

Oppose the Majority Report to LD 443, An Act to Amend the Maine Workers' Compensation Act of 1992 To Provide Benefits to Seriously Injured Workers

The voice of Maine business

As amended, LD 443 represents a significant rollback, not only of the reforms passed in 2012, but of the reforms of 1992 as well. Prior to 1992, Maine was the most expensive state in the nation for workers' compensation. Our system was in crisis, and businesses were fleeing Maine due to the exorbitant costs. **Do we really want to go back to those days?**

As Amended, The Bill Proposes To...

- In addition to unlimited duration (no change) on total incapacity benefits, **a new class of long-term partial incapacity benefits is created** that would provide most individuals who have a partial incapacity with the potential of lifetime benefits, regardless of how serious the injury. The use of work capacity *and* earning capacity, as found in current law, is eliminated.
- **Once it is determined that the employee qualifies for "long-term partial incapacity" under Section 213, that decision could not be reviewed more than once every two years, apparently regardless of whether earnings change.**
- Entitlement to long-term partial incapacity benefits could be claimed at any point after 520 weeks (10 years) of benefits have expired – even years later – making it difficult or impossible to consider claims to be closed.
- Entitlement to long-term benefits could be claimed regardless of any objective measure of the severity of the injury.

Unless the employee actually refuses "suitable work," the employee would qualify for 100% partial simply by satisfying the unemployment benefit's "work search" test, which as we all know, is really a pro forma work search and tells you little about the labor market.

Why We Should Oppose These Changes...

- **This proposal would greatly increase costs of the system, and Maine remains a relatively high-cost state for workers' compensation.**
- The 100% partial eligibility test is a loosened standard for **100% benefit eligibility** relative to the standard which has always been in place in Maine, including prior to 1992.
- The proposal would result in very few partial cases being subject to a durational limit; **this is completely out of step with most other states in the country.**
- The 2012 legislation was a compromise with bipartisan support. It is inappropriate to renege on this compromise a year later, and in effect, repeal what was recently enacted in favor of a significant expansion of benefits. This bill represents an attempt, driven by organized labor, to roll back last session's comp reforms, and in fact, return to the failed policies of the past.

Partial incapacity benefits are already the most expensive part of the Workers' Compensation Act. If enacted, this proposal would cause a significant cost increase, by extending the duration and extent of incapacity benefits paid on claims.

- **Very few partial incapacity claims would now be subject to any durational limit.**
- Any partial claim of any significance will qualify for unlimited benefits. Only the minor injuries, with minor wage loss, would potentially be limited. In most of those cases, the employee will have probably returned to work and would potentially be earning a pre-injury average weekly wage at the end of the 10-year limit.

Here are some comparisons between this proposal and the current law, which was enacted in 2012 and applies to injuries on and after January 1, 2013:

- Under current law, partial incapacity benefits may be extended beyond 520 weeks *only if* the employee is working and earning 65% or less than the pre-injury average weekly wage after 520 weeks. Under this proposal, **benefits are unlimited if the employee is earning 70% or less of the average weekly wage.**
- Under current law, partial benefits may be extended only if the permanent impairment is in excess of 18%; under this proposal, **benefits could be unlimited regardless of the *permanent* impairment from the injury, and even if there is little or no *permanent* impairment caused by the injury. *The only measured standard is earnings.***
- Under current law, and also for the law in effect for injuries prior to January 1, 2013, work search evidence could establish entitlement to 100% benefits *only if it proved the lack of available work within the employee's restrictions in the labor market.* Under the proposal, a **pro forma unemployment style work search, showing a few contacts with random employers each week,** will suffice. This change means **the number of unemployed receiving 100% benefits will skyrocket.**
- This proposal **creates a moratorium on reviewing partial incapacity found at a level of 30% or higher (70% or less earning capacity) for two years after it is established, regardless of changes which occur.** Current law has no such moratorium.
- Under current law, *extended benefits are possible after 520 weeks of benefits expire.* Under the proposal, **a claim for extended benefits could be made any time after the 520 weeks expire – even years later!**

Even relative to the pre-2012 law, the proposed amendment to LD 443 adds cost!

- Under Section 213 for injuries prior to January 1, 2013, theoretically 25% of partial claims will qualify for unlimited benefits, with the remainder limited to 520 weeks. Under this proposal, as mentioned above, **virtually any partial claim of any significance would be unlimited.**
- Under the law for injuries prior to January 1, 2013, depending upon the applicable threshold, permanent impairment of 13% to 14% is needed to avoid the 520-week limitation. Under this proposal, **the 520-week limitation could be avoided regardless of the permanent impairment caused by the injury, even if the injury causes very minor or no permanent impairment.**