

By Mr. White of Worcester, petition of Thomas P. White relative to disability payments under the workmen's compensation law. Commerce and Labor.

**The Commonwealth of Massachusetts**

In the Year One Thousand Nine Hundred and Eighty-Five.

AN ACT REVISING WORKER'S COMPENSATION DISABILITY PAYMENTS.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Section 1 of chapter 152 of the General Laws, as  
2 most recently amended by chapter 374 of the acts of 1972 is hereby  
3 further amended by adding the following paragraph: —

4 (9) "Permanent impairment," any anatomic or functional abnor-  
5 mality or loss existing, after the date of maximum medical  
6 improvement or recovery which is stable or nonprogressive and  
7 which results from the injury.

8 (10) "Date of maximum medical improvement," the date after  
9 which further recovery from, or lasting improvement to an injury  
10 or disease can no longer reasonably be anticipated based upon  
11 reasonable medical certainty, and on which temporary disability  
12 ends and permanent disability, if any, begins.

1 SECTION 2. Section 29 of chapter 152 of the General Laws, as  
2 most recently amended by chapter 155 of the acts of 1979, is hereby  
3 further amended by striking out in line 2, the word "incapacitate"  
4 and insert in place thereof the word, 'disable', and by striking out in  
5 line 3, the word "incapacity" and inserting in place thereof the  
6 word: — disability.

1 SECTION 3. Chapter 152 of the General Laws is hereby  
2 amended by striking out section 34, as most recently amended by  
3 section 5 of chapter 474 of the acts of 1976, and inserting in place  
4 thereof the following section: —

5     *Section 34.* In case of total disability, the insurer shall pay the  
6 injured employee a weekly compensation equal to two-thirds of his  
7 average weekly wages, but not more than the average weekly wage  
8 in the commonwealth, as determined according to the provisions  
9 of subsection (a) of section twenty-nine of chapter one hundred  
10 and fifty-one A during the continuance of such total disability, and  
11 promulgated by the director of the division of employment secur-  
12 ity on or before October first of each year, unless the average  
13 weekly wages of the injured employee are less than forty dollars  
14 per week, in which case, said weekly compensation shall be equal  
15 to his average weekly wages, but not less than twenty dollars per  
16 week where the number of normal working hours of the employee  
17 is fifteen or more; provided that the amount does not exceed  
18 forty-five thousand dollars, except that if the injured employee has  
19 received compensation for the same injury under section thirty-  
20 five, the combined amount of compensation under this section and  
21 section thirty-five shall not exceed the maximum amount as set  
22 forth in section thirty-five.

1     SECTION 4. Chapter 152 of the General Laws is hereby  
2 amended by striking out section 34A, as most recently amended by  
3 chapter 474 of the acts of 1976, and inserting in place thereof the  
4 following section: —

5     *Section 34A.* (1) While the disability for work resulting from  
6 injury is both permanent and total, the insurer shall pay to the  
7 injured employee, following payment of the maximum amount of  
8 compensation provided in sections thirty-four and thirty-five, or  
9 either of them, a weekly compensation equal to two-thirds of his  
10 average weekly wage in the commonwealth, as determined,  
11 according to the provisions of subsection (a) of section twenty-  
12 nine of chapter one hundred and fifty-one A, during the continu-  
13 ance of such total disability, and promulgated by the director of  
14 the division of employment security on or before October first of  
15 each year, nor less than forty dollars per week during the continu-  
16 ance of such permanent and total disability.

17     Loss of both hands, both arms, both feet, both legs, both eyes, or  
18 any 2 thereof, or paraplegia or quadriplegia shall, in the absence of  
19 conclusive proof of a substantial earning capacity, constitute per-

20 manent total disability. In all other cases, permanent total disabili-  
21 ty shall be determined in accordance with the facts. In such other  
22 cases, no compensation may be payable under paragraph (1) if the  
23 employee is engaged in, or is physically capable of engaging in,  
24 gainful employment, and the burden shall be upon the employee to  
25 establish that he is not able to do even light work due to physical  
26 limitation; and

27 If an employee who is being paid compensation for permanent  
28 total disability becomes rehabilitated to the extent that he estab-  
29 lishes a work capacity, or otherwise regains or acquires a work  
30 capacity, he shall be paid, instead of the compensation provided in  
31 paragraph (1), benefits pursuant to section 35.

32 (2) Temporary total disability. Compensation for temporary  
33 total disability shall be paid as follows: —

34 In case of disability of total in character but temporary in  
35 quality, a weekly compensation equal to two-thirds of his average  
36 weekly wages, earnings or salary, but not more than the average  
37 weekly wage in the commonwealth during the continuance there-  
38 of, not to exceed 250 weeks.

39 (3) Compensation adjustment. Compensation payable pursu-  
40 ant to this section shall be adjusted each year as of the first day of  
41 the state's fiscal year so that it continues to bear the same percen-  
42 tage relationship to the state average weekly wage as it did at the  
43 time of injury; provided that no adjustment in any one year may  
44 exceed 5%.

1 SECTION 5. Chapter 152 of the General Laws is hereby  
2 amended by striking out section 35 as most recently amended by  
3 chapter 474 of the acts of 1976, and inserting in place thereof the  
4 following new section: —

5 *Section 35.* While the disability for work resulting from the  
6 injury is partial, and said injured employee experiences a decrease  
7 in wages caused by a compensable injury, but is not eligible for  
8 benefits pursuant to sections thirty-four and thirty-four A, he may  
9 be entitled to wage-loss benefits under this section. These benefits  
10 shall be based on actual wage loss and shall be equal to two-thirds  
11 the difference between his average weekly wage before the injury  
12 and the salary, wage and other remuneration the employee

12 receives or is able to earn after the injury, as compared on a weekly  
13 basis, but not more than the average weekly wage in the common-  
14 wealth as determined according to the provisions of subsection (a)  
15 of section twenty-nine of chapter one hundred and fifty-one A and  
16 promulgated by the director of the division of employment secur-  
17 ity on or before October first of each year, and the amount of such  
18 compensation shall not exceed an amount equal to two-thirds of  
19 the employee's average weekly wage at the time of the injury or  
20 forty-five thousand dollars, whichever is lower.

21 The amount determined to be the salary, wages and other  
22 remunerations the employee is able to earn after the injury shall in  
23 no case be less than the sum actually being earned by the employee,  
24 including earnings from sheltered employment. In the event the  
25 employee voluntarily limits his income, or fails to accept employ-  
26 ment commensurate with his ability, the salary, wages and other  
27 remunerations the employee is able to earn after the injury shall be  
28 deemed to be the amount which would have been earned if the  
29 employee did not limit his income or accepted appropriate  
30 employment. Whenever a wage-loss benefit as set forth in the first  
31 paragraph may be payable, the burden shall be on the employee to  
32 establish that any wage loss claimed is the result of the compensa-  
33 ble injury.

34 The right to wage-loss benefits shall terminate:

35 (1) As of the end of any two-year period commencing at any  
36 time subsequent to the month when the injured employee reaches  
37 the date of maximum medical improvement, unless during such  
38 two-year period wage-loss benefits shall have been payable during  
39 at least three consecutive months;

40 (2) Five hundred weeks after the injured employee reaches the  
41 date of maximum medical improvement; or

42 (3) When the injured employee reaches age 65 and is eligible for  
43 the benefits under the United States Code Title 42, Sections 402  
44 and 405, whichever comes first.

45 When the injured employee reaches age 62, wage-loss benefits  
46 shall be reduced by the total amount of Social Security retirement  
47 benefits which the employee is receiving, not to exceed 50% of the  
48 employee's wage-loss benefits.

49 Annual adjustment. Compensation payable pursuant to this  
50 section shall be adjusted each year as of the first day of the state's  
51 fiscal year so that it continues to bear the same percentage rela-  
52 tionship to the state average weekly wage as it did at the time of  
53 injury; provided that no adjustment in any one year may exceed  
54 5%.

1 SECTION 6. Chapter 152 of the General Laws is hereby  
2 further amended by striking out section 35B, as most recently  
3 amended by chapter 667 of the acts of 1970, and inserting in place  
4 thereof the following new section: —

5 *Section 35B.* If an employee receiving wage-loss benefits pur-  
6 suant to section 35 suffers a subsequent injury compensable pur-  
7 suant to this chapter, which subsequent injury causes a further  
8 decrease in wages, wage-loss benefits for both such injuries shall be  
9 payable, provided that the total wage-loss benefits payable do not  
10 exceed the maximum benefits level allowed pursuant to section  
11 thirty-five. For purposes of determining wage-loss benefits pay-  
12 able for subsequent injuries under this subsection, the phrase  
13 "average weekly wage" in section thirty-five is deemed to include  
14 wage-loss benefits then being paid for the prior injury.

1 SECTION 7. Chapter 152 of the General Laws is hereby further  
2 amended by striking out section 48, as most recently amended by  
3 chapter 776 of the acts of 1977, and inserting in place thereof the  
4 following new sections: —

5 *Section 48.* (1) It is stated policy for the administration of the  
6 workers' compensation system that it is in the best interests of the  
7 injured worker that he receive disability or wage-loss payments on  
8 a periodic basis. Lump sum payments in exchange for the employ-  
9 er's or carrier's release from liability for future payments of com-  
10 pensation, other than for medical expenses, shall be allowed only  
11 under special circumstances, as when the claimant can demon-  
12 strate that lump sum payments will definitely aid in his rehabilita-  
13 tion or are otherwise clearly in his best interests and that lump sum  
14 payments will avoid undue expense or undue hardship to any  
15 party, or that such claimant has removed himself or is about to  
16 remove himself from the state. In no case shall a lump sum pay-

17 ment be allowed in exchange for the release of an employer's or  
18 carrier's liability for future medical expenses. In no case shall a  
19 lump sum settlement be allowed in exchange for the release of an  
20 employer's or carrier's liability for future medical expenses. In no  
21 case shall a lump sum settlement be allowed until 6 months after  
22 the date of maximum medical improvement has been reached.

23 (2) Upon the application of any party in interest or upon joint  
24 petition of all interested parties, and after giving due consideration  
25 to the interests of all interested parties, if a deputy commissioner  
26 finds that a lump sum payment in exchange for release from  
27 liability is proper under paragraph (1), said commissioner may  
28 enter a compensation order requiring that the liability of the  
29 employer for compensation shall be discharged by the payment of  
30 a lump sum equal to the present value of all future payments of  
31 compensation, computed at 4% true discount computed annually  
32 or requiring that the employer make advance payment of a part of  
33 the compensation for which said employer is liable by the payment  
34 of a lump sum equal to the present value of such part of the  
35 compensation, computed at 4% true discount compounded annu-  
36 ally. A compensation order so entered upon joint petition of all  
37 interested parties shall not be subject to modification or review.  
38 However, nothing in this subsection shall be construed to mean  
39 that a commissioner is required to approve any award for lump  
40 sum payment when it is determined by the commissioner that the  
41 payment being made is in excess of the value of benefits the  
42 claimant would be entitled to under this chapter. The commis-  
43 sioner shall make or cause to be made such investigations as he  
44 considers necessary, in each case in which the liability of the  
45 employer for compensation shall not be subject to modification or  
46 review, to determine whether such final disposition will definitely  
47 aid the rehabilitation of the injured worker or otherwise is clearly  
48 for the best interests of the person entitled to compensation and, in  
49 his discretion, may have an investigation made by the Rehabilita-  
50 tion Section of the Division of Workers' Compensation. The joint  
51 petition and the report of any investigation so made will be deemed  
52 a part of the proceeding. A commissioner, in his discretion, may  
53 hear testimony relating to proposed stipulation for settlement  
54 under this subsection without having in hand the division file;

55 however, he shall in no event enter an order thereon without first  
56 having reviewed the division file. An employer shall have the right  
57 to appear at any hearing pursuant to this subsection which relates  
58 to the discharge of such employer's liability and to present testi-  
59 mony at such hearing. The carrier shall provide reasonable notice  
60 to the employer of the time and date of any said hearing and inform  
61 him of his rights to appear and testify. When the claimant is  
62 represented by counsel or when the claimant and carrier or  
63 employer are represented by counsel, final approval of the lump  
64 sum settlement agreement, as provided for in a joint petition and  
65 stipulation, shall be approved by entry of an order within 7 days of  
66 the filing of such joint petition and stipulation without a hearing,  
67 unless the deputy commissioner determines, at his discretion, that  
68 additional testimony is needed before such settlement can be  
69 approved or disapproved and so notifies the parties. The probabil-  
70 ity of the death of the injured employee or other person entitled to  
71 compensation before the expiration of the period during which  
72 such person is entitled to compensation shall, in the absence of  
73 special circumstances making such course improper, be deter-  
74 mined in accordance with the most recent United States Life  
75 Tables published by the National Office of Vital Statistics of the  
76 United States Department of Health, Education, and Welfare. The  
77 probability of the happening of any other contingency affecting the  
78 amount of duration of a compensation, except the possibility of the  
79 remarriage of a surviving spouse, shall be disregarded. As a condi-  
80 tion of approving a lump sum payment to a surviving spouse, the  
81 commissioner at the commissioner's discretion, may require secur-  
82 ity which will insure that, in the event of the remarriage of such  
83 surviving spouse, any unaccrued future payments so paid may be  
84 recovered or recouped by the employer or carrier.

