§355. Employment Rehabilitation Fund

If an employee who has completed a rehabilitation program under section 217, whether implementation is approved or ordered by the board, subsequently sustains a personal injury arising out of and in the course of employment and that injury, in combination with the prior injury, results in a reduction in earning capacity that is substantially greater in duration or degree, or both, than that which would have resulted from the subsequent injury alone, taking into account the age, education, employment opportunities and other factors related to the employee, the employer at the time of the subsequent injury is entitled to reimbursement from the Employment Rehabilitation Fund, referred to in this section as the "fund," as provided in this section. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

1. Fund administration and contributions. There is established a special fund, known as the Employment Rehabilitation Fund, for the sole purpose of making payments in accordance with this Act. The fund is administered by the board. The Treasurer of State is the custodian of the fund. All money and securities in the fund must be held in trust by the Treasurer of State for the purpose of making payments under this Act and are not money or property for the general use of the State. The fund does not lapse.

The Treasurer of State may disburse money from the fund only upon written order of the board. The Treasurer of State shall invest the money of the fund in accordance with law. Interest, income and dividends from the investments must be credited to the fund.
[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

2. Limitations. An employer is not entitled to reimbursement from the fund in the event of subsequent injury if an injured employee returns to the employee's preinjury job with the same employer without the provision of significant rehabilitation services or significant modification of the workplace.
[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

3. Reimbursement. The employer must be reimbursed at least quarterly from the fund for any weekly wage replacement benefits for which the employer is liable under section 212, 213 or 215 and that are paid by that employer.

A. An employer entitled to reimbursement under this section remains liable to the employee for all payments otherwise required from the employer by this Act and remains responsible for carrying out the rehabilitation efforts required by this Act as a result of the subsequent injury. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

B. The board shall order a reduction, suspension or termination of reimbursement of an employer under this section if the board finds that the employer has not made a bona fide effort to return the employee to continuing suitable employment. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]
[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

4. Apportionment. Reimbursement under this section must be reduced by the amount of any contribution paid to the employer by any other employer for wage replacement benefits on the basis of apportioned liability under section 354.

A. If insurers disagree on the apportionment of liability in a case under this section, the matter must be considered by the board before an insurer may file a petition under section 354. The board shall encourage agreement between the insurers and, if agreement can not be achieved, shall make a recommendation on the apportionment of liability. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]
[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

5. Employer knowledge. An employer otherwise entitled to reimbursement under this section is entitled to that reimbursement regardless of whether the employer has knowledge at any time that the employee had completed an approved rehabilitation plan.
[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

6. Hiring incentive; wage credit. If an employer hires an employee after the employee has completed a rehabilitation program under section 217, that subsequent employer may apply for a wage credit under this subsection. For the purposes of this subsection, the term "employer" does not include the insurer of a subsequent employer or the same employer for whom an employee worked when the employee sustained the injury for which the employee received rehabilitation.

A. The subsequent employer must file an application for a wage credit by providing the board, within 2 weeks after the close of the first 90 days of employment of the employee, with a statement of the total direct wages, earnings or salary the employer paid to the employee for the first 90 days of employment along with such verification as may be required by rule of the board. Within 2 weeks after the close of the first 180 days of employment, the subsequent employer must provide to the board a supplemental report of the direct wages, earnings and salary for the 2nd 90-day period, along with the required verification. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

B. The board shall compute the wage credit, which consists of a sum equal to 50% of the average weekly direct wages, earnings or salary for the 90-day period listed in the subsequent employer's application or statement, but may not exceed the amount of workers' compensation benefits that the employee did not receive because of the employment but would have been entitled to for the wage credit period, based on the average weekly workers' compensation benefits during the most recent 60-day period in which the employee did receive benefits preceding the employee's hiring by the employer.

(1) On adequate verification of the application or statement, the board shall pay the amount for each 90-day period in a lump sum to the subsequent employer within 30 days of receiving the application or statement.

(2) The board shall bill these sums to the insurer or self-insurer that was responsible for payment of the compensation received by the employee immediately before the employee's hiring by the subsequent employer. When the sum is received from the insurer or self-insurer, the board shall deposit it in the fund. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

C. If the employment with the subsequent employer is terminated by the employer without good cause before the completion of 12 consecutive months of employment, the subsequent employer shall return to the board all wage credits received by the employer for that employee and all sums paid into the fund by the insurer or self-insurer must be returned to that insurer or self-insurer. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

D. When the wage credit is paid from the fund to an employer, the insurer or self-insurer who paid the sum into the fund has no further obligation to pay any sums into the fund for any future reemployment of that employee, except as provided in paragraph E.

(1) Total wage credit payments under a plan may not exceed a period of 180 days, not including periods subject to refunds under paragraph C.

(2) The board shall inform subsequent employers of the number of days of wage credits available, if it is less than 180 days. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

E. Wage credit payments are not dependent on the receipt by the fund of payments from an insurer or self-insurer. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

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

7. Plan implementation costs; payment; reimbursement. The actual and direct costs of implementing plans ordered by the board under section 217, subsection 2 must be paid from the fund. Payments must be made directly to the rehabilitation providers or other persons who provide services under the plan. Upon an order of recovery of plan implementation costs under section 217, subsection 3, the board shall assess the employer who refused to agree to implement the plan under section 217 an amount equal to 180% of the costs paid from the fund under this subsection. An employer may appeal the imposition or amount of this assessment to the board. The employee may not be a party to this appeal.

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

8. Jurisdiction. The board has jurisdiction over all claims brought against the fund.

A. The fund is not bound as to any question of law or fact by reason of any award or any adjudication to which the fund was not a party or in relation to which the fund was not notified, at least 21 days prior to the award or adjudication, that the fund might be subject to liability for the injury or death of an employee. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

B. An employer shall notify the board of any possible claim for subsequent injury reimbursement against the fund as soon as practicable, but in no event later than one year after the injury or death of an employee. Failure to provide timely notice bars the claim. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

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

9. Legal representation. The Attorney General shall provide legal representation for any claim made under this section, including the enforcement of an assessment made under subsection 7 or the defense of an employer's appeal of that assessment.

A. The reasonable expense of prosecution or defense by the Attorney General of assessments to or claims against the fund, subject to the approval of the board, are payable out of the fund. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

B. The Attorney General may not prosecute an assessment against the State or defend the fund against any claim brought by the State. The board may hire, using money from the fund, private counsel for this purpose. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

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

10. Effect on obligations of prior employers. The availability of reimbursement under this section does not limit or reduce the obligation of any previous employer to provide benefits under this Act to the employee.

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

11. Freedom from liability. The State is not liable for any claim against the fund that is in excess of the fund's current ability to pay. If any claim against the fund is denied due to an inadequate fund balance, that claim is entitled to priority over later claims when an adequate balance is restored.

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

12. Applicability. Reimbursement under this section is available solely with respect to employees who are injured and rehabilitated after November 20, 1987.

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

13. Reimbursement.

[PL 2001, c. 448, §3 (RP).]

14. Funding; assessments. This subsection governs funding of the Employment Rehabilitation Fund.

A. The board may levy an assessment when the balance in the fund is insufficient to meet obligations of the fund under this section. The assessment must be levied on each insurer based on its actual paid losses during the previous calendar year. [PL 2001, c. 448, §4 (NEW).]

B. Every insurer shall keep as permanent records a record of the amount and date of each loss paid. The records must be open for inspection at all times. Every insurer shall, on or before the 60th day following the end of a calendar quarter, render a report to the State Tax Assessor stating the amount of losses paid by the insurer during the preceding calendar quarter. That report must contain any further information the board prescribes by rule. [PL 2001, c. 448, §4 (NEW).]

C. The State Tax Assessor shall pay daily all receipts from any assessment and any receipts received under paragraph F to the Treasurer of State. The Treasurer of State shall deposit all receipts as received in the fund. [PL 2001, c. 448, §4 (NEW).]

D. The State Tax Assessor or the State Tax Assessor's duly authorized agent or the board, for the purpose of determining the truth or falsity of any statement or return made by the insurer, may:

(1) Enter any place of business of an insurer to inspect any books or records of the insurer;

(2) Notwithstanding any other provision of law, inspect any records or reports filed by an insurer with the Superintendent of Insurance; and

(3) Delegate these powers to the Superintendent of Insurance or the superintendent's deputies, agents or employees. [PL 2001, c. 448, §4 (NEW).]

E. Whenever any insurer fails to pay any assessment due under this subsection within the time specified by the board, the Attorney General shall enforce payment by civil action against that insurer for the amount of the assessment in the Superior Court in and for the county or the District Court in the division in which that insurer has the insurer's place of business, or in the Superior Court of Kennebec County. [PL 2001, c. 448, §4 (NEW).]

F. In every case of the death of any employee when there is no person entitled to compensation, the employer shall pay to the Treasurer of State a sum equal to 100 times the average weekly wage in the State as computed by the Department of Labor to be credited to the fund. [PL 2001, c. 448, §4 (NEW).]

G. For the purposes of this subsection, "insurer" means an insurance company or association that does business or collects premiums for workers' compensation insurance in this State or an individual or group self-insurer under this Act, including the State and any other public or governmental authority. [PL 2001, c. 448, §4 (NEW).]

[PL 2001, c. 448, §4 (NEW).]

SECTION HISTORY

PL 1991, c. 885, §A8 (NEW). PL 1991, c. 885, §§A9-11 (AFF). PL 2001, c. 448, §§3,4 (AMD).

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