for compensation for occupational deafness may not be filed until after the employee has been separated from the occupational noise for a period of at least 30 days. The last day of this period is the date of disability. "Separation from the occupational noise" means the use of hearing protective devices or equipment, including noise attenuators and ear plugs.
[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

9. Employers limit of liability. An employer is liable for the entire occupational deafness to which the employment has contributed, except that, if previous deafness is established by a hearing test or by other competent evidence, whether or not the employee was exposed to noise within 30 days preceding the test, the employer is not liable for previous loss so established. In addition, the employer is not liable for any loss for which compensation has previously been paid or awarded.

An employer is not liable for the payment of compensation for occupational deafness unless the employee claiming benefits has worked for the employer in employment exposing the employee to harmful noise for a total period of at least 90 days.

Consideration may not be given to the question of whether or not the ability of an employee to understand speech is improved by the use of a hearing aid.
[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

10. Restriction on liability. Compensation is not payable for temporary disability for loss of hearing due to exposure to injurious noise in employment.
[RR 2001, c. 1, §47 (COR).]

SECTION HISTORY

PL 1991, c. 885, §A8 (NEW). PL 1991, c. 885, §§A9-11 (AFF). RR 2001, c. 1, §47 (COR).

§613. Silicosis

In the absence of evidence in favor of the claim, disability or death from silicosis is presumed not to be due to the nature of any occupation, unless during the 15 years immediately preceding the date of disability the employee was exposed to the inhalation of silica dust over a period of at least 2 years. If the employee has been employed by the same employer during the whole of the 2-year period, the employee's right to compensation against such employer is affected by the fact that the employee had been employed during any part of the 2-year period outside of the State. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

SECTION HISTORY

PL 1991, c. 885, §A8 (NEW). PL 1991, c. 885, §§A9-11 (AFF).

§614. Special provisions for asbestos-related diseases

1. Definition. As used in this section, the term "asbestos-related disease" means a disease caused by exposure to asbestos.
[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

2. Scope. This section applies only to asbestos-related diseases caused or contributed to by a last injurious exposure to asbestos that occurred on or after November 30, 1967.

Except as otherwise provided in this section, all provisions of this chapter apply to asbestos-related diseases.
[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

3. Aggravation of condition. Section 605 does not apply to asbestos-related diseases.

[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

4. Last employer liable; notice. Notwithstanding section 606, the only employer and insurance carrier liable is the last employer in whose employment the employee was last injuriously exposed to asbestos, and the insurance carrier, if any, on the risk when the employee was last so exposed under that employer. Notice of incapacity under section 607 must include the name of that employer and the date when employment with that employer ceased.
[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

5. Compensation limit. The 3-year limit provided in section 609 does not apply to asbestos-related diseases.

Nothing in this section may be construed to require retroactive payments of compensation for periods of incapacity that occurred prior to October 1, 1983 or retroactive payments of death benefits for periods of time prior to October 1, 1983. Compensation for claims permitted under this section is payable only for periods of incapacity occurring after October 1, 1983.
[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

6. Further compensation. Notwithstanding section 607, after compensation payments for incapacity or death caused by an asbestos-related disease have been legally discontinued, a claim for further compensation for that disease not due to further exposure to asbestos in that employment is barred if not made within 40 years after the last previous payment.
[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

7. Compensation benefits. Compensation under this section is paid as follows.

A. If an employee is determined to be entitled to compensation for periods of total incapacity occurring on or after October 1, 1983, or if a dependent of an employee is determined to be entitled to full death benefits for periods occurring on or after October 1, 1983, and the employee became incapacitated or died on or after November 30, 1967 and before January 1, 1972, then the weekly compensation paid is equal to 2/3 of the average weekly wage in the State, as computed by the Department of Labor, that exists on the date the worker files a claim for compensation. If an employee is determined to be entitled to compensation for periods of partial incapacity occurring on or after October 1, 1983, and the employee became incapacitated on or after November 30, 1967 and before January 1, 1972, then the weekly compensation paid is equal to 2/3 of the difference, due to the injury, between the average weekly wage in the State, as computed by the Department of Labor, that exists on the date the worker files a claim for compensation and the weekly wages, earnings or salary that the employee is able to earn after the claim is filed. If a dependent of an employee is determined to be entitled to partial death benefits for periods occurring on or after October 1, 1983 and the employee died on or after November 30, 1967 and before January 1, 1972, then the weekly compensation paid is equal to the same proportion of the weekly payment provided in this paragraph for full death benefits, as the total amount contributed by the employee to such partial dependents for their support during the year prior to incapacity bears to the employee's earnings during that period. [PL 1995, c. 560, Pt. G, §28 (AMD).]

B. If an employee is determined to be entitled to compensation for periods of total or partial incapacity occurring on or after October 1, 1983 or if a dependent of an employee is determined to be entitled to full or partial death benefits for periods occurring on or after October 1, 1983 and the employee became incapacitated or died on or after January 1, 1972 and before October 1, 1983, then the initial weekly compensation paid is equal to the compensation that would have been paid had compensation payments begun at the time the employee became incapacitated or died and that compensation had been adjusted annually as provided in former Title 39, section 54, 55 or 58, whichever section was applicable. This subsection may not be interpreted as providing for any adjustment for inflation in excess of the adjustment provided in former Title 39, section 54, 55 or 58. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

C. If an employee becomes incapacitated or dies on or after October 1, 1983, but before June 30, 1985, then compensation is payable in the same manner and amounts as provided in former Title 39, sections 54, 55 and 58. If an employee becomes incapacitated or dies on or after June 30, 1985 but before November 20, 1987, then compensation is payable in the same manner and amount as provided in former Title 39, sections 54-A, 55-A and 58-A. If an employee becomes incapacitated or dies on or after November 20, 1987 but before January 1, 1993, compensation is payable in the same manner and amount as provided in former Title 39, sections 54-B, 55-B and 58-A. If an employee becomes incapacitated or dies on or after January 1, 1993, compensation is payable in the same manner and amount as provided in sections 212, 213 and 215. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

[PL 1995, c. 560, Pt. G, §28 (AMD).]

8. Section not applicable. This section does not apply to an asbestos-related disease of any worker who, at the time of the last injurious exposure to asbestos, was covered by the federal Longshore and Harbor Workers' Compensation Act of March 4, 1927, Chapter 509, 33 United States Code, Section 901, or the Federal Employees Compensation Act, 5 United States Code, Section 8101. A worker is deemed to be covered by one of those acts if, at the time of the worker's last injurious exposure to asbestos, the worker was an employee, as defined by those federal acts, and was employed in employment that is subject to any of those federal acts.

[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

SECTION HISTORY

PL 1991, c. 885, §A8 (NEW). PL 1991, c. 885, §§A9-11 (AFF). PL 1995, c. 560, §G28 (AMD).

§615. Disability due to radioactive properties

Notwithstanding section 606 or any other provision of this chapter, the employee need not be exposed to radioactive substances for a period of 60 days or more, and the time for filing claims does not begin to run in cases of incapacity due to exposure to radioactive substances until the later of the time after incapacity or the time the person claiming benefits knew, or by exercise of reasonable diligence should have known of the causal relationship between the employment and the employee's incapacity. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

SECTION HISTORY

PL 1991, c. 885, §A8 (NEW). PL 1991, c. 885, §§A9-11 (AFF).

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