

What the 2019 Changes to Maine Workers' Comp May Mean to You

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LD 756 resulted after Democrats took control of all the levers in Augusta thereby creating great concern about a rollback to pre-1993 benefits and costs. But, sounder minds generally prevailed, as the Governor kept a firm and fair hand on the tiller. The following changes take effect for injuries after January 1, 2020, unless otherwise noted.

1. Durational limits for partial benefits

Result: For partial incapacity under section 213, 12 years, no questions asked, in place of 1993's 10 years unless PI exceeds a threshold and 2013's 18% PI threshold plus other byzantine twists and turns.

Verdict: Partial return of sanity at small cost. HR managers can now advise injured workers without needing to retain a stable of actuaries and lawyers.

2. 14-day claims (already effective)

Result: Rule 1.1 codified to confirm that insurer must pay or deny within 14-days of notice of knowledge, but obligation is excused if due to act of God or mistake of fact or unavoidable circumstance. Otherwise, must begin paying (or file NOC) at day 14. Employer's failure to notify insurer is not an excuse. But, may suspend within 45-days of notice by filing NOC and may suspend after 45 days by filing 21-day suspension.

Verdict: Intent was to be fair and helpful. But: "let the games begin."

3. Increase in maximum and fringe benefit threshold

Result: Max rises from 100% of SAWW (\$856.79) to 125% of SAWW (\$1,070.98) with like increase in fringe benefit threshold.

Verdict: Boost for high wage earners (up to maybe \$83,000 per year) at small cost - nothing for little guy.

4. Return of COLAs

Result: After 5 years of payments, cases paid at total under section 212 get COLA of lesser of 5% or last increase in SAWW.

Verdict: Small cost and difficult to argue against, but is the camel's nose under the tent?

5. PTO offsets

Result: Offsets for payments made under wage continuation plans extended to include PTO plans unless use of PTO is mandated by employer (e.g. during period of FMLA) or paid upon separation from employment (what if can or does cash out PTO?). Board views sick and vacation payments as counting if part of one plan.

Verdict: Possibly clarifies existing uncertainty in case law.

6. New 60-day notice period

Result: 60-day notice period replaces 30-day notice period which replaced 90-day notice period which replaced 30-day notice period.

Verdict: Most practitioners recognize that it does not matter.

7. ALJ reappointments

Result: Need 5 of 7 Board votes to appoint new ALJs, rather than majority.

Verdict: Time will tell how or whether this affects new hires starting next year.

8. Attorney's fees for claimant lawyers

Result: More money for lawyers and less for injured workers at settlement, but perhaps, too, greater access to lawyers rather than advocates.

Verdict: One for lawyers. No surprise.

9. Death with no dependents

Result: Pay the parents.

10. Working group

Result: Business as usual, but will the Governor stay true to her word?