

WORKERS' COMPENSATION LEGISLATION UPDATE – 6/14/19

As promised, below is a matrix of the concepts that were passed out of the Labor & Housing Committee last night. These are complicated issues that we have attempted to simplify so, if you have any questions, please let us know. Keep in mind that NCCI has priced the additional cost to the system for the Original Majority Report at 4.2% to 6.3%. They have yet to price out the bill that passed out of committee but, suffice it to say, it will be less than 4.2% to 6.3%.



As we have indicated before, each side got something out of this compromise and each side had to give things that they were not happy about. In the end, however, we feel good about the system improvements and the predictability that resulted from this compromise, understanding that the benefit increases are going to hit our members and impact the economy. To her credit, Governor Mills actively acknowledged the important roles that both labor and business play, which is why this result is much more balanced than the original majority report.

And as long as we are acknowledging those who played important roles in this compromise, let us start with the Republicans serving on the Labor & Housing Committee, especially Senator Stacy Guerin and Rep. Dick Bradstreet. At every turn, they were asking for input on how these issues would impact businesses and injured employees. Supported by their leadership, they dug in when necessary and they negotiated in good faith in order to form a compromise that is reasonable. They deserve our credit for this outcome, and for their dedicated public service. While politicians are easy targets for indignation, sometimes deservedly so, having had this experience with Senator Guerin and Rep. Bradstreet gives me a much greater appreciation for their sacrifice and struggle on this and other important issues.

The other group that needs mentioning is the Business Coalition that formed that gave the Republicans the expertise, support and confidence that they needed to know they were on the right side of these issues. AGC, PLC, MEMA, the Retail Lumber Dealers, ABC, Maine Beer & Wine Distributors and many of the self-insured groups that are administrated by Joe Edwards were all actively engaged on this issue. While Joe might not have been able to be the face of our efforts, his knowledge and talents behind the scenes were invaluable to get the resulting compromise.

From here, LD 756 still needs to be voted on in the House and the Senate. While we do not expect any issues, there is always the possibility of things going sideways. If anything occurs going forward, we will let members know.

BENEFIT INCREASES

ISSUE	CURRENT LAW	ORIGINAL MAJORITY REPORT FOR LD 756	LD 756 PASSED OUT OF LABOR COMMITTEE 6/13/19
Injured Worker Maximum Compensation	100% State Average Weekly Wage	125% State Average Weekly Wage – made changes to the inclusion of fringe benefits in the AWW calculation.	125% State Average Weekly Wage
Cost of Living (COLA) Adjustment for Total Incapacity claims	None	Effective after 5 years of benefits have been paid.	Effective after 5 years of benefits have been paid.
Cost of Living (COLA) Adjustment for Partial Incapacity claims	None	Effective after 10 years of benefits have been paid if PI is over 12%.	None

Partial Incapacity Claim Durational Limit	10 years with a hardship provision that includes wage level and PI threshold.	12 years unless injured employee has a PI of 12% or greater – then they are eligible for lifetime benefits.	12 years and eliminate permanent impairment threshold.
Workplace Fatality Benefits When There Are No Dependents	100 weeks of benefits are paid to the Maine Supplemental Benefits Fund.	500 Weeks of benefits paid to parents of the deceased worker, retroactive to 1/1/19.	500 Weeks of benefits paid to parents of the deceased worker. Retroactivity to 1/1/19 but only for the amount already paid to SBF.
Employee Notice of Injury Requirement	30-days	90-days	60-days
Attorney Fees for Settlements	10% on the first \$50k and then a reducing sliding scale up to \$100k.	10% flat.	10% flat.
Studies	None	Directs the WCB to study the worker advocate program compensation, work search/voc rehab, and protecting employees whose employers have wrongfully not secured WC coverage.	Directs the WCB to study the worker advocate program compensation, work search/voc rehab, and protecting employees whose employers have wrongfully not secured WC coverage.

SYSTEM IMPROVEMENTS

ISSUE	CURRENT LAW	ORIGINAL MAJORITY REPORT FOR LD 756	LD 756 PASSED OUT OF LABOR COMMITTEE 6/13/19
Political Predictability	None	None	Governor will not entertain any additional workers comp bills except for those bills requiring technical changes and any substantive measures that are supported by a bipartisan consensus.
Administrative Law Judge Appointments/ Reappointments	Majority of WCB.	No change.	Supermajority vote of the WCB – would need 5 of 7 votes.
Time to Pay and/or Investigate Claims	14-days to decide to pay or deny.	No change.	45-days to investigate with a provision to notify injured employee of status within 14 days. Payments can be made without creating a payment scheme within the 45-days, allowing for payment without prejudice.
Paid Time Off When Benefits are Being Paid	Certain circumstances may allow for benefits to be paid in addition to employees collecting PTO.	No change.	Injured employees cannot get WC benefits and PTO to disincentivize return to work. Employers cannot require injured employees to use PTO instead of collecting WC benefits.
Deadline to File Petitions After Mediation	2 Years.	No change.	Require rulemaking to establish a requirement to file petitions within a reasonable timeframe in an effort to expedite litigation and create predictability.