

FOR REVIEW 5/28/19

MAJORITY REPORT:

Committee Amendment to LD 756, An Act To Improve the Maine Workers' Compensation Act of 1992

Amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

Sec. 1. 39-A MRSA §102, sub-§4, ¶ H is amended to read:

H. "Average weekly wages, earnings or salary" does not include any fringe or other benefits paid by the employer that continue during the disability. Any fringe or other benefit paid by the employer that does not continue during the disability must be included for purposes of determining an employee's average weekly wage to the extent that the inclusion of the fringe or other benefit will not result in a weekly benefit amount that is greater than 2/3 of the state average weekly wage at the time of injury. The limitation on including discontinued fringe or other benefits only to the extent that such inclusion does not result in a weekly benefit amount greater than 2/3 of the state average weekly wage at the time of injury does not apply if the injury results in the employee's death. For injuries occurring on or after January 1, 2020, any fringe or other benefit paid by the employer that does not continue during the disability must be included for purposes of determining an employee's average weekly wage to the extent that the inclusion of the fringe or other benefit will not result in a weekly benefit amount that is greater than 125% of the state average weekly wage at the time of injury. The limitation on including discontinued fringe or other benefits only to the extent that such inclusion does not result in a weekly benefit amount greater than 125% of the state average weekly wage at the time of injury does not apply if the injury results in the employee's death.

Sec. 2. 39-A MRSA §205, sub-§2 is amended to read:

2. Time for payment. The first payment of compensation for incapacity under section 212 or 213 is due and payable within 14 days after the employer has notice or knowledge of the injury or death, on which date all compensation then accrued must be paid, unless the first payment cannot be made within 14 days due to an Act of God or to a factual mistake, in which case the first payment is due and payable as soon as practicable after 14 days. Subsequent incapacity payments must be made weekly and in a timely fashion. Every insurance carrier, self-insured and group self-insurer shall keep a record of all payments made under this Act and of the time and manner of making the payments and shall furnish reports, based upon these records, to the board as it may reasonably require.

Sec. 3. 39-A MRSA §211 is amended to read:

§211. Maximum Benefit Level

Effective January 1, 1993, the maximum weekly benefit payable under section 212, 213 or 215 is \$441 or 90% of state average weekly wage, whichever is higher. Beginning on July 1, 1994, the maximum benefit level is \$441 or 90% of the state average weekly wage as adjusted annually utilizing the state average weekly wage as determined by the Department of Labor, whichever is higher. If the injured employee's date of injury is on or after January 1, 2013, the maximum benefit level is \$441 or 100% of the state average weekly wage as adjusted annually utilizing the state average weekly wage as determined by the Department of Labor, whichever is higher. If the injured employee's date of injury is on or after January 1, 2020, the maximum benefit level is \$441 or 125% of the state average weekly wage as adjusted annually utilizing the state average weekly wage as determined by the Department of Labor, whichever is higher.

1

Sec. 4. 39-A MRSA §212, sub-§4 is enacted to read:

4. Annual adjustment. For dates of injury on or after January 1, 2020, beginning after the receipt of 260 weeks of benefits under this section, section 213 or the combination of both, weekly compensation benefits under this section must be adjusted annually. The adjustment is equal to the actual percentage increase or decrease in the state average weekly wage, as computed by the Department of Labor, for the previous year or 5%, whichever is less.

The annual adjustment must be made after the receipt of 260 weeks of benefits under this section, section 213 or the combination of both and on each succeeding anniversary date of the injury, except that when the effect of the maximum under section 211 is to reduce the amount of compensation to which the claimant would otherwise be entitled, the adjustment must be made annually on July 1st.

Sec. 5. 39-A MRSA §213, sub-§1, ¶ C is enacted to read:

C. If the injured employee's date of injury is on or after January 1, 2020, the weekly compensation is equal to $\frac{2}{3}$ of the difference, due to the injury, between the employee's average gross weekly wages, earnings or salary before the injury and the average gross weekly wages, earnings or salary that the employee is able to earn after the injury, but not more than the maximum benefit under section 211. An employee is not eligible to receive compensation under this paragraph after the employee has received a total of 624 weeks of compensation under section 212, subsection 1-A, this paragraph or both. The board may in the exercise of its discretion extend the duration of benefit entitlement beyond 624 weeks in cases involving extreme financial hardship due to inability to return to gainful employment. This authority may be delegated by the board, on a case-by-case basis, to an administrative law judge or a panel of 3 administrative law judges. The board, administrative law judge or panel shall make a decision under this paragraph expeditiously. A decision under this paragraph made by an administrative law judge or a panel of 3 administrative law judges may not be appealed to the board under section 320, but may be appealed pursuant to section 321-A.

Orders extending benefits beyond 624 weeks are not subject to review more often than every 2 years from the date of the board order or request allowing an extension.

Sec. 6. 39-A MRSA §213, sub-§1-C is enacted to read:

1-C. Long-term partial incapacity; date of injury on or after January 1, 2020. If the injured employee's date of injury is on or after January 1, 2020, after the exhaustion of benefits under subsection 1, paragraph C, if the whole person impairment resulting from the injury is 12% or greater, the employer shall pay weekly compensation equal to the difference between the employee's average weekly wage at the time of the injury and the employee's postinjury wage, but not more than the maximum benefit under section 211.

Sec. 7. 39-A MRSA §213, sub-§5 is enacted to read:

5. Annual adjustment. For dates of injury on or after January 1, 2020, beginning 520 weeks from the date of injury, if the whole person permanent impairment resulting from the injury is 12% or greater, weekly compensation benefits under this section must be adjusted annually. The adjustment is equal to the actual percentage increase or decrease in the state average weekly wage, as computed by the Department of Labor, for the previous year or 5%, whichever is less.

The annual adjustment must be made after 520 weeks from the date of injury and each succeeding anniversary date of the injury, except that when the effect of the maximum under section 211 is to reduce the amount of

compensation to which the claimant would otherwise be entitled, the adjustment must be made annually on July 1st.

Sec. 8. 39-A MRSA §215, sub-§1-B is enacted to read:

1-B. Death of employee; date of injury on or after January 1, 2019. If an injured employee's date of injury is on or after January 1, 2019, if death results from the injury of the employee and if the employee has no dependents, the employer shall pay or cause to be paid to the estate of the employee a weekly payment equal to 2/3 of the employee's gross average weekly wages, earnings or salary, but not more than the maximum benefit under section 211, for a period of 500 weeks from the date of death. This subsection does not apply to an injury or death of an employee occurring before January 1, 2019.

Sec. 9. 39-A MRSA §301 is amended to read:

§ 301. Notice of injury

For claims for which the date of injury is prior to January 1, 2013, proceedings for compensation under this Act, except as provided, may not be maintained unless a notice of the injury is given within 90 days after the date of injury. For claims for which the date of injury is on or after January 1, 2013 and prior to January 1, 2020, proceedings for compensation under this Act, except as provided, may not be maintained unless a notice of the injury is given within 30 days after the date of injury. For claims for which the date of injury is on or after January 1, 2020, proceedings for compensation under this Act, except as provided, may not be maintained unless a notice of the injury is given within 90 days after the date of injury. The notice must include the time, place, cause and nature of the injury, together with the name and address of the injured employee. The notice must be given by the injured employee or by a person in the employee's behalf, or, in the event of the employee's death, by the employee's legal representatives, or by a dependent or by a person in behalf of either.

The notice must be given to the employer, or to one employer if there are more employers than one; or, if the employer is a corporation, to any official of the corporation; or to any employee designated by the employer as one to whom reports of accidents to employees should be made. It may be given to the general superintendent or to the supervisor in charge of the particular work being done by the employee at the time of the injury. Notice may be given to any doctor, nurse or other emergency medical personnel employed by the employer for the treatment of employee injuries and on duty at the work site. If the employee is self-employed, notice must be given to the insurance carrier or to the insurance carrier's agent or agency with which the employer normally does business.

Sec. 10. 39-A MRSA §325, sub-§6 is enacted to read:

6. Attorney's fees for lump-sum settlement in cases in which the injury occurred on or after January 1, 2020. In cases in which the injury to the employee occurred on or after January 1, 2020, attorney's fees for lump-sum settlements must be determined as follows.

A. Before computing the fee, reasonable expenses incurred on the employee's behalf must be deducted from the total settlement, including:

- (1) Medical examination fee and witness fee;
- (2) Any other medical witness fee, including cost of subpoena;
- (3) Cost of court reporter service; and
- (4) Appeal costs; and

B. The computation of the fee, based on the amount resulting after deductions according to paragraph A, may not exceed 10%.

C. If a lump sum settlement includes any amount that is allocated for past due benefits, the administrative law judge shall review the allocation to make sure that it is not for an amount that is greater than what the Employee is claiming.

Sec. 11. Study of advocate pay. No later than January 1, 2020, the Workers' Compensation Board shall study of the advocate program established in Maine Revised Statutes, Title 39-A, section 153-A, including the salary paid to advocates, and make recommendations for any changes to improve the advocate program and its representation of injured workers. The Joint Standing Committee on Labor and Housing may report out legislation to the Second Regular Session of the 129th Legislature based on the board's report.

Sec. 12. Workers' Compensation Board to establish working group on certain issues; report. The Workers' Compensation Board shall convene a working group of stakeholders to evaluate issues related to work search and vocational rehabilitation requirements for injured workers and protections for injured workers whose employers have wrongfully not secured workers' compensation payments. On behalf of the working group, the Workers' Compensation Board shall report to the Joint Standing Committee on Labor and Housing by January 30, 2020 with recommendations and any draft implementing legislation to address these issues. The Joint Standing Committee on Labor and Housing may report out legislation to the Second Regular Session of the 129th Legislature related to the report and recommendations.

Sec. 13. Retroactive application. That section of this Act that enacts Maine Revised Statutes, Title 39-A, section 215, subsection 1-B applies retroactively to January 1, 2019.

SUMMARY

This amendment is the majority report of the committee and replaces the bill, which was a concept draft.

The amendment does the following:

Section 1 amends the definition of "average weekly wage" to clarify that, for an injury occurring on or after January 1, 2020, any fringe or other benefit paid by the employer that does not continue during the disability must be included to the extent that the inclusion of the fringe or other benefit will not result in a weekly benefit amount that is greater than 125 % of the state average weekly wage at the time of the injury.

Section 2 allows an exception to the requirement that the first payment must be made by an employer within 14 days after notice of the injury or death if the payment cannot be made due to a factual mistake or an act of God.

Section 3 increases the maximum benefit level to 125% of the state average weekly wage for an injury occurring on or after January 1, 2020.

Section 4 requires a cost-of-living adjustment to be applied in cases of total incapacity after 260 weeks of benefits.

Section 5 extends the cap of benefits for partial incapacity from 520 weeks to 624 weeks.

Section 6 requires that after benefits have been exhausted, the employee is entitled to continue benefits of the employee has a permanent impairment of 12% or greater.

Section 7 requires a cost-of-living adjustment to be applied in cases of partial incapacity after 520 weeks of benefits if the employee has a permanent impairment of 12% or greater.

Section 8 provides that, if a deceased employee has no dependents, the employer must pay benefits to the estate of the deceased employee for a period of 500 weeks. Section 8 applies retroactively to an injury or death occurring on or after January 1, 2019.

Section 9 extends the notice of injury requirement from 30 days to 90 days.

Section 10 caps the maximum percentage of attorneys' fees that may be awarded at 10% in a lump-sum settlement in cases in which the injury occurred on or after January 1, 2020.

Section 11 requires the Workers' Compensation Board to study the advocate program established in Maine Revised Statutes, Title 39-A, section 153-A, including the salary paid to advocates, and make recommendations for any changes to improve the advocate program and its representation of injured worker to the Joint Standing Committee on Labor and Housing no later than January 1, 2020.

Section 12 directs the Workers' Compensation Board to convene a working group of stakeholders to evaluate issues related to work search and vocational rehabilitation requirements for injured workers and protections for injured workers whose employers have wrongfully not secured workers' compensation payments. On behalf of the working group, the Workers' Compensation Board is required to report to the Joint Standing Committee on Labor and Housing by January 30, 2020 with recommendations and any draft implementing legislation to address these issues.

Section 13 makes clear the Legislature's intent that the provision of the amendment requiring death benefits to be paid if a deceased employee has no dependents applies retroactively to an injury or death occurring on or after January 1, 2019