

**§324. Compensation payments; penalty**

**1. Order or decision.** The employer or insurance carrier shall make compensation payments within 10 days after the receipt of notice of an approved agreement for payment of compensation or within 10 days after any order or decision of the board awarding compensation. If the board enters a decision awarding compensation, and a motion for findings of fact and conclusions of law is filed with the administrative law judge or an appeal is filed with the division pursuant to section 321-B or the Law Court pursuant to section 322, payments may not be suspended while the motion for findings of fact and conclusions of law or appeal is pending. The employer or insurer may recover from an employee payments made pending a motion for findings of fact and conclusions of law or appeal to the division or the Law Court if and to the extent that the administrative law judge, division or the Law Court has decided that the employee was not entitled to the compensation paid. The board has full jurisdiction to determine the amount of overpayment, if any, and the amount and schedule of repayment, if any. The board, in determining whether or not repayment should be made and the extent and schedule of repayment, shall consider the financial situation of the employee and the employee's family and may not order repayment that would work hardship or injustice. The board shall notify the Commissioner of Health and Human Services within 10 days after the receipt of notice of an approved agreement for payment of compensation or within 10 days after any order or decision of the board awarding compensation identifying the employee who is to receive the compensation. For purposes of this subsection, "employer or insurance carrier" includes the Maine Insurance Guaranty Association under Title 24-A, chapter 57, subchapter 3. [PL 2015, c. 297, §18 (AMD).]

**2. Failure to pay within time limits.** An employer or insurance carrier who fails to pay compensation, as provided in this section, is penalized as follows. For purposes of this subsection, "employer or insurance carrier" includes the Maine Insurance Guaranty Association under Title 24-A, chapter 57, subchapter 3.

A. Except as otherwise provided by section 205, if an employer or insurance carrier fails to pay compensation as provided in this section, the board may assess against the employer or insurance carrier a fine of up to \$200 for each day of noncompliance. If the board finds that the employer or insurance carrier was prevented from complying with this section because of circumstances beyond its control, a fine may not be assessed.

(1) The fine for each day of noncompliance must be divided as follows: Of each day's fine amount, the first \$50 is paid to the employee to whom compensation is due and the remainder must be paid to the board and be credited to the Workers' Compensation Board Administrative Fund.

(2) If a fine is assessed against any employer or insurance carrier under this subsection on petition by an employee, the employer or insurance carrier shall pay reasonable costs and attorney's fees related to the fine, as determined by the board, to the employee.

(3) Fines assessed under this subsection may be enforced by the Superior Court in the same manner as provided in section 323. [PL 2007, c. 265, §1 (AMD).]

B. Payment of a fine assessed under this subsection is not considered an element of loss for the purpose of establishing rates for workers' compensation insurance. [PL 2007, c. 265, §1 (AMD).] [PL 2009, c. 129, §10 (AMD); PL 2009, c. 129, §13 (AFF).]

**3. Failure to secure payment.** If any employer who is required to secure the payment to that employer's employees of the compensation provided for by this Act fails to do so, the employer is subject to the penalties set out in paragraphs A, B and C. The failure of any employer to procure insurance coverage for the payment of compensation and other benefits to the employer's employees in

compliance with sections 401 and 403 constitutes a failure to secure payment of compensation within the meaning of this subsection.

A. The employer is guilty of a Class D crime. This paragraph applies only to cases in which the employer has committed a knowing violation. [PL 2015, c. 469, §3 (AMD).]

B. The employer is liable to pay a civil penalty of up to \$10,000 or up to an amount equal to 108% of the premium, calculated using Maine Employers' Mutual Insurance Company's standard discounted standard premium, that should have been paid during the period the employer failed to secure coverage, whichever is larger, payable to the Employment Rehabilitation Fund. In determining the amount of the penalty to be assessed under this paragraph, the board shall take into consideration the employer's effort to comply with sections 401 and 403. [PL 2015, c. 469, §3 (AMD).]

C. The employer, if organized as a corporation, is subject to administrative dissolution as provided in Title 13-C, section 1421 or revocation of its authority to do business in this State as provided in Title 13-C, section 1532. The employer, if organized as a limited liability company, is subject to administrative dissolution as provided in Title 31, section 1592. The employer, if licensed, certified, registered or regulated by any board authorized by Title 5, section 12004-A or whose license may be revoked or suspended by proceedings in the District Court or by the Secretary of State, is subject to revocation or suspension of the license, certification or registration. This paragraph applies only to cases in which the employer has committed a knowing violation, has failed to pay a penalty assessed pursuant to this subsection or continues to operate without required coverage after a penalty has been assessed pursuant to this subsection. [PL 2015, c. 469, §3 (AMD).]

For purposes of this subsection, a violation is considered a knowing violation if the employer has previously obtained workers' compensation insurance and that insurance has been cancelled or that insurance has not been continued or renewed, unless the cancellation, failure to continue or nonrenewal is due to a substantial change in the employer's operations that is unrelated to the classification of individuals as employees or independent contractors; the employer has been notified in writing by the board of the need for workers' compensation insurance; the employer has had one or more previous violations of the requirement to secure the payment of the compensation provided for by this Act; or the employer misclassifies an employee as an independent contractor despite a contrary determination by the board.

Prosecution under paragraph A does not preclude action under paragraph B or C.

If the employer is a corporation, partnership, limited liability company, professional corporation or any other legal business entity recognized under the laws of the State, any agent of the corporation or legal business entity having primary responsibility for obtaining insurance coverage is liable for punishment under this section. Criminal liability must be determined in conformity with Title 17-A, sections 60 and 61.

[PL 2015, c. 469, §3 (AMD).]

**4. Certificate.** Notwithstanding any other provision of law or rule of evidence, the certificate of the executive director, under seal of the board, must be received in any court in this State as prima facie evidence of facts pertaining to insurance coverage records contained in the certificate or within the documents attached to the certificate.

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

#### SECTION HISTORY

PL 1991, c. 885, §A8 (NEW). PL 1991, c. 885, §§A9-11 (AFF). PL 1999, c. 354, §8 (AMD). PL 1999, c. 547, §B78 (AMD). PL 1999, c. 547, §B80 (AFF). PL 2003, c. 344, §D28 (AMD). PL 2007, c. 240, Pt. JJJ, §6 (AMD). PL 2007, c. 265, §1 (AMD). PL 2007, c. 311, §3 (AMD). PL 2009, c. 129, §§9, 10 (AMD). PL 2009, c. 129, §13 (AFF). PL 2009, c. 520, §2 (AMD). PL

2011, c. 113, Pt. B, §20 (AMD). PL 2011, c. 361, §1 (AMD). PL 2013, c. 63, §15 (AMD). PL 2015, c. 297, §18 (AMD). PL 2015, c. 469, §3 (AMD).

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