

Analysis of Proposed Workers' Compensation Legislation and Current Maine Workers' Compensation Law

Status of the Bill:

LD 1571, *An Act To Amend the Laws Governing Workers' Compensation*, was sponsored by Rep. Andre Cushing and introduced in the first session of the 125th Legislature. The bill was carried over and a task force, chaired by Workers Compensation Board Director, Paul Sighinolfi, was convened to review the bill. Chairman Sighinolfi has submitted his report to the LCRED Committee. That report contains proposed legislation. Our understanding is that the LCRED committee will kill LD 1571 and consider Sighinolfi's proposed legislation (hereafter referred to as the "Committee bill"). This fact sheet addresses that proposed legislation. While the Committee bill is not nearly as draconian as LD 1571, it is very harmful to injured workers, particularly those who are most severely injured.

Workers' Compensation:

Workers' Compensation systems were created nearly 100 years ago in a grand compromise-- employers were exempted from any liability for workplace injuries and workers, in theory, were provided with medical care and speedy compensation for on-the-job injuries.

Workers Compensation is incredibly important. After Medicare and Social Security, it is the largest social insurance program in America today. Tens of thousands of Maine people are saved from poverty by the benefits provided by this system.

Recommendations:

While we feel some provisions of this legislation would be helpful to workers, taken as a whole, it will harm injured workers. We recommend rejecting this proposal.

Key Points:

1. A fair workers' compensation system prioritizes injured workers, not corporate profits and insurance companies. It's only fair that workers should have a small safety net that helps them to provide for their families and that pays for medical expenses.
2. This bill would cut a worker off from benefits after 618 weeks, even if their on-the-job injury prevents them from working for the rest of their life. It's unfair to set an arbitrary deadline that cuts an injured worker off from benefits without regard for his or her ability to earn wages.
3. Workers' Compensation rates have declined 57% in the past decade, and they've gone down over 7% in just the past year. This bill is a solution in search of a problem.
4. Over the past decade, fewer and fewer benefits paid out by workers' compensation system have gone to workers and more and more benefits have gone to insurance companies and medical costs. This bill would only make that worse.

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<p>Partial Incapacity Benefits (Section 213)</p>	<ul style="list-style-type: none"> • Current law establishes a tiered system to determine the length of benefits a worker is entitled to receive based on the degree to which they are injured. • Most workers (75%) are capped at 10 years (520 weeks) of benefits. • The most severely injured workers (the top 25%) are able to receive ongoing benefits for the duration of their disability and diminished capacity. 	<ul style="list-style-type: none"> •The proposal would cap benefits for all workers with a partial incapacity at 11.8 years (618 weeks) regardless of the severity of the worker's injury or wage-earning capacity. •The proposal would allow for workers to petition for extreme financial hardship should benefits expire. 	<ul style="list-style-type: none"> •This hurts the most severely injured workers by capping their benefits, regardless of the severity of the worker's injury or wage-earning capacity. •This section impacts virtually all workers in Maine's workers' compensation law because so few workers are classified as having a "total incapacity" (under Section 212 of the law.) • Last session after hearing powerful stories from first responders and others, the LCRED Committee unanimously rejected a proposal that would have removed behavioral, emotional or psychiatric conditions from factors to assess in making a determination of permanent impairment of an injured worker. This proposal will have essentially the same impact, freezing workers with these conditions out of the system after 618 weeks regardless of the impacts of their condition. • It is wrong to arbitrarily cut workers out of the system--whether their condition is mental or physical--when the impacts of their condition may last a lifetime. •The extreme financial hardship waiver does not provide a sufficient safety net for the most severely injured workers. In the past thirteen years, eighteen workers have sought extreme financial hardship and only six workers have been granted this extension. 1. •Moreover, the extreme financial hardship provision implies that you have to become destitute in order to qualify. The point of a Workers Compensation system is to prevent injured workers from becoming destitute. •Many workers who reach the 618 week cliff will have nowhere to go, and the costs of their injury will surely be shifted from the employer and insurance company to the public.

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Appellate Division	<ul style="list-style-type: none"> • Current appeals go to the Maine Supreme Court, which may refuse to take them. 	<ul style="list-style-type: none"> • This proposal would establish an Appellate Division for Maine's Workers' Compensation. • The panels would be comprised of at least three hearing officers selected by the Executive Director of the Board. • The proposal states that no hearing officer will be allowed to review his own decisions. 	<ul style="list-style-type: none"> • Under this proposal, injured workers will always have to pay for counsel when an appeal is brought against them. This would be a significant financial hardship for an injured worker who may already be struggling to make ends meet. This should be changed to include prevail provisions so that a worker does not have to pay for an appeal brought against them if they win. • The minimum number of hearing officers to sit on a panel is just three. This should be increased to at least five in order to enhance the precedential impact of the decision. • The failure to issue an appellate decision within six months of the initial decree should be deemed a denial of the appeal in order to prevent lengthy waiting periods and increased legal fees for injured workers. • In this proposal the Executive Director has the authority to select hearing officers for a panel. Under any Administration, this could lead to a lack of parity on the panel. • The Appellate Division will not have the authority to make sweeping legal decisions; the decision will only impact the case at hand. This means the case will still have to go to a Law Court.

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Denial of Benefits	<ul style="list-style-type: none"> • Under current law, when an appeal is pending, the injured worker is able to continue receiving benefits. • These benefits may recouped if the appeal is not decided in the worker's favor. 	<ul style="list-style-type: none"> • With a decree of a hearing officer, the injured worker could have his benefits halted while an appeal is pending. 	<ul style="list-style-type: none"> • This will certainly increase the number of appeals filed against workers. • This could "starve out" workers who are unable to work and will have little financial means to pursue an appeal. • It may drive workers to settle for less than they are entitled to, and again, shift costs to the public when workers who are unable to earn an income are no longer receiving workers' compensation support.
Changes to the Statute of Limitations	<ul style="list-style-type: none"> • Under current law, the clock starts ticking when a first report of injury is filed. A worker is notified that they have two years to take action. 	<ul style="list-style-type: none"> • Under this proposal, the first report obligation is removed thus causing the two-year statute to run at the time of injury, even if the injured worker is unaware of a condition until a later date. 	<ul style="list-style-type: none"> • This section creates additional gray area for workers whose injuries or conditions may take time to appear or that take time to become disabling enough to inhibit the ability to work. These workers, who sustained an on-the-job injury, could be disqualified simply because they did not recognize the injury immediately, because they were not aware that a statute of limitations clock was ticking, or because the injury took a longer period of time to appear. • Workers will be forced to file claims when there is no lost time benefit in dispute and no medical bill in dispute, resulting in increased litigation.
Calculation of Compensation rate	Under current law, the wage replacement benefits are calculated as 80% of post-tax income, which can be a complicated calculation	Under this proposal, the wage replacement benefits would be calculated at 2/3 of gross income.	<ul style="list-style-type: none"> • The changes made in this section will make it easier for workers, employers, and insurance companies to clearly calculate the wage replacement benefit a worker should be receiving.

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<p>Maximum compensation rate</p>	<ul style="list-style-type: none"> Under current law, the maximum compensation rate is 90% of the State Average Weekly Wage (\$634.13 as of July 1, 2011). A worker earning about \$49,500/year would reach this cap under the 2/3 of gross income calculation proposed above. 	<ul style="list-style-type: none"> Under this proposal, the maximum compensation rate would be 100% of the State Average Weekly Wage (\$704.59 as of July 1, 2011). A worker earning about \$55,000/year would reach this cap under the 2/3 of gross income calculation proposed above. This proposal is recommended <u>only</u> in conjunction with the 618 week durational limit proposed in Section 213. 	<ul style="list-style-type: none"> The changes proposed in this section would be beneficial in helping workers who earn a higher income make ends meet after an on-the-job injury. There is no need to tie the changes in maximum compensation to the durational limit. There is no direct correlation between a workers pre-injury income and the severity and duration of a worker's injury. It makes no sense make these changes dependent on one another.
<p>Vocational Rehabilitation</p>	<ul style="list-style-type: none"> Under current law, workers participating in vocational rehabilitation programs may have their claims challenged, with insurance companies or employers arguing that the workers ability to participate in rehabilitation indicates that they no longer qualify. 	<ul style="list-style-type: none"> This proposal would make it easier for workers to participate in vocational rehabilitation programs without facing the risk of losing their workers' compensation benefits. 	<ul style="list-style-type: none"> This is a positive change that will assist workers in gaining appropriate training and skills to re-enter the workforce with a different set of physical or mental abilities than they had prior to their workplace injury.

1. http://www.maine.gov/wcb/Board_Decisions/section_213/section213.html