

§105. Predetermination of independent contractor and construction subcontractor status

1. Predetermination permitted. A worker, an employer or a workers' compensation insurance carrier, or any together, may apply to the board for a predetermination of whether the status of an individual worker, group of workers or a job classification associated with the employer is that of an employee or an independent contractor.

A. The predetermination by the board creates a rebuttable presumption that the determination is correct in any later claim for benefits under this Act. [PL 1993, c. 120, §1 (AMD); PL 1993, c. 120, §6 (AFF).]

B. Nothing in this subsection requires a worker, an employer or a workers' compensation insurance carrier to request predetermination. [PL 2009, c. 569, §1 (AMD).]
[PL 2009, c. 569, §1 (AMD).]

1-A. Predetermination permitted for construction subcontractors. A person, as defined in section 105-A, subsection 1, paragraph E, may apply to the board for a predetermination that the person performs construction work in a manner that would not make the person an employee of a hiring agent, as defined in section 105-A, subsection 1, paragraph D.

A. The predetermination issued by the board pursuant to this subsection is valid for one year and creates a rebuttable presumption that the determination is correct in any later claim for benefits under this Act. [PL 2009, c. 569, §1 (NEW).]

B. Nothing in this subsection requires a person, as defined in section 105-A, subsection 1, paragraph E, a worker, an employer or a workers' compensation insurance carrier to request predetermination. [PL 2009, c. 569, §1 (NEW).]
[PL 2009, c. 569, §1 (NEW).]

2. Premium adjustment. If it is determined that a predetermination does not withstand board or judicial scrutiny when raised in a subsequent workers' compensation claim, then, depending on the final outcome of that subsequent proceeding, either the workers' compensation insurance carrier shall return excess premium collected or the employer shall remit premium subsequently due in order to put the parties in the same position as if the final outcome under the contested claim were predetermined correctly.

[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

3. Predetermination submission. A party may submit, on forms approved by the board, a request for predetermination regarding the status of a person or job description as an employee, construction subcontractor, as defined in section 105-A, subsection 1, paragraph B, or independent contractor. The request is deemed to have been approved if the board does not deny or take other appropriate action on the submission within 30 days.

[PL 2013, c. 63, §4 (AMD).]

4. Hearing. A hearing, if requested by a party within 10 days of the board's decision on a petition, must be conducted under the Maine Administrative Procedure Act. A ruling by the board or administrative law judge under this section is final and not subject to review by the Superior Court.

[PL 2015, c. 297, §2 (AMD).]

5. Certificate. The board shall provide the petitioning party a certified copy of the decision regarding predetermination that is to be used as evidence at a later hearing on benefits.

[PL 1993, c. 120, §1 (AMD); PL 1993, c. 120, §6 (AFF).]

6. Rulemaking. The board is authorized to adopt reasonable rules pursuant to the Maine Administrative Procedure Act to implement the intent of this section, which is to afford speedy and equitable predetermination of employee, construction subcontractor, as defined in section 105-A, subsection 1, paragraph B, and independent contractor status.

[PL 2009, c. 569, §1 (AMD).]

SECTION HISTORY

PL 1991, c. 885, §A8 (NEW). PL 1991, c. 885, §§A9-11 (AFF). PL 1993, c. 65, §1 (AMD). PL 1993, c. 120, §1 (AMD). PL 1993, c. 120, §6 (AFF). PL 2009, c. 569, §1 (AMD). PL 2013, c. 63, §§4, 5 (AMD). PL 2015, c. 297, §2 (AMD).

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