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September 30, 2024

Senator Michael Tipping, Chair
Representative Amy Roeder, Chair
Joint Standing Committee on Labor and Housing
100 State House Station
Augusta, ME 04333-0100

Re: Resolves 2023, c. 139; September Update

I. Introduction

In 1992, a Blue Ribbon Commission ("BRC") identified two "equally important" objectives for Maine's workers' compensation system: "substantial protection for workers who have suffered work-related injuries and diseases at an affordable cost to employers . . ." (*Report of the Blue Ribbon Commission to Examine Alternatives to the Workers' Compensation System and to Make Recommendations Concerning Replacement of the Present System ["BRC Report"]*, August 31, 1992, p. 3.)

The adequacy of benefits and their cost to employers are equally important elements of Maine's Workers' Compensation Act ("Act"). Therefore, proposals (such as the role of cost-of-living adjustments (COLA's)) must be analyzed in terms of both employer costs and benefit adequacy and not through the lens of only one or the other.

With respect to the first prong, Resolves 2023, c. 139 ("Resolve") requires:

> A thorough analysis of the data and reports that were considered, identification of data or other areas that require further study and recommendations on any changes or adjustments to workers' compensation benefits in order to ensure claimants are receiving adequate benefits[.]

Resolves 2023, c. 139, Sec. 2(1).

In particular, the Resolve requires an analysis of how workers' compensation benefits compare "to the current cost of living as determined by the United States Department of Labor, Bureau of Labor Statistics CPI-U for the New England Division . . ."

This report starts the benefit adequacy discussion by evaluating whether, in light of the impact of inflation, the benefit structure in Title 39-A ensures that injured workers receive "the income support that they require as a result of their injuries." *BRC Report*, p.3. This analysis will begin to provide a frame of reference for understanding if benefits are adequate.

II. Lost time benefits in Maine

In Maine, workers who suffer work-related injuries are entitled to weekly wage replacement benefits once they meet the waiting period.[1] The amount of the weekly benefit is based on the worker's average weekly wage (AWW). Most often, the AWW is the worker's average income for weeks worked in the prior 52-week period.[2] The weekly disability payment (called the compensation rate) is 2/3 of the AWW.[3] Weekly compensation cannot exceed 125% of the state average weekly wage (SAWW).[4] Incapacity benefits are paid under the following sections of the Act: §212 - total incapacity, §213 partial incapacity (100% if good faith work search does not yield a job), §213 - death benefits.[5] Injured workers are entitled to weekly benefits pursuant to § 212 for the duration of the disability. Benefits paid pursuant to § 213 are subject to a limit of 624 weeks, and death benefits are limited to 500 weeks.

III. Measuring the impact of inflation on purchasing power of currency

The Resolve requires an analysis, using the Consumer Price Index ("CPI") of how inflation impacts the extent to which incapacity benefits replace lost earnings.

According to the U.S. Bureau of Labor Statistics, Mid-Atlantic Information Office (https://www.bls.gov/regions/mid-atlantic/news-release/consumerpriceindex_northeast.htm),

> The Consumer Price Index for the Northeast Region is published monthly. The Consumer Price Index (CPI) is a measure of the average change in prices over time in a fixed market basket of goods and services. . . .
>
> The CPI is based on prices of food, clothing, shelter, fuels, transportation fares, charges for doctors' and dentists' services, drugs, and the other goods and services that people buy for day-to-day living.

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[1] Employees whose incapacity lasts for seven days or less are not entitled to incapacity benefits. Benefits begin on the eighth day of incapacity. If the incapacity lasts for more than 14 days the employee is entitled to payment from the date of injury. The waiting period does not apply to firefighters 39-A M.R.S.A. § 204.

[2] The purpose of the average weekly wage calculation is to arrive at an estimate of the "employee's future earning capacity as fairly as possible." *Fowler v. First Nat'l Stores, Inc*., 416 A.2d 1258, 1260 (Me. 1980) (quoting *Landry v. Bates Fabrics, Inc*., 389 A.2d 311, 313 (Me. 1978)). *Frank v. Manpower Temporary Servs*., 687 A.2d 623, 625 (Me. 1996).

[3] For workers injured between January 1, 1993 and December 31, 2012, the compensation rate was equal to 80% of the worker's after-tax average weekly wage.

[4] For workers injured between January 1, 1993, through December 31, 2012, the maximum benefit payable is 90% of the state average weekly wage. The maximum for workers injured between January 1, 2013, through December 31, 2019, is 100% of the state average weekly wage.

[5] Additional information can be found on pp. 3-4 of the August 30, 2024, Report.

The CPI-U "shows how the purchasing power of a dollar changes over time." *U.S. Bureau of Labor Statistics, Consumer Price Index, Purchasing power and constant dollars*: https://www.bls.gov/cpi/factsheets/purchasing-power-constant-dollars.htm.

The following chart uses the CPI-U Index for the New England Division to show how inflation altered the purchasing power of a dollar from December of 2017 to December of 2023.

Year	CPI-U New England Division Index	Ratio of index values to 2018	Ratio multiplied by 100	Percentage loss in purchasing power
2017	100			
2018	102.169	0.98	97.9	2.1%
2019	104.273	0.96	95.9	4.1%
2020	105.101	0.95	95.1	4.9%
2021	111.635	0.90	89.6	10.4%
2022	117.821	0.85	84.9	15.1%
2023	120.579	0.83	82.9	17.1%

A dollar in 2023 could purchase 83% of what it could buy 2017, a decline of 17.1%.

IV. Measuring the impact of inflation on Maine workers' compensation benefits

Having seen data showing that inflation erodes the purchasing power of a dollar, the next question is, how does this translate to workers' compensation benefits? As mentioned in section II (above), the compensation rate is designed to replace 2/3 of the employee's pre-injury AWW. (It is not designed to replace 100% of an employee's pre-injury after-tax earnings. While each individual employee's experience will vary based on income and filing status, on average, an injured employee receiving 100% of their compensation rate is likely receiving approximately 80% of their pre-injury after-tax pay.)

The following charts illustrate how the value of the compensation rate changes when inflation is taken into account. The first chart is based on the CPI-U for the New England Division. The second is based on changes to the state average weekly wage. The impact is similar for both measures. In each case, the longer an individual receives weekly benefits, the more the value of the benefit erodes due to inflation.

SAWW December, 2017		$804.40			
CR		$536.27			
Year	CPI-U New England Division Index	Ratio of index values to 2017	Equivalent AWW in 2017 dollars	Compensation Rate	Year to year value of benefit
2017	100		$804.40	$536.27	66.7%
2018	102.169	1.022	$821.85	$536.27	65.3%
2019	104.273	1.043	$838.77	$536.27	63.9%
2020	105.101	1.051	$845.43	$536.27	63.4%
2021	111.635	1.116	$897.99	$536.27	59.7%
2022	117.821	1.178	$947.75	$536.27	56.6%
2023	120.579	1.206	$969.94	$536.27	55.3%

The following chart is based on changes to the state average weekly wage and assumes the average weekly wage for an employee is equal to that number:

		SAWW July, 1, 2017	Compensation Rate	
		$804.40	$536.27	
Year	Potential Earnings	Percent change in state average weekly wage	52 weeks at 100%	Year to year value of benefit
2017	$804.40		$536.27	66.7%
2018	$819.55	1.88%	$536.27	65.4%
2019	$843.30	2.90%	$536.27	63.6%
2020	$871.43	3.34%	$536.27	61.5%
2021	$888.05	1.91%	$536.27	60.4%
2022	$915.54	3.10%	$536.27	58.6%
2023	$945.89	3.31%	$536.27	56.7%

The impact of inflation is likely one reason a COLA was enacted in 2019. The next chart shows how the existing COLA affects the value of benefits over time.[6] In order to have more than five years of information, the chart assumes the current COLA would have applied to an individual injured in 2017. When the COLA starts to apply, the decline in the value of the benefit stops.

[6] The existing COLA only applies to employees receiving benefits pursuant to § 212. Employees receiving 100% pursuant to § 213 are not eligible for the COLA.

SAWW December, 2017	$804.40				
Compensation Rate	$536.27				
Year	Change in State Average Weekly Wage	Wage Inflation Limited to 5%	Adjusted Average Weekly Wage	Compensation Rate with adjustments	Year to year value of benefit
2017			$804.40	$536.27	66.7%
2018	3.10%	3.10%	$829.30	$536.27	64.7%
2019	3.31%	3.31%	$856.79	$536.27	62.6%
2020	3.80%	3.80%	$889.34	$536.27	60.3%
2021	10.64%	5.00%	$933.81	$536.27	57.4%
2022	5.30%	5.00%	$980.50	$563.08	57.4%
2023	6.52%	5.00%	$1,029.52	$591.23	57.4%

The Resolve requires consideration of CPI-U inflation data for the New England Division. The following chart substitutes the CPI-U for the New England Division for the increases in the SAWW beginning in 2018.

SAWW December, 2018	$829.30				
Compensation Rate	$552.87				
Year	CPI-U NE Div	CPI-U NE Div (limited to 5%)	Adjusted Average Weekly Wage	Compensation Rate With COLA based on CPI-U New Eng Div	Year to year value of benefit
2018			$829.30	$552.87	66.7%
2019	1.90%	1.90%	$845.06	$552.87	65.4%
2020	0.90%	0.90%	$852.66	$552.87	64.8%
2021	3.60%	3.60%	$883.36	$552.87	62.6%
2022	7.10%	5.00%	$946.08	$552.87	58.4%
2023	2.90%	2.90%	$973.51	$568.90	58.4%

V. CONCLUSION

This update uses the year-to-year value of benefits to illustrate how inflation impacts the value of workers' compensation benefits. Questions that arise include whether there is a point in time when the impact of inflation means that injured workers are no longer receiving "the income support that they require as a result of their injuries[,]" *BRC Report*, p.3; whether other measures exist that can be used to evaluate whether benefits are adequate; and, whether the existing COLA will adequately address inflation's impact.

As the Board considers these questions, and others that may arise, it will also be considering the second objective identified in the Introduction, affordable costs to employers. This will, in part, require analysis of data regarding injured workers who receive weekly compensation benefits. For instance, how many injured workers receive benefits for less than one-year, and how many receive benefits for more than one-year, three-years and five-years? How many of those individuals are receiving 100% and how many are receiving less than 100%?

Finally, with respect to both objectives, the Board will explore the importance of returning injured employees to work as soon as possible after an injury and, if this is not possible, ensuring appropriate employment rehabilitation services are available. Quickly returning an employee to gainful employment minimizes the impact of the injury on the employee while simultaneously containing costs borne by the employer.

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